

ATTACHMENT C

Final Air Tour Management Plan for Badlands National Park

FINAL AIR TOUR MANAGEMENT PLAN BADLANDS NATIONAL PARK

SUMMARY

This Air Tour Management Plan (ATMP) provides the terms and conditions for commercial air tours conducted over Badlands National Park (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, Wilderness character, and visitor experience.

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, including any tribal lands within that area, 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to the ATMP requirement for parks with 50 or fewer commercial air tour operations each year unless the exemption is withdrawn by the Director of the NPS.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.

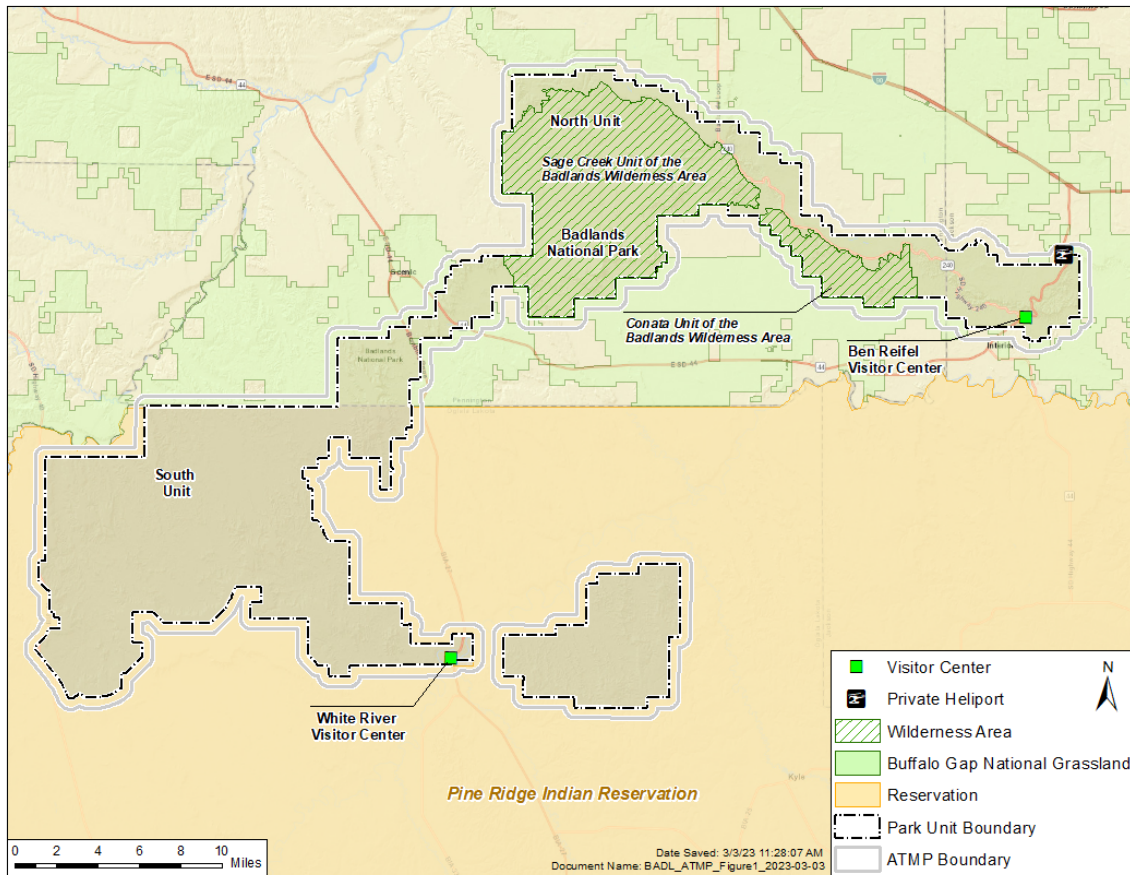


Figure 1. Map of the area subject to the ATMP for Badlands National Park. Appendix A includes an enlarged Figure 1.

2.1 Park Overview

The Park encompasses 242,756 acres and is located 70 miles east of Rapid City, South Dakota. The rugged beauty of the Badlands and striking geologic deposits contain one of the world's richest fossil beds. The Park protects an expanse of mixed-grass prairie inhabited by bison, bighorn sheep, prairie dogs, federally endangered black-footed ferrets, and raptors such as the state listed peregrine falcon, which is highly susceptible to noise disturbance.

Badlands National Park is divided into a North Unit and a South Unit. The North Unit is the area north of the Pine Ridge Indian Reservation and the South Unit is the area entirely within the boundaries of the reservation (Figure 1). The South Unit is co-managed by the NPS and the government of the Oglala Sioux Tribe. The North Unit preserves the 64,250 acres of Badlands Wilderness Area, which consists of the Sage Creek Unit and the Conata Unit. Badlands Wilderness offers outstanding opportunities for exploration and

solitude. The South Unit contains spectacular scenery, including table mesas offering sweeping panoramas, deep canyons, washes, ravines, and foreboding walls, as well as large concentrations of mixed-grass prairies that provide habitat for numerous wildlife species. Composed of undeveloped and remote tracts of land, it offers an experience rich in the history and culture of the Lakota people, the natural heritage and scenery of the White River Badlands, and is a landscape of great historical and spiritual significance to the Oglala Lakota. There are two visitor centers in the Park, one in the North Unit and one in the South Unit. The Park receives approximately one million visitors per year.

The Badlands region contains cultural, historical, geological, and paleontological resources. The scenic landscape of the Park has great historical and spiritual significance to many tribes, and the entire Badlands area is part of a cultural landscape of great importance to Northern Plains Tribal Nations. The Badlands and entire Black Hills are considered a cultural landscape for these Tribes. A large number of tribal sacred sites, traditional cultural properties, and archeological sites exist within the ATMP boundary and are significant cultural and natural resources of the Park and are fundamental to the purpose and significance of the Park.

The purposes of the Park, as stated in its Foundation Document, are to: 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; and preserve and interpret the archeological and contemporary history of use and settlement of lands within the Park.

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

- Park acoustic resources support an outstanding visitor experience and opportunities to hear and enjoy natural sounds.
- Acoustic resources of the Park are maintained such that the following aspects of Wilderness character are preserved: solitude or primitive and unconfined recreation, including remoteness from sights and sounds; untrammelled or wildness; naturalness; undeveloped; other features or values.
- 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 and use of these resources by 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, Wilderness character, and visitor experience 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 and abutting Tribal lands 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. Currently, no air tours are conducted over the South Unit of the Park.

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, Wilderness character, and visitor enjoyment under the NPS Management Policies § 1.4.7.1 (2006), and do not meet the purpose and need for the ATMP. 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). The Park's ambient acoustic environment is very quiet, typically ranging between 22-27 decibels (A-

weighted), which makes aircraft noise intrusions very noticeable and difficult to mitigate. Under existing levels of air tours, air tour noise is audible more than two hours a day in many locations of the Park, and noise above 35 decibels (A-weighted) can occur for up to 1.5 hours in the Park. NPS uses the amount of time that noise is above 35 decibels (A-weighted) to assess impacts to wildlife and Wilderness character.

The existing air tours are concentrated over the northeast corner of the Park, which impact visitor experience in the area of the Park with the highest visitation, including the Cedar Pass Area. Raising the altitudes of flights to mitigate noise impacts is not feasible because the location of the private heliport near the Park boundary and existing route configurations would not allow an operator to reach an altitude that would be protective of Park resources before beginning the descent back to the private heliport. Furthermore, due to the proximity of the private heliport near the Park boundary, requiring an operator to take off away from the Park in order to reach a sufficient altitude before entering the Park could result in noise greater than or equal to the noise from the existing operations due to the amount of noise in the Park from takeoff and again during the fly over.

Similarly, moving the routes to mitigate noise is not feasible because this would result in the air tours flying over Wilderness, which would create new impacts to Wilderness character or would increase the flight time and distances of air tours which would also increase the amount of noise from air tours. Eliminating air tour noise over designated Wilderness areas will help preserve Wilderness character and values associated with natural soundscapes such as solitude or primitive and unconfined recreation, including remoteness from sights and sounds and naturalness.

The existing routes also impact two of the primary species of concern at the Park, which are bighorn sheep and peregrine falcon. The air tours pass over a prime area for bighorn sheep lambing, and bighorn sheep are very noise sensitive.² National level guidance suggests prohibiting low level flights during the lambing season, which is May through June. Approximately 70 percent of the bighorn sheep population at the Park were lost to disease in 2021. Considering this 70 percent decline in the Park's herd, additional stressors such as air tour noise could impact recovery of this struggling population. Peregrine falcon are a state threatened species and are highly susceptible to noise disturbance. A minimum altitude of 2,600 ft. above ground level is necessary for raptor protection. However, due to location of the private heliport and existing routes, increasing altitude or changing routes is impracticable for the reasons described above.

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

² Schoenecker, K. A., & Krausman, P. R. (2002). Human Disturbance in Bighorn Sheep Habitat, Pusch Ridge Wilderness, Arizona. *Journal of the Arizona-Nevada Academy of Science*, 34(1), 63–68.
<http://www.jstor.org/stable/40024904>

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.

Noise from air tours negatively impacts the cultural landscape that Northern Plains Tribal Nations hold sacred. In extensive consultation with Northern Plains Tribes, Tribes have articulated strong opposition to air tours over the Park because of their effects to the cultural landscape, wildlife, and plants, and concerns over privacy during traditional cultural practices and ceremonies within the ATMP boundary. Due to the large number of tribes with traditional connections to the Park, establishment of “no fly days” cannot mitigate impacts for several reasons. First, many of the tribes consider the location, timing, and identification of participants involved in traditional use of sacred sites to be sensitive and culturally guarded information. Further, there are almost 30 tribes with connections to the Park, and some of the tribes indicated that it is not always possible to identify no fly days in advance. Finally, the tribes informed the agencies that no fly days would not be sufficient mitigation as the lands themselves are held to be sacred. Further, prohibiting air tours over this area is needed to protect tribal privacy during traditional cultural practices and ceremonies and is consistent with the opposition to air tours heard in Tribal consultation. Based on Tribal consultation, allowing even a reduced level of air tours would not sufficiently mitigate the impacts to tribal use and tribal connection to the Park.

The South Unit of the Park is on the Pine Ridge Reservation, home to the Oglala Sioux Tribe. No air tours are currently conducted over this area. Prohibiting air tours over this area is needed to protect Tribal privacy during traditional cultural practices and ceremonies and is consistent with the Tribes’ opposition to air tours over the Park.

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, Wilderness character, natural soundscapes, wildlife, and visitor experience 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 and the Pine Ridge Indian Reservation 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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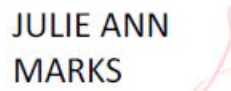
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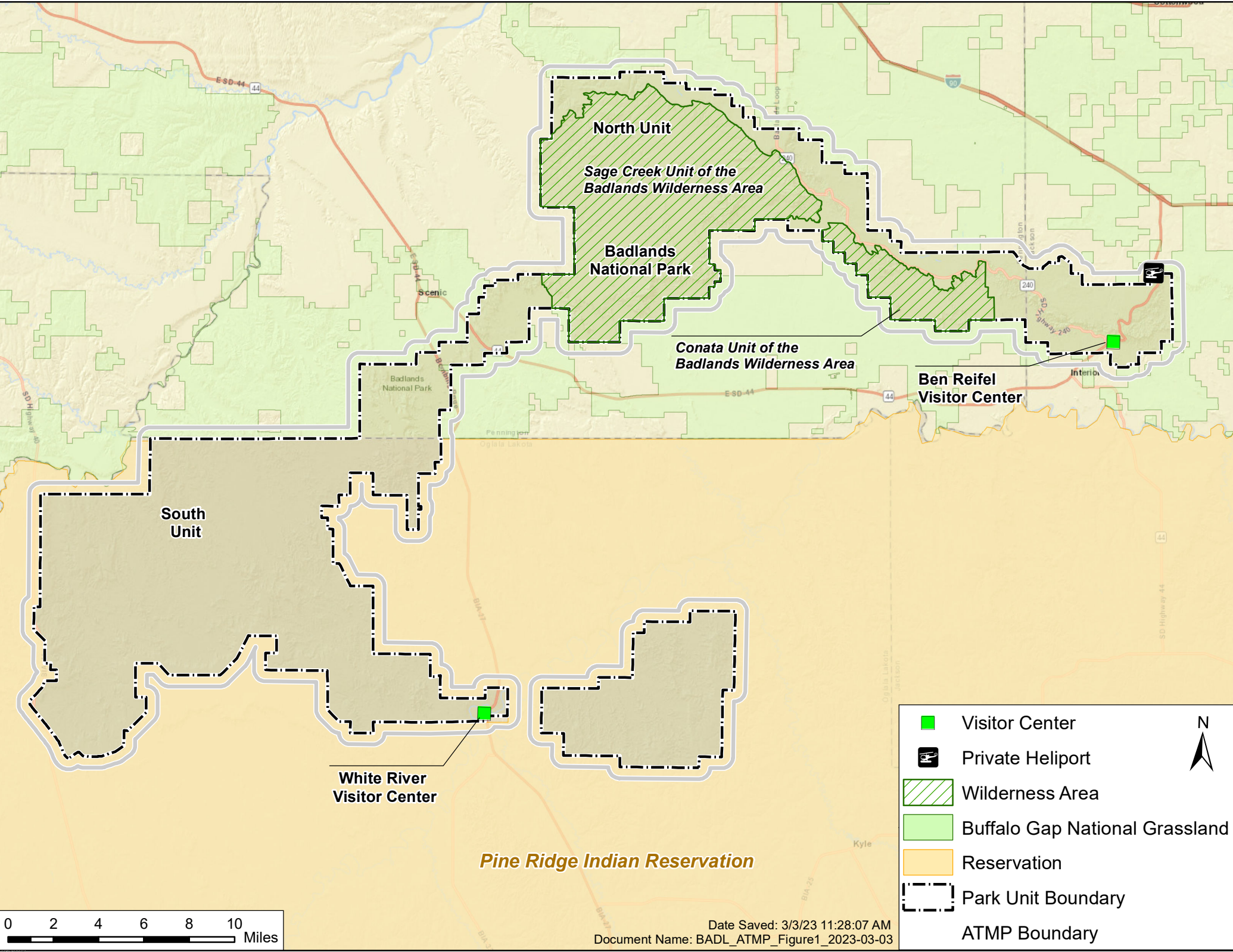
Julie Marks
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
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APPENDIX A


Enlarged Figure 1




 Visitor Center


 Private Heliport

 Wilderness Area

 Buffalo Gap National Grassland

 Reservation

 Park Unit Boundary

 ATMP Boundary

