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January 21, 2010

Mr. Gordon Heddell, Inspector General
Department of Defense
400 Army Navy Drive
Arlington, VA 22202-4704

Subject: DOD IG Case #113851

Dear Mr. Heddell,

Below is an updated version of a previously submitted document. Thank you for reconsidering the matter. **This issue is not simply historical, since the residents surrounding NAS Key West continue to live without benefit of the protection promised by the National Environmental Policy Act. Those most adversely and unfairly affected are the citizens who purchased homes outside of the published noise zones, but now find themselves effectively within the noise zones by virtue of the much-louder airplanes.**

For the sake of credibility, I'm a retired Navy Commander, Naval Aviator, Aeronautical Engineering Duty Officer, former Engineering Test Pilot and retired international airline Captain. I believe strongly the Navy has fraudulently claimed they've fulfilled their National Environmental Policy Act (NEPA) obligations regarding the potential impacts of the F/A-18E/F Super Hornet at Naval Air Station Key West. The fraud may be part of a conspiracy that may go as high as the Assistant Secretary of the Navy (Installations and Environment). While there may be other less incendiary explanations, the evidence I've uncovered since my original complaint is increasingly compelling. As you know, DOD IG's failure to find fault with the Navy's claim of NEPA compliance in the face of unequivocal evidence was the reason for my submission to the Integrity Committee, which referred the matter back to you.

The subject is the action of introducing the F/A-18E/F Super Hornet aircraft to NAS Key West, and the responsibility of the U.S. Navy to "...assess environmental consequences of proposed actions that could affect the quality of the human environment..." as required by NEPA. At NAS Key West, the "mix" of aircraft changed substantially when the F-14 Tomcats that flew there were replaced by F/A-18E/F aircraft. According to Navy documents (an environmental study done for another location), in the same configuration and flight pattern the Super Hornet is up to four times as loud as the Tomcat. According to the Environmental Assessment that is the subject of this complaint, the Super Hornets were expected to fly up to 25% more operations at that location compared to the Tomcats. Clearly a much-louder airplane flying more operations could have environmental impacts that would "affect the human environment," and a "Finding of No Significant Impact" would seem unlikely, but that is exactly what the Navy claims.

The original complaint was filed with the Government Accountability Office, which assigned Control number 51428. Apparently GAO jurisdictional limitations required them to transfer the complaint to DOD Inspector General, which assigned Case #105900. In April 2009, the DOD Inspector General closed the case, finding no fault. The matter was then brought before the

Integrity Committee of the Council of the Inspectors General for Integrity and Efficiency, which found that "...actions by the OIG properly fell within the discretion of an IG..." which caused me to appeal the matter back to the DOD IG, which has assigned the new Case number 113851.

In the twenty-six months since my original complaint in November 2007, more facts have been uncovered that reinforce the fundamental assertion that the U.S. Navy (sadly, for this retired Naval Aviator) has fraudulently used the unrelated *"2003 Environmental Assessment (EA) for Fleet Support and Infrastructure Improvements at NAS Key West"* to claim they have satisfied their NEPA legal obligations. As a result of my assertion, I also believe that the requirement to assess the impacts of the airplane remains unfulfilled.

The original inquiry questioned whether the Environmental Assessment might have been altered to give the appearance that the Navy had fulfilled their NEPA obligations. While it may be true that the document was not physically *altered*, there is stronger evidence of the fundamental complaint - that the Navy continues to fraudulently claim that the 2003 EA satisfies their NEPA obligations.

There are four main documents that the Navy claims validates their claim of Super-Hornet NEPA compliance, and it is only the third of the four (the EA itself) that briefly mentions the Super Hornet. The other three documents do not. Of the more than 400 pages in the chain of documents, only 3 pages mention the Super Hornet. How can the Navy claim, with a straight face, that these isolated and unconnected three pages satisfy their NEPA obligations, and how can the DOD IG concur? The Department of Defense Office of Inspector General focused narrowly on whether the EA document itself had been altered, concluded that it had not, and closed the case. That finding obscures the more important and basic assertion that the Navy fraudulently used the 2003 EA to claim fulfillment of their legal obligations.

The four Navy documents I'm referring to are 1) the "Brief Letter", 2) the Draft Environmental Assessment, 3) the EA itself and 4) the Finding of No Significant Impact:

1. October 2, 2002 – Announcement of intent to assess the potential environmental impacts of an "action." As required by Navy regulations, NAS Key West Commanding Officer, Captain L.S. Cotton wrote a "brief letter" to advise his superiors of his intent to produce an "Environmental Assessment for Training Facility Improvements and Increased Activities at NAS Key West, FL." This is the first reference to the Environmental Assessment *and the Super Hornet is not mentioned*. As of October 2, 2002, the Navy has not declared their intent to study the impact of the Super Hornet at NAS Key West.

2. January, 2003 - A "Draft" Environmental Assessment is distributed to the public and at least eleven agencies for their comments. *Again there is no mention of the Super Hornet*. This is the smoking gun. The NEPA process requires that affected agencies and the public be given the opportunity to comment on the "proposed action," and as of January 2003, none are aware that the Navy intends to study the impact of the Super Hornet at NAS Key West. **This fact alone is damning and invalidates the Navy's assertion of NEPA compliance, because neither the public nor any of the eleven reporting agencies were made aware of the Navy's intent to introduce the Super Hornet to NAS Key West and thus none have evaluated its potential impacts.**

3. April 2003 - The Environmental Assessment document itself. Among the 232 pages of the EA, whose proposed action is to "...modernize ship and aircraft support functions and

facilities...” there are three pages (115, 116, 117) that mention the Super Hornet but no mention of the environmental impacts of the aircraft. *This is first and only time the F/A-18E/F Super Hornet is mentioned in any NEPA document.* Not surprisingly, none of the public comments in the Appendix of the EA mentions the Super Hornet, because the reporting agencies were not apprised of the need to do so in the *Draft EA!*

4. **April 14, 2003 – FONSI.** The outcome of an Environmental Assessment is supposed to be either an Environmental Impact Statement (if it is determined that potential impacts exist), or the issuance of a “Finding of No Significant Impact (FONSI).” The Navy issued a “FONSI” letter on April 14, 2003, but stunningly, *that document does not mention the airplane that the Navy claims it exonerates!*

Incongruously, when the Navy studied the potential impacts of the Super Hornet for potential home bases on the East Coast, they found that the impacts were significant and in July 2003 published the 1,078-page “Final Environmental Impact Statement for the Introduction of the F/A-18E/F Super Hornet aircraft to the East Coast of the United States.” The Navy did not include NAS Key West in that study, even though the Navy projected more Super Hornet flights at NAS Key West than several of the fields they *did* study.

During my inquiries, I submitted a Freedom of Information Act request to the Navy for a copy of the Draft EA. The Navy was unable to find the document. An appeal to the Navy’s General Counsel was also unsuccessful. Nevertheless, subsequent to the Navy’s inability to find a copy, I located, viewed and copied portions of the Draft EA.

As a result of the additional facts uncovered since my November 2007 Government Accountability Office contact, the list of concerns has grown, as listed below:

A. I believe the Navy has fraudulently claimed that the “2003 Environmental Assessment (EA) for Fleet Support and Infrastructure Improvements at NAS Key West” satisfied their obligations under the National Environmental Policy Act to “...assess environmental consequences of proposed actions that could affect the quality of the human environment...” for the introduction of the F/A-18E/F Super Hornet to NAS Key West. The most easily documented confirmation of this belief is that none of the reporting agencies were made aware that the Super Hornet was to be evaluated. They could not have known, since there is no mention of the aircraft in any document prior to the April 2003 publication of the EA itself.

B. I believe the Navy fraudulently claimed that the April, 14, 2003 “Finding of No Significant Impact” fulfilled their NEPA requirements regarding the Super Hornet, since that document did not mention the airplane.

C. I believe the Navy’s legal obligation to assess the subject environmental impacts remains unfulfilled.

D. I believe the Navy failed to fulfill their obligations under the Freedom of Information Act regarding FOIA File Number DON 200800645-F, a request for a copy of the Draft EA. As stated above, this document is the “smoking gun” that proves the Navy had no intention of evaluating the F/A-18E/F Super Hornet’s environmental impact at NAS Key West with the 2003 EA *and the Navy claims it could not find the document.* How is it possible that a FOIA request and an appeal would both fail to reveal a document that was distributed widely within the Navy system and to at least eleven other agencies and yet this writer was able to find a copy after the Navy failed? It

is deeply troubling to consider that this might constitute an attempt to conceal the most damning document.

E. Questions were asked of the Assistant Secretary of the Navy (Installations and Environment) Assistant Navy Secretary B.J. Penn, who replied with three deceptive sentences that have reappeared verbatim in several documents:

“In 2003, the Navy complied with NEPA for transient aircraft operations at NAS Key West by completing an Environmental Assessment (EA) for Fleet Support and Infrastructure Improvements. That EA, and its incorporated references, analyzed impacts to the human environment, including noise and flight paths resulting from all transient aircraft operations, including the F/A-18E/F. As a result, of that analysis, the Navy reached a Finding of No Significant Impact, which addressed off-base noise exposure from aircraft operating at NAS Key West.”

As has been shown, the Navy has *not* complied with NEPA if for no other reasons than none of the agencies that should have commented on the impacts were made aware that the Super Hornet was to be evaluated, and the FONSI does not mention the aircraft. The term “transient aircraft” is curious because it seems to imply that because the majority of the airplanes that fly at NAS Key West are not based there, they somehow make less noise. As stated earlier, Navy documents show that they expected the Super Hornet to fly up to 25% more operations than the Tomcats at NAS Key West and the location of an airplane’s home parking spot is irrelevant. The statement “...and its incorporated references” is wrong if for no other reason than “references” should be singular rather than plural. There is one lonely reference in the Appendix of the EA that addresses Super Hornet noise, a Wyle Laboratories study that was published in April 2003—the same publication date as the Environmental Assessment itself! Since publication of this study was coincident with the EA, it could not have been scrutinized by agencies prior to the publication of the EA itself.

At the very least, the Navy has failed to properly evaluate the potential impacts of the Super Hornet at NAS Key West. At the worst, there is a widespread conspiracy.

I will gladly provide documentation of these claims, and am grateful for your review of the facts.

Sincerely,

A handwritten signature in black ink, appearing to read "John G. Hammerstrom", with a long horizontal line extending to the right.

John G. Hammerstrom
Commander, U.S. Navy Retired