



August 6, 2009

To:

J. Randolph Babbitt, Administrator
Federal Aviation Administration

Ms. Nancy D. LoBue, Acting Assistant
Administrator, Aviation Policy, Planning
and Environment
Federal Aviation Administration

Mr. Nick Scarpinato, Jr., Manager
Flight Standards District Office
Federal Aviation Administration

Mr. Ken Salazar, Secretary of the
Interior

Mr. Daniel N. Wenk, Acting Director
National Park Service

Mr. Jon Jarvis, Director-Designate
National Park Service

Mr. Craig Ackerman, Superintendent
Crater Lake National Park

Ms. Hilary Tompkins, Solicitor
U.S. Department of Interior

Cc:

Honorable Ron Wyden, U.S. Senator
Honorable Jeff Merkley, U.S. Senator
Honorable Greg Walden, U.S. Representative
Honorable Peter DeFazio, U.S. Representative

Dear Administrator Babbitt, Secretary Salazar, and other Sirs and Madams:

We write to remind you that several important legal steps must be taken early in the process of consideration of any application by Leading Edge Aviation or any other company for helicopter or fixed-wing aircraft flights of any kind over Crater Lake National Park.

We trust that this letter will be considered in any future screening and scoping determinations in which either the Administration or the Department may engage. We will rely upon this letter having raised issues, should future litigation become necessary. We trust, however, that this will not be necessary.

We stand ready to work cooperatively with you in addressing the deeply disturbing proposal by Leading Edge Aviation for permissions, authorizations, approvals, or letters to conduct helicopter flights of any kind into Crater Lake National Park. We understand that Leading Edge Aviation has, in fact, made such applications or requests to the Federal Aviation Administration and National Park Service.

Applicable Legal Authorities

Any application for any kind of permission, authorization, approval, or letter that could result in any flights over Crater Lake National Parks must comply with at least the following statutes:

1. Section 4(f) of the Department of Transportation Act, 49 U.S. Code sec. 303. Section 4(f) applies to any transportation “project” that requires the “use” of parks and allows such a project only if there is no prudent and feasible alternative, among other things. 49 U.S. Code sec. 303(c). As you are undoubtedly aware, court precedents have established that noise intrusion constitutes a “use” of parklands under section 4(f). *See, e.g., City of Grapevine v. Dept. of Transportation*, 17 F.3d 1502, 1507 (D.C. Cir. 1994).

It is our position that there are numerous “prudent and feasible alternatives” to the use of air tours for visitors to experience the beauties of Crater Lake National Park. These include tours by motor vehicles, hikes up Mount Scott and along the rim, cross-country skiing, as well as many other options.

2. The Endangered Species Act, which requires consultation with the U.S. Fish and Wildlife Service. The endangered Northern Spotted Owl nests within the area over which Leading Edge proposes as its helicopter tour routes.

It is our position that the position of the Northern Spotted Owl, as precarious as it is, should not have to tolerate additional intrusions from the air.

3. The National Environmental Policy Act, which requires preparation of an Environmental Impact Statement (EIS) on any *proposal* for a major federal action (including grant of permissions) that *may* significantly affect the environment. A government agency may not decide that there is no effect unless it first prepares an Environmental Assessment (EA). Such an EA may only be prepared after proper notice and opportunity for public participation.

It is our position that an analysis of potential environmental impact in an EIS or EA must take place at the proposal stage, must include cumulative impacts, and that substantial research must be undertaken to investigate potential impacts. It is our further position that any authorization of any flights would involve the possible irreversible commitment of resources and a full EIS, not merely an EA, will be needed. This is because large parts of Crater Lake National Park have been proposed as Congressionally designated Wilderness Areas. The Wilderness Act of 1964 prohibits “use of . . . motorized equipment” in a designated Wilderness (Sec. 4(c)), but provides an exception to allow “the use of aircraft or motorboats, where these uses have already become established . . .” (Sec. 4(d)(1)). Thus any authorization for flights has the potential of irreversibly preventing future restrictions or prohibitions on future flights. An EIS on a proposed Wilderness was prepared in 1974 by the National Park Service. <http://soda.sou.edu/awdata/020618a1.pdf>. The 1978 modified version can be found at <http://wilderness.nps.gov/document/II-11.pdf>.

There is only one Crater Lake National Park among the crown jewels of American conservation. We are committed to helping those who would be its guardians.

Continuing Request for Copies of Correspondence and Tracking Proposal

We hereby request that we be copied on any correspondence with Leading Edge Aviation. We also suggest that you establishing a tracking number for any future contacts of any kind with Leading Edge Aviation, as we intend to file periodic Freedom of Information Act requests for any and all documents of any kind relating to such contacts. Establishing a tracking number system now will make it far easier for you to search for and provide documents in response to our requests.

Sincerely,

Erik Fernandez
Oregon Wild

Robert Mutch
Crater Lake Institute

Cindy Haws
Umpqua Watersheds