

**Grand Canyon Working Group
First Meeting
July 13 - 14, 2005
Thornager's/Kilted Kat
Flagstaff, Arizona**

Summary of Discussion and Agreements Reached

Facilitators/recorders: Lucy Moore, Ed Moreno, Tahnee Robertson

Members Present:

Lynne Pickard, FAA, Working Group Co-chair
Karen Trevino, NPS, Working Group Co-chair
Katherine Andrus, Air Transport Association
Bill Austin, US Fish and Wildlife Service
Marklyn Chee, alternate for Alan Downer, Navajo Nation [day 2 only]
Mark Grisham, Grand Canyon River Outfitters Association
Elling Halvorson, Papillon Airways
Bob Henderson, alternate for Alan Zusman, Naval Facilities Engineering Command
Dick Hingson, Grand Canyon Trust and National Parks and Conservation Association
Leigh Kuwanwisiwma, Hopi Tribe
Cliff Langness, King Airlines, Inc. and Westwind Aviation
Jim McCarthy, Sierra Club
Doug Nering, Grand Canyon Hikers and Backpackers Association
Alan Stephen, Scenic and Grand Canyon Airlines, Inc.
John Sullivan, Sundance Helicopters, Inc.
David Yeamans, Grand Canyon Private Boaters Association
Charlie Vaughn, Hualapai Tribe
Heidi Williams, Aircraft Owners and Pilots Association

Superintendent's Chair:

Joe Alston, Grand Canyon National Park

Member Absent:

Roland Manakaja, Havasupai Tribe

Welcome and Introduction: Joe Alston, Superintendent, Grand Canyon National Park, welcomed members, alternates, and observers to this first meeting of the Grand Canyon Working Group. He expressed appreciation to those who have agreed to serve as members and alternates, and hope for a successful process. He introduced Steve Martin, Deputy Director, National Park Service, who emphasized the commitment of his agency to this effort and his hope for an outcome that serves the best interests of both agencies, stakeholders, and the public.

Facilitator's Remarks: Lucy Moore introduced herself and her colleagues, Ed Moreno and Tahnee Robertson. Their role as facilitators, she explained, is to insure that the

process moves as efficiently and productively as possible, and that all members have equal opportunity to participate. They are responsible for creating and maintaining a safe environment where the full range of voices can be heard and respected, and the maximum opportunity created for resolution. Lucy urged all members, alternates, staff and observers to let the facilitators know if there are any problems with the process or any suggestions for improvement.

She explained that Lucy Moore Associates, Inc. was contracted to assist with this process through the U.S. Institute of Environmental Conflict Resolution (USIECR). At the request of the FAA and NPS, USIECR began working with the two agencies in 2003 to help them develop a cooperative working relationship that would help facilitate the resolution of issues surrounding overflight noise at the Grand Canyon. In 2004, the two agencies agreed to move forward with a Stakeholder Assessment Process, conducted by Lucy and her team. The results of 46 interviews revealed that there was a willingness among stakeholders to negotiate with each other and the agencies to reach an agreement that would resolve these issues. The FAA and the NPS decided to create a working group under the authority of the National Parks Overflights Advisory Group, and through the Federal Register they invited nominations that would meet certain criteria. The result of this process is the Grand Canyon Working Group.

Lucy reviewed the purpose of the Working Group:

- To review data and analysis
- To identify and review issues related to overflight noise
- To consider a variety of alternatives to address the issues
- To make recommendations for an Overflight Plan at Grand Canyon
- To help develop aviation regulations to implement the Plan

The purpose of this first meeting, she explained, was to allow members and alternates to get acquainted, to make certain process decisions, and to learn more about the historical, legal and technical milestones relating to overflight noise at the Grand Canyon.

Lucy explained the roles of the various people in the room. Members were chosen by the agencies according to the process described in the Federal Register. Each member was asked to select an alternate, someone who could keep up with the progress of the Working Group and take the place of the member if necessary. A special seat at the table was designated for the Superintendent of Grand Canyon National Park. Also present were staff from both the FAA and the Park Service who would serve as resources for the Working Group for technical and legal questions. Finally, because the meeting was open to the public, observers were welcome to listen to the presentations and discussion. They would be given an opportunity at each meeting to ask questions or make comments or suggestions to the Working Group.

Finally, because adoption of the Protocols, or operating principles and procedures, would not happen until the end of the meeting, Lucy asked the group to agree to follow some simple groundrules in their discussions. Members were asked to raise their hands to be recognized to speak, to be aware of the time constraints, and to realize that in order to

have equity at the table, everyone needs to have a chance to speak. They were also asked to strive for a certain attitude, which included being respectful, open and willing to learn; searching for solutions in the interest of the group; and participating in good faith.

Member Introductions: Each member spent five minutes introducing him/herself and his/her alternate. Many told a story or two as they spoke of their interest in, and history with, the issue of overflight noise and/or the Grand Canyon. Some referred to the timeline members and alternates had created on the wall prior to the beginning of the meeting, where they had recorded their first awareness of Grand Canyon, or most significant experience there.

Background on Grand Canyon Overflights, Presentations:

Carla Mattix, Solicitor's Office, Department of Interior, gave the group an overview of the legislation and court decisions relating to overflight noise at Grand Canyon. A copy of her chronology and case law was in the Member notebooks and can be found on the website.

Questions:

- The 1994 National Park Service Report, Chapter 10, included 35 recommendations. Which of those recommendations have been implemented, modified, or rejected? Carla agreed to give the Working Group an update on the status of those recommendations.
- When was the definition of natural quiet established? In the 1994 report to Congress.
- There seems to be a conflict between the Overflights Act of 1987 and the National Parks Air Tour Management Act of 2000 with respect to the authorities of the two agencies. What was the impact of the 2000 Act on the Overflights Act of 1987? Because the 1987 law is very specific to Grand Canyon, and the later 2000 Act only partly refers to Grand Canyon, the 1987 law still governs. Carla responded to another question: there is a conflict in language in Paragraph A between “significant adverse impact” and “adverse impact” which has not yet been reconciled.

Paul Joly, Natural Resource Specialist for Grand Canyon and Air Tour Operations, FAA, gave a power point presentation (also in the notebooks and on the website) on the Special Flight Rules Area and the regulation of commercial air tours.

Questions:

- Were the altitudes referred to based on sea level or ground level? Mean sea level.
- What possible impact will the air tour safety rule have on the timetable of this group? FAA will report at the next meeting.
- What percentage of the Park is currently in a flight free zone? 66% as opposed to the 85% that could be inferred from the presentation

- What are “non-tour operations”? These flights (13,000) were flights that did not take passengers for hire, or carried no passengers at all. Examples of these flights are transporting a plane from one location to another, delivering supplies, providing maintenance support, fighting fires, etc.

Lynne Pickard, Senior Advisor for Environmental Policy at FAA, and Karen Trevino, Director, NPS Natural Sounds Program, who serve as Working Group co-chairs, gave a power point presentation (also in the notebooks and on the website) on the roles and responsibilities of the two agencies with respect to this issue and this process.

Questions:

- What are the responsibilities of the agencies in the protection of tribal resources? The agencies consult with tribes on a government-to-government basis whenever a federal action is being considered which might impact the tribe. In addition, any tribe is considered a cooperating agency in the NEPA process, and cultural resource protection is required by law as well. The Overflights Act of 1987 contains special tribal provisions. All these processes will continue as necessary parallel to the Grand Canyon Working Group process.
- Who will take the lead for the NEPA process? FAA and NPS will be joint lead agencies.
- Hualapai issues/questions:
 - With a million acre land base, Hualapai needs to provide for their fire fighting aircraft in the administrative flights provision.
 - Hualapai small businesses need consideration.
 - If air tour flights are restricted, Hualapai will need compensation for lost revenues.

Grand Canyon Working Group - Scope of Work and Timeline: Lynne and Karen presented a draft Scope of Work and Timeline to the group. They explained that although no formal approval is needed from the group, they would be very interested to hear reactions and suggestions. [Document was sent to members prior to the meeting, was handed out at the meeting, and is available on the website.]

Questions and comments:

Feasibility of timeline: Many spoke to the challenge of reaching the conclusion of the process by the deadline for implementation of April 2008. There were questions about the meaning of “implementation” -- of the rule? Or of substantial restoration of natural quiet? The Presidential Memorandum of 1996 calls for the restoration of natural quiet by April 2008. Industry spokespersons pointed out that if the rule requires major changes in equipment and operations, safety concerns mandate time for training and preparation. In this case, implementation cannot meet the deadline. The agencies understood that promulgation of the rule would have to accommodate time needed for training, practice and preparation for implementation. Safety should never be jeopardized by clinging to a deadline. If, on the other hand, the rule calls for

stabilizing the situation or preventing further degradation of the soundscape, then perhaps implementation could be more immediate.

Others applauded the agencies' setting the April 2008 date as a goal, but were skeptical about the group's ability to meet it. They wished that data had been gathered earlier and that this process were farther along at this point.

The NEPA process itself has built in time periods, including comment periods. The NEPA Record of Decision would have to come out before implementation. An FAA staff person advised that the NEPA process should begin this October in order to meet these requirements. Perhaps the NEPA Notice of Intent could be moved earlier in the process.

A participant was concerned that the deadline was becoming a burden and a threat to the natural evolution of the Working Group. She asked that the formal structure not be allowed to override or dictate the natural progression and development of alternatives.

A participant asked what would happen if the deadline was not met. A Presidential Memo creates a political deadline, replied Carla, but if it is slipped, the argument could be made that the agencies are not acting in a reasonable time frame.

One participant requested an opinion or clarification from FAA's Office of Chief Counsel regarding the role of NEPA in an ARC (Aviation Rulemaking Committee) process.

Need for Preliminary Data:

The discussion about the urgency of the process led some to ask for preliminary noise data, or an overview of data collected so far, even expressed in ranges or estimates, so that some discussion could begin on the identification of alternatives. The agencies expressed reluctance to release preliminary data because it is incomplete at this time and therefore not reliable from a scientific standpoint. Federal agencies are required by law to use the best available technology and science, and that takes time. There is a concern that if they released data too early, stakeholders could leap to improper conclusions, waste time going in the wrong direction, or even hold the agencies responsible for using poor data .

ESA and Section 7 Consultation:

The group understood that there is another parallel process that must be coordinated with this process -- the Endangered Species Act's Section 7 Consultation. An early identification of ESA issues will help the group be able to integrate this data into its deliberations.

Attorney Expertise:

In answer to a question, Lynne said that a general counsel from FAA will be at future meetings. The issue of *ex parte* communication was raised with respect to the Working Group process. Carla will consult with the FAA attorney.

Presentations from the Modeling Working Group: For the past year, technical staff from FAA and NPS have been evaluating existing models for overflight noise. In February 2005, the group agreed on a model and began work on parameters for monitoring and data collection. Modeling Working Group members include: Tom Connor and Paul Joly from FAA, and Ken McMullen and Kerry Moss from NPS. Tom Connor is retiring and has been replaced by John Gulding.

Presenters were: *Tom Connor, Special Assistant for Environmental Modeling, FAA; Paul Joly, Natural Resource Specialist for Grand Canyon and Air Tour Operations, FAA; John Gulding, replacing Tom Connor; and Ken McMullen, Overflights and Natural Soundscape Program Manager, Grand Canyon, NPS.* [Slide presentations are included in Members' notebooks, and can also be found on the website.]

Questions and Comments:

FICAN: Was the work of the FICAN (Federal Interagency Committee on Aviation Noise) peer-reviewed in published journals? The answer was no.

Relative contribution of noise: What is the relative contribution of the air tour, high altitude, and other sources of aviation noise? Is the non-tour data available for the same peak day as air tour data? The answer was yes.

Noticeability and the Human Factor: [Audible refers to noise that is detectable by an attentive human observer with normal hearing. Noticeable refers to noise that is not just able to be heard, but is noticed by a human observer with normal hearing who is not actively listening.]

Some felt it was important to focus the gathering and analysis of data on noise that is noticeable by humans and degrades the experience. What is impacting the visitor is the heart of the matter, they said. Noise should be evaluated in terms of human reaction, not the reaction of instruments. They referred to a Visitor Survey in 1994 that attempted to document visitor reaction and measurement of noise. They suggested a model for noticeability, or a survey of visitors to determine the location, type, volume, source of noise that is noticeable. There was also a request for a Dual Zone Map, showing both audibility and noticeability. Karen Trevino offered to make available any relevant visitor use surveys and post them to the GCWG website. She also noted that while air tours over the Grand Canyon might end up being largely a visitor use issue, the federal agencies still have a legal responsibility to ensure that there are no significant adverse impacts to park resources as well

Comprehensiveness of Ambient Data Gathering: It was unclear whether or not wind noise and riparian sounds are being included and considered as part of the ambient soundscape. Some felt this was a serious omission and could jeopardize the credibility of the results of the collection and analysis. There were also questions about the two dimensionality of the ambient data analysis. Are areas without vegetation, like rock slopes or canyon walls, being included?

Definitions: There were questions about the definition of “peak day.” Is the definition settled, and is it to be part of the scope of the Working Group? Co-chairs answered that it was settled in court decisions, and that it is not contemplated to be part of the Working Group’s scope of work.

Lands Adjacent to Park: A representative from a Navajo Chapter which borders the Park asked if those lands would be included in the air tour plan. There are communities that are being adversely impacted by air tours and would like more information about how they can protect themselves. Sheep and other livestock are being disturbed by low flying aircraft. Paul Joly responded that any dangerous flying should be reported as quickly as possible to his office, at 702-491-3736. The caller should have as much detail as possible, including type of plane, time of day, location, and any identifying numbers. Legal staff at both agencies will explore the question of including adjacent lands in the plan.

Protocols Discussion: The Working Group addressed the Draft Protocols prepared by the facilitation team on Day 1 in order to identify areas for discussion and negotiation on Day 2. The list of issues identified were:

- Definition of “consensus”
- Participation/absences
- Commitment of members to the process
- Dealing with the media
- How to focus on substantial restoration of natural quiet without limiting issues, discussion, and potential solutions

It was understood that other sections of the Protocols were acceptable as written. During the discussion of the Protocols some members made it clear that they would need to consult with constituencies before offering consensus on the Protocols. Although consensus was reached on several points, it was understood that final agreement would be sought at the next meeting.

Consensus: Lucy offered some thoughts on consensus. It is a very powerful tool, particularly in this situation where the decision-making agencies have agreed to participate in the process as members, through the co-chairs. This means that any decisions reached by consensus (i.e. unanimity) will be supported and promoted by the two agencies. If the group fails to reach consensus, the decision reverts to the agencies to make, with the benefit of a full understanding of the different points of view. It is critical, she said, to agree in the beginning of the process what consensus means and how failure to reach consensus will be handled. She urged the group to strive for consensus, and not

to resort to a vote since each person at the table is representing an important and unique interest. Any voting option could put minority voices at a serious disadvantage. Lucy suggested that consensus could be expressed through a thumbs-up, thumbs-to-the-side, thumbs-down technique:

- Thumbs-up = strong support
- Thumbs-to-the-side = I can live with it, I may not agree, but I won't block it
- Thumbs-down = I cannot agree

There was acceptance for the thumbs up/down method. Members suggested that in some cases the facilitator could poll members prior to asking for consensus to get a sense on the views around the table, without making it binding. There was not support for recording which members offered consensus and which did not.

Members asked the facilitators to keep a working document of agreements reached at each meeting. It is understood that this document is a "living document" and that some agreements may be tentative until constituencies have been consulted, or until other related issues have been decided. Members and facilitators should make clear when consensus is tentative.

The group reviewed the list of options in the Protocols available to try to reach consensus, if it is not achieved in the first attempts. At the least, dissenters will be asked to explain their veto in order to better understand how to meet their needs. There was agreement that every effort should be made to help craft a solution that would have the support of the dissenting parties.

Failure to reach consensus will result in the decision reverting to the agencies. Co-chairs asked that when consensus is not reached on a major issue, those with opposing views be invited to submit a written statement explaining their position. This will help the agencies understand the issue and it will provide an administrative record.

Agreements on Consensus: [highlighted in revised Protocols]

- Add language: "If there is no consensus, the working group may ask members of the group to provide supporting and dissenting positions to facilitate agency decision making."

Participation/Absences: Although the group hopes to have a full membership present at every meeting, it was understood that there may be emergencies that result in the absence of both the member and the alternate. There was a request that the process be flexible in these situations, and tolerate a "designee" to represent the interest. Some felt that the group should be able to make decisions without a full membership at the table, and that absences could hold up decisions that need to be made on a very tight schedule. The group also considered the use of proxies, participation by telephone, or communication through the facilitator in case of absences. These were considered last resorts. The group recommended that each circumstance be considered on its own merits.

Agreement on Participation/Absences: [new language highlighted in revised Protocols]

- Add language to reflect that in case of absences each circumstance will be considered on its merits.

Commitment of the Members to the Process: Members discussed the section of the Protocols that deals with commitment to the Working Group process. Although the language was not changed in the Protocols, members spoke of the importance of not using the media as a forum to promote a personal agenda and not “grandstanding in the press” at the expense of others at the table. They also understood the potential impacts on the process from seeking legislative or judicial fixes during the life of the Working Group. The Protocols urge members to bring such contemplated actions to the group for a full discussion before proceeding.

A member noted that external events can have an impact on the group, as well, and hoped that members would be able to react in ways that support the Working Group.

Media: Members were aware of the importance of developing a policy for media relations. The hope is that members will represent the Working Group process in a positive way to the media and will not use the press to advance a personal agenda. The more negativism there is in the press, the greater the challenge to develop an atmosphere of trust and good will at the meetings.

Some suggested that the facilitator could play a role with the media, answering some questions and referring others to members as appropriate. In general, the group assumed that members should use good judgment and exercise caution when being interviewed. Everyone understood the damage to trust and relationships that could result from coverage that pits one interest against another. It was also understood that surprise coverage in the press can hurt the process, and that notifying other members before an article appears or a segment is aired could lessen the impact. A member suggested that members send copies of any press relating to this subject to Lucy for distribution to the group, if possible, before publication; or that members could do the distribution themselves.

Co-chairs said that the two agencies had agreed to speak to the press together whenever possible, and not to seek out the press unilaterally.

Members emphasized the need to continue to be able to go to the media individually, but agreed to not undermine the process in the press.

The group was concerned about filming and recording during the meetings. Editing and selection of sound bites can be used to create controversial pieces. The presence of the camera can also have a dampening effect on speakers. There are also confidentiality concerns with respect to tribal cultural information or proprietary business information. The group discussed policies that might allow filming of a meeting during a certain time, or for background visuals only with no sound. Interviews could be conducted outside the meeting room during breaks.

Another option considered was closing the meetings to the public. Although it would solve the problem of dealing with the press and would allow for more freedom for members to express themselves, some felt it would arouse suspicion and concern among the public and result in more controversy. Members agreed the next meeting will be open, and the decision will be made then about future meetings.

Agreement:

- The group asked the facilitators to draft Protocol language covering media relations to be considered at the next meeting.

Substantial Restoration of Natural Quiet Language: There was tension over inclusion of language concerning substantial restoration of natural quiet in the Protocols. Some felt it was critical to repeat that language in order to emphasize its central role in the process. Others felt that this put unnecessary emphasis on one mandate of the Overflights Act, while ignoring others, e.g., safety, and that focusing on that language could prevent the group from looking at other aspects of overflights that might lead to broader, more creative solutions.

Agreement: [new language highlighted in revised Protocols]

- Add new language to Section I. Purpose of the Grand Canyon Working Group to include the Presidential Memorandum of 1996 and other applicable laws.

Review of Protocols: Members reiterated that the Protocols are a living document, and asked for language regarding revision.

Agreement: [new language highlighted in revised Protocols]

- Add new language to Section IV. Operating Procedures: “The group has the opportunity to revisit the protocols on an as needed basis.”

Agreements Document: Members asked facilitators to create a separate document for agreements reached by the group.

Facilitation: Members were concerned that the Protocols allowed the co-chairs to remove the facilitation team without cause or consultation with the Working Group. Co-chairs reassured the group that this was not the intention of the language.

Letter from Senator McCain: Karen Trevino read a letter received by the leadership of the Park Service at the meeting a short time before the meeting’s conclusion from Senator McCain offering his interpretation of the intent behind the Overflights Act of 1987 with respect to commercial aviation. FAA and NPS advised the group that they were not certain of the effect of the letter, and that it would take advice of legal counsel and others to determine. Neither FAA nor NPS had advance knowledge that Senator McCain was sending such a letter, nor were they involved in requesting a letter or any drafting. [A copy of this letter was distributed to all members and alternates by email following the meeting.]

Tasks and Next Steps:

Facilitators will prepare a meeting summary with a list of next steps generated at the meeting and distribute it to members and alternates within one month.

Facilitators will also create and distribute by August 15 a revised version of the Protocols document that shows where consensus was reached, and where discussion is still needed.

Facilitators will be responsible for an Agreements Document which is revised following each meeting and which tracks agreements reached by the group.

Co-chairs will review the Scope of Work and Timeline based on the group's discussion. It will be distributed prior to the next meeting, and reviewed at that meeting.

Co-chairs will oversee posting the following documents requested by members on the website:

- 1994 NPS report to Congress (relevant portions)
- Chart of decibel equivalents of common natural noises heard in national parks
- Ambient data collection methodology
- Natural Resource Report/survey questions for human response to noise
- Executive summary HMMH Human Response Report
- VOLPE Report and NPS response

Co-chairs will oversee provision of the following information, as requested by members to assist in their understanding and deliberations.

- Glossary of terms relating to overflights issues
- Requirements governing Tribal-federal relationship, including trust responsibility and government-to-government consultation for inclusion in Members' notebooks
- Status of the 35 recommendations and tools specified in the 1994 NPS Report; what changes have resulted, and by whom?
- Dual zone map, that shows both audibility and noticeability
- Chart showing historic trend of air tour operations, e.g. fixed-wing vs. helicopter, east end vs. west end

Other assignments/questions:

- Determination of *ex parte* communication relevance to this process -- Carla will consult with FAA general counsel
- Clarity on the ambient data collection and analysis: Are wind and riparian noise included? Are non-vegetated areas included? -- Ken McMullen will consult with field staff and report to Working Group asap
- Can lands adjacent to the Park be included in the air tour plan? -- Carla will consult with FAA general counsel
- Clarification from FAA Chief Counsel regarding the role of NEPA in an ARC process such as this

Parking Lot: During the meeting the Working Group identified issues or needs that they could not address but did not want to lose track of. The group assigned them to the “Parking Lot” and will review them at each meeting to insure that they are addressed at the proper time in the proper forum.

Endangered Species Act Issues:

Members understand the need for early identification of ESA issues, and the commencement of the Section 7 Consultation process.

Representation Concerns

The Working Group discussed the challenge of representing the great number, and wide variety of visitors to the Grand Canyon. Air tour operators felt it was important to include the interests of the over 50 million visitors who have experienced the Canyon from the air. Those representing the visitors who hike or see the Canyon from the river said they cannot possibly represent the numbers and rely on the National Park to speak for these interests. In addition, there are millions who visit the rim only, and are not specifically represented on the Working Group.

Members considered ways of including these interests at the table. There is some representation through the air tour operators, the Hualapai Tribe, and the hiking and boating interests. Perhaps some kind of survey process, or participation from a broad-based tourism organization or agency, could also contribute to the deliberations. The Grand Canyon Visitors Alliance was mentioned as another potential voice for the visitor.

Data/Education Needs:

- An overview of the noise data already collected, at least in range form
- The impact of the Air Tour Safety Rule on the Working Group’s assignment
- An understanding of the NEPA process and how to best coordinate it with the work of the Working Group

Increased Understanding of Each Other:

- An understanding of tribal sovereignty, and particular issues for tribes participating in the Working Group
- An understanding of each member’s particular challenges in representing a constituency, or adhering to a vetting process in order to be able to make a decision

Implementation:

- How will these decisions be implemented? By when? What does “substantial restoration of natural quiet” mean?

Next Meeting: October 26 - 27, 2005, at or near the Grand Canyon National Park 2 full days including a half-day field visit

Summary written by Lucy Moore; please contact her with comments or questions.

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