

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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PROGRESS UPDATE OF  
FEDERAL AVIATION ADMINISTRATION  
AND NATIONAL PARK SERVICE

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 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 1, Quarter 3 (March 1, 2021 to May 31, 2021) and provides a concise summary of the work activities accomplished during this quarter.

As this Court previously noted, Muir Woods National Monument ("Muir Woods") was exempt from NPATMA's requirement for the agencies to prepare an ATMP or voluntary agreement for the park as no air tours had been conducted over the park since 2018. However, on March 4, 2021, the NPS withdrew the exemption

for Muir Woods in order to allow it to be included in the ATMP being developed for Golden Gate National Recreation Area, San Francisco Maritime National Historical Park, and Point Reyes National Seashore. The NPS explained in its letter to FAA withdrawing the exemption that because interim operating authority still exists for Muir Woods, an ATMP is necessary to protect the resources and values and visitor experience of the park and to preserve the primeval character and ecological integrity of its old-growth redwood forest. Because Muir Woods is managed jointly with Golden Gate National Recreation Area, and will be included in the ATMP being prepared for the San Francisco Bay Area parks, the agencies do not believe that the inclusion of Muir Woods in this ATMP will cause any delay of agencies' completion of ATMPs for all required parks.

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

<b>Actions in Proposed Plan for First Year, Quarter 3</b>	<b>Work Activities Completed in First Year, Quarter 3</b>
Continue drafting ATMP/National Environmental Policy Act (NEPA) documents; review of completed chapters, as appropriate.	<ul style="list-style-type: none"> <li>• The agencies finalized an ATMP template to be used for all ATMPs.</li> <li>• The agencies are using previously developed proposed actions for each park to draft ATMPs. Ten draft ATMPs have been prepared so far and are under internal review.</li> <li>• The agencies developed templates for NEPA compliance documents.</li> <li>• The agencies agreed to a draft form and general content of Environmental Assessments that meet both agencies' NEPA requirements.</li> </ul>
Continue Tribal consultation and other agency consultations.	<ul style="list-style-type: none"> <li>• The agencies coordinated on and conducted informal outreach to Tribes on a park-by-park basis prior to sending formal consultation letters.</li> <li>• The agencies sent formal consultation letters to 132 Tribes and Tribal Historic Preservation Officers (THPOs) affiliated with 19 of the 24 parks, formally initiating consultation under Section 106 of the National Historic Preservation Act (NHPA) as well as government to government consultation pursuant to Executive Order 13175 and FAA Order 1210.20.</li> <li>• The agencies initiated formal consultation pursuant to Section 106 of the NHPA with State Historic Preservation Officers (SHPOs) and THPOs that have taken over the SHPO's consultation responsibilities on tribal lands. The agencies sent formal consultation letters to 11 of 13 SHPOs.</li> <li>• The agencies prepared letters for Native Hawaiian Organizations (NHOs) and other consulting parties at Haleakalā National Park and Hawai'i Volcanoes National Park. The agencies sent these letters to 85 NHOs and other consulting parties. The agencies are in</li> </ul>

	<p>the process of identifying other consulting parties in connection with the parks.</p> <ul style="list-style-type: none"> <li>• The agencies held three informational webinars with SHPOs and THPOs, Tribes, NHOs, and other consulting parties. The agencies held two additional webinars for Tribes with cultural ties to Badlands National Park, Canyon de Chelly National Monument, and Mount Rushmore National Memorial.</li> <li>• The agencies began drafting letters to operators to invite them to participate as consulting parties in the Section 106 process.</li> <li>• The agencies developed a template undertaking/Area of Potential Effects (APE) memorandum to be used for all ATMPs.</li> <li>• The agencies held the first park-specific meeting with Everglades National Park to discuss the APE, effects on historic properties, and how to proceed with consultation. The agencies continue to coordinate other park-specific meetings as part of formal consultation.</li> <li>• The agencies drafted a Section 7 consultation letter template to use for all ATMPs and coordinated with the U.S. Fish &amp; Wildlife Service (FWS) to obtain feedback.</li> <li>• The agencies continued coordination and outreach to the FWS to discuss the anticipated scope of consultation, possible mitigation measures, and next steps for Section 7 compliance. The agencies began conducting informal meetings with the FWS and park staff to discuss Section 7 considerations for the park.</li> </ul>
Additional work done to facilitate implementation of ATMPs	<ul style="list-style-type: none"> <li>• The agencies are developing the form, manner, and process for ATMP amendments.</li> </ul>

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, signature block, and certificate this document contains 847 words.

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