

**FEDERAL AVIATION ADMINISTRATION AND  
U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE**

**FINDINGS OF NO SIGNIFICANT IMPACT/RECORD OF DECISION**

**AIR TOUR MANAGEMENT PLAN FOR MOUNT RUSHMORE NATIONAL MEMORIAL, SOUTH  
DAKOTA**

**I. Introduction**

This document serves as the Federal Aviation Administration’s (FAA) and the National Park Service’s (NPS) (collectively, the agencies) Findings of No Significant Impact/Record of Decision (FONSI/ROD) and provides final agency determinations and approvals for the federal actions necessary to implement the Air Tour Management Plan (ATMP) for Mount Rushmore National Memorial (Park) in the State of South Dakota, in accordance with the National Parks Air Tour Management Act (the Act), as amended, its implementing regulations (14 CFR Part 136), and all other applicable laws and policies. This FONSI/ROD is based on the information and analysis contained in the attached final Environmental Assessment (EA), dated November 15, 2023. This final EA has been prepared in accordance with the National Environmental Policy Act (NEPA), its guidelines and requirements set forth by the Council on Environmental Quality (CEQ), the FAA’s NEPA implementing regulations, and the Department of Interior’s implementing regulations.

This FONSI/ROD includes the applicable background information, which is provided in more detail in the final EA and ATMP; identifies the proposed action; identifies the purpose and need for the proposed action; summarizes the alternatives considered in the final EA and their environmental consequences as found in the final EA; identifies the Preferred Alternative; provides the agencies’ separate findings of no significant impact; explains the agencies’ compliance with laws that apply to the action, in addition to NEPA and the Act; identifies any changes from the draft ATMP to the final ATMP; explains the basis and justification for the decision made by the agencies; and provides the agencies’ joint decision and the FAA’s final order.

**II. Description of the Park**

The Park includes 1,278 acres in the central Black Hills in southwestern South Dakota, near Keystone. The Park features the monumental carved faces of United States Presidents George Washington, Thomas Jefferson, Abraham Lincoln, and Theodore Roosevelt, reminding visitors of the political, social, and cultural histories of the past and the relevancy of America’s spirit and ideals today. The majority of Park visitation is for purposes of viewing the mountain sculpture and associated visitor facilities.

The Park includes large stands of old growth ponderosa pine forest, granite peaks, historic buildings and archeological sites, streams and wetlands, and flora and fauna representative of a variety of habitats. The Park is home to the federally listed endangered northern long eared bat and the state listed threatened peregrine falcon, which is highly susceptible to noise disturbance. The Black Elk Wilderness, congressionally designated Wilderness that is managed by the U.S. Forest Service (USFS), abuts the Park to the south and west and is partially within the ATMP planning area.

The land reflects human habitation and development for thousands of years, from stone tools of tribal populations to the first homesteads in the Black Hills. There are also several historic sites related to the mining boom of the area and sites related to the Park's early development and tourism. The entirety of the Park is listed in the National Register of Historic Places at the nationally significant level, and the mountain carving is a primary contributing feature of the Park.

The Park and the Black Hills are also sacred spaces for living cultures whose legacies still thrive today. The mountain upon where the sculpture is located is of cultural significance to many of the Northern Plains Tribal Nations, and the Lakota refer to it as the Six Grandfathers. The Fort Peck Assiniboiné and Sioux Tribes, Upper Sioux Community, Santee Sioux Nation, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, Northern Arapaho, and others advised that the Black Hills, including the Park, are part of a continuous landscape that is sacred to them and that they view as a single landscape and traditional cultural property. The entire Black Hills are considered a cultural landscape for these Tribes.

The mission of Mount Rushmore National Memorial, as stated in its Foundation Document, is to commemorate the founding, expansion, preservation, and unification of the United States by preserving, protecting, and interpreting the mountain sculpture in its historic, cultural, and natural setting while providing for the education, enjoyment, and inspiration of the public.

### **III. Background**

The final EA and final ATMP include relevant background information in more detail than is summarized below. Both documents, together with their appendices, are incorporated by reference. 40 CFR 1501.6(b).

#### **A. The National Parks Air Tour Management Act**

The Act requires that all commercial air tour operators conducting or intending to conduct a commercial air tour operation over a unit of the National Park System apply to the FAA for authority to undertake such activity. 49 U.S.C. § 40128(a)(2)(A). The Act, as amended, further requires the FAA, in cooperation with the NPS, to establish an ATMP or voluntary agreement for each park that did not have such a plan or agreement in place at the time the applications were made, unless a park has been otherwise exempted from this requirement. *Id.* § 40128(b)(1)(A). The objective of an ATMP is to “develop acceptable and effective measures to

mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.” *Id.* 40128(b)(1)(B)). An ATMP “may prohibit” commercial air tour operations over a park in whole or in part, or “may establish” conditions for the conduct of commercial air tour operations over a park. *Id.* § 40128(b)(3)(A)-(B). The need for implementation of any measures taken in an ATMP must be justified and documented in the ATMP and with a record of decision. *Id.* § 40128(b)(3)(F).

As a threshold matter, the agencies needed to define what constitutes a commercial air tour so that they could implement the requirements of the Act. As relevant here, FAA regulations define a commercial air tour as:

[A]ny flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½-mile outside the boundary of any national park, or over tribal lands during which the aircraft flies:

- (i) Below 5,000 feet above ground level (except for the purpose of takeoff or landing, or as necessary for the safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); [or]
- (ii) Less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary).

14 CFR § 136.33(d). This area is referred to as the ATMP planning area in the draft and final EAs, and as the ATMP boundary in the draft and final ATMPs. This FONSI/ROD uses the terms ATMP boundary and ATMP planning area interchangeably.

Because Congress understood that developing ATMPs that meet the requirements of the Act could take some time, the Act provided that prior to the establishment of an ATMP, the FAA “shall grant interim operating authority” to existing air tour operators that apply for prospective operating authority. 49 U.S.C. 40128(c)(1); H.R. Rep. No. 106-167, at 96. The interim operating authority (IOA) issued was required to be the greater of the number of commercial air tour flights over the park during the 12-month period prior to the enactment of the Act or the average number of commercial air tour flights within the 36-month period prior to the enactment of the Act. 49 U.S.C. 40128(c)(2).

The Act was substantively amended in 2012. In addition to authorizing the agencies to enter into voluntary agreements with air tour operators in lieu of developing ATMPs, 49 U.S.C. 40128(b)(7)(A), the 2012 amendments added reporting requirements for operators conducting commercial air tour operations over National Park System units. *Id.* § 40128(d). The amendments also exempted parks with 50 or fewer commercial air tours from the requirement to prepare an ATMP or voluntary agreement, unless this exemption was withdrawn by the NPS. *Id.* 40128(a)(5).

## **B. Past Efforts to Complete an ATMP for the Park**

The previous planning process for an ATMP for the Park was initiated in 2003. In 2004, the FAA published a notice of the agencies' intent to prepare an EA for that ATMP.<sup>1</sup> Work on this planning process was ultimately paused due to the passage of the 2012 amendments to the Act which, as discussed above, included new operator reporting requirements and provided an exemption from the requirement to prepare an ATMP or voluntary agreement for parks with 50 or fewer commercial air tours per year. The planning process was formally terminated via a September 3, 2020 Federal Register notice.<sup>2</sup>

## **C. The Compliance Plan**

In February 2019, a petition for a writ of mandamus was filed in the U.S. Court of Appeals for the District of Columbia in which the petitioners requested an order directing the FAA and the NPS to establish ATMPs or voluntary agreements under the Act for seven specified National Park System units within two years of such order. *In Re: Public Employees for Environmental Responsibility*, 957 F.3d 267, 271 (D.C. Cir. 2020). On May 1, 2020, the Court granted the petition, holding that agencies had a mandatory duty to establish ATMPs or voluntary agreements for eligible parks under the Act and that mandamus relief was warranted based on delay in performance of this duty and consideration of the relevant factors, *Id.* at 273; Per Curiam Order, May 1, 2020 (Mandamus Order). The Mandamus Order directed the agencies to submit, by August 31, 2020, a proposed plan for bringing all 23 eligible parks within the National Park System into compliance with the Act by completing an ATMP or voluntary agreement for those parks, within two years – or to offer “specific, concrete reasons” why it will take longer than two years. *Id.* The Court retained jurisdiction to approve the agencies' plan and monitor their progress and directed the agencies to submit quarterly progress updates.

Consistent with the Court's order, agencies submitted a proposed plan and schedule (Compliance Plan). In general, the Compliance Plan contemplated initiating and moving forward with a process to implement ATMPs at all eligible parks concurrently as part of a coordinated, omnibus effort. Mount Rushmore National Memorial was identified as requiring an ATMP or voluntary agreement and was included in the Compliance Plan which was subsequently approved by the D.C. Circuit on November 30, 2020.

On June 21, 2022, the Court ordered the agencies to file a joint supplemental report and propose firm deadlines for bringing each of the parks included in the Compliance Plan into

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<sup>1</sup> Environmental Assessment for the Air Tour Management Plan Program at Mount Rushmore National Memorial, 69 FR 20660 (April 16, 2004).

<sup>2</sup> Termination of Previously Initiated Processes for the Development of Air Tour Management Plans and Environmental Assessments/Environmental Impact Statements for Various National Park Units and Notice of Intent to Complete Air Tour Management Plans at 23 National Park Units, 85 FR 55060 (Sept. 3, 2020).

compliance with the Act. On July 21, 2022, the agencies filed their report and provided a deadline of December 31, 2023 to complete an ATMP for the Park.

#### **D. The Planning Process**

As no ATMP had previously been implemented for any park at the time the agencies submitted their Compliance Plan to the Court, as an initial step in this process the agencies worked collaboratively to determine the contents of and process for completing an ATMP that would be consistent with the Act. Together, they developed an ATMP template which could then be modified and tailored to meet the specific needs and address the unique circumstances of each park included in the planning process. Further, because air tours have been occurring over parks for decades, the agencies had institutional experience and data to draw upon in developing the ATMP template and in determining how to regulate commercial air tours over parks.

#### **E. Existing Conditions of Air Tours Within the ATMP Planning Area**

Early in the planning process, the agencies worked to identify the existing condition of commercial air tours over the Park and outside of the Park but within ½-mile of the boundary (referred to as the ATMP planning area in the EA and as the ATMP boundary in the ATMP itself); i.e., the average number of commercial air tours conducted per year and the general operating parameters of those tours (see Table 1 and Figure 1 below). As stated above, the Act required the FAA to grant IOA to existing operators authorizing them to conduct commercial air tours within the ATMP planning area, as a temporary measure until an ATMP could be established. IOA includes only an annual cap on the number of commercial air tours that may be conducted by an operator but does not represent the actual number of air tours conducted and does not designate the route(s), time-of-day, altitude(s), or other conditions for such tours.

The agencies decided to use a three-year average of operator-reported air tours to identify the existing condition, rather than reports from a single year. In order to identify the three-year average, the agencies decided to use reported air tours from 2017, 2018, and 2019. These years were selected because they reflected relatively current air tour conditions, represented reliable operator reporting of air tours, accounted for variations across multiple years, were available during the planning effort, and excluded years that were atypical due to the COVID-19 pandemic. The requirement for commercial air tour operators to report annual commercial air tour operations to the agencies was implemented in 2013. Reporting data from 2013 and 2014 are considered incomplete as reporting protocols were not fully in place at that time and likely do not accurately reflect actual number of air tours conducted. Flight numbers from a single year were not chosen as the existing baseline because the three-year average accounts for both variation across years and takes into account the most recent pre-pandemic years. Reporting data from 2020 was not used because the COVID-19 pandemic resulted in abnormalities in travel patterns across the U.S., which does not represent the

conditions in a typical year. The agencies also decided against using 2021 or 2022 data due to continued abnormalities associated with the COVID-19 pandemic and the unavailability of reporting data for 2021 or 2022 during most of the planning effort. The agencies also decided against using IOA as the baseline because IOA was based on numbers reported by operators more than 20 years ago and does not represent the most current or reliable operational data.

Table 1 below depicts available reporting information regarding the number of commercial air tours conducted on an annual basis over the Park. Two commercial air tour operators currently hold IOA to fly up to a combined total of 5,608 commercial air tours per year over the Park (see Table 1). Based upon the three-year average of reporting data from 2017 to 2019, the operators conduct an average of 3,914 commercial air tours per year which is approximately 70% of IOA. The final EA used the three-year average as the existing condition of commercial air tours within the ATMP planning area.

#### **F. Air Tour Operations**

In order to identify the general operating parameters of the air tours, the FAA reached out to the operators with IOA for the Park to identify current air tour routes and other operating conditions. The general route information provided by these commercial air tour operators for their air tour operations within the ATMP planning area is shown in Figure 1. Commercial air tours conducted using helicopters on the Keystone 1, Keystone 2, Keystone 3/4/5, and Custer 4/5/6 routes are flown at the operator-reported altitude of 900 ft. above ground level (AGL), except during takeoff and landing from the privately owned and operated heliport on the boundary of the ATMP planning area. An altitude of 900 ft. AGL results in the mean sea level (MSL) altitude callouts in Figure 1 that range from 5,500 to 7,000 ft. MSL.<sup>3</sup> Commercial air tours conducted by fixed-wing aircraft on the Eagle Aviation MRU route are conducted at the operator-reported altitude of 6,500 ft. MSL, which result in altitudes that range from 1,300 to 2,100 ft. AGL as shown on the altitude callouts in Figure 1.

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<sup>3</sup> Altitude expressed in units AGL is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in MSL refers to the altitude of an aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Table 1. Commercial Air Tour Operators, Aircraft Type, Reported Tours, and IOA

Operator	Aircraft Type	2013	2014	2015	2016	2017	2018	2019	2020	2017-2019 Avg.	IOA
Dakota Rotors LLC (Black Hills Aerial Adventures, Inc., and Rushmore Helicopters)	BHT-206B, BHT-47-G3B1, R-44-II, R-66-66 (helicopter)	0	3,639	4,348	4,002	3,730	3,782	4,202	4,860	3,905	5,563
Eagle Aviation, Inc.	Cessna 172, Cessna 206 (fixed-wing)	9	9	15	9	19	6	2	0	9	45
<b>TOTAL</b>	<b>--</b>	<b>9</b>	<b>3,648</b>	<b>4,363</b>	<b>4,011</b>	<b>3,749</b>	<b>3,788</b>	<b>4,204</b>	<b>4,860</b>	<b>3,914</b>	<b>5,608</b>

Source: 2013-2020 Annual Reports, "Reporting Information for Commercial Air Tour Operations over Units of the National Park System."  
See: <https://www.nps.gov/subjects/sound/airtours.htm>.

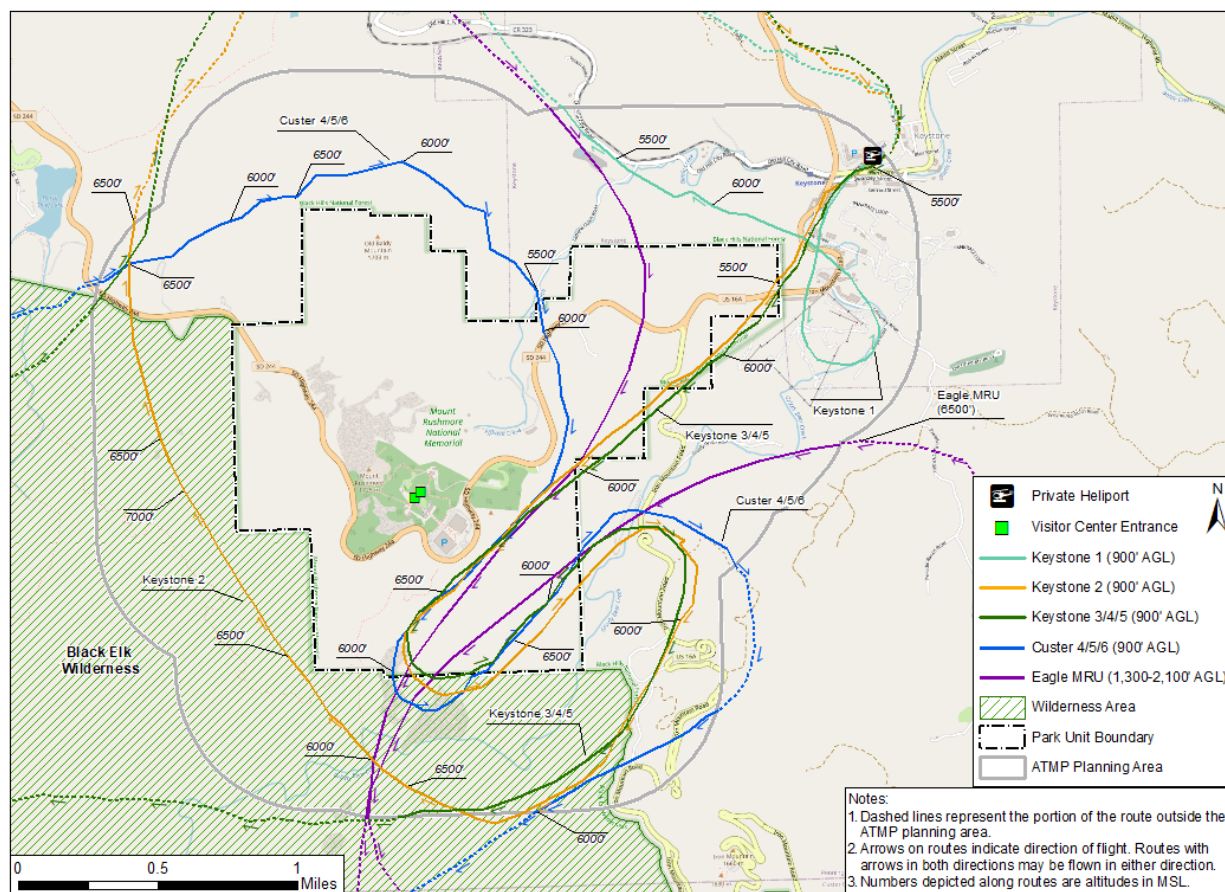


Figure 1. Current routes as reported by operators.

#### IV. Proposed Action

The proposed action is to implement an ATMP for the Park. The Act defines an ATMP as a plan used to develop acceptable and effective measures to mitigate or prevent the significant

adverse impacts, if any, of commercial air tour operations upon natural and cultural resources, visitor experiences, and tribal lands. An ATMP describes conditions for the conduct of air tour operations over a park, including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum numbers of flights, or other provisions. The Act and implementing regulations found in 14 CFR Part 136 state that the ATMP for a park:

- May prohibit commercial air tour operations over a national park in whole or in part;
- May establish conditions for the conduct of commercial air tour operations, including, but not limited to, commercial air tour routes, maximum number of flights per unit of time, maximum and minimum altitudes, time of day restrictions, restrictions for particular events, and mitigation of noise, visual, or other impacts;
- Shall apply to all commercial air tour operations over a national park or within ½-mile outside the park's boundary;
- Shall include incentives (such as preferred commercial air tour routes and altitudes, relief from caps and curfews) for the adoption of quiet aircraft technology by commercial air tour operators conducting commercial air tour operations at the park;
- Shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the number of commercial air tour operations for any time period;
- Shall justify and document the need for measures taken pursuant to the items above and include such justifications in the record of decision.

## **V. Purpose and Need**

Purpose: The purpose of the ATMP is to comply with the Act and other applicable laws, consistent with the *Plan and Schedule for Completion of Air Tour Management Plans at Twenty-Three Parks* approved by the U.S. Court of Appeals for the District of Columbia Circuit on November 20, 2020, in Case No. 19-1044, *In Re Public Employees for Environmental Responsibility and Hawai'i Coalition Malama Pono* (Compliance Plan).

Need: The Act requires an ATMP or voluntary agreement to be developed for the Park. Air tours have the potential to impact natural and cultural resources, tribal sacred sites and ceremonial areas, Wilderness character, and visitor experience. The Act requires that the FAA and the NPS develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations on natural and cultural resources, tribal sacred sites and ceremonial areas, Wilderness character, and visitor experience.

## **VI. Alternatives**

Prior to public scoping, the preliminary ATMP alternatives were developed by an NPS interdisciplinary team comprised of subject matter experts from the NPS's Natural Sounds and



Night Skies Division, Environmental Quality Division, Midwest Regional Office, and the Park. In developing the alternatives, the team considered the noise impacts of existing air tour routes and operations, the Park's cultural and natural resources, the Park's existing and natural acoustic environment, visitor experience, and visual resources, as well as potential protective measures that could be included in an ATMP. The interdisciplinary team considered other existing planning documents for the Park, including its Foundation Document. The alternatives identified by the interdisciplinary team and justifications for restrictions on commercial air tours were reviewed by the FAA who noted any aviation safety concerns.

The FAA, in coordination with the NPS, initiated consultation pursuant to Section 106 of the National Historic Preservation Act, including consultation with Native American Tribes. The input from consultation and preliminary environmental analysis was used to further refine or dismiss potential alternatives prior to the public scoping period. The agencies considered but dismissed alternatives that would allow air tour operations above existing reported numbers as well as current operating parameters at existing numbers. These alternatives were dismissed from further consideration because the NPS determined they would result in unacceptable impacts to the Park's natural and cultural resources and visitor enjoyment under the NPS 2006 Management Policies 1.4.7.1, as well as Wilderness character outside the Park but inside the ATMP planning area, and did not meet the purpose and need for the ATMP.

On September 6, 2022, the FAA and the NPS initiated a 30-day NEPA public scoping process. Four alternatives were presented during scoping as defined in the Public Scoping Newsletter (refer to Appendix J of the EA). Scoping was conducted by an interdisciplinary team of NPS and FAA planners, scientists, cultural resource specialists, and managers. The agencies notified the public of the scoping period through a Park news release, notices on the Park's website and social media, and emails. Comments were accepted from September 6 through October 6, 2022. The agencies posted a newsletter describing the potential alternatives to the NPS Planning, Environment, and Public Comment (PEPC) website at the start of the scoping period and attached the newsletter to the notification emails. The newsletter on potential alternatives provided a project introduction, the purpose and need for the project, resources for consideration in the environmental assessment, elements common to all alternatives, and an overview of four potential alternatives, including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum numbers of flights, or other provisions. The potential draft alternatives also included a justification for the provisions and conditions designed to protect Park resources and visitor experience.

The agencies received 263 correspondences, of which three were duplicates and 108 were form letters. The agencies coded 311 comments by topic. Some comments received more than one code. ATMP elements: routes and altitudes (153), ATMP elements: annual number of air tours (130), and adverse impacts: equity (120) were the most common comment topics. Refer to Appendix J of the final EA, *Public Scoping Materials*, for more information.

## **A. Development of the Draft ATMP**

In the development of the draft ATMP, the agencies considered modifications to the number of flights per year, routes, altitudes, restrictions for particular events, and other operating parameters that would meet the purpose and need for the ATMP. Because land managed by the USFS is inside the ATMP planning area, the USFS was invited to and agreed to participate in the planning process as a cooperating agency.

In extensive consultation with Northern Plains Tribes, the Tribes have repeatedly stated that they are against all air tours in the areas they hold sacred, including over the Park. Noise from the existing level of air tours negatively impacts sacred sites within the Park associated with many Tribal Nations. Tribes consider the entire landscape of the Black Hills to be sacred and believe air tours are inappropriate and constitute an adverse effect to the cultural landscape, wildlife, and plants. Further, the Tribes stated that the plants, animals, the sky, and other natural resources are contributing features of the cultural resources throughout the Black Hills. During consultation the agencies discussed with the Tribes the idea of restricting flights on specific days or special events; however it was communicated that many Tribal uses were spontaneous, decided only a few days or a week in advance, or may be protected cultural information to specific Tribes. It was further communicated that with so many tribes and people holding this landscape sacred, organizing and communicating events would be extremely challenging. Finally, the Tribes informed the agencies that no fly days would not be sufficient mitigation as the lands themselves are held to be sacred throughout the Black Hills.

The agencies considered numerous alternatives in the draft EA for the draft ATMP, including allowing air tours within the ATMP planning area at reduced numbers compared to existing levels. However, the NPS identified Alternative 2 - No Air Tours in the Planning Area as the Preferred Alternative because it was the alternative that best fit the purpose and need of the ATMP and because the other selectable alternatives would still result in noise that would continue to interfere with the Park's management objectives and would continue to negatively impact the lands tribes hold sacred.

The draft ATMP released for public comment would prohibit commercial air tours within the ATMP planning area and reflected Alternative 2 in the draft EA. The draft ATMP developed by the NPS interdisciplinary team and justifications for restrictions on commercial air tours were reviewed by the FAA for aviation safety concerns. As noted in the plan, the pilot-in-command is always required to take action to ensure the safe operation of the aircraft.

## **B. Alternatives Considered in the EA**

The comments received during the scoping process informed the alternatives included in the draft EA. As a result of the comments received, the agencies refined the annual and daily number of flights, seasonal restrictions, and time-of-day restrictions in Alternative 4. There were no changes made to Alternatives 1, 2, or 3 following public scoping.

The final EA, in Section 2, includes these four alternatives that were carried forward for analysis as well as a detailed description of the alternatives considered but eliminated from further study:

- **Alternative 1 (No Action Alternative).** The No Action Alternative would allow a continuation of air tours under IOA without implementation of an ATMP or voluntary agreement. The No Action Alternative represents the yearly average number of commercial air tours within the ATMP planning area from 2017-2019 (3,914 commercial air tours per year) across the two current operators. The No Action Alternative provides a basis for comparison but is not a selectable alternative because it does not meet the purpose and need for the ATMP and is not in compliance with the Act. The impacts of IOA are not included in the baseline condition, though the EA acknowledges that operators may fly air tours up to their IOA, or may fly fewer tours. Section 2.4 of the final EA provides a more detailed description of Alternative 1.
- **Alternative 2 (Preferred Alternative).** Alternative 2 would prohibit air tours within the ATMP planning area. Except when necessary for takeoff or landing from the privately owned and operated heliport on the boundary of the ATMP planning area, 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 tours would not be allowed to enter the ATMP planning area. Alternative 2 would provide the greatest protection for the purpose, resources, and values of the Park. Section 2.5 of the final EA provides a more detailed description of Alternative 2, the Preferred Alternative.
- **Alternative 3.** Alternative 3 would restrict air tour operations within the ATMP planning area. Alternative 3 would permit 3,657 flights from May 1 through September 30 each year, with a daily limit of 25 flights per day on days when flights would be allowed. Air tours would be permitted on five different routes based on existing air tour routes with set minimum altitudes. Under Alternative 3, the NPS would be able to designate no fly periods or no fly days in consultation with Tribal Nations or for special events or Park management. The NPS developed Alternative 3 to provide opportunities for air tours to occur within the ATMP planning area, with mitigations to avoid or minimize impacts to natural and cultural resources and visitor experience. Section 2.6 of the final EA provides a more detailed description of Alternative 3.
- **Alternative 4.** Alternative 4 would restrict and reduce air tour operations within the ATMP planning area. Alternative 4 would permit up to 751 commercial air tours during the period from June 16 through September 30 each year, with a limit of eight flights per day on days when flights are allowed. Air tours would be permitted on five

different routes based on existing air tour routes with set minimum altitudes. As in Alternative 3, under Alternative 4, the NPS would be able to designate no fly periods or no fly days in consultation with Tribal Nations or for special events or Park management. The NPS developed Alternative 4 to provide opportunities for air tours to occur within the ATMP planning area, with mitigations to avoid or minimize impacts to natural and cultural resources and visitor experience. Section 2.7 of the final EA provides a more detailed description of Alternative 4.

Under all action alternatives, all IOA for the Park would terminate by operation of law 180 days after establishment (effective date) of the ATMP, after which time no operator could continue to rely on any Operations Specifications (OpSpecs) issued under IOA as authority to conduct commercial air tours within the ATMP planning area. Additionally, under all action alternatives, OpSpecs that incorporate the operating parameters set forth in the ATMP would be issued by the FAA within 180 days of the establishment of the ATMP.

## **VII. Agency Actions and Approvals**

The FAA and NPS actions, determinations, and approvals include the following:

- Approval of the Air Tour Management Plan (FAA and NPS)
- Issuance of implementing Operations Specifications (FAA)

## **VIII. Environmental Impact Categories Not Analyzed in Detail**

The following environmental impact categories were considered but not analyzed in detail in the EA because the topics do not exist in the analysis area, would not be affected by the ATMP, or the likely impacts are not reasonably expected. Refer to Section 1.5 of the EA for a discussion of the following impact categories.

- Biological Resources (Fish, Invertebrates, and Plants)
- Children's Environmental Health and Safety Risks
- Hazardous Materials, Solid Waste, and Pollution Prevention
- Farmlands
- Land Use
- Natural Resources and Energy Supply
- Visual Effects – Light Emissions
- Water Resources (Including Wetlands, Floodplains, Surface Waters, Groundwater, and Wild and Scenic Rivers)
- Coastal Resources

## **IX. Affected Environment**

Under the Act and its implementing regulations, an ATMP regulates commercial air tours over a national park or within ½-mile outside the park's boundary during which the aircraft flies below 5,000 ft. AGL (ATMP planning area). Air tours outside of the ATMP planning area are not subject to the Act and are therefore not regulated under the ATMP. The study area, referred to as the ATMP planning area, for each environmental impact category includes the Park and areas outside the Park within ½-mile of its boundary. Environmental impact categories that considered a study area different from the ATMP planning area are Cultural Resources, Wilderness, Environmental Justice and Socioeconomics, Visual Effects, and Department of Transportation (DOT) Act Section 4(f) Resources.

Detailed information regarding the affected environment with respect to each impact category analyzed in detail is presented in Chapter 3 of the final EA.

## **X. Environmental Consequences**

The final EA analyzed the following environmental impact categories in detail: Noise and Noise-Compatible Land Use; Air Quality and Climate Change; Biological Resources; Cultural Resources; Wilderness; Visitor Use and Experience and Other Recreational Opportunities; Environmental Justice and Socioeconomics; Visual Effects; and DOT Act Section 4(f) Resources. The FAA, in cooperation with the NPS, considered the impact categories specified in FAA Order 1050.1F, Environmental Impacts: Policies and Procedures (FAA, 2015) and NPS Director's Order #12, Conservation Planning, Environmental Impact Analysis, and Decision-making, and other categories identified during the agency and public scoping process. See Section 1.5 of the EA, Environmental Impact Categories Not Analyzed in Detail. Section 3 of the final EA and the agencies' separate Findings of No Significant Impact below provide more detailed descriptions and analysis of the environmental impact categories that could potentially be affected by the proposed action.

### **A. The NPS's Finding of No Significant Impact**

A description of all potential environmental effects associated with the selected action/final ATMP and other alternatives are included in the final EA, incorporated by reference herein. *40 CFR 1501.6(b)*.

Consistent with CEQ regulations § 1501.3(b), the NPS evaluates the significance of the selected action/final ATMP, which was Alternative 2/the Preferred Alternative, by evaluating the potentially affected environment and the degree of effect of the action including effects on public health and safety and effects that would violate federal, state, tribal, or local laws protecting the environment. The affected environment is described in Chapter 3 of the final EA and summarized above in Section II, Description of the Park. The affected environment also includes lands outside the Park but within ½-mile of its boundary. This significance determination considers the effects of the ATMP. Per NPS policy, the NPS only completes a

significance determination for the selected action and does not determine the significance of unselected alternatives. Here, the No Action Alternative, which is not selectable, would result in impairment to Park resources and values which the NPS considers to be significant impacts under NEPA because the NPS Organic Act prohibits the NPS from taking actions that would result in impairment of Park resources and values. 54 U.S.C. § 100101(a). The NPS's determination does not include a significance discussion for impacts under Section 4(f) since only FAA must comply with Section 4(f).

i. Degree of Effect

Alternative 2, the selected action/ATMP, will result in long-term beneficial effects to Park resources and the visitor experience at the Park. As disclosed in final EA, the selected action will reduce the intensity of noise in the Park and move the Park closer to natural ambient conditions.

Under current conditions, commercial air tours may be audible within the Park up to 480 minutes per day (non-contiguous). More than half of the Park experiences noise up to 345 minutes per day (non-contiguous). The agencies modeled the extent and duration of noise above 35 A-weighted decibels (dBA), the level at which wildlife may experience disturbance, and 52 dBA, the level at which speech is interrupted, to determine the severity of the effects from commercial air tours. The modeling demonstrated that noise above 35 dBA would be expected up to 330 minutes a day and noise above 52 dBA is expected up to 104.9 minutes per day at the loudest location point modeled. The acoustic impacts of the ATMP cannot be modeled because, although some speculation about air tour routes can be made, it is unknown where air tours would fly when outside the ATMP boundary or over it at or above 5,000 ft. AGL. However, because under the ATMP air tours are not permitted in the ATMP boundary, the intensity of noise within the Park would be greatly reduced. Additionally, the ATMP would reduce noise in the most noise-sensitive areas of the Park. Since noise impacts from the ATMP are beneficial compared to the existing condition and expected to be less intense, there is no potential for significant adverse noise effects.

Many of the impacts to other Park resources from air tours are directly a result of noise. The NPS considered the effects of air tour noise on birds and mammal species, and species of concern including the bald eagle and peregrine falcon and the federally listed northern long-eared bat and tricolored bat. As disclosed in the final EA, the NPS considers, based on existing literature, noise levels above 35 dBA to have the potential to result in effects to wildlife. As noted above, it is not possible to model noise levels under the ATMP. However, the ATMP will result in less intense noise compared to current conditions, which will directly benefit wildlife in the ATMP boundary. The NPS also determined that there would be no effect on any federally listed species from implementation of the Preferred Alternative. Thus, there will therefore be no significant adverse effects to biological resources within the Park since all effects are beneficial and the ATMP will reduce the intensity of noise within the ATMP boundary.

The NPS also considered the effects to cultural resources within the Park, including ethnographic resources, sacred sites, traditional cultural properties, archeological resources, cultural landscapes and prehistoric and historic structures. Tribes and individual tribal members have consistently noted that persistent air tours over the Park unreasonably interfere with their connections to the sacred landscape of the Black Hills. Tribes and individual tribal members have emphasized that air tours over the Park have negative impacts on the ecosystem (including plants, animals, and the sky) as a cultural resource, as well as the continuous landscape, both of which are considered a sacred landscape and traditional cultural property. Air tours within the Area of Potential Effects (APE) may also impact the Park's historical, architectural, and archeological resources, including cultural landscapes, and prehistoric and historic structures when air tour noise and visual effects detract from the feeling and setting of those resources. Under the ATMP, the potential for impacts to cultural resources and the Tribes would be greatly reduced since, as described above, the intensity of noise from air tours will be greatly reduced. Visual effects are also likely to be reduced since air tours flying outside the ATMP boundary will be less visible from within the Park. The FAA determined and NPS concurred that the ATMP would not have an adverse effect on historic properties under Section 106. Throughout formal consultation with official Tribal representatives, Tribes strongly supported no air tours within the ATMP boundary. Because these impacts would be reduced there is no potential for significant adverse effects to cultural resources from the ATMP.

Some Park visitors may hear noise from commercial air tours, which may degrade the visitor experience by disrupting verbal communications and masking the sounds of nature. Noise from commercial air tours may disrupt visitors during interpretive and educational programs or while hiking or participating in other activities. Visitors respond differently to noise from commercial air tour overflights – noise may be more acceptable to some visitors than others. As described above, approximately 23% of the Park currently experiences audible air tour noise for between 360 and 480 minutes per day (non-contiguous), and 100% of the area within the Park experiences audible air tour noise for at least 210 minutes a day. Under the ATMP, the intensity of noise within the Park will be reduced, which will result in fewer interruptions during Park programs and make it less likely that visitors experience noise while visiting the Park. Additionally, because air tours will not be flown within the ATMP boundary, Park visitors will be less likely to see air tours during their visit. This will improve the scenic views from the Park, including of the Memorial itself. Since the impacts to visitor experience from the ATMP are beneficial compared to the existing condition, there are no potentially significant adverse effects to visitor experience or Park viewsheds.

The ATMP would result in adverse but not significant impacts on air tour patrons since commercial air tours would no longer be authorized within the ATMP boundary. Commercial air tour patrons (operators estimate approximately 15,000) are a very small fragment of those who see the sculpture each year. The number of Park visitors on an annual basis is estimated to be 2,440,449. Also, the Park and sculpture would be visible from an air tour outside the

ATMP boundary, just at a further distance. Additionally, air tours are only one of many ways for a person to experience the Park and many air tour patrons also visit the Park by ground as well.

As described in the EA, in 2021 the air tour industry represented less than 1% of employment in Pennington County. Air tour operators in this area provide air tours over a number of other sites outside the ATMP boundary. The ATMP may result in lost revenue from air tours within the ATMP boundary. However, the ATMP would not prohibit operators from conducting air tours just outside of the ATMP boundary while still viewing the sculpture, conducting air tours elsewhere within the region (already a common practice), and making up this revenue in other ways such as using their aircraft for other business ventures. Also, the ATMP could result in some economic benefit to businesses within the study area considered in the EA that benefit from quieter noise levels and/or the absence of human-caused sounds, which may include Park visitation. Thus, it's expected that there would only be minor impacts on regional socioeconomics, including the community tax base, which may fluctuate in response to changes in the air tour industry. Therefore, there would be no significant socioeconomic impacts as a result of the ATMP.

Some environmental justice populations are present within the study area and currently experience the noise, air quality, and visual effects associated with air tours. The ATMP would result in a reduction in noise, air quality, and visual impacts compared to those currently occurring within the ATMP boundary, and therefore, would result in beneficial impacts to environmental justice populations within the study area. There would be no disproportionately high and adverse noise, air quality, or visual impacts to environmental justice populations and therefore no significant impacts.

Currently, noise from air tours adversely impacts the portion of the Black Elk Wilderness, managed by the USFS, within the ATMP boundary but outside the Park boundary. Currently, several air tour routes cross the Black Elk Wilderness within the ATMP planning area. The final EA discloses that on a peak month, average day<sup>4</sup>, the maximum time that air tours could be audible within the Wilderness that is within the ATMP boundary is up to 480 minutes a day (non-contiguous). Both the noise from these tours and the presence of air tours in the viewsheds within Wilderness detract from the opportunity for solitude within Wilderness. Noise from air tours also detracts from the natural quality of Wilderness character. Compared to the current conditions, the ATMP would directly enhance these qualities of Wilderness character by reducing the intensity of noise over the Black Elk Wilderness within the ATMP boundary. Thus, the ATMP will improve both the solitude and the natural qualities of Wilderness character within the ATMP boundary. Because the opportunity to experience

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<sup>4</sup> The analysis for the existing condition is based on a peak month, average day (PMAD) of commercial air tour activity. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to ensure it is a reasonable representation of the commercial air tour activity over the Park.



solitude will improve and the natural quality of Wilderness will be enhanced by the prohibition of air tours within the ATMP boundary, there is no potential significant impacts to Wilderness character from the ATMP.

The air quality in the ATMP boundary may improve under the ATMP. As described in the final EA, current aircraft emit pollutants that contribute to regional emissions in the area but do not cause pollutant concentrations to exceed one or more of the National Ambient Air Quality Standard (NAAQS) for any of the time periods analyzed. Under the ATMP, there would be only beneficial effects to air quality since air tour emissions within the ATMP boundary would be eliminated. However, if the operator chooses to fly outside the ATMP boundary those emissions may still occur.

Finally, under the ATMP, air tour operators may shift routes or altitudes to outside the ATMP boundary, some of which could result in impacts to resources outside the ATMP boundary. It is difficult to predict with specificity if, where, and to what extent any air tours would be displaced to areas outside the ATMP boundary, including at altitudes at or above 5,000 ft. AGL. It is reasonably foreseeable that operators would continue to fly to points of interest outside of the ATMP boundary where they already fly and fly just outside of the ATMP boundary where views of the sculpture are still afforded. Operators may also offer new or increased tours to other points of interest in the region such as the Crazy Horse Monument, Iron Mountain Road, Horsethief Lake, Black Elk Peak, and Sylvan Lake, which are known points of interest for current air tour patrons. Specific routes, altitudes and numbers would be necessary to assess the noise and other potential indirect and cumulative impacts associated with eliminating air tours within the ATMP boundary. Consistent with the CEQ regulations, the NPS disclosed in the EA that specific air tour routes, altitudes, and numbers of tours are not available with enough specificity to assess noise and other potential indirect and cumulative impacts associated with the ATMP. However, it is unlikely that displaced air tours outside the ATMP boundary would generate noise at or above the yearly day-night average sound level (DNL, denoted by the symbol  $L_{dn}$ ) 65 decibels (dB), which is the threshold that the FAA applies for determining the significance of noise impacts. The NPS does not have jurisdiction over air tours outside the ATMP boundary. For additional discussion see the EA, page 57-59 and Appendix F to the EA, *Noise Technical Analysis*, Section 8.

a. Effects on Public Health and Safety

The NPS does not anticipate any impacts to public health or safety within the Park from the selected action.

b. Effects that Would Violate Federal, State, or Local Law Protecting the Environment

The ATMP would not result in any effects that would violate federal, state, or local laws that protect the environment. The NPS and FAA have documented compliance with Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act. See

Section XIII of this ROD and Appendices G and H to the final EA. The NPS's Non-Impairment Determination is included as Attachment B. The ATMP, including Section 5.0, Justification for Measures Taken, and Section XV, Basis and Justification for the Decision, demonstrate how the agencies' decision to establish and implement the ATMP complies with the Act.

## **B. The FAA's Finding of No Significant Impact**

In order for the FAA to make a finding of no significant impact, no impact category can have a significant impact. In determining significance, the FAA has identified thresholds that serve as specific indicators of significant impacts for some environmental impact categories. For those impact categories that do not have significance thresholds, the FAA has identified factors that are considered in evaluating the context and intensity of potential environmental impacts.

Of the impact categories discussed in detail in Section 3 of the final EA, the FAA has considered the significance threshold and/or significance factors for each applicable impact category. The following impact categories (Noise and Noise-Compatible Land Use, Air Quality and Climate Change, Biological Resources, and DOT Section 4(f) Resources) have thresholds that the FAA uses as specific indicators of significant impact and are described in a specific significance determination section below. Impact categories that do not have significance thresholds (Cultural Resources, Environmental Justice and Socioeconomics, and Visual Effects) have factors considered in evaluating the context and intensity of potential environmental impacts and are discussed below in the specific impact category and are also included in the final EA, Table 18, *Summary of Environmental Consequences of the ATMP Alternatives*.

In addition, the FAA's determination does not include a significance discussion for impacts under Wilderness or Visitor Use and Experience and Other Recreational Opportunities as these are not impact categories in FAA Order 1050.1F.

### **i. Noise and Noise-Compatible Land Use**

The impact analysis analyzed noise metrics consistent with both FAA and NPS noise guidance. The FAA's primary noise metric established in FAA Order 1050.1F is the yearly day-night average sound level (DNL, denoted by the symbol  $L_{dn}$ ) metric; the cumulative noise energy exposure from aircraft over 24 hours. The FAA impact analysis also considered NPS metrics. The NPS considers various metrics to analyze impacts to Park resources and values from noise, including equivalent continuous sound level ( $LA_{eq}$ ), time audible (the amount of time you can hear air tour aircraft noise), the amount of time that the noise from a commercial air tour operation would be above specific sound levels that relate to different Park management objectives (e.g., 35 and 52 dBA), and maximum sound level ( $L_{max}$ ).

#### **a. Alternative 1 (No Action Alternative)**

Under the No Action Alternative, the acoustic conditions described in the affected environment would be expected to continue (see Sec. 3.1.1 of the EA). For purposes of assessing noise impacts from commercial air tours on the acoustic environment under FAA

Order 1050.1F, the analysis indicates that the resultant DNL is expected to be below 60 dB. The 12-hour equivalent sound level would not exceed 60 dBA, with the exception of a very small area in the immediate vicinity of the heliport. The noise modeling indicates that 43% of the ATMP planning area would continue to experience 12-hour equivalent sound levels between 50 and 55 dBA, and the entire ATMP planning area would continue to experience 12-hour equivalent sound levels between 40 and 45 dBA. More than half (56%) of the ATMP planning area would continue to experience non-contiguous audible air tour noise for up to 345 minutes a day, and the entire ATMP planning area would continue to experience non-contiguous audible air tour noise for between 210 and 480 minutes a day. Noise above 35 dBA would occur for more than 315 minutes a day across 70% of the ATMP planning area, with the entire ATMP planning area experiencing noise above 35 dBA for 210 – 330 minutes a day. Across the entire ATMP planning area, noise above 52 dBA would occur for a maximum of 104.9 minutes a day at the points modeled, and the maximum sound level would be 73.7 dBA at the points modeled under the No Action Alternative. This alternative would not be expected to result in indirect impacts, although it would result in the greatest level of cumulative noise impacts across the four alternatives evaluated in the final EA.

b. Alternative 2 (Preferred Alternative)

Under Alternative 2, there would be 365 days per year without air tours within the ATMP planning area. There would be a reduction in noise in the most noise sensitive regions of the Park. While Alternative 2 would result in indirect impacts from air tours displaced outside the ATMP planning area, the agencies' conservative, screening-level noise analysis indicates that it would be highly unlikely that air tours that are displaced outside the ATMP planning area under these alternatives would generate noise at or above DNL 65 dB.

c. Alternative 3

Compared to existing conditions, Alternative 3 would provide 212 days per year during which air tours would not be conducted within the ATMP planning area.

The maximum 12-hour equivalent sound level would not exceed 60 dBA, with the exception of a very small area in the immediate vicinity of the heliport on the boundary of the ATMP planning area. Compared to existing conditions, Alternative 3 would represent a 34% reduction in number of modeled daily operations, equivalent to a decrease of approximately 2 dBA in the 12-hour equivalent sound level. With the exception of a small area (less than 1% of the ATMP planning area) within the immediate vicinity of the privately owned and operated heliport, Alternative 3 would eliminate areas with 12-hour average noise levels over 55 dBA.

The modeling results for time audible (natural ambient) show that Alternative 3 would result in 66% of the ATMP planning area experiencing audible air tour noise between 210 and 300 minutes a day, and the entire ATMP planning area would experience audible air tour noise for between 135 and 300 minutes a day (non-contiguous). Compared to existing conditions,

under Alternative 3 the time audible number of minutes would be 34% less, equivalent to 100-120 minutes at most locations.

The modeling results for time above 35 dBA show that Alternative 3 would result in 55% of the ATMP planning area experiencing noise above 35 dBA for between 135 and 225 minutes a day (non-contiguous), and the entire ATMP planning area would experience air tour noise above 35 dBA for between 75 and 225 minutes a day (non-contiguous). Compared to existing conditions, the time above 35 dBA under Alternative 3 would be less at all modeled locations.

The maximum time above 52 dBA would be 68.1 minutes, and compared to existing conditions, the time above 52 dBA at the modeled location points under Alternative 3 would range from two to 37 minutes less.

The maximum sound level in ATMP planning area would be 73.7 dBA for the points modeled. Since this metric represents the loudest sound level, in dBA, generated by the loudest event and is independent of the number of operations, there would be little to no change in the maximum sound level compared to existing conditions.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment under FAA Order 1050.1F, the analysis indicates that the resultant DNL is expected to be below 60 dB.

Indirect noise impacts may occur due to air tours being displaced outside the ATMP planning area.

#### d. Alternative 4

Compared to existing conditions, Alternative 4 would provide 258 days per year during which air tours would not be conducted within the ATMP planning area.

The maximum 12-hour equivalent sound level would not exceed 50 dBA, with the exception of a very small area in the immediate vicinity of the heliport on the boundary of the ATMP planning area. Compared to existing conditions, Alternative 4 would represent a 79% reduction in number of modeled daily operations, equivalent to a decrease of approximately 7 dBA in the 12-hour equivalent sound level. With the exception of a small area (less than 1% of the ATMP planning area) within the immediate vicinity of the privately owned and operated heliport, Alternative 4 would eliminate areas with 12-hour average noise levels over 50 dBA.

The modeling results for time audible (natural ambient) show that Alternative 4 would result in the entire ATMP planning area experiencing audible air tour noise between 45 and 90 minutes a day (non-contiguous). Compared to existing conditions, under Alternative 4 the time audible number of minutes would be 79% less, equivalent to 160-350 minutes at most locations.

The modeling results for time above 35 dBA show that Alternative 4 would result in the entire ATMP planning area experiencing air tour noise above 35 dBA for between 15 and 60 minutes

a day (non-contiguous). Compared to existing conditions, the time above 35 dBA under Alternative 4 would be less at all modeled locations.

The maximum time above 52 dBA would be 21.1 minutes, and compared to existing conditions, the time above 52 dBA at the modeled location points under Alternative 4 would range from five to 84 minutes less.

The maximum sound level in ATMP planning area would be 73.7 dBA. Since this metric represents the loudest sound level, in dBA, generated by the loudest event and is independent of the number of operations, there would be little to no change in the maximum sound level compared to existing conditions.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment under FAA Order 1050.1F, the analysis indicates that the resultant DNL is expected to be below 60 dB.

Indirect noise impacts may occur due to air tours being displaced outside the ATMP planning area.

e. Noise and Noise-Compatible Land Use Significance Determination

The FAA has determined that the resultant DNL is expected to be below 60 dB for the alternatives and would not generate noise at or above DNL 65 dB over noise-sensitive areas as described in the final EA, which includes the Park, resources discussed in Sections 3.4, Cultural Resources and Section 3.9, DOT Act Section 4(f) Resources, and residential areas outside the Park but within ½ mile of its boundary. Therefore, there would be no significant impacts for any of the alternatives.

ii. Air Quality and Climate Change

Under the No Action Alternative, emissions of criteria pollutants would be 54 tons per year (TPY), which would not cause NAAQS exceedance or increase the frequency or severity of any existing violations. Greenhouse gas (GHG) emissions would be 97.5 metric tons (MT) of CO<sub>2</sub> per year. Under Alternative 2, there would be a reduction in criteria pollutants of 54 TPY and a reduction in GHG emissions of 97.5 MT of CO<sub>2</sub> per year compared to existing conditions within the ATMP planning area. Under Alternative 3, there would be a reduction in criteria pollutants of 3.4 TPY and a reduction in GHG emissions of 6.09 MT CO<sub>2</sub> per year compared to existing conditions within the ATMP planning area. Under Alternative 4, there would be a reduction in criteria pollutants of 43.4 TPY and a reduction in GHG emissions of 78.4 MT CO<sub>2</sub> per year compared to existing conditions within the ATMP planning area.

Under the No Action Alternative, indirect effects are not expected to occur. For Alternatives 2, 3, or 4, indirect impacts may occur due to air tours outside the ATMP planning area if winds transport emissions to within the ATMP planning area, and some areas not currently exposed to emissions from air tours (outside the ATMP planning area) may be exposed to emissions.

However, it is highly unlikely that air tours displaced to outside the ATMP planning area would result in air quality impacts or change the current attainment status of the Park. Alternatives 2, 3, and 4 would likely result in no noticeable change to a slight improvement in overall cumulative air quality in the Park, with no change in the current NAAQS attainment status.

a. Air Quality and Climate Change Significance Determination

The FAA has determined that the alternatives would not cause pollutant concentrations to exceed one or more of the NAAQS, as established by the Environmental Protection Agency under the Clean Air Act and described in the final EA, Section 3.2. Therefore, there would be no significant impacts for any of the alternatives.

iii. Biological Resources

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, commercial air tour noise would continue to affect wildlife within the ATMP planning area. On days when air tours occur, noise above 35 dBA would occur for less than 330 minutes across the majority (70%) of the ATMP planning area which may interfere with wildlife behavior including changes in vocal behavior, avoiding an area, breeding relocation, or changes in foraging behavior. The current altitudes reported by air tour operators over the ATMP planning area (minimum 900 ft. to 1,400 ft. AGL) are not in compliance with recommended buffer zones raptor protection and may impact bald eagles and peregrine falcons in the ATMP planning area in the form of nest flushing due to noise or collisions with aircraft. This alternative would not be expected to result in indirect impacts.

b. Alternative 2 (Preferred Alternative)

Under Alternative 2, commercial air tours would not be conducted within the ATMP planning area which would eliminate this source of noise from the planning area. Alternative 2 has the most potential to result in the displacement of air tours and could result in more indirect effects to biological resources from air tours flying outside of the ATMP planning area.

c. Alternative 3

Because Alternative 3 would authorize fewer air tours per year than existing conditions, the likelihood of effects occurring to biological resources would decrease, including effects resulting from noise or physical effects caused by collisions with aircraft. On days when air tours occur, noise above 35 dBA would occur for less than 225 minutes a day across the ATMP planning area, which represents a reduction of 105 minutes a day compared to existing conditions. Similar to the altitudes under existing conditions, the altitudes for Alternative 3 (minimum 900 ft. to 1,400 ft. AGL) are not in compliance with the recommended buffer zones for bald eagles and for peregrine falcons during the nesting season and may impact bald eagles and peregrine falcons in the ATMP planning area in the form of nest flushing due to noise or collisions with aircraft.

Alternative 3 could result in indirect effects to wildlife due to air tour displacement outside the ATMP planning area. Alternative 3 would result in less cumulative noise and wildlife disturbance in the ATMP planning area than existing conditions given the designated routes and other ATMP conditions; however, this alternative could allow for more cumulative noise and associated wildlife disturbance than Alternative 2, where flights would not be authorized in the ATMP planning area.

d. Alternative 4

Alternative 4 would establish time-of-day (air tours permitted from 9:00 AM to 5:00 PM local time) and seasonal restrictions (air tours permitted June 16 – Sept. 30) and would authorize fewer tours per year than existing conditions. Compared to existing conditions and Alternative 3, Alternative 4 would result in less disturbance to nesting birds and bighorn sheep lamb rearing, due to the time-of-day and seasonal restrictions and by reducing the number of tours to 751 per year and eight per day within the ATMP planning area. On days when air tours occur, noise above 35 dBA would occur for less than 75 minutes a day across the ATMP planning area, which represents a reduction of 255 minutes a day compared to existing conditions and 150 minutes less than Alternative 3. Similar to the altitudes under existing conditions, the altitudes for Alternative 4 (minimum 900 ft. to 1,400 ft. AGL) are not in compliance with the recommended buffer zones for bald eagles and for peregrine falcons during the nesting season and may impact bald eagles and peregrine falcons in the ATMP planning area in the form of nest flushing due to noise or collisions with aircraft.

Alternative 4 could result in indirect effects to wildlife due to air tour displacement outside the ATMP planning area. Alternative 4 would result in less cumulative noise and wildlife disturbance in the ATMP planning area than existing conditions, given the reduced number of flights, designated routes, and other ATMP conditions. However, this alternative could allow for more cumulative noise and associated wildlife disturbance than Alternative 2, where flights would not be authorized in the ATMP planning area.

e. Biological Resources Significance Determination

While all alternatives were presented for review to the U.S. Fish and Wildlife Service, the FAA has determined that the Preferred Alternative would have No Effect on federally listed or candidate species within the action area, which includes northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*), red knot (*Calidris canutus rufa*), and monarch butterfly (*Danaus plexippus*). Further, the FAA determined that the alternatives would have no impacts to species protected under the Migratory Bird Treaty Act (MBTA), which includes peregrine falcon (*Falco peregrinus*) and bald eagle (*Haliaeetus leucocephalus*). Therefore, there would be no significant impacts to biological resources for any of the alternatives.

#### iv. Cultural Resources

##### a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, cultural resources within the area of potential effects (APE) would continue to be impacted by air tours, as noise and visual effects would impact the feeling and setting of those resources. Tribes and individual tribal members have consistently noted that persistent air tours over the Park unreasonably interfere with their connections to the sacred landscape of the Black Hills. In consideration of the noise effects of air tours under the No Action Alternative on cultural resources within the APE, air tour noise above 35 dBA would occur for less than 330 minutes a day across the ATMP planning area. The 12-hour equivalent sound level would only exceed 60 dBA within the ATMP planning area near the privately owned and operated heliport, and across the modeled location points, the highest 12-hour equivalent sound level would be 54.2 dBA. These noise effects would continue to occur under the No Action Alternative, including those that interrupt tribal cultural practices and ceremonies, and connections to the sacred landscape of the Black Hills. The No Action Alternative would not be expected to result in indirect impacts to cultural resources, although it would result in the greatest level of cumulative impacts to cultural resources across the four alternatives evaluated in the EA.

##### b. Alternative 2 (Preferred Alternative)

Under Alternative 2, commercial air tours would not be conducted within the ATMP planning area which would reduce the direct noise and visual intrusions from impacting the feeling and setting of cultural resources within the APE compared to existing conditions. Indirect noise impacts would have the potential to be greatest under Alternatives 2 due to the displacement of air tours outside the ATMP planning area. The cumulative effects would be the fewest under Alternative 2 as there would be no tours permitted within the ATMP planning area. Under Section 106 of the National Historic Preservation Act, the FAA made a finding that the ATMP will not adversely affect historic properties and received concurrence from the South Dakota State Historic Preservation Office, two tribes, and one consulting party.

##### c. Alternative 3

Because Alternative 3 would authorize fewer tours per year than existing conditions, direct impacts to the feeling and setting of cultural resources throughout the APE would decrease as compared to existing conditions as a result of fewer noise and visual impacts from air tours. The daily limits on the number of air tours within the ATMP planning area would also reduce the likelihood that an air tour would interrupt tribal ceremonies or the sanctity of tribal sites. On days when air tours occur, portions of the APE would experience noise above 35 dBA for less than 225 minutes a day. The 12-hour equivalent sound level would only exceed 60 dBA within the ATMP planning area near the heliport, and across the modeled location points, the highest 12-hour equivalent sound level would be 52.4 dBA. The time above 52 dBA under Alternative 3 is up to 18 minutes less compared to existing conditions.



Indirect noise impacts would have the potential to occur under Alternative 3 as this alternative could result in the displacement of air tours outside the ATMP planning area. Compared to existing conditions, the cumulative effects would be fewer for Alternative 3 which would limit the number of routes on which air tours could be conducted within the ATMP planning area, but the cumulative effects would be greater than Alternative 2.

d. Alternative 4

Alternative 4 would further restrict air tour operations within the ATMP planning area compared to Alternative 3. Alternative 4 would establish annual (751) and daily (8) limits on air tours which would reduce the likelihood that an air tour would interrupt tribal ceremonies or the sanctity of tribal sites. Compared to Alternative 3, Alternative 4 would result in approximately 81% fewer air tours conducted within the ATMP planning area as compared to existing conditions, so it would reduce the intensity and duration of direct noise and visual impacts within the APE to a greater degree than Alternative 3.

On days when air tours occur, the 12-hour equivalent sound level would only exceed 60 dBA within the ATMP planning area near the heliport, and across the modeled location points, the highest 12-hour equivalent sound level would be 47.5 dBA. Time above 35 dBA would be less than 75 minutes a day, which represents a reduction of 255 minutes a day compared to existing conditions and 150 minutes less than Alternative 3. The time above 35 dBA under Alternative 4 would stay the same or be less at all the identified cultural resources. The time above 52 dBA under Alternative 4 is up to 42.6 minutes less compared to existing conditions.

Indirect noise impacts would have the potential to occur under Alternative 4 as this alternative could result in the displacement of air tours outside the ATMP planning area. Compared to existing conditions, the cumulative effects would be fewer for Alternative 4 which would limit the number air tours and number of routes on which air tours could be conducted within the ATMP planning area, but the cumulative effects would be greater than Alternative 2.

e. Cultural Resources Significance Determination

While the FAA does not have a significance threshold for Cultural Resources, it does consider, among other things, whether or not a finding of adverse effect is made under Section 106 of the National Historic Preservation Act when evaluating the context and intensity of potential environmental impacts under this category. The FAA identified the undertaking as the development of an ATMP that would authorize or prohibit commercial air tour operations over the Park. In accordance with the conditions included in the alternative that is identified as preferred, the FAA, in coordination with the NPS, made a finding of no adverse effect for the Preferred Alternative. In addition, under NEPA, the FAA did not find that in evaluating the context and intensity of impacts for the other alternatives that impacts arose to the level of significance. Therefore, there would be no significant impacts to cultural resources for any of the alternatives.

v. Environmental Justice and Socioeconomics

a. Alternative 1 (No Action Alternative)

The No Action Alternative would not result in disproportionately high and adverse impacts to environmental justice (EJ) populations or impact those populations in ways that are unique to those EJ populations, based on impacts on noise, air quality, and viewsheds within the study area. The DNL is expected to be below 60 dB under this alternative. No Action Alternative would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed or increase the frequency or severity of any such existing violations. The total amount of annual GHG emissions resulting from commercial air tours in the ATMP planning area would be 97.5 MT CO<sub>2</sub>. Impacts would continue to occur to visual resources under the No Action Alternative as commercial air tours would continue to contrast the scenic vistas and natural areas in the Park, but the visual resources of the Park would still be viewable at times of the day when commercial air tours were not present within the study area (on average, air tours were conducted within the ATMP planning area 38 times per day in a peak month, average day).

Under the No Action Alternative, the number of commercial air tours conducted by operators would vary from year to year but would likely be consistent with the number of tours reported in the timeframe from 2017-2019. Therefore, the amount of income generated for air tour operators and other ancillary businesses as well as employment would likely be consistent with income generated during that timeframe. Although under the No Action Alternative flight numbers could increase, it would not induce substantial economic growth, disrupt or divide physicality of community, cause extensive relocation, disrupt traffic patterns, or produce a substantial change in the community tax base.

Although flight numbers could increase, no indirect impacts would be expected to occur under this alternative.

b. Alternative 2 (Preferred Alternative)

Alternative 2 would result in a reduction in noise, air quality, and visual impacts compared to those currently occurring under existing conditions. Alternative 2 would not result in disproportionately high and adverse noise, air quality, or visual impacts to EJ populations. Alternative 2 could impact employment or the amount of income that air tour operators and other ancillary businesses generate from conducting air tours within the ATMP planning area.

Under Alternative 2, it is difficult to predict with specificity if, where, and to what extent any air tours that are displaced outside the ATMP planning area would result in indirect noise, air quality, or visual impacts to EJ populations within the study area. However, the effects are not likely to change substantially as compared to existing conditions. Therefore, disproportionately high or adverse indirect noise, air quality, or visual impacts to EJ populations are not expected to occur. Cumulative effects would be greatest under the No

Action Alternative and fewest under Alternative 2 based on the number of flights authorized per year and authorized routes.

c. Alternative 3

Alternative 3 would reduce impacts by reducing the number of tours per year authorized within the ATMP planning area. Compared to existing conditions, Alternative 3 would result in fewer direct noise, air quality, and visual impacts. The DNL analysis indicates that Alternative 3 would not result in noise impacts that would exceed DNL 65 dB; the resultant DNL is expected to be below 60 dB under Alternative 3. Alternative 3 would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed, or to increase the frequency or severity of any such existing violations. The total amount of annual GHG emissions resulting from existing commercial air tours within the ATMP planning area would be 6.09 MT CO<sub>2</sub>. Some impacts to visual resources would occur under Alternative 3 as commercial air tours would contrast the scenic vistas and natural areas in the Park, but impacts would be fewer than those under existing conditions. The alternative would not result in disproportionately high and adverse impacts to EJ populations or impact those populations in ways that are unique to those EJ populations.

The same socioeconomic effects stated under Alternative 2 would occur under Alternative 3, but those effects would be fewer (including the potential for impacts associated with changes to the community tax base), as some air tours would still occur within the ATMP planning area. Alternative 3 would not induce substantial economic growth, disrupt or divide physicality of community, cause extensive relocation, or disrupt traffic patterns.

Under Alternative 3, is difficult to predict with specificity if, where, and to what extent any air tours that are displaced outside the ATMP planning area would result in indirect noise, air quality, or visual impacts to EJ populations within the study area. However, the effects are not likely to change substantially as compared to existing conditions. Therefore, disproportionately high or adverse indirect noise, air quality, or visual impacts to EJ populations are not expected to occur. Cumulative effects for Alternative 3 would be less than the No Action Alternative but greater than Alternative 2 based on the number of flights authorized per year.

d. Alternative 4

Alternative 4 would reduce impacts through annual (751) and daily (8) limits on air tours within the ATMP planning area. Compared to existing conditions, Alternative 4 would result in fewer direct noise, air quality, and visual impacts. The DNL analysis indicates that Alternative 4 would not result in noise impacts that would exceed DNL 65 dB; the resultant DNL is expected to be below 60 dB under Alternative 4. Alternative 4 would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed, or to increase the frequency or severity of any such existing violations. The total reduction in annual GHG emissions for Alternative 4 as compared to existing conditions is modeled to be

78.4 MT CO<sub>2</sub>. Some impacts to visual resources would occur under Alternative 4 as commercial air tours would contrast the scenic vistas and natural areas in the Park, but impacts would be fewer than those under existing conditions. The alternative would not result in disproportionately high and adverse impacts to EJ populations or impact those populations in ways that are unique to those EJ populations.

The same socioeconomic effects stated under Alternative 2 would occur under Alternative 4, but those effects would be fewer (including the potential for impacts associated with changes to the community tax base), as some air tours would still occur within the ATMP planning area. Socioeconomic effects under Alternative 4 would be expected to be greater than those under Alternative 3 because it would limit the number of air tours conducted within the ATMP planning area to fewer tours per year. Alternative 4 would not induce substantial economic growth, disrupt or divide physicality of community, cause extensive relocation, or disrupt traffic patterns.

Under Alternative 4, is difficult to predict with specificity if, where, and to what extent any air tours that are displaced outside the ATMP planning area would result in indirect noise, air quality, or visual impacts to EJ populations within the study area. However, the effects are not likely to change substantially as compared to existing conditions. Therefore, disproportionately high or adverse indirect noise, air quality, or visual impacts to EJ populations are not expected to occur. Cumulative effects for Alternative 4 would be less than the No Action Alternative but greater than Alternative 2 based on the number of flights authorized per year and authorized routes.

e. Environmental Justice and Socioeconomics Significance Determination

While the FAA does not have a significance threshold for socioeconomics or environmental justice, it has a number of factors that it considers when evaluating the context and intensity of potential environmental impacts under these categories. Under socioeconomics, the FAA considers whether the action will induce substantial economic growth in the area; disrupt or divide the physical arrangement of an established community; cause extensive relocation when sufficient replacement housing is unavailable; cause extensive relocation of community businesses that would cause severe economic hardship for affected communities; disrupt local traffic patterns; or produce a substantial change in the community tax base. The FAA analysis did not find any of these issues to be triggered for any of the alternatives. Under environmental justice, the FAA considers whether the action would have the potential to lead to a disproportionately high and adverse impact to an environmental justice population due to significant impact in other environmental impact categories or impacts on the physical or natural environment that affect an environmental justice population in a way that the FAA determines are unique to the environmental justice population and significant to that population. The FAA analysis did not find any of these issues to be triggered for any of the alternatives. Therefore, there would be no significant impacts to environmental justice or socioeconomics for any of the alternatives.

vi. Visual Effects

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, air tours would continue to impact viewsheds primarily at the terminus of the Blackberry Trail and atop Old Baldy. Reporting data from 2017-2019 indicates that on a peak month average day, air tours fly over the ATMP planning area approximately 38 times per day. The unique visual resources within the Park of scenic vistas and natural areas contrast with commercial air tours and would continue to detract from the visitor's opportunity to observe these resources when commercial air tours are present. However, the greater Black Hills region provides opportunities to view similar natural landscape features and viewsheds as those found within the visual effects study area, and the visual resources of the Park would still be viewable at times of the day when commercial air tours were not present within the ATMP planning area. No indirect impacts would be expected to occur under this alternative. Across the alternatives, the cumulative visual effects under the No Action Alternative would have the greatest potential for impacts within the visual effects study area.

b. Alternative 2 (Preferred Alternative)

Alternative 2 would provide the greatest protection to Park viewsheds across the alternatives. Alternative 2 has the most potential to result in the displacement of air tours and could result in more indirect effects to visual resources from air tours flying outside of the ATMP planning area but within the visual effects study area. Across the alternatives, cumulative impacts would be fewest under Alternative 2 as there would be no tours permitted within the ATMP planning area.

c. Alternative 3

Under Alternative 3, a reduction in the number of tours per day and per year would reduce the likelihood of visual impacts and provide improved protection to viewsheds within the ATMP planning area as compared to existing conditions. Visual impacts would primarily be associated with air tour aircraft contrasting natural scenery. Indirect impacts to viewsheds could occur if flights were displaced outside the ATMP planning area. Compared to existing conditions, the cumulative impacts would be fewer under Alternative 3 due to the reduced number tours per year, but the cumulative impacts would be greater than Alternatives 2 and 4.

d. Alternative 4

Under Alternative 4, annual and daily limits on air tours would reduce the likelihood of visual impacts. Because of these conditions, Alternative 4 would provide increased protection to visual resources within the visual effects study area as compared to both existing conditions and Alternative 3. Visual impacts would primarily be associated with air tour aircraft contrasting natural scenery. Indirect impacts to viewsheds could occur if flights were

displaced outside the ATMP planning area. Compared to existing conditions, the cumulative impacts would be fewer under Alternative 4 due to the reduced number air tours per year and the reduced number of routes on which tours could be conducted, but the cumulative impacts would be greater than Alternatives 2 and 3.

e. Visual Effects Significance Determination

While the FAA does not have a significance threshold for visual resources and visual character, the FAA has established factors to consider when evaluating the context and intensity of potential environmental impacts for visual resources and character. The FAA considers the extent the action would have the potential to affect the nature of the visual character of the area, including the importance, uniqueness, and aesthetic value of the affected visual resources; contrast with the visual resources and/or visual character in the study area; and block or obstruct the views of visual resources, including whether these resources would still be viewable from other locations. Based on the analysis, the FAA did not find any of the issues to be triggered for any of the alternatives. Therefore, there would no significant impacts to visual effects for any of the alternatives.

vii. Department of Transportation (DOT) Act Section 4(f) Resources

a. Alternative 1 (No Action Alternative)

The FAA consulted with the NPS on the potential for substantial impairment to Section 4(f) resources that would occur under the No Action Alternative, and the NPS determined that the No Action Alternative cannot be mitigated to avoid or prevent unacceptable impacts to the Park's natural and cultural resources and visitor experience. The FAA determined that the No Action Alternative would result in substantial impairment to Section 4(f) resources. No indirect impacts would be expected to occur under this alternative.

b. Alternative 2 (Preferred Alternative)

The FAA determined there would be no substantial impairment of Section 4(f) resources from noise, visual, or vibrational related effects caused by air tours in the ATMP planning area under Alternative 2. Alternative 2 would have the potential to result in some displacement of air tours outside the ATMP planning area, resulting in the most potential for indirect impacts across the alternatives, but it is highly unlikely that the air tours that are displaced to outside the ATMP planning area would generate a noise exposure level at or above DNL 65 dB in a single location. Visual impacts could occur if operators choose to move their air tours just outside the ATMP planning area; however, it is difficult to predict with specificity if, where, and to what extent any displaced air tours would result in visual impacts in different and/or new areas, including Section 4(f) resources.

c. Alternative 3

Under Alternative 3, annual (3,657) and daily (25) limits on air tours and time-of-day restrictions (one hour after sunrise until one hour before sunset) would reduce the likelihood of impacts compared to existing conditions.

On days when commercial air tours would occur, noise levels above 35 dBA would occur for at least 75 minutes in the ATMP planning area, including between 180 and 225 minutes in small areas (<9 %) below flight routes, up to 180 minutes in 19% of the ATMP planning area, and between 120 and 135 minutes in 55% of the ATMP planning area. Noise levels above 52 dBA are not anticipated to exceed 68.1 minutes in the ATMP planning area at the location points modeled. The resultant DNL due to Alternative 3 is expected to be less than 60 dB.

Alternative 3 would not introduce visual elements or result in visual impacts that would substantially diminish the activities, features or attributes of a Section 4(f) resource. Vibrational impacts are not anticipated to affect surrounding parkland given that aircraft overflights do not contain vibrational energy at levels which would affect outdoor areas of natural features and there would be no substantial change from existing conditions.

As a result, FAA concludes there would be no substantial impairment of Section 4(f) resources in the Section 4(f) study area under Alternative 3. This conclusion supports the FAA's determination that Alternative 3 would not constitute constructive use of Section 4(f) resources in the Section 4(f) study area.

Alternative 3 would have the potential to result in some displacement of air tours outside the ATMP planning area, resulting in more indirect impacts as compared to existing conditions, but it is highly unlikely that the air tours that are displaced to outside the ATMP planning area under Alternative 3 would generate a noise exposure level at or above DNL 65 dB in a single location. Visual impacts could occur when displaced air tours conducted takeoff and landing operations at the privately owned and operated heliport that is within the ½ mile buffer of the Park's boundary if those air tours were visible from Section 4(f) resources in this area, or if operators choose to move their air tours just outside the ATMP planning area; however, it is difficult to predict with specificity if, where, and to what extent any displaced air tours would result in visual impacts in different and/or new areas, including Section 4(f) resources.

Alternative 3 would result in less cumulative noise and visual effects to Section 4(f) properties than the No Action Alternative, but more than Alternatives 2 and 4.

d. Alternative 4

Under Alternative 4, annual (751) and daily (8) limits on air tours and time-of-day restrictions (9:00 AM to 5:00 PM local time) would reduce the likelihood of impacts compared to existing conditions. The resultant DNL due to Alternative 4 is expected to be less than 60 dB.

On days when commercial air tours would occur, noise levels above 35 dBA would occur for at least 15 minutes in the ATMP planning area, including between 45 and 60 minutes in 42% of

the ATMP planning area, up to 75 minutes in small regions (1%) below flight routes. Noise levels above 52 dBA are not anticipated to exceed 21.1 minutes in the ATMP planning area at the location points modeled.

Alternative 4 would not introduce visual elements or result in visual impacts that would substantially diminish the activities, features or attributes of a Section 4(f) resource. Vibrational impacts are not anticipated to affect surrounding parkland given that aircraft overflights do not contain vibrational energy at levels which would affect outdoor areas of natural features and there would be no substantial change from existing conditions.

As a result, FAA concludes there would be no substantial impairment of Section 4(f) resources in the Section 4(f) study area under Alternative 4. This conclusion supports the FAA's determination that Alternative 4 would not constitute constructive use of Section 4(f) resources in the Section 4(f) study area.

Alternative 4 would have the potential to result in some displacement of air tours outside the ATMP planning area, resulting in more indirect impacts as compared to existing conditions, but it is highly unlikely that the air tours that are displaced to outside the ATMP planning area under Alternative 4 would generate a noise exposure level at or above DNL 65 dB in a single location. Visual impacts could occur when displaced air tours conducted takeoff and landing operations at the privately owned and operated heliport that is within the ½ mile buffer of the Park's boundary if those air tours were visible from Section 4(f) resources in this area, or if operators choose to move their air tours just outside the ATMP planning area; however, it is difficult to predict with specificity if, where, and to what extent any displaced air tours would result in visual impacts in different and/or new areas, including Section 4(f) resources. Alternative 4 would result in less cumulative noise and visual effects to Section 4(f) properties than the No Action Alternative and Alternative 3, but more than Alternatives 2.

#### e. DOT Act Section 4(f) Resources Significance Determination

The FAA has determined that the alternatives would not result in a physical use of a Section 4(f) resource. The No Action Alternative does not meet the purpose and need and therefore was not advanced for a detailed Section 4(f) analysis.

The FAA determined that there would be no constructive use of Section 4(f) resources under Alternatives 2, 3, and 4 because the noise, visual, or vibrational impacts would not constitute a substantial impairment of the protected activities, features, or attributes of the Section 4(f) resources. Therefore, no significant impacts to Section 4(f) resources would occur.

## **XI. Mitigation and Minimization**

The attached final EA examined each of the environmental impact categories that were determined to be present in the ATMP planning area or had the potential to be impacted by the Proposed Action. The FAA is not proposing mitigation as part of this project, because



implementation of this ATMP for the Park would not cause any environmental impacts that would exceed the FAA thresholds of significance for any environmental impact category.

The NPS does not require additional mitigation because the ATMP will prohibit air tours within the ATMP planning area and the NPS found that the selected alternative/ATMP will not have significant impacts.

## **XII. Public Involvement**

The FAA, in coordination with NPS, prepared a draft EA in compliance with NEPA to analyze a range of alternatives and evaluate potential issues and impacts as part of the ATMP planning process. In addition, the Act requires that the agencies publish notification of the availability of a draft ATMP in the Federal Register for public comment and to hold at least one public meeting for each draft ATMP. A draft ATMP and draft EA were released on May 16, 2023 for public review and comment. The FAA published a Notice of Availability of the draft ATMP and draft EA for the Park on May 18, 2023. The agencies notified the public of the availability of the draft ATMP and draft EA using various methods including a notice in the Federal Register issued on May 18, 2023, a news release posted on the Park's website and social media accounts, and emails to the Park's civic engagement stakeholder list and other stakeholder groups including federal, state, and local agencies and community organizations, associations, businesses, and interest groups.

The agencies held a public meeting for the draft ATMP and draft EA for the Park on May 24, 2023 and accepted public comments between May 18 and June 20, 2023. In addition, Park staff responded to media inquiries.

In total, the agencies received 266 correspondences, of which 118 were form letters. The agencies reviewed and analyzed the public comments and used them to revise the draft ATMP and draft EA and prepare a final ATMP, final EA, and FONSI/ROD. See Appendix K of the final EA, *Draft EA and Draft ATMP Public Involvement Materials*, for more information.

## **XIII. Consultation and Compliance with Other Laws**

### **A. Endangered Species Act and Migratory Bird Treaty Act**

The FAA and the NPS conducted a Section 7 analysis for those federally listed species described in Section 3.3.1 of the EA, Affected Environment for Biological Resources, in accordance with 50 CFR Part 402.02. The FAA and the NPS initiated technical assistance with the U.S. Fish and Wildlife Service on February 7, 2023 during which all four alternatives were reviewed. The agencies determined the ATMP would have no effect on federally listed threatened or endangered species or their critical habitat. See Appendix H of the final EA, *Section 7 No Effect Memo*, for additional analysis.

i. Species Protected under the MBTA

The agencies analyzed potential impacts to non-Endangered Species Act listed species that are protected under the MBTA, including bald eagles (*Haliaeetus leucocephalus*) and peregrine falcons (*Falco peregrinus*). Because the Preferred Alternative would prohibit commercial air tours within the action area, it is reasonably foreseeable that current air tour operators could offer air tours outside of the action area, as the areas beyond the action area would not be regulated by the ATMP. It is difficult to predict with specificity if, where, and to what extent any air tours would be displaced to areas outside the action area, including at altitudes at or above 5,000 ft. AGL. However, air tours outside of the action area are outside the jurisdiction of the ATMP and not subject to the Act. Based on the agencies' analysis, there would be no impacts from the Preferred Alternative on species protected under the MBTA.

**B. National Historic Preservation Act**

The agencies continued consultation under Section 106 with an evaluation of the effects of Alternative 2, as the Preferred Alternative, on historic properties. A letter was sent on March 14, 2023, to the South Dakota State Historic Preservation Office (SHPO) and all consulting parties, including tribes, outlining the Section 106 process, including a description of the undertaking, delineation and justification of the APE, identification of historic properties within the APE, and an evaluation of effects to historic properties within the APE. Based on this consultation, the FAA made a finding of no adverse effect to historic properties (36 CFR § 800.5(b)) for the ATMP undertaking. The South Dakota SHPO, Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Northern Cheyenne Tribe, and Eagle Aviation Inc. concurred with the finding of no adverse effect to historic properties. The Turtle Mountain Band of Chippewa Indians provided comment but did not concur or object. No consulting party objected to the finding and Section 106 consultation was completed on April 14, 2023. See Appendix G of the final EA, *Cultural Resources Consultation and Summary*, for more information.

**C. Section 4(f) of the Department of Transportation Act of 1966**

The FAA has determined that the alternatives would not result in a physical use of a Section 4(f) resource. The No Action Alternative does not meet the purpose and need and therefore was not advanced for a detailed Section 4(f) analysis.

The FAA determined that there would be no constructive use to Section 4(f) properties under Alternatives 2, 3, and 4 because noise, vibrational, and visual impacts from commercial air tours under these alternatives would not constitute a substantial impairment of Section 4(f) resources in the Section 4(f) study area. As part of the draft ATMP and draft EA development, the FAA consulted with the NPS and other Officials with Jurisdiction over Section 4(f) resources in the Section 4(f) study area regarding FAA's preliminary finding of no substantial impairment, and hence, the FAA's proposed no constructive use determination. The FAA sent letters to each Section 4(f) property's Official with Jurisdiction with this preliminary finding

concurrent with the release of the draft EA for public review. On May 16, 2023, the FAA sent an email with an attached letter to the U.S. Forest Service describing the proposed action and FAA's preliminary determination and requested a response within a 14-day review period. A follow-up email was sent on May 23, 2023. Additionally, the FAA notified the National Park Service (NPS) of the determination via email. The 14-day response period for both review requests closed on May 30, 2023. No responses were received. Refer to Appendix I of the final EA, Section 4(f) Analysis, for additional details on this coordination.

#### **D. Clean Air Act, Section 176 (c) (1) Conformity Determination (42 U.S.C. § 7506(c))**

The Park is currently in an area of attainment for all NAAQS. The ATMP would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed.

#### **E. National Park Service Organic Act and Management Policies**

Consistent with the NPS Organic Act and the NPS 2006 Management Policies, the NPS has prepared a non-impairment determination, and found that the selected action/final ATMP, which was Alternative 2/the Preferred Alternative, will not result in impairment of Park resources. Please see the attached NPS Non-Impairment Determination.

#### **XIV. Changes from the Draft ATMP**

The agencies considered and responded to public comments received on the draft ATMP and draft EA. There were no substantive changes to the ATMP, but additional explanation regarding the NPS's obligations for the conservation of cultural resources under its Organic Act was added. Administrative changes included adding the word "FINAL" to the title of the ATMP and adding the names of the signatories. Minor, non-substantive changes were made to improve clarity.

#### **XV. Basis and Justification for the Decision**

This section, together with the final EA and all appendices, including Appendix K, *Draft ATMP and Draft EA Public Involvement Materials*, which includes the public comments, summary of comments, and the agency responses to substantive comments, which are attached to this document and are incorporated herein by reference, explain the decision made by the agencies, and provides the justifications for that decision required by 49 U.S.C. § 40128(b)(3)(F).

The agencies have decided to establish an ATMP implementing Alternative 2 (the Preferred Alternative in the final EA) and to prohibit commercial air tours within the ATMP boundary no later than 180 days after the ATMP is signed by all required signatories from both agencies (the ATMP's establishment and effective date). Except when necessary for takeoff or landing from the privately owned and operated heliport on the ATMP boundary, 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 tours would not be allowed to enter the ATMP boundary.

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. All IOA for the Park will terminate by operation of law 180 days after the establishment (effective date) of the 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. See Final Air Tour Management Plan for Mount Rushmore National Memorial, Attachment C to this FONSI/ROD.

The provisions and conditions included in the ATMP are designed to protect the Park's natural and cultural resources, tribal sacred sites and ceremonial areas, and visitor experience, as well as Wilderness character within the ATMP boundary from the effects of commercial air tours, and to support NPS management objectives for the Park. 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 2006 Management Policies, 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." This may be a tangible resource or may be an intangible cultural practice or place of cultural importance. 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.

The NPS is charged by its Organic Act with conserving National Park System resources and values "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. § 100101(a). This mandate "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 2006 Management Policies § 1.4.3.

The final EA did not consider alternatives at or above existing conditions because the NPS determined that air tour operations at existing levels under IOA result in unacceptable impacts to Park natural and cultural resources, tribal sacred sites and ceremonial areas, and visitor enjoyment under Section 1.4.7.1 of the 2006 NPS Management Policies, and are inconsistent with the Park's purpose and values including interpreting the mountain sculpture in its historic, cultural, and natural setting while providing for the education, enjoyment, and inspiration of the public. The visitor experience at the Park has been severely impacted by air tour noise, which is contrary to the Park's purpose. These impacts are supported by modeling results and verbal complaints received by Park staff. The NPS's Non-Impairment Determination, Attachment B, provides further explanation regarding the NPS's determination that the current number of air tours unacceptably impact and impair the Park's resources in

violation of the NPS Organic Act. The NPS may not allow uses that would result in unacceptable impacts to, or impairment of, Park resources. 54 U.S.C. § 100101(a); NPS 2006 Management Policies § 1.4.7.

As noted above, the No Action Alternative was not selectable because it does not meet the purpose and need for the ATMP. Of the action alternatives carried forward for detailed analysis, Alternative 2 was selected because the conditions in Alternatives 3 and 4 would still result in noise that would continue to interfere with the Park's management objectives and continue to negatively impact the lands tribes hold sacred. The Park is very small (only 1,278 acres), thus the agencies were not able to include routes or altitude adjustments in Alternatives 3 or 4 due to safety concerns. Alternative 2 is the most protective of the Park's acoustic environment, historic and cultural resources (including traditional cultural properties), biological resources, and visitor experience, and is responsive to information received during tribal consultation. It is also the most protective of the Black Elk Wilderness, which is not within the Park but which lies partially within the ATMP boundary and contributes to the Park's natural setting. The USFS participated in the NEPA process as a cooperating agency and supported the agencies' decision to restrict air tours in the portion of the Wilderness within the ATMP boundary.

In the agencies' consultation with Northern Plains Tribes, the Tribes have repeatedly stated that they are against all air tours in the areas they hold sacred, including over the Park. Noise from the existing level of air tours negatively impacts sacred sites within the Park associated with many Tribal Nations. Tribes consider the entire landscape of the Black Hills to be sacred and believe air tours are inappropriate and constitute an adverse effect to the cultural landscape, wildlife, and plants. Further, the Tribes stated that the plants, animals, the sky, and other natural resources are contributing features of the cultural resources throughout the Black Hills. During consultation the agencies discussed with the Tribes the idea of restricting flights on specific days or during special events; however, it was communicated that many Tribal uses were spontaneous, decided only a few days or a week in advance, or may be protected cultural information to specific Tribes. It was further communicated that with so many Tribes and people holding this landscape sacred, organizing and communicating events would be extremely challenging. Finally, the Tribes informed the agencies that establishing no fly days would not be sufficient mitigation as the lands themselves are held to be sacred.

The Park is home to the peregrine falcon which is listed as threatened under state law and is highly susceptible to noise disturbance. A peregrine pair nested at the Park in 2020 and had four chicks, none of which survived. Stressors such as air tour noise could impact recovery of this struggling population.

The NPS is responsible for ensuring "the availability and use of a broad program of the highest quality interpretation and education." 54 U.S.C. § 100802. The purpose of NPS interpretive and educational programs is to advance the NPS's mission by providing memorable educational and recreational experiences that will (1) help the public understand the meaning

and relevance of park resources, and (2) foster development of a sense of stewardship. The programs do so by forging a connection between park resources, visitors, the community, and the national park system. Nearly 500,000 visitors participate in the Park's outstanding interpretive programs per year. By prohibiting air tours within the ATMP boundary, visitors can experience the NPS's interpretive programming at the Park and the Park's natural and cultural resources with minimal interference due to noise.

Additionally, the ATMP is consistent with NPS Management Policies § 4.9 since it eliminates some noise and moves the Park closer to natural ambient conditions, by prohibiting commercial air tours. The ATMP complies with NPS Management Policies § 8.4 by avoiding unacceptable impacts from air tours over the Park, including potential impacts to cultural resources. The ATMP will not result in excessive noise as prohibited under NPS Management Policies § 5.3.1.7, because the NPS has successfully collaborated with the FAA and developed an ATMP that will not result in unacceptable impacts to natural or cultural soundscapes or impairment of Park resources. See NPS's Non-Impairment Determination, Attachment B.

Although prohibiting commercial air tours within the ATMP boundary would prevent viewing the Park on tours conducted within the ATMP boundary, those customers will likely have opportunities to take air tours just outside the ATMP boundary that still offer views of the sculpture.

The Act authorizes the agencies to prohibit air tours within the ATMP boundary. Based on the level of air tour noise, the NPS determined that the selected action (prohibiting air tours within the ATMP planning area) is necessary to protect Park resources and values, meet Park management objectives, and is responsive to the concerns of the Northern Plains Tribes.

While none of the action alternatives in the final EA trigger any FAA thresholds of significance or factors that the FAA considers in determining significance, the Act requires the FAA to work in cooperation with the NPS in developing either a voluntary agreement or an ATMP. To that end, the FAA has recognized NPS expertise regarding the management of the National Park System and considered NPS criteria in determining impacts on National Park System units. Consequently, the FAA has determined that the Preferred Alternative is a reasonable and safe basis for the ATMP.

The FAA reviewed the ATMP to identify and address any safety concerns. The FAA also reviewed all public comments received on the draft ATMP that raised safety concerns. The FAA will evaluate the establishment of an operational plan in the area to enhance safety. Under FAA regulations, the pilot-in-command is always required to take action to ensure the safe operation of the aircraft.

Because the agencies have selected an alternative that will prohibit air tours within the ATMP boundary and found that the ATMP will not have significant impacts, additional mitigation is not required.

## **XVI. Decision and Order**

After careful and thorough consideration of the facts herein, and the reasons stated in Sections X(B) and XV, the FAA finds that the Preferred Alternative is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of NEPA and other applicable environmental requirements and is not a major federal action significantly affecting the quality of the human environment or otherwise, including any condition requiring consultation pursuant to Section 102(2)(c) of NEPA.

After careful and thorough consideration of the facts herein, and for the reasons stated in Sections X(A) and XV, the NPS finds that the selected action/ATMP (Preferred Alternative) is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of NEPA and other applicable environmental requirements and is not a major federal action significantly affecting the quality of the human environment or otherwise including any condition requiring consultation pursuant to Section 102(2)(c) of NEPA.

As a result of these findings, the FAA and the NPS will not prepare an Environmental Impact Statement.

The FAA and the NPS have also considered the agencies' common and respective goals in relation to issuance of an ATMP for the Park including the environmental impacts of this decision, the mitigation measures available to preserve the Park's resources, visitor experience and tribal lands, and aviation safety, and find that the Preferred Alternative is reasonably supported and consistent with the Act.

Accordingly, under the authority delegated to us by the Administrator of the FAA and the Director of the NPS, we select the Preferred Alternative, and approve and direct that action be taken – issuance of the ATMP for Mount Rushmore National Memorial consistent with this document and issuance or modification of applicable operations specifications – to carry out the agency decisions as detailed in this ROD.

Herbert C. Frost, Ph.D.  
Regional Director  
Interior Regions 3, 4, & 5  
National Park Service

Date \_\_\_\_\_

Erik Amend  
Regional Administrator  
Great Lakes Region  
Federal Aviation Administration

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

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

## XVII. Right of Appeal

This FONSI/ROD constitutes a final order of the FAA Administrator and is subject to the 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 decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision 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. Any party seeking to stay the implementation of the ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.

## XVIII. Attachments

A. Final EA (which includes the following appendices):

## Appendix A: References

## Appendix B: List of Acronyms, Abbreviations, and Glossary

## Appendix C: List of Preparers

## Appendix D: Distribution List

## Appendix E: Environmental Impact Analysis Methods

## Appendix F: Noise Technical Analysis



Appendix G: Cultural Resources Consultation and Summary

Appendix H: Section 7 No Effect Memo

Appendix I: Section 4(f) Analysis

Appendix J: Public Scoping Materials

Appendix K: Draft ATMP and Draft EA Public Involvement Materials

B. National Park Service - Non-Impairment Determination

C. Final Air Tour Management Plan for Mount Rushmore National Memorial