

ATTACHMENT C

Final Air Tour Management Plan for Mount Rushmore National Memorial

FINAL AIR TOUR MANAGEMENT PLAN MOUNT RUSHMORE NATIONAL MEMORIAL

SUMMARY

This Air Tour Management Plan (ATMP) provides the terms and conditions for commercial air tours conducted over Mount Rushmore National Memorial (Park) pursuant to the National Parks Air Tour Management Act (Act) of 2000.

1.0 INTRODUCTION

The Act requires that commercial air tour operators conducting or intending to conduct commercial air tours over a unit of the National Park System apply to the Federal Aviation Administration (FAA) for authority before engaging in that activity. The Act further requires that the FAA in cooperation with the National Park Service (NPS) establish an ATMP for each National Park System unit for which one or more applications has been submitted, unless that unit is exempt from this requirement.¹

The objective of this ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations on the Park's natural and cultural resources, tribal sacred sites and ceremonial areas, and visitor experience, as well as Wilderness character within the ATMP boundary.

2.0 APPLICABILITY

This ATMP applies to all commercial air tours over the Park and commercial air tours within ½ mile outside the boundary of the Park, as depicted in Figure 1 below. 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 Park, or within ½ mile of the Park boundary, 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 Park boundary).

¹ The Act provides an exemption to the ATMP requirement for parks with 50 or fewer commercial air tour operations each year unless the exemption is withdrawn by the Director of the NPS. See 49 U.S.C. § 40128(a)(5). As an alternative to an ATMP, the agencies also have the option to execute voluntary agreements with all operators operating at any of the parks.

See 14 CFR § 136.33(d). The area subject to the ATMP is also referred to as the area within the ATMP boundary.

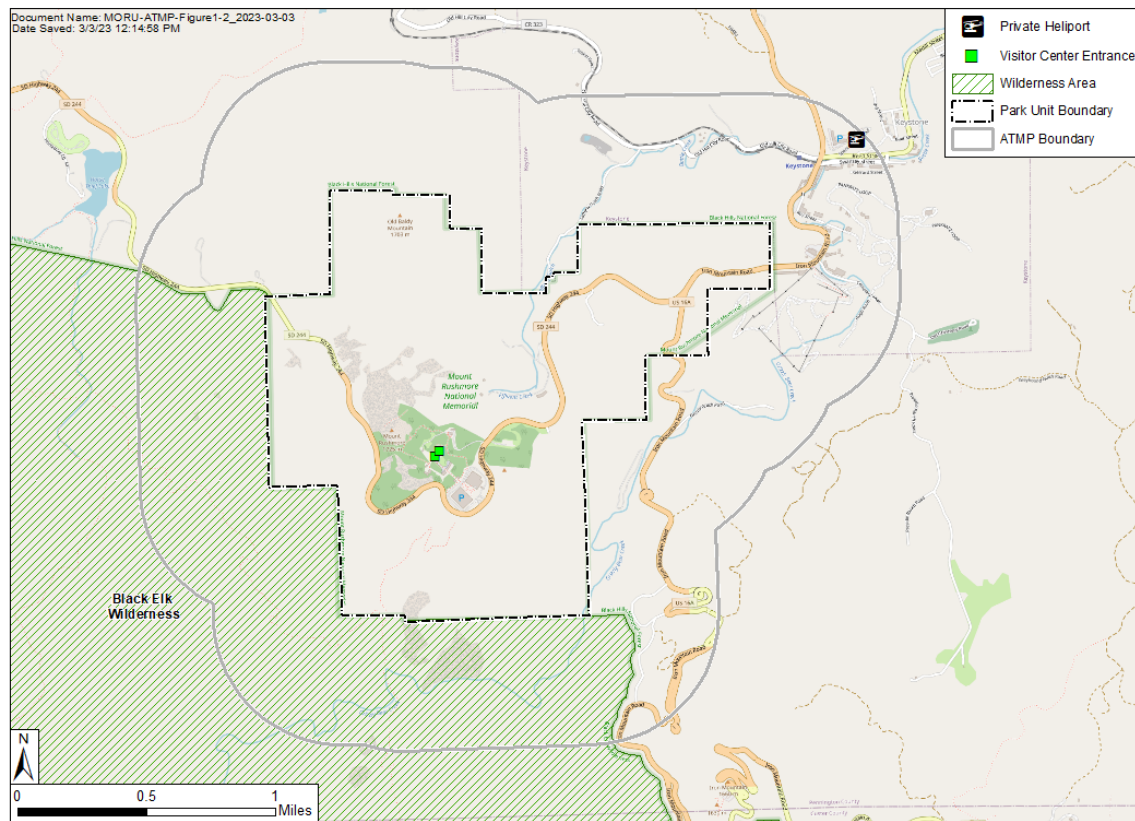


Figure 1. Map of area subject to the ATMP for Mount Rushmore National Memorial. Appendix A includes an enlarged Figure 1.

2.1 Park Overview

The Park includes 1,278 acres in the central Black Hills in southwestern South Dakota, near Keystone. The Park features the monumental carved faces of United States Presidents George Washington, Thomas Jefferson, Abraham Lincoln, and Theodore Roosevelt, reminding visitors of the political, social, and cultural histories of the past and the relevancy of America's spirit and ideals today. The majority of Park visitation is for purposes of seeing the carved mountain and associated visitor facilities.

The Park includes large stands of old growth ponderosa pine forest, granite peaks, historic buildings and archeological sites, streams and wetlands, and flora and fauna representative of a variety of habitats. The Park is home to the federally-listed endangered northern long-eared bat and the state listed threatened peregrine falcon, which is highly susceptible to noise disturbance. The Black Elk Wilderness, congressionally designated Wilderness that is managed by U.S. Forest Service, abuts the Park to the south and west, and is partially within the ATMP boundary.

The land reflects human habitation and development for thousands of years, from the earliest stone tools of tribal populations to the first homesteads in the Black Hills. There are also several historic sites related to the mining boom of the area and sites related to the Park's early development and tourism. The entirety of the Park is listed in the National Register of Historic Places at the nationally significant level, and the mountain carving is a primary contributing feature of the Park.

The mountain upon which the sculpture is located is of cultural significance to many of the Northern Plains Tribal Nations, and the Lakota refer to it as the Six Grandfathers. The entire Black Hills are considered a continuous cultural landscape for these Tribes.

The purpose of Mount Rushmore National Memorial, as stated in its Foundation Document, is to commemorate the founding, expansion, preservation, and unification of the United States by preserving, protecting, and interpreting the mountain sculpture in its historic, cultural, and natural setting while providing for the education, enjoyment, and inspiration of the public.

The following Park management objectives relate to the development of this ATMP:

- The Park's acoustic environment supports an outstanding visitor experience and opportunities to hear and enjoy natural sounds.
- Park staff are able to conduct, and visitors are able to experience, interpretive programming with minimal interference due to noise.
- Natural sounds are protected to conserve healthy and robust wildlife populations; biological and ecological processes prevail.
- Traditional and cultural resources are preserved to facilitate ongoing connection with and use of these resources by associated Tribal Nations and traditionally associated communities.

3.0 CONDITIONS FOR THE MANAGEMENT OF COMMERCIAL AIR TOUR OPERATIONS

Under this ATMP, commercial air tours will be prohibited within the ATMP boundary. Except when necessary for takeoff or landing, or as necessary for safe operation of an aircraft as determined under Federal Aviation Regulations requiring the pilot-in-command to take action to ensure the safe operation of the aircraft, or unless otherwise authorized for a specified purpose, commercial air tour operations may not enter the ATMP boundary.

4.0 COMPLIANCE

No later than one hundred and eighty days after the effective date of this ATMP, all commercial air tours will be prohibited within the ATMP boundary. The NPS and the FAA are both responsible for the monitoring and oversight of the ATMP. If the NPS identifies instances of noncompliance, the NPS will report such findings to the FAA's

Flight Standards District Office (FSDO) with geographic oversight of the Park. The public may also report allegations of noncompliance with this ATMP to the FSDO. The FSDO will investigate and respond to all written reports consistent with applicable FAA guidance.

Any violation of operations specifications (OpSpecs) shall be treated in accordance with FAA Order 2150.3, *FAA Compliance and Enforcement Program*.

5.0 JUSTIFICATION FOR MEASURES TAKEN

The provisions and conditions in this ATMP are designed to protect the Park's natural and cultural resources, tribal sacred sites and ceremonial areas, and visitor experience, as well as Wilderness character within the ATMP boundary from the effects of commercial air tours, and to support NPS management objectives for the Park.

Under the Act, the FAA was required to grant Interim Operating Authority (IOA) for commercial air tours over the Park as a temporary measure until an ATMP could be established. IOA does not provide any operating conditions (e.g., routes, altitudes, time of day, etc.) for air tours other than an annual limit.

The NPS determined that air tour operations at existing levels result in unacceptable impacts to Park natural and cultural resources, tribal sacred sites and ceremonial areas, and visitor enjoyment under the NPS Management Policies § 1.4.7.1 (2006), and are inconsistent with the Park's purpose and values including interpreting the mountain sculpture in its historic, cultural, and natural setting while providing for the education, enjoyment, and inspiration of the public. The NPS's mandate to conserve Park resources and values "applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired" (NPS Management Policies § 1.4.3, 2006).

Under existing levels of air tours, air tour noise is audible more than four hours a day throughout much of the Park, and visitors at many locations experience noise above 52 decibels (A-weighted) between 1.2 to 1.8 hours a day. Fifty-two decibels (A-weighted) is the noise level at which human speech interference occurs, which disrupts interpretive programs at the Park. Approximately 490,000 visitors to the Park participate in interpretive programs each year. The visitor experience at the Park has been severely impacted by air tour noise, which is contrary to the Park's purpose. These impacts are supported by modeling results and verbal complaints received by Park staff. By prohibiting air tours within the ATMP boundary, visitors can experience interpretive programming with minimal interference due to noise.

As previously mentioned, the Park is home to the state listed threatened peregrine falcon, which is highly susceptible to noise disturbance. A peregrine pair nested at the Park in 2020 and had four chicks, none of which survived. Stressors such as air tour noise could impact recovery of this struggling population.

The cultural resources that the NPS preserves under its Organic Act are broader than “historic properties” under the National Historic Preservation Act. As defined in NPS Management Policies (2006), a cultural resource is “an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about the culture.” It may be tangible or may be a cultural practice or connection to a landscape. Tangible cultural resources in the Park include archaeological sites, sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within them.

In consultation with Northern Plains Tribes, the Tribes have repeatedly stated that they are against all air tours in the areas they hold sacred, including over the Park. Noise from the existing level of air tours negatively impacts sacred sites within the Park associated with many Tribal Nations. Tribes consider the entire landscape of the Black Hills to be sacred and believe air tours are inappropriate and constitute an adverse effect to the cultural landscape, wildlife, and plants. Further, the Tribes stated that the plants, animals, the sky, and other natural resources are contributing features of the cultural resources throughout the Black Hills. During consultation the agencies discussed with the Tribes the idea of restricting flights on specific days or special events; however, it was communicated that many Tribal uses were spontaneous, decided only a few days or a week in advance, or may be protected cultural information to specific Tribes. It was further communicated that with so many tribes and people holding this landscape sacred, organizing and communicating events would be extremely challenging. Finally, the Tribes informed the agencies that no fly days would not be sufficient mitigation as the lands themselves are held to be sacred.

The NPS also considered allowing air tours within the ATMP boundary at reduced numbers compared to existing levels, but determined that this would still result in noise that would continue to interfere with the Park’s management objectives and continue to negatively impact the lands tribes hold sacred.

Based on the level of air tour noise associated with air tours when they occur within the ATMP boundary, prohibiting air tours within the ATMP boundary is necessary to protect Park resources and values, meet Park management objectives, and is responsive to the concerns of the Northern Plains Tribes.

6.0 NEW ENTRANTS

For the purposes of this ATMP, a “new entrant” is any commercial air tour operator that requests to conduct air tours within the ATMP boundary. The management objectives of the Park include preservation of the Park’s natural and cultural resources, tribal sacred sites and ceremonial areas, and visitor experience, as well as Wilderness character within the ATMP boundary, which support prohibiting commercial air tours, and therefore, the agencies will not consider applications from new entrant operators.

7.0 COMPETITIVE BIDDING

Competitive bidding is not applicable to this ATMP since it prohibits commercial air tours within the ATMP boundary.

8.0 AMENDMENT

This ATMP may be amended at any time: if the NPS, by notification to the FAA and the operator(s), determines that the ATMP is not adequately protecting Park resources and/or visitor enjoyment; if the FAA, by notification to the NPS and the operator(s), determines that the ATMP is adversely affecting aviation safety and/or the national aviation system; or, if the agencies determine that appropriate changes to this ATMP are necessary to address new information or changed circumstances.

The FAA and the NPS will jointly consider requests to amend this ATMP from interested parties. Requests must be made in writing and submitted to both the FAA and the NPS. Requests must also include justification that includes information regarding how the requested amendment: is consistent with the objectives of this ATMP with respect to protecting Park resources, tribal lands, or visitor use and enjoyment; and would not adversely affect aviation safety or the national aviation system. The FAA and the NPS will publish additional information for interested parties about the form and manner for submitting a request.

Any amendment that would permit commercial air tours within the ATMP boundary will require additional environmental review.

Notice of all amendments to this ATMP will be published in the Federal Register for notice and comment.

9.0 CONFORMANCE OF OPERATIONS SPECIFICATIONS

All IOA for the Park terminates by operation of law 180 days after the establishment (effective date) of this ATMP, 49 U.S.C. § 40128(c)(2)(E), after which time no operator may continue to rely on any OpSpec issued under IOA as authority to conduct commercial air tours within the ATMP boundary. OpSpecs will be rescinded or amended to incorporate the operating parameters set forth in this ATMP within 180 days after the effective date of the ATMP.

10.0 EFFECTIVE DATE

This ATMP is established and effective on the date it is signed by all required signatories. Operators will be permitted to continue to conduct air tours within the ATMP boundary up to the limit of their IOA until their OpSpecs are rescinded or amended to incorporate the ATMP's operating parameters, which will occur no later than 180 days after the effective date of the ATMP.

11.0 RIGHT OF APPEAL

The Record of Decision for this ATMP constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. § 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the Record of Decision resides or has its principal place of business. Any party having a substantial interest in this order may seek judicial review of the Record of Decision for this ATMP by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 U.S.C. § 46110.

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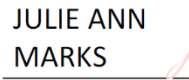
Michelle Wheatley
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National Park Service

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Herbert C. Frost, Ph.D.
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Julie Marks
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Office of Environment & Energy
Federal Aviation Administration

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Raymond M. Sauvajot
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APPENDIX A

Enlarged Figure 1

