

Claire E. Tonry (WSBA No. 44497)  
SMITH & LOWNEY, PLLC  
2317 East John Street  
Seattle, Washington 98112  
(206) 860-2883

Thomas Buchele (*pro hac vice* application pending, OSB #081560)  
Earthrise Law Center  
Lewis & Clark Law School  
10015 S.W. Terwilliger Blvd.  
Portland, OR 97219  
Tel: (503) 768-6894  
tbuchele@lclark.edu

*Attorneys for Plaintiff National Parks Conservation Association*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NATIONAL PARKS CONSERVATION )  
ASSOCIATION, a non-profit corporation, )  
Plaintiff, )

v. )

THE U.S. DEPARTMENT OF THE )  
NAVY, )  
a Federal Agency, )  
Defendant. )

Case No. 2:19-cv-645

PLAINTIFF’S COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

Plaintiff National Parks Conservation Association alleges as follows:

**I. INTRODUCTION**

1. Although this action is based on violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, it really is about Olympic National Park (“the Park”), one of the quietest places in the contiguous United States. For many years the Defendant in this action, the United States

1 Department of the Navy (“the Navy”), has been conducting electronic warfare training exercises  
2 using military jet aircraft, called “Growlers,” which emit a distinctive and very loud noise,  
3 around and above the Olympic Peninsula. For reasons that still remain unclear, the Navy often  
4 flies its Growler jets over Olympic National Park itself during those exercises, thereby directly  
5 disturbing the unique, natural quiet of the Park. As part of its mission to protect and enhance our  
6 national parks, Plaintiff National Parks Conservation Association (“NPCA”) has been seeking to  
7 obtain as much information as possible about the Navy’s jet overflights of the Park and the  
8 impacts of those overflights on the Park’s visitors and natural resources, including its natural  
9 quiet.  
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12 2. As required by the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, et  
13 seq., the Navy has been conducting an ongoing and convoluted analysis of the environmental  
14 impacts of its decisions to continue and expand its Navy jet training exercises over the Olympic  
15 Peninsula. As part of this NEPA process, the Navy must seek public comments on its draft  
16 NEPA documents. NPCA has been participating in the various public commenting processes on  
17 the Navy’s NEPA analysis of its Navy jet training exercises since at least 2015. The overall goal  
18 of NPCA’s participation in the NEPA processes related to the Navy’s jet training exercises is to  
19 encourage the Navy to prepare and publicly disclose a complete analysis of the impacts of those  
20 overflights on the Park and its visitors and to consider alternative ways of conducting such  
21 exercises without flying over the Park.  
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24 3. In order to obtain as much information as possible regarding the impacts of Navy jet  
25 training exercises on the Park and to allow NPCA to effectively participate in the Navy’s NEPA  
26 commenting process, on June 10, 2016, NPCA sent a request to the Navy pursuant to FOIA. The  
27 FOIA request sought “any and all NEPA analyses, documents, or communications regarding  
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1 part, current, or anticipated naval or military training exercises affecting Olympic National Park,  
2 the Olympic National Forest, and the Olympic Peninsula.” The request went on to explain that it  
3 included, but was not limited to, “all documents and communications between the Navy and any  
4 other state or federal agency related to noise impacts analyzed in the 2010 EIS, 2014 EA, and  
5 2015 EIS;...[and] all documents related to or addressing impacts to Olympic National Park or its  
6 visitors from naval training exercises on or above the Olympic Peninsula.”

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8 4. On that same date, NPCA sent almost identical FOIA requests to several other federal  
9 agencies that have been involved in various aspects of the Navy’s ongoing NEPA processes  
10 regarding Navy jet training over the Olympic Peninsula. The National Park Service produced  
11 hundreds of responsive records to NPCA. The U.S. Fish and Wildlife Service (“USFWS”)  
12 produced thousands of responsive records. The U.S. Forest Service (“USFS”), which was  
13 required to approve a permit related to the Navy’s training exercises, also produced thousands of  
14 records, but only after NPCA sued that agency in Federal District Court.  
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17 5. As of the date NPCA filed this action, and in contrast to the large productions of  
18 responsive records by federal agencies that were only assisting with the Navy’s ongoing NEPA  
19 analysis of its Navy jet training exercises, the Navy itself has produced only 158 pages of records  
20 responsive to NPCA’s 2016 FOIA request. Despite two administrative appeals and two remands  
21 to the Navy to allow it to respond fully to NPCA’s request, NPCA still has not received the vast  
22 majority of the records in the Navy’s possession that are responsive to its 2016 FOIA request.  
23 Indeed, since the Navy remanded NPCA’s second administrative appeal regarding the 2016  
24 FOIA request on September 19, 2017, NPCA has not received any responses from the Navy in  
25 response to NPCA’s numerous inquiries regarding the status of its 2016 FOIA request.  
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1 6. Because so much time has elapsed since NPCA submitted its 2016 FOIA request to the  
2 Navy, NPCA believed it was necessary to submit a supplemental FOIA request, and it did so on  
3 December 13, 2018 (the “2018 FOIA request.”) This 2018 FOIA request from NPCA asked for  
4 responsive documents dated after the initial June 10, 2016 FOIA request, and it supplemented,  
5 but did not supersede or replace NPCA’s still pending 2016 FOIA request to the Navy.

7 7. As it did in response to NPCA’s 2016 FOIA request, the Navy, in February of 2019,  
8 produced only a relatively small number of records, about 400 pages, in response to this 2018  
9 FOIA request. NPCA’s claims regarding the Navy’s response to its 2018 FOIA request are not  
10 yet ripe. On April 30, 2019 NPCA submitted an administrative appeal to the Navy regarding its  
11 illegal response to NPCA’s December 2018 FOIA request. The Navy has 20 business days to  
12 respond to that appeal. NPCA includes allegations regarding its 2018 FOIA request in this  
13 Complaint to notify the Navy and the Court that, if the Navy responds to NPCA’s administrative  
14 appeal regarding NPCA’s 2018 FOIA request in the same legally inadequate way it responded to  
15 NPCA’s prior appeals regarding the 2016 FOIA request, NPCA likely will file, or seek leave to  
16 file, a supplemental complaint that includes additional claims regarding its 2018 FOIA request.

19 8. NPCA’s patience regarding the Navy’s wholly inadequate responses to its 2016 FOIA  
20 request is now at an end. NPCA already has been forced to participate in one NEPA scoping  
21 process and a USFS objection process regarding a Navy permit without the benefit of a complete  
22 response to its 2016 FOIA request. The Navy has now released a Draft Supplemental  
23 Environmental Assessment (“SEIS”) regarding its Navy jet training exercises on March 29,  
24 2019. Comments on this SEIS are, at the time of filing this Complaint, due June 12, 2019. The  
25 comment period for this SEIS is a critical moment throughout the long NEPA process related to  
26 the Navy’s electronic warfare proposal on and over the Olympic Peninsula. NPCA needs to  
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1 receive, and is legally entitled to receive, a complete response from the Navy to its 2016 and  
2 2018 FOIA requests so that NPCA can prepare complete and fully informed comments on this  
3 pending Navy draft SEIS. The Navy has missed every applicable FOIA deadline regarding  
4 NPCA's 2016 FOIA request. NPCA now has come to the conclusion that the only way it can  
5 obtain a complete response to its 2016 FOIA request is to seek judicial relief under FOIA from  
6 this Court.  
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8 9. This action specifically challenges the failure of Defendant, the Navy, to respond to  
9 NPCA's FOIA request, served on June 10, 2016, within the time and in the manner required by  
10 FOIA. The Navy is illegally withholding records responsive to NPCA's FOIA request. The Navy  
11 has illegally failed to estimate the volume of responsive documents that it has withheld from  
12 NPCA. The Navy is illegally invoking FOIA exemptions without justification. The Navy has  
13 illegally failed to adequately search for documents that are responsive to NPCA's FOIA request,  
14 including illegally narrowing the scope of NPCA's FOIA request. The Navy illegally failed to  
15 make a determination in response to the second remand of NPCA's FOIA request.  
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18 10. NPCA is legally entitled to the responsive records the Navy has been withholding for  
19 nearly three years. The Navy has violated numerous FOIA mandates by failing to provide an  
20 adequate determination on NPCA's FOIA request within the time and manner required by law.  
21 Accordingly, NPCA seeks a declaration from this Court that the Navy has violated FOIA in the  
22 ways set forth below. NPCA also seeks an injunction from this Court that directs the Navy to  
23 promptly provide NPCA with the requested records.  
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## 25 **II. JURISDICTION, VENUE, AND THE BASIS FOR RELIEF**

26 11. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28  
27 U.S.C. §1331 because this action arises under FOIA and 28 U.S.C. § 1346.  
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1 12. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) because the Navy  
2 maintains the facilities on Whidbey Island, Island County, in which many of the requested  
3 agency records are likely situated. Assignment is proper in this division for the same reason.

4 13. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

### 5 **III. PARTIES**

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7 14. Plaintiff NPCA is a national non-profit working to protect and enhance America's  
8 National Park System for present and future generations. NPCA is headquartered in Washington,  
9 D.C., and has various regional offices, including a Northwest Regional Office based in Seattle,  
10 Washington. As part of its advocacy, NPCA works to protect all national parks, including  
11 Olympic National Park on the Olympic Peninsula in Washington state. NPCA requested the  
12 records that the Navy has failed to disclose in furtherance of NPCA's organizational mission and  
13 its work to protect Olympic National Park. NPCA seeks information in order to contribute to the  
14 public's understanding of the Navy's operations and activities on, around, and above the  
15 Olympic National Forest and the Olympic Peninsula, and above Olympic National Park. NPCA  
16 now has a critical need for the documents so that it can comment on the Navy's SEIS.

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19 15. Defendant, the Navy, is an agency of the executive branch of the United States  
20 government. The Navy is in possession and control of the records sought by NPCA, and as such,  
21 it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### 22 **IV. LEGAL BACKGROUND**

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24 16. The purpose of FOIA is "to establish a general philosophy of full agency disclosure  
25 unless information is exempted under clearly delineated statutory language." S. Rep. No. 813,  
26 89<sup>th</sup> Cong., 1<sup>st</sup> Sess., 3 (1965). "[D]isclosure, not secrecy, is the dominant objective of the Act."  
27 *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). FOIA therefore requires federal agencies  
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1 to disclose records to any person upon request unless the information falls within one of nine  
2 narrow exemptions listed in the Act. *See* 5 U.S.C. § 552(a)(3)(A),(b). Except in unusual  
3 circumstances, federal agencies must determine within 20 business days whether requested  
4 records are exempt from disclosure and, if they are not, the agency must “promptly disclose” the  
5 records to the requester. 5 U.S.C. § 552(a)(6)(A)(i); 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).

7 17. If the agency makes any adverse determination regarding a request, the agency must also  
8 communicate to the requester that it has a right to appeal that determination. 5 U.S.C §  
9 552(a)(6)(A)(i)(III)(aa).

10 18. FOIA also mandates that a federal agency that has received a request for records must  
11 inform the requester of “the date on which the agency originally received the request[,]” and “an  
12 estimated date on which the agency will complete action on the request.” 5 U.S.C §  
13 552(a)(7)(B).

15 19. FOIA provides only limited circumstances under which a federal agency may take longer  
16 than twenty business days to make a determination. First, the agency may toll the twenty  
17 business-day deadline for up to ten additional business days while the agency is waiting for the  
18 information that it had reasonably requested from the requester. 5 U.S.C § 552(a)(6)(A)(ii)(I).  
19 Secondly, if the agency faces “unusual circumstances,” the agency may extend the twenty  
20 business-day deadline if the agency sets “forth the unusual circumstances for such extension and  
21 the date on which a determination is expected to be dispatched.” 5 U.S.C § 552(a)(6)(B)(i). No  
22 extension will exceed ten business days unless the agency provides written notice to the  
23 requester explaining the “unusual circumstances” requiring an extension, establishes the date on  
24 which the agency expects to make the determination, and gives the requester “an opportunity to  
25 limit the scope of the request so that it may be processed within that time limit or an opportunity  
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1 to arrange with the agency an alternative time frame for processing the request or a modified  
2 request.” 5 U.S.C § 552(a)(6)(B)(ii). Under FOIA, “unusual circumstances” are defined as “the  
3 need to search for and collect the requested records from field facilities or other establishments  
4 that are separate from the office processing the request[,]” or “the need to search for, collect, and  
5 appropriately examine a voluminous amount of separate and distinct records which are  
6 demanded in a single request,” or “the need for consultations . . . with another agency having a  
7 substantial interest in the determination of the request or among two or more components of the  
8 agency having substantial subject-matter interest therein.” 5 U.S.C § 552(a)(6)(B)(iii).

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10 20. If an agency determination is appealed, the agency has 20 days to respond to the appeal. 5  
11 U.S.C § 552(a)(6)(A)(ii).

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13 21. A FOIA request that has been appealed and remanded resets the timeline for the agency’s  
14 response. An agency must respond to a remand within 20 days. A request upon remand is still a  
15 request, and thus, agencies are required to make a “determination” within the statutory time  
16 period.

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18 22. A U.S. district court has jurisdiction “to enjoin the agency from withholding agency  
19 records and to order the production of any agency records improperly withheld from the  
20 complainant.” 5 U.S.C § 552(a)(4)(B). If the government can show that “exceptional  
21 circumstances” exist and that the agency is exercising due diligence in responding to the request,  
22 the court may retain jurisdiction and allow the agency additional time to complete its review of  
23 the records. 5 U.S.C § 552(a)(6)(C)(i). Notably, the term “exceptional circumstances” does *not*  
24 include a delay that results from a predictable agency workload of FOIA requests, unless the  
25 agency demonstrates reasonable progress in reducing its backlog of pending requests. 5 U.S.C §  
26 552(a)(6)(C)(ii).  
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1 23. One element of an agency's determination within the statutory timeframe is that the  
2 agency must "estimate the volume of any requested matter the provision of which is denied." 5  
3 U.S.C. § 552(a)(6)(F).

4 24. FOIA does not give discretion to agencies to alter or narrow the scope of requests. FOIA  
5 only contemplates that the agency will notify the requestor "if the request cannot be processed  
6 within the time limit specified in that clause and shall provide the person with an opportunity to  
7 limit the scope of the request so that it may be processed within that time limit..." 5 U.S.C. §  
8 552(a)(6)(B)(ii).

9 25. A requestor has a right to the production of any records that are responsive to its FOIA  
10 request, except those portions of the documents that are exempted under 5 U.S.C. § 552(b).  
11 FOIA exemptions are construed narrowly in favor of disclosures. "In light of the strong policy of  
12 the FOIA that the public is entitled to know what its government is doing and why, [E]xemption  
13 5 is to be applied as narrowly as consistent with efficient Government operation." *Maricopa*  
14 *Audubon Soc'y v. U.S. Forest Serv.*, 108 F.3d 1089, 1093 (9th Cir. 1997) (internal quotation  
15 marks omitted). An agency bears a burden to establish its right to withhold information from the  
16 public. "We remind the agencies, once again, that the burden is on them to establish their right to  
17 withhold information from the public and they must supply the courts with sufficient information  
18 to allow us to make a reasoned determination that they were correct." *Coastal States Gas Corp.*  
19 *v. Dep't of Energy*, 617 F.2d 854, 861 (D.C.Cir. 1980).

20 26. Portions of documents may be withheld under Exemption 5's deliberative process  
21 privilege only if those portions are predecisional and deliberative; it does not apply to factual or  
22 investigative matters. "[Exemption (5)] requires different treatment for materials reflecting  
23 deliberative or policy-making processes on the one hand, and purely factual, investigative  
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1 matters on the other.” *U.S. Env’tl Prot. Agency v. Mink*, 410 U.S. 73, 89 (1973). Furthermore,  
2 Exemption 5 does not permit “the withholding of factual material ... merely because it was  
3 placed in a memorandum with matters of law, policy, or opinion.” *Id.* at 91. To the degree that  
4 documents in the possession of the Navy contain factual material, or factual material reasonably  
5 segregable from deliberative material, the Navy must disclose documents if they are responsive  
6 to NPCA’s request. *See* 5 U.S.C. § 552(b)(5).

8 27. The attorney work-product exemption has a limited scope. The most significant limitation  
9 to the attorney work-product exemption is that “it has uniformly been held to be limited to  
10 documents prepared in contemplation of litigation. *Coastal States Gas Corp.*, 617 F.2d at 864.

12 28. Furthermore, the fact that “an agency document was written by a lawyer does not  
13 necessarily make it ‘work product[,]’” because “[t]he executive branch of our government  
14 employs an uncountable and ever-growing number of attorneys, and [FOIA] can hardly be  
15 understood as protecting everything they put on paper.” *Kent Corp. v. Nat’l Labor Relations Bd.*,  
16 530 F.2d 612, 623 (5th Cir. 1976).

18 29. An agency is required, upon receipt of a request for records, to make a determination. An  
19 agency, pursuant to that determination, must gather and review documents that are responsive to  
20 the requester’s FOIA request. A search for documents pursuant to a FOIA request must be  
21 “reasonably calculated to uncover relevant documents.” *Zemansky v. U.S. Env’tl Prot. Agency*,  
22 767 F.2d 569, 571 (9th Cir. 1985) (quoting *Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476,  
23 1485 (D.C. Cir. 1984)).

## 25 V. FACTUAL BACKGROUND

26 30. On June 10, 2016, NPCA requested from the Navy the following records:  
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1 NPCA requests any and all NEPA analyses, documents, or communications  
2 regarding past, current, or anticipated naval training exercises affecting Olympic  
3 National Park, the Olympic National Forest, and the Olympic Peninsula. This  
4 request includes, but is not limited to:

- 5 1. Any and all documents related to or addressing noise impacts associated with  
6 naval training exercises on or above Olympic National Park, the Olympic  
7 National Forest, and the Olympic Peninsula;
- 8 2. Any and all documents and communications between the Navy and any other  
9 state or federal agency related to noise impacts analyzed in the 2010 EIS, 2014  
10 EA, and 2015 EIS;
- 11 3. Any and all documents related to or addressing impacts to Olympic National Park  
12 or its visitors from naval training exercises on or above the Olympic Peninsula.

11 31. NPCA submitted this request, and nearly identical requests to several other federal  
12 agencies, for several reasons. First, NPCA anticipated that it would need the responsive records  
13 to help it prepare an administrative objection to the USFS's forthcoming decision on a Navy  
14 permit request. The Navy was seeking the permit to allow it to operate mobile electronic warfare  
15 transmitters on USFS property close to the boundaries of Olympic National Park. Second, the  
16 Navy had an ongoing NEPA analysis and public comment process regarding its Navy jet training  
17 exercises over the Olympic Peninsula and NPCA needed the responsive records so it could fully  
18 and effectively participate in any upcoming Navy/NEPA public commenting process. Third,  
19 NPCA needed the responsive records to help it fulfill its ongoing public education and outreach  
20 efforts regarding the impacts of the Navy jet training exercises on Olympic National Park's  
21 visitors and resources, including the Park's extraordinary natural quiet.  
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23 32. The Navy responded to NPCA's 2016 FOIA request in a July 14, 2016 letter  
24 acknowledging receipt of NPCA's FOIA request on June 10, 2016. The Navy assigned NPCA's  
25 request the case file number of 2016-12.  
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27 33. On July 22, 2016, the Navy sent another letter. With this letter, the Navy attached only  
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1 158 pages of responsive documents and said it was withholding an undisclosed volume of  
2 documents pursuant to the deliberative process and attorney work-product exemptions. Further,  
3 the Navy inaccurately characterized NPCA's request thusly:

4       “(1) Documents related to noise impacts associated with naval training exercises in these  
5 areas; (2) Documents and communications between the Navy and other state or federal  
6 agencies related to noise impacts analyzed in the 2010 and 2015 Environmental Impact  
7 Statements and the 2014 Environmental Assessment; and (3) Documents related to  
impacts to visitors in these areas from naval training exercises.”

8 34. NPCA administratively appealed to the Navy regarding its inadequate FOIA response on  
9 September 21, 2016. In that appeal, NPCA objected to the Navy's procedural failure to estimate  
10 the volume of the requested matter the provision of which was denied, mischaracterization and  
11 narrowing of NPCA's request, withholding of documents responsive to NPCA's request, and  
12 improper withholding of documents responsive to NPCA's FOIA request under FOIA  
13 Exemption 5.

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15 35. On November 9, 2016, the Navy responded and stated that the FOIA request was  
16 remanded back to the Navy to "...reconsider its position on the withholding of certain materials  
17 and conduct a further search for responsive records.”

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19 36. On April 5, 2017, 148 days after the notice of remand, the Navy responded to the remand.  
20 As an initial matter, the Navy claimed it did not receive notice of the remand until March 22,  
21 2017. The Navy maintained the same characterization of NPCA's FOIA request from the Navy's  
22 first response. The Navy further stated that it conducted an additional search and that it was  
23 unable to locate any additional documents responsive to NPCA's FOIA request. The Navy made  
24 no mention of the first prong of the remand related to reconsidering its position on the  
25 withholding of certain materials. The Navy then stated that NPCA had 90 days to appeal.  
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28 37. While NPCA was attempting to use the Navy's administrative appeal processes to obtain  
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1 a complete response to its 2016 FOIA request to the Navy, the National Park Service and the  
2 U.S. Fish & Wildlife Service responded to similar FOIA requests submitted by NPCA. Those  
3 two agencies, which were only indirectly involved in the Navy's on-going NEPA processes  
4 regarding the Navy jet training, produced thousands of responsive records to NPCA.

5 38. But the Navy was not the only federal agency that refused to completely produce  
6 responsive records to NPCA's 2016 FOIA requests in a timely manner. NPCA also served the  
7 USFS with a similar FOIA request on June 10, 2016 and the USFS refused to produce a single  
8 responsive record until NPCA sued that agency under FOIA in March of 2017. *See NPCA v.*  
9 *USFS*, Case No. 1:17-cv-00456-DLF (D.D.C. Match 14, 2017). Shortly after NPCA filed that  
10 lawsuit the USFS produced thousands of pages of responsive records.  
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12 39. On June 30, 2017, NPCA administratively appealed a second time to the Office of the  
13 General Counsel of the Navy. Again, NPCA objected to the Navy's procedural failure to  
14 estimate the volume of the requested matter the provision of which was denied, the Navy's  
15 mischaracterization and narrowing of NPCA's request, the withholding of documents responsive  
16 to NPCA's request, the inadequate search, and the improper withholding of documents  
17 responsive to NPCA's FOIA request under FOIA Exemption 5. As exhibits for that  
18 administrative appeal, NPCA attached records created by or sent to the Navy that NPCA had  
19 received from the National Park Service, the USFWS and the USFS that the Navy also should  
20 have produced to NPCA in response to the 2016 FOIA request. As the lead agency responsible  
21 for the ongoing NEPA analysis regarding its Navy jet training exercises, the Navy must have in  
22 its possession many more responsive records than these other, only indirectly involved or  
23 cooperating federal agencies.  
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25 40. On September 19, 2017, the Office of the General Counsel responded to NPCA's FOIA  
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1 administrative appeal. The appeal was remanded for the second time back to the Navy's Initial  
2 Denial Authority ("IDA") to "coordinate a complete response...".

3 41. 451 days later, on December 13, 2018, without any further response from the Navy to  
4 NPCA's 2016 FOIA request, and no follow up whatsoever regarding the second remand, NPCA  
5 filed a supplemental FOIA request ("2018 FOIA request"). This second FOIA request asked for  
6 the following:  
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8 [A]ll NEPA analyses, documents, or communications regarding past, current, or  
9 anticipated naval or military training exercises affecting Olympic National Park,  
10 the Olympic National Forest, and the Olympic Peninsula. This request includes,  
11 but is not limited to:

- 12 1. Any and all documents related to or addressing noise impacts associated with  
13 naval or military training exercises on or above Olympic National Park, the  
14 Olympic National Forest, the Olympic Peninsula or the World Heritage Site on  
15 the Olympic Peninsula;
- 16 2. Any and all documents and communications between the Navy and any other  
17 state or federal agency, or any elected official related to noise impacts analyzed in  
18 the 2010 EIS, 2014 EA, the 2015 EIS or any drafts of the forthcoming 2020 SEIS;
- 19 3. Any and all documents related to or addressing impacts to Olympic National Park  
20 the World Heritage Site on the Olympic Peninsula or visitors to those locations  
21 from naval or military training exercises on or above the Olympic Peninsula.

22 This 2018 FOIA request from NPCA asked for responsive documents dated after the initial June  
23 10, 2016 FOIA request, and it supplemented, but did not supersede or replace NPCA's still  
24 pending 2016 FOIA request to the Navy.

25 42. On February 22 and March 1, 2019, the Navy produced about 400 responsive records in  
26 response to the 2018 FOIA request. Inexplicably, the Navy prioritized responding to this second  
27 request over completing its response to NPCA's 2016 FOIA request. Nevertheless, the Navy's  
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1 response of providing so few records in response to the 2018 FOIA request appears to be almost  
2 as inadequate as its 158-page response to NPCA's 2016 FOIA request. NPCA includes  
3 allegations regarding the 2018 FOIA request in this Complaint solely to put the Navy and this  
4 Court on notice that it may seek to supplement its current claims in this Complaint when and if  
5 its claims regarding the 2018 FOIA request become ripe.  
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7 43. NPCA now believes its only option for obtaining a complete response to its 2016 FOIA  
8 request is to seek judicial relief under FOIA. While NPCA has waited to receive such a response  
9 using the Navy's administrative remedies, NPCA has been forced to submit an objection to the  
10 Navy's permit request to the USFS without the benefit of the Navy's responsive records. NPCA  
11 has also been forced to submit scoping comments on the Navy's next SEIS without the benefit of  
12 the Navy's responsive records. NPCA's ability to submit a complete USFS objection and  
13 complete scoping comments were materially prejudiced by the Navy's failure to properly and  
14 timely respond to NPCA's 2016 FOIA request. The Navy, on March 29, 2019, released a draft  
15 SEIS regarding its Navy jet training exercises. NPCA's ability to prepare and submit complete  
16 and effective comments on this draft SEIS similarly will be prejudiced if it is required to do so  
17 without having received all of the Navy's records that are responsive to NPCA's 2016 FOIA  
18 request. NPCA also needs these responsive records to continue its public education and outreach  
19 efforts regarding the impacts of Navy jet training overflights on Olympic National Park. NPCA's  
20 NEPA commenting and its public education and outreach efforts regarding impacts to Olympic  
21 National Park are an essential part of NPCA's organizational mission.  
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25 44. As of the date this action was filed, the statutory deadline for the Navy to issue a timely  
26 determination on NPCA's remanded June 10, 2016 FOIA request has elapsed.  
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28 45. As of the date this action was filed, the Navy has not given NPCA an estimate of the  
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1 volume of denied documents that were responsive to NPCA's June 10, 2016 FOIA request.

2 46. As of the date this action was filed, the Navy has not done an adequate search for records  
3 that are responsive to NPCA's June 10, 2016 FOIA request.

4 47. As of the date this action was filed, the Navy has not reconsidered its position on  
5 withholding documents responsive to NPCA's June 10, 2016 FOIA request as required by the  
6 first remand.

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8 48. As of the date this action was filed, the Navy continues to improperly exempt an  
9 undisclosed number of documents responsive to NPCA's June 10, 2016 FOIA request and to  
10 improperly redact information from the records it did produce.

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12 49. As of the date this action was filed, the Navy has yet to justify its withholding of  
13 documents responsive to NPCA's June 10, 2016 FOIA request pursuant to the deliberative  
14 process Exemption 5.

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16 50. As of the date this action was filed, the Navy has yet to justify its withholding of  
17 documents responsive to NPCA's June 10, 2016 FOIA request pursuant to the attorney work-  
18 product Exemption 5.

19  
20 51. As of the date this action was filed, the Navy continues to mischaracterize NPCA's initial  
21 June 10, 2016 FOIA request with narrow search terms.

22  
23 52. As of the date this action was filed, NPCA has received only 158 pages of responsive  
24 documents from the Navy regarding its June 2016 FOIA request.

VI. CAUSES OF ACTION

CLAIM I

IMPROPER WITHHOLDING OF DOCUMENTS RESPONSIVE TO NPCA'S REQUEST  
AND SECOND ADMINISTRATIVE APPEAL

53. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

54. The Navy is required, upon receipt of a request for records from NPCA, to make those records promptly available to NPCA, unless the records may be withheld under one of FOIA's narrow exemptions. 5 U.S.C. § 552(a)(3)(A), (b).

55. NPCA, through its June 10, 2016 FOIA request, properly asked for records within the Navy's control.

56. The Navy responded to NPCA's request on July 22, 2016.

57. The Navy produced 158 pages of documents to NPCA in response to its FOIA request.

58. NPCA specifically asked for "[a]ny and all documents related to or addressing noise impacts associated with naval training exercises on or above Olympic National Park, the Olympic National Forest, and the Olympic Peninsula." Documents that are responsive to this request include, but are not limited to, those documents the Navy relied upon when preparing its Airspace Noise Analysis for the Olympic Military Operations Areas. *See* U.S. Dep't of Navy, Northwest Training and Testing Final Environmental Impacts Statement/Overseas Environmental Impact Statement (2015 EIS), Vol. 4, Appendix J, Airspace Noise Analysis for the Olympic Military Operations Areas, at 26 (Sept. 2015). The Navy provided none of these documents.

59. Responsive documents also would include documents regarding noise impacts associated

1 with naval training exercises that took place before during and after 2010, the first date  
2 specifically mentioned in NPCA's FOIA request.

3 60. NPCA reasonably believes that other responsive documents were not disclosed.

4 However, NPCA cannot be sure of the extent to which documents were not released because the  
5 Navy failed to "estimate the volume of any requested matter the provision of which is denied." 5  
6 U.S.C. § 552(a)(6)(F); *see also infra* Claim II.

7  
8 61. NPCA received from other agencies documents that, unequivocally, should have been  
9 disclosed by the Navy. Other federal agencies produced these records in response to similar  
10 NPCA FOIA requests. All of these documents were also, undoubtedly, in the possession of the  
11 Navy, and any "reasonably calculated" search by the Navy would have located them.

12  
13 62. An adequate search should have yielded, at least, the responsive documents that were  
14 produced by the USFS, the USFWS, and the National Park Service from corresponding NPCA  
15 FOIA requests. The Navy's search did not yield the permitting documents that were produced by  
16 the USFS. The Navy's search did not yield public comment letters or various other documents  
17 that should have been discovered, and therefore disclosed, had the Navy's search been  
18 "reasonably calculated."  
19

20 63. NPCA appealed the Navy's FOIA response for a second time on June 30, 2017.

21  
22 64. On September 19, 2017, the Navy remanded the appeal "to coordinate a complete  
23 response..."

24 65. As of the date on which NPCA filed this action, the Navy has not made a determination  
25 in response to the September 19, 2017 remand.

26  
27 66. As of the date on which NPCA filed this action, the Navy has not produced any further  
28 records to NPCA in response to its June 10, 2016 FOIA request.

1 67. The Navy is improperly and unlawfully withholding from public disclosure information  
2 sought by NPCA, information to which it is entitled under FOIA.

3 **CLAIM II**

4 **FAILURE TO ESTIMATE THE VOLUME OF REQUESTED DOCUMENTS**  
5 **THAT ARE EXEMPTED**

6  
7 68. The allegations made in all preceding paragraphs are realleged and incorporated by  
8 reference herein.

9 69. In response to a FOIA request the Navy is required to make a determination within the  
10 20-day statutory timeframe. One element of that determination is that the agency must “estimate  
11 the volume of any requested matter the provision of which is denied.” 5 U.S.C. § 552(a)(6)(F).

12  
13 70. NPCA notified the Navy of this procedural deficiency in the appeal it sent on September  
14 21, 2016.

15 71. NPCA again notified the Navy of this procedural deficiency in the second appeal it sent  
16 on June 30, 2017. In both appeals, NPCA invoked 5 U.S.C. § 552(a)(6)(F).

17  
18 72. As of the date on which NPCA filed this action, the Navy has failed to provide an  
19 estimate of the volume of any requested material that is responsive to NPCA’s FOIA request but  
20 that the Navy is withholding.

21  
22 **CLAIM III**

23 **IMPROPER WITHHOLDING OF DOCUMENTS RESPONSIVE TO NPCA’S REQUEST**  
24 **UNDER FOIA EXEMPTION 5: DELIBERATIVE PROCESS**

25 73. The allegations made in all preceding paragraphs are realleged and incorporated by  
26 reference herein.

27  
28 74. The Navy is required, upon receipt of a FOIA request from NPCA, to make responsive  
29

1 records promptly available to NPCA, unless the records may be withheld under one of FOIA's  
2 exemptions. 5 U.S.C. § 552(a)(3)(A), (b).

3 75. NPCA, through its June 10, 2016 FOIA request, properly asked for records within the  
4 Navy's control.

5 76. The Navy has produced 158 pages of documents to NPCA in response to its FOIA 2016  
6 request. However, the Navy also has asserted that an undisclosed number of records are exempt  
7 under the deliberative process exemption.  
8

9 77. NPCA has a right to the production of any records that are responsive to NPCA's FOIA  
10 request, except those portions of the documents that are exempted under 5 U.S.C. § 552(b).  
11

12 78. As of the date on which NPCA filed this action, the Navy has yet to justify its  
13 withholding of documents pursuant to the deliberative process Exemption 5.

14 79. As of the date on which NPCA filed this action, the Navy was unlawfully withholding  
15 from public disclosure records and portions of records sought by NPCA and to which FOIA  
16 exemptions do not apply.  
17

#### 18 CLAIM IV

#### 19 IMPROPER WITHHOLDING OF DOCUMENTS RESPONSIVE TO NPCA'S REQUEST 20 UNDER FOIA EXEMPTION 5: ATTORNEY WORK-PRODUCT 21

22 80. The allegations made in all preceding paragraphs are realleged and incorporated by  
23 reference herein.

24 81. The Navy is required, upon receipt of a FOIA request from NPCA, to make responsive  
25 records promptly available to NPCA, unless the records may be withheld under one of FOIA's  
26 exemptions. 5 U.S.C. § 552(a)(3)(A), (b).  
27

28 82. NPCA, through its June 10, 2016 FOIA request, properly asked for records within the  
29

1 Navy's control.

2 83. The Navy has produced 158 pages of documents to NPCA in response to its FOIA  
3 request. However, the Navy also has asserted that an undisclosed number of records are exempt  
4 under the attorney work-product exemption.

5 84. NPCA has a right to the production of any records that are responsive to NPCA's FOIA  
6 request, except those portions of the documents that are exempted under 5 U.S.C. § 552(b).

7 85. As of the date on which NPCA filed this action, the Navy has yet to justify its  
8 withholding of documents pursuant to the attorney work-product Exemption 5.

9 86. As of the date on which NPCA filed this action, the Navy was unlawfully withholding  
10 from public disclosure records and portions of records sought by NPCA to which FOIA  
11 exemptions do not apply.  
12

13  
14 **CLAIM V**

15 **INADEQUATE SEARCH**

16  
17 87. The allegations made in all preceding paragraphs are realleged and incorporated by  
18 reference herein.

19 88. In its initial FOIA request dated June 10, 2016, NPCA requested "any and all NEPA  
20 analyses, documents, or communications regarding past, current, or anticipated naval training  
21 exercises affecting Olympic National Park, the Olympic National Forest, and the Olympic  
22 Peninsula."  
23

24 89. In its initial response, the Navy mischaracterized and narrowed NPCA's request to only  
25 include "certain Navy training activities." This narrower search excludes prior and ongoing or  
26 anticipated NEPA analyses, documents or communications. For instance, although the Navy in  
27 the 2010 and 2015 EISs referenced historic training activities, the Navy provided little or no  
28  
29

1 analyses, documents, or communications regarding those past naval training exercises and how  
2 they might affect Olympic National Park, the Olympic National Forest, and the Olympic  
3 Peninsula.

4 90. NPCA notified the Navy of this mischaracterization twice, once within the first appeal  
5 dated September 21, 2016, and the second time within the second appeal dated June 30, 2017.  
6

7 91. The Navy's remand notice dated November 9, 2016, remanded the request to the IDA "so  
8 that the IDA may reconsider its position... and conduct a further search for responsive records."

9 92. On remand, the Navy did not reconsider this narrowing of NPCA's request. NPCA did  
10 not receive any notice that complying with the breadth of its request would place a burden upon  
11 the Navy. Nor did the Navy provide NPCA with an opportunity to limit the scope of its request.  
12 Instead, the Navy simply "conducted an additional search and review of the records... [and] did  
13 not locate any additional [responsive] documents." The Navy also did not address the first prong  
14 of the remand that contemplated the Navy reconsidering its position on the withholding of  
15 certain records.  
16  
17

18 93. As of the date on which NPCA filed this action, the Navy has not notified NPCA of a  
19 time constraint or other condition that would justify limiting the scope of NPCA's FOIA request.  
20

21 94. The Navy is required, upon receipt of a request for records from NPCA, to make a  
22 determination. The Navy, pursuant to that determination, must gather and review documents that  
23 are responsive to NPCA's FOIA request. A search for documents pursuant to a FOIA request  
24 must be reasonably calculated to uncover relevant documents.

25 95. NPCA, through its June 10, 2016 FOIA request, properly asked for records within the  
26 Navy's control.  
27

28 96. As of the date on which NPCA filed this action, the Navy has not conducted an adequate  
29

1 search for responsive records.

2 97. An adequate search should have yielded, at least, the responsive documents that were  
3 produced by the USFS, the USFWS and the National Park Service from corresponding NPCA  
4 FOIA requests. The Navy's search did not yield the permitting documents, public comment  
5 letters or various other documents that should have been discovered, and therefore disclosed, had  
6 the Navy's search been "reasonably calculated."  
7

8 98. As of the date on which NPCA filed this action, that Navy has not conducted a search  
9 that that yielded documents known to NPCA to be responsive to NPCA's FOIA request.

10 99. By inadequately searching the Navy is improperly and unlawfully withholding from  
11 public disclosure information sought by NPCA and information to which it is entitled.  
12

### 13 **VII. REQUESTS FOR RELIEF**

14 WHEREFORE, NPCA respectfully requests that this Court:

- 15 (a) Declare the Navy's failure to estimate the volume of withheld documents from NPCA  
16 to be unlawful under FOIA;  
17
- 18 (b) Declare the Navy's narrowing of the scope of NPCA's FOIA request to be unlawful  
19 under FOIA;  
20
- 21 (c) Declare the Navy's withholding of documents responsive to NPCA's FOIA request to  
22 be unlawful under FOIA;  
23
- 24 (d) Declare the Navy's improper withholding of documents under the FOIA exemptions  
25 for deliberative process and attorney work-product to be unlawful under FOIA;  
26
- 27 (e) Declare the Navy's inadequate search for documents responsive to NPCA's FOIA  
28 request to be unlawful under FOIA.  
29

- 1 (f) Order the Navy in the form of injunctive relief to promptly conduct a new and  
2 adequate search and to furnish to NPCA all responsive documents not legally  
3 exempted as deliberative or attorney work-product, and to provide a privilege log for  
4 those records it chooses to withhold under any FOIA exemptions;  
5  
6 (g) Award NPCA its costs and reasonable attorney fees pursuant to 5 U.S.C. §  
7 552(a)(4)(E), or any other applicable law;  
8  
9 (h) Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and  
10  
11 (i) Grant such other and further relief as this Court may deem just and proper.

12 Respectfully submitted for the Court's consideration, this 2nd day of May, 2019.

13 SMITH & LOWNEY, PLLC

14 By: /s/ Claire E. Tonry  
15 Claire E. Tonry, WSBA No. 44497  
16 2317 E. John St.  
17 Seattle, WA 98112  
18 Tel: (206) 860-2883  
19 Fax: (206) 860-4187  
20 E-mail: claire@smithandlowney.com

21 By: /s/ Thomas Buchele  
22 Thomas Buchele (*pro hac vice* application pending,  
23 OSB #081560)  
24 Earthrise Law Center  
25 Lewis & Clark Law School  
26 10015 S.W. Terwilliger Blvd.  
27 Portland, OR 97219  
28 Tel: (503) 768-6894  
29 tbuchele@lclark.edu