

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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Of Counsel:

MICHAEL FINEMAN  
CATHERINE BASIC  
*Attorneys*  
Office of the Chief Counsel  
Federal Aviation Administration

SARA PORSIA  
*Attorney*  
Office of the Solicitor  
U.S. Department of the Interior

ANDREW C. MERGEN  
ELLEN J. DURKEE  
*Attorneys*  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7415  
Washington, D.C. 20044  
(202) 514-4426  
ellen.durkee@usdoj.gov

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").<sup>1</sup> The order further directed the agencies to file a progress update on November 30, 2020 and to file subsequent updates at 90-day intervals thereafter. Pursuant to that order and a March 8, 2021 clarification order, the agencies submit the following:

The Plan details the agencies' intended approach to completing air tour management plans ("ATMP"s) for all covered 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 2, Quarter 1 (September 1, 2021 to November 30, 2021) and provides a concise summary of the work activities accomplished during this quarter.

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<sup>1</sup> As explained in a previous progress update, the NPS withdrew the exemption applicable to Muir Woods National Monument and the agencies are now proceeding with ATMPs for 24 parks.

<b>Actions in Proposed Plan for Second Year, Quarter 1</b>	<b>Work Activities Completed in Second Year, Quarter 1</b>
<p>Release ATMP/NEPA documents for public comment, as appropriate.</p>	<ul style="list-style-type: none"> <li>• The agencies published public meeting/notices of availability in the Federal Register for draft ATMPs for Bandelier National Monument; Great Smoky Mountains National Park; Arches National Park; Glacier National Park; Canyonlands National Park; Natural Bridges National Monument; and Bryce Canyon National Park, 86 Fed. Reg. 49593 (September 3, 2021) and for a draft combined ATMP for Golden Gate National Recreation Area, Muir Woods National Monument, San Francisco Maritime National Historical Park, and Point Reyes National Seashore, 86 Fed. Reg. 57471 (October 15, 2021). In total, twelve draft ATMPs, covering 15 National Park System units, have been released for public review and comment thus far.</li> <li>• The agencies continued drafting environmental screening forms and preliminary draft categorical exclusion documentation for those ATMPs where the agencies, at present, are considering application of a documented categorical exclusion.</li> <li>• The agencies continued work toward NPATMA compliance for the remaining 9 National Park System units for which an ATMP or voluntary agreement is required.</li> <li>• The agencies continued work on the general content of environmental assessments, as appropriate, to ensure both agencies' NEPA requirements are met. This included collection and review of data related to current air tour operations to support environmental analysis. In addition, reviews of relevant park planning and compliance documents were conducted.</li> </ul>

	<ul style="list-style-type: none"> <li>• The agencies began preparing materials for public scoping in connection with Hawai'i Volcanoes National Park and Haleakalā National Park.</li> </ul>
Conduct public meetings.	<ul style="list-style-type: none"> <li>• The September 3, 2021 Federal Register notice announced seven public meetings in September. The agencies held these public meetings on the following dates: Bandelier National Monument (September 15, 2021), Great Smoky Mountains National Park (September 16, 2021), Arches National Park (September 20, 2021), Glacier National Park (September 21, 2021), Canyonlands National Park (September 22, 2021), Natural Bridges National Monument (September 23, 2021), and Bryce Canyon National Park (September 27, 2021).</li> <li>• The 30-day public comment period for the seven draft ATMPs was from September 3 to October 3, 2021. The public comment period for Bandelier National Monument and Great Smoky Mountains National Park was extended to October 13, 2021, due to an error discovered during the public comment period on the NPS Planning, Environment and Public Comment (PEPC) home page.</li> <li>• The October 15, 2021 Federal Register notice announced one public meeting in October for a combined ATMP covering four parks (Golden Gate National Recreation Area, Muir Woods National Monument, San Francisco Maritime National Historical Park, and Point Reyes National Seashore). The agencies held this public meeting on October 26, 2021. The 30-day public comment period for this draft ATMP was from October 15 to November 15, 2021.</li> <li>• The agencies publicized the eight September and October public meetings with publications</li> </ul>

	<p>on their social media platforms and notifications on their websites. The agencies livestreamed the meetings simultaneously on FAA social media platforms (YouTube, Facebook, and Twitter).</p> <ul style="list-style-type: none"> <li>• The agencies developed materials for the September and October public meetings, including presentations, FAQs, and runs-of-show, and used the social media platforms as portals for the public to engage and pose questions to the agencies during the live meetings.</li> <li>• Recordings of the meetings are available on the <a href="#">FAA YouTube channel</a>.</li> </ul>
<p>Continue resolution of Tribal and other agency consultations, as necessary.</p>	<ul style="list-style-type: none"> <li>• The agencies sent Section 106 consultation letters to State Historic Preservation Officers/Tribal Historic Preservation Officers, tribes, operators, and other consulting parties regarding the proposed undertaking and area of potential effects for Golden Gate National Recreation Area, Muir Woods National Monument, San Francisco Maritime National Historical Park, and Point Reyes National Seashore.</li> <li>• The agencies developed a plan for conducting tribal consultation for Badlands National Park and Mount Rushmore National Memorial and a framework for completing Section 106 and tribal consultation for the other ATMPs.</li> <li>• Via letter dated October 1, 2021, the agencies invited the Oglala Sioux Tribe to participate in government-to-government consultation for the ATMP for Badlands National Park and requested a meeting with the tribe.</li> <li>• The agencies held a tribal consultation meeting for Badlands National Park and Mount Rushmore National Memorial on October 19, 2021, and continued preparations for subsequent meetings with the tribes.</li> </ul>

	<ul style="list-style-type: none"> <li>• On October 28, 2021, the agencies held an informational webinar on the ATMP and Section 106 process for consulting parties at Hawai‘i Volcanoes National Park and Haleakalā National Park.</li> <li>• The agencies held a consultation meeting associated with Bandelier National Monument on November 22, 2021.</li> <li>• The agencies responded to specific questions from various tribes regarding ATMP development at the parks.</li> <li>• The agencies held a webinar to introduce active air tour operators to the Section 106 consultation process.</li> <li>• The agencies continued coordination and outreach to the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) to discuss Endangered Species Act Section 7 compliance and continued to draft Section 7 documentation for all ATMPs in progress.</li> </ul>
Additional work done to facilitate implementation of ATMPs	<ul style="list-style-type: none"> <li>• On September 10, 2021, the agencies conducted an informational briefing for the National Parks Overflights Advisory Group (NPOAG).</li> <li>• The agencies responded to congressional and stakeholder inquiries.</li> </ul>

At this time, the agencies’ goal remains to complete all air tour management plans, or voluntary agreements, consistent with the Court approved plan and schedule, by August 31, 2022. As noted above, and in the agencies’ Response to Petitioners’ Motion to Enforce Order Granting Petition for Mandamus, filed November 5, 2021, and the supporting declarations, twelve draft air tour

management plans, covering fifteen National Park System units, have already been released for public review and comment.

The remaining nine National Park System units included in the planning process each present their own unique challenges and complications that the agencies are working through in order to bring them into compliance with NPATMA. The agencies have decided to prepare an environmental assessment for the following parks: Badlands National Park; Haleakala National Park; Hawaii Volcanoes National Park; and Mount Rushmore National Memorial. The agencies have not yet identified the appropriate NEPA pathway for the following parks and are working through park-specific challenges to identify a path forward:

a. National Parks of New York Harbor. Commercial air tours in this region are largely regulated by a local agreement and the agencies are working through how to regulate air tours consistent with this agreement.

b. Canyon de Chelly National Monument. This park is uniquely located entirely on the Navajo Nation reservation land, and the Navajo Nation has been invited as a cooperating agency under NEPA for this plan.

c. Lake Mead National Recreation Area. The airspace over this park is complicated because it is overflowed by transportation routes to Grand Canyon National Park, which are specifically exempted from compliance with the Act, as

well as commercial jets en route to Las Vegas. For this plan, the agencies are working first to understand and define these transportation routes in order to determine how commercial air tour routes should be regulated under an air tour management plan.

d. Glen Canyon National Recreation Area/Rainbow Bridge National Monument. Seven of the nine air tour operators that overfly these parks have signed voluntary agreements, and the agencies are working to identify how best to move forward at these parks, consistent with the Act, given the existing voluntary agreements.

Should it become clear that compliance with NPATMA for any of the parks covered by the Court approved plan and schedule will take longer than August 31, 2022, the agencies will provide the Court with a clear and specific explanation for the need for additional time.



Respectfully submitted,

/s/ ELLEN J. DURKEE

Of Counsel:

MICHAEL FINEMAN  
CATHERINE BASIC  
*Attorneys*  
Office of the Chief Counsel  
Federal Aviation Administration

ANDREW C. MERGEN  
ELLEN J. DURKEE  
*Attorneys*  
Environment and Natural Resources Division  
U.S. Department of Justice

SARA PORSIA  
*Attorney*  
Office of the Solicitor  
U.S. Department of the Interior

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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, signature block, and certificate this document contains 1431 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

ELLEN J. DURKEE

Counsel for Federal Aviation  
Administration and  
National Park Service