

**ATTACHMENT B**

**National Park Service - Non-Impairment Determination**

## ATTACHMENT B

### NATIONAL PARK SERVICE NON-IMPAIRMENT DETERMINATION FOR BADLANDS NATIONAL PARK AIR TOUR MANAGEMENT PLAN

#### **Compliance with NPS Management Policies Unacceptable Impact and Non-Impairment Standard**

As described in National Park Service (NPS or Service) 2006 Management Policies, § 1.4.4, the National Park Service Organic Act prohibits the impairment of park resources and values. *Guidance for Non-Impairment Determinations and the NPS NEPA Process* (September 2011) provides guidance for completing non-impairment determinations for NPS actions requiring preparation of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA). The NPS has completed a non-impairment analysis for the impacts to Badlands National Park (Park) from the Air Tour Management Plan (ATMP) and determined that it will not result in impairment of Park resources, or in unacceptable impacts as described in § 1.4.7.1 of the 2006 NPS Management Policies.

Sections 1.4.5 and 1.4.6 of Management Policies 2006 further explain impairment. Section 1.4.5 defines impairment as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Section 1.4.5 goes on to state:

An impact to any park resource or value may, but does not necessarily, constitute an impairment. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- identified in the park's general management plan or other relevant NPS planning documents as being of significance.

Section 1.4.6 of Management Policies 2006 identifies the park resources and values that are subject to the no-impairment standard. These include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it;

scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;

- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

NPS non-impairment analysis normally does not include discussion of impacts to visitor experience, socioeconomics, public health and safety, environmental justice, land use, Park operations, wilderness, etc., as these do not constitute impacts to Park resources and values subject to the non impairment standard under the Organic Act. See Management Policies § 1.4.6.

### **Non-Impairment Determination for the Badlands National Park ATMP**

The purposes of Badlands National Park, along with Park significance statements and a description of the Park's fundamental resources and values, are described in the *Foundation Document Badlands National Park* (Foundation Document), 2017.

The purposes of the Park include:

- Protect the unique landforms and scenery of the White River Badlands for the benefit, education, and inspiration of the public.
- Preserve, interpret, and provide for scientific study of the paleontological and geological resources of the White River Badlands.
- Preserve the flora, fauna, and natural processes of the mixed-grass prairie ecosystem.
- Preserve the Badlands Wilderness Area and associated wilderness values.
- Preserve and interpret the history, culture, and heritage of the Sioux Nation and Lakota people.
- Preserve and interpret the archeological and contemporary history of use and settlement of lands within the park. (Foundation Document, page 4).

The Park's significance statements, and fundamental resources and values highlight resources that may be impacted by commercial air tours including outstanding scenic values, the spiritual and historical relationship and significance to the Lakota people, cultural resources, and wildlife. Commercial air tours do not impact the significant geological and paleontological resources the Park protects, nor the vegetation in the mixed-grass prairie, which is the largest within the national park system. (See Foundation Document, page 5–7).

As a basis for evaluating the potential for impairment or unacceptable impacts on Park resources, the NPS relied on the *Final Environmental Assessment for an Air Tour Management Plan for Badlands National Park* (EA). The EA includes analysis of impacts to the soundscape (noise and noise-compatible land use); air quality and climate change; biological resources including birds, mammals, and other species of concern; cultural resources including ethnographic resources, sacred sites and traditional cultural properties, archeological resources, cultural landscapes and prehistoric and historic structures; wilderness; visitor use and experience; environmental justice and socioeconomics; and viewsheds (visual effects). The EA evaluated the impacts of three action alternatives including the selected alternative. Consistent with NPS guidance described above, NPS has not included a non-impairment determination here for wilderness, environmental justice and socioeconomics, and visitor experience.

The selected alternative, which is reflected in the ATMP, is the most protective alternative evaluated in the EA and the most protective alternative that the NPS has the authority to select. The ATMP will prohibit commercial air tours over the park and within ½-mile outside the Park's boundary during which the aircraft flies below 5,000 ft. AGL (referred to as the ATMP boundary). Air tours outside of the ATMP boundary are not subject to the National Parks Air Tour Management Act of 2000 (NPATMA) and are therefore may not be regulated under the ATMP. Because air tours outside of the ATMP boundary are outside the jurisdiction of the ATMP and NPS, this non-impairment determination focuses on the impacts from implementation of the ATMP on resources inside the park boundary, not the unknown impacts over which NPS does not have jurisdiction.

To determine the severity of the effect and potential for impairment, the NPS considered not just the presence of noise and potential for disturbance, but also the duration, frequency, and amplitude of noise. Currently, 4% of the Park experiences air tour noise for up to 165 minutes a day from air tours within the ATMP boundary. More than half (62%) of the Park experiences audible air tour noise for more than 15 minutes a day (non-contiguous). (See EA, page 48). Under the ATMP, these impacts would be greatly reduced since there will be no noise from commercial air tours within the ATMP boundary. The only potential for noise within the Park from air tours would occur from air tours flying above 5,000 ft. AGL or just outside the ½ mile ATMP boundary. As noted in the EA, it is difficult to predict if, where, and to what extent any air tours would be displaced to areas outside the ATMP boundary including over the Park at

altitudes at or above 5,000 ft. AGL (*See*, EA, page 60). However, the analysis in Alternative 4, the next most protective alternative evaluated, demonstrates that time audible would be reduced by approximately half the time compared to current conditions and decibel levels, or the intensity of sound, would also be reduced. It is expected then, that eliminating air tours entirely within the ATMP boundary would have even greater benefits to the Park's soundscapes than Alternative 4. Because noise from air tours within the ATMP boundary will be entirely eliminated, the natural and cultural soundscapes of the Park benefit from the selected action resulting in the Park's soundscape near natural condition and leaving the resource unimpaired and without unacceptable impacts under the ATMP. After the implementation of the ATMP, the Park's natural and cultural soundscape will be largely unimpacted by air tours (though air tours may occur outside the park and be audible within the park) and available for the enjoyment by present and future generations with limited interruptions.

The EA evaluated impacts to wildlife and cultural resources since air tour noise can impact these resources. As described above, wildlife and cultural resources, specifically the ethnographic resources and sacredness of the Park to the Lakota people, are fundamental values of the Park. The ATMP fulfills the responsibility to protect and enhance these resources by eliminating commercial air tours within the ATMP boundary. Because the ATMP will eliminate noise from air tours within the ATMP boundary, it is expected there will be limited impacts to wildlife and cultural resources from the ATMP, if any. Any noise impacts from air tours would occur from those flying outside the ATMP boundary over which NPS has no jurisdiction.

The EA also evaluated impacts to scenery and viewsheds which are also fundamental resources of the Park. As described above for wildlife and cultural resources, the ATMP fulfills the responsibility to protect and enhance these resources by eliminating air tours within the ATMP boundary. While air tours may still be visible outside the ATMP boundary (aircraft at or above 5,000 ft AGL or outside the ½ mile Park boundary), because the noise associated will be less intense, aircraft are likely to be less noticeable within the Park. This reduces and eliminates in some areas the potential for commercial air tours to disrupt the outstanding views and scenery for which the Park was established, leaving these resources unimpaired for future generations.

The EA also includes an air quality analysis. Because the ATMP eliminates commercial air tours within the ATMP boundary, there are no adverse impacts to air quality over the Park from the ATMP. Thus, there is no potential for impairment of the Park's air quality from the ATMP. Any air quality impacts from commercial air tours would occur from those flying outside the ATMP boundary over which NPS has no jurisdiction.

As demonstrated here and in the analysis referenced above, the impacts to these resources, neither individually nor cumulatively, would preclude the NPS from achieving the purpose of the Park or desired conditions for resources; and would not unreasonably interfere with Park

programs or activities, another appropriate use, the overall atmosphere of peace and tranquility or the natural soundscape, or NPS concessioner or contractor operations or services. As a result, there will not be impairment of or unacceptable impacts to the Park's natural and cultural resources or visitor experience. Impacts to other resources potentially affected were considered so small and insignificant that they did not warrant a written analysis here.

## **References**

National Park Service. (2006). Management Policies, 2006. Available at [https://www.nps.gov/subjects/policy/upload/MP\\_2006.pdf](https://www.nps.gov/subjects/policy/upload/MP_2006.pdf).

National Park Service. (2001). Guidance for Non-Impairment Determinations and the NPS NEPA Process. Available at <https://www.nps.gov/subjects/nepa>.

National Park Service. (2017). Foundation Document for Badlands National Park.