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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** CD-0005-22

**Applicant:** Federal Aviation Administration and National Park Service

**Location:** Golden Gate National Recreation Area and Point Reyes National Seashore, San Francisco and Marin Counties

**Project Description:** Establish and implement an air tour management plan for the Golden Gate National Recreation Area and Point Reyes National Seashore

**Staff Recommendation:** Concurrence

## SUMMARY OF STAFF RECOMMENDATION

The Federal Aviation Administration (FAA) and National Park Service (NPS) seek the Commission's concurrence with their consistency determination that adoption and implementation of an air tour management plan (ATMP) for Golden Gate National Recreation Area and Point Reyes National Seashore is consistent with California's Coastal Management Program. The purpose of the ATMP is to manage existing and future commercial air tours over Golden Gate National Recreation Area (GGNRA) and

Point Reyes National Seashore (PRNS). The ATMP would accomplish this by establishing an annual cap on the number of flights and designating flight routes and operating conditions that companies carrying out commercial air tours over these National Park system units would be required to adhere to. The Bay Conservation and Development Commission is also conducting federal consistency review on the portions of the ATMP that cover parks within its jurisdiction around San Francisco Bay.

In 2000, Congress passed the National Parks Air Tour Management Act (Act), which requires the FAA and NPS to establish ATMPs for each National Park system unit. To allow for continuation of existing commercial air tour operations until ATMPs could be developed, the Act also required FAA to grant interim operating authority to existing operators. Currently, two air tour operators hold interim operating authority to conduct up to 5,090 air tours annually over GGNRA and PRNS. Aside from this annual limit for the number of flights, the interim operating authority does not provide any operating restrictions, such as routes, times of day, or minimum altitudes. The annual limit on the number of flights in the interim operating authority was established by FAA based primarily on input from air tour operators and greatly exceeds the number carried out within any one year.

In contrast, NPS developed a new proposed annual limit of 2,548 flights in the ATMP based on the three-year average of the number of air tours reported in 2017, 2018, and 2019. In addition, the ATMP would also set flight altitude limits, would prohibit hovering aircraft in place and would prohibit the use of helicopters for air tours over Point Reyes National Seashore. Flight altitude limits would require that fixed-wing aircraft fly no lower than 1,500 ft above ground level (AGL) in Golden Gate National Recreation Area and Point Reyes National Seashore, and that helicopters fly no lower than 1,000 ft AGL over Golden Gate National Recreation Area. Sensitive resource areas in both parks, such as seabird colonies, would also have a 1,000 ft lateral avoidance requirement. The proposed ATMP also includes time of day restrictions on flights and incentivizes the use of quiet technology on aircraft. Establishment of the proposed ATMP would not replace existing FAA flight safety requirements and regulations.

The key Coastal Act issues raised by the proposed ATMP are the potential for impacts to marine resources, particularly seabirds and marine mammals, sensitive habitat for northern spotted owl, and recreational use and visitor experience. However, the proposed limits included in the ATMP, including minimum altitudes, lateral offsets, time of day restrictions, routes and reporting will protect seabirds, marine mammals, sensitive habitat and recreational uses.

Commission staff therefore recommends the Commission find that the proposed ATMP is fully consistent with the California Coastal Management Program. Staff recommends that the Commission CONCUR with Consistency Determination No. CD-0005-22. The motion is on page 4.

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Appendix A: Substantive File Documents

## EXHIBITS

1. Map of Parks Covered by the Proposed ATMP with the Coastal Zone
2. Map of ATMP Proposed Routes and Minimum Altitudes

## I. FEDERAL AGENCY'S CONSISTENCY DETERMINATION

The Federal Aviation Administration and National Park Service have determined that the project is consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

## II. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **concur** with Consistency Determination CD-0005-22 on the grounds that the project described therein is fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).*

### Staff Recommendation:

Staff recommends a **YES** vote on the forgoing motion. Passage of this motion will result in a concurrence with the determination of consistency, and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

### Resolution:

*The Commission hereby **concurs** with Consistency Determination CD-0005-22 on the grounds that the project described therein is fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP.*

## III. APPLICABLE LEGAL AUTHORITIES

### A. STANDARD OF REVIEW

The federal Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451-1464, requires that federal agency activities affecting coastal resources be “carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” Id. at § 1456(c)(1)(A). The implementing regulations for the CZMA (federal consistency regulations), at 15 C.F.R. § 930.32(a)(1), define the phrase “consistent to the maximum extent practicable” to mean:

*... fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the federal agency.*

This standard allows a federal activity that is not fully consistent with California's Coastal Management Program (CCMP) to proceed, if full compliance with the CCMP would be “prohibited by existing law.” In its consistency determination (CD), the Federal

Aviation Administration (FAA) and National Park Service (NPS) did not argue that full consistency is prohibited by existing law or provide any documentation to support a maximum extent practicable argument. Therefore, there is no basis to conclude that existing law applicable to the federal agency prohibits full consistency. Since FAA and NPS have raised no issue of practicability, as so defined, the standard before the Commission is full consistency with the enforceable policies of the CCMP, which are the policies of Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-30265.5).

## **B. AUTHORITY**

This Consistency Determination is submitted in compliance with the federal Coastal Zone Management Act, 16 U.S.C. §§ 1451-1464, and the National Oceanic and Atmospheric Administration's (NOAA) federal consistency regulations in 15 C.F.R. Part 930. The ATMP is a federal agency activity as defined in 15 C.F.R. § 930.31(a). Because the ATMP would establish restrictions and operating requirements solely for commercial air tours over the Golden Gate National Recreation Area, Muir Woods National Monument, San Francisco Maritime National Historical Park, and Point Reyes National Seashore, the project occurs outside of the coastal zone for purposes of the CZMA. (See, 16 U.S.C. § 1453(1)). The Commission's review of the ATMP's consistency with the Coastal Management Program is therefore focused on spillover effects from the ATMP in the coastal zone, i.e., effects that activities on federal lands may have on resources within the coastal zone, or effects that activities on federal lands may have on species on federal lands that travel in and out of the coastal zone

## **IV. FINDINGS AND DECLARATIONS**

### **A. BACKGROUND AND INTERIM FLIGHT TOUR OPERATIONS**

In 2000, Congress passed the National Parks Air Tour Management Act (Act), which requires the FAA and NPS to establish an Air Tour Management Plan (ATMP) for each National Park system unit. The Act also allowed existing commercial air tour operations occurring at the time the law was enacted to continue until an ATMP is implemented by requiring the FAA to grant interim operating authority to existing operators. The FAA granted interim operating authority for two commercial air tours over the Golden Gate National Recreation Area and Point Reyes National Seashore (the Parks). Currently, these two commercial air tour operators hold interim operating authority to conduct a combined total of 5,090 commercial air tours over the Parks. The interim operating authority does not provide any operating conditions, such as routes, times of day restrictions, or minimum altitudes, for commercial air tours other than the annual limit for the number of flights.

### **B. PROPOSED PROJECT**

The FAA and NPS propose to terminate the interim operating authority and adopt the ATMP for the Parks. The FAA and NPS have found that the management objectives for the Parks relating to development of the ATMP include protecting wildlife and wildlife

habitat, including known nesting areas and marine mammal haul outs, protecting wilderness character, and protecting soundscapes.

The ATMP would authorize a maximum of 2,548 commercial air tours per year, which includes 2,405 air tours over Golden Gate National Recreation Area and San Francisco Maritime National Historic Park, and 143 air tours over Golden Gate National Recreation Area, San Francisco Maritime National Historical Park, and Point Reyes National Seashore (see routes indicated in **Exhibit 2**). The ATMP would cover all commercial air tours over the Parks and commercial air tours within a ½ mile boundary outside of the parks. According to the NPS:

*A commercial air tour subject to this ATMP is any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Parks, during which the aircraft flies:*

*(1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or*

*(2) Less than one mile laterally from any geographic feature within the Parks (unless more than ½-mile outside the boundary of the Parks).*

The portion of the ATMP subject to the NPS and FAA consistency determination submitted to the Commission for review is limited to the portion that falls within the Coastal Zone and covers the Golden Gate National Recreation Area and Point Reyes National Seashore. The portion of the ATMP that would affect National Park units in and immediately around San Francisco Bay is being reviewed by the Bay Conservation and Development Commission (BCDC) under its Federal Consistency authority. A map of the parks included in the ATMP, and the Coastal Zone is included in **Exhibit 1**. The commercial air tours authorized under the ATMP would be conducted on the routes and restricted to the minimum altitudes shown in **Exhibit 2**. The total number of air tours authorized under the ATMP would be consistent with the average annual number of commercial air tours carried out over the Parks in the three years immediately preceding the COVID-19 pandemic. The total number of air tours authorized is based on the 3-year average of the total commercial air tours reported in 2017, 2018, and 2019. No known issues of wildlife or habitat disturbance or adverse impacts to land-based recreational use have been associated with these levels of use. NPS and FAA intend for these annual flight limits to protect visitor experience, wildlife, and wilderness areas through the Parks by limiting the number of potential disturbances caused by commercial air tours.

In addition to the limit on the number of flights annually, the ATMP would also set flight altitude limits and would prohibit the use of helicopters for commercial air tours over

Point Reyes National Seashore. Hovering aircraft in-place would also be prohibited. Proposed flight altitude limits include:

- Flying no lower than 1,500 ft above ground level (AGL) over the Golden Gate National Recreation Area.
- Flying no lower than 1,500 ft AGL over Point Reyes National Seashore
- Helicopters would fly no lower than 1,000 ft AGL over Golden Gate National Recreation Area, except for certain sensitive areas of the park in Marin County where the ATMP would require minimum flight heights of 1,500 ft AGL.
- All commercial tours would fly no lower than 2,000 ft AGL over land-based wilderness and would maintain 1,000 ft lateral avoidance of nesting seabird colonies.

The ATMP would also require set operating hours for air tours. Commercial air tours of the Golden Gate National Recreation Area and San Francisco Maritime National Historic Park could operate from 9:00 AM until 30 minutes after sunset. Commercial air tours of Point Reyes National Seashore could operate from 12:00 PM until 5:00 PM.

The AMTP also includes incentives for operators to use Quiet Technology (QT). Operators that have converted to QT aircraft or are considering converting to QT aircraft would be allowed to request air tours beginning one hour after sunrise on all days that flights are authorized (FAA and NPS 2022).

Finally, the ATMP includes reporting requirements and restrictions or temporary no-fly periods that would apply to air tours during special events or planned park management activities. Events may include tribal ceremonies and other specific events. Required reports would include the number of commercial air tours over the Parks that were conducted by the operator and flight monitoring data, including routes and altitudes. The ATMP would also include requirements for bird aircraft strike reporting, consistent with FAA Advisory Circular 150-5200-32B.

As the ATMP does not involve any ground disturbing activities, it is not expected to have impacts on most land-based coastal resources, such as water quality, sensitive aquatic or terrestrial species, water supply, or archaeological resources. Nevertheless, commercial air tours in and around the Golden Gate National Recreation Area and Point Reyes National Seashore could potentially affect marine resources, sensitive avian species, and recreational uses in and adjacent to NPS-managed lands. As discussed more fully below, project modifications will avoid and/or minimize potential impacts to coastal resources such that the ATMP can be found consistent with Chapter 3 of the Coastal Act.

## **C. OTHER AGENCY APPROVALS AND TRIBAL CONSULTATION**

### **Bay Conservation and Development Commission**

As mentioned above, BCDC is conducting federal consistency review of the ATMP and its impacts on the enforceable policies of the Bay Plan. Commission staff coordinated

with BCDC staff during its review process to help ensure a thorough and consistent consideration of the entire geographic area covered by the ATMP.

### **Tribal Consultation**

The FAA and NPS engaged in tribal consultation with the Federated Indians of Graton Rancheria as they developed their draft ATMP. Commission staff also invited the Federated Indians of Graton Rancheria to consult in early October 2022. The Tribe responded, requesting more information about the project, in mid-October. This information was provided. Commission staff is aware of no additional questions or concerns raised by the Tribe.

## **D. MARINE RESOURCES**

Coastal Act Section 30230 states:

*Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance.*

Operation of fixed wing aircraft and helicopters near seabird and marine mammal breeding areas and rookeries has the potential to result in disturbance, injury or abandonment of young. To address these potential adverse impacts, the ATMP includes measures to protect marine resources, specifically nesting seabirds and marine mammals.

### **Seabirds**

Brandt's cormorants (*Phalacrocorax penicillatus*), common murre (*Uria aalge*), and western snowy plovers (*Charadrius nivosus nivosus*) are three of the rarest seabird species known to nest on the coast of Marin and San Francisco Counties. All three species are known to be sensitive to visual and noise disturbance around nest sites and are protected under the Migratory Bird Treaty Act. Disturbance from overflights can cause agitation or flushing in these species, and lead to nest failures. Although many other seabird and avian species are also present within the project area, these species provide a conservative representation of that wider group due to their known sensitivity. Studies of aircraft disturbance to colonial nesting Brandt's cormorants and common murre support a 1,000 ft above ground level (AGL) minimum altitude to prevent flushing, with a greater distance to prevent all types of disturbance (FAA and NPS 2022). The ATMP would require flight heights of at least 1,500 ft AGL over the portions of Golden Gate National Recreation Area and Point Reyes National Seashore in the Coastal Zone to protect both these species and the wider suite of species they represent from adverse impacts. For reference, these altitude restrictions are similar to the 1,000 ft AGL minimum altitude established several decades ago for the Farallon Islands by the Greater Farallones National Marine Sanctuary. At the Farallon Islands, these protections have been shown to successfully protect sensitive seabird colonies from aircraft related disturbances. As such, the proposed minimum flight altitude in the



ATMP is expected to help ensure that disturbance to cormorants, murre, plovers and other shorebird and seabird species in the project area is avoided and minimized.

The FAA and NPS have also included a bird strike reporting requirement in the ATMP to facilitate adaptive management of air tours around the Parks. While the FAA and NPS are not aware of migratory bird strike issues associated with existing air tours in these areas, the Parks protect a high diversity of migratory birds along the Pacific Flyway. If bird strike reporting indicates that air tour bird strikes are occurring, the FAA and NPS would work to remedy this problem with the operators. Measures that would be taken to address bird strikes may include adjusting air tour routes and hours of operation, establishing temporary no-fly periods, or using new technologies to facilitate avoidance. In addition, air tour operators would continue ongoing safe flight best management practices to help avoid bird strikes.

Finally, sunrise and sunset are important times of day for wildlife. Biologically important behaviors for many species occur during this time, such as the dawn chorus for songbirds, foraging, and communication. Day and time restrictions have been included in the proposed ATMP to create quiet periods of the day during which noise from commercial air tours would not impede wildlife behaviors (FAA and NPS 2022).

### **Marine Mammals**

The Marin Headlands, which are part of the Golden Gate National Recreation area, are known for having a significant harbor seal haul out and pupping area in Bonita Cove, just adjacent to Point Bonita. Harbor seals are sensitive to visual and noise disturbance and are protected under the Marine Mammal Protection Act. Point Reyes National Seashore is also known for its elephant seal haul outs and the Drake's Beach colony and South Beach colony are located beneath one of the proposed flight routes. Disturbance at haul out sites may cause marine mammals to flush into the water, expending extra energy and potentially causing injury to young. To protect marine mammals, the National Marine Fisheries Service has provided guidelines for viewing marine mammals from the air. These guidelines require aircraft to maintain a 1,000 ft AGL minimum altitude when viewing marine mammals (NOAA Fisheries 2022). The ATMP includes more protective requirements than the NOAA's guidelines, requiring that aircraft remain at least 1,500 ft AGL above Point Reyes and Golden Gate National recreation Area.

### **Conclusion**

For both seabirds and marine mammals, the restrictions and operating requirements of the proposed ATMP would protect marine resources from potential adverse impacts associated with air tours. Accordingly, the Commission finds that the proposed ATMP will maintain and enhance marine resources and protect areas of special biological significance, and therefore is consistent with section 30230 of the Coastal Act.

## E. SENSITIVE HABITAT AND RECREATION

Coastal Act Section 30240(b) states:

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Air tour operations have the potential to adversely affect visitor experience and recreation of those on the ground and degrade terrestrial habitats. Coastal Act Section 30240(b) addresses both sensitive habitat and the protection of park and recreational areas. Both issues are discussed in the findings below.

### Recreation and Visitor Experience

Although the air tours themselves are a form of recreation and a way for visitors to experience the parks and surrounding coastal areas, the sound and presence of aircraft may diminish the recreational experience of visitors both within the Parks and at popular nearby coastal areas adjacent to the proposed flight routes, such as Bolinas, portions of Stinson Beach and the nearshore waters along the Marin County coastline. The FAA and NPS considered the adverse impacts that air tours may have on visitor experience and have included several measures in the ATMP to protect that visitor experience. These measures include designating the specific routes shown in **Exhibit 2**, establishing the minimum flight altitudes described above, and limiting the total annual number of flights and time of day in which flights may occur. The NPS states:

*While some temporary noise disturbances may occur, these intrusions would be limited in frequency and duration by the ATMP. For instance, on days when commercial air tours would occur over Golden Gate National Recreation Area, noise levels above 52 dBA will occur for less than 20 minutes a day in several small areas directly beneath and adjacent to the routes. At Point Reyes, noise levels above 52 dBA are anticipated to occur for less than five minutes a day.*

Compared to the current conditions provided under the FAA Interim Operating Authority (specifically, the over 5,000 flights per year it allows), elevated noise in recreational areas of the parks would be limited in frequency and duration by the ATMP due to the restriction to the number of flights per year (roughly half of the currently allowed level), routes, and altitudes and time of day flights may occur. Minimum altitudes at Point Reyes National Seashore are consistent with FAA rules for flights near noise-sensitive areas. Additionally, the minimum altitude provisions would improve preservation of wilderness character and visitor experience on the ground throughout the project area by reducing the intensity of air tour noise to visitors. Under the proposed ATMP, less than seven flights per day would occur, on average, throughout the year. This level of use and the proposed prohibition on hovering in place would help ensure that air traffic

associated with tours and its resulting noise and visual disturbances would be short-lived and infrequent. In addition, because the proposed annual limit is based on the level of use from recent years – a level that is not known to adversely affect coastal recreational activities – no additional adverse impacts to recreational uses or visitor experience would be expected due to implementation of the ATMP. Finally, as mentioned above, sunrise and sunset are important times of day for visitor use and experience. Day and time restrictions have been included in the proposed ATMP to allow for opportunities for on-the-ground visitors to create quiet periods of the day during which noise from commercial air tours would not impede visitor experience. Therefore, air tours under the ATMP would be sited and designed to prevent adverse impacts that have the potential to significantly degrade the parks.

### **Sensitive Habitat and Northern Spotted Owls**

In addition to addressing park and recreational areas, Coastal Act Section 30240(b) also discusses environmentally sensitive habitat areas and states that development in areas adjacent to environmentally sensitive habitat areas (ESHA) shall be sited and designed to prevent impacts that would significantly degrade those areas. Portions of the Golden Gate National Recreation Area and Point Reyes National Seashore in Marin County contain ESHA and provide habitat for the northern spotted owl (*Strix occidentalis caurina*), a federally threatened species. Northern spotted owls are indicators for forest ecosystems, and their populations have declined on the west coast as a result of habitat loss and competition with the invasive barred owl. However, in coastal Marin County, the population of northern spotted owls remains stable. To protect northern spotted owls from potentially adverse impacts due to elevated noise levels, the ATMP requires that air tours fly no lower than 1,500 ft AGL over Golden Gate National Recreation Area and Point Reyes National Seashore. This is consistent with the avoidance recommendations for spotted owls developed by the U.S Fish and Wildlife Service. Noise from fixed-wing aircraft at 1,500 ft AGL would produce sound at 70 decibels (dB) at the maximum, this is below the sound-only injury threshold of 92 dB for northern spotted owls (FAA and NPS 2022). Therefore, air tours carried out under the ATMP would be sited and designed to prevent adverse impacts that would significantly degrade northern spotted owl habitat and other ESHA, and no development is proposed in ESHA in the coastal zone.

### **Conclusion**

The flight altitudes, routes, and time-of-day restrictions that would be established by the proposed ATMP would reduce the potential for adverse impacts due to elevated noise levels on ESHA, sensitive habitat for northern spotted owls and recreational uses in the GGNRA and Point Reyes National Seashore. Accordingly, the Commission finds that the proposed ATMP would protect sensitive habitat and recreation and is therefore consistent with section 30240(b) of the Coastal Act.

## **V. APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

Federal Aviation Administration and National Park Service. (2022). Draft Air Tour Management Plan: Golden Gate National Recreation Area, Muir Woods National Monument, San Francisco Maritime National Historic Park, Point Reyes National Seashore.

<https://parkplanning.nps.gov/document.cfm?parkID=303&projectID=103175&documentID=115991>

NOAA Fisheries. (2022). Marine Life Viewing Guidelines: Guidelines & Distances.

NOAA Fisheries. <https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines/guidelines-&-distances>