

**Final EA – Additional Appendix Materials**

**Appendix J – Draft ATMP and Draft EA Public Involvement Materials**

*Comment Summary Report and Agency Responses to Comments on the Draft ATMP  
and Draft EA*

*Copies of all public comments received on the Draft ATMP and Draft EA*

**US Department of Transportation  
Federal Aviation Administration**



**US Department of the Interior  
National Park Service**



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## **Comment Summary Report**

### **Bandelier National Monument Air Tour Management Plan**

***Summary of Comments Received During Public Comment Period and Agency  
Responses to Comments  
for the Draft Air Tour Management Plan and Draft Environmental Assessment***

**November 2023**

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## INTRODUCTION

The Federal Aviation Administration (FAA) and the National Park Service (NPS) have prepared an Air Tour Management Plan (ATMP), which regulates commercial air tours conducted over Bandelier National Monument (the Park) pursuant to the National Parks Air Tour Management Act of 2000 (the Act)<sup>1</sup>. The Act requires that the FAA, in cooperation with the NPS (collectively, the agencies), establish an ATMP or voluntary agreement for each National Park System unit for which one or more applications to conduct commercial air tours has been submitted, unless that unit is exempt from this requirement because 50 or fewer commercial air tour operations are conducted over the park on an annual basis, 49 United States Code (U.S.C.) § 40128(a)(5). The objective of the ATMP is to identify acceptable terms and conditions for commercial air tours conducted over the Park and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tours on natural and cultural resources, Wilderness character, visitor experience, and tribal lands within the jurisdictional boundaries of the Act.

The FAA, in coordination with NPS, has prepared an Environmental Assessment (EA) in compliance with the National Environmental Policy Act (NEPA) to analyze a range of alternatives and evaluate potential issues and impacts as part of the ATMP planning process. The ATMP has also been developed in accordance with Section 106 of the National Historic Preservation Act (NHPA) and other applicable laws, regulations, and policies. A Draft Air Tour Management Plan (Draft ATMP) and Draft Environmental Assessment (Draft EA) were released on July 12, 2023, for public review and comment.

The agencies notified the public of the availability of the Draft ATMP and Draft EA using various methods, including a notice in the Federal Register issued on July 12, 2023, a news release posted on the Park's website and social media accounts, and e-mails to the agencies' distribution list (see Appendix D of the EA, *Distribution List*). Comments were accepted on both the Draft ATMP and Draft EA from July 12 through August 11, 2023. The agencies posted frequently asked questions (FAQs), the Draft ATMP, and Draft EA to the NPS Planning, Environment, and Public Comment (PEPC) website at the start of the public comment period. In addition, Park staff responded to media inquiries. This report summarizes comments received during the public comment period.

Any comments submitted to PEPC, as well as any written comments mailed to the NPS, were considered and included in Appendix J of the Final EA, *Draft ATMP and Draft EA Public Involvement Materials*. The agencies analyzed the public comments and considered all comments in revising the Draft ATMP and the Draft EA and in preparing a Final ATMP, Final EA, and the Findings of No Significant Impact/Record of Decision (FONSI/ROD). This *Comment*

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<sup>1</sup> 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 feet above ground level (AGL). This is referred to as the ATMP planning area in this document and as the ATMP boundary in the ATMP itself.

*Summary Report* provides a summary of the substantive comments submitted during the public comment period.

## **COMMENT ANALYSIS METHODOLOGY**

Comment analysis is a process used to compile and correlate similar comments into a usable format for the agencies' decision-makers and the program team. Comment analysis assists the agencies in organizing, clarifying, and addressing information and aids in identifying the topics and issues to be evaluated and considered throughout the ATMP planning process.

The process includes five main components:

- Developing a coding structure;
- Employing a comment database for comment management;
- Reviewing and coding of comments;
- Interpreting and analyzing the comments to identify issues and themes; and
- Preparing a comment summary.

The agencies developed a coding structure to organize comments into logical groups by topic and issue. The coding structure was designed to capture the content of the comments rather than to restrict or exclude any ideas. The agencies used the NPS PEPC database to manage the public comments received. The database stores the full text of all correspondence and allows comments within each correspondence to be coded. All substantive comments within each correspondence were grouped by topic. Substantive comments are those that do one or more of the following:

- Question, with reasonable basis, the accuracy of the information in the NEPA document;
- Question, with reasonable basis, the adequacy of the environmental analysis;
- Present reasonable alternatives other than those presented in the NEPA document; or
- Cause changes or revisions in the proposal.

Substantive comments raise, debate, or question a point of fact or analysis. The intent of the agencies is to capture the concern raised by the commenter and evaluate each substantive comment based on the individual concern, topic, or suggestion, regardless of the repetitive nature of the concern. Those comments that simply provided support or opposition are not considered substantive. All substantive comments were grouped by similar themes under each code, and those groups were summarized with concern statements. Concern statements are written summaries of the comments received on a particular topic.

In total, the agencies received 28 correspondences, of which three were form letters.

## **SUMMARY OF COMMENTS AND RESPONSE TO COMMENTS**

The following section summarizes the comments received during the public comment period and is organized by code. The summarized text is formatted into concern statements to

identify the thematic issues or concerns represented by comments within the code. The agencies only summarized comments with substantive content. The agencies collectively reviewed and analyzed each comment to determine if there were any changes warranted to the Draft ATMP or the Draft EA, based on the information, question, or concern provided. The agencies have provided a response following each concern statement.

### **Adverse Impacts: Soundscape Impacts**

1. **Concern Statement:** A commenter suggests that noise data analyzed in the EA are not appropriate because they are outdated, based on only four points of observation which the commenter believes is not representative of the Park, and modeled with hypothetical inputs.

**Agencies' Response:** The NPS conducted an acoustic monitoring study to characterize the natural and existing ambient conditions in 2012 (White, 2014). Four sampling locations were selected for long-term acoustical monitoring and were selected to represent the range of habitats and visitor uses typical of the Park and sufficient to document existing ambient conditions. Ambient conditions are influenced by vegetation (land cover) and visitor uses in a particular area. Unless the vegetation cover and visitor use in an area change substantially, and no such change has occurred, the acoustic data collected are not outdated and are considered appropriate.

The FAA's Aviation Environmental Design Tool (AEDT), Version 3e (Lee et al., 2022) was used to model air tour noise. AEDT is the FAA-approved computer program for modeling noise as listed under Appendix A of FAA's Part 150 Airport Noise Compatibility Planning (14 Code of Federal Regulations (CFR) § A150.103(a)). Noise modeling conducted for the Draft ATMP and Draft EA was consistent with these requirements. Modeling inputs, including route and aircraft information, were provided by the existing commercial air tour operator. The modeling inputs are not outdated because detailed current information regarding the aircraft source, operational, and flight route information, terrain, atmospheric absorption, etc., was used to compute various noise metrics for aircraft noise emissions that can be used to assess the potential noise impacts of air tours on the acoustic environment of the Park.

Contours of several noise metrics were mapped for the entire Park. Noise metrics were also calculated at 13 site-specific locations of interest in the Park. Additional information about noise modeling can be found in Appendix F of the EA, *Noise Technical Analysis*.

2. **Concern Statement:** A commenter suggests that the impact of noise under Alternatives 1 and 3 is essentially the same and very small. The commenter suggests that worst-case scenarios only occur over small areas and only twice a week on average and are thus not a burden and only a small component of man-made noise at the Park.

**Agencies' Response:** The agencies did consider the cumulative impact of noise in Section 3.1.2 of the EA, Environmental Consequences of Noise and Noise-Compatible Land Use. The noise analysis demonstrates that there are differences in impacts between the alternatives. Those differences were small and not the primary justification for the agencies' decision to select Alternative 2. The agencies acknowledge that air tour noise is not expected to be a daily occurrence. However, noise is not the only impact resulting from commercial air tours. 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 consider the entire landscape of the Pajarito Plateau to be sacred and believe air tours are inappropriate and constitute an adverse effect on the cultural landscape, wildlife, and plants. Tribes 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 hunting, among other events and activities. See Section 2.2.1 of the EA, Air Tours Above Existing Levels, and Section 3.4.2 of the EA, Environmental Consequences, for a thorough discussion of how existing air tours impact Park resources. Therefore, in compliance with the Act and other applicable laws, and considering tribal input, the agencies were required to assess mitigative measures for impacts identified by the tribes. See Section 5.0 of the ATMP, Justification for Measures Taken, for the complete justification for the preferred alternative.

3. **Concern Statement:** A commenter suggests that the statement "39% of the ATMP planning area would experience audible air tour noise at some point in the day" in Table 14 of the EA is misleading because this noise estimate is based on a model and only occurs for less than five minutes twice a week.

**Agencies' Response:** The table is correct as presented. The reference to 39% of the ATMP planning area refers to the geographical extent of air tour noise across the ATMP planning area on a day in which it occurs. The 39% does not refer to the duration, frequency, or intensity of noise, as the commenter suggests.

4. **Concern Statement:** A commenter suggests that prohibiting air tours in the ATMP planning area would increase the number of air tours flying over adjacent pueblo lands, which are more sensitive than the Park.

**Agencies' Response:** Prohibiting air tours could result in indirect impacts, as described in the Environmental Consequences sections for each environmental impact category in the EA. The agencies disclosed the potential displacement of air tours outside the ATMP boundary with tribes during tribal meetings. In developing the ATMP, the agencies held

public meetings and consulted with numerous tribes. Written comments were received from six different tribes and individual consultation meetings were held with various tribes. Through this consultation, the tribes repeatedly stated that they consider the entire landscape of the Pajarito Plateau to be sacred and believe that air tours are inappropriate and adversely impact the cultural landscape and traditional cultural properties located throughout the Park.

### **Adverse Impacts: Visual Impacts**

1. **Concern Statement:** A commenter suggests that visual impacts of overflights are difficult to identify because visitors primarily notice aircraft from the accompanying noise rather than sight. The short duration and low number of flights and position in the scene as viewed from most locations make it unlikely the typical visitor will notice or be visually distracted by aircraft. The commenter notes that the NPS documented this effect in the environmental screening form for the Arches National Park ATMP.

**Agencies' Response:** The impacts of air tours on viewsheds within the ATMP planning area are discussed in Section 3.8.2 of the EA, Environmental Consequences for Visual Effects. Since the Park consists primarily of a natural landscape, the encroachment of commercial air tour aircraft on these viewsheds could temporarily detract from the opportunity to observe these unique scenic vistas and natural resources on days when air tours are flown. The agencies applied the same criteria here as they did at Arches National Park and came to the conclusion that each park is unique and the impact analysis for the Park does not contradict the analysis for the Arches National Park. The purposes and fundamental resources and values of each Park are different.

### **Adverse Impacts: Equity**

1. **Concern Statement:** A commenter suggests that the agencies want to eliminate the air tour industry. The commenter contends that the ATMP discriminates against visitors who choose to experience the national parks by aerial sightseeing. Eliminating air tour flights unfairly limits access to the elderly, very young, disabled, and others. The commenter suggests that eliminating flights over the Park is discriminating against those who might not have the time, resources, or physical means to see the Park another way.

**Agencies' Response:** Air tours are only one of many ways for a person with disabilities to experience a national park. The ATMP does not discriminate against persons with disabilities, who may or may not wish to pay to experience a park via a commercial air tour. The NPS works to ensure that people with disabilities can participate in the same programs, activities, and employment opportunities available to visitors without disabilities in the most integrated setting possible. Alternative means of accessing facilities, programs, and services are provided when an accessible direct experience

cannot be provided. Accessibility solutions are developed in consultation with the disability community and various partners, including NPS concessioners and commercial service operators. The NPS has a team dedicated to breaking physical and programmatic barriers to make parks more inclusive for people with sensory, physical, and cognitive disabilities. The team includes regional accessibility coordinators who work to make sure that NPS staff have the tools and training necessary to provide accessible and inclusive outdoor recreation and interpretation opportunities for park visitors and employees alike. At the Park, the Visitor Center, museum, bookshop, and theater are all accessible to people with disabilities. A portion of the Main Loop Trail (Pueblo Loop Trail) is accessible. Guides to the Main Loop Trail are available in large print, Braille, Spanish, French, Japanese, German, and Russian.

### **Adverse Impacts: Other**

1. **Concern Statement:** A commenter suggests that the agencies clarify in the EA that air tour customers comprise only approximately 0.2% of total Park visitation. The commenter suggests that the possibly positive experiences of 0.2% of all Park visitors on air tours do not justify potentially negatively impacting the experiences of up to 99.8% of other Park visitors on the ground.

**Agencies' Response:** Air tour patrons make up a very small number of people who see the Park compared to Park visitors. The ATMP would eliminate most impacts of air tours within the ATMP planning area and minimize impacts on visitor experience and cultural practices. The agencies identified Alternative 2 as the preferred alternative because it provided the greatest level of protection for the purposes, resources, and values of the Park, as well as the Park's management objectives, and is the most responsive to tribal concerns.

2. **Concern Statement:** A commenter suggests that the statement "Peak month, average day = 1 air tour" (Table 14 in the EA) is misleading because business is relatively constant throughout the year with no peaks and there are no more than two flights over the Park per week.

**Agencies' Response:** To model the potential noise from air tours, information was needed about air tour operations, including routes, frequency of tours, aircraft type, etc. The operator provided information that a peak day for air tours is one air tour per day. Thus, it was appropriate to use an assumption of one air tour per day to determine the likely noise from air tours within the ATMP planning area on days on which tours occur. The noise modeling results disclose the potential for noise on a given day under a number of different metrics. The agencies disclosed in the EA that there will be some days when there is no air tour noise since air tours do not occur every day. See

Appendix F of the EA, *Noise Technical Analysis*, for additional information on noise modeling.

3. **Concern Statement:** A commenter notes that the EA states that the agencies conclude that the No Action Alternative cannot be modified to “avoid or prevent unacceptable impacts to the Park’s Section 4(f) resources” (Draft EA Section 3.9.2 and Table 14). Then under Alternative 3, in the Summary Table 14, the EA states “No substantial impairment of Section 4(f) resources in the ATMP planning area.” The commenter suggests that these statements are contradictory.

**Agencies’ Response:** A substantial impairment analysis that the FAA is required to conduct under 4(f) is different from the analysis and considerations that the NPS undertakes to determine whether impacts are unacceptable under NPS the Management Policies.

The No Action Alternative and Alternative 3 have different impacts on Park resources. The No Action Alternative does not include designated routes or minimum altitudes, which provide some protections for Park resources. Under the No Action Alternative, operators may fly air tours up to their interim operating authority. Alternative 3 does include mitigation measures, which provide some protections for Park resources. Because the alternatives are different and have different impacts, the 4(f) conclusions are correct.

4. **Concern Statement:** A commenter suggests that the positive economic impact that the air tour operator has in north-central New Mexico, including working with tribes to promote their culture, pueblo visitation, local ground tours, and sales of art, pottery, and jewelry is not considered in the EA.

**Agencies’ Response:** The socioeconomic section acknowledges the air tour industry’s contributions to the regional economy. As stated in Section 3.7.1 of the EA, Environmental Justice and Socioeconomics, the air tour industry provides income to workers and indirectly provides revenue to local businesses as a result of employee and operator spending. As described in Section 3.7.2 of the EA, Environmental Consequences for Environmental Justice and Socioeconomics, operators may choose to conduct air tours outside of the ATMP planning area. The EA acknowledges that Alternatives 2 and 3 could result in changes to air tour operator employment or income and impact other ancillary businesses generated from conducting air tours within the ATMP planning area.

### **Alternatives: ATMP Elements: Routes and Altitudes**

1. **Concern Statement:** A commenter suggests that the airspace above the Rio Grande should be available to the air tour operator. Many pilots fly up and down the Rio

Grande, as it is a major informal air traffic route. The air tour operator's flights are a small percentage of the air traffic along this route and would not be noticed. The commenter suggests that the air tour operator's safety would be compromised if they were forced to fly over the higher terrain to the east.

**Agencies' Response:** The jurisdiction of the agencies under the Act is limited to commercial air tour operations; it does not provide jurisdiction to regulate overflights that do not meet the definition of a commercial air tour. The agencies considered a wide range of alternatives to address commercial air tour impacts on the Park. The preferred alternative meets Park management objectives. Flights outside of the ATMP planning area cannot be regulated by the ATMP, nor can the agencies speculate as to tour routes that operators may choose to take outside the ATMP planning area. The pilot-in-command is responsible for compliance with Federal Aviation Regulations and ensuring safe operation of the aircraft. The local FAA Flight Standard District Office reviewed the preferred alternative for safety.

2. **Concern Statement:** A commenter suggests that the argument made multiple times in the EA that fewer routes would result in less impact is not valid and is made without any evidence. The operator would not be spending any more time over the Park if they had more routes. No route would have the operator over the Park for more than 10 minutes. The argument that less concentrated use could result in less overall impact is made without any data. This argument is used in the following environmental impact categories: Biological Resources, Cultural Resources, Wilderness, Visitor Use and Experience and Other Recreational Opportunities, and Visual Effects.

**Agencies' Response:** The impacts resulting from an air tour are not just associated with the duration of the flight but also the resources present in the area of the Park where the air tour occurs. Alternative 3 reduces the number of routes from seven to two routes that cross directly over the Park and avoids looping over Wilderness and following Park canyons. Alternative 3 would also establish a minimum altitude of 10,000 feet (ft.) above mean sea level (MSL), which results in altitudes of at least 2,600 ft. above ground level (AGL), as compared to minimum altitudes of 800 and 1,000 ft. AGL under existing conditions. Alternative 3 limits potential impacts to nesting raptors and other listed species and limits noise and visual intrusions over Wilderness where solitude is currently impacted by air tour noise; therefore, the impacts to Park resources caused by air tours are directly related to the route, altitudes, and aircraft type.

3. **Concern Statement:** Commenters suggest that Alternative 3 is not feasible because it does not give the operator any east-to-west routes; the altitude of 10,000 ft. above MSL would force flights to descend too quickly for passenger health to the operator's airport; and it denies access to the heavily used river transportation corridor.

**Agencies' Response:** To address the commenter's concern, the agencies have changed the direction of the eastbound ER-N route ("red route") in Alternative 3 to provide a westbound route. This change will not result in any new or different environmental impacts under Alternative 3 than those already disclosed in the EA since the noise impacts are expected to be similar to those already evaluated for this alternative. Under Alternative 3, the operator may either fly eastbound or westbound over the Park on a given day but cannot fly both directions over the Park in one day. This is consistent with the operator's current operations, as reported to the agencies by the operator at the initiation of the planning process.

4. **Concern Statement:** A commenter suggests that the proposed reporting requirements (dedicated flight tracking equipment that would keep track of each plane over each park for each flight) are too complicated, too expensive, and too abusive. The proposal is not feasible due to cost, pilot workload, and data management complexity. The commenter suggests that the existing Automatic Dependent Surveillance-Broadcast (ADS-B) reporting is sufficient.

**Agencies' Response:** The ATMP does not include any reporting requirements since air tours would be prohibited within the ATMP planning area. Alternative 3 (which was not selected) would require that operators equip aircraft used for air tours with flight monitoring technology, use such technology when conducting air tours, and include flight monitoring data in their semi-annual reports. The agencies consulted with the National Parks Overflights Advisory Group regarding the cost of various flight following technologies and found that there are off-the-shelf options that could meet the requirements in Alternative 3. Relying on ADS-B as a method of compliance would cause uncertainties related to processing, cross-checking, and validating all observed flights that would not be present with operator-submitted data under Alternative 3.

#### **ATMP Elements: Day/time**

1. **Concern Statement:** A commenter suggests that the statement in the EA (page 12) "Thus, a single tour occurred on most days, approximately 98% of the time." is misleading because it could lead the reader to think that there was a tour flight on 98% of days when flights are actually twice a week.

**Agencies' Response:** Clarifications were included in the Final EA to address the commenter's concern.

#### **Favorable Benefits of Air Tours**

1. **Concern Statement:** A commenter notes that air tour operators have reported many wildfires over NPS lands, a beneficial impact not noted in the EA.

**Agencies' Response:** The agencies acknowledge that an operator could be the first to report a wildfire. Wildfires are reported to federal land management agencies in a number of different ways. Because this benefit can be credited to many sources, a list of potential sources for reporting wildfires was not included in the EA.

#### **Process Comments: Alternatives Considered**

1. **Concern Statement:** A commenter suggests that a voluntary agreement is a better solution than any of the ATMP alternatives. The commenter believes that a voluntary agreement would be relatively easy to implement and would require less time and fewer resources than an ATMP, especially because the Park only has one air tour operator who flies over the Park two to ten minutes twice a week.

**Agencies' Response:** The Act allows the agencies to develop an ATMP or a voluntary agreement. The agencies determined that an ATMP is best suited for the Park. See Section 1.4 of the EA, Purpose and Need, and Section 5.0 of the ATMP, Justification for Measures Taken for additional information.

2. **Concern Statement:** A commenter suggests that the agencies should have included a voluntary agreement as an alternative in the EA.

**Agencies' Response:** The Act allows the agencies to comply with either a voluntary agreement, which does not require NEPA compliance, or with an ATMP that does require NEPA compliance. In this case, the agencies determined that an ATMP is best suited for the Park. The decision to prepare a voluntary agreement does not trigger NEPA or the NEPA process; therefore, a voluntary agreement would not be an appropriate alternative under NEPA. The agencies did consider the full range of alternatives under NEPA. The alternatives considered in the EA describe the operating parameters necessary for the implementation of the ATMP.

#### **Process Comments: Other**

1. **Concern Statement:** A commenter suggests that the agencies are not working together with the air tour operators, are ignoring the potential to use voluntary agreements, and are abusing agency discretion towards the air tour operator at the Park.

**Agencies' Response:** Under the Act, the agencies have discretion to choose whether to enter into a voluntary agreement or complete an ATMP. The agencies properly considered the operator during the development of the ATMP, and there were various opportunities for operator input. The operator provided input many times during the development of the ATMP, including through the National Historic Preservation Act (NHPA) Section 106 process. The agencies held two public comment periods and have included the operator in the NHPA Section 106 consulting party meetings. Ultimately,



can be found in Appendix F, of the EA, *Noise Technical Analysis*. Section 808 of the Act does not take precedence over or otherwise negate the agencies' responsibilities to comply with NEPA or the NHPA.

3. **Concern Statement:** A commenter suggests that the agencies have a new, undeclared policy of not allowing flights over National Park System units that are surrounded by tribal lands.

**Agencies' Response:** The commenter's assertion is not accurate. The agencies completed voluntary agreements for parks with adjacent tribal lands that allow air tours. Eleven of the completed ATMPs continue to authorize air tours, and several of those parks have adjacent tribal lands.

4. **Concern Statement:** A commenter suggests that the Act only requires that ATMPs "mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations." The commenter contends that the Act does not require or authorize the elimination of less than significant impacts because that would automatically result in ATMPs that eliminate flights, which was not the will of Congress.

**Agencies' Response:** In addition to the Act, the NPS's decision-making is guided by the NPS Organic Act of 1916. The NPS Organic Act requires the NPS "to conserve the scenery and the natural and historic objects and the wildlife [within National Park System units] and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." See Section 5.0 of the ATMP, Justification for Measures Taken, and Section 2.5 of the EA, Alternative 2 (Preferred Alternative). The NPS's mandate to conserve park resources and values "applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired" (*NPS Management Policies 2006*, Section 1.4.3). The Act does not limit the NPS's authority and obligation to preserve park resources and mitigate impacts to them. The Act specifically provides that an ATMP "may prohibit commercial air tour operations over a national park in whole or in part." [49 U.S.C. § 40128\(b\)\(3\)\(A\)](#).

The planning effort for the ATMP, the process for developing alternatives, and the extensive consultation conducted by the agencies are all discussed in the EA. The agencies identified Alternative 2 as the preferred alternative because it provided the greatest level of protection for the purposes, resources, and values of the Park, as well as the Park's management objectives, and is the most responsive to tribal concerns. Because continuing cultural connections to the Park 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 to the land under the No Action Alternative would be inconsistent with the Park's purpose and values for which it was established.

### **Process Comments: NEPA**

1. **Concern Statement:** A commenter suggests that the agencies should choose the No Action Alternative, followed by a voluntary agreement.

**Agencies' Response:** As described in Section 2.4 of the EA, Alternative 1 (No Action Alternative), the No Action Alternative is not a selectable alternative. The NPS determined that air tours at or above current levels on the current routes result in unacceptable impacts on the Park's cultural resources under the *NPS Management Policies 2006*, Section 1.4.7.1. The NPS cannot select an alternative that would result in unacceptable impacts to Park resources. Thus, the commenter's suggestion that the No Action Alternative become the basis for a voluntary agreement is not a viable path forward. The ATMP is consistent with all applicable laws.

2. **Concern Statement:** A commenter suggests that the agencies include more discussion and references to the NPS Organic Act of 1916 in the ATMP and EA because the law established the NPS conservation mandate and provides important legal context for the management of NPS lands.

**Agencies' Response:** The NPS has considered applicable laws and policies in the development of the ATMP and EA, including its Organic Act. Consistent with NPS guidance, the NPS has included a non-impairment determination as an appendix to the FONSI/ROD. The planning effort for the ATMP, the process for developing alternatives, and the extensive consultation conducted by the agencies are all discussed in the EA. The agencies identified Alternative 2 as the preferred alternative because it provided the greatest level of protection for the purposes, resources, and values of the Park, as well as the Park's management objectives, and is the most responsive to tribal concerns.

The NPS decision-making is guided by the 1916 NPS Organic Act. Specifically, the NPS Organic Act requires the NPS "to conserve the scenery and the natural and historic objects and the wildlife [within National Park System units] and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." See Section 5.0 of the ATMP, Justification for Measures Taken, and Section 2.5 of the EA, Alternative 2 (Preferred Alternative). Section 5.0 of the ATMP has been updated to include that the NPS's mandate to conserve park resources and values "applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired" (*NPS Management Policies 2006*, Section 1.4.3), and has also been updated to describe how the cultural resources that the NPS preserves under its Organic Act are broader than "historic properties" under the NHPA.

3. **Concern Statement:** A commenter suggests that the EA should include an appropriate use analysis for the proposed action consistent with *NPS Management Policies 2006*,

Section 1.5. “Appropriate use” is a use that is suitable, proper, or fitting for a particular park or to a particular location within a park. Not all uses are appropriate or allowable in units of the National Park System, and what is appropriate may vary from one park to another and from one location to another within a park. When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be prioritized.

**Agencies’ Response:** The NPS is not required to document an appropriate use analysis, though it may choose to do so out of an abundance of caution. However, an appropriate use analysis is not needed for the ATMP because it prohibits commercial air tours within the ATMP planning area.

4. **Concern Statement:** A commenter suggests that a categorical exclusion without an ATMP could have been used for the Park as was done for Arches National Park, Canyonlands National Park, and Natural Bridges National Monument. The commenter suggests that the conditions at the Park are similar to those of National Park System units where the existing route structures of the various air tour operators were maintained. Only altitudes were changed, which was sufficient for a determination of “no adverse effect.” The commenter suggests that the agencies’ statement that a categorical exclusion cannot be considered under 40 CFR § 1501.4 because extraordinary circumstances exist does not apply because there are circumstances that would “lessen the impacts or other conditions sufficient to avoid significant effects” (e.g., modification of altitudes and/or routes).

**Agencies’ Response:** The agencies, in complying with the Act and other applicable laws, were able to use a categorical exclusion to develop ATMPs for Arches National Park and Canyonlands National Park. The agencies prepared a Draft ATMP for the Park in September 2021 and received public comment until October of that year. The agencies had anticipated applying a categorical exclusion for the Draft ATMP released in 2021; however, in complying with the Act and other applicable laws and in consideration of public comments received during the 2021 planning effort, the agencies determined that an EA was the appropriate level of NEPA analysis for the development of an ATMP for the Park. The agencies have prepared an EA, consistent with all applicable laws. The agencies determined that an EA was appropriate and necessary to respond to public and tribal input and assist with agency planning and decision-making, consistent with 40 CFR § 1501.5(b).

5. **Concern Statement:** A commenter suggests that the agencies are not in compliance with 40 CFR § 1502.21 of NEPA because they do not acknowledge in the Draft EA that they are relying on “incomplete or unavailable information”.

**Agencies’ Response:** Consistent with 40 CFR § 1501.5(g)(1) and 1502.21, the agencies acknowledge several times in the EA that there is incomplete or unavailable information

to assess certain impacts. See Sections 2.5.1, Alternative 1 Commercial Air Tour Routes and Altitudes, 2.6.2, Alternative 2 Commercial Air Tour Routes and Altitudes, 3.1.2, Noise and Noise-Compatible Land Use Environmental Consequences, 3.3.2, Biological Resources Environmental Consequences, and 3.9.2, Department of Transportation Act Section 4(f) Resources Environmental Consequences, of the EA. The commenter does not identify specific areas where they contend such disclosure is lacking. The EA is consistent with all applicable laws.

6. **Concern Statement:** A commenter recommends that the EA should contain a section with other applicable laws in Chapter 1.

**Agencies' Response:** The agencies have included all the EA-required content listed in 40 CFR § 1501.5(c). A list of applicable laws is not required content.

### **Cultural Resources and Tribal Concerns**

1. **Concern Statement:** A commenter suggests that “spiritual integrity” of a landscape is impossible to measure, and that there is no way to determine whether there are beneficial or adverse spiritual impacts on a site. The commenter suggests that it is inappropriate for the agencies to favor the sacred values of one park over another.

**Agencies' Response:** The agencies acknowledge that some aspects of cultural landscapes and resources are difficult to measure. The agencies rely on tribal input to describe the impact of air tours on the connection between the tribe and Park resources, including actions that interfere with or detract from that connection. NPS *Management Policies 2006*, Section 5.3.5.3.2 and Executive Order 13007, “Indian Sacred Sites” directs the NPS to avoid adversely affecting the integrity of sacred sites. The tribes have clearly stated that air tours interfere with their connection to sacred sites within the Park.

2. **Concern Statement:** A commenter suggests that there is no invasion of privacy from an altitude of 2,000 ft. AGL.

**Agencies' Response:** If an air tour is visible to tribal users of the Park conducting traditional practices, then the group of tribal users could be visible to the air tour. Viewing tribal members from the air could expose the locations of sacred sites or sites of religious significance. Tribes have conveyed to the NPS that keeping the location of sacred sites secret is key to the survival of their religion and culture.

3. **Concern Statement:** A commenter contends that the statement in the EA, regarding the density of tribal sites within the Park making it not possible to avoid impacts to sacred sites from air tours is not true. The commenter contends that density does not correlate with impact and that sufficient altitude decreases the impact.

**Agencies' Response:** The Bandelier National Monument Archeological and Historic District encompasses the entire Park. The density of historic resources, along with the Park's purpose and significance, are relevant because air tour operations cannot avoid impacting those resources. There are thousands of contributing archeological sites, which are evenly distributed throughout the Park and are listed on the National Register of Historic Places. Air tours over the Park and their encroachment on tribal privacy and religious and cultural activities 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.

4. **Concern Statement:** A commenter suggests that the agencies' premise that all aircraft noise and visual impacts have adverse effects on people and historic properties on the ground is false. The commenter suggests that personal feelings of experiencing negative impacts are insufficient without reasonable scientific measurement.

**Agencies' Response:** Under Section 106 of the NHPA, the agencies are required to consider the effect of any proposed undertaking on historic properties. The agencies did not base their assessment of effects under Section 106 on the premise that all aircraft noise and visual impacts have an adverse effect on people and historic properties on the ground. In assessing the effects of the undertaking (prohibition of air tours), the agencies compared implementing the undertaking with existing conditions. The agencies focused on whether the undertaking would "alter any characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials workmanship, feeling or association" (36 CFR § 800.5(a)(1)). Based on this assessment, the agencies found that the undertaking would not have an adverse effect on historic properties within the Area of Potential Effects. The agencies' consideration of written or orally provided input from consulting parties, including tribal nations, is appropriate and in accordance with Section 106 regulations.

5. **Concern Statement:** A commenter contends that there were no complaints for 49 years of operation at the Park until the agencies requested comment from the tribes.

**Agencies' Response:** The alleged lack of complaints is not relevant to the agencies' assessment of impacts from air tours or the identification of Alternative 2 as the preferred alternative. However, in developing the ATMP, the agencies held public meetings and conducted tribal consultation. Opposition to air tours was expressed in the public meetings and comments on the Draft ATMPs. In tribal consultation, the tribes expressed opposition to air tours over the Park and clearly explained that air tours interfere with their connection to Park resources. The alternative selected meets both Park management objectives and the requirements of the Act and was informed by public comment and tribal input.

6. **Concern Statement:** A commenter suggests that eliminating air tours to protect historic properties would result in greater demand for ground tours, which would create more noise and visual impact than air tours. The commenter contends that the EA did not analyze this effect.

**Agencies' Response:** The NPS disagrees that tours within the Park would result in more impacts than air tours. Commercial tours within the Park require a commercial use permit that would include protections for Park resources. Given the very low number of people who take air tours, this would not result in a noticeable or impactful increase in Park visitation. Also, under current conditions, some air tour patrons may visit the Park.

7. **Concern Statement:** A commenter contends that the agencies' NHPA Section 106 findings are based on faulty evidence and incorrect procedure. The commenter requests that the ATMP process for the Park be halted until a determination can be made by a court of law as to the correct legal procedures.

**Agencies' Response:** The agencies have complied with the Act and the NHPA; therefore, there is no need to request an opinion regarding the applicability of these laws from the court.

8. **Concern Statement:** A commenter suggests that tribal ceremony privacy could have been maintained at the Park in the same way proposed at Arches National Park — with temporary no-fly restrictions.

**Agencies' Response:** Traditional events, such as gatherings and ceremonies, often do not occur on pre-determined dates or times. Further, some tribal activities are private, and disclosing dates, times, and locations is not consistent with cultural practice. Since the locations, timing, and identification of participants involved in traditional use of sacred sites is sensitive and culturally guarded information, pre-emptively disclosing this information to the government to reduce the effects of air tours on these cultural and religious practices is not possible. Thus, provisions in the ATMP, such as time-of-day restrictions or no-fly periods, would be unlikely to be effective in avoiding all impacts on these resources.

9. **Concern Statement:** A commenter suggests that the agencies are altering the trust relationship with the tribes by attempting to give the tribes control over lands the tribes do not own in order to turn the lands back to the tribes without going through legal processes.

**Agencies' Response:** The agencies' selection of the preferred alternative/ATMP does not alter the trust relationship or existing legal authorities applicable to the Park. The agencies appropriately considered the impacts on the Park's cultural resources and the input of tribes through the Section 106 process and public engagement for the draft ATMP. The ATMP fulfills the Park's purpose to protect and preserve the outstanding

features of the Pajarito Plateau, including both natural and cultural resources found there. The ATMP also provides for the traditional practices of the associated Pueblos, providing a direct cultural connection to resources, stories, and oral histories.

- 10. Concern Statement:** One commenter contends that the agencies' estimate of 3,000 cultural and ceremonial sites is too high for several reasons and was not estimated in a scientific manner.

**Agencies' Response:** As described in Section 3.4.1, the Bandelier National Monument Archeological and Historic District contains 32 contributing buildings, 90 contributing structures, and 2,974 contributing archeological sites. These resources have been documented in the National Register of Historic Places.

## Copies of All Public Comments Received on the Draft ATMP and Draft EA

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Correspondence ID: 1 Project: 103440 Document: 129475

Name: Alvarez, Josefina

Received: Jul,12 2023 08:30:16

Correspondence Type: Web Form

Correspondence: I oppose air tours over Bandelier. Actually, I would expand the safety boundary to at least one mile.

---

Correspondence ID: 2 Project: 103440 Document: 129475

Name: Brooks, Elizabeth M

Received: Jul,13 2023 15:47:24

Correspondence Type: Web Form

Correspondence: This is not a viable idea when the national parks are the last bastion of solitude for visitors, Native Pueblos who live & whose ancestors inhabited these lands, as well as National Park personnel who work tirelessly to preserve the wilderness.

Why start down this slippery slope toward the privatizing of Bandelier. We instituted a shuttle to cut down on overcrowding, noise & emissions pollution. Why would we even consider this as a form of tourism to please a few who can afford this? Wildlife is so threatened by drought and climate change why add to their demise in the name of corporate gain. ENOUGH!!!!

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Correspondence ID: 3 Project: 103440 Document: 129475

Name: Lee, Michael

Received: Jul,16 2023 06:20:36

Correspondence Type: Web Form

Correspondence: Please do not allow air tours or air traffic of any kind within sight or hearing distance of Bandelier. The only exception would be emergency services. Thank you.

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Correspondence ID: 4 Project: 103440 Document: 129475

Name: Shankland, Rebecca H

Received: Jul,16 2023 13:11:42

Correspondence Type: Web Form

Correspondence: I hope that Air Tours can be eliminated entirely. I feel that the message to communicate about Bandelier National Monument is its ancient, timeless feeling of man alone with nature. I do not know what the effect of airplanes on wildlife is, but as with man's many intrusions on the natural world (for example, think of what highways have done to wildlife corridors), it cannot be good.

In Bandelier, we treasure exploring the ancient world on foot, using ladders and old pathways that were in keeping with the Ancient People's corridors. (I wish we could eliminate cars, too, but that seems to be our only means to visit; at least the parking is designed to be fairly invisible.)

Please keep Bandelier as insulated as possible from the mechanical intrusions of modern man. Air tours should be banned.

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Correspondence ID: 5 Project: 103440 Document: 129475

Name: HADDEN, MARIE LOUISE

Received: Jul,17 2023 16:18:28

Correspondence Type: Web Form

Correspondence: Absolutely, no flights over Bandelier National Monument, Valles Caldera and all lands with historic and religious relevance.

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Correspondence ID: 6 Project: 103440 Document: 129475

Name: Dryja, Robert A

Received: Jul,18 2023 08:45:01

Correspondence Type: Web Form

Correspondence: I am in agreement with the following section:

AIR TOUR MANAGEMENT PLAN BANDELIER NATIONAL MONUMENT

140. Under this ATMP, commercial air tours will be prohibited within the ATMP boundary

157. The provisions and conditions in this ATMP are designed primarily to protect the Park's

158. National Register listed or eligible cultural resources, including sacred sites, ancestral

159. sites, cultural landscapes, and traditional cultural properties

The following comments relate to the Appendix map:

307 APPENDIX A Map including Los Alamos National Laboratory security area and the Valles Caldera National Preserve

Bandelier National Monument is physically adjacent to the Los Alamos Laboratory. Air craft could fly over this high security area that includes nuclear related activities. The Valles Caldera also is physically adjacent. Air craft could disturb herds of elk and other wild life, affecting their long term existence.

I am in agreement with item 2.7. I recommend that Alternative 2 be extended to the Los Alamos National Laboratory and the Valles Caldera National Preserve

2.7 Summary Comparison of the ATMP Alternatives

Alternative 2 (Preferred Alternative) Prohibits air tours within the ATMP planning area to maximize protection of the Park's natural and cultural resources,

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Correspondence ID: 7 Project: 103440 Document: 129475

Name: Spotts, Richard A

Received: Jul,19 2023 14:21:22

Correspondence Type: Web Form

Correspondence: I greatly appreciate the diligent and professional work involved in preparing this comprehensive draft EA and ATMP. Kudos to the NPS staff who did this excellent work.

After reviewing the information, I strongly support the NPS Preferred Alternative 2. I agree with NPS that commercial air tours subject to the ATMP are harmful, unnecessary, and conflict with the required high level of natural quiet and environmental protection. These air tours are noisy, disturbing to visitors and wildlife, expensive, and burn fossil fuels that contribute to making the climate crisis worse.

I urge NPS to adopt and fully implement this Preferred Alternative 2 and prohibit all future commercial air tours under the ATMP. This prohibition would be reasonable, necessary, and in the public interest.

Thank you very much for your kind consideration of my comments.

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Correspondence ID: 8 Project: 103440 Document: 129475

Name: ,

Received: Jul,26 2023 16:51:29

Correspondence Type: Web Form

Correspondence: This is an outstanding EA and ATMP.

The NPS preferred alternative is best. Commercial air tours are not appropriate. These tours are noisy, polluting, and annoying.

I appreciate this preferred alternative. I hope it will be chosen and successfully achieved.

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Correspondence ID: 9 Project: 103440 Document: 129475

Name: Day, Donald

Received: Jul,28 2023 13:49:19

Correspondence Type: Web Form

Correspondence: To whom it may concern:

Please think carefully and consider unintended consequences of any actions taken in the name of 'Public Safety'. We all want to be 'safe'. Most people - not all - are reasonable in their expectations when facts are explained in an orderly way.

My great concern is an incremental erosion of Liberty, Liberty, Liberty! Well intentioned, ill thought out, rules and regulations infringe on that great concept that started more than 250 years ago. We must be judicial in our application of the absolutely awesome power of government.

Please think, and rethink, the proposed actions that using that awesome government power may bring to people that simply want to provide a service that is in high demand to users of an air tour. Those tours are flown in a responsible way by responsible people serving people in a reasonable way.

Well, that's my humble comment.

CW4 Donald L. Day U.S. Army (Retired)

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Correspondence ID: 10 Project: 103440 Document: 129475

Name: Lorenz, John

Received: Jul,29 2023 12:29:59

Correspondence Type: Web Form

Correspondence: July 29, 2023

The New Mexico Pilots Association (NMPA) believes that the proposed Alternative 2 prohibiting air tours over the entire Monument and 1/2 mile outside its boundaries is overly restrictive. Alternative 3 is not workable for the tour operator, who would be negatively impacted. We think that a Voluntary Agreement would be the best solution and we ask that you consider it. We think that the Environmental Assessment (EA) does not show that Alternative 3 has significantly smaller impacts than Alternative 1. We think that the Draft EA is incomplete because the Alternatives do not differ significantly in environmental impact, the EA relies only on sound modeling and doesn't use current sound data, and it does not consider the viable alternative of a Voluntary Agreement.

Whatever final plan is implemented, we feel very strongly that the airspace above the Rio Grande needs to be available to the tour operator with no restrictions other than standard VFR rules. Many pilots fly up and down the Rio Grande; it is a major informal air traffic route. The ATMP planning area includes this heavily used corridor. We believe that the tour operator's 101 flights per year, or their absence, will not be noticed among the other air traffic. The tour operator has expressed to us that his flight safety will be compromised if he is forced to fly over the higher terrain to the east, especially on hot summer afternoons. Both Alternatives 2 and 3 in the draft ATMP deny this pilot the use of the safer river corridor. Because it is a valuable route, is available to every other pilot, and its loss impacts flight safety, we believe that prohibiting this pilot from flying along the Rio Grande at VFR altitudes is an unreasonable restriction.

The tour operator has explained to us that Alternative 3 is not useful to him. In addition, the quantitative data for Alternatives 1 and 3 in the EA are not substantially different. Alternative 3 seems to be something that was proposed as a required alternative, but it doesn't appear to be a real alternative that was offered in good faith. The EA should address why a Voluntary Agreement was rejected.

The only quantitative data in the EA are the Noise Technical Analysis and Air Quality categories. The Noise Technical Analysis relies on modeling. The only measured data is from 2012 (White, C. L. (2014), Bandelier National Monument: Acoustic monitoring report), and it is not current. It consists of only 4 points which are not evenly distributed across the Monument and cannot be considered representative of the entire Monument. It isn't clear how, or even if, this data was

incorporated into the Technical Analysis. If the noise model is accurate, the environmental impact of noise under Alternatives 1 and 3 is essentially the same, and very small. Under either Alternative, the worst case sound >35 dB (like a quiet bedroom or a whisper) is under 5 minutes over 39% (Alternative 1) or 53% (Alternative 3) of the ATMP planning area. The worst case sound >52 dB occurs for 0.1 minutes (6 seconds) to 0.5 minutes (30 seconds.) The loudest sound level (54.8 dBA or 57.7 dBA) is roughly like a conversation. (Draft EA, Table 14) The analysis of ER-N in Alternative 3 is not as extensive as the analysis of ER-S; ER-N is louder than the existing condition. (Appendix F, Tables 5 and 3) In either case, these worst case scenarios are over small areas and only during the tours - twice a week, on average. Most areas of the Monument will not experience noise from the tours. We feel that this noise level is not a burden, and the paper by White bolsters the argument that air tours (lumped into propeller plane noise) are a small part of the man made noise. (For example, White, Tables 4-11, and noting that monitoring sites 3 and 4 reflect the general use of the Rio Grande as an air transportation corridor.)

As for Air Quality comparisons between Alternative 1 and Alternative 3, the EA shows either a slight increase, or a slight decrease, in CO and greenhouse gases, with negligible changes in the other measured categories. The EA states that the two alternatives are equivalent in this regard - "Compared to the No Action Alternative, Alternative 3 would result in no or negligible benefit/impact to air quality within the ATMP planning area." (Draft EA, page 44)

In several Environmental Impact Categories, when comparing Alternatives 1 and 3, the general argument is made that fewer routes would result in less impact. That argument is stated without any evidence. We don't think that that conclusion is necessarily valid. The operator will not be spending any more time over the Monument if he has more routes. No tour will have him over the Monument for more than 10 minutes, and he will often be through it in only a few minutes. If he has more routes, he will be spreading his (very small) impact over a larger area. Arguably, less concentrated use could result in less overall impact. No data has been provided to justify the argument in the EA. This argument is used in the categories Biological Resources, Cultural Resources, Wilderness, Visitor Use and Experience and Other Recreational Opportunities, and Visual Effects.

Appendix H addresses Biological Resources. It states "no adverse effects to species were identified in the current conditions, which includes the potential impacts of 101 commercial air tours per year (based on the three-year average of flights between 2017-2019). The noise impacts resulting from these air tours were identified to be very low and infrequent, thus not resulting in impacts to species." (Appendix H, page 4) The EA discusses impacts to wildlife with the terms like "potential" and "could". It provides no concrete data to show that the impacts would differ between Alternatives 1 and 3.

Under Visitor Use and Experience and Other Recreational Opportunities, there is a misleading statement that "39% of the ATMP planning area would experience audible air tour noise at some point in the day." (Draft EA, Table 14) First, this noise is based on a model. Second, it occurs for less than 5 minutes and is at the level of a whisper or quiet bedroom. The most misleading part of the statement is the implication that the noise would occur every day. It would only occur twice a week, on average.

Under Environmental Justice and Socioeconomics and again under Visual Effects there is the statement "Peak month, average day= 1 air tour." (Draft EA, Table 14) The tour operator has told us that his business is relatively constant throughout the year with no peaks, and that he never flies over the Monument more than twice per week. The statement implies daily tours during the "peak month" and is misleading.

Under Visual Impacts, the term "minimal" is used to describe the impact under Alternative 1. (Draft EA, Table 14) We don't think that minimal impacts are a compelling reason to implement Alternative 2.

We take issue with the conclusion in the section DOT Act Section 4(f) Resources. Appendix I, which analyzes impacts to these resources, only addresses noise. We have commented about the noise impacts. The EA states that the impacts to these resources would be similar between Alternatives 1 and 3: "Because Alternative 3 would authorize the same number of flights per year, evaluation of NPS supplemental metrics show that impacts to Section 4(f) resources would be similar to impacts currently occurring". (Draft EA, page 115) And yet, the EA states that the NPS concludes that Alternative 1 cannot be modified to "avoid or prevent unacceptable impacts to the Park's Section 4(f) resources." (Draft EA page 113 and Table 14) Then under Alternative 3, in the Summary Table 14, the EA states "No substantial impairment of Section 4(f) resources in the ATMP planning area." These statements are contradictory.

The EA describes most of the impacts under Alternative 1 using terms like "minor", "minimal", and "no." Therefore, we disagree with the decision to prohibit air tours completely.

As stated previously, Alternative 3 is not acceptable. It does not give the operator any east to west routes. The altitude of 10,000' MSL is also a problem. If the operator maintains legal VFR cruising altitudes when heading east (as he does along routes ER-N and ER-S) he would have to climb to 11,500' MSL. At the eastern edge of the ATMP planning area, the operator would be about 10 miles from his home airport KSAF, and >5,000' above it. He would have to descend at more than

1,000 feet per minute to reach pattern altitude at a reasonable distance from the airport. That descent rate is unreasonably high and would negatively impact passenger health. Finally, the operator is denied access to the heavily used river transportation corridor.

We believe that a Voluntary Agreement is a better solution than any of the ATMP alternatives. A Voluntary Agreement would be relatively easy to implement and would require less time and fewer resources than implementing an ATMP. It would be more flexible and could be crafted to address the cultural issues, which are the main reason for the preferred Alternative of a complete prohibition of air tours over the Monument. (For example, routes could be designated to avoid major cultural sites; there could be no-flight times to avoid cultural practices.) There is only one tour operator/pilot. His flights do not linger over the Monument; they are not conducive to looking at cultural sites or people on the ground. His flights over the Monument are primarily transportation. The operator wants a few transportation routes so that he can fly across the Monument to get to the main areas of interest for his tours. His purpose is not sightseeing over the Monument. His crossings take from less than 2 minutes to less than 10 minutes. He has been flying these tours since 1974 without complaints. We think that a Voluntary Agreement could be reached if both parties want to make it work, and we request that you consider implementing one.

Respectfully,

New Mexico Pilots Association

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Correspondence ID: 11 Project: 103440 Document: 129475

Name: Murray, Michael B

Received: Jul,31 2023 09:06:26

Correspondence Type: Web Form

Correspondence: July 31, 2023

Mr. Patrick Suddath, Superintendent

Bandelier National Monument

15 Entrance RD

Los Alamos, NM 87544

Subject: Bandelier National Monument Proposed Air Tour Management Plan and Environmental Assessment

Dear Superintendent Suddath:

I am writing on behalf of over 2,400 members of the Coalition to Protect America's National Parks (Coalition), all of whom have worked or volunteered for the National Park Service (NPS) and who collectively represent more than 45,000 years of national park management experience. The Coalition studies, educates, speaks, and acts for the preservation of America's National Park System. Among our members are former NPS directors, regional directors, superintendents, resource specialists, rangers, maintenance and administrative staff, and a full array of other former employees, volunteers, and supporters.

We offer the following comments for your consideration regarding the proposed Air Tour Management Plan (ATMP) and Environmental Assessment (EA) for Bandelier National Monument (Bandelier or Park), as described at:

<https://parkplanning.nps.gov/document.cfm?parkID=27&projectID=103440&documentID=129475>

#### GENERAL COMMENTS

1. First, we commend the agencies for reconsidering their 2021 proposed ATMP for Bandelier NM and for issuing a revised proposal and environmental assessment (EA) now -When the Coalition submitted comments on the proposed ATMP in 2021, we were quite concerned that it did not consider a range of alternatives or provide an analysis of the potential impacts of the proposed action as required under the National Environmental Policy Act (NEPA). We greatly appreciate having the opportunity to comment on the revised proposal and EA now.

2. Compliance with the NPS Organic Act (54 USC §100101) is integral to compliance with the National Parks Air Tour Management Act (49 USC §40128), yet the recently issued planning documents barely mention the Organic Act or its relevance - We suggest that the proposed ATMP and EA include more robust discussion and references to the NPS Organic Act of 1916, since that law established the NPS "conservation mandate" and provides critical legal context for the management of parks. It is a concern that the Organic Act is not mentioned in the ATMP and is barely mentioned in the

EA, even though the National Parks Air Tour Management Act (NPATMA) of 2000 clearly refers to it. Specifically, Section 802 (Findings) of the NPATMA states, in part: "Congress finds that--

- (1) the Federal Aviation Administration has sole authority to control airspace over the United States;
- (2) the Federal Aviation Administration has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands;
- (3) the National Park Service has the responsibility of conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations."

The NPS "responsibility for conserving" park resources and values described in subsection # 3 of the NPATMA above derives directly from the NPS Organic Act of 1916 and is often referred to as the NPS "conservation mandate." As described in NPS Management Policies 2006, Section 1.4.1: "The most important statutory directive for the National Park Service is provided by interrelated provisions of the NPS Organic Act of 1916 and the NPS General Authorities Act of 1970, including amendments to the latter law enacted in 1978." As further stated in Management Policies Section 1.4.3:

The fundamental purpose of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment and 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... Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act. (Emphasis added)

As described in the EA, p. 8: "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... Consistent with this purpose, tribal sacred sites, eligible TCPs, 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 1916 Presidential Proclamation that established Bandelier National Monument was solely focused on protecting aboriginal ruins by "reserving these relics of a vanished people." In addition, the Park's 2015 Foundation Document identifies cultural significance as interwoven throughout the Park's resources.

Given that both the proposed ATMP and the EA are focused on evaluating potential impacts of commercial air tours on the Park's archaeological sites and natural features that remain an integral component of pueblo culture, we would expect the NPS Organic Act's "conservation mandate" to serve as a key basis for evaluating those impacts. We therefore recommend that the agencies add a new second paragraph to Section 1.0 (Introduction) of the ATMP (i.e., insert between the current first and second paragraphs) that states in effect: "The fundamental purpose of the national park system, established by the National Park Service Organic Act of 1916 and reaffirmed by the General Authorities Act of 1970, as amended, begins with a mandate to conserve park resources and values. Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant." We also recommend that you add a section to the EA (e.g., in Chapter 1 or as an appendix) summarizing applicable laws relevant to the proposed action, including the NPS Organic Act.

3. The EA appropriately considers the 2015 Foundation Document for Bandelier National Monument, which provides important context for the planning process regarding the park's significance and fundamental resources and values that could be adversely affected by commercial air tours -Relevant sections of the Foundation Document include the following:

(p. 6) Park Significance: "Bandelier National Monument preserves a high density and variety of archaeological resources from the Ancestral Pueblo period, including cavates carved into cliffs of volcanic tuff. Bandelier is one of the few places in the world where these types of resources are found... Archaeological sites and natural features of Bandelier National Monument remain an integral component of pueblo culture and provide a context for continuing traditional practices. The monument plays an important role for the traditionally associated pueblos, providing a direct cultural connection to resources, stories, and oral histories."

(pp. 7-8) Fundamental Resources and Values: "Fundamental resources and values help focus planning and management efforts on what is truly significant about the park. One of the most important responsibilities of NPS managers is to ensure the conservation and public enjoyment of those qualities that are essential (fundamental) to achieving the purpose of the park and maintaining its significance. (Emphasis added) If fundamental resources and values are allowed to

deteriorate, the park purpose and/or significance could be jeopardized. Among the resources and values that have been identified as "fundamental" for Bandelier are the following:

**Archaeological Resources** - One of the primary reasons the monument was established was to protect and preserve more than 3,000 archaeological sites, including Archaic and Ancestral Pueblo sites--one of the largest such concentrations in the American Southwest. These sites are still highly valued and are important for the modern pueblo people.

**Continuing Cultural Connections** - Affiliated pueblo Indian groups still have strong traditional associations and ties to Bandelier National Monument's landscape.

**Natural Landscape** - Although this area has been occupied by people for centuries, the canyons and mesas of Bandelier are still relatively natural, supporting diverse vegetative communities, a variety of wildlife species, several watersheds, and volcanic tuff--all of which have enabled people to find shelter, food, and water.

**Wilderness** - Some 70% of Bandelier is designated wilderness.

In brief, protecting the above mentioned fundamental resources and values of Bandelier is closely related to and dependent upon preserving the "natural setting" of the Park. And protecting the "natural setting" from visual and noise intrusions of low-flying air tours is fundamental to conserving the resources and values described above.

4. Consistent with NPS Management Policies Section 1.5, the EA should include an "appropriate use analysis" for the proposed action - We recommend that the EA be amended (e.g., through errata or as an appendix) to include an "appropriate use analysis" as described in Section 1.5 of the NPS Management Policies. Section 1.5 states, in part: "An 'appropriate use' is a use that is suitable, proper, or fitting for a particular park, or to a particular location within a park. Not all uses are appropriate or allowable in units of the national park system, and what is appropriate may vary from one park to another and from one location to another within a park...When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be predominant. A new form of park use may be allowed within a park only after a determination has been made in the professional judgment of the superintendent that it will not result in unacceptable impacts."

To our knowledge, NPS has never formally considered or determined whether commercial air tours are an appropriate use of (or over) Bandelier. While the Preferred Alternative in the EA is based upon the premise that air tours would adversely impact the Park's fundamental resources and values, it is not the same as making a formal determination that air tours are NOT an appropriate use in light of those impacts. We therefore suggest that the EA include a deliberate appropriate use determination statement.

5. The eventual decision document for the ATMP should include an "impairment determination" for the proposed action - We recommend that the eventual decision document, presumably a Finding of No Significant Impact (FONSI), includes an impairment determination as described in Section 1.4.7 of NPS Management Policies. Section 1.4.7, states, in part: "Before approving a proposed action that could lead to an impairment of park resources and values, an NPS decision-maker must consider the impacts of the proposed action and determine, in writing, that the activity will not lead to an impairment of park resources and values. If there would be an impairment, the action must not be approved."

Furthermore, "the impact threshold at which impairment occurs is not always readily apparent. Therefore, the Service will apply a standard that offers greater assurance that impairment will not occur. The Service will do this by avoiding impacts that it determines to be unacceptable. These are impacts that fall short of impairment, but are still not acceptable within a particular park's environment."

6. Section 8.0 ("Amendment") of the ATMP itself should be revised - This section of the ATMP is not discussed in the EA. The boilerplate language used in Section 8 (ATMP p. 8) states that "the ATMP may be amended at any time" (emphasis added) if either NPS or the FAA notifies the other agency. We imagine that the Amendment clause is intended to convey the concept that the ATMP could be updated and revised if/when the agencies determine it is needed and appropriate; and we fully understand that all management plans are subject to future change.

However, the use of the words "at any time" creates the distinct impression that reversal of the final ATMP decision and/or resumption of air tours at BADL could happen on relatively short-notice (i.e., "at any time"). Such wording suggests there is little certainty that elimination of air tours at Bandelier, as proposed, would be a durable decision since it could be changed "at any time." In our view, creating such uncertainty in the ATMP unnecessarily invites industry appeals and/or political intervention on behalf of air tour operators. Our observation has been that many NPS management decisions that curtail or eliminate controversial recreational and commercial activities in

parks, such as off-road vehicle (ORV) use, hunting, or in this case commercial air tours, are often subject to industry lobbying and/or political reversal, especially if/when there is a change in administration.

Over 20 years after the passage of the NPATMA, litigation was needed to force the agencies to finally prepare the required ATMPs. Moving forward, it is critical that the new ATMPs are widely viewed as providing for consistent long-term air tour management at the individual parks involved, rather than leave room for uncertainty. Toward that end, we recommend that the agencies revise the wording of Section 8.0 of the ATMP itself to state the following:

(add new first sentence) This ATMP will remain in effect until amended or terminated by mutual agreement of the agencies. This ATMP may be amended at any time (i.e., delete: "at any time"); if the NPS, by notification to the FAA and the operator(s), determines that the ATMP is not adequately protecting Park resources and/or visitor enjoyment; if the FAA, by notification to the NPS and the operator(s), determines that the ATMP is adversely affecting aviation safety and/or the national aviation system; or, if the agencies determine that appropriate changes to this ATMP are necessary to address new information or changed circumstances.

These minor revisions would affirm the intended stability and longevity of the ATMP; and refocus the Amendment provision on the limited circumstances that could justify reconsideration of the ATMP, rather than on the infinite possibility of amending the ATMP.

## SECTION-BY-SECTION COMMENTS

### Chapter 1

1. Section 1.4 Purpose and Need - As explained in General Comment # 2 above, compliance with the NPS Organic Act (54 USC §100101) is an integral component of the National Parks Air Tour Management Act (49 USC §40128), yet the Organic Act or its relevance to the air tour issue is not mentioned in the ATMP and barely mentioned in the EA. As stated in EA section 1.4, "The purpose of the ATMP is to comply with the Act and other applicable laws..." (Emphasis added) This would seem to be the perfect opportunity to identify the "other applicable" laws, such as the NPS Organic Act, that the agencies may have considered during the development of the ATMP. This could be addressed by providing a brief summary of "other applicable laws" in Chapter 1 or as an appendix to the EA.

2. Section 1.5 Environmental Impact Categories Not Analyzed in Detail - As described in this section, the agencies have appropriately identified a number of impact categories that were considered but not analyzed in detail. In our view, the dismissed categories are generally not relevant or significant to the analysis; and the impact categories that have been carried forward for detailed analysis in the EA include the most relevant or significant impact topics for the analysis that follows in Chapter 3 of the EA.

### Chapter 2

1. Section 2.1 Alternatives Development - We appreciate the detailed description of how the ATMP preliminary alternatives were developed by an NPS inter-disciplinary team and then reviewed by the FAA. We also appreciate that the planning team fully considered the purpose and significance for which the Park was established as it went about developing alternatives for further consideration. In general, we believe that the agencies have developed and considered an appropriate range of alternatives. It also is very appropriate that the alternatives of "Air Tours Above Existing Levels or Air Tours at Existing Levels with Current Operating Parameters" and "Air Tours on Routes Presented in the 2021 Draft ATMP" were eliminated from further study for the reasons stated in Sections 2.2.1 and 2.2.2 respectively.

2. Section 2.4 Alternative 1 (No Action Alternative) - As described in this section, "the No Action Alternative represents a continuation of what is currently flown under existing conditions..." We strongly agree with the statement that "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 (refer to Section 1.4, Purpose and Need)." (Emphasis added) It is evident from the impact analysis of the No Action Alternative in Chapter 3 that the existing air tour situation at Bandelier is causing unacceptable impacts to park resources and values that the NPS is mandated to conserve unimpaired under the Organic Act.

3. Section 2.5 Alternative 2 (Preferred Alternative) - As described, Alternative 2 would prohibit commercial air tours within the ATMP planning area no later than 180 days after the ATMP is signed by all required signatories from both agencies. We strongly support the selection of Alternative 2 as the Preferred Alternative for the reasons described in the EA, which include: "Alternative 2 would provide the greatest level of protection for the purposes, resources, and values of the Park because it would not authorize [any] air tours within the ATMP planning area, which includes the Tsankawi Unit of the Park and the area within ½-mile of its boundary. Alternative 2 would eliminate air tour presence over the sacred sites, National Register listed or eligible TCPs, ancestral sites, and cultural landscapes within the ATMP planning area; maintain

confidentiality of sacred sites (Executive Order (EO) 13007, Indian Sacred Sites, dated May 24, 1996); [and] respect the spiritual significance of the Park to tribal people.”

4. Section 2.6 Alternative 3 - Alternative 3 would authorize 101 commercial air tours per year within the ATMP planning area, which is consistent with the average number of flights reported on an annual basis from 2017-2019. Compared to existing conditions, Alternative 3 would reduce the number of flight routes from seven to two eastbound routes that directly cross over the Park and avoid looping over Wilderness and following Park canyons. It would also establish a minimum altitude of 10,000 ft. MSL which results in altitudes of at least 2,600 ft. AGL. However, in comparison to the Preferred Alternative (elimination of air tours), Alternative 3 would cause more adverse impacts across a range of impact topics. See EA Table 14 on pp. 119-123. Of the selectable alternatives, we strongly support the selection of Alternative 2 (Preferred Alternative) and oppose Alternative 3.

### Chapter 3

Chapter 3 includes comparative analyses of the respective alternatives on various impact categories (i.e., resources or uses that would be affected by air tours) at Bandelier NM. Nearly every analysis indicates that Alternative 2, the elimination of air tours at Bandelier, would provide the greatest level of protection and/or restoration of resources at the Park. Our comments below are focused on the impact categories that we believe would receive the most significant benefits of implementing Alternative 2.

1. Section 3.1 Noise and Noise-Compatible Land Use - This section includes appropriate references to relevant FAA and NPS policies. Specifically, FAA Order 1050.1F, paragraph 11-5.b(10) defines a noise sensitive area as “an area where noise interferes with normal activities associated with its use. Normally, noise sensitive areas include residential, educational, health, religious structures and sites, parks, recreational areas, areas with Wilderness characteristics, wildlife refuges, and cultural and historical sites.” (Emphasis added) In other words, the entirety of Bandelier is considered a noise sensitive area under the FAA order and should be protected accordingly.

NPS Management Policies (2006) Section 4.9, Soundscape Management, directs the NPS to preserve soundscapes and the acoustic environment to the greatest extent possible and to restore these resources to their natural condition wherever they have become degraded by noise and unwanted sounds. In other words, NPS management policies direct NPS to restore the natural soundscape at Bandelier that has been adversely impacted by air tour noise.

Section 3.1's comparative analysis of the noise levels likely to be caused by the respective alternatives strongly supports Alternative 2 (the NPS Preferred Alternative) as the alternative with the greatest likelihood of restoring the natural soundscape at Bandelier, consistent with FAA Order 1050.1F and NPS Management Policies Section 4.9. In contrast, the other alternatives would perpetuate noticeable levels of air tour noise disturbance.

2. Section 3.3 Biological Resources - As described in the EA, p. 52, the Preferred Alternative would have no effect on federally listed threatened or endangered species. Appendix H, Section 7 No Effect Memo, provides additional information on this determination. In comparison, under Alternative 3 wildlife would continue to be exposed to noise, although direct effects would not be widespread throughout the ATMP planning area. The level of noise exposure would be similar to or something less than noise exposure under current conditions because the number of authorized flights under the ATMP would be the same as the average number of flights from 2017- 2019 but flown on fewer routes and greater altitudes. See EA, p. 53. In essence, Alternative 2 (elimination of air tours) would provide the greatest level of protection to Bandelier's biological resources. For this reason, we fully support selection and implementation of Alternative 2.

3. Section 3.4 Cultural Resources - This section of the EA includes a good summary of applicable laws and policies related to cultural/historic resource protection, as well as a comprehensive description of tribal concerns about air tour-related adverse impacts to a variety of cultural resources in the Park. Because the preservation of the area's diverse cultural resources is a primary purpose for the establishment of Bandelier NM, we fully support selection and implementation of Alternative 2 (elimination of air tours). It would provide the greatest level of protection for the diverse cultural resources and sites within the APE and is the most appropriate alternative to implement under applicable NHPA, FAA, and NPS cultural resource guidelines and policies.

4. Section 3.5 Wilderness - Elimination of air tours at Bandelier NM would provide the greatest protection of the designated Wilderness at the Park. The Wilderness Act of 1964 is the primary federal legislation regulating the management of designated Wilderness areas. Congress designated 23,267 acres of the Park as Wilderness in 1976. The Bandelier Wilderness covers 70% of the Park, which leaves views within the Park largely unimpaired and forms the backdrop to the Park's steep-walled canyons, mesas, and archeological sites. While Wilderness is not an impact category FAA traditionally examines, as a land management agency, the NPS is required to preserve Wilderness character.

NPS Management Policies (2006) Section 6.1 states: "The purpose of Wilderness in the national parks includes the preservation of Wilderness character and Wilderness resources in an unimpaired condition." As described in NPS Director's Order # 41, Section 6.2, Wilderness character is the combination of biophysical, experiential, and symbolic ideals that distinguishes wilderness from other lands. The five qualities of wilderness character are (1) untrammeled, (2) undeveloped, (3) natural, (4) offers outstanding opportunities for solitude or primitive and unconfined recreation, and (5) other features of scientific, educational, scenic, or historical value.

As described in the EA, air tours would have no direct effect on the "untrammeled" and undeveloped qualities of the Bandelier Wilderness; while potential impacts to "other features" (e.g., cultural resources) are evaluated elsewhere in the EA. As a result, the EA analysis focuses on potential impacts to the "natural" and "solitude" qualities of Wilderness character. The analysis indicates that Alternative 2 (elimination of air tours) would provide the lowest level of air tour noise intrusion into the Bandelier Wilderness and thus provide the greatest level of protection to Wilderness character. As a result, we fully support Alternative 2 as the most appropriate alternative to implement under applicable NPS wilderness stewardship policies.

5. Section 3.6 Visitor Use and Experience and Other Recreational Opportunities -This section examines impacts to park visitors as well as to air tour customers. In general, the visual and noise intrusions of air tour overflights inevitably have impacts, mostly negative, on the experience of the many park visitors on the ground, while a relatively limited number of airplane passengers per flight may benefit from the air tour experience. This contrast should be made more transparent in the EA.

As described in Section 3.6.1 Trends in Visitation and Visitor Demographics, p. 84, "Between 2017 and 2019, the Park averaged 202,774 visitors; however, visitation was approximately 270,000 in 2021. Scenery, recreation, and wildlife draw large numbers of visitors to the Park each year...Within the Park, Frijoles Canyon is the most popular visitor use area, drawing 98% of the Park's overall visitors to the archaeological sites, trails, and visitor services within it." Several pages later (i.e., p. 86) under "Other Recreational Opportunities," the EA indicates that: Based on reported air tours from 2017-2019 (101), multiplied by an estimated 5 passenger seats per aircraft, "an average of 505 air tour customers per year are currently able to experience the Park from another viewpoint." (Emphasis added) Doing the math, air tour customers comprised approximately 0.2% of the total number of park visitors during 2017-2019.

Since the above information is presented separately in the EA, the mathematical relationship between the numbers of park visitors whose experiences may be negatively impacted by air tours versus the number who may benefit from an air tour experience is completely lost. To ensure this information is readily visible to the public, we suggest that NPS include the air tour customer numbers (from p. 86) in the "Trends in Visitation and Visitor Demographics" section on p. 84 immediately after the park visitation information. Or, if NPS chooses to leave the information separated as it is on p. 86 in the EA, then we suggest that NPS add a simple mathematical statement to the "Other Recreational Opportunities" that states in effect that: "Based on the numbers for 2017-2019, air tour customers comprised approximately 0.2% of total park visitation during the same period."

In our view, it is not acceptable for the possibly positive experiences of 0.2 % of all park visitors on air tours to negatively impact the experiences of up to 99.8% of other park visitors on the ground. For this reason, we fully support the "elimination of air tours" as the most appropriate alternative to implement at Bandelier. We believe that many members of the general public who are interested in Bandelier would feel the same way if this information were more transparent in the EA.

6. Section 3.8 Visual Effects - "Conservation of the scenery" in parks is a fundamental mandate of the NPS Organic Act. As described in this section of the EA, "[t]he Park is characterized by deep canyons that reach from the edge of Valles Caldera to the Rio Grande, offering visitors distinct experiences of the Park's visual resources and a major attraction for visiting the Park is to experience Bandelier's scenery and landscape." Studies indicate that aircraft noise in national parks can impact human perceptions of aesthetic quality of viewsheds (Weinzimmer et al., 2014; Benfield et al., 2018).

Under existing conditions, commercial air tours are primarily flown over or near ATMP planning area viewsheds in the central and eastern areas of the Park. Air tours are most visible to people on the ground from popular, higher elevation viewpoints that offer 360-degree views of the Pajarito Plateau, the Jemez Mountains, the Rio Grande Valley, native vegetation, masonry pueblos, and caves. Because the comparative impact analysis clearly indicates that Alternative 2 (elimination of air tours) would provide the greatest level of protection to the park's visual resources, it is most appropriate for the agencies to select and implement Alternative 2.

7. Section 3.10 Summary of Environmental Consequences - Table 14 provides a side-by-side comparison of the environmental consequences for each of the alternatives considered across each environmental impact category. This

comparison provides compelling evidence that Alternative 2, elimination of air tours, would provide the greatest level of protection to or within the various impact categories analyzed in the EA. For these reasons, we strongly support selection and implementation of Alternative 2, which would eliminate air tours at Bandelier.

#### CLOSING COMMENT

In closing, we greatly appreciate that the agencies have reconsidered their 2021 proposed ATMP for Bandelier National Monument and have now prepared a revised ATMP and an EA that evaluates the impacts of a range of air tour alternatives at the Park. In keeping with the NPS Organic Act's conservation mandate, the EA's information and analysis provide compelling evidence that Alternative 2, elimination of air tours, is the most appropriate alternative to implement at the park. We appreciate the opportunity to comment on this important issue.

Sincerely,

Michael B. Murray, Chair

Coalition to Protect America's National Parks

Email: [editor@protectnps.org](mailto:editor@protectnps.org)

2 Massachusetts Ave NE, Unit 77436

Washington, DC 20013

cc: Kate Hammond, Director of Regions 6, 7, and 8, National Park Service

Ray Sauvajot, Associate Director for Natural Resource Stewardship and Science, NPS

Karen Trevino, Chief, Natural Sounds and Night Skies Division, National Park Service

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Correspondence ID:	12	Project:	103440	Document:	129475
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Name:	M, N
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Received:	Jul,31 2023 11:01:15
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Correspondence: I oppose allowing tourist overflights of the Bandelier ATMP, over National Parks and over most other parts, e.g. battlefield, historic, state, etc. As both a helicopter pilot and a hiker, I can appreciate both perspectives. However having flown over 2000 hours in a helicopter, I don't believe that an air tour provides an experience commensurate with the downsides of tour operations. In particular, air tours don't allow the visitor to experience sounds or scents that are critical to experience a park. Especially as these senses are so integral to creating and recalling memories. Additionally both the aural and visual noise from these tours distract from the experience of other visitors to the park. I believe a comparable park experience could be created by these companies using augmented and /or virtual reality and so there is not a requirement for these companies to cease the business of entertaining tourists. Additional benefits of this path would be the tours would be more affordable and available to a broader set of visitors, it would eliminate the risk of aircraft mishaps and the resulting potential loss of life, costs associated with recovery operations, potential damage to the park ecosystem and environmental impacts. Lastly companies could market these experiences to many more people than just those that physically visit the park.

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Correspondence ID:	13	Project:	103440	Document:	129475
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Name:	Tester, John
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Received:	Jul,31 2023 13:49:16
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Correspondence ID:	14	Project:	103440	Document:	129475
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Name:	Tester, John
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Received:	Aug,03 2023 08:13:17
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Correspondence ID: 15 Project: 103440 Document: 129475

Name: Rivas, Andrew

Received: Aug,04 2023 11:12:33

Correspondence Type: Web Form

Correspondence: I am against any flight restrictions. The airspace in the US is managed by the FAA not the NPS. The NPS has over the years been doing nothing but putting overbearing restrictions on our public lands. There is only one tour operator in the area and not an issue whatsoever. The NPS has been run by a bunch of environmental nuts and is not in tune with the majority of Americans. If anything needs restrictions it is the NPS. Best thing that could happen is for the park to be turned over to the state parks department to run.

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Correspondence ID: 16 Project: 103440 Document: 129475

Name: Janssen, Tim

Received: Aug,08 2023 10:46:18

Correspondence Type: Web Form

Correspondence: Thank you for the opportunity to comment on the proposed Air Tour Management Plan (ATMP) for Bandelier National Monument.

I oppose the draft ATMP for Bandelier National Monument. I disagree with the elimination of Interim Operating Authority (IOA) and believe that the National Park Service (NPS) and the Federal Aviation Administration (FAA) did not properly conduct due diligence to determine the true impacts to the operators, the public, and park resources in the ATMP process.

According to the NPS documents, on average, from 2017-2019, only 101 commercial air tours occurred over Bandelier National Monument per year. This number is not expected to grow. The visitation of Bandelier National Monument by air is insignificant compared to the number of motorized vehicles that access the Park every day. According to Park sound estimates, the average noise level per flight is under 35 dBA. Many vehicles accessing the park by means of the steep road going up and down the cliffs make more noise than a lone aircraft at 2,000 feet above ground level (AGL).

As the NPS and the FAA have released the draft ATMP, it is clear that the agencies have an agenda to eliminate the air tour industry. The real harm is not only to the air tour operators, but also to the national park visitors, and the surrounding communities who support these operations. The ATMP discriminates against visitors who choose to experience the national parks by aerial sightseeing.

As we move past the pandemic years, many national parks saw their resources strained by the large number of visitors as the public began to travel again. Air tours are an important option for many visitors conducting a one-in-a-lifetime trip to see famous natural landmarks. Parks benefit greatly from reduced impacts as a result of air tours. Air tours reduce traffic in the park, reduce emissions as a result, improve guest experience, reduce physical impacts on park infrastructure, and lessen cultural impacts from walking trails that possibly encroach on sacred historical sites.

The national parks should be available for all visitors to see. Eliminating air tour flights unfairly limits access to the elderly, very young, disabled, and others. Eliminating flights over Bandelier National Monument is discriminating to those who might not have the time, resources, or physical means to see the Park any other way.

Like ground-based tours, air tours are a valid part of our visitor experience, providing a unique window from which we can share our cultural, historical, and environmental sites with the world. Air tours require no ground-based infrastructure at the park, which allows visitors accessibility without the need for roads, trails, signs, bathrooms, garbage cans, or other services.

By eliminating an already limited number of allowable air tours, we are removing opportunities to access our parks in a way that leaves little to no environmental footprint or disturbance. Through carbon-offset efforts and strict altitude requirements to control noise just to name a few efforts air tour operators are constantly working to ensure they are responsible stewards of the nations parks.

Undoubtedly it is essential to preserve the national parks and work with local communities, yet still enable visitors of all abilities the opportunity to experience interpretive backcountry flights over national parks and monuments. Air tours, respectfully conducted, serve to protect, promote, and enhance the value our national recreational spaces, and are

compatible with the purpose and values for which the Bandelier National Monument was established. While I oppose the draft ATMP, commercial air tour operators would welcome collaborative engagement with the FAA, NPS, and all interested parties to benefit Bandelier National Monument and its visitors.

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Correspondence ID: 17 Project: 103440 Document: 129475

Name: Adams, Bruce

Received: Aug,08 2023

Correspondence Type: Letter

Correspondence: SOUTHWEST SAFARIS

PO Box 945

Santa Fe, NM 87504

505-988-4246

Volpe National Transportation Systems Center Kaitlyn Rimol, V-326

Attn: Bandelier National Park ATMP 55 Broadway

Cambridge, MA 02142

August 7, 2023 Bandelier National Monument ATMP Dear Sir/Madam:

I am commenting on the draft Bandelier National Monument Air Tour Management Plan (ATMP) recently published in the federal register.

I will divide my critique of the Bandelier ATMP into seven sections: Operational, Environmental, Legal/Logical, Regulatory, Historical, Other, and Summary.

#### I. Operational Analysis

##### Alternative 2

I will start with Alternative 2, because it is the most draconian of the proposals. The "No Flights" proposition is contrary to the Will of Congress and is unreasonable, besides. Aircraft have been flying over scenic landscapes since long before there were any National Parks. Commercial scenic air tours brought attention to the enormous vistas of the Grand Canyon, Canyonlands, and Badlands before there were roads by which to access the views. Aerial photographs taken by air-tour passengers were published in magazines and drew the attention of the public to world-class outdoor experiences. As a direct result of air tours, one-by-one the spectacular destinations of America the Beautiful were turned into National Parks and Monuments. Slowly at first and then all at once, environmental concerns grew on the mindset of the National Park Service (NPS). Ironically, the very aircraft that largely created the demand for the National Parks eventually were attacked for being incompatible with "the purpose and values" of the Parks. Air tour operators justifiably felt double-crossed.

Over time, the objections of the NPS to air tours over units of the National Park Service have changed. At first, the issue was safety. Then it became noise. Then it became visual intrusion. Presently, it is religious and cultural impact. But this, too, is subtly shifting. Today, the real issue of for the agency is none of the above, rather it is the mere presence of any aircraft, but especially commercial planes, over National Parks. Even this matter is now morphing into alarm over the hypothetical possibility of aircraft presence, whether or not there is actual incidence. Concept is conflated with reality. Such is the case at Bandelier National Monument (BAND, or "the Park"). The arguments "evolve," but the method of thinking does not.

In 1997, the issue of the presence of aircraft over lands managed by the NPS became so contentious that Congress became involved. The House and the Senate both held hearings, during which the pros and cons of air tours over National Parks and Monuments were aired.

When Congress finally drafted the National Parks Air Tour Management Act of 2000 (hereafter, NPATMA, or "the Act"), the Intent of Congress was clearly spelled out.

On November 17, 1997, in Dixie College, St. George, Utah, the House of Representatives' Subcommittee on National Parks and Public Lands (Committee on Natural Resources) joint with the Subcommittee on Aviation (Committee on Transportation and Infrastructure) held a public meeting to discuss the pending regulation of air tours over units of the National Park Service.

Congressman John Duncan went on record with a prepared statement, which summed up most of the Congressional testimonies that day. His prepared statement is particularly relevant because, at the time, Rep. Duncan headed the House Transportation and Infrastructure Committee. On 2/11/1999, Rep. Duncan introduced H.R. 717 - National Parks Air Tour Management Act of 1999 to the 106th Congress (1999-2000). That bill eventually became the final National Parks Air Tour Management Act of 2000.

STATEMENT OF HON. JOHN J. DUNCAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Chairman Hansen, Congressman Ensign, it is a pleasure to be here today in this wonderful community and in the State of Utah.

I am fortunate to have the opportunity to serve both on the Parks Subcommittee and as Chair of the Aviation Subcommittee in the Congress, which enables me to have a unique perspective on all sides of this issue.

Let me make clear at the outset that I strongly support the goal of protecting our National Parks from unnecessary aircraft noise.

There are many legitimate methods for management of aircraft over Parks which will achieve the appropriate balance between aircraft use and protection of the visitor experience, including but not limited to: limitation on time, place and number of aircraft, quiet aircraft technology and management of visitor use patterns.

These management actions are not dissimilar to actions taken to address other resource use allocation issues or management of other uses of park areas.

I also believe that sightseeing by aircraft is a legitimate manner in which to experience the Grand Canyon National Park and other Park areas.

. With the efforts put forth by the Aviation Working Group, which consists of Federal, private, environmental, and other organizations, I believe that we can develop a [viable] solution which will permit continuation of aircraft overflights while enhancing opportunities for Park visitors to experience natural quiet.

If we work together to develop consensus on a reasonable and common-sense approach, then I think we will be very successful on this and many other issues.

Mr. Chairman, I look forward to hearing from the expert witnesses we have before us today. [Emphasis added]

Congress had two purposes in mind when it drafted NPATMA. The first, as stated by the

Chairman, was to "support the goal of protecting our National Parks from unnecessary aircraft noise." Air tour operators agree with that goal.

That being said, the second unambiguous purpose of the Act was to protect and preserve the right of air tour operators to provide air tours over the National Park System. That is why the Honorable Chairman John Duncan said for the record in writing, speaking for Congress and for future generations: "I also believe that sightseeing by aircraft is a legitimate manner in which to experience the Grand Canyon National Park and other Park areas." This is a statement by a congressman who sat on both the House Subcommittee on National Parks & Public Lands and chaired the House Subcommittee on Aviation. There can be no clearer enunciation of the Will of Congress. This statement of Congressional intent cannot be equivocated.

It appears, nonetheless, that the latter purpose of the Act has been lost on the FAA. That objective has been completely forgotten and/or discarded by an overzealous Office of Environment and Energy determined to systematically deconstruct the air tour industry in order to achieve "a greater state of environmental perfection" ... which the Act never required, because it can never be achieved and because the logic of the catchy phrase is contradictory.

The FAA proposes (Alternative 2) to take away not just some, but all, of Southwest Safaris' (SWS) allocations to fly over Bandelier National Monument. This despite the fact that neither the FAA nor the NPS has received a single documented noise or visual complaint against Southwest Safaris in 49 years! In two public meetings, held two years apart, the most recent being 7/25/2023, the purpose of which was to discuss imposing an ATMP on BAND, Southwest Safaris asked the FAA and NPS to cite any documented complaints against the ATO. Neither agency was able to do so, there being no complaints against air tours at all. Ignoring that piece of inconvenient truth, the FAA proposes, under Alternative 2, prohibiting all flights over BAND, announcing that no consideration would be given to modification of routes, altitudes, times, frequency, or equipment used to achieve the goal of reducing air tour impact.

The mere presence of an air tour aircraft over BAND is the apparent offense. This undeclared but very real condemnation stands in total contradiction of the twin purposes (dual mandate) of the Act, to protect the parks from excessive aircraft

noise and to protect the rights of ATOs to operate over Parks. Undeterred, the FAA has issued environmental assessments in preparation for a total ban on air tour overflights over BAND and has turned a deaf ear to petitions to the contrary.

FAA initiatives, like these, fly in the face of Congressional record. The Honorable John Duncan, speaking for Congress, specifically addressed this topic. I repeat the relevant part of the above citation:

There are many legitimate methods for management of aircraft over Parks which will achieve the appropriate balance between aircraft use and protection of the visitor experience, including but not limited to: limitation on time, place and number of aircraft, quiet aircraft technology and management of visitor use patterns.

These management actions are not dissimilar to actions taken to address other resource use allocation issues or management of other uses of park areas.

The FAA has made little or no effort at Bandelier National Monument to find an "appropriate balance between aircraft use and protection of the visitor experience." With respect to Southwest Safaris, the FAA will eliminate all of SWS' flights over said Park units, enormously damaging a business of 49 years that has received no complaints from the FAA or the NPS or the Pueblo tribes. It appears that Southwest Safaris' great crime is that of "politically incorrectness." Native Americans now allege that it is abuse of culture to allow air tour passengers to "look down on them." Where did this contrived argument come from? Where will this line of accusation lead the Nation, especially rural air transportation? I fear we are dealing with a new form of "weaponized law" that can be indiscriminately aimed at small businesses at any time with devastating consequence. The purpose of this "new law" appears to be the deconstruction not only of air transportation services, but small businesses in general. ATO's just stand in the way.

Sadly, the crisis involving Southwest Safaris is not an isolated occurrence. The same kinds of extreme extinction events, involving additional ATOs, arise at Canyon de Chelly, Badlands, Mount Rushmore, and Death Valley National Monuments. Many other Parks will follow in short order. Apparently, the FAA feels it has no obligation or duty to honor the Will of Congress to make reasonable allowances for air tours over NPS units. The FAA is viciously attacking small flying services all over the country.

It is obvious, even to the layman, that the FAA is no longer abiding by the purpose and limitations of the Act, but is exploiting the Act to accomplish "a greater work" of "environmental remedy" than imagined or intended by Congress. When the Act was drafted, the issue on the table was aircraft noise. The issue now is the fictitious assault of air tours on Native American religion and cultural privacy. This is a classic example of legal stretch and agency overreach, which abuse of discretion perverts the system of checks and balances between branches of Government envisioned by the Constitution. NPATMA never contemplated such allegations.

As quoted above, Congressman Duncan concluded his remarks by stating:

I believe that we can develop a solution which will permit continuation of aircraft overflights while enhancing opportunities for Park visitors to experience natural quiet. If we work together to develop consensus on a reasonable and common-sense approach, then I think we will be very successful on this and many other issues.

Clearly, in the case of BAND, the FAA is not "working together" with air tour operators. The agency has done nothing to "develop consensus on a reasonable and common-sense approach" (to quote the Honorable Duncan) regarding management of air tours. The FAA has completely ignored the second intended outcome of NPATMA. The abuse of agency discretion by the FAA towards a small flying service is everywhere apparent.

There clearly is no justification for Alternative 2. Southwest Safaris has flown the routes presented in Alternative 1, the "No Change" alternative, for 49 years without the air tour operator (ATO) having received a single complaint, whether based on noise impact, visual trespass, or cultural intrusion. According to testimony presented in public hearing back in September, 2021, and again in July of 2023, neither the FAA nor the NPS headquarters offices could present evidence of a single documented claim to any of the above accusations of adverse impact. Nor, when asked by the ATO, has the local FAA FSDO been able to present evidence of same.

The disallowance of air tours over BAND (Alternative 2) is not only an act of defiance of the Will of Congress ... the FAA having presented no hard evidence as to actual existence of excessive noise, visual intrusion, and/or cultural trespass per Section 808 of the Act ... but the proposed prohibition is also unreasonable in the face of obvious facts.

Alternative 2 (no future flights allowed over the Park) just moves a small noise/visual "shadow of effect" over the Park to a larger amplified "cone of impact" radiating outward from the perimeter of the Park. Neither the FAA nor Native Americans gain anything from Option 2, but the supposed "fix" makes the alleged "problem" significantly worse by spread of consequence.

Prohibiting Southwest Safaris from taking short direct flights across the Park means that SWS will have to take long flights over rising terrain to circumnavigate the planning area. This will cause tour planes to have to climb at full power, at slower speeds, and for longer times over the Park and adjoining lands north of the Park, all the while making considerably more noise, adversely impacting communities surrounding the Park in ways SWS has heretofore assiduously avoided. The actual perceived adverse effects will be much greater, concentrating noise on a single route known in advance to be problematic for local residents and back-country enthusiasts.

Of further consequence, there will be negative economic fallout from Alternative 2 for the ATO, the Park, and for the communities of northern New Mexico. Alternative 2 offers a "lose-lose-lose" proposition. In the interest of brevity, the positive contributions of Southwest Safaris will be addressed under Alternative 1 below in contrast to the transparently negative impacts of Option 2.

Alternative 2 is clearly intended to hurt the aviation community. It sends an undeniable message to get out of the profession of rural air transportation. This attitude will eventually affect the availability of emergency services ... medical, fire-fighting, personal transport, and food & supply delivery after the occurrence of natural catastrophes, for example. These are important concerns for people who live in rural America. The domino effect is already well underway.

Alternative 2 raises some ugly issues. It may or may not be a coincidence that the FAA is brutally attacking small flying services in the immediate wake of the COVID shutdown, which has already brought small flying services to their knees. Whether intended or not, Alternative 2 is a "kill shot" for businesses already suffering from the aftereffects of harsh governmental shutdowns. Now, the FAA and NPS are imposing even more draconian closures. It appears to the aviation community that the FAA, for unknown reasons, is trying to take advantage of the

times to "finish off" the process begun by COVID. Storm clouds are building on the horizon.

#### Alternative 1

Alternative 1, the option to maintain existing tour conditions, is by far the best choice of the three alternatives. It allows the most flexibility and opportunity for experimentation between the FAA, NPS, and SWS.

Bandelier NM is a small park, but its location just south of restricted air space (Los Alamos NL), east of high mountains (the Jemez range), and west of the Santa Fe Regional Airport's expanding airline/military traffic patterns, pose problems unique to this Park. Alternatives 2 and 3 simply impose a bad solution for the sake of administrative expediency, but do nothing to solve the alleged but nonexistent "problem" of air tour noise/presence in the way Congress envisioned (i.e., by "working together to develop consensus on a reasonable and common-sense approach.") The real problem, of course, is airline and military growth patterns, "the elephant in the room."

The FAA has never approached SWS with a constructive plan to mitigate alleged noise over the Park. The agency has never initiated a single conversation as to how flights over the Park might be improved to the benefit of all parties. The FAA left the problem of managing air tours to Southwest Safaris, which SWS solved. Until now, noise, aircraft presence, and spiritual trespass have not been problems. These are only issues today because everything, including human rights, has been politicized in recent times. The FAA has no experience managing scenic flights over Bandelier. Southwest Safaris has 49 years of experience. It would be much better to keep a window of mutual cooperation open, by leaving things alone, before freezing out any chance for future "improvement" by adopting Alternative 2 or 3.

Southwest Safaris' air tours make a major economic contribution to the economy of north central New Mexico. This includes working with Native Americans to promote their culture, Pueblo visitation, local ground tours, and sales of art, pottery, and jewelry. The FAA has not taken this into account when it pushes for highly limited/no-flight access to the Park. All of these benefits for Native Americans will be needlessly lost for the sake of short-term "bureaucratic efficiency" at the expense of long-term community gain and flexibility to meet changing environmental and technical circumstances. Tourists come from all over the world to take advantage of Southwest Safaris' unique air/land adventure expeditions, emphasizing the study of geology, archaeology, and Southwest history. The contribution Southwest Safaris has made to New Mexico over 49 years is more than anyone can calculate. Why kill the goose that lays the golden egg? One must question whether there might not be a larger agenda than meets the eye.

Currently, SWS only absolutely needs four routes across the Park, down from the seven originally flown. One route lies on the south end (going east and west), one route lies along the north end (going east and west), a third lies on the east side going north and south along the Rio Grande (a major flyway for general aviation), and a fourth diagonal route heads northeast/southwest, which is used for transportation purposes to transit the Park as fast as possible. The northern route is/will be used the least, mostly for weather avoidance. The diagonal route has been routinely flown at 8500 MSL for the last twenty years, at a constant altitude, to prevent using high power settings. Flying at that altitude makes people on the

ground barely visible, so the privacy of Native Americans is protected, flight duration is only about four- and-a-half minutes, and noise levels are unobtrusive by the NPS' own measurements (see draft

BAND EA, Table 4, page 33). The tour narration over the Park consists of geologic explanation ahead of the aircraft, so passengers are not looking for people on the ground. In fact, contrary to fears of Native Americans, it is extremely rare from a tour aircraft to see anyone hiking in the backcountry of BAND and static figures cannot be distinguished from trees. It is impossible to focus on people 2,000 feet below a plane without binoculars, the use of which Southwest Safaris does not allow. The FAA's "no flight" alternative takes none of this into account. Nowhere

does the FAA cite having conducted field tests, using "reasonable scientific methods," to measure visual acuity from the air. The FAA's assertions of visual intrusion are completely untested and unfounded.

It would seem, then, that Southwest Safaris has already met most of the objections (noise, presence, and intrusion/trespass) of Native Americans to air tours over the Park. The issue of privacy is overcome on page 15. This said, in consideration of Native American interests, Southwest Safaris strongly recommends maintenance of its seven-route tour structure in order to lessen any conceivable noise impact over any particular route only occasionally flown.

Counterintuitively, perhaps, the more the routes the less the noise impact and the less the intrusion on "viewsapes" along any single route. This is simple math.

Allowing SWS to continue flying north and south along the Rio Grand is consistent with flight patterns in use by most general aviation aircraft flying in north central New Mexico to/from Albuquerque. The landscape just to the east and to the west of the Rio Grande rises rapidly.

Thunderstorms/snowstorms congregate over the higher terrain, so safety dictates the lower routes. By not having to climb, forward speed of ATO aircraft is maximized, reducing exposure to the canyon environment. The noise generated by a rare air tour aircraft would be indistinguishable from that of general aviation, military, and airline aircraft. There is no reason to prohibit one particular air transport service from taking advantage of the safety of flying the canyon corridor.

On page 12 of the draft BAND Environmental Assessment, the NPS makes a confusing mathematical statement that is prejudicial against Southwest Safaris. Under paragraph 2.4.2, "Commercial Air Tours per Year," the NPS concludes, "Thus, a single tour occurred on most days, approximately 98% of the time." This leads the reader to think that most days of the year, or 98% of the time, SWS flies an air tour over the Park. This is misleading. The FAA repeats the error twice more, on page 122, under the headings of "Environmental Justice" and "Visual Effects" for Alternative 1. The NPS should have said, "SWS flies on average 0.276 flights per day, less than two flights per week, 98% of the time with only one flight per day when it does fly." This would have presented a totally different impression. However, it would have destroyed the impact of the NPS' statement two pages earlier (paragraph 2.2.1), that "All [the Pueblos] have unequivocally stated that air tours are inappropriate and adversely impact the cultural resources identified above . . .". Contrary to the false impression the NPS is trying to generate, SWS is hardly creating excessive noise/visual impact on the Park by flying its existing route structure (Alternative 1) less than twice a week. The FAA's own noise studies prove this

... see the section of this brief titled, "Legal & Logical Analysis," page 17.

All of Southwest Safaris' flights over the Park under Alternative 1 are of short duration. Most of the "tours" follow a straight line and last no more than five minutes. Many flights are less than two minutes, such as those flying from east to west cutting across the southeastern corner of the Park. The maximum noise impact that the NPS could cite anywhere in the Park was 35 seconds above 52 dBA. This kind of "environmental assault" hardly imposes a significant burden on either the Park environment or Native Americans. That noise level is about the same as a normal voice in conversation. Forcing the ATO to fly the perimeter of the Park will triple the length of a tour and quadruple the time of the tour (because of slow climbs), greatly increasing the noise/physical presence of tour aircraft.

Southwest Safaris flies over Bandelier NP mostly as a matter of convenience and necessity. The Park lies along a commonly-used, well-known, fly-way following the Rio Grande. General aviation pilots fly over portions of the Park, because they are squeezed between the Los Alamos restricted area to the north; the expanded traffic patterns of the ever-growing Santa Fe Regional Airport (due to airline and military operations) to the east; and the 10,000-foot Jemez Mountains to the west. Most flights over the park are due to flight training and transient operations, many conducted by employees of Los Alamos NL who commute to work from ABQ by private plane. The FAA's BAND ATMP never takes these facts into account. The agencies put all the blame for imagined/hypothetical aircraft noise/presence ... sometimes called "skyshed diminishment" ... and spiritual trespass on one small ATO who transits the park relatively infrequently (no more than twice a week) and for very short periods of time (generally less than five minutes). The FAA's accusations of abuse of environment and culture are absurd on face of argument.

The problem with implementing an ATMP for BAND is not lack of cooperation from Southwest Safaris; it is the hardened attitude by the NPS, in particular. That agency strives to eliminate all scenic air tours over the Park, if possible, which attitude is responsible for the self-generated impasse the agencies have created. I repeat again and again, that this is very shortsighted "reasoning" and contrary to the Will of Congress.

Southwest Safaris favors Alternative 1 because that option has no requirement for an annual meeting and annual training. Both sessions can and should be combined into one encounter, but SWS fears the requirement is more for punitive purposes than transfer of information. In any case, the ATMP should specify that the meetings may take place by phone, if the NPS wants to insure cooperation and attendance.

I further favor Alternative 1 because there is no requirement therein for special flight tracking equipment. ADS-B should be sufficient. Requiring an ATO to buy special flight tracking equipment in order to make two flights a week, each of five minutes duration or less, is obviously overkill. It remains to be seen whether either the FAA or an ATO will be willing to gather, compile, and analyze the data. This sounds like a make-work project designed by the NPS to discourage flights over the Park, the results of which will benefit no one. For further discussion of flight tracking equipment, see the "Regulatory Analysis" section at the end of this letter (page 34).

### Alternative 3

Alternative 3 is just a thinly disguised version of Alternative 2. It is so restrictive that it hardly allows access to the Park sky at all. It is almost as punitive as Alternative 2, providing false hope for the ATO. Its two routes can only be flown from west to east, which means that the routes are only good for returning from long-range tours originating out to the west. Thus, Alternative 3 is a meaningless "solution."

### Alternative 4 - Deliberately Withheld by the FAA

Alternative 4 is the option to form a Voluntary Agreement. The FAA never even mentions this possibility. This is a major flaw in the draft ATMP, bad enough to cause the FAA to have to reintroduce the draft, because the FAA has hopelessly prejudged the outcome of its scoping.

The lack of a fourth alternative tends to force the public to vote for Alternative 3, not realizing that Alternative 3 has no value to anyone.

Draft agreements are already in place in Glen Canyon NRA, Rainbow Bridge, and the Statue of Liberty/Governors Island. I have recently been contacted by the NPS to sign a VA for Lake Meade. There are many ATOs involved with Glen Canyon, Rainbow Bridge, Lake Powell, Lake Meade, and Statue of Liberty/Governors Island, only one at Bandelier. It would be a very easy matter to get a VA for BAND. What works for the goose should work for the gander. A VA for BAND would be almost as good as Alternative 1, and it should satisfy the FAA's obsession with control.

The FAA should have put Alternative 4 on the table. According to 40 CFR 1502.1, an Environmental Statement ...

shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment [emphasis added].

The FAA had a duty to inform decision makers and the public of "reasonable alternatives." A Voluntary Agreement is certainly one form of reasonable alternative. The FAA has failed its duty to inform and needs to withdraw the proposal for reason of prejudice.

## II. Environmental Analysis

The ATMP for Bandelier National Monument offers three options (decisions) for controlling the alleged four-fold negative impacts from air tours, consisting of noise, presence, intrusion, and scattering of confidential information ... all supposedly pointing to invasion of privacy. Alternative 1 was a "No Action Alternative." Alternatives 2 & 3 were "Action Alternatives." Alternative 4 should have been a "Voluntary Agreement," but it was not included (see above).

### Alternative 1

The "No Action" option is clearly the preferred choice, because it meets all of the objectives of NPATMA with minimal governmental involvement, starting with sound.

When NPATMA was drafted in year 2000, aircraft noise was the major issue with which Congress was concerned. Although other lesser issues were involved, noise was considered by §40128(b)(1)(B) to be the "significant" irritant that needed to be addressed. This is why Section 808 was inserted. According to the NPS' data, this objective has been admirably accomplished. The NPS is fully aware of this, because it makes no specific claim in the draft BAND ATMP that "significant"

aircraft noise is a problem in the Park. In fact, the word, "noise" does not even appear in the draft ATMP. The issue of aircraft sound," however, arises in line 135 of the draft ATMP and appears prominently in the draft Environmental Analysis.

The NPS violates the understanding of NPATMA, and engages in abuse of Act, by claiming or inferring in the draft ATMP that all possible traces of aircraft sounds have to be eliminated from the Park in order to allow for purity of traditional ceremonial practices of Native Americans (this according to "Park management objectives;" see line 127). Such a goal is unachievable and was never contemplated by NPATMA. The White Report shows that some 99% of aircraft noise in the Park is generated by airlines, military, and general aviation activity, not air tours, with the bulk of the sound coming from three proximate local airports. This source of noise will never be eliminated. Consequently, the noise-related justification for eliminating air tours at BAND must be struck and the ATMP withdrawn, the noise issue having wrongfully permeated every argument the NPS makes against the ATO. The relevant issue under NPATMA (as opposed to Section 106 of NHPA) is not low-level aircraft sound, but significant aircraft noise.

The NPS has taken a position of "no compromise" with air tours, maintaining that the "mere presence" of air tours over the Park is an abomination to local tribes and visitor experience and cannot be tolerated. This attitude of hostility is totally contrary to that which was envisioned by NPATMA, which legislation could have just banned air tours entirely from National Parks and Monuments. The fact is, air tours, precisely because of NPATMA, have a recognized right to exist at National Parks. The NPS is setting up impossible conditions that air tours would have to meet at any Park associated with traditional native lands, which all Parks are. NPATMA intended for there to be a reasonable compromise between all users of the National Park System, because the Parks "belong to all the people" (quote from Deb Haaland, current head of the Department of Interior). Excessive noise having been declared the major adverse issue associated with air tours, which Southwest Safaris has already "significantly mitigated and prevented," the issue of sound under NPATMA is now mute.

At BAND, the existing ambient sound level of significance, that is, the level of noise below which the NPS ideally wants human-made sounds to measure, is 35 dBA. The maximum level of sound intrusion appears to be 52. Judging from the FAA's BAND draft Environmental Assessment, Table 4, Alternative 1 meets all objections. The Day-Night Average Sound Level (DNL) does not exceed 35 dBA. Day-Night Average Sound Level is likewise less than 35 dBA. The maximum time that noise from air tours would be above 35 dBA is less than 5 minutes, applicable to just one route. This five-minutes figure translates to 0.0069 of a day; in other words, no impact at all. The maximum time above 52 dBA experienced across all points modeled is projected to be 0.1 minutes at location point #11 (Rio Grande). All of this is the NPS' way of admitting, without saying so, that SWS' air tours produce no significant noise impact. All other modeled location points would not experience noise above 52 dBA (the sound of a human voice) due to air tours.

The White sound study (White, C.L. 2014. Bandelier National Monument: Acoustic Monitoring Report; see EA, Appendix F, "9. Literature Cited," page 19) agrees. It was conducted in 2012. Though its numbers are old and outdated, nevertheless the NPS supposedly bases all of its AEDT current calculations and conclusions on the four points of observation cited in the White Report. According to the White study, there is no significant noise of any kind in the Park.

The Bandelier National Monument Acoustic Monitoring Report (Natural Resource Technical Report NPS/NRSS/NRTR - 2014/844) stated in the "Discussion" section on page32:

The existing ambient conditions at Bandelier National Monument are quiet to very quiet, even at the busiest site. At BAND001, located near the Visitor Center, parking lot, popular hiking trails, and archaeological sites, non-natural sounds could be heard 67.1% (summer) - 72.8% (winter) of the time. However, the median existing ambient levels were quite low, the highest being 33.6 dBA (summer, daytime). For comparison, a comprehensive 1982 study of noise levels in residential areas found that nearly 87% of US residents were exposed to day-night sound levels over 55 dB (and an additional 53% was exposed to day-night sound levels over 60 dB) (EPA 1982). Noise levels have increased nationally with population growth since the EPA study (Suter 1991; Barber et al. 2010). Therefore, these results imply that although noise was common at BAND001 during the monitoring period, it was considerably quieter than most residential areas. The most common sources of noise at this site were people talking, vehicles, and a building generator.

BAND002 was a much less-visited area of the park, along the trail to Cerro Grande peak. Although the site was about one mile from the road, vehicles were clearly audible. Vehicles could be heard 41.5% of the time during the summer deployment, making up the majority of the 61.3% time audible of all non-natural noise. All noise sources, including vehicles, were less commonly heard in the winter (33.5% and 15.3% time audible, respectively). The only other significant sources of noise at this site were aircraft, mainly high-altitude jets. [Emphasis added.]

I refer now to Table 4 on page 9 of the study to reference the noise sampling results for Band001. SWS picked this location by random; however, it seems to reflect the main visitors' center at BAND, so its data is significant. Some very interesting facts come to life by studying Table 4.

Propeller aircraft hardly make any noise at all in the Park, relative to jets and road vehicles. The present time audible (PA) factor for jets is 30. The PA for propeller aircraft is a mere 3.

According to the NPS own figures, jets make ten times the sound intrusion of prop planes. Prop planes can only be heard 3% of a summer day. On a given day when SWS might fly over the Park for five minutes or less, its noise factor would be 5 minutes, divided by 720 minutes in a day, times 3% of its proportionate share of total propeller noise measured, equaling .0002 or 0.002% of a day PA. In other words, no sound equipment would be able to measure the miniscule sound generated by one of Southwest Safaris' air tour airplanes. Most of the time, a normal person would not hear an air tour plane.

Because the NPS admits that the presence of an aircraft is generally made known by its sound (see "Environmental Analysis for Arches National Park" on page 15 of this brief), the NPS' logic says that, under normal daily conditions, no one would even look to the sky to observe the possible presence of one of Southwest Safaris air tours. The NPS' theory at Arches is, "If you don't hear an aircraft, you probably won't see it."

Therefore, using the NPS' own figures and logic ... sourced from an actual field study (the White Report) and drawn from NPS' draft Environmental Analysis for ARCH, respectively ... there are no adverse impacts from Southwest Safaris air tours over BAND. That is, there are no adverse impacts from either aircraft noise or from the visual presence (affecting "viewsapes") of tour aircraft. These are the only two substantive requirements of NPATMA. Thus, Southwest Safaris air tours already fulfill all the requirements of the Act.

Still the FAA is not satisfied. The agency makes up law, claiming that Southwest Safaris is violating Indian rights of privacy based on intrusion of spiritual property and likelihood of interruption of religious ceremony. These arguments are imaginative but specious.

"Trespass of spiritual space," a concept of art the FAA tries to apply to BAND, is not a substantive allegation. The term, "spiritual space" has no scale of measurement or proof of reality. Its existence varies from person to person and has no dimensions. Some people feel that "spiritual space" is limited to 5 feet above the ground, others to infinity. Some suppose that "sacred space" is defined by horizontal distance, others by vertical. There is no method to rationally calculate the dimensions of "sacred aerial space," because it is based on belief, not dimensional definition. Therefore, "sacred space" cannot be regulated or managed in terms of airspace.

In the present instance, the FAA is not regulating or managing a "block" of airspace, which it regularly does. The basis of the agency's logic for "density of sacred sites" is that each individual historic site has its own sacred airspace attached to it, the supposed dimensions of which would have to vary according to the "degree of sacredness" attached to each cultural unit. In the case of BAND, the FAA is proposing breaking down the airspace into 3000 separate blocks. The FAA's theory is that there is no path an air tour aircraft could weave between these sacred sites, because they are so many. However, there is no provision within FAA regulation that would allow for this fractional allocation of airspace. Nor does BAND airspace fall under the category of "special use" without going through regulatory procedures.

The FAA errs in implementing an ATMP for BAND based on airspace that has no vertical or horizontal components. There is no legal definition for "aerial spiritual property." Consequently, there is no way to test for "trespass of spiritual space," so there cannot be lawful enforcement of same. Legal theories based on density of "aerial spiritual properties" have even less merit, as the micro-units of entity change the concept of manageable blocks of airspace upon which air navigation relies.

Therefore, under current regulations, there is no lawful basis for saying in line 246 of the draft BAND ATMP, "The density of tribal [spiritual] sites within the Park means it is not possible to avoid impacts to [or intrusion of] sacred sites from air tours." The concept of "spiritual trespass" is foreign to aviation regulation and navigation. This legal theory is more applicable to surface hiking paths, than "aerial trails" 2,000 feet AGL. Such "innovative" theories of regulation are artfully introduced by the agencies with no case law cited to support acceptance by the courts.

There appears to be no limit to the overreach of federal agencies. At 100-foot altitudes, the FAA's logic would make sense. At 500-foot altitudes, the FAA's logic might make some sense. At 2,000-feet AGL minimum flight altitude, the FAA's objections drop away. Denying an ATO the right to fly both below 2,000-feet AGL (the wilderness minimum) and above 2,000-feet AGL (i.e., Alternative 2, the FAA's "no fly" option) constitutes obstruction of air commerce, defiance of Congressional Act (NPATMA), and disregard for Will of Congress (page 2).

Yet, there are supportive observations for air tours that SWS can draw from studying Table 4 of the White study.

Chief amongst the observations is that the major contributors to the noise at BAND are wind, with a PA of 50, and then "all road vehicles," with a PA of 69.4. BAND is a windy environment. This is especially true over the high mesas in the southern reaches of the Park and along the eastern border, where the canyons of the Rio Grand form something of a wind tunnel. These are the areas where SWS does most of its flying. The sound of wind not only masks aircraft noise, it also tends to blow the noise away so that it is less audible, if at all. Moreover, according to the White Report, the sound of motorized

vehicles is even more constant than wind. The reason no one has complained of air tour noise over BAND in 49 years is because one can hear it or see the planes that cause it! The White study demonstrates that the accusations of the NPS and FAA are fiction.

If Native Americans can neither hear nor see Southwest Safaris tour aircraft, it is highly unlikely that said aircraft will normally, if ever, "fracture cultural connections to the Park" (line 179), "interfere with tribal connections to the sacred landscape of the Park," (line 188), interrupt Native American ceremonies by "interfering with the privacy of the pueblo people as they carry out ceremonies and sacred practices" (line 192), "intrude on cultural practices the Park is required to protect" (line 198), "interfere with tribal connections to the land" (line 216), or "adversely affect the physical and spiritual integrity of sacred sites" (line 238). These allegations of the NPS are hyperbole and absurd of the face of the accusations.

The fact is, the FAA's draft BAND ATMP and EA contain so many misstatements, half-truths, and omissions that they can not be relied upon as a truthful representation of air tour conditions in the Park. For these abuses of process alone, the documents need to be withdrawn. But the FAA is not finished.

The FAA alleges, in so many nebulous words and contorted arguments, that Southwest Safaris' air tours violates the National Environmental Policy Act. I disagree.

Title I, Section 101 of NEPA (42 USC 4331) sets forth the "Congressional Declaration of National Environmental Policy." It reads:

The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Alternative 1 fulfills the test of NEPA in numerous and significant ways. First, air tour technology meets the definition of "financial and technical assistance." Tour aircraft represent a large financial investment that directly benefit the environment of the Parks at no cost to the government. Air tours leave no litter behind, create no adverse human impact on the ground, require no investment in Park infrastructure, make no enduring noise footprint, and require no parking lots. Moreover, air tours provide an alternative view of National Parks and Monuments that the public clearly values.

Second, air tours are calculated "to foster and promote the general welfare" by giving exposure to the natural wonders of a Park that the NPS cannot provide. The NPS has no access to air tour technology or expertise, nor is it likely to ever have it. ATOs provide expanded Park experience as a value-added contribution by the private sector, producing irreplaceable memories of a lifetime. Many a traveler's first exposure to a particular Park is by air. Air tour operators provide significant free promotion for local Parks and Monuments, saving the Federal government millions of dollars per year.

Third, Alternative 1 meets the challenge of "creating and maintaining conditions under which man and nature can exist in productive harmony." Today's air tour technology is totally compatible with natural Park experience. At BAND, park visitors have to strain their ears and eyes to detect the presence of air tours. With respect to the draft VA and aircraft noise, the FAA's own figures demonstrate that air tours over the Park have no adverse impact on people on the ground (see Table 4, page 33 of the draft EA). Similarly, the FAA acknowledges that the "viewsapes" of the Park are not impaired by two short air tours per week. The FAA's language throughout the draft VA is full of "could" and "possible" modifiers, but definitive verbs of inclusion, such as "is" and "are," are noticeably absent. All of the negative aspersions to noise, adverse visual impact, and spiritual trespass are hypothetical and imaginary, insignificant and impossible to measure. The agency provides no objective criteria by which to measure either visual impact or spiritual intrusion (see EA Section 3.8, "Visual Effects"), so the agency's accusations are hollow, at best.

Interestingly, one has to go to the FAA's "Environmental Analysis for Arches National Park" to find arguments that refute "the mere presence of aircraft" objection of the NPS at BAND. The ARCH EA (Environmental Screening Form, "Evaluation of the ATMP," Table 1, "Viewsheds," P. 9) observes:

Other literature for studies on impacts from commercial air tours or overflights generally on viewsheds conclude that the visual impacts of overflights are difficult to identify because visitors primarily notice aircraft because of the accompanying noise. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The short duration and low number of flights (along with the position in the scene as viewed from most locations) make it unlikely the typical visitor will

notice or be visually distracted by aircraft. The viewer's eye is often drawn to the horizon to take in a park view and aircraft at higher altitudes are less likely to be noticed. Aircraft at lower altitudes may attract visual attention but are also more likely to be screened by topography.

Hence, the NPS makes precisely the same argument in favor of air tours over Arches as Southwest Safaris makes for BAND. Air tours over BAND obviously have no significant adverse impact on visual effects, using the Park Service's own words and logic.

Air tours are in great demand by the public. Air tour operators have conclusively demonstrated to Congress that they can "coexist in productive harmony" with National Parks and Monuments (see Congressional Statement by the Honorable John Duncan). Actual perceptions in the field are diametrically opposite to theoretical allegations made in administrative offices.

Finally, Alternative 1 meets the test of "fulfilling the social, economic, and other requirements of present and future generations of Americans." Air tour methods and technology will continue to improve. Future generations will benefit enormously. Moreover, the economic benefits of air tours will compound over time as their popularity grows. Unlike Alternative 2, Alternative 1 does not cut future generations off from the benefits of science, nature, and people working together to build a valuable American experience for everyone.

A major justification stated by the FAA for denying Alternative 1 and choosing the "No Flight" option is that Alternative 2 will "enhance the likelihood of privacy during religious ceremonies" (draft BAND ATMP, line 241). This calloused remark is partially true, but mostly incorrect.

Yes, if no flights are allowed over the Park, obviously there will be no chance of air tour planes having even minor adverse impact on ceremonies. However, both the Will of Congress and NEPA call for cooperation between all parties to "develop consensus on a reasonable and common-sense approach" (Congressman John Duncan) to accommodate diverse interests and to "create and maintain conditions under which man and nature can exist in productive harmony" (Title I, Section 101 of NEPA (42 USC 4331)). This simply means invoking a reasonable compromise, where air tours over the Park will be conducted at 2,000-foot minimum altitude.

The NPS has already testified that noise is not a problem. The 2,000-foot AGL altitude is the national standard for ensuring privacy in wilderness lands. 70% of the Park is wilderness, and this is the region over which SWS does most of its flying. Moreover, according to the NPS, minimum aircraft noise means minimal observation of aircraft (see page 15). In any case, an average of only two flights a week, each of only 5 minutes average, should not impose an unreasonable impact on observance of religious ceremonies of undeclared frequency.

There is nothing in NPATMA, NEPA, or NHPA that says one party's interests in an environmental dispute ought to be prioritized so as to completely negate another party's rights. As long as the "significant adverse impacts" can be "mitigated or prevented," the objective of the Act will have been achieved. In the case of BAND, the NPS chooses the most extreme remedy, which is neither necessary nor the Will of Congress. Alternative 2 inflicts the greatest costs on the greater society, with only minor gains for the tribes. Deciding in favor of Alternative 1, or choosing a Voluntary Agreement based on Alternative 1 with a 2,000-foot AGL floor, would solve all of the problems.

Given the limited choices available, Alternative 1 clearly meets the intent and expectations of Congress, satisfying all the objectives of NPATMA, NEPA, and NHPA, combined. Alternatives 2 and 3 fail miserably. Therefore, safety in air commerce, public interest, the purpose and values of the Park, and the purpose and means of the Act all require adoption of Alternative 1, "No change."

#### Alternative 3

Alternative 3 is so close to Alternative 1, relative to environmental impact, as to be statistically insignificant. The noise levels are almost identical in terms of human perception. There is no reason to prefer Alternative 3 over Option 1 because of negligible lessened aircraft noise or physical presence and because Alt 3 serves no constructive purpose (see page 9).

#### Alternative 2

The "No Flight" option, as previously discussed, offers no benefits either to the Park or to local communities.

Alternative 2 throws away 49 years of careful air tour research, which provides proven methods for conducting air tours at BAND without disturbing people or historic sites on the ground.

Alternative 2 deprives the ATO, NPS, and local tribes of the economic, cultural, educational, and experiential benefits of Southwest Safaris world-famous natural-history-narrated air tours. The cumulative loss to the greater community of northern New Mexico will be profound and irreversible.

Societal loss from Alternative 2 exceeds environmental gains. FAA data, whether derived from synthetic noise models or real-world noise studies, show that SWS air tours "do no harm."

Therefore, there can be no gain from eliminating the flights. Thus, the gain from Alternative 2 is imaginary; the loss from losing the flights would be real.

In fact, alternative 2 results in real environmental damage. Instead of the ATO flying high over mostly unused lands (Alternative 1), SWS will be forced to fly low around the perimeter of the Park, where noise sensitivity is at its greatest. Alt 2 will produce "significant adverse effects," because flights in the vicinity of Bandelier will not only continue, but increase. It requires far more power and time to circumnavigate the Park than to fly over it. Southwest Safaris worries that the FAA and NPS have not sufficiently impressed this reality upon the local tribes. The "No Change" option insures the absence of complaints from ATO overflights. SWS gives public notice that Alternative 2 provides no such guarantee.

### III. Legal & Logical Analysis

The BAND ATMP and EA do not withstand legal scrutiny for many substantive and procedural reasons.

I allege that the FAA has knowingly and deliberately ignored mandate of Congress that the agency conduct pertinent (defined to mean "current, comprehensive, relevant, accurate, and science-based") sound studies at National Parks and Monuments before implementation of respective ATMPs. By so doing, the agency has ignored Act of Congress, disregarded primacy of laws, failed to perform due diligence, abused power of agency discretion, and deprived air tour operators of due process/civil rights.

The impact of the FAA's callous and indifferent actions affects virtually every State. Small aviation businesses are being destroyed by the FAA in record numbers. Yet the FAA persists, seemingly arguing that executive force of agency trumps legislative reason of law.

Air Tour Management Plans are mandated by the National Parks Air Tour Management Act of 2000, otherwise known as NPATMA (or, "the Act").

ATOs generally support the Act because, in addition to regulating the day-to-day conduct of air tours at units of the National Park Service, the Act also acknowledges and protects ATOs' right to fly over said Parks. ATOs strenuously object, however, to the FAA's abuse of statute to arbitrarily and capriciously deconstruct the air tour industry through "weaponized" ATMPs, the original constructive purpose of which has been redirected and targeted against ATOs despite opposing Will of Congress.

NPATMA begins by stating the purpose of the Act. Section 40128(b)(1)(B) says:

The objective of any air tour management plan shall be 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. [Emphasis added.]

One of the main goals of Congress was to control the amount of noise commercial aircraft were creating over Parks and Monuments. At the time that the Act was enacted, Congress thought, and presumably still does, that noise had the potential to create the greatest adverse effect on natural and cultural resources, visitor experiences, and tribal lands.

However, Congress was not convinced that environmental and human-rights advocates were telling the truth about noise. "Potential" noise is not the same as actual. Congress was skeptical that environmental/special interest groups were exaggerating their claims about aircraft noise and/or invasion of privacy and/or interruption of tribal ceremonies and were skewing their testimonies as to the time, place, and magnitude of "the problem." That is why Congress inserted the "if any" phrase quoted above. The phrase carries enormous significance, requiring that all data, evidence, assumptions, and conclusions be tested and verified as being current, comprehensive, relevant, accurate, and science-based (i.e., pertinent) in order to determine veracity. The phrase is, in effect, a "prove it" clause, and the clause is an order. The "if any" phrase imposes a mandate to positively determine the scope and degree of "significant adverse impacts" as they currently exist. Untested testimony, allegation, conjecture, supposition, hearsay, innuendo, opinion, speculation, and feelings of abuse allowed under Section 106 of the National Historic Preservation Act (NHPA) would not, by themselves, suffice to confirm existence of "adverse effect" under NPATMA. Nor would old and outdated studies be considered to be relevant and reasonable scientific evidence in a working environment that is constantly changing.

To ensure objective environmental analysis, Congress added specific language to the Act, known as Section 808, that spells out the manner in which determinations of aircraft sound levels must be made and evaluated. It reads:

Any methodology adopted by a Federal agency to assess air tour noise in any unit of the national park system (including the Grand Canyon and Alaska) shall be based on reasonable scientific methods. [Emphasis added.]

Thus, putting the two mandates together, the Act requires both substantiation of actual (not theoretical) adverse effects and application of "reasonable scientific methods" (not deductive speculation) ... including the acquisition of current evidence/data (versus historical records that cannot be verified or challenged) ... where any analysis of sound impact is at issue.

Under the Act, there must be a specific order of investigation and implementation of corrective measures, if in fact any corrections might even be necessary. First, current aircraft sound levels were to be empirically recorded and mathematically measured. Second, the FAA was instructed by the Act to adopt methodology to analyze the data based on "reasonable scientific methods." Third, after proving (testing and verifying) that excessive noise exists over any particular unit of the National Park Service, based only on real measurements, an ATMP could be created, if necessary, to correct the situation.

The substantive illegalities of the FAA's ATMP initiatives are widely various and pernicious. I allege that the FAA has completely disregarded the Act's order of instruction, picking which Congressional laws and agency regulations the FAA will comply with and ignoring the rest. For Bandelier National Monument, and most other units of the National Park System, the FAA has used no scientific methodology to arrive at the FAA's assessments and final determinations regarding ATMP implementation. Instead, the FAA relies on "manufactured" emotional evidence that ATOs have no scientific or evidentiary means to refute and on contrived and manipulated noise modeling technology to produce predetermined impact analysis.

In the case of Bandelier NM, the FAA's "evidence" is primarily based on accusations supposedly emanating from five local Pueblo tribes after consultation with the NPS. Most of the letters from the Pueblos read the same, indicating that the tribes were coached by the FAA and NPS as to what to say. Prior to the consultations, the Pueblos were not even aware of the Park overflights Southwest Safaris (SWS) has been conducting. Suddenly, all the Pueblos are now protesting the exact same issues, i.e., violation of their religious and cultural privacy. This line of evolved argument could only have come at this convenient time from the agencies. It appears that the FAA and NPS have conspired to manipulate the evidence against SWS in order to insure a determination against the ATO. Moreover, the FAA hides behind Section 106 of NHPA, arguably activated by NEPA (40 CFR 1501.3 and 1501.5 through 1501.8), in turn triggered by §40128(b)(4)(C), to rely on accusations (e.g., feelings) of that are presented as stand-alone evidence without need of proof. Thus, the FAA has conspired with the NPS to deprive SWS of legal defense.

The "shall" mandate of Section 808, quoted above, declares that objective scientific methodology was to prevail and that NPATMA was to be the controlling legal authority, not NHPA. The reason is very clear: under NHPA Section 106 consultation regulations, there is no requirement to gather objective data; mere accusations alone constitute convicting evidence of "adverse impact." The FAA builds its case against SWS based on unsubstantiated charges of theoretical, possible, and potential abuse (e.g., spiritual trespass, invasion of privacy, and interruption of tribal ceremonies) without any reference to actual, present, or documented occurrences, often citing anecdotal "feelings alone" as legitimate evidence. No hard facts are offered, only emotions and undefinable allegations based entirely of supposition. Under NPATMA, this does not constitute substantiation of claim or presentation of "evidence."

Nor would NEPA regulations be able to take command away from NPATMA law. No contrived regulations under NEPA ... drafted by the ever-creative Council on Environmental Quality, having concocted exemptions based on "categorical park exclusions" (CATEX) and "theory of no adverse effects" ... would be allowed to get around the imposition of pertinent sound studies.

The FAA tries its best to get around NPATMA, abusing the Act to do so. NPATMA §40128(b)(4)(C) says:

Procedure - In establishing an air tour management plan for a national park or tribal lands, the Administrator and the Director shall . . . comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations.

The FAA relies on these regulations in support of its theories of CATEX and "no adverse effects" and to gain access to NHPA's evidentiary rules. The problem is, in the present instance, none of these laws and regulations (referring to NEPA and NHPA) are applicable. The FAA has had 23 years since the Act's passage in which to discover that these citations lead nowhere.

NEPA codified law, Section 1500.3(a), controls all NEPA regulations which follow that paragraph. It specifies which NEPA regulations apply under any given situation. Section 1500.3(a) says:

Mandate. This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act), except where compliance would be inconsistent with other statutory requirements. [Emphasis added.]

The "shall" mandate of NPATMA 808 makes regulatory compliance with CEQ regulations

statutorily "inconsistent" with NPATMA. The Act dictates that pertinent sound studies shall be performed under all conditions; NEPA does not require them under most conditions. Second, the Act strongly and logically indicates that the sound studies should be performed before ATMPs may be implemented; proof of need for remedy must precede corrective action. The concept of timely sound studies is largely irrelevant under NEPA. Third, under NPATMA, no exemptions, exclusions, or legal fantasies that might be employed by the FAA under NEPA are to be considered. Congressional law overrides allowance of special-interest/purpose regulations, which is the manner in which the FAA and NPS are using NHPA's Section 106 (reached through NEPA). The agencies are trying to legitimize Native American claims under NHPA (i.e., mere allegations) in order to negate ATO rights under NPATMA (i.e., the necessity for provable evidence that will hold up in a court of law). To the contrary, in the present instance, I assert that law (NPATMA) controls regulations (Section 106 of NHPA) in matters of substance and procedure; reg

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Volpe National Transportation Systems Center

Kaitlyn Rimol, V-326

Attn: Bandelier National Park ATMP

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Cambridge, MA 02142

August 10, 2023 Bandelier National Monument ATMP

Dear Sir/Madam:

I am commenting on the draft Bandelier National Monument Air Tour Management Plan (BAND ATMP). I wish to add some comments for purposes of clarification to those I made the other day by way of letter sent to your office with the kind help of Mr. Eric Elmore of the FAA.

Major points of contention exist between Southwest Safaris and the FAA over the execution of the BAND ATMP. In my original letter, I emphasized (page 20 bottom) that the FAA errs in implementing the BAND ATMP without first having complied with Section 808 of the National Air Tour Management Act of 2000 (NPATMA, or "the Act"). The FAA counters by claiming that Section 808 is irrelevant to NEPA and NHPA. I argued (page 18) that the sound studies required by Section 808 must be pertinent (defined to mean current, comprehensive, relevant, accurate, and science-based) under the Act before any "determination" can be made regarding an Air Tour Management Plan (ATMP). The FAA, citing §1502.21 (actually, §1502.23), thinks that no sound studies have to be performed at all (see letter, page 23). I argued (page 20 middle) that NPATMA is the controlling legal authority dictating the order and method of implementing ATMPs, not NEPA and not NHPA. The FAA argues that NEPA and NHPA control the direction that NPATMA must take. To date, no progress has been made on resolving these issues of legal principle.

Now comes the question of Primacy of Law. Do laws control regulations, or can regulations be used to "correct" the law? I argue that laws control regulations and that there is an orderly arrangement of laws that has to be followed in administrative matters. I allege in the case of the BAND ATMP, the FAA is trying to overturn law (NPATMA) by use of NEPA and NHPA regulations. The issue comes down to which statute is the controlling legal authority. Without making that determination, it is impossible to logically and legally impose a system of ATMPs on ATOs or to engage in constructive NHPA Section 1106 consulting.

I argue that the FAA is wrongly using NEPA and NHPA to control the outcome of determinations initiated under NPATMA with respect to the BAND ATMP. The agency errs by contending that NPATMA passes control to the other acts. I reason vehemently to the contrary.

One of the reasons for NPATMA's being the overall controlling authority, I stated (page 20 top), is that NEPA openly and unambiguously acknowledges the authority of NPATMA. NEPA §1500.3 says:

Mandate. This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act), except where compliance would be inconsistent with other statutory requirements. [Emphasis added.]

NPATMA is "inconsistent" with NEPA. The "shall" mandate of NPATMA Section 808 makes regulatory compliance with NEPA statutorily incompatible. The Act dictates that pertinent sound studies shall be performed under all conditions; NEPA does not require them under most conditions (§1502.23). In my letter (page 20), I gave many other reasons why, in the present instance, NPATMA controls NEPA, not the least of which is that NPATMA's only reference to NEPA (see §40128(b)(4)(C)) does not include language that would override the "except clause." NPATMA does not even mention the "Mandate" paragraph. So, the "except stipulation" stands.

I now wish to add the fact that NHPA makes the same concession to NPATMA as does NEPA. In a letter dated June 6, 2023, to Ms. Judith Walker of the FAA's Office of Environment and Energy, I pointed out the fact that both NEPA and NHPA are in agreement on this critical point. NHPA 800.2(a)(4) says:

Consultation. The agency official shall involve the consulting parties described of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinate with other requirements of other statutes, as applicable, such as ... agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part. [Emphasis added.]

NPATMA is "agency-specific legislation." The Act does not mention NHPA, or give any deference to it through NEPA. Therefore, NPATMA is controlling statutory law. Hence, NPATMA controls the application of NHPA, not the other way around.

NPATMA controls the rule-making process that creates ATMPs, because the Act calls the decision-making process for ATMPs into existence and because NPATMA never cedes specific authority to NHPA or NEPA. Section 808 of NPATMA, as written, is an iron mandate that must be followed in the case of all ATMPs, NHPA and NEPA notwithstanding. No administrative discretion . . . such as a decision that pending ATMPs must be expeditiously completed, by ignoring Section 808, in order to satisfy a court order (Writ of Mandamus) ... is allowed under NPATMA. Section 808 must be complied with by operation of law. NEPA and NHPA must bend towards NPATMA as to the manner in which the requirements of law are implemented.

I respectfully request, then, that the FAA suspend further development of a draft ATMP and Environmental Assessment for Banderier until these legal disagreements between parties of interest can be settled in a court of law. I maintain that no "findings" under Section 106 of NHPA can be made without basing them on the methods of Section 808 of NPATMA. Not only must all field research be conducted using "reasonable scientific methods," but the evidence gathered under Section 106 must be "hard," that is, be able to withstand legal cross-examination and analytical challenge. Under NPATMA, accusations do not constitute evidence, under NHPA they do. Currently, according to NPATMA, the NHPA- and NEPA-sourced "evidence" used against Southwest Safaris, including a list of affected historic properties, sound models, and undocumented allegations, fail all three tests and are, according to NPATMA, inadmissible for inclusion in the BAND ATMP. "Spiritual properties" are not treated the same under NPATMA law as physical properties under NEPA and NHPA regulations, the former properties having no definable dimensions and no property rights attached. The charges and evidence the FAA present under Section 106 are unsubstantiated and disallowed, according to NPATMA.

It makes a great deal of difference whether NPATMA is deemed the controlling legal authority or whether NEPA and MHPA do the controlling. Because of the potential for self-serving interest to influence decision, this primary issue, that is, the Priority of Law, must be decided by a third party, the Court.

After judicial finding for Priority of Law is determined, I ask the FAA to get a second court opinion on the legality of the Agencies' refusal to comply with Section 808 within NPATMA before finalizing the BAND ATMP. Also needed is a third ruling on what constitutes "reasonable scientific methods" ... whether that include noise modeling ... and a fourth ruling as to whether or not historic sound studies can be used in place of "pertinent" research methodology regarding assessment of aircraft noise. I submit that all four rulings need to be determined before the ATMP process is allowed to go forward and before any Operations Specifications are altered with respect to Banderier. In the meanwhile, because of the serious legal challenges facing the FAA, I ask that the process of NHPA Section 106 consulting be halted pending direction from the Court as to what kinds of "spiritual belongings," "evidence of fact," and unsupported accusations relating to historic properties are admissible under NPATMA.

The legal issues I raise are not matters of agency discretion, but of jurisprudence.

Thank you for your further consideration.

Sincerely,

Bruce Adams

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Received: Aug,10 2023 09:07:25

Correspondence Type: Web Form

Correspondence: I sent the following letter, dated 5/31/2023, to Ms. Judith Walker of the FAA's Office of Environment and Energy. The subject is my objection to the FAA's finding of "no adverse effects" regarding Section 106 determination for the BAND ATMP undertaking. I would like my comments to be recorded for the greater record as they reflect on the arguable logical viability of the entire BAND ATMP undertaking.

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SOUTHWEST SAFARIS

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Ms. Judith Walker

Senior Environmental Policy Analyst

Environmental Policy Division (AEE-400)

Federal Aviation Administration

Washington, DC

May 31, 2023 Response to Request for Concurrence re. Sec 106

Additional Statement of Disagreement - Submitted by Email

Dear Ms. Walker:

On April 20, 2023, you wrote to me, asking that I assess the FAA's draft "Section 106 determination" regarding Bandelier National Monument. I originally responded to your request as a general issue regarding both Section 106 of the National Historic Preservation Act (NHPA) and the entire Air Tour Management Plan (ATMP) process. However, I did not target my legal objections to the FAA's finding specifically to Section 106. I will now address the alleged errors in the FAA's conclusion primarily in terms of NHPA, presenting different arguments no less determinate.

My overall disagreement with the FAA's finding comes down to legal (procedural and substantive), circumstantial, and logical issues. In my letter of response, dated May 19, 2023, subsequently revised for clarity, I pointed out many shortcomings in the legal and circumstantial categories of the FAA's arguments. I now come forward with objections that are based strictly on the errant reasoning of the FAA's finding under Section 106. My analysis requires less space than my original letter, but the criticisms I offer are equally important. I introduced these concepts in my prior letter of May 19, but now find that further analysis is required to explain how the FAA's environmental determination went astray solely with respect to NHPA. The task does not require a legal mind, but rather the disciplined application of logic alone.

The FAA's determination (hereafter, "finding") under Section 106 of NHPA, is that denying Southwest Safaris (SWS), an air tour operator (ATO), the right to fly over Bandelier National Monument (BAND, or "the Park") will have "no adverse effects" on the persons and historic properties in the Park. Coincidentally, the FAA has arrived at the same finding in every instance where it wants to deny ATOs the right to continue flying over National Parks. The FAA's argument, under Section 106, is: if a governmental agency denies ATOs all rights of overflight at any given National Park, then there can not possibly be any negative impacts to persons and property, both inside and outside said park, from the "action" because there cannot possibly be any consequential damages from flights that do not exist (i.e., that are not allowed). I observe that repeating a mantra over and over, from park to park, however appealing in its simplicity, does not make it true.

The FAA's mantra is actually a syllogism. It breaks down to this: (Major premise) All flights make noise and have visual impact. (Minor premise) All noise and visual impact have adverse effects to persons and historic properties on the ground. (Primary conclusion) Therefore, eliminating all flights will necessarily eliminate all noise and visual impact caused by aircraft. (Secondary conclusion) Eliminating all noise and visual impact means that no harm can be done to persons and property on the ground by taking such administrative action.

The logical fallacies are multiple. First, regarding the FAA's Section 106 minor premise, it is not true that all aircraft noise and visual impact have adverse effects for persons and historic properties on the ground. Just because someone claims on the basis of personal feelings alone that he/she is experiencing negative impacts, does not make it so. Without reasonable scientific measurement, the minor premise can not be verified. Therefore, the FAA's shotgun-like conclusion, that eliminating all flights will necessarily eliminate all noise and visual impact caused by aircraft, may or may not be true, because of the variables involved in determining the veracity of the minor premise. Such a determination can only be arrived at by empirical evidence, not deductive reasoning. The FAA and NPS together (the Agencies), acting as one, have refused for the last twenty years to provide any reasonable scientific evidence to substantiate their minor premise. Therefore, the syllogism cannot stand. No absolute conclusions can be drawn from the FAA's mantra upon which the FAA wishes to base sweeping administrative remedy. Substantively speaking, the FAA's "finding of no adverse effect" can not be relied upon to be universally true. The fact that the FAA's secondary conclusion follows logically from the primary conclusion does not mean that the primary conclusion, itself, is accurate (i.e., that is necessarily follows from the major and minor premises). The FAA has short circuited the reasoning process. The FAA errs in basing an empirical finding on deductive evidence, so the finding must be withdrawn.

The FAA argues, under Section 106 of NHPA, that the FAA (speaking for the combined Agencies) is not obligated to substantiate the legitimacy of Native American claims that aircraft noise over National Parks is excessive, but that the FAA is only required to act on the fact that aircraft noise and presence have been claimed to be offensive and felt by persons to destroy the cultural value of their historic sites and the quality of their sacred ceremonies. To the contrary, NPATMA does require under Section 808 "reasonable scientific" process to validate such allegations. I argue (see also my letter of May 19, 2023), that NPATMA is the logical controlling legal authority in this case, because it calls NHPA into effect and not the other way around. In any case, priority of law is a matter for the courts to decide, not the FAA. Until the courts do rule, I argue that the FAA is legally and logically required to withdraw its finding and, consequentially, suspend the ATMP process for lack of a valid Environmental Assessment under NEPA. The FAA's draft finding for BAND under NHPA, as summarized above, will hopelessly and unfairly direct and prejudice the FAA's conclusions under NEPA's Environmental Assessment for the undertaking. Therefore, the issues of procedural and substantive priorities of law (see my letter of May 19) both cry out for judicial review of the FAA's proposed Section 106 finding before an Environmental Assessment (NEPA) and administrative determination (NHPA Section 106) regarding BAND can properly be made. A proper end can only be justified by proper means.

Second, the FAA's logical error in applying Section 106 is, however, even more complex. The concealed flaw in the FAA Section 106 finding consists of circular reasoning superimposed on top of a major premise which is false (in addition to that of the minor premise). The FAA's major premise is that all flights create noise and have visual impact. They do not. To illustrate, no Agency (neither the FAA, nor the NPS, nor the Pueblo Tribes), during the last 49 years, even knew of the presence of air tours over Bandelier National Monument. It is a fact that not one of these entities ever received a single complaint, noise or otherwise, about the air tours until Southwest Safaris was required to report said flights under NPATMA and the Agencies shoved the presence of Southwest Safaris into the faces of the Tribes, asking if there might be an objection. The alleged "problem" has been fabricated politically by the US Government, not by the operation of air tours by SWS. Consequently, it is not necessarily true that eliminating all flights will prevent all significant adverse impacts to persons and property on the ground any more than would allowing said inconspicuous flights to continue. A positive determination concerning the continued existence of air tours, however, carries the greater weight of argument, for want of any actual proof that air tours over the Park cause harmful effects. The burden of proof is on the FAA, but that agency has never provided any convincing evidence to support their finding and, indeed, they cannot. The combined Agencies simply rely on their hollow mantra to justify their lack of due diligence, Section 106 of NHPA notwithstanding.

The circular reasoning error imbedded in the FAA's finding comes from the FAA's conclusion(s) having ignored the imbedded fallacy of the arguable premise. The FAA's primary and secondary conclusions say that denial of all flights is justified on the grounds that absence of cause precludes consequence of effects, supposedly "proving" that there can be no damage to persons and property on the ground from lack of overflights; but that conclusion might be just as untrue as the major premise it is tied to. The conclusion denies reality, relying only on force of assertion rather than facts. For instance, in most instances, National Parks and associated persons and historic properties benefit greatly from park overflights, as is the case for Indian and other subcontractors providing guided ground tours for air tour operators; famous hotels inside the parks providing overnight accommodations for ATOs; and local restaurants/convenience stores in a park serving the needs

of ATO clients. People who visit National Parks frequently want to get "the total experience" of the park. This includes getting a grand overview that only an air tour can provide. This includes seeing the back country without leaving any trace of visitation. This includes enjoying the freedom of responsible flight available to all other persons elsewhere, such as Alaska and Lake Meade, where no park overflight restrictions exist. All of these individual and corporate "persons" and properties benefit from air tours in general. Cutting off the flights would do measurable damage to these living and/or corporate "persons" and properties in a National Park.

Speaking of which, the category of "persons" is a very broad. Even the Park Service can be considered to be a legal "person;" it, too, benefits from air tours due to greater visitor numbers directly attributable to free advertising and other promotion provided by successful air tour operators who want to see that National Parks succeed. Moreover, National Parks, themselves, have become "historic structures" that air tours actually help to protect in very measurable environmental ways (see Objection #3 below, page 4).

So, it is easy to demonstrate that there might actually be significant adverse effects to persons and historic properties from denying selected unobtrusive flights that should otherwise have been allowed. The circular reasoning now becomes obvious, even though difficult to verbalize. In the present instance, a not-necessarily-true premise, broadly considered, is misused to justify a sweeping false conclusion only narrowly considered, which is then used to assert the validity of the questionable original premise, broadly considered. Clearly, I argue, the FAA's finding under Section 106 cannot be measured or tested to be true, goes nowhere, and makes no sense as a basis for remedial decision making. Therefore, the FAA's finding, though dramatic, carries no weight.

Third, the FAA's deductive Section 106 error stems from trying to prove a positive based on a negative, which cannot be logically, conclusively, or reliably achieved. The syllogism can be reworded: (Negative premise) No good can be demonstrated to come to persons and historic properties from flights conducted over parks. (Neutral minor premise) All air tours are flights. (Positive conclusion) Therefore, all air tours create adverse environmental impact to persons and property on the ground. (Second derivative conclusion) Thus, eliminating all air tours can cause no harm to persons and historic properties on the ground. In point of fact, it can be demonstrated, as I have already herein done, that not all flights do create adverse noise and/or visual effects to persons or historic properties on the ground. Therefore, eliminating all air tours will not necessarily prevent adverse effects from said flights. To the contrary, the reverse is more likely to be true. Prohibiting air tours will increase the noise and physical presence of machinery in a park, because extra noise and offensive visual impact will be created by greater demand for ground tours, which will be of much greater duration. Passengers on air tours leave no footprints, leave no litter behind, and make no lasting noise. Physical ground contact with delicate nature has far longer lasting consequences than fleeting aerial sounds. Air tours come and go in only half-a-minute. They contribute greatly to a park's popularity, local employment (including Native Americans and Park Service personnel), and measurably help to preserve and protect (see above) a pristine environment which counts as "historic property." The FAA's narrow, one-sided, and self-serving draft environmental assessment considers none of this.

Contrary to the Agencies' built-in prejudicial assumptions in all forms of their syllogism, respectfully-conducted air tours actually contribute to the overall quality of life in and around a park. All of the constructive benefits from air tours over BAND and other National Parks (such as Canyon de Chelly, Chaco Canyon, Mesa Verde, and Navajo National Monument) will be lost if the flights are arbitrarily and politically prohibited, so there will, in fact, be significant adverse effects to persons and historic properties on the ground from banning scenic sorties.

Moreover, denying air tour overflights of BAND, in specific, will only serve to move the flights away from remote areas of the Park to truly sensitive routes over Pueblo lands on the perimeter, causing real outcry, the impact of which the FAA negligently fails to measure and will be powerless to rectify. The purpose of Southwest Safaris air tours has always been to present the geology and archaeology of the Great American Southwest, not to focus on Bandelier, a unit of the NPS which SWS does not even advertise. The totally unnecessary consequence of changing SWS' routes to outside the Park will be most unfortunate. In any case, one cannot incontestably prevent something from happening (harmful adverse aircraft effects) that does not necessarily exist in the first place (invasive aircraft noise/presence).

For all these reasons and more (see my revised letter of May 19, 2023), it cannot be proven always to be true that there will be "no adverse impact" from disallowing environmentally sensitive air tours over Bandelier National Monument or any other National Park Service unit over which SWS flies. I submit, then, that the FAA's draft finding for BAND, and any other park that the FAA might be considering for Southwest Safaris, is a meaningless argument designed to obstruct constructive remedy.

For these and all the other numerous reasons cited in my revised letter to you of May 19, 2023, I respectfully request that you withdraw your draft determination of "no adverse effect" from the FAA's environmental assessment for Bandelier National Monument under Section 106 of the National Historic Preservation Act. The FAA's pending determination cannot be logically, consequentially (see letter of May 19, 2023), or even factually proven always to be true. Therefore, it should

not be used as a basis for radical decision at BAND. In my opinion, the damage of the FAA's draft finding amounts to effective deconstruction of legal process and operational rights.

Thank you for your consideration.

Sincerely yours,

Bruce Adams

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Correspondence ID: 20 Project: 103440 Document: 129475

Name: Sherlock, Richard

Received: Aug,10 2023 10:01:21

Correspondence Type: Web Form

Correspondence: Thank you for the opportunity to comment on the proposed Air Tour Management Plan (ATMP) for Bandelier National Monument.

I oppose the draft ATMP for Bandelier National Monument. I disagree with the elimination of Interim Operating Authority (IOA) and believe that the National Park Service (NPS) and the Federal Aviation Administration (FAA) did not properly conduct due diligence to determine the true impacts to the operators, the public, and park resources in the ATMP process.

According to NPS documents, on average, from 2017-2019, only 101 commercial air tours occurred over Bandelier National Monument per year. This number is not expected to grow. The visitation of Bandelier National Monument by air is insignificant compared to the number of motorized vehicles that access the Park every day. According to Park sound estimates, the average noise level per flight is under 35 dBA. Many vehicles accessing the park by means of the steep road going up and down the cliffs make more noise than a lone aircraft at 2,000 feet above ground level (AGL).

As the NPS and the FAA have released the draft ATMP, it is clear that the agencies have a clear agenda to eliminate the air tour industry. The real harm is not only to the air tour operators, but also to the national park visitors, and the surrounding communities who support these operations. The ATMP discriminates against visitors who choose to experience the national parks by aerial sightseeing.

As we move past the pandemic years, many national parks saw their resources strained by the large number of visitors as the public began to travel again. Air tours are an important option for many visitors conducting a one-in-a-lifetime trip to see famous natural landmarks. Parks benefit greatly from reduced impacts as a result of air tours. Air tours reduce traffic in the park, reduce emissions as a result, improve guest experience, reduce physical impacts on park infrastructure, and lessen cultural impacts from walking trails that possibly encroach on sacred historical sites.

The national parks should be available for all visitors to see. Eliminating air tour flights unfairly limits access to the elderly, very young, disabled, and others. Eliminating flights over Bandelier National Monument is discriminating to those who might not have the time, resources, or physical means to see the Park any other way.

Like ground-based tours, air tours are a valid part of our visitor experience, providing a unique window from which we can share our cultural, historical, and environmental sites with the world. Air tours require no ground-based infrastructure at the park, which allows visitors accessibility without the need for roads, trails, signs, bathrooms, garbage cans, or other services.

By eliminating an already limited number of allowable air tours, we are removing opportunities to access our parks in a way that leaves little to no environmental footprint or disturbance. Through carbon-offset efforts and strict altitude requirements to control noise just to name a few efforts air tour operators are constantly working to ensure they are responsible stewards of the nations parks.

Undoubtedly it is essential to preserve the national parks and work with local communities, yet still enable visitors of all abilities the opportunity to experience interpretive backcountry flights over national parks and monuments. Air tours, respectfully conducted, serve to protect, promote, and enhance the value our national recreational spaces, and are compatible with the purpose and values for which the Bandelier National Monument was established. While I oppose the draft ATMP, commercial air tour operators would welcome collaborative engagement with the FAA, NPS, and all interested parties to benefit Bandelier National Monument and its visitors.

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Correspondence ID: 21 Project: 103440 Document: 129475

Name: Young, Christopher

Received:

Aug,10 2023 11:04:18

Correspondence Type:

Web Form

Correspondence: Thank you for the opportunity to comment on the proposed Air Tour Management Plan (ATMP) for Bandelier National Monument.

I strongly oppose the draft ATMP for Bandelier National Monument. I disagree with the elimination of Interim Operating Authority (IOA) and believe that the National Park Service (NPS) and the Federal Aviation Administration (FAA) did not properly conduct due diligence to determine the true impacts to the operators, the public, and park resources in the ATMP process.

According to the NPS documents, on average, from 2017-2019, only 101 commercial air tours occurred over Bandelier National Monument per year. This number is not expected to grow. The visitation of Bandelier National Monument by air is insignificant compared to the number of motorized vehicles that access the Park every day. According to Park sound estimates, the average noise level per flight is under 35 dBA. Many vehicles accessing the park by means of the steep road going up and down the cliffs make more noise than a lone aircraft at 2,000 feet above ground level (AGL).

As the NPS and the FAA have released the draft ATMP, it is clear that the agencies have an agenda to eliminate the air tour industry. The real harm is not only to the air tour operators, but also to the national park visitors, and the surrounding communities who support these operations. The ATMP discriminates against visitors who choose to experience the national parks by aerial sightseeing.

As we move past the pandemic years, many national parks saw their resources strained by the large number of visitors as the public began to travel again. Air tours are an important option for many visitors conducting a one-in-a-lifetime trip to see famous natural landmarks. Parks benefit greatly from reduced impacts as a result of air tours. Air tours reduce traffic in the park, reduce emissions as a result, improve guest experience, reduce physical impacts on park infrastructure, and lessen cultural impacts from walking trails that possibly encroach on sacred historical sites.

The national parks should be available for all visitors to see. Eliminating air tour flights unfairly limits access to the elderly, very young, disabled, and others. Eliminating flights over Bandelier National Monument is discriminating to those who might not have the time, resources, or physical means to see the Park any other way.

Like ground-based tours, air tours are a valid part of our visitor experience, providing a unique window from which we can share our cultural, historical, and environmental sites with the world. Air tours require no ground-based infrastructure at the park, which allows visitors accessibility without the need for roads, trails, signs, bathrooms, trash removal, or other services.

By eliminating an already limited number of allowable air tours, we are removing opportunities to access our parks in a way that leaves little to no environmental footprint or disturbance. Through carbon-offset efforts and strict altitude requirements to control noise just to name a few efforts air tour operators are constantly working to ensure they are responsible stewards of the nations parks.

Undoubtedly it is essential to preserve the national parks and work with local communities, yet still enable visitors of all abilities the opportunity to experience interpretive backcountry flights over national parks and monuments. Air tours, respectfully conducted, serve to protect, promote, and enhance the value our national recreational spaces, and are compatible with the purpose and values for which the Bandelier National Monument was established. While I oppose the draft ATMP, commercial air tour operators would welcome collaborative engagement with the FAA, NPS, and all interested parties to benefit Bandelier National Monument and its visitors.

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Correspondence ID: 22 Project: 103440 Document: 129475

Name: Conway, Tim

Received: Aug,10 2023 12:08:17

Correspondence Type: Web Form

Correspondence: Thank you for the opportunity to comment on the proposed Air Tour Management Plan (ATMP) for Bandelier National Monument. I oppose the draft ATMP for Bandelier National Monument and I disagree with the elimination of Interim Operating Authority (IOA).

All of our national parks should be available for all visitors to see by all means (air, water, and land). Eliminating air tour flights unfairly limits access to the elderly, very young, disabled, and others. Eliminating flights over our national parks is discriminating to those who might not have the time, resources, or physical means to see the park any other way.

Like ground-based tours, air tours are a valid part of the visitor experience. By eliminating an already limited number of allowable air tours, we are removing opportunities to access our parks in a way that leaves little to no environmental footprint or disturbance.

Undoubtedly it is essential to preserve the national parks and work with local communities, yet still enable visitors of all abilities the opportunity to experience interpretive backcountry flights over national parks and monuments. Air tours, respectfully conducted, serve to protect, promote, and enhance the value our national recreational spaces, and are compatible with the purpose and values for which our national parks were established.

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Correspondence ID: 23 Project: 103440 Document: 129475

Name: ,

Received: Aug,10 2023 21:22:35

Correspondence Type: Web Form

Correspondence: The EA and ATMP are well written and interesting.

The NPS preferred alternative is needed and reasonable.

Commercial air tours should not be allowed because they conflict with visitor enjoyment and environmental protection.

Thank you.

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Correspondence ID: 24 Project: 103440 Document: 129475

Name: Wolf, Emily

Received: Aug,11 2023 10:20:03

Correspondence Type: Web Form

Correspondence: National Park Service

Natural Sounds and Night Skies Division

BAND ATMP

1201 Oakridge Dr., Suite 100

Fort Collins, CO 80525

August 9, 2023

Subject: Bandelier National Monument Proposed Air Tour Management Plan

Dear National Park Managers,

I write to comment on the Bandelier National Monument ("Park") draft air tour management plan. Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our over 1.6 million members and supporters nationwide, we thank you for your efforts in crafting a responsive and respectful plan which reflects the priorities and needs of affiliated Tribes and stakeholders. We ask you to consider our views on this draft air tour management plan (ATMP).

- What elements of the alternatives do you think are most important? Why?

National Historic Preservation Act

In the National Historic Preservation Act (NHPA) (16 U.S.C. §§ 470a et seq.), Section 106 is the portion that addresses federal undertakings which include a project, activity, or program either funded, permitted, licensed, or approved by a federal agency including the FAA and NPS. Undertakings may take place either on or off federally controlled property and include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106. This provision requires the FAA and NPS to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment. In addition, FAA and NPS are required to consult on the Section 106 process with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), Indian Tribes (to include Alaska Natives) [Tribes], and Native Hawaiian Organizations (NHO).

Historic properties are any prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places. Also included are any artifacts, records, and remains (surface or subsurface) that are related to and located within historic properties and any properties of traditional religious and cultural importance to Tribes or NHOs. The Section 106 regulations (36 CFR 800) place particular emphasis on consultation with THPOs, Tribes, and NHOs. Federal agencies must consult THPOs, Tribes, and NHOs about undertakings when they may affect historic properties to which a Tribe or NHO attaches religious or cultural significance. This requirement applies regardless of the location of the historic property. The Bandelier draft plan issued in 2021 stated, "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 natural and cultural resources of the monument. The Cochiti Pueblo abuts the Park's southern boundary, while the 799-acre Tsankawi unit 12 miles from the main Park abuts the San Ildefonso Indian Reservation." (page 2)

We applaud and support the Park's acknowledgement that "In this context, cultural resource management extends beyond concern with tangible resources to recognition and accommodation of cultural processes," (2023 Draft Air Tour Management Plan, page 3) and it is crucial to maintain confidentiality and privacy for Tribes during cultural uses and ceremonies. The Park's thorough assessment of the full and cumulative impact of overflights to religious and cultural activities in the park ensures that the proposed ATMP is consistent with the Park's purpose and values.

#### Endangered Species Act

We commend the Park for incorporating the potential impact of air tours on threatened and endangered species. The Endangered Species Act of 1973 (ESA) protects species that are listed as "endangered" or "threatened." (16 U.S.C. §§ 1531-1544). Section 7 of the ESA directs all agencies to ensure that any action authorized, funded, or carried out by it is not likely "to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species." (The "jeopardy provision";). (16 U.S.C. § 1536(a)(2)). Section 7 requires the NPS to consult with the Fish and Wildlife Service to ensure that an action does not violate the jeopardy provision. (Id.) Section 9 prohibits all persons (private and public) within the jurisdiction of the United States from "taking" a listed species. (16 U.S.C. § 1538(a)). It is important to note that a take does not necessarily require a "dead body." A take arises whenever the listed species is harassed, harmed, pursued, shot, wounded, killed, trapped, captured, or collected. Even an attempt at any of these actions constitutes a "take." (Id.) We appreciate the Park describing federally protected species in the Environmental Assessment which could potentially be impacted by overflights conducted in the ATMP planning area.

#### The Wilderness Act of 1964

We strongly support the Park's decision to analyze the impact to the designated Wilderness in the area. The Wilderness Act of 1964 (16 U.S.C. § 1131) created the National Wilderness Preservation System to protect and preserve land's wilderness character. The NPS Management Policies of 2006 clearly established the responsibilities of park managers to protect and preserve wilderness resources, stating that "to preserve Congress's prerogative to designate wilderness ... plans potentially affecting eligible wilderness resources will propose no actions that could adversely affect the wilderness characteristics and values that make them eligible for consideration for inclusion in the National Wilderness Preservation System." (NPS Management Policies at 2.3.1.10)

In its draft ATMP, the Park is mitigating avoidable intrusions, like air tours, into wilderness, fulfilling NPS' duty to "ensure that the wilderness character is likewise preserved." (NPS Management Policies at 6.3.1)

Seventy percent of the monument is designated as Wilderness, with 70-plus miles of trails and elevations from 5300' at the Rio Grande to over 10,000' at the top of Cerro Grande.

#### National Park Service Management Policies of 2006 & Foundation Document of 2015

Congress provided the NPS with the discretion to manage national parks, but limited that discretion by the requirements of the Organic Act that park resources and values be left "unimpaired" for future generations. This duty to avoid impairment establishes the primary responsibility of the NPS. "The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation establishing the park." (NPS Management Policies at 1.4.4). The Park Service has an affirmative duty to prevent degradation of park resources and values. "NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values." (NPS Management Policies at 1.4.3)

Impairment is an impact that affects a resource or value that is "necessary to fulfill specific purposes" identified in formation of the park or "key to the natural and cultural integrity of the park or to opportunities for enjoyment of the park." (NPS Management Policies at 1.4.5). The "park resources and values" that fall under the

impairment standard include scenery, wildlife, natural soundscapes and smell, and all natural process and features. Also not to be impaired is “the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system.” (NPS Management Policies at 1.4.6).

Specifically, the NPS requires that “using appropriate management planning, superintendents will identify what levels and types of unnatural sound constitute acceptable impacts on park natural soundscapes. The frequencies, magnitudes, and durations of acceptable levels of unnatural sound will vary throughout a park, being generally greater in developed areas. In and adjacent to parks, the Service will monitor human activities that generate noise that adversely affects park soundscapes, including noise caused by mechanical or electronic devices. The Service will take action to prevent or minimize all noise that through frequency, magnitude, or duration adversely affects the natural soundscape or other park resources or values, or that exceeds levels that have been identified through monitoring as being acceptable to or appropriate for visitor uses at the sites being monitored.” (NPS Management Policies at 4.9).

Furthermore, NPS sets an expectation that certain impacts should be avoided and describes its duty as the following: “unacceptable impacts are impacts that, individually or cumulatively, would be inconsistent with a park's purposes or values, or impede the attainment of a park's desired conditions for natural and cultural resources as identified through the park's planning process, or create an unsafe or unhealthy environment for visitors or employees, or diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or unreasonably interfere with park programs or activities, or an appropriate use, or the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park, or NPS concessioner or contractor operations or services.” (NPS Management Policies at 8.2). Whether the standard is impairment, adverse effects or unacceptable impacts, NPS is required to protect natural and cultural resources and visitor experiences of those resources ahead of uses and activities that could negatively impact them. We appreciate the Park's efforts to protect these resources, experiences, and sites so as to be consistent with the values of Bandelier National Monument.

We commend the Park for incorporating the 2015 Foundation Document for Bandelier into the EA, which lays out the significance, values, resources the park is committed to preserving.

The Bandelier National Monument 2015 Foundation Document states “The Bandelier Wilderness and backcountry provide exceptional opportunities for visitors to access, recreate in, and experience expansive views, clean air, dark night skies, quiet, and solitude, all within an environment rich in archeological sites, which is unique among NPS cultural parks.” (page 6) Solitude, exceptional natural quiet, and similar wilderness characteristics are defined as Fundamental Resources or Values in the Foundation Document.

The Bandelier National Monument Foundation Document also observes that “the primary sources of unnatural sounds were military and general aviation airplane,” (page 71) according to the Bandelier National Monument Acoustic Monitoring Report ARTA 2014/844. As noted in the Foundation Document, “Developments near the monument and external activities, such as aircraft overflights, have adversely affected some wilderness character qualities, the dark night sky, natural quiet, and the feeling of remoteness.” (page 41)

Bandelier's Frijoles Canyon Visitor Access Plan defines the Monument's priorities as “reduc[ing] the impact of vehicle operations in Frijoles Canyon to enhance tranquility.”

In alignment with the stated fundamental resources and values of Bandelier, and given the park's own internal guidance on observed disturbances and threats to wilderness quality, wildlife habitat, and visitor experience, we applaud and support the Park's full assessment of potential threats to these characteristics and the alternatives described in the EA to adequately safeguard them.

#### National Environmental Policy Act

We appreciate the opportunity to comment on this proposed action, as we were concerned that the original proposed ATMP in 2021 did not comply with the National Environmental Policy Act (NEPA). The Federal Register notice announcing the ATMP states, “The FAA is issuing this notice pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106-181) and its implementing regulations contained in Title 14, Code of Federal Regulations, Part 136, Subpart B, National Parks Air Tour Management.” §136.39 states, “In establishing an air tour management plan under this section, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement and the record of decision for the air tour management plan.” It is important to note the following from the court decision that prompted this planning process:

"Management plans must go through notice and comment and comply with the National Environmental Policy Act (NEPA)."[https://www.peer.org/wp-content/uploads/2020/05/5\\_1\\_20-Court-Decision-Overflights.pdf](https://www.peer.org/wp-content/uploads/2020/05/5_1_20-Court-Decision-Overflights.pdf).

The National Environmental Policy Act (NEPA) requires that agencies "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -- (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332(C). The NPATMA requires NEPA compliance by means of an EIS or EA for ATMPs. 49 U.S.C. § 40128(b)(2). We appreciate the demonstrated consultation and engagement, range of alternatives proposed by the Park, and the analysis of cumulative potential impacts published in the EA.

#### Tribal Consultation

We strongly support the robust consultation with Tribes described in the Environmental Assessment and proposed ATMP, including how and which tribes contributed and how their voices were factored into the decision-making process. The plan acknowledges the cultural and historical significance of many areas in Bandelier National Monument and that the Park Service actively works with the associated Tribal communities to protect significant areas within this plan. With proper investigation into the needs and wants of neighboring Tribal communities, this plan is more likely to achieve its intended purpose.

#### Air Quality and Climate Change

We commend the Park for inclusion of consideration of impacts of air tours on air quality and climate change in the Environmental Assessment. In a notice published in the Federal Register on August 3, 2023, the Advisory Council on Historic Preservation describes the escalating climate impacts on historic and important sites which are "increasingly leading to their damage and destruction." At Bandelier National Monument, ecological and cultural resources are regularly threatened by catastrophic wildfire, more frequent and larger than in history. The notice goes on to state:

"In accordance with the NHPA, the federal government is to be a national preservation leader, manage and care for historic properties under its control, and foster both nonfederal, governmental, and private preservation activities. Section 110 of the NHPA (54 U.S.C. 306101- 306107; 306109-306114) sets out the broad historic preservation responsibilities of federal agencies and is intended to ensure that historic preservation is fully integrated into their ongoing programs. Section 106 of the NHPA (54 U.S.C 306108) requires federal agencies to consider the effects of projects they carry out, approve, or fund on historic properties. As the ACHP issues the regulations (36 CFR part 800) that guide federal agencies in completing review of federal projects under section 106, this policy statement applies to the consideration of climate change issues during section 106 reviews. Climate change adds new challenges to fulfilling federal responsibilities under the NHPA and calls for creative approaches."

As cited in the Environmental Assessment, "the Clean Air Act divides federal lands into different classifications based on acreage. The Park is classified as a Class I airshed, which means that it is afforded special air quality and visibility protection (NPS, 2020)." (page 41) The EA also states that aviation accounted for 4.1% of global greenhouse gas emissions.

Given the concern warranted by the Park for maintaining air quality standards bestowed with the designation of Class I airshed as well as the potential contribution to greenhouse gases from transportation-related sources, we commend the Park for incorporating a thorough analysis of air quality impacts and greenhouse gas contributions by various alternatives assessed in the EA, and for planning to continue monitoring and analysis into the future.

- What other information should the planning team consider when analyzing the alternatives?
- Are there other elements or ideas that should be considered and analyzed that are not already presented? What is missing, and why should it be considered?

#### Organic Act of 1916

The National Park Service Organic Act of 1916 sets forth the agency's central mission "to conserve the scenery and the natural and historic objects and the wildlife [in national parks] and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. In the General Authorities Act, Congress "reaffirm[ed], declare[d], and direct[ed] that the promotion and regulation of the various areas of the National Park System ... shall be consistent with and founded in the purpose established by [the Organic Act], to the common benefit of all of the people of the United States." Id. § 1a-1. Congress further provided

that "[t]he authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established." Id. Air tour management must comply with these laws and other laws as well as the enabling legislation for each park unit. We urge the Park to more thoroughly include a discussion of the Organic Act and how the Act's mandate to conserve park resources and values directly serves as a basis for evaluating the impacts of air tours. This draft air tour plan fails to account for the resources and values intended to be protected and how to judge impacts to them.

National Parks Air Tour Management Act (NPATMA) of 2000 clearly refers to the Organic Act; specifically, Section 802 (Findings) of the NPATMA states: "Congress finds that--

- (1) the Federal Aviation Administration has sole authority to control airspace over the United States;
- (2) the Federal Aviation Administration has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands;
- (3) the National Park Service has the responsibility of conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations[]"

- What other comments and suggestions do you have?

The National Parks Air Tour Management Act of 2000 (P.L. 106-181) states, "The objective of any air tour management plan shall be 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."

With parks' limited resources in terms of staff and funding that are already dedicated to a variety of important projects and programs, the time and cost of managing an air tour program which has the potential to harm park resources is not worth it.

In the past, we have witnessed the National Park Service (NPS) allow other uses from snowmobiles to personal watercraft to enter parks at low volumes then grow and have major damaging effects from increased noise to direct conflicts with park resources, wildlife, and visitor experiences. The draft plan for Bandelier directly addresses this risk that air tours pose to the Park's purpose and values.

#### Conclusion

NPCA applauds and supports the Park for proposing an elimination of air tours over Bandelier National Monument. We assert that there is a lack of justification to allow air tours at the expense of protecting the cultural resources and privacy of affiliated Tribal members, wildlife, and natural soundscape in the park, and that in measuring the acoustics, evaluating impact on park resources, and conducting thorough Tribal consultation.

Thank you for the opportunity to comment on this important issue. Please contact me if you have questions or if I can provide any additional information.

Sincerely,

Emily Wolf

New Mexico Program Manager

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Correspondence ID: 25 Project: 103440 Document: 129475

Name: Kauffman, Gary

Received: Aug,11 2023 12:33:16

Correspondence Type: Web Form

Correspondence: Thank you for the opportunity to comment on the proposed Air Tour Management Plan (ATMP) for Bandelier National Monument.

As an aviation operator in the Rocky Mountains, we have repeatedly offered valuable service to the NPS, at no cost to the NPS, due to the number of wildfires we report while conducting our flights. This benefit of flying over National Parks unfortunately is not taken into account when making flight restrictions by ATMPs.

I oppose the draft ATMP for Bandelier National Monument. I disagree with the elimination of Interim Operating Authority (IOA) and believe that the National Park Service (NPS) and the Federal Aviation Administration (FAA) did not properly conduct due diligence to determine the true impacts to the operators, the public, and park resources in the ATMP process.

According to the NPS documents, on average, from 2017-2019, only 101 commercial air tours occurred over Bandelier National Monument per year. This number is not expected to grow. The visitation of Bandelier National Monument by air is insignificant compared to the number of motorized vehicles that access the Park every day. According to Park sound estimates, the average noise level per flight is under 35 dBA. Many vehicles accessing the park by means of the steep road going up and down the cliffs make more noise than a lone aircraft at 2,000 feet above ground level (AGL).

As the NPS and the FAA have released the draft ATMP, it is clear that the agencies have an agenda to eliminate the air tour industry. The real harm is not only to the air tour operators, but also to the national park visitors, and the surrounding communities who support these operations. The ATMP discriminates against visitors who choose to experience the national parks by aerial sightseeing.

As we move past the pandemic years, many national parks saw their resources strained by the large number of visitors as the public began to travel again. Air tours are an important option for many visitors conducting a one-in-a-lifetime trip to see famous natural landmarks. Parks benefit greatly from reduced impacts as a result of air tours. Air tours reduce traffic in the park, reduce emissions as a result, improve guest experience, reduce physical impacts on park infrastructure, and lessen cultural impacts from walking trails that possibly encroach on sacred historical sites.

The national parks should be available for all visitors to see. Eliminating air tour flights unfairly limits access to the elderly, very young, disabled, and others. Eliminating flights over Bandelier National Monument is discriminating to those who might not have the time, resources, or physical means to see the Park any other way.

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By eliminating an already limited number of allowable air tours, we are removing opportunities to access our parks in a way that leaves little to no environmental footprint or disturbance. Through carbon-offset efforts and strict altitude requirements to control noise just to name a few efforts air tour operators are constantly working to ensure they are responsible stewards of the nations parks.

Undoubtedly it is essential to preserve the national parks and work with local communities, yet still enable visitors of all abilities the opportunity to experience interpretive backcountry flights over national parks and monuments. Air tours, respectfully conducted, serve to protect, promote, and enhance the value our national recreational spaces, and are compatible with the purpose and values for which the Bandelier National Monument was established. While I oppose the draft ATMP, commercial air tour operators would welcome collaborative engagement with the FAA, NPS, and all interested parties to benefit Bandelier National Monument and its visitors.

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Correspondence ID: 26 Project: 103440 Document: 129475

Name: ADAMS, BRUCE M

Received: Aug,11 2023 17:12:17

Correspondence Type: Web Form

Correspondence: SOUTHWEST SAFARIS

PO Box 945

Santa Fe, NM 87504

505-988-4246

Ms. Judith Walker

Senior Environmental Policy Analyst

Environmental Policy Division (AEE-400)

Federal Aviation Administration

Washington, DC

August 11, 2023 4th Response to Request for Concurrence on Sec. 106

Draft BAND ATMP

Dear Ms. Walker:

This is my fourth letter of response to your request for evaluation of the FAA's proposed finding of "no adverse effects" from implementation of Alternative 2 which would prohibit air tours over Bandelier National Monument (BAND, or "the Park"). I am responding to your request for continued consultation and more information.

I will first comment on the identification of historic properties selected at BAND by the FAA.

I believe that the FAA has failed to properly identify historic properties that meet the definition of "historic properties" as determined by 36 CFR §800.4 and §800.16(l)(1).

First, the FAA's list of historic properties (LHP) pertaining to the draft BAND ATMP relies on hearsay. I allege that the FAA has compiled its LHP from five sources: (1) the NPS, (2) the New Mexico Preservation Division, (3) the National Register, (4) verbal testimonies with the Pueblo tribes (the tribes) through process of Section 106 consultation, and (5) from lists compiled by the tribes following consultation. The FAA gives no details relative to the data. There is no statement by the FAA as to the numbers of sites reported by the NPS or whether the sites were assessed based on field research/studies, or site sampling together with statistical modeling, or recollection and lore. Lacking such information, I conclude that the data was determined anecdotally and deductively. The data on the National Register is simply a repeat of the data recorded by the NM Preservation Division, which itself is undocumented as to source. I conclude that the data on the State records is based on tradition, informal consulting, opinion, best estimate, and "professional opinion" ... which was standard assessing "methodology" back in 1970-1971 ... not on archaeological survey. The data was recorded into the State records in 1971 and has not been updated since, contrary to §800.4(c)(1), affecting the reliability of the data on both State and National registers. I furthermore allege that the tribes were coached as to the number and types of ceremonial and sacred sites they were to report, because the five letters submitted to the FAA by the tribes as part of the record, after consultation, all made substantially the same points in roughly the same order. No letters were submitted before the 2021 consultations, but were submitted shortly thereafter. The FAA conducted no current field studies, no current archeological excavations, and did not walk the Park to make first hand observations as to the credibility of the sites referenced by the NPS, State Historic Office, National Register, and the tribes.

Had the FAA walked the Park, the agency would have discovered that almost all of the 3,000 alleged cultural and ceremonial sites have been diminished by nature to their natural states. There are only the collective fading memories of tribal members to document where the once-important sites lie. The importance of the sites is lessened both by natural events (fire and storms) and by time, itself, burying the past one shovel of sand per year for 1,000 years. Few members of any tribe, I allege, can positively identify the 3,000 sites, today.

Second, the FAA wrongly relies on the numbers and locations of historic properties listed on the National Registry of Historic Sites. For most of the cultural and religious sites, the only record of their one-time presence is recorded in the National Registry, not in the active minds of the tribes. Records of these sites is important for religious and historic reasons, but if there is not proof of their use in current practice, these sites have already relinquished their claim on current land use. This is consistent with tribal practices of most Indian cultures. Once a family is no longer living on a piece of property, another family is free, with permission of the tribe, to occupy the same space without regard to the spirits of the past. "Sacred trespass" is a relative concept, even for Native Americans. The relevance of the term to cultural and ceremonial sites is to the past, not the present. The FAA offers no evidence that the sites are in active use.

Third, the FAA errs by accepting without question the number of historic sites the tribes claim to have. The number of sacred sites has never been reduced due to normal attrition. I allege that 90% of the sites recorded 50 yrs ago could be eliminated. §800.4(c)(1) agrees, in principle. It says:

The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible.

The 3,000 sites the FAA claims to be active are undoubtedly grossly exaggerated.

Fourth, even the tribes question the validity of the FAA's 3,000 estimate for the number of cultural and ceremonial sites. The FAA states in Section 2.1 of the draft BAND ATMP that the Park contains more than 3,000 archaeological sites. The Cochiti Pueblo agrees with that figure (see Cochiti Pueblo letter dated 2/21/22), but the Pueblo of Pojoaque reports that the figure is 50% less, claiming only 2,000 sites (see Pueblo of Pojoaque letter dated 8/27/21).

The FAA's assessment of historic properties is demonstrably overstated. The FAA is simply taking the word of the tribes and State and Federal agencies for approximate numbers, but provides no field data to support the claim. Even the Pueblo de

San Ildefonso admits that no conclusive archaeological survey has been completed. In a letter from Ms. Judith Walker of the FAA's Office of Environment and Energy to the NM State Historic Preservation Office, dated 4/20/2023, page 6 (see Appendices for the Draft Environmental Assessment, digital page 106), the FAA states:

The Pueblo de San Ildefonso noted that the inventory of historic properties based upon archaeological survey is currently incomplete and would benefit from additional inventory documenting ethnographic use within the APE.

The FAA claims in Attachment C that 2,974 "contributing sites" exist. The agency never defines what "contributing sites" means. There is no way of knowing how many of these are archaeological sites of cultural and ceremonial significance today. The inventory of sites was made in 1970 and included in the National Registry. That inventory is hopelessly out of date and most of the "contributing sites" would not be allowed on the Registry today, using current standards of acceptance. Even the FAA admits, under "Identification of Historic Properties" on page 7 of the Request for Concurrence, that most of the sites the agency's argument relies on are irrelevant. The document states:

There are thousands of additional below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

This supports my allegation that the number of relevant sites of current cultural and ceremonial significance can probably be reduced by 90%, the tribes never have disclosed the number of sacred sites that lie beneath cover of earth.

Fifth, most of the supposed 3,000 cultural and ceremonial sites would not meet the criteria for inclusion in the National Registry if they had to be separately considered today. They are included under "grandfather rights," as per §800.16(l)(2). The properties do not meet the current tests of acceptability.

Under §60.4, which sets forth the "Criteria for Evaluation" of historic sites, "Ordinary cemeteries, birthplaces, or graves of historical figures ... shall not be considered eligible for the National Register." This would apply to Native Americans, too. Moreover, the criteria for Evaluation makes no allowance for undistinctive shrines and sacred sites, saying:

A property primarily commemorative in intent [is allowed as an historic property] if design, age, tradition, or symbolic value has invested it with its own exceptional significance.

Mere event of death and burial at a particular site is not enough. Furthermore, the property must be "primarily commemorative in intent," which is different than being of "spiritual importance."

Sixth, §60.4 makes no allowance for inclusion of sites based on the beauty of natural topography.

Seventh, nor does the section of code consider "sacredness" to be a determining-criteria of "historic value" that causes it to be set aside.

Eighth, considerations of airspace surrounding historic properties is not relevant to the National Registry's "Criteria for Evaluation." §60.4 makes no mention of "viewsheds" being a part of a historic property's intrinsic value. "Diminishment of viewshed" is a concept foreign to the Criteria for Evaluation and not a factor of relevance when determining adverse impact of aircraft presence. This discounts most of the FAA's criticism of air tours over the Park.

Ninth, the Criteria for Evaluation attaches no vertical column of airspace to any historic property. Therefore, cultural and ceremonial sites have no claim of trespass or intrusion of presence by persons or machines passing overhead either by foot or wing. This largely discounts the rest of the FAA's objections to air tours over the Park.

The FAA abuses the National Registry, saying that Southwest Safaris is imposing adverse impact on historic sites, when the historic sites it refers to are simply cultural sites worthy of the same sensitivities as any modern cultural site, judging by today's definition of "historic properties."

I will now turn my attention to "assessment of adverse effects."

The FAA's "criteria of adverse effect" is defined as "an adverse effect [that alters] ... any of the characteristics of a historic property that qualify the property for inclusion in the National Register" (§800.5). Because the individual historic properties in question do not properly belong on the National Registry, and because they have no claim to special religious set-aside, and because they serve no commemorative purpose of exceptional significance, and because they have no sacred space above them, it is not possible for the presence air tours to have an adverse impact on non-existing "historic properties" in the "Area of Potential Effect."

Moreover, there can be no adverse effect from non-existent flights over historic properties that do not exist. The FAA's "criteria of adverse effect" is a quiet syllogism. The logic is absurd and, therefore, impossible to argue. See my letter of May

31, 2023. Any court would discard the logic behind the FAA's hopelessly convoluted "criteria of adverse effect;" it doesn't make sense.

On the other hand, it is very possible for the absence of air tour to have a very substantial negative effect on historic properties in the Area of Potential Effect, i.e., the Park.

For instance, in most cases, National Parks, themselves, have become "historic structures" (CCC Projects from the 30's) that air tours actually help to protect. National Parks and other historic properties benefit greatly from park overflights, as is the case for Indian and other subcontractors using the historic properties of the Park for providing guided ground tours for air tour operators; famous hotels (historic properties) inside the Park providing overnight accommodations for ATOs; and local historic restaurants/convenience stores in a park serving the needs of ATO clients. People who visit National Parks frequently want to get "the total experience" of a park. This includes getting a grand overview that only an air tour can provide. This avoids negative impact on historic properties by allowing passengers to see the back country without leaving any trace of visitation or having any adverse impact on park infrastructure, including trails, lodging facilities, restaurants, bathrooms, gift shops, amphitheaters, and parking lots. Elimination of the flights would cut off substantial economic contribution to historic business properties within the Park, causing the diminishment of historic structures, all the while significantly adding to the cost of maintaining the historic properties within the APE.

Despite the humor of this partly exaggerated argument, there are much more important reasons for allowing an air tour operator to transit BAND. It is true that denying air tours over the Park will not, in and of itself, allow for any impact of air tour noise on historic properties directly below an aircraft. It is not true, however, that denying Park overflights will have a positive effect (decrease) noise in the overall APE. The air tour operator at BAND will simply be forced to fly the perimeter of the Park on the west, south, and east sides, increasing the total noise impact on the APE by a factor of three, especially impacting wilderness areas. The impact of noise will only partially be diminished by distance (10%), but the time exposure will be increased by 300% in high power-settings. The net gain to the park from disallowing direct overflights (transportation routes) will be significantly negative, defeating the purpose of Alternative 2.

Thus, the FAA's finding ... that denying Southwest Safaris the right to continue its air tours over BAND would have "no adverse effect" on historic properties ... is wrong on the face of argument.

The FAA Alternative 2 does not satisfy NHPA. However, digging ever deeper, the tools the FAA uses to determine imposition of adverse effect do not satisfy NPATMA, either.

NPATMA, Section 808, dictates that:

Any methodology adopted by a Federal agency to assess air tour noise in a unit of the national park system (including the Grand Canyon and Alaska) shall be based on reasonable scientific methods. [Emphasis added.]

This is the prime directive of NPATMA.

I assert that NPATMA is the controlling legal authority for creating Air Tour Management Plans. Under NPATMA, "any methodology" used to assess air tour noise, must be based on science.

The FAA's methods for assessing air tour noise at BAND are not based on "reasonable scientific methods." The FAA errs by using Noise Modeling at BAND to determine the presence of aircraft noise instead of scientific field tests to measure actual (not theoretical) noise. Noise modeling is not science, it is technology, prone to many errors. The internal formulas can be wrong and the external data fed to the model can be erroneous. I allege that the FAA procedurally stumbles by not using pertinent (defined to mean "current, comprehensive, relevant, accurate, and science-based") data in their noise models. The FAA's input data at BAND is stale-dated and insufficient, having been gathered 11 years ago and having only been sampled at four points in the Park. Therefore, it is not possible for the FAA to accurately assess adverse effects at Bandelier National Monument by use of AEDT "estimation" techniques, and I dispute the FAA's findings in the draft BAND ATMP and EA. The FAA's reliance on §1502.21 (and §1502.23) for not complying with Section 808 is misdirected; in the present instance, NPATMA is the controlling legal authority, not NEPA. For detailed analysis of these arguments, see my letter to Volpe National Transportation system, dated August 7, 2023, and my second letter to same, dated August 10, 2023.

In summary, I do not concur with the FAA's Section 106 findings, based on faulty evidence and unacceptable procedure. I respectfully request, based on the FAA's disregard for the Primacy of Law... which contempt of process permeates the whole of the agency's Section 106 investigations and findings... that the ATMP process for BAND be halted until a determination can be made by court of law as to the controlling jurisprudence of the undertaking.

Thank you for your continued consideration.

Sincerely,

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Correspondence ID: 27 Project: 103440 Document: 129475

Name: Hingson, Dickson J

Received: Aug,11 2023 18:18:22

Correspondence Type: Web Form

Correspondence: Dear Reviewers:

As one of the four NPOAG Environmental Representatives, based presently with Sierra Club Grand Canyon Chapter (Arizona) but also with extensive Club staff/volunteer experience in CA, NV, UT Chapters, also with NPS employment or V.I.P. work over three decades, in southwestern states and also with MUWO (Muir Woods National Park), and expertise with Joshua Tree NP airspace contention, I offer these comments.

I value the unique importance of \*cultural landscape\* in this particularly naturally quiet unit, being grounded on the &quot;sacred place&quot; and &quot;privacy&quot; issues perhaps more, this time than usual, than perhaps typically with soundscape metrics, thresholds, protections against more intrusive \*noise\* as such. The issue appears one of repetitively , intrusively inappropriate \*presence&quot; , not all human presence..

Bandelier's natural quietness --per se-- has seemingly held up fairly well through decades, unlike the opposite experience we've had since 1975 with Grand Canyon National Park air touring.

I am pleased to review/note the detailed support comments to NPS/FAA from \*NPCA's \*Emily Wolf\*, New Mexico Program manager, being today submitted; I endorse them, point-by-point, as excellent overview primer of the Government's responsibilities in finally producing this long-awaited ATMP.

The Record of Decision would benefit, I think if provides some selected context/historical detail re situation from thirty years ago, when NPS issued its 1994 Report on National Park Overflights to Congress, including with Appendices in 1995. The Record could now benefit with at least referencing whatever specific impairing \*aircraft\* intrusions were perceived at Bandelier in 1993, which led to great NPS Management concern documented in that 1994 document.

Bandelier was even back then, consistently, and repetitively, identified, &quot;as a needy, &quot;Priority One&quot; in the Plan and in Appendices, among several, much better known, noise-plagued Parks such as Grand Canyon or Glacier or Bryce or Great Smokies, in needing an Air Tour Management Plan.

The Record of Decision might note thirty years has elapsed between the 1994 Report to Congress requesting Priority Resolution for Bandelier, and presently, thus providing additional\*references\* to early 90's Superintendent-level, administrative documents that further explain the degree of concern noted in the Report.

Q. What actual noise or privacy or sacred space intrusions, by what type aircraft, \*already\* disturbed the peace, as to warrant concerns, how were these intrusions perceived, documented, addressed at ground administrative level, with what response from air tour operators, back then, compared with the &quot;current&quot; conditions: so uniformly, systematically well assessed in all these current ATMP's .

Such information might help flesh out, document, thus further buttress this long-delayed Record of Decision. Simple citations/links of the relevant NPS Superintendents' or from Regional NPS or WASO, Memoranda (no doubt duly, urgently issued , eventually archived) would help understand \*Bandelier's\* \*long\*-identified air tour-aviation-related, plight from , from, say the late 1980's over ensuing decades.

Also the Record of Decision should \*update\* Bandelier current conditions, (possibly via a link, or footnoted) especially re airtour operations reported through Y 2022, and first half of Y 2023, based on numbers of air tours actually flown during those periods.

More current information ought also be noted in the several ATMP/ ROD's still pending.

In the end, selected historical overview/context/detail, (link- referenced if/as appropriate) in the ROD, might help buttress this current, appropriate, very commendable, FAA/NPS , \*positive\*, resolution of Bandelier's air tour problem, solved by blocking low-level air touring over the Park, and raising the height of, and/or re-routing air tours outside/around the southern border legal buffer zone.

Thank You, FAA/NPS!!

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Correspondence ID: 28 Project: 103440 Document: 129475

Name: Buchser, John

Received: Aug,11 2023 21:52:30

Correspondence Type: Web Form

Correspondence: We support alternative 2 of the Draft Environmental Assessment, the preferred alternative.

We do not support any air tours, and encourage ending the current permit for the current permittee.

The noise created by low-flying aircraft is disruptive to the wilderness experience. It is disruptive to tribal activities within their historical homeland.

As noted in section 2.1 of the draft Air Tour Management Plan :

"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. Protect the visitor experience of the character and solitude of the Bandelier Wilderness where natural sounds predominate, providing opportunities to experience quiet and solitude in a remote natural setting."

Also in section 2.1, which is particularly important to the Sierra Club:

"Protect the visitor experience of the character and solitude of the Bandelier Wilderness where natural sounds predominate, providing opportunities to experience quiet and solitude in a remote natural setting."

Thank you for the opportunity to comment, on the behalf of our 3,000 members in Northern New Mexico.

John Buchser

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Correspondence ID: 29 Project: 103440 Document: 129475

Name: Buchser, Linda

Received: Aug,11 2023 22:03:31

Correspondence Type: Web Form

Correspondence: I am gratified to see that the National Park Service clearly understands that air tours over Bandelier National Monument would be entirely inappropriate and would impact the cultural and traditional uses of the area, as well as the general enjoyment of the beauty, history, and serenity of the Monument.

I have visited Bandelier many times, hiking, backpacking, camping with an RV, wandering along the paths that provide the opportunity to get a glimpse of life here over the ages.

Please continue a firm commitment to preventing invasive commercial activities in this national treasure.

Thank you,

Linda Buchser

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Correspondence ID: 30 Project: 103440 Document: 129475

Name: Fitch, Ken

Received: Aug,11 2023 22:47:49

Correspondence Type: Web Form

Correspondence: NPS has made a strong case for its appropriate decision to prevent disruptive serious impacts to the area within its jurisdiction from non-emergency flight intrusion into an airspace that is a component of the sacred site it is mandated to protect, along with the values it contains that proliferate into adjacent areas with deep levels of interconnection.

The ATMP cites "Continuing Cultural Connections "as a statement of significance for an area that contains "actively used shrines and sacred sites across an elevation gradient of nearly 5,000 feet."

Perhaps unclear to some parties is the fact that there is an established respect for the "confidentiality of sacred sites" and their location is areas not specifically cited in public documentation.

Air tours present a significant disruption of cosmic connection in these areas where there is a continuity of connection from earth to sky.

Further, it must be recognized that there are sacred sites within ½ miles of the designated boundaries here, and of special note, as several pueblo communities border the NPS boundaries.

The numerous "figures" that present maps of the entire affected area also depict a continuous Cultural Landscape (in ways not cited in the EA).

The reality is that any flights in the area shown on the maps potentially and actually generate a range of conflicts and direct and indirect impacts, along with the likelihood for inevitable "air tour displacement" impacts, especially with the increasing number of "points of interest outside the ATMP."

A particular problem occurs when "air tour displacement" occurs and air tours are present in areas of special sensitivity.

The "whoops" factor can present objectionable situations.

The Cultural Landscape has been newly extended and reactivated by another cultural connection, and that is from the film "Oppenheimer," and the cultural sensation it has generated, inevitably spurring visitation to the area to explore the area where the history in that film occurred, with an increased potential for intentional "accidental" air tour displacement events.

Another NPS unit not depicted on the map is a unit of Manhattan Project NHP.

To be blunt, as an American, I do not want any device or contraption flying in direct or indirect proximity to Los Alamos.

The jumble of disruptions from any air tour activity would be particularly insensitive to this area and the residents and visitors who interact with the particular experience here.

Demographics - Demographics Report - PEPC ID: 103440