

No. 19-1044

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY  
and HAWAII COALITION MALAMA PONO,  
*Petitioners.*

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On Petition for Writ of Mandamus

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**SUBMISSION OF FEDERAL AVIATION ADMINISTRATION AND  
NATIONAL PARK SERVICE FOR APPROVAL OF PROPOSED PLAN  
FOR COMPLETION OF AIR TOUR MANAGEMENT PLANS**

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In this petition for writ of mandamus, Petitioners requested an order directing the Federal Aviation Administration and the National Park Service to complete air tour management plans or voluntary agreements under the National Parks Air Tour Management Act of 2000 (“Air Tour Management Act”), 49 U.S.C. § 40128, for seven specified National Park System units within 24 months of such order. On May 1, 2020, the Court granted the petition and ordered the agencies to submit, by August 31, 2020, a proposed plan for bringing not just the six eligible parks about which petitioners complained and demonstrated standing, but all twenty-three eligible parks within the National Park System into compliance with the Act within two years—or to offer “specific concrete reasons” why it will take longer than two years. Per Curiam Order (May 1, 2020). The Court retained jurisdiction to approve the agencies’ proposed plan and monitor the agencies’ progress. *Id.* The Order directs the agencies to submit progress updates every 90 days after the proposed plan is approved. *Id.*

In accordance with the Court’s Order, and consistent with the Air Tour Management Act, the National Environmental Policy Act (“NEPA”), and other applicable laws, the agencies jointly submit their Proposed Plan and Schedule for Completing Air Tour Management Plans for Twenty-Three Parks (“Proposed Plan”), attached hereto as Exhibit A. The Proposed Plan details the agencies’ plan for completing air tour management plans for all twenty-three parks referenced in

the Court's Order within two years, and it describes on a quarterly basis the work activities that the agencies anticipate undertaking to complete plans. *See* Proposed Plan Section III. The Proposed Plan complies with both the letter and the spirit of this Court's Order. The agencies accordingly request that this Court approve the Proposed Plan.

As detailed in the Proposed Plan and in the two attached supporting declarations (Exhibits B and C hereto), the agencies propose to work on air tour management plans at all twenty-three parks concurrently as part of a coordinated, omnibus effort. This approach reflects the agencies' agreement that in order to bring the twenty-three parks into compliance with the Air Tour Management Act within two years, it is no longer feasible to move forward with their previously stated preference to attempt first to reach voluntary agreements with tour operators before transitioning to preparation of an air tour management plan. Sauvajot Declaration ¶¶ 4-6 (Exhibit B). As compared to a voluntary agreement process, the agencies have more control over a plan process, and thus there is greater assurance that they can meet the milestones in the Proposed Plan. *Id.* ¶ 6. The Proposed Plan contemplates initiating and moving forward with management plan processes for all twenty-three parks, and proceeding with a voluntary agreement only if it is clear that an agreement with all operators at a park can be achieved within the two-year timeframe. *Id.*; Proposed Plan Section I.

In order to leverage economies of scale, the agencies will address plan requirements established in the Air Tour Management Act in a consolidated fashion wherever practical. Procedurally, the Act requires the agencies to (1) hold at least one public meeting; (2) publish proposed plans in the Federal Register; (3) comply with NEPA; and (4) invite Indian tribes to participate as cooperating agencies, as appropriate. Proposed Plan Section I.B. To meet these requirements and to streamline necessary processes, the agencies will (as appropriate and practicable) use virtual public meetings, consolidated notices and interagency and tribal consultation processes, consolidated methodologies or analyses, and standardized templates. *Id.*; Sauvajot Declaration ¶ 15. By necessity, there will also be park-specific planning activities and considerations. Proposed Plan Section I; Sauvajot Declaration ¶ 14.

At present, the agencies expect to achieve their Proposed Plan to complete air tour management plans within two years, and they are currently unaware of any “specific concrete reasons” why they cannot achieve the milestones set forth in the plan. Sauvajot Declaration ¶¶ 3, 18; Girvin Declaration ¶¶ 4-5, 8 (Exhibit C). If it appears that park-specific circumstances or other external factors will affect the agencies’ ability to adhere to the schedule included in the Proposed Plan, they will identify the specific and concrete reasons for delay in the quarterly reports required by the Order at the earliest possible time. *Id.* ¶ 7; Sauvajot Declaration ¶¶ 22-24.

The agencies have identified some factors or circumstances that may cause delays. *See* Proposed Plan Section I; Sauvajot Declaration ¶¶ 18-24. In particular, the statutory requirements for tribal consultation and potential tribal participation as a cooperating agency in the NEPA process under the Air Tour Management Act, other statutes, or agency policy with respect to a particular park have the potential to cause delays. Sauvajot Declaration ¶ 20.\* But especially for a project of this magnitude, it is neither possible nor advisable to try to address at this time every contingency that might arise during implementation of the Proposed Plan. Should there arise park-specific circumstances that cause an individual park to fall behind the schedule included in the Proposed Plan, the agencies will work with project managers to ensure that a delay in completion of an air tour management plan for that park will not impact the schedule for other parks in the plan. Proposed Plan Section I; Sauvajot Declaration ¶ 23.

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\* The Air Tour Management Act's plan or voluntary agreement requirement applies not only to eligible National Park System units, but also to tribal lands within or abutting such parks. 49 U.S.C. §§ 409128(b)(1)(A)-(B), 309128(g)(6). A tribe whose lands are, or may be, overflowed by air tours to which a plan applies may elect to participate as a cooperating agency under NEPA during the planning process. *Id.* § 409128(b)(4)(D). Many parks contain natural and cultural resources of significance to tribes, and tribes are valuable partners with the National Park Service with regard to the identification and protection of such resources. Sauvajot Declaration ¶ 20. All but one eligible parks will involve some tribal consultation, and several of these will involve potential cooperating agency status for Tribes. *Id.* In light of the limited resources of many tribes, and given agency experience with other NEPA documents, the agencies anticipate that tribes might request additional time to respond and provide information. *Id.*

The agencies have been working collaboratively on multiple fronts to move forward with implementing air tour management plans and to develop and execute the Proposed Plan. *See* Proposed Plan Section I.A; Sauvajot Declaration ¶¶ 7-17. For example, the agencies have been reviewing previously compiled data park-by-park, assessing additional information and data needs, and meeting with each other in an effort to resolve past disagreements regarding NEPA compliance and to develop mutually agreeable language for plan and NEPA templates. *Id.* ¶¶ 7-13. The agencies have already successfully resolved key NEPA concerns, including agreement that the existing condition for environmental analyses will be based on reported flights, as informed by reported flight data and route information, for each park. *Id.* ¶¶ 8-9. Comparable data on reported flights had been unavailable in the 2000s because the reporting requirement was a feature of the 2012 amendments to the Air Tour Management Act. *Id.* ¶ 9.

Significantly, the Federal Aviation Administration has approved and begun obligating funds to support contracted services to draft air tour management plans and NEPA compliance documents and to provide required technical and policy support. Girvin Declaration ¶ 6. The National Park Service has also approved and will soon obligate funds to support contracted services and has reallocated staffing to increase the number of staff devoted to this effort. Sauvajot Declaration ¶¶ 16-17. Many of the administrative tasks needed to secure funding and personnel to

implement the Proposed Plan are completed or are underway. Proposed Plan Section I.B; Sauvajot Declaration ¶ 14. These actions include the appointment of two general program managers (one from each agency) to oversee and coordinate the project and assignment of team members to keep activities moving in a timely fashion. *Id.*; Girvin Declaration ¶ 6.

In sum, the agencies have expended considerable effort into responding appropriately to the Court's Order, and they have proposed a reasonable plan for bringing the twenty-three eligible parks referenced in the Order into compliance with the Air Tour Management Act. For the foregoing reasons and further reasons set forth in the Proposed Plan and supporting declarations, the Federal Aviation Administration and National Park Service respectfully request that the Court approve the Proposed Plan.

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90-13-1-15766

## **Proposed Plan and Schedule for Completion of Air Tour Management Plans for Twenty-Three Parks**

In accordance with the Court's May 1, 2020 order (Order), and consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), as amended by the FAA Modernization and Reform Act of 2012 (codified at 49 U.S.C. § 40128), the National Environmental Policy Act (NEPA), and other applicable laws, the agencies submit this proposed plan and schedule to complete air tour management plans (ATMPs) at the twenty-three eligible parks referenced in the Order.

### **I. PROPOSED PLAN**

The agencies will move forward with ATMPs for all twenty-three parks contemplated by the Order. While voluntary agreements are permissible under NPATMA, the need for operator engagement and accord makes the process too uncertain given the two-year timeframe. The agencies remain open to completing voluntary agreements, in lieu of ATMPs, at individual parks if it becomes clear that they will be able to do so within this timeframe; however, ATMPs are the preferred approach and the basis of the pathway contemplated by this proposed schedule.

The agencies intend to initiate work on all twenty-three ATMPs concurrently and, to the maximum extent possible, consolidate the administrative processes and streamline activities under NEPA, in order to complete all of the ATMPs within two years

Under this proposed plan, and pursuant to the proposed schedule identified in Section III below, the agencies are targeting the completion of all twenty-three ATMPs within two years and expect, at this time, that their efforts will be successful. However, the agencies recognize that park-specific circumstances or other external factors may affect their ability to adhere to the schedule proposed below for a particular park. While it is premature to determine whether any such circumstances will cause delays at this time, if it appears that these circumstances may result in a delay in completion of the ATMP process at an individual park, the agencies will identify the specific and concrete reasons for such delay in the quarterly reports required by the Order at the earliest possible time. To mitigate the possibility of delays, the agencies have identified key factors across the twenty-three parks that are most likely to create complexities for completing ATMPs so that the agencies can address these issues early on, allowing for as much time as possible to complete ATMPs within the required two-year timeframe. Most notably, these factors include particularized Tribal Consultation considerations and the presence of designated wilderness areas at particular parks.

The following describes the steps taken by the agencies since oral argument and next steps that the agencies intend to take to meet NPATMA's requirements.



**A. *Activities Completed Since Oral Arguments***

Since oral argument was held in this case on December 9, 2019, the agencies have worked collaboratively on various fronts to establish a framework for completing ATMPs at the twenty-three parks referenced in the Order within two years. This work has included:

- Agreeing that the “existing condition” for environmental analysis will be based on reported flights, as informed by reported flight data and route information, for each park;
- Reviewing all previously compiled data by park to produce summaries for each that document the history and status of each process for inclusion into decision files for the ATMPs to be completed pursuant to this Plan and Schedule;
- Conducting ATMP Information and Data Needs Assessments<sup>1</sup> and related gap analyses to organize and evaluate available data and the completion of analytics, determine factors that will influence preparation of individual ATMPs, and identify additional data needs through activities such as noise monitoring/modeling, gathering ambient baseline data, confirming route information, and responding to other regulatory requirements (e.g., Endangered Species Act); and
- Conducting meetings between the agencies to resolve NEPA issues and develop mutually agreeable language for ATMP/NEPA templates where appropriate. Since the requirements for an ATMP are the same regardless of the level of air tour activity or park resource conditions, the process lends itself well to the use of certain standardized templates that can be supplemented with park-specific information.

**B. *Planned Next Steps to Complete the Twenty-Three ATMPs in Two Years***

In general, the agencies will work towards completion of ATMPs for all twenty-three parks as part of a coordinated, omnibus effort. In order to leverage economies of scale, the agencies will address the requirements established in NPATMA in a consolidated fashion wherever practicable, though, as noted above, the ATMPs will by necessity include park-specific considerations. Whenever possible, the agencies plan to undertake procedural actions in a consolidated fashion in order to improve efficiency, reduce overall administrative burden, and more effectively implement the Order.

Many of these administrative tasks are already underway, including:

- Preparation of website updates for the public;
- Facilitation of agency and congressional briefings;
- Development of interagency agreements needed to fund collaborative planning efforts and necessary NEPA contracting;
- Drafting of project agreements to identify roles and responsibilities for agency staff;

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<sup>1</sup> The Information and Data Needs Assessments include identification of the number of parks with abutting Tribal lands, designated wilderness, or previously identified park resource or visitor use concerns; identification of Tribal interests; confirmation of the availability of noise monitoring or modeling data; assessments of the availability of air tour route information for individual parks; and assessments of prior NEPA work for individual parks that need to be incorporated in the current planning effort.

- Appointment of two general program managers (one from each agency) to oversee the project and the associated project managers and contractors and to keep activities moving in a timely fashion; and
- Assignment of project teams and the development of joint schedules and various online tools to facilitate communication, collaboration, and project tracking among the agencies' offices, contractors, and parks (e.g., project teams have been identified at various levels to advance actions and resolve issues as quickly as possible; weekly, bi-weekly, and monthly calls have been scheduled, etc.).

Further, the agencies will pursue opportunities to streamline ATMP/NEPA processes. Procedurally, NPATMA requires the agencies to 1) hold at least one public meeting; 2) publish proposed ATMPs in the Federal Register; 3) comply with NEPA; and 4) invite Tribes to participate as cooperating agencies, as appropriate. 49 U.S.C. § 40128(b)(4). To meet these requirements, the agencies will initiate ATMP and NEPA documents at all parks and will, as appropriate, use virtual public meetings and consolidated public notices and interagency and Tribal consultation processes. The agencies will also consolidate methodologies and analyses for NPATMA requirements such as the use of quiet technology incentives and establishment of initial allocations among operators, as well as the use of document templates to the extent practical. All ATMPs that the agencies create will additionally include adaptive management measures that are tied to air tour impacts and park conditions to ensure the continued effectiveness of each ATMP based on relevant and appropriate new information.

## **II. PARKS INCLUDED IN THE PROPOSED SCHEDULE**

The twenty-three National Park System units included within the proposed schedule in Section III below are:

1. Arches National Park (ARCH)
2. Badlands National Park (BADL)
3. Bandelier National Monument (BAND)
4. Bryce Canyon National Park (BRCA)
5. Canyon de Chelly National Monument (CACH)
6. Canyonlands National Park (CANY)
7. Death Valley National Park (DEVA)
8. Everglades National Park (EVER)
9. Glacier National Park (GLAC)
10. Glen Canyon National Recreation Area (GLCA)
11. Golden Gate National Recreation Area (GOGA)
12. Great Smoky Mountains National Park (GRSM)
13. Haleakalā National Park (HALE)
14. Hawai'i Volcanoes National Park (HAVO)
15. Lake Mead National Recreation Area (LAKE)
16. Mount Rainier National Park (MORA)
17. Mount Rushmore National Memorial (MORU)
18. Natural Bridges National Monument (NABR),
19. National Parks of New York Harbor Management Unit (NPNH),

20. Olympic National Park (OLYM),
21. Point Reyes National Seashore (PORE),
22. Rainbow Bridge National Monument (RABR)
23. San Francisco Maritime National Historical Park (SAFR)

### III. PROPOSED SCHEDULE

The schedule below outlines the agencies' planned activities to complete ATMPs at the twenty-three parks referenced in the Order. While the agencies' planned approach involves consolidation to the extent possible, there will be circumstances where certain parks require more individualized treatment. In these cases, specific milestones may need to be adjusted as they are identified; however, the agencies' intent remains to complete ATMPs for all twenty-three parks in two years.

<b>Activities</b>	<b>Action</b>
<p><b>Current</b> <i>Ongoing – Aug. 31, 2020</i></p>	<ul style="list-style-type: none"> <li>• Review and assemble relevant data previously collected and confirm current applicability.</li> <li>• Draft and publish Federal Register notice terminating outstanding NEPA processes and advising of new ones.</li> <li>• Identify Tribes to be consulted regarding the ATMPs.</li> <li>• Draft cooperating agency invitation letters to Tribes.</li> <li>• Begin coordination of government-to-government Tribal consultation and other interagency consultations, as necessary (e.g., Endangered Species Act Section 7 consultation).</li> <li>• Update FAA/NPS websites to reflect current activities.</li> <li>• Finalize interagency agreements and any necessary subcontracts for NEPA compliance-related contracting and obligate funding.</li> <li>• Prepare project agreements among and between the agencies.</li> <li>• Evaluate online platforms through which to conduct virtual public meetings.</li> </ul>
<p><b>First Year</b> Quarter 1 (Sept. – Nov. 2020)</p>	<ul style="list-style-type: none"> <li>• Begin drafting standard sections and language for all twenty-three ATMPs and continue to assemble necessary supporting documentation (e.g., maps, exhibits).</li> <li>• Consider appropriate level of park-specific NEPA review required.</li> <li>• Finalize a purpose and need statement that can be applied to all parks and customized, if needed.</li> <li>• Continue coordination of government-to-government Tribal consultation and other interagency consultations, as necessary.</li> <li>• Confirm acceptable measures for the mitigation or prevention of adverse impacts to designated wilderness areas.</li> <li>• Confirm procedures to address quiet technology incentives.</li> <li>• Confirm online platform(s) through which to conduct virtual public meetings.</li> </ul>

Activities	Action
<b>First Year (Continued)</b>	
Quarter 2 (Dec. 2020 – Feb. 2021)	<ul style="list-style-type: none"> <li>• Describe details of the proposed action for each park, drawing from actual flight and route information; begin drafting no-action and other relevant alternatives, as appropriate.</li> <li>• Continue development of ATMP documents for each of the twenty-three parks, including identification of operating parameters and development of range of alternatives, as appropriate.</li> <li>• Draft “Affected Environment” sections of NEPA documentation, as appropriate.</li> <li>• Continue Tribal consultation and other agency consultations.</li> <li>• Incorporate the process for the mitigation or prevention of adverse impacts to designated wilderness areas into ATMPs, as appropriate.</li> </ul>
Quarter 3 (March – May 2021)	<ul style="list-style-type: none"> <li>• Continue drafting ATMP/NEPA documents; review of completed chapters, as appropriate.</li> <li>• Continue Tribal and other agency consultations.</li> </ul>
Quarter 4 (June – Aug. 2021)	<ul style="list-style-type: none"> <li>• Continue drafting ATMP/NEPA documents; review completed chapters, as appropriate.</li> <li>• Begin planning for/conduct public meetings.</li> <li>• Confirm input and craft any necessary responses to resolve issues that arose from Tribal and other agency consultations.</li> </ul>
<b>Second Year</b>	
Quarter 1 (Sept. – Nov. 2021)	<ul style="list-style-type: none"> <li>• Release ATMP/NEPA documents for public comment, as appropriate.</li> <li>• Conduct public meetings.</li> <li>• Continue resolution of Tribal and other agency consultations, as necessary.</li> </ul>
Quarter 2 (Dec. 2021 – Feb. 2022)	<ul style="list-style-type: none"> <li>• Incorporate comments from public meetings and prepare responses, as appropriate.</li> <li>• Begin drafting Records of Decision and finalizing ATMP/NEPA documents.</li> <li>• Complete resolution of Tribal and other agency consultations, as necessary.</li> <li>• Continue work on any appropriate park-specific incentives for quiet technology.</li> </ul>
Quarter 3 (March– May 2022)	<ul style="list-style-type: none"> <li>• Complete final draft Records of Decision and finalize ATMP/NEPA documents.</li> <li>• Continue work on any appropriate park-specific incentives for quiet technology.</li> <li>• Document completion of Tribal and other agency consultations.</li> </ul>
Quarter 4 (June – Aug. 2022)	<ul style="list-style-type: none"> <li>• Publicly release final ATMP/NEPA decision documents.</li> </ul>
<i>Schedule End/All Tasks Complete: Aug. 31, 2022</i>	<ul style="list-style-type: none"> <li>• Update park-specific operational specifications for air tour operators that reflect allowable flight numbers, routes, and other conditions specified in each ATMP.</li> <li>• Distribute operational specifications to air tour operators and collaboratively ensure continued operations that are consistent with ATMP requirements and NPATMA.</li> </ul>

**THIRD SUPPLEMENTAL DECLARATION OF RAYMOND M. SAUVAJOT, PH.D., IN SUPPORT OF THE NATIONAL PARK SERVICE AND FEDERAL AVIATION ADMINISTRATION'S PROPOSED PLAN AND SCHEDULE FOR THE COMPLETION OF AIR TOUR MANAGEMENT PLANS FOR TWENTY-THREE PARKS**

I, Raymond M. Sauvajot, Ph.D., declare as follows:

1. I am the Associate Director for National Resource Stewardship and Science for the National Park Service (NPS). I am submitting this, my third supplemental declaration in this matter, in support of the Proposed Plan and Schedule for Completion of Air Tour Management Plans for Twenty-Three Parks (Proposed Plan) prepared and agreed to by the NPS and Federal Aviation Administration (FAA) in compliance with the Court's May 1, 2020 Order (Order). The Proposed Plan is Exhibit A to the agencies' Submission for Approval of Proposed Plan for Completion of Air Tour Management Plan.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.

3. The Proposed Plan sets forth a schedule under which the agencies will complete air tour management plans (ATMPs) for all twenty-three parks referred to in the Order at which air tour management plans or voluntary agreements are required under the National Parks Air Tour Management Act (NPATMA) within two years of August 31, 2020. For the reasons more fully detailed below, the NPS believes that the Proposed Plan is achievable, and I am not currently aware of any “specific concrete reasons” why the agencies cannot achieve the milestones set forth in the Proposed Plan.

**The agencies will pursue ATMPs at all twenty-three parks.**

4. In my September 30, 2019 declaration in support of the agencies’ agreed-to schedule for seven parks (September 30 Schedule), I explained that the agencies had agreed to pursue voluntary agreements first, where feasible, then to transition to an ATMP process if the agencies were unable to reach an agreement with operators within eighteen months of formal initiation of an agreement process. This preference to pursue voluntary agreements was based in part on the fact that voluntary agreements do not

require compliance with the National Environmental Policy Act (NEPA).

5. After the Court's Order was issued, the agencies agreed that in order to prepare a two-year plan for completion of their responsibilities under NPATMA, it was no longer feasible to move forward with their previously stated preference for voluntary agreements or with the timeframe for transitioning to ATMPs identified in my September 30, 2019 declaration. The voluntary agreement process necessarily involves working with operators to develop an agreement for the relevant park, and thus the completion of voluntary agreements and the agencies' ability to obtain signatures from all operators within a park can be delayed due to factors outside of the agencies' control, as occurred with respect to multiple target dates for the Mount Rushmore and Badlands voluntary agreements identified in the September 30 Schedule. In addition, there is no guarantee, even after extensive negotiation, that all operators within a park will sign a voluntary agreement, as happened with respect to the voluntary agreements



for Glen Canyon National Recreation Area and Rainbow Bridge National Monument.

6. In contrast, because the agencies have more control over the ATMP process and timelines don't depend on information from external stakeholders there is a greater certainty that they can meet the milestones identified in the Proposed Plan. Accordingly, in order to comply with the Court's Order, the attached Proposed Plan contemplates moving forward with ATMPs at all twenty-three parks and only proceeding with a voluntary agreement if it is clear that an agreement with all operators at a park can be achieved within the two-year timeframe identified in the Proposed Plan.

**Actions are underway or completed in furtherance of the Proposed Plan.**

7. Since the time my December 6, 2019 declaration was signed, the agencies have worked collaboratively on various fronts to move forward with implementing ATMPs and to establish a framework for completing ATMPs at the twenty-three parks identified in the Proposed Plan within two years.
8. Much of this work has focused on NEPA compliance, as this was an area that the agencies struggled to reach agreement on in the

2000s. The agencies met several times in an effort to resolve past disagreements regarding NEPA compliance and have successfully resolved key concerns.

9. In particular, the agencies were able to agree that the “existing condition” for environmental analysis will be based on reported flights, as informed by reported flight data and route information, for each park, and not on interim operating authority (IOA) issued for the park. Comparable data on reported flights had been unavailable in the 2000s because this reporting requirement was a feature of the 2012 amendments to NPATMA. Focusing on actual flights flown, as opposed to IOA allows the agencies to direct analysis at current conditions and not conduct time-consuming and unnecessary analysis for unrealistic or infeasible alternatives.
10. The agencies have also worked to develop mutually agreeable language for ATMP/NEPA templates where appropriate. Since the requirements for an ATMP are the same regardless of the level of air tour activity or park resource conditions, the process lends itself well to the use of certain standardized templates that can be supplemented with park-specific information. The agencies expect

that this approach will expedite the drafting process for ATMP/NEPA compliance documents.

11. The agencies have agreed that all ATMPs developed will include adaptive management measures that are tied to air tour impacts and park conditions to ensure the continued effectiveness of each ATMP based on relevant and appropriate new information.
12. The agencies reviewed the information compiled for each park from the previous ATMP efforts to produce summaries for each that document the history and status of each process for inclusion into the official ATMP decision files.
13. The agencies conducted ATMP Information and Data Needs Assessments and related gap analyses to organize and evaluate available data. Further analytics were conducted in order to determine factors that will influence preparation of individual ATMPs, and identify additional data needs through activities such as noise monitoring/modeling, gathering ambient baseline data, confirming route information, and responding to other regulatory requirements (e.g., Endangered Species Act, National Historic Preservation Act, etc.). The Information and Data Needs

Assessments include an identification of the number of parks with abutting Tribal lands, designated wilderness, or previously identified park resource or visitor use concerns; identification of Tribal interests; confirmation of the availability of noise monitoring or modeling data; assessments of the availability of air tour route information for individual parks; and assessments of prior NEPA work for individual parks that need to be incorporated in the current planning effort.

14. The agencies agreed to work towards completion of ATMPs for all twenty-three parks as part of a coordinated, omnibus effort. In order to leverage economies of scale, the agencies will address the requirements established in NPATMA in a consolidated fashion wherever practicable, though the ATMPs will by necessity include park-specific considerations. Many of the administrative tasks necessary to move forward with the Proposed Plan are already underway or have already been completed, including:
  - a. Preparation of website updates for the public;
  - b. Facilitation of agency and congressional briefings;

- c. Completion of interagency agreements needed to fund collaborative planning efforts and necessary NEPA contracting;
  - d. Drafting of project agreements to identify roles and responsibilities for agency staff;
  - e. Appointment of two general program managers (one from each agency) to oversee the project and the associated project managers and contractors and to keep activities moving in a timely fashion; and
  - f. Assignment of project teams and the development of joint schedules and various online tools to facilitate communication, collaboration, and project tracking among the agencies' offices, contractors, and parks (e.g., project teams have been identified at various levels to advance actions and resolve issues as quickly as possible; weekly, bi-weekly, and monthly calls have been scheduled, etc.).
15. In order to complete the ATMPs pursuant to the Proposed Plan, the agencies have agreed that they will pursue opportunities to streamline ATMP/NEPA processes. Procedurally, NPATMA requires the agencies to 1) hold at least one public meeting; 2)

publish proposed ATMPs in the Federal Register; 3) comply with NEPA; and 4) invite Tribes to participate as cooperating agencies, as appropriate. 49 U.S.C. § 40128(b)(4). To meet these requirements, the agencies will initiate ATMP and NEPA documents at all parks and will, as appropriate, use virtual public meetings and consolidated public notices and interagency and Tribal consultation processes. The agencies have agreed to consolidate methodologies and analyses for NPATMA requirements such as the use of quiet technology incentives and establishment of initial allocations among operators, as well as the use of document templates to the extent practical.

**The NPS has dedicated sufficient resources to the project.**

16. The NPS has approved and will soon obligate funds to support contracted services to draft ATMPs, NEPA compliance documents, and other materials necessary to complete this project pursuant to the Proposed Plan. In addition, the NPS has reallocated staffing to increase the number of staff devoted to this effort and identified points of contact at affected National Park system units and regional offices.

17. NPS and departmental leadership have committed to move forward to complete ATMPs pursuant to the Proposed Plan.

**The NPS acknowledges circumstances that may cause delays.**

18. At this time, the agencies are unaware of any specific, concrete circumstances that will prevent the agencies from completing ATMPs for all twenty-three parks pursuant to the Proposed Plan.
19. However, the agencies acknowledge that circumstances may arise that they are unable to predict at the present time. For example, external stakeholders may request additional review time or other information which it may be advisable to allow to help ensure that the agencies comply with all applicable laws, that they consider all relevant information, and that the final agency action is defensible should it be legally challenged.
20. Tribal consultation is required under NPATMA, and may be required under other compliance statutes or agency policy with respect to a particular park. Many parks contain natural and cultural resources of significance to Tribes and Tribes are valuable partners to the NPS with regard to the identification and protection of such resources. Of the twenty-three parks included in the

Proposed Plan, twenty-two have been identified as requiring tribal consultation either under NPATMA or applicable policies. Due to the complexity of issues involved, and based on awareness of the limited resources of some Tribes, Tribal consultation does have the potential to cause delays. For example, based on experience working on other NEPA documents, additional time may be requested by Tribes to respond to and provide the agencies with information, or to address resource related concerns of which the agencies are currently unaware.

21. Additional time may be also necessitated by the COVID-19 pandemic, though it has not yet caused delays to the Proposed Plan. For example, the Advisory Council for Historic Preservation, the agency with regulatory authority regarding compliance with Section 106 of the National Historic Preservation Act, advised that the “Section 106 deadlines for the response of State and Tribal Historic Preservation Officers, and Indian tribes and Native Hawaiian organizations (NHOs) that attach religious and cultural significance to historic properties affected by the undertaking...will be considered paused while, due to the COVID-



19 outbreak, an office is closed or work conditions are such that the states/tribes/NHOs are unable to carry out their Section 106 duties or statutory rights to consultation in a timely fashion.”

Advisory Council on Historic Preservation, Section 106 and

Coronavirus Impacts (July 23, 2020) available

at:[https://www.achp.gov/digital-library-section-106-](https://www.achp.gov/digital-library-section-106-landing/section-106-and-coronavirus-impacts)

[landing/section-106-and-coronavirus-impacts](https://www.achp.gov/digital-library-section-106-landing/section-106-and-coronavirus-impacts).

22. While the agencies’ planned approach involves consolidation to the extent possible, there will be circumstances where certain parks require more individualized treatment. In these cases, specific milestones may need to be adjusted as they are identified; however, the agencies’ intent remains to complete ATMPs for all twenty-three parks in two years.
23. Should circumstances arise which cause the ATMP process for an individual park to fall behind the Proposed Plan, the agencies will work with the project managers to ensure that a delay at one park will not impact the schedule for other parks in the Proposed Plan. If an unexpected delay does occur that affects the timeline for completing the ATMP for one or more parks, the agencies will

take appropriate actions to minimize impacts to the schedule and advise the Court accordingly.

24. The agencies will advise the Court of any adjusted milestones or delays in their quarterly reports required by the Order.

### **Conclusion**

25. In my June 27, 2019 declaration, I advised that it was not feasible to proceed towards voluntary agreements or air tour management plans for all parks not exempt from NPATMA's requirements at the same time. The circumstances outlined above, including the agencies' agreement to pursue ATMPs at all parks in the first instance, the progress made by the agencies with respect to resolving NEPA issues and drafting templates, the additional resources identified for the project, and agencies' plan to pursue administrative efficiencies, are circumstances that have changed since my June 27, 2019 declaration. Based on the agencies' commitment to the project, and their progress to date, I believe that the Proposed Plan can be achieved. The NPS is committed to achieving the completion of ATMPs at all twenty-three parks as outlined in the Proposed Plan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 28, 2020 in Washington, D.C.

RAYMOND  
SAUVAJOT

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SAUVAJOT  
Date: 2020.08.28 16:54:38 -04'00'

Raymond M. Sauvajot, Ph.D.

**DECLARATION OF RAQUEL GIRVIN  
IN SUPPORT OF THE FEDERAL AVIATION ADMINISTRATION  
AND NATIONAL PARK SERVICE'S PROPOSED PLAN AND  
SCHEDULE FOR THE COMPLETION OF AIR TOUR  
MANAGEMENT PLANS FOR TWENTY-THREE PARKS**

I, Raquel Girvin, Ph.D., declare as follows:

1. I am the Regional Administrator for the Federal Aviation Administration's (FAA) Western Pacific Region, headquartered in El Segundo, California. My responsibilities as Regional Administrator include serving as the principal executive representative of the FAA Administrator and the senior FAA official in the region, providing corporate leadership in cross-organizational matters and representing the FAA with industry, the public, and governmental organizations. These responsibilities also include leading the FAA's special programs office that manages the Air Tour Management Program. The FAA's Western Pacific Regional Office, along with the FAA's Office of Environment and Energy, maintains responsibility within FAA for addressing issues associated with the National Parks Air Tour Management Act (NPATMA).

2. I am submitting this declaration in support of the Proposed Plan and Schedule for Completion of Air Tour Management Plans for Twenty-Three Parks (Proposed Plan) prepared and agreed to by the FAA and the National Park Service (NPS) in compliance with the Court's May 1, 2020 Order (Order). The Proposed Plan is attached as Exhibit A to the agencies' Submission for Approval of Proposed Plan and Schedule for Completion of Air Tour Management Plans (Submission). The Third Supplemental Declaration of Raymond M. Sauvajot, Ph.D (Sauvajot Declaration), dated August 28, 2020, is Exhibit B to the agencies' Submission.
3. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
4. The Proposed Plan sets forth a schedule under which the agencies will complete air tour management plans for all twenty-three parks referred to in the Order at which air tour management plans or voluntary agreements are required under the NPATMA within two years of August 31, 2020. For the reasons more fully detailed below and in the Sauvajot Declaration, which the FAA hereby

acknowledges and adopts, the FAA believes that the Proposed Plan is reasonable and achievable.

5. More specifically, I agree with Dr. Sauvajot that the Proposed Plan represents the efforts and commitments of the FAA, as well as of NPS, and the FAA will make every effort to comply with the Proposed Plan and with the Court's Order. The FAA further agrees with Dr. Sauvajot's characterization of the intent of the agencies to consolidate and streamline environmental processes to the extent possible, to his description of the agencies' efforts since the Court's Order was issued and agency efforts planned for both short and longer terms, and to his recognition that circumstances may arise that would delay the proposed schedule, but that the agencies are not currently aware of any "specific, concrete reasons" why the agencies cannot successfully implement the Proposed Plan.
6. In furtherance of the FAA's commitment to this undertaking, the agency has approved and begun obligating funds to support contracted services to draft air tour management plans, NEPA compliance documents, and other necessary materials and to oversee program coordination activities internal to the agency and

with the NPS to complete this project pursuant to the Proposed Plan. The FAA uses intra-agency agreements (IAAs) with the U.S. Department of Transportation Volpe National Transportation Systems Center (Volpe Center) to provide funding for these services. The FAA will use its IAAs to fund its share of the cost of the services pertaining to technical and policy support for the development of the air tour management plans consistent with the Proposed Plan. The FAA has further provided funding to the Volpe Center to assign a program coordinator—responsible for oversight, management, and tracking of the milestones identified within the Proposed Plan—to ensure these milestones are met and the Proposed Plan is achieved. The program coordinator works closely with the FAA’s headquarters organizations, across its regional enterprise, and also coordinates across the agencies, partnering with the NPS program coordinator and managing the workflow and tasks to be conducted by the Volpe Center.

7. The FAA also agrees with Dr. Sauvajot that the agencies will advise the Court of any adjusted milestones or delays in their quarterly reports required by the Order.

8. Based on the agencies' commitment to the project, and their progress to date, I believe that the Proposed Plan can be achieved. The FAA is committed to achieving the completion of ATMPs at all twenty-three parks as outlined in the Proposed Plan.

I declare under penalty of perjury that the foregoing is correct. Executed on August 28, 2020 at El Segundo, California.

RAQUEL  
GIRVIN

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Date: 2020.08.28  
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Raquel Girvin, Ph.D.



## **CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

1. This Submission is filed in response to this Court's May 1, 2020 Per Curiam Order. The Order did not impose a volume limit. If the length limit of Federal Rule of Appellate Procedure 27(d) applies, this Submission complies with this limit because it contains 1,397 words (excluding exhibits, cover, and signature block).

2. This Submission (excluding exhibits) complies with the type-face requirements of Federal Rule Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule Appellate Procedure (a)(6) because this document has been prepared in a proportionally spaced typeface using Word 2016 in 14 point Times New Roman font.

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2020, I electronically filed the foregoing Submission with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate electronic filing system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system

/s/ Ellen J. Durkee

ELLEN J. DURKEE

*Counsel for Federal Aviation Administration  
and National Park Service*