

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

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

**AIR TOUR MANAGEMENT PLAN FOR CANYON DE CHELLY NATIONAL  
MONUMENT, ARIZONA**

**I. Introduction**

This document serves as the Federal Aviation Administration’s (FAA) and the National Park Service’s (NPS) (collectively, the agencies) Findings of No Significant Impact/Record of Decision (FONSI/ROD) and provides final agency determinations and approvals for the federal actions necessary to implement the Air Tour Management Plan (ATMP or Final ATMP) for Canyon de Chelly National Monument (Park) in the State of Arizona, in accordance with the National Parks Air Tour Management Act (NPATMA), as amended, its implementing regulations (14 CFR Part 136), and all other applicable laws and policies. This FONSI/ROD is based on the information and analysis contained in the attached Final Environmental Assessment (Final EA), dated December 18, 2024. The Final EA, which includes the errata sheet, Draft EA, and all appendices, has been prepared in accordance with the National Environmental Policy Act (NEPA), its guidelines and requirements set forth by the Council on Environmental Quality (CEQ) (2020 NEPA implementing regulations, as amended in 2022),<sup>1</sup> the FAA’s NEPA implementing regulations, and the Department of the Interior’s implementing regulations.

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

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<sup>1</sup> The FAA and the NPS are aware of the November 12, 2024 decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the Council on Environmental Quality (CEQ) regulations implementing NEPA are not judicially enforceable or binding on this agency action, the agencies have nonetheless elected to follow those regulations at 40 C.F.R. Parts 1500– 1508, in addition to their own procedures/regulations implementing NEPA, to meet the agencies’ obligations under NEPA, 42 U.S.C. §§ 4321 et seq.

## **II. Description of the Park**

The Park consists of approximately 84,000 acres in northeastern Arizona within the Defiance Plateau on Tribal lands held by the United States in trust for the Navajo Nation. Generations of Navajo have lived in Canyon de Chelly, Canyon del Muerto, and Monument Canyon, and a community of approximately 600 individuals of the Navajo Nation reside along the canyon floors and rim areas where they maintain homes, farms, and traditional grazing lands. The Hopi and other modern pueblo Tribes are culturally associated with Canyon de Chelly and its former ancestral inhabitants. The purpose of the Park, as stated in its Foundation Document<sup>2</sup>, is to maintain and preserve an outstanding concentration of archeological resources, representing thousands of years of continuous occupation and agriculture, as well as other features of scientific, historical, and educational interest. The canyon preserves resources of sacred significance and perpetuates lifeways of past and present cultures ancestrally connected to these landscapes.

Canyon de Chelly National Monument within the Navajo Indian Reservation was established by Presidential Proclamation #1945 on April 1, 1931 (47 Stat. 2448) with the consent of the Tribal Council of the Navajo Tribe of Indians and authorization of the United States Congress. Congress charged the NPS with the administration of the area of national monument, “so far as it applies to the care, maintenance, preservation and restoration of the prehistoric ruins, or other features of scientific or historical interest within the area.” However, Congress also provided that the legislation authorizing the establishment of the monument shall not “be construed as in any way as impairing the right, title, and interest of the Navajo Tribe of Indians which they now have and hold to all lands and minerals, including oil and gas, and the surface use of such lands for agricultural, grazing, and other purposes, except” for the NPS legislatively defined role and responsibilities.

In addition to the NPS’s Organic Act that applies to resources within the Park, the Navajo Nation has enacted legal protections that apply to the Park. Resolution of the Resources Committee of the Navajo Tribal Council, 1985 (RCS-51-85) – established a protection zone within the boundaries of the Park to protect its resources from activities and developments deemed to be a threat or an adverse impact until a joint management plan between the Navajo Nation, Bureau of Indian Affairs, and the NPS could be developed. That Resolution also established a moratorium on new construction and development within the Park’s boundary. The Navajo Nation Cultural Resources Protection Act of 1988 (Navajo Nation Code, Title 19) – Section 1011 requires all cultural properties on Navajo lands, including those in the National Park System, to be included in the Navajo Nation Register of Cultural Properties.

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<sup>2</sup> NPS. (2016). Foundation Document – Canyon de Chelly National Monument. <http://npshistory.com/publications/foundation-documents/cach-fd-2016.pdf>.

In 2018, the Navajo Nation, the NPS, and the Bureau of Indian Affairs entered into a Strategic Agreement for the Cooperative Stewardship of Canyon de Chelly. The parties to the Strategic Agreement recognized that Canyon de Chelly remains the Navajo Nation's Tribal trust lands, over which the Navajo Nation has sovereign authority. The NPS manages the Park under federal authority. The Navajo Nation retains authority, in accordance with Navajo Nation and federal law regarding trust assets. In the Strategic Agreement, the parties agreed "[t]o respectfully share stewardship of the Canyon values and to protect and preserve its beauty, resources and culture for the future – Hozho Dooleef." The Strategic Agreement outlined key management roles and responsibilities for the administration of Canyon de Chelly pursuant to existing policies, statutes, and regulations. The Navajo Nation and the NPS are currently in the early phases of a joint/co-management planning process.

The NPS honors its unique nation-to-nation relationship regarding decisions affecting the Park, particularly because the Park is located on trust lands. The NPS is entrusted with the management of over 85 million acres of federal lands and waters that are the ancestral homelands of Indian and Alaska Native Tribes, and Native Hawaiians that predate the National Park System. As stewards, the NPS is entrusted to conserve these resources for future generations, including resources, sites, and vistas that hold significance to Indigenous peoples who have lived on and cared for the land since time immemorial. The NPS recognizes and supports the unique, nation-to-nation relationship that exists with the Navajo Nation that is based in the U.S. Constitution, treaties, statutes, and judicial decisions. In managing the Park, the NPS is required to honor its trust responsibilities to protect Tribal interests, pursue an open and collaborative relationship with the Navajo Nation, and provide for the continuation of the cultural and spiritual practices of the Navajo people.

The NPS identified five statements of significance for the Park, or statements explaining why the Park's resources and values are important enough to merit designation as a unit of the National Park System, in the Park's Foundation Document. Those statements include Relationships, Cultural Continuity, and Cultural Resources.

Cultural Continuity refers to the fact that the Park "...preserves one of the longest continually inhabited locations by American Indian communities in the United States, spanning at least 5,000 years. Tséyi', the place within the rock, sustains a living community connected to a landscape of great historical and spiritual significance—a landscape composed of places infused with collective memory and defining moments in Navajo history. It is essential to the spiritual and traditional lives and cultural identity of many native peoples."

Cultural Landscapes, Continuing Cultural Connections, Experience of Place, and Partnerships and Relationships are among the Park's fundamental resources and values identified in its Foundation Document. As the Park's Foundation Document explains, "Canyon de Chelly is fundamentally linked to the cultural practices and beliefs of the Navajo and other traditionally associated groups and is central to the perpetuation of their

respective cultural identities.” It notes that “[s]pecific places and natural features (e.g., Spider Rock, Fortress Rock, and celestial features) are physical expressions of the defining stories and events in the history of the Navajo people and retain profound spiritual and sacred significance.” It further recognizes that “[f]or the Navajo people (Diné), Canyon de Chelly (Tséyi’) is a physical and spiritual home that sustains the families who live in the canyons as well as a sacred place connecting all Navajo to their cultural heritage and beliefs. Canyon de Chelly also has enduring cultural importance for the other regional native peoples whose ancestors once occupied the canyons.” Consistent with these fundamental resources and values, the NPS prohibits visitors from entering the canyons of the Park unless accompanied by NPS employees or by authorized guides. 36 CFR § 7.19.

The most significant cultural and natural resources within the ATMP boundary include archeological sites, Tribal sacred sites, traditional cultural properties, and ancestral sites, many of which are listed in National Register of Historic Places (National Register) or are eligible for listing. The Park’s archeological resources provide evidence of occupation through the Archaic, Basketmaker, and Puebloan periods. Many of the sites are cliff dwellings containing large amounts of dry, cultural debris. In addition, 18th, 19th, and 20th century A.D. sites of Navajo occupancy remain in the Park. The archeological resources within the Park make up one of the most important and extensive archeological landscapes in the Southwest, expanding over the past 5,000 years. Archeological inventories have resulted in the identification of approximately 1,600 sites throughout the Park, some of which may be considered traditional cultural properties (TCPs) by Tribes. Pre-Columbian archeological sites are a source of spiritual, sacred power to the Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places. The White House ruins and Spider Rock are two archeological sites and traditional cultural properties within the Park that are still used in ceremony for the Diné people. Both sites are eligible for inclusion in the National Register because of their ancestral connection with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because they are important in maintaining cultural identity.

Today, the Park is occupied by Navajo families who farm and have livestock operations within the canyons, carrying on their traditional practices. Approximately 80 Navajo families live in and around the monument, and approximately six hundred individuals live in the canyon community. This community is one of the longest, continually inhabited Native American communities in the United States.<sup>3</sup>

Visitors can tour the Park’s canyons only by hiking, horseback, or vehicle with an authorized Navajo guide and after obtaining a backcountry permit from the Navajo Nation’s Parks and Recreation Department and the NPS. However, visitors may take a self-guided hike to the White House Overlook and Trail (currently closed due to safety

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<sup>3</sup> Letter from the Navajo Nation President to FAA and NPS, April 11, 2023

and law enforcement concerns) and scenic drives along the north and south rim from which visitors can access overlooks open year-round and experience expansive views of high desert mesas, vegetation, dark night skies, and distant mountains.

The Park's Foundation Document recognizes that "[a] strong ethic of stewardship for protecting the canyons and the natural world permeates everyday life and is passed on from Navajo elders to younger generations." The Park's natural resources include those that are a result of geological processes of uplift and erosion that have exposed the Park's colorful red cliffs of the de Chelly sandstone which rise from the wash to heights of up to 1,200 feet and contribute to the scenic values of the Park. Towering spires of erosion-resistant sandstone and cap-rock (such as Spider Rock and Face Rock) rise from the canyon floor. Dependable water from springs, seeps, and streams originating from the Chuska Mountains, eventually reaches Chinle Wash. The water and the rich soils of the canyons support a variety of native and introduced plants and animals that have sustained canyon residents for thousands of years. A variety of avian species may be found within the Park, including raptors and migratory birds. Species potentially affected by overflights include three federally listed threatened species – the Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Empidonax traillii extimus*), and yellow-billed cuckoo (*Coccyzus americanus*).

### **III. Background**

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

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

NPATMA requires that all commercial air tour operators conducting or intending to conduct a commercial air tour operation over a unit of the National Park System apply to the FAA for authority to undertake such activity. 49 U.S.C. § 40128(a)(2)(A). NPATMA, as amended, further requires the FAA, in cooperation with the NPS, to establish an ATMP or voluntary agreement for each park that did not have such a plan or agreement in place at the time the applications were made, unless a park has been otherwise exempted from this requirement. *Id.* § 40128(b)(1)(A). The objective of an ATMP is to "develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands." *Id.* § 40128(b)(1)(B)). An ATMP "may prohibit" commercial air tour operations over a park in whole or in part, or "may establish" conditions for the conduct of commercial air tour operations over a park. *Id.* § 40128(b)(3)(A)-(B). The need for implementation of any measures taken in an ATMP must be justified and documented in the ATMP and with a record of decision. *Id.* § 40128(b)(3)(F).

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

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

(i) Below 5,000 feet above ground level (except for the purpose of takeoff or landing, or as necessary for the safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); [or]

(ii) Less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary).

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

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

NPATMA was substantively amended in 2012. In addition to authorizing the agencies to enter into voluntary agreements with air tour operators in lieu of developing ATMPs, 49 U.S.C. § 40128(b)(7)(A), the 2012 amendments added reporting requirements for operators conducting commercial air tour operations over National Park System units. *Id.* § 40128(d). The amendments also exempted parks with 50 or fewer commercial air tours from the requirement to prepare an ATMP or voluntary agreement, unless this exemption was withdrawn by the NPS. *Id.* § 40128(a)(5). The Park was previously exempt from the portion of NPATMA that requires the agencies to establish an ATMP or voluntary agreement for commercial air tours. On November 2, 2017, the NPS withdrew the Park’s exemption.

President Biden signed the FAA Reauthorization Act of 2024 on May 16, 2024. Section 628 of the Reauthorization amends the NPATMA to require the agencies to consult with

the National Parks Overflights Advisory Group (NPOAG) and to “consider all advice, information, and recommendations provided by” NPOAG. 49 U.S.C. § 40128(b)(4)(E)

## **B. The Compliance Plan**

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

Consistent with the Court’s order, agencies submitted a proposed plan and schedule (Compliance Plan). In general, the Compliance Plan contemplated initiating and moving forward with a process to implement ATMPs at all eligible parks concurrently as part of a coordinated, omnibus effort. Canyon de Chelly National Monument was identified as requiring an ATMP or voluntary agreement and was included in the Compliance Plan, which was subsequently approved by the D.C. Circuit on November 20, 2020.

On June 21, 2022, the Court ordered the agencies to file a joint supplemental report and proposed firm deadlines for bringing each of the parks included in the Compliance Plan into compliance with NPATMA. On July 21, 2022, the agencies filed their report and provided a deadline of December 31, 2024 to complete an ATMP for the Park.

## **C. The Planning Process**

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

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

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

The agencies decided to use a three-year average of operator-reported air tours to identify the existing condition, rather than reports from a single year. In order to identify the three-year average, the agencies decided to use reported air tours from 2017, 2018, and 2019. These years were selected because they reflected relatively current air tour conditions, represented reliable operator reporting of air tours, accounted for variations across multiple years, were available during the planning effort, and excluded years that were atypical due to the COVID-19 pandemic. The requirement for commercial air tour operators to report annual commercial air tour operations to the agencies was implemented in 2013. Reporting data from 2013 and 2014 are considered incomplete as reporting protocols were not fully in place at that time and likely do not accurately reflect actual number of air tours conducted. Flight numbers from a single year were not chosen as the existing baseline because the three-year average accounts for both variation across years and considers the most recent pre-pandemic years. Reporting data from 2020 was not used because the COVID-19 pandemic resulted in abnormalities in travel patterns across the U.S., which does not represent the conditions in a typical year. The agencies also decided against using 2021 or 2022 data due to continued abnormalities associated with the COVID-19 pandemic and the unavailability of reporting data for 2021 or 2022 during most of the planning effort. The agencies also decided against using IOA as the baseline because IOA was based on numbers reported by operators more than 20 years ago and does not represent the most current or reliable operational data.<sup>4</sup>

Table 1 below depicts available reporting information regarding the number of commercial air tours conducted on an annual basis over the Park. Four commercial air tour operators currently hold IOA to fly up to a combined total of 175 commercial air tours per year over the Park. Of those operators, only one flew tours between 2017 and 2019, averaging 43 tours per year (0.12 per day), although that air tour operator currently

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<sup>4</sup> The agencies view the baseline they chose as the correct starting point for their analysis because the baseline accurately reflects the existing condition. But if the agencies chose a baseline that did not reflect the existing conditions and instead reflected a condition with no commercial air tours within the ATMP planning area, the environmental impacts would be greater than the impacts measured from the baseline that the agencies selected.



holds IOA to fly up to a total of 147 commercial air tours per year over the Park (see Table 1). All air tours were flown by fixed-wing aircraft. Based on the three-year average of reporting data from 2017 to 2019, the operator conducts an average of 43 commercial air tours per year which is approximately 29% of its IOA. The Final EA used the three-year average as the existing condition of commercial air tours within the ATMP planning area.

### E. Air Tour Operations

To identify the general operating parameters of the air tours, the FAA reached out to the current operator to identify current air tour routes and other operating conditions. The route information provided by the current commercial air tour operator for routes over and adjacent to the Park is shown in Figure 1. Commercial air tours conducted using a Cessna 182 and T207A on the five routes shown in Figure 1 ranging in altitude from 800 to 1,000 feet (ft.) above ground level (AGL).

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

Operator	Aircraft Type (all fixed wing)	2017 Reported Tours	2018 Reported Tours	2019 Reported Tours	Average Number of Reported Air Tours (2017-2019)	Interim Operating Authority (IOA)
Southwest Safaris	Cessna 182 Cessna T207A	38	30	62	43	147
Air Grand Canyon, Inc.	Unknown	0	0	0	0	9
American Aviation	Cessna 172-N, Cessna 206, Cessna 207-T207A	0	0	0	0	14
Grand Canyon Airlines, Inc.	Cessna 208B, de Havilland DHC-6 300	0	0	0	0	5
TOTAL	-	38	30	62	43	175

Sources: NPS, 2017, 2018, 2019, [www.nps.gov/subject/sound/airtours.htm](http://www.nps.gov/subject/sound/airtours.htm)

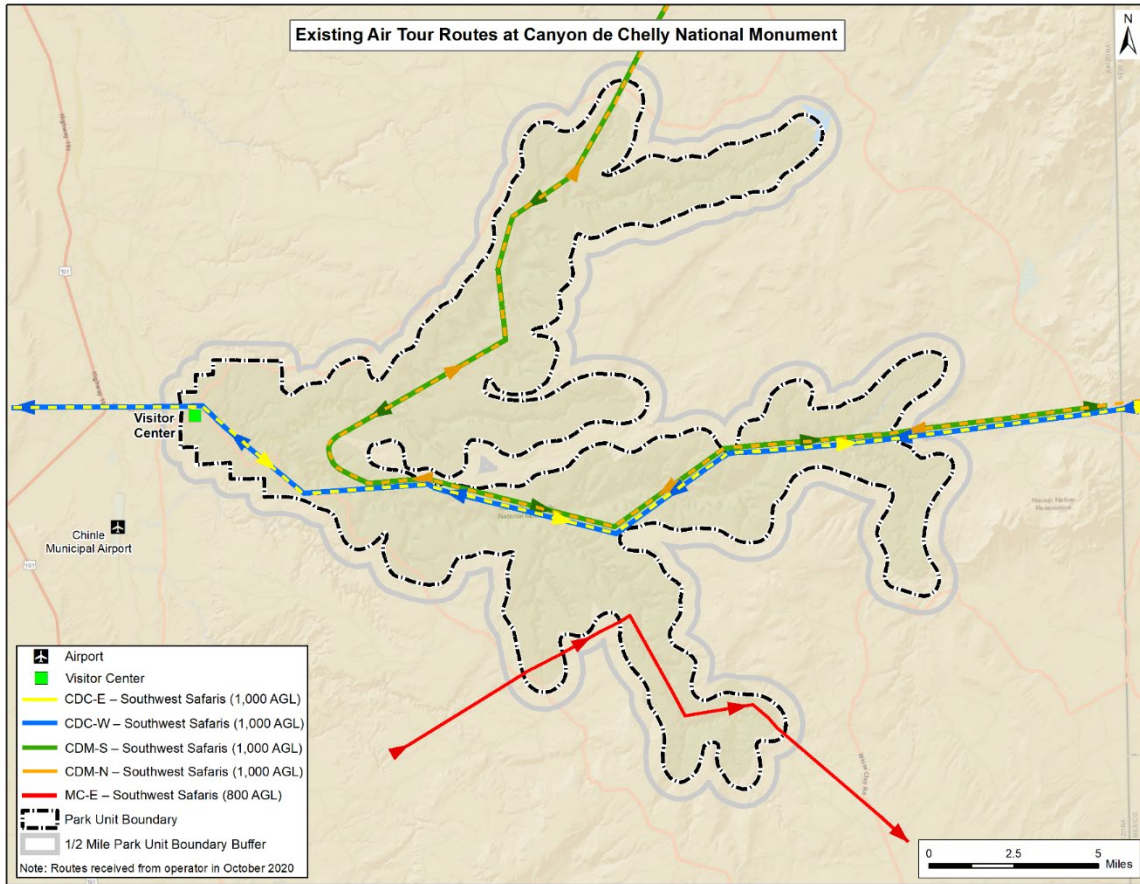


Figure 1. Current routes as reported by the one active air tour operator.

#### IV. Proposed Action

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

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

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

## **V. Purpose and Need**

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

Need: The Park was previously exempt from the portion of NPATMA that requires the agencies to establish an ATMP or voluntary agreement for commercial air tours. On November 2, 2017, the NPS withdrew the Park's exemption. Thus, NPATMA requires an ATMP or voluntary agreement to be developed for the Park. Air tours have the potential to impact natural and cultural landscapes and resources, Tribal privacy, and Native American TCPs, including Native American sacred landscapes, sites, and ceremonial areas. NPATMA requires that the agencies develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations on these resources.

## **VI. Alternatives and Draft ATMP**

An NPS interdisciplinary team comprised of subject matter experts from the NPS's Natural Sounds and Night Skies Division, Environmental Quality Division, Intermountain Regional Office, and the Park developed the action alternative to be considered in this EA in consideration of Park management objectives and based on information and Tribal input received during consultation with the Navajo Nation, specifically the Navajo Nation President, Divisions and Departments within the Executive Branch, and local Chapters and Tribal members. The NPS interdisciplinary team considered the impacts of existing air tour routes and operations, the cultural and natural resources within the Park, existing and natural acoustic environment, visitor experience, and visual resources. Because the Park is located entirely on lands held in

trust by the United States for the Navajo Nation, impacts on resources within the Park are impacts on Tribal trust resources and Tribal interests.

The NPS and Navajo Nation work in conjunction to manage Park resources and enable traditional and contemporary lifeways. Between March 2021 and December 2023, the agencies engaged with the Navajo Nation President's office and appropriate Departments regarding an ATMP for the Park. On May 12, 2021, the agencies held a webinar with the Navajo Nation to provide basic background information on ATMPs and the ATMP development process. In 2022, communications continued with the Navajo Nation with an emphasis on communicating with Chapter House delegates and departmental representation within the Executive Branch. Navajo Chapters play an essential role in shared stewardship of the Canyon de Chelly area as local governmental entities. The Chinle, Tsaile-Wheatfields, Nazlini, Lukachukai, and Sawmill Navajo Chapters, which represent the Diné people that live in and around the Park, passed Resolutions that support an alternative that would not allow air tours over the Park. The Resolutions stated that overflights disturb residential areas, farmers and ranchers, domesticated animals, and wildlife, including endangered species; impact the serenity, peaceful enjoyment, and visitor experience of the natural soundscape; and produce safety and privacy concerns. These Resolutions were sent to the Navajo Nation President. In April 2023, Dr. Buu Nygren, President of the Navajo Nation, sent a letter to the agencies (the President's letter) forwarding the Chapters' Resolutions, all of which oppose air tours over the Park (Appendix I). In his letter President Nygren stated that he "supports the position of the Navajo people (approximately 600 individuals that live in and around the monument) for a Canyon de Chelly Air Tour Management Plan that does not allow any air tours over these sacred lands." Because the Park is located entirely on the Navajo Nation's Tribal trust lands, the agencies relied heavily on the input received from the Chapters, the President of the Navajo Nation, and representatives from Departments in the Executive Branch. On February 29, 2024, members of the Chinle Chapter House of the Navajo Nation held a Chapter House meeting in which they discussed the air tour management plan. Members wrote individual comments on comment cards, which were then sent to the agencies (Appendix I). All these correspondences received opposed air tours over the Park, stating concerns about dangers to the residents, wildlife, livestock, and cultural resources from the noise and vibrations created by the aircraft, as well as privacy for the residents and users of the Park. Some residents provide Jeep, horseback, and hiking tours for visitors and stated that the air tours are not needed.

In developing the action alternative, the interdisciplinary team also considered the essential and foundational cultural elements that led to the establishment of the Park as they developed and evaluated alternatives. The primary purpose of the Park is to "maintain and preserve an outstanding concentration of archeological resources, representing thousands of years of continuous occupation and agriculture, as well as other features of scientific, historical, and educational interest. The canyon preserves resources of sacred significance and perpetuates lifeways of past and present cultures connected to

these landscapes” (NPS, 2016). The Park is located entirely on lands held by the United States in trust for the Navajo Nation, and Diné families still reside within the Park.

Consistent with the Park’s founding and 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 some of the most significant cultural and natural resources of the Park. The archeological resources in the Park document thousands of years of human presence. It provides the most intact assemblage of perishable materials (e.g., basketry, sandals, reed mats) in the country, and one of the largest concentrations of pictographs and petroglyphs in North America (NPS, 2016). The Park is also inherently tied to the cultural practices and beliefs of the Diné and other traditionally associated groups and is central to the perpetuation of their respective cultural identities. It serves as a physical and spiritual home for the Diné and connects them to their cultural heritage and beliefs (NPS, 2016). Maintaining these resources and values is an essential component of the Park’s purpose.

Importantly, because the Park is located entirely on lands held by the United States in trust for the Navajo Nation, in developing the action alternative the interdisciplinary team carefully considered the United States’ unique trust obligations to the Navajo Nation and how best to safeguard Tribal resources and interests.

The agencies considered but eliminated alternatives that would allow commercial air tours within the ATMP planning area, including at existing or reduced levels. These alternatives were eliminated from further study based on the information and input provided by the five Navajo Nation Chapters that represent the Diné people living in and around the ATMP planning area (Chinle, Tsaile-Wheatfields, Nazlini, Lukachukai, and Sawmill Navajo Chapters), representatives from Departments in the Navajo Nation Executive Branch, and the President of the Navajo Nation regarding the significant adverse impacts under NPATMA of air tours on the privacy of the Diné on Tribal lands, Tribal sacred sites, and ceremonial areas. Based on this information, the NPS determined that the air tours cause adverse impacts on the Park’s intangible and tangible cultural resources that were significant under NPATMA and that air tours also cause significant adverse impacts on Tribal lands. These alternatives were also eliminated from study because they do not meet the purpose and need for the ATMP.

Based on this input, the interdisciplinary team developed the action alternative, which would prohibit air tours within the ATMP planning area. The action alternative identified by the NPS and justifications for restrictions on commercial air tours were reviewed by the FAA who noted any aviation safety concerns.

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

The Final EA (Section 2) includes these two alternatives that were carried forward for analysis as well as a detailed description of the alternatives considered but eliminated from further study:

- **Alternative 1 (No Action Alternative).** The No Action Alternative would allow a continuation of air tours under IOA without implementation of an ATMP or voluntary agreement. The No Action Alternative represents the yearly average number of commercial air tours within the ATMP planning area from 2017-2019 conducted by the operator (43 commercial air tours per year). The No Action Alternative provides a basis for comparison but is not a selectable alternative because it does not meet the purpose and need for the ATMP and is not in compliance with NPATMA. The impacts of the number of air tours authorized under IOA are not analyzed nor included in the baseline condition. Section 2.4 of the Final EA provides a more detailed description of Alternative 1.
- **Alternative 2 (Preferred Alternative).** Alternative 2 would prohibit air tours within the ATMP planning area. Except as necessary for safe operation of an aircraft as determined under Federal Aviation Regulations requiring the pilot-in-command to take action to ensure the safe operation of the aircraft, or unless otherwise authorized for a specified purpose, commercial air tours would not be allowed to enter the ATMP planning area. Alternative 2 would provide the greatest protection for the purposes, resources, and values of the Park. Section 2.5 of the Final EA provides a more detailed description of Alternative 2, the preferred alternative.

Under the action alternative, all IOA for the Park and Navajo Nation Tribal trust lands within the ATMP boundary would terminate by operation of law 180 days after the establishment (effective date) of the ATMP, 49 U.S.C. § 40128(c)(2)(E), after which time no operator could continue to rely on any operations specifications issued under IOA as authority to conduct commercial air tours within the ATMP boundary. Operations specifications would be rescinded or amended to incorporate the operating parameters set forth in the ATMP within 180 days after the effective date of the ATMP.

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

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

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

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

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

- Biological Resources (Fish, Amphibians, Invertebrates, and Plants)
- Geologic Resources

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

## **IX. Affected Environment**

Under NPATMA and its implementing regulations, an ATMP regulates commercial air tours over a national park or within ½-mile outside the park's boundary during which the aircraft flies below 5,000 ft. AGL (ATMP planning area or ATMP boundary). Air tours outside of the ATMP planning area are not subject to NPATMA and are therefore not regulated under the ATMP. The study area, referred to as the ATMP planning area in the Final EA, for each environmental impact category includes the Park and areas outside the Park within ½-mile of its boundary. Detailed information regarding the affected environment with respect to each impact category analyzed in detail is presented in Chapter 3 of the Final EA.

## **X. Environmental Consequences**

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

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

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

Consistent with 2020 CEQ regulations, as amended in 2022, § 1501.3(b), the NPS evaluates the significance of the selected action/Final ATMP, which was Alternative 2/the preferred alternative, by evaluating the potentially affected environment and the degree of effect of the action including effects on public health and safety and effects that would violate federal, state, Tribal, or local laws protecting the environment. The affected environment is described in Chapter 3 of the Final EA and summarized above in Section II, Description of the Park (affected environment). The affected environment also includes lands outside the Park but within ½-mile of its boundary. This significance determination considers the effects of the selected action/ATMP. Per NPS policy, the NPS only completes a NEPA significance determination for the selected action and does not determine the significance of unselected alternatives. Here, the No Action Alternative unreasonably interferes with Tribal cultural connections to the sacred landscape of the Park. Air tours over the Park interfere with the privacy of the Navajo as they carry out ceremonies and sacred practices on Tribal lands, the protection of which is a primary purpose of the Park. Tribal dances are religious ceremonies and are not public performances. It is a privilege to witness a ceremony. As noted in the Navajo Nation Chapter Resolutions, commercial air tours may interrupt these practices by their physical presence and invasion of privacy, which denigrates the sacred space that the Park protects. See Section 2.2.1 of the Final EA. The NPS's determination also does not include a significance discussion for impacts under Section 4(f) since only FAA must comply with Section 4(f).

### **i. Degree of Effect**

Alternative 2, the selected action/ATMP, will result in direct and cumulative beneficial effects to resources within the affected environment.

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

Compared to current conditions, the selected action will result in direct beneficial effects on the Park's acoustic environment. Under current conditions, the agencies modeled the duration of noise above 35 A-weighted decibels (dBA), the level at which wildlife may experience disturbance in quiet natural settings, and 52 dBA, the level at which speech is interrupted by noise, in order to determine the effects from commercial air tours. The modeling demonstrates that noise above 35 dBA will be expected less than 5 minutes a day over 69% of the ATMP planning area under current conditions. Air tour noise reaches 52 dBA across only 7% of the ATMP planning area under current conditions for less than five minutes a day. The acoustic impacts of the ATMP cannot be modeled because, although some speculation about air tour routes can be made, it is unknown where air tours will fly when outside the ATMP boundary or over it at or above 5,000 ft.



AGL. However, because under the ATMP air tours are not permitted within the ATMP boundary, the intensity of noise directly around and below existing air tour routes will decrease. Additionally, the Park will likely experience fewer noise events. Since the only noise impacts from the ATMP are both beneficial and reduce or eliminate the intensity of noise and the amount of time noise is audible, there is no potential for significant adverse noise effects.

b. Air Quality and Climate Change

As described in the Final EA, aircraft that currently conduct air tours over the Park emit pollutants that contribute to regional emissions in the area but do not cause pollutant concentrations to exceed one or more of the National Ambient Air Quality Standards (NAAQS) for any of the time periods analyzed. Under the ATMP, there will only be beneficial effects to air quality since emissions within the ATMP boundary will be eliminated. However, if the operator chooses to fly outside or over the ATMP boundary those emissions may still occur and may impact the air quality within that area. Overall, there will be no significant impacts to air quality since there will be a reduction of emissions within the ATMP boundary and if air tours are displaced outside the ATMP, there will be no change in regional emissions.

c. Wildlife and Wildlife Habitat (Biological Resources)

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

d. Cultural Resources

As presented in the EA, the NPS considered the effects of air tours on cultural resources within the Park, including ethnographic resources, sacred sites, traditional cultural properties, archeological resources, cultural landscapes and prehistoric and historic structures. The cultural resources that the NPS preserves under its Organic Act are broader than “historic properties” under the National Historic Preservation Act. Consistent with NPS policy, the NPS considers an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about the culture to be a cultural resource. It may be tangible or may be a cultural practice or connection to a landscape. The Park’s cultural resources necessarily include resources that are culturally and spiritually significant to the Navajo Nation because the Park is located entirely on Tribal trust lands. During consultation, the Navajo

Nation Chapters noted that overflights disturb residential areas, farmers and ranchers, domesticated animals, and wildlife, including endangered species; impact the serenity, peaceful enjoyment, and visitor experience of the natural soundscape; and produce safety and privacy concerns. Under the ATMP, the potential for impacts to cultural connections and Tribal practices will be reduced within the ATMP boundary since both the noise from air tours and potential visual disruption from air tours are reduced. Because these impacts will be reduced and, in many places within the Park, eliminated, there is no potential for significant adverse impact under NEPA to cultural resources within the Park under the ATMP.

The FAA determined and NPS concurred that the ATMP will not have an adverse effect on historic properties within the area of potential effects/ATMP boundary under Section 106 of the National Historic Preservation Act, discussed more fully in Section XIII(B) below. Because impacts to cultural resources will be reduced and, in many places within the Park, eliminated, there is no potential for significant impacts under NEPA to the Park's cultural resources or to historic properties.

e. Visitor Use and Experience and other Recreational Opportunities

Air tour noise may disrupt visitors and degrade the Park's visitor experience by masking the sounds of nature during interpretive and educational programs or while hiking, camping or participating in other activities in the Park. Air tours are concentrated near visitor points of interest including the scenic overlooks, ruins, canyon bottoms, visitor center, and the campground. The elimination of air tours under the ATMP will result in a minimal direct beneficial impact on Park visitor use and experience since the intensity and presence of noise and sight of aircraft from commercial air tours will be reduced. Visitors will only hear or see commercial air tours that occur outside the ATMP boundary.

Effects to air tour patrons is analyzed separately from effects to park visitors because air tour patrons are not considered park visitors and do not meet the definition of a visitor under NPS 2006 Management Policies. The ATMP will result in adverse but not significant impacts on air tour patrons since commercial air tours will no longer be authorized within the ATMP boundary. Commercial air tour patrons are a very small fraction of those who see the Park each year. The number of Park visitors on an annual basis is estimated to be approximately 184,000. However, there may be opportunities to take air tours outside the ATMP boundary. Air tour patrons will still be able to visit the Park under the ATMP, including by jeep or horseback, which will continue to provide an opportunity for all visitors to access the Park. Overall, the ATMP will not result in significant impacts to the visitor experience since visitors will no longer experience noise or visual effects from commercial air tours within the ATMP boundary and will not result in significant impacts to air tour patrons who will continue to be able to access the Park.

f. Environmental Justice and Socioeconomics

Air tours are only one of many ways for a person to experience the Park. Air tour patrons may also visit the Park by ground as well. Visitor services and activities include a Visitor Center, camping, lodging, hiking, jeep and horseback trails and tours, rock art viewing, picnicking, photography, and interpretative programs. As described in the EA, in 2020, the air tour industry represented less than 1% of employment of the tri-county area where the operator is based. The air tour operator in this area provides air tours over a number of other sites besides the Park. The ATMP may result in a minimal loss of revenue from air tours over the Park, considering there are on average only 43 tours per year that occur over the Park, but will not prohibit the operator from making up this revenue in other ways such as using their aircraft for other business ventures or conducting air tours elsewhere within the region. Thus, it is expected that there will only be minor to negligible impacts on regional socioeconomics, including the community tax base, which may fluctuate in response to changes in the air tour industry. Air tour operators currently do not have a permit from the Navajo Nation Office of Tourism and the Tribe does not directly benefit from commercial air tours. Therefore, there will be no significant socioeconomic impacts as a result of the ATMP.

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

g. Viewsheds (Visual Effects)

The Park is characterized by brightly colored sandstone walls and rock promontories that tower above sinuous bands of vegetation and agricultural fields along the narrow canyon floors. Canyon rim overlooks provide visitors with breathtaking panoramic views into and across the canyons to distant vistas. Existing commercial air tour routes are located near these viewpoints and can be seen by visitors overlooking natural scenic areas. The elimination of air tour routes within the ATMP boundary reduces the likelihood visitors will hear air tours or see air tours when at scenic viewsheds. Thus, the ATMP will result in direct beneficial effects to viewsheds and there are no potentially significant impacts to the Park's scenic viewsheds.

h. Indirect and Cumulative Effects

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

Finally, under the ATMP, the air tour operator may shift routes or altitudes to fly outside or over the ATMP boundary, which could result in impacts to resources outside the ATMP boundary. It is difficult to predict with specificity if, where, and to what extent any air tours will be displaced to areas outside or over the ATMP boundary. It is reasonably foreseeable that the operator will continue to fly to points of interest outside of the ATMP boundary where they already fly. The operator may also offer additional routes outside the ATMP boundary or increase tours to other points of interest in the region. Specific routes, altitudes and numbers would be necessary to assess the noise and other potential indirect and cumulative impacts associated with eliminating air tours within the ATMP boundary. The ATMP will only displace 43 flights so it is unlikely that a significant number of new flights will result outside the ATMP boundary as a result of the ATMP. Consistent with the 2020 CEQ regulations, as amended in 2022, the NPS disclosed in the EA that specific air tour routes, altitudes, and numbers of tours are not available with enough specificity to assess noise and other potential indirect and cumulative impacts associated with the ATMP. However, it is unlikely that displaced air tours outside the ATMP boundary will generate noise at or above the yearly day-night average sound level (DNL, denoted by the symbol  $L_{dn}$ ) 65 decibels (dB), which is the threshold that the FAA applies for determining the significance of noise impacts. The NPS does not have jurisdiction over air tours outside the ATMP boundary. For additional discussion see Section 3.2.2 of the EA and Appendix F to the EA, Noise Technical Analysis, Section 3.4.

ii. Effects on Public Health and Safety

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

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

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

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

For the FAA to make a finding of no significant impact, no impact category can have a significant impact. In determining significance, the FAA has identified thresholds that serve as specific indicators of significant impacts for some environmental impact categories. For those impact categories that do not have significance thresholds, the FAA

has identified factors that are considered in evaluating the context and intensity of potential environmental impacts.

Of the impact categories discussed in detail in Section 3 of the Final EA, the FAA has considered the significance threshold and/or significance factors for each applicable impact category. The following impact categories (Noise and Noise-Compatible Land Use, Air Quality and Climate Change, Biological Resources, and DOT Section 4(f) Resources) have thresholds that the FAA uses as specific indicators of significant impact and are described in a specific significance determination section below. Impact categories that do not have significance thresholds (Cultural Resources, Environmental Justice and Socioeconomics, and Visual Effects) have factors considered in evaluating the context and intensity of potential environmental impacts and are discussed below in the specific impact category and are also included in the Final EA, Table 14, *Summary of Environmental Consequences of the ATMP Alternatives*.

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

i. Noise and Noise-Compatible Land Use

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

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, the acoustic conditions described in the affected environment would be expected to continue (see Section 3.2.1 of the EA). For purposes of assessing noise impacts from commercial air tours on the acoustic environment under FAA Order 1050.1F, the analysis indicates that the resultant DNL is expected to be below 35 dB. The 12-hour equivalent sound level would not exceed 35 dBA. The maximum time that noise above 35 dBA would occur is less than five minutes a day<sup>5</sup> across 69% of the ATMP planning area. The maximum time above 52 dBA experienced across all points modeled would be less than five minutes a day across 7% of the ATMP planning area. The maximum sound level under the No Action Alternative would be at least 55

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<sup>5</sup> Day refers to a 12-hour day, 7 am to 7 pm, typical air tour operating hours.

dBA across 5% of the ATMP planning area. This alternative would not be expected to result in indirect impacts, although it would result in the greater level of cumulative noise impacts between the two alternatives evaluated in the Final EA.

b. Alternative 2 (Preferred Alternative)

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

c. Noise and Noise-Compatible Land Use Significance Determination

The FAA has determined that the resultant DNL is expected to be below 35 dB for the alternatives and would not generate noise at or above DNL 65 dB over noise-sensitive areas, as described in the Final EA, which includes the Park, resources discussed in Sections 3.5, Cultural Resources, and Section 3.9, DOT Act Section 4(f) Resources, and residential areas outside the Park but within ½ mile of its boundary. Therefore, there would be no significant impacts for either of the alternatives.

ii. Air Quality and Climate Change

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, emissions of criteria pollutants would not cause NAAQS exceedance or increase the frequency or severity of any existing violations. Emissions for criteria pollutants under the No Action Alternative are provided in Table 5 of the EA. The range of greenhouse gas (GHG) emissions would be 1.5 metric tons (MT) of carbon dioxide (CO<sub>2</sub>) per year. Under the No Action Alternative, indirect effects are not expected to occur.

b. Alternative 2 (Preferred Alternative)

Under Alternative 2, there would be a reduction in criteria pollutants by the amounts reported in Table 5 of the EA and a reduction in GHG emissions of 1.5 MT of CO<sub>2</sub> per year compared to the No Action Alternative within the ATMP planning area. Indirect impacts under Alternative 2 may occur due to air tours outside the ATMP planning area if winds transport emissions within the ATMP planning area, and some areas not currently exposed to emissions from air tours (outside the ATMP planning area) may be exposed to emissions. However, it is highly unlikely that air tours displaced outside the ATMP planning area would result in air quality impacts or change the current attainment status of the Park. Alternative 2 would likely result in no noticeable change to a slight improvement in overall cumulative air quality in the Park with no change in the current NAAQS attainment status.

c. Air Quality and Climate Change Significance Determination

The FAA has determined that the alternatives would not cause pollutant concentrations to exceed one or more of the NAAQS, as established by the Environmental Protection Agency under the Clean Air Act and described in the Final EA, Section 3.3. Therefore, there would be no significant impacts for either of the alternatives.

iii. Biological Resources

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, current effects to biological resources would continue as commercial air tours within the ATMP planning area would continue to fly at low altitudes (ranging from 800 to 1,000 ft. AGL). The current altitudes reported by air tour operators over the ATMP planning area are not in compliance with recommended buffer zones for raptor protection and may impact bald eagles, peregrine falcons, and Mexican spotted owls in the ATMP planning area in the form of nest flushing due to noise or collisions with aircraft. Commercial air tour noise would also continue to affect wildlife within the ATMP planning area. On days when air tours occur, noise above 35 dBA would occur for less than five minutes across 69% of the ATMP planning area, which has the potential to cause temporary disturbances in the behavior of bird foraging, mating, or nesting. However, these noise impacts are so infrequent and short in duration, they are not anticipated to cause adverse impacts to any of the federally listed species, including southwestern willow flycatcher, yellow-billed cuckoo, Mexican spotted owl, or any other wildlife species. This alternative would not be expected to result in indirect impacts.

b. Alternative 2 (Preferred Alternative)

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

c. Biological Resources Significance Determination

Both alternatives were presented for review to the U.S. Fish and Wildlife Service, the FAA has determined that the preferred alternative would have No Effect on federally listed species within the action area, which include the Mexican spotted owl, southwestern willow flycatcher, and yellow-billed cuckoo. Further, the FAA determined that the alternatives would have no impacts to species protected under the Migratory Bird Treaty Act (MBTA), which includes, golden eagle (*Aquila chrysaetos*), peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalis*), and western screech owl (*Megascops kennicottii*). Therefore, there would be no significant impacts to biological resources for either of the alternatives.

iv. Cultural Resources

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, cultural resources within the APE would continue to be impacted by air tours, as noise and visual effects would impact the feeling and setting of those resources. Air tours would also continue to impart an invasion of privacy on Diné residents and users of the Park, which would be inconsistent with the Park's purpose and values for which it was established. The presence of existing low-altitude overflights over the Park, including commercial air tours, unreasonably interferes with Tribal connections to the sacred landscape of the Park primarily due to Tribal concerns about privacy. Air tours over the Park interfere with the privacy of the Diné as they carry out ceremonies and sacred practices, the protection of which is a primary purpose of the Park.

Under the No Action Alternative, cultural resources within the APE experience air tour noise above 35 dBA for less than five minutes a day across 69% of the ATMP planning area. These noise effects would continue to occur under the No Action Alternative, including those that interrupt Tribal dances and religious ceremonies. Although some noise and visual intrusions would continue to be present under the No Action Alternative, they would be infrequent and limited to a few minutes per day and approximately 43 instances per year. The No Action Alternative is not expected to result in indirect effects to cultural resources within the APE, although the potential for cumulative noise and visual effects would be the greater under the No Action Alternative when compared to Alternative 2.

b. Alternative 2 (Preferred Alternative)

Under Alternative 2, commercial air tours would not be conducted within the ATMP planning area, which would reduce the noise and visual intrusions of air tours from impacting the feeling and setting of cultural resources within the APE compared to the No Action Alternative. Alternative 2 would be most consistent with the Park's purpose and values for which it was established, as the elimination of air tours within the APE would improve privacy conditions for the Diné during traditional uses and ceremonies in the Park. Alternative 2 would have the potential for indirect noise impacts due to the displacement of air tours outside the ATMP planning area. Under Section 106 of the NHPA, the FAA made a finding that Alternative 2 will not adversely affect historic properties. Southwest Safaris commented objecting to the finding. After continued consultation with Southwest Safaris, the objection could not be resolved. The FAA requested the Advisory Council on Historic Preservation's (ACHP) review of the finding and the ACHP responded that the FAA had appropriately applied the criteria of adverse effect for the undertaking and a finding of "no adverse effect" to historic properties was reasonable. After review of the ACHP advisory opinion, the FAA confirmed the finding that the ATMP would have no adverse effect and provided this response to the ACHP and all consulting parties.



c. Cultural Resources Significance Determination

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

v. Environmental Justice and Socioeconomics

a. Alternative 1 (No Action Alternative)

The No Action Alternative would not result in disproportionately high and adverse impacts to environmental justice (EJ) populations or impact those populations in ways that are unique to those EJ populations, based on impacts on noise, air quality, and viewsheds within the study area. The DNL is expected to be below 35 dB under this alternative. The No Action Alternative would not cause pollutant concentrations to exceed one or more of the NAAQS for any of the time periods analyzed or increase the frequency or severity of any such existing violations. The range of total amount of annual GHG emissions resulting from commercial air tours in the ATMP planning area would be 1.5 MT CO<sub>2</sub>. Impacts would continue to occur to visual resources under the No Action Alternative as commercial air tours would continue to contrast the scenic vistas and natural areas in the Park, but the visual resources of the Park would still be viewable at times of the day when commercial air tours were not present within the study area (a peak month, average day consists of one air tour). Assuming 43 air tours per year, populations of EJ concern that reside in the ATMP planning area have up to a 12% chance of an air tour flight within sight of their homes and communities on any given day. Government to government consultation has indicated Tribal concerns that commercial air tours in the ATMP planning area constitute an invasion of privacy, which have potentially adverse social and cultural implications.

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

of community, cause extensive relocation, disrupt traffic patterns, or produce a substantial change in the community tax base.

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

b. Alternative 2 (Preferred Alternative)

Alternative 2 would result in a minimal reduction in noise, air emissions, and visual impacts compared to those currently occurring under the No Action Alternative and would not result in disproportionately high and adverse noise, air quality, or visual impacts to EJ populations. Alternative 2 could impact employment or the amount of income that the air tour operator and other ancillary businesses generate from conducting air tours within the ATMP planning area.

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

c. Environmental Justice and Socioeconomics Significance Determination

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

vi. Visual Effects

a. Alternative 1 (No Action Alternative)

Under the No Action Alternative, air tours would continue to impact viewsheds, especially at the highest points in the Park where 360-degree views are available. Reporting data from 2017-2019 indicates that visitors have the potential, on average, to see commercial air tour aircraft 43 times per year. The maximum number of tours reported over the Park during this time period was two tours in a single day, though most days on which air tours were flown (approximately 99%) consisted of one tour. The unique visual resources within the Park, including dramatic canyons, rims, geological formations, and Ancestral Pueblo ruins, contrast with commercial air tours and would continue to detract from the visitor's opportunity to observe these resources when commercial air tours are present. Since the Park consists primarily of a natural landscape, the encroachment of commercial air tour aircraft on these viewsheds could temporarily detract from the visitor's opportunity to observe these unique scenic vistas and natural areas on days where air tours are flown. No indirect impacts would be expected to occur under this alternative. The cumulative visual effects under the No Action Alternative would have a greater potential for adverse cumulative impacts on viewsheds when compared to Alternative 2.

b. Alternative 2 (Preferred Alternative)

Alternative 2 would provide protection of Park viewsheds by prohibiting air tours in the ATMP planning area. Alternative 2 has the potential to result in the displacement of air tours and could result in indirect effects to visual resources from air tours flying outside of the ATMP planning area. Cumulative impacts would be fewest under Alternative 2 as there would be no tours permitted within the ATMP planning area.

c. Visual Effects Significance Determination

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

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

a. Alternative 1 (No Action Alternative)

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

b. Alternative 2 (Preferred Alternative)

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

c. DOT Act Section 4(f) Resources Significance Determination

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

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

## **XI. Mitigation and Minimization**

The attached Final EA examined each of the environmental impact categories that were determined to be present in the ATMP planning area or had the potential to be impacted by the proposed action. The FAA is not proposing mitigation as part of this project because implementation of this ATMP for the Park would not cause any environmental impacts that would exceed the FAA thresholds of significance for any environmental impact category.

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

## **XII. Public Involvement**

The FAA, in coordination with NPS, prepared a Draft EA in compliance with NEPA to analyze a range of alternatives and evaluate potential issues and impacts as part of the ATMP planning process. In addition, NPATMA requires that the agencies publish notification of the availability of a Draft ATMP in the Federal Register for public comment and to hold at least one public meeting for each Draft ATMP. The Draft ATMP and the Draft EA were released on April 3, 2024 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 April 3, 2024, a news release posted on the Park's website social media accounts, and emails to stakeholder groups including federal, state, and local agencies and community organizations, associations, businesses, and interest groups.

The agencies held public meetings for the Draft ATMP and Draft EA on April 16 and 17, 2024 and accepted public comments from April 3 through May 3, 2024. In addition, Park staff responded to media inquiries.

During the public review period, the agencies received 25 correspondences on the Draft EA and Draft ATMP. The agencies reviewed and analyzed the public comments and used them to revise the Draft ATMP and Draft EA and prepare a Final ATMP, Final EA, and FONSI/ROD. See Appendix K of the Final EA, *Public Involvement Materials*, for more information.

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

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

The FAA and the NPS conducted a Section 7 analysis for those federally listed species described in Section 3.4.1 of the EA, Affected Environment for Biological Resources, in accordance with 50 CFR § 402.02. The FAA and the NPS initiated technical assistance with the U.S. Fish and Wildlife Service in 2023. The agencies determined the ATMP would have no effect on federally listed threatened or endangered species or their critical habitat. See Appendix H of the Final EA, *Section 7 No Effect Memo*, for additional analysis.

The agencies analyzed potential impacts to species not listed on the Endangered Species Act, but which are protected under the MBTA, including, golden eagle (*Aquila chrysaetos*), peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalis*), and western screech owl (*Megascops kennicottii*). Because the preferred alternative would prohibit commercial air tours within the action area, it is reasonably foreseeable that current air tour operators could offer air tours outside of the action area, as the areas beyond the action area would not be regulated by the ATMP. It is difficult to predict with

specificity if, where, and to what extent any air tours would be displaced to areas outside the action area, including at altitudes at or above 5,000 ft. AGL. However, air tours outside of the action area are outside the jurisdiction of the ATMP and not subject to NPATMA. Based on the agencies' analysis, there would be no impacts from the Preferred Alternative on species protected under the MBTA.

## **B. National Historic Preservation Act**

The agencies continued consultation under Section 106 with an evaluation of the effects of Alternative 2, as the preferred alternative, on historic properties. The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 21, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties that may be located within the APE. Through this initial letter and follow up communication, the FAA identified tribes that expressed interest in participating in the Section 106 consultation process. On June 2, 2023, the FAA sent the participating federally recognized tribes, including the Navajo Nation THPO, a Section 106 consultation letter describing the proposed undertaking in greater detail in which a proposed APE and the results of the preliminary identification efforts of historic properties was provided.

The FAA invited the National Parks Conservation Association (Arizona Field Office) and Apache County to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively and included them as consulting parties in subsequent consultation. On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106 and provided a Section 106 consultation letter describing the proposed undertaking and proposed an APE. In the June 2, 2023, letter, the FAA also provided the results of our preliminary identification of historic properties. Responses from consulting parties to the FAA's June 2, 2023 letter were received on June 5, 2023 from Pueblo of Pojoaque; June 9, 2023, June 12, 2023 and June 30, 2023 from Southwest Safaris; June 15, 2023 from Air Grand Canyon and Grand Canyon Air; and July 21, 2023 from the National Parks Conservation Association.

A letter dated October 26, 2023, sent to all consulting parties, described FAA's further efforts to identify and evaluate historic properties within the APE. FAA received Southwest Safaris response on November 14, 2023; Southwest Safaris did not agree with the FAA's selection of historic sites for inclusion in the APE. FAA continued to work to resolve the objection through subsequent correspondence with Southwest Safaris in November 2023.

The agencies published a notice in the Federal Register, inviting the public to engage in the Section 106 process and provide feedback on the APE and historic property identification. The agencies accepted comments through the NPS's Planning, Environment & Public Comment (PEPC) website from November 2 through December 1,

2023. Nine comments were submitted, all supporting the discontinuation of air tours over the Park.

On October 25, 2023, IKG Air, LLC dba American Air provided a notice of intent to FAA to maintain IOA. FAA sent a letter on December 5, 2023 inviting IKG Air, LLC dba American Air to consult. On December 28, 2023, the FAA sent letters to the Navajo Nation Tribal Historic Preservation Officer and other consulting parties to notify them of a finding of “no adverse effect” determination and request review and concurrence on this determination.

FAA received a response to FAA’s December 28, 2023 letter from the National Parks and Conservation Association on January 23, 2024 and from Southwest Safaris on January 29, 2024. The January 29, 2024 letter from Southwest Safaris objected to the finding of effects in the FAA’s December 28, 2023 letter. A response to this letter was sent by FAA on April 10, 2024. Both letters are in Exhibit 6 of Appendix G.

After continued consultation with Southwest Safaris, the objection could not be resolved; therefore, on June 4, 2024, the FAA requested the ACHP’s review of the finding pursuant to 36 CFR § 800.5(c)(2) and (3). On June 30, 2024, the ACHP responded to FAA’s request for ACHP review stating that FAA has appropriately applied the criteria of adverse effect for this undertaking and a finding of “no adverse effect” to historic properties is reasonable. After review of the ACHP advisory opinion, the FAA confirmed the finding that the ATMP at Canyon de Chelly National Monument would have no adverse effect on historic properties. However, the ACHP expressed concern that the FAA should have undergone the consultation process described under Section 304 of the NHPA and 36 CFR § 800.11(c) to address confidentiality concerns associated with Traditional Cultural Properties that were not disclosed in the EA. On August 5, 2024, the FAA submitted a letter to the Keeper of the National Register of Historic Places requesting concurrence with the Agencies’ determination that the information was protected from disclosure under Section 304 of the NHPA. On September 4, 2024 the Keeper responded to FAA’s request, agreed with the agency’s proposal that withholding this information from selected parties falls under the authority of Section 304, and recommended the FAA withhold the information in its entirety to ensure the FAA and NPS meet their responsibilities under Section 304, the Archaeological Resources Protection Act, and their trust obligations to Tribal partners.

The FAA provided the Keeper’s response to the ACHP and all consulting parties on the project in a letter dated October 3, 2024, thereby concluding the Section 106 process. See Appendix G for the EA, Section 106 Consultation and Summary, for more information.

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

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

The FAA determined that there would be no constructive use to Section 4(f) resources under Alternative 2 because noise, vibrational, and visual impacts from commercial air tours under this alternative would not constitute a substantial impairment of Section 4(f) resources in the Section 4(f) study area. As part of the Draft ATMP and Draft EA development, the FAA consulted with the NPS and other Officials with Jurisdiction over Section 4(f) resources in the Section 4(f) study area regarding FAA's preliminary finding of no substantial impairment, and hence, the FAA's proposed no constructive use determination. The FAA sent letters to each Section 4(f) property's Official with Jurisdiction with this preliminary finding concurrent with the release of the Draft EA for public review. Additionally, the FAA notified the National Park Service (NPS) of the determination via email. The 14-day response period for both review requests closed on April 18, 2024. At the conclusion of the review period, no responses or objections were received. Therefore, the FAA made a final determination that the preferred alternative would not constitute a use of the Section 4(f) resources. Refer to Appendix L of the Final EA, Section 4(f) Analysis, for additional details on this coordination.

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

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

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

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

**F. Consultation with the National Parks Overflights Advisory Group**

The FAA Reauthorization Act of 2024 was signed on May 16, 2024. Section 628 of the Reauthorization amends the National Parks Air Tour Management Act (NPATMA) to require consultation with the National Parks Overflights Advisory Group (NPOAG) as part of the procedural requirements for completing an air tour management plan. See 49 U.S.C. § 40128(b)(4)(E).

Consistent with the recent amendment of NPATMA, the agencies initiated consultation regarding the Draft ATMP with the NPOAG via signed letter sent by email dated July 8, 2024. The agencies requested the NPOAG's advice, information, and recommendations regarding the Draft ATMP for the agencies' consideration no later than August 8, 2024. The agencies received an email on August 6, 2024 requesting a two-week extension. In order to meet the court-approved timeframe for completing the ATMP for the Park, the



agencies initially declined to extend the deadline. The agencies received a response from some members of the NPOAG on August 8, 2024.

On August 19, 2024, the agencies notified the NPOAG that they would have sufficient time to fully consider NPOAG input on the Draft ATMP if it were provided by September 3, 2024. The NPOAG provided comments regarding the Draft ATMP on September 3, 2024, including overarching comments on the ATMP process and some specific comments regarding the Park's ATMP. In finalizing the ATMP, the agencies have considered all advice, information and recommendations included in NPOAG's September 3, 2024 letter, focusing on those comments specific to or relevant to the Park's ATMP. This consultation was separate from, and in addition to, the agencies' regular meetings with NPOAG throughout the ATMP planning process where the agencies generally discussed the process by which ATMPs were being developed. It was also separate from, and in addition to, the public comment period for the Canyon de Chelly Draft ATMP and Draft EA (refer to Appendix M, NPOAG Communications).

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

The agencies considered and responded to public comments received on the Draft ATMP and Draft EA. There were changes made to the substantive provisions of the ATMP. Clarifying edits were made to Section 5.0 Justification for Measures Taken to make clear that the NPS found that commercial air tours within the ATMP boundary were causing significant adverse impacts under NPATMA on the Park's cultural resources and intrusions on the privacy of the Navajo people on Tribal lands and to include the American Indian Religious Freedom Act. Edits also made clear that the conditions in the ATMP were acceptable and effective measures designed to mitigate or prevent significant adverse impacts to the Park's cultural resources and intrusions on the privacy of the Navajo people on Tribal lands. Explanatory edits were also made to explain intangible cultural resources.

Further, changes were made to Section 6.0 New Entrants to make clear that because the agencies decided to prohibit air tours within the ATMP boundary, they will not be considering new entrant applications unless there is an amendment to the ATMP which allows commercial air tour operations.

Administrative changes included adding the word "FINAL" to the title of the ATMP and adding the names of the signatories.

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

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

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

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

The provisions and conditions in the ATMP are designed to mitigate or prevent significant adverse impacts to the Park's cultural resources and to Tribal lands. The agencies acknowledge that the FAA made a finding of no significant impacts for both the No Action Alternative and the preferred alternative under NEPA. The NPS also found no significant impacts for the selected alternative. However, per NPS policy, the NPS does not make significance findings under NEPA for unselected alternatives and has not made such a finding for the No Action Alternative. The agencies have considered under Section 40128(b)(1)(B) of NPATMA whether the impacts of commercial air tours are significant adverse impacts on the Park's natural and cultural resources, visitor experiences, and Tribal lands. NPS determined that commercial air tours are causing significant adverse impacts on the Park's cultural resources and on Tribal lands. The NPS further found that prohibiting commercial air tours within the ATMP boundary is necessary to mitigate or prevent these significant adverse impacts. Because of NPS's expertise in managing the National Park System and NPS' role and involvement in overseeing the Park and the Park's resources and Tribal lands, the FAA has deferred to NPS's determination under NPATMA.

The NPS is charged by its Organic Act with conserving National Park System resources "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. § 100101(a). This mandate "applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired." NPS 2006 Management Policies § 1.4.3. The cultural resources that the NPS preserves under its Organic Act are broader than "historic properties" under the National Historic Preservation Act. As defined in NPS Management Policies (2006), a cultural resource is "an aspect of a cultural system that is valued by or

significantly representative of a culture, or that contains significant information about the culture.” It may be tangible or may be a cultural practice or connection to a landscape. Tangible cultural resources in the Park include archeological sites, sacred sites, ancestral sites, cultural landscapes, and traditional cultural properties, all of which include the natural resources within them. Intangible cultural resources include the cultural connections that the Navajo people have to these lands, including carrying out traditional cultural practices and ceremonies within the Park. The Park’s cultural resources necessarily include resources that are culturally and spiritually significant to the Navajo Nation because the Park is located entirely on Tribal trust lands.

The ATMP also supports NPS management objectives consistent with the co-management relationship that NPS has with the Navajo Nation regarding specific decisions involving the monument. Thus, in making management decisions about the monument, the NPS gave due consideration to the Nation’s concerns about the significant adverse impacts under NPATMA of commercial air tours on the Park’s cultural resources, traditional cultural practices, and intrusions on privacy on Tribal lands. The concerns communicated include information and input received from the Navajo Nation Chapters that represent the Diné people living in and around the ATMP boundary, representatives from Departments in the Navajo Nation Executive Branch, and the President of the Navajo Nation regarding the impacts of air tours on the privacy of the Navajo people, Tribal sacred sites, and ceremonial areas.

Resolutions from the Tsaile/Wheatfields, Lukachukai, Nazlini, Chinle, and Sawmill Navajo Chapters expressed that overflights, including commercial air tours, are disruptive and limit Tribal members’ ability to engage freely in religious and cultural activities in the Park. During a public meeting at the Chinle Chapter House on April 16, 2024, Tribal members overwhelmingly did not support commercial air tours over the Park. Representatives from the Navajo Nation’s Executive Offices have stated that disclosing the time and location of their sacred practices would violate their privacy. They consider the entire landscape of the Park to be sacred and believe air tours are inappropriate and constitute an adverse effect on the cultural landscape, wildlife, and plants. Representatives from the Navajo Nation stated that overflights, including commercial air tours, disturbed gatherings and traditional religious practices at sacred sites, impacted viewsheds to sacred geological formations and natural features, are inappropriate to the sacred landscape, and disrupt the tranquility of accessing the lands for reflection or cultural purposes. The Resolutions emphasized that overflights, including commercial air tours, have negative impacts on the cultural heritage of dances, traditional events, agriculture, and hunting, among other events and activities.

The NPS gives due consideration to Tribal recommendations and indigenous knowledge in the planning and management of Federal lands and waters, which include the Park. See NPS Policy Memorandum 22-03, *Fulfilling the National Park Service Trust Responsibility to Indian Tribes, Alaska Natives, and Native Hawaiians in the Stewardship of Federal Lands and Waters* (setting forth NPS policy and guidance on implementation

of Secretary's Order No. 3403, *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters*). Secretary's Order 3403 states that the Department of the Interior is "charged with the highest trust responsibility to protect Tribal interests and further the nation-to-nation relationship with Tribes" when managing Federal lands and waters. The United States' trust responsibility to Indian Tribes stems from the unique historical relationship and treaty obligations between the United States and Indian Tribes. Secretary's Order 3403 therefore directs all bureaus and agencies with the Department to ensure that all Departmental decisions "relating to Federal stewardship of Federal lands, waters, and wildlife under their jurisdiction include consideration of how to safeguard the interests of any Indian Tribes such decisions may affect." Thus, pursuant to NPS Policy Memorandum 22-03, the NPS consults and works directly with Indian Tribes on planning and resource management activities that may directly or indirectly affect Tribal interests, practices, or traditional use areas.

The American Indian Religious Freedom Act sets U.S. policy to preserve and protect Tribal freedom to worship through ceremonials and traditional rites. 42 U.S.C. § 1996. Consistent with this policy and pursuant to Executive Order 13007, Indian Sacred Sites, the NPS will, to the greatest extent practicable, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical and spiritual integrity of such sacred sites; collaborate with Indian and other traditionally associated peoples who have identified sacred sites within units of the National Park System to prepare mutually agreeable strategies for providing access; and enhance the likelihood of privacy during religious ceremonies.

Based on information received during consultation and during the public comment period, NPS found that air tours intrude on the Diné religious and cultural activities and interrupt and degrade both the tangible and intangible associations the Diné experience during use of their traditional cultural properties, the protection of which is a significant Park purpose. Because continuing cultural connections to the Park and relationships are fundamental values of the Park and are significant to the Park's purpose, air tours and their resultant interference with Tribal connections to the land and the privacy of the Navajo people are inconsistent with the Park's purpose and values for which it was established. Thus, the NPS found under NPATMA that commercial air tours are causing significant adverse impacts on the Park's cultural resources and on Tribal lands.

The significant adverse impacts on Tribal lands are primarily due to the invasion of the privacy of the Navajo people. The significant adverse impacts on the Park's cultural resources relate to traditional cultural properties and the intrusion of commercial air tours upon the performance of ceremonies, rituals prayers, and other traditional practices. The invasion of privacy creates an aversion to perform ceremonies, rituals, prayers and traditional practices under observation. This aversion can lead to a deterioration of the link between the resource and the communities that value it, thus impacting the association that creates the cultural resource's significance.

The impacts of commercial air tours on Tribal connections to the land and the privacy of the Navajo people could not be mitigated by modifying the air tour routes within the ATMP boundary. National Register-listed or eligible cultural resources, including archaeological resources, Tribal sacred sites, cultural landscapes, and ancestral sites occur throughout the Park, which is listed in the National Register in its entirety and contains many traditional cultural properties within. Due to the shape of the Park, which was defined by the canyons and waterways of the landscape, and because sensitive locations are densely distributed throughout the Park, air tours cannot be rerouted to avoid sensitive locations. Similarly, increasing the altitude of tours within the ATMP boundary would not address the Tribal concerns expressed as the tours would still be visible to the canyon residents.

Further, because the Diné reside on Tribal trust lands within the Park and because the Diné continually practice their traditional activities and religious ceremonies within the Park, timing of air tours cannot be adapted to avoid these activities. Those activities continuously occur and are central to the Park's purpose of providing connection and relationship of the Diné to the Tribal trust lands and resources within the Park. Further, representatives from the Navajo Nation's Executive Divisions and Departments have also stated that disclosing the time and location of their sacred practices would violate their privacy. Thus, provisions, such as time-of-day restrictions or no-fly periods, would be unlikely to be effective in avoiding the impacts identified in the Resolutions and the President's letter and thus would be unlikely to avoid impacting this fundamental Park purpose.

Thus, the provisions and conditions in the ATMP protect the confidentiality of sacred sites in the Park which is listed in the National Register in its entirety and contains many traditional cultural properties and other cultural resources that are sacred to the Navajo Nation; respect the spiritual significance of the Park to the Navajo people; maintain cultural connections to the Park; respect the privacy of Navajo people during traditional uses and ceremonies; respect the privacy of the Navajo people living within the ATMP boundary; and prioritize the voices and values of the people of the Navajo Nation, especially those that live within or adjacent to the Park.

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

NPATMA authorizes the agencies to prohibit air tours within the ATMP boundary. The NPS has determined under NPATMA that commercial air tours are causing significant

adverse impacts on the Park's cultural resources and on Tribal lands. The NPS has further determined that, as a result of those impacts, allowing air tours within the ATMP boundary is inconsistent with the Park's purpose, significance, and fundamental resources and values. Because the Park is located entirely on lands held in trust by the United States for the Navajo Nation, the agencies carefully considered their trust obligations. NPS and Departmental policy and guidance were strictly adhered to in establishing this ATMP. For instance, the NPS engaged directly in government-to-government consultation with the Navajo Nation regarding how the ATMP may safeguard the Tribe's sacred cultural resources and practices. The NPS also gave due consideration to how its management decisions involving the Park and the ATMP may safeguard these Tribal interests implicated by the Park's unique location on Tribal trust lands. For the foregoing reasons, the prohibition of commercial air tours within the ATMP boundary is an acceptable and effective measure to mitigate or prevent significant adverse impacts on the Park's cultural resources and Tribal lands, both of which are impacts from commercial air tours that cannot be otherwise mitigated. Accordingly, the agencies decided to implement the ATMP which prohibits commercial air tour operations within the ATMP boundary in order to mitigate or prevent significant adverse impacts on the Park's cultural resources and Tribal lands.

While none of the alternatives in the Final EA trigger any FAA thresholds of significance or factors that the FAA considers in determining significance under NEPA, and this NEPA determination would inform the FAA's consideration of a significant adverse impact under NPATMA, NPATMA requires the FAA to work in cooperation with the NPS in developing either a voluntary agreement or an ATMP. To that end, the FAA has recognized NPS expertise regarding the management of the National Park System and considered NPS criteria in determining impacts on National Park System units. Consequently, the FAA has determined that the preferred alternative is a reasonable and safe basis for the ATMP.

The FAA reviewed the ATMP to identify and address any safety concerns. The FAA also reviewed all public comments received on the Draft ATMP that raised safety concerns. Under FAA regulations, the pilot-in-command is always required to take action to ensure the safe operation of the aircraft.

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

## **XVI. Decision and Order**

After careful and thorough consideration of the facts herein, and the reasons stated in Sections X(B) and XV, the FAA finds that the preferred alternative is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of NEPA and other applicable environmental requirements and is not a major federal action

significantly affecting the quality of the human environment or otherwise, including any condition requiring consultation pursuant to Section 102(2)(c) of NEPA.

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

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

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

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

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Kate Hammond Regional Director Interior Regions 6, 7, & 8 National Park Service	Date
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Raquel Girvin Regional Administrator Western Pacific Region Federal Aviation Administration	Date
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Raymond M. Sauvajot Associate Director Natural Resource Stewardship and Science Directorate National Park Service	Date
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Julie Marks Executive Director (A) Office of Environment & Energy Federal Aviation Administration	Date
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## **XVII. Right of Appeal**

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

## **XVIII. Attachments**

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

Appendix A: References

Appendix B: List of Acronyms, Abbreviations, and Glossary

Appendix C: List of Preparers

Appendix D: Distribution List

Appendix E: Environmental Impact Analysis Methods

Appendix F: Noise, Air Quality, and Greenhouse Gas Emissions Technical Analysis: Canyon de Chelly National Monument

Appendix G: Section 106 Consultation and Summary

Appendix H: Section 7 No Effect Memo

Appendix I: Navajo Nation Cooperating Agency Correspondence

Appendix J: Air Tour Management Exemption Withdrawal Letter

Appendix K: Public Involvement Materials

Appendix L: Section 4(f) Analysis

Appendix M: National Parks Overflights Advisory Group Correspondence

### **B. National Park Service - Non-Impairment Determination**

### **C. Final Air Tour Management Plan for Canyon de Chelly National Monument**