



STATE OF MAINE
OFFICE OF THE GOVERNOR
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AUGUSTA, MAINE
04333-0001

JOHN ELIAS BALDACCI
GOVERNOR

December 29, 2009

Harry M. Wyatt III
Lieutenant General, USAF
Director, Air National Guard
National Guard Bureau
1411 Jefferson Davis Highway
Arlington, Virginia 22202-3231

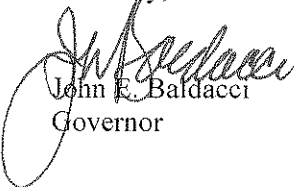
Dear Lieutenant General Wyatt:

I'd like to thank your staff for the response to my correspondence dated 13 November 2009. Considering the significance and extensiveness of concerns for the potential impacts that would be imposed on the State of Maine, the citizens of the State of Maine and I respectfully request that a Supplemental Draft Environmental Impact Statement (SDEIS) be completed, and published with significant lead time notification of the required public hearings.

I have enclosed for your consideration more specific information regarding the answers provided in your letter of 1 December 2009. In addition to the information enclosed, I am requesting an analysis of the "Deployment for LOWAT Training" as compared to the socioeconomic impact of the proposed CONDOR modification because in accordance with the CEQ regulations and guidance "prohibitive cost" alone is not a sufficient reason to dismiss an alternative from further consideration in the DEIS. The DEIS does not adequately demonstrate that expanding the existing Adirondack Airspace Complex or Yankee MOA are economically infeasible alternatives or would impose greater environmental impacts than the proposed expansion of use at the Maine CONDOR activities and associated adverse impacts to the people of Maine.

On behalf of the residents of Maine I maintain the assessments noted in my prior correspondence and strongly recommend that additional data gathering, analysis and documentation be done to assure me and the people of Western Maine that no significant impacts will result from the proposed changes to the Condor MOA. I look forward to your response.

Sincerely,



John E. Baldacci
Governor

cc: William Albro, NGDIA 7
Attorney General Janet Mills
David A. Cole, MaineDOT Commissioner
General John Libby, DVEM Commissioner

Encl:



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1. MaineDOT's Assessments

- A. CEQ regulations. Please see Part 4A of this attachment for specific additional comments relative to the CEQ regulations as they relate to the DEIS.
- B. Civilian airports. The DEIS, pages 4-6 through 4-10, outlines a basic impact analysis to the civilian airports in the study area. The results of the analysis states "...increasing F-15 sorties and decreasing F-16 sorties in the MOAs would decrease the relative risk of a Class A mishap, but increase the relative risk of a Class B sortie occurring in the MOAs." The DEIS continues with "...there is no evidence to indicate that the Proposed Action would constitute a significant negative impact on mishap potential in the Condor Low and High MOAs." The existing Condor operations occur at a significantly higher altitude than that proposed in the MOA and increased risk to Maine civilians crashing because of encountering low level military aircraft is unacceptable. Your response letter, Item 2. B. states "a clear understanding of flying operations is difficult to assess..." without a more thorough analysis. The same paragraph ends by stating "Consequently, further investigation will be required to validate current operations to assess safety considerations." The additional investigation and analysis suggested by the DEIS to validate safety considerations should be included in the requested SDEIS to provide the decision-makers a complete safety analysis prior to committing to a particular Condor flight location and/or height.

The DEIS is lacking a complete impact analysis of low level military flights upon public use airports, seaplane bases and private airports within the Study Area. To respond to the above concern I request that an SDEIS include a more thorough analysis of potential impacts from low level flights and identification of proposed mitigation for the above named types of civilian operations.

- C. Noise Analysis. MaineDOT respectfully requests the ANG hire an independent noise consultant to validate the DEIS noise analysis, prepare additional requested noise analysis and document the results within the SDEIS. As stated in Item 3, Section D the DEIS did not include a noise analysis for identified wildlife and domestic species within the Study Area. The additional noise analysis must include a thorough noise analysis for domestic and wild animals located within the study area, as well as the potential social and economic impacts to farm operations dependent on animal products.

2. Residents Assessments

- A. Socioeconomic Issues. According to the definitions provided in 42 U.S.C. 3161 the four Maine Study Area counties, Piscataquis, Somerset, Franklin and Oxford, are Economically Distressed Areas (EDAs) of the United States. 42 U.S.C. 3161 identifies EDAs as "areas where the unemployment is 1% or more above the national average or the per capita income is 80% or less than the national average". The Maine Department of Labor (DOL) has identified unemployment rates of 10.5% in Somerset County and 10.3% in both Franklin and Oxford Counties. The

Maine DOL also notes that many of the individual towns located in the Condor MOA area experience unemployment rates of 12 to 26%, well exceeding the rate experienced at the associated county and state level. Specific socioeconomic data applicable to the above mentioned counties should be collected and analyzed for potential socioeconomic impacts to the residents and commercial enterprises underlying the proposed airspace modifications. This analysis should be included in the SDEIS along with the review done by the ANG, as noted in the response letter, such that it may be reviewed by the MaineDOT, Maine State Planning Office, Maine Department of Economic and Community Development and the citizens of the State of Maine before the decision is made final. Many of Maine's citizens are very concerned that low flying military aircraft will exacerbate the economic conditions and be detrimental to economic growth in a portion of our State known for its recreational opportunities and quality of life.

- B. Caps on flying. The response provided states that the DEIS "effectively caps the number of sorties that could occur." As noted in my previous correspondence, "the residents would like caps placed on the number and timing of sorties." We believe that a definitive cap on sorties in writing within the SDEIS (ex. Sorties will not be flown on weekends or holidays.) will go a long way to address concerns.
- C. Bird Strikes. Page 3-12 of the DEIS states that "There are no major migratory flyways that pass through, or adjacent to, Condor 1 and 2 MOA's". Page 3 of the USFWS letter in Appendix A states "Despite the EA's assertion that the project area is not near any flyway (3-10), the Androscoggin River Watershed, which is central to the refuge, is a major migratory route for waterfowl, passerines, and shorebirds." Conflicting statements such as these should be fully vetted and discussed within the SDEIS. The MaineDOT also notes the DEIS lacks documentation of coordination with Maine Department of Inland Fisheries and Wildlife (IF&W) in terms of affect on these or any State listed species. There is no indication that any local bird or bird use data, such as data from wind power farm planning documents, were reviewed or analyzed.

As noted, baseline bird information and analysis is lacking in the DEIS, therefore, we respectfully request a more in-depth evaluation at this time and the evaluation results be included in an SDEIS such that it may be reviewed by the MaineDOT, Maine IF&W, and the citizens of the State of Maine before the decision is made final.

- D. Noise Analysis. Please refer to 1.c. MaineDOT finds that the DEIS mentions that eagles are not affected by 60 to 75 dBA. The DEIS lacks documentation for this statement. The DEIS also does not address the potential of a noise impact from the upper limit of 117.6 dBA as identified on page 3-20. On Page 4-17, it states that nesting pairs become habituated to over flights. There is no citation for that statement, and that statement is rebutted on Page 3 of the USFWS letter in Appendix A. Therefore the DEIS is deficient in analysis of noise impacts to eagles. We respectfully request this deficiency to be addressed in an SDEIS.

The Maine Farm Bureau has identified 1062 livestock farms (beef, dairy, and horse operations) within the four counties that the proposed Condor operation will impact. Collective livestock within these farms totals more than 27,000 animals, not including sheep, llama, or alpaca which are also raised in that area of Maine. The noise potentially created has the possibility of affecting the more than \$26 million in sales generated by these farms. The Farm Bureau believes that low-level training flights in the western United States has had negative effects on said industries. Therefore, we respectfully request that the so noted "Identified wildlife and domestic species that may be impacted by noise" be evaluated at this time and the evaluation included in the SDEIS such that it may be reviewed by the MaineDOT and the citizens of the State of Maine before the decision is made final. Many citizens are concerned about the noise impact on wildlife and domestic animal population will be significant and detrimental to the State's Quality of Life.

- E. Land Use. The discussions on pages 1-9 and 1-10 indicate that Condor and Adirondack are equally restrictive "for the maneuvers and operations required by F-15s performing LOWAT." As both the Condor and Adirondack locations are equally restrictive, and since "The Adirondack Airspace Complex, including the low altitude portion of the airspace, is designed and optimized for air-to-ground, 'bombing range' type training..." why is LOWAT not proposed to occupy the same area. As such, why introduce new low level flights in Maine when the Adirondack Complex area already incurs the associated impacts from low level military flights? A more detailed analysis of the Adirondack MOA should be provided in an SDEIS as an alternative as it would occur in an area already impacted, and would potentially present less socioeconomic, and population impacts.
- F. Training Necessity. Maine citizens understand the need for military training; however, former military pilots have spoken out against this particular alternative and the need for LOWAT training itself. Maine citizens have requested additional information beyond the September 11, 2001 example given. Since the DEIS refers to training requirements as far back as 2001, Maine is requesting that the ANG provide the number of sorties overseas that have encountered a similar situation where LOWAT training has been beneficial and has been called into practice and include this in the SDEIS. This information could be crucial to assist in convincing the citizens of Maine that the proposed actions far outweigh the impacts on the Maine landscape, wildlife, economy and way of life in Western Mountains of Maine.
- G. Notification. While we agree that the notices were placed in numerous publications, we would also note the timing of these advertisements are not stipulated in the CEQ regulations. The MaineDOT standards for DEIS advertisement include a requirement of public notice of all NEPA public hearings at least two weeks prior to the meeting date and that written notification be sent to all potentially impacted property owners within a Study Area. Although ANG notification met the 32 CFR standard, citizens from Western Maine believe it did not provide sufficient advance notification. I respectfully request that at least two weeks notification prior to the SDEIS public hearing be provided in the same publications noted in your 1 December 2009 letter.

- H. Quantity of Sorties. As noted, BRAC decisions can and have changed. As such, a SDEIS should specifically state that any change in the number of sorties or the type of aircraft that use this proposed airspace be required to advance a SDEIS including further NEPA analysis, public and resource agency coordination and a public hearing.
- I. Prior MOA request. The SDEIS that I am requesting should contain reference to the prior MOA request denied under the McKernan administration in the 1980's. This reference should include a detailed statement as to the requested Proposed Action, changes and modifications from the Proposed Action and outline the differences between the past and current MOA proposal documented in the DEIS.

3. Attorney General's Assessments

- A. Impact on Appalachian Trail. The comments from the National Park Service should be addressed within the SDEIS, not the Final EIS.
- B. Penobscot Nation. The ANG should meet formally with the Penobscot Nation and obtain their comments for inclusion in the requested SDEIS. The MaineDOT standard practice recognizes that written communication is insufficient with the Maine Native American population. With a study of this magnitude we strongly recommend more formal communication via telephone or face to face with Penobscot Indian Nation, Chief Kirk Francis.

4. Overall Assessments

A. CEQ regulations:

- 40 CFR 1502.10 identifies a standard format for EISs should be followed unless the agency determines that there is a compelling reason to do otherwise. The following components were not included in the CONDOR DEIS:
 - Cover Page [In accordance with 40 CFR 1502.11]
 - Who are comments to be sent to [40 CFR 1502.11]
 - End date for submitting comments on DEIS [40 CFR 1502.11 and 1506.10]
 - Documentation of the EIS Scoping Process [40 CFR 1501.7]
 - Distribution list [40CFR 1502.10(i)]
 - Agencies and persons consulted during the preparation of the DEIS [40 CFR 1508.9(b)]
 - Information regarding public participation/coordination [40 CFR 1506.6]
 - List or statement regarding need for any federal/state permits, licenses, etc. [40 CFR 1502.25(b)]

B. Document specific items:

- Page 1-5 – Figure 2-1 – legend does not describe dots and circles in graphic
- Page 3-22 – lines 11-14, question the accuracy of the provided climate information
- Page 3-29 – line 7 – spelling “Garrabassett” should be “Carrabassett”
- Page 3-30 – lines 20 & 24, same spelling error as on previous line
- Page 3-35 – Figure legend is not clear
- Page 3-47 – lines 1-3 – Are all of the 6 wildlife management areas in study/affected area?
- Page 4-2 – line 25 – where is Figure 4-1?
- Page 5-1 – line 6 – implies an EA
- Page 5-3 – line 16 – implies an EA
- Page 5-8 – line 5 – Should be “Figure 5.2” not 5.1
- Page 5-9 – line 24 – Why not get information from Navy regarding P-3 Orion operations?
- Page 6-1 – line 1 – implies an EA