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## Open Letter Regarding Noise Pollution in Grand Canyon National Park

May 18, 2016

Director Jonathan B. Jarvis  
National Park Service  
1849 C Street NW  
Washington, DC 20240

Dear Director Jarvis:

We write this letter as concerned citizens with a deep love for the Grand Canyon National Park (the Park) – a timeless cathedral in the American southwest and one of the United States’ national treasures. UNESCO calls the Grand Canyon “the most spectacular gorge in the world” and it is often recognized as one of the seven natural wonders of the world.

Most of the Park’s approximately 4.5 million annual visitors experience the Park from the ground, standing at rim overlooks or venturing into the Park’s backcountry as day hikers and overnight backpackers. Conservationist John Muir remarked that “by far the greatest and most influential feature of . . . the canyon views is the opposite wall. . . . Though far distant, [it] is beheld in all its glory of color and noble proportions.”<sup>1</sup> The canyon wall allows visitors to view and experience the magnitude of geologic time. But significant numbers of recreational air tours interfere with the enjoyment of the Park and are inconsistent with the National Park Service (NPS) mandate to “conserve the scenery and the natural and historic objects and the wild life” therein. 54 U.S.C. § 100101; *see* Pub. L. 95-250, Title I, §101(b), Mar. 27, 1978, 92 Stat. 166 (amending 16 U.S.C. §1a-1) (“The authorization of activities. . . shall not be exercised in derogation of the values and purposes for which these various areas have been established.”). Especially at current levels, air tours impair the scenery daily, add too much noise, and detract from the timelessness and solitude of the Park that visitors come to the park to experience and should be able to experience.<sup>2</sup>

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<sup>1</sup> John Muir, *Steep Trails* (1918), Chapter 24. Muir continued: “It seems a gigantic statement for even nature to make, all in one mighty stone word. . . . Wildness so godful, cosmic, primeval, bestows a new sense of earth’s beauty and size. Not even from the highest mountains does the world seem so wide.” *Id.*

<sup>2</sup> “You do not see, hung before you, the seven million years that went to the making of these walls, and their twisted strata. . . . There must be the profoundest of silences there because all the noises made throughout these years have no existence in this instantaneous vision of the ages, in which the longest time that any individual sound could take would be represented by the tiniest fraction of an inch on these mile-high walls.” J.B. Priestley, *Midnight on the Desert* (1937).



The NPS has the authority and obligation to address the impact of air tour noise and visual interference at the Park. Below is a detailed discussion laying out NPS's authority to act. We urge you to take action to protect the Park and limit overflights of the Park under the Organic Act and NPS Management Policies.<sup>3</sup>

## A. Background

The National Parks Overflights Act, enacted in 1987, called for the “substantial restoration of the natural quiet and experience of the [Park] and protection of public health and safety from adverse effects associated with aircraft overflight.” Over the past decade, NPS has studied the impact of air tour noise on the use and experience of the Park, including in a draft environmental impact statement (DEIS) in 2011. *See* Notice of Availability of Environmental Impact Statements, 76 Fed. Reg. 9575 (Feb. 18, 2011). In the DEIS, NPS determined that it needed to take further action to reduce the number of overflights because the existing number of overflights adversely affected “sensitive natural and cultural resources and ground-based visitors.” *See* National Park Service, *Draft Environmental Impact Statement DES 10-60, Special Flight Rules Area in the Vicinity of Grand Canyon National Park: Actions to Substantially Restore Natural Quiet* (Feb. 18, 2011) 4 (“Special Flight Rules Area Draft EIS”).

In 2012, NPS was poised to issue a final environmental impact statement (“FEIS”) with conclusions on the impact of overflight noise. That FEIS would have provided a basis for NPS and the Federal Aviation Administration (FAA) to promulgate remedial overflight rules under the National Parks Overflights Act. But, on the eve of such action, Congress enacted the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (the MAP-21 Act). The MAP-21 Act legislatively defined “substantial restoration of the natural quiet and experience of the [Park]” and in so doing appeared to limit the basis for potential action on the DEIS by NPS under the Overflights Act. *See* MAP-21 Act, Pub. L. No. 112-141, § 35001, 126 Stat. 843 (July 6, 2012).<sup>4</sup> As a result of this legislative definition, we understand that NPS has put on hold its plans for further regulation of overflights—despite the DEIS’s conclusion that additional protections are necessary.<sup>5</sup>

The MAP-21 Act also required air tour operators in the Park to convert their fleets to “quiet aircraft technology” (QT). *See id.* § 35002. FAA has been working on incentives to accelerate the conversion. While we hope that quieter technology will generate benefits on the ground, we note that “quiet aircraft technology” is a misnomer. QT does not necessarily require any reduction in noise level: to qualify as QT, operators may simply add passenger seats to an aircraft with no reduction in overall noise. *See* 14 C.F.R. Part 93, Subpart U, Appendix A to Subpart U of Part 93. Thus, a new QT aircraft with more seats can replace an existing non-QT aircraft and make more noise than the non-QT aircraft. To hasten conversion to QT technology, FAA’s QT incentive program now allows free flight allocations to QT operators during off-peak months so long as annual overflights noise does not increase. As a result, the QT incentive is very likely to increase the number of

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<sup>3</sup> “If I were an American, I should make my remembrance of [the Grand Canyon] the final test of men, art, and policies. I should ask myself: . . . How would I feel about this man, this kind of art, these political measures, if I were near that rim? Every member or officer of the Federal Government ought to remind himself, with triumphant pride, that he is on the staff of the Grand Canyon.” J.B. Priestley, *Midnight on the Desert*.

<sup>4</sup> Under the MAP-21 Act, substantial restoration is achieved if “for at least 75 percent of each day, 50 percent of the Park is free of sound produced by commercial air tour operations that have an allocation to conduct commercial air tours in the Park as of the date of enactment of this Act.” Pub. L. No. 112-141, § 35001(a).

<sup>5</sup> An April 27, 2016 status report filed by NPS and FAA noted that “NPS continues to work with the FAA to develop quiet technology provisions.” Status Report of the Federal Aviation Administration and the National Park Service, *Grand Canyon Trust v. FAA*, Case No. 01-1230 (D.C. Cir. 27, 2016), #1610779.

overflights and, ironically, is unlikely to generate any additional “quiet” since there is no requirement to reduce noise.

In 2016, NPS plans to allow nearly 94,000 air tours to fly over the Park. *See* Special Flight Rules Area Draft EIS 34. In addition, the recent QT incentive will allow even more flights over the Park because early season flights of QT aircraft do not count toward an operator’s annual allocation. *See* 80 Fed. Reg. 22606 (Apr. 22, 2015). Instead of experiencing the solitude of the backcountry wilderness or the Park’s spectacular vistas without interruption, visitors will have their attention drawn upwards to the overhead noise and visual impairment of air tour after air tour. In the summer months, air tours are continuous with no quiet intervals at certain locations such as the Dragon Corridor, west of Hermits Rest. This volume of air tours is not consistent with the mission of the NPS to “conserve the scenery and the natural and historical objects and the wild life . . . and to provide for the enjoyment . . . in such manner and by such means as will leave them unimpaired.” 54 U.S.C. § 100101. Indeed, the scenery is visually impaired daily, disrupting visitors’ experience of the view of the opposite wall, the same view that Muir identified as the “greatest and most influential feature” of the canyon’s views. The natural beauty and profound silence of the Grand Canyon are marred by whirling blades creating noise and visual distractions for ground visitors.

In summary, reliance on QT is not sufficient to protect the Park and likely will not achieve any improvement. More needs to be done – indeed, must be done – to preserve the character of the Park for visitors and future generations. Such action is within the powers of NPS and the Department of the Interior.

## **B. Legal Authority for Regulation of Overflights**

Despite the MAP-21 Act, NPS still can and should take appropriate measures to limit the adverse auditory and visual impacts of current overflights in the Park. The MAP-21 Act was a congressional response to a specific component of an NPS rulemaking. It did not, however, overturn the ability of NPS to manage (a) soundscapes and visual impairments under the National Park Service Organic Act (the “Organic Act”), NPS Management Policies, and the Grand Canyon Management Plan or (b) wilderness areas. Stated in another way, the fact that MAP-21 has further defined compliance with the Overflights Act does not in any way mean that there has been compliance with entirely different statutes. NPS can and should use its authority under the Organic Act and NPS Management Policies to reasonably regulate overflights in the Park.

The Organic Act and the Management Policies issued thereunder provide sufficient authority to conclude that additional regulation of air tours is necessary, particularly in consideration of the management goals of the Park as a whole, and in particular the Park’s backcountry and wilderness areas. The Organic Act charges the NPS “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” The 2006 revisions to the NPS Management Policies, which serve “as NPS’s official interpretation of the Organic Act and [are] therefore enforceable against NPS,” contain a more detailed discussion of the obligations of the NPS to conserve park resources and values. *See Greater Yellowstone Coalition v. Kempthorne*, 577 F. Supp. 2d 183, 190 n.1 (D.D.C. 2008).

### 1. NPS Management Policies on “Impairment” and “Unacceptable Impacts”

The NPS 2006 Management Policies’ definitions of “impairment” and “unacceptable impact” lead to the conclusion that the noise and visual interference from air tour flights constitute impairment or unacceptable

impacts.<sup>6</sup> Under the 2006 Management Policies, the Park’s resources protected from impairment include “natural soundscapes,” “natural landscapes” and “scenic features,” and “appropriate opportunities to experience enjoyment of [these] resources.” NPS Management Policies (2006) § 1.4.6. Air tours, whether or not they employ QT, impact the experience of the Park for those not in the aircraft: they add human noise to the natural sounds of the Park; mar uninterrupted natural vistas; and disturb hikers, animals, boaters, and birds. According to NPS’s own data, Park visitors are drawn to visit the Park for the scenery and natural quiet. See Special Flight Rules Area Draft EIS 115. And, in the professional judgment of the NPS, “additional action is needed to . . . improve visitor experience . . . and ensure the restoration of natural quiet.” See Special Flight Rules Area Draft EIS 4. Commercial air tours interfere with both of those aspects.

An impact is more likely to be an impairment if it “affects a resource or value whose conservation is . . . identified in the park’s general management plan . . . as being of significance.” *Id.* § 1.4.5. The Grand Canyon’s General Management Plan notes that “[t]he Grand Canyon is recognized as a place with unusual and noticeable natural quiet, and direct access to numerous opportunities for solitude.” Grand Canyon General Management Plan (Aug. 1995), 8; see also Special Flight Rules Area Draft EIS, 10. The General Management Plan also recognizes that “[t]he Grand Canyon has internationally recognized scenic vistas, qualities, and values.” Grand Canyon General Management Plan, 8. Overflights are impairing ground visitors’ ability to experience the Park because the noise and visual impacts harm the integrity of the Park. Moreover, “unacceptable impacts” are explicitly defined to include impacts that “unreasonably interfere with . . . the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.” *Id.* § 1.4.7.1. Given the centrality of quiet soundscapes and scenic vistas to the Park, NPS should consider the current noise levels and visual impacts of overflights as impairments or unacceptable impacts, and thus take steps to mitigate those impacts.

## 2. Wilderness Areas

In addition to NPS’s authority under the Organic Act to limit impairment of or unacceptable impacts to Park resources, NPS has additional authority to regulate overflights in connection with the management of the vast majority of the Park’s land as wilderness. In 1993, NPS recommended that 94% of the Park be designated as wilderness and has managed those areas of the Park as de facto wilderness ever since. Grand Canyon General Management Plan, 13, 21, 60. The 2006 Management Policies require that NPS manage acreage recommended for wilderness designation in the same manner as designated wilderness so that wilderness character and values are not degraded. NPS Management Policies (2006) § 6.3.1.

Under NPS’s own wilderness stewardship policies, which supplement the 2006 Management Policies, “commercial air tours are inconsistent with preservation of wilderness character.” NPS Director’s Order #41: Wilderness Stewardship (2013) § 7.3. While the Director’s Order #41 permits existing air tours over proposed wilderness areas, NPS must address “ways to prevent or minimize negative impacts to wilderness character” and “work with air tour operators and the FAA to further prevent or minimize negative impacts to wilderness character.” *Id.* And yet there are areas within the Park managed as wilderness that experience constant or near-constant air tour noise on a daily basis. For example, according to the 2011 DEIS, air tours are audible at Point

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<sup>6</sup> Under the 2006 Management Policies, **impairment** is “an impact that, in the *professional judgment of the responsible NPS manager*, would harm the integrity of the park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.” NPS Management Policies (2006) § 1.4.5 (emphasis added). **Unacceptable impact** is an impact that “fall[s] short of impairment but [is] still not acceptable within a particular park’s environment.” *Id.* at §1.4.7.1.

Sublime, an area within the proposed wilderness land, for 100 percent of the day. *See* Special Flight Rules Area Draft EIS, 436, Table 4.414.<sup>7</sup> A quarter of the Park – over 300,000 acres – hears aircraft more than 60 percent of the day. This air tour noise is surely inconsistent with wilderness character. Because NPS manages 94% of the Park as wilderness, this air tour noise is inconsistent with the wilderness character of a vast majority of the Park. NPS should employ its authority to regulate and further restrict air tours to minimize the impacts of overflight noise, consistent with management of other wilderness areas.

### 3. 2015 Backcountry Management Plan

In November 2015, NPS published an updated Backcountry Management Plan draft environmental impact statement for the Park and determined that “there are no areas in [the Park] where the natural soundscape is not adversely affected by aircraft noise.” NPS Backcountry Management Plan Draft Environmental Impact Statement (2015), 242 (“Backcountry DEIS”). Yet the Backcountry DEIS avoids considering any changes to overflights rules to remedy these adverse effects. *See* Backcountry DEIS, 24. Instead, NPS focuses on its own helicopters used for routine maintenance and visitor health and safety, and almost entirely ignores the impact of commercial and “transportation” air tours on the backcountry soundscape and visual scenery. Backcountry DEIS, 242. NPS should use the Backcountry DEIS as a forum to address overflights’ impact on soundscape and visual impairment. As detailed in this letter, NPS should, consistent with its statutory authority to manage the Park, take action to further regulate air tours, as they impair the wilderness character and interfere with the wilderness management goals of the Park.

### **C. Process for Proposing Changes to FAA**

Under the Grand Canyon Enlargement Act of 1975 (the “Enlargement Act”), NPS can propose regulations for regulating overflights to the FAA and avoid implicating either the Overflights Act or the MAP-21 Act. If NPS determines that altering flight routes or flight allocations is necessary in connection with its Park management goals, the Enlargement Act provides a framework for proposing such rules to the FAA. The Enlargement Act directs NPS to submit recommendations for aircraft regulations to the FAA “[w]henver the Secretary has reason to believe” that aircraft operations are likely to “cause a significant adverse effect on the natural quiet and experience of the [P]ark.” 16 U.S.C. § 228g. Although NPS cannot use this authority to regulate overflights directly, the Enlargement Act mandates that the FAA “shall consider the matter, and after consultation with the Secretary [of the Interior], shall take appropriate action to protect the [Park].” *Id.* In effect, NPS has authority to propose and co-author regulations, and the FAA must “take appropriate action to protect the park and visitors.” *Id.*

Although similar to the Overflights Act, the Enlargement Act’s procedure for regulating aircraft in the Park is distinct and is not explicitly referenced, amended, or restricted by either the Overflights Act or the MAP-21 Act. NPS should exercise its power under the Enlargement Act to make recommendations to the FAA to restrict commercial air tours that cause significant adverse effects on the Park’s natural quiet and scenic vistas.

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<sup>7</sup> [http://www.nps.gov/grca/learn/management/upload/GRCA\\_Wilderness\\_Map.pdf](http://www.nps.gov/grca/learn/management/upload/GRCA_Wilderness_Map.pdf).

## D. Conclusion

President Theodore Roosevelt said of the Grand Canyon:

[I]n that Canyon [,] Arizona has a natural wonder which, far as I know, is in kind absolutely unparalleled throughout the rest of the world. . . . Keep this great wonder of nature as it now is. . . . I hope you will not . . . mar the wonderful grandeur, the sublimity, the great loneliness and beauty of the Canyon. Leave it as it is. You cannot improve on it; not a bit. The ages have been at work on it, and man can only mar it. What you can do is to keep it for your children, your children's children, and all who come after you, as the one great sights which every American if he can travel at all should see.<sup>8</sup>

President Roosevelt likely never imagined that the noise of nearly 100,000 air tours would ever be permitted to “mar the wonderful grandeur, the sublimity, the great loneliness and beauty of the Canyon.” While QT may ultimately help to reduce overall noise, it will not be enough to restore the natural, unimpaired wonder of the Grand Canyon. We ask that you use your existing authority to honor and protect the Park for this generation and future generations by further regulating the air tour operations in the Park.

Sincerely,



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<sup>8</sup> President Theodore Roosevelt, Address of President Roosevelt at Grand Canyon, Arizona (May 6, 1903) available at: <http://www.theodorerooseveltcenter.org/Research/Digital-Library/Record/PrintAll.aspx?libID=o289796>.