

ARGUED DECEMBER 9, 2019

No. 19-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

On Petition for Writ of Mandamus

**RESPONDENTS' OPPOSITION TO
PETITIONERS' SECOND MOTION TO ENFORCE**

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INTRODUCTION

This is Petitioners' second "motion to enforce" in five months. In this motion, Petitioners seek new, but equally-extraordinary injunctive relief against the Federal Aviation Administration (FAA) and the National Park Service. But Petitioners fail to meet their burden to obtain this relief and are wrong on the merits. Thus, the Court should deny Petitioners' second motion, as it did the first.

First, Petitioners do not seek enforcement of the Court's Orders; rather they request an injunction that substantially exceeds the relief they sought in their Mandamus Petition. Petitioners ask for the Court to issue a new injunctive order shutting down all air tours over every park for which an air tour management plan or voluntary agreement is required by the National Parks Air Tour Management Act if the agencies do not complete the plans or agreements by August 31, 2022. But Petitioners have not satisfied the traditional four-part test for an injunction.

Second, Petitioners misread the Court's Orders and make unsupported and speculative allegations about the agencies' progress bringing all eligible parks into compliance with the Act. Consistent with the Court-approved plan, the agencies are diligently working to bring all 24 eligible National Park System units into compliance with the Act, as the attached declarations from agency leadership show. Given the agencies' experience working to bring parks into compliance with

the Act, it is evident that they will need more than two years to complete plans for some parks. The Court should allow the agencies to continue with their efforts.

BACKGROUND

A. The Court's Orders and the Agencies' Plan

In their petition for writ of mandamus, Petitioners requested an order directing the agencies to establish air tour management plans or voluntary agreements under the National Parks Air Tour Management Act of 2000, 49 U.S.C. § 40128, for seven specified National Park System units. *In Re: Public Employees for Environmental Responsibility (PEER)*, 957 F.3d 267, 271 (D.C. Cir. 2020). In May 2020, the Court granted the petition, holding that the agencies had a mandatory duty under the Act to establish air tour management plans or voluntary agreements for all eligible parks and that mandamus relief was warranted based on delay in performance of this duty and consideration of the *TRAC* factors. *Id.* at 273; Order (May 1, 2020) (per curiam) (Mandamus Order).

The Mandamus Order directed the agencies to submit, by August 31, 2020, a proposed plan and schedule for bringing not just the seven parks about which Petitioners complained and showed standing, but all 23 National Park System units eligible at that time into compliance with the Act within two years, or to offer “specific, concrete reasons” why it will take longer than two years. *Id.* The Court retained jurisdiction to approve the agencies’ proposed plan and monitor the

agencies' progress. *Id.* The Mandamus Order directed the agencies to submit progress updates every 90 days after the Court approved the plan. *Id.*

On August 31, 2020, the agencies submitted their Proposed Plan and Schedule for Completing Air Tour Management Plans for Twenty-Three Parks. The Plan set out the agencies' approach and steps for completing air tour management plans for all 23 parks referenced in the Court's Order within two years of its submission to the Court. In November 2020, the Court issued an order (Approval Order) approving the Plan and setting November 30, 2020 as the due date for the filing of the first quarterly progress update.

B. The Agencies' substantial progress implementing the Plan

Since the Court approved the agencies' Plan, the agencies have devoted substantial time and resources to the planning process. And the agencies have made significant progress. The agencies' efforts and progress are covered in detail in (1) the agencies' Progress Updates; (2) two declarations from the agencies' leadership responding to Petitioners' First Motion to Enforce; and (3) two more declarations submitted with this Motion. For convenience, all four declarations are attached as Exhibits 1-4. Here, the agencies provide an overview of their progress.

1. In compliance with the Court's Orders, the agencies have timely filed six Progress Updates in November 2020, March 2021, May 2021, August 2021,

November 2021, and February 2022.¹ Each Progress Update summarizes the work activities completed during the concluding quarter and describes the agencies' anticipated activities under the Court-approved Plan for the next quarter.

The agencies have posted these Progress Updates on their websites, along with other information about the development of air tour management plans.² *See* Response from FAA and Park Service in Opposition to Petitioners' First Motion to Enforce (Respondents' Opposition to First Motion to Enforce), Declaration of Kevin Welsh, Executive Director of the Federal Aviation Administration's Office of Environment and Energy (First Welsh Decl.) ¶¶ 4, 6, 13-15 (attached as Exhibit 1). The Progress Updates are accurate reports of the agencies activities to date in implementing the Court-approved Plan. *Id.* ¶ 4; *id.*, Declaration of Raymond M. Sauvajot, Ph.D., Associate Director for National Resource Stewardship and Science for the National Park Service (First Sauvajot Decl.) ¶¶ 5, 11-12 (attached as Exhibit 2).

2. Consistent with the Plan, the agencies have made substantial progress on air tour management plans or voluntary agreements for all eligible parks.

¹ The Court granted the agencies' unopposed motion to adjust the schedule for submitting progress reports on fixed dates instead of at 90-day intervals. *See* Order (Feb. 10, 2022) (per curiam).

² *See* https://www.faa.gov/about/office_org/headquarters_offices/ara/programs/air_tour_management_plan (last visited May 3, 2022); <https://www.nps.gov/subjects/sound/airtours.htm> (last visited May 3, 2022).

a. To date, the agencies have published in the Federal Register notices announcing the public availability of 12 draft air tour management plans (that cover 14 of the 23 parks in the Plan and a 15th park not included in the Plan)³ for public review and comment. First Welsh Decl. ¶ 5.⁴ The agencies have also held virtual public meetings for each of the 12 draft plans. First Welsh Decl. ¶¶ 6, 12-15. The PowerPoint slides for the agency presentations and recordings of these meetings are available online. *Id.* ¶¶ 13-15.

b. The agencies' efforts include conducting environmental analyses and drafting documentation in compliance with the National Environmental Policy Act (NEPA) and Endangered Species Act, as well as analyzing current conditions, potential mitigations, route locations and related air traffic safety concerns. *See*

³ Although the Court found Muir Woods National Monument to be exempt from the Act's requirements to complete a management plan or voluntary agreement, the Park Service withdrew its exemption and included it in the planning process. Second Sauvajot Decl. ¶ 16.

⁴ Unlike the interim operating authority under which commercial air tour operators currently operate (which contain none of the following limitations), the management plans released for public comment thus far all (1) designate routes and minimum altitudes, (2) require operators to install and use flight monitoring equipment (to enable agencies to monitor and ensure compliance with plans), (3) set time of day and—in some cases—daily flight limits, and (4) allow the Park Service to set temporary no fly periods. First Sauvajot Decl. ¶ 15. These draft management plans all set limits on the number of flights that would be authorized annually, which in many cases is much lower than the number of flights that operators may fly under the interim operating authority. *Id.*

Declaration of Raymond M. Sauvajot, Ph.D. (Second Sauvajot Decl.) ¶¶ 1-83 (attached as Exhibit 3); First Welsh Decl. ¶¶ 8-9, 16-18; First Sauvajot Decl. ¶¶ 7, 14. And the agencies are devoting substantial time and resources to complying with Section 106 of the National Historic Preservation Act. *See* Declaration of Kevin Welsh (Second Welsh Decl.) ¶¶ 1-28 (attached as Exhibit 4). The agencies' Section 106 efforts include consulting with state historic preservation officers, tribal historic preservation officers, tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties that may be affected by air tour management plans, representatives of a local government with jurisdiction over the area where effects of the undertaking may occur, and with air tour operators whose livelihoods may also be affected. *Id.* ¶¶ 6-7.

C. Procedural Background

In October 2021, Petitioners filed their first motion styled as a Motion to Enforce the Order Granting Petition for Mandamus. This Court denied the motion in January 2022. Order (Jan. 14, 2022) (per curiam). Less than two months later, in March 2022, Petitioners filed this Second "Motion to Enforce." Petitioners request that the Court grant new injunctive relief that would require the agencies to ban air tours over parks "that do not have statutorily-compliant [Air Tour Management Plans] by" August, 31, 2022, the date in the agencies' Plan. Second Motion 9.

SUMMARY OF ARGUMENT

Just like Petitioners' First Motion purportedly seeking to "enforce" the Mandamus Order, Petitioners' Second Motion rests on an incorrect reading of the Court's Orders and the Act, as well as unsupported allegations about the agencies' efforts to follow the Court-approved Plan. At bottom, Petitioners' meritless "enforcement" motions divert valuable resources away from the agencies' earnest efforts to timely bring all 24 parks into compliance with the Act.

1. Petitioners request extraordinary injunctive relief that substantially enlarges the relief they sought in their Mandamus Petition. But Petitioners have not even tried to meet the four-factor test for injunctive relief. An injunction against air tours in the parks would undermine the agencies' efforts and cause harm to third parties not before the Court.

2. Unlike Petitioners' bare and speculative assertions, the agencies have submitted Progress Updates and four declarations from agency leadership that detail the agencies' efforts. These declarations not only corroborate the agencies' progress to date but also identify the specific and concrete reasons for anticipated delays in bringing certain parks into compliance with the Act. The agencies are proceeding according to the Court-approved Plan and consistent with the Court's Orders, and the Court should allow the agencies to continue on that path.

Like the First Motion, Petitioners' Second Motion should be denied.

ARGUMENT

I. Petitioners fail to show they are entitled to the extraordinary injunctive remedy they seek.

As we discuss in Argument Point II below, Petitioners' arguments mischaracterize the Court's Orders, and lack merit because the agencies are working to bring all 24 parks into compliance with the Act, consistent with the Court-approved Plan. At the threshold, however, Petitioners skip over their burden to meet the four-part test for the injunctive relief that they seek. An injunction is "an extraordinary remedy never awarded as of right." *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 24 (2008). To obtain an injunction, a movant must show (1) a likelihood of success on the merits; (2) that it is likely to suffer an irreparable injury in the absence of an injunction; (3) that the balance of equities tips in the movant's favor; and (4) that an injunction is in the public interest. *Id.* at 20. Petitioners neither acknowledge the four-part test to show entitlement to an injunction, nor try to meet it. The Court should not allow Petitioners to make an end-run around this fundamental requirement.

1. Petitioners have not shown a likelihood of success.

a. As in their First Motion to Enforce, Petitioners are misusing a "motion to enforce" to seek an injunction that would alter the status quo and substantially enlarge the relief that they sought in their Mandamus Petition and obtained in the Court's Mandamus Order.

The Mandamus Petition sought a Court order requiring the agencies to complete management plans for seven parks for which Petitioners submitted declarations to support their standing “within 24 months of the date of the issuance of the writ, unless by that time voluntary agreements, compliant with all statutory and regulatory requirements, have been entered with all commercial air operators over those parks.” Mandamus Petition 4-5. The Mandamus Petition did not request the injunctive relief Petitioners seek in this Second Motion.

Although the Court granted mandamus relief, it did not grant the specific relief requested by Petitioners. *PEER*, 957 F.3d at 275-276. Instead, the Court ordered the agencies to produce a schedule within 120 days “for bringing all twenty-three parks into compliance” with the Act. *Id.* at 275. The Court noted that it “fully expect[ed] that the agencies will make every effort to produce a *plan* that will enable them to complete the task within two years, as Congress directed.” *Id.* (emphasis added). But the Court also observed that “[i]f the agencies anticipate that it will take them more than two years, they must offer specific, concrete reasons for why that is so in their proposal.” *Id.* Finally, the Court “retain[ed] jurisdiction to approve the plan and monitor the agencies’ progress.” *Id.*

By contrast, Petitioners now seek injunctive relief both beyond that requested in their Mandamus Petition and beyond that granted by the Court in the Mandamus Order. They ask the Court “to enter an order requiring that the agencies

permit no air tours over parks that do not have statutorily-compliant [air tour management plans] by the Court’s deadline of August 31, 2022.” Second Motion

9. Yet Petitioners do not explain why it is proper for them to seek this new relief exceeding the scope of the Mandamus Petition and Mandamus Order.

b. Moreover, the existing air tour operations are permissible under the Act. Petitioners ask the Court to order the agencies to ban air tours over parks for which air tour management plans are not in place by August 31, 2022. But those tours are being conducted under interim operating authority issued by FAA under the Act. While the Act provides that air tour management plans “may prohibit commercial air tour operations over a national park in whole or in part,” 49 U.S.C § 40128(b)(3)(A), the Court has distinguished between the requirement that the agencies prepare management plans and the discretionary nature of their content. *See PEER*, 957 F.3d at 273. The Court noted that “Petitioners do not seek to control the content of the plans.” *Id.* Yet that is precisely what Petitioners seek to do through their Second Motion.⁵ Because the content of an air tour management plan is not something that may be compelled by mandamus, Petitioner’s request is overreaching, and the Court should not grant it.

⁵ The authority to “prohibit commercial air tour operations over a national park in whole or in part” appears in the subsection of the Act identifying the “Contents” of “Air Tour Management Plans.” *See* 49 U.S.C § 40128(b)(3)(A).

c. Finally, as discussed below in Argument Point II, the agencies are actively implementing the Court-approved Plan to bring all 24 parks into compliance with the Act.

2. Petitioners have shown no injury, let alone an irreparable one. The Supreme Court has stated that plaintiffs cannot obtain injunctive relief if they “cannot show that they will suffer irreparable injury.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 162 (2010). To establish irreparable harm, a movant must show an injury “both certain and great; it must be actual and not theoretical.” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). The movant must show that the “injury complained of [is] of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.* (cleaned up). The movant must further “substantiate the claim that irreparable injury is ‘likely’ to occur.” *Id.*

Petitioners have failed to satisfy this “high standard.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). They submitted no evidence of an imminent irreparable injury. In fact, they articulate no injury at all tied to the agencies taking longer than two years to bring all 24 parks into compliance with the Act. Absent a “clear showing” of irreparable harm, Petitioners are not entitled not entitled to the extraordinary remedy of an injunction. *Winter*, 555 U.S. at 22.

3. The balance of the harms and public interest weighs against Petitioners. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (balance of harms and public interest factors merge when government is opposing party). This Court must “pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24 (cleaned up). Petitioners’ requested injunction would disrupt the agencies’ efforts to comply with the Act and would impose punitive and disproportionate economic harm on the third-party air tour operators.

Petitioners request that the Court “requir[e] compliance by the deadline for all parks.” Second Motion 6. But this differs from the Court’s Orders, which did not impose a set deadline but directed the agencies to propose a Plan, to keep the Court apprised of their progress, and to provide the Court with specific reasons if the two-year timeframe could not be met. *See* Argument Point II. Although this Court found that the agencies have a mandatory duty to establish air tour management plans or voluntary agreements, and that the agencies unreasonably delayed fulfilling this duty, the agencies still possess discretion about *how* to comply with the Air Tour Management Act. And preparing adequate management plans takes time. *PEER*, 957 F.3d at 273-276. Ordering the agencies to complete management plans for all 24 parks by August 31, 2022 would deviate from (1) the Court’s Mandamus Order, which acknowledged that bringing all eligible parks into

compliance with the Act could take longer than two years, and (2) the Court-approved Plan, which also acknowledged that completing the agencies' planning efforts might take longer than two years.

Petitioners also ask the Court to enter an order requiring “that the agencies permit no air tours over parks that do not have statutorily-compliant [plans] by the Court’s deadline of August 31, 2022.” Second Motion 9. Yet in the February 2022 Progress Update, the agencies informed the Court that they cannot meet the August 31, 2022 timeframe for some parks. So Petitioners’ requested relief means that air tours over the covered parks would be halted until the agencies can complete a management plan or voluntary agreement for that park. But this relief conflicts with the Act, which requires FAA to issue interim operating authority providing authority for commercial air tour operators to conduct air tours over parks pending completion of air tour management plans or voluntary agreements for those parks. *See* 49 U.S.C. §§ 40128(c)(1), 40128(c)(2)(E).

Notably, this relief targets air tour operators, not the agencies. Thus, the injunction would harm third parties that are not before the Court. Petitioners show no regard for the reliance interests or economic consequences of a prohibitory injunction that would alter the status quo. And they seek this disruptive relief while the Court is already overseeing an orderly process for the agencies to bring all 24 parks into compliance with the Act.

II. No grounds for a new injunction exist because the agencies are diligently following the Court-approved Plan to complete air tour management plans or voluntary agreements for all covered parks.

Because Petitioners have not shown their entitlement to injunctive relief, the Court need not resolve the merits of the Second Motion. Besides, Petitioners' contentions are without merit and fail to justify new injunctive relief exceeding the relief that Petitioners requested in their Mandamus Petition. Consistent with the Court's Orders, the agencies are following the Plan by working to complete management plans or voluntary agreements for all eligible parks. In the Approval Order, the Court approved the agencies' Plan to complete air tour management plans for 23 national parks within two years, by August 31, 2022. Since then, the agencies have timely filed Progress Updates showing their substantial progress in completing air tour management plans. But as the agencies explained in the February 2022 Progress Update, they cannot complete plans for all eligible parks by the two-year mark. Petitioners contend that this violates the Court's Orders, but that is incorrect for three reasons.

1. Petitioners misinterpret the Court's Orders. Although they quote the Mandamus Order, they interpret it as if the Court simply ordered the agencies to complete air tour management plans for 23 parks and set a fixed deadline for the agencies to complete this task. Second Motion 1-2. But the Mandamus Order did not do that.

a. The Court directed the *agencies* to prepare “a *proposed schedule*” for “bringing all twenty-three parks into compliance within two years.” Mandamus Order (emphasis added). But the Court noted that “[s]hould the agencies anticipate it will take them longer than two years, they must offer specific concrete reasons in the proposed schedule for why that is so.” *Id.* And the Court retained jurisdiction “to approve the plan and monitor the agencies’ progress.” *Id.* Finally, the Court ordered that “[a]fter the plan is approved, the agencies are directed to submit updates on their progress every 90 days until their statutory obligations are fulfilled.” *Id.* In other words, from the beginning, the Court recognized that the agencies might need more than two years to bring all eligible parks into compliance with the Act. And the Court required progress updates so it could exercise oversight of the agencies’ efforts.

b. The agencies complied with the Mandamus Order. They submitted the proposed Plan, proposing a schedule for bringing all eligible parks into compliance with the Act within two years. *See* Submission by FAA and Park Service for Approval of Proposed Plan (Plan Submission) at 1-3. When submitting the Plan, the agencies identified “factors or circumstances that may cause delays,” including statutory requirements for tribal consultation, potential tribal participation as a cooperating agency in the NEPA process under the Act, compliance with other statutes, or agency policy related to a particular park. *Id.* at 4. At the same time, the

agencies advised the Court that “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.” *Id.*

Likewise, in the Plan itself, the agencies recognized the possibility that “park-specific circumstances or other external factors may affect their ability to adhere to the schedule proposed below for a particular park.” Plan 1. And the agencies noted that they “will identify the specific and concrete reasons for such delay in the quarterly reports required by the Order at the earliest possible time.” *Id.* This Court approved the Plan in the Approval Order.

Reading the two Orders together, the Court expected the agencies to do their best to complete plans or agreements for all covered parks within two years of submitting the Plan and to notify the Court if it became apparent that they could not meet that timeframe by providing clear and specific reasons why they need more time. And since then, the agencies have continued to follow the Orders and the Plan, as discussed next.

2. For more than a year-and-a-half, the agencies have worked diligently to complete plans or agreements for all covered parks. Over that period, the agencies have invested significant resources to bring all eligible parks into compliance with the Act. *See, e.g.,* Second Welsh Decl. ¶¶ 6-13. Second Sauvajot Decl. ¶ 7. The agencies have faced substantial challenges, but they have addressed

those challenges in a cooperative and collaborative manner. Second Sauvajot Decl.

¶ 8. But the agencies now know that they will need more time to complete some plans. *Id.* ¶ 5, 14-82. This is not for lack of effort (as Petitioners suggest) but because developing air tour management plans has proven complicated and resource-intensive. Thus, the agencies have provided “specific concrete reasons” why they need additional time to complete the management plans for some, but not all, of the 24 parks. *See* Mandamus Order.

a. When the agencies submitted the Plan to the Court, they had not yet implemented an air tour management plan. The entire endeavor was a learning process. Now the agencies have experience preparing draft management plans, and as detailed extensively in the Second Sauvajot Declaration, have invested substantial time and effort to complete plans or agreements for all eligible parks since the Mandamus Order. Armed with the experience and knowledge gained during this process, the agencies can now provide a clear and specific explanation why they need more time to bring some parks into compliance with the Act. And the agencies can state with more confidence how much time they estimate it will take to do so.

b. In the November 2021 Progress Update, the agencies reported that although their goal remained to bring all eligible parks into compliance with the Act consistent with the Plan, they faced “unique challenges and complications” in

completing plans or agreements for nine parks. Progress Update 6-8 (Nov. 24, 2021). And the agencies noted that if it became clear that bringing any of the parks into compliance with the Act would take longer than August 31, 2022, the agencies would provide the Court with “a clear and specific explanation for the need for additional time.” *Id.* at 8.

The agencies did precisely that in the February 2022 Progress Update. For 15 parks, the agencies reported that they were on track, although they faced “particular complications” with two management plans—the plan for Bandelier National Monument and the plan for four San Francisco Bay Area parks. Progress Report 5-6 (Feb. 28, 2022). But the agencies reported that despite devoting extensive resources to the process, it had become clear that they will be unable to bring 8 of the 23 covered parks into compliance within the two-year timeframe. *Id.* at 7. And the agencies provided concrete reasons for the delay and estimated timelines for completing their efforts to bring all parks into compliance. *Id.* at 7-13.

In response to Petitioners’ First Motion to Enforce, the agencies also submitted declarations identifying the agencies’ substantial work towards compliance for the eight parks. *See* Respondents’ Opposition to First Motion to Enforce 11; First Welsh Decl. ¶¶ 16-19; First Sauvajot Decl. ¶¶ 14. Those submissions focused on the agencies’ NEPA efforts because Petitioners asserted

that the agencies were not complying with NEPA. Respondents' Opposition to First Motion to Enforce 8-12. Petitioners say nothing about those declarations.

Finally, the agencies have provided even more detail about the agencies' efforts to develop management plans for 24 parks in the two new declarations submitted with this filing. *See* Second Sauvajot Decl. ¶¶ 1-83; Second Welsh Decl. ¶¶ 1-28. As those declarations show, the agencies face challenges developing the management plans and completing compliance with other applicable laws, in particular with NEPA, the Endangered Species Act, and Section 106 of the National Historic Preservation Act, but are diligently making substantial progress towards bringing all the parks into compliance with the Act.

c. Without foundation, Petitioners allege that the agencies "have done little or nothing with respect to the eight parks they now admit will need at least another year." Second Motion 4. This is not accurate. Consistent with the Court-approved Plan, the agencies proceeded with the planning process for *all* parks at the same time. Second Sauvajot Decl. ¶ 82. That some of the management plans have and will take more time to complete is not due to a lack of diligence by the agencies. *Id.* Some delays are because of factors outside the agencies' control, while in other cases, the delay reflects the complexities applicable to the planning effort for a particular park. *Id.* On this score, Petitioners fail to acknowledge, in particular, that the agencies' obligations under Section 106 and tribal consultation require

extensive outreach and resources. And the timing of completing those consultations is largely outside the agencies' control.

Although Petitioners claim without support that the agencies have done little or nothing at the eight parks, in fact the opposite is true. The agencies have invested the most time and effort on planning for that group of parks because they are more complicated and challenging than ones that are on track to be completed by August 2022. Second Sauvajot Decl. ¶ 82. Similarly, the agencies have invested substantial efforts in the Section 106 consultation process at the eight parks. Second Welsh Decl. ¶¶ 13-27.

Consider the Hawaii national parks. As described in the Second Sauvajot Declaration, the agencies have expended considerable effort to collect, analyze and model information regarding the current conditions of both Hawaii parks, completed substantial pre-NEPA work for both parks, and circulated scoping newsletters for public comment that identified potential draft alternatives. Second Sauvajot Decl. ¶¶ 36-56; *see also* Park Service's February 2022 Scoping Newsletters for the Hawaii parks, attached as Exhibits 5 and 6.

Acting as lead agency for the Section 106 process, FAA has initiated consultation with 82 parties for the Hawai'i Volcanoes management plan, and with 57 parties for the Haleakalā management plan. Second Welsh Decl. ¶ 14. In October 2021, the agencies hosted a Section 106 informational webinar for

prospective consulting parties for the Hawaii parks. *Id.* ¶ 15. In December 2021, FAA and the Park Service conducted a listening sessions for each Hawaii park. Then in March 2022, the agencies held a Section 106 consultation meeting to present potential alternatives for the Hawai'i Volcanoes management plan. *Id.* Besides the public meetings and public comment periods required by the Act, the agencies expect to host additional consultation meetings as the NEPA and Section 106 processes proceed. *Id.*

In short, the Court should credit the agencies' detailed explanations over Petitioners' bare allegations.

3. Finally, Petitioners repeat the same erroneous arguments about the agencies' NEPA compliance that they raised in their First Motion to Enforce. Petitioners claim that “the only parks that are even claimed to be on track . . . are those that will get no [NEPA] review, but instead will claim to be categorically-excluded from NEPA.” Second Motion 4. And Petitioners claim that the Act prevents the agencies from comply with NEPA by applying a categorical exclusion. *Id.* at 4-6. The agencies explained why Petitioners' NEPA arguments are incorrect when the agencies opposed the First Motion to Enforce. Opposition to First Motion to Enforce 7-21. And the Court denied that motion. Petitioners' attempt to resurrect their flawed NEPA arguments should fail too.

* * *

To sum up, the agencies have made substantial and unprecedented progress on their Plan to bring all 24 eligible parks into compliance with the Act by implementing management plans, or agreements, for all of those parks. The agencies have timely submitted Progress Updates to allow the Court to oversee their efforts. And consistent with the Plan and this Court's Orders, the agencies have identified clear and specific reasons why it will take them longer to bring certain parks into compliance with the Act. But the agencies remain committed to doing so.

Finally, Petitioners' repeated motions have presented the agencies with yet another challenge to this planning effort, diverting valuable staff time and focus from the important work of completing plans or agreements for all covered parks. Second Sauvajot Decl. ¶ 83. Even so, the agencies remain committed to completing this effort consistent with the Court-approved Plan.

CONCLUSION

For all these reasons, the Court should deny Petitioners' Second Motion.

Respectfully submitted,

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May 9, 2022

DJ 90-13-1-15766

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this filing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) and Circuit Rule 27(c) because it contains 5,129 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Justin D. Heminger

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- Exhibit 2 Declaration of Raymond M. Sauvajot, Ph.D., Associate Director for National Resource Stewardship and Science for the National Park Service ("First Sauvajot Decl.")
- Exhibit 3 Declaration of Raymond M. Sauvajot, Ph.D., Associate Director for National Resource Stewardship and Science for the National Park Service ("Second Sauvajot Decl.")
- Exhibit 4 Declaration of Kevin Welsh, Executive Director of the Federal Aviation Administration's Office of Environment and Energy ("Second Welsh Decl.")
- Exhibit 5 Hawai'i Volcanoes National Park, Scoping Newsletter for Air Tour Management Plan (February 2022)
- Exhibit 6 Haleakalā National Park, Scoping Newsletter for Air Tour Management Plan (February 2022)

EXHIBIT 1
First Declaration of Kevin Welsh

DECLARATION OF KEVIN WELSH IN SUPPORT OF
THE RESPONSE FROM FEDERAL AVIATION ADMINISTRATION
AND NATIONAL PARK SERVICE IN OPPOSITION TO
PETITIONERS' MOTION TO ENFORCE ORDER
GRANTING PETITION FOR MANDAMUS

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**DECLARATION OF KEVIN WELSH IN SUPPORT OF
THE RESPONSE FROM FEDERAL AVIATION ADMINISTRATION
AND NATIONAL PARK SERVICE IN OPPOSITION TO
PETITIONERS' MOTION TO ENFORCE ORDER
GRANTING PETITION FOR MANDAMUS**

I, Kevin Welsh declare as follows:

1. I am the Executive Director of the Federal Aviation Administration's (FAA) Office of Environment and Energy. The FAA's Office of Environment and Energy maintains responsibility within FAA for addressing issues associated with the National Parks Air Tour Management Act (Act). I am submitting this declaration in support of the Response from the FAA and the National Park Service (NPS) in Opposition to Petitioners' Motion to Enforce Order Granting Petition for Mandamus (Motion).

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. On August 31, 2020, in response to the Court's May 1, 2020 Order granting petitioners' petition for a writ of mandamus, the FAA and the NPS (collectively, the agencies) submitted to this Court a Proposed Plan and Schedule for bringing twenty-three parks into compliance with the Act. The Court approved the Proposed Plan and Schedule on November 20, 2020.

4. Since that time, the agencies have submitted four joint quarterly progress updates as directed by the court. Those progress updates were filed on

November 30, 2020; March 1, 2021; May 28 1, 2021; and August 26, 2021. They were also posted on websites maintained by the agencies. Links to the progress updates on the FAA's website are as follows:

November 30, 2020:

https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/media/faa_nps_progress_update.pdf

March 1, 2021:

https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/media/faa_nps_progress_update_y1q2.pdf

May 28, 2021:

https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/media/faa_nps_progress_update_y1q3.pdf

August 26, 2021:

https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/media/faa_nps_progress_update_y1q4.pdf

These progress updates are accurate reports of the agencies activities to date in implementing the Court approved Plan and Schedule. The next joint progress update is due to the Court on, and will be filed by, November 25, 2021.

5. The FAA has published Federal Register notices announcing the public availability of 12 draft air tour management plans (covering 14 of the 23

parks subject to the Court's order and a 15th park not included in the Order)¹ for public review and comment.² The notices also publish the dates, times, and locations of virtual public meetings for each draft plan. The 15 parks covered by the draft plans released to date are Arches National Park, Bandelier National Monument, Bryce Canyon National Park, Canyonlands National Park, Death Valley National Park, Everglades National Park, Golden Gate National Recreation Area, Glacier National Park, Great Smoky Mountains National Park, Mount Rainier National Park, Muir Woods National Monument, Natural Bridges National Monument, Olympic National Park, Point Reyes National Seashore, and San Francisco Maritime National Historical Park.

6. The 12 draft air tour management plans have been available for public comment on the NPS's Planning, Environment and Public Comment (PEPC) website from the time of publishing and the agencies have held virtual public meetings for all 12 draft plans, as follows:

- a. Arches National Park: September 20, 2021 (4:30-6:00 p.m. MT).

¹ While Muir Woods was exempt from the Air Tour Management Plan provisions of the Act because it experiences 50 or fewer annual tours, NPS withdrew Muir Woods from the exempt park list on March 4, 2021.

² The agencies have prepared a single draft air tour management plan and have held a single public meeting covering Golden Gate National Recreation Area, Muir Woods National Monument, San Francisco Historic Maritime National Historical Park, and Point Reyes National Seashore. So 12 plans and 12 public meetings cover 15 National Park System units.

- b. Bandelier National Monument: September 15, 2021 (4:30-6:00 p.m. MT).
- c. Bryce Canyon National Park: September 27, 2021 (2:30-4:00 p.m. MT).
- d. Canyonlands National Park: September 22, 2021 (4:30-6:00 p.m. MT).
- e. Death Valley National Park: August 17, 2021 (4:30-6:00 p.m. PT).
- f. Everglades National Park: August 19, 2021. (6:30-8:00 p.m. ET).
- g. Olympic National Park: August 25, 2021 (5:30-7:00 p.m. PT).
- h. Glacier National Park: September 21, 2021 (4:30-6:00 p.m. MT).
- i. Golden Gate National Recreation Area, Point Reyes National Seashore, Muir Woods National Monument and San Francisco Maritime National Historical Park: October 26, 2021 (4:30-6:00 p.m. PT).
- j. Great Smoky Mountains National Park: Thursday, September 16, 2021 (4:30-6:00 p.m. ET).
- k. Mount Rainier National Park: Monday, August 16, 2021 (4:30-6:00 p.m. PT).
- l. Natural Bridges National Monument: Thursday, September 23, 2021 (4:30-6:00 p.m. MT).

7. In the Motion, petitioners allege that

. . . the agencies have failed to take any action to comply with [the National Environmental Policy Act] (NEPA) with regard to the 11 draft [Air Tour Management Plans] ATMPs that have so far been issued and presented for public comment with absolutely no mention of NEPA. There is no apparent intention or plan to comply, and in fact every indication is that the agencies will finalize the draft plans after consideration of public comments with no NEPA analysis at all.

Motion at 2. These statements are simply not true. The agencies understand their legal obligations and will comply with NEPA, and other applicable laws, with respect to each air tour management plan in accordance with the Court approved plan and schedule.

8. The agencies have devoted substantial time and resources since the Court issued its Order in May 2020 to conducting environmental analysis in compliance with NEPA and preparing draft NEPA documentation. For example, the FAA team implementing the air tour management plans is now comprised of nine staff with day-to-day responsibilities, along with contributions from many others across the agency. Moreover, the FAA has assumed fifty percent of the cost to retain a dedicated team from the Department of Transportation John A. Volpe National Transportation Systems Center (Volpe Center) to assist in data collection and analysis, drafting services, project management, and other tasks as assigned. Currently, the equivalent of approximately eight full-time Volpe Center staff are assisting the agencies with the air tour management program.

9. The agencies are considering the appropriate NEPA pathway for each air tour management plan on a case-by-case basis. With regard to the 12 draft air tour management plans that have been released for public review and comment, the agencies currently anticipate that NPS may apply a documented categorical exclusion (CE), and the FAA may adopt NPS's CE determination pursuant to 40 CFR §1506.3(d), but the agencies have made no final determinations on the use of CEs for these parks. For every plan where a documented CE is applied, the agencies would prepare a detailed environmental screening form, based on close scrutiny of each park's particular environmental character, as well as the preparation of the CE itself and supporting analysis and documentation. The agencies have already conducted preliminary analysis and drafting of this documentation for each of the 12 draft plans that have been released. The FAA would need to adopt NPS's CE determination, and both agencies would sign a Record of Decision before a final plan could be issued. While the Act provides for public meetings and comment on the draft air tour management plans, neither NEPA nor the Act require draft CEs to be made public. Nevertheless, the agencies fully intend to make completed CEs and supporting documentation available to the public at the time they release final air tour management plans.

10. While the agencies contemplate applying a CE to the 12 draft plans that have been released for public review and comment so far, no final

determination has been made as to whether a CE is the appropriate NEPA pathway for the plans, and any such determination will be informed by the ongoing Section 106 and Section 7 consultations. If the agencies determine that a CE is not the appropriate NEPA pathway for any plan or plans, the agencies will proceed to prepare environmental assessments for such plans to ensure that they would not cause significant environmental impacts and that environmental impact statements are not necessary. The agencies are fully committed to complying with NEPA for every air tour management plan they issue.

11. The agencies have already engaged in, and will continue to engage in, expansive consultation and compliance with Section 106 of the National Historic Preservation Act including government-to-government consultation with Tribes. In particular, the agencies have initiated consultation with 12 state historic preservation officers, 133 tribes, 195 consulting parties, sent approximately 700 letters, hosted 5 informational meetings with state historic preservation offices and other consulting parties, and had 7 park specific consultation meetings with tribes.

12. In the public meetings for the draft plans, and in publicly available written materials, the agencies have been transparent about the fact that they are considering the use of a CE for the twelve draft plans that have been made available for public review to date.

13. Each of the 12 public meetings, which were conducted on a Zoom platform and simultaneously live streamed to YouTube, Facebook, and Twitter, and which are also available to the public on the FAA's YouTube page (<http://youtube.com/user/FAAnews/videos>), has begun with a presentation, including an accompanying PowerPoint, and has ended with a real-time question and answer session. All of the PowerPoints include a slide acknowledging the agencies' obligation to comply with NEPA. Each of the first four presentations contain the statement "[a]t this time, the FAA and the NPS are considering developing the ATMP under an NPS Categorical Exclusion," while each of the later presentations contain a similar statement reading, "[a]t this time, the FAA and the NPS have conducted an initial impact analysis and are considering developing the ATMP under an NPS Categorical Exclusion." These statements were read aloud by the presenter at every meeting. *See* Arches National Park virtual public meeting at 32:35; Bandelier National Monument virtual public meeting at 33:37; Bryce Canyon National Park virtual public meeting at 35:06; Canyonlands National Park virtual public meeting at 34:44; Death Valley National Park virtual public meeting at 34:40; Everglades National Park virtual public meeting at 35:10; Olympic National Park virtual public meeting at 29:52; Glacier National Park virtual public meeting at 37:36; Bay Area National Parks virtual public meeting at 34:06; Great Smoky Mountains National Park virtual public meeting at 40:58;

Mount Rainier virtual public meeting at 27:30; and Natural Bridges virtual public meeting at 33:58.

14. The PowerPoint presentations for these public meetings have all been made publicly available on the NPS's PEPC website and are available at the following locations, with the slide referencing the proposed use of CE's identified for each:

Mount Rainier – Slide #25:

<https://parkplanning.nps.gov/showFile.cfm?projectID=102920&MIMEType=application%252Fpdf&filename=MORA%5FATMP%5FPublic%5FMeeting%5FPresentation%5FFinal%5F081221%5F508%20Compliant%2Epdf&sfid=543585>

Death Valley – Slide #25:

<https://parkplanning.nps.gov/showFile.cfm?projectID=103441&MIMEType=application%252Fpdf&filename=DEVA%5FATMP%5FPublic%5FMeeting%5FPresentation%5FFinal%5F081221%5F508%20Compliant%2Epdf&sfid=542576>

Everglades – Slide #24:

<https://parkplanning.nps.gov/showFile.cfm?projectID=97578&MIMEType=application%252Fpdf&filename=EVER%5FATMP%5FPublic%5FMeeting%5FPresentation%5FFinal%5F081221%5F508%20Compliant%2Epdf&sfid=542579>

Olympic – Slide #24:

<https://parkplanning.nps.gov/showFile.cfm?projectID=103431&MIMEType=application%252Fpdf&filename=OLYM%5FATMP%5FPublic%5FMeeting%5FPresentation%5FFinal%5F081221%5F508%20Compliant%2Epdf&sfid=543581>

Bandelier – Slide #25:

<https://parkplanning.nps.gov/showFile.cfm?projectID=103440&MIMEType=application%252Fpdf&filename=BAND%5FPresentation%5FFinal%5F090721%5F508%2Epdf&sfid=543579>

Great Smoky Mountains – Slide #27:

<https://parkplanning.nps.gov/showFile.cfm?projectID=100689&MIMEType=application%252Fpdf&filename=GRSM%5FPresentation%5FFinal%5F083121%5F508%2Epdf&sfid=542577>

Arches – Slide #25:

<https://parkplanning.nps.gov/showFile.cfm?projectID=102782&MIMEType=application%252Fpdf&filename=ARCH%5FPresentation%5FFinal%5F090721%5F508%2Epdf&sfid=543094>

Glacier – Slide #26:

<https://parkplanning.nps.gov/showFile.cfm?projectID=103520&MIMEType=application%252Fpdf&filename=GLAC%5FPresentation%5FFinal%5F090721%5F508%2Epdf&sfid=542599>

Canyonlands – Slide #24:

<https://parkplanning.nps.gov/showFile.cfm?projectID=102784&MIMEType=application%252Fpdf&filename=CANY%5FPresentation%5FFinal%5F090721%5F508%2Epdf&sfid=543095>

Natural Bridges – Slide #25:

<https://parkplanning.nps.gov/showFile.cfm?projectID=102783&MIMEType=application%252Fpdf&filename=NABR%5FPresentation%5FFinal%5F090721%5F508%2Epdf&sfid=543104>

Bryce Canyon – Slide #25:

<https://parkplanning.nps.gov/showFile.cfm?projectID=103148&MIMEType=application%252Fpdf&filename=BRCA%5FPresentation%5FFinal%5FSection%20508%20Compliant%2Epdf&sfid=542262>

Golden Gate/Muir Woods/San Francisco Maritime/
Point Reyes – Slide #31:

<https://parkplanning.nps.gov/showFile.cfm?projectID=103175&MIMEType=application%252Fpdf&filename=GOGA%2DSAFR%2DPORE%2DMUWO%20ATMP%20Public%20Meeting%5F508%2Epdf&sfid=547042>

15. Each of the 12 public meetings included a question and answer session, during which the agencies responded to questions submitted during the meeting. In response to questions regarding NEPA compliance for the draft plans, the presenters discussed various NEPA-related topics such as the agencies' anticipated NEPA pathway for the air tour management plans, including the potential use of a categorical exclusion; that the agencies will consider public comments on the air tour management plans and information obtained during consultations before making a final determination on the NEPA pathway; and that a categorical exclusion is not an exclusion from NEPA but rather a level of NEPA review. *See e.g.*, Bandelier National Monument public meeting at 44:31; Bryce Canyon National Park public meeting at 47:30, 59:35, and 1:13:02; Canyonlands National Park public meeting at 53:03; Death Valley National Park public meeting at 43:08; Everglades National Park public meeting at 42:19 and 1:05:39; Glacier National Park public meeting at 50:01 and 1:03:24; Bay Area National Parks

public meeting at 42:37 and 51:30; Great Smoky Mountains National Park public meeting at 56:27; Mount Rainier National Park public meeting at 48:06, 1:07:00, 1:17:32, and 1:23:36; National Bridges National Monument public meeting at 57:11; and Olympic National Park public meeting at 46:04, 53:46, and 1:25:50.

16. As to the remaining nine parks for which the agencies have not released a draft air tour management plan for public review, the agencies have made, and continue to make, substantial efforts towards compliance with the Act, notwithstanding the unique complexities of each of these parks. These efforts have included defining the current condition of air tours over these parks (identifying routes, altitudes, etc...), consulting with affected tribes regarding their concerns, working with the local Flight Standards District Offices regarding complicated airspace and safety issues, and informally consulting with park biologists and the U.S. Fish and Wildlife Service to identify threatened and endangered species within the parks and to identify measures to mitigate any effects of commercial air tours on any threatened or endangered species.

17. The agencies have so far determined that they will prepare environmental assessments (EAs) to comply with NEPA for at least four parks. Those parks are Hawai'i Volcanoes National Park, Haleakalā National Park, Mount Rushmore National Memorial, and Badlands National Park.

18. The agencies are actively working toward compliance with the Act and to determine the appropriate NEPA pathway for the remaining five parks, each of which present unique challenges:

- 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.

19. For those parks in which an EA is being prepared, the agencies will conduct public scoping and will make a draft EA available for public review and comment consistent with NEPA and agency guidance. The agencies do not currently contemplate implementing any air tour management plans that have significant environmental impacts. However, if they were to do so, the agencies would first prepare an environmental impact statement consistent with NEPA.

20. In summary, with respect to the preparation of the air tour management plans for all parks identified in response to the Court's order, the agencies have committed to comply with all applicable laws, including NEPA, and have undertaken, and will continue to undertake, substantial work in furtherance of this effort. 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. This effort has not been without its challenges, both foreseen and unforeseen, and the agencies will continue to accurately keep the Court apprised of their progress in the quarterly progress updates. If it becomes clear that compliance with the Act for a particular park will

not be completed by August 31, 2022, the agencies will provide the Court with a clear and specific explanation for the need for additional time.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 5, 2021 at Washington, DC.

KEVIN W.
WELSH

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KEVIN W. WELSH
Date: 2021.11.05
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Kevin Welsh

EXHIBIT 2

First Declaration of Raymond Sauvajot

DECLARATION OF RAYMOND M. SAUVAJOT, PH.D.
IN SUPPORT OF THE RESPONSE BY THE FEDERAL AVIATION
ADMINISTRATION AND THE NATIONAL PARK SERVICE TO
PETITIONERS' MOTION TO ENFORCE ORDER
GRANTING PETITION FOR MANDAMUS

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**DECLARATION OF RAYMOND M. SAUVAJOT, PH.D.
IN SUPPORT OF THE RESPONSE BY THE FEDERAL AVIATION
ADMINISTRATION AND THE NATIONAL PARK SERVICE TO
PETITIONERS' MOTION TO ENFORCE ORDER
GRANTING PETITION FOR MANDAMUS**

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 have been in this position for seven years. Prior to that time, I served as Deputy Associate Director for Natural Resource Stewardship and Science, Natural Resource Program Chief for the NPS Pacific West Region, and Chief of Planning, Science, and Resource Management for Santa Monica Mountains National Recreation Area. All told, I have worked for the NPS for 28 years.
2. As Associate Director, I oversee natural resource management and science programs for the NPS, including national programs in biology, air and water resources, geology, natural sounds and night skies, environmental quality and compliance, ecological inventory and monitoring, climate change response, and science communication. The Natural Sounds and Night Skies Division is a Washington support program within the Natural Resource Stewardship and Science directorate. The NPS National Overflights Program, which has primary responsibility for implementing the National

Parks Air Tour Management Act (Act), is within the Natural Sounds and Night Skies Division. The NPS's Environmental Quality Division, which provides project management and National Environmental Policy Act (NEPA) planning assistance nationwide to help ensure that the National Park Service meets its mission to preserve park resources and values, is also within my directorate.

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. I have read and am familiar with the Declaration of Kevin Welsh, the Executive Director of the Federal Aviation Administration's (FAA) Office of Environment and Energy, dated November 5, 2021 and agree with the factual statements therein. In the interest of brevity, this declaration does not separately set forth facts stated in Mr. Welsh's declaration related to the agencies' joint activities, but only provides facts specific to the NPS's efforts to implement the Court approved plan and schedule.
5. I have read and am familiar with the four joint quarterly progress updates filed by the agencies that are referenced in Paragraph 4 of Mr. Welsh's declaration. Those progress updates are accurate reports of the agencies activities to date in implementing the Court approved plan and schedule.

6. I have read and am familiar with the Motion to Enforce Order Granting Petition for Mandamus filed by Public Employees for Environmental Responsibility on October 12, 2021. In the Motion, Petitioners allege that

. . . the agencies have failed to take any action to comply with [the National Environmental Policy Act] (NEPA) with regard to the 11 draft [Air Tour Management Plans] ATMPs that have so far been issued and presented for public comment with absolutely no mention of NEPA. There is no apparent intention or plan to comply, and in fact every indication is that the agencies will finalize the draft plans after consideration of public comments with no NEPA analysis at all.

Motion at 2. These statements are not true. The agencies understand their legal obligations and will comply with NEPA, and other applicable laws, with respect to each air tour management plan in accordance with the Act and the Court approved plan and schedule.

7. As explained in Paragraph 8 of Mr. Welsh's declaration, the agencies devoted substantial time and resources to preparing air tour management plans and associated environmental compliance documents, including NEPA compliance documentation since May 2020. In addition to the time and resources identified by Mr. Welsh, the NPS has a core team of personnel within the Natural Sounds and Night Skies and Environmental Quality Divisions who devote all or a substantial amount of their time to this process, and additional personnel who pitch in as needed. Staff for the affected National Park System units and staff working for multiple NPS

regions have also devoted substantial time and resources to the development, review, and environmental compliance processes for the 12 draft air tour management plans that have already been released for public review and comment and the ongoing planning process for the 9 remaining parks for which an air tour management plan or voluntary agreement is required.

Further, the NPS has assumed fifty percent of the cost sharing and oversight of the NPS interagency agreement with the Department of Transportation Volpe Center to retain a dedicated team to assist in data collection and analysis, drafting services, project management, and other tasks as assigned.

8. As noted in Paragraph 5 and Footnotes 1 and 2 of Mr. Welsh's declaration, on March 4, 2021, the NPS withdrew the exemption of Muir Woods National Monument (Muir Woods) from the Act's requirement to complete an air tour management plan or voluntary agreement for the park via a letter from me to Raquel Girvin, Regional Administrator for the FAA Western Pacific Region. Even though no commercial air tours had occurred over Muir Woods in recent years, the interim operating authority for the park was 5,090 commercial air tours per year. The NPS determined that an air tour management plan is necessary to protect the resources and values and visitor experience of Muir Woods from potential future impacts from air tours and to preserve the primeval character and ecological integrity of the old-growth

redwood forest for scientific values and inspiration. In addition, given its proximity to Golden Gate National Recreation Area, Point Reyes National Seashore, and San Francisco Maritime National Historical Park, for which the agencies were preparing a single combined air tour management plan, the agencies found that it made sense to include Muir Woods in the combined air tour management plan for the neighboring parks. The agencies decided to prepare a combined ATMP, rather than four separate ATMPs for the San Francisco Bay Area parks, given the close proximity of the parks, the air tour routes that necessarily overfly multiple parks, and the fact that the same air tour operators are involved.

9. As explained in Paragraphs 9-10 of Mr. Welsh's declaration, for the 12 draft air tour management plans already released, the agencies anticipate that the NPS may apply a documented categorical exclusion, though no final decision regarding the appropriate NEPA pathway for any particular plan has yet been made. The categorical exclusion (CE) that the NPS is considering applying is set forth in the Department of the Interior, Departmental Manual at 516 DM 12.5 A(1), which applies to "[c]hanges or amendments to an approved action when such changes would cause no or only minimal environmental impacts." A true copy of 516 DM 12.5 is attached as Attachment 1 to this declaration. For the purposes of the

potential application of the CE, the “approved action” would be the interim operating authority issued by the FAA consistent with the Act, which was a non-discretionary authorization directed by Congress.

10. The CE that the NPS is contemplating applying to the draft air tour management plans released to date is also reproduced in the NPS NEPA Handbook at CE 3.3.A.1. Excerpts from the NPS NEPA Handbook are attached as Attachment 2 to this declaration and the NEPA handbook in its entirety is available at:
https://www.nps.gov/subjects/nepa/upload/NPS_NEPAHandbook_Final_508.pdf. In general, the NPS NEPA Handbook divides the categorical exclusions available to the NPS into two categories: those that require documentation and those that do not. The CE at 3.3A.1. is in the category of CEs for which documentation is required. NEPA Handbook at 33.
11. The NPS NEPA Handbook provides the following definitions that are relevant to Petitioner’s motion:

NEPA Document – Generally refers to an EA or EIS and can also refer to documentation prepared for a CE that requires documentation.

NEPA Pathway – Level of analysis and documentation for a NEPA review. CEs, EAs, and EISs are all specific NEPA pathways.

NEPA Process – All measures necessary to comply with the procedural requirements of NEPA for a specific action (1508.21).

NEPA Review – Applies broadly to all levels of NEPA documentation, whether it is a CE, EA, or EIS.

NEPA Handbook at 88.

12. The references in the Court approved plan and schedule to “NEPA templates,” “NEPA compliance,” “NEPA Documents,” “NEPA Documentation,” and the “appropriate level of park-specific NEPA Review” are all consistent with the NPS NEPA Handbook, which includes documented CEs within the definition of the terms “NEPA Document,” “NEPA Pathway,” “NEPA Process,” and “NEPA Review.” *Compare* Proposed Plan and Schedule at pp. 2, 5, 6 *with* NEPA Handbook at 88. Similarly, in my August 28, 2020 declaration submitted in support of the agencies’ proposed plan and schedule, I did not use the term “environmental documents” but instead used the broader terms “NEPA compliance” and “NEPA documents” which, consistent with the NEPA Handbook, include documented CEs, such as the one NPS is contemplating applying to the draft air tour management plans. *See* Aug. 28, 2020 Sauvajot Decl., pp. 4, 5, 6, 9,
11. The agencies’ progress updates filed with the Court to date have specifically referenced work on environmental assessments (EAs) where appropriate, but have also used more general terms like “NEPA pathway,” “NEPA review,” “National Environmental Policy Act (NEPA) documents,” “NEPA compliance documents,” and “NEPA documentation” to encompass

work done both on documented CEs and EAs, consistent with the NEPA Handbook. *See* Nov. 30, 2020 Progress Update at pp. 1-2; March 1, 2021 Progress Update at p. 2; May 28, 2021 Progress Update at p. 4; Aug. 26, 2021 Progress Update at p. 3.

13. As noted in Paragraph 10 of Mr. Welsh's declaration, if the agencies determine that a CE may not be applied to any of the proposed air tour management plans, they will prepare an environmental assessment (EA) or environmental impact statement (EIS), as appropriate.
14. Mr. Welsh's declaration also accurately captures the work the agencies have jointly undertaken to date pursuant to the Court approved plan and schedule. In addition to the work described by Mr. Welsh, staff at the Overflights Program have worked intensively with staff from individual National Park System units to understand the effects of current air tour operations on park resources and visitor experience, including identifying tribal concerns, historic properties, and threatened and endangered species present in the park that may be affected by air tours. This work also included establishing ambient baseline acoustic conditions and modeling existing air tour conditions based on operator reports. Staff then identified potential changes to the existing air tour operations that could address park resource

and visitor experience concerns including, but not limited to, time of day restrictions, daily caps on air tours, and route or altitude modifications.

15. The interim operating authority under which operators currently operate does not set routes over the park or prescribe operating conditions for an operator except to limit the number of air tours the operator is permitted to fly over a park each year. Each of the 12 draft air tour management plans released to date has incorporated some modifications to the current condition based on consultation with park subject matter experts and consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Setting specific routes and minimum altitudes for flights, requiring operators to install and use flight monitoring equipment that would better enable the agencies to monitor and ensure compliance with the plans, setting time of day restrictions and daily flight limits, and allowing the NPS to set temporary no fly periods are just some of the protective measures included in the draft management plans that are unavailable under interim operating authority. And the draft management plans limit the annual number of flights that would be authorized based on a three-year average of flights reported to be flown, which is, in some cases, substantially lower than the number of flights operators could potentially fly under interim operating

authority. The NPS believes that each of these draft air tour management plans would, if implemented, protect park resources and visitor experience.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 5, 2021 in Washington, D.C.

RAYMOND
SAUVAJOT

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SAUVAJOT
Date: 2021.11.05 13:09:09 -04'00'

Raymond M. Sauvajot, Ph.D.

SAUVAJOT DECLARATION
ATTACHMENT 1

Department of the Interior Departmental Manual

Effective Date: 5/27/04

Series: Environmental Quality Programs

Part 516: National Environmental Policy Act of 1969

Chapter 12: Managing the NEPA Process--National Park Service

Originating Office: National Park Service

516 DM 12

12.1 Purpose. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's National Park Service. This Chapter is referenced in 516 DM 6.5.

12.2 NEPA Responsibility.

A. The Director is responsible for NEPA compliance for National Park Service (NPS) activities.

B. Regional Directors are responsible to the Director for integrating the NEPA process into all regional activities and for NEPA compliance in their regions.

C. The Denver Service Center performs most major planning efforts for the National Park Service and integrates NEPA compliance and environmental considerations with project planning, consistent with direction and oversight provided by the appropriate Regional Director.

D. The Environmental Compliance Division (Washington), which reports to the Associate Director-Planning and Development, serves as the focal point for all matters relating to NEPA compliance; coordinates NPS review of NEPA documents prepared by other agencies; and provides policy review and clearance for NPS EISs. Information concerning NPS NEPA documents or the NEPA process can be obtained by contacting this office.

12.3 Guidance to Applicants. Actions in areas of NPS jurisdiction that are initiated by private or non-Federal entities include the following:

A. Minerals. Mineral exploration, leasing and development activities are not permitted in most units of the National Park System. There are exceptions where mineral activities are authorized by law and all mineral activities conducted under these exceptions require consultation with and evaluation by officials of the NPS and are subject to NEPA compliance. Some procedures whereby mineral activities are authorized are outlined below. For site-specific proposals, interested parties should contact the appropriate NPS Regional Director for a determination of whether authorities for conducting other types of mineral activities in particular areas exist and, if so, how to obtain appropriate permits. For further information about NPS

minerals policy, interested parties should contact the Energy, Mining, and Minerals Division (Denver, Colorado).

(1) **Mining Claims and Associated Mining Operations.** All Units of the National Park System are closed to mineral entry under the 1872 Mining Law, and mining operations associated with mining claims are limited to the exercise of valid prior existing rights. Prior to conducting mining operations on patented or unpatented mining claims within the National Park System, operators must obtain approval of the appropriate NPS Regional Director. The Regional Directors base approval on information submitted by potential operators that discusses the scope of the proposed operations, evaluates the potential impacts on park resources, identifies measures that will be used to mitigate adverse impacts, and meets other requirements contained in 36 CFR Part 9, Subpart A, which governs mining operations on mining claims under the authority of the Mining in the Parks Act of 1976.

(2) **Non-Federal Mineral Rights.** Privately held Oil, gas and mineral rights on private land or split estates (Federally-owned surface estate and non-Federally owned subsurface estate) exist within some park boundaries. Owners of outstanding subsurface oil and gas rights are granted reasonable access on or across park units through compliance with 36 CFR Part 9, Subpart B. These procedures require an operator to file a plan of operations for approval by the appropriate NPS Regional Director. An approved plan of operations serves as the operator's access permit.

(3) **Federal Mineral Leasing and Mineral Operations.**

(a) **Leasing of Federally-owned minerals** is restricted to five national recreation areas in the National Park System, where leasing is authorized in the enabling legislation of the units. According to current regulations (43 CFR 3100.0-3(g)(4); 43 CFR 3500.0-3(c)(7)). These areas are: Lake Mead, Glen Canyon, Ross Lake, Lake Chelan, and Whiskeytown National Recreation Areas. However, Lake Chelan was designated in 1981 as an "excepted" area under the regulations and is closed to mineral leasing. The Bureau of Land Management (BLM) issues leases on these lands and controls and monitors operations. Applicable general leasing and operating procedures for oil and gas are contained in 43 CFR Part 3100, et seq, and for minerals other than oil and gas in 43 CFR 3500 et seq. Within units of the National Park System, the NPS, as the surface management agency, must consent to the permitting and leasing of park lands and concur with operating conditions established in consultation with the BLM. Leases and permits can only be granted upon a finding by the NPS Regional Director that the activities authorized will not have a significant adverse effect on the resources and administration of the unit. The NPS can also require special lease and permit stipulations for protecting the environment and other park resources. In addition, the NPS participates with BLM in preparing environmental analyses of all proposed activities and in establishing reclamation requirements for park unit lands.

(b) **Glen Canyon National Recreation Area** is the only unit of the National Park System containing special tar sands areas as defined in the Combined Hydrocarbon Leasing Act of 1981. In accordance with the requirements of this Act, the BLM has promulgated regulations governing the conversion of existing oil and gas leases located in special tar sands

areas to combined hydrocarbon (oil, gas, and tar sands) leases and for instituting a competitive combined hydrocarbon leasing program in the special tar sands areas. Both of these activities, lease conversions and new leasing, may occur within the Glen Canyon NRA provided that they take place commensurate with the unit's minerals management plan and that the Regional Director of the NPS makes a finding of no significant adverse impact on the resources and administration of the unit or on other contiguous units of the National Park System. If the Regional Director does not make such a finding, then the BLM cannot authorize lease conversions or issue new leases within the Glen Canyon NRA. The applicable regulations are contained in 43 CFR 3140.7 and 3141.4-2, respectively. Intra-Departmental procedures for processing conversion applications have been laid out in a Memorandum of Understanding (MOU) between the BLM and the NPS. For additional information about combined hydrocarbon leasing, interested parties should contact the Energy, Mining and Minerals Division (Denver, Colorado).

B. Grazing. Grazing management plans for NPS units subject to legislatively-authorized grazing are normally prepared by the NPS or jointly with the BLM. Applicants for grazing allotments must provide the NPS and/or the BLM with such information as may be required to enable preparation of environmental documents on grazing management plans. Grazing is also permitted in some NPS areas as a condition of land acquisition in instances where grazing rights were held prior to Federal acquisition. The availability of these grazing rights is limited and information should be sought through individual Park Superintendents.

C. Permits, Rights-of-Way, and Easements for Non-Park Uses. Informational requirements are determined on a case-by-case basis, and applicants should consult with the Park Superintendent before making formal application. The applicant must provide sufficient information on the proposed non-park use, as well as park resources and resource-related values to be affected directly and indirectly by the proposed use in order to allow the Service to evaluate the application, assess the impact of the proposed use on the NPS unit and other environmental values, develop restrictions/stipulations to mitigate adverse impacts, and reach a decision on issuance of the instrument. Authorities for such permits, rights-of-way, etc., are found in the enabling legislation for individual National Park System units and 16 U.S.C. 5 and 79 and 23 U.S.C. 317. Right-of-way and easement regulations are found at 36 CFR Part 14. Policies concerning regulation of special uses are described in the NPS Management Policies Notebook.

D. Archaeological Permits. Permits for the excavation or removal of archaeological resources on public and Indian lands owned or administered by the Department of the Interior, and by other agencies that may delegate this responsibility to the Secretary, are issued by the Director of the NPS. These permits are required pursuant to the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95) and implementing regulations (43 CFR Part 7), whenever materials of archaeological interest are to be excavated or removed. These permits are not required for archaeological work that does not result in any subsurface testing and does not result in the collection of any surface or subsurface archaeological materials. Applicants should contact the Departmental Consulting Archaeologist in Washington about these permits.

E. Federal Aid. The NPS administers financial and land grants to States, local governments and private organizations/individuals for outdoor recreation acquisition,

development and planning (Catalog of Federal Domestic Assistance (CFDA #15.916), historic preservation (CFDA #15.904), urban park and recreation recovery (CFDA #15.919) and Federal surplus real property for park recreation and historic monument use (CFDA #15.403). The following program guidelines and regulations list environmental requirements which applicants must meet:

- (1) Land and Water Conservation Fund Grants Manual, Part 650.2;
- (2) Historic Preservation Grants-in-Aid Manual, Chapter 4;
- (3) Urban Park and Recreation Recovery Guidelines, NPS-37;
- (4) Policies and Responsibilities for Conveying Federal Surplus Property Manual, Part 271.

Copies of documents related to the Land and Water Conservation Fund and the Historic Preservation Fund have been provided to all State Liaison Officers for outdoor recreation and all State Historic Preservation Officers. Copies of these documents related to the Urban Park and Recreation Recovery Program are available for inspection in each NPS Regional Office as well as the NPS Office of Public Affairs in Washington, D.C. Many State agencies which seek NPS grants may prepare related EISs pursuant to section 102(2)(D) of NEPA. Such agencies should consult with the NPS Regional Office.

F. Conversion of Acquired and Developed Recreation Lands. The NPS must approve the conversion of certain acquired and developed lands prior to conversion. These include:

- (1) All State and local lands and interests therein, and certain Federal lands under lease to the States, acquired or developed in whole or in part with monies from the Land and Water Conservation Fund Act are subject to section 6(f) of the Act which requires approval of conversion of use.
- (2) All recreation areas and facilities (as defined in section 1004), developed or improved, in whole or in part, with a grant under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95-625, Title 10) are subject to section 1010 of the Act which requires approval for a conversion to other than public recreation uses.
- (3) Most Federal surplus real property which has been conveyed to State and local governments for use as recreation demonstration areas, historic monuments or public park and recreation areas (under the Recreation Demonstration Act of 1942 or the Federal Property and Administrative Services Act of 1949, as amended) are subject to approval of conversion of use.
- (4) All abandoned railroad rights-of-way acquired by State and local governments for recreational and/or conservation uses with grants under section 809(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, are subject to approval of conversion of use. Application for approval of conversion of the use of these lands must be submitted to the appropriate Regional Director of the NPS. Early consultation with the Regional Office is

encouraged to insure that the application is accompanied by any required environmental documentation. If the property was acquired through the Land and Water Conservation Fund, then the application must be submitted through the appropriate State Liaison Officer for Outdoor Recreation. If the property was acquired under the Federal Property and Administrative Services Act of 1949, as amended, approval of an application for conversion of use must also be concurred in by the General Services Administration.

12.4 Major Actions Normally Requiring Environmental Impact Statements.

A. The following types of NPS proposals will normally require the preparation of an EIS:

- (1) Wild and Scenic River proposals;
- (2) National Trail proposals;
- (3) Wilderness proposals;
- (4) General Management Plans for major National Park System units;
- (5) Grants, including multi-year grants, whose size and/or scope will result in major natural or physical changes, including interrelated social and economic changes and residential and land use changes within the project area or its immediate environs;
- (6) Grants which foreclose other beneficial uses of mineral, agricultural, timber, water, energy or transportation resources important to National or State welfare.

B. If for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared and made available for public review in accordance with section 1501.4(e)(2).

12.5 Categorical Exclusions. In addition to the actions listed in the Departmental categorical exclusions in Appendix 1 of 516 DM 2, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 to 516 DM 2.

A. Actions Related to General Administration.

- (1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.
- (2) Land and boundary surveys,
- (3) Minor boundary changes,
- (4) Reissuance/renewal of permits, rights-of-way or easements not involving new environmental impacts,

(5) Conversion of existing permits to rights-of-way, when such conversions do not continue or initiate unsatisfactory environmental conditions,

(6) Issuances, extensions, renewals, reissuances or minor modifications of concession contracts or permits not entailing new construction,

(7) Commercial use licenses involving no construction,

(8) Leasing of historic properties in accordance with 36 CFR Part 18 and NPS-38,

(9) Preparation and issuance of publications,

(10) Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it,

(c) Conflict with adjacent ownerships or land uses, or

(d) Cause a nuisance to adjacent owners or occupants.

(11) At the direction of the NPS responsible official, actions where NPS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau.

B. Plans, Studies and Reports.

(1) Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.

(2) Cultural resources maintenance guides, collection management plans and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

(4) Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying and information gathering.

(5) Statements for management, outlines of planning requirements and task directives for plans and studies.

(6) Technical assistance to other Federal, State and local agencies or the general public.

(7) Routine reports required by law or regulation.

(8) Authorization, funding or approval for the preparation of Statewide Comprehensive Outdoor Recreation Plans.

(9) Adoption or approval of surveys, studies, reports, plans and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.

(10) Preparation of internal reports, plans, studies and other documents containing recommendations for action which NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.

(11) Land protection plans which propose no significant change to existing land or visitor use.

(12) Documents which interpret existing mineral management regulations and policies, and do not recommend action.

C. Actions Related to Development.

(1) Land acquisition within established park boundaries.

(2) Land exchanges which will not lead to significant changes in the use of land.

(3) Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds and trails.

(4) Routine maintenance and repairs to cultural resource sites, structures, utilities and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

(5) Installation of signs, displays, kiosks, etc.

(6) Installation of navigation aids.

(7) Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing systems (e.g., routes and schedule changes).

(8) Replacement in kind of minor structures and facilities with little or no change in location, capacity or appearance.

(9) Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

(10) Sanitary facilities operation.

(11) Installation of wells, comfort stations and pit toilets in areas of existing use and in developed areas.

(12) Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

(13) Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not change existing pole line configurations.

(14) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

(15) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

(16) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing utility right-of-way.

(17) Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

(18) Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities accessible to the handicapped.

(19) Landscaping and landscape maintenance in previously disturbed or developed areas.

(20) Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

D. Actions Related to Visitor Use.

(1) Carrying capacity analysis.

(2) Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental education programs.

(4) Minor changes in programs and regulations pertaining to visitor activities.

(5) Issuance of permits for demonstrations, gathering, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance.

(6) Designation of trail side camping zones with no or minimal improvements.

E. Actions Related to Resource Management and Protection.

(1) Archeological surveys and permits involving only surface collection or small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and research natural areas.

(4) Stabilization by planting native plant species in disturbed areas.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Restoration of noncontroversial native species into suitable habitats within their historic range and elimination of exotic species.

(7) Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources or become a nuisance in areas surrounding a park, when such removal is included in an approved resource management plan.

(8) Removal of non-historic materials and structures in order to restore natural conditions.

(9) Development of standards for, and identification, nomination, certification and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.

F. Actions Related to Grant Programs.

(1) Proposed actions essentially the same as those listed in paragraphs A-E above.

(2) Grants for acquisition of areas which will continue in the same or lower density use with no additional disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural resources of the area; or the integrity of the existing setting.

(4) Grants for construction of facilities on lands acquired under a previous NPS or other Federal grant provided that the development is in accord with plans submitted with the acquisition grant.

(5) Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:

(a) Conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants; e.g., extend use beyond daylight hours;

(b) Introduce motorized recreation vehicles;

(c) Introduce active recreation pursuits into a passive recreation area;

(d) Increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or

(e) Add or alter access to the park from the surrounding area.

(6) Grants for the restoration, rehabilitation, stabilization, preservation and reconstruction (or the authorization thereof) of properties listed on or eligible for listing on the National Register of Historic Places at their same location and provided that such actions:

(a) Will not alter the integrity of the property or its setting;

(b) Will not increase public use of the area to the extent of compromising the nature and character of the property; and

(c) Will not cause a nuisance to adjacent property owners or occupants.

5/27/04 #3622

Replaces 3/18/80 #3511

SAUVAJOT DECLARATION
ATTACHMENT 2

National Park Service NEPA Handbook



2015

ACRONYMS

ACHP	Advisory Council on Historic Preservation
CE	categorical exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DM	Departmental Manual
DO-12	Director's Order 12
DO-75A	Director's Order 75A
DOI	Department of the Interior
DEIS	draft environmental impact statement
EA	environmental assessment
ECM	environmental compliance memorandum
EIS	environmental impact statement
EO	executive order
EPA	Environmental Protection Agency
EQD	Environmental Quality Division
ERM	environmental review memorandum
ESA	Endangered Species Act
ESF	environmental screening form
ESM	environmental statement memorandum
FEIS	final environmental impact statement
FONSI	finding of no significant impact
GMP	general management plan
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOA	notice of availability
NOI	notice of intent to prepare an environmental impact statement
NPOMA	National Parks Omnibus Management Act of 1998
NPS	National Park Service
OEPC	Office of Environmental Policy and Compliance (Department of the Interior)
PEPC	Planning, Environment and Public Comment
REC	regional environmental coordinator
ROD	record of decision
SOF	statement of findings
USC	United States Code
WASO	Washington Support Office (National Park Service)

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HANDBOOK USER'S GUIDE

This handbook synthesizes the legal and policy requirements and considerations related to the National Environmental Policy Act (NEPA) (42 United States Code (USC) 4321 et seq.) and associated guidance applicable to the National Park Service (NPS). It contains the information necessary to comply with NEPA and conduct sound environmental planning.

This handbook, along with supplemental guidance that will be issued on an as-needed basis to address specific NEPA-related topics, is intended to assist you in carrying out your NEPA responsibilities. The handbook will be maintained electronically; only a limited number of hard copies will be distributed. It will be modified and reissued periodically based on changes to Council on Environmental Quality (CEQ) and Department of the Interior (DOI) regulations and guidance, as well as NPS policy. The most up-to-date version of the handbook can be accessed on the NPS policy website: <http://www.nps.gov/applications/npspolicy/DOrders.cfm>.

In addition to managing units of the national park system, the NPS administers programs that serve the conservation and recreation needs of the nation but are not directly related to the national park system. Examples include the Land and Water Conservation Fund Grants Program; the Rivers, Trails, and Conservation Assistance Program; and the National Heritage Areas Program. Pursuant to *Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision-making* (DO-12), these programs may develop their own program-specific NEPA guidance. However, where other directives or guidelines appear to differ from the information in this handbook, this handbook takes precedence (DO-12, 4.2).

This handbook is intended only to improve the internal management of the National Park Service and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

Chapter 1: Introduction to the National Environmental Policy Act provides a general overview of several aspects of the act, including how NEPA relates to the NPS mission, the circumstances that trigger the need to comply with NEPA, the basic characteristics of a NEPA review, and the methods for documenting compliance with NEPA.

Chapter 2: Using Existing NEPA Analyses describes options and procedures for using existing NEPA analyses to meet a proposal's NEPA documentation and analysis requirements, either in full or in part.

Chapter 3: Categorical Exclusions provides information about the use of categorical exclusions to meet NEPA review requirements for certain types of NPS actions and the process for applying and documenting categorical exclusions.

Chapter 4: The NEPA Process for Environmental Assessments and Environmental Impact Statements describes the elements of the NEPA planning and analysis process for environmental assessments and environmental impact statements in detail.

Chapter 5: NPS Review of External Environmental Review Documents discusses how the National Park Service provides comments on other agencies' environmental review documents through a formal process required by DOI.

Although this handbook is intended to be comprehensive, it is not an all-inclusive, step-by-step NEPA “cookbook.” Therefore, in addition to becoming familiar with this handbook, you are encouraged to pursue opportunities for NEPA training and to seek NEPA-related advice, when needed, from your regional environmental coordinator (REC) and the Environmental Planning and Compliance Branch of the Washington Support Office (WASO) Environmental Quality Division (EQD).

This handbook contains numerous references to NEPA, the CEQ NEPA regulations and *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (40 Questions), the DOI NEPA regulations and Departmental Manual (DM), and DO-12. The guidance provided in this handbook is derived primarily from these authorities. The nature of these authorities is discussed in Section 1.1 of this handbook. Although this handbook has been written with these authorities in mind, if a conflict should be found between the handbook and these authorities, the authorities take precedence. These authorities are cited as follows:

NEPA – The referenced section number is in parentheses: (sec. 101(b))

CEQ regulations – The referenced section number from 40 *Code of Federal Regulations* (CFR) Parts 1500–1508 is in parentheses: (1500.2)

40 Questions – The number of the question referenced is in parentheses: (Q23)

DOI NEPA regulations – The referenced section number from 43 CFR Part 46 is in parentheses: (46.30)

Departmental Manual – The referenced chapter from part 516 of the DM is in parentheses as 516 DM followed by the relevant chapter: (516 DM 2)

Director's Order 12 – The referenced section number from the Director's Order is in parentheses as DO-12 followed by the relevant section: (DO-12, 4.2)

Guidance found in the DOI Office of Environmental Policy and Compliance (OEPC) Environmental Statement Memorandum (ESM) series is also incorporated throughout the handbook.

This handbook uses the pronoun “you” to address the reader. While the guidance in this handbook is intended for use by NPS personnel, it may be consulted by other

agencies, tribal representatives, applicants, contractors, and members of the public who are involved with the NPS NEPA process.

The “NEPA process” refers to all measures taken in order to meet NEPA-related legal and policy requirements associated with a particular NPS action. The term “NEPA review” is used to refer to the process, analyses, and documents developed under NEPA to inform a decision. “NEPA document” generally refers to an environmental assessment (EA) or environmental impact statement (EIS), and can also refer to documentation that is prepared for a categorical exclusion (CE).

The terms “must” and “should” appear throughout this handbook. “Must” is used in association with requirements imposed on the NPS by law, regulation, or policy. “Should” is used in association with instructions that are not explicitly required by law, regulation, or policy, but are “best practices” to be followed in most cases, and are intended to help ensure that NPS NEPA practice meets both the letter and spirit of NEPA-related requirements. The same is true for references to “standard” and “recommended” NPS NEPA practices. You are encouraged to consult with your REC if you have questions about any particular requirements or instructions.

As with the CEQ regulations (1508.8), this handbook uses the terms “impact” and “effect” interchangeably. When the term “resource” or “environmental resource” is used, it should be understood to mean an element of the human environment. The human environment includes the natural and physical environment and the relationship of people with that environment (1508.14).

The terms “must” and “should” appear throughout this handbook. “Must” is used in association with requirements imposed on the NPS by law, regulation, or policy. “Should” is used in association with instructions that are not explicitly required by law, regulation, or policy, but are “best practices” to be followed in most cases, and are intended to help ensure that NPS NEPA practice meets both the letter and spirit of NEPA-related requirements.

CHAPTER 1: INTRODUCTION TO THE NATIONAL ENVIRONMENTAL POLICY ACT

1.1 INTRODUCTION

The NEPA process is intended to, “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” (1500.1). The stated purposes of NEPA include (42 USC 4321):

- declaring a national policy which will encourage productive and enjoyable harmony between man and his environment;
- promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- enriching the understanding of the ecological systems and natural resources important to the Nation; and
- establishing the Council on Environmental Quality.

The purposes of NEPA and the mission of the NPS express very similar goals. Both contain language designed to result in the conservation and protection of our nation’s resources for the benefit of future generations.

This chapter provides a general overview of several aspects of NEPA, including the circumstances that trigger the need to comply with NEPA, the basic characteristics of a NEPA review, and the methods for documenting compliance with NEPA. The sections discussing these topics are:

- 1.2 Legal and Policy Overview
- 1.3 Determining Whether NEPA Applies
- 1.4 NEPA Fundamentals
- 1.5 NEPA Pathways
- 1.6 Considering Whether a Proposal has the Potential for Significant Impacts

1.2 LEGAL AND POLICY OVERVIEW

A. A Procedural Act

NEPA includes the declaration of a national policy that encourages harmony between human beings and the environment and the promotion of efforts to prevent or eliminate environmental harm. As a means of furthering its purposes, it requires federal agencies to fully consider the impacts of proposals that would affect the human environment prior to deciding to take an action. NEPA also requires federal agencies to involve the interested and affected public in decision-making processes.

NEPA is a “procedural” or process-oriented law rather than a “substantive” or substance-oriented one. It defines a process that federal agencies must follow when

proposing to take actions that have environmental impacts. NEPA does not, however, dictate what decision an agency must make with regard to actions affecting the environment. If meeting an agency's goal requires taking actions with adverse environmental impacts, even severe ones, such actions are not prohibited under NEPA.

Relationship to Decision-making

Although NEPA is purely a procedural statute, it is important to note that the NPS Organic Act, which is a substantive statute, and NPS *Management Policies 2006*, which set forth the NPS interpretation of the Organic Act, prohibit the NPS from taking any action that would result in impairment of park resources or values (NPS *Management Policies 2006*, 1.4.4). Furthermore, while the NPS has discretion to allow adverse impacts, NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values (NPS *Management Policies 2006*, 1.4.3). The conclusions regarding impacts to park resources and values that are reached during the NEPA process are used by NPS managers when making decisions about NPS-administered resources, including when assessing whether or not an action would result in impairment to park resources. A written non-impairment determination for the selected action must be appended to each finding of no significant impact (FONSI) and record of decision (ROD) (NPS *Management Policies 2006*, 1.4.3; NPS *Guidance for Non-Impairment Determinations and the NEPA Process*)¹.

B. NEPA and the Council on Environmental Quality

When NEPA was signed into law in 1970, it created the White House Council on Environmental Quality, part of the Executive Office of the President, to be the “caretaker” of NEPA. In 1978, CEQ promulgated regulations (40 CFR 1500–1508) that apply to all federal agencies and that provide instruction to agencies regarding compliance with the procedural requirements of NEPA. To elaborate on its regulations, CEQ periodically issues NEPA guidance, most notably the *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, published in 1981. In recent years, CEQ has issued guidance on a number of NEPA-related topics, including the establishment and use of CEs, use of mitigation, use of programmatic NEPA reviews, and improving the process for preparing timely and efficient NEPA reviews. This guidance is available on the CEQ website.

CEQ also oversees federal agency implementation of NEPA and CEQ regulations; provides assistance in developing environmental policies and proposed legislation as requested by the president; consults with federal agencies regarding legislation and litigation; mediates interagency disputes; acts on referrals to CEQ; and interprets NEPA and CEQ regulations for agencies and citizens.

¹ NPS program activities unrelated to managing units of the national park system are not subject to the provisions of the Organic Act or NPS *Management Policies 2006* (DO-12, 2; *Management Policies 2006*, Introduction). Therefore, a written non-impairment determination is not required for actions related to those programs unless an action would have environmental effects on an NPS unit.

C. Department of the Interior NEPA Regulations and Policies

The CEQ regulations direct federal agencies to “implement procedures to make the NEPA process more useful to agency decision makers and the public” (1500.2; 1507.3). In 2008, DOI promulgated regulations (43 CFR Part 46) to establish procedures applicable to DOI bureaus and offices for complying with NEPA. The DOI NEPA regulations supplement, and are intended to be used in conjunction with, the CEQ regulations. DOI provides further guidance on NEPA implementation in Part 516, chapters 1–4, of the DM. Additionally, DOI OEPC provides NEPA-related information and explanatory guidance in its ESM series.

Most of the requirements found in the DOI NEPA regulations and policies are included in this handbook. If an issue is addressed by the DOI regulations or policies but is not addressed in this handbook or some other NPS policy, you should consult with your REC in order to determine the best way to comply with the DOI regulations and policies.

Departmental Manual Chapter 12, Part 516

516 DM 12 provides supplementary requirements for implementing the DM that are specific to the NPS. It delegates certain responsibilities related to NEPA and establishes actions that normally require preparation of an EIS and NPS-specific CEs.

D. National Park Service NEPA Policies and Procedures

Director’s Order 12 and Accompanying Handbook

Director’s Order 12: Conservation Planning, Environmental Impact Analysis, and Decision-making sets forth the policy and procedures by which the NPS will comply with NEPA and assigns the roles and responsibilities of NPS organizations and employees for carrying out NPS NEPA obligations. This DO-12 Handbook provides an overview of the legal and policy framework that the NPS uses to implement NEPA. Taken together, DO-12, the handbook, and the supplemental guidance will help you meet the requirements of NEPA. If you have additional questions after reviewing these sources, you should consult your REC.

Roles and Responsibilities

As set forth in DO-12, Section 5:

The Associate Director for Natural Resource Stewardship and Science is responsible for issuing and updating procedures for implementing DO-12 and for working with others to ensure training, technical assistance, and other resources are available to implement the requirements of DO-12.

The WASO Environmental Quality Division is the servicewide focal point for NEPA-related matters and other related environmental mandates. The division provides technical assistance to parks and regions, coordinates NPS review of EAs and EISs prepared by other agencies, and provides policy review and clearance for EISs on a case-by-case basis.

Regional Directors are responsible to the NPS Director for integrating the NEPA process into all regional activities and for NEPA planning in their regions. Regional directors are specifically responsible for:

- accepting or rejecting requests for the NPS to be a cooperating or joint lead agency on another agency's EA or EIS;
- approving EAs for public release and signing FONSI's;
- approving most EISs for public release and signing most RODs²; and
- approving emergency actions that would normally require an EA or an EIS [See Section 1.3 C: *Emergency Actions*.]

Regional Environmental Coordinators, subject to the direction of the regional director, are responsible for:

- having functional oversight responsibility for all environmental compliance activities within a given region;
- in most cases, serving as the point of contact with the Washington Office and Department of the Interior offices, such as the Office of the Solicitor, on significant environmental issues;
- providing policy review for all NPS NEPA documents within their region;
- coordinating review of non-NPS environmental documents for the region; and
- serving as a resource to other NPS professionals for understanding the various environmental requirements under which the NPS operates.

Park Superintendents are responsible for day-to-day implementation of NEPA for activities related to parks under their administration, which includes the following:

- designating a park resource specialist (or other park employee with the appropriate background and training) to serve as coordinator for NEPA and related impact analysis activities;
- ensuring that within-park actions are adequately analyzed, an adequate range of alternatives is considered, and the public and other agencies are appropriately involved;
- ensuring that ample resource information appropriate to a decision is available, and the technical and scientific studies appropriate to analyze proposed actions are conducted;
- approving actions that fall under established NPS CEs;
- approving emergency actions that would normally require a CE [See Section 1.3 C: *Emergency Actions*.];
- recommending EAs, EISs, FONSI's, and RODs for approval by the regional director;

² The Director retains signature and approval authority for proposals of nationwide application and may assume signature and approval authority for any proposal that is unusually controversial or that involves major policy issues.

- ensuring that resource conflicts and allocations are adequately resolved before projects are implemented;
- ensuring that all actions approved under a FONSI or ROD are implemented;
- ensuring that mitigation measures are included in projects once they are approved (this means ensuring mitigation measures committed to in a FONSI or ROD are implemented);
- emergency actions that would normally require a CE; and
- ensuring that park comments on external project proposals are consistent with NPS guidelines for review of non-NPS NEPA documents.

Park Resource Specialists, subject to the direction of the superintendent, are responsible for:

- having knowledge of existing technical and scientific information on park resources and the quality of such information;
- identifying additional resource information needs and technical and scientific studies necessary to ensure that ample resource information appropriate to analyze proposed actions is available;
- serving as park NEPA coordinator to facilitate conservation planning and impact analysis (this role could also be filled by another park employee who is not a resource specialist);
- having knowledge of impact analysis processes and procedures;
- working with the park superintendent and other park staff to ensure consideration of potential resource impacts in park proposals; and
- working with contracting officers to ensure that mitigating measures identified in environmental documents are included in the subsequent contract documents implementing projects.

Project Managers and Contracting Officers are responsible for working with park staff to ensure that mitigation measures and other items identified in environmental documents to provide for resource protection are included in the subsequent documents implementing projects.

1.3 DETERMINING WHETHER NEPA APPLIES

This section provides the background you need to determine if a proposed NPS activity is subject to or exempt from NEPA review. It also provides specific guidance on how to comply with the procedural requirements of NEPA when you must take an action in response to an emergency.

A. Actions Requiring NEPA Review

Regardless of the nature of the action, the first consideration when determining if the NPS must undertake a NEPA review is to assess whether or not the procedural requirements of the act are triggered.

NEPA applies to a broad range of federal actions, which include (1508.18(b)):

1. Adoption of official policy such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 USC 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies that will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by federal agencies, which guide or prescribe alternative uses of federal resources on which future agency actions will be based.
3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities, located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Whether or not NEPA applies depends on the extent to which the NPS exercises control and responsibility over a proposed action and whether NPS funding or approval is necessary to implement it. The greater the NPS control and responsibility, or degree of NPS funding required to implement an action, the more likely it is that NEPA would apply. In instances where the NPS provides funding with no control over the expenditure of funds by the recipient, NEPA does not apply (46.100).

Examples of the types of actions described above that would trigger NEPA include:

- promulgation of a special regulation;
- approval or adoption of plans whose implementation would result in environmental impacts such as a general management plan, fire management plan, or wildlife management plan;
- construction of a visitor contact station or trail system;
- building and road maintenance activities;
- issuance of commercial use authorizations or special use permits;
- approval of National Heritage Area management plans; and
- approval of specific actions for funding on non-NPS lands, such as providing grants, when NPS has control over how the funds will be spent.

Although the level of documentation and analysis required for these examples would vary, some level of NEPA review—CE, EA, or EIS—would be required for all of these actions.

In addition to new projects and programs, “continuing activities” are also subject to NEPA’s procedural requirements (1508.18). For continuing activities, the procedural requirements of NEPA are triggered if the NPS is affirmatively making a decision to

states that park management generally should be guided by “the highest quality science and information” and requires the NPS to use the results of scientific study when considering management decisions pertaining to national park system units (54 USC 100702, 100706).

The specificity of data needed for analysis will vary according to the nature of the action. For actions of a more programmatic or broad nature, such as development of a parkwide facilities management plan, the NEPA review and the data on which it is based may be correspondingly broad. For site-specific projects such as construction of a new picnic area or rehabilitation of a parking lot, the data on which analyses are based should be correspondingly specific.

Ultimately, you must be able to carry out a meaningful analysis of impacts based on the available data in order to support a decision to take an action. Analyses should be substantiated by information included in the decision file, and peer review should be used when appropriate. [See Section 4.9: *The Decision File*; see also supplemental guidance: *Compiling a Decision File for NEPA Reviews*.] If there are key uncertainties regarding the environmental effects of an action under consideration, an adaptive management approach should be used when appropriate (46.145). [See Section 4.3 F: *Adaptive Management*.]

In cases where you have no data or poor quality data, you are required to obtain additional information that is “relevant to reasonably foreseeable significant adverse impacts,” if it is “essential to a reasoned choice among alternatives,” and if “the overall costs of obtaining it are not exorbitant” (1502.22(a)). The costs of obtaining additional information are measured not only in money, but also in time (to complete a research study or survey, for instance).

If essential information is unavailable or if the costs of obtaining it are exorbitant, an EIS must include statements to inform the public of this lack of information and its effect on the ability of the NPS to predict environmental impacts. When information cannot be obtained, existing credible scientific evidence must be summarized and the impact predicted based on this evidence (1502.22(b)). When preparing an EA, you should take the same approach. Lack of data can be an important consideration when preparing an EA because if you do not have enough reliable data to support a finding at the conclusion of the EA process that there will be no significant adverse impacts as a result of implementing the selected action, an EIS will need to be prepared.

1.5 THE NEPA PATHWAYS

The NPS uses four pathways, or levels of analysis and documentation, to comply with NEPA. A brief description of each pathway is included below. More detailed information about the pathways can be found in Chapters 3 and 4.

A. Categorical Exclusion for which No Documentation is Required

This pathway is applicable to actions that have been found to have no potential for significant environmental impacts under ordinary circumstances and whose potential for environmental impacts of any kind is so minimal the NEPA review does

not require formal documentation. The source of these CEs is the DOI NEPA regulations; they apply to all DOI bureaus (46.215). [See Section 3.2: *Categorical Exclusions for which No Documentation is Required.*]

B. Categorical Exclusion for which Documentation is Required

This pathway is applicable to actions that have been found to have no potential for individual or cumulative significant environmental impacts under ordinary circumstances, but whose potential for environmental impacts warrants some level of analysis and formal documentation. The source of these CEs is the NPS-specific chapter of the DM (516 DM 12). [See Section 3.3: *Categorical Exclusions for which Documentation is Required.*]

C. Environmental Assessment

This pathway is applicable to a variety of situations. Although an EA was originally envisioned as a tool for determining whether to prepare an EIS and is still used this way in some instances, in most cases the EA has become a distinct pathway. An EA is a means for documenting compliance with NEPA and assisting in the planning and decision-making process when a CE is not appropriate but an EIS is not necessary.

Any of the following indicates a need to prepare an EA:

- the proposal has no applicable CE, is not an action that normally requires preparation of an EIS, and is unlikely to result in significant adverse environmental impacts;
- the proposal has an applicable CE but may trigger an extraordinary circumstance (46.205) [See Section 3.5: *Extraordinary Circumstances.*]; or
- it is unknown whether the proposal would result in significant adverse environmental impacts (i.e., the preparation of the EA is to determine whether an EIS is necessary).

In addition to the circumstances above, an EA may be prepared when it would assist with or inform agency planning and decision-making (1501.3(b); 46.300(b)).

It is important to understand some fundamental differences between EAs and EISs in order to prevent the EA document and process from simply becoming an “EIS in disguise.” An EIS is meant to be a “detailed written statement” on the environmental impacts of major actions significantly affecting the environment (1508.11). Its fundamental purpose is to promote detailed consideration and disclosure of the environmental costs and benefits of a proposal.

An EA, on the other hand, while still analytical and explanatory, is meant to be a “brief” and “concise” document at a level of detail limited to that necessary to demonstrate that the proposal would not result in significant environmental impacts (1508.9; 46.310(e)). It should be kept brief by carefully developing the scope to identify pivotal issues; focusing discussions and analysis on the relevant issues and dismissing issues that are not meaningful to the decision; discussing impacts in proportion to their importance; and using tiering and incorporation by reference techniques, when appropriate, to minimize bulk. You should strive to keep an EA to no more than 50 pages, and closer to 15 pages when you are preparing an EA for

An EA should be kept brief by carefully developing the scope to identify pivotal issues; focusing discussions and analysis on the relevant issues and dismissing issues that are not meaningful to the decision; discussing impacts in proportion to their importance; and using tiering and incorporation by reference techniques, when appropriate, to minimize bulk.

CHAPTER 3: CATEGORICAL EXCLUSIONS

3.1 INTRODUCTION

A CE describes a category or type of actions that do not cumulatively or individually have the potential for significant environmental impacts (1508.4). If an action fits within a CE it is not exempt from NEPA; however, it is exempted from the requirement to prepare an EA or EIS. You are encouraged to use CEs when applicable, in order to reduce paperwork and delays associated with approvals of certain federal actions (1500.4; 1500.5).

If an action fits within a CE it is not exempt from NEPA; however it is exempted from the requirement to prepare an EA or EIS (1508.4)

The NPS categorizes CEs into two types based on documentation requirements associated with the CE: (1) CEs for which no documentation is required; and (2) CEs for which documentation is required.

CEs applicable to NPS actions come from two sources:

1. The DOI NEPA regulations (46.210), which include CEs available for use by all DOI bureaus and offices.
2. The NPS chapter of the DM (516 DM 12), which includes additional CEs available specifically to the NPS.

These CEs are listed below. You may rely on the CE lists included in this handbook and cite the CEs listed below by referring to chapter 3.2 or 3.3 and the CE letter/number, for example, “CE 3.2Y” or “CE 3.3 A.4,” rather than citing to the DOI NEPA regulations or the DM.

Information regarding when a CE may be used, approval authority for CEs, and public involvement considerations is included in this section. Other sections in this chapter describe the various NPS actions that may be categorically excluded and discuss associated documentation requirements and procedures, consideration of extraordinary circumstances, and use of CEs for ongoing and recurring actions. The sections discussing these topics are:

- 3.2 Categorical Exclusions for which No Documentation is Required
- 3.3 Categorical Exclusions for which Documentation is Required
- 3.4 Process for Categorical Exclusions Requiring Documentation
- 3.5 Extraordinary Circumstances
- 3.6 Use of Categorical Exclusions for Ongoing and Recurring Actions

Determining Whether a Categorical Exclusion May be Used

In order to use a CE, you must ensure a proposed action fits within the category of actions described in a specific CE. A proposed action is “the bureau activity under consideration” (46.30). The proposed action does not have to be specifically mentioned in the text of a CE, but should easily fit into the category of actions described by the CE. Many of the CEs listed below include guidance that is intended to help you understand how they should best be applied. Where the guidance provides examples of actions that would be appropriate under a specific CE, the examples are meant to be illustrative and not exclusive. If the proposed action does

not fit within the category of actions described in a CE you must either modify the proposal so that it does, or prepare an EA or EIS (46.205). If multiple CEs are required to cover different elements of the proposed action that is a sign that a CE is likely not appropriate.

Once you determine that a proposed action fits within a CE, you must consider whether any of the extraordinary circumstances listed in the DOI NEPA regulations apply. [See Section 3.5: *Extraordinary Circumstances*.] If extraordinary circumstances do apply, you may not use a CE. In such circumstances you must either modify the proposal so that extraordinary circumstances no longer apply, or prepare an EA or EIS (46.205).

As long as the proposed action fits within a CE and no extraordinary circumstances apply, you should use the CE as your pathway for complying with NEPA.

Approval of Categorical Exclusions

Authority for categorically excluding an action rests with the park unit's superintendent (DO-12, 5.4).

Prior to the approval of a CE, all other necessary consultation and coordination (such as ESA Section 7, NHPA Section 106, and tribal consultations) should be completed and related documentation should be included in the decision file. If the action under consideration triggers the need to comply with Section 106 of the NHPA, you must complete the Section 106 consultation before the CE is approved. You may implement an action that is categorically excluded immediately upon approval of the CE by the superintendent as long as all other necessary consultation and coordination requirements have been completed. [See Section 4.14: *Integrating NEPA and other Environmental Requirements*.]

Public Involvement

Public comment is not required when using a CE. However, you may wish to seek public comment in situations where there is a high degree of public interest or uncertainty regarding potential effects of a proposed action. Public input can help identify environmental issues [See Section 4.2 D: *Identifying Environmental Issues and Impact Topics*] and provide information that will help determine whether any extraordinary circumstances exist. If you decide to seek public comment regarding the use of a CE, you generally should provide only a short period for the public to submit written comments.

Regardless of whether or not you seek public comment, when using a CE that requires documentation, you should consider notifying the public once the CE is approved by the superintendent. This can be accomplished by posting a brief notice on PEPC or your park unit or program's website, or by other means.

3.2 CATEGORICAL EXCLUSIONS FOR WHICH NO DOCUMENTATION IS REQUIRED

A variety of CEs exist to cover actions that typically have little or no potential for environmental impacts of any kind, let alone potential for significant adverse

impacts. For such actions, documentation regarding use of a CE is generally not required. These types of actions typically have such little potential to cause environmental impacts that in many instances, NPS personnel may not even realize they are taking an action to which NEPA applies.

While the CEs in this section may be applied without any associated documentation, there may be some instances where documentation is desired for administrative purposes. In such cases, you may prepare documentation following the procedures described in Section 3.4 or document use of the CE in some other way such as a memorandum to the project file. Voluntary documentation of CEs that do not require documentation should be considered on a case-by-case basis. If documentation is prepared for a CE that does not require documentation, it should not be considered to set a precedent for the need to document the use of that same CE in the future.

Although no documentation is required for the purposes of NEPA, if the proposed action triggers the need to comply with other laws, such as the ESA or NHPA, you should develop a decision file for the CE and include the results of any studies or consultations related to other laws.

Available CEs:

- A. Personnel actions and investigations and personnel services contracts.
- B. Internal organizational changes and facility and bureau reductions and closings.
- C. Routine financial transactions including such things as salaries and expenses, procurement contracts (e.g., in accordance with applicable procedures and executive orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.
- D. Departmental legal activities including, but not limited to such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).
- E. Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

Guidance: Examples of routine and continuing maintenance and operations include trash removal, sweeping parking lots, cleaning restrooms, fixing machinery, snow removal, and small-scale building repairs and renovations.

- F. Management, formulation, allocation, transfer, and reprogramming of the department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required).

- G. Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects, and comments and reports on referrals of legislative proposals.
- H. Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature, or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

Guidance: Consider documenting this CE if you are promulgating a regulation.

- I. Activities that are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.
- J. Land and boundary surveys.
- K. Preparation and issuance of publications.
- L. Technical assistance to other federal, state, and local agencies or the general public.
- M. Routine reports required by law or regulation.
- N. Issuance of individual hunting and/or fishing licenses in accordance with state and federal regulations.
- O. Changes in interpretive and environmental education programs.
- P. Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying, and information gathering.

Guidance: This CE also applies to agreements between NPS offices and other federal and state agencies for plans and studies.

- Q. Authorization, funding, or approval for the preparation of statewide comprehensive outdoor recreation plans.

Guidance: This CE applies to equivalent plans such as comprehensive statewide historic preservation plans.

- R. Adoption or approval of surveys, studies, reports, plans, and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.
- S. Sanitary facilities operation.

Guidance: This may also include upgrades to equipment to incorporate new technologies.

- T. Development of standards for, and identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.

Guidance: This CE also applies to biosphere reserves.

- U. Statements for management, outlines of planning requirements, and task directives for plans and studies.

Guidance: Statements for management and outlines of planning requirements are now known as foundation statements and assessments of planning needs, respectively.

- V. Preparation of internal reports, plans, studies, and other documents containing recommendations for action which NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.
- W. Documents which interpret existing mineral management regulations and policies and do not recommend action.
- X. Stabilization by planting native plant species in disturbed areas.
- Y. Day-to-day resource management and research activities.

3.3 CATEGORICAL EXCLUSIONS FOR WHICH DOCUMENTATION IS REQUIRED

A variety of CEs exist for actions that generally result in some level of environmental impact but that do not have the potential to cause significant adverse impacts under normal circumstances. For such actions, documentation is required indicating that the action fits within a CE and that no extraordinary circumstances exist. Documenting the use of a CE provides the NPS an opportunity to demonstrate why a decision to use a CE is appropriate.

Available CEs:

A. Actions Related to General Administration.

1. Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.
2. Minor boundary changes.

Guidance: This CE applies to boundary changes that are accomplished through existing statutory authorities, such as including an area within a park boundary and maintaining the area as open space, or including a historic structure within the boundaries of a park unit and retaining that structure.

3. Reissuance/renewal of permits, rights-of-way, or easements not involving new environmental impacts.
4. Conversion of existing permits to rights-of-way when such conversions do not continue or initiate unsatisfactory environmental conditions.
5. Issuances, extensions, renewals, reissuances, or minor modifications of concession contracts or permits not entailing new construction.
6. Commercial use licenses involving no construction.

Guidance: Commercial use licenses are now known as commercial use authorizations.

7. Leasing of historic properties in accordance with 36 CFR Part 18 and NPS-38.

Guidance: NPS-38 is now Director's Order 38: Real Property Leasing.

8. Modifications or revisions to existing regulations or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:
 - a. increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,
 - b. introduce noncompatible uses that might compromise the nature and characteristics of the area or cause physical damage to it,
 - c. conflict with adjacent ownerships or land uses, or
 - d. cause a nuisance to adjacent owners or occupants.

Guidance: "Area" should be interpreted to mean NPS unit.

9. At the direction of the NPS Responsible Official, actions where NPS has concurrence or co-approval with another bureau and the action is a categorical exclusion for that bureau.

B. Plans, Studies, and Reports.

1. Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.
2. Cultural resources maintenance guides, collection management plans, and historic furnishings reports.

Guidance: This CE also applies to equivalent documents related to cultural resources.

3. Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

Guidance: This CE also applies to equivalent documents related to interpretation.

4. Land protection plans which propose no significant change to existing land or visitor use.

C. Actions Related to Development.

1. Land acquisition within established park boundaries.
2. Land exchanges which will not lead to significant changes in the use of land.

Guidance: Land exchanges under this CE include transfers of jurisdiction in the District of Columbia.

3. Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds, and trails.
4. Routine maintenance and repairs to cultural resource sites, structures, utilities, and grounds under an approved Historic Structures Preservation

Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

5. Installation of signs, displays, kiosks, etc.

Guidance: Other examples include wayside exhibits, small solar collectors on poles, boundary marking signs, and small solar or wind generator system installations on a building.

6. Installation of navigation aids.
7. Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing systems (e.g., routes and schedule changes).
8. Replacement in kind of minor structures and facilities with little or no change in location, capacity, or appearance.

Guidance: Examples of minor structures and facilities include comfort stations, pit toilets, fences, kiosks, signs, sheds, foot logs, small trail bridges, and campfire circles.

9. Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

Guidance: This CE also applies to road maintenance, rehabilitation, repaving, and reconstruction on existing roads within the existing road prism. Actions taken under this CE may also include repair or replacement of culverts, signs, surfacing of right-turn lanes at intersections in previously disturbed areas, seal coating a parking lot, maintenance of an existing gravel road in the same footprint, routine roadside brushing, routine ditching, adding gravel, grading, and other modifications.

10. Installation of wells, comfort stations, and pit toilets in areas of existing use and in developed areas.

Guidance: Other examples include pump houses and vault toilets.

11. Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.
12. Upgrading or adding new overhead utility facilities to existing poles or replacement poles which do not change existing pole line configurations.
13. Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

Guidance: This CE also applies to the installation of overhead poles and utility lines that meet the other requirements of the CE (not just the issuance of a right-of-way permit for another entity).

14. Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

15. Installation of underground utilities in previously disturbed areas having stable soils or in an existing utility right-of-way.
16. Landscaping and landscape maintenance in previously disturbed or developed areas.
17. Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

Guidance: Other examples include installation or construction of exclosures or other internal fencing that may be used to control adverse effects of wildlife. This CE may also be used for security fencing around park buildings or facilities.

18. Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

Guidance: Some examples of minor structures include adding a small support building such as a pump house or small equipment cache in an existing maintenance yard, bus stop (transportation) or picnic shelters, comfort stations, or similar small-scale structures; walkways, ramps, signs, or other small features incidental to the use of a developed area or to improve accessibility; small-scale development of new parking spaces adjacent to existing parking areas; addition or relocation of a small number of camping spaces in an existing campground or picnic sites in an existing picnic area and small, compatible additions to existing buildings (such as making an "L" into a "T").

19. Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities accessible for the handicapped.

D. Actions Related to Visitor Use.

1. Carrying capacity analysis.
2. Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.
3. Minor changes in programs and regulations pertaining to visitor activities.
4. Issuance of permits for demonstrations, gatherings, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance.
5. Designation of trailside camping zones with no or minimal improvements.

E. Actions Related to Resource Management and Protection.

1. Archeological surveys and permits involving only surface collection or small-scale test excavations.
2. Restoration of noncontroversial native species into suitable habitats within their historic range and elimination of exotic species.
3. Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources, or become a

nuisance in areas surrounding a park when such removal is included in an approved resource management plan.

Guidance: Resource management plan should be interpreted broadly.

4. Removal of non-historic materials and structures in order to restore natural conditions.
5. Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

Guidance: Some examples include vegetation plots and monitoring, soil surveys, species monitoring, and other nondestructive research activities that require a research permit. This CE should be used for activities that are not covered under the CE for day-to-day resource management. [See CE 3.2 Y.]

6. Designation of environmental study areas and research natural areas.

F. Actions Related to Grant Programs.

1. Proposed actions essentially the same as those listed in paragraphs A–E above.

Guidance: This CE applies to approval of a grant by the NPS that would result in actions taken by others that are the same or similar to those listed in paragraphs A–E above.

2. Grants for acquisition of areas that will continue in the same or lower density use with no additional disturbance to the natural setting.
3. Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical, or cultural resources of the area, or the integrity of the existing setting.
4. Grants for construction of facilities on lands acquired under a previous NPS or other federal grant provided that the development is in accord with plans submitted with the acquisition grant.
5. Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:
 - a. conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants, e.g., extend use beyond daylight hours;
 - b. introduce motorized recreation vehicles;
 - c. introduce active recreation pursuits into a passive recreation area;
 - d. increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or
 - e. add or alter access to the park from the surrounding area.
6. Grants for the restoration, rehabilitation, stabilization, preservation, and reconstruction (or the authorization thereof) of properties listed on or

eligible for listing on the National Register of Historic Places at their same location and provided that such actions:

- a. will not alter the integrity of the property or its setting;
- b. will not increase public use of the area to the extent of compromising the nature and character of the property; and
- c. will not cause a nuisance to adjacent property owners or occupants.

G. Actions Related to Hazardous Fuels Reduction and Post-fire Rehabilitation.³

1. Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management-approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):
 - a. shall be conducted consistent with bureau and departmental procedures and applicable land and resource management plans;
 - b. shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and
 - c. shall be completed within three years following a wildland fire.

3.4 PROCESS FOR CATEGORICAL EXCLUSIONS REQUIRING DOCUMENTATION

The steps described below should be accomplished through an internal scoping process that uses an interdisciplinary approach.

This section details the process for applying and documenting CEs described in Section 3.3. The steps described below should be accomplished through an internal scoping process that uses an interdisciplinary approach.

1. Define the Proposed Action, Identify Issues, and Evaluate Associated Impacts

The first steps in the process should be to define the proposed action, identify potential issues, and evaluate associated impacts. Be certain to consider whether there are any connected or similar actions that should be considered as part of the proposal. [See Section 4.2 D: *Identifying Environmental Issues and Impact*, and Section 4.2 C: *Identifying Connected and Similar Actions*.]

You should complete this step with input from subject matter experts. You may wish to use an environmental screening form (ESF), which can be generated in PEPC, to assist with identifying issues and impacts, although you are not required to do so.

³ The DOI NEPA regulations include an additional CE for hazardous fuels reduction activities (43 CFR 46.210 (k)) that is not listed here. That hazardous fuels reduction CE is not available for use in areas within the jurisdiction of the U.S. Court of Appeals for the 9th Circuit Court at this time, as discussed in the preamble to the final rule (73 FR 61305 October 15, 2008). As a matter of policy, NPS does not currently use this CE.

When evaluating impacts, be sure to consider cumulative impacts in addition to direct and indirect impacts. If your evaluation of impacts indicates there is a potential for significant adverse impacts as a result of implementing the proposed action, a CE may not be used unless the proposal is modified to reduce impacts to a level below significance.

2. *Determine Whether There is a CE That Could Apply to the Proposed Action*

After defining the proposed action and determining that there is no potential for significant adverse impacts, you should review the CE list to determine whether there is a CE that applies. As stated in Section 3.1, the proposed action does not have to be specifically described, but should easily fit into the category of actions described by the CE. If you are unsure whether a CE applies, you should consult with your REC.

3. *Determine Whether Any Extraordinary Circumstances Exist*

Prior to categorically excluding an action, you must consider the extraordinary circumstances listed in the DOI NEPA regulations and determine whether any apply. [See Section 3.5: *Extraordinary Circumstances*.] If any of the extraordinary circumstances apply, you may not use a CE. In such circumstances you must either modify the proposal so that extraordinary circumstances no longer apply, or prepare an EA or EIS (46.205).

4. *Document the Potential Impacts of the Action Covered by the CE*

When using a CE that requires documentation, you must create a concise record that identifies the CE being used and which should document: (1) that the proposed action fits within the category of actions described in the CE; and (2) no extraordinary circumstances exist. [See *CEQ guidance: Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*.] The standard NPS practice is to use a Categorical Exclusion Documentation Form, which can be generated in PEPC, in order to document the required information.

In addition to the information above, if you decide to use an ESF, you should include it in the decision file. Furthermore, if the proposed action triggers the need to comply with other laws, such as the ESA or NHPA, you should include the results of any studies or consultations related to other laws in the decision file. You may also include additional documentation pertinent to the action, such as notes from internal scoping meetings, photographs or field notes documenting a site visit, and documents generated from public involvement efforts (press releases, newsletters, public comments received, etc.). [See Section 4.9: *The Decision File*; see also *supplemental guidance: Compiling a Decision File for NEPA Reviews*.] The documentation you prepare should be as concise as possible in order to avoid unnecessary delays and administrative burdens. However, the level of detail, length of discussions, and amount of materials you include in the decision file will vary based on the type of action involved, the potential for extraordinary circumstances to apply, and the compliance requirements of other laws.

The superintendent must provide written approval of a CE that requires documentation (typically by signing the Categorical Exclusion Documentation

Form), and other required consultation processes (such as ESA Section 7, NHPA Section 106, and tribal consultations) must be complete prior to implementing an action covered by a documentable CE. [See Section 4.14: Integrating NEPA with Other Environmental Review and Consultation Requirements.]

3.5 EXTRAORDINARY CIRCUMSTANCES

As described in Section 3.1 above, CEs apply under normal circumstances. When applying CEs, you must consider the impacts of the action in question to ensure that no extraordinary circumstances exist. If extraordinary circumstances do exist a CE may not be used and an EA or EIS must be prepared (46.205(c)). If you determine that extraordinary circumstances exist that preclude the use of a CE, you can modify the proposed action or apply mitigation so that extraordinary circumstances would no longer apply, and then use the CE. Significant impacts as referred to in the list of extraordinary circumstances below should be interpreted to mean significant adverse impacts.

The DOI NEPA regulations establish the following extraordinary circumstances and mandate that prior to categorically excluding an action, the NPS must consider whether the action would (46.215):

- a. have significant impacts on public health or safety;
- b. have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas;
- c. have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (Sec. 102(2)(E));
- d. have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks;
- e. establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;
- f. have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects;
- g. have significant impacts on properties listed or eligible for listing in the National Register of Historic Places as determined by the bureau;
- h. have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated critical habitat for these species;
- i. violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment;

- j. have a disproportionately high and adverse effect on low income or minority populations (EO 12898);
- k. limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007); or
- l. contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

3.6 USE OF CATEGORICAL EXCLUSIONS FOR ONGOING AND RECURRING ACTIONS

Many NPS actions, especially routine activities related to park administration and maintenance, are of an ongoing or recurring nature. Some examples of these types of actions include routine maintenance and repair of non-historic structures (CE 3.3 C.4) and trail maintenance and repair (CE 3.3 C.11). Such activities, although routine, are at the same time subject to NEPA. In the case of these examples and similar actions, a CE with documentation would typically be required. However, you may avoid preparing separate CE documentation for each instance that one of these types of activities is conducted by making use of “programmatic CEs.” Programmatic CEs provide NEPA documentation for multiple instances of an ongoing or recurring activity, when the activity or activities and the impacts that result, are predictable. For example, if your park unit routinely makes repairs to non-historic structures, you could develop a programmatic CE that serves as the NEPA review for routine maintenance and repairs rather than preparing CE documentation each time a repair is made.

When a CE is used in this manner, you should clearly describe the specific activities that are meant to be covered and describe any conditions that must be met for the CE to apply to a particular activity. Although a programmatic CE can be established to cover activities for some time, you should periodically review and updated the CE as necessary to ensure the documentation is still accurate and that no circumstances have changed that would warrant additional NEPA review. While in some cases an annual review may be appropriate, CEs used for ongoing and recurring actions should be reviewed every five years at a minimum, consistent with CEQ guidance regarding supplementation of EISs for ongoing programs (Q32).

You must also consider cumulative impacts and other required consultation processes when preparing and reviewing programmatic CEs. You are encouraged to consult with your REC if you have any questions about developing and using programmatic CEs.

GLOSSARY

Categorical Exclusion – A category of actions that do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by a federal agency pursuant to NEPA (1508.4).

Cooperating Agency – A federal, state, or local agency or tribal government other than the agency preparing the NEPA review (lead agency), that has jurisdiction by law or special expertise with respect to environmental impacts related to a proposal and that has been deemed a cooperating agency by lead agency (1508.5).

Cumulative Impact – The incremental environmental impact of the an action, when added to the impacts of other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions (1508.7).

Effect (synonymous with impact) – A direct result of an action which occurs at the same time and place; or an indirect result of an action which occurs later in time or in a different place and is reasonably foreseeable (1508.8).

Environmental Assessment – A concise public document, prepared in compliance with NEPA that briefly provides sufficient evidence and analysis of impacts to determine whether to prepare an EIS or FONSI (1508.9).

Environmental Impact Statement – A detailed written statement required by section 102(2)(C) of NEPA (1508.11).

Environmentally Preferable Alternative – The alternative required by 40 CFR 1505.2(b) to be identified in ROD, that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources (46.30).

Extraordinary Circumstances – Circumstances that, if exist, mean a CE is may not be used and an EA or an EIS must be prepared (46.205).

Finding of No Significant Impact – A decision document prepared in compliance with NEPA, supported by an EA that presents the reasons why an action will not have significant impacts on the human environment (1508.13).

Human Environment – The natural and physical environment and the relationship of people with that environment (1508.14).

Impact Topics– Headings used in a NEPA document that represent specific resources that would be affected by a proposed action or alternatives under consideration.

Issues – Problems, concerns, conflicts, obstacles, or benefits that may occur if the proposed action or alternatives, including the no-action alternative, are implemented.

Jurisdiction by Law – Agency authority to approve, veto, or finance all or part of a proposal (1508.15).

Lead Agency – The agency or agencies responsible for preparing an EIS (1508.16). This term can apply when an EA is prepared as well.

Major Federal Action – Actions with adverse effects that may be significant and which are potentially subject to federal control and responsibility (1508.18).

Memorandum to File – A memorandum to a decision file that documents a determination that an existing NPS NEPA review provides complete and accurate NEPA documentation sufficient to cover a specific proposal.

Mitigated FONSI – A FONSI that relies on mitigation to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS.

Mitigation – Planning actions taken to avoid an impact altogether to minimize the degree or magnitude of the impact, reduce the impact over time, rectify the impact, or compensate for the impact (1508.20).

NEPA Document – Generally refers to an EA or EIS and can also refer to documentation prepared for a CE that requires documentation.

NEPA Pathway – Level of analysis and documentation for a NEPA review. CEs, EAs, and EISs are all specific NEPA pathways.

NEPA Process – All measures necessary to comply with the procedural requirements of NEPA for a specific action (1508.21).

NEPA Review – Applies broadly to all levels of NEPA documentation, whether it is a CE, EA, or EIS.

No-Action Alternative – Has two interpretations:

- (1) “no change” from a current management direction or level of management intensity (e.g., if no ground-disturbance is currently underway, no action means no ground-disturbance); or
- (2) “no project” in cases where a new project is proposed for implementation (46.30).

Notice of Intent – A notice that an EIS will be prepared (1508.22).

Notice of Availability – A notice submitted to the *Federal Register* announcing that a draft EIS, final EIS, and in some cases a ROD, is available to the public.

Preferred Alternative – The alternative identified in draft and final EISs, and most EAs, that the NPS decision maker believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors (46.420).

Proposed Action (synonymous with proposal) – The bureau activity under consideration (46.30).

Reasonably Foreseeable Future Action – Federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a Responsible Official of ordinary prudence would take such activities into account in reaching a decision. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite (46.30).

Record of Decision – The document that is prepared to substantiate a decision based on an EIS (1505.2).

Resource – An element of the human environment.

Scope – The range of actions, alternatives, and impacts to be considered in an EIS (1508.25). This term can also apply to EAs.

Scoping – An early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action (1501.7).

Significant – A subjective interpretation of the level of impact that will result to the human environment if an action is implemented, taking into account the context and intensity of an impact (1508.27).

Special Expertise – Statutory responsibility, agency mission, or related program experience.

Tiering – The coverage of general matters in broader EISs (or EAs) with subsequent narrower statements of environmental analysis, incorporating by reference, the general discussions and concentrating on specific issues (1508.28).

EXHIBIT 3

Second Declaration of Raymond Sauvajot

**DECLARATION OF RAYMOND M. SAUVAJOT, PH.D.
IN SUPPORT OF THE RESPONSE BY THE FEDERAL AVIATION
ADMINISTRATION AND THE NATIONAL PARK SERVICE TO
PETITIONERS' SECOND MOTION TO ENFORCE ORDER
GRANTING PETITION FOR MANDAMUS**

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). My declaration in support of the agencies' response to Petitioners' first motion to enforce the Court's order (First Motion to Enforce) dated November 5, 2021, incorporated by reference herein, supplies relevant information regarding my background.
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. My November 5, 2021 declaration, as well as the November 5, 2021 declaration of Kevin Welsh, the Executive Director of the FAA Office of Environment and Energy, supply information regarding the efforts by the NPS and the Federal Aviation Administration to implement air tour management plans (ATMPs) or voluntary agreements for 24 National Park System units for which ATMPs or agreements are required under the National Parks Air Tour Management Act (NPATMA). In the interest of brevity, this declaration does not separately set forth facts stated in my

November 5, 2021 declaration or in the November 5, 2021 declaration of Kevin Welsh, but only provides additional facts in response to the Second Motion to Enforce Order Granting Petition for Mandamus filed by Plaintiffs on March 9, 2022 (Second Motion to Enforce). Further, this declaration focuses on the agencies' efforts in the ATMP planning process, including compliance with National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). To the extent possible, this declaration does not duplicate information included in the declaration of Kevin Welsh, filed herewith (Second Welsh Declaration).

4. I have read and am familiar with the joint quarterly progress update filed by the agencies on November 24, 2021. That progress update was an accurate report of the agencies' activities as of that date in implementing the Court approved plan and schedule, as were all previous updates. In the November 2021 progress update, the agencies explained that their "goal remains to complete all air tour management plans, or voluntary agreements, consistent with the Court approved plan and schedule, by August 31, 2022." However, the agencies noted unique challenges and complications at specific parks that had caused the ATMPs for those parks to fall behind the parks for which draft ATMPs had already been released. Further, the agencies explained that if it became clear NPATMA compliance "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.” These statements were all true at the time the progress update was filed. And it remains the agencies’ goal to complete ATMPs or agreements for all 24 parks as close to the timeframe set in the Court approved plan as possible.

5. In preparing to file their February 28, 2022 progress update, the agencies reviewed their progress towards completing an ATMP or agreement for each of the 24 National Park System units included in the planning effort and the steps necessary to complete an ATMP or agreement, including required environmental compliance processes. At that time, it became clear, that despite the agencies’ best efforts, the planning and/or environmental compliance processes for several parks could, or would likely not, be completed within the two-year timeframe included in the Court-approved plan.
6. I have read and am familiar with the February 28, 2022, progress update filed by the agencies which, like all previous progress updates, was an accurate report of the agencies’ activities and progress as of that date in implementing the Court approved plan and schedule. This declaration provides further explanation regarding the activities completed by the

agencies so far, focusing on NPS's contributions to the planning efforts with respect to the 13 parks that are the focus of Petitioners' most recent motion to enforce the Court's mandamus order.

7. As an initial matter, I would like to address the Petitioners' inaccurate characterization of the agencies' efforts to date and the agencies' commitment to bringing the 24 parks included in this planning effort into compliance with NPATMA. Specifically, Petitioners contend that "little progress that has been made on several parks" and make the unsupported accusation that "it seems that what we are now facing is more of the same recalcitrance and lack of serious intent to comply with the law that occurred over the 20 years before this Court's order." Second Motion to Enforce at 3-4. Nothing could be further from the truth. The agencies' commitment, and the extensive resources devoted to this effort, have been demonstrated in the six progress updates filed to date and in the declarations submitted in opposition to Petitioners' First Motion to Enforce.
8. The agencies' efforts to implement ATMPs have involved substantial challenges, but the agencies have worked through these challenges in a cooperative and collaborative manner. Since my November 5, 2021 declaration was filed, the agencies worked through the extensive comments received with respect to the twelve ATMPs covering 15 National Park

System units that were released for public review in the late Summer and Fall of 2021. This was a time-consuming process. First, U.S. Department of Transportation's Volpe National Transportation Systems Center (Volpe Center) generated summaries of the comments received for each ATMP. Then, each agency needed to review the comments and consider how to address them, including whether changes should be made to the ATMPs in response to them. Some of the comments raised issues related to resources or aviation safety that involved further planning or research by one or both of the agencies. For the NPS, this meant that a project manager from the Natural Sounds and Night Skies Division with expertise regarding overflights, needed to engage with the interdisciplinary team of subject matter experts assembled for each individual park to understand resource concerns, identify whether changes were needed based on resource considerations raised by public comments, and identify any resource concerns raised as a result of changes suggested by the FAA related to safety concerns.

9. Because the resolution of these comments, and some of the resulting changes to the ATMPs, have the potential to change the effects of the ATMPs on park resources, additional noise modeling was often required to accurately assess the potential impacts of the ATMPs to park resources. And

because changes to the ATMPs could change the agencies' determination as to the appropriate pathway for NEPA compliance and the content of corresponding compliance documentation, change the undertaking that is the subject of the agencies consultation efforts in compliance with Section 106 of the National Historic Preservation Act (NHPA) (for which the FAA is acting as the lead agency), and affect the action to be reviewed by the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) for compliance with Section 7 of the ESA (for which the NPS is acting as the lead agency), those compliance efforts could not be completed until the public comments were resolved and addressed by the agencies with respect to each of the twelve ATMPs already released for public review and comment.

10. As made clear in the declarations submitted by the agencies in opposition to Petitioners' First Motion to Enforce, at the time the twelve draft ATMPs were released for public review and comment, the NPS anticipated complying with NEPA by applying a categorical exclusion, and the FAA anticipated adopting that categorical exclusion, but no final determination regarding the appropriate NEPA pathway had been made for any ATMP. The agencies have and continue to evaluate the appropriate NEPA pathway for each of the twelve ATMPs already released for public review, and this

evaluation is informed by the comments received during the public review period and comments that have and will be received as part of the Section 106 consultation and government-to-government tribal consultation.

11. As described in the Second Welsh Declaration, compliance with Section 106 of the NHPA involves the participation of consulting parties, including state agencies and tribes, whose input and participation is valuable and necessary, but also affects the timelines for completion of this process consistent with the applicable regulations, 36 CFR Part 800.
12. Similarly, compliance with Section 7 of the ESA involves the review of each ATMP by an expert regulatory agency, the FWS and/or the NMFS, when a species on the endangered species list, or their habitat, is present and may be affected by air tours. Throughout the air tour management planning process the agencies have been proactive in an attempt to expedite consultation, wherever possible. Here, the NPS initiated conversations with FWS and/or NMFS early in the process to understand potential mitigation measures and other information they may need to complete compliance with Section 7 of the ESA. The draft ATMPs released for public review in August, September, and October 2021 incorporated mitigation measures to protect listed species resulting from these early conversations.

13. For those ATMPs where the agencies anticipate a finding that the action is not likely to adversely affect listed species or critical habitat, they will need the concurrence of the relevant regulatory agency (the FWS and/or the NMFS). Upon receipt of a written request for concurrence with the agencies' determination that an ATMP is not likely to adversely affect a listed species or critical habitat, the FWS and/or the NMFS has up to 60 days to respond. *See* 50 C.F.R. § 402.13(c). If the relevant regulatory agency concurs in the agencies' findings the informal consultation process will be concluded. *Id.* Because changes have been made to draft ATMPs as a result of public comments and may be made as a result of Section 106 consultation, the agencies have had to wait to finalize and send informal consultation letters to the relevant regulatory agency to request concurrence until the terms and conditions in the ATMP for each park is finalized.
14. Even with the foregoing challenges, the agencies anticipate that ATMPs or agreements will be in place for 15 of the 24 parks included in this planning process by the end of August 2022 including: Arches National Park; Bryce Canyon National Park; Canyonlands National Park; Death Valley National Park; Everglades National Park; Glacier National Park; Golden Gate National Recreation Area; Great Smoky Mountains National Park; Mount Rainier National Park; Muir Woods National Monument; Natural Bridges

National Monument; National Parks of the New York Harbor (Statue of Liberty National Monument and Governors Island National Monument); Olympic National Park; Point Reyes National Seashore; and, San Francisco Maritime National Historical Park. Those parks that are identified in the Petitioners' Second Motion to enforce, and any parks for which the agencies anticipate that the process for establishing an ATMP will extend beyond August 31, 2021, are specifically addressed below.

Golden Gate National Recreation Area,
Point Reyes National Seashore,
San Francisco Maritime National Historical Park,
and
Muir Woods National Monument

15. The draft ATMP for Golden Gate National Recreation Area, Point Reyes National Seashore, San Francisco Maritime National Historical Park and Muir Woods National Monument (Muir Woods) is different from the other 11 draft ATMPs already released for public review because it covers 4 parks within 3 separate NPS management units (Muir Woods is managed as part of Golden Gate National Recreation Area), meaning that the planning process involved required approvals by three different park superintendents and the input of subject matter experts from the staff of three separate NPS management units.

16. Near the beginning of the planning process, the agencies agreed to prepare a single combined ATMP for Golden Gate National Recreation Area, Point Reyes National Seashore, and San Francisco Maritime National Historical Park due to: the close proximity of the parks, including shared borders; the fact that the same operators conducted air tours over the three parks; and, the fact that the operators' routes overflowed multiple parks. Though Muir Woods was exempt from the requirement to prepare an ATMP or voluntary agreement, the NPS withdrew that exemption March 4, 2021 in order to protect the resources and values and visitor experience of Muir Woods, to preserve the primeval character and ecological integrity of the old-growth redwood forest, and to preserve the natural soundscape which is a highly valued part of the park's visitor experience. Because no air tours overflowed Muir Woods and because it was managed as part of Golden Gate National Recreation Area, the agencies did not believe that the inclusion of Muir Woods would add additional time or complexity to the planning effort, and this has proven true.

17. As another initial step in the planning effort for this ATMP, the NPS established an interdisciplinary team of subject matter experts from the NPS's Natural Sounds and Night Skies Division, the NPS's Environmental Quality Division, the NPS regional office, and the staff from the parks.

Unlike the interdisciplinary teams assembled by the NPS for other ATMPs, this team involved experts from the park staff of three different NPS management units, each with necessary expertise regarding the resources of their park(s).

18. The air tour routes provided to the FAA by the operators had to be modeled in order to understand and predict noise effects from the air tours. This information was then considered, in addition to acoustic monitoring information collected by the NPS, and analyzed by the interdisciplinary team, which included subject matter experts in the fields of cultural resources, park planning, interpretative programs, NEPA compliance, natural resources and biology, and wilderness management. The interdisciplinary team met on a regular basis to consider the existing routes and operations, the parks' noise sensitive resources, existing and natural acoustic environment, and visitor experience. The team also considered potential mitigation or protective measures that could be included in an ATMP in order to develop a proposed action.

19. The proposed action identified by the NPS and the justifications for restrictions on air tours were further reviewed by the FAA, including the FAA's local Flight Standards District Office (FSDO). During this time, the agencies conducted preliminary environmental analysis to preliminarily

identify the appropriate NEPA pathway for a draft ATMP implementing the proposed action; initiated consultation pursuant to Section 106 of the National Historic Preservation Act, including tribal consultation; and began informal consultation consistent with Section 7 of the Endangered Species Act. The coastal location of the parks meant that the NPS had to discuss potential mitigation measures with both the FWS and the NMFS.

20. Given the complexities of this ATMP, it was the last of the twelve ATMPs that have already been released for public review and its public comment period ended November 14, 2021. Although this draft ATMP received numerically fewer comments than those received with respect to other ATMPs, it received a higher percentage of substantive and detailed comments that required more detailed review to consider and address than for some of the other parks, including comments from adjacent local jurisdictions. In addition, after the public comment period ended, the agencies received a detailed comment letter from the Greater Farallones National Marine Sanctuary, a marine sanctuary administered by the National Oceanic and Atmospheric Administration (NOAA) that is adjacent to both Point Reyes National Seashore and Golden Gate National Recreation Area.
21. The agencies' goal for completion of this ATMP remains August 31, 2022 and, at present, this remains possible. Whether this goal can be met depends

on the outcome of the consultation meeting between the agencies and the Federated Indians of Graton Rancheria, scheduled for May 18, 2022.

Bandelier National Monument

22. The planning process for the ATMP for Bandelier National Monument proceeded similarly to the planning process for the ATMP for the San Francisco Bay Area parks, discussed above. The NPS established an interdisciplinary team of subject matter experts from the NPS's Natural Sounds and Night Skies Division, the NPS's Environmental Quality Division, the NPS regional office, and the park's staff. The FAA requested operator routes, which were then modeled and analyzed by the NPS interdisciplinary planning team in order to identify necessary mitigation measures to protect park resources, visitor experiences and tribal use in order to identify a proposed action to be included in a draft ATMP. The agencies conducted preliminary environmental analysis and began tribal outreach.

23. A draft ATMP for Bandelier was released for public review on September 3, 2021. As with the draft ATMP for the San Francisco Bay area parks, the comments received needed to be summarized, organized and addressed by the agencies.

24. In the progress update filed on February 28, 2022, the agencies reported that the schedule for completing the Bandelier ATMP was currently holding, but that completion could be pushed past August 31, 2022. It is now clear, due to the extensive and ongoing tribal consultation efforts described in the Second Welsh Declaration, that an ATMP for Bandelier will not be complete by August 31, 2022. A timeframe for completion will depend largely on upcoming tribal consultation meetings and will be included in the next quarterly progress update.

Canyon de Chelly National Monument

25. Canyon de Chelly National Monument (Canyon de Chelly) is unique among the parks included in this planning effort in that it is located entirely on the reservation lands of the Navajo Nation and a community of Navajo people reside within the park. The park was established in 1931 by presidential proclamation, with the consent of the Navajo Nation. *See* Proclamation 2036—Canyon De Chelly National Monument; 16 U.S.C. § 445 (authorizing the park's establishment).

26. The planning process for Canyon de Chelly started similarly to that for other parks. An NPS team analyzed information provided by FAA regarding routes and altitudes of flights over the park to understand the existing condition and identify mitigations.

27. Because the Navajo Nation's tribal lands were overflowed by commercial air tours, consistent with NPATMA, via a letter dated May 21, 2021 the agencies invited the Navajo Nation to be a cooperating agency under NEPA for this ATMP and initiated consultation with the Navajo Nation Tribal Historic Preservation Officer under Section 106 of the NHPA.
28. On June 26, 2021, the NPS held a meeting held with Navajo Nation Department Chinle and Tsaille/Wheatfields Chapter representatives to discuss a proposed ATMP for the park. The agencies jointly held a follow up meeting August 18, 2021, with representatives of the Navajo Nation to continue discussions on a proposed ATMP.
29. As a result of these tribal consultation efforts, it became clear to the NPS that because Canyon de Chelly is located entirely on Navajo Nation reservation land, a proposed action could not be identified without the Nation's involvement in the planning process as an integral part of the planning team. Though NPATMA does not specifically provide for this status, the agencies found that due to the unique nature of Canyon de Chelly, including representatives of the Navajo Nation as part of the planning team was consistent with the intent of NPATMA, which includes the protection of tribal lands.

30. Via letter dated November 16, 2021, the park superintendent invited the president of the Navajo Nation to identify a representative to be a part of the interdisciplinary planning team and participate fully in planning meetings on behalf of the Navajo Nation. The agencies followed up with email and phone calls to individuals within the president's office. A representative from Navajo Department of Transportation was identified and, at the time of the agencies' February 28, 2022 progress update, the agencies believed that this person would represent the Navajo Nation on the planning team.
31. After the agencies filed their February 28, 2022 progress update, it became clear that the identified representative did not represent the entirety of the Navajo Nation and that additional representatives were necessary in order to ensure full participation by and representation of the Navajo Nation on the planning team. Additional representatives from the Navajo Nation's governmental departments were identified to participate on the planning team, including representatives from Navajo Nation Tourism Office, Navajo Fish and Wildlife, the Historic Preservation Department, and the Parks and Recreation Department. Representatives of two Navajo Nation chapters were also included in the planning team.
32. The NPS and representatives from the Navajo Nation identified above held a planning team meeting on March 16, 2022, to discuss the Navajo Nation's

position with respect to a proposed action for the ATMP. Representatives of Navajo Nation decided to conduct community outreach and further internal process needed to provide the Navajo Nation's consensus position regarding commercial air tours over the park.

33. The agencies and the Navajo Nation met on April 21, 2022. They discussed the preliminary results of the community outreach and determined that additional outreach was needed to identify the consensus position of the Navajo Nation with respect to commercial air tours.

34. Though Petitioners contend that “[n]o viable explanations are provided for why so little has been done” with respect to developing an ATMP for Canyon de Chelly, Second Motion to Enforce at 7, this statement ignores the unique nature of this park, which is entirely on Navajo Nation land, as well as the heavy toll that COVID-19 pandemic has taken on Native American tribes in general, and on the Navajo Nation in particular. During much of the planning period for this ATMP, the government of the Navajo Nation has been entirely or partially closed, focusing on handling the pandemic.¹ As detailed above, the agencies are now able to engage with the Navajo

¹ The Navajo Division of Health's website contains information regarding the Navajo Nation's response to the pandemic: <https://www.ndoh.navajonnsn.gov/covid-19>

Nation's representatives and are making progress towards developing an ATMP for this park.

35. At present, I estimate that the steps needed to complete an ATMP for Canyon de Chelly, including completing a draft ATMP, releasing the ATMP for public comment, and identifying the appropriate NEPA pathway, preparing NEPA compliance documentation, and completing other necessary environmental compliance, could take until December 2023. However, depending on the outcome of the Navajo Nation's community outreach and internal processes, the agencies could complete an ATMP well in advance of that timeframe. As with the other parks, the agencies will make every effort to complete an ATMP for Canyon de Chelly as expeditiously as possible, consistent with their consultation and compliance responsibilities.

Hawai'i Volcanoes National Park

36. The planning process for the ATMP for Hawai'i Volcanoes National Park (Hawai'i Volcanoes) began similarly to the planning process for the ATMPs mentioned above. The NPS established an interdisciplinary team of subject matter experts from the NPS's Natural Sounds and Night Skies Division, the NPS's Environmental Quality Division, the NPS regional office, and the park's staff. The NPS interdisciplinary planning team for the Hawai'i

Volcanoes ATMP has been meeting on a biweekly or weekly basis since November 2020.

37. The FAA requested operator routes for Hawai'i Volcanoes, but the route information was so complex due to the number of routes, that the agencies needed to obtain flight tracking data to understand the current condition, regarding the distribution of the air tours (i.e., which routes are being flown more than other routes). Though the NPS did have flight tracking data for this park, this data was raw data that needed to be processed in order for the NPS to understand the effects of commercial air tours on park resources and visitor experience. The NPS also did a detailed analysis of 34,133 air tours reported by operators from 2017-2019 to generate yearly and daily statistics in order to inform noise modeling. Due to the large amount of data, this type of analysis is time intensive. The agencies then did preliminary noise modeling based on flight tracking data which enabled them to understand the noise impacts of the current level of commercial air tours.

38. Petitioners contend that “The agencies note that they still do not have a handle on impacts to park resources and visitor experiences from current levels of air tours.” Mtn at 8. As explained above, this is not true. Because of the high level of air tour activity associated with this park, it did take substantial effort for the agencies to understand the routes, flight patterns,

and associated noise impacts of commercial air tours on park resources, but the agencies have done so.

39. Early on in the planning process the agencies determined that they would need to do environmental assessments (EAs) for both Hawai'i Volcanoes and Haleakalā National Park (Haleakalā). As past efforts to implement ATMPs were stymied by agency disagreements between the agencies regarding NEPA compliance requirements and alternatives, the agencies prioritized efforts to resolve these differences and agree on language to be incorporated in the EAs, process for completing the EAs, and outlines to be used for EAs. This work has been reported to the Court in the progress updates filed to date.
40. The agencies completed a substantial amount of pre-NEPA work for the EA for Hawai'i Volcanoes before starting the formal NEPA process. In particular, given the high number of endemic threatened and endangered species that occur in the park, the NPS has already begun preliminary discussions with the FWS regarding compliance with Section 7 of the ESA which has informed the EA process and the development of potential alternatives.
41. The agencies also completed substantial work to identify and refine potential alternatives to be presented to the public during public scoping.

The development of potential alternatives was informed by NPS's preliminary discussions with the FWS and the noise modeling work discussed above. Although public scoping is not required for an EA, the agencies decided to do scoping based, in part, on the high level of public interest in the project, and in order to obtain meaningful public input as to the alternatives under consideration, which are different than those previously released to the public in prior planning efforts.

42. The agencies released a scoping newsletter presenting potential alternatives for an ATMP for Hawai'i Volcanoes for public review and comment on February 28, 2022. The public comment period for the newsletter closed on April 1, 2022. The newsletter is available at:

<https://parkplanning.nps.gov/documentsList.cfm?parkID=307&projectID=103522>

43. The scoping newsletter documents the substantial work already done by the agencies to complete an ATMP for Hawai'i Volcanoes.

- a. It explains that the agencies considered but dismissed alternatives that would allow commercial air tour operations at or above existing numbers because the NPS determined they would result in unacceptable impacts to the park's natural and cultural resources, wilderness character, and visitor enjoyment under the NPS

Management Policies 2006 1.4.7.1. and do not meet the purpose and need for the ATMP.

- b. It identifies a no action alternative, which the agencies are required by NEPA to consider, but explains that this alternative is not selectable.

The map on page 12 of the newsletter illustrates flights expected to occur under the no-action alternative and thus depicts the complexity of the existing operations that the agencies have been required to analyze in order to consider and dismiss alternatives that would allow air tours at or above existing numbers.

- c. It also sets out three potential action alternatives which include an alternative under which all commercial air tours would be prohibited in the ATMP planning area, and two alternatives that would set designated routes and include various other restrictive measures to protect park resources and visitor experience.

44. The next step in the process will be to summarize and sort the comments received during scoping, and to use those comments to identify alternatives to be carried forward in the EA. The agencies received 935 comments on the scoping newsletter, of which 449 were form letters.

45. Once the agencies decide what alternatives to carry forward, they will need to complete additional noise modeling regarding each alternative, which

may take 2-3 months. For each route the agencies need to identify the type of aircraft that will use the route, aircraft power settings, altitude, and speed to model the noise resulting from the air tours. The metrics used are computationally intensive and it takes 2-3 weeks for a computer to run the data and create the noise contour maps. Once this analysis is completed, it needs to be compiled into a technical report. The agencies will then need to draft an ATMP and an EA, and complete the environmental compliance processes discussed above.

46. At present, I estimate that the steps needed to complete an ATMP for Hawai'i Volcanoes will take an additional year beyond the current 2-year schedule, until August 2023. While the agencies currently anticipate completing, and will make every effort to complete, the ATMP for Hawai'i Volcanoes by August 2023, challenges beyond their control have the potential to delay the completion date beyond August 2023.

Haleakalā National Park

47. The planning process for the ATMP for Haleakalā began similarly to the planning process for the ATMPs mentioned above. The NPS established an interdisciplinary team of subject matter experts from the NPS's Natural Sounds and Night Skies Division, the NPS's Environmental Quality Division, the NPS regional office, and the park's staff. The NPS

interdisciplinary planning team for the Haleakalā ATMP has been meeting on a biweekly or weekly basis since November 2020.

48. As it did for other parks, the FAA requested operator routes for Haleakalā.

On receipt of this information, the NPS found that it needed to obtain flight tracking data to understand to what extent the current flight patterns were adhering to the previously identified routes and to what extent they followed the routes submitted by the operators. The NPS also did a detailed analysis of 14,471 air tours reported by operators from 2017-2019 to generate yearly and daily statistics in order to inform noise modeling. Due to the large amount of data, this type of analysis is time intensive. The agencies then did preliminary noise modeling based on flight tracking data which enabled them to understand the routes flown, flight patterns, and associated noise impacts of the current level of commercial air tours on park resources.

49. Petitioners contend that “The agencies note that they still do not have a handle on impacts to park resources and visitor experiences from current levels of air tours.” Mtn at 8. As explained above, this is not true. Because of the level of air tour activity at Haleakalā it did take substantial effort for the agencies to understand the impacts of the current level of commercial air tours, but the agencies have done so.

50. As with Hawai'i Volcanoes, the agencies completed a substantial amount of pre-NEPA work for the EA for Haleakalā before starting the formal NEPA process. Like Hawai'i Volcanoes, Haleakalā has a high number of endemic species that are threatened or endangered. The NPS has already begun preliminary discussions with the FWS regarding compliance with Section 7 of the ESA which has informed the EA process and the development of potential alternatives.

51. The agencies also completed substantial work to identify and refine potential alternatives to be presented to the public during public scoping. The development of potential alternatives was informed by NPS's preliminary discussions with the FWS and the noise modeling work discussed above. Although public scoping is not required for an EA, the agencies decided to do public scoping based, in part, on the high level of public interest in the project, and in order to obtain meaningful public input as to the alternatives under consideration, which are different than those previously released to the public in prior planning efforts.

52. The agencies released a scoping newsletter regarding potential alternatives for an ATMP for Haleakalā on February 28, 2022, and the public comment period for the newsletter closed on April 1, 2022. The newsletter is available at:

<https://parkplanning.nps.gov/document.cfm?parkID=306&projectID=103365&documentID=118738>

53. The scoping newsletter documents the substantial work done by the agencies in furtherance of completing an ATMP for Haleakalā.
- a. It explains that the agencies considered but dismissed alternatives that would allow air tour operations at or above existing numbers because the NPS determined they would result in unacceptable impacts to the park's natural and cultural resources, wilderness character, and visitor enjoyment under the NPS Management Policies 2006 1.4.7.1. and do not meet the purpose and need for the ATMP.
 - b. It identifies a no action alternative, which the agencies are required by NEPA to consider, but explains that this alternative is not selectable. The map on page 12 of the newsletter illustrates flights expected to occur under the no-action alternative and thus depicts the complexity of the existing operations that the agencies have been required to analyze in order to consider and dismiss alternatives that would allow air tours at or above existing numbers.
 - c. It also sets out two potential action alternatives which include an alternative under which all commercial air tours would be prohibited in the ATMP planning area, and another alternative that would set

designated routes and include various other restrictive measures to protect park resources and visitor experience.

54. As with Hawai'i Volcanoes, the next step in the process for Haleakalā will be to summarize and sort the comments received during scoping, and to use those comments to identify alternatives to be carried forward in the EA. The agencies received 2,543 comments, of which 426 were form letters.
55. Once the agencies decide what alternatives to carry forward, they will need to complete additional noise modeling regarding each alternative, which may take 2-3 months. They will then need to draft an ATMP and an EA, and complete the environmental compliance processes discussed above.
56. At present, I estimate that the steps needed to complete an ATMP for Haleakalā take an additional year beyond the current 2-year schedule, until August 2023. While the agencies currently anticipate completing, and will make every effort to complete, the ATMP for Haleakalā by August 2023, challenges beyond their control have the potential to delay the completion date beyond August 2023.

Badlands National Park

57. Similar to the planning processes above, at the beginning of the planning process for the ATMP for Badlands National Park (Badlands), the NPS established an interdisciplinary team of subject matter experts from the

NPS's Natural Sounds and Night Skies Division, the NPS's Environmental Quality Division, the NPS regional office, and the park's staff. The NPS interdisciplinary planning team for the Badlands ATMP has been meeting on a bi-weekly basis since late 2019.

58. As with the above parks, the FAA requested the operators' routes over Badlands which have then been analyzed by the interdisciplinary planning team. However, early on in the planning process multiple tribes that hold the Black Hills and surrounding area significant, including Badlands and Mount Rushmore National Memorial (Mount Rushmore), expressed interest in initiating tribal consultation. As detailed in the Second Welsh Declaration, this consultation has required extensive outreach and resources. The timing of consultation is not completely within the agencies' control. Consultation meetings have included the participation of high level decision-makers for both agencies (including the park superintendent), and high-level tribal officials, in addition to staff from both agencies.

59. Petitioners complain that the agencies "have not yet initiated formal consultation with the Ogalala Sioux Tribe, an essential partner because it co-manages part of the Badlands National Park." Second Motion to Enforce at 8. While this is technically true, the agencies have spent considerable efforts attempting to initiate consultation with the Oglala Sioux Tribe, and invited

them to all tribal consultation meetings, but have not yet received a response, possibly due to the COVID-19 pandemic. The NPS believes that the participation of the Oglala Sioux Tribe in this process is vital as they co-manage the South Unit of the park and the Pine Ridge Reservation abuts the park.

60. As a result of tribal consultation, the agencies decided to prepare EAs for the ATMPs for both Badlands and Mount Rushmore. The agencies further agreed that both EAs would consider a no air tours alternative and that the EAs would need to proceed in tandem as a result of the feedback received during tribal consultation.
61. Petitioners contend that “[t]he agencies have decided to conduct environmental assessments for these parks but have not even begun to develop a preliminary range of alternatives for public scoping.” Second Motion to Enforce at 8. This statement is not true. Potential alternatives have been developed for ATMPs for both Badlands and Mount Rushmore and were shared with the tribes during a consultation meeting on January 28, 2022. The agencies planned to continue the discussions about these draft alternatives with the tribes and to seek their input at an in-person meeting scheduled for April 14, 2022 in Bismarck, ND, in conjunction with a tribal consultation meeting set up by the North Dakota Department of

Transportation. I planned to attend this meeting along with multiple members of my staff, as well as staff from both parks including the superintendents of both parks. Unfortunately, this meeting had to be cancelled at the last minute due to a snowstorm. Due to the difficulties in coordinating the schedules for those involved, and in obtaining a venue for consultation, the agencies have not been able reschedule it until May 12, 2022.

62. After the agencies receive the tribal feedback regarding the preliminary draft alternatives, they will consider that information and whether and how it may impact the draft alternatives. The agencies plan to release the draft alternatives for both parks for public review in a public scoping process. The agencies anticipate that the scoping newsletters for the ATMPs for Badlands and Mount Rushmore will include a comparable level of detail as the scoping newsletters already released for Hawai'i Volcanoes and Haleakalā.
63. Petitioners contend that the agencies have not “taken the other needed steps such as historic preservation and endangered species consultations.” Second Motion to Enforce at 8. While it is true that the agencies have not completed these consultations, this statement ignores the extensive tribal consultation that has already been conducted and the pre-NEPA work that has already been done. As for Section 7 compliance, while the NPS had collected

information about threatened or endangered species that may be affected by an ATMP, consultation has not yet been initiated because the agencies have not yet identified a proposed action.

64. At present, I estimate that the steps needed to complete an ATMP for Badlands take an additional year beyond the current 2-year schedule, until August 2023. While the agencies currently anticipate completing, and will make every effort to complete, the ATMP for Badlands by August 2023, challenges beyond their control have the potential to delay the completion date beyond August 2023.

Mount Rushmore National Memorial

65. As with the planning processes detailed above for other ATMPs, at the beginning of the planning process for the ATMP for Mount Rushmore the NPS established an interdisciplinary team of subject matter experts from the NPS's Natural Sounds and Night Skies Division, the NPS's Environmental Quality Division, the NPS regional office, and the park's staff. The NPS interdisciplinary planning team for the Mount Rushmore ATMP has been meeting on a bi-weekly basis since late 2019.
66. As with the above parks, the FAA requested the operators' routes over Mount Rushmore which have then been analyzed by the NPS's assembled interdisciplinary planning team.

67. In addition to the extensive tribal consultation and NEPA work discussed in the Second Welsh Declaration and above for both Badlands and Mount Rushmore, the NPS has done preliminary work to identify threatened or endangered species within the park that may be affected by an ATMP, though consultation with the FWS has not yet been initiated because the agencies have not yet identified a proposed action.

68. At present, I estimate that the steps needed to complete an ATMP for Mount Rushmore take an additional year beyond the current 2-year schedule, until August 2023. While the agencies currently anticipate completing, and will make every effort to complete, the ATMP for Mount Rushmore by August 2023, challenges beyond their control have the potential to delay the completion date beyond August 2023.

Lake Mead National Recreation Area

69. Petitioners contend that “it is not clear that [the agencies] have done much of anything at all” in furtherance of an ATMP for Lake Mead National Recreation Area (Lake Mead). Second Motion to Enforce at 7. In fact, the agencies have done substantial work in furtherance of an ATMP for Lake Mead. At the beginning of the ATMP planning process for the ATMP for Lake Mead, the NPS established an interdisciplinary team of subject matter

experts, as it has for other parks, and this interdisciplinary planning team has met as needed to discuss issues that have arisen in the planning process.

70. Because of its location between the Las Vegas area and Grand Canyon National Park (Grand Canyon), Lake Mead is overflowed by more than 50,000 commercial air tours in transit to Grand Canyon each year. Air tours over Grand Canyon and abutting tribal lands are excluded from NPATMA, 49 U.S.C. § 40128(e), and are regulated as a Special Flight Rules Area by the FAA. NPATMA also includes a provision excluding air tour operations over or near Lake Mead that are flown “solely as a transportation route, to conduct an air tour over the Grand Canyon National Park.” 49 U.S.C. § 40128(f). It then goes on to state “that an air tour operator flying over the Hoover Dam in [Lake Mead] en route to the Grand Canyon National Park shall be deemed to be flying solely as a transportation route.” *Id.* NPATMA does not provide a definition of the term “transportation route.”

71. As with the other parks, the NPS interdisciplinary planning team, using route information obtained by the FAA, attempted to define the existing condition of commercial air tours over Lake Mead. However, in so doing it became clear that operators were inconsistent in reporting commercial air tours over Lake Mead, likely due to the need for a clear definition of a “transportation route.” Some operators appeared to be reporting

transportation routes as commercial air tours over Lake Mead, while others appear to not be reporting them. Because the term “transportation route” is not defined, it was further unclear whether some routes were transportation routes or commercial air tour routes over Lake Mead. The agencies have been examining reporting data for both Lake Mead and Grand Canyon to disentangle data submitted for commercial air tours over Lake Mead from flights on transportation routes over Lake Mead.

72. The interdisciplinary planning team’s efforts to identify a proposed action with mitigations to protect park resources have been further complicated by the complexity of the multiple air tour routes over the park, which depart from or arrive from multiple airports, and are flown by different types of aircraft (fixed wing and helicopters) which need to be vertically separated for safety reasons. Further, much of the airspace over Lake Mead where air tours originate or conclude is controlled by air traffic controllers (Class B airspace) and includes much of the commercial airline traffic heading into and out of the City of Las Vegas. As a result of these factors, the NPS interdisciplinary planning team has had to work closely with the Las Vegas FSDO, the FAA FSDO with jurisdiction, to understand the complexity of the airspace in this part of the country, which impacts the availability of mitigation measures.

73. The agencies are continuing to work to define transportation routes in order to determine the existing condition of commercial air tours over Lake Mead and how these routes should be regulated under an ATMP. This requires additional outreach and consultation with air tour operators to ensure that commercial air tours, as opposed to transportation routes, have been consistently and correctly reported.
74. After the existing condition is identified, the agencies will need to identify the appropriate NEPA pathway for an ATMP, and complete NEPA compliance, draft an ATMP, and complete the consultations outlined above.
75. At present, I estimate that the steps needed to complete an ATMP for Lake Mead take an additional year beyond the current 2-year schedule, until August 2023. Though Petitioners express doubt that the agencies can meet this timeframe, I note that the substantial pre-NEPA work already completed, as well as the agencies' experience in developing ATMPs for other parks will inform and expedite the agencies efforts with respect to Lake Mead. While the agencies currently anticipate completing, and will make every effort to complete, the ATMP for Lake Mead by August 2023, challenges beyond their control have the potential to delay the completion date beyond August 2023.

Glen Canyon National Recreation Area
and
Rainbow Bridge National Monument

76. Glen Canyon National Recreation Area (Glen Canyon) and Rainbow Bridge National Monument (Rainbow Bridge) are unique among the parks included in this planning effort in that the agencies have already signed voluntary agreements with seven of the nine operators with IOA for these parks, which are both managed by a single NPS management unit.
77. Nine operators hold IOA authorizing 8,159 commercial air tours per year over Glen Canyon and hold IOA authorizing 10,160 commercial air tours per year over Rainbow Bridge. Under the voluntary agreement signed by seven of the nine operators with IOA for Glen Canyon, 7,658 commercial air tours are authorized per year over Lake Powell within Glen Canyon and, of these, 122 may be flown over the Glen Canyon Natural Zone, which is proposed for wilderness designation. Under this same agreement, 3,854 commercial air tours per year are authorized over Rainbow Bridge. The two operators with IOA for the parks that have not signed the voluntary agreement (American Aviation and Aero-Copters or Arizona) continue to operate under IOA and are authorized to conduct up to 501 air tours per year over Glen Canyon and 138 air tours per year over Rainbow Bridge.

78. In 2019, the most recent year for which reliable reporting data is available, 5,919 commercial air tours were reported over Glen Canyon and 1,301, commercial air tours were reported over Rainbow Bridge. Over 91 % of the air tours that occur per year over Glen Canyon and over 89 % of air tours that occur per year over Rainbow Bridge are regulated by the voluntary agreements in place for these parks.

79. Given that the extensive efforts already expended by the agencies to implement the voluntary agreements for these parks, and the fact that these parks are already substantially in compliance with NPATMA, the agencies began by making initial attempts to bring the two operators who had not signed the voluntary agreement under a voluntary agreement before turning to an ATMP planning effort.

80. As with the other parks, an NPS interdisciplinary planning team is in place for Glen Canyon and Rainbow Bridge. The ATMP planning effort for Glen Canyon and Rainbow Bridge has occurred during an extreme drought, which has resulted unprecedented low lake levels for Glen Canyon. This drought emergency has been a major focus of the park and the resources needed to address this emergency have disrupted the park's operations and the availability of the interdisciplinary team to meet and contribute to the development of a proposed action.

81. At present, I estimate that the steps needed to complete an ATMP for Glen Canyon and Rainbow Bridge will take an additional eighteen months beyond the current 2-year schedule, until February 2024. This estimate is based in part on the need for the agencies to agree on a proposed action and the agencies' past experience with the extensive tribal interest in consultation on the voluntary agreements, in particular with respect to Rainbow Bridge. While the agencies currently anticipate completing, and will make every effort to complete, the ATMP for these parks by February 2024, challenges beyond their control have the potential to delay the completion date beyond February 2024.

Conclusion


82. Consistent with the Court approved Plan the planning processes for each of the parks were initiated at the same time. The fact that some of the ATMPs have or will take additional time to complete is not due to any lack of diligence on the part of the agencies. For some parks, this has been due to factors outside of the agencies' control, such as tribal consultation. For others, it reflects the complexities specific to those particular parks. Petitioners allege that the agencies "have done little or nothing with respect to" the parks that will take additional time to complete when, in fact, the converse is true. The agencies have invested the most time and effort with

respect to the planning efforts for many of these parks; they are just harder and more time consuming to complete than those that are on track to be completed by August 2022.

83. The agencies' progress towards completing ATMPs or VAs for the parks has also been limited by available resources to some extent. While the NPS has prioritized completion ATMPs or voluntary agreements for 24 parks consistent with the Court approved plan and devoted substantial resources, primarily in terms of staff time, to this effort, those resources are not unlimited. This is particularly true with respect to NPS staff with the expertise needed to evaluate, understand and manage complex projects like the implementation of ATMPs at a diverse array of NPS units, each with their own specific resource concerns and different existing air tour conditions. The NPS staff with experience working on overflight issues, and with the necessary background to understand the acoustic environment of national parks, how park visitors respond to acoustic environment, and how park wildlife responds to noise have been invaluable to this effort. The same core team has also had to expend time that could otherwise have been spent on the ATMP planning effort supporting the agencies' responses to Petitioners' post decision motions, including this declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on May 9, 2022 in Washington, D.C.

RAYMOND
SAUVAJOT

 Digitally signed by RAYMOND
SAUVAJOT
Date: 2022.05.09 09:35:43 -04'00'

Raymond M. Sauvajot, Ph.D.

EXHIBIT 4
Second Declaration of Kevin Welsh

**DECLARATION OF KEVIN WELSH IN SUPPORT OF
THE RESPONSE FROM FEDERAL AVIATION ADMINISTRATION
AND NATIONAL PARK SERVICE IN OPPOSITION TO
PETITIONERS' SECOND MOTION TO ENFORCE ORDER
GRANTING PETITION FOR MANDAMUS**

I, Kevin Welsh, declare as follows:

1. I am the Executive Director of the Federal Aviation Administration's (FAA) Office of Environment and Energy. The FAA's Office of Environment and Energy maintains responsibility within the FAA for addressing issues associated with the National Parks Air Tour Management Act (NPATMA). I am submitting this declaration in support of the Response from the FAA and the National Park Service (NPS) in Opposition to Petitioners' Second Motion to Enforce Order Granting Petition for Mandamus (Second Motion to Enforce).

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. I have read the declaration of Raymond M. Sauvajot, the Associate Director of the National Resource Stewardship and Science for the National Park Service, executed on May 9, 2022 and filed herewith. That declaration accurately reflects the agencies' efforts related to the air tour management plan (ATMP) planning process and related reviews under the National Environmental Policy Act (NEPA), Section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act (NHPA).

4. Mr. Sauvajot and I previously executed declarations in support of the agencies' November 5, 2021 response to Petitioners' October 12, 2021 Motion to Enforce Order Granting Petition for Mandamus (First Motion to Enforce). Those declarations supplied the court information regarding the agencies' efforts to implement ATMPs or voluntary agreements that are required for 24 National Park System units under the NPATMA.

5. In the interest of brevity, this declaration does not seek to restate facts stated in my November 5, 2021 declaration, or in the declarations of Raymond Sauvajot executed on November 5, 2021 and May 9, 2022. This declaration aims to provide additional facts in response to the Second Motion to Enforce filed by petitioners on March 9, 2022. In particular, this declaration focuses on the agencies' efforts related to Section 106 of the NHPA and tribal consultation.

Section 106 of the NHPA and Tribal Consultation

6. Compliance with Section 106 of the NHPA involves the participation of consulting parties—*i.e.*, state historic preservation officers (SHPOs), tribal historic preservation officers (THPOs), tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties that may be affected by the air tour management plans, representatives of a local government with jurisdiction over the area where effects of the undertaking may occur, air tour operators, and other parties with an interest in the undertakings. The input and

participation of consulting parties is valuable and necessary, but also affects the timelines for completion of this process under the applicable regulations, 36 CFR Part 800.

7. The FAA serves as the lead agency for the Section 106 process. Fifteen representatives from the FAA, the NPS, and the U.S. Department of Transportation's Volpe National Transportation Systems Center (Volpe Center) participate and collaborate consistently as part of an interagency group, referred to as the FAA-NPS Section 106 Working Group (Section 106 Working Group). The Section 106 Working Group is a subset of the broader ATMP planning team and includes cultural resource specialists and a variety of other subject matter experts. The FAA and the Section 106 Working Group meet in various configurations multiple times each week to support the massive Section 106 consultation effort.

8. The agencies have made an enormous effort and expended substantial time and resources toward complying with Section 106 for each park for which an ATMP is being prepared.

9. In all, the FAA has invited 316 consulting parties to participate in the Section 106 process so far. This includes 128 tribes, 34 air tour operators, 12 State Historic Preservation Offices (SHPOs), 94 Native Hawaiian Organizations (NHOs) and Hawaiian-based consulting parties, and 48 other consulting parties that have a demonstrated interest in the undertakings.

10. To date, the FAA has sent a total of 986 letters related to this process. This includes 246 formal letters initiating consultation under Section 106; 247 letters describing the undertaking for each park and its respective area of potential effect (APE); 362 letters identifying historic properties within the APE that are listed or eligible to be listed on the National Register for Historic Places; 32 letters proposing the FAA's effect determination; and 99 other types of consultation letters and correspondence (*i.e.*, meeting invitations, letters responding to comments or recognizing comments submitted). This correspondence and consultation process is ongoing, so these numbers increase every week.

11. In addition to the letters, the FAA and the NPS have hosted 30 meetings and the FAA made at least 135 phone calls to or with consulting parties so far. Generally, around a half-dozen to a dozen agency representatives attend, participate, and often present at these meetings. Agency leadership routinely participates in tribal consultation meetings—such as the park superintendent for the NPS and a Regional Administrator for the FAA.

12. On April 28, May 4, and May 6, 2021, the FAA and the NPS held virtual informational Section 106 presentations for consulting parties (*i.e.*, SHPOs and Tribal Historic Preservation Officers (THPOs), tribes, NHOs, and other consulting parties) that had been identified at that time. The agencies also hosted a virtual presentation specifically for air tour operators on November 19, 2021.

These webinars were not park specific, but rather focused on providing basic background information about NPATMA and the agencies' efforts to develop ATMPs. They also provided consulting parties the opportunity to ask any ATMP process-related questions.

13. The following paragraphs include an update about the Section 106 and tribal consultation processes for parks that are identified in the Petitioner's Second Motion to Enforce.

Hawai'i Volcanoes National Park/Haleakalā National Park

14. Contrary to Petitioners' claim that the agencies "have done little or nothing" with respect to parks like Hawai'i Volcanoes and Haleakalā. (Second Motion to Enforce at 4), the FAA has initiated consultation with 82 parties for the Hawai'i Volcanoes ATMP and 57 parties for the Haleakalā ATMP. These parties include the SHPO, air tour operators, NHOs, and other parties with an interest in the undertakings. The FAA has so far sent a total of 70 consultation letters for Hawai'i Volcanoes and 41 for Haleakalā.

15. In addition to the introductory webinars the FAA and the NPS hosted in April and May 2021, the agencies hosted a Section 106 informational webinar on October 28, 2021 specifically developed for prospective consulting parties for the Hawaii parks. Then, the FAA and the NPS met on December 9, 2021 with prospective consulting parties for Haleakalā and on December 10, 2021 with

prospective consulting parties for Hawai'i Volcanoes. At these meetings called "listening sessions," the agencies provided information about current air tour activities at the parks, summarized comments received so far from consulting parties or through prior ATMP efforts for the Hawaii parks, identified historic properties and traditional cultural properties, and provided an opportunity for the consulting parties to voice questions and concerns. More recently, on March 11, 2022, the FAA and the NPS held a Section 106 consultation meeting to present potential alternatives for the Hawai'i Volcanoes ATMP. Consultation is ongoing and important to informing the ATMP planning process and underlying environmental assessments. The agencies expect to host additional consultation meetings as the NEPA and Section 106 processes progress.

Mount Rushmore National Monument/Badlands National Park

16. As with the Hawaii parks, the agencies have dedicated extensive time and resources to its consultation efforts related to the Badlands and Mount Rushmore ATMPs. The FAA initiated consultation with 31 parties for Mount Rushmore and 28 parties for Badlands. For Mount Rushmore, this includes 23 tribes, three operators, four other consulting parties with a demonstrated interest, and the South Dakota SHPO, while for Badlands it consists of 21 tribes, two operators, four other consulting parties and the South Dakota SHPO.

17. The agencies have also hosted a number of Section 106 consultation meetings for these parks including a virtual kick-off/informational meeting for Mount Rushmore and Badlands on March 30, 2021, a virtual introductory meeting for Mount Rushmore on June 1, 2021, a virtual introductory meeting for Badlands on July 23, 2021, a virtual Section 106 tribal consultation meeting on October 19, 2021, and a follow-up virtual Section 106 consultation meeting to present potential alternatives on January 28, 2022. In between these meetings, the FAA followed up by email and phone with tribes that had not yet responded to previous invitations to consult. The FAA also met informally at a Tribal Consultation Committee meeting in Bismarck, North Dakota, on September 9, 2021, with representatives of 9 tribes.

18. The COVID-19 pandemic, along with typical scheduling issues, including weather, has proven challenging to conducting in person consultations. Due to these issues, the parties were not able to schedule an in-person meeting until April 14, 2022, but that meeting was then postponed due to severe snow storm warnings for the Bismarck area.

19. In fact, the FAA had conducted substantial coordination efforts to prepare for the April 14 meeting including assisting tribal representatives with travel arrangements. The FAA had to ensure that participants were notified of the cancellation before they began their travels. Now that the meeting has been rescheduled, extensive additional coordination is needed to prepare for the new

meeting date on May 12, 2022, including identifying a new list of attendees and working through the invitational travel process for new attendees.

20. Petitioners complain that the agencies have not yet initiated formal consultation with the Oglala Sioux Tribe, an “essential partner because it co-manages part of the Badlands National Park.” Second Motion to Enforce at 8. In fact, in recognition of the Oglala’s unique relationship to Badlands as a co-manager of the park, the agencies followed the tribe’s process, set forth in its Oglala Sioux Tribe Consultation and Coordination Ordinance of 2001, to request formal government-to-government consultation. Specifically, the agencies sent a letter on October 18, 2021 inviting the tribe to engage in government-to-government consultation and followed up by email with the tribe’s Executive Secretary. Nevertheless, we have not yet received a response. The Oglala Sioux Tribe referred the matter to its Land Committee. The Chief of Resource Management, for Badlands National Park attended the Land Committee meeting in March 2022. The Land Committee subsequently referred the matter to the Oglala Natural Resources Regulatory Agency. The agencies are continuing to work through the tribe’s protocols to engage with the Oglala Tribal Council on a government-to-government level.

21. While the agencies have not been able to initiate government-to-government consultation, the FAA has initiated Section 106 consultation with the

Oglala Sioux Tribe by April 15, 2021 letter to the President and copied to the THPO. Although the FAA did not receive a response to the April 15, 2021 letter, and the Oglala Sioux Tribe has not attended any of the Section 106 consultation meetings to date, the letter represents the start of the Section 106 consultative process. The Oglala Sioux Tribe has not opted out of Section 106 consultation, and the FAA continues to send the Tribe relevant correspondence related to the historic review process. Further, three Oglala Sioux Tribe representatives, including the THPO, were planning to attend the April 14 meeting that was rescheduled due to extreme winter weather. To date, two of the three have confirmed attendance for the rescheduled meeting in May. As with the Hawaii parks, tribal input is imperative to inform the ATMP, NEPA, and Section 106 process, and therefore, the agencies are committed to continuing consultation.

Lake Mead National Recreation Area

22. As explained in the February 28, 2022 Progress Update to the Court, the agencies are working diligently to define transportation routes between the Harry Reid International Airport and other points of origin and Grand Canyon National Park. Paragraph 40128(f) of NPATMA expressly exempts these transportation routes from the requirements of Act. The agencies need this definition to determine the existing condition of commercial air tours over Lake Mead and how these routes should be regulated under an ATMP. As such, the

agencies need to meet individually with each of the air tour operators who conduct air tours of Lake Mead as well as air tour operators who may only overfly Lake Mead on a transportation route to Grand Canyon National Park to ensure there is a common understanding of what are considered air tour routes and what are considered transportation routes, and they are reported correctly as such. Then, the agencies will need to review the location and usage of the routes to better understand current conditions, potential resource concerns, and whether mitigations measures are necessary.

23. Given the current posture of the overall ATMP planning process for Lake Mead, Section 106 consultation for the park has been paused. Nevertheless, the FAA has already prepared an initial list of Section 106 consulting parties for Lake Mead and sent the Nevada SHPO, tribes, and other consulting parties formal invitation letters to consult. Once the agencies develop a final definition of the transportation routes, the agencies will resume the Section 106 and NEPA processes.

Glen Canyon National Recreation Area/Rainbow Bridge National Monument

24. Even though the FAA has not initiated Section 106 consultation on behalf of the agencies for these parks, it has a preliminary list of potential Section 106 consulting parties. Once the undertaking is defined we can rapidly initiate consultation.

Golden Gate National Recreation Area, Point Reyes National Seashore, San Francisco Maritime National Historical Park, and Muir Woods National Monument (Northern California Parks)

25. The agencies are still intending to complete the ATMP for the Northern California parks by August 31, 2022, but there are factors outside the agencies' control that may push the completion date including ongoing tribal consultations under Section 106 of the National Historic Preservation Act. The agencies have made great progress under Section 106 for the Northern California Parks. The FAA initiated consultation with the SHPO in March 2021. In April 2021, the FAA invited federally recognized tribes with an interest in the undertaking to consult with the agencies and, on September 17, 2021, the FAA initiated consultation with other parties including operators that currently conduct air tours over the Northern California Parks. In October 2021, the FAA continued consultation with the SHPO, tribes, and other consulting parties regarding the undertaking and proposed APE. In December 2021, the FAA followed up with tribes that had not yet responded to prior correspondence. In March of this year, the FAA sent letters to the Section 106 consulting parties identifying eligible and potentially eligible historic properties within the APE. Most recently, the FAA and Volpe Center have been coordinating with the Northwest Information Center—one of nine information centers affiliated with the State of California SHPO—and, on April 27, 2022, received additional historic property information from the center.

The FAA and Volpe are now processing and considering the data as part of the ongoing consultation efforts and assessment of effects process.

26. Yet, the Federated Indians of Graton Rancheria have recently requested a consultation meeting with the agencies, which has been scheduled for May 18, 2022. The tribe has also requested detailed information related to current air tour and air traffic operations and information about ATMP contingency plans in the event of an accident. The agencies are working to gather the information requested and will make every effort to complete the ATMP by August 31, 2022.

Bandelier National Monument

27. The FAA initiated Section 106 consultation with federally recognized tribes in March 2021 and with other consulting parties in April and May 2021 for Bandelier National Monument. Since then, 5 tribes have expressed an interest in consulting individually on the draft ATMP. The FAA and the NPS have met with three tribes to date. The agencies held a government-to-government consultation meeting with the Pueblo de Santa Clara on November 22, 2021, with the San Ildefonso Pueblo on March 9, 2022, and with the Pueblo of Pojoaque on April 11, 2022. So far, the tribes have expressed opposition to air tours and raised concerns regarding effects on traditional cultural properties and sacred sites within the park and on their tribal practices within the park. The FAA is currently coordinating with a fourth tribe, the Pueblo of Cochiti, whose tribal lands abut the park and are

overflowed by air tours, to schedule a meeting between the agencies and the tribe. The FAA, with input and review from the NPS, is responding to a letter from the Pueblo of Acoma asking, among other things, whether the pueblo would like to engage in a government-to-government consultation meeting with FAA and NPS leadership.

28. Although tribal consultation under Section 106 and the Executive Order 13175 is not conducted on a defined timeline and scheduling necessary meetings requires finding mutually available times for the relevant parties, the agencies must continue this tribal engagement. It is critical to informing the range of alternatives for NEPA and the overall ATMP process.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 9, 2022 in Washington, D.C.

KEVIN W.
WELSH

Digitally signed by
KEVIN W. WELSH
Date: 2022.05.09
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Kevin Welsh

EXHIBIT 5
Scoping Newsletter for
Hawai'i Volcanoes National Park



Hawai'i Volcanoes National Park

FEB 2022
Newsletter



Air Tour Management Plan
Potential Alternatives for Public Comment

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are working together to present potential alternatives for an Air Tour Management Plan for Hawai‘i Volcanoes National Park. Public and stakeholder feedback during this phase is critical. This document will explain:

- Commercial air tour operations
- Requirements for a plan at the Park
- Potential alternatives being considered for the plan
- How the public and stakeholders can provide feedback

Project Introduction

This document presents potential alternatives for the Hawai‘i Volcanoes National Park Air Tour Management Plan (ATMP) Environmental Assessment (EA) for public and stakeholder input. As applied to Hawai‘i Volcanoes National Park (Park), the term commercial air tour operation is defined as any flight conducted for compensation or hire in a powered aircraft, where a purpose of the flight is sightseeing over the Park or within ½-mile outside the Park’s boundary during which the aircraft flies below 5,000 feet above ground level.

The National Parks Air Tour Management Act (the Act) of 2000 requires the FAA, in cooperation with the NPS, to develop an ATMP for parks and tribal lands where operators have applied to conduct commercial air tours. The objective of this ATMP, under the Act, is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts of commercial air tour operations on the Park’s natural and cultural resources, Native Hawaiian sacred sites and ceremonial areas, wilderness character, and visitor experience.

As part of the public scoping process pursuant to the National Environmental Policy Act (NEPA), the FAA and the NPS invite public input on potential alternatives. Many of you have commented on the FAA and the NPS’s past efforts to complete an ATMP for Hawai‘i Volcanoes National Park which have been considered in the development of these potential alternatives. Public and stakeholder input will be used to further refine or dismiss alternatives and potentially to consider new alternatives. Public input will also be used to inform the environmental analysis. Alternatives that are carried forward and analyzed in the EA are expected to be available for public review and comment later this year.

Hōlei Cliffs



Purpose and Need for the Project

Under NEPA, alternatives must meet the Purpose (i.e., objective) and Need for the project.

Purpose

To comply with the *National Parks Air Tour Management Act of 2000 (the Act)* and other applicable laws, consistent with the *Plan and Schedule for Completion of Air Tour Management Plans at Twenty-Three Parks* approved by the U.S. Court of Appeals for the District of Columbia Circuit on November 20, 2020, in Case No. 19-1044, *In Re Public Employees for Environmental Responsibility and Hawai'i Coalition Malama Pono*.

Need

The Act requires an ATMP or voluntary agreement for the Park. Air tours have the potential to impact natural and cultural resources, wilderness character, and visitor experience. The Act requires that the FAA and the NPS develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations on natural and cultural resources, wilderness character, visitor experience, and Native Hawaiian Traditional Cultural Properties including Native Hawaiian sacred sites and ceremonial areas. In order to address potential impacts from commercial air tours the agencies have decided to prepare an ATMP for the Park.

Resources for Consideration in the EA

The agencies propose to analyze the potential impacts of each alternative on the following resources:

- Air quality
- Biological resources (wildlife including special status species)
- Climate (climate change and greenhouse gas emissions)
- Coastal resources
- Cultural resources (historic buildings, historic districts, archeological resources, sacred sites, Traditional Cultural Properties, cultural landscapes, ethnographic resources)
- Department of Transportation Act, Section 4(f)
- Noise and compatible land use (acoustic environment and Park soundscape)
- Park visitors and visitor uses
- Socioeconomics, Children's Environmental Health and Safety Risk, and Environmental Justice (children's environmental health and safety risks, environmental justice and resident communities, socioeconomics)
- Visual effects (visual resources and visual character)
- Water resources
- Wilderness

Elements Common to All Alternatives for the Hawai'i Volcanoes National Park ATMP

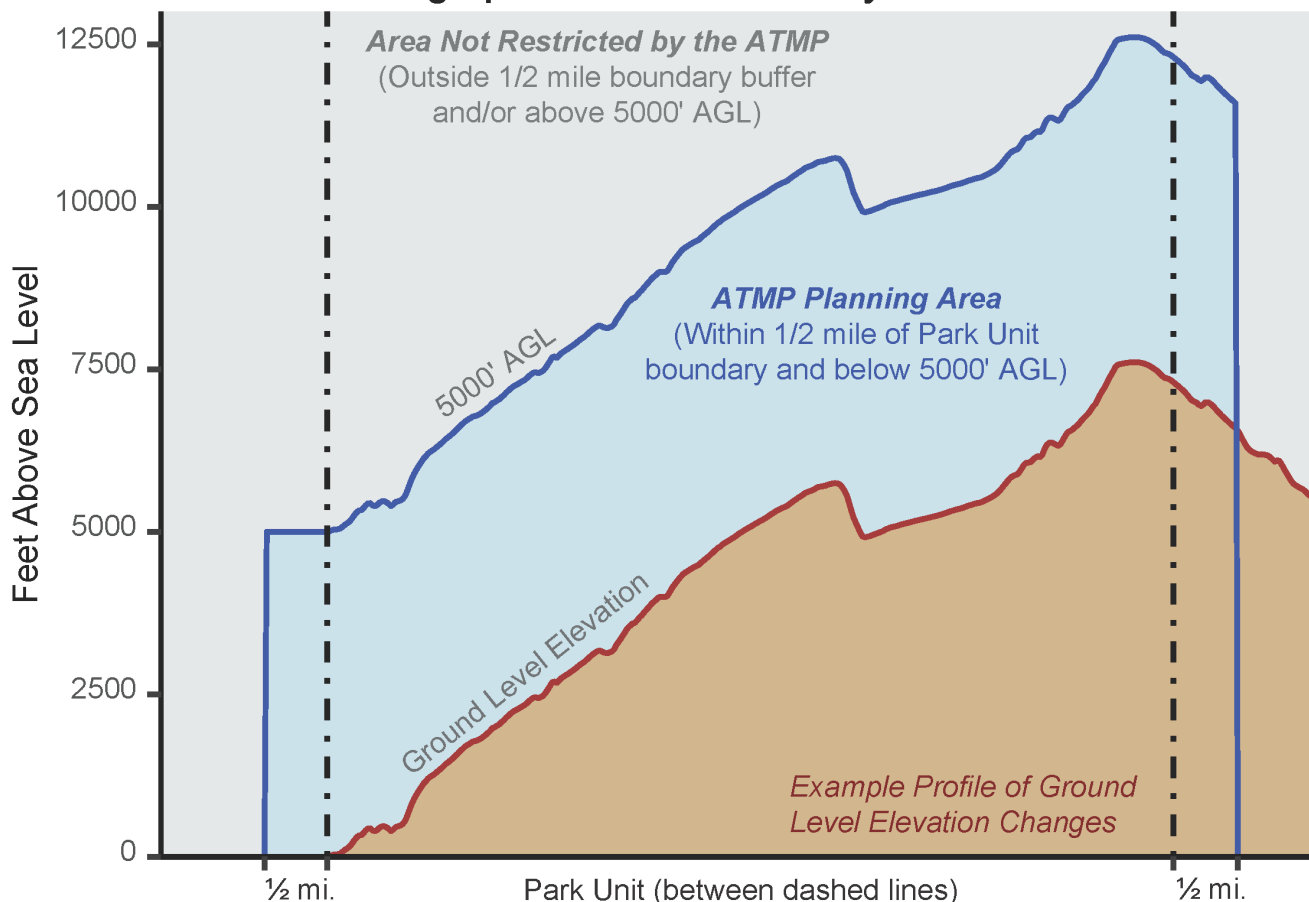
All alternatives being considered for the Hawai'i Volcanoes National Park ATMP will incorporate the following:

ATMP Planning Area

According to the Act, an ATMP shall regulate commercial air tours over a national park or within ½-mile outside the park's boundary during which the aircraft flies below 5,000 feet above ground level (AGL). This is referred to as the ATMP planning area. Air tours outside of the ATMP planning area are not subject to the Act and are therefore not regulated under the ATMP. As air tours outside the boundaries of the ATMP planning area are outside the jurisdiction of the ATMP, there would be no limitations on the annual number of air tours or routes that could occur outside the ATMP planning area under any alternative. Refer to the figure below for a geographic depiction of the ATMP planning area. Although they may occur within the ATMP planning area, general aviation flights, overflights by commercial airlines, and military flights would not be regulated by the ATMP because they are not commercial air tours subject to regulation under the Act.



Geographic Areas Covered by the ATMP



Monitoring and Enforcement

All air tour operators are required to report to the FAA and the NPS, on a semi-annual basis, the number of commercial air tour operations they have conducted within the ATMP planning area. The operators must provide the date and time each tour occurred, the make/model of aircraft used, and the route on which the tour was conducted.



Aircraft monitoring and enforcement would occur to ensure that commercial air tour operators are complying with the terms and conditions of the ATMP. The NPS and the FAA are both responsible for the monitoring and oversight of the ATMP. If the NPS identifies instances of non-compliance, the NPS will report such findings to the FAA's Honolulu Flight Standards District Office (FSDO). The FSDO will investigate all substantiated reports of noncompliance. The public may also report allegations of non-compliance with the ATMP to the FSDO, which may result in an FAA investigation.

Flight Routes and In-flight Deviations

The maps included in the potential alternatives show flight routes where air tours could occur within the ATMP planning area. Flight routes within the ATMP planning area are represented by a line with a buffer on either side of the route that indicates the acceptable range of deviation that would not trigger enforcement action. The flight lines will be used for noise modeling purposes in the impact analysis. If pilots are entering a route in the ATMP planning area but weather conditions do not allow them to follow that route at the prescribed altitude they may not proceed further on the route. They would either be required to follow another ATMP route where weather conditions allow or to leave the ATMP planning area boundary. If pilots are on a route and encounter weather that does not allow them to proceed further along the route at prescribed altitude, they must safely exit the route and either follow another ATMP route where weather conditions allow or leave the ATMP planning area boundary.



Minimum Altitudes

The range of altitudes examined in the alternatives will be from 1,500 to 5,000 feet AGL. On two-way routes, aircraft will utilize vertical separation to allow aircraft to maintain a safe distance from each other. Vertical separation of aircraft only applies to aircraft traveling in opposite directions, and vertical stacking of aircraft going the same direction along a route would be prohibited.



FAA Airspace Authority

The FAA has authority for all airspace matters, including any enforcement actions for violations under the ATMP, which the agency would process in accordance with existing FAA procedures and regulations.



Fee Collection

Under the Omnibus Budget Reconciliation Act of 1993 (54 U.S.C. § 100904), commercial air tour operators currently conducting air tours over the Park are required to pay a fee (currently \$25 for each aircraft with 25 passengers or less) for each air tour conducted. This requirement will remain in force when this ATMP becomes effective. Fee collection will not be considered in the decision-making process for analyzing and selecting a potential alternative. The decisions will be based solely on the environmental impact analysis and public input.



Initial Allocation and Competitive Bidding

The Act states whenever an ATMP limits the number of commercial air tour operations during a specified time frame, a competitive bidding process must occur pursuant to the criteria set forth in 49 U.S.C. § 40128(a)(2)(B) and other criteria developed by the agencies. Since the number of flights would be limited for Alternatives 3 and 4, competitive bidding would be required. In the time period between the finalization of an ATMP and the completion of the competitive bidding process, commercial air tour operators would be allocated a certain number of commercial air tours over the Park, referred to as the initial allocation.



Competitive bidding may also be appropriate to address: a new entrant application; a request by an existing operator for additional operating authority; consideration by the agencies of Park-specific resources, impacts, or safety concerns; or for other reasons. The Act directs the agencies to consider various factors during the comp bidding process including known resource issues, reporting, and compliance concerns.

Potential Alternatives

The agencies have considered a range of reasonable alternatives that are technically and economically feasible, meet the purpose and need for the project, and the goals of the agencies.

Alternatives Considered and Dismissed

The agencies considered but dismissed alternatives that would allow air tour operations at or above existing numbers. These alternatives were dismissed from further consideration because the NPS determined they would result in unacceptable impacts to Park natural and cultural resources, wilderness character, and visitor enjoyment under the NPS Management Policies 2006 1.4.7.1. and do not meet the purpose and need for the plan.

The NPS determined the current level of air tours is inconsistent with the Park's purpose and values. The Park's purpose includes perpetuating the traditional Hawaiian cultural connections to the Park's landscapes (see Foundation Document). Noise from the current level of air tours inhibits the Park's ability to meet this purpose. Noise from air tours negatively impacts existing sacred sites within the Park associated with Native Hawaiian people. The NPS is required to avoid such impacts to sacred sites to the extent possible (NPS Management Policies 2006 5.3.5.3.2). Native Hawaiians have consistently noted that persistent air tours over the Park unreasonably interfere with Native Hawaiian connections to the Park's sacred areas.

Additionally, existing air tour operations result in frequent and loud noise disruptions in many areas of the Park. Current air tours over the Park impede the NPS's ability to fully meet the Park's purpose of perpetuating

endemic Hawaiian ecosystems and does not support the perpetuation of biological diversity and ecological integrity which are fundamental resources and values of the park (see Foundation Document). A recent Park study documents that loud, frequent helicopter noise results in changes in avian vocalization (Gallardo Cruz et al 2021). Helicopter noise could detrimentally affect physiology, pairing and breeding success, and territory size of birds by limiting communication between individuals (Habib et al. 2007; Nemeth and Brumm 2010; Halfwerk et al. 2011; Kleist et al. 2018). These effects could have a greater impact on Hawaiian endemics, which already face a number of stressors (Atkinson and Lapointe 2009; Pratt et al. 2009; LaPointe et al. 2010), than on introduced species.

Current air tours over the Park also directly interfere with resource management activities (such as the execution of acoustic based bird surveys), which impedes the NPS's ability to fully meet the Park's purpose of perpetuating endemic Hawaiian ecosystems and does not support the perpetuation of biological diversity and ecological integrity which are fundamental resources and values of the Park (see Foundation Document).



The current level of air tours diminishes visitor opportunities to learn about and be inspired by Park resources and values and unreasonably interferes with the atmosphere of peace and tranquility and the natural soundscapes in wilderness. Existing air tours repeatedly interrupt and unreasonably interfere with interpretive programs and visitor activities at many sites, including Uēkahuna Bluff, Kīlauea Overlook, Steam Vents, Volcano House, Kīlauea Visitor Center, Kūpina‘i Pali, Kīlauea Iki, Devastation, Pu‘upua‘i, Keanakāko‘i, Maunaulu, Puhimau, Kīpukapua‘ulu, and Maunaloa (lookout and trail). Regular visitor complaints and staff observations indicate that noise from air tours impedes visitors from enjoying and learning about existing Park resources in these and other areas of the Park.

Existing air tour operations also unreasonably interfere with the natural soundscape maintained within the Hawai‘i Volcanoes National Park’s four designated Wilderness areas, Maunaloa, ‘Ōla‘a, East Rift, and Ka‘ū Desert, as well as the eligible (Upper Kahuku) and potential (Great Crack) Wilderness areas (see NPS Management Policies 1.4.7.1). Persistent noise within Wilderness interferes with the opportunity for solitude and detracts from the natural quality of Wilderness.

Therefore, authorizing commercial air tours at or above the existing level of operations would not meet the objective of an ATMP under the Act. The NPS has determined that the current level of air tours cannot be mitigated to avoid or prevent unacceptable impacts and therefore any alternative that would maintain or increase the current number of air tours over the Park does not meet the purpose and need for the plan. For all of these reasons, the agencies have considered but dismissed alternatives that would continue air tours at or above existing air tour numbers.



Lava lake

Alternative 1 (No Action)

Objective

A no action alternative is required by the Council on Environmental Quality and NEPA regulations.

The no action alternative provides a basis for comparison but is not a selectable alternative because it does not meet the purpose and need for the ATMP and is not in compliance with the Act. The agencies have decided to comply with the Act by developing an ATMP for the Park.

Description

The no action alternative is what happens if the agencies do not adopt an ATMP. The no action alternative would allow a continuation of air tours under Interim Operating Authority (IOA) without implementation of an ATMP or voluntary agreement. Under the no action alternative, air tour numbers would be expected to vary from year to year, likely consistent with reported numbers over the past three to five years. Air tour numbers from 2017 to 2019 are listed below. Under the no action alternative operators could fly up to IOA, 26,664 air tours per year. Air tour operators may fly where they choose. Currently, altitudes are flown in accordance with the Hawai'i Air Tour Common Procedures Manual (HI Manual). Minimum altitudes range from 500-1,500 ft. AGL, weather dependent, depending on location on the island.

Number of Flights Each Year

Alternative 1 represents a continuation of what is currently flown and allowed under existing law including each company's IOA as granted by the FAA (70 Federal Register 36456 (June 23, 2005)), applicable regulations that govern aviation safety (Title 14 Code of Federal Regulations Part 136, Appendix A (formerly Special Federal Aviation Regulation 71)), and any FAA exceptions issued to individual operators as outlined by the HI Manual. Ten commercial air tour operators currently hold IOA to fly up to a combined total of 26,664 annual commercial air tours over the Park (see table on page 11).

Since reporting began in 2013, the total number of annual commercial air tours reported over the Park ranges from 8,333 (reported in 2018) to 16,520 (reported in 2017). Under the no action alternative, operators could fly up to IOA. The operators may not exceed their respective IOA limitation in any given year. Under the no action alternative, air tours numbers would be expected to vary from year to year, likely consistent with reported numbers over the past three to five years.

Alternative 1 (No Action)

The average annual number of commercial air tours conducted over the Park from 2017-2019 for all operators is 11,376. The agencies consider the 2017-2019, three-year average, the existing baseline for the purposes of understanding the existing number of commercial air tour flights over the Park. The requirement for commercial air tour operators to report actual commercial air tours to the FAA and the NPS was implemented in 2013. Reporting data from 2013 and 2014 are considered incomplete as reporting protocols were not fully in place at that time and likely do not reflect actual flights. Flight numbers from a single year were not chosen as the existing baseline because the three-year average accounts for both variation across years and takes into account the most recent pre-pandemic years. Reporting data from 2020 was not used because the 2020 COVID-19 pandemic resulted in lower than normal commercial air tour operations due to travel restrictions and closures in the State of Hawai‘i, which does not represent the conditions in a typical year.

Routes and Altitudes

There are no designated flight routes or no-fly zones under the no action alternative. The figure for this alternative depicts both general route information provided by current commercial air tour operators and Automatic Dependent Surveillance-Broadcast (ADS-B) flight tracking data of actual commercial air tour operations over and adjacent to the Park. Actual commercial air tour operations are dispersed around the generalized routes provided by operators depicted on the figure. The ADS-B tracking data is more reflective of existing operations for various reasons including deviations that may occur due to weather.

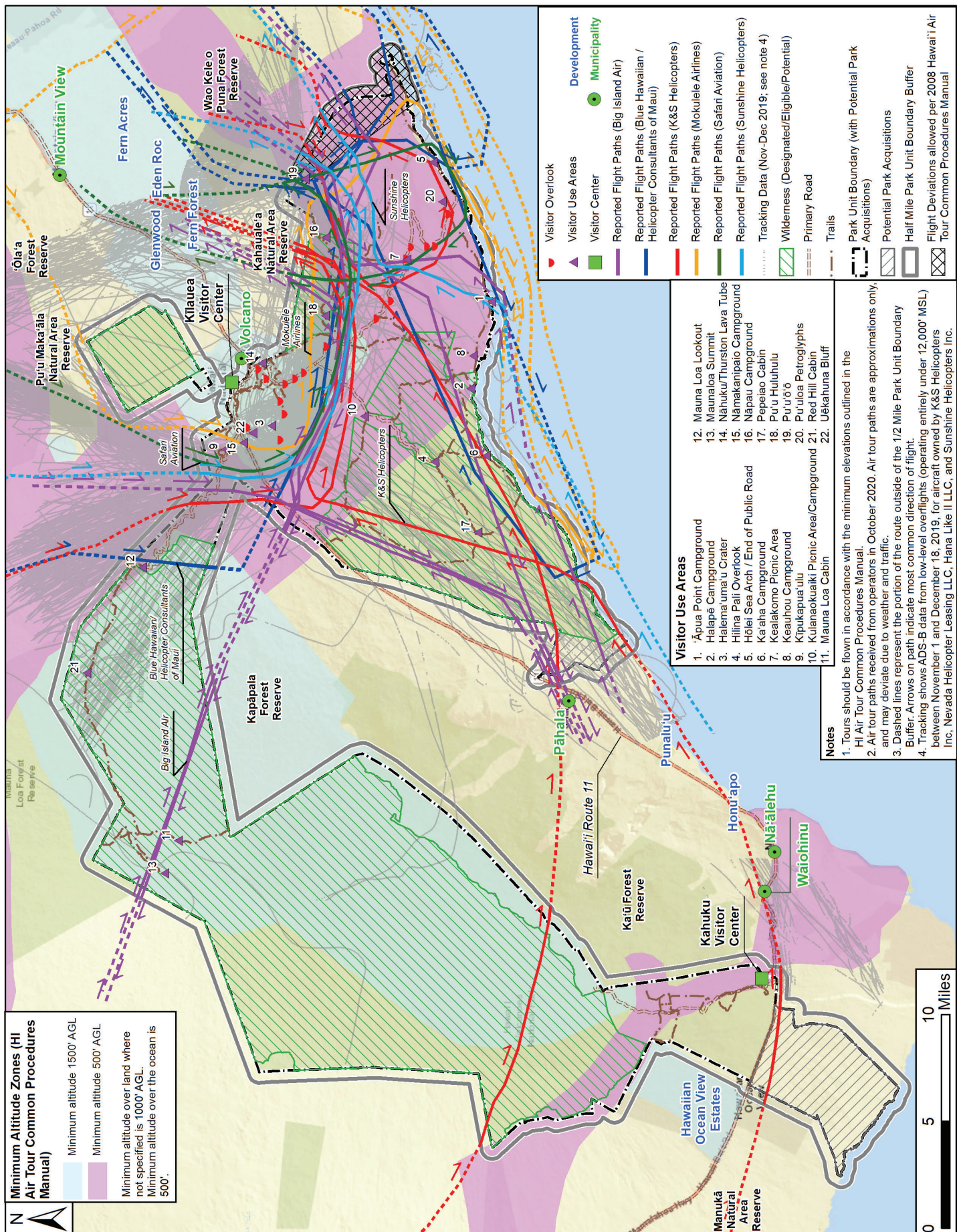
Minimum altitudes for commercial air tours within the ATMP planning area are flown in accordance with the HI Manual, from 500-1,500 ft. AGL, weather dependent and contingent on location on the island. In addition, operators holding a B048 Operations Specification are authorized to conduct commercial air tour operations at altitudes less than 1,500 feet above the surface, within the state of Hawai‘i, in accordance with the provisions and limitations of the HI Manual. See the figure for this alternative for details.

Operators, Aircraft Types, Interim Operating Authority

Seven of the ten operators that hold IOA for the Park reported flying commercial air tours over the Park between 2013 and 2019. Five operators fly helicopters, and two operators fly fixed-wing aircraft. The following table summarizes each operator’s aircraft type, IOA for the Park, and average number of reported air tours over the Park from 2017-2019:

Alternative 1 (No Action)

Operator	Aircraft Type	2017 Reported Tours	2018 Reported Tours	2019 Reported Tours	3-year Reported Average No. of Air Tours (2017-2019)	Interim Operating Authority (IOA)
Above it All Inc. (Sporty's Academy Hawai'i, Hawai'i Island Hoppers, Hawai'i Airventures, Benchmark Flight Center)	no data	0	0	0	0	3,878
Big Island Air Inc.	fixed wing	102	7	0	36	1,643
Hawai'i Helicopters Inc. (Helicopter Consultants of Maui, Inc.)	helicopter	139	50	67	85	141
Helicopter Consultants of Maui Inc. (Hawai'i Helicopter, Blue Hawaiian Helicopters)	helicopter	12,300	6,059	7,325	8561	12,413
K&S Helicopters (Paradise Helicopters)	helicopter	877	552	248	559	1,684
Manuiwa Airways Inc. (Volcano Helicopters, Volcano Heli-Tours)	no data	0	0	0	0	800
Mokulele Flight Service Inc. (Mokulele Airlines)	fixed wing	0	15	0	5	60
Safari Aviation Inc. (Safari Helicopter Tours)	helicopter	1,977	1,050	995	1341	3,920
Schuman Aviation Company, Ltd. (Makani Kai Helicopters)	no data	0	0	0	0	25
Sunshine Helicopters Inc.	helicopter	1,125	600	641	789	2,100
		16,520	8,333	9,276	11,376	26,664



Alternative 2

Objective

Alternative 2 seeks the greatest protection for the purposes, resources, and values of the Park. These include the summits of Kīlauea and Maunaloa which hold spiritual and cultural significance to Native Hawaiians; threatened and endangered species and other wildlife sensitive to noise; Congressionally designated wilderness and visitor opportunities for solitude; ground-based visitor experience; Native Hawaiian traditional cultural practices; scenic qualities, and natural sounds.

Description

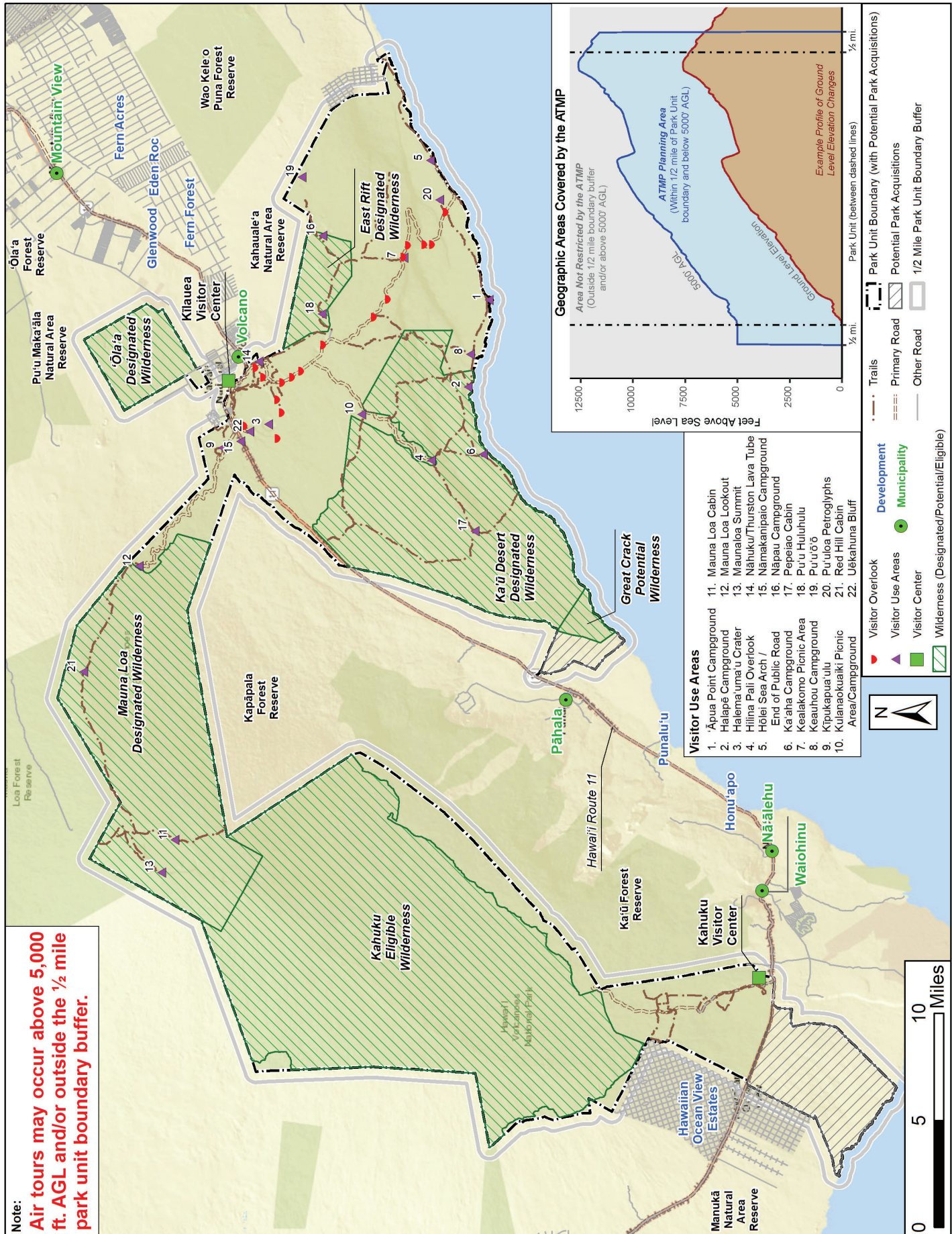
Alternative 2 would prohibit air tours within the ATMP planning area. The ATMP planning area includes areas below 5,000 feet AGL and within ½-mile of the Park boundary. The Park itself would be designated as an area to remain free of commercial air tours under 5,000 feet AGL regardless of future eruptions or lava flows. Air tours outside of the ATMP planning area (i.e., above 5,000 feet AGL or more than ½-mile outside the Park boundary) are not subject to the Act and are therefore not regulated under the ATMP. Thus, there would be no limitations on the number of air tours that could occur outside the ATMP planning area.

Routes and Altitudes

Air tours could be conducted only outside the ATMP planning area. Based on current air tour activity, routes outside of the ATMP planning area would be expected to be similar to existing routes. An unknown number of air tours originating on Hawai‘i Island from Hilo, Kailua-Kona, Hāpuna and Waikoloa, and airports on Maui and O‘ahu would still continue to fly more than ½-mile outside of the Park’s boundary at or below 1,500 feet AGL in accordance with the HI Manual. The actual flight path of air tours outside the ATMP planning area would vary due to operator preference, volcanic activity, and weather conditions at the time of the air tour.



Rainforest trail



Alternative 3

Objective

The NPS developed Alternative 3 to provide multiple air tour routes for access to historically active volcanic areas of the Park with mitigations to avoid or minimize unacceptable impacts to soundscapes based on Park management zones. The FAA reviewed the alternative to ensure it meets safety parameters.

Description

Commercial air tour operations would only fly along two main routes, one fly zone, and one adaptive management route providing access to active volcanic areas, coastal areas, and other volcanic landscapes.

Caps on Numbers of Flights Allowed Annually and Daily

Soundscape modeling for Alternative 3 will consider and evaluate various numbers of annual commercial air tours over the Park, ranging between 1 flight per year to below current condition (the average number of commercial air tours conducted over the Park each year from 2017-2019, in this case 11,376). The number of flights allowed over the Park on an annual basis will be selected to avoid or minimize unacceptable impacts to soundscapes based on Park management zones. This alternative would not consider a daily cap on the number of commercial air tours that each operator could fly.

Routes and Altitudes

Alternative 3 includes two main routes, one fly zone, and one adaptive management route where commercial air tour operators could fly. Refer to the figure for this Alternative for a depiction of each:

- Northern Route: Commercial air tour operations would fly along Highway 11 for viewing of Kīlauea and Halema‘uma‘u Craters. The northern route would be flown at minimum 1,500 ft. AGL altitude, and minimum 2,000 ft. AGL altitude over wilderness areas and sensitive sites.
- Coastal Route: Commercial air tour operators would fly offshore along the edge of the Park boundary, but within ½-mile of the Park boundary. The route runs offshore along the edge of the ATMP planning area boundary in order to protect wilderness areas and backcountry campgrounds within the Park. This route would be flown at minimum 2,000 ft. AGL. The coastal route would be available for use only if commercial air tour operators could safely adhere to the required altitudes and distances to the shore. If an operator is not able to safely fly offshore in accordance with the prescribed altitude and distance requirements, the operator shall not utilize that route.

Alternative 3

- Pu‘u‘ō‘ō Viewing Area: The Pu‘u‘ō‘ō viewing area is a fly zone along the east rift of Kīlauea to the Pu‘u‘ō‘ō area. Commercial air tour access would be permitted to the east rift of Kīlauea within the Pu‘u‘ō‘ō viewing area. Quiet Technology (QT) aircraft would be permitted to use an expanded fly zone in the western portion of this area near Pu‘u‘ō‘ō. Commercial air tours conducted within this area would be flown at minimum 1,500 ft. AGL.
- Southwest Rift Zone Route: The Kīlauea Southwest Rift Zone would be viewable from the Southwest Rift Zone route outside the Park boundary but within ½-mile of the boundary under adaptive management only (e.g., if lava emerges, the adaptive management process would be implemented to determine if/when the route is approved for use). The offset from the Park boundary would provide protection to wilderness areas. This route would be flown at minimum 2,000 ft. AGL.

Other than the routes described above, under Alternative 3, no air tours could occur below 5,000 feet AGL within the rest of the Park or within ½-mile of the Park boundary. Refer to the map for this alternative for a depiction of flight corridors and altitudes.

Loitering/Circling

This alternative would prohibit loitering or circling because it could negatively impact visitors, cultural, and natural resources, including sensitive sites.

Time of Day/Day of Week

Flights would be permitted between the hours of 10:00 a.m. – 2:00 p.m. Flights would be permitted on all days of the week except Wednesday and Sunday. Exceptions to these parameters for QT aircraft are noted below, which allows QT aircraft to fly over the Park on Wednesdays. One no-fly day provides opportunities for visitor enjoyment, particularly bird watching. Sunday was selected as a no-fly day for consistency with the Park’s Mission Critical Administrative Aviation Plan and Environmental Assessment and allows for one weekend flight-free day at the Park.

Quiet Technology (QT) Incentives

The Act requires that the ATMP include incentives for the adoption of QT by commercial air tour operators. Alternative 3 includes the following incentives for operators conducting commercial air tours using QT aircraft:

- Relax the day of week restriction to allow flights on Wednesdays for QT aircraft
- Relax the time-of-day restrictions to allow QT aircraft to fly from 10:00 a.m. - 4:00 p.m.
- Allow QT aircraft to conduct commercial air tours in additional locations in the Pu‘u‘ō‘ō viewing area (see map for a depiction of these areas).

In order to qualify for QT incentives, operators will be required to follow a process to be defined by the agencies.

Alternative 3

Restrictions for Special Events

This alternative would include a mandatory 5-mile standoff for special events that could be impacted by commercial air tours, limited to the day of the event. Special events could include Native Hawaiian events or other natural and cultural resource programs. Two months' notice would be provided to commercial air tour operators prior to the event. The standoff would not extend outside the ATMP planning area.

Adaptive Management

Adaptive management is a systematic approach for improving resource management and ensuring that the continued effectiveness of the ATMP over time through the monitoring of park conditions and by learning from management actions or choices. Adaptive management is also used to address changed conditions such as a new lava flow occurs in the Park or if the breeding habitat of a sensitive species moves to a new area. This alternative will analyze an adaptive management route, the Southwest Rift Zone route, for use during an eruptive event along the Southwest Rift Zone of Kīlauea. See "Routes and Altitudes" section for a description of this route.

Interpretive Training and Education

The NPS would provide mandatory training for air tour pilots regarding Park resources. The training would include the Park information that operators could use to further their own understanding of Park priorities, cultural and natural resources protection and management objectives as well as enhance the interpretive narrative for air tour clients and increase

understanding of the Park by air tour clients.

Operators would also be required to complete the FAA Fly Neighborly training for their aircraft type. Fly Neighborly is a noise reduction program that seeks to create better relationships between communities and helicopter operators by establishing noise mitigation techniques and increasing effective communication.

Annual Meeting

An annual meeting between the agencies and commercial air tour operators would occur under this alternative. The ATMP will describe the details of the annual meeting.

Operators, Initial Allocation of Air Tours, and Aircraft Types

Upon finalization of the ATMP, the number of flights authorized to occur each year would be proportionally allocated to each of the seven operators that have reported operations over the Park in the period from 2017-2019. Each operator's initial allocation will reflect the proportion of its average number of reported flights from 2017-2019 as compared to all operators that have reported flying over the Park during this period. Each operator's aircraft types would reflect those reported in the period from 2017-2019. The initial allocation would be used until a competitive bidding process could occur. Under the Act, IOA terminates 180 days after the date of establishment of the ATMP, however, if the FAA updates an operator's Operations Specifications before that time, IOA will be terminated when the Operations Specifications are updated.

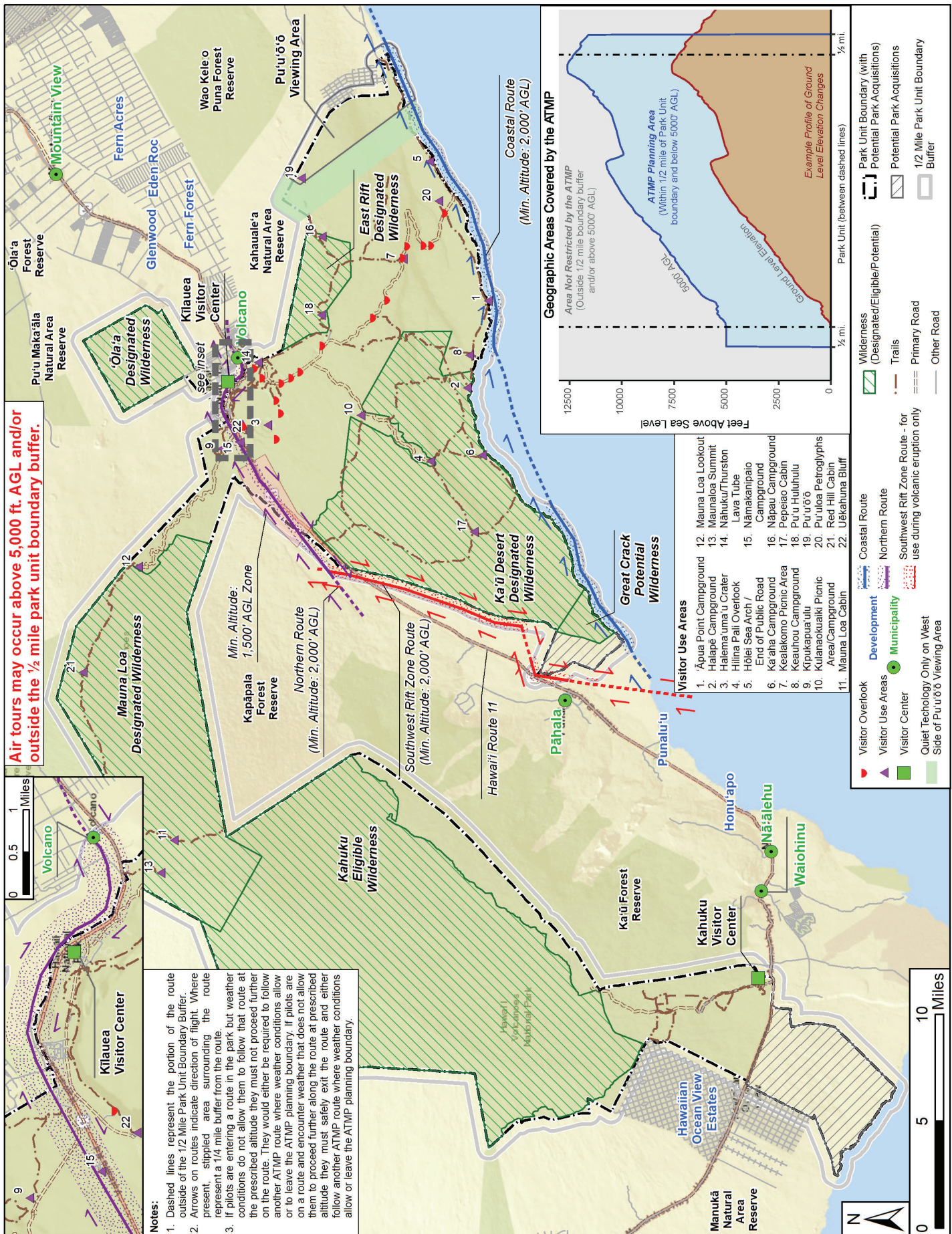
Alternative 3

Monitoring and Enforcement

Upon finalization of the ATMP, the operators would be required to equip all aircraft used for air tours with flight monitoring technology, use flight monitoring technology during all air tours under the ATMP, and to report flight monitoring data as an attachment to the operator's semi-annual reports. Soundscape monitoring would also occur to ensure that the terms and conditions of the ATMP are consistent with Park management objectives.



Maunaulu



Alternative 4

Objective

The NPS developed Alternative 4 to provide an air tour route for access to the historically active east rift zone of Kīlauea, an additional route for air tour transit across the lower southern edge of Kahuku, and an offshore coastal flight corridor that would protect wilderness areas and backcountry campgrounds. The heart of the Park, including designated wilderness areas and key cultural and visitor use areas, would be free of commercial air tours. This alternative would avoid or minimize unacceptable impacts to Park soundscapes based on Park management zones. The FAA reviewed the alternative to ensure it meets safety parameters.

Description

This alternative includes three flight corridors for commercial air tours within the ATMP planning area and does not consider any adaptive management routes.

Caps on Numbers of Flights Allowed Annually and Daily

Soundscape modeling for Alternative 4 will consider and evaluate various numbers of annual commercial air tours over the Park, ranging between 1 flight per year to below current condition (the average number of annual commercial air tours conducted over the Park from 2017-2019, in this case 11,376). The number of flights allowed over the Park on an annual basis will be selected

to avoid or minimize unacceptable impacts to soundscapes based on Park management zones. This alternative would consider the use of daily caps by operator due to the historical frequency of air tours that have occurred during eruptive events at the Park.

Routes and Altitudes

This alternative includes three flight corridors where commercial air tour operators would be permitted to fly:

- Pu‘u‘ō‘ō Route: The Pu‘u‘ō‘ō route consists of a route on the east rift of Kīlauea in the Pu‘u‘ō‘ō area with a single entry and exit over the ocean. Only QT aircraft would be permitted to use an expanded fly zone directly west of this route near Pu‘u‘ō‘ō. The flight path on the west side would avoid the designated wilderness boundary at Nāpau, and an impact analysis would be used to determine the boundary line of the west side flight zone. Commercial air tours conducted within this area would be flown at minimum 1,500 ft. AGL.
- Coastal Route: Commercial air tour operators would fly offshore along the edge of the Park boundary, but within ½-mile of the boundary. The route runs offshore along the edge of the ATMP planning area boundary in order to protect wilderness areas and backcountry campgrounds within the Park. This route would be flown at minimum 2,000 ft. AGL. The coastal route would be

Alternative 4

available for use only if commercial air tour operators could safely adhere to the required altitudes and distances to the shore. If an operator is not able to safely fly offshore in accordance with the prescribed altitude and distance requirements, the operator shall not utilize that route.

- Kahuku Route: This route provides access for Kailua-Kona flights and circle island tours across the lower southern edge of Kahuku along Highway 11 to provide views of the southwest rift of Maunaloa and many past eruptions. This route would be flown at minimum 1,500 ft. AGL.

Other than the routes described above, under Alternative 4, no air tours could occur below 5,000 feet AGL over the rest of the Park or within ½-mile of its boundary. Refer to the map for this alternative for a depiction of flight corridors and altitudes.

Loitering/Circling

This alternative would allow loitering and circling along the Pu'u'ō'ō route and viewing area. Impact analyses would be used to set mandatory time limits for loitering within the Pu'u'ō'ō viewing area. Circling aircraft must turn away from the advancing blade as much as possible in order to minimize noise.

Time of Day/Day of Week

Flights would be permitted between the hours of 9:00 a.m. – 5:00 p.m. Flights would be permitted on all days of the week except Sunday. Exceptions to these parameters for QT aircraft are noted below. One no-fly day provides opportunities for visitor enjoyment, particularly bird watching. Sunday was

selected as a no-fly day for consistency with the Park's Mission Critical Administrative Aviation Plan and Environmental Assessment and allows for one weekend flight-free day at the Park.

Quiet Technology (QT) Incentives

The Act requires that the ATMP include incentives for the adoption of QT by commercial air tour operators. Alternative 4 includes the following incentives for operators conducting commercial air tours using QT aircraft:

- Relax the time-of-day restrictions to allow QT aircraft to fly from 8:00 a.m. - 5:00 p.m.
- Allow QT aircraft to conduct commercial air tours in additional locations in the Pu'u'ō'ō viewing area (see map for a depiction of these areas).

In order to qualify for QT incentives, operators will be required to follow a process to be defined by the agencies.

Restrictions for Special Events

This alternative would include a voluntary 3-mile standoff for special events that could be impacted by overflights, limited to the day of the event. Special events could include Native Hawaiian events or other natural and cultural resource programs. Two months' notice would be provided to commercial air tour operators prior to the event. The standoff would not extend outside the boundary of the ATMP planning area.

Alternative 4

Interpretive Training and Education

NPS would provide voluntary training for air tour pilots regarding Park resources. The training would include the Park information that operators could use to further their own understanding of Park priorities and management objectives as well as enhance the interpretive narrative for air tour clients and increase understanding of the Park by air tour clients.

Operators would also be required to complete the FAA Fly Neighborly training for their aircraft type. Fly Neighborly is a noise reduction program that seeks to create better relationships between communities and helicopter operators by establishing noise mitigation techniques and increasing effective communication.

Annual Meeting

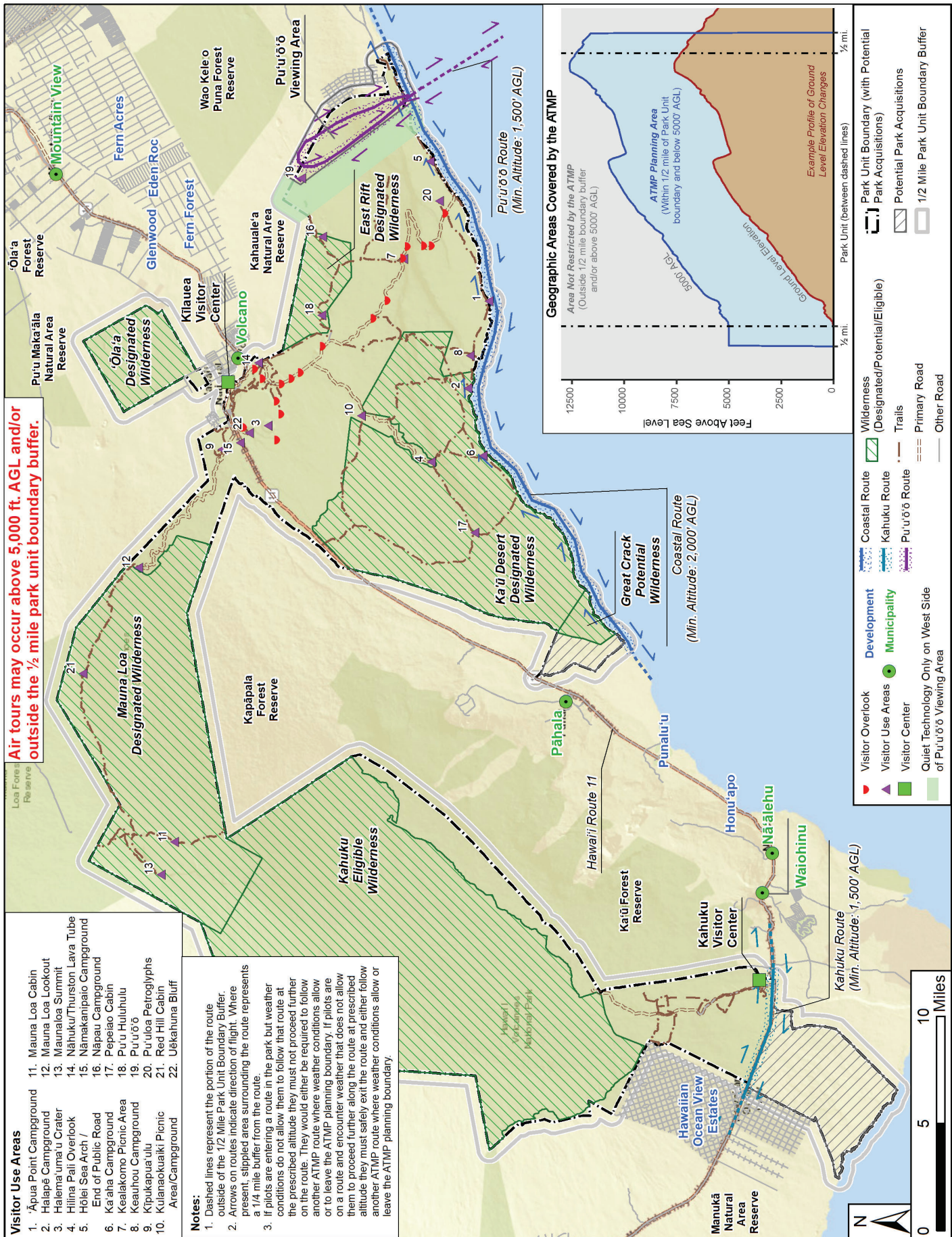
An annual meeting between the agencies and commercial air tour operators would occur under this alternative. The ATMP will describe the details of the annual meeting.

Operators, Initial Allocation of Air Tours, and Aircraft Types

Upon finalization of the ATMP, the number of flights authorized to occur each year would be proportionally allocated to each of the seven operators that have reported operations over the Park in the period from 2017-2019. Each operator's initial allocation will reflect the proportion of their average number of reported flights from 2017-2019 as compared to all operators that have reported flying over the Park during this period. Each operator's aircraft types would reflect those reported in the period from 2017-2019. The initial allocation would be used until a competitive bidding process could occur. Under the Act, IOA terminates 180 days after the date of establishment of the ATMP. However, if FAA updates an operator's Operations Specifications before that time, the IOA will be terminated when the Operations Specifications are updated.

Monitoring and Enforcement

Operators would be required to equip all aircraft used for air tours with flight monitoring technology, use flight monitoring technology during all air tours under the ATMP, and to report flight monitoring data as an attachment to the operator's semi-annual reports. Soundscape monitoring would also occur to ensure that the terms and conditions of the ATMP are consistent with Park management objectives.



Summary of Alternative Elements

Alternative Attributes	Alternative 1 (No Action)	Alternative 2	Alternative 3	Alternative 4
General Description and Objectives	What happens if the agencies do not adopt an ATMP. Allows a continuation of air tours under IOA without implementation of an ATMP or voluntary agreement. Does not comply with the Act.	Prohibits air tours within the ATMP planning area to maximize Park resource protection. Air tours could still continue to fly outside the ATMP planning area (i.e., above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).	Two main air tour routes, one fly zone, and one adaptive management route provide access to historically active volcanic areas of the Park with soundscape mitigations.	Three routes provide air tour access over the Park with soundscape mitigations, while keeping the heart of the Park free of air tours.
Annual/Daily Number of Flights	Leaves IOA in place, allowing the potential for up to 26,664 commercial air tours each year. Actual number of tours has historically ranged from 8,333 to 16,520 flights per year, or an average of 11,376 flights (based on 2017-2019 reporting).	None in ATMP planning area.	Above 1 and below 11,376 flights per year, dependent on modeling. No daily caps.	Above 1 and below 11,376 flights per year, dependent on modeling. Daily caps will be considered.
Routes	No mandatory routes or no-fly zones. See map for depiction of reported routes and actual operations.	None in ATMP planning area.	Two main routes (coastal route and northern route) and one fly zone (Pu'u'ō'ō viewing area). Also includes an adaptive management route (Southwest Rift Zone route) for use during a volcanic eruption only.	Three routes (Kahuku route, coastal route, Pu'u'ō'ō route). Does not include adaptive management routes.
Minimum Altitudes	Flown in accordance with the HI Manual, generally between 500-1,500 ft. AGL.	No minimum altitude would be set. However, flights over the Park that are above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary are similarly outside the ATMP planning area and are subject to the altitude restrictions of the HI Manual.	Minimum 1,500 ft. AGL; minimum 2,000 ft. AGL over wilderness areas and sensitive sites. Flights more than ½-mile outside the Park boundary are similarly outside the ATMP planning area and are subject to the altitude restrictions of the HI Manual.	Minimum 1,500 ft. AGL; minimum 2,000 ft. AGL over wilderness areas and sensitive sites. Flights more than ½-mile outside the Park boundary are similarly outside the ATMP planning area and are subject to the altitude restrictions of the HI Manual.
Time of Day	No Restrictions.	N/A	10 AM – 2 PM for non-QT flights. 10 AM – 4 PM for QT flights.	9 AM – 5 PM for non-QT flights. 8 AM – 5 PM for QT flights.

Continuation of Alternative Attributes	Alternative 1 (No Action)	Alternative 2	Alternative 3	Alternative 4
Day of Week	No Restrictions.	N/A	No-fly day on Sunday Only QT flights may fly on Wednesday.	No-fly day on Sunday.
Loitering/ Circling	None.	N/A	Not permitted.	Permits loitering/circling from the Pu'u'ō'ō route.
Quiet Technology (QT) Incentives	None.	N/A	QT flights may fly 10AM - 4PM QT flights may fly on Wednesdays Additional fly locations in the Pu'u'ō'ō viewing area for QT flights.	QT flights may fly 8AM - 5PM Additional fly locations in the Pu'u'ō'ō viewing area for QT flights.
Interpretative Training and Education	None.	N/A	Mandatory.	Voluntary.
Annual Meeting	None.	N/A	Included.	Included.
Restrictions for Particular Events	None.	N/A	Mandatory 5-mile standoff distance. Two months' notice provided to operators.	Voluntary 3-mile standoff distance. Two months' notice provided to operators.
Adaptive Management	None.	N/A	Includes adaptive management route for new eruption along Southwest Rift Zone.	None.
Operators, Initial Allocation of Air Tours, and Aircraft Types	Reflects IOA (26,664 IOA issued to ten operators (five helicopter operators, two fixed-wing operators, and three with unknown aircraft).	N/A	The initial allocation would reflect the proportional number of air tours reported over the Park and the existing aircraft types of each of the seven operators that have reported operating in the period from 2017-2019. Then it would move to competitive bidding.	The initial allocation would reflect the proportional number of air tours reported over the Park and the existing aircraft types of each of the seven operators that have reported operating in the period from 2017-2019. Then it would move to competitive bidding.

Glossary

The Act	National Parks Air Tour Management Act of 2000
ADS-B	Automatic Dependent Surveillance-Broadcast
AGL	Above Ground Level
ATMP	Air Tour Management Plan
EA	Environmental Assessment
FAA	Federal Aviation Administration
FSDO	Flight Standards District Office
HI Manual	Hawai‘i Air Tour Common Procedures Manual
IOA	Interim Operating Authority
NEPA	National Environmental Policy Act
NPS	National Park Service
Park	Hawai‘i Volcanoes National Park
PEPC	Planning, Environment & Public Comment System
QT	Quiet Technology



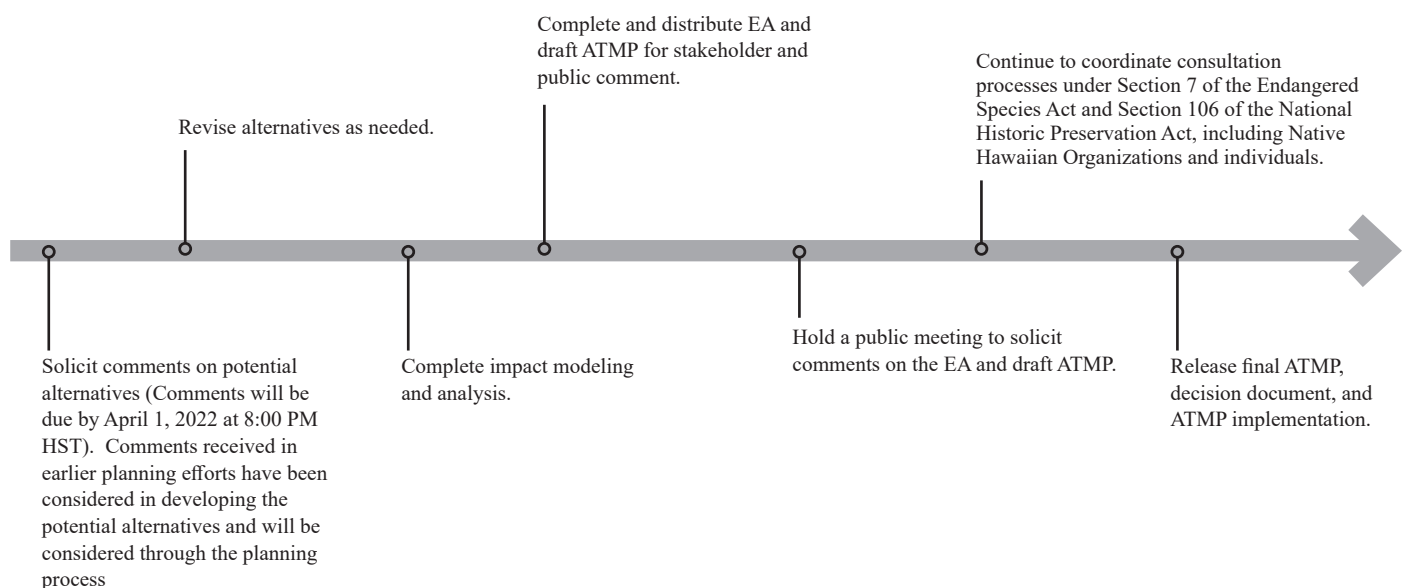
Next Steps

This public scoping period represents the first opportunity to be involved in the current planning process. During this scoping period, the project planning team would like to receive comments on the potential alternatives. After this public scoping process has concluded, the agencies will prepare an EA to comply with NEPA and a draft ATMP. Important steps in the planning process are in the graphic below.

The FAA and the NPS are also identifying resources that are listed in or eligible for listing in the National Register of Historic Places that could be affected by air tours operating under the proposed ATMP. This includes any historic districts, sites, buildings, structures, objects or landscapes, including traditional cultural properties. If members of the public have any information on historic properties that they believe would be helpful in this effort, including properties outside of the Park, we welcome that assistance.

The FAA and the NPS are also seeking to identify additional individuals or organizations that may be interested in participating in Section 106 consultations for the ATMP as consulting parties. We want to ensure that we include anyone that may have information or expertise to share.

Should you have information you wish to provide regarding historic properties or are interested in participating in the Section 106 review process as a consulting party, please contact Cathy Nadals at 240-446-5086 or Catherine.L.Nadals@FAA.gov and copy the ATMP Team at ATMPTeam@dot.gov. Please note that this contact information is only for correspondence related to the Section 106 process and comments not related to the Section 106 process will not be accepted or relayed via email. Instructions for general public comment on the potential alternatives described in this newsletter are provided below.



Instructions for Public Comment

Please comment on any alternative and/or alternative element described above. The agencies are seeking substantive comments that describe why something will or will not work, provide new ideas or factual information to correct or adjust assumptions made, or present reasonable alternatives other than those described. Comments that merely support or oppose the proposals are not considered substantive. Commenters may wish to consider the following questions:

- What elements of the alternatives do you think are most important? Why?
- What other information should the planning team consider when analyzing the alternatives?
- Are there other elements or ideas that should be considered and analyzed that are not already presented? What is missing, and why should it be considered?
- Are there other resources or impact topics that should be considered in the analysis?
- What other comments and suggestions do you have?

Comment submission using the Planning, Environment & Public Comment (PEPC) system is preferred, although written comments sent via postal mail will also be accepted. If you do not have access to a computer, use the attached comment form, following directions on the form. Comments will not be accepted via email.

Comments may be submitted using the [PEPC system](https://parkplanning.nps.gov/HawaiiVolcanoesATMP) (<https://parkplanning.nps.gov/HawaiiVolcanoesATMP>) by **April 1, 2022 at 8:00 PM HST**.

Written comments may be sent via postal mail to the following address:

Volpe National Transportation Systems Center
Kaitlyn Rimol, V-326
Attn: Hawai'i Volcanoes National Park ATMP
55 Broadway
Cambridge, MA 02142

Send Us Your Comments!

PLEASE SUBMIT YOUR COMMENTS BY APRIL 1, 2022 AT 8:00 PM HST.

Please submit comments electronically by visiting: <https://parkplanning.nps.gov/HawaiiVolcanoesATMP>. Once on the website, select “Open for Comment” to provide your thoughts on these preliminary alternatives. If you do not have access to a computer, you can send us your comments on this comment form.

Do you wish to remain on the mailing list for the Air Tour Management Plan ? YES___ NO___

Please print your name and address in the space provided. If the mailing label we used is incorrect, please indicate any corrections in the space below. To keep our mailing list accurate, please check the boxes below that apply.

- ☐ Change my address.
- ☐ Add my name to the mailing list.
- ☐ Remove my name from the mailing list.
- ☐ Send me information by e-mail.

Name: _____

Organization, if any: _____

Mailing Address: _____

City/State/Zip: _____

Email: _____

Below, please write any comments or feedback related to information provided in this newsletter. Please include additional sheets of paper as necessary. When complete, please fold this form in half, showing the preprinted address on the outside, tape it closed (no staples please), add postage, and drop in the mail.

Comments will not be accepted by fax, e-mail, or any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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Name: _____

Address: _____

ADD
POSTAGE
HERE

Volpe National Transportation Systems Center
Kaitlyn Rimol, V-326
Attn: Hawai'i Volcanoes National Park ATMP
55 Broadway
Cambridge, MA 02142

EXHIBIT 6
Scoping Newsletter for
Haleakalā National Park



Haleakalā National Park

FEB 2022
Newsletter



Air Tour Management Plan
Potential Alternatives for Public Comment

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are working together to present potential alternatives for an Air Tour Management Plan for Haleakalā National Park. Public and stakeholder feedback during this phase is critical. This document will explain:

- Commercial air tour operations
- Requirements for a plan at the Park
- Potential alternatives being considered for the plan
- How the public and stakeholders can provide feedback

Project Introduction

This document presents potential alternatives for the Haleakalā National Park Air Tour Management Plan (ATMP) Environmental Assessment (EA) for public and stakeholder input. As applied to Haleakalā National Park (Park), the term commercial air tour operation is defined as any flight conducted for compensation or hire in a powered aircraft, where a purpose of the flight is sightseeing over the Park or within ½-mile outside the Park's boundary during which the aircraft flies below 5,000 feet above ground level.

The National Parks Air Tour Management Act (the Act) of 2000 requires the FAA, in cooperation with the NPS, to develop an ATMP for parks and tribal lands where operators have applied to conduct commercial air tours. The objective of this ATMP, under the Act, is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts of commercial air tour operations on the Park's natural and cultural landscapes and resources, areas of historic and spiritual significance to Native Hawaiians, Wilderness character, and visitor experience.

As part of the public scoping process pursuant to the National Environmental Policy Act (NEPA), the FAA and the NPS invite public input on potential alternatives. Many of you have commented on the FAA and the NPS's past efforts to complete an ATMP for Haleakalā National Park which have been considered in the development of these potential alternatives. Public and stakeholder input will be used to further refine or dismiss alternatives and potentially to consider new alternatives. Public input will also be used to inform the environmental analysis. Alternatives that are carried forward and analyzed in the EA are expected to be available for public review and comment later this year.



View of Kukui Bay, Kīpahulu District

Purpose and Need for the Project

Under NEPA, alternatives must meet the Purpose (i.e., objective) and Need for the project.

Purpose

To comply with the *National Parks Air Tour Management Act of 2000 (the Act)* and other applicable laws, consistent with the *Plan and Schedule for Completion of Air Tour Management Plans at Twenty-Three Parks* approved by the U.S. Court of Appeals for the District of Columbia Circuit on November 20, 2020, in Case No. 19-1044, *In Re Public Employees for Environmental Responsibility and Hawai'i Coalition Malama Pono*.

Need

The Act requires an ATMP or voluntary agreement for the Park. Air tours have the potential to impact natural and cultural resources, Wilderness character, and visitor experience. The Act requires that the FAA and the NPS develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations on natural and cultural landscapes and resources, Wilderness character, visitor experience, and Native Hawaiian Traditional Cultural Properties including Native Hawaiian sacred landscapes, sites, and ceremonial areas. In order to address potential impacts from commercial air tours the agencies have decided to prepare an ATMP for the Park.

Resources for Consideration in the EA

The agencies propose to analyze the potential impacts of each alternative on the following resources:

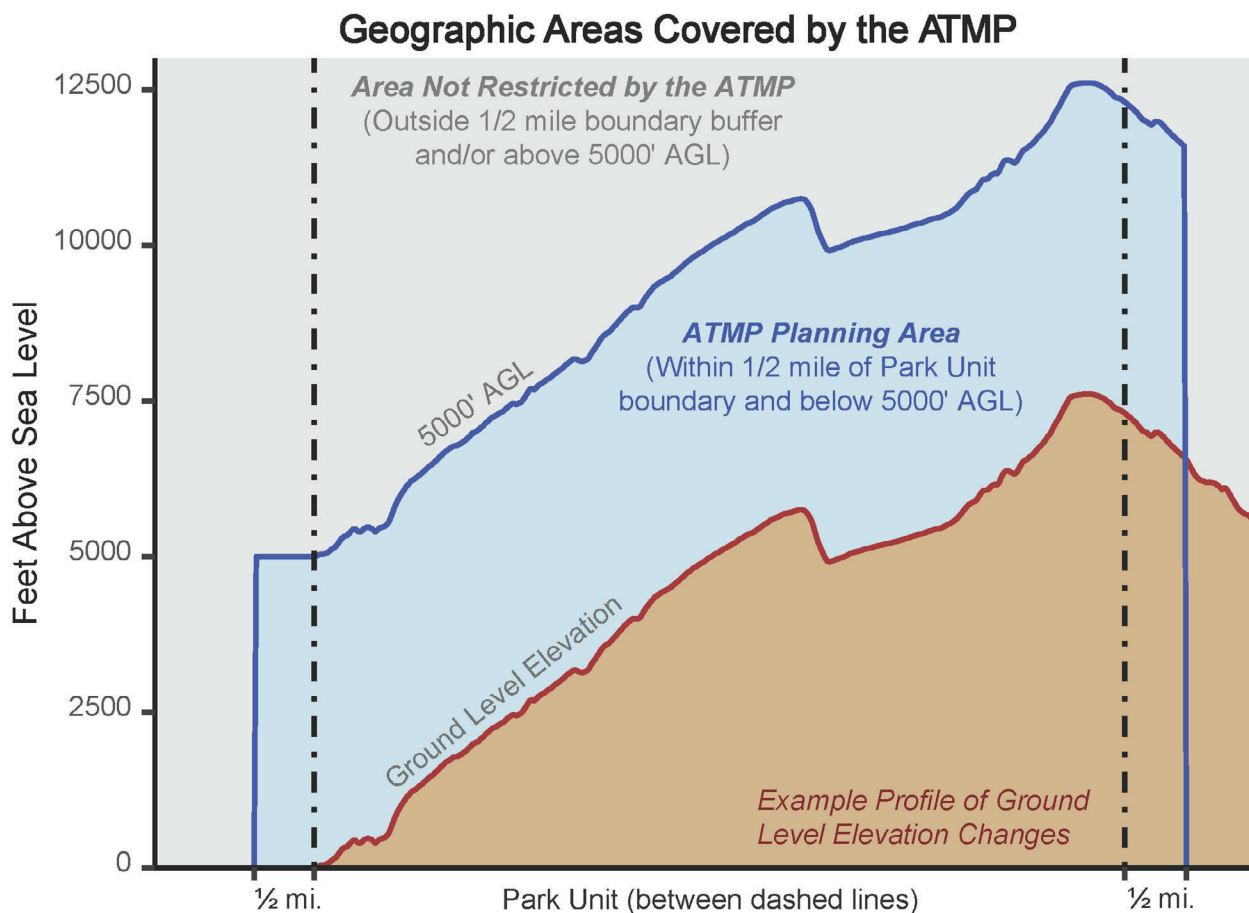
- Air quality
- Biological resources (e.g., fish, plants, and wildlife including mammals, avian species, and special status species)
- Climate (climate change and greenhouse gas emissions)
- Coastal resources
- Cultural resources (historic buildings, historic districts, archeological resources, sacred sites, Traditional Cultural Properties, cultural landscapes, ethnographic resources)
- Department of Transportation Act, Section 4(f)
- Farmlands (e.g., Kapahu Living Farm)
- Noise and compatible land use (acoustic environment and Park soundscape)
- Park visitors and visitor uses
- Socioeconomics, Children's Environmental Health and Safety Risk, and Environmental Justice
- Visual effects (light emissions, visual resources, visual character)
- Water resources
- Wilderness

Elements Common to All Alternatives for the Haleakalā National Park ATMP

All alternatives being considered for the Haleakalā National Park ATMP will incorporate the following:

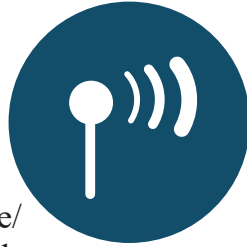
ATMP Planning Area

According to the Act, an ATMP may regulate commercial air tours over a national park or within ½-mile outside the park's boundary during which the aircraft flies below 5,000 feet Above Ground Level (AGL). This is referred to as the ATMP planning area. Air tours outside of the ATMP planning area are not subject to the Act and are therefore not regulated under the ATMP. As air tours outside the boundaries of the ATMP planning area are outside the jurisdiction of the ATMP, there would be no limitations on the annual number of air tours or routes that could occur outside the ATMP planning area under any alternative. Refer to the figure below for a geographic depiction of the ATMP planning area. Although they may occur within the ATMP planning area, general aviation flights, overflights by commercial airline and military flights would not be regulated by the ATMP because they are not commercial air tours subject to regulation under the Act.



Monitoring and Enforcement

All air tour operators are required to report to the FAA and the NPS, on a semi-annual basis, the number of commercial air tour operations they have conducted within the ATMP planning area. The operators must provide the date and time each tour occurred, the make/model of aircraft used, and the route on which the tour was conducted.



Aircraft monitoring and enforcement would occur to ensure that commercial air tour operators are complying with the terms and conditions of the ATMP. The NPS and the FAA are both responsible for the monitoring and oversight of the ATMP. If the NPS identifies instances of non-compliance, the NPS will report such findings to the FAA's Honolulu Flight Standards District Office (FSDO). The FSDO will investigate all substantiated reports of noncompliance. The public may also report allegations of non-compliance with the ATMP to the FSDO, which may result in an FAA investigation.

The NPS will continue to maintain its Automatic Dependent Surveillance-Broadcast (ADS-B) flight tracking system to monitor commercial air tour activity within the ATMP planning area. The ADS-B data documenting unauthorized commercial air tours and any additional visual observations will be submitted to the FAA through the Honolulu FSDO for FAA enforcement and/or disciplinary actions. The NPS will use all available flight tracking data to monitor air tour activity.

Flight Route and In-flight Deviations

The map included in the potential alternative show a flight route where air tours could occur within the ATMP planning area. The flight route within the ATMP planning area is represented by a line with a buffer on either side of the route that indicates the acceptable range of deviation that would not trigger enforcement action. The flight line will be used for noise modeling purposes in the impact analysis. If pilots are entering or on the route in the ATMP planning area and weather conditions do not allow them to follow the route at the prescribed altitude they must not proceed further on the route. Pilots must safely exit the route and leave the ATMP planning area boundary. Weather deviations to the flight route would be reported to the Park, the FAA, and the NPS as part of bi-annual reporting requirements.



FAA Airspace Authority

The FAA has authority for all airspace matters, including any enforcement actions for violations under the ATMP, which the agency would process in accordance with existing FAA procedures and regulations.



Minimum Altitudes

The range of altitudes examined in the alternatives will be from 1,500 to 5,000 feet AGL. None of the alternatives would supersede laws protecting humpback whales and monk seals under the Endangered Species Act, the Marine Mammal Protection Act, and State of Hawai‘i law, including 50 CFR Part 216 which states that it is unlawful to operate any aircraft within 1,000 feet AGL of any humpback whale or monk seal in the vicinity of the Hawaiian Islands.



Fee Collection

Under the Omnibus Budget Reconciliation Act of 1993 (54 U.S.C. § 100904), commercial air tour operators currently conducting air tours over the Park are required to pay a fee (currently \$25 for each aircraft with 25 passengers or less) for each air tour conducted. This requirement will remain in force when this ATMP becomes effective.

Fee collection will not be considered in the decision-making process for analyzing and selecting a potential alternative. The decisions will be based solely on the environmental impact analysis and public input.



Initial Allocation and Competitive Bidding

The Act states whenever an ATMP limits the number of commercial air tour operations during a specified time frame, a competitive bidding process must occur pursuant to the criteria set forth in 49 U.S.C. § 40128(a)(2)(B) and other criteria developed by the agencies. Since the number of flights would be limited for Alternative 3, competitive bidding would be required. In the time period between the finalization of an ATMP and the completion of the competitive bidding process, commercial air tour operators would be allocated a certain number of commercial air tours over the Park, referred to as the initial allocation.



Competitive bidding may also be appropriate to address: a new entrant application; a request by an existing operator for additional operating authority; consideration by the agencies of Park-specific resources, impacts, or safety concerns; or for other reasons. The Act directs the agencies to consider various factors during the competitive bidding process including known resource issues, reporting, and compliance concerns.

Potential Alternatives

The agencies have considered a range of reasonable alternatives that are technically and economically feasible, meet the purpose and need for the project, and the goals of the agencies.

Alternatives Considered and Dismissed

The agencies considered but dismissed alternatives that would allow air tour operations at or above existing numbers. These alternatives were dismissed from further consideration because the NPS determined they would result in unacceptable impacts to Park natural and cultural resources and visitor enjoyment as defined in NPS Management Policies 2006 1.4.7.1. and do not meet the purpose and need for the plan.

The NPS determined the current level of air tours is inconsistent with the Park's purpose and values. Existing air tour operations result in frequent and loud noise disruptions in many areas of the Park. Noise from air tours adversely impacts existing Native Hawaiian sacred sites and landscapes. The NPS is required to avoid adverse impacts to sacred sites to the extent possible (NPS Management Policy 5.3.5.3.2). Native Hawaiians have consistently noted the persistent air tours over the Park unreasonably interfere with ceremonies conducted by Native Hawaiian practitioners at these sacred sites.

Current air tours over the Park also directly interfere with resource management activities (such as the execution of acoustic based bird surveys) which impedes the NPS's ability to fully meet the Park's purpose of perpetuating endemic Hawaiian ecosystems and does not support the perpetuation of biological diversity and ecological integrity which are fundamental resources and values of the Park (see Foundation Document). A recent study in Hawai'i documents that loud, frequent helicopter noise results in changes in avian vocalization (Gallardo Cruz et al 2021). Helicopter noise could detrimentally affect physiology, pairing and breeding success, and territory size of birds by limiting communication between individuals (Habib et al. 2007; Nemeth and Brumm 2010; Halfwerk et al. 2011; Kleist et al. 2018). These effects could have a greater impact on Hawaiian endemics, which already face a number of stressors (Atkinson and Lapointe 2009; Pratt et al. 2009; LaPointe et al. 2010), than on introduced species. The current level of air tours also diminishes visitor opportunities to learn about and be inspired by Park resources and values and unreasonably interferes with Park programs, activities, the atmosphere of peace and tranquility and the natural soundscapes in Wilderness (see NPS Management Policies 1.4.7.1). Existing air tours repeatedly interrupt and unreasonably

interfere with interpretive programs and visitor activities at the Summit, in Kīpahulu and in the Haleakalā Crater, which may significantly impede visitors from enjoying and learning about existing Park resources. Natural quiet is a foundational resource for the Park and a primary reason for visitation. Air tours currently disrupt natural quiet throughout the Park. Additionally, existing air tour operations unreasonably interfere with the natural soundscape maintained within the Haleakalā Wilderness.

Therefore, authorizing commercial air tours at or above the existing level of operations would not meet the objective of an ATMP under the Act. The NPS has determined that the current level of air tours cannot be mitigated to avoid or prevent unacceptable impacts and therefore any alternative that would maintain or increase the current number of air tours over the Park does not meet the purpose and need for the ATMP. For all of these reasons, the agencies have considered but dismissed alternatives that would continue air tours at or above existing air tour numbers.



Hikers in Haleakalā Crater; View towards Halemau‘u Trail “Switchbacks”

Alternative 1 (No Action)

Objective

A no action alternative is required by the Council on Environmental Quality and NEPA regulations.

The no action alternative provides a basis for comparison but is not a selectable alternative because it does not meet the purpose and need for the ATMP and is not in compliance with the Act. The agencies have decided to comply with the Act by developing an ATMP for the Park.

Description

The no action alternative is what happens if the agencies do not adopt an ATMP. The no action alternative would allow a continuation of air tours under interim operating authority (IOA) without implementation of an ATMP or voluntary agreement. Under the no action alternative, air tours numbers would be expected to vary from year to year, likely consistent with reported numbers over the past three to five years. Air tour numbers from 2017 to 2019 are listed below. Under the no action alternative operators could fly up to IOA, 25,827 air tours per year. Air tour operators may fly where they choose. Currently, altitudes are flown in accordance with the Hawai'i Air Tour Common Procedures Manual (HI Manual). Minimum altitudes range from 500-1,500 ft. AGL, weather dependent, depending on location on the island.

Number of Flights Each Year

Alternative 1 represents a continuation of what currently exists and is allowed under existing law including each company's IOA as granted by the FAA (70 Federal Register 36456 (June 23, 2005)), applicable regulations that govern aviation safety (Title 14 Code of Federal Regulations Part 136, Appendix A (formerly Special Federal Aviation Regulation 71)), and any FAA exceptions issued to individual operators as outlined by the HI Manual. Six commercial air tour operators currently hold IOA to fly up to a combined total of 25,827 annual flights at the Park authorized under IOA (see table on page 11).

Under the no action alternative, operators could fly up to IOA. The operators may not exceed their respective IOA limitation in any given year. Under the no action alternative, air tours numbers would be expected to vary from year to year, likely consistent with reported numbers over the past three to five years. The average annual number of commercial air tours conducted over the Park from 2017-2019 for all operators is 4,824. The agencies consider the 2017-2019, three-year average, to be the existing baseline for the purposes of understanding the existing number of commercial air tour flights over the Park.

Alternative 1 (No Action)

The requirement for commercial air tour operators to report actual commercial air tours to the FAA and the NPS was implemented in 2013. Reporting data from 2013 and 2014 are considered incomplete as reporting protocols were not fully in place at that time and likely do not reflect actual flights. Flight numbers from a single year were not chosen as the existing baseline because the three-year average accounts for both variation across years and takes into account the most recent, pre-pandemic years. Reporting data from 2020 was not used because the 2020 COVID-19 pandemic resulted in lower than normal commercial air tour operations due to travel restrictions and closures in the State of Hawai‘i and does not represent the conditions in a typical year.

Routes and Altitudes

There are no designated flight routes or no-fly zones under the no action alternative. The figure for this alternative depicts both general route information provided by current commercial air tour operators and Automatic Dependent Surveillance – Broadcast (ADS-B) flight tracking data of actual commercial air tour operations over and adjacent to the Park. Actual commercial air tour operations are dispersed around the generalized routes provided by operators depicted on the figure. The ADS-B tracking data is more reflective of existing operations for various reasons including deviations that occur due to weather.

Minimum altitudes for commercial air tours within the ATMP planning area are flown in accordance with the HI Manual, from 500-1,500 ft. AGL, weather dependent and contingent on location on the island. In most locations within the Park, the HI Manual requires helicopters to fly at a minimum 500 ft. AGL. See the figure for this alternative for details. Operators have been granted exemptions to fly below 1,500 feet AGL over Haleakalā National Park and within a ½-mile buffer provided they meet certain requirements and limitations set forth by the FAA in the HI Manual.

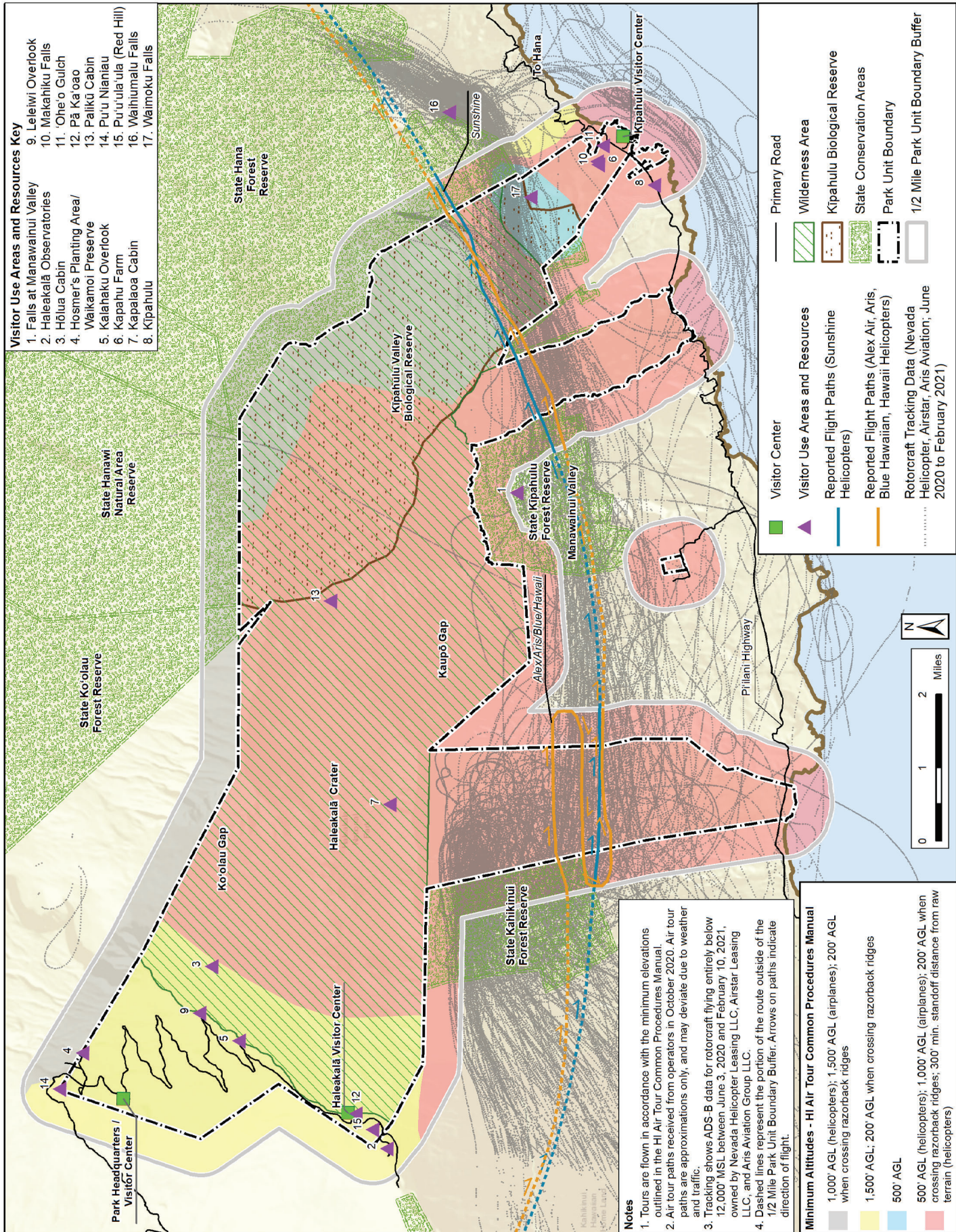
Operators, Aircraft Types, Interim Operating Authority

Five of the six operators that hold IOA for the Park reported flying commercial air tours over the Park between 2013 and 2019. All five operators that have reported flying over the Park during this period fly helicopters (not fixed wing aircraft). The following table summarizes each operator’s aircraft type, IOA for the Park, and average number of reported air tours over the Park from 2017-2019:

Alternative 1 (No Action)

Operator	Aircraft Type	2017 Reported Tours	2018 Reported Tours	2019 Reported Tours	3-year Reported Average No. of Air Tours (2017-2019)	Interim Operating Authority (IOA)
Aris, Inc. (Air Maui Helicopter Tours)	AS350BA	905	863	735	834	3,996
Hawai'i Helicopters, Inc.	AS350B2	516	328	283	376	5,682
Helicopter Consultants of Maui, Inc. (Blue Hawaiian Helicopters)	AS350B2, EC130 T2, EC130 B4	2,100	2,503	2,740	2,448	8,348
Schuman / Makani Kai	No Data	0	0	0	0	25
Sunshine Helicopters, Inc.	AS350BA	881	703	775	786	4,853
Alika Aviation, Inc. (Alexair, Maverick)	EC130B4	437	360	342	380	2,923
		4,839	4,757	4,875	4,824	25,827





Alternative 2

Objective

Alternative 2 seeks the greatest protection for the purposes, resources, and values of the Park. This includes: the summit of Haleakalā (meaning rim and crater), a Traditional Cultural Property which holds spiritual and cultural significance to Native Hawaiians; threatened and endangered species and other wildlife sensitive to noise; Congressionally designated Wilderness and visitor opportunities for solitude; ground-based visitor experience; Native Hawaiian traditional cultural practices; scenic qualities, and natural sounds.

Description

Alternative 2 would prohibit air tours within the ATMP planning area. The ATMP planning area includes areas below 5,000 feet AGL and within 1/2-mile of the Park boundary. The Park itself would be designated as an area to remain free of commercial air tours under 5,000 feet AGL. Air tours outside of the ATMP planning area (i.e., above 5,000 feet

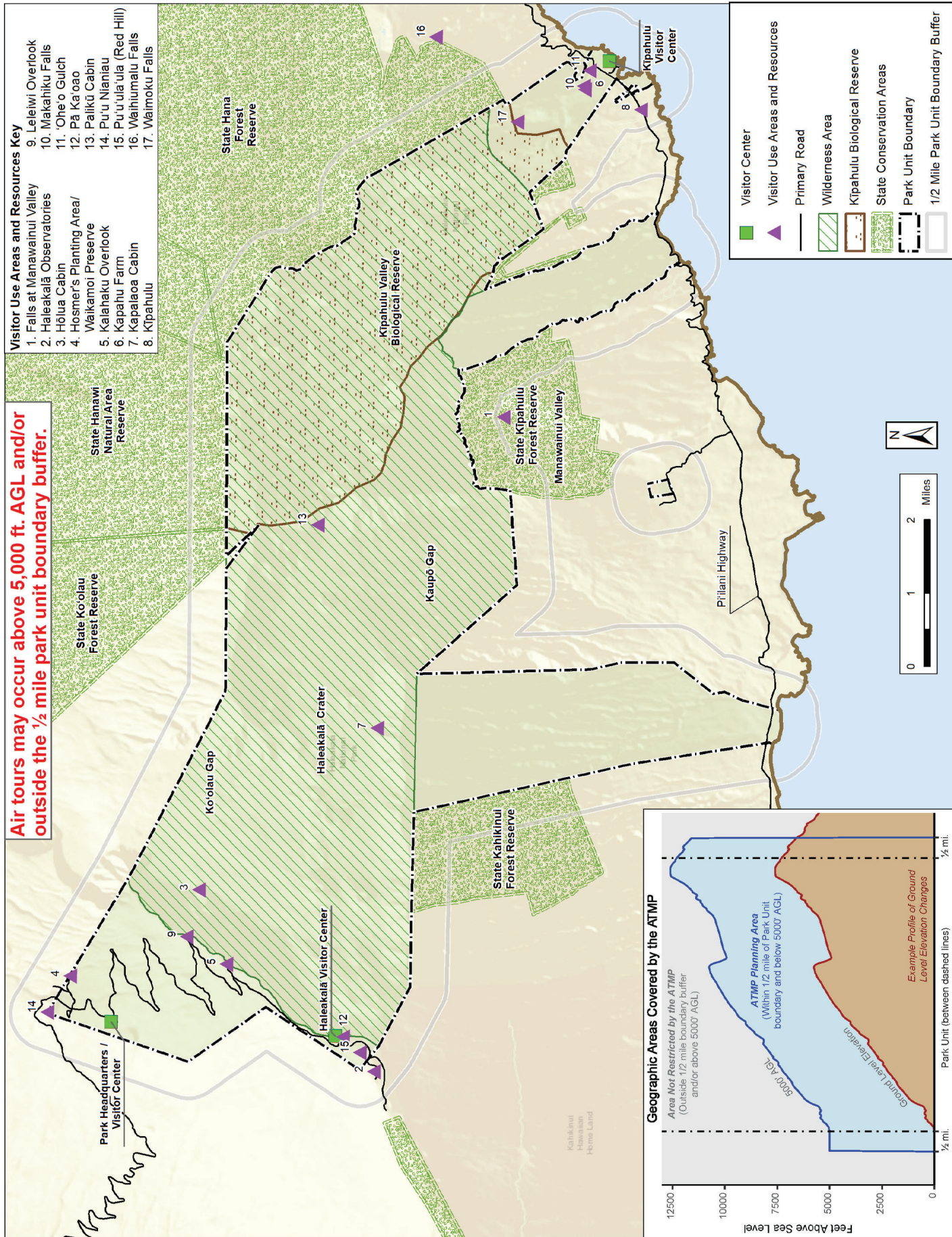
AGL or more than 1/2-mile outside of the Park's boundary) are not subject to the Act and are therefore not regulated under the ATMP. Thus, there would be no limitations on the annual number of air tours that could occur outside the ATMP planning area.

Routes and Altitudes

Air tours could be conducted only outside the ATMP planning area. Based on current air tour activity, routes outside of the ATMP planning area would be expected to be similar to existing routes. An unknown number of air tours originating on Maui Island would still continue to fly more than 1/2-mile outside of the Park's boundary at minimum altitudes ranging from 500 to 1,500 ft. AGL, depending on location on the island, in accordance with the HI Manual. The actual flight path of air tours outside the ATMP planning area would vary due to operator preference and weather conditions at the time of the air tour.



'Iwi in māmane



Alternative 3

Objective

Alternative 3 is intended to improve and protect Wilderness values, cultural resources, natural soundscapes, wildlife, and to provide enjoyment of the Park (visitor use). The following objectives were considered by the NPS in the development of this alternative.

- Protect sensitive cultural properties. The flight path avoids culturally significant areas, including those used by cultural practitioners, the Kīpahulu Historic District, Crater Historic District, the Kapahu Living Farm, and coastal areas for cultural fishing access and use (Prasad, U.K. and Tomonari-Tuggle, M.J. 2008).
- Protect biological resources. The flight path avoids bioreserves and protects forest birds, nēnē and ‘ua‘u by maintaining mid-slope (i.e., staying below 4,000 ft contour line elevations). The flight path also protects cliff-nesting seabirds and forest birds of the Manawainui plateau by avoiding flights in the deep valley/bowl area immediately west of Kaupō.

- Protect visitor experience and Wilderness values. The singular flight path avoids the Keonehe‘ehe‘e (Sliding Sands) Trailhead at the visitor center parking lot, Waimoku Falls and Kīpahulu area including the Visitor Center, and the Halemau‘u Trail switchback areas for improved Wilderness and visitor use and experience conditions and protection.
- Avoid or minimize unacceptable impacts to Wilderness values, cultural resources, natural soundscapes, wildlife, and visitor use by reducing the annual number of commercial air tours over the Park as compared to existing conditions.

The FAA reviewed the alternative to ensure it meets safety parameters.

Description

Alternative 3 provides a singular flight path within the ATMP planning area and a reduction in the number of commercial air tours authorized to fly over the Park in order to protect Park resources, values, and visitor experience.

Alternative 3

Caps on Numbers of Flights Allowed Annually and Daily

Noise modeling will be used to consider and evaluate various numbers of annual commercial air tours over the Park, ranging between 1 flight per year to below current condition (the average number of commercial air tours conducted over the Park each year from 2017-2019, in this case 4,824). The number of flights allowed over the Park on an annual basis will be selected to avoid or minimize unacceptable impacts to Wilderness values, cultural resources, natural soundscapes, wildlife, and visitor experience.

Daily caps will be determined by noise modeling in order to protect biological resources, sensitive cultural areas, and visitor use and experience.

Annual and daily caps on the numbers of flights allowed will be outlined in the EA and draft ATMP for public review.

Route and Altitudes

Alternative 3 includes a singular flight path with altitudes ranging from 1,500 – 2,000 ft. AGL, depending on location over the Park. This route has one ingress point into the ATMP planning area, entering from the west over the State Kahikinui Forest Reserve at a minimum altitude of 2,000 ft AGL. The flight crosses the Park's Nu'u Parcel at 2,000 ft. AGL, then descends to the edge of the ATMP planning area near the Park's Denman Parcel. The route continues in an easterly direction over a coastal portion of the ATMP planning area at a minimum of 1,000 ft. mean sea level (MSL). The altitude restrictions protect

marine threatened and endangered species by maintaining at least 1,000 feet above MSL over the ocean. Vertical separation of aircraft along the route would be prohibited.

Other than the route described above, under Alternative 3, no air tours could occur below 5,000 feet AGL within the rest of the ATMP planning area. Refer to the map for this alternative for a depiction of the flight corridor and altitudes.

Hovering/Circling

This alternative would prohibit hovering or circling because it could negatively impact visitors, cultural, and natural resources, including sensitive sites.

Time of Day/Day of Week

Flights would be permitted between the hours of 11:00 a.m. and 2:00 p.m. Exceptions to this parameter for Quiet Technology (QT) aircraft are noted below, which allow QT aircraft to fly at the Park from 11:00 a.m. until 4:00 p.m.

Flights would be permitted on all days of the week except Wednesday and Sunday. Selecting non-consecutive days comprising one weekend day and one weekday may offer access to the renowned quiet of the Haleakalā Crater to a broad range of visitors. Air tour operators will also be required to observe the Park's six existing commercial free days as no-fly days (see section on restrictions for special events).

Alternative 3

Quiet Technology (QT) Incentives

The Act requires that the ATMP include incentives for the adoption of QT by commercial air tour operators. Alternative 3 incentivizes the use of QT aircraft by relaxing time-of-day restrictions to allow QT aircraft to fly from 11:00 a.m. - 4:00 p.m.

In order to qualify for QT incentives, operators will be required to follow a process to be defined by the agencies outside of the planning process for the Haleakalā National Park ATMP.

Restrictions for Special Events

This alternative would include a mandatory 5-mile lateral standoff for special events that could be affected by commercial air tours, limited to the day of the event. Special events could include Native Hawaiian events or other natural and cultural resource programs. Two months' notice would be provided by the Park to commercial air tour operators prior to the event. The standoff would not extend outside of the ATMP planning area.

In addition to the weekly no fly days of Wednesday and Sunday, the Park has set aside six no-fly days for commercial tours over the Park. These dates are generated by following the Hawaiian Moon Calendar and Makahiki Season and currently are:

1. January 6 - end of Makahiki
2. May 26 - Zenith Noon
3. June 20 - Summer Solstice
4. July 15 - Zenith Noon
5. October 7 - start of Makahiki
6. December 21 - Winter Solstice

One year notice of the six no-fly dates will be provided to air tour operators by the Park.

Adaptive Management

Adaptive management is a systematic approach for improving resource management and ensuring that the continued effectiveness of the ATMP over time through the monitoring of park conditions and by learning from management actions or choices. Adaptive management is also used to address changed conditions such as if the breeding habitat of a sensitive species moves to a new area. Adaptive management of the route, frequency, and timing will be considered, analyzed, and included in this alternative for the protection of the biological reserves, forest and ground bird migratory patterns and habitat shifts over time due to climate change, Wilderness, and cultural resource quality and visitor experience impacted by air tours.

Interpretive Training and Education

The NPS would provide mandatory training for air tour pilots regarding Park resources. The training would include the Park information that operators could use to further their own understanding of Park priorities, cultural and natural resource protection and management objectives as well as enhance the interpretive narrative for air tour clients and increase understanding of the Park by air tour clients.

Operators would also be required to complete the FAA Fly Neighborly training for their aircraft type. Fly Neighborly is a noise reduction program that seeks to create better relationships between communities and helicopter operators by establishing noise mitigation techniques and increasing effective communication.

Alternative 3

Annual Meeting

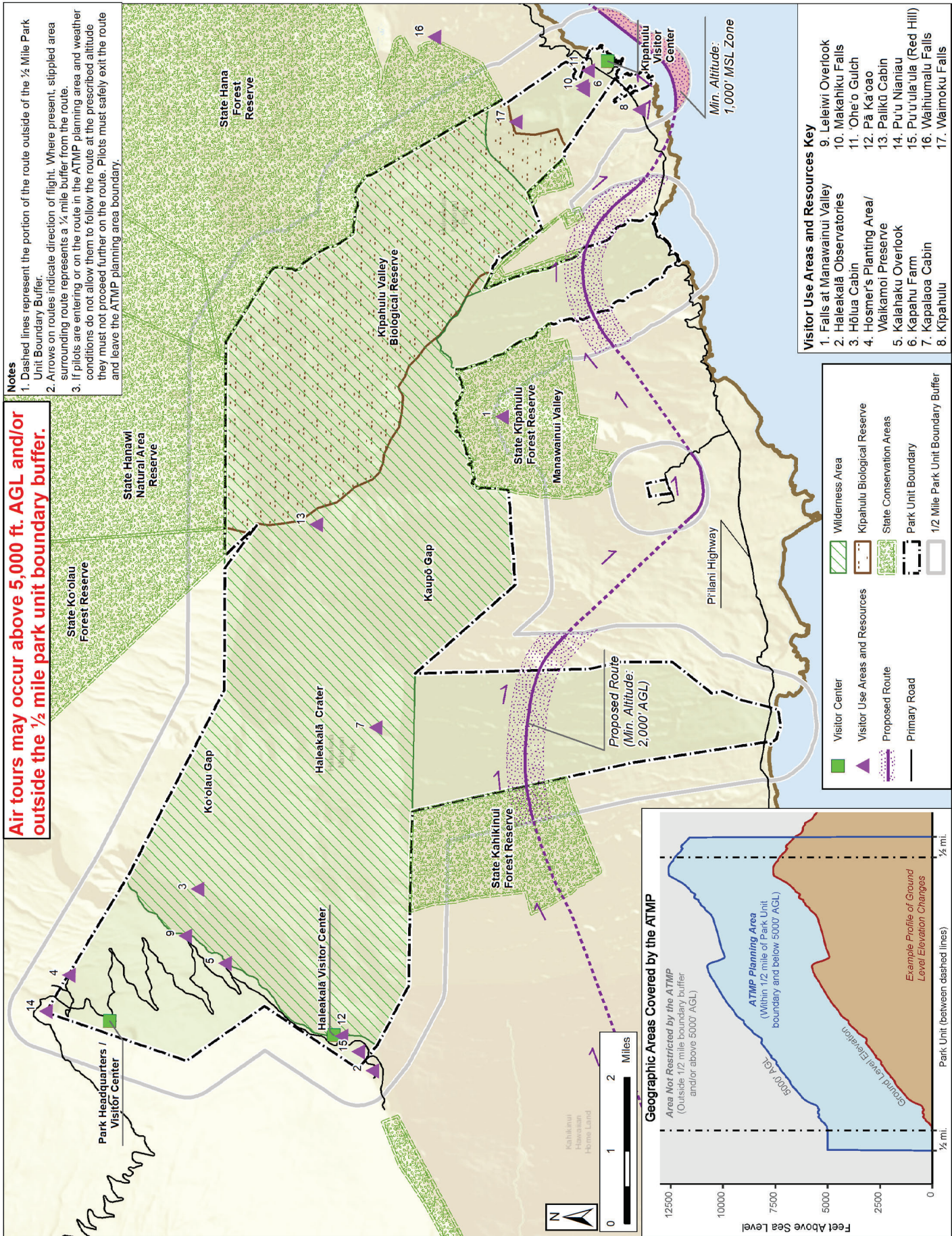
An annual meeting between the agencies and air tour operators would occur under this alternative. The ATMP will describe the details of the annual meeting.

Operators, Initial Allocation of Air Tours, and Aircraft Types

The ATMP will identify a maximum total number of air tour flights authorized to occur each year. Upon finalization of the ATMP, the number of flights authorized to occur each year would be proportionally allocated to each of the six operators that have reported operations over the Park in the period from 2017-2019. Each operator's initial allocation will reflect the proportion of its average number of reported flights from 2017-2019 as compared to all operators that have reported flying over the Park during this period. Each operator's aircraft types would reflect those reported in the period from 2017-2019. The initial allocation would be used until a competitive bidding process could occur. Under the Act, IOA terminates 180 days after the date of establishment of the ATMP. However, if the FAA updates an operator's Operations Specifications before that time, IOA will be terminated when the Operations Specifications are updated.

Monitoring and Enforcement

Operators would be required to equip all aircraft used for air tours with flight monitoring technology, use flight monitoring technology during all air tours under the ATMP, and to report flight monitoring data as an attachment to the operator's semi-annual reports. Soundscape monitoring by the NPS would also occur to ensure that the terms and conditions of the ATMP are consistent with Park management objectives.



Summary of Alternative Elements

Alternative Attributes	Alternative 1 (No Action)	Alternative 2	Alternative 3
General Description and Objectives	What happens if the agencies do not adopt an ATMP. Allows a continuation of air tours under IOA without implementation of an ATMP or voluntary agreement. Does not comply with the Act.	Prohibits air tours within the ATMP planning area to maximize Park resource protection. Air tours could still continue to fly outside the ATMP planning area (i.e., above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).	Provides a singular flight path within the ATMP planning area and a reduction in the annual number of commercial air tours over the Park.
Annual/Daily Number of Flights	Leaves IOA in place allowing the potential to fly up to 25,827 commercial air tours each year. Actual number of tours has historically ranged from 4,839 (in 2017) to 4,757 (in 2018) flights per year, or an average of 4,824 flights (based on 2017-2019 reporting).	None in ATMP planning area.	Between 1 and below the current condition (4,824) flights per year, dependent on modeling. Will consider the use of daily caps by operator.
Routes	No mandatory routes or no-fly zones. See map for depiction of reported routes and actual operations.	None in ATMP planning area.	One air tour route, entering the Park on the west near the State Kahikinui Forest Reserve and exiting the Park near the Kīpahulu area and Visitor Center. This route allows operators to fly in one direction.
Minimum Altitudes	Flown in accordance with the HI Manual, generally between 500-1,500 ft. AGL.	No minimum altitude would be set. However, flights over the Park that are above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary are similarly outside the ATMP planning area and are subject to the altitude restrictions of the HI Manual.	Minimum 1,500 – 2,000 ft. AGL. Flights more than ½-mile outside the Park boundary are similarly outside the ATMP planning area and are subject to the altitude restrictions of the HI Manual.
Time of Day	No restrictions.	N/A	11 AM – 2 PM for non-QT flights. 11 AM – 4 PM for QT flights.

Continuation of Alternative Attributes	Alternative 1 (No Action)	Alternative 2	Alternative 3
Day of Week	No restrictions.	N/A	No-fly day on Wednesday and Sunday.
Hovering/ Circling	No restrictions.	N/A	Not permitted.
Quiet Technology (QT) Incentives	None.	N/A	QT flights may fly 11AM - 4PM.
Interpretative Training and Education Annual Meeting	None.	N/A	Mandatory.
Restrictions for Particular Events	None.	N/A	Included.
Adaptive Management	None.	N/A	Six no-fly days generated by following the Hawaiian Moon Calendar and Makahiki Season with one year notice provided to operators. Mandatory 5-mile standoff distance for other special events, with two months' notice provided to operators. To be considered/analyzed.
Operators, Initial Allocation of Air Tours, and Aircraft Types	Reflects IOA (25,827 IOA issued to six operators).	N/A	The initial allocation would reflect the proportional number of air tours reported over the Park and the existing aircraft types of each of the five operators that have reported operating in the period from 2017-2019. Then it would move to competitive bidding.

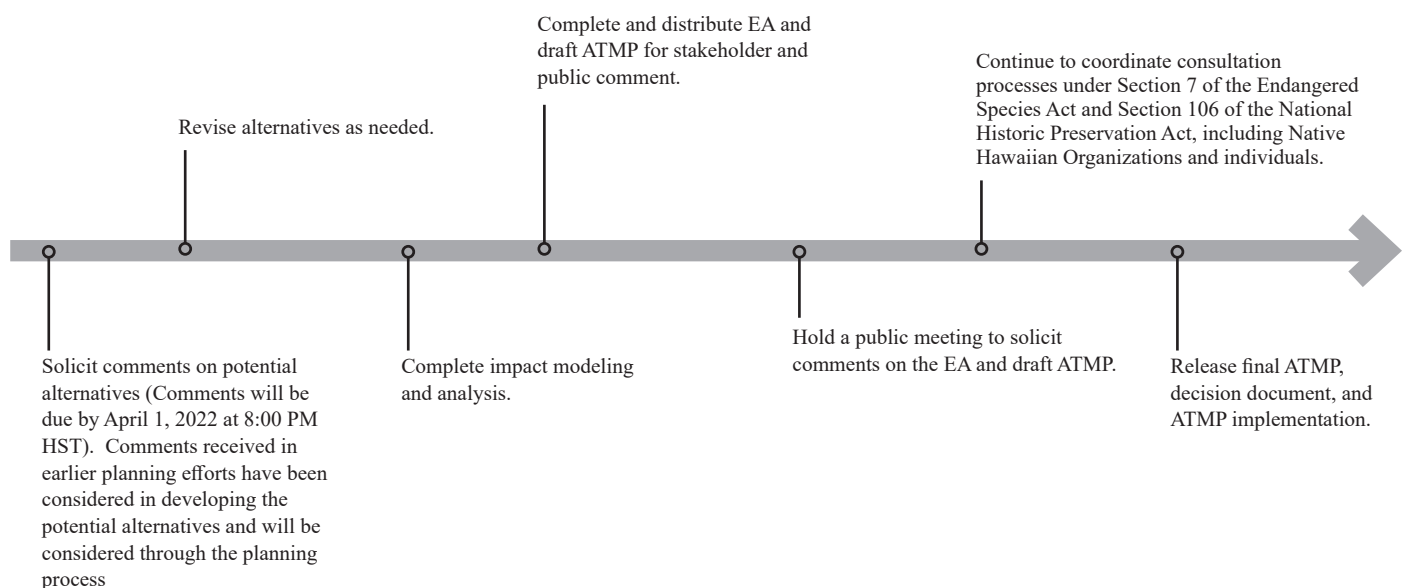
Next Steps

This public scoping period represents the first opportunity to be involved in the current planning process. Comments received in earlier planning efforts have been considered in developing the potential alternatives and will be considered through the planning process. During this scoping period, the project planning team would like to receive comments on the potential alternatives. After this public scoping process has concluded, the agencies will prepare an EA to comply with NEPA and a draft ATMP. Important steps in the planning process are in the graphic below.

The FAA and NPS are also identifying resources that are listed in or eligible for listing in the National Register of Historic Places that could be affected by air tours operating under the proposed ATMP. This includes any historic districts, sites, buildings, structures, objects or landscapes, including traditional cultural properties. If members of the public have any information on historic properties that they believe would be helpful in this effort, including properties outside of the Park, we welcome that assistance.

The FAA and NPS are also seeking to identify additional individuals or organizations that may be interested in participating in Section 106 consultations for the ATMP as consulting parties. We want to ensure that we include anyone that may have information or expertise to share.

Should you have information you wish to provide regarding historic properties or are interested in participating in the Section 106 review process as a consulting party, please contact Cathy Nadals at 240-446-5086 or Catherine.L.Nadals@FAA.gov and copy the ATMP Team at ATMPTeam@dot.gov. Please note that this contact information is only for correspondence related to the Section 106 process and comments not related to the Section 106 process will not be accepted or relayed via email. Instructions for general public comment on the potential alternatives described in this newsletter are provided below.



Glossary

The Act	National Parks Air Tour Management Act of 2000
ADS-B	Automatic Dependent Surveillance-Broadcast
AGL	Above Ground Level
ATMP	Air Tour Management Plan
EA	Environmental Assessment
FAA	Federal Aviation Administration
FSDO	Flight Standards District Office
HI Manual	Hawai‘i Air Tour Common Procedures Manual
IOA	Interim Operating Authority
MSL	Mean Sea Level
NEPA	National Environmental Policy Act
NPS	National Park Service
Park	Haleakalā National Park
PEPC	Planning, Environment & Public Comment System
QT	Quiet Technology



Instructions for Public Comment

Please comment on any alternative and/or alternative element described above. The agencies are seeking substantive comments that describe why something will or will not work, provide new ideas or factual information to correct or adjust assumptions made, or present reasonable alternatives other than those described. Comments that merely support or oppose the proposals are not considered substantive. Commenters may wish to consider the following questions:

- What elements of the alternatives do you think are most important? Why?
- What other information should the planning team consider when analyzing the alternatives?
- Are there other elements or ideas that should be considered and analyzed that are not already presented? What is missing, and why should it be considered?
- Are there other resources or impact topics that should be considered in the analysis?
- What other comments and suggestions do you have?

Comment submission using the Planning, Environment & Public Comment (PEPC) system is preferred, although written comments sent via postal mail will also be accepted. If you do not have access to a computer, use the attached comment form, following directions on the form. Comments will not be accepted via email. Please send comments by **April 1, 2022 at 8:00 PM HST**.

Comments may be submitted using the PEPC system at:

<https://parkplanning.nps.gov/HaleakalaATMP>

Written comments may be sent via postal mail to the following address:

Volpe National Transportation Systems Center
Kaitlyn Rimol, V-326
Attn: Haleakalā National Park ATMP
55 Broadway
Cambridge, MA 02142

Send Us Your Comments!

PLEASE SUBMIT YOUR COMMENTS BY APRIL 1, 2022 AT 8:00 PM HST.

Please submit comments electronically by visiting:

<https://parkplanning.nps.gov/HaleakalaATMP>

Once on the website, select “Open for Comment” to provide your thoughts on these preliminary alternatives. If you do not have access to a computer, you can send us your comments on this comment form.

Please print your name and address in the space provided.

Name: _____

Organization, if any: _____

Mailing Address: _____

City/State/Zip: _____

Email: _____

Below, please write any comments or feedback related to information provided in this newsletter. Please include additional sheets of paper as necessary. When complete, please fold this form in half, showing the preprinted address on the outside, tape it closed (no staples please), add postage, and drop in the mail.

Comments will not be accepted by fax, e-mail, or any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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Name: _____

Address: _____

ADD
POSTAGE
HERE

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