

December 30, 2009

Major Stephen R. Lippert
NGB/A 7AM, Program Manager
3500 Fetchet Avenue
Andrews AFB, MD 20762-5157

**RE: DEIS for Proposed Modification of Condor Military Operations in Western
Maine**

Dear Major Lippert:

The Penobscot Nation has serious concerns about impacts from this project on tribal lands and natural resources, tribal citizens and the general public that use tribal lands and resources within the project area, and Penobscot Nation plans for the development of certain economic projects that are currently underway.

The approximate 47,600 acres of tribal lands impacted by the proposed expansion of military training flights are lands that were recovered by the Penobscot Nation under the terms of PL 96-420, The Maine Indian Land Claims Act of 1980. These lands were acquired for the long term use and benefit of the Penobscot Nation. Current uses that would be significantly impacted by this project include cultural and traditional gathering practices, land management activities of the tribal government, and economic development projects currently under development within the project area. This project, by its nature, may result in unintended restrictions on the uses of our lands and resources which may constitute a violation of the Maine Indian Land Claims Settlement Act of 1980. The United States Government has a federal fiduciary trust responsibility to protect the lands and natural and cultural resources of the Penobscot Nation. As an agency of the federal government, the MANG may (unwittingly) be in breach of the federal trust responsibility if this project is approved as proposed.

**CONSULTATION AS REQUIRED BY EXECUTIVE ORDER OF THE PRESIDENT
AND FEDERAL LAW**

The Penobscot Nation is a federally recognized sovereign Indian Tribe. Executive Orders of the President of the United States, including President Obama, require that all federal

agencies formally consult with federally recognized tribes when their proposed actions potentially impact such tribes. To date, your agency has not initiated the required consultation process. Although The Penobscot Nation was contacted in October 2006 and March 2007 regarding the cultural significance of these sites, such contacts do not fulfill the intent of the US Government's policy for formal consultation, especially given the level of impact to the tribe's lands, resources, and the current and future uses of these tribal lands and resources.

Section 106 of the National Historic Preservation Act requires formal consultation with the Penobscot Nation as a matter of federal law. In 2005, the National Association of Tribal Historic Preservation Officers, in collaboration with the Advisory Council on Historic Preservation, developed a "best practices" document for tribal consultation. The following excerpt is from that document:

"An agency's notification to a tribe does NOT constitute the complete consultation process. Nor must tribal consent or agreement always be obtained before the consultation process can be concluded. Consultation is completed once a well-documented administrative history of government-to-government discussions (face-to-face preferred) of the proposed project exists and a plan of action is agreed upon" (Tribal Consultation-- Best Practices in Historic Preservation, NATHPO, May 2005).

We request that the Department of Defense honor its government-to-government relationship with the Penobscot Nation by initiating a formal consultation process with the Tribal leadership, our Natural Resources Director, and the Penobscot THPO.

**TRIBAL LANDS, NATURAL RESOURCES, AND CURRENT AND FUTURE USES
OF TRIBAL LANDS AND NATURAL RESOURCES ARE SIGNIFICANTLY
IMPACTED BY THE PROPOSED ACTION**

The Penobscot Nation strongly disagrees with the statement on page 4-39 of the DEIS that:

“The Proposed Action would have no adverse effect on existing Native American resources within the APE.....”.

Since your agency has failed to meet its mandatory formal consultation requirements with the Penobscot Nation, the MANG can not fully understand all of the issues associated with the cultural, traditional, and economic uses of the lands and natural resources located within the project area.

I look forward to a formal consultation process regarding this matter.

Sincerely,

Kirk E. Francis, Chief
Penobscot Nation

Cc: Maine Congressional Delegation
The Honorable Governor John E. Baldacci
Mr. David Sanborn, Senior Tribal Liaison, Office of the Deputy Under Secretary of
Defense