

National Parks Over-flight Advisory Group (NPOAG)

Meeting Minutes

November 8-9, 2005

8:00 AM to 5:00 PM

Stanley Hotel

Estes Park, Colorado

NPOAG Members in Attendance:

Heidi Williams	Richard "Lash" Larew	Mark Peterson	Alan Stephen
Richard Deertrack	Chip Dennerlein	Charles Maynard	Don Barger

Alternates: Rory Majenty Brenda Halvorson

Absent: Elling Halvorson (substituted by Brenda Halvorson)

Barry Brayer (FAA Ex-officio Member)

Karen Trevino (2005 Chair and NPS Ex-officio Member)

FAA Staff in attendance: Elly Brekke, Steve May, Brian Armstrong, Victor Globa (FAA Support)

NPS Staff in attendance: Bob Rossman, Frank Turina (NPS Support), Vicki McCusker, NPS Denver Service Center: Barbara Johnson.

Public in Attendance:

Larry Fredrick – NPS (Chief of Interpretation and Education at RMNP)

John Dillon – Grand Canyon Airlines

Dick Hingson - Grand Canyon Trust/Sierra Club National Committee

Doug Greenbergs - Defender of Quiet, Darkness and People (November 9, 2005, only)

Note taker: Victor Globa

Chair Karen Trevino called the meeting to order on November 8, 2005, at 8:14 a.m. She welcomed new NPOAG member and environmental representative Mark Peterson. Mark was formerly with NPCA and is now with the Audubon Society (MN)

Barry Brayer also mentioned that Brenda Halvorson will be representing Elling Halvorson and that Rory Majenty is filling in as a Tribal Representative. Barry indicated that Rory was the only person that showed interest who applied for the open position following Germaine White's resignation from the NPOAG. Bill Withycombe is not in attendance so Elly Brekke will be representing him in his absence.

Introductions for all those in attendance were made and they are as follows:

Victor Globa  
Brian Armstrong  
Bob Rossman  
Don Barger  
Chip Dennerlein

Charles Maynard  
Chris Shaver  
Linda Deertrack  
Richard Deertrack  
Rory Majenty  
Mark Peterson  
Brenda Halvorson  
Heidi Williams  
Lash Larew  
Alan Stephen  
Vicki McCusker  
Frank Turina  
Steve May  
Elly Brekke  
John Dillon  
Dick Hingson  
Barbara Johnson  
Larry Fredrick

Larry Fredrick Chief of Interpretation and Education at Rocky Mountain National Park (RMNP) welcomed the group and provided a short history of the Rocky Mountain area. He is representing Chief Superintendent Von Baker who could not be at the meeting due to meetings regarding the accidental death of a NPS employee in August.

Chris Shaver thanked the NPOAG for coming to Estes Park. Appreciates that NPOAG could make it there. NPS does not just experience noise issues but air quality problems as well. Although, air tours were banned at RMNP through legislation air carriers are flying over RMNP into Denver International Airport. Numerous other issues challenge the NPS. Your perspectives are helpful.

Karen Trevino acknowledged Chris Shaver's attendance and indicated her appreciation for being able to make the meeting. She thanked Rory Majenty and indicated that the Tribal Representative opening should be resolved shortly. At the request of the NPOAG at the June 2005 meeting in Rapid City this agenda has more, but shorter breaks and Karen wants the NPOAG's feedback on this new format. Additionally, Karen is working with the hotel to operate this meeting in a manner that would bring sustainability and compliance with EPA standards. One area that she questioned the NPOAG was to minimize the use of new meeting binders at every NPOAG meeting. The Grand Canyon Overflights Working Group currently uses one large briefing book and members are responsible for bringing it to the meeting and filling it with the provided inserts. Karen requested if the NPOAG would agree to the same type of format and a majority of the NPOAG agreed. Future meetings will include inserts only.

Karen proceeded to identify some additional issues that will be addressed in the next two days:

- Amount of progress since the last meeting.
- Four draft EA's
- Bob Rossman and Brian Armstrong will talk about Lake Mead.
- Alan Stephen will talk about legislation.

- Status of acoustic monitoring at Acadia and Great Smoky Mountains National Park
- Resolved 95% of Pacific West Region comments working with FAA and Gene Kirkedall.
- Alan Stephen volunteered to work with Chip Dennerlein on Intermountain Region comments
- GAO is 98% completed with its report. Exit conference next three to four weeks. Have held an exit conference with the requestors of the report.
- Proud to announce 95% of Implementation Plan is completed. Thanked the staff that worked on it.

#### Opening Remarks/Co Chair

Barry Brayer opened up with an initial deferment to Elly Brekke who is representing Bill Withycombe. Elly indicated that she is glad to be at the NPOAG and is impressed by the partnership between agencies and NPOAG group.

Barry advised the NPOAG that the flight tour ban at Rocky Mountain National Park is the only park that is banned to air tour operators in the act. Gene Kirkendall will be at the NPOAG meeting the second day to discuss IOA and Enforcement. Additionally, James Whitlow, FAA Deputy Chief Counsel, the number two attorney for FAA will be in attendance tomorrow. Some of the issues that he would like to discuss include:

- The ARC process and that he is looking for another park.
- Asking group for thoughts and advice to work out an ATMP.
- Another issue is to abbreviate the ATMP process by using a CATEX.

James Whitlow has been briefed on approximately 10 big issues regarding the ATMP process. He was also in attendance at the Grand Canyon Working Group meeting a couple of weeks ago. Lynne Pickard could not attend the Grand Canyon meeting so Barry was Lynne's representative at the meeting.

Barry Brayer went into his presentation of the Program Update. Global Group has dropped out of the air tour business thus reducing numbers of operators and impacted National Park units. A comment was made regarding the use of FAA acronyms and Barry gave a short definition of the various FAA acronyms identified and indicated that in future meetings he will work on trying not to use acronyms.

Barry went over FY05 Accomplishments. Ongoing ATMP Projects have their own bit of complexities. Lake Mead, Hawaii Volcanoes EIS, Kalaupapa residents, Haleakala has its own issues.

We need to identify where Native American have an interest. Barbara Johnson from NPS Denver Service Center has developed maps of regions and locations of Native American Tribes. However, there was no resolution as to whether or not one or two ATMPs would be completed. We expect to have an answer from FAA counsel James Whitlow tomorrow. We will have a more explicit explanation of the ATMPs later in the meeting.

We completed the Implementation Plan which is a huge milestone! FAA/NPS staff have taken the input from NPOAG to put the Implementation Plan together.

Barry Brayer then proceeded to give a short synopsis and status of ongoing ATMP projects. The West Hawaii parks are no longer included since the air tour operators are flying outside a half mile and have pulled their requests.

Karen Trevino discussed that a new protocol for acoustical monitoring was being done at Acadia NP and Great Smoky Mountains NP. NPS and Volpe used a joint protocol for acoustical monitoring.

Barry mentioned that the FAA is performance based organization. Flight plan goals are commitments that have to be completed. FAA's pay is based on completing those goals. Internal staff goals are our own goals for the year. We are looking at the whole list as a minimum.

Lash Larew questioned whether the FAA and NPS are trying to get one ATMP completed or just an EA in 2006? Barry Brayer responded that rulemaking is the question which hopefully will be addressed tomorrow by FAA's James Whitlow. Rulemaking will take a minimum of 18-months. Safety rules go to the top of the pile and there is currently a backlog of rules with environmental rules at the bottom of the order. Hopefully tomorrow we can get some ideas from James Whitlow to expedite the rulemaking process.

Karen Trevino indicated that there is nothing preventing us from getting more done. The Natural Sounds Program has its own internal ATMP goals. Gene Kirkendall acknowledged that the reporting requirement is coming out next and also agrees that 18-36 months is too long for rulemaking. There are some creative ideas out there.

Barry Brayer mentioned that the delay cannot just be attributed to the FAA only. Department of Transportation and Office of Management and Budget must review the rule as well. If there are changes to be made, then the timeline starts all over again. First ATMPs will probably take longer. If one or two ATMPs are completed, then it maybe it won't take as long. The public then also gets an opportunity at making comments. Chip Dennerlein and Barry both agreed that the process is taking too long. Once we get a few done then we could go up to as many as 20 per year. NEPA will allow us to cluster units. Bill (Withycombe) and I are pushing for one rule for all ATMP's. ATMP and NEPA jointly signed. Rulemaking is an FAA rule since it is an enforcement tool and a mechanism to develop it. Gene Kirkendall will give a better answer tomorrow. Alan Stephen indicated that if the issue of the rule is that there should be a record keeping system he doesn't see it as a national rule. Part 93 high density slot rules and Grand Canyon operations are examples. Chip Dennerlein discussed the necessity for acceptable standards. Should look at one rule to cover all ATMP's for enforcement action and it should encompass all generalities (i.e. record keeping).

A consensus from the group was that one rulemaking process would be better. Karen Trevino will write something up and would like to get a consensus statement regarding the rulemaking process. Barry indicated that we are on the right track for a recommendation. James Whitlow has some ideas or advice as far as why they should or should not be separate rules. Could NPOAG hold off on making a recommendation until James Whitlow addresses the group tomorrow?

Alan Stephen asked if NEPA is identified in the rulemaking. Barry responded that NEPA and rulemaking are separate issues. The ATMP alternatives are analyzed and it is during the analysis process where impacts are identified. Rulemaking is the enforcement action. Rule is used to enforce ATMP decision.

Alan Stephen asked how come Federal Register comments were not on the docket? Karen Trevino put it on the parking lot list for tomorrow's session with Gene Kirkendall.

Karen recommended that it would be better next time to go through the Agenda first at the next NPOAG meeting before the Program Update in order to address many of the NPOAG questions. Additionally, the GAO Report will be available in January or February. Karen also made the NPOAG aware of a Palm pilot that is used by the NPS to log noise events and that it is available for members to look at. This is a second generation Palm pilot and it is developed for 93 different sounds. Additionally, a printout was also available of the inputted data.

#### BREAK

Following the break, Karen Trevino proceeded to review the agenda and provided a short synopsis of the upcoming various agenda items and breakout group discussions for the rest of the day and tomorrow's schedule. Barbara Johnson from the NPS' Denver Service Center will only be available tomorrow in the morning so she will address the maps regarding tribal lands that are abutting or within national parks.

There was a joint response letter from FAA/NPS with respect to the 1987 Grand Canyon Overflights Act that was handed out at the recent Grand Canyon Working Group meeting. Anyone who wants a copy can go to the Grand Canyon Overflights website which is <http://overflights.faa.gov>. Go to the Related Documents link (Document date 9/22/05) to see the letter.

Barry discussed that NPOAG charter was going to expire. However, the NPOAG doesn't need a new charter since it is an advisory group that it is legislatively mandated. As of Thursday (November 3), it was still in Administrator's Office and it has no sunset clause.

The NPOAG proceeded to approve the minutes from the last two NPOAG meetings.

Minutes from Great Smoky Mountains National Park NPOAG  
Gatlinburg, TN  
February 23-24, 2005  
Motion to Approve: Don Barger  
Seconded: Richard "Lash" Larew  
NPOAG approved the minutes.

Minutes from Mount Rushmore/Badlands NPOAG  
Rapid City, SD  
June 21-22, 2005  
Motion to Approve: Don Barger  
Seconded: Richard "Lash" Larew  
NPOAG approved the minutes

Steve May distributed a copy of the Implementation Plan (IP) to the NPOAG then proceeded to give a short history on the development of the IP and explained what the IP is and who its primary audience is. The IP was developed in coordination with the FAA, NPS and Volpe. Lynne Pickard from FAA, as well as noise and air quality staffs from FAA/NPS and Volpe were instrumental in developing the IP. The IP was primarily developed into its current format between August 21, 2005 and September 30, 2005. FAA, NPS and Volpe staff met in Fort Collins for four days then spent numerous hours on conference calls following the IP meeting in Fort Collins. Next Steps for the IP include:

- FAA/NPS Legal Review
- IP Team Telecons
- Publish Revised IP
- IP Team Meetings/Telecons
- Publish Revised IP

Brian Armstrong followed-up with a description of the IP's Appendix SS, Environmental Impact Analysis Procedures. Brian advised the NPOAG that there were some qualifiers that were identified with the IP:

- The IP is for Official Use and is Pre-decisional
- The IP uses a combination of FAA and NPS Guidance
- The IP is highly specialized and not applicable to other FAA or NPS projects
- In developing the IP both NPS (DO12) and FAA (1050.1E) guidelines were used to address environmental impacts

Bob Rossman acknowledged that we have gotten through some big steps and we will learn more as the EA's and EIS's come out.

Chip Dennerlein questioned whether the IP would have to go through a rulemaking and public comment process. Karen Trevino indicated that it is not our vision that this IP would be implemented by rule. The IP would be for FAA/NPS planners and contractors. The IP has not gone through final agency review. NPS and FAA have specific guidelines before something becomes policy. Barry Brayer followed up the discussion that rules are what the public has to comply with. FAA has orders such as 1050.1E that are comparable to the NPS Director's Orders or management policies. The IP is a cookbook and a living document. Bob Rossman also mentioned that we are two agencies that are aware of NEPA but have our own standards. It would be counterproductive to argue with two federal agencies that put together a document.

Chip Dennerlein acknowledged that the IP will direct internal staff and contractors. Public will have an opportunity to comment on a specific ATMP. However, will the ATMP team have consultations with tribe with regards to specific ATMP? Karen Trevino asked that Richard Deertrack and Rory Majenty look at the Tribal Consultation process in the IP and give back their comments.

Brian Armstrong mentioned that there are 18 tribes that have tribal or cultural interests in the Lake Mead area. 40 people were invited to the first meeting and only three showed up. One tribe is not interested. Rory Majenty will have further discussions with Brian regarding coordination with Indian tribes. Brenda Halvorson inquired as to how the tribal

contacts are selected and contacted and Brian indicated that he worked with NPS. Additionally, FAA followed a similar process with Native Hawaiians for cultural and tribal issues. Barry Brayer mentioned that there is a list of federally recognized tribes. Before recorded history certain tribes may have hunted or had cultural properties in one region but are now located in another region. This may be the case for Lake Mead since he does not think that Lake Mead has any abutting tribal lands but does have a Native American history in the area.

Brian Armstrong gave a summary of the air quality analysis section and how the emissions levels will be developed for air tours. If project emissions are negligible no further analysis will be done. Don Barger inquired as to whether the air quality analysis is air chemistry or visual. Karen Trevino indicated that visual impacts are a separate category and that when an ATMP is completed in house NPS staff will review the document.

Noise Analysis was the next topic of discussion for Brian Armstrong. A number of NPOAG members commented on the amount of metrics used in the acoustic protocol and Brian mentioned that it was due to a combination of FAA and NPS agreement. We may not use all these metrics since they may not be necessary. Leq is an A weighted decimal metric that is being used as a surrogate for the DNL model since air tours operate usually within a 12 hour time frame and not during nighttime hours. Bob Rossman also mentioned that this noise section was a collaborative effort and these metrics may help explain or disclose impacts but have no standard or threshold. Additionally, we have come to an agreement for audibility. Negligible or minor will not normally have significant impacts on park soundscapes. Areas outside of NP boundaries will use 1050.1E.

Chip Dennerlein suggested that it was important to have an array of tools. Additionally, the ATMP should not accept non air tour noise and that the ATMP could be a driver for non ATMP park related issues and other non-ATMP related planning policies. Barry Brayer had some concerns that with so many metrics, for numerous alternatives there might be so many maps that the public would be confused rather than helped. The amount of metrics may be more than we need but not less.

Alan Stephen questioned as to how do you reconcile all the metrics and is natural ambient a real thing? He gave an example of the Grand Canyon where you could remove all air tours and still have aviation noise. Bob Rossman replied that natural ambient is part of the baseline and not the goal. Additionally Alan requested whether modeling criteria is average day or peak day and whether it is peak day or peak month since some parks are not open year round. He would prefer that the model be on an average day vs. a peak day. Karen Trevino responded that the average day peak month was going to be used. Alan Stephen felt that the average day peak month was arbitrarily picked out of the air. Bob Rossman indicated that he would like to be more accurate but he needs to make assumptions. We need to base it on peaks since that is where the impacts will be. Barry Brayer mentioned that the operators are authorized to manage the quota. The air tour operator could use its allocation all in one day or spread them apart. Chris Shaver reflected that visitors in the back country should be able to have the same experience whether 500 or 25000 visitor are at the park.

Richard Deertrack expressed concerns that some parks during certain times of the year are overflowed by air tours where they have sacred sites. Barry Brayer responded that

one of the tools in the Act covers special events. During consultations we will be seeking this information.

Rory Majenty questioned whether there were restrictions during nighttime hours since some operators are starting their operations at the break of dawn Barry Brayer and Karen Trevino indicated that there are no nighttime restrictions but concerns can be addressed during the consultation, scoping and alternatives process.

Brian also presented and discussed a sliding scale table that he developed explaining Predetermined Significant Impacts and where significance is yet to be determined. Karen Trevino complimented Brian on this table, and potential use at the Grand Canyon, however, Barry thought that this scale may not be ready for the Grand Canyon. Chip Dennerlein indicated that this is where park purposes are inescapable. Barbara Halvorson felt that this table is a dichotomy of mathematical equations. It appears that air tours are more welcome where there are more people. Karen Trevino indicated that the NPS needs to focus their resources where the American people have a reasonable expectation of quiet. Alan Stephen referred to McCain's letter and Karen Trevino responded that the McCain letter was specific to the Grand Canyon. Bob Rossman mentioned that there are tradeoffs such as wildlife vs. visitors within the park itself and that the table is not describing how the decision will be made but what the impacts are. Mark Peterson inquired as to whether this table would apply to a Voyageurs NP vs. a Yosemite. Bob Rossman responded that these are only guidelines and that there are no presumptions. The green identifies that it is less than a minor impact. Don Barger thought that the table gives substance and is very helpful.

### **Update on Ongoing ATMP Projects**

Bob Rossman and Brian Armstrong gave an update on the Lake Mead ATMP. The Lake Mead ATMP is currently on hold due to exemption language and alternatives. A meeting was held in July to discuss Lake Mead NP. Attending the meeting included FAA, NPS and the Park Superintendent. Additionally, there is an amendment pending to Appropriations Bill.

A tentative schedule was presented for the Lake Mead ATMP. Based on the most recent Volpe schedule which did not include resource loading showed the finalize alternatives starting in 9/23/05 with production of the Final EA/FONSI and ATMP on 9/29/06.

Alan Stephen had number of concerns regarding Lake Mead. The original ATMP act had a Lake Mead exemption. Currently, three operators that do not go to the Grand Canyon should be regulated by the ATMP. Because of Air Traffic Control changes Scenic and Vision aircraft are operating over Lake Mead. 70,000 operations have IOA and there are really only about 12,000 air tours over Lake Mead. The rest should be exempt. Henderson Airport, Boulder Airport and McCarran Airport are currently exempt but wants to add North Las Vegas. Alan is willing to sit down with park staff to discuss who and how they should be regulated. Barry Brayer mentioned that operators may consider keeping their numbers so they do not lose their OA. The ATMP will address the issues for all those flights. Karen Trevino is opposed to the change in legislation. Although, after she sat down and spoke with Alan regarding this process she feels better. Agencies are working on and discussing transportation routes.

Don Barger mentioned that these operators are going to the Hoover Dam. However, Alan Stephen responded that Hoover Dam is not part of Lake Mead but instead is on Bureau of Reclamation Land. Lake Mead is incidental to the purposes of the flight. Lake Mead planning is proceeding and there are three types of routes flying over Lake Mead 1) Direct Routes to Grand Canyon (which are exempt), 2) Those that take a tour over Lake Mead and 3) Air tour operations over Lake Mead on their way to the Grand Canyon. 2 and 3 would be covered by the ATMP<sup>1</sup>. Alan has personally met with Senator Ensign (NV) and Senator McCain (AZ) and their staff and they agree with Alan. Alan is not aware of the status of the amendment however things are usually changed in conference. Air traffic Control is the culprit not the air tour operator. Elly Brekke advised there are air space problems due to the Nellis Air Force base airspace and there are additional changes planned to the Las Vegas airspace. Charles Maynard asked that before the air traffic routes were changed would those operators have been impacted by the ATMP? No, additionally operators would reduce IOA if they knew that their operations to Grand Canyon would be exempt.

Bob Rossman gave a status update on the ATMP projects for Badlands and Mount Rushmore. The Baseline Ambient sound report has been completed. The acoustic model is being run on the Alternatives and the Alternatives Environmental Consequences are in progress. FAA and NPS are tentatively scheduled to review the Draft EA on 1/2/06 and to produce the final EA/FONSI and ATMP 8/18/06. This is only a tentative schedule by Volpe they still have to look at the IP. There are also some changes going on in those parks. There have been some administrative changes with the tribal leaders and Jimmy Sams is no longer the contact point. Also the NPS Superintendent at Badlands is retiring in a couple of weeks.

Vicki McCusker gave an update on Hawaii Parks. Since Hawaii Volcanoes is an EIS it has taken its own track. Regarding, Haleakala and Kalaupapa the Purpose & Need, Alternatives and Affected Environment have been reviewed, currently reviewing them with the current Implementation Plan. The Draft Environmental Consequences section will be available in the next couple of weeks for review. Tentative schedule has the FAA and NPS reviewing the Draft EA at the end of March 2006 with the production of the Final EA/FONSI and ATMP on 9/29/06.

Barry Brayer mentioned that the EA's that we are doing are more in depth than your typical EA and are closer to being an EIS. Karen Trevino asked Vicki McCusker to coordinate with the new Superintendent at Haleakala regarding the recent discussions to move forward with an EIS since the level of analysis will not be changed in any way.

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<sup>1</sup> On November 30, 2005, DOT appropriations bill (HR 3058) was signed into law and included the following language related to the Air Tour Management Act and Lake Mead. "SEC. 110. Section 40128(e) of title 49, United States Code, is amended by adding at the end the following: ``For purposes of this subsection, an air tour operator flying over the Hoover Dam in the Lake Mead National Recreation Area en route to the Grand Canyon National Park shall be deemed to be flying solely as a transportation route. Nothing in this provision shall allow exemption from over-flight rules for the Grand Canyon." As a result of this language, only air tour operators giving air tours over Lake Mead will be subject to the ATMP process.

Chip Dennerlein asked why not call them EIS's? Chris Shaver inquired as to whether legal has looked at this that if it is a high analysis EA will you get sued for not doing an EIS? Don Barger seemed to think that the sticking point may be potentially significant impacts.

Native Hawaiian consulting parties and the SHPO are opposing any air tour operations over the park. Additionally, the nature of air tour activity over Hawaii Volcanoes is different than Haleakala. Haleakala has informal agreement with operators and are not operating in 90-95 percent of the park.

Don Barger inquired as to whether or not the FAA and NPS see the NPOAG as a reviewer of the draft EA and a discussion ensued regarding the NPOAG's role as a reviewer. Karen Trevino indicated that they have been talking about the NPOAG reviewing the draft EA, but there is some discomfort allowing a document to go to a group before the public. Don Barger felt that the NPOAG's role should be to review the document. Chip Dennerlein thought that the NPOAG would be a good sounding board to determine if the draft EA looks reasonable. If we (as the NPOAG) see things that look like land mines we would be a good sounding board. However, you would have to establish operational guidelines.

Karen polled the NPOAG as to how many NPOAG members would be interested in reviewing the draft EA's. Alan Stephen, Lash Larew, Heidi Williams and Brenda Halvorson indicated no interest in reviewing the draft EA's. Rory Majenty and Richard Deertrack indicated that they had an interest in the Section 106 section. Richard did point out though that he would be more interested if his tribe was involved. However, he would not be responsible for all concerns. He may look at one. Mark Peterson and Charles Maynard the first few.

Chip Dennerlein suggested that the first completed draft EA be a topic of the NPOAG and for the NPS and FAA to walk through the draft EA in detail. This is a last stop review before going out to the public. Don Barger concurred with Chip and that is what he had in mind.

Barry Brayer thought that it may be good to have a meeting to show how we did it. However, this is not the first time NPS or FAA have put out a NEPA document. No reason to bring a document where we as agencies see eye-to-eye then have the NPOAG review the document. If there is a specific area we can't agree on then we could consider bringing it the NPOAG.

Parking Lot – Not everyone on the NPOAG is interested in reviewing the draft EA but some would be interested. Karen Trevino welcomes the advice, however, with legal concerns. We would have to come up with a consensus statement of agreement. This could be done through a sub-group.

A summary and tentative schedule was also provided on the Hawaii Volcanoes EIS. EIS scoping was completed on 9/15/05. Currently we are reviewing scoping comments and refining alternatives if necessary. P&N, Alternatives and EA have been reviewed. Refine Alternatives starting 9/13/05 and have a Final EIS ROD by 7/30/07

Breakout Groups:

### **Significant Impacts/Impact Analysis/Multi-Zone Impact Approach**

(Lash Larew, Richard Deertrack, Charles Maynard and Bob Rossman, Vicki McCusker)

Karen Trevino volunteered this group at the recent Grand Canyon meeting to help flush out a paper discussing the dual zone/multi-zone approach for the Grand Canyon working group. Did Grand Canyon want to use the same approach? They are currently using a decade old standard (dual zone) for an approach. Karen Trevino/Gregg Fleming and Skip Ambrose with Vicki McCusker, Bob Rossman, Frank Turina drafted a summary.

### **IOA Modification Verification/IMR Comment Review**

Gene Kirkendall is not familiar with all the parks so Alan Stephen and Chip Dennerlein will review a list of Intermountain Region comments and assist with the comments.

Additionally, this group can look at potential parks that could be used in the ARC process. Initially that NPS had not concurred with using the CATEX for an abbreviated process; however, Karen Trevino is willing to put out a paper discussing the merits of doing an abbreviated process.

### **Reports from Breakout Groups**

Significant Impacts/Impact Analysis

Multi-Zone Impact Approach

Heidi Williams, Richard Deertrack, Rory Majenty, Don Barger, Dick Hingson, Charles Maynard, Brenda Halvorson, Lash Larew, Bob Rossman, Chris Shaver, Brian Armstrong, Vicki McCusker

Brenda Halvorson initiated that it this is not an easy decision. Currently, the Grand Canyon is divided into two different zones. Reasoning for multiple zones, is looking at it not just from a visitor experience but from other resources as well. Alan Stephan indicated that he is not sure if they want to go in that direction. Would like to see a map of various zones and compare it to the park objectives. Brenda Halvorson followed up that it's pretty clear that we now have those options; however, could aircraft be put into a motorized zone?

Karen Trevino indicated that the multi-zone approach allows you to do that. Gregg Fleming from Volpe gave a presentation at the Grand Canyon meeting regarding the multi-zone approach. The multi-zone approach appears to be more legally and scientifically defensible and also allows more flexibility. Dual zone is not as strongly scientifically defensible. Bob Rossman talked about the multi-zone approach as another way to do things. Initially, to some, it may be appear to be a negative change; however it does become a positive by changing to something that people understand. Although Don Barger agreed that the multi-zone approach may be more defensible, he did not have a recommendation as was the consensus of the group that you can't make a recommendation.

Karen Trevino did not want a recommendation but to flush out the differences in the paper between dual zone and multi-zone approaches. Karen recommended that a conference call be held to further discuss and flush out this issue. Lash Larew, Brenda Halvorson, Heidi Williams, Bob Rossman, Brian Armstrong are all interested in a conference call. Alan Stephan questioned whether we are using this for the ATMP or

Grand Canyon? Barry mentioned that the law at Grand Canyon is different than the one for the ATMP. Karen Trevino thanked the sub-committee on behalf of Grand Canyon working group.

ARC Process -

Alan Stephen, Karen Trevino, Steve May, Frank Turina, Barry Brayer,

Not as easy as they thought. Eventually looked through each air tour operator and came up with the following parks as potential candidates for the ARC ATMP process. Golden Spike National Historic Site, Lassen Volcanic National Park, Colonial National Historic Park, Voyageurs National Park, and Point Reyes National Seashore. Karen Trevino would be willing to contact Park Superintendents to see if they would like to participate in this process.

IOA Modification Verification

Intermountain Region (IMR) Comment Review

Global Group (Makarion Air) is in 30% of parks.

Divided operations into four categories as identified by the Parks:

- 1) Completely Unknown
- 2) Have heard of operator but don't think they are operating over park
- 3) More information needed (Not confirmable)
- 4) More information needed (Think numbers are higher or lower.)

It would be good idea to have operators meet with Park Superintendents and Flight Standards District Office.

Air Tour operator Bruce Adams (Southwest Safaris) is responsible for 30 ATMPs and 40% of the operations in the Inner Mountain Region. Chip Dennerlein did an internet search on Bruce Adams and parks are not mentioned on his website. Some of the parks that he alleges that he flew into includes Big Bend where the airport manager and the Fixed Based Operator (FBO) have no operating records of this aircraft. This is pretty good evidence that shows that operations could not be accomplished with size and fleet mix of aircraft. He's not only operating in these parks but preventing us from doing the ARC process.

What would happen if falsified information was provided? Frank Turina indicated that this information must be correct to ask for verification. Barry Brayer interjected and wanted the record show that this is not factual information and that these are only allegations and will be investigated by Gene Kirkendall and FSDO. Let us say that prior to April 5, 2001, this operator may have had 50 aircraft and he was truthful in his application. This data is six years old. And there were no requirements to maintain this data. Don't jump

to conclusions. Karen Trevino indicated that we are not jumping to any conclusions, however, we would like to keep the integrity for other operators.

Alan Stephen inquired as to what the definition of a Safety Record is? What does that mean? FAA and NPS do not have to have access to an operator's financial records? What is the priority? There are many questions that need a fair answer. How is this going to get administered for selection of operating authority? Barry Brayer indicated that he has concerns based on Alan's questions but they would best be addressed by James Whitlow the following day. Karen Trevino thanked Alan for his thoughts and investigation.

Meeting adjourned for the day at 5:20 pm

## **November 9, 2005 Day 2**

8:08 a.m. Karen opened up the second day with a short synopsis of the agenda.

### **Discussion of Various Legal Issues Including:**

James Whitlow was introduced as the FAA's Deputy Chief Counsel, the number two attorney for the FAA. James gave a short explanation on what his view is of the ARC process. The FAA Administrator does not give up her authority with this ARC process. He'd prefer to call it an "Expedited ATMP" process instead of the ARC process. It is designed to come up with a final product. James proceeded to describe some other successes using the ARC process which included the Fractional Ownership ARC and Overflight fees ARC. He would like to import the lessons learned from other projects. Pick a simple, non-complicated low number park that is not controversial, status quo or with a few minor changes and everybody is happy. The intent is to work with the NPS. In the initial ARC he named Bill Withycombe as the lead because he needed to put a name down and Bill Withycombe was familiar with the process. For James, it is not significant who the head is but the concept of the ARC process. Then select the stakeholders.

Chris Shaver inquired that just because the FAA has authority to do this does NPS have the authority to participate in this process and also was not sure if it would be a violation of the Federal Advisory Committee Act (FACA). James Whitlow had confidence that it could be worked out and does not feel it will be problem. Barry Brayer also indicated that the Grand Canyon working group is a sub-group of the NPOAG.

Karen Trevino inquired that the dual zone and multi-zone approach were discussed at the Grand Canyon meeting and why should the NPS not be suspicious with the ARC Process? James Whitlow mentioned that if the expedited ARC process does not work, the process stops and you take that data and go to a full ATMP. The ultimate goal is to have recognition that ATMPs are non-significant and to achieve something. Barry Brayer referenced an example where we started the expedited ARC process (Great Smoky Mountains National Park) and then stopped when it appeared that it would be too controversial.

Karen Trevino inquired as to whether James Whitlow thought through other alternatives to rulemaking prior to selecting the expedited ARC process and whether or not he has exchanged information with other agencies. James indicated that he did look at other alternatives, however, they did not meet with success and that he is working with in-

house staff only. Not with other agencies. Additionally, he has established successes at La Guardia Airport and Chicago O'Hare using this ARC process and is currently is working on something for Grand Canyon in Washington DC.

James Whitlow would like the ARC process to at least work once. Identify a park. Get Park Superintendent to identify the stakeholders and put out invitations. I would expect meetings to be held at the park. Who are the entities that should be involved? A Federal Register announcement inviting interested members and the process can keep the number to what you want. The general public should have a chance to say that they are interested. Karen Trevino asked, assuming that we are in an ARC process do we immediately go into alternative development mode?

James Whitlow sees it as the stakeholders with a map of the park area sitting down with the air tour operators. The air tour operators provide them with numerous operations related data including times, frequency and equipment type. Stakeholders will then say yeah or nay. If the stakeholders agree then they sign off and say that there will not be significant impacts. You then come up with a draft ATMP and put it out for final comment then finally issue it as a final rule. You need to get the Office of Management and Budget (OMB) familiarized with the ATMP process so when more complicated ATMP projects arrive they will be familiar with the process.

Bob Rossman wanted the NPOAG to know that there is no simple flight and that he is concerned about the notion of an agreement that there are no significant impacts as a precedent going into other ATMP's. First of all is it legal? James Whitlow indicated that if you can't go forward without major analysis, then you stop and go to a full ATMP. James seems to think that there is a pre-screening tool to use a programmatic approach of doing upwards of 75 ATMPs. Brian Armstrong mentioned that we will have a fairly good idea as to what the potential environmental impacts may be. Karen Trevino will contact the five parks that were earlier identified and see if there are any issues about doing a possible expedited ARC.

Alan Stephen encouraged the ARC process. You should follow the NEPA process. However, you should bring in the air tour operators to the table with the NPS to discuss the safety and routing. The NEPA process currently does not allow it. The Part 136 rule is based on the Hawaii SFAR 71. Under SFAR 50-2 you have a perfect safety record. Alan does not think that the rule on the book applies to the Grand Canyon.

Chip Dennerlein is inclined to go with the ARC process. However, he would like to go into the ARC process with some information. The five parks identified earlier are not representative of all the parks but are anomalies unless you find a way to fix the flawed IOA process. One operator is the sole operator at 30 parks and a partner operator at 24 other parks. Need to find a way to correct IOA issuance. Karen Trevino indicated that a majority of the air tour operators are good people and "we" need to weed out the bad operators and give some credibility to the process.

James Whitlow acknowledged Chip's concerns and indicated that there are ways to address those other things. Let me do the five first. Other areas may assist him in making those decisions.

***At this point Karen Trevino proposed that the NPOAG skip the Breakouts and Report session and continue with the ongoing discussions.***

Brian Armstrong asked James Whitlow how we deal with a new entrant. James Whitlow responded that you need to incorporate it in the plan or amend the rule. Rule process would be a bit more complicated or get approval from NPS superintendent and look at it through NEPA process? You don't want to close the door and give exclusivity to a specific operator.

Lash Larew inquired what about the number of overflights? James Whitlow responded that a new entrant will have to request an amendment to the rule. Barry Brayer said that if we are really looking as to what are the impacts are, and identify a park where lets say there are 2 or 3 operators that are ok at 50 operations a month, and one of the operators decides to retire you should be able to keep those operations at a 150 since it has already been determined as de minimus. James Whitlow brought up the idea of slot control. Operators would use or lose operations and would reallocate the unused portion usually via a lottery process or new entrant. Heidi Williams was very cautious about this process, especially if you ask a new operator or new entrant to enter a 3-5 year waiting period. It's just not realistic. James Whitlow did not envision a normal rulemaking period. Don Barger indicated that this process must allow he NPS has to be able to make management decisions. These should go beyond technical issues. James Whitlow agreed, if additional analysis is necessary we can import the ARC data as part of the normal ATMP process.

Following the overflight discussion the NPOAG got into a discussion regarding Tribal Lands and the ARC process. Richard Deertrack indicated that he does not represent all tribes but believes that the ARC process is good. He understands that it may be acceptable and hopes that the concerns of Native American are not being glossed over. Government to Government relations are taken seriously. Process can move on as long as Native Americans are notified. Karen Trevino inquired as to what role or formality would be for working Native Americans during the ARC process? James Whitlow reiterated that he does not want to work with complex parks? Any complexity would exclude this process. If NPS says this could not work than we stop. We want to establish the ARC process at parks where Tribal Issues are not going to be raised.

Barry Brayer agreed with James Whitlow that during the ARC process we will look for parks that won't have Indian tribal issues; or parks that would have an issue; or are the parks aware of any Indian tribal issues that may affect this ARC process.

Alan Stephen said that by involving all the groups as stakeholders, in essence you are doing your scoping process. You are expediting the process with all the people at the table. Park Superintendent is the stakeholder and if he or she says tours are completely inappropriate then you go back to normal ATMP process. Karen Trevino sees stakeholders as having problems with park objectives. Chip Dennerlein described a situation with air tour operations over a river and whether or not they will be able to operate. Need to have training so that both sides are aware of their purposes and values. James Whitlow wants to keep the process narrowly focused. Come to an agreement or consensus without having to go the long route.

Alan Stephen asked whether there is a consensus recommendation to move forward and Karen Trevino took an IOU and would take the first step. James Whitlow requested that Karen take the ARC process back to the NPS constituency. Lash Larew supports the process and would like for it to encompass the National Air Tour Safety Rule. Barry

Brayer indicated that the overflight rule is a separate issue. James Whitlow requested some more information on the National Air Tour Safety Rule. Heidi Williams made a motion to move forward with an ARC process and develop a white paper. Karen Trevino is not sure if it would be anymore compelling or convincing than her just calling

Alan Stephen requested that the first draft come from the NPS, and then we as the NPOAG can comment on the paper.

Don Barger wants the white paper to explain the process, for Heidi Williams the white paper is to sell the ARC process to the five NPS park superintendents.

James Whitlow made a request to move forward without waiting for the process. Barry Brayer had no objection to a white paper although it seems to be taking steps backwards since we have already had a potential candidate in Great Smoky Mountains National Park and had a signed ARC. Karen Trevino disagreed and indicated that we never really went forward with the ARC process. Barry Brayer agreed to move forward with the paper and mentioned that this could go into the IP. Karen Trevino will be moving forward to develop a "vision paper" and will simultaneously contact the Parks Superintendents at the five parks regarding the ARC process. James Whitlow also requested a marked up version of the Great Smoky Mountains National Park ARC charter?

### **Applicability of ATMP to abutting tribal lands**

Karen Trevino started off the discussion by reminding the NPOAG that at the last NPOAG meeting in June in Rapid City, SD we had a healthy discussion regarding the development of one or two ATMPs for tribal lands that abut the park? James Whitlow responded that only one ATMP will need to be done and only if the tribal land is abutting the park. If the tribal land is independent of the park then no ATMP needs to be done. Additionally, if aircraft are not flying over the park but are flying over a tribal land no ATMP needs to be done since the trigger for an ATMP is the national park.

Following this response a variety of scenarios were discussed regarding only one ATMP. Charles Maynard brought up the concern that that if you only did the ATMP over the park you would be shoving air tour operations into areas outside the park. However, Richard Deertrack indicated that if there were tribal interests in the park where tribal lands would be impacted by air tours then the tribe would become a cooperating agency. The federal government has trust responsibility over the land. Barry Brayer also mentioned that if an air tour operator is flying to and from the park over the tribal land then the tribal land would be included. Although, Karen Trevino indicated that Jimmy Sams would disagree that if an ATMP were to be done they wanted the tribal unit to do it. Brian Armstrong also reminded the NPOAG that 18 tribes attach religious or cultural significance to properties within the Lake Mead area, however, are not currently located in the area.

Rory Majenty agreed and provided support to the ARC process. All the ATMPs are different. The Hualapai Tribe in Grand Canyon area has experienced the shoving of operations over our tribal lands. However, they (Hualapai Tribe) have tourism and depend on the air tour operators. We need to balance between tourism and environmentalism. Tribes need to be informed and the FAA and NPS need to do outreach to get them to the table to participate in the process. The Hualapai Tribe has its own ATMP with the FSDO office that requires operators to coordinate with FSDO

office and has 26 provisions and requires insurance. It is a three strike program with a first offense violation of \$5000.

James Whitlow expressed that if there is a disagreement by the tribes over the ATMP process then there should be government to government discussion or even attorney to attorney discussions.

Chip Dennerlein did not envision a separate tribal ATMP. However did have some concerns if tribal lands create a helipad adjacent to a park with multiple operations. Karen Trevino reiterated that the ATMP process is to protect tribal lands and park lands where air tour operations go over the park.

Bob Rossman questioned James Whitlow regarding what is the “trigger” for Badlands since the tribal lands abut the park but the currently no operators overfly the park. Since nobody is conducting tours over the tribal lands? Steve May explained that a new entrant operator had applied to overfly the Pineridge Indian reservation and the legal interpretation that we received was that only one ATMP would be completed for which the tribe was not receptive to one plan. The Tribe wanted to have the same level of authority as the NPS or FAA. After the Rapid City NPOAG meeting the operator withdrew his application. There is no longer a “trigger.” James Whitlow commented that even though the flights don’t operate over the tribe and since they still abut the park the tribal land would still be included as a cooperating agency.

Karen Trevino questioned how other parks are going to be impacted especially those that fly over the abutting tribal land to the park. Richard Deertrack felt that it should be up to the specific tribe as a quasi sovereign nation. Chris Shaver questioned whether tribes would have co-signature authority on the ATMP. Richard Deertrack responded that each tribe is independent and their response may be different. Tribes have never considered the upper realm as a commodity. Tribes are going to recognize their air space. Barry Brayer reminded the NPOAG that legal jurisdiction for the airspace is by the FAA even for tribal lands abutting national parks. However Barry Brayer did question how does this act applies to Grand Canyon abutting tribal lands that are not subjected to the ATMP process, yet have parks within their tribal properties. James Whitlow said that the Act is not clear. The idea is to work through this process. However, parks that abut the Grand Canyon will not have ATMPs completed; however, parks that are within tribal lands that abut the Grand Canyon will get an ATMP.

### **Meaning of the term “annual” in the act**

One question that was brought up at the Rapid City NPOAG meeting in June 2005 was “What is the definition of “annual?” James Whitlow responded that the calculation based on what was done in the year (over 12 months) not on a recurring annual basis. Karen Trevino identified specific language regarding “annual” in the ACT and indicated that is how IOA was granted.

### **Review role of NPOAG re: draft NEPA review**

Another question that was posed at the Rapid City, SD NPOAG meeting in June 2005 was whether or not the NPOAG members could review certain sections of the NEPA documents prior to going to the public. Barry Brayer indicated that the NPOAG is not an oversight committee. James Whitlow also had concerns that by allowing this to occur it

makes the NEPA document a public document. He requested that we “punt” and that he would take an IOU on this process. Karen Trevino recommended an IOU or “parking lot” regarding this issue until the next meeting. She will also check with her agency legal staff as well.

A short discussion ensued regarding enforceability. Gene Kirkendall reminded the NPOAG that Part 13 provides enforceability. It starts with an initial investigation and can go to a formal hearing. The FAA wants ATMP compliance. They are not looking at civil penalties for every violation. They want compliance. James Whitlow concurred and indicated that he wants an education process to reduce or eliminate potential for violations and eliminate the opportunity for operators to claim that they do not know the rules.

Following the enforceability discussion there was a group discussion on Part 91 issues. Heidi Williams wanted to provide a little insight with a Part 91 operator (Skylane Tours) at Picture Rocks and Grand Island that has not been able to operate for over three years. In 2003 Skylane Tours made an IOA application (to the FAA within two days after he was notified by the FAA of ATMP requirements) and was told that he had become a Part 135 operator. He proceeded to go through the process of becoming a Part 135 operator and still has not received IOA. He is not a new operator. He gave 10 years of operational records to FSDO with 197 annual operations. As a result of this delay he wrote to his Senator Levin. He claims that the Grand Rapids FSDO discarded his application and paperwork once FSDO became aware of a letter to the Senator. He also indicates that the National Park Service indicted that they had no role in the in the process.

At the request of Heidi Williams the NPOAG watched a few minutes of an informational DVD prepared by Skylane Tours to show the air tour marketing efforts taken by the operator. The operator also claims that he literally went to the Grand Rapids FSDO which is a six hour commute and the FAA has not acknowledged him. He indicates that undercover FAA and NPS have tried to get him violated. He is the only air tour operator in the area. The other operator pulled out when the ATMP requirement indicated that he had to become a Part 135 operator. He is extremely frustrated that he has been waiting three years and would like to see some ramifications regarding his experience with the local FSDO office. Need to figure it out. Karen Trevino was interested that the operator is represented by counsel. She is not aware of any contact that this operator has had with the Park Service or the Senator’s office. It may be an unfortunate lack of education with park superintendents. This is a terrible example how this operator has gone through all the hoops and has not been issued IOA.

A number of IOU’s were left for FAA/NPS regarding Skylane Tours. Karen Trevino will get some info on Picture Rocks. Gene Kirkendall will investigate allegations and James Whitlow asked that if individual allows us to do so he would like to look into this process and would like to get back to the operator’s counsel. He would like all pertinent information as well as any correspondence to Senator Levin.

Alan Stephen gave a presentation and discussion on competitive bidding. Does not know what competitive bidding means by FAA? Is it an award to a single successful bidder? Are the six identified criteria going to apply into the competitive bid? Don’t have a process in DOT on economic authority. The Act is unclear on giving out extra capacity to existing and new operators and is concerned that there going to be a limit at every

single park that there are going to be air tours? There are three types of scenarios that we can be looking at: 1) 120% over IOA grants, 2) Same as IOA or 3) a reduction in IOA based on environmental concerns. Alan Stephen would like to see Operating Authority granted to the air tour operators consistent with their application numbers. The FAA is the 900-lb gorilla and tour operators are seeking guidance. If the FAA & NPS were to put in limitations they have never discussed the philosophy of limitations. Additional questions by Alan include what does safety record mean? If I had one violation would that preclude me from entering the competitive bidding process? Additional questions regarding the definition of accidents, violations and compliance disposition.

James Whitlow would like to stay away from limits. The competitive bidding process allows those entities that are interested to submit in writing those factors to argue why they would be the best operator to enter. This process allows us to issue a written order addressing how and why the criteria was used to pick the operator. Alan Stephen was questioned how does the FAA select only one and no more? James Whitlow responded that the FAA prefers to have plan. If they want to increase he would prefer to stay away from limits. He foresees some expansions but is concerned that we are worrying about slots for operators that don't exist. If we get to a point that there may be no more than 120 operations a month and there are still available slots we would give it to the new operator and it would be defensible. I would like to include a lottery system if there is tie. He would rather petition for an amendment when the new entrant comes in. Don Barger indicated that a lot of parks will want absolute caps over the parks and the FAA will have to have a process in place to accommodate them. Chris Shaver thought that the plan should be written with management objective and should be encouraging best available technology.

There were a number of scenarios that were brought up to James Whitlow regarding the competitive bidding process such as:

For some ATMPs cap numbers may be lower than the authorized numbers based on IOA's then how do we operate? (Barry Brayer)

In the event there is operating authority to be granted how the OA would be divided to existing operators or new entrants? (Karen Trevino)

Is there a commitment to IOA numbers? (Alan Stephen)

A park has authorized 6000 operations for three operators with 3K, 2K and 1K operation respectively. A new operator now wants to enter the market. How do you divide the operations? (Don Barger)

What if an operator could increase operations if it were willing to cut back time of trip? (Alan Stephen)

Barry Brayer reminded the NPOAG that the law says if you have to have a limitation you must have a competitive bidding process with the identified six criteria. We would need to follow the competitive bidding language in the Act. James Whitlow does not want to see slots come to existing operations and thought that the competitive bidding process should be relatively easy to set up. Existing entrants. How many operations do you want at the park is it equal to IOA? Rather than establishing a limit and indicate where you want to go. He preferred to wait until there is a new operator who wants to come

into the mix then deal with it at the time. If it is zero, then we would want to pool from operators to allow the new operator to come in.

Karen Trevino mentioned that NPS had to go to a slot basis with tour ships coming in Glacier Bay. Chip Dennerlein is of the opinion that Congress did not and will not grandfather operators. If they change, they will no longer be grandfathered. It's about protecting the operators that first existed and did business in a safe way. First place you go is to incentives. Add new fleet or cut back on flights. The Glacier Bay limits set environmental and visitor standards. Slot system will create a mad dash to Congress. Lash Larew indicated that Juneau Alaska has a permit system for Glaciers. There is a pool of available landings and the Forest service makes a final decision. Karen Trevino is willing to take suggestions to address this process and would like to do some research what was done in Glacier Bay. She will also investigate what was done in Juneau, Alaska.

Barry Brayer wanted to remind everyone regarding the idea and discussions regarding placing limitations. The Act gives a whole bunch of ways is to do mitigation. Competitive bidding talks about numbers. A number of ATMPs will be capped. Numbers determine this. I can read the paragraph two different ways. One operator or more than one operator it has to be equitable. Parks with 10-12 operators may put restrictions based on criteria. Some may get more operations, some may get less, and some operators may get put out of business. Also, if a company does get these operations how do we determine increases, or if a company sells its business or goes out of business do we go to new competitive bidding? How do we distribute?

Bob Rossman followed up that competitive bidding, growth factor allocation, and quiet technology incentives or whatever is decided has to be supported with analysis. It is a function of the alternatives developed. There is no way right now to support a cap at less than IOA. We might be missing some things in the existing EAs. Significant criteria have not been built in. We need to do iterative model runs to determine impacts and should be doing it for all the alternatives. However, it ends up creating a voluminous analysis problem. Don Barger stressed that is the reason why NPOAG members need to review these EA's. In the existing EA's the alternatives that are outlined are not based on a determined process for making a significant impact determination and you have failed to protect parks. Bob Rossman disagreed and indicated that avoidance techniques were used.

Barry Brayer explained one of his concerns is what is going on at Lake Mead particularly, the definition of transportation flights, which may be a big factor in limitations. For cumulative impacts these operations could have an effect. This is where a cap could be imposed. Karen Trevino suggested that they talk over lunch regarding the benefit of existing models with various scenarios and need to come up with something. It was also determined to postpone the Tribal Consultation presentation to the next NPOAG meeting. Additionally, if there is time any legislative changes to the act that could be recommended to the General Accountability Office are brought up as well.

Barry Brayer wanted to offer up James Whitlow to address any pending issues.

Karen Trevino recommended that Quiet Technology and Incentives be a topic for another meeting. Additionally, she questioned how the FAA determines aircraft noise impacts since it is based on the size of the airplane and noise per person.

## Lunch Break

Following the lunch break the meeting reconvened with Karen Trevino posing the question as to where and when the next NPOAG meeting would be held. The NPOAG chair will be handed back to Barry Brayer for 2006 and he had an idea the NPOAG has been to some nice remote parks with and without air tours. However, we have not been to an urban area yet. He would like to think about it some more. Additionally, the timing has not been determined. Don Barger recommended the end of February or early March since the Draft EA for Badlands is due at that time and likes idea of going to an urbanized park. Chip Dennerlein recommended Point Reyes. The NPOAG could meet at the Presidio would be able to see an urbanized park in a cluster. Additionally, we would also be near Muir Woods.

Alan Stephen also requested that between now and the next meeting there should be a process as to how Operating Authority is going to be issued. We still have not discussed how this process of the Issuance of Operating Authority would be made to the public. Is it in the Act or is it not? We should try and get an intervening meeting. Barry Brayer mentioned that Alan Stephen will have to talk to FSDO. Karen Trevino questioned how will the process for issuing Operating Authority be issued through FSDO via Ops Specifications if there are no limitations? Also, if there are limitations, will they be competitive? James Whitlow suggested that there be a white paper to show how this process would work. We (FAA) could take the lead to put the topic together for something before the next NPOAG.

Karen Trevino questioned whether these decisions would be done on a regional or national level and would FSDO be involved as part of the competitive bidding process or included in developing restrictions? Gene Kirkendall indicated that each day we are adding more content and that it may not necessarily only be FSDO but a combination of FAA representatives and that any restrictions or limitations in the ATMP would be included in the Operations Specification. James Whitlow indicated that he does not think that Operations Specifications are the only ways to enforce things. We need to have something to look at in writing. James Whitlow provided his e-mail address for NPOAG member as james.whitlow@faa.gov. Chris Shaver recommended that the competitive bidding criteria be further discussed online by Barry Brayer and Karen Trevino after which they will submit via e-mail how they are going to deal with this by way of a working group. Barbara Halvorson, Heidi Williams, Alan Stephen and Chip Dennerlein would like to be the agency representatives.

Heidi Williams mentioned the provision that Part 91 operators are exempt if approved by letter of the Park Superintendent. Gene Kirkendall responded that the operator still needs Interim Operating Authority and Operating Authority.

Mark Peterson had to leave the meeting and thanked the entire group. He enjoyed being at his first NPOAG meeting and is looking forward to working with the group. Karen Trevino suggested that at the next NPOAG meeting Mark tell a little about himself.

Gene Kirkendall initiated his presentation on air tour activity reporting requirements. Currently there are no requirements for reporting. He envisions the ATMP to have a record keeping process. Part 136 has no requirements to keep records either. We don't have requirements and we need requirements. When done, he will need to put out

guidance to 5000 inspectors. In June we will put out a Notice of Proposed Rulemaking but before that a Rulemaking Project Record (RPR). A Simple RPR was proposed since it is not as complex. Gene wanted to put in a one sentence catch all that if there is an operator he would have to follow ATMP and that it would relieve the requirement for individual rulemaking. However, it was turned down. Additionally, would prefer reporting on the web as opposed to a paper trail. If we have to go into rulemaking we have 24 months from NPRM. Karen Trevino inquired as to whether there is an expedited process? James Whitlow indicated that there may be an expedited process but we would need the Office of Management and Budget to agree on a significant negative impact. This includes economic pacts on small businesses if we don't have ATMPs to show them. We need to have a policy and rulemaking to make it clearer. Brian Armstrong read Part 136.7A3. He questioned that once Part 136 is in place without rulemaking would it not be enforceable? Gene Kirkendall confirmed that yes it would be. But we don't now.

Lash Larew recommended that as each ATMP is approved it can be added to the annex. Additionally, have reporting requirements as part of the issuance of Operations Specifications.

Gene Kirkendall mentioned that these operators can still operate legally without signing and he is here to get recommendations from the NPOAG.

Alan Stephen thought that the FSDO might also consider holding the certificate number and crew member at risk. You can't regulate on the process of non-compliance. If there is no enforceability then there is no intention to count flights and it becomes a sham. James Whitlow questioned how we can have a reporting requirement that doesn't exist? You have the cost of the rule, the Paperwork reduction Act and you have to maintain the data. But you are not required to send us the data. You have to have enforceability.

Gene Kirkendall mentioned that the flight manifest requirements are 30 days. Alan Stephen questioned how Office of Management and Budget would look at if it went to 365 days. James is not concerned with reporting requirements. However, he is concerned that some operators will not want to do it and Office of Management and Budget may agree with them. The number one issue on reporting is the policy issue. Lash Larew indicated that you have to be able to show compliance for X number of days with no requirements to provide the data to the FAA. Don Barger mentioned that the operators are not keeping different records just keeping them longer. Karen Trevino questioned how can we best move forward for requests for new entrants? There are 16 total 6 are new entrants and 10 are existing operators entering new parks. Until we get existing IOA cleaned up Karen wants to put it on hold. Chris Shaver thought that FSDO could put an incentive if they provided air tour route information, tour times, as a preference. Gene Kirkendall preferred to use date of application. Thinks there are 16 new entrant operators and is going to 18 very shortly.

Barry Brayer reminded the NPOAG that there is a provision in the act for priority to new applicants and Alan Stephen read the section from the Act. Alan said that it was clear that Congress' intention was to expedite the process. Heidi Williams thought that the first priority is to issue IOA to existing operators prior to new entrants.

Gene Kirkendall asked the NPOAG what information was lacking. Karen Trevino mentioned voluntary reporting requirements and that she is thinking of ways to get information. She believes some air tour operators may be keeping the information.

Chip Dennerlein would prefer that the FAA address IOA, get the ARC process going then deal with new entrants. Karen Trevino also agreed to not allow increases or new entrants until the IOA numbers get straightened out. Karen Trevino then polled the NPOAG and the consensus around the room was not to think about new entrants or increases until we address existing IOA. Karen Trevino mentioned that some of the NPS funds can go to paying contractors in assisting FSDO/Gene Kirkendall and IOA. Alan Stephen disagreed and indicated that it is not mutually exclusive. Priority is because the ATMP process is getting numbers to what the base period really looked like. They should think about moving forward by addressing other issues (new entrants & increases). The ARC process may be a way to see if new entrants or increases could be looked at. Alan Stephen and Heidi Williams wanted to make sure that limited resources at FSDO are tailored to existing operators and that priority be given to those that have a dispute with the IOA. Chris Shaver is concerned that other operators that may be indicating that they are flying and they are not should be addressed. Gene Kirkendall indicated that no documentation has been provided to a FSDO yet. No operator has contacted Gene either. Once he receives the data, he reviews it, then would turn it over to legal to start Part 13 process. They have look at both sides of the story.

When Gene Kirkendall got involved in the ATMP process one of the first things he learned was that there was no handle on the IOA, it was on an honor basis only. Even the act, did not require the FAA to verify those numbers. He also noticed that a lot of the FSDO's were doing it on its own merits. Database was a mess due to multiple entries and names for the same park. He started by cleaning up the database. Not only was he cleaning up those that were issued in error (i.e multiple issued as separate parks within Golden Gate National Recreation Area) and Statue of Liberty and Ellis Island but he does not issue Operations Specifications. He issues guidance. FSDO's Principle Operating Inspectors (POI) may not see operators all the time. Operators are showing up because it is still in the system. Paragraph B57 of the Operations Specifications has to be re-issued. The change to the Operations Specifications could be weeks or months. Until it happens can't tell you that it has been done.

Part 91 sightseer aircraft that operate within a 25 mile radius and does not land at another airport are not technically an air tour operator. Such an event would spark an investigation but not necessarily a violation. Gene referenced as an example the one operator that was operating at the Colorado National Monument.

Once FSDO gets the operators and parks straightened out we will start looking at actual numbers. Gene recently found out that the GAO and NPS were using an old list. He would like to put it on the web so that when they do get comments it is the most accurate data we have. We will not have a final list because it is constantly changing. A handbook guide will be developed on how to investigate these air tour operations and is planning on having annual meetings. Chip Dennerlein suggested that Gene Kirkendall prioritize actions by going after specific operators and getting the best return on investment. Gene responded that if he gets a credible report from the park service he could turn up the heat on an operator. Keep in mind that there could be another priority.

Alan Stephen identified that Southwest Safaris (Bruce Adams) is a legitimate operator even though it has applied for IOA at 54 parks. For some parks he is the only operator. Karen Trevino requested that Chip Dennerlein and Frank Turina gather their information about this operator and that they forward it to Gene Kirkendall and James Whitlow.

Heidi Williams was under the impression that there was already an ATMP training program in place at the FSDO's and wanted to know what Gene's Kirkendall's role was in providing training. Gene indicated that he is not aware of any training programs and that the draft training manual that was discussed at the Great Smoky Mountains NPOAG meeting in February is already outdated and he is in the process of updating it. He also discussed developing a DVD once training material is developed. The video that was seen originally was an informational video not a training video. As far as his role, one person in each FSDO would be identified as the regional environmental coordinator. Normally local FSDO's call their regional office before they call Gene. Once he writes the guidance it will require a full time position in the region. FSDOs report to the regions director. Chip Dennerlein and Heidi Williams also agreed that FAA and NPS regional field people be together in the same room getting the same training.

Gene Kirkendall has sent out Federal Register notices regarding the issuance of BO57's. Alan Stephan wanted to discuss a Federal Register notice that went out in June (70 FR 36456) and wanted to see public comments on the docket. The system that is currently in place has no ability for the operator to comment on the error or to correct the comment. Most comments are from environmental related groups and if the operator had access to make a comment he could resolve it thus having a lot of the investigation go away. Why didn't the notice go on to the Docket? Gene Kirkendall mentioned that he received only two comments from the public and they were non-credible. Comments that he received were older comments not to the June FR notice. Additionally, if the FAA did receive credible comments then they would investigate. Data on the web is not reliable. The document that was sent from the NPS Pacific region is what he is looking for.

Karen Trevino indicated that only about a half-dozen comments were made from the NPS for the most recent Federal Register notice. Notwithstanding the NPS comments had very little comments. FSDO needs to continue working on this task. NPS has some money from Congress to that extent to be able to funnel that cash and clean up existing IOAs. Karen also wanted to get some agreement from Barry Brayer that we would be cleaning up the IOA problem and that Bill Withycombe has agreed upon it, while Barry Brayer wanted to have further discussions. James Whitlow indicated that he could get a supplementation of resources. Chris Shaver advised the group that nothing in the MOU says that we can't give money to Gene Kirkendall.

Below is a list of parking lot issues to be addressed either between now and the next meeting or at the next meeting itself:

- FAA will be looking into it whether or not one ATMP rule can be implemented rather than multiple rules?
- Where and when is the next NPOAG meeting going to be held?
- Who is rotating off the committee?

- Send IP for FAA and NPS legal review.
- Tribal consultation (have specific tribes for specific ATMPs)
- Is there a need to for NPOAG to review Draft EA's?
- Why we are using the average day peak month for analysis?
- Karen Trevino will contact Pictured Rocks Superintendent.
- How do other advisory groups review documents?
- Karen Trevino and Barry Brayer will put together a meeting to develop a Competitive bidding process.
- A vision paper regarding ARC process will be developed by the FAA
- An ATMP training status update.
- FAA/NPS jurisdictional issues. IP does not say that the NPS can fly planes and that the FAA can't tell the NPS how to run parks.
- Multi-zone vs. Dual zone Grand Canyon issue. A white paper came out of the working group. Lash Larew, Alan Stephen, Bob Rossman and Brian Armstrong are interested in this topic.
- A conference call regarding the framework or straw man for issuance of OA.
- Karen Trevino needs to talk to facilitator and FAA regarding the Grand Canyon timeline issue.
- IP comments to go on the next agenda as a discussion item.

#### Public Comment

Dick Hingson – Representing the Grand Canyon Trust/Sierra Club Sierra Club National committee. Multi-zone paper suggests that you need to teach from a graphic or map. Use overlays then do an analysis in 2 to 3 steps in order to help teach people how multi-zones work. You need a diagram. The ATMP website; as of last weekend there were no minutes for the last two meetings. Additionally there was no notice of this meeting. No detailed agenda. Public is being blind sided. Urges that it be a weekly notice. Nothing has been posted since July 1<sup>st</sup>. Something that could go up on the ATMP website is the Park IOA where it shows subtotals by each operator and sub-totals by each park. The notices for comment could be put up as well. Dick Hingson also complimented some things. The size of the Implementation Plan is impressive that you (FAA/NPS) agreed on it. He is impressed by the power points with supplemental metrics that may be more user friendly. Glad to see recognition of other metrics. Questions as to their application though. As far as IOA he understands that not yet making a rule. People should continue to be able to submit comments on all aspects of IOA. Use

website to show public how you are proceeding with IOA verification and management of effort.

John Dillon – Grand Canyon Airlines. Shares a lot of Dick's compliments, especially, on the Implementation Plan. Thanked James Whitlow for coming to the meeting. A few concerns though. Concerned that if a lot of weight is given at the Park Superintendent level, there will be a lot of restrictions. Grand Canyon working group everything is on the table that things will get done. He has seen the best and worse of park management. Agencies should push hard with ARC process.

For the most part has not seen any other new operators. Started this process in his 20's now in his 30's and he is still a bit confused. His position has changed from being aggressive on IOA to one now that he does not really care. Don't spend your money on IOA verification but on ATMPs instead. Commended the group.

Doug Greenbergs Defender of Quiet, Darkness and People Is a former sound engineer. One suggestion is a mailing list regarding soundscape issues. Silence of the Lands, NSP, Discussed various speakers and sessions that were participants in this meeting. Noise from F-16s overflights caused frogs to take 45 minutes to get back to their natural environment. Rocky Mountain National Park glad there is a ban on air tours. Denver International Airport flights are impacting park. It sucks to hear an aircraft at 6:00 a.m. No refuge from transportation noise. Noise measurements metric dehumanizes noise. Quality not quantity is a key issue. Small sounds are a big deal. Mr. Greenbergs played some recorded aircraft sounds and indicated that he would like to get away from this noise when he is at the national parks. He has some technology ideas regarding a date and time stamp, latitude and longitude and is willing to provide information. Imagine a no fly day one day, a month or a year. On behalf of the people have sensibility, sensitivity and the good sense to preserve soundscapes.

Barry Brayer's closing remarks thanked the NPOAG for its dedication and level of participation. He was really impressed and wanted them to know how important it is to us. Not just the words but the meaning behind it. Barry also thanked James Whitlow and Gene Kirkendall for attending from the FAA headquarters office. Thanks also went out to NPS for setting up the meeting. It was a great venue and a good meeting location, as well as their hard work on the Implementation Plan. Barry also acknowledged his FAA staff and Elly Brekke for their participation. A thank you also went out to Bob Rossman for his challenges and all the best with his upcoming move. Barry will be taking over on January 1, 2006, and will get back on specifics regarding the next meeting place and location. He thanked current Chair Karen Trevino for being the chair this year and doing a great job. He looks forward to taking over. There is a lot of work to be done and with many important issues where we will need your input. Wish the NPOAG a safe journey home.

In Karen Trevino's closing remarks she thanked the entire NPOAG group as she closes the meeting and year as Chair of this group. Hopes we have made progress and that NPOAG is a useful part of your time. We've created a safe environment to disagree and work through this process. It is not always easy. She thanked her NPS staff and Barry Brayer's FAA staff since they do all of the preparatory work. We will continue to work together. She thanked Elly Brekke, Gene Kirkendall and James Whitlow. Also gave a final farewell to Bob Rossman and indicated that he leaves a legacy with the

development of the Implementation Plan. A lot of good hard work formed the ATMP Implementation Plan.