

ATTACHMENT C

Final Air Tour Management Plan for Bandelier National Monument

FINAL AIR TOUR MANAGEMENT PLAN BANDELIER NATIONAL MONUMENT

SUMMARY

This Air Tour Management Plan (ATMP) provides the terms and conditions for commercial air tours conducted over Bandelier National Monument (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 resources and values the Park was established to protect, primarily National Register of Historic Places (National Register) listed or eligible cultural resources, including sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within. The ATMP also reduces impacts to Wilderness 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

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to the ATMP requirement for parks with 50 or fewer commercial air tour operations each year unless the exemption is withdrawn by the Director of the NPS.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.

(2) Less than one mile laterally from any geographic feature within the Park (unless more than ½-mile outside the Park boundary).

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

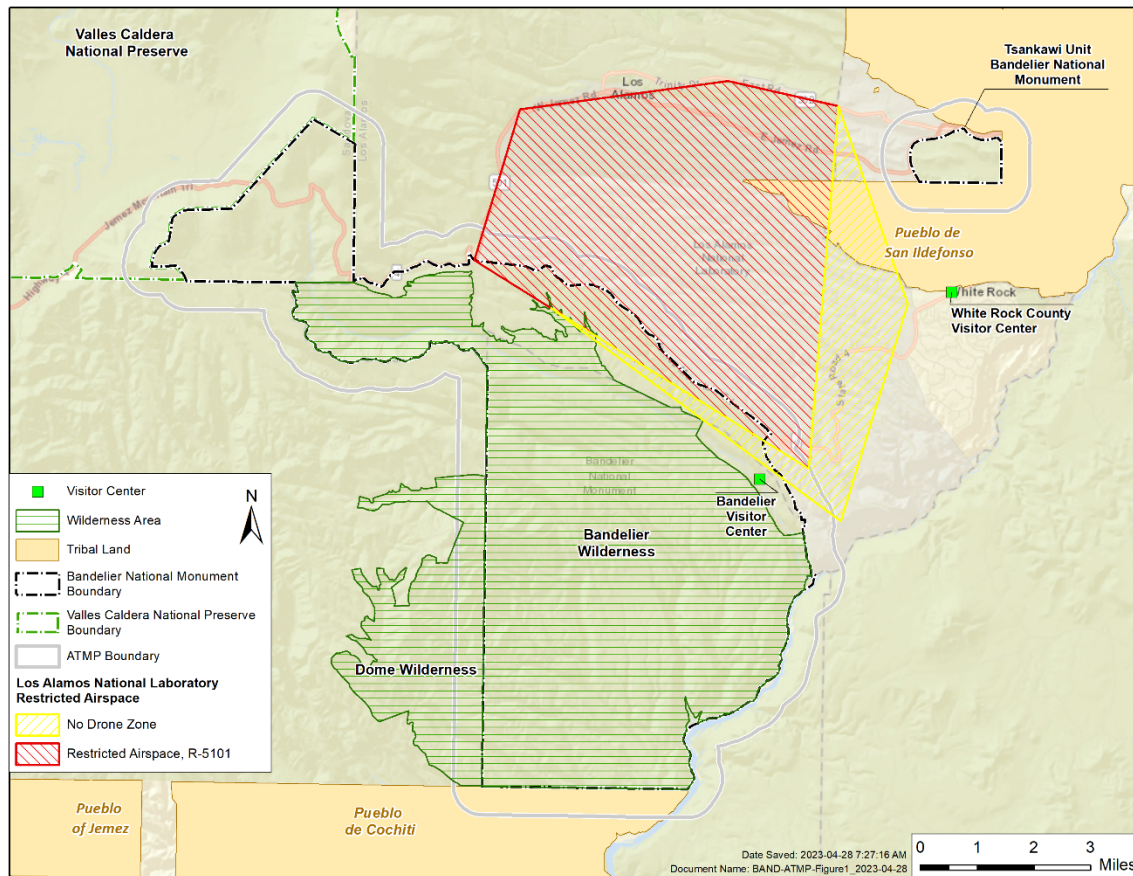


Figure 1. Map of the area subject to the ATMP for Bandelier National Monument. Appendix A includes an enlarged Figure 1.

2.1 Park Overview

The Park consists of 33,676 acres in Los Alamos County, New Mexico and contains more than 3,000 archeological sites, most dating from AD 1100 to 1550 and associated with the Ancestral Pueblo period. The Park in its entirety has been identified as a traditional cultural property. Affiliated pueblo Indian groups still have strong traditional associations and ties to the landscape within the Park. Their cultures, lifestyles, religious beliefs, and traditions continue to be shaped by their ties to the Park's natural and cultural resources. The Pueblo de Cochiti abuts the Park's southern boundary, while the 799-acre Tsankawi Unit 12 miles from the main Park abuts the San Ildefonso Indian Reservation. This unit is of critical importance to the cultural heritage, beliefs, customs, practices, and history of the Pueblo de San Ildefonso—the direct descendants of the people who inhabited the Tsankawi Unit.

The primary purpose of the Park includes protecting and preserving the outstanding features of the Pajarito Plateau, including both natural and cultural resources found there. When the Park was reserved from the public domain in 1916 pursuant to the Antiquities Act of 1906, it was described in the proclamation by President Wilson as featuring: “certain prehistoric aboriginal ruins...of unusual, ethnologic, scientific, and educational interest...”.² It is from these features that the Park’s significance as a national monument is rooted. Six main statements of significance for the Park were identified in the Park’s Foundation Document.³ “Cultural Connections” is one of these six statements. The Park’s Foundation Document explains that “[a]rcheological sites and natural features of Bandelier National Monument remain an integral component of pueblo culture and provide a context for continuing traditional practices” and further goes on to state that the Park “plays an important role for the traditionally associated pueblos, providing a direct cultural connection to resources, stories, and oral histories.” “Continuing Cultural Connections” is identified as a fundamental resource and value for the operation of the Park in its Foundation Document, which explains that “Affiliated pueblo Indian groups still have strong traditional associations and ties to Bandelier National Monument’s landscape. Their cultures, lifestyles, religious beliefs, and traditions continue to be shaped by their ties to the natural and cultural resources of the monument.”

The Park’s Foundation Document makes clear that the Park has identified traditional cultural properties associated with tribal partners as a significant cultural resource that should be protected from any diminishment. NPS Director’s Order 28: “Cultural Resource Management” (1998) provides the guidance for ensuring that these significant sites are not diminished.⁴ Director’s Order 28 provides the following direction:

When used by their associated ethnic groups, these types of resources help underpin entire cultural systems. Resource management sensitive to the rights and interests of these groups, especially Native Americans, can help perpetuate if not strengthen traditional activities such as subsistence, language use, religious practice, and aesthetic expression. In this context, cultural resource management extends beyond concern with tangible resources to recognition and accommodation of cultural processes.

The Park’s archeological sites and natural features remain an integral component of pueblo culture and provide a context for continuing traditional practices of pueblo culture.³ National Register listed or eligible cultural resources, including tribal sacred sites, traditional cultural properties, and ancestral sites are some of the Park’s most significant cultural and natural resources. The dense cultural landscape is comprised of over 3,000 ancestral sites, dozens of actively used shrines and sacred sites, and includes

² Proclamation No. 1322, Bandelier National Monument, N. Mex., 39 Stat. 1764 (Feb. 11, 1916).

³ NPS. (2015). Foundation Document – Bandelier National Monument.
<http://www.npshistory.com/publications/foundation-documents/band-fd-2015.pdf>

⁴ NPS. (1998). NPS- 28: Cultural Resource Management.
https://www.nps.gov/parkhistory/online_books/nps28/28contents.htm

diverse ecosystems across an elevation gradient of nearly 5,000 feet. Important tribal sites are distributed throughout the entire Park. Ancestral sites, as well as other tribal sacred sites located on the landscape, are all considered a part of the traditional landscape utilized by tribal people from time immemorial. Pueblo people continue to practice traditional ceremonies and make pilgrimages to sacred sites within the Park. These are important to the continuation of pueblo Indian traditional practices in contemporary pueblo communities.

In addition, the Bandelier National Monument Civilian Conservation Corps (CCC) Historic District is the largest collection of CCC structures and furnishings in the National Park System. The district is an outstanding example of design and workmanship from the New Deal era and harmonizes with its natural and cultural setting and helps define the mood of the headquarters and main visitor center area in Frijoles Canyon.

The Park's natural resources include the congressionally designated Bandelier Wilderness, which comprises over 23,000 acres, approximately 70% of the Park, and covers most of the Park's challenging, steep-walled canyons and mesas, and many of its archeological sites. Most of the Park's 70-plus miles of trails are in Wilderness. Popular destinations in the Wilderness include the deep gorge of Alamo Canyon, the Ancestral Pueblo of Yapashi, and Painted Cave in Capulin Canyon.

The Park extends from the Rio Grande at 5,300 feet to the summit of Cerro Grande at 10,200 feet on the caldera rim. Major vegetation types vary with increasing elevation, including juniper savannas, piñon-juniper woodlands, canyon-wall shrublands, ponderosa pine forests, riparian forests, mixed conifer forests, and montane grasslands. The Park's canyons and mesas are still relatively natural, supporting diverse vegetative communities, a variety of wildlife species, several watersheds, and volcanic tuff. A variety of raptor and migratory bird species inhabit the Park. The Park includes many sensitive species, including four federally listed threatened and endangered species (Mexican spotted owl, southwestern willow flycatcher, yellow-billed cuckoo, and New Mexico meadow jumping mouse).

Popular activities include hiking, picnicking, photography, bird-watching, backpacking, and camping. Most visitors are day users and spend their time visiting archeological sites in Frijoles Canyon. Popular trails and destinations include the Pueblo Loop Trail to Tyuonyi and the cliff dwellings, Alcove House, and the Falls Trail.

The purpose of the Park, as stated in its Foundation Document, is to protect, preserve, and interpret an outstanding portion of the Pajarito Plateau, including one of the largest concentrations of Ancestral Pueblo archeological sites in the American Southwest. The Park provides opportunities for people to connect with and enjoy a diversity of cultural and natural resources, striking scenery, wildlife habitats, remnants of a volcanic landscape, and Wilderness.

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

- Protect individuals and populations of wildlife species known to be sensitive to the effects of aircraft overflights, primarily migratory birds, including the federally listed Mexican spotted owl.
- Protect sensitive cultural and historic sites; preserve traditional and cultural resources to facilitate ongoing connection with, and use of, these resources by associated Tribal Nations; maintain confidentiality of sacred sites; and respond to information from tribal consultation.
- Protect the visitor experience of the character and solitude of the Bandelier Wilderness where natural sounds predominate, providing opportunities to experience quiet and solitude in a remote natural setting.

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 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, including tribes, 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 primarily to protect the Park's natural and cultural resources and tribal sacred sites and ceremonial areas from the effects of commercial air tours, and to support NPS management objectives for the Park. The provisions and conditions also maintain confidentiality of sacred sites, respect the spiritual significance of the Park to tribal people, maintain cultural connections to the Park, and respect privacy for tribes during traditional uses and ceremonies within the ATMP boundary. The ATMP also reduces impacts to Wilderness and visitor experience.

Under the Act, the FAA was required to grant Interim Operating Authority (IOA) for commercial air tours over the Park and adjacent pueblo tribal lands that are outside of the Park but within ½-mile of its boundary 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 Tsankawi Unit of the Park.

The cultural resources that the NPS preserves 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 archeological sites, sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within them. The tangible and intangible aspects of the Park’s cultural resources are an integral component of contemporary tribal culture and provide a context for ongoing traditional practices.⁵ The presence of air tours over the Park interferes with tribal connections and continuing cultural connections is a fundamental resource and value of the Park and is significant to the Park’s purpose.

In addition, the NPS determined that air tours impact cultural sites within the Park associated with Native American Tribes. Tribal Nations that were consulted have emphasized that air tours have negative impacts on the cultural heritage of pueblos, ceremonial dances, traditional events, among other events and activities. Allowing air tours continues to impart an invasion of privacy on tribal users of the Park which would be inconsistent with the Park’s purpose and values which includes preserving privacy while conducting traditional uses.

The presence of existing low-altitude overflights over the Park, including commercial air tours, interferes with tribal connections to the sacred landscape of the Park primarily due to tribal concerns about privacy. Tribes and individual tribal members have consistently noted that air tours over the Park unreasonably interfere with their connections to the larger sacred landscape that is in continuous use and of which the Park is a part. Air tours over the Park interfere with the privacy of the pueblo people as they carry out ceremonies and sacred practices, the protection of which is a primary purpose of the Park. Commercial air tours may interrupt these practices by their physical presence which denigrates the sacred space that the Park protects. Pueblo villages, including kivas, ceremonial rooms, and burial grounds, are sacred places. Air tour patrons’ observations of pueblo people carrying out traditional uses and ceremonies in these sacred places intrudes on the cultural practices the Park protects.

⁵ NPS. (2015). Foundation Document – Bandelier National Monument.
<http://www.npshistory.com/publications/foundation-documents/band-fd-2015.pdf>

Tribes have stated that overflights, including commercial air tours, are disruptive and limit their ability to engage freely in religious and cultural activities in the Park. Tribes have stated that disclosing the timing and location of their sacred practices would violate their privacy. Many tribes consider the entire landscape of the Pajarito Plateau, including the sky above, to be sacred and believe air tours are inappropriate and constitute an adverse effect to the cultural landscape, wildlife, and plants. During consultation tribes stated that overflights, including commercial air tours, have disturbed gatherings and traditional religious practices at sacred sites, impacted viewsheds to and from sacred peaks, are inappropriate to the sacred landscape and sky, and disrupt the tranquility of accessing the lands for reflection or religious and cultural purposes.

Air tours over the Park and abutting tribal lands within ½-mile of the Park's boundary and their encroachment on tribal privacy, religious, and cultural activities could interrupt and diminish both the tangible and intangible associations tribes experience during use of their traditional cultural properties, the protection of which is a significant Park purpose. Because continuing cultural connections is a fundamental resource and value of the Park and is significant to the Park's purpose, air tours and their resultant interference with tribal connections are inconsistent with the Park's purpose and values for which it was established. 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).

Because National Register listed or eligible cultural resources, including tribal sacred sites, cultural landscapes, and ancestral sites, occur throughout the Park, impacts to tribes and tribal resources cannot be reduced to an acceptable level by routing air tours to avoid sensitive locations because sensitive locations are densely distributed throughout the Park. Since the locations, timing, and identification of participants involved in traditional use of sacred sites is sensitive and culturally guarded information, pre-emptively disclosing this information in order to reduce the effects of air tours on these cultural and religious practices is not possible. Thus, provisions in the ATMP such as time-of-day restrictions or no-fly periods would be unlikely to be effective in avoiding all impacts to these resources. For these reasons, allowing air tours within the ATMP boundary is inconsistent with the Park's purpose and values including perpetuating traditional pueblo cultural connections to the Park's landscapes.

NPS Policy Memorandum 22-03 sets forth guidance on how the NPS will implement Secretary's Order No. 3403, *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters*. This policy states that the NPS will give due consideration to tribal recommendations and indigenous knowledge in the planning and management of Federal lands and waters. Per Executive Order 13007, *Indian Sacred Sites*, the NPS will, to the greatest extent practicable, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical and spiritual integrity of such sacred sites; collaborate with Indian and other traditionally associated peoples who have

identified sacred sites within units of the National Park System to prepare mutually agreeable strategies for providing access; and enhance the likelihood of privacy during religious ceremonies.

Since the Park's fundamental resources and values include preserving the connection between the pueblo people and the sacred space the Park protects, and because the density of tribal sites and their distribution throughout the Park means it is not possible to avoid impacts to sacred sites from air tours, the ATMP does not permit any air tours within the ATMP boundary. Further, the ATMP is consistent with the Park's purpose and values for which it was established, and the elimination of air tours will improve privacy for the tribes during traditional uses and ceremonies within the ATMP boundary.

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 resources and values the Park was established to protect, primarily to protect National Register listed or eligible cultural resources, including sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within, which supports prohibiting commercial air tours. 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 abutting pueblo tribal lands 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 OpSpecs 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.



Digitally signed by PATRICK
SUDDATH
Date: 2024.02.29 08:21:32 -07'00'

Patrick Suddath
Superintendent
Bandelier National Monument
National Park Service

ROBERT R LOWE

Digitally signed by ROBERT R. LOWE
Date: 2024.02.29 17:12:58 -06'00'

Rob Lowe
Regional Administrator
Southwest Region
Federal Aviation Administration

KATHARINE
HAMMOND

Digitally signed by KATHARINE
HAMMOND
Date: 2024.02.29 08:37:56 -07'00'

Kate Hammond
Regional Director
Interior Regions 6, 7, & 8
National Park Service

JULIE ANN
MARKS

Digitally signed by JULIE ANN
MARKS
Date: 2024.02.29 18:54:08 -05'00'

Julie Marks
Executive Director (A)
Office of Environment & Energy
Federal Aviation Administration

RAYMOND
SAUVAJOT

Digitally signed by RAYMOND
SAUVAJOT
Date: 2024.02.29 11:03:44 -05'00'

Raymond M. Sauvajot
Associate Director
Natural Resource Stewardship
and Science Directorate
National Park Service

APPENDIX A

Enlarged Figure 1

Valles Caldera
National Preserve

Tsankawi Unit
Bandelier National Monument

Pueblo de
San Ildefonso

White Rock
White Rock County
Visitor Center

Bandelier
Visitor
Center

Bandelier
Wilderness

Dome Wilderness

Los Alamos
National
Laboratory

Bandelier
National
Monument

Los Alamos

East Rd

Trinity Rd

E Jemez Rd

State Road 4

Salvo Rd

Los Alamos

Jemez Mountain III

Visitor Center

Wilderness Area

Tribal Land

Bandelier National Monument Boundary

Valles Caldera National Preserve Boundary

ATMP Boundary

Los Alamos National Laboratory Restricted Airspace

No Drone Zone

Restricted Airspace, R-5101

N