

# TOHONO O'ODHAM NATION OFFICE OF THE CHAIRMAN AND VICE CHAIRWOMAN

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Arizona Regional Airspace EIS  
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Via online portal submission

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## **Tohono O'odham Nation Comments on the Proposed USAF Regional Special Use Airspace Optimization DEIS**

The following comments on the proposed U.S. Air Force (USAF) Regional Special Use Airspace Optimization Draft Environmental Impact Statement (DEIS) are submitted by and on behalf of the Tohono O'odham Nation (the Nation). The Nation is a federally recognized Indian Tribe with more than 36,000 members and tribal lands spanning more than 2.8 million acres across Southern Arizona. Our people have cared for this land, our *jewed*, since time immemorial. We have preserved its tranquility for our people and all living creatures within it—this is integral to maintaining our Tohono O'odham *himdag*, our way of life. Increasing noise pollution and other environmental impacts of low-altitude military overflights significantly threaten this way of life. The action alternatives set forth in the DEIS negatively and disproportionately impact tribal, rural, and low-income communities across southern Arizona, including our communities on the Nation. The Sells and Ruby Military Operation Areas (MOAs) are above the Nation's reservation lands and the Fuzzy

MOA is immediately adjacent to the Nation's lands. The action alternatives all include a projected increase in annual sorties and extension of authorized times of use, effectively authorizing the gradual transformation of tribal communities into military training grounds from 6:00 a.m. to midnight five days a week.

To the extent implementation of one of the action alternatives may improve our shared interest in national security, any such incremental improvement is not sufficient to justify the significant, disparate, negative impacts the action alternatives will have on the Nation. Federally recognized tribes, such as the Nation, have both procedural and substantive safeguards embedded in federal law and practice that are intended to protect them, and to some extent other environmental justice communities, from projects that result in the disparate, negative impacts addressed herein.

As detailed below, there are significant procedural and substantive shortcomings in the DEIS. First, the USAF has not met its obligation to conduct meaningful consultation with the Nation as required by the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and its federal trust responsibility. Additionally, the USAF has failed to meet NEPA's public comment requirements which are intended, in part, to give members of the public who will be impacted by the proposed Action—such as those who live and work on the Nation—a meaningful opportunity to comment on the process, the alternatives, and the anticipated impacts of the project.

Substantively, the stated Purpose and Need of the Proposed Action are misleading, omitting analysis of the 492nd Special Operations Wing beddown and A-10 Warthog's retirement. Further, the necessity of increasing sorties across the MOAs is unclear, especially given the reasonable alternative of meeting the USAF's future airspace needs by scheduling additional sorties on the weekends at the Barry M. Goldwater Bombing Range—a reasonable alternative that should have been, but was not, adequately considered in the DEIS. The DEIS also fails to properly identify the Nation as an environmental justice community and inadequately addresses the impact of increased sorties on our people, wildlife, livestock, and resources.

The Nation joins the San Carlos Apache Tribe, Center for Biological Diversity, and Archaeology Southwest (and incorporates their comments in their entirety by this reference herein), in strongly encouraging the USAF to adopt the No Action Alternative. In the alternative, the Nation encourages the USAF to issue a revised DEIS that includes an analysis of the impacts of the 492<sup>nd</sup> Special Operations wing beddown on the USAF's future airspace needs; fully analyzes the reasonable alternative of adding weekend scheduling to the Barry M. Goldwater Bombing Range; accurately identifies environmental justice communities and properly analyzes the disproportionate impact the action alternatives will have on them; and adequately analyzes the potential impacts of the action alternatives on tribal members' health and homes, wildlife, livestock, and lands.

#### **I. The USAF Failed to Conduct Meaningful Tribal Consultation on the Proposed Action with the Nation as Required by Applicable Law.**

Given the significant potential for the action alternatives to disproportionately negatively impact the Nation and its members, meaningful and ongoing consultation throughout all steps of the DEIS/EIS process was necessary to address the Nation's critical concerns. The USAF, however, has not upheld its obligation to engage in ongoing, meaningful tribal consultation with the Nation on the DEIS under NEPA, the NHPA, or its federal trust responsibility. Further, it has failed to fulfill

the obligations outlined in the December 2023 Memorandum of Understanding between the USAF 56th Fighter Wing at Luke Air Force Base and the Nation (2023 MOU), in which the USAF committed to “[c]onsult with the Nation on BMGR-related activities that have potential to significantly affect natural or cultural resources of interest to the Nation,” and to engage in “regular, meaningful communication regarding issues of mutual interest through senior-level liaisons.” 2023 MOU Secs. IV(C)(7) and (A)(1). The 56th Fighter Wing also committed to maintaining the senior-level position of Native American Liaison in Luke Air Force Base’s Range Management Office to serve as the primary point of contact between the USAF and the Nation in the government-to-government relationship. 2023 MOU Sec. IV(C)(1). The USAF additionally committed to improved communication, accountability, and transparency processes to address tribal members’ concerns regarding harmful impacts of low-altitude flights and sonic booms in the Sells MOA. 2023 MOU Sec. IV(C)(7-11).

Despite the above-outlined commitments and obligations, the USAF failed to demonstrate ongoing engagement or proactive outreach during and after a leadership transition within the Nation. The last in-person meeting between the USAF and the Nation’s executive and legislative leadership occurred over two years ago in July 2022. Since then, the USAF provided a single cursory update on the DEIS during a presentation to various tribal representatives at Davis-Monthan Air Force Base’s Annual Tribal Summit in November 2023 and sent one email notifying the Nation’s Tribal Historic Preservation Officer—who is not tribal leadership—when the DEIS was published. The retirement of the USAF’s Native American Liaison in late 2023 without timely replacement exacerbated the gap in communication. In the past, the Native American Liaison has presented regularly to the Nation’s Legislative Council on USAF activity of critical concern to tribal members, including low-altitude overflights and sonic booms, and directly responded to leaders’ concerns in a timely manner.

Prior to issuing a revised DEIS, the USAF must, at least, schedule tribal consultation with the Nation’s Chairman to ensure that the Nation’s concerns on the range of impacts the action alternatives will have on our community are adequately heard and considered.

## **II. The USAF’s Public Hearing and Comment Process has Been Deeply Flawed.**

The public hearing process for the DEIS has been inadequate, as the USAF, in part, systematically excluded the most impacted communities, including individuals living and working on the Nation, from its outreach. No public meetings were held within our reservation, despite community members’ significant stake in the Proposed Action. Government-to-government consultations are meant to supplement, not supplant, input from the impacted public on Proposed Actions. Other communities poised to experience the most severe impacts were also overlooked for public hearings. When requests for additional hearings were made, the USAF cited a lack of capability to add in-person locations, opting instead for virtual hearings that fail to address the broadband limitations faced by rural community members, including our tribal members, many of whom have extremely limited access to internet in their homes. Additional public hearings on the DEIS must be conducted in the affected communities, including on the Nation.

The DEIS’s treatment of public comments during the scoping phase also raises serious concerns regarding transparency and compliance with NEPA. Although over 6,500 comments were submitted, none were publicly disclosed. This lack of transparency prevents verification and thorough assessment of public input. Furthermore, the USAF’s responses to comments were often dismissive and inadequately addressed substantive issues raised. The Nation requests that all

comments received during the scoping process be disclosed in full to address these deficiencies and ensure that the voices of impacted communities like the Nation are adequately heard and considered. The scoping process is intended to shape the Purpose and Need for the project and to help identify alternatives that the agency may have otherwise overlooked. Inadequate scoping is an indication that the USAF may have failed to meet its most basic obligations under NEPA.

### **III. The Purpose and Need for the Proposed Action is Incomplete and Misleading to the Public—It Omits Any Analysis of the Beddown of the 492<sup>nd</sup> Special Operations Wing and Retirement of the A-10 Warthog.**

The stated purpose of the Proposed Action is to “ensure availability of appropriate airspace to accomplish essential training requirements for aircrews stationed in Arizona.” [DEIS p. 1.1]. But the USAF failed to provide any reasonable support for the claim that there is a lack of adequate airspace to meet future training needs. The DEIS notes that A-10 Warthog pilot training accounts for nearly 30% of current flight training yet omits critical details about the impending retirement of the A-10 as part of the beddown of the 492<sup>nd</sup> Special Operations Wing at Davis-Monthan Air Force Base. Its replacement will not require low-altitude training, leaving a surplus of available training hours for other low-altitude and supersonic maneuvers, including those at the Barry M. Goldwater Range. The failure to include this information in the DEIS undermines the public’s ability to fully understand the USAF’s evolving airspace needs and to evaluate the Proposed Action and other action alternatives. A revised DEIS must, in part, include an analysis of the impact of the retirement of the A-10 on its future airspace requirements and the necessity of increasing sorties and authorized hours of use across all the MOAs.

### **IV. The Air Force Arbitrarily Dismissed Expanding Hours of Operation at Barry M. Goldwater Bombing Range From the Range of Reasonable Alternatives Fully Analyzed in the DEIS.**

The DEIS improperly lacked a full analysis of expanding scheduling at the Barry M. Goldwater Bombing Range (BMGR) to meet the USAF’s stated purpose and need. Federal agencies are required to discuss the reasons why certain alternatives are dismissed and thus exempt from full analysis in a DEIS. The USAF was required to discuss the reasons for the elimination of the “Barry M. Goldwater Range Alternative” pursuant to 40 C.F.R. § 1502.14(a). The DEIS cited cost and personnel requirements as reasons why the DEIS eliminated the alternative of expanding weekend operations at BMGR East. However, the justification is, at best, vague. For example, it is unclear why the USAF is restrained from scheduling personnel on weekends given that this type of training is already being conducted on the weekends. Further, the DEIS failed to disclose important data, such as existing numbers of sorties, that are needed to properly evaluate whether expanded weekend BMGR operations could meet their training needs.

The DEIS also omits a detailed analysis of using BMGR West, a portion of the range administered by the Marines, despite regulations requiring agencies to consider reasonable alternatives outside their jurisdiction. The DEIS’s lack of an evaluation of the use of BMGR West limits the scope of alternatives and undermines a thorough review of the best options for accommodating expanded training. The Nation urges the USAF to fully analyze the reasonable alternative of expanding weekend operations at BMGR in a revised DEIS.

### **V. The DEIS Environmental Justice Demographic Analysis Misrepresents the Action Alternatives’ Impacts on Minority, Low Income, and Tribal Communities, Including the Nation.**

The DEIS Environmental Justice demographic analysis [beginning at DEIS Section 3-118] relies on county-level data, diluting the presence of minority, low-income, and tribal communities, including the Nation, in the affected area. The DEIS's use of this larger, inappropriate, geographic unit means the analysis fails to reflect the true composition of affected populations in Southern Arizona; the DEIS evaluates a population 27 times larger than the actual population impacted by proposed changes to the MOAs. An analysis done using census tract data reveals that the population affected by the Proposed Action is 50.2% minority and 19.6% low income, significantly higher than the DEIS's county-level findings of 39% minority and 13% low-income. The DEIS thus, in part, misrepresents the impacts of the Proposed Action, and other action alternatives. This misrepresentation makes it difficult for the public to accurately analyze and respond to the DEIS. It also ensures that the actual decision-makers do not have accurate information as to the impact of the project on environmental justice communities. The USAF must use smaller, more appropriate, geographic units such as census block groups or tracts to ensure accurate representation and identification of environmental justice communities, including the Nation.

#### **VI. The DEIS Inadequately Analyzes Potential Impacts of Increased Sorties on Community Health.**

Tribal members have increasingly raised serious concerns about the persistence of noise pollution from low-altitude overflights and sonic booms in the Sells MOA and its impact on community health and wellness. The disturbances from these sorties are significant and already experienced throughout our tribal lands—by families in their homes, children in schools, tribal employees in their workplaces, and even, as was reported to the USAF in 2022, during our most significant cultural and religious ceremonies like our coming-of-age ceremony. These noise impacts will be exponentially increased if one of the action alternatives is implemented. The impacts of noise pollution on community health are not adequately addressed or analyzed in the DEIS.

The DEIS's analysis of noise impacts on public health is inadequate and misleading due, in part, to its reliance on outdated noise measurement methodologies. Specifically, the Day-Night Average Sound Level (DNL) and the Schultz Curve used in the DEIS are based on urban noise standards from the 1980s, which do not accurately reflect the effects of noise in our rural communities. These metrics were developed for urban environments and fail to account for the unique characteristics of our land, where the tranquility of the community plays an essential role in our quality of life.

Furthermore, the DEIS dismisses the growing body of epidemiological studies that link environmental noise with serious public health issues, particularly in rural and tribal communities. Aircraft noise, especially during nighttime operations, has been shown to disrupt sleep, elevate stress hormones, and increase the risk of heart attacks and strokes. These studies were not limited to sonic booms that are significantly more intrusive than standard aircraft noise. Notwithstanding, the DEIS fails to incorporate these findings or to provide a thorough assessment of the potential health consequences of expanding authorized hours of use and increasing sorties in the Sells MOA. Its reliance on outdated noise metrics and failure to consider public health risks render the analysis insufficient to protect the wellbeing of tribal members and others who live and work on our reservation.

#### **VII. The DEIS Inadequately Analyzes Potential Impacts of Increased Overflights on Wildlife and Livestock.**

Tribal members also continuously express concern that low-altitude flights and sonic booms have negative impacts on wildlife and livestock, yet the DEIS inadequately addresses potential impacts on livestock and dismisses significant scientific evidence that shows that even noise levels below those expected from proposed military overflights can disturb wildlife, disrupt ecosystems, and lead to long-term population declines. The DEIS acknowledges that military aircraft could produce peak noise levels of 131 dB during low-altitude flights [DEIS p. 3-79], yet it downplays the implications for wildlife without thorough analysis. Significant scientific literature demonstrates that military overflights disrupt not only individual species but also entire ecosystems, impacting predator-prey dynamics and habitat use. Certain studies indicate that noise pollution significantly affects wildlife behavior, fitness, and community composition, with terrestrial species often showing responses to noise levels as low as 40 dBA. The DEIS fails to incorporate relevant studies, including those showing that species like caribou experience behavioral disruptions due to military overflights, highlighting a concerning gap in the assessment of cumulative effects on wildlife under the Sells MOA—like the endangered Sonoran Pronghorn—and other impacted MOAs.

Moreover, the DEIS arbitrarily excludes reptiles, small mammals, amphibians, and other wildlife from its impact analysis, despite clear warnings from the U.S. Fish and Wildlife Service (USFWS) about potential harm to these species from noise and other disturbances. This exclusion contradicts existing scientific findings that show physiological and behavioral responses in various species, including reptiles, to military noise. Research indicates that certain lizard species demonstrate measurable stress responses to overflights at lower decibel levels than those expected from the proposed actions.

Lastly, the DEIS inadequately addresses the potential impacts of military overflights on livestock [DEIS p. 3-84], stating that noise from overflights may startle animals but would not significantly affect ranching or livestock industries. This dismissal overlooks evidence that livestock can experience panic, fear, and injury from loud noises and sonic booms. Additionally, there are concerns about livestock ingesting chaff and the risk of accidents for ranchers, particularly those on horseback, during such disturbances. These concerns are especially relevant for the Nation because many families are engaged in ranching, which is a significant part of the economy within our tribal lands. By disregarding extensive evidence and failing to analyze the impacts on wildlife, including federally listed species, as well as livestock, the DEIS presents an incomplete and flawed assessment. The USAF must gather more data, review existing studies, and conduct further analysis for the revised DEIS.

#### **VIII. The DEIS Inadequately Analyzes Potential Impacts of Increased Sonic Booms on Community/Tribal Members' Homes.**

The DEIS inadequately addresses the impact of increased sonic booms on homes within the Nation. Many tribal members live in traditionally constructed adobe and mud homes, many of which are old, damaged, or structurally compromised due to severe housing shortages and limited resources for repairs. While the DEIS acknowledges that sonic booms can cause structural damage, it provides only a brief discussion of potential harm to various building materials. [DEIS pp. 3-133–135]. It fails to consider the specific types and conditions of homes under the Sells MOA, which requires a more detailed analysis, as these homes are disproportionately affected by the action alternatives.

## **IX. The DEIS Inadequately Analyzes Potential Impacts of Increased Deployment of Flares on Wildfire Risk.**

The DEIS inadequately analyzes the potential impacts of increased military overflights and increased use of chaff and flares on wildfire risk on our tribal lands under the Sells MOA. The action alternatives all project an increase in both chaff and flare usage within the Sells MOA. The increased deployment of flares raises significant concerns for the Nation, which has recently been impacted by human-caused wildfires, including fires in and around critical areas like our sacred Baboquivari Peak and Kitt Peak. Although the DEIS mentions the risk of igniting surface material from flares, it fails to fully account for the heightened wildfire threat exacerbated by regional drought and climate change across Southern Arizona, including on the Nation. The USAF must review existing studies and conduct further analysis on the increased risk of wildfires resulting from an increased use of flares as the climate is changing.

### **Conclusion**

The Nation strongly urges the USAF to address the material procedural and substantive shortcomings in the DEIS and to issue a revised/corrected DEIS. The Proposed Action will have significant impacts on our people, wildlife, our livestock, our land, our structures, and our way of life, none of which have been adequately considered in the DEIS. The DEIS even fails to adequately address the likely increased risk of wildfire on the Nation created by the action alternatives. Moreover, the DEIS fails to identify the Nation as an environmental justice community. As a result, the DEIS improperly omits any analysis of the disproportionate impacts of the Proposed Action on the Nation's members who live and work on the reservation. Finally, the USAF needs to, in part, engage in meaningful government-to-government consultation with the Nation as required by federal law and the 2023 MOU, and to provide the public with meaningful opportunities to comment on the DEIS through, in part, public hearings held on our tribal land. The USAF must take these critical steps prior to issuing a revised DEIS.

If you require additional information and/or to arrange for tribal consultation, please contact the Nation's Attorney General, Howard Shanker, at [howard.shanker@tonation-nsn.gov](mailto:howard.shanker@tonation-nsn.gov).

Sincerely,



Verlon Jose, Chairman  
Tohono O'odham Nation