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; and provisions to ensure the stability of and compliance with the voluntary agreement. Each agreement reflects the provisions and conditions appropriate for the particular national park to which the agreement applies.

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[1] 49 U.S.C. § 40128(b)(7)(A)
[2] 49 U.S.C. § 40128(b)(7)(B)

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 approximately 729,000 acres, including 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. This land has served as home for Miccosukee and Seminole Indians and early settlers. Members of the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida are permitted to continue their usual and customary use and occupancy within BCNP. 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 1,000,000 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) Members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida are permitted, subject to reasonable regulations established by the Secretary of Interior, to continue their usual and customary use and occupancy of Federal or federally acquired lands and waters within BCNP. Such usual and customary use and occupancy includes residential occupancy, hunting, fishing, and trapping on a subsistence basis, and traditional tribal ceremonials. 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 ½-mile of the BCNP boundary shall be conducted on the route contained in Figure 2 for Miami Seaplane Tours, 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.

Bald eagle nests are known to occur within BCNP. Based on current bald eagle nest locations, no route modifications are required; however, the Florida Fish and Wildlife Conservation Commission (FWC) requests operators to check the website https://public.myfwc.com/FWRI/EagleNests/nestlocator.aspx semiannually to verify new or relocated nests. Miami Seaplanes will make these semiannual checks and comply with the recommendation of FWC's Bald Eagle Management Plan, which states that aircraft will not operate within 1,000 feet vertically or horizontally of an eagle nest during nesting season (October 1 through May 15), unless the aircraft operations are related to prescribed landing and departure patterns.

4.2 Number of Operations

Miami Seaplanes is authorized to conduct up to 252 commercial air tour operations annually over BCNP.

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 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 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 (as discussed in Section 7.0), copies of the proposed Agreement were sent to the Seminole Tribe of Florida, the

Miccosukee Tribe of Indians of Florida, and the Seminole Nation of Oklahoma with a letter requesting any comments in regards to the proposed Agreement. The Seminole Tribe of Florida Tribal Historic Preservation Office submitted comments, and formal consultation with this tribe, the NPS, and the FAA occurred from April 2014 through February 2015. Consultation included meetings, discussions with tribal members, and modification to the air tour routes, as reflected in this Agreement. The Seminole Tribe of Florida discussed the proposed Agreement at a Tribal Council meeting in February 2015 and provided concurrence with the 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 was made available for a 30-day public review period on March 25, 2014 by being posted on the National Park Service Planning, Environment and Public Comment web site (PEPC). The availability of the proposed Agreement and the 30-day public review period were announced in a press release.

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 Miami Seaplanes to another air tour company, and the Agreement is re-signed by all three parties, including the new air tour operator.

10.0 CONFORMANCE TO 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 upon the date of the last signature of all parties below and may be signed in counterparts, each of which will be deemed to be an original. All such counterparts, including facsimiles, shall together constitute a single, executed instrument when all parties have so signed.

Adriel Anderson, Egerton A. Anderson
Owner, Miami Seaplane Tours, Inc.

11-12-15
Date

Jonathan B. Jarvis
Director, National Park Service

12-11-15
Date

Glen A. Martin
Regional Administrator, Western-Pacific Region
Federal Aviation Administration

12/21/2015
Date

APPENDICES

Figure 1. Map of Big Cypress National Preserve

Figure 2. Air Tour Routes for Agreement

Figure 1. Map of Big Cypress National Preserve

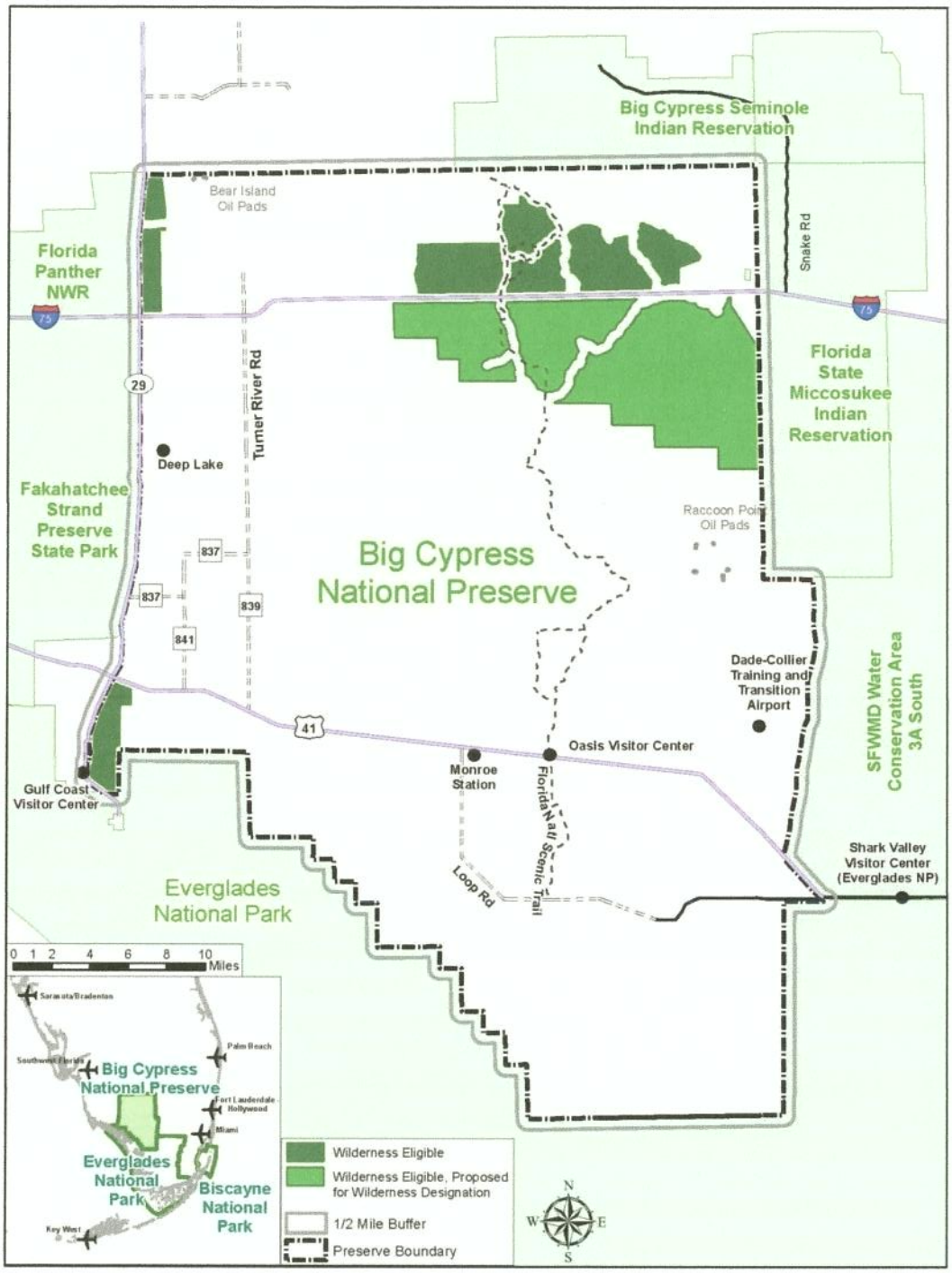
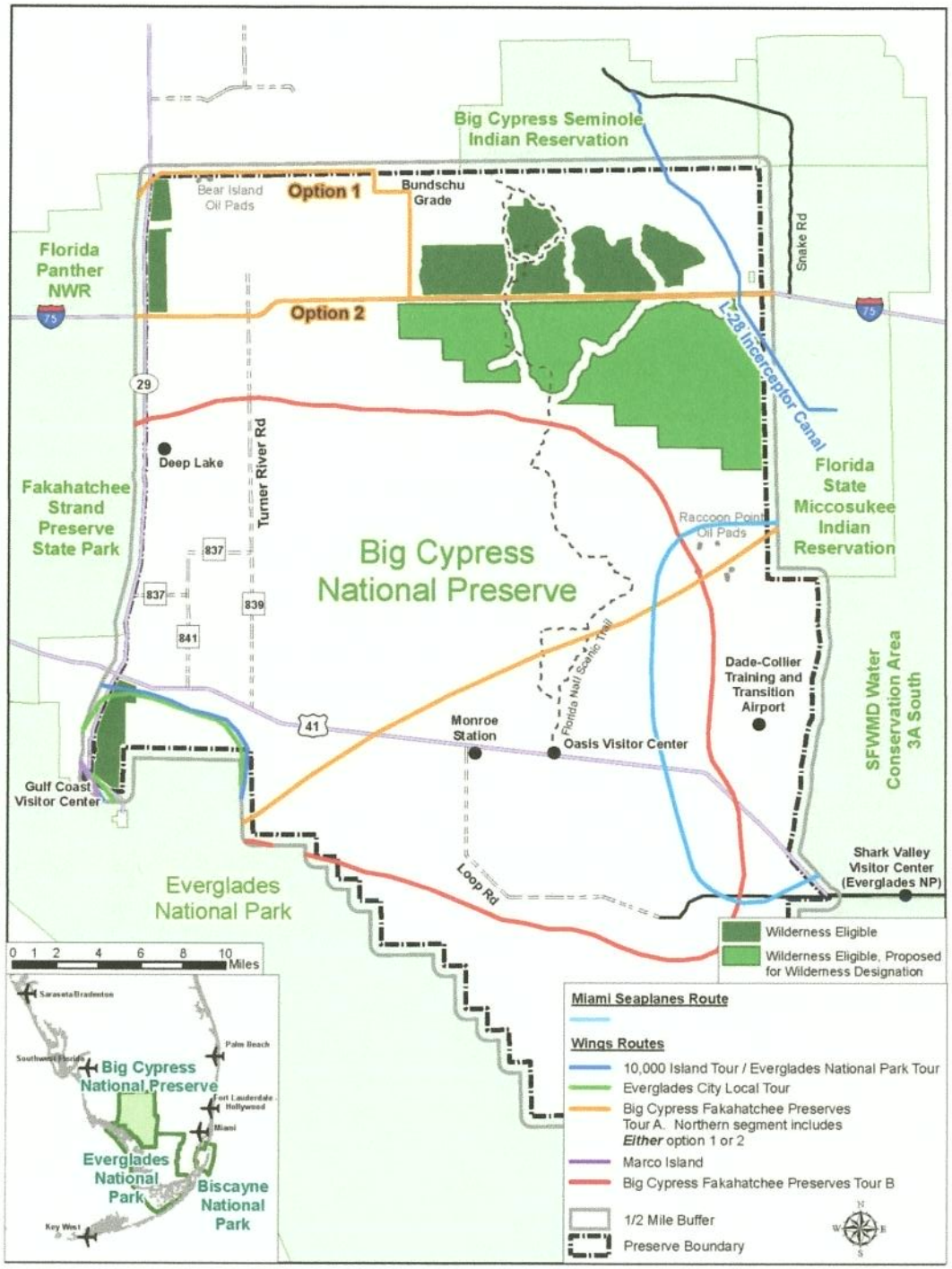
Figure 2. Air Tour Routes for Agreement