

COMMERCIAL AIR TOUR VOLUNTARY AGREEMENT FOR BIG CYPRESS NATIONAL PRESERVE

Miami Seaplane Tours



**COMMERCIAL AIR TOUR
VOLUNTARY AGREEMENT
BIG CYPRESS NATIONAL PRESERVE**

SUMMARY

This Voluntary Agreement (Agreement) provides the terms and conditions for commercial air tours to be conducted over Big Cypress National Preserve (BCNP) as an alternative to an air tour management plan, under the provisions of the National Parks Air Tour Management Act (Act) of 2000 as amended by the FAA Modernization and Reform Act of 2012. The parties to this Agreement are the National Park Service (NPS), the Federal Aviation Administration (FAA), and Miami Seaplane Tours, Inc. (Miami Seaplanes).

1.0 INTRODUCTION

The Act, as amended, requires that all persons conducting or intending to conduct a commercial air tour operation over a unit of the national park system apply to the FAA for authority to undertake such activity before engaging in that activity. The Act further requires that the Administrator of the FAA (Administrator), in cooperation with the Director of the NPS (Director), establish an Air Tour Management Plan (ATMP) for each park that does not have such a plan in effect at the time that a person applies to the FAA for authority to conduct a commercial air tour operation.

As an alternative to an ATMP, the Director and the Administrator may enter into an agreement with a commercial air tour operator who has applied to conduct commercial air tour operations over a national park.¹ In such cases, the Act requires that the agreement address the management issues necessary to protect the resources and visitor use of the park without compromising aviation safety or the air traffic control system.² An agreement may also include: conditions for the conduct of air tour operations (including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts); incentives for the adoption of quiet aircraft technology by air tour operators; an allocation of opportunities to conduct air tour operations if there is a limitation on the number of such operations for any time period; provisions to ensure the stability of and compliance with the voluntary agreement; and a provision for fees for commercial air tour operations. Each agreement reflects the

¹ 49 U.S.C. § 40128(b)(7)(A)

² 49 U.S.C. § 40128(b)(7)(B)

provisions and conditions appropriate for the particular national park to which the agreement applies.

2.0 APPLICABILITY

This Agreement applies only to commercial air tour operations conducted by Miami Seaplanes at BCNP. BCNP is depicted in Figure 1. As defined in 14 CFR Part 136, a commercial air tour operation is any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½-mile outside the boundary of any national park, or over tribal lands abutting a national park, 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 park (unless more than ½-mile outside the boundary).

3.0 OVERVIEW OF BCNP

BCNP is located between Miami and Naples in the southwestern portion of Florida's peninsula. The boundary of BCNP encompasses over 639,000 acres of wetlands, and the fresh waters are essential to the health of the Everglades as well as the rich estuaries of Florida's southwest coast. Additionally, BCNP serves as home for Miccosukee Indians, and has, throughout time, also served as refuge or home for Seminole Indians and early settlers. BCNP is adjacent to several other parcels of protected or tribal land, including Everglades National Park, Fakahatchee Strand Preserve State Park, Florida Panther National Wildlife Refuge, Big Cypress Seminole Indian Reservation, and Florida State Miccosukee Indian Reservation.

Annually, BCNP averages 800,000 visitors, with visitation generally highest December through April. Visitors have access to view BCNP's delicate ecology through hiking, biking, paddling, or use of off-road vehicles. The primary attractions of BCNP include its natural habitats, which consist of prairies, hardwood hammocks, mangroves, cypress forests, pine forests, and coastal estuaries, all of which are home to many species of birds, mammals, and reptiles, particularly animal and plant species that receive special protection or are recognized by the state of Florida, the U.S. government, or the Convention on International Trade in Endangered Species.

The purpose of BCNP, as stated in its enabling legislation, is to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof.

3.1 Management Issues Addressed by this Agreement

The following management issues are addressed by this Agreement:

1. The Miccosukee and Seminole tribes have permanent rights of usual and customary use and occupancy of land within BCNP, and private landowners whose properties meet certain criteria are permitted to keep their properties even though they are in BCNP. The Miccosukee and Seminole have villages, agricultural plots, and ceremonial sites within BCNP and which they currently use. In particular, cultural events occur periodically, which should be considered when conducting air tour operations over BCNP.

2. Pursuant to the *Wilderness Act of 1964* (16 USC 1121), wilderness areas are protected and valued for their ecological, historical, scientific and experiential resources. The human imprint in these areas is minimal, and there are restrictions on grazing, mining, timber cutting and mechanized vehicles. Certain areas of BCNP are either proposed or eligible for future designation as wilderness by Congress. These areas within BCNP are managed in accordance with the Act and the *NPS Management Policies 2006*. The latter contains provisions related to eligible and proposed wilderness, which should be considered when conducting air tour operations over BCNP.

4.0 CONDITIONS FOR THE MANAGEMENT OF COMMERCIAL AIR TOUR OPERATIONS OF BCNP

This Agreement includes the following provisions and conditions:

4.1 Commercial Air Tour Routes and Altitudes

All commercial air tours over BCNP and within a ½ mile of the BCNP boundary shall be conducted on the route contained in Figure 2 for Miami Seaplane Tour, Inc. The minimum altitude for commercial air tours over BCNP is 500 feet above ground level (AGL). Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized for a specified purpose, Miami Seaplanes may not deviate from this route and altitudes.

4.2 Number of Operations

Miami Seaplanes is authorized to conduct up to 252 commercial air tour operations annually over BCNP. The majority of the air tours would occur November through May.

4.3 Aircraft Type

Miami Seaplanes is authorized to conduct commercial air tour operations in the following types of aircraft: Cessna 172 Floatplane or Cessna 185 Floatplane. Any new or replacement aircraft must be at least as quiet as the aircraft being replaced. Any modifications, including repairs or upgrades, to the aforementioned aircraft must not result in an increase in the level of noise output for each aircraft.

4.4 Restrictions for Particular Events

Absent exigent circumstances or emergency operations, BCNP will provide a minimum of one week's notice to Miami Seaplanes to request avoidance of air tours due to circumstances such as special events, cultural events, safety precautions, and weather.

4.5 Time-of-Day Restrictions

Miami Seaplanes is authorized to conduct commercial air tour operations over BCNP from 11:00 AM until 3:00 PM. Miami Seaplanes shall coordinate with BCNP staff regarding providing air tours outside of these hours.

5.0 COMPLIANCE

5.1 Compliance with this Agreement will be ensured through ongoing communications among the parties to this Agreement, periodic reporting of air tour operations by the operator (as set forth in Section 5.4 below), and enforcement measures if necessary. The parties agree to work together to address any possible compliance issues.

5.2 The parties will meet on a periodic basis, or as necessary, to discuss compliance issues and ways to improve the protection of BCNP resources.

5.3 Allegations of non-compliance with this Agreement may be reported to the FAA's local Flight Standards District Office (FSDO) and may result in an investigation by the FAA. Investigative determination of non-compliance may

result in partial or total loss of any privileges that may be accorded by this Agreement. Any violation of Operations Specifications (OpSpecs) and/or Letters of Authorization (LOA) shall be treated in accordance with FAA Order 2150.3 – FAA Compliance and Enforcement Program.

5.4 Reporting Requirements

Commercial air tour operators conducting air tours over national parks and abutting tribal lands are now required to submit reports to the FAA and NPS. The agencies require operators to submit reports of their operations on a quarterly basis (January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31) and report that information to FAA and NPS no later than 30 days after the close of that quarter.

Guidance on these reporting requirements and the reporting template the agencies developed can be found at either of the following two websites:

- http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/program_information/
- <http://www.nature.nps.gov/sound/resources.cfm>

Miami Seaplanes, Inc. must fill out the reporting template and submit concurrently to the following email addresses no later than 30 days after the end of each quarter:

- 9-AWP-ATMP-Reports@faa.gov
and
- NPS_NRSS_NRPC_AirTourPlanning@nps.gov

6.0 TRIBAL CONSULTATION

The Act requires the Director and the Administrator to consult with any Indian tribe whose tribal lands are, or may be, flown over by a commercial air tour operator. [During the public review period, Indian tribes will be mailed a copy of the proposed voluntary agreement with a letter requesting any comments they may have in regards to the proposed VA. The final Agreement will document the tribal consultation process that occurred for this Agreement.]

7.0 PUBLIC REVIEW

The Act requires the Director and the Administrator to provide an opportunity for public review of a proposed voluntary agreement. [The proposed agreement will be posted on the National Park Service Planning, Environment and Public Comment web site (PEPC). The availability of the proposed agreement and a 30

day public review period will be announced in a press release. The final Agreement will document the public review process that occurred for this Agreement.]

8.0 AMENDMENT

The NPS, the FAA, or Miami Seaplanes may request an amendment to this Agreement. Written notice to amend the Agreement should be sent to the other two parties to the Agreement. Revisions to the Agreement can only be approved if all three parties sign the amendment to the Agreement, following the opportunity for public review and tribal consultation.

9.0 TRANSFER OF VOLUNTARY AGREEMENT

This voluntary agreement is not transferable to another air tour operator unless the transfer is pursuant to the complete sale of the air tour company to another air tour company and the Agreement is re-signed by all three parties, including the new air tour operator.

10.0 CONFORMANCE OF OPERATIONS SPECIFICATIONS

Changes to the operating authority granted by this Agreement will result in the amendment of the appropriate OpSpecs. Revised OpSpecs will be reissued within 90 days of the effective date of this Agreement and will remain in effect until this Agreement is revised or terminated.

11.0 TERMINATION

11.1 This Agreement may be terminated at any time at the discretion of:

(1) the Director, by notification to the FAA and the operator, if the Director determines that the Agreement is not adequately protecting BCNP resources and/or visitor experiences;

(2) the Administrator, by notification to the NPS and the operator, if the Administrator determines that the Agreement is adversely affecting aviation safety and/or the national aviation system; or

(3) the Operator, for any reason, by notification to the FAA and the NPS.

12.0 AGREEMENT AND EFFECTIVE DATE

The parties to this Agreement, which include the FAA, the NPS, and Miami Seaplanes, agree to abide by the terms set forth in this Agreement. This Agreement is effective [date].

Owner, Adriel Anderson, Miami Seaplane Tours, Inc.

National Park Service

Federal Aviation Administration

APPENDICES

Figure 1. Map of Big Cypress National Preserve

Figure 2. Air Tour Routes for Agreement

Figure 1. Map of Big Cypress National Preserve

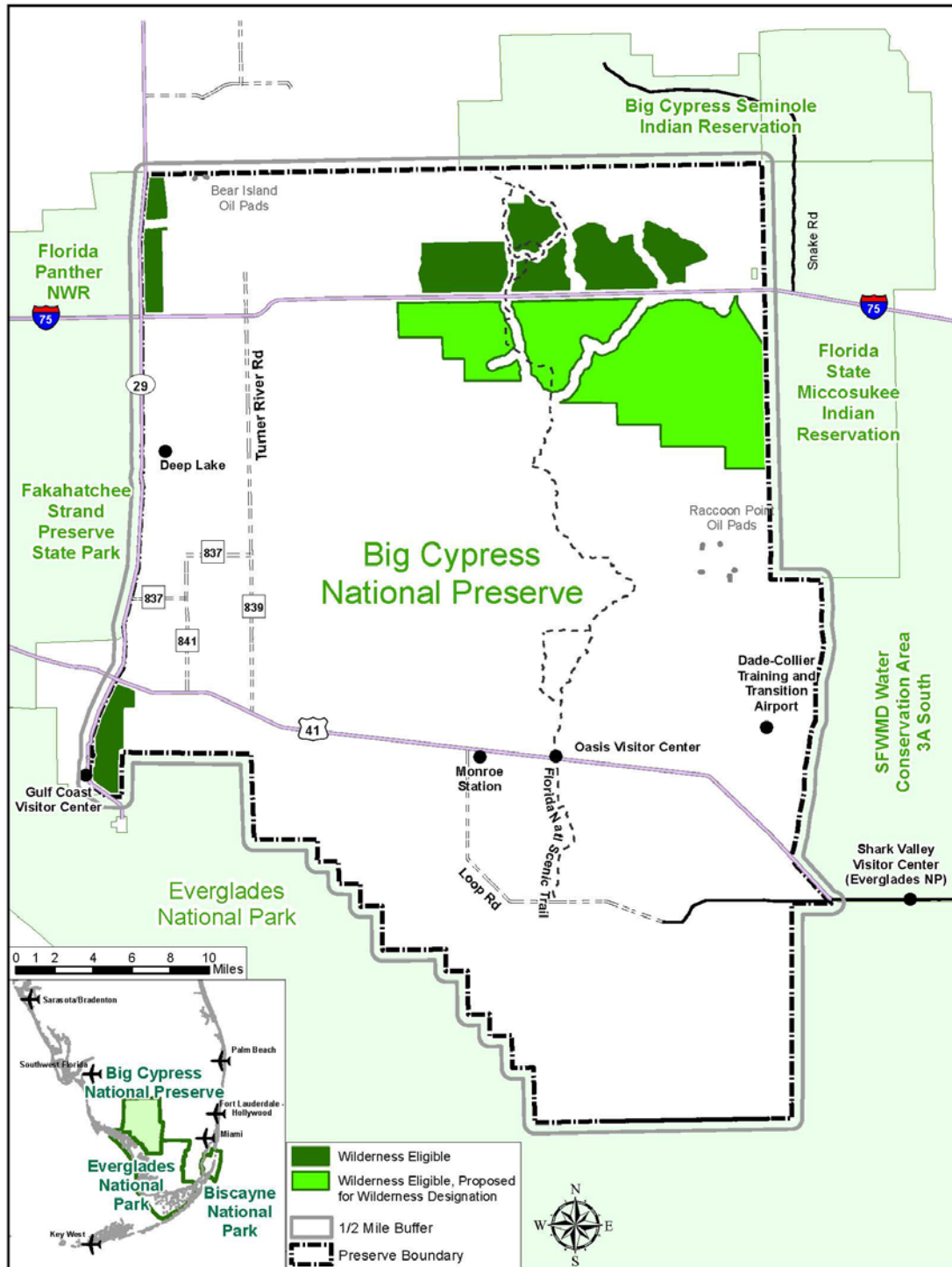


Figure 2. Air Tour Routes for Agreement

