

**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 HALEAKALĀ NATIONAL PARK, HAWAII**

**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 Haleakalā National Park (Park) in the State of Hawai'i, 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 January 8, 2024. 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 manages over 33,000 acres of land on the eastern side of Maui, the second largest island in the Hawaiian chain. The Park was originally established in 1916 as part of Hawaii National Park. At that time the Park included lands on both the islands of Hawai'i (now part of Hawai'i Volcanoes National Park) and Maui. The Park was established as a separate NPS unit in 1961 (PL 86-744, 74 Stat. 88).

The Park is part of the East Maui volcano and features a large erosional depression, Haleakalā Crater, at the summit and then opening to the northeast and southeast forming large valleys that extend to the coast. There are two districts in the Park: the Summit District and the

Kīpahulu District. The Summit District includes a portion of Haleakalā Highway (known as Crater Road within the Park), Haleakalā Crater, Kaupō Gap, and Nu‘u. The Kīpahulu District includes ‘Ohe‘o Gulch, Kīpahulu Valley, Manawainui, and Ka‘āpahu. The northern and eastern slopes of Haleakalā and the rainforests of the Kīpahulu Valley are among the richest biological regions in Hawai‘i. More than 90% of the native biota found in the Park is endemic to the Hawaiian Islands and nearly 50% is endemic to Maui. In 1980, the United Nations Educational, Scientific and Cultural Organization (UNESCO) designated the entire Park, together with Hawai‘i Volcanoes National Park, as the Hawaiian Islands International Biosphere Reserve. The Park protects native Hawaiian ecosystems, providing a home for diverse threatened and endangered species, including some that exist nowhere else in the world.

The Kīpahulu District of the Park protects Kīpahulu Valley and the scenic free-flowing stream system ending at ‘Ohe‘o Gulch. From east of the volcano rim, the valley drops thousands of feet down to the coast. The Kīpahulu coastal area is set atop a seaside cliff and was first farmed by early Polynesians more than 800 years ago, distinguishing it as both ecologically and historically significant. The upper Kīpahulu Valley is managed as a biological reserve and is home to a vast profusion of flora and fauna, including some of the world’s rarest birds, plants, and invertebrates.

The Park is a sacred place to kānaka maoli (Native Hawaiians) and is fundamentally linked to their traditional and contemporary beliefs, practices, and way of life. The concept of kuleana (responsibility) is central to these beliefs, passed on from kūpuna (ancestors) to future generations to ensure stewardship and respect for all things spiritual and physical. Closely connected to kuleana is the concept of mālama ‘āina, caring for and nurturing the land so it continues to provide the essential means and resources necessary to sustain life for present and future generations. For Native Hawaiians, the summit of Haleakalā is the Wao Akua (“Place of the Gods”) where the demigod Maui snared the sun. Tangible and intangible cultural resources and values, place names, oral traditions/history, and features of the landscape are invaluable parts of Hawaiian culture. At the piko (navel) of East Maui, traditional Hawaiian land districts (moku) converge at a place called Pōhaku Pālaha. From ancient times to the present, Native Hawaiians have used particular areas, sites, and features within the current Park boundaries for a broad range of activities, cultural practices, and protocols including ceremonies, spiritual training, practices related to birth and burial, resource collection, and travel across East Maui.

The Park has 24,719 acres (74% of the Park) of federally designated Wilderness. The Haleakalā Wilderness provides a panorama of exceptional grandeur where people may find solitude and inspiration within a vast and colorful landscape, and is part of a historic district listed in the National Register of Historic Places in recognition of its significant archeological resources and historic sites. The summit of Haleakalā, including Kīpahulu Valley and Kaupō Gap, is also eligible for listing in the National Register as a traditional cultural property (TCP)

for its association with the cultural landscape of Maui and because of its known uses, oral history, mele (chants or poems), and legends. It remains a source of traditional materials and sacred uses, and a place of profound spiritual power.

Over the years 2017-2019, an average of 1,050,289 visitors annually came to the Park to experience its natural and cultural wonders. Over those same years, an average of up to 24,120 air tour clients flew over the Park annually. The majority of land-based visitors who travel to the summit and headquarters / visitor center are drawn there to witness the awe-inspiring sunrise. In addition to these activities, hiking is available along 38 miles of trails. Visitors to the Park enjoy a broad spectrum of natural sounds, including a rare opportunity to experience intense quiet inside the Haleakalā Crater. Sound levels in the crater are among the lowest recorded in any national park. The NPS 1995 Report to Congress on the Effects of Aircraft Overflights on the National Park System identified the Park as a top priority for maintaining or restoring natural quiet.

The purpose of the Park is to inspire current and future generations, to protect a wild volcanic landscape with a wide array of fragile and diverse native ecosystems, including species found nowhere else on Earth, and to perpetuate the unique connections between Hawaiian culture and this sacred and evolving land.

### **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. Haleakalā National Park 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.

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<sup>1</sup> Environmental Assessments for the Air Tour Management Plan Program at Haleakalā National Park, Hawai'i Volcanoes National Park, Pu'ukoholā Heiau National Historic Site, Kaloko-Honokōhau National Historical Park, Kalaupapa National Historical Park, and Pu'uhonua O Honaunau National Historical Park, 69 Fed. Reg. 9420 (February 27, 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 Fed. Reg. 55060 (Sept. 3, 2020).

On June 21, 2022, the Court ordered the agencies to file a joint supplemental report and proposed firm deadlines for bringing each of the parks included in the Compliance Plan into 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. On August 30, 2023, the U.S. Department of Justice submitted a motion to the court to extend the deadline to January 30, 2024.

#### **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. In the period from 2017-2019, six commercial air tour operators held IOA to fly up to a combined total of 25,827 commercial air tours per year over the Park. Since that time, one operator no longer holds IOA to conduct tours over the Park, and five operators are currently authorized to conduct a combined total of 20,145 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 4,824 commercial air tours per year which is less than 25% of current 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 current operators to identify current air tour routes and other operating conditions. The general route information provided by current commercial air tour operators for their air tour operations within the ATMP planning area is shown in Figure 1, which also depicts Automatic Dependent Surveillance-Broadcast (ADS-B) flight tracking data of likely commercial air tour operations over and adjacent to the Park. Likely commercial air tour operations are dispersed around the generalized routes provided by operators depicted on Figure 1. The ADS-B tracking data is more reflective of existing operations for various reasons including deviations that may occur due to weather. There are currently no route limitations on air tours and routes may change, depending on an operator's preference to change routes or fly higher or lower than they currently are flying.

Air tour operators authorized to fly below 1,500 ft. above ground level (AGL) (14 CFR Part 136, Appendix A, Special Operating Rules for Air Tour Operators in the State of Hawai'i) within the ATMP planning area must comply with requirements such as training and limitations set forth by the FAA in the 2008 FAA Hawai'i Air Tour Common Procedures Manual (Hawai'i Common Procedures Manual).<sup>3</sup> Minimum altitudes for commercial air tours within the ATMP planning area are flown in accordance with the Hawai'i Common Procedures Manual, from 500-1,500

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<sup>3</sup> Hawai'i Air Tour Common Procedures Manual, FAA Document Number: AWP13-136A, 2008, <https://www.faa.gov/media/69191>

ft. AGL, weather dependent and contingent on location over the island. Refer to Figure 1 for details.

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
Aris, Inc. (Air Maui Helicopter Tours)	AS350BA	1,230	1,090	721	818	905	863	735	87	834	3,996
Hawai'i Helicopters, Inc.	AS350B2	476	424	380	476	516	328	283	13	376	5,682**
Helicopter Consultants of Maui, Inc. (Blue Hawaiian Helicopters)	AS350B2, EC130 T2, EC130 B4	1,966	2,550	2,376	2,334	2,100	2,503	2,740	416	2,448	8,348
Schuman / Makani Kai	No Data	0	0	0	0	0	0	0	0	0	25
Sunshine Helicopters, Inc.	AS350BA	959	868	927	679	881	703	775	76	786	4,853
Alika Aviation, Inc. (Alexair, Maverick)	EC130B4	N/A	0	139	282	437	360	342	55	380	2,923
<b>TOTAL</b>	--	<b>4,631</b>	<b>4,932</b>	<b>4,543</b>	<b>4,589</b>	<b>4,839</b>	<b>4,757</b>	<b>4,875</b>	<b>647</b>	<b>4,824</b>	<b>20,145</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>.

\*\* Operator who is no longer authorized to conduct commercial air tours over the Park as of 2023. IOA is not included in the total reflected across the five operators currently operating over the Park.



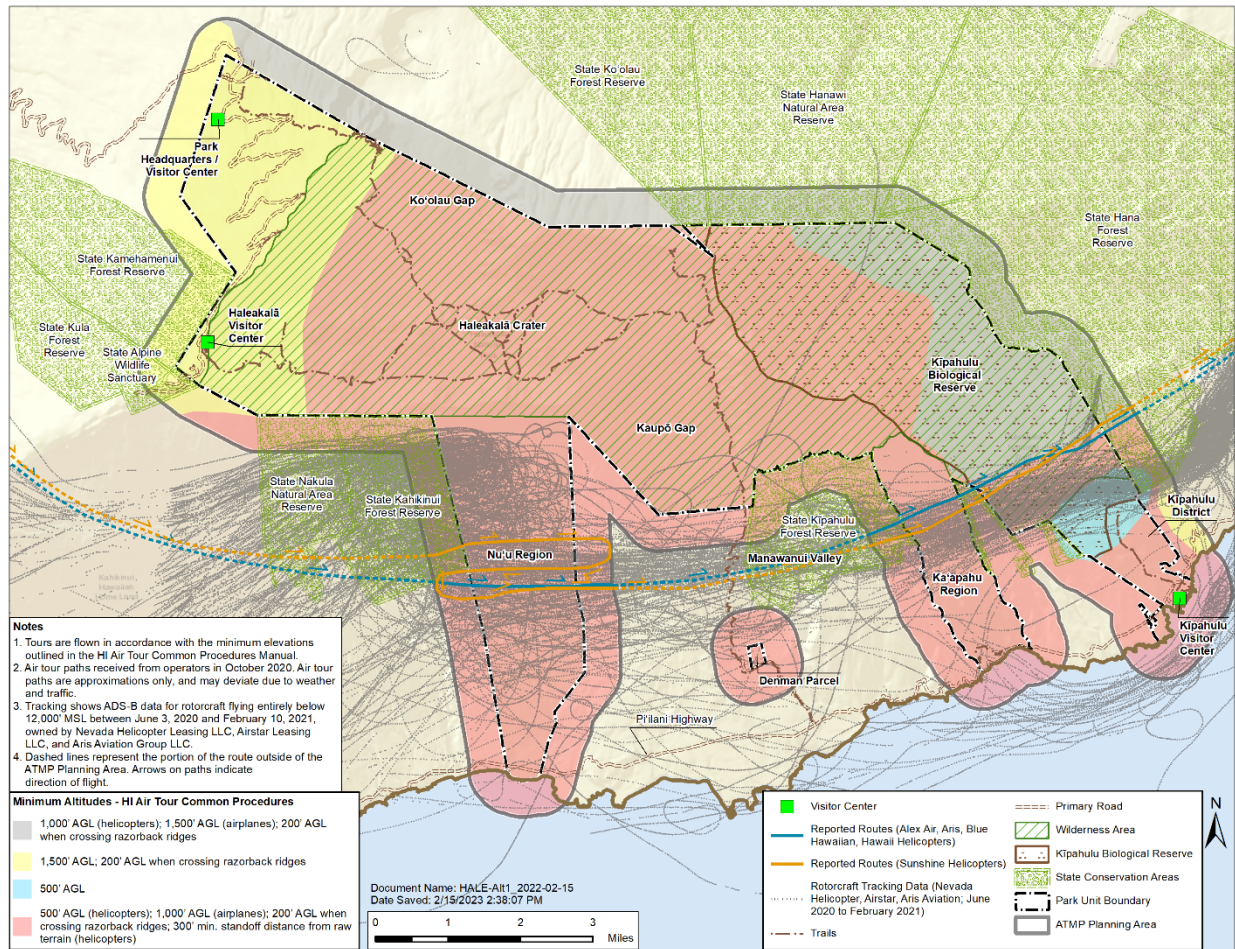


Figure 1. Current routes as reported by operators.

#### 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, 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 landscapes and resources, Wilderness character, visitor experience, and Native Hawaiian TCPs including Native Hawaiian sacred landscapes, sites, and ceremonial areas.

## **VI. Alternatives**

Prior to public scoping, the preliminary ATMP alternatives were developed primarily by an NPS interdisciplinary team comprised of subject matter experts from the NPS's Natural Sounds and Night Skies Division, Environmental Quality Division, Pacific West 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, and 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 alternatives identified by the NPS and justifications for restrictions on commercial air tours were reviewed by the FAA, including the FAA's local Flight Standards District Office (FSDO) 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 (NHPA), including consultation with Native Hawaiian

individuals and Native Hawaiian Organizations. The input from consultation and preliminary environmental analysis was used to further refine or dismiss potential alternatives prior to the public scoping period.

On February 28, 2022, the FAA and the NPS initiated a NEPA public scoping process. Three alternatives were presented during scoping as defined in the Public Scoping Newsletter (refer to Appendix J of the EA). The agencies notified the public of the scoping period through a Park news release, notices on the Park's website and social media, emails, and hard copy mailings. Comments were accepted from February 28 through April 1, 2022. The NPS published a newsletter describing the potential alternatives on the NPS Planning, Environment, and Public Comment (PEPC) website at the start of the scoping period and attached the newsletter to the notification emails and hard copy mailings. 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 three potential alternatives, including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum numbers of flights, and other provisions. The potential draft alternatives also included a justification for the provisions and conditions designed to protect Park resources and visitor experience.

In total, 2,685 correspondences were received, of which 139 were duplicates and six were form letters. Adverse impacts: soundscape impacts (916), adverse impacts: other (308), and adverse impacts: cultural resource impacts (257) were the most common substantive 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.

The agencies considered but eliminated alternatives that would allow air tour operations at or above existing numbers. These alternatives were eliminated from further study because the NPS determined they would result in unacceptable impacts to the Park's natural and cultural resources and visitor enjoyment (NPS Management Policies 1.4.7.1, 2006), and do not meet the purpose and need for the plan.

The agencies considered three alternatives in the draft EA for the draft ATMP. The draft ATMP released for public comment would limit the annual number of air tours within the ATMP planning area to no more than 2,412 tours per year and implement a designated route, altitudes, and time-of-day restrictions and reflected Alternative 3 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 agencies' consideration of the comments received, the agencies refined the No Action Alternative to be the three-year average instead of the IOA, recognizing that IOA is not reasonably foreseeable. As a result of the comments received from the February 2022 public scoping period, the agencies also refined the route and altitudes in Alternative 3. There were no changes made to Alternative 2 following public scoping.

The final EA, in Section 2, includes these three 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 (4,824 commercial air tours per year) across the five operators that have reported conducting commercial air tours over the Park during this period. 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 the number of air tours authorized under IOA are not analyzed nor included in the baseline condition. Section 2.4 of the final EA provides a more detailed description of Alternative 1.
- **Alternative 2.** Alternative 2 would prohibit air tours within the ATMP planning area. Except when 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 purposes, resources, and values of the Park. Section 2.5 of the final EA provides a more detailed description of Alternative 2.
- **Alternative 3 (Preferred Alternative).** In general, under Alternative 3, the ATMP would:
  - Authorize up to 2,224 commercial air tours per year within the ATMP planning area and provide an initial allocation of commercial air tours to each operator based on the proportion of their average number of air tours they flew annually from 2017-2019 compared to all operators that reported flying over the Park during that period.

- Set limits on the number of air tours that each operator may conduct in a single day.
- Set minimum altitudes depending on location within the ATMP planning area (2,000 ft. AGL over land and 3,000 ft. AGL over the ocean) with exceptions for emergency situations.
- Designate a single one-way route from west to east over the southern area of the Park, with four segments, and with minimum altitudes ranging from 2,000 – 3,000 ft. AGL depending on location within the ATMP planning area.
- Prohibit hovering and circling of aircraft.
- Set time-of-day restrictions under which air tours may only operate from 11:00 AM until 2:00 PM unless they are flown using aircraft that qualify for the quiet technology incentive.
- Set Sundays and Wednesdays as weekly no-fly days, set up to 14 annual no-fly days, and provide for the establishment of additional no-fly periods by the NPS for Park management or special events, including Native Hawaiian events, with advance notice to the operators.
- Authorize specific types of aircraft to be used on air tours and specify that any new or replacement aircraft must not be noisier than the authorized aircraft.
- Establish a quiet technology incentive under which air tours using quiet technology aircraft may be conducted from 11:00 AM to 4:00 PM and require all commercial air tours to be flown using quiet technology aircraft by 2033.
- Provide for operator training and education as well as annual meetings to which other stakeholders may be invited.
- Establish procedures to be followed in the event of an emergency landing inside the Park.
- Require operators to install and use flight monitoring technology on all authorized commercial air tours, and to include flight monitoring data in their semi-annual reports to the agencies, along with the number of commercial air tours conducted in the format requested by the agencies and in compliance with all applicable laws.
- Include safety requirements relating to in-flight communications.
- Allow for minor modifications to the ATMP through adaptive management, so long as the impacts of such changes have already been analyzed in previous environmental compliance.

- Outline a process for amending the ATMP.
- Provide information regarding the process for operators to apply for operating authority as a new entrant.
- Set forth a general process for conducting competitive bidding for air tour allocations, where appropriate.

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, Plants, and Invertebrates)
- 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)

## **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; Coastal Resources; 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 sections 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 under NEPA**

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 3/the Preferred Alternative, by evaluating the 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. A description of the affected environment is described in Chapter 3 of the final EA and summarized above in Section II, Description of the Park (Affected Environment). The affected environment also includes lands outside the Park but within ½-mile of its boundary. This significance determination considers the effects of the selected action/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 would result in unacceptable impacts to Park resources and values which the NPS considers to be significant impacts under NEPA because they may lead to impairment and 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); NPS 2006 Management Policies § 1.4.7.1. 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). Coastal resources are a separate impact category in the EA. Coastal resources are not separately discussed below. Impacts to coastal resources within the Park are evaluated under the more specific categories, i.e. Noise and Noise-Compatible Land Use, Biological Resources, Cultural Resources, Visitor Use and Experience, etc. rather than under a separate broad discussion for coastal resources.

i. Degree of Effect

Alternative 3, the selected action/final ATMP, will result in long-term beneficial effects to Park resources and the visitor experience at the Park. As disclosed in the EA, the selected action will reduce the intensity of noise in the Park and move the Park closer to natural ambient conditions. As described in the non-impairment determination, Attachment B, effects will continue to occur from air tours authorized under the ATMP boundary, but the effects will not be significant, nor rise to the level of impairment.

a. Park Soundscape (Noise and Noise-Compatible Land Use)

Under current conditions, commercial air tours may be audible throughout 95% of the Park for up to an hour a day (non-continuous). Approximately 50% of the Park experiences audible air tour noise for more than two hours a day (non-continuous). In approximately 1% of the Park, air tour noise is audible for nearly four hours per day (225 minutes) (non-continuous). Air tours are audible in 100% of the Park for up to 15 minutes per day (non-continuous) (Figure 9, *Noise Technical Analysis*, Appendix F of the final EA). The agencies modeled the extent and duration of noise above 35 decibels, A-weighted (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 90 minutes a day (Figure 10, *Noise Technical Analysis*, Appendix F of the final EA) and noise above 52 dBA is expected up to approximately 24 minutes per day at the loudest location, Nu'u 7500 ft. elev. (location point 40), under current conditions (Table 7, *Noise Technical Analysis*, Appendix F of the EA).

The ATMP limits the number of commercial air tours to 2,224 per year, designates a route and altitudes for those air tours, establishes approximately 118 no-fly days per year, limits flights to certain hours each day, and includes a quiet technology incentive. Thus, under the ATMP, the overall duration, extent and intensity of air tour noise will be substantially less than current conditions. Noise modeling for the ATMP discloses that noise from 2,224 annual



commercial air tours will remain audible throughout the Park on days commercial air tours will be allowed, but the noise will be at a low intensity and for a limited duration. The ATMP limits the number of air tours to 14 per day. This restriction limits the frequency of air tour noise on days air tours are allowed. Air tour noise will be audible in just over a third of the Park (37%) for up to an hour a day (Figure 12, *Noise Technical Analysis*, Appendix F of the final EA). Approximately 42% of the Park will have no noise above 35 dBA, while 33% of the Park will experience noise above 35 dBA up to 15 minutes per day and 3% of the Park will have time above 35 dBA greater than 30 minutes (Figure 13, *Noise Technical Analysis*, Appendix F of the final EA). There will be no air tour noise above 52 dBA, the level at which speech is interrupted, at 31 modeled location points, while 13 modeled location points will have air tour noise above 52 dBA for no more than 10 minutes (non-continuous) (Table 8, *Noise Technical Analysis*, Appendix F of the final EA). Noise will be the loudest, up to 65 dBA, under and adjacent to the designated route, but the intensity of noise is very brief and dissipates in locations further away from the designated route. All air tour noise is expected to be non-continuous. Thus, while air tour noise will be audible throughout the Park on days when air tours are authorized, that noise will be limited in intensity and of a short duration and will not be a significant impact on Park resources and visitors. The Haleakalā Crater would have limited noise because of the designated route placement. Because there are no-fly days, air tour noise is short in duration on the days when air tours occur based on a representative peak month average day of nine tours (no more than 14 air tours can occur on any day though most days with air tours would have fewer than 14 air tours), and because the majority of noise from air tours is low intensity (at or below 35 dBA) there will be no significant noise effects from the air tours authorized by the ATMP and there would be beneficial impacts compared to current conditions.

b. Wildlife and Wildlife Habitat (Biological Resources)

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 wildlife and wildlife habitat, including the endemic mammals and bird species. 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. The analysis demonstrates that on a day with nine tours per day (which represents a peak month average day scenario), commercial air tours would result in noise levels above 35 dBA up to 45 minutes in 3% of the Park. Approximately 33% of the Park will experience noise above 35 dBA up to 15 minutes per day, while approximately 42% of the Park will have no noise above 35 dBA (Figure 13, *Noise Technical Analysis*, Appendix F of the final EA). All air tour noise is expected to be non-continuous. Additionally, as noted above, approximately 118 days each year would be free of air tours. On days when they are allowed, air tours are limited to an operational window of only three hours for non-quiet technology aircraft (and five hours a day for those who qualify for the quiet technology incentive), providing sufficient days for research, education opportunities, and for wildlife not to be interrupted by air tour noise, including times of dawn and dusk.

The minimum altitude of 2,000 ft. AGL over land and 3,000 ft. AGL over the ocean substantially limits both noise exposure to wildlife in the Park, as well as the potential for bird strikes since the air tours can only be conducted on a single flight path through the ATMP boundary, avoiding many habitat areas for sensitive species. Air tours will not be permitted at dusk and dawn, which are the times of day birds are most active. The minimum altitude of 3,000 ft. AGL over the ocean sufficiently protects turtles, whales, and other marine mammals that use the waters and beaches within the ATMP boundary.

Further, the agencies concluded, and U.S. Fish and Wildlife Service and the National Marine Fisheries Service concurred, that the commercial air tours authorized by the ATMP may affect but are not likely to adversely affect threatened and endangered species in the Park<sup>4</sup> (*Section 7 Consultation*, Appendix H to the EA). This determination supports the conclusion that while noise from air tours authorized under the ATMP may have some ongoing effect, there will be no take of endangered species as a result of implementation of the ATMP.

In summary, the noise from air tours authorized under the ATMP is limited in intensity and duration. These impacts will not result in take of listed species under the Endangered Species Act. Thus, there will be no significant impacts to wildlife or wildlife habitat from the air tours authorized by the ATMP. Additionally, the ATMP will result in an overall reduction in noise from air tours which will beneficially impact wildlife and wildlife habitat, compared to current conditions.

#### c. Cultural Resources

The EA also evaluated the effects to cultural resources within the Park, including ethnographic resources, sacred sites, TCPs, archeological resources, cultural landscapes and prehistoric and historic structures. Native Hawaiians have consistently noted that air tours persistently and unreasonably interfere with the silence needed for ceremonies conducted by Native Hawaiian practitioners at these sacred sites, some of which rely on hearing natural sounds. Air tours currently 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 Native Hawaiian cultural activities would be greatly reduced compared to current conditions since, as described above, the frequency, duration, and intensity of noise from air tours will be greatly reduced. The ATMP limits the duration, frequency, and intensity of these impacts providing opportunities for silence without noise from commercial air tours. Approximately 118 days of the year will be completely free of commercial air tours, and on those days when commercial air tours do occur the intensity of noise is very low over most of the Park. On days when air tours are

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<sup>4</sup> "May affect, but not likely to adversely affect" means that all effects are beneficial, insignificant, or discountable.

allowed, they must occur within a three-hour window for non-quiet technology aircraft (and five hours a day for those who qualify for the quiet technology incentive), providing times of the day when no air tour noise can intrude on cultural activities. The ATMP designates eight no-fly days that are culturally important and intended to mitigate impacts on cultural practitioners. In addition, the NPS may designate additional days or periods to be air tour free to preserve the natural quiet necessary for ceremonies or other practices by providing two months' notice to the operators. While air tours may be audible anywhere in the Park, the duration and intensity of noise in most locations is very limited. Approximately 42% of the Park will have no air tour noise above 35 dBA while approximately 33% of the Park will experience noise above 35 dBA up to 15 minutes per day (Figure 13, *Noise Technical Analysis*, Appendix F of the final EA). Although noise intensity may increase at some location points under the ATMP near the proposed flight path, any increases in the time above metrics and maximum sound level at these points are minor, and the overall time that air tours are audible would significantly decrease under the ATMP at all of these points. For example, the largest increase in time above 52 dBA is at location point 37, which would experience an increase of 7.1 minutes to 9.3 minutes (spread out over operating hours) compared to existing conditions. At this same point, the overall time that air tours will be audible under the ATMP would decrease by 104 minutes to 79.6 minutes compared to existing conditions. Further, restricting air tours to the designated route limits noise and visual effects to many sacred sites and ethnographic resources within the Park. To understand how specific cultural resource sites may be impacted, see the *Noise Technical Analysis* (Appendix F of the final EA). The designation of a route, altitude restrictions and other ATMP parameters were designed specifically to mitigate impacts to these important Park resources, and to the opportunity for traditional cultural use, which is one of the Park's fundamental resources.

In summary, there will be no significant impacts to cultural resources in the Park from the air tours authorized under the ATMP because there are a substantial number of days (approximately 118) when air tours will not occur, the times of day during which air tours could occur are limited (no more than five hours), the routes avoid many noise sensitive areas of the Park, and when air tours do occur the intensity of noise is low and the duration of noise is short, and the designated routes avoid many of the sacred sites in the Park. Additionally, compared to current conditions, there will be beneficial impacts to cultural resources in the Park under the ATMP. Finally, the FAA determined and NPS concurred that the ATMP would not have an adverse effect on historic properties under Section 106 of the National Historic Preservation Act, discussed more fully in Section XIII(B) below.

#### d. Viewsheds (Visual Effects)

The Park's panoramic views greatly contribute to Haleakalā's unique sense of place (Haleakalā National Park Foundation Document, page 7). Visitors come to the Park to witness spectacular sunrises over the natural landscape from a high elevation vantage along with other views in the Park. Studies indicate that aircraft noise in national parks can impact

human perceptions of aesthetic quality of viewsheds (refer to Section 3.8.1 of the EA). Currently, air tours disrupt scenic views within the Park an average of 14 times per day, with a maximum of 50 disruptions a day on peak days (refer to Section 3.8.2 of the EA).

Under the ATMP, there will be fewer disruptions of air tours to the Park's viewsheds resulting in beneficial effects to viewsheds, compared to current conditions. Air tours conducted within the ATMP boundary under the ATMP may disrupt a viewshed an average of nine times a day on days when they are allowed. Some visitors may experience multiple disruptions in one day from air tours depending on where they are in the Park and what they are doing, however those disruptions will be short in duration for only as long as the tour passes through the viewshed. The ATMP limits the impacts of these air tours by designating a route that avoids most scenic points of interest and overlooks, including Waimoku Falls, Haleakalā Highway (known as Crater Road within the Park) and the Haleakalā Crater. Under the ATMP, commercial air tours along an authorized route could be visible from the Park's coastal areas, but they would avoid most other scenic points of interest or overlooks. Because the ATMP includes daily limits on air tours such that air tours are likely to average approximately nine per day, limits the hours in which air tours may disrupt the viewshed, the disruption is short in nature, and limits those tours to routes not visible from many scenic points of interests and overlooks, there are no significant impacts to the Park's viewsheds from the ATMP and compared to current conditions, the viewsheds in the Park would improve.

e. Air Quality and Climate Change

The Park is a designated Class I Airshed, which means that it is afforded the highest degree of protection. The Park is removed from many sources of air pollution. However, volcanic gases and particulate emissions from active volcanic activity, approximately 100 miles away on the Island of Hawai'i, may affect air quality and visibility within the ATMP boundary. Commercial air tours currently contribute 267 metric tons (MT) of carbon dioxide (CO<sub>2</sub>) (refer to Section 3.2.2 of the EA).

The EA included an air quality and climate change analysis and determined that 2,224 commercial air tours authorized under the ATMP contributes a minimal amount of emissions to the local air quality and would not have a regional impact (refer to Section 3.2.2 of the EA). Authorized air tours would contribute 109 MT of CO<sub>2</sub>. Also, the ATMP's authorization of these air tours would not cause pollutant concentrations to exceed one or more of the National Ambient Air Quality Standards (NAAQS) for any of the time periods analyzed. Because the amount of emissions is so small, impacts to air quality from the ATMP are not significant. Compared to existing conditions, the ATMP will result in beneficial impacts to air quality.

f. Visitor Use and Experience

Some Park visitors may hear noise from commercial air tours, which can degrade the visitor experience by disrupting verbal communications and masking the sounds of nature. Air tours also detract from the visitor experience by interrupting the viewshed. Visual impacts are

described in more detail above under viewsheds. Noise from commercial air tours can 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, half (50%) of the area within the ATMP boundary currently experiences audible air tour noise for more than two hours a day (non-continuous), and 100% of the area within the ATMP boundary experiences audible air tour noise for at least 15 minutes a day (non-continuous). Under the ATMP, the frequency, duration, and intensity of noise within the Park will be substantially reduced, which will result in fewer interruptions during Park programs and make it less likely that visitors experience noise while visiting the Park. Specifically, under the ATMP, air tour noise will not exceed 52 dBA, the level at which speech is interrupted, for more than ten minutes (non-continuous) at any location on any day when air tours are allowed (Table 8, *Noise Technical Analysis*, Appendix F of the final EA). Thus, Park programs are unlikely to be interrupted and if interruptions occur, they will be short in duration. Additionally, there will be approximately 118 days a year when visitors will not see or experience noise from air tours within the ATMP boundary, which may have a beneficial effect on some visitors. Compared to current conditions, Park visitors will be less likely to see or experience noise from air tours during their visit which will improve the scenic views from the Park as discussed above. Since the extent, frequency, duration and intensity of noise is limited, there are no potentially significant adverse effects to visitor experience from the air tours authorized by the ATMP. And, compared to existing conditions, visitor experience is expected to improve.

The ATMP would result in adverse but not significant impacts on some air tour patrons since the number of commercial air tours authorized in the ATMP would be less than current operations. Some potential air tour patrons may not be able to take an air tour over the Park because of the reduced number of air tours authorized within the ATMP boundary. However, there are opportunities to take air tours outside the ATMP boundary and commercial air tour patrons represent a very small fraction of those who see the Park each year. The number of Park visitors on an annual basis is estimated to be 1.05 million. 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.

g. Wilderness

Under existing conditions, air tours fly over the Park's Wilderness which adversely impact the Park's Wilderness character, including the natural quality of Wilderness and the opportunity for solitude. Approximately 24,719 acres, or 74 percent, of the Park is federally designated Wilderness. The Wilderness area includes the majority of the Haleakalā Crater, Manawainui, and the Kīpahulu Biological Reserve, which protects one of the most intact rainforest ecosystems in the Hawaiian Islands. The Park has a high level of biological diversity with natural processes continuing to take place, largely unaffected by humans. However, air tour noise is currently audible across 100% of the Park's Wilderness. In the Kīpahulu Biological

Reserve and adjacent Wilderness, air tour noise above 35 dBA occurs for up to 75 (non-continuous) minutes a day (Figure 10, *Noise Technical Analysis*, Appendix F of the final EA). Overall, air tour noise above 35 dBA occurs for up to 90 minutes (non-continuous) a day in the Haleakalā Wilderness.

Under the ATMP, on days when air tours occur, noise from commercial air tours would be audible up to 105 minutes a day within Wilderness, although in most of the Park's Wilderness noise from commercial air tours will be audible for a much shorter time and will not reach 35 dBA. Air tour noise above 35 dBA would occur for less than 30 minutes a day in the Haleakalā Wilderness, including in the Kīpahulu Biological Reserve. All air tour noise is expected to be non-continuous. Under the ATMP there will be approximately 118 days without air tour noise and on days air tours would occur, air tour noise (non-continuous) would be limited to between 11:00 AM and 2:00 PM local time (or 11:00 AM and 4:00 PM for quiet technology aircraft). This noise detracts from the opportunity for solitude and natural quality of Wilderness as it introduces sounds of human activity and therefore detracts from this quality of Wilderness character, although it would be substantially less than current conditions. Because there are days without air tour noise, and noise is limited in duration and frequency and intensity, there are no significant impacts to wilderness character from the air tours authorized by the ATMP. Compared to current conditions, Wilderness character would improve substantially.

#### h. Environmental Justice and Socioeconomics

As described in the EA, in 2021, approximately 800 individuals worked in the air transportation industry in Maui County (which includes both the air tour industry plus commercial airlines and airport employees), representing approximately 1.2% of the county's total employment (refer to Section 3.7.1 of the EA). The ATMP will result in lost revenue from air tours within the ATMP boundary. However, the ATMP does not prohibit operators from making up this revenue in other ways such as using their aircraft for other business ventures or conducting air tours elsewhere within the region. Also, the ATMP could result in some economic benefit to businesses within the study area that benefit from quieter noise levels and/or the absence of human-caused sounds, which may include Park visitation. Thus, it is 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 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.

i. Indirect Effects

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. Due to the elevation of the crater, flights close to the crater at or above 5,000 ft. AGL are unlikely due to the altitude of the aircraft (likely over 10,000 ft. mean sea level) and safety requirements for unpressurized aircraft. 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 to view the Park. Operators may also offer new or increased tours to other points of interest on the island. Specific routes, altitudes and numbers of air tours would be necessary to assess the noise and other potential indirect and cumulative impacts associated with reducing air tours within the ATMP boundary. Consistent with the CEQ regulations, 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  $L_{dn}$ ) of DNL 65 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 43-45 and Appendix F of the EA, *Noise Technical Analysis*, Section 8.

j. 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.

k. Effects that Would Violate Federal, State, Tribal, 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, the Coastal Zone Management Act, and Section 7 of the Endangered Species Act. See Section XIII of this ROD and Appendices G, H, and K 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, Coastal Resources, 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 13, *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 50 dB. The maximum 12-hour equivalent sound level would be below 50 dBA and affected portions of the ATMP planning area would continue to be 35 to <40 dBA, representing 24% of the total



area. The maximum time that air tours would be audible would exceed 225 minutes a day, representing less than 1% of the ATMP planning area. Half of the ATMP planning area would experience non-continuous audible air tour noise for more than 120 minutes a day, and the entire ATMP planning area would continue to experience audible air tour noise. The maximum time that noise from air tours would be above 35 dBA is between 75 and 90 minutes a day, representing 3% of the ATMP planning area, while 49% of the ATMP planning area would continue to experience noise above 35 dBA for more than 30 minutes a day. Across the entire ATMP planning area, noise above 52 dBA would occur for a maximum of 23.6 minutes a day at the points modeled, and the maximum sound level at the points modeled would be 68.7 dBA 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 three alternatives evaluated in the final EA.

b. Alternative 2

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 (Preferred Alternative)

Compared to the No Action Alternative, Alternative 3 would provide up to 118 days per year during which air tours would not be conducted within the ATMP planning area. The maximum 12-hour equivalent sound level would be below 45 dBA, where affected portions of the ATMP planning area would generally be 35 to <40 dBA, representing 12% of the total area. Compared to the No Action Alternative, the average sound levels under Alternative 3 would be lower for the interior regions of the Park but may be higher in coastal regions. The noise footprint for Alternative 3 potentially affects 12% less of the ATMP planning area and the equivalent sound level would not exceed 45 dBA, 5 dB less than the No Action Alternative

The modeling results for time audible (natural ambient) show that for Alternative 3 the maximum time that air tours could be audible would be less than 105 minutes a day, representing less than 1% of the ATMP planning area, and 37% of the ATMP planning area would experience non-continuous audible air tour noise for at least 60 minutes a day. Compared to the No Action Alternative, the overall time audible noise footprint for Alternative 3 potentially is only 1% smaller than the No Action Alternative; however, approximately 60% of the ATMP planning area would no longer experience time audible in excess of 105 minutes. Reductions at modeled location points range between 37 and 194 minutes.

The maximum time that noise from air tours would be above 35 dBA is between 30 and 45 minutes a day, representing 3% of the ATMP planning area, while 58% of the ATMP planning area would experience noise above 35 dBA for at least 0.1 minutes a day. Compared to the No Action Alternative, the time above 35 dBA under Alternative 3 could be up to 61 minutes (85%) less, except for one point where time above 35 dBA would be greater by 2 minutes. The overall noise footprint for Alternative 3 potentially affects 42% less of the ATMP planning area.

The maximum time above 52 dBA would be 9.3 minutes at the points modeled. Compared to the No Action Alternative, the time above 52 dBA under Alternative 3 could be up to 24 minutes (100%) less. A larger percentage of modeled points under Alternative 3 (73%) experience time above 52 dBA for less than 1 minute. However, time above 52 dBA could be greater under Alternative 3 at eight locations near the coast (ranging from 1.8 to 7.1 minutes greater). Four of those eight locations near the coast would experience an increase of less than three minutes.

The maximum sound level in ATMP planning area would be 65.0 dBA at the points modeled. Compared to the No Action Alternative, the maximum sound levels under Alternative 3 could be lower for the interior regions of the Park (up to 40 dBA) but may be higher in coastal regions (up to 9 dBA).

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 45 dB.

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

#### d. Noise and Noise-Compatible Land Use Significance Determination

The FAA has determined that the resultant DNL is expected to be below 50 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 not cause NAAQS exceedance or increase the frequency or severity of any existing violations. Emissions for criteria pollutants under the No Action Alternative are provided in Table 6 of the EA. Greenhouse gas (GHG) emissions would be 267 MT of CO<sub>2</sub> per year. Under Alternative 2, there would be a reduction in criteria pollutants by the amounts reported in Table 6 of the EA and a reduction in GHG emissions of 267 MT CO<sub>2</sub> per year compared to the No Action

Alternative within the ATMP planning area. Under Alternative 3, there would be a reduction in criteria pollutants by the amounts reported in Table 7 of the EA and a reduction in GHG emissions of 158 MT CO<sub>2</sub> per year compared to the No Action Alternative within the ATMP planning area. Alternative 3 would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed.

Under the No Action Alternative, indirect effects are not expected to occur. For Alternatives 2 or 3, 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 and 3 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 and interfere with wildlife research activities. Current altitudes of commercial air tour operations do not meet the guidelines for protection of marine mammals. On days when air tours occur, the maximum time that noise from air tours would be above 35 dBA is between 75 and 90 minutes a day, representing 3% of the ATMP planning area. This alternative would not be expected to result in indirect impacts.

b. Alternative 2

Under Alternative 2, commercial air tour aircraft would not fly 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 (Preferred Alternative)

The reduction in tours per year, route, altitudes, and time-of-day restrictions included in Alternative 3 would provide protection to biological resources as compared to the No Action Alternative. This both reduces the frequency and duration of noise and the sound levels experienced by wildlife within the ATMP planning area, as well as reduces the likelihood of

collisions with aircraft. Under Alternative 3, 3% of the ATMP planning area would experience noise above 35 dBA for up to 45 minutes a day, with most areas at less than 15 minutes a day and many areas, including the majority of the Haleakalā Crater, not experiencing noise above 35 dBA at all. When compared to existing conditions, in which air tours could fly as low as 500 ft. AGL, Alternative 3 would increase the minimum altitudes for air tours within the ATMP planning area anywhere from 1,500 to 2,500 ft. AGL depending on location over the ATMP planning area (minimum altitudes under Alternative 3 are 2,000 ft. AGL over land and 3,000 ft. AGL over the ocean). Higher altitudes both reduce the likelihood of bird strikes and reduce maximum sound levels at sites directly below the flight path, and meet the guidelines for protection of marine mammals.

Indirect impacts to biological resources could occur under Alternative 3 if flights were displaced to outside the ATMP planning area. Alternative 3 would result in less cumulative noise and wildlife disturbance in the ATMP planning area than the No Action Alternative, given the reduced number of flights, designated routes, and other ATMP parameters. However, it 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. 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 may affect, but is not likely to adversely affect ‘Ōpe‘ape‘a (*Lasiurus semotus*); forest birds including the kiwīkiu (*Pseudonestor xanthophrys*), ‘ākohekohe (*Palmeria dolei*), ‘i‘iwi (*Drepanis coccinea*), and ‘alalā (*Corvus hawaiiensis*); seabirds including the ‘ua‘u (*Pterodroma sandwichensis*), ‘a‘o (*Puffinus newelli*), and the ‘akē‘akē (*Oceanodroma castro*); nēnē (*Branta (=Nesochen) sandvicensis*); waterbirds including the ae‘o (*Himantopus mexicanus knudseni*) and the ‘alae ke‘oke‘o (*Fulica alai*); sea turtles, including the honu (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), leatherback sea turtle (*Dermochelys coriacea*), olive ridley sea turtle (*Lepidochelys olivacea*), and honu‘ea (*Eretmochelys imbricata*). The U.S. Fish and Wildlife Service concurred with this determination on June 15, 2023. Additionally, the FAA has determined that the Preferred Alternative may affect, but is not likely to adversely affect Hawaiian monk seals and their critical habitat and received concurrence from National Marine Fisheries Service on May 31, 2023. The FAA has also determined that the Preferred Alternative would have No Effect on all other federally listed threatened or endangered species within the action area (see Appendix H, Section 7 Consultation). Further, the FAA determined that the alternatives would not adversely impact species protected under the Migratory Bird Treaty Act (MBTA), including ‘apapane (*Himatione sanguinea*), Hawai‘i ‘amakihi (*Chlorodrepanis virens wilsoni*), Maui ‘alauahio (*Paroreomyza montana*), Hawaiian Short-eared owl or pueo (*Asio flammeus sandwichensis*), Pacific golden-plover (*Pluvialis fulva*), Hawaiian black noddie (*Anous minutus melanogenys*), and white-tailed tropicbird (*Phaethon lepturus*). 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 effect (APE) would continue to be impacted by air tours, as noise and visual effects would impact the feeling and setting of those resources. Native Hawaiians have consistently noted that the persistent air tours over the Park unreasonably interfere with the silence needed to perform ceremonies conducted by Native Hawaiian practitioners at these sacred sites, some of which rely on hearing natural sounds. In consideration of the noise effects of air tours under the No Action Alternative on cultural resources within the APE, the entire Haleakalā Summit TCP may experience sound above 35 dBA, with the areas along the most heavily utilized flight paths (where the crater is visible) experiencing between 75 and 90 minutes above 35 dBA. The 12-hour equivalent sound level within the TCP would range from 9.5 dBA to 45.6 dBA. Under the No Action Alternative, flights over significant features such as the Haleakalā Summit, including Kīpahulu Valley and Kaupō Gap, would continue to occur, resulting in visual and audible intrusions that detract from the sanctity of the Haleakalā Summit TCP.

The No Action Alternative is not expected to result in indirect effects to cultural resources within the APE, although the potential for cumulative noise and visual effects would be the greatest under the No Action Alternative when compared to Alternative 2 and Alternative 3.

##### b. Alternative 2

Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area which would reduce the noise and visual intrusions from impacting the feeling and setting of cultural resources within the APE compared to the No Action Alternative. 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.

##### c. Alternative 3 (Preferred Alternative)

Because the authorized flight path under Alternative 3 would not fly directly over many of the Park's sacred sites and ethnographic resources, including many significant features of the Haleakalā Summit TCP, and the Park's National Register listed and eligible resources, Alternative 3 would overall reduce noise and visual impacts that could detract from the feeling and setting of these resources. Some locations may experience a slight increase in noise intensity from existing conditions as more flights may fly the path than currently fly over those areas; however, not all of these resources have settings where quiet or natural sounds are significant and the duration flights may be heard would be reduced due to the higher minimum altitudes and other restrictions under Alternative 3. Annual and daily limits for air tour operations within the APE would reduce the likelihood that an air tour would interrupt

Native Hawaiian traditional practices such as ceremonies and the sanctity of the Haleakalā Crater.

On days when air tours occur, portions of the APE would experience noise above 35 dBA for up to 45 minutes a day, with most portions of the APE experiencing noise above 35 dBA for less than 15 minutes a day. Compared to the No Action Alternative, the time above 35 dBA under Alternative 3 would be reduced by up to 61 minutes and only at one point would time above 35 dBA be greater under Alternative 3 (2 minutes). The noise footprint as measured in time above 35 dBA for Alternative 3 potentially affects 42% less of the Park.

The 12-hour equivalent sound level would be between 35 and 40 dBA for portions of the APE along the proposed flight path of Alternative 3, with small areas increasing above 40 dBA but below 45 dBA. As a whole, the noise footprint for Alternative 3 as measured by the 12-hour equivalent sound level would impact 12% less of the Park. Compared to the No Action Alternative, the average 12-hour equivalent sound level under Alternative 3 would be lower for the interior regions of the Park but may be higher in coastal regions.

Point #22 would have 6.4 additional minutes of noise above 52 dBA (from 1.8 to 8.2 minutes) and point #37 would have 7 additional minutes of noise above 52 dBA (from 2.2 to 9.3 minutes). The increases in minutes above 52 dBA would be minimal, and they would be spread across the operating hours depending on when the flights occur. The maximum sound level at point #22 would increase by 6.3 dBA (from 57.3 dBA to 63.6 dBA  $L_{max}$ ); the maximum sound level at point #37 would increase by 4.3 dBA (from 60.7 dBA to 65 dBA  $L_{max}$ ). Of the historic properties in the vicinity of points #22 and #37, the Haleakalā TCP, Puhilele Archaeological Sites, and Kīpahulu Historic District have a quiet setting and/or natural sounds as significant characteristics. While these locations would experience an increase in noise intensity, they are near the coast where the median natural ambient sound level is between 45 and 50 dBA and the time the air tours are audible would decrease by over 100 minutes compared to current conditions (from 187.1 to 85.5 minutes at point #22 and 183.7 to 79.9 minutes at point #37). Therefore, overall impacts would be reduced in duration.

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 the No Action Alternative, 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.

The FAA proposed a finding of no adverse effect to historic properties for the preferred alternative (Alternative 3) and consulted with the Hawai'i State Historic Preservation Division (SHPD), consulting parties, and Native Hawaiian Organizations. Five consulting parties objected to this finding. One of the consulting party's objections was resolved through continued consultation; the remaining objections could not be resolved. In July 2023, the agencies expanded the APE as a result of the revised Park boundary. The agencies sent a

letter to the SHPD and all consulting parties with the new APE and requested comments on the historic properties and potential effects within the revised areas. After analyzing the effects of the undertaking in the revised APE, the agencies maintained a finding of no adverse effect and sent a letter requesting concurrence to the SHPD and all consulting parties. The SHPD and one consulting party objected to the finding, and one consulting party provided comment but did not concur nor object. As not all objections could be resolved through continued consultation, the FAA requested the Advisory Council on Historic Preservation's (ACHP) review of the finding, and the ACHP responded disagreeing with the finding of no adverse effect. After careful review of the ACHP advisory opinion, the FAA confirmed the finding that the ATMP would have no adverse effect and provided this response to the ACHP and all consulting parties.

d. 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 NHPA 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 50 dB under the No Action Alternative. The No Action Alternative 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 commercial air tours over the Park is 267 MT CO<sub>2</sub>. Under the No Action Alternative, impacts to viewsheds would continue to affect the nature of the visual character of the area and 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 are conducted within the study area 14 times per 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. The No Action Alternative 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.

There are no indirect impacts that would be expected to occur under this alternative.

b. Alternative 2

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 were displaced to outside the ATMP planning area would result in indirect noise, air quality, or visual impacts to EJ populations. However, the effects are not likely to change substantially as compared to current 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.

c. Alternative 3 (Preferred Alternative)

Alternative 3 would reduce impacts through an annual (2,224) limit on air tour operations; time-of-day restrictions; and increased altitudes (2,000-3,000 ft. AGL depending on location within the ATMP planning area). Compared to the No Action Alternative, Alternative 3 would result in fewer direct impacts to noise, air quality, and visual effects to EJ populations. The DNL analysis indicates that Alternative 3 would not result in noise in excess of 65 dB DNL; the resultant DNL for Alternative 3 is expected to be below 45 dB. 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 change in annual GHG emissions for Alternative 3 as compared to the No Action Alternative is modeled to result in a reduction of 158 MT CO<sub>2</sub> within the ATMP planning area. Some impacts to visual resources would occur under Alternative 3 as commercial air tours would continue to affect the nature of the visual character of the area and contrast the scenic vistas and natural areas in the Park, but impacts would be fewer than those under the No Action Alternative. Alternative 3 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's 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, it is challenging to predict with specificity if, where, and to what extent any air tours that were displaced to outside the ATMP planning area would result in indirect noise, air quality, or visual impacts to EJ populations. However, the effects are not likely to change substantially as compared to current conditions. Therefore, disproportionately high or adverse indirect noise, air quality, or visual impacts to EJ populations are not expected to occur.

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 the No Action Alternative. Therefore, disproportionately high or adverse indirect noise, air quality, or visual impacts to EJ populations are not expected to occur.

#### d. 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 along the leeward shore of the Park, near the crater rim, and in the Kīpahulu District, including Waimoku Falls and coastal viewsheds. Reporting data from 2017-2019 indicates that visitors have the potential, on average, to see commercial air tour aircraft approximately 14 times per day, and the maximum number of tours reported over the Park during this time period was 50 tours a day. The 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 (which occurs 14 times per day on average). However, 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

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 (Preferred Alternative)

Under Alternative 3, annual (2,224) limit of air tour operations, designated route, and time-of-day restrictions would protect the Park's viewsheds. Commercial air tours along the authorized route could be visible from the Park's coastal areas, but they would avoid most other scenic points of interest or overlooks within the study area, including Waimoku Falls and the Summit District. 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 the No Action Alternative, 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 Alternative 2.

d. 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. Coastal Resources

The agencies analyzed the potential for direct, indirect, and cumulative impacts on coastal resources in the relevant environmental impact categories for all three alternatives in the EA (see Noise and Noise Compatible Land Use (Section 3.1), Biological Resources (Section 3.3), Cultural Resources (Section 3.4), Visitor Use and Experience and Other Recreational Opportunities (Section 3.6), Environmental Justice and Socioeconomics (Section 3.7), Visual Effects (Section 3.8), and DOT Act Section 4(f) Resources (Section 3.10)).

The agencies only prepared a consistency determination for the preferred alternative (Alternative 3) and have evaluated Alternative 3's consistency with the enforceable policies of the Hawai'i Coastal Zone Management (CZM) Program, including their objectives and supporting policies. Alternative 3 is not expected to result in impacts to coastal resources. This alternative would be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawai'i CZM Program. The Hawai'i CZM Program Office conditionally concurred with the agencies' determination on June 22, 2023, provided that: the proposed activity is carried out as represented in the CZM federal consistency application and certification; the mitigation measures for protected terrestrial and marine species included in the draft EA are fully implemented; and, the proposed activity is in compliance with the requirements of the SHPD consultation under Section 106 of the NHPA. The agencies' compliance with these conditions is described in Section XIII.F. See Section 3.9 and Appendix K of the EA.

##### a. Coastal Resources Significance Determination

While the FAA does not have a significance threshold for coastal resources, it has a number of factors that it considers when evaluating the context and intensity of potential environmental impacts under these categories. The FAA considers whether the action would be inconsistent with the relevant state coastal zone management plan(s); whether the action would impact a coastal barrier resources system unit (and the degree to which the resource would be impacted); whether the action would pose an impact to coral reef ecosystems (and the degree to which the ecosystem would be affected); whether the action would cause an unacceptable risk to human safety or property; or whether the action would cause adverse impacts to the coastal environment that cannot be satisfactorily mitigated. The FAA analysis did not find any of these issues to be triggered.

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

a. Alternative 1 (No Action Alternative)

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 Park resources including those that unreasonably interfere with ceremonies conducted by Native Hawaiian practitioners at cultural sites, Park programs, activities, the atmosphere of peace and tranquility, and the natural soundscapes in Park's Wilderness areas. The FAA determined that the No Action Alternative would result in substantial impairment to Section 4(f) resources.

b. Alternative 2

The FAA determined there would be no substantial impairment of Section 4(f) resources in the Section 4(f) study area and there would be no constructive use to any Section 4(f) properties. Effects to Section 4(f) resources under Alternative 2 would be expected to be similar or less than those under Alternative 3 as there would be no air tours authorized in the ATMP planning area under this alternative. Therefore, the Section 4(f) analysis does not analyze the potential for constructive use of Section 4(f) resources in detail under Alternative 2.

c. Alternative 3 (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 3. Under Alternative 3, annual (2,224) and daily (14) limits of air tour operations, a single designated flight route, time-of-day restrictions (11:00 AM to 2:00 PM for non-quiet technology, 11:00 AM to 4:00 PM for quiet technology aircraft), and increased altitudes (2,000 ft. AGL over land and 3,000 ft. AGL over water) would reduce the likelihood of impacts compared to the No Action Alternative.

An evaluation of NPS supplemental metrics shows that impacts to Section 4(f) resources would be less than impacts currently occurring. On days when commercial air tours would occur under Alternative 3, noise levels above 35 dBA would occur for less than 15 minutes in 58% of the study area, less than 30 minutes in 25% of the study area, and less than 45 minutes in small portions (3%) in the southeast area of the study area. Noise levels above 52 dBA are not anticipated to exceed 10 minutes in the study area based on an analysis of location point data. Alternative 3 is expected to be below DNL 45 dB and would not cause any reportable noise as there would be no expected increase or change in noise as a result of this alternative.

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 on Section 4(f) resources in the Section 4(f) study area from noise-related effects 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 the No Action Alternative, 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 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 Alternative 2.

#### d. 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 and 3 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 measures that avoid or mitigate impacts are included in the selected action/final ATMP.

### **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, emails, and hard copy mailings 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 the public meeting for the draft ATMP and draft EA for the Park on May 25, 2023 and accepted public comments between May 16 and June 20, 2023. In addition, Park staff responded to media inquiries.

In total, the agencies received 874 correspondences, which included 22 different form letters comprising 598 comments or 68% of the total number of correspondences. 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 L of the final EA, *Draft ATMP and Draft EA 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 and National Marine Fisheries Service in December 2022 during which all three alternatives were reviewed. The agencies determined the ATMP may affect, but is not likely to adversely affect federally listed threatened or endangered species or their critical habitat. The U.S. Fish and Wildlife Service concurred with this determination on June 15, 2023 and the National Marine Fisheries Service concurred with this determination on May 31, 2023. See Appendix H of the EA, *Section 7 Consultation*, for additional analysis.

##### **i. Species Protected under the MBTA**

The agencies analyzed potential impacts to other native bird species, including those protected under the MBTA but are not classified as endangered or threatened under the Endangered Species Act. Other protected native birds that occur throughout the ATMP planning area, including Hawai'i 'amakihi, 'apapane, Maui 'alauahio, pueo, and other migratory or transiting birds, would be exposed to noise under Alternative 3. However, this would represent a reduction in noise compared to current conditions. The single flight path allowed under the Alternative 3 prevents air tours flying directly over sensitive habitats for

the Park's wildlife which reduces the likelihood of impacts to those species including noise that could alter wildlife behavior. The authorized altitudes (minimum 2,000 ft. AGL over land and 3,000 ft. AGL over the ocean) also limit the potential for direct strikes to wildlife within the action area. 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 conducted consultation under Section 106 with an evaluation of the effects of Alternative 3, as the Preferred Alternative, on historic properties. A letter was sent on March 27, 2023, to the Hawai'i SHPD and all consulting parties 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 and proposed finding 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 Office of Hawaiian Affairs (OHA), Haleakalā Conservancy, National Trust for Historic Preservation, Friends of Haleakalā National Park, and the National Parks Conservation Association objected to the finding. OHA's objection was resolved through continued consultation.

In July 2023, the agencies expanded the APE after the Park acquired new parcels that expanded the Park boundary, and consequently, the ATMP planning area. When reviewing the changes needed for new parcels, the NPS also found other small parcels that needed to be added to the maps and consequently expanded the ATMP planning area. The agencies adjusted the APE to include the areas of expanded buffer and sent an APE letter to all consulting parties on July 26, 2023, with a map showing the new areas within the APE and requesting comments on historic properties and potential effects within these new areas. The agencies analyzed the effects of the undertaking in the expanded areas of the APE and maintained a finding of no adverse effect in an August 14, 2023, letter sent to all consulting parties. The Daniel K. Inouye Solar Telescope concurred with the finding and Nu'u Mauka Ranch sent comment that they had no issue with the plan as outlined. In addition to the aforementioned objections from the Haleakalā Conservancy, NTHP, Friends of Haleakalā National Park, and the NPCA, the SHPD and Mr. Stanley Kī'ope Raymond also objected to the finding. Therefore, on October 18, 2023, FAA requested the ACHP review the finding pursuant to 36 CFR §§800.5(c)(2) and (3). The ACHP provided their opinion in a letter dated November 20, 2023, disagreeing with the finding of no adverse effect. After careful review of the ACHP advisory opinion, the FAA confirmed the finding that implementing the ATMP at Haleakalā National Park would have no adverse effect on historic properties. FAA provided the agency response to the ACHP and all consulting parties on the project in a letter dated December 7, 2023, thereby concluding the Section 106 process. See Appendix G, *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 and 3 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 through the release of the draft ATMP and draft EA, consulted with the NPS and other Officials with Jurisdiction over Section 4(f) resources in the 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. The FAA sent an email with an attached letter to the Hawai'i Department of Land and Natural Resources (DLNR) and the National Park Service (NPS) on May 16, 2023 and to the Hawai'i Land Trust on September 22, 2023 describing the proposed action and FAA's preliminary determination and requested response within a 14-day review period. A follow-up email was sent to the Hawai'i DLNR and the NPS on May 23, 2023, and to the Hawai'i Land Trust on September 28, 2023. Additionally, the FAA notified the NPS of the determination via email. The 14-day response period for the review requests with the Hawai'i DLNR and the NPS closed on May 30, 2023, and the review request with the Hawai'i Land Trust closed on October 6, 2023. No responses were received. Following the public comment period on the draft EA and draft ATMP, the FAA sent emails to each Official with Jurisdiction describing the updated Section 4(f) study area associated with the revised Park boundary and the changes to the ATMP parameters reflected in the final ATMP, which did not result in a change to the FAA's determination of no constructive use. 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**

In managing National Park System units, the NPS is bound by the Organic Act of 1916, 54 U.S.C. §§ 100101 et seq., which requires the NPS to manage parks to "conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the



enjoyment of future generations.” In addition, NPS management of System units is guided by the 2006 NPS Management Policies and other policy and guidance documents that do not apply to the FAA. The NPS has prepared a non-impairment determination and found that the selected action/final ATMP, which was Alternative 3/the Preferred Alternative, will not result in impairment of Park resources. The NPS’s Statement of Compliance, Attachment B, includes the NPS’s non-impairment determination, and explains the NPS’s compliance with relevant NPS policies.

#### **F. Coastal Zone Management Act**

The State of Hawai‘i administers a CZM program and has established objectives and their supporting policies (Hawai‘i Revised Statutes § 205A-2) to help the Hawai‘i CZM Program evaluate the consistency of proposed federal actions. As part of this compliance with the Coastal Zone Management Act (CZMA), the agencies requested a federal consistency review by the Hawai‘i CZM Program Office simultaneous with the release of the draft EA for public review and comment. See Appendix K of the EA. The Hawai‘i CZM Program Office conditionally concurred with the agencies’ determination on June 22, 2023, provided that: (1) the proposed activity is carried out as represented in the CZM federal consistency application and certification; (2) the mitigation measures for protected terrestrial and marine species included in the draft EA are fully implemented; and, (3) the proposed activity is in compliance with the requirements of the SHPD consultation under Section 106 of the NHPA. The agencies complied with all three conditions of the conditional concurrence. First, the ATMP will be carried out as represented in the consistency determination, with minor changes that will have primarily beneficial or neutral impacts on coastal resources. These changes are: a reduction in the number of annually authorized air tours; a slight reduction in daily limit of authorized air tours; minor revisions to ATMP boundary as described in Section XIV; minor changes to two sections of the authorized route that reflect the revised ATMP boundary; and six additional no-fly days of important cultural significance to Native Hawaiians. Second, the ATMP and the final EA/errata include the mitigation measures in the draft EA that protect terrestrial and marine species and the agencies have committed to implementing the ATMP. Third, as explained in Section VIII(B) above, the agencies complied with Section 106 of the NHPA, and its implementing regulations.

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

The agencies considered and responded to public comments received on the draft ATMP and draft EA. In addition to minor, editorial changes made for clarity, the final ATMP includes the following substantive changes from the draft ATMP made in response to public comments or based on further agency review, as follows:

##### **A. The Park Boundary and ATMP Boundary**

Under the Act and its implementing regulations, the ATMP must apply to all commercial air tour operations over the Park and those ½-mile outside the Park’s boundary. 49 U.S.C. §

40128(b)(3)(C); 14 CFR 136.39 (c)(3). Under the enabling legislation for the Park, parcels acquired by the United States for inclusion in the Park automatically enlarge the Park's boundary. 16 U.S.C. §§ 391b, 396c. Three parcels were added in March 2023 that enlarged the Park boundary and, consequently, the ATMP boundary. Specifically, the NPS acquired easements on two small parcels totaling 0.92 acres (Tract No. 01-126) along the northwest existing boundary of the Summit District for Halemau'u Trail switchbacks near the Halemau'u trailhead. The third parcel (Tract No. 01-127) is an easement over a 7.28 acre property added along the northwest portion of the Park's Summit District, including a small portion of the Hosmer Loop Trail, near the parking lot for the Hosmer Grove Campground.

In updating the ATMP boundary for the final ATMP, it became clear that the maps included in the draft ATMP did not capture other relatively recent acquisitions and Park boundary clarifications based on more recent mapping. As a result, the agencies updated the Park's boundary in the final ATMP with the current, most accurate data, then revised the ATMP boundary as depicted in the final ATMP to include the area ½-mile outside of the Park's corrected boundary. The additional modifications to the Park's boundary in the final ATMP include:

- The addition of a 216.18 acre parcel (Tract No. 01-128) between the Ka'āpahu and Kīpahulu areas, adjacent to the Ka'āpahu area that was acquired in 2016.
- The addition of four parcels in the Kīpahulu area. Tract Nos. 03-118 and 03-112 are 5.9 acres in total and are parallel to the coast at the eastern edge of the lower Kīpahulu District. They are within the Park's legislated boundary but are not owned by the NPS. Tract Nos. 03-120 and 03-117 together comprise 34.09 acres and are owned by the NPS.
- A decrease in size of the Denman Parcel (Tract No. 01-125) from the 19.151 acres depicted in the draft ATMP to the 17.18 acres depicted in the final ATMP as a result of a mapping correction.
- Minor mapping corrections were made to the eastern edge of the Nu'u Region.

In total, as a result of the mapping corrections, the size of the ATMP boundary increased from 51,427.7 acres to 51,522.5 acres, which represents a +0.18% change of 236.3 acres.<sup>5</sup> The Park boundary modifications and mapping clarifications and the ATMP boundary changes from the draft to the final ATMP are depicted on the map below which also identifies the tract numbers of the added or corrected parcels.

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<sup>5</sup> This difference is calculated by geographic information systems (GIS) using property boundaries projected to the UTM Zone 5N coordinate system using the NAD83 datum. These calculations may differ from acreages derived from survey, deed, or assessor records, which are authoritative if available.

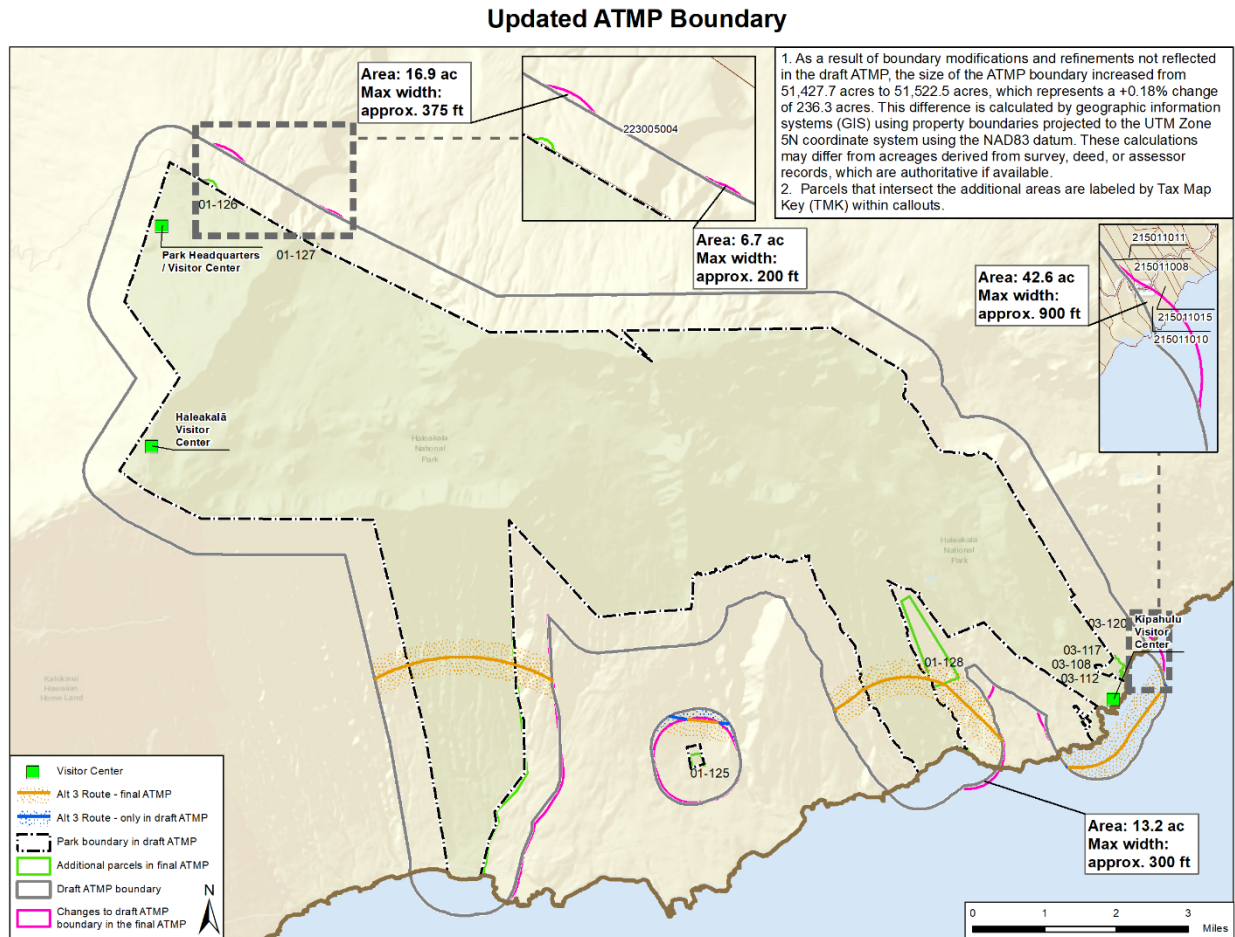


Figure 2. Updated ATMP Boundary.

## B. Section 3.1 Commercial Air Tours Authorized

The number of tours per year authorized was reduced from 2,412 to 2,224 commercial air tours per year. After the draft ATMP was released for public review, one of operators with IOA for the Park who conducted air tours from 2017-2019 stopped conducting commercial air tours in Hawai'i and no longer holds IOA for the Park. The total number of air tours authorized on an annual basis in the final ATMP was reduced to no longer account for the air tours conducted by this operator. Similarly, the daily flight allocations in Section 3.7D and Table 1 in Appendix A to the ATMP were modified to no longer allocate air tour operations to this operator, and no longer include a daily limit on air tour operations for this operator. The daily flight limitations were all revised to make clear that they are subject to, and may not be used to exceed, the total annual flight allocations to each operator.

## C. Section 3.2 Commercial Air Tour Route and Altitudes

As a result of the changes to the ATMP boundary described above, minor modifications were made to two sections of the designated route. Due to the reduced size mapped for the

Denman Parcel the portion of the route within the ATMP boundary in that area was reduced. Due to the minor expansion of the ATMP boundary near the Kīpahulu Visitor Center, the route in this area was slightly extended.

Though the final ATMP continues to allow operators to deviate from designated routes and altitudes to avoid hazards, it was modified to make clear that the pilot in command should return to the designated route and altitude as soon as safely possible after a hazard has passed.

#### **D. Section 3.5 Restrictions for Particular Events**

The draft ATMP would have established six annual no-fly days based on the Park's existing commercial free days (which vary from year to year) and two no-fly days per year for commercial air tours based on culturally significant Hawai'i State holidays: Prince Jonah Kūhiō Kalaniana'ole Day (March 26) and King Kamehameha I Day (June 11). In response to public comments, the final ATMP retains the no-fly days included in the draft ATMP and it includes up to six additional no-fly days of important cultural significance to Native Hawaiians that will be determined through consultation with Native Hawaiian Organizations and individuals and confirmed during the annual meeting provided for in Section 3.7B, Annual Meeting, of the final ATMP. The final ATMP clarifies that the NPS will provide at least two months' notice of these no-fly days.

#### **E. Section 3.7B Annual Meeting**

This section was revised to make clear that the agencies may invite stakeholders with relevant subject matter expertise to attend annual meetings between Park staff, the local FAA Flight Standards District Office and the operators.

#### **F. Section 3.7C In-Flight Communication**

Changes were made to this section to require pilots provide more specific information when entering or departing a route. These changes were made for safety reasons. In addition to identifying their company and aircraft, pilots are now required to identify their location on the route, when entering or departing a segment of the route. They must also identify the name of the route when departing the route. Clarifying edits were included to make clear that pilots may identify their location along the route for the awareness of other operators as needed.

#### **G. Section 3.8 Quiet Technology Incentive**

To reduce potential confusion, this section was revised to include language, already included in Section 3.7F, Transition to Quiet Technology Aircraft, making clear that by 2033 all air tours over the Park must be conducted using quiet technology aircraft.

## **H. Section 5.0 Justification for Measures Taken**

This section was reorganized for improved clarity and readability. In addition to editorial or clarifying edits, this section was substantively revised to explain the justification for allowing other stakeholders, including Native Hawaiian Organizations, to attend the annual meeting between air tour operators, Park staff and the FAA's local Flight Standards District Office. Additional background regarding the impacts of commercial air tours on visitor experience and on the resource impacts targeted by mitigations in the ATMP was also included.

## **I. Section 9.0 Amendment**

This section was amended to make clear that one of the reasons that the ATMP could be amended is if the NPS, by notification to the FAA and the operator, determines that it is not adequately protecting the Park's Wilderness.

## **J. Section 13.0 Compliance with All Laws**

In response to comments regarding Section 4.1 of the draft ATMP, the agencies added a section to the final ATMP acknowledging that the ATMP will be implemented in compliance with all applicable laws, including but not limited to 44 U.S.C. § 3501 et seq.

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

This section, together with the final EA and all appendices, including Appendix L, *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 3 (the Preferred Alternative in the final EA). The ATMP will permit up to 2,224 commercial air tours within the ATMP boundary per year, on a single designated route with four segments, and subject to the operating parameters, restrictions, and other provisions included in the ATMP. The Act contemplates that air tours may be an appropriate use over parks subject to restrictions that prevent or mitigate significant impacts on park resources and visitor experience. The agencies decided to implement the selected action because it includes measures designed to protect the Park's natural and cultural resources, Native Hawaiian sacred sites and ceremonial areas, and visitor experience, as well as Wilderness character, and continues to allow opportunities for air tours to be safely conducted. As explained in the agencies' significance findings above, the measures included in the ATMP mitigate or avoid significant impacts of commercial air tours on Park resources and visitor experience and as explained in the NPS's Statement of Compliance, Attachment B, it will not result in impairment of or unacceptable impacts to the Park's resources.

The NPS determined that current levels of air tours create unacceptable impacts on the Park's natural and cultural resources and visitor enjoyment. It further unreasonably interferes with Native Hawaiian ceremonies, Park programs, activities, the atmosphere of peace and tranquility and the natural soundscapes in Wilderness. And the current level of air tours is inconsistent with the Park's purpose and values including preserving endemic Hawaiian ecosystems, perpetuating biological diversity and perpetuating the continuing connections between Hawaiian culture and the Park. See Section 2.2.1 of the final EA and NPS Statement of Compliance, Attachment B. The NPS's Management Policies direct that the NPS may not select an action that would cause unacceptable impacts or that are inconsistent with the Park's purposes or values. NPS 2006 Management Policies § 1.4.7. Further, the agencies found that authorizing air tours at current levels did not meet the purpose and need for the ATMP. Thus, the agencies considered but dismissed alternatives that would have allowed air tours at or above existing numbers (4,824 commercial air tours per year).

The Park's ambient acoustic environment is very low (below 35 decibels in many places, which is comparable to a low whisper). These low ambient background levels, coupled with the high number of annual commercial air tours flying at low altitudes, make helicopter noise intrusions very noticeable and difficult to mitigate at current levels. This ATMP uses a combination of designating a single route, setting minimum altitudes, establishing no-fly days, reducing air tours by 54% compared to current levels, substantially condensed operating hours, and quiet technology incentives to reduce the average sound levels (over a 12-hour day) by over 30 decibels for many of the most noise sensitive regions of the Park. Alternatives that did not include these measures, or that allowed more annual air tours than analyzed in the final EA, were not analyzed in detail because they did not meet the purpose and need for the ATMP because they did not sufficiently mitigate the adverse impacts of commercial air tours on the Park's natural and cultural resources, Native Hawaiian sacred sites and ceremonial areas, Wilderness character, and visitor experience.

The agencies considered an alternative that would prohibit commercial air tours within the ATMP boundary (Alternative 2 in the final EA) but did not select that alternative, because they found that the mitigation measures in the ATMP, including annual limits, designated routes and minimum altitudes, sufficiently mitigated the impacts of air tours on Park resources and visitor experience, while still providing some opportunities for commercial air tours for those who wished to take those tours. A ban is not necessary to fulfill the objectives of the Act or to avoid significant impacts under NEPA or adverse effects under NHPA. The mitigation and other measures included in the ATMP are explained in more detail below.

The conservation mandate in the NPS Organic Act "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. Thus, the ATMP includes measures not just to mitigate the significant impacts of air tours on Park resources, but measures determined by the NPS to be protective of such resources and that support NPS management

objectives for the Park, as well as measures determined by the agencies to be necessary to effectively implement the ATMP. However, NPS Management Policies do not require the NPS to mitigate the impacts of commercial air tours to the point that they no longer have any impact at all or no longer can occur. Rather, the NPS has to consider whether there are mitigations that can reduce impacts to Park resources and whether the impacts of those uses, after applying mitigations, result in unacceptable impacts or impairment. See NPS 2006 Management Policies §§ 8.1.1, 8.4. As demonstrated in the NPS's Statement of Compliance, the NPS concluded that the ATMP will not result in impairment or unacceptable impacts and complies with NPS Management Policies.

After considering the full technical analyses of noise and other impacts, input from the public and other federal and state agencies, information and input from consulting parties, including Native Hawaiian Organizations and individuals, the Hawai'i SHPD, and the ACHP, the NPS and the FAA have determined that the operating parameters and other measures included in the ATMP strike the appropriate balance between mitigating impacts on Park resources and visitor experience while still providing opportunities for commercial air tours to occur. These measures are explained in more detail below.

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. Under FAA regulations, the pilot-in-command is always required to take action to ensure the safe operation of the aircraft.

#### **A. Annual and Daily Air Tour Limits**

The ATMP limits the number of commercial air tours authorized per year to 2,224 tours and includes daily limits on the number of tours that may be conducted. The draft ATMP proposed to authorize 2,412 commercial air tours annually. The number of flights authorized per year was selected to reduce impacts to noise sensitive areas in the Park (including those with Wilderness values), cultural resources, natural acoustic environment, wildlife, and visitor experience while also providing air tour customers with the opportunity to experience expansive views of the Park from the air.<sup>6</sup> However, after the draft ATMP was released for public review, the agencies became aware that an operator who conducted air tours over the

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<sup>6</sup> Noise sensitive areas of the Park are areas where a quiet setting is a generally recognized feature or attribute.

Park from 2017-2019 is no longer authorized to conduct commercial air tours over the Park. As a result, the number of tours per year proposed to be authorized in the draft ATMP was reduced by 188 commercial air tours per year in the final ATMP. The agencies did this to maintain the annual air tour allocations in the draft ATMP to the remaining operators (which, as noted below is a proportional allocation based on the operator's proportional share of the total reported flights from 2017-2019) and because the NPS found the lower number of authorized tours to be more protective of Park resources and visitor experience. As a result, the final ATMP authorizes 2,224 of the existing condition of tours conducted based on the three-year average of reporting data from 2017-2019 (4,824 commercial air tours per year), excluding tours previously allocated by the operator that is no longer authorized to conduct tours over the Park.

The ATMP also provides an initial allocation of commercial air tour operations to current commercial air tour operators that identifies the maximum number of commercial air tours that each operator may conduct in a year. The initial allocation of commercial air tours for each operator in the draft ATMP was based on the proportional number of each operator's average reported total flights per year from 2017-2019 compared to the total number of tours reported during that timeframe.

The number of air tours each operator may conduct on a single day is limited under the ATMP, which makes clear that the daily limitations are subject to the annual allocations (i.e., the annual allocations provide the upper limit on the total number of air tours that operators may conduct in a single year). The daily flight limits are intended to manage the daily noise footprint from commercial air tours and to adequately protect Park natural and cultural resources, traditional cultural properties, designated Wilderness and visitor experience. The operator allocated the highest number of air tour operations may conduct up to six commercial air tours in a single day, while two of the operators are each limited to three air tours a day and the fourth operator is limited to two air tours in a single day. The daily air tour limits were developed based on what the NPS determined would be protective of Park resources and values while allowing the operators sufficient flexibility to use their annual allocations. Each operator's daily limit reflects its proportional allocation of operations for the year. The agencies decided to set daily limits for each operator, rather than a hard cap on daily operations for all operators, because a hard cap would be more difficult to implement.

#### **B. Designated Route and Minimum Altitudes**

The ATMP designates a single one-way route from west to east over the southern area of the Park, with four segments, and makes clear that air tours are not required to fly all four segments of the route, but must follow the designated route when within the ATMP boundary. The designation of a single flight path was designed to protect Wilderness values by not authorizing tours over the Park's Wilderness, and to enhance the visitor experience in areas without air tour overflights, including by avoiding the Keonehe'ehe'e (Sliding Sands) Trailhead near the visitor center, Waimoku Falls and lower Kīpahulu area including the Visitor



Center, and the Halemau‘u Trail switchback areas. The flight path intentionally avoids identified culturally significant areas, the Kīpahulu Historic District, Crater Historic District, the Kapahu Living Farm, and cultural fishing access and use in certain coastal areas. Further, the location of the flight path was selected because it avoids the bioreserve and reduces impacts to forest birds, and nesting ‘ua‘u by maintaining mid-slope elevations (i.e., staying below 4,000 ft. contour line elevations). Thus, the designated route shifts air tours away from key avian habitat.

The ATMP sets minimum altitudes for air tours conducted on the designated route. Aircraft are required to maintain minimum altitudes of 2,000 ft. AGL over land and a minimum of 3,000 ft. AGL over the ocean. The minimum altitudes were selected to reduce air tour noise in order to protect Park resources, Native Hawaiian traditional practices and sacred sites, and visitor experience.

The ATMP makes clear that operators are required to adhere to the designated route and altitudes except in case of a hazard where a deviation is necessary for safe operation of the aircraft under Federal Aviation Regulations, though the operator should return to the designated route as soon as safely possible after the hazard has passed. However, if upon entering a segment of the route, an operator encounters weather that does not allow them to proceed further at the prescribed altitude, they must not proceed further on the route and must safely exit the ATMP boundary.

Hovering and/or circling, and vertical separation (“stacking”) of aircraft along the route, are prohibited because they increase noise levels and duration and negatively impact visitor experience and noise sensitive cultural and natural resources.

The final EA and each agencies’ findings of no significant impacts (above) demonstrate that the designated route, minimum altitudes, and prohibitions on hovering, circling, and vertical stacking, together with other measures included in the final ATMP, do substantially mitigate the impacts of commercial air tours on Park resources and visitor experience.

### **C. Hours and Days of Operation**

The ATMP restricts the hours during which commercial air tours may occur within the ATMP boundary. Unless flown using aircraft that qualify for the quiet technology incentive, air tours may only operate during the three-hour window from 11:00 AM to 2:00 PM daily. These time-of-day restrictions were included to protect wildlife resources and visitor experience. Sunrise and sunset are important times of the day for wildlife and visitor use and experience. Behaviors critical for survival of many wildlife species occur during this time, such as foraging, mating, and communication. Eliminating air tours before 11:00 AM is critical for acoustic surveys and song meter recordings of endangered forest birds. As noted below, the quiet technology incentive expands the time frame during which air tours may be conducted using quiet technology aircraft from 11:00 AM to 4:00 PM and all air tours must be conducted using quiet technology aircraft by 2033. Thus, the agencies anticipate that after 2033 the

hours of operation will be from 11:00 AM to 4:00 PM because all air tours will be conducted using quiet technology aircraft.

The ATMP also restricts the days of the week that commercial air tours may operate. Air tours may only operate on Mondays, Tuesdays, Thursdays, Fridays, and Saturdays. No air tours are permitted on Wednesdays or Sundays. These non-consecutive no-fly days comprising one weekend day and one weekday offer a range of visitor access to the natural acoustic environment and the renowned quiet of the Haleakalā Crater. In addition, Park stewardship actions (i.e., song meter recordings of endangered forest birds) will benefit from these no-fly days where stewardship actions can be conducted unhindered by interruptions due to noise from commercial air tours.

#### **D. Emergency Landings**

The ATMP does not authorize any aircraft to take off or land within the Park. However, helicopters conducting commercial air tours have landed in the Park in the past due to equipment issues and the agencies recognize emergencies may occur in the future and that operators may need to land aircraft in order to protect the lives or safety of air tour patrons. Thus, the ATMP includes a requirement that any operator that has made an emergency landing within the Park must, once the aircraft has safely landed and any medical or other emergency issues have been addressed, immediately notify the NPS through Park Dispatch of the incident and location. The Park superintendent, or their designee, is then required to approve the removal or take off of the landed aircraft in order to coordinate joint resources for the safety of Park visitors and resources. Any non-emergency landing within the Park, including replacement aircraft deployed to retrieve passengers who are not able to exit via ground transportation, requires prior approval from the Park superintendent or their designee.

#### **E. Restrictions for Particular Events**

The ATMP establishes up to fourteen annual no-fly days for commercial air tours and allows the NPS to establish additional no-fly periods. The no-fly days and no-fly periods are intended to prevent noise interruptions of Park events and some Native Hawaiian practices or ceremonies.

Six of the no-fly days vary from year to year and are based on days that follow the Hawaiian Moon Calendar and Makahiki Season: End of Makahiki (typically in January); Zenith Noon (typically in May); Summer Solstice (June); Zenith Noon (typically in July); Start of Makahiki (typically in October); and Winter Solstice (December). The specific dates on which these no-fly days will occur each year will be identified by NPS through outreach with Native Hawaiian Organizations. The ATMP also includes up to six additional no-fly days of important cultural significance to Native Hawaiians that will be determined through consultation with Native Hawaiian Organizations and individuals. The agencies plan to confirm the no-fly dates for the

next year at the annual meeting in order to provide the operators with at least two months' notice of these no-fly dates for the following year.

Two additional annual no-fly days for commercial air tours are based on culturally significant Hawai'i State holidays: Prince Jonah Kūhiō Kalaniana'ole Day (March 26) and King Kamehameha I Day (June 11).

The ATMP also allows the NPS to establish additional no-fly periods either for special events (including Native Hawaiian events or natural or cultural resource programs) or planned Park management by providing two months' notice to operators, unless there are exigent circumstances or emergency operations. For special events that could be impacted by overflights, there is a mandatory five-mile standoff which means that routes within the five-mile standoff may not be flown during the no-fly period.

#### **F. Required Reporting**

Operators are required to submit semi-annual reports to the agencies identifying the number of commercial air tours they conducted within the ATMP boundary and to include the flight monitoring data required under Section 4.1 of the ATMP (which will enable the agencies to verify whether aircraft are flying on the designated route and maintaining the required minimum altitudes) as well as any other information requested by the agencies. The reporting will comply with all applicable laws, including 44 U.S.C. § 3501 et seq. The Act requires operators to report their commercial air tour operations conducted under an ATMP to both agencies but provides the agencies the discretion to prescribe the frequency, content, and format for such reports. 49 U.S.C. § 40128(d). The ATMP establishes reporting periods of January 1 through June 30 and July 1 through December 31 and provides that reports are due to both agencies no later than 30 days after the close of a reporting period.

Under 54 U.S.C. § 100904(f), commercial tour use fees are required for commercial air tour operations conducted over the Park. The ATMP includes direction to operators as to how to report the number total number of air tours conducted over the Park to the NPS and establishes a procedure for the NPS to bill the operators for fees due and to provide information to operators regarding how to pay their fees. Including these instructions in the ATMP is intended to simplify and streamline the reporting and payment process.

#### **G. Quiet Technology Incentive**

The Act requires that each ATMP include incentives for the use of quiet technology. The ATMP incentivized the adoption and use of quiet technology aircraft by expanding the hours during which air tours flown using qualifying aircraft may be conducted are expanded. While tours using non-quiet technology aircraft are restricted to the hours from 11:00 AM to 2:00 PM, quiet technology air tours may be flown between 11:00 AM to 4:00 PM on all days that flights are authorized. The quiet technology incentive is applicable until 2033, after which time all air tours conducted within the ATMP boundary will be required to be conducted using quiet

technology aircraft and may be conducted from 11:00 AM to 4:00 PM on all days that flights are authorized.

The ATMP sets up a consultation process between the operators and both agencies regarding which of their aircraft qualify for the incentive. Until 2033, if operators believe that any or all of the aircraft authorized for use under the ATMP should qualify for the quiet technology incentive, they may request that the agencies allow them to conduct air tours using such aircraft from 11:00 AM to 4:00 PM on all days when flights are authorized. The eligibility of each aircraft type for this incentive will be considered by the agencies on a case-by-case basis. In the future, should operators wish to purchase new aircraft, the ATMP allows for consultation with the agencies before the operator makes the investment in a new aircraft to determine whether such aircraft would qualify for the incentive. After 2033, operators will need to have consulted with the agencies to determine which of their aircraft qualify as quiet technology aircraft before conducting tours using such aircraft within the ATMP boundary.

The quiet technology incentive was included in the ATMP to be effective in incentivizing the adoption and use of quiet technology aircraft for commercial air tours, with a transition to all quiet technology tours by 2033, while at the same time minimizing noise impacts to Park resources. This incentive allows visitors to experience less noise in the latter part of day when Park visitation numbers are higher. The ATMP provides that the NPS will periodically monitor Park conditions and coordinate with the FAA to assess the effectiveness of this incentive. If there are unanticipated effects to visitor experience and Park resources, including Native Hawaiian traditional practices and sacred sites, further agency action may be required to ensure their protection. This action could include either adaptive management measures or an ATMP amendment modifying the incentive.

#### **H. Monitoring and Compliance**

In order to successfully implement the ATMP, the agencies determined that it should include provisions to allow the agencies to adequately monitor and ensure compliance with its conditions. To this end, Section 4.1 of the final ATMP requires that operators equip aircraft used for air tours with flight monitoring technology, to use such technology when conducting air tours, and to include flight monitoring data in their semi-annual reports. The NPS consulted with the National Parks Overflights Advisory Group regarding the cost of various flight following technologies and found that there are relatively inexpensive off the shelf options that could meet the requirements of the ATMP. Operators are not required to install a specific type or brand of flight monitoring equipment as long as the tracking technology selected by the operator meets the performance requirements in the ATMP.

These requirements, together with the required semi-annual reports operators are required to submit to the agencies, will enable the agencies to appropriately monitor operations and ensure compliance with the ATMP. The ATMP acknowledges that NPS will report identified instances of noncompliance to the appropriate FSDO and that the public may also report

allegations of noncompliance to the FSDO. Written reports of noncompliance will be investigated by the relevant FSDO consistent with FAA policy.

### **I. Adaptive Management**

The provisions in Section 8.0 are included to allow minor modifications to the authorized operating parameters (for example, slight deviations in the route) to avoid adverse impacts to the Park's resources, values, or visitor experiences; address safety concerns; or address new information or changed circumstances. Such modifications could only be made through adaptive management if the impacts to the Park's resources are within the scope of impacts already analyzed under NEPA, the Endangered Species Act, the Coastal Zone Management Act, and Section 106 of the National Historic Preservation Act. This process was designed to ensure that actions that are potentially more impactful to resources would only be made through the amendment process, which requires public participation, after further environmental compliance. Adaptive management could not be used to remove, or lessen, measures designed to mitigate impacts on the Parks' resources and visitor experience or increase the number of commercial air tours allowed. Authorization of additional air tours, beyond those authorized in the ATMP including an increase of commercial air tour operations authorized annually or an increase of daily commercial air tour operations, would require an amendment to the ATMP.

### **J. Annual Meetings and Annual Training**

The ATMP requires the operators, Park staff and the FSDO to attend an annual meeting regarding the implementation of the ATMP and any potential amendments or other changes to the ATMP, if such meeting is requested by the NPS or the FAA. The annual meeting requirement was included to facilitate effective implementation of the ATMP and to be used to review and discuss issues related to the implementation of this ATMP. The agencies intend that meeting be used to ensure that air tour operators remain informed regarding the terms and conditions of the ATMP, including any adaptive management measures or amendments, and that operators are made aware of new or reoccurring concerns regarding Park resources. It is also intended to provide opportunities for operators to enhance their interpretive narrative for air tour clients and thus to increase understanding of Park natural and cultural resources by air tour companies and their clients.

The agencies may invite other stakeholders with relevant subject matter expertise to attend the annual meeting. In allowing stakeholders to attend all or part of the meetings, the agencies are providing opportunities for stakeholders to provide input to the agencies and the operators. For example, during the annual meeting, stakeholders can inform agencies of the dates on which the six no-fly days per year occur that are based on days that follow the Hawaiian Moon Calendar and Makahiki Season. The agencies also plan to use the annual meeting to confirm the six additional no-fly dates for the next year. This would enable the agencies to provide the maximum amount of advance notice to operators regarding the no-fly

days. Allowing stakeholders to attend may also advance understanding, respect, and appreciation for what these days are and why they are culturally significant for Native Hawaiians.

The ATMP also requires operators to take at least one training course per year, if and when such course is made available by the NPS. Operator training and education will provide opportunities for operators to enhance their interpretive narrative for air tour clients and increase understanding of Park natural and cultural resources by air tour companies and their clients. This training may be provided in conjunction with the annual meeting or may be provided separately. In addition, all helicopter pilots must complete the FAA's Introduction to Fly Neighborly training within 180 days of the effective date of the ATMP and retain certifications on file.

#### **K. Competitive Bidding**

The Act requires that where an ATMP limits the number of authorized commercial air tours within a specific time frame, the agencies must develop an open and competitive process for evaluating competing proposals to conduct commercial air tours. 49 U.S.C. § 40128(a)(2)(B). At present, because the ATMP provides an initial allocation of operations based on the proportion of air tours flown by each current operator during the period from 2017-2019, the agencies do not plan to conduct a competitive bidding process. However, this does not preclude the agencies from holding a competitive bidding process in the future, consistent with the Act. The ATMP identifies conditions under which a competitive bidding process may be appropriate.

#### **L. Interim Operating Authority**

Under the Act, the FAA was required to grant IOA for commercial air tours over the Park as a temporary measure until an ATMP could be established. This was a nondiscretionary, Congressionally mandated action. IOA does not provide any operating conditions (e.g., routes, altitudes, time-of-day, etc.) for air tours other than an annual limit. Currently five commercial air tour operators hold IOA for a combined total of 20,145 commercial air tours per year over the Park. The ATMP will be established and effective on the date that it is signed by all required signatories. Within 180 days of the effective date of the ATMP, the FAA, through the appropriate FSDO, will issue amended OpSpecs to all operators with IOA for the Park that incorporate the operating parameters set forth in the ATMP. 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 amended to incorporate the ATMP's operating parameters. All IOA for the Park terminates by operation of law 180 days after the effective date of the ATMP, 49 U.S.C. § 40128(c)(2)(E), after which time no operator may continue to rely on any OpSpec issued under IOA as authority to conduct commercial air tours within the ATMP boundary.

## **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/final 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 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 Air Tour Management Plan for Haleakalā National Park consistent with this document and issuance or modification of applicable operations specifications – to carry out the agency decisions as detailed in this ROD.

David Szymanski Regional Director Interior Regions 8, 9, 10, and 12 National Park Service	Date	Raquel Girvin Regional Administrator Western-Pacific Region Federal Aviation Administration	Date
Raymond M. Sauvajot Associate Director Natural Resource Stewardship and Science Directorate National Park Service	Date	Julie Marks Executive Director (A) Office of Environment & Energy Federal Aviation Administration	Date

## **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 Consultation

Appendix I: Section 4(f) Analysis

Appendix J: Public Scoping Materials

Appendix K: CZMA Compliance

Appendix L: Draft ATMP and Draft EA Public Involvement Materials

B. National Park Service – Statement of Compliance

C. Final Air Tour Management Plan for Haleakalā National Park