

No. 19-1044

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

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On Petition for Writ of Mandamus

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**JOINT SUPPLEMENTAL REPORT OF THE  
FEDERAL AVIATION ADMINISTRATION AND  
THE NATIONAL PARK SERVICE**

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The Federal Aviation Administration (FAA) and National Park Service (together, the agencies) submit this joint supplemental report to comply with the Court's June 21, 2022 Order. As directed by the June 21 Order, this report was reviewed and is signed by the Acting Administrator of the FAA and the Director of the National Park Service, as well as counsel for the agencies.

### **PRELIMINARY STATEMENT**

At the outset, we highlight three points for the Court's consideration.

*First*, the agencies remain committed to meeting their obligations. The agencies have sought in good faith to comply with the Court's May 2020 Mandamus Order and November 2020 order (Approval Order) approving the agencies' August 31, 2020 Proposed Plan and Schedule for Completing the Air Tour Management Plans for Twenty-Three Parks (the Compliance Plan). The agencies have devoted substantial resources to get to the point where they are today. Most recently, the agencies have completed the first two management plans (see attached Exhibits 1, 2). And the agencies will continue to devote substantial resources to this effort. The agencies also will continue to submit quarterly Progress Updates to the Court until this is accomplished. The agencies will submit the next Progress Update on August 31, 2022.

*Second*, the agencies are firmly committed to involving the public in the process of developing air tour management plans at national parks. The agencies

have engaged in public participation in three primary ways: (1) soliciting public input on the plans under the National Parks Air Tour Management Act; (2) consulting under the National Historic Preservation Act; and (3) engaging in tribal consultation. The agencies have sought to provide meaningful opportunities for public participation as they develop plans. But public participation takes time; it is often unpredictable and not entirely within the agencies' control. The agencies received thousands of comments on the draft plans released in the late summer and fall of 2021, and they needed to consider and address those comments.

Consultation under the National Historic Preservation Act involves State Historic Preservation Offices and other stakeholders, who may affect the timeframe for completing consultation in ways the agencies cannot control. *See* 36 C.F.R. §§ 800.5, 800.6.

Similarly, engaging in tribal consultation, a priority for the agencies, though valuable and necessary, may extend the timeframe for completing plans. *See* Declaration of Raymond M. Sauvajot, Ph.D. (Second Sauvajot Decl.) ¶¶ 1-83 (attached as Exhibit 3 to Respondents' Opposition to Petitioners' Second Motion to Enforce (May 9, 2022) (Respondents' Second Opposition)); Declaration of Kevin Welsh, Executive Director of the Federal Aviation Administration's Office of Environment and Energy (Second Welsh Decl.) ¶¶ 1-28 (attached as Exhibit 4 to Respondents' Second Opposition).

*Finally*, the agencies are equally committed to complying with the National Environmental Policy Act (NEPA). For some parks, that may mean applying a categorical exclusion, while for others that may mean preparing an Environmental Assessment. Where the agencies have applied a categorical exclusion, they have still examined in detail the potential environmental impacts of the management plans. The agencies have attached two examples of the extensive documentation being prepared for all plans for which the agencies are contemplating applying a categorical exclusion. Exhibit 1 is the final Record of Decision for the Air Tour Management Plan for Olympic National Park, with documentation in Appendices B, C, and D. Exhibit 2 is the final Record of Decision for the Air Tour Management Plan for Mount Rainier National Park, with appendices. But when the agencies determine that an Environmental Assessment is needed, that takes even more time and resources to develop. And until the Environmental Assessment is completed, the agencies cannot determine whether there may be significant impacts that would require mitigation to avoid having to prepare an Environmental Impact Statement.

In sum, the agencies are working diligently under the Compliance Plan to bring all eligible parks into compliance with the Air Tour Management Act. To that end, the agencies submit this supplemental report.

## JOINT SUPPLEMENTAL STATUS REPORT

### I. The Accuracy of the Agencies' November 2021 Progress Update

In the June 21 Order, the Court directed the agencies to “explain why the agencies were unaware that they were behind schedule as of their November 24, 2021 status report.” The agencies understand the Court’s concern to be whether the agencies’ November 2021 Progress Update was accurate. The agencies have accurately reported on their activities and progress in all of the progress updates submitted to the Court, including the November 2021 Progress Update.

The Compliance Plan provided that during the first quarter of the second year (September 1, 2021 through November 31, 2021) the agencies would: “Release ATMP/NEPA documents for public comment, as appropriate”; “Conduct public meetings”; and “Continue resolution of Tribal and other agency consultations, as necessary.” In the August 2021 Progress Update, the agencies reported that they had released four air tour management plans for public review ahead of schedule. In their November 2021 Progress Update, the agencies reported that an additional eight management plans covering eleven parks had been released for public review and that public meetings had been conducted. November 2021 Progress Update at 3. In sum, the agencies reported that a total of twelve draft

management plans, covering fifteen parks, had been completed on or ahead of the schedule in the agencies' Compliance Plan.<sup>1</sup>

But in their November 2021 Progress Update, the agencies also acknowledged the nine parks that had fallen behind the schedule in the Compliance Plan (that is, because no draft management plans had been released for public comment and no public meetings had yet been conducted). The agencies explained that “unique challenges and complications” had caused eight of those nine parks to fall behind the other parks. November 2021 Progress Update at 7-8.

When the November 2021 Progress Update was filed, the agencies also reported that their goal remained to complete air tour management plans or voluntary agreements for all parks included in the Compliance Plan by August 31, 2022. November 2021 Progress Update at 6. And the agencies noted that when it became “clear that compliance with [the Air Tour Management Act] 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

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<sup>1</sup> The agencies are preparing a single air tour management plan for Golden Gate National Recreation Area, Point Reyes National Seashore, Muir Woods National Monument, and San Francisco Maritime National Historical Park. Muir Woods National Monument was not one of the 23 parks included in the Court-approved Compliance Plan and was exempt because no tours had been conducted over it for several years. But the Park Service withdrew its exemption, and the agencies included it in the combined air tour management plan for the San Francisco Bay Area parks.

explanation for the need for additional time.” *Id.* at 7. At that time, though the agencies acknowledged that they were behind schedule as to specific tasks in the Compliance Plan for nine parks, they were still working to meet the Compliance Plan’s two-year timeline. Moreover, at the time, the agencies did not have sufficient information to predict how much additional time, if any, they might need and for which parks. In particular, the agencies still had significant work to do in considering public input on the draft management plans. But the agencies promised to provide such information to the Court when they were able to provide clear and specific reasons why compliance would take longer for individual parks.

This information was provided in the next Progress Update, filed in February 2022. The agencies informed the Court that “it has become clear that the agencies will not be able to bring 8 of the 23 covered parks into compliance” with the Act by August 31, 2022 and, as promised, provided clear and specific reasons why bringing these parks into compliance would take additional time. February 28, 2022 Progress Update at 7. In the interim between the November 2021 and February 2022 Progress Updates, the voluminous public comments on the twelve draft plans that had been released for public review in the fall of 2021 were reviewed, summarized, and compiled into reports for the agencies’ consideration. The agencies then expended extensive efforts to review, consider, and address the public comments on each plan and to identify whether and how the plans needed to

be modified as a result of those comments. An example report summarizing public comments on a single plan is included as Appendix G to Exhibit 1.

In their February 2022 Progress Update, the agencies explained the reasons for anticipated delays in completing plans or agreements for the parks identified in the November Progress Update, along with estimated timelines for bringing the parks into compliance with the Act. These timelines were informed by the extensive comments received on the draft plans already released and the time and effort needed to address them. The agencies also reported that, at that point, the schedule was currently holding to bring the 15 parks for which draft plans had already been released for public review into compliance by August 31, 2022, but that the completion of two plans covering five parks (Bandelier National Monument and the four San Francisco Bay Area parks) could be delayed past August 31, 2022 due to unanticipated complications. February 2022 Progress Update at 5-6. The agencies also informed the Court that it was clear they would not be able to bring 8 parks into compliance with the Air Tour Management Act by August 31, 2022. And the agencies provided specific reasons for the delay and estimated timelines for completing those efforts. *Id.* at 7-13.

The agencies updated their explanation and timeline again in their May 2022 Progress Update, identifying additional parks that had fallen behind schedule due to unanticipated circumstances and identifying dates by which the agencies



anticipated completing plans or agreements for all parks that the agencies believed, based on information available at that time, could not be completed by August 31, 2022. May 2022 Progress Update at 5-6. The agencies also reported that one park (Everglades National Park) achieved compliance with the Act because the only air tour operator for that park no longer had authority to conduct commercial air tours of the park. *Id.* at 4-5.

Since the agencies' May 2022 Progress Update, the agencies have continued to encounter new obstacles and delays that have set back the schedule for completing plans or agreements at additional parks. Completion of these air tour management plans was delayed due to factors explained in the agencies' most recent progress updates and in the agencies' response to Petitioners' Second Motion to Enforce, as well as delays in completing consultation in compliance with the National Historic Preservation Act.

The agencies have acted consistent with the Compliance Plan since it was approved by the Court in November 2020. The Compliance Plan provides that if it appears that park-specific "circumstances may result in a delay in completion of the ATMP process at an individual park, the agencies will identify the specific and concrete reasons for such delay in the quarterly reports required by the Order at the earliest possible time." Compliance Plan at 1. In the Compliance Plan, the agencies predicted some of the factors that might delay compliance, and those factors have

in fact caused delays in completing plans or agreements. Compliance Plan at 1-2 & Exhibit B at 10-13. Other delays have resulted from factors or circumstances that the agencies did not anticipate when they filed the Compliance Plan. But the agencies accurately reported the factors that have caused some parks to fall behind schedule in their November 2021, February 2022, and May 2022 Progress Updates, as well as in their responses to Petitioners' two motions to enforce, which responses were accompanied by voluminous declarations in support.

## **II. Proposed Firm Compliance Dates for Each Park**

In the June 21 Order, the Court directed the agencies to propose firm compliance dates for each park. In the chart below, the agencies have submitted proposed dates for bringing each park included in the Compliance Plan into compliance with the Act. We highlight three points about the proposed timeline.

*First*, the agencies have completed two management plans and associated Records of Decision (see attached Exhibits 1, 2), and they are on track to complete another eight management plans for ten parks by the end of January 2023. The timeframe for completion of these management plans depends on whether issues are raised or objections are made by State Historic Preservation Offices or other consulting parties so that the agencies can complete necessary compliance with the National Historic Preservation Act. The chart below identifies proposed deadlines for those eight management plans that account for that uncertainty.

*Second*, where the agencies cannot complete air tour management plans or voluntary agreements by August 31, 2022, the primary reason is that the agencies need to conduct additional required consultation and environmental or other analysis. This includes preparing environmental assessments for up to nine parks—the very NEPA documents that Petitioners contend the agencies must prepare. On the one hand, Petitioners seek to rush the agencies to the finish line to complete all of the air tour management plans within two years. On the other hand, Petitioners complain that the agencies are not doing sufficient NEPA review.

The agencies are seeking to bring all parks included in the Compliance Plan into compliance with the Act as expeditiously as possible, while also complying with NEPA and other applicable laws. As to some of those laws, the agencies do not have ultimate control over the timing of compliance. For example, where tribal interests or concerns have been expressed, the agencies have sought to engage in government-to-government tribal consultation. Though necessary to inform their planning efforts, the scheduling, timing, and resolution of such consultation is not entirely within the agencies' control. A good example of this is the snowstorm in April 2022 that forced the agencies to reschedule their first in-person tribal consultation meeting regarding the plans for Badlands National Park and Mount Rushmore National Memorial. *See* Second Welsh Decl. ¶¶ 18-19. Due to the difficulties in scheduling a meeting with agency decision-makers and tribal leaders,

the agencies were forced to delay this meeting for a month, which has contributed to a delay in completing the scoping newsletters for these parks.

Similarly, as noted above, compliance with the National Historic Preservation Act requires the agencies to engage in a consultation process with State Historic Preservation Offices and other interested parties, including tribes. If the State Historic Preservation Office or another consulting party does not concur with the agencies' proposed finding of no adverse effects, then the agencies must conduct an additional process. *See* 36 C.F.R. part 800.5(c). For example, the agencies could have completed the management plan for Great Smoky Mountains National Park by August 31, 2022, but the Tennessee State Historic Preservation Officer objected to the FAA's proposed finding of no adverse effect, delaying completion of National Historic Preservation Act consultation and completion of the plan for that park.

The Second Declaration of Raymond Sauvajot and the Second Declaration of Kevin Welsh, attached to the Respondents' Opposition to the Petitioners' Second Motion to Enforce, both supplied detailed explanations of park-specific challenges that have delayed the completion of plans or agreements for certain parks and identified anticipated completion dates for most of those parks. Second Sauvajot Decl. ¶¶ 15-81; Second Welsh Decl. ¶¶ 14-28. The parks discussed are primarily those for which the agencies now anticipate preparing an environmental

assessment. *See id.* The agencies' May 2022 Progress Update was consistent with the dates reported in the Second Sauvajot Declaration, except the Progress Update noted that the plan for Bryce Canyon National Park had been delayed due to aviation safety concerns raised during the public comment process. These safety concerns have required additional consultation with the FAA's Flight Standards District Office. May 2022 Progress Update at 6. And the agencies set an anticipated completion date for Bandelier National Monument, while noting that completion of the plan for that park could be further delayed due to the Cerro Pelado Fire on Park Service and tribal lands. *Id.* at 6-7.

The chart below identifies proposed completion dates that differ from the anticipated completion dates previously reported. However, it identifies a proposed completion date for each of those parks that accounts for uncertainty regarding the completion of the consultation process under the National Historic Preservation Act which, as noted above, is not entirely within the agencies' control.

The chart also identifies several parks for which the agencies plan to prepare an environmental assessment to comply with NEPA. The proposed completion dates for these parks differ from the anticipated completion dates included in the May 2022 Progress Update for several reasons:

- For some parks, including Bandelier National Monument, Canyon De Chelly National Monument, Glen Canyon National Recreation Area, and Rainbow Bridge National Monument, the proposed completion dates account for tribal interest and the need to conduct tribal consultation.

- For Lake Mead National Recreation Area, the extended timeframe is primarily due to the complex airspace and the need to engage operators to understand the current condition of air tours.
- For Badlands National Park, Mount Rushmore National Park, Hawaii Volcanoes National Park, and Haleakala National Park, the proposed completion date takes into consideration the extensive work already completed or in progress in furtherance of plans for these parks.
- The timeframe for bringing the National Parks of the New York Harbor into compliance is extended because the agencies have not yet entered into a voluntary agreement with operators and may have to prepare an air tour management plan and environmental assessment instead.

For all of these parks, the proposed completion dates account for additional time that may be necessary to complete compliance with the National Historic Preservation Act.

*Third*, although the agencies are submitting their best predictions of how long it will take to bring each park into compliance, these are only predictions. And it is difficult to predict with precision the completion of a process that necessarily includes the participation of stakeholders not before the Court. Developing an air tour management plan is a lengthy and complex process rife with challenges, many of them unexpected. The agencies now have more experience to lean on in estimating how long it will take to develop a draft plan, release it for public review and comment, address comments received, and complete compliance with other applicable laws. But despite their best efforts, the agencies may still be unable to bring some parks into compliance by the deadlines

proposed in the chart below. This is particularly so when the issues involve legal obligations under NEPA and other applicable laws, such as the National Historic Preservation Act, that may arise as a result of engaging in robust consultation with tribes, the State Historic Preservation Offices, and other stakeholders. For instance, if the agencies conclude that they need to prepare an environmental assessment at a park where they previously anticipated applying a categorical exclusion, the agencies would need additional time to complete the NEPA process.

### **III. The Legal Basis for Anticipated Categorical Exclusions and the Date by which the Agencies Will Make that Determination**

In the June 21 Order, the Court also directed the agencies to provide the legal basis for any anticipated categorical exclusion and the date by which the agencies will make that determination. In the chart below, the agencies have identified the level of NEPA review they anticipate for each potential air tour management plan at this time (voluntary agreements do not require NEPA compliance under the Air Tour Management Act). But until the agencies complete their environmental analysis and make a final decision on a management plan, the agencies maintain discretion to find that a different level of NEPA review applies.

For some management plans, the agencies have already decided to prepare an environmental assessment to comply with NEPA. For others, the Park Service anticipates applying a documented categorical exclusion memorialized in the Department of the Interior's Departmental Manual Part 516 § 12.5.A(1),

reproduced in the Park Service’s NEPA Handbook as categorical exclusion 3.3.A.1.<sup>2</sup> This categorical exclusion applies to “[c]hanges or amendments to an approved action when such changes would cause no or only minimal environmental impacts.” Interior Departmental Manual, Part 516, § 12.5.A(1).

Here, the “approved action” is the interim operating authority that the FAA granted air tour operators as required by the Air Tour Management Act. *See* 49 U.S.C. § 40128(c). The Act required operators that wished to conduct commercial air tours over national parks to apply to the FAA for authority to conduct such tours. *Id.* § 40128(c)(1). By expressly requiring the FAA to grant interim operating authority to existing operators, the Act provided for existing commercial air tour operations occurring at the time the law was enacted to continue until an air tour management plan for the park was implemented. *Id.*; *see also id.* § 40128(c)(2)(E) (specifying that interim operating authority “shall terminate 180 days after the date on which an air tour management plan is established for the park or tribal lands”). The interim operating authority allowed operators to conduct, on an annual basis, “the greater of (i) the number of flights used by the operator to provide the commercial air tour operations within the 12-month period prior to the date of the enactment of the act, or (ii) the average number of flights per 12-month period

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<sup>2</sup> The relevant chapter of the Departmental Manual is available at <https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-12.pdf>.



used by the operator to provide such operations within the 36-month period prior to such date of enactment, and, for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period.” 49 U.S.C.

§ 40128(c)(2)(A)(i-ii).

The FAA granted the required interim operating authority for commercial air tours over all National Park System units for which operators applied. *See* Notice of Interim Operating Authority Granted to Commercial Air Tour Operators Over National Parks and Tribal Lands Within or Abutting National Parks, 70 Fed. Reg. 36,456 (June 23, 2005). The interim operating authority does not provide any operating conditions (for example, route, altitudes, time of day, etc.) for commercial air tours other than an annual limit. The issuance of the interim operating authority was a non-discretionary action directed by Congress. *See* 49 U.S.C. § 40128(c).

For Glacier National Park, the Park Service also considers a 1999 Record of Decision for the park’s General Management Plan to be an approved action for the purposes of the categorical exclusion.

To document their compliance with NEPA, the agencies are using the Park Service’s categorical exclusion documentation form and environmental screening form to demonstrate that there are no or minimal impacts from these air tour management plans or, alternatively, that the impacts of the plans are beneficial

compared to the current condition. For each plan where the agencies anticipate applying the categorical exclusion, the Park Service will first consider whether the extraordinary circumstances in 43 C.F.R. § 46.215 exist. The Park Service will apply the categorical exclusion only if no extraordinary circumstances exist and if the plan will not result in significant environmental impacts.

The FAA is performing its own extraordinary circumstances analysis and an analysis under section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c). If the FAA finds that no extraordinary circumstances apply, it is planning to adopt the Park Service's categorical exclusion determination pursuant to 40 C.F.R. § 1506.3(d), which allows an agency to adopt another agency's determination that a categorical exclusion applies. Thus, a categorical exclusion will only be applied to a plan if, after the plan is finalized, the Park Service has determined that it will have no or minimal impacts (or that impacts will be beneficial), and both agencies have determined that no extraordinary circumstances preclude the application of a categorical exclusion.

Prior to implementing an air tour management plan, the agencies intend to document that decision in a record of decision as contemplated by the Air Tour Management Act. 49 U.S.C. § 40128(b)(2). The appendices to the record of decision will include the agencies' documentation regarding their compliance with NEPA. As examples, the Record of Decision for the Air Tour Management Plan

for Olympic National Park, and its appendices, are attached as part of Exhibit 1 to this Report. The Environmental Screening Form, Categorical Exclusion Documentation Form, and FAA Categorical Exclusion Determination Adoption documents are attached to the Record of Decision as Appendices B, C, and D. The same documents are attached to the Record of Decision for the Air Tour Management Plan for Mount Rainier National Park at Exhibit 2.

The Court also directed the agencies to provide the date by which they will determine whether to apply a categorical exclusion to each plan. Unfortunately, the agencies cannot make a final determination on the level of NEPA review for an air tour management plan until the conclusion of the agencies' decision-making process. That is, before the Park Service applies a categorical exclusion, it must first conduct (1) consultation under Section 106 of the National Historic Preservation Act, (2) government to government tribal consultation (if any), (3) compliance with Section 7 of the Endangered Species Act, and (4) consideration of public comments on the draft air tour management plan. Once the Park Service has information from each of these processes, it will be able to determine whether the categorical exclusion applies to the air tour management plan, and the FAA will be able to decide whether it can adopt the categorical exclusion determination.

In the chart below, the agencies have identified the proposed completion date for the air tour management plan as the same date they expect to determine

conclusively the applicability of the categorical exclusion, with the exception of Canyon De Chelly National Monument where the agencies have included a date by which they will determine whether to prepare an environmental assessment. In compliance with the June 21 Order, the agencies have identified the level of NEPA review they currently contemplate for the plan being prepared for each park.

The parks are listed in descending chronological order according to the anticipated date by which the agencies will be able to complete a plan or agreement for the park. Where multiple parks are anticipated to be included in a single plan, those parks are grouped together.

**ANTICIPATED NEPA PATHWAY AND  
PROPOSED FIRM COMPLIANCE DATES**

	<b>Park</b>	<b>Anticipated NEPA Pathway</b>	<b>Date for determining application of Categorical Exclusion</b>	<b>Proposed Date for Completion</b>
1.	<b>Everglades National Park</b>	n/a	n/a	As explained in the May 2022 Progress Update the Act no longer requires a plan or agreement for this park.
2.	<b>Olympic National Park</b>	Categorical Exclusion	Completed	Completed July 20, 2022
3.	<b>Mount Rainier National Park</b>	Categorical Exclusion	Completed	Completed July 20, 2022

	<b>Park</b>	<b>Anticipated NEPA Pathway</b>	<b>Date for determining application of Categorical Exclusion</b>	<b>Proposed Date for Completion</b>
4.	<b>Death Valley National Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
5.	<b>Glacier National Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
6.	<b>Great Smoky Mountains National Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
7.	<b>Arches National Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
8.	<b>Canyonlands National Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
9.	<b>Natural Bridges National Monument</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
10.	<b>Bryce Canyon National Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023
11.- 13.	<b>Golden Gate National Recreation Area/Point Reyes National Seashore/San Francisco Maritime National Historical Park</b>	Categorical Exclusion	Jan. 31, 2023	Jan. 31, 2023

	<b>Park</b>	<b>Anticipated NEPA Pathway</b>	<b>Date for determining application of Categorical Exclusion</b>	<b>Proposed Date for Completion</b>
14.	<b>National Parks of the New York Harbor</b>	Voluntary Agreement or Environmental Assessment	n/a	Aug. 31, 2023*
15.	<b>Badlands National Park</b>	Environmental Assessment	n/a	Dec. 31, 2023
16.	<b>Mount Rushmore National Memorial</b>	Environmental Assessment	n/a	Dec. 31, 2023
17.	<b>Hawaii Volcanoes National Park</b>	Environmental Assessment	n/a	Dec. 31, 2023
18.	<b>Haleakala National Park</b>	Environmental Assessment	n/a	Dec. 31, 2023
19.	<b>Bandelier National Monument</b>	Environmental Assessment	n/a	March 31, 2024
20.	<b>Lake Mead National Recreation Area</b>	Environmental Assessment	n/a	Aug. 31, 2024
21.- 22.	<b>Glen Canyon National Recreation Area/Rainbow Bridge National Monument</b>	Environmental Assessment	n/a	Aug. 31, 2024

	<b>Park</b>	<b>Anticipated NEPA Pathway</b>	<b>Date for determining application of Categorical Exclusion</b>	<b>Proposed Date for Completion</b>
23.	<b>Canyon de Chelly National Monument</b>	Environmental Assessment or Categorical Exclusion	Dec. 31, 2023	Dec. 31, 2024

\* This proposed completion date assumes that the agencies are not able to complete a voluntary agreement in the near term and are then required to do an environmental assessment.

## CONCLUSION

As directed by the Court in the June 21 Order, this report is signed by the Acting Administrator of the FAA and the Director of the National Park Service, as well as counsel for the agencies. The Acting Administrator and the Director affirm that both agencies remain committed to complying with the Court's Orders and to working diligently to bring all eligible parks into compliance with the Air Tour Management Act.

Respectfully submitted,

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July 21, 2022

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## CERTIFICATE OF COMPLIANCE

1. This document is not a brief or motion and therefore is not subject to the type-volume limits of Federal Rules of Appellate Procedure 27(d)(1)(E)(2) and 32(a)(7)(B). Excluding the cover, signature block, and certificate this document contains 4,782 words.

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

/s/ Justin D. Heminger  
JUSTIN D. HEMINGER

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