

No. 19-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY
and HAWAII COALITION MALAMA PONO
Petitioners,

On Petition for Writ of Mandamus

**PROGRESS UPDATE OF FEDERAL AVIATION ADMINISTRATION
AND NATIONAL PARK SERVICE**

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The Court's order of November 20, 2020 approved a proposed plan submitted by the Federal Aviation Administration and National Park Service ("Plan") for bringing twenty-three eligible parks into compliance with the National Parks Air Tour Management Act of 2000. The Court's November 20 order directed the parties to file a progress update on November 30, 2020 and to file subsequent updates at 90-day intervals thereafter. Pursuant to that directive, the federal agencies submit the following:

The Plan details the agencies' intended approach to completing air tour management plans for all twenty-three eligible parks within two years, and it describes on a quarterly basis the actions that the agencies anticipate undertaking in furtherance of that approach. The actions included in the Plan for Year 1, Quarter 1 (September 1, 2020 to November 30, 2020) are as follows:

- Begin drafting standard sections and language for all twenty-three ATMPs and continue to assemble necessary supporting documentation (e.g., maps, exhibits).
- Consider appropriate level of park-specific NEPA review required.
- Finalize a purpose and need statement that can be applied to all parks and customized, if needed.
- Continue coordination of government-to-government Tribal consultation and other interagency consultations, as necessary.
- Confirm acceptable measures for the mitigation or prevention of adverse impacts to designated wilderness areas.
- Confirm procedures to address quiet technology incentives.

- Confirm online platform(s) through which to conduct virtual public meetings.

The table below provides a concise summary of the work activities accomplished in the referenced quarter relative to the actions listed above and any additional work done on the project not specifically associated with this quarter in the Plan. At this time the agencies do not anticipate delays at any individual park.

Actions in Proposed Plan for First Year, Quarter 1	Work Activities Completed in First Year, Quarter 1
Begin drafting standard sections and language for all twenty-three ATMPs and continue to assemble necessary supporting documentation (e.g., maps, exhibits).	<ul style="list-style-type: none"> • The agencies have developed a draft ATMP template using standardized language that can be used for all 23 ATMPs, which is in the process of internal agency vetting. • The NPS initiated outreach to all 23 parks to fill information and data gaps, and for parks to vet existing information needed to justify the terms and conditions of their ATMP. • The FAA initiated outreach to commercial air tour operators to obtain detailed information about their tour routes over each respective park for which an ATMP must be developed.
Consider appropriate level of park-specific NEPA review required.	<ul style="list-style-type: none"> • The agencies compared their policies and approaches to the NEPA process to determine appropriate NEPA pathway considerations.
Finalize a purpose and need statement that can be applied to all parks and customized, if needed.	<ul style="list-style-type: none"> • The agencies developed a Purpose and Need statement template, which they will use as the basis for purpose and need statements

Actions in Proposed Plan for First Year, Quarter 1	Work Activities Completed in First Year, Quarter 1
<p>Continue coordination of government-to-government Tribal consultation and other interagency consultations, as necessary.</p>	<ul style="list-style-type: none"> • The agencies continue to coordinate on Tribal consultation requirements through park outreach to confirm which Tribes need to be consulted, through the development of letter templates to be signed jointly by the agencies, and through outreach to agency Tribal liaisons and National Historic Preservation Act (NHPA) Section 106 experts on a strategy to engage Tribes during the COVID-19 pandemic. • The NPS has contacted counterparts at the U.S. Fish and Wildlife Service to begin coordination of consultation procedures required under Section 7 of the Endangered Species Act. • The agencies have consulted with their respective Federal Preservation Officers to discuss efficiencies and strategy for consultation requirements for the 23 parks under Section 106 of the NHPA.
<p>Confirm acceptable measures for the mitigation or prevention of adverse impacts to designated wilderness areas.</p>	<ul style="list-style-type: none"> • The agencies identified a suite of measures available for the mitigation or prevention of impacts to wilderness. These measures can be applied to all parks with wilderness areas.

Actions in Proposed Plan for First Year, Quarter 1	Work Activities Completed in First Year, Quarter 1
Confirm procedures to address quiet technology incentives.	<ul style="list-style-type: none">• The agencies developed procedures to address quiet technology incentives that could be broadly applied to all 23 parks in a similar manner.
Confirm online platform(s) through which to conduct virtual public meetings.	<ul style="list-style-type: none">• The agencies, through coordination with their respective Public Affairs offices, looked for successful use of virtual public meetings in the recent past.• Based on this internal coordination, the agencies have confirmed they will use existing FAA platforms to conduct the virtual public meetings.
Additional work done on the project not specifically associated with this quarter in the Plan.	<ul style="list-style-type: none">• The agencies developed a sequence of tasks, responsible parties, and approximate time per task, which they will continue to track and update as progress on ATMP development moves forward.

Petitioners concur in this filing based on the information supplied by the federal agencies.

Respectfully submitted,

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November 30, 2020
90-13-1-15766

CERTIFICATE OF COMPLIANCE

1. This document is not a brief or motion and therefore is not subject to the type-volume limits of Federal Rules of Appellate Procedure 27(d)(1)(E)(2) and 32(a)(7)(B). Excluding the cover and signature block, this document contains 807 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Ellen J. Durkee

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Counsel for Federal Aviation
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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2020, I electronically filed the foregoing progress update with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Appellate Electronic Filing system. The participants in the case are registered CM/EF users and service will be accomplished by the appellate CM/ECF system

/s/ Ellen J. Durkee

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