

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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**PROGRESS UPDATE OF FEDERAL AVIATION ADMINISTRATION  
AND NATIONAL PARK SERVICE**

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The Court's order of November 20, 2020 approved a plan ("Plan") submitted by the Federal Aviation Administration ("FAA") and National Park Service ("NPS")(collectively "agencies") for bringing twenty-three specific parks into compliance with the National Parks Air Tour Management Act of 2000 ("NPATMA"). The order further directed the parties to file a progress update on November 30, 2020 and to file subsequent updates at 90-day intervals thereafter. Pursuant to that directive, the agencies submit the following:

The Plan details the agencies' intended approach to completing air tour management plans ("ATMP's") for all twenty-three parks within two years, and it describes on a quarterly basis the actions that the agencies anticipate undertaking in furtherance of that approach. The table below identifies the actions included in the Plan for Year 1, Quarter 2 (December 1, 2020 to February 28, 2021) and provides a concise summary of the work activities accomplished during this quarter.

At this time the agencies do not anticipate delays at any individual park.

<b>Actions in Proposed Plan for First Year, Quarter 2</b>	<b>Work Activities Completed in First Year, Quarter 2</b>
Describe details of the proposed action for each park, drawing from actual flight and route information.	<ul style="list-style-type: none"> <li>• The agencies collected and analyzed information from air tour operators about their tours over each of the 23 parks and from park staff regarding park resources.</li> <li>• The agencies digitized air tour routes onto maps that also show park resources.</li> <li>• The agencies developed proposed action descriptions for 20 parks that include the ATMP contents required by NPATMA, 49 U.S.C. §40128(b)(3).</li> </ul>
<b>Actions in Proposed Plan for First Year, Quarter 2</b>	<b>Work Activities Completed in First Year, Quarter 2</b>
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.	<ul style="list-style-type: none"> <li>• The agencies further refined a draft ATMP template that can be used for all 23 ATMPs to ensure compliance with NPATMA requirements and ease-of-use for air tour operators and park managers.</li> <li>• The NPS continued outreach to all 23 parks in order to identify operating parameters that may be necessary and to justify the terms and conditions of the ATMP for the park.</li> <li>• The agencies identified operating parameters based upon the data collected as described in the preceding section.</li> </ul>
Draft “Affected Environment” sections of NEPA documentation, as appropriate.	<ul style="list-style-type: none"> <li>• The agencies collected information to form the basis of the environmental baseline needed for NEPA compliance in all 23 parks.</li> <li>• The agencies developed Affected Environment outlines for parks where appropriate.</li> </ul>

<b>Actions in Proposed Plan for First Year, Quarter 2</b>	<b>Work Activities Completed in First Year, Quarter 2</b>
Continue Tribal consultation and other agency consultations.	<ul style="list-style-type: none"><li>• The agencies continue to coordinate on Tribal consultation requirements. The agencies agreed that the FAA will serve as the lead agency for Tribal/Section 106 consultation, working closely with the NPS on consultation activities.</li><li>• The agencies established an internal Tribal/Section 106 Working Group (“Working Group”) to ensure coordination during the consultation process.</li><li>• The FAA prepared process flow materials to document the communications protocols for addressing questions received through the consultation process.</li><li>• The agencies prepared an informal introductory letter template for the 23 parks to share information with Tribes, prior to the initiation of formal consultation. Parks began outreach to Tribes using this informal introductory letter. As of the date of this report, this outreach is ongoing.</li><li>• The agencies substantially completed the coordination and administrative preparation necessary to initiate formal consultation with Tribal Historic Preservation Officers and State Historic Preservation Officers pursuant to Section 106 of the National Historic Preservation Act, and with Tribes pursuant to NPATMA, as well the preparation necessary to send invitations to Tribes to participate in Government-to-Government Tribal Consultation pursuant to Executive Order 13175 and FAA Order 1210.20.</li><li>• The agencies determined that the NPS will manage the process for consultation pursuant to Section 7 of the Endangered</li></ul>

	<p>Species Act, working closely with the FAA on consultation activities.</p> <ul style="list-style-type: none"> <li>The agencies continued coordination and outreach to the U.S. Fish &amp; Wildlife Service to identify efficiencies for Section 7 consultation across the 23 parks.</li> </ul>
<b>Actions in Proposed Plan for First Year, Quarter 2</b>	<b>Work Activities Completed in First Year, Quarter 2</b>
Incorporate the process for the mitigation or prevention of adverse impacts to designated wilderness areas into ATMPs, as appropriate.	<ul style="list-style-type: none"> <li>The agencies integrated the mitigation measures established in the previous quarterly reporting period into the proposed actions for each park where wilderness may be impacted by air tours. The suite of mitigation measures will be considered for each park to determine applicability toward the goal of resource protection.</li> </ul>
Additional work done on the project not specifically associated with this quarter in the Plan.	<ul style="list-style-type: none"> <li>The agencies held a virtual meeting, open to the public, with the National Parks Overflights Advisory Group (NPOAG) on January 22, 2021. The meeting provided an opportunity for the agencies to brief the NPOAG on recent activities and receive input from the NPOAG as well as public comment.</li> </ul>

Petitioners concur in this filing based on the information supplied by the federal agencies.

Respectfully submitted,

/s/ ELLEN J. DURKEE

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## CERTIFICATE OF COMPLIANCE

1. This document is not a brief or motion and therefore is not subject to the type-volume limits of Federal Rules of Appellate Procedure 27(d)(1)(E)(2) and 32(a)(7)(B). Excluding the cover and signature block, this document contains 831 words.

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

/s/ Ellen J. Durkee

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2021, I electronically filed the foregoing progress update 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/EF users and service will be accomplished by the appellate CM/ECF system

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