

**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 BANDELIER NATIONAL MONUMENT, NEW
MEXICO**

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 or Final ATMP) for Bandelier National Monument (Park) in the State of New Mexico, 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 February 29, 2024. The Final EA, which includes the errata sheet, Draft EA, and all appendices, 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 released for public comment in 2023 (2023 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 consists of 33,676 acres in Los Alamos County, New Mexico and contains more than 3,000 archeological sites, most dating from AD 1100 to 1550 and associated with the Ancestral Pueblo period. Affiliated pueblo Indian groups still have strong traditional associations and ties to the landscape within the Park. Their cultures, lifestyles, religious beliefs, and traditions continue to be shaped by their ties to the Park's natural and cultural resources. The Pueblo de Cochiti abuts the Park's southern boundary, while the

799-acre Tsankawi Unit 12 miles from the main Park abuts the San Ildefonso Indian Reservation. This unit is of critical importance to the cultural heritage, beliefs, customs, practices, and history of the Pueblo de San Ildefonso—the direct descendants of the people who inhabited the Tsankawi Unit.

The primary purpose of the Park includes protecting and preserving the outstanding features of the Pajarito Plateau, including both natural and cultural resources found there. When the Park was reserved from the public domain in 1916 pursuant to the Antiquities Act of 1906, it was described in the proclamation by President Wilson as featuring: “certain prehistoric aboriginal ruins...of unusual, ethnologic, scientific, and educational interest...”.¹ It is from these features that the Park’s significance as a national monument is rooted. Six main statements of significance for the Park were identified in the Park’s Foundation Document.² “Cultural Connections” is one of these six statements. The Park’s Foundation Document explains that “[a]rcheological sites and natural features of Bandelier National Monument remain an integral component of pueblo culture and provide a context for continuing traditional practices” and further goes on to state that the Park “plays an important role for the traditionally associated pueblos, providing a direct cultural connection to resources, stories, and oral histories.” “Continuing Cultural Connections” is identified as a fundamental resource and value for the operation of the Park in its Foundation Document, which explains that “Affiliated pueblo Indian groups still have strong traditional associations and ties to Bandelier National Monument’s landscape. Their cultures, lifestyles, religious beliefs, and traditions continue to be shaped by their ties to the natural and cultural resources of the monument.”

The Park’s Foundation Document makes clear that the Park has identified traditional cultural properties associated with tribal partners as a significant cultural resource that should be protected from any diminishment. NPS Director’s Order 28: Cultural Resource Management Guideline (1998) provides the guidance for ensuring that these significant sites are not diminished.³ Director’s Order 28 provides the following direction:

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

¹ Proclamation No. 1322, Bandelier National Monument, N. Mex., 39 Stat. 1764 (Feb. 11, 1916).

² NPS. (2015). Foundation Document – Bandelier National Monument.

<http://npshistory.com/publications/foundation-documents/band-fd-2015.pdf>

³ NPS. (1998). NPS- 28: CULTURAL RESOURCE MANAGEMENT GUIDELINE.

https://www.nps.gov/parkhistory/online_books/nps28/28contents.htm

with tangible resources to recognition and accommodation of cultural processes.

The Park's archeological sites and natural features remain an integral component of pueblo culture and provide a context for continuing traditional practices of pueblo culture.³ National Register listed or eligible cultural resources, including tribal sacred sites, traditional cultural properties, and ancestral sites are some of the Park's most significant cultural and natural resources. The dense cultural landscape is comprised of over 3,000 ancestral sites, dozens of actively used shrines and sacred sites, and includes diverse ecosystems across an elevation gradient of nearly 5,000 feet. Important tribal sites are distributed throughout the entire Park. Ancestral sites, as well as other tribal sacred sites located on the landscape, are all considered a part of the traditional landscape utilized by tribal people from time immemorial. Pueblo people continue to practice traditional ceremonies and make pilgrimages to sacred sites within the Park. These are important to the continuation of pueblo Indian traditional practices in contemporary pueblo communities.

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

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

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

Popular activities include hiking, picnicking, photography, bird-watching, backpacking, and camping. Most visitors are day users and spend their time visiting archeological

sites in Frijoles Canyon. Popular trails and destinations include the Pueblo Loop Trail to Tyuonyi and the cliff dwellings, Alcove House, and the Falls Trail.

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

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). The area subject to an ATMP 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 2021. On September 3, 2021, the FAA, in cooperation with the NPS, published a Federal Register notice announcing the availability of a Draft ATMP for the Park (2021 Draft ATMP). The 2021 Draft ATMP proposed to adopt existing conditions with adjustments to mitigate and address impacts to Park soundscapes, visitor experience, Wilderness character, and wildlife. The agencies held a public meeting on September 15, 2021, and accepted comments on the Draft ATMP until October 13, 2021. The FAA, in coordination with the NPS, initiated consultation with Native American Tribes (tribes) under Section 106 of the National Historic Preservation Act (NHPA) on the 2021 Draft ATMP in March 2021, and subsequently held Section 106 tribal consultation meetings in 2021 and 2022 with

Pueblo of Santa Clara, Pueblo de Cochiti, Pueblo of Pojoaque, and Pueblo de San Ildefonso. Based on feedback during tribal consultation and comments received on the 2021 Draft ATMP, the NPS and FAA agreed to prepare an EA to evaluate reasonable alternatives.

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. Bandelier National Monument 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, 2023.

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 March 31, 2024 to complete an ATMP for the Park.

D. The Planning Process

As no ATMP had previously been implemented for any park at the time the agencies submitted their Compliance Plan to the Court, as an initial step in this process the agencies worked collaboratively to determine the contents of and process for completing an ATMP that would be consistent with the Act. Together, they developed an ATMP template which could then be modified and tailored to meet the specific needs and address the unique circumstances of each park included in the planning

process. Further, because air tours have been occurring over parks for decades, the agencies had institutional experience and data to draw upon in developing the ATMP template and in determining how to regulate commercial air tours over parks.

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

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

The agencies decided to use a three-year average of operator-reported air tours to identify the existing condition, rather than reports from a single year. In order to identify the three-year average, the agencies decided to use reported air tours from 2017, 2018, and 2019. These years were selected because they reflected relatively current air tour conditions, represented reliable operator reporting of air tours, accounted for variations across multiple years, were available during the planning effort, and excluded years that were atypical due to the COVID-19 pandemic. The requirement for commercial air tour operators to report annual commercial air tour operations to the agencies was implemented in 2013. Reporting data from 2013 and 2014 are considered incomplete as reporting protocols were not fully in place at that time and likely do not accurately reflect actual number of air tours conducted. Flight numbers from a single year were not chosen as the existing baseline because the three-year average accounts for both variation across years and takes into account the most recent pre-pandemic years. Reporting data from 2020 was not used because the COVID-19 pandemic resulted in abnormalities in travel patterns across the U.S., which does not represent the conditions in a typical year. The agencies also decided against using 2021 or 2022 data due to continued abnormalities associated with the COVID-19 pandemic and the unavailability of reporting data for 2021 or 2022 during most of the planning effort. The agencies also decided against using IOA as the baseline because IOA was based on numbers reported by operators more than 20 years ago and does not represent the most current or reliable operational data.

Table 1 below depicts available reporting information regarding the number of commercial air tours conducted on an annual basis over the Park. One commercial air tour operator currently holds IOA to fly up to a total of 126 commercial air tours per

year over the Park (see Table 1). Based upon the three-year average of reporting data from 2017 to 2019, the operator conducts an average of 101 commercial air tours per year which is approximately 80% of IOA. The Final EA used the three-year average as the existing condition of commercial air tours within the ATMP planning area.

F. Air Tour Operations

In order to identify the general operating parameters of the air tours, the FAA reached out to the current operator to identify current air tour routes and other operating conditions. The route information provided by the current commercial air tour operator for routes over and adjacent to the Park is shown in Figure 1. Commercial air tours conducted using a Cessna 182 and T207A on the NR-E / SR-E, NR-W / SR-W-2, SR-W, WR-N, and WR-S routes are flown at the operator-reported minimum altitude of 800 feet (ft.) above ground level (AGL), and air tours conducted on the ER-N and ER-S routes are flown at the operator-reported minimum altitude of 1,000 ft. AGL. The altitudes of 800 and 1,000 ft. AGL result in the mean sea level (MSL) altitude callouts shown in Figure 1.⁴ No commercial air tour operators have the authority to fly within restricted airspace to the northeast of the Park over Los Alamos National Laboratory, nor do they have authority to fly less than 5,000 ft. AGL over Valles Caldera National Preserve, a separate unit of the National Park System located to the northwest of the Park's boundary.

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

Operator	Aircraft Type	2013	2014	2015	2016	2017	2018	2019	2020	2017–2019 Avg.	IOA
Southwest Safaris	Cessna 182 and T207A	132	125	127	105	101	76	125	91	101	126

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>

⁴ Altitude expressed in units AGL is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in MSL refers to the altitude of an aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

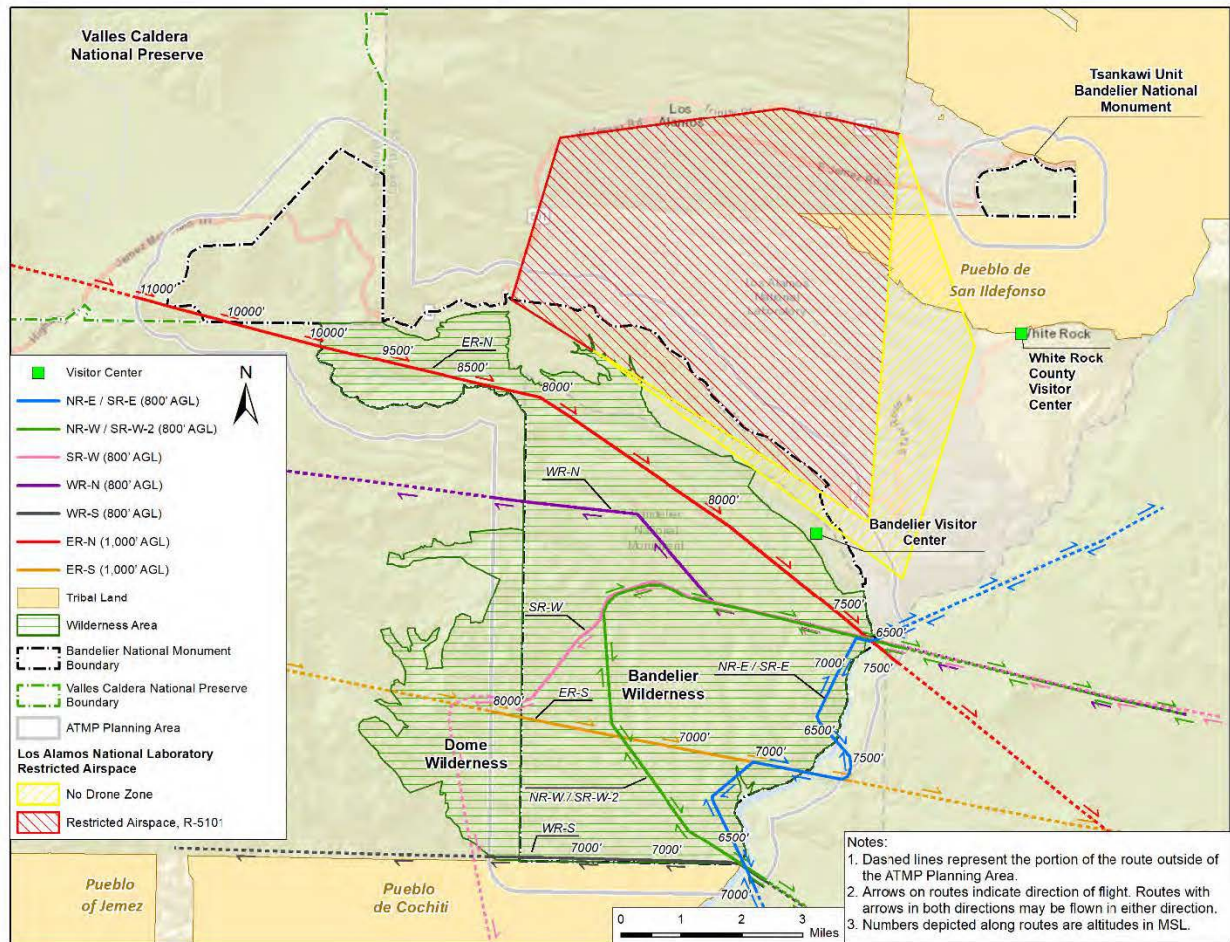


Figure 1. Current routes as reported by the operator.

IV. Proposed Action

The proposed action is to implement an ATMP for the Park. The Act defines an ATMP as a plan used to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon natural and cultural resources, visitor experiences, and tribal lands. An ATMP describes conditions for the conduct of air tour operations over a park, including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum numbers of flights, or other provisions. The Act and implementing regulations found in 14 CFR Part 136 state that the ATMP for a park:

- May prohibit commercial air tour operations over a national park in whole or in part;
- May establish conditions for the conduct of commercial air tour operations, including, but not limited to, commercial air tour routes, maximum number of flights per unit of time, maximum and minimum altitudes, time-of-day

restrictions, restrictions for particular events, and mitigation of noise, visual, or other impacts;

- Shall apply to all commercial air tour operations over a national park or within ½-mile outside the park's boundary;
- Shall include incentives (such as preferred commercial air tour routes and altitudes, relief from caps and curfews) for the adoption of quiet aircraft technology by commercial air tour operators conducting commercial air tour operations at the park;
- Shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the number of commercial air tour operations for any time period;
- Shall justify and document the need for measures taken pursuant to the items above and include such justifications in the record of decision.

V. Purpose and Need

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

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

VI. Alternatives

The preliminary ATMP alternatives were developed by an NPS interdisciplinary team comprised of subject matter experts from the NPS's Natural Sounds and Night Skies Division, Environmental Quality Division, Intermountain Regional Office, and the Park. In developing the alternatives, the team considered the noise impacts of existing air tour routes and operations, the Park's cultural and natural resources, the Park's existing and natural acoustic environment, visitor experience, visual resources, and input provided by the tribes and public on the 2021 Draft ATMP. The interdisciplinary team considered other existing planning documents for the Park, including its Foundation Document. The

alternatives identified by the interdisciplinary team and justifications for restrictions on commercial air tours were reviewed by the FAA who noted any aviation safety concerns.

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

The agencies also considered but eliminated the alternative that would authorize air tour operations consistent with current operator reported operating parameters as presented in the 2021 Draft ATMP. Comments received during the public comment period for the 2021 Draft ATMP (September 3, 2021 – October 13, 2021) and information learned through tribal consultation demonstrate that impacts from the existing number of air tours flown on current operator reported routes could not be mitigated.

A. Development of the 2023 Draft ATMP

In the development of the 2023 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 also considered the purpose and significance for which the Park was established. The agencies acknowledged the essential and foundational cultural elements that led to the establishment of the Park as they developed and evaluated alternatives for the ATMP. The primary purpose of the Park is to protect and preserve the outstanding features of the Pajarito Plateau, including both natural and cultural resources found there. The Park's archeological sites and natural features remain an integral component of pueblo culture and provide a context for continuing traditional practices of pueblo culture. Consistent with this purpose, tribal sacred sites, eligible traditional cultural properties, and ancestral sites listed in or eligible for listing in the National Register of Historic Places (National Register) are the most significant cultural and natural resources of the Park. The dense cultural landscape is comprised of over 3,000 ancestral sites, dozens of actively used shrines and sacred sites, and includes diverse ecosystems across an elevation gradient of nearly 5,000 ft. Important tribal sites are distributed throughout the entirety of the Park. Ancestral sites, as well as other tribal sacred sites located on the landscape, are all considered by many tribes to a part

of the traditional landscape utilized by the indigenous people from time immemorial. Pueblo people continue to practice traditional ceremonies and make pilgrimages to sacred sites within the Park. These are important to the continuation of pueblo traditional practices in contemporary pueblo communities. Maintaining these resources and respecting the privacy and sacredness of ceremonies of the pueblo people is considered an essential component of the cultural significance of the Park's purpose.

Tribal Nations that were consulted stated that overflights, including commercial air tours, have disturbed gatherings and traditional religious practices at sacred sites, impacted viewsheds to sacred peaks, are inappropriate to the sacred landscape, and disrupt the tranquility of accessing the lands for reflection or cultural purposes. Tribes and tribal members have emphasized that overflights, including commercial air tours, have negative impacts on the cultural heritage of pueblos, dances, traditional events, and other events and activities. Tribes have unequivocally stated that air tours are inappropriate and adversely impact the cultural resources identified above, the cultural landscape and, in some cases, violate their privacy during the ceremonial use of the land. Several tribes have reiterated the importance of their continuing cultural connections to the Park during consultation. Through consultation, the agencies have heard from several tribes that they consider the natural resources within the area of potential effects (APE) to also be cultural resources, with particular emphasis on plants, animals, and the sky. The preservation of natural resources and the natural setting of the Park are important to maintaining the integrity of ethnographic resources. Several tribes communicated the cultural importance of the entire Park as a cultural landscape as well as undocumented resources that are associated with traditional and ceremonial practices. During consultation, the tribes voiced the importance of preservation, maintaining traditions, and cultural identity throughout the Park. Tribes have occupied and stewarded the natural and cultural landscape prior to colonization and before the Park was established, including areas encompassed by the Park. Tribes maintain a cultural connection with the landscape through story, song, prayer, ceremony, and pilgrimage such that the landscape is in continuous use by multiple tribes. Many tribal members consider the Park to lie within the ancestral domain of their tribe and believe that the landscape is tied to the spiritual presence of their ancestors.

The agencies considered three alternatives in the Draft EA for the 2023 Draft ATMP (Draft EA), including allowing air tours within the ATMP planning area at existing levels on consolidated routes. The NPS identified Alternative 2, which would prohibit air tours within the ATMP planning area, as the Preferred Alternative because it was the alternative that best fit the purpose and need of the ATMP.

The 2023 Draft ATMP would prohibit commercial air tours within the ATMP planning area and reflected Alternative 2 in the Draft EA. The 2023 Draft ATMP developed by the NPS interdisciplinary team and the 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 2021 Draft ATMP process informed the alternatives included in the Draft EA. 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 conducted by the operator (101 commercial air tours per year). 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 (Preferred Alternative).** Alternative 2 would prohibit air tours within the ATMP planning area. Except as necessary for safe operation of an aircraft as determined under Federal Aviation Regulations requiring the pilot-in-command to take action to ensure the safe operation of the aircraft, or unless otherwise authorized for a specified purpose, commercial air 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, the Preferred Alternative.
- **Alternative 3.** Alternative 3 would restrict air tour operations within the ATMP planning area. Alternative 3 would authorize 101 commercial air tours per year and would reduce the number of routes from seven to two routes. It would also establish a minimum altitude of 10,000 ft. MSL which results in altitudes of at least 2,600 ft. AGL as compared to minimum altitudes of 800 and 1,000 ft. AGL under existing conditions. Under Alternative 3, the NPS could establish temporary no-fly periods that apply to air tours for special events or planned Park management. The NPS developed Alternative 3 to provide opportunities for air tours to occur within the ATMP planning area, with mitigations to avoid or minimize impacts to tribal and cultural resources, wildlife, Wilderness values,

and visitor experience. Section 2.6 of the Final EA provides a more detailed description of Alternative 3.

Under all action alternatives, all IOA for the Park and abutting pueblo tribal lands would terminate by operation of law 180 days after the establishment (effective date) of the ATMP, 49 U.S.C. § 40128(c)(2)(E), after which time the operator could not 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, Amphibians, Invertebrates, and Plants)
- Geologic Resources
- Children's Environmental Health and Safety Risks
- Hazardous Materials, Solid Waste, and Pollution Prevention
- Farmlands
- Land Use
- Natural Resources and Energy Supply
- Visual Effects – Light Emissions
- Water Resources (Including Wetlands, Floodplains, Surface Waters, Groundwater, and Wild and Scenic Rivers)
- Coastal Resources
- Resources of Valles Caldera National Preserve

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 main Park unit and the Tsankawi Unit of the Park, located 12 miles northeast of the main Park unit, as well as the area within ½-mile of the boundary of both the main Park and the Tsankawi Unit. The Wilderness environmental impact category considered a study area different from the ATMP planning area because designated Wilderness only includes approximately 70% of the entire study area.

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 (Birds, Mammals, Federally Listed Species); Cultural Resources; Wilderness; Visitor Use and Experience and Other Recreational Opportunities; Environmental Justice and Socioeconomics; Visual Effects; and Department of Transportation (DOT) Act Section 4(f) Resources. The FAA, in cooperation with the NPS, considered the impact categories specified in FAA Order 1050.1F, Environmental Impacts: Policies and Procedures (FAA, 2015) and NPS Director's Order #12, Conservation Planning, Environmental Impact Analysis, and Decision-making, and other categories identified during the agency and public scoping process. See Section 1.5 of the EA, Environmental Impact Categories Not Analyzed in Detail. Section 3 of the Final EA and the agencies' separate Findings of No Significant Impact below provide more detailed descriptions and analysis of the environmental impact categories that could be potentially 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 2/the Preferred Alternative, by evaluating the potentially affected environment and the degree of effect of the action including effects on public health and safety and effects that would violate federal,

state, tribal, or local laws protecting the environment. The affected environment is described in Chapter 3 of the Final EA and summarized above in Section II, Description of the Park (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. The NPS's determination does not include a significance discussion for impacts under Section 4(f) since only FAA must comply with Section 4(f).

i. Degree of Effect

Alternative 2, the selected action/ATMP, will result in direct and cumulative beneficial effects to resources within the affected environment. As presented in the EA, the NPS considered the effects of air tours on cultural resources within the Park, including ethnographic resources, sacred sites, traditional cultural properties, archeological resources, cultural landscapes and prehistoric and historic structures. Impacts to these resources currently occur from both noise and visual effects of commercial air tours. In extensive consultation with tribes, they articulated strong opposition to air tours over the Park because of their effects to the cultural landscape, wildlife, and plants, and concerns over disruptions during traditional cultural practices and ceremonies within the Park. Under the ATMP, the potential for impacts to cultural resources and tribal practices would be reduced within the ATMP boundary since both the noise from air tours and potential visual disruption from air tours are reduced. The associated tribes strongly supported no air tours within the ATMP boundary. Because these impacts would be reduced and, in many places within the Park, eliminated, there is no potential for significant adverse effects to cultural resources within the Park under the ATMP. The FAA determined and NPS concurred that the ATMP would not have an adverse effect on historic properties within the area of potential effects/ATMP boundary under Section 106 of the National Historic Preservation Act, discussed more fully in Section XIII(B) below. Because these impacts would be reduced and, in many places within the Park, eliminated, there is no potential for significant adverse effects to the Park's cultural resources or to historic properties.

Compared to current conditions, the selected action will result in direct beneficial effects on the Park's acoustic environment. Under current conditions, the agencies modeled the duration of noise above 35 A-weighted decibels (dBA), the level at which wildlife may experience disturbance in quiet natural settings, and 52 dBA, the level at which speech is interrupted by noise, in order to determine the effects from commercial air tours. The modeling demonstrates that noise above 35 dBA would be expected up to 5 minutes a day under current conditions. Air tour noise reaches 52 dBA at one location point modeled under current conditions for under a minute. The acoustic impacts of the

ATMP cannot be modeled because, although some speculation about air tour routes can be made, it is unknown where air tours would fly when outside the ATMP boundary or over it at or above 5,000 ft. AGL. However, because under the ATMP air tours are not permitted within the ATMP boundary, the intensity of noise directly around and below existing air tour routes would decrease. Additionally, the Park would likely experience fewer noise events. Since the only noise impacts from the ATMP are both beneficial and reduce or eliminate the intensity of noise and the amount of time noise is audible, there is no potential for significant adverse noise effects.

The NPS also considered the effects of air tour noise on biological resources in the ATMP boundary, including the federally listed Mexican spotted owl, southwestern willow flycatcher, and yellow-billed cuckoo. As disclosed in the Final EA, the NPS considers, based on existing literature, noise to have the potential to result in effects to wildlife. As noted above, it is not possible to model noise levels under the ATMP. However, the ATMP will result in less intense noise or fewer minutes of noise above 35 dBA compared to current conditions. The NPS also determined that there would be no effect on any federally listed species within the ATMP boundary. Thus, there will be no significant adverse impacts to biological resources within the ATMP boundary since all effects are beneficial and the ATMP reduces noise within the ATMP boundary.

Compared to the current conditions, the ATMP directly benefits and enhances the natural quality of Wilderness character and opportunities for solitude by eliminating the source of noise and visual effects originating from within the ATMP boundary. The existing operator-reported routes currently fly over the Bandelier Wilderness resulting in noise above 35 dBA for less than five minutes on days air tours occur. The elimination of air tours over the Park is consistent with NPS Director's Order 41 § 7.3, which requires the NPS to consider ways to further prevent or minimize impacts of commercial air tours on Wilderness character, since the ATMP will improve both the solitude and the natural qualities of Wilderness character. Because the opportunity to experience solitude will improve and the natural quality of Wilderness will be enhanced by the elimination of the current routes over Wilderness, there are no potential significant impacts to Wilderness character from the ATMP.

Air tour noise may disrupt visitors and degrade the Park's visitor experience by masking the sounds of nature during interpretive and educational programs or while hiking, camping or participating in other activities in the Park. Also, air tours may detract from the Park's scenic views. The elimination of air tour routes within the ATMP boundary reduces the likelihood visitors will hear air tours or notice them when at scenic viewsheds. Because the only noise impacts from the ATMP are both beneficial and limited in intensity and timing, there are no potentially significant adverse effects to visitor experience or the Park's scenic viewsheds.

The ATMP will result in adverse but not significant impacts on air tour patrons since commercial air tours would no longer be authorized within the ATMP boundary. Commercial air tour patrons are 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 approximately 203,000. However, there may be opportunities to take air tours outside the ATMP boundary. Additionally, air tours are only one of many ways for a person to experience the Park and many air tour patrons may also visit the Park by ground as well.

As described in the EA, in 2020, the air tour industry represented less than 1% of employment in Los Alamos, Sandoval, and Santa Fe Counties. The air tour operator in this area provides air tours over a number of other sites besides the Park. The ATMP may result in lost revenue from air tours over the Park, but would not prohibit the operator 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. Thus, it is expected that there would only be minor to negligible impacts on regional socioeconomics, including the community tax base, which may fluctuate in response to changes in the air tour industry. Therefore, there would be no significant socioeconomic impacts as a result of the ATMP.

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

As described in the Final EA, aircraft that currently conduct air tours over the Park emit pollutants that contribute to regional emissions in the area but do not cause pollutant concentrations to exceed one or more of the National Ambient Air Quality Standards (NAAQS) for any of the time periods analyzed. Under the ATMP, there would only be beneficial effects to air quality since emissions within the ATMP boundary would be eliminated. However, if the operator chooses to fly outside the ATMP boundary those emissions may still occur and may impact the air quality within that area.

As described in Chapter 3 of the EA, Alternative 2 could result in some small cumulative beneficial effects on resources from eliminating air tours within the ATMP planning area since the intensity of impacts from air tours directly around and below existing air tour routes would decrease. Overall, there would be less intense noise in the Park than current conditions.

Finally, under the ATMP, the air tour operator may shift routes or altitudes outside the ATMP boundary, 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. It is reasonably foreseeable that the operator would continue to fly to points of interest outside of the ATMP boundary where they already fly. The operator may also offer additional routes outside the ATMP boundary or increase tours to other points of interest in the region. Specific routes, altitudes and numbers would be necessary to assess the noise and other potential indirect and cumulative impacts associated with eliminating air tours within the ATMP boundary. Consistent with the CEQ regulations, the NPS disclosed in the EA that specific air tour routes, altitudes, and numbers of tours are not available with enough specificity to assess noise and other potential indirect and cumulative impacts associated with the ATMP. However, it is unlikely that displaced air tours outside the ATMP boundary would generate noise at or above the yearly day-night average sound level (DNL, denoted by the symbol Ldn) 65 decibels (dB), which is the threshold that the FAA applies for determining the significance of noise impacts. The NPS does not have jurisdiction over air tours outside the ATMP boundary. For additional discussion see Section 3.1.2 of the EA and Appendix F to the EA, *Noise Technical Analysis*, Section 8.

ii. 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.

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

The ATMP would not result in any effects that would violate federal, state, or local laws that protect the environment. The NPS and FAA have documented compliance with Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act. See Section XIII of this ROD and Appendices G and H to the Final EA. The NPS's Non-Impairment Determination is included as Attachment B. The ATMP, including Section 5.0, Justification for Measures Taken, and Section XV, Basis and Justification for the Decision, demonstrate how the agencies' decision to establish and implement the ATMP complies with the Act.

B. The FAA's Finding of No Significant Impact

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

Of the impact categories discussed in detail in Section 3 of the Final EA, the FAA has considered the significance threshold and/or significance factors for each applicable impact category. The following impact categories (Noise and Noise-Compatible Land Use, Air Quality and Climate Change, Biological Resources, and DOT Section 4(f) Resources) have thresholds that the FAA uses as specific indicators of significant impact and are described in a specific significance determination section below. Impact categories that do not have significance thresholds (Cultural Resources, Environmental Justice and Socioeconomics, and Visual Effects) have factors considered in evaluating the context and intensity of potential environmental impacts and are discussed below in the specific impact category and are also included in the Final EA, Table 14, *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 Section 3.1.1 of the EA). For purposes of assessing noise impacts from commercial air tours on the acoustic environment under FAA Order 1050.1F, the analysis indicates that the resultant DNL is expected to be below 60 dB. The 12-hour equivalent sound level would not exceed 35 dBA. The maximum time that noise above 35 dBA would occur is less than five minutes a day, which represents 39% of the ATMP planning area. The maximum time above 52 dBA experienced across all points modeled would be 0.1 minutes at location point #11 (Rio Grande). All other modeled location points would not experience noise above 52 dBA from air tours. The maximum sound level under the No Action Alternative would be 54.8 dBA at location point #11 (Rio Grande). 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 (Preferred Alternative)

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

c. Alternative 3

Compared to the No Action Alternative, Alternative 3 would authorize the same number of tours per year on fewer routes. Alternative 3 was modeled based on the average number of operations which may occur in a single day – one operation, using the aircraft and route combination most likely to be utilized under Alternative 3 – a Cessna 182 on the ER-S orange route. Noise modeling was also performed for the Cessna 207-ER-N red route combination, and effects under the other scenarios under Alternative 3 were not modeled (Cessna 182 - orange route or Cessna 207 - red route), but are anticipated to be similar to the effects predicted by the modeled scenarios.

Under both modeled scenarios, the 12-hour equivalent sound level would be below 35 dBA within the ATMP planning area. Time above 35 dBA, and therefore 52 dBA, is zero minutes within the ATMP planning area under the Cessna 182 - orange route scenario, and the maximum time that noise from air tours would be above 35 dBA under the Cessna 207 – ER-N red route scenario is less than five minutes a day, representing 53% of the ATMP planning area.

Under the Cessna 182 – ER-S orange route scenario, the maximum sound level would be 28.2 dBA at location point #6 (Turkey Springs). Under the Cessna 207 – ER-N red route scenario, the maximum sound level would be 57.7 dBA at location point #10 (Capulin Canyon), and the maximum time above 52 dBA experienced across all points modeled under this scenario would be 0.5 minutes at location point #10 (Capulin Canyon).

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

ii. Air Quality and Climate Change

Under the No Action Alternative, emissions of criteria pollutants would 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 7 of the EA. The range of greenhouse gas (GHG) emissions would be 0.46-1.13 metric tons (MT) of carbon dioxide (CO₂) per year. Under Alternative 2, 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 1,851 MT of CO₂ 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 8 of the EA and a range of change in GHG emissions of -0.53 to 0.28 MT CO₂ 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 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 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, current effects to biological resources would continue as commercial air tours within the ATMP planning area would continue to fly at low altitudes (ranging from 800 to 1,000 ft. AGL). The current altitudes reported by air tour operators over the ATMP planning area are not in compliance with recommended buffer zones for raptor protection and may impact bald eagles, peregrine falcons, and Mexican spotted owls in the ATMP planning area in the form of nest flushing due to noise or collisions with aircraft. Commercial air tour noise would also continue to affect wildlife within the ATMP planning area. On days when air tours occur, noise above 35 dBA would occur for less than five minutes across 39% of the ATMP planning area, which has the potential to cause temporary disturbances in the behavior of bird foraging, mating, or nesting. However, these noise impacts are so infrequent and short in duration, they are not anticipated to cause adverse effects to any of the federally listed species, including southwestern willow flycatcher, yellow-billed cuckoo, Mexican spotted owl, New Mexico meadow jumping mouse, or any other wildlife species. This alternative would not be expected to result in indirect impacts.

b. Alternative 2 (Preferred Alternative)

Under Alternative 2, commercial air tours would not be conducted within the ATMP planning area which would eliminate this source of noise from the planning area as well as low-flying aircraft that are not currently in compliance with recommended buffer zones for Mexican spotted owl, bald eagles, and peregrine falcons. 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

Alternative 3 would authorize air tours on two flight paths which would avoid some habitat areas for sensitive species. The altitudes required under Alternative 3 are compliance with the recommended buffer zones for Mexican spotted owl, bald eagles, and peregrine falcons. The time-of-day restrictions, which would allow the operator to conduct air tours beginning two hours after sunrise until two hours before sunset, may also reduce the likelihood of impacts to nocturnal species.

On days when air tours occur where the operator uses the ER-S orange route (using a Cessna 182), there would be no noise above 35 dBA and therefore, no noise impacts would be expected to occur that would have the potential to alter wildlife behavior. Based on the modeling results identified for the ER-N red route, noise above 35 dBA would occur for less than five minutes in 53% of the ATMP planning area.

Alternative 3 could result in indirect effects to wildlife due to air tour displacement outside the ATMP planning area. Alternative 3 would result in less cumulative noise and wildlife disturbance in the ATMP planning area than the No Action Alternative given the designated routes and other ATMP conditions; however, this alternative could allow for more cumulative noise and associated wildlife disturbance than Alternative 2, where flights would not be authorized in the ATMP planning area.

d. Biological Resources Significance Determination

While all alternatives were presented for review to the U.S. Fish and Wildlife Service, the FAA has determined that the Preferred Alternative would have No Effect on federally listed species within the action area, which include the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*), Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Empidonax traillii extimus*), and yellow-billed cuckoo (*Coccyzus americanus*). Further, the FAA determined that the alternatives would have no impacts to species protected under the Migratory Bird Treaty Act (MBTA), which includes northern goshawk (*Accipiter gentilis*), golden eagle (*Aquila chrysaetos*), peregrine falcon (*Falco peregrinus*), and bald eagle (*Haliaeetus leucocephalis*). 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 APE would continue to be impacted by air tours, as noise and visual effects would impact the feeling and setting of those resources. Air tours would also continue to impart an invasion of privacy on tribal users of the Park which would be inconsistent with the Park's purpose and values for which it was established. The presence of existing low-altitude overflights over the Park, including commercial air tours, unreasonably interferes with tribal connections to the sacred landscape of the Park primarily due to tribal concerns about privacy. Air tours over the Park interfere with the privacy of the pueblo people as they carry out ceremonies and sacred practices, the protection of which is a primary purpose of the Park. Under the No Action Alternative, cultural resources within the APE experience air tour noise above 35 dBA for less than five minutes a day. At the modeled location points at or near cultural resources, air tour noise above 35 dBA would occur for less than one minute a day. The 12-hour equivalent sound level varies by location, and ranges from 0 dBA to 19.3 dBA. These noise effects would continue to occur under the No Action Alternative, including those that interrupt tribal cultural practices, ceremonies, and connections to pueblos.

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 (Preferred Alternative)

Under Alternative 2, commercial air tours would not be conducted within the ATMP planning area which would reduce the noise and visual intrusions of air tours from impacting the feeling and setting of cultural resources within the APE compared to the No Action Alternative. Alternative 2 would be most consistent with the Park's purpose and values for which it was established, as the elimination of air tours within the APE would improve privacy conditions for the tribes during traditional uses and ceremonies in the Park. Indirect noise impacts would have the potential to be greatest under Alternative 2 due to the displacement of air tours outside the ATMP planning area. The cumulative effects would be the fewest under Alternative 2 as there would be no tours permitted within the ATMP planning area. Under Section 106 of the NHPA, the FAA made a finding that Alternative 2 will not adversely affect historic properties. The Pueblo of San Felipe and Southwest Safaris objected to the finding. The Pueblo of San Felipe's objection was resolved through continued consultation. After continued consultation with Southwest Safaris, the objection could not be resolved. The FAA requested the Advisory Council on Historic Preservation's (ACHP) review of the finding and the ACHP responded that the FAA had appropriately applied the criteria of adverse effect for the undertaking and a finding of "no adverse effect" to historic properties was reasonable. After 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.

c. Alternative 3

The two flight routes under Alternative 3 would avoid some of the Park's sacred sites, ethnographic resources, and cultural landscapes and historic districts. The resultant noise and visual effects of Alternative 3 and their effect on the feeling and setting of cultural resources within the APE would be similar or experience a slight improvement compared to current conditions. However, air tours would continue to disturb religious ceremonies and privacy of tribes while within the Park which would be inconsistent with the Park's purpose and values.

On days when air tours occur, under the ER-S orange route scenario, noise in the APE would not exceed 35 dBA and the time above 35 dBA would be reduced by up to five minutes a day across the APE compared to the No Action Alternative. Portions of the APE along the flight path of the ER-S orange route would experience 12-hour equivalent sound levels less than 3 dBA, and the maximum sound level for Alternative 3 on days where the ER-S orange route is flown would not reach 30 dBA at the modeled location points. Based on noise modeling, on days when air tours occur where the ER-N red

route is flown, noise would exceed 35 dBA for up to five minutes a day and noise above 35 dBA would not exceed 2.5 minutes a day. Locations along the flight path of the ER-N red route for Alternative 3 would experience 12-hour equivalent sound levels up to 25.2 dBA. The maximum sound level for Alternative 3 on the ER-N red route would remain under 60 dBA at the modeled location points.

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.

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 35 dB under this 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 increase the frequency or severity of any such existing violations. The range of total amount of annual GHG emissions resulting from commercial air tours in the ATMP planning area would be 0.46-1.13 MT CO₂. Impacts would continue to occur to visual resources under the No Action Alternative as commercial air tours would continue to contrast the scenic vistas and natural areas in the Park, but the visual resources of the Park would still be viewable at times of the day when commercial air tours were not present within the study area (a peak month average day consists of one air tour).

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

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

b. Alternative 2 (Preferred Alternative)

Alternative 2 would result in a reduction in noise, air emissions, and visual impacts compared to those currently occurring under the No Action Alternative, and 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 the air tour operator and other ancillary businesses generate from conducting air tours within the ATMP planning area.

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

c. Alternative 3

Alternate 3 would reduce impacts by reducing the number of routes on which air tours could be conducted within the ATMP planning area. Compared to existing conditions, Alternative 3 would result in fewer direct noise, air quality, and visual impacts. The DNL analysis indicates that Alternative 3 would not result in noise impacts that would exceed DNL 65 dB; the resultant DNL is expected to be below 35 dB under Alternative 3. Alternative 3 would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed, or to increase the frequency or severity of any such existing violations. The range of change in annual GHG emissions for Alternative 3 compared to the No Action Alternative would be -0.53 to 0.28 MT CO₂. Impacts to visual resources would decrease compared to the No Action Alternative because air tours would be authorized to occur on fewer routes compared to existing

conditions, which would reduce the area of the Park that visitors could have the potential to see an air tour. The alternative would not result in disproportionately high and adverse impacts to EJ populations or impact those populations in ways that are unique to those EJ populations.

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

Under Alternative 3, is difficult to predict with specificity if, where, and to what extent any air tours that are displaced outside the ATMP planning area would result in indirect noise, air quality, or visual impacts to EJ populations within the study area. However, the effects are not likely to change substantially as compared to 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 including ridges and mesas that offer 360-degree views of the Park. Reporting data from 2017-2019 indicates that visitors have the potential, on average, to see commercial air tour aircraft 101 times per year, although air tours are flown on an average of approximately 99 days out of the year and the maximum number of tours reported over the Park during this time period was two tours in a single day, though most days on which air tours were flown (approximately 98%) consisted of one tour. The unique visual resources within the Park, including 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. Since the Park consists primarily of a natural landscape, the encroachment of commercial air tour aircraft on these viewsheds could temporarily detract from the visitor's opportunity to observe these unique scenic vistas and natural areas on days where air tours are flown. 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 adverse cumulative impacts on viewsheds.

b. Alternative 2 (Preferred Alternative)

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

c. Alternative 3

Under Alternative 3, a reduction in the number routes that could be flown would reduce impacts to visual resources within the ATMP planning area. 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 number of authorized routes, 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. Department of Transportation (DOT) Act Section 4(f) Resources

a. Alternative 1 (No Action Alternative)

The FAA consulted with the NPS on the potential for substantial impairment to Section 4(f) resources that would occur under the No Action Alternative, and the NPS determined that the impacts of this alternative to cultural practices, sacred sites, and the cultural landscape of the Park are too great and inhibit the NPS's ability to provide the pueblos their cultural connection to the landscape which is essential to meeting the purpose of the Park. The FAA determined that the No Action Alternative would result in substantial impairment to Section 4(f) resources. No indirect impacts would be expected to occur under this alternative.

b. Alternative 2 (Preferred Alternative)

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

c. Alternative 3

Under Alternative 3, a reduced number of authorized routes, increased altitudes, and time-of-day restrictions would reduce the likelihood of impacts compared to existing conditions.

On days when commercial air tours would occur, noise levels above 35 dBA would occur for less than five minutes in 53% of the ATMP planning area for air tours conducted

on the ER-N red route, and noise would not exceed levels above 35 dBA in the ATMP planning area for air tours conducted on the ER-S orange route. Noise levels above 52 dBA are not anticipated to exceed one minute in the ATMP planning area based on an analysis of location point data. The resultant DNL due to Alternative 3 is expected to be below DNL 35 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 of 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 flights were displaced to outside the ATMP planning area and could be experienced just outside the ATMP planning area. Section 4(f) resources are present in these areas and could experience indirect visual effects if air tours were visible from those resources. 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 the ATMP will prohibit air tours within the ATMP planning area and the NPS found that the selected alternative/ATMP will not have significant impacts.

XII. Public Involvement

The FAA, in coordination with NPS, prepared a Draft EA in compliance with NEPA to analyze a range of alternatives and evaluate potential issues and impacts as part of the ATMP planning process. In addition, the Act requires that the agencies publish notification of the availability of a Draft ATMP in the Federal Register for public comment and to hold at least one public meeting for each Draft ATMP. A new Draft ATMP (2023 Draft ATMP) and the Draft EA were released on July 12, 2023 for public review and comment. The agencies notified the public of the availability of the 2023 Draft ATMP and Draft EA using various methods including a notice in the Federal Register issued on July 12, 2023, a news release posted on the Park's website social media accounts, and emails to stakeholder groups including federal, state, and local agencies and community organizations, associations, businesses, and interest groups.

Having already held a public meeting on September 15, 2021 regarding the 2021 Draft ATMP, the agencies held a public meeting for the 2023 Draft ATMP and Draft EA on July 25, 2023 and accepted public comments between July 12 and August 11, 2023. In addition, Park staff responded to media inquiries.

In total, the agencies received 1,102 correspondences during the 2021 Draft ATMP and 28 correspondences during the 2023 comment period, of which three were form letters. The agencies reviewed and analyzed the public comments and used them to first to draft and then to revise the 2023 Draft ATMP, to draft the Draft EA and to prepare a Final ATMP, Final EA, and FONSI/ROD. See Appendix J of the Final EA, *Draft EA and Draft ATMP Public Involvement Materials*, for more information.

XIII. Consultation and Compliance with Other Laws

A. Endangered Species Act and Migratory Bird Treaty Act

The FAA and the NPS conducted a Section 7 analysis for those federally listed species described in Section 3.3.1 of the EA, Affected Environment for Biological Resources, in

accordance with 50 CFR Part 402.02. The FAA and the NPS initiated technical assistance with the U.S. Fish and Wildlife Service in 2021. The agencies determined the ATMP would have no effect on federally listed threatened or endangered species or their critical habitat. See Appendix H of the Final EA, *Section 7 No Effect Memo*, for additional analysis.

i. Species Protected under the MBTA

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

B. National Historic Preservation Act

The agencies continued consultation under Section 106 with an evaluation of the effects of Alternative 2, as the Preferred Alternative, on historic properties. A letter was sent on April 20, 2023, to the New Mexico State Historic Preservation Officer (SHPO) and all consulting parties, including tribes, outlining the Section 106 process, including a description of the undertaking, delineation and justification of the APE, identification of historic properties within the APE, and an evaluation of effects to historic properties within the APE. Based on this consultation, the FAA made a finding of no adverse effect to historic properties (36 CFR § 800.5(b)) for the ATMP undertaking. The Pueblo of San Felipe and Southwest Safaris objected to the finding. The Pueblo of San Felipe's objection was resolved through continued consultation. After continued consultation with Southwest Safaris, the objection could not be resolved; therefore on November 21, 2021, the FAA requested the ACHP's review of the finding pursuant to 36 CFR §§800.5(c)(2) and (3). On December 21, 2023, the ACHP responded to FAA's request for ACHP review stating that FAA has appropriately applied the criteria of adverse effect for this undertaking and a finding of "no adverse effect" to historic properties is reasonable. After review of the ACHP advisory opinion, the FAA confirmed the finding that the ATMP at Bandelier National Monument would have no adverse effect on historic properties. The FAA provided the agency response to the ACHP and all consulting parties on the project in a letter dated January 11, 2024, thereby concluding the Section 106 process.

See Appendix G for the EA, *Section 106 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 2023 Draft ATMP and Draft EA development, the FAA consulted with the NPS and other Officials with Jurisdiction over Section 4(f) resources in the Section 4(f) study area regarding FAA's preliminary finding of no substantial impairment, and hence, the FAA's proposed no constructive use determination. The FAA sent letters to each Section 4(f) property's Official with Jurisdiction with this preliminary finding concurrent with the release of the Draft EA for public review. Additionally, the FAA notified the National Park Service (NPS) of the determination via email. The 14-day response period for both review requests closed on August 3, 2023. No responses were received. Refer to Appendix I of the Final EA, *Section 4(f) Analysis*, for additional details on this coordination.

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

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

E. National Park Service Organic Act and Management Policies

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

XIV. Changes from the 2023 Draft ATMP

The agencies considered and responded to public comments received on the Draft ATMP and Draft EA. There were no substantive changes to the ATMP's conditions relating to the management of commercial air tour operations. Changes were made to Sections 2.1 Park Overview and 5.0 Justification for Measures Taken to further describe

the Park's purpose and values for which it was established and the tribal connections that are a fundamental resource and value of the Park. Additional explanation regarding the NPS's obligations for the conservation of cultural resources was added to Section 5.0. Administrative changes included adding the word "FINAL" to the title of the ATMP and adding the names of the signatories. Minor, non-substantive changes were made to improve clarity.

XV. Basis and Justification for the Decision

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

The agencies have decided to establish an ATMP implementing Alternative 2 (the Preferred Alternative in the Final EA) and to prohibit commercial air tours within the ATMP boundary no later than 180 days after the Final ATMP is signed by all required signatories from both agencies (the Final ATMP's establishment and effective date). Except as necessary for safe operation of an aircraft as determined under Federal Aviation Regulations requiring the pilot-in-command to take action to ensure the safe operation of the aircraft, or unless otherwise authorized for a specified purpose, commercial air tours would not be allowed to enter the ATMP boundary.

The operator will be permitted to continue to conduct air tours within the ATMP boundary up to the limit of their IOA until their OpSpecs are rescinded or amended to incorporate the Final ATMP's operating parameters, which will occur no later than 180 days after the effective date of the Final ATMP. All IOA for the Park and abutting pueblo tribal lands will terminate by operation of law 180 days after the establishment (effective date) of the ATMP, 49 U.S.C. § 40128(c)(2)(E), after which time no operator may continue to rely on any OpSpecs issued under IOA as authority to conduct commercial air tours within the ATMP boundary. See Final Air Tour Management Plan for Bandelier National Monument, Attachment C.

The provisions and conditions in the Final ATMP maintain confidentiality of sacred sites, respect the spiritual significance of the Park to tribal people, maintain cultural connections to the Park, respect privacy for tribes during traditional uses and ceremonies within the ATMP boundary, and prioritize elevating the voices and values of tribal nations. They also protect the Park's National Register listed or eligible cultural resources, including sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within, from the effects of

commercial air tours, and support NPS management objectives for the Park. The ATMP also reduces impacts to Wilderness and visitor experience.

The NPS is charged by its Organic Act with conserving National Park System resources “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. § 100101(a). This mandate “applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired.” NPS 2006 Management Policies § 1.4.3. The cultural resources that the NPS preserves under its Organic Act are broader than “historic properties” under the National Historic Preservation Act. As defined in NPS Management Policies (2006), a cultural resource is “an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about the culture.” It may be tangible or may be a cultural practice or connection to a landscape. Tangible cultural resources in the Park include archeological sites, sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within them.

As noted above, a draft ATMP for the Park was released for public review in September 2021. The 2021 Draft ATMP largely adopted the existing condition of commercial air tours with adjustments to mitigate impacts to Park soundscapes, visitor experience, Wilderness character, and wildlife. It also removed a route that flew over Valles Caldera National Preserve because there are not air tour authorizations for that park. Comments received during the public comment period for the 2021 Draft ATMP and information learned through tribal consultation led the NPS to determine that the existing number of air tours on existing routes had too great of an impact to cultural practices, sacred sites, and the cultural landscape of the Park and that they inhibit the NPS’s ability to provide the pueblos their cultural connection to the landscape which is fundamental to meeting the purpose of the Park.

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

The presence of existing low-altitude overflights within the ATMP boundary, including commercial air tours, interferes with tribal connections to the sacred landscape of the Park primarily due to tribal concerns about privacy. Tribes and individual tribal members have consistently noted that air tours over the Park unreasonably interfere with their connections to the larger sacred landscape that is in continuous use and of which the Park is a part. Air tours over the Park interfere with the privacy of the pueblo people as

they carry out ceremonies and sacred practices, the protection of which is a primary purpose of the Park. Commercial air tours may interrupt these practices by their physical presence which denigrates the sacred space that the Park protects. Pueblo villages, including kivas, ceremonial rooms, and burial grounds, are sacred places. Air tour patrons' observations of pueblo people carrying out traditional uses and ceremonies in these sacred places intrudes on the cultural practices the Park protects.

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

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

The agencies considered an alternative that would designate two routes, an eastbound route and a westbound route (Alternative 3 in the Final EA). However, because National Register listed or eligible cultural resources, including tribal sacred sites, cultural landscapes, and ancestral sites, occur throughout the Park, routes could not be identified that would avoid sensitive locations because sensitive locations are densely distributed throughout the Park. Thus, impacts to tribes and tribal resources could not be reduced to an acceptable level by rerouting and reducing current air tour routes to avoid sensitive locations. Further, although Alternative 3 includes a provision that would limit the times during the day when air tours could be conducted and would allow the NPS to set no-fly periods for special events that may include tribal ceremonies by giving advance notice to the operators, these provisions are unlikely to be effective at avoiding all impacts. This is because the locations, timing, and identification of participants involved in traditional use of sacred sites is sensitive and culturally guarded information. Thus, pre-emptively disclosing this information to the government in order to reduce the effects of air tours on these cultural and religious practices is not possible. For these

reasons, the NPS determined that allowing air tours within the ATMP boundary, even with the mitigation measures included in Alternative 3, is inconsistent with the Park's purpose and values including perpetuating traditional pueblo cultural connections to the Park's landscapes.

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

The ATMP is also consistent with NPS Policy Memorandum 22-03 which sets forth guidance on how the NPS will implement Secretary's Order No. 3403, *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters*. This policy states that the NPS will give due consideration to tribal recommendations and indigenous knowledge in the planning and management of Federal lands and waters. Per Executive Order 13007, *Indian Sacred Sites*, the NPS will, to the greatest extent practicable: accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical and spiritual integrity of such sacred sites; collaborate with Indian and other traditionally associated peoples who have identified sacred sites within units of the National Park System to prepare mutually agreeable strategies for providing access; and, enhance the likelihood of privacy during religious ceremonies. The NPS Management Policies direct the NPS to avoid adversely affecting the physical integrity of sacred sites to the extent practicable and to prevent inappropriate noise from unacceptably impacting cultural and historic resource sounds associated with park purposes (NPS Management Policies §§ 5.3.5.3.2, 5.3.1.7, 2006).

The Act authorizes the agencies to prohibit air tours within the ATMP boundary. The NPS determined that prohibiting air tours within the ATMP boundary is necessary to protect the Park's fundamental resources and values, including preserving the connection between the pueblo people and the sacred space within the Park, meet Park management objectives, and to be consistent with the Park's purpose and values for which it was established. The elimination of air tours within the ATMP boundary is also responsive to the concerns expressed by tribes, as it is not possible to avoid impacts to sacred sites from air tours and this action will improve privacy conditions for the tribes during traditional uses and ceremonies.

While neither 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 2023 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.

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

XVI. Decision and Order

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

After careful and thorough consideration of the facts herein, and for the reasons stated in Sections X(A) and XV, the NPS finds that the selected action/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 tribal lands, and aviation safety, and find that the Preferred Alternative is reasonably supported and consistent with the Act.

Accordingly, under the authority delegated to us by the Administrator of the FAA and the Director of the NPS, we select the Preferred Alternative, and approve and direct that

action be taken – issuance of the ATMP for Bandelier National Monument consistent with this document and issuance or modification of applicable operations specifications – to carry out the agency decisions as detailed in this ROD.

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

Rob Lowe	Date
Regional Administrator	
Southwest Region	
Federal Aviation Administration	

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

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

XVII. Right of Appeal

This FONSI/ROD constitutes a final order of the FAA Administrator and is subject to the exclusive judicial review under 49 U.S.C. § 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 U.S.C. § 46110. Any party seeking to stay the implementation of the ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.

XVIII. Attachments

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

Appendix A: References

Appendix B: List of Acronyms, Abbreviations, and Glossary

Appendix C: List of Preparers

Appendix D: Distribution List

Appendix E: Environmental Impact Analysis Methods

Appendix F: Noise Technical Analysis

Appendix G: Section 106 Consultation and Summary

Appendix H: Section 7 No Effect Memo

Appendix I: Section 4(f) Analysis

Appendix J: Draft ATMP and Draft EA Public Involvement Materials

B. National Park Service - Non-Impairment Determination

C. Final Air Tour Management Plan for Bandelier National Monument