

Appendix G (Revised)

10/03/2024 FAA to ACHP Opinion Pursuant to 36 CFR 800.5(c)(3)(ii)(B) on the Federal Aviation Administration's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument

09/04/24 Response from the Keeper of the National Register of Historic Places

08/05/24 FAA to the Keeper of the National Register of Historic Places Request for Review Pursuant to 36 CFR 800.5(c)(2) of the FAA's Identification of Traditional Cultural Properties from the Implementation of an Air Tour Management Plan for Canyon de Chelly National Monument

06/04/24 FAA to ACHP Request for Review from the ACHP Pursuant to 36 CFR 800.5(c)(2) of the FAA's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan for Canyon de Chelly National Monument

Additional Communications

12/03/21 Follow-up email regarding invitation to consult

12/09/21 Follow-up email regarding invitation to consult

12/15/21 Follow-up phone call logs regarding invitation to consult

12/20/21 Follow-up phone call logs regarding invitation to consult

10/25/23 Notification from IKG Air, LLC dba American Aviation

10/03/2024 FAA to ACHP Opinion Pursuant to 36 CFR 800.5(c)(3)(ii)(B) on the Federal Aviation Administration's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 3, 2024

Re: Response to the Advisory Council on Historic Preservation's Opinion Pursuant to 36 CFR 800.5(c)(3)(ii)(B) on the Federal Aviation Administration's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (ACHP Project Number: 021045)

Ms. Jaime Loichinger
Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street, Ste. 308
Washington, DC 20001

Dear Ms. Loichinger:

Thank you for your advisory opinion dated June 30, 2024, in response to the Federal Aviation Administration's (FAA) request for the Advisory Council on Historic Preservation's (ACHP) review of the proposed finding of no adverse effect for the undertaking (ATMP) for Canyon de Chelly National Monument (the Park). In accordance with 36 CFR 800.5(c)(3)(ii), the FAA, in coordination with the National Park Service (NPS), considered the ACHP's opinion in affirming the finding of no adverse effect for the undertaking.

The ACHP concurred with the agency's finding of no adverse effect for the undertaking and found that the proposed finding was supported by the Section 106 review and the record of consultation. It also expressed concern that the agency should have undergone the consultation process described in Section 304 of the NHPA and 36 CFR § 800.11(c) before withholding information regarding historic properties due to confidentiality concerns.

On August 5, 2024, the FAA conducted consultation with the Keeper of the National Register of Historic Places (Keeper) in accordance with 36 CFR § 800.11(c). On September 4, 2024, the Keeper responded agreeing that withholding this information from consulting parties falls under the authority of Section 304 of the NHPA and recommended that the document be withheld in its entirety to ensure that the FAA and the NPS meet their responsibilities under Section 304, the Archaeological Resources Protection Act, 16 U.S.C. § 470hh(a), and their trust obligation to Tribal Nations.

The FAA affirms its finding that the ATMP for Canyon de Chelly National Monument will result in no adverse effects to historic properties within the APE and notes ACHP's agreement that the finding is supported by the Section 106 review and record of consultation.

Should you have any questions regarding any of the above, please contact me at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

Julie Marks
Executive Director, AEE-1
FAA Office of Environment and Energy

CCs: Rachael Mangum, Advisory Council on Historic Preservation
Bruce Adams, Southwest Safaris

Enclosure

Exhibit 1 – Letter Initiating ACHP Review, dated November 21, 2023, and Response

09/04/24 Response from the Keeper of the National Register of Historic Places



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW

Washington, DC

20240

September 4, 2024

Judith Walker

Federal Preservation Officer

Environmental Policy Division (AEE-400)

Federal Aviation Administration

Ms. Walker,

This message serves to conclude consultation initiated by the Federal Aviation Authority (FAA), in coordination with the National Park Service (NPS), on August 5, 2024 with the Keeper of the National Register per 54 U.S.C. § 307103 (S.304). The consultation concerns the agency's responsibility to protect information about historic properties in documents developed in the course of the Section 106 process for the implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. The information in question was obtained by the agency under permit from the Navajo Nation's Heritage & Historic Resources Preservation Department (NNHHPD) and so is also protected under the authority of the Archeological Resources Protection Act (ARPA)(16 U.S.C. § 470hh). As per 54 U.S.C. §307103(c), the Keeper's office consulted with the Advisory Council on Historic Preservation (ACHP) on our recommendations because the information in question was generated in the course of compliance with Section 106 of the NHPA.

On behalf of the FAA and the NPS, the United States Department of Transportation's Volpe National Transportation Systems Center (Volpe) conducted a records search at the NNHHPD to identify TCPs and other historic properties located within the project's Area of Potential Effects (APE), all of which is on the Navajo Nation's Tribal trust lands. The records search was conducted during the Identification of Historic Properties phase of the Section 106 process. To conduct the records search, Volpe acquired a Class B Cultural Resources Investigation Permit from the NNHHPD specifying that the resources and information regarding them were protected by the ARPA and that "the permittee will NOT share sensitive archaeological site locations, Traditional Cultural Property (TCP) locations, burial locations, or ethnographic information. They will limit the use of data to the purposes authorized within the scope of job responsibilities." During the search, Volpe took detailed notes about 33 historic properties identified as TCPs by the Navaho Nation within the project's APE. These detailed notes are the subject of this request for restriction. The agencies, in concurrence with the THPO, consider the TCPs as eligible for the National Register. In keeping with the stipulations of the permit, the agencies did not share descriptive or locational information about these resources with selected consulting parties except for numerical identifiers and the locations of two historic properties already publicly interpreted by NPS (Spider Rock and White House Ruins).

The Keeper agrees with the agency's proposal that withholding this information from selected consulting parties falls under the authority of S.304. Protecting information about the religious significance and practices of Tribal partners as it pertains to the location and character of historic properties will: (1) prevent a significant invasion of privacy; (2) risk harm to historic properties; or (3) impede the use of a traditional religious site by practitioners. This context of risk is underscored by the agency's documentation of concerns provided by the Navajo Nation during government-to-government consultation and public comment that '.... this information, if released, could be used to locate historic sites of significance to the Navajo Nation and other tribes on property currently owned by the Navajo Nation. If released, tribal members may be interrupted by members of the public when conducting ceremonies.'" Despite the presence of limited amounts of previously released information in the documents, the Keeper recommends that the agency withhold the document in its entirety to ensure that the FAA and NPS meet their responsibilities under S.304, ARPA, and their trust obligations to Tribal partners.

Please do not hesitate to contact me if you have any questions regarding these recommendations. I can be reached by email at michael_roller@nps.gov.

Respectfully,

Michael P. Roller, PhD
Archeologist, National Park Service
Archeology Program/ National Register/ National Historic Landmarks
1849 C St., NW - Mail Stop 7508
Washington, DC 20240

08/05/24 FAA to the Keeper of the National Register of Historic Places Request for Review Pursuant to 36 CFR 800.5(c)(2) of the FAA's Identification of Traditional Cultural Properties from the Implementation of an Air Tour Management Plan for Canyon de Chelly National Monument

Attachment A – Canyon de Chelly Foundation Document

Attachment B – Permit Number B23698

Attachment C – Volpe Notes – NOT INCLUDED

Attachment D – Finding of Effects Letter dated 12/28/2023, with the following attachments

Attachment A. List of Consulting Parties

(23 tribes; 5 opted out of further Section 106 consultation for the undertaking)

Attachment B. APE Map Including Existing Commercial Air Tour Route

Attachment C. List of Historic Properties in the APE & Description of Historic Characteristics

Attachment D. Summary of Noise Technical Analysis from NEPA Review

Attachment E – Southwest Safaris Objection dated 01/29/24

Attachment F – ACHP Opinion dated 06/30/24



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

August 5, 2024

Re: Request for Review from the Keeper of the National Register of Historic Places Pursuant to 36 CFR §800.11(c)(2) of the Federal Aviation Administration's Identification of Traditional Cultural Properties from the Implementation of an Air Tour Management Plan for Canyon de Chelly National Monument

Ms. Joy Beasley
Associate Director, Cultural Resources, Partnerships, and Science and
Keeper of the National Register of Historic Places
National Park Service
1849 C Street NW
Washington, DC 20240

Dear Ms. Beasley:

The Federal Aviation Administration (FAA), as the lead Federal agency and in coordination with the National Park Service (NPS), is consulting with you pursuant to Section 304 of the National Historic Preservation Act (NHPA) of 1966, as amended, about information that was obtained by the agencies under permit from the Navajo Nation (Permit Number B23698). Consistent with the terms of the permit from the Navajo Nation's Heritage & Historic Resources Preservation Department under which the agencies were permitted to review information that the Department identified as protected from disclosure by the Archaeological Resources Protection Act (ARPA), the agencies have withheld all information regarding archaeological site locations, traditional cultural property (TCP) locations, burial locations or ethnographic information from consulting parties during the Section 106 process for the implementation of an Air Tour Management Plan for Canyon de Chelly National Monument. The FAA is requesting your concurrence in the agencies' determination that the information is protected under Section 304 of the National Historic Preservation Act and as such should not be released.

Canyon de Chelly National Monument is a National Park System unit located entirely on tribal lands held in trust by the United States for the Navajo Nation. It is one of the longest continually inhabited locations by American Indian communities in the United States, spanning at least 5,000 years. The monument was established to maintain and preserve an outstanding concentration of archaeological 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. The NPS's Foundation Document (**Attachment A**) provides background on the monument, its history,

purpose, and resources as well as its cultural importance to the Navajo. Navajo communities continue to live in and around the monument.

On behalf of the FAA and the NPS, the United States Department of Transportation's Volpe National Transportation Systems Center (Volpe) conducted a records search at the Navajo Nation's Heritage and Historic Preservation Department to identify TCPs located within the project's Area of Potential Effects (APE), all of which is on the Navajo Nation's Tribal trust lands. The records search was conducted during the Identification of Historic Properties phase of the Section 106 process. To conduct the records search, Volpe acquired a Class B Cultural Resources Investigation Permit from the Heritage and Historic Preservation Department (**Attachment B**), which specified that the resources and information regarding them were protected by the ARPA and that "the permittee will NOT share sensitive archaeological site locations, Traditional Cultural Property (TCP) locations, burial locations, or ethno-graphic information. They will limit the use of data to the purposes authorized within the scope of job responsibilities." Furthermore, while at the Heritage and Historic Preservation Department, Volpe was not allowed to photocopy records and maps or photograph anything during the records search. Thus, this request does not include any such documentation. Volpe did, however, take detailed notes about each of the TCPs that were identified (**Attachment C**). These detailed notes are the subject of this request for concurrence.

Given that the conditions of the permit (**Attachment B**) that demonstrate the Navajo Nation's position that the information is protected from disclosure under the ARPA, the FAA withheld the information in **Attachment C** from consulting parties during Section 106 consultation. On December 28, 2023, the FAA proposed a finding that the implementation of an ATMP for the monument prohibiting all air tours over the monument within ½ mile of its boundary would result in no adverse effect on historic properties under Section 106 of the National Historic Preservation Act (NHPA), in accordance with 36 CFR 800.5(c). In its finding of effects letter (**Attachment D**), the FAA provided a list of TCPs within the area of potential effects only identifying them by the identification number assigned by the Navajo Nation's Heritage & Historic Resources Preservation Department and providing cardinal direction location information only. TCPs were not identified on maps except for Spider Rock TCP and White House TCP, which are both interpreted to the public by the NPS. Only a general description of the characteristics that qualify these TCPs for listing in the National Register of Historic Places was provided to protect location information and descriptions of archaeological components that were part of some of these TCPs.

On January 29, 2024, the FAA received an objection to the finding from an air tour operator, Southwest Safaris in which one of the bases for the objection was that "[a]ll claimed historic properties at [the park], should be identified on a map, the argument for privacy notwithstanding." (**Attachment E**, Pg. 26). The operator further contended that "The FAA is wrongly withholding the locations of historic sites that would be essential for planning air tour routes." Due to the objection received, the FAA requested an opinion from the Advisory Council on Historic Preservation (ACHP) in accordance with 36 CFR §800.5(c)(2)(i). While the ACHP concurred with the FAA's proposed finding, the ACHP's opinion noted 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 and determine who may have access to the information (**Attachment F**).

The agencies agreed to keep the locations of archaeological sites and TCPs confidential pursuant to the terms of the permit (**Attachment B**), consistent with the ARPA, 16 U.S.C. § 470hh, and their trust obligations to the Navajo Nation. The detailed notes (**Attachment C**) also contain locational and other information that the agencies agreed to keep confidential consistent with their ARPA and trust

obligations. The agencies have determined that locational information that the operator wants disclosed and the information contained in **Attachment C** are also protected from disclosure under Section 304 of the NHPA, 54 U.S.C. § 307103. Based on information received from the Navajo Nation during government-to-government consultation and public comment, this information, if released, may cause a significant invasion of privacy (here, the invasion of privacy would be related to disclosure of the traditional practices and customs of the Navajo), risk harm to the historic property, and impede the use of a traditional religious site by practitioners. Specifically, this information, if released, could be used to locate historic sites of significance to the Navajo Nation and other tribes on property currently owned by the Navajo Nation. If released, tribal members may be interrupted by members of the public when conducting ceremonies. The Navajo Nation's position that the information must be kept confidential is expressed in the terms of the permit issued by its Heritage & Historic Resources Preservation Department (**Attachment B**).

In light of the above and given the agencies' obligations to protect the information contained in **Attachment C** under ARPA and the terms of the permit, the FAA is seeking your concurrence that the information in **Attachment C** meets one or more of the conditions in 54 U.S.C. § 307103. Though a consulting party has requested disclosure of this information, the FAA is proposing to withhold disclosure and access to the information. Further, the Navajo Nation's Heritage and Historic Preservation Department deems this information as protected from disclosure by the ARPA and as such disclosure would be also inconsistent with the commitment the agencies made to the Heritage & Historic Resources Preservation Department in order to access this sensitive information. Consistent with 54 U.S.C. 307103(c) we are also providing the supporting documentation, by copy of this letter to the ACHP.

Should you have any questions regarding any of the above, please contact me at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

CCs: Richard Begay, Navajo Nation Tribal Historic Preservation Officer
Jaime Loichinger, Director, Office of Federal Agency Programs, ACHP
Lyn Carranza, Superintendent, Canyon de Chelly National Monument
Jeffrey Durbin, Deputy Federal Preservation Officer, NPS

Enclosures

Attachment A – Canyon de Chelly Foundation Document
Attachment B -- Permit Number B23698
Attachment C – Volpe Notes

Attachment D – Finding of Effects Letter
Attachment E – Southwest Safaris Objection
Attachment D – ACHP Opinion

Attachment A – Canyon de Chelly Foundation Document



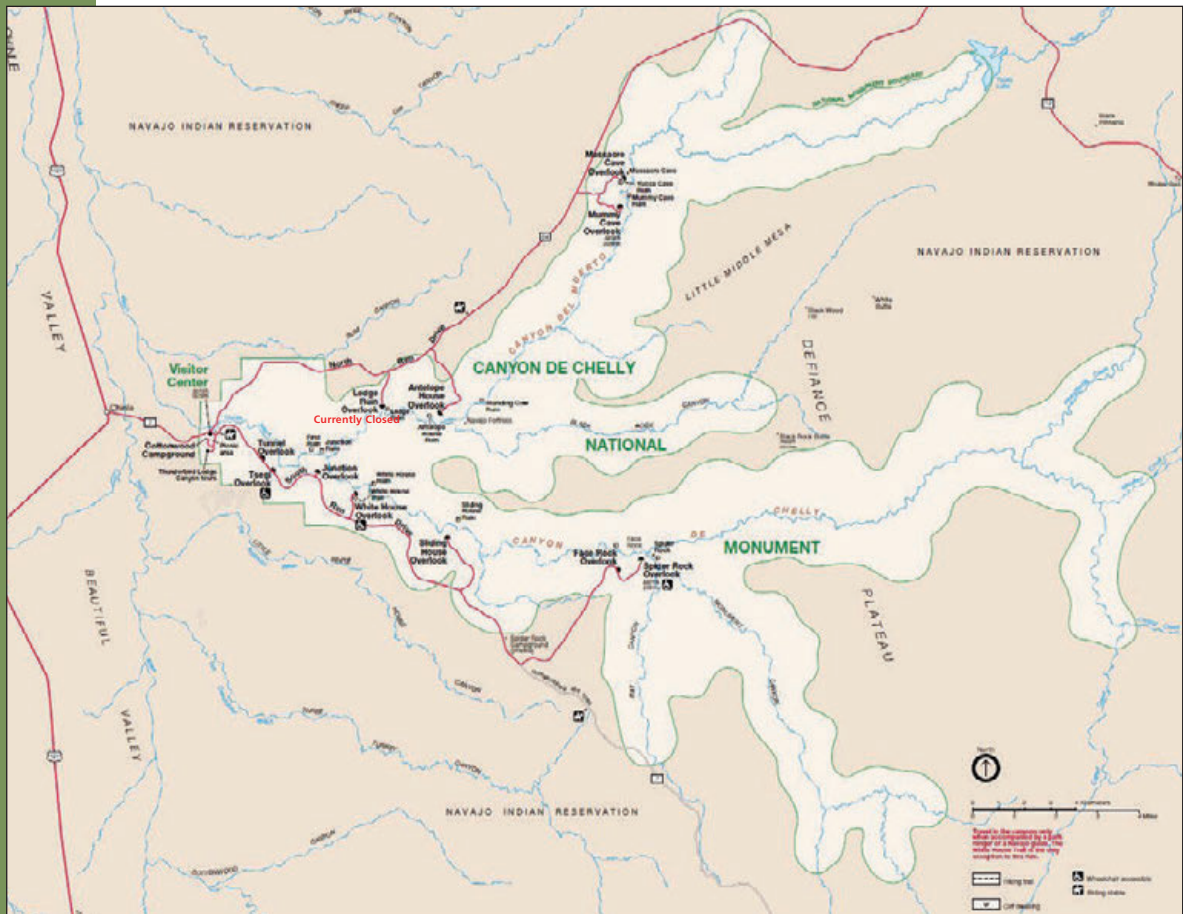
Foundation Document

Canyon de Chelly National Monument

Arizona

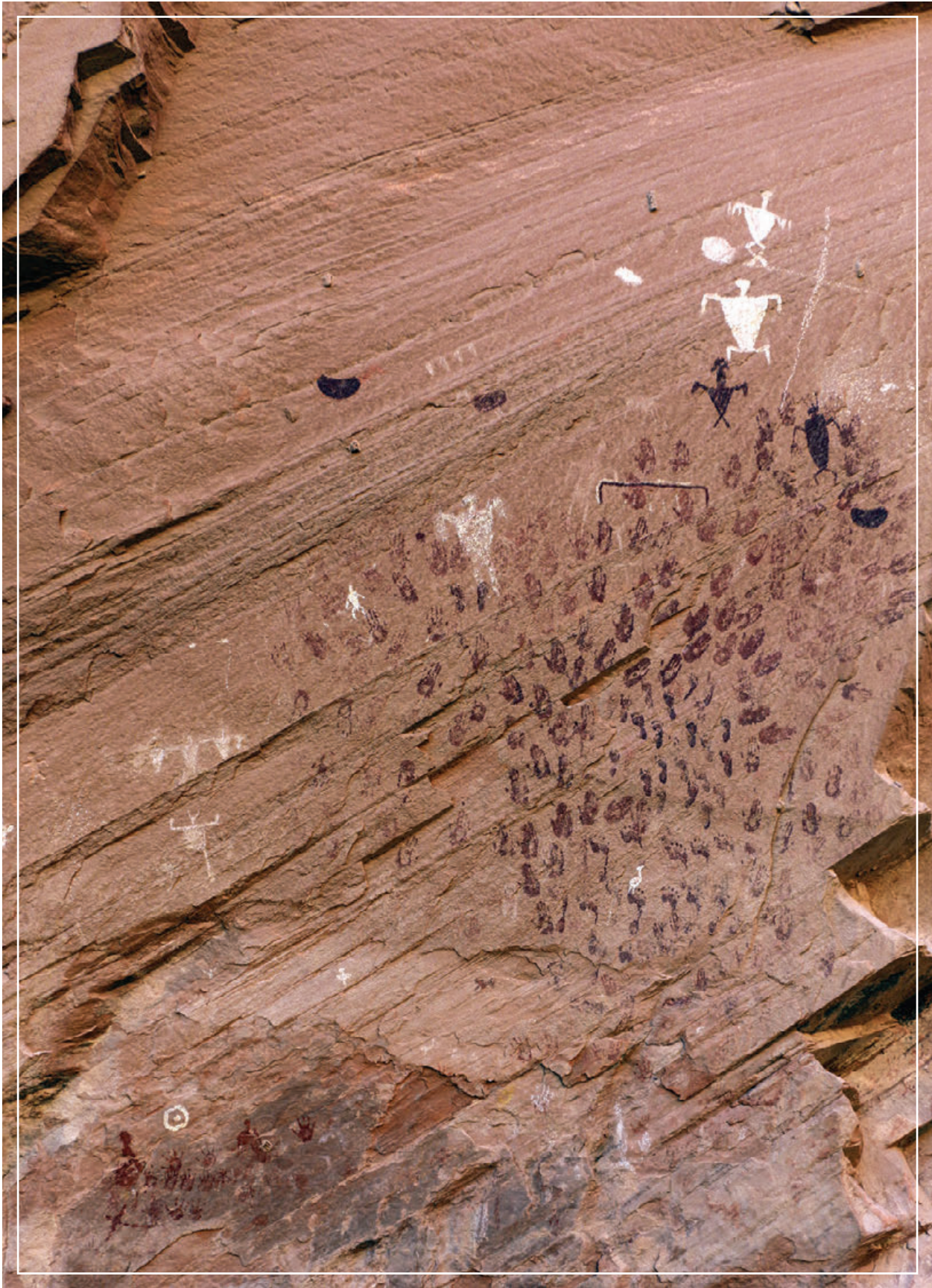
December 2016





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Mission of the National Park Service

The National Park Service (NPS) preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The National Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

The NPS core values are a framework in which the National Park Service accomplishes its mission. They express the manner in which, both individually and collectively, the National Park Service pursues its mission. The NPS core values are:

- **Shared stewardship:** We share a commitment to resource stewardship with the global preservation community.
- **Excellence:** We strive continually to learn and improve so that we may achieve the highest ideals of public service.
- **Integrity:** We deal honestly and fairly with the public and one another.
- **Tradition:** We are proud of it; we learn from it; we are not bound by it.
- **Respect:** We embrace each other's differences so that we may enrich the well-being of everyone.

The National Park Service is a bureau within the Department of the Interior. While numerous national park system units were created prior to 1916, it was not until August 25, 1916, that President Woodrow Wilson signed the National Park Service Organic Act formally establishing the National Park Service.

The national park system continues to grow and comprises over 400 park units covering more than 84 million acres in every state, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. These units include, but are not limited to, national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, scenic rivers and trails, and the White House. The variety and diversity of park units throughout the nation require a strong commitment to resource stewardship and management to ensure both the protection and enjoyment of these resources for future generations.



The arrowhead was authorized as the official National Park Service emblem by the Secretary of the Interior on July 20, 1951. The sequoia tree and bison represent vegetation and wildlife, the mountains and water represent scenic and recreational values, and the arrowhead represents historical and archeological values.

Introduction

Every unit of the national park system will have a foundational document to provide basic guidance for planning and management decisions—a foundation for planning and management. The core components of a foundation document include a brief description of the park as well as the park’s purpose, significance, fundamental resources and values, and interpretive themes. The foundation document also includes special mandates and administrative commitments, an assessment of planning and data needs that identifies planning issues, planning products to be developed, and the associated studies and data required for park planning. Along with the core components, the assessment provides a focus for park planning activities and establishes a baseline from which planning documents are developed.

A primary benefit of developing a foundation document is the opportunity to integrate and coordinate all kinds and levels of planning from a single, shared understanding of what is most important about the park. The process of developing a foundation document begins with gathering and integrating information about the park. Next, this information is refined and focused to determine what the most important attributes of the park are. The process of preparing a foundation document aids park managers, staff, and the public in identifying and clearly stating in one document the essential information that is necessary for park management to consider when determining future planning efforts, outlining key planning issues, and protecting resources and values that are integral to park purpose and identity.

While not included in this document, a park atlas is also part of a foundation project. The atlas is a series of maps compiled from available geographic information system (GIS) data on natural and cultural resources, visitor use patterns, facilities, and other topics. It serves as a GIS-based support tool for planning and park operations. The atlas is published as a (hard copy) paper product and as geospatial data for use in a web mapping environment. The park atlas for Canyon de Chelly National Monument can be accessed online at: <http://insideparkatlas.nps.gov/>.



Part 1: Core Components

The core components of a foundation document include a brief description of the park, park purpose, significance statements, fundamental resources and values, and interpretive themes. These components are core because they typically do not change over time. Core components are expected to be used in future planning and management efforts.

Brief Description of the Park

Canyon de Chelly National Monument is in northeastern Arizona on the outskirts of the town of Chinle. The NPS visitor center (at the western end of the monument) is about 3 miles east of the turnoff to Chinle from U.S. Highway 191. The monument encompasses approximately 84,000 acres within the Defiance Plateau on tribal trust lands belonging to the Navajo Nation. Three major interconnected canyon systems comprise the monument: Canyon de Chelly, about 27 miles long; Canyon del Muerto, about 18 miles long; and Monument Canyon, about 10 miles long. Generations of Navajo have lived in the canyons, and some 80 Navajo families continue to reside along the canyon floors and rim areas where they maintain homes, farms, and traditional grazing lands on a primarily seasonal basis.

The monument was authorized by an act of Congress on February 14, 1931, (Public Law 71-667) following approval of the Navajo Tribal Council. Among its proponents, the primary objective for establishing the monument was to protect significant prehistoric archeological sites and ruins then threatened by erosion and looting. The legislation affirmed that the Navajo Nation would retain surface and subsurface rights in the canyons for agricultural, grazing, mineral development, and other purposes. The National Park Service was charged with administration of the monument and particularly with the “care, maintenance, preservation and restoration of the prehistoric ruins, or other features of scientific or historical interest . . .” The National Park Service was also authorized to construct roads and trails and provide visitor facilities. The resultant overlay of management and ownership responsibilities among the Navajo Nation, Bureau of Indian Affairs, and the National Park Service continues to the present day and is unique within the national park system.

Over millions of years, geological processes of uplift and erosion resulted in the exposure of the monument’s colorful cliff walls as streams cut through layers of sandstone. Only 30 feet high near the mouth of Canyon de Chelly, canyon walls progressively rise in height to about 1,200 feet at the distant eastern reaches of the monument. 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 and seeps, and streams originating from the Chuska Mountains east of the monument eventually reach Chinle Wash with water flows occurring more regularly during the spring runoff and summer monsoon periods. 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.

Beginning approximately 5,000 years ago, mobile groups of Archaic period hunters and gatherers first made use of canyon resources and occupied seasonal rock shelter camps. Later (200 BC–AD 750) Basketmaker people introduced the farming of corn, beans, and squash in the canyons and on the mesas. They occupied communities of extended and dispersed families and built pit houses, granaries, and other structures to store food and provide for communal/ceremonial activities. The subsequent Puebloan period (AD 750–1300) was characterized in part by the development of pottery and concentrated village sites with several multistoried stone and adobe-walled structures constructed along the canyon floors and alcoves. The Puebloan period ended approximately 700 years ago as inhabitants left the canyons, perhaps in response to drought, conflict, or other factors. The Hopi, among the descendants of these ancestral Puebloan people, later established villages along the Little Colorado River and at the southern tip of Black Mesa; they continued to frequent Canyon de Chelly as part of pilgrimages or for other purposes. In addition to the Hopi, many other modern Pueblo tribes claim traditional cultural associations with Canyon de Chelly (see appendix D).



Although precise dates are unavailable, the Navajo (Diné) are believed to have arrived in the Southwest from their ancestral homelands between about AD 1200 and 1400. They reached Canyon de Chelly more than 400 years ago, bringing with them domesticated sheep and goats for use as food and wool for weaving. For many Navajo, their presence in Canyon de Chelly extends further back several hundred years to the time of the earlier inhabitants (*Nihinasaazi*) as reflected in oral histories, ceremonies, and offerings conducted by the Navajo people. The Navajo adapted their pastoral way of life to the canyons and plateaus, and planted corn and other crops as well as fruit orchards. Their tranquil existence was disrupted in the late 18th century by conflict and raids with other tribes and Spanish colonists. Canyon alcoves and other natural features such as Fortress Rock provided places of refuge during periods of conflict and figure prominently in Navajo stories of survival and endurance.

The Navajo were later forcibly removed from Canyon de Chelly in the winter of 1864 following a brutal campaign waged by the U.S. Army under the command of Colonel Kit Carson. Those Navajo who survived the fighting and the loss of their canyon homes, livestock, fields, and orchards were forced to walk more than 300 miles to Fort Sumner in New Mexico Territory. Scores died during what became known as the Long Walk. After a four-year internment, the Navajo were allowed to return to their homeland. The establishment of regional trading posts and food distribution centers enabled the Navajo to eventually recover and rebuild their communities. A trading post established in 1902 near the mouth of Canyon de Chelly was later adapted to accommodate canyon visitors and eventually became the Thunderbird Lodge, a concessions operation offering tours, lodging, and a restaurant. The vibrant presence and stewardship ethic that endures today among canyon residents are powerful testimony to the spiritual and cultural connections that collectively bind the Diné to Canyon de Chelly and make it an extraordinary place.

Visitors to Canyon de Chelly have opportunities to receive orientation at the NPS visitor center where a video and bookstore are provided; tour the canyons with a Navajo guide; take the self-guided hiking trail from the canyon rim to the White House ruin; participate in NPS ranger-led hikes and talks; drive along the north and south rim roads to several scenic overlooks; and camp at the Cottonwood Campground near the monument entrance.

Park Purpose

The purpose statement identifies the specific reason(s) for establishment of a particular park. The purpose statement for Canyon de Chelly National Monument was drafted through a careful analysis of its enabling legislation and the legislative history that influenced its development. The park was established when the enabling legislation authorized by Congress was signed into law by presidential proclamation on March 3, 1933 (see appendix A for enabling legislation and legislative acts). The purpose statement lays the foundation for understanding what is most important about the park.

CANYON DE CHELLY NATIONAL MONUMENT, in the heart of the Navajo Nation, was established 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.



Park Significance

Significance statements express why a park's resources and values are important enough to merit designation as a unit of the national park system. These statements are linked to the purpose of Canyon de Chelly National Monument, and are supported by data, research, and consensus. Statements of significance describe the distinctive nature of the park and why an area is important within a global, national, regional, and systemwide context. They focus on the most important resources and values that will assist in park planning and management.

The following significance statements have been identified for Canyon de Chelly National Monument. (Please note that the sequence of the statements does not reflect the level of significance.)

1. **Relationships.** Located on Navajo trust land and having a resident community, Canyon de Chelly is unique among national park units. A mutual decision was made to establish the site as a national monument because the National Park Service and Navajo Tribal Council recognized the importance of Canyon de Chelly. The National Park Service, Navajo Nation, and canyon community work in conjunction to manage park resources and enable traditional and contemporary lifeways.
2. **Cultural Continuity.** Canyon de Chelly National Monument 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.
3. **Watershed.** Water is the central element woven throughout the landscape, history, and cultures associated with the canyon. In this environment, "water is life." The largest watershed on the Defiance Plateau, Canyon de Chelly, Canyon del Muerto, Monument Canyon, and associated tributaries, provide a perpetual water source that has sustained diverse plant, animal, and human life throughout time.
4. **Cultural Resources.** The quantity, diversity, and integrity of cultural resources at Canyon de Chelly provide outstanding opportunities to study and interpret long-term relationships between people and land. Integrated archeological and cultural landscapes reflect a long occupational history, spanning the Archaic through Basketmaker, prehistoric Puebloan, transitional period, historic Navajo and Pueblo, and early European contact. The canyon system contains protective alcoves and cavates that preserve exceptional architecture, the largest, most intact assemblage of perishable materials (i.e., basketry, sandals, reed mats, etc.) in the country, and one of the largest concentrations of pictographs and petroglyphs in North America.
5. **Scenic Values.** Canyon de Chelly offers especially striking examples of canyon scenery. The vibrant yet serene beauty of the monument is found in the shapes, colors, contrasts, and interplay of light and shadows across natural and cultural features. The perpendicular red cliffs of the de Chelly sandstone rise from the wash to heights of up to 1,200 feet. Scenic vistas from the canyon rims look onto spectacular geological formations, such as Spider Rock and Fortress Rock, as well as spectacular night skies. From the north and south rim roads, visitors also experience expansive views of high desert mesas, vegetation, dark night skies, and distant mountains. These qualities create inspirational and memorable experiences for residents and visitors from around the world.

Fundamental Resources and Values

Fundamental resources and values (FRVs) are those features, systems, processes, experiences, stories, scenes, sounds, smells, or other attributes determined to warrant primary consideration during planning and management processes because they are essential to achieving the purpose of the park and maintaining its significance. Fundamental resources and values are closely related to a park's legislative purpose and are more specific than significance statements.

Fundamental resources and values help focus planning and management efforts on what is truly significant about the park. One of the most important responsibilities of NPS managers is to ensure the conservation and public enjoyment of those qualities that are essential (fundamental) to achieving the purpose of the park and maintaining its significance. If fundamental resources and values are allowed to deteriorate, the park purpose and/or significance could be jeopardized.

The following fundamental resources and values have been identified for Canyon de Chelly National Monument:

- **Archeological Landscapes and Associated Museum Collections.** Canyon de Chelly's archeological resources provide physical evidence documenting thousands of years of human presence in the canyons. The resources collectively contribute to one of the most important and extensive archeological landscapes in the Southwest, providing in-depth insight and understanding of cultural adaptations made primarily over the past 5,000 years. Sites associated with the Archaic, Basketmaker, and Puebloan periods, as well as more recent historic use by Hopi and Navajo inhabitants, are occasionally layered in the same locations, providing a chronological record of cultural use and habitation. Among the varied archeological resources are stratified occupational deposits that include ceramic, lithic, and occasionally perishable materials (baskets and other objects fashioned from plant fibers); large aboveground structural complexes (e.g., White House, Antelope House, Mummy Cave); smaller structural remains in canyon wall alcoves; pictographs and petroglyphs; and evidence of trails (e.g., handholds/footholds carved into the canyon walls). Approximately 30% of the monument has been archeologically inventoried resulting in about 1,600 identified and recorded sites. Most of the archeological artifacts recovered from investigations are curated in museum collections at the NPS Western Archeological and Conservation Center in Tucson, Arizona, although some items are stored in other non-NPS repositories.



- **Cultural Landscapes.** The cultural landscape of Canyon de Chelly reflects a dynamic and complex mosaic of prehistoric, historic, and contemporary land uses adapted to the natural environment of the canyons. The landscape reveals evidence of the various ways land is currently used and divided among Navajo canyon residents for agricultural practices and homesites, patterns of prehistoric/historic settlement and access, native and nonnative vegetation, and other factors that contribute to the integrity of this unique landscape. Within the context of ethnographic landscapes, 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. Specific 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.
- **Continuing Cultural Connections.** For 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. Many of the Navajo families who reside along the floors of Canyon de Chelly and Canyon del Muerto carry out seasonal subsistence activities including dryland farming of corn, alfalfa, and other crops on tilled farm plots; collecting fruit from a variety of orchard trees; grazing sheep, goats, horses, and cows; and raising other domestic animals. 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. While firmly grounded in tradition and respectful of the spirit of their ancestors, the Diné adapt to changes occurring in the larger world, adopting what is appropriate while preserving the continuity of their heritage.
- **Experience of Place.** Canyon de Chelly was established with the express intent of preserving and restoring the monument's significant cliff dwellings and other archeological resources as well as protecting them from vandalism and deterioration in efforts to promote research and visitor education. The outstanding scenic beauty of the canyons was also recognized as an important visitor attraction. The enabling legislation reserved to the Navajo the preferential right to furnish riding horses to canyon visitors, and later NPS regulations prohibited visitors from entering the canyons (except where otherwise authorized) without being accompanied by an authorized Navajo or NPS guide. Consequently, while the visitor experience is somewhat necessarily constrained by the presence of a resident Navajo community, visitors venturing into the canyons have long had opportunities to enjoy rich educational and scenic experiences, and to gain deeper understanding of the monument's history, stories, and resources. These experiences are enhanced by the interpretation provided by Navajo guides, and interactions with canyon residents who maintain intimate connections with their canyon homeland.
- **Partnerships and Relationships.** Management and resource stewardship responsibilities for Canyon de Chelly are shared by the National Park Service, Navajo Nation, the resident Navajo community, the Bureau of Indian Affairs, and other entities. The park's enabling legislation created a unique situation within the national park system with the monument's location on Navajo tribal trust lands and the presence of a contemporary Navajo community residing inside the monument boundaries. These factors often present management challenges that require collaboration and close partnership relationships among all parties to effectively resolve issues and clarify jurisdictional authorities.
- **Scenic Views and Vistas.** The remarkable scenery of Canyon de Chelly reflects the dramatic contrast of 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. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.

Interpretive Themes

Interpretive themes are often described as the key stories or concepts that visitors should understand after visiting a park—they define the most important ideas or concepts communicated to visitors about a park unit. Themes are derived from, and should reflect, park purpose, significance, resources, and values. The set of interpretive themes is complete when it provides the structure necessary for park staff to develop opportunities for visitors to explore and relate to all park significance statements and fundamental resources and values.

Interpretive themes are an organizational tool that reveal and clarify meaning, concepts, contexts, and values represented by park resources. Sound themes are accurate and reflect current scholarship and science. They encourage exploration of the context in which events or natural processes occurred and the effects of those events and processes. Interpretive themes go beyond a mere description of the event or process to foster multiple opportunities to experience and consider the park and its resources. These themes help explain why a park story is relevant to people who may otherwise be unaware of connections they have to an event, time, or place associated with the park.

The following interpretive themes have been identified for Canyon de Chelly National Monument:

- Water at Canyon de Chelly continuously shapes landscapes and sustains diverse plant, animal, and human life—reminding us of our ongoing dependence on water and the personal and societal decisions that affect it.
- The iconic features of Canyon de Chelly—its intimate scale and sheer cliffs, geological shapes and vibrant colors, contrasts of light and shadow, exceptional cliff dwellings and rock art, and the serene agricultural landscape—offer opportunities to appreciate how the interplay of nature and culture can create inspiring, memorable beauty.
- Canyon de Chelly preserves one of the longest continually inhabited locations by American Indian communities in the United States—to which the quantity, diversity, and integrity of material culture attest—a landscape essential to the spiritual lives and cultural identity of many native peoples, exemplifying the intimate, complex, and dynamic relationships between people and land that can develop through long-term interactions.
- *Tséyi'*, “the place within the rock,” sustains a living community connected to a landscape of great historical and spiritual significance composed of places infused with collective memory and defining moments in Navajo history. This landscape fosters contemplation of the defining moments that have occurred in the cultures we connect ourselves to.
- Located on Navajo Trust land, supporting a resident community, and managed cooperatively by the National Park Service and Navajo Nation, Canyon de Chelly National Monument allows for traditional and contemporary lifeways to continue here by offering opportunities for exploration of shared values and preservation ethics.



Part 2: Dynamic Components

The dynamic components of a foundation document include special mandates and administrative commitments and an assessment of planning and data needs. These components are dynamic because they will change over time. New special mandates can be established and new administrative commitments made. As conditions and trends of fundamental resources and values change over time, the analysis of planning and data needs will need to be revisited and revised, along with key issues. Therefore, this part of the foundation document will be updated accordingly.

Special Mandates and Administrative Commitments

Many management decisions for a park unit are directed or influenced by special mandates and administrative commitments with other federal agencies, state and local governments, utility companies, partnering organizations, and other entities. Special mandates are requirements specific to a park that must be fulfilled. Mandates can be expressed in enabling legislation, in separate legislation following the establishment of the park, or through a judicial process. They may expand on park purpose or introduce elements unrelated to the purpose of the park. Administrative commitments are, in general, agreements that have been reached through formal, documented processes, often through memorandums of agreement. Examples include easements, rights-of-way, arrangements for emergency service responses, etc. Special mandates and administrative commitments can support, in many cases, a network of partnerships that help fulfill the objectives of the park and facilitate working relationships with other organizations. They are an essential component of managing and planning for Canyon de Chelly National Monument.

Special Mandates

- The Treaty of 1868 between the United States of America and the Navajo Tribe of Indians provided that an area, specifically including Canyon de Chelly, be set apart “for the use and occupation of the Navajo tribe of Indians.”
- The authorizing legislation for Canyon de Chelly National Monument (Act of February 14, 1931, 46 Stat 1161) set up a situation unique within the national park system because all of the lands within the monument remain in tribal ownership. The rights of the Navajo Nation are stated in section 2: “Nothing herein shall be construed as in any way 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 as hereinafter defined; and the said Tribe of Indians shall be, and is, hereby, granted the preferential right, under regulations to be prescribed by the Secretary of the Interior, of furnishing riding animals for the use of visitors to the monument.”



- The rights of the National Park Service are stated in section 3 of the enabling legislation: “The National Park Service, under the direction of the Secretary of the Interior, is hereby charged with the administration of the area of said 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, and shall have the right to construct upon the lands such roads, trails, or other structures or improvements as may be necessary in connection with the administration and protection of the monument, and also the right to provide facilities of any nature whatsoever required for the care and accommodation of visitors to the monument.”
- Special regulations were included in the Code of Federal Regulations (36 CFR 7.19; 32 FR 13129, September 15, 1967, appended) prohibiting visitors from entering the canyons of Canyon de Chelly National Monument unless accompanied by NPS employees or by authorized guides. The superintendent may, however, designate, by marking on a map available for public inspection in the office of the superintendent and at other convenient locations within the monument, canyons, or portions of canyons that may be visited or entered without accompaniment. The superintendent may authorize properly qualified persons to act as guides for the purpose of accompanying visitors into and within the canyons.
- Because Canyon de Chelly National Monument consists of tribal trust lands belonging to the Navajo Nation, the Navajo police exercise full jurisdiction over Navajos living in the monument. The National Park Service enforces 36 CFR in those developed areas related to visitor use, such as concession developments, overlooks, roads, trails, and campgrounds. Qualified NPS rangers and the Navajo police are authorized to enforce all aspects of the Navajo Tribal Code within the boundary of the monument. Apache County also assists with law enforcement and the Federal Bureau of Investigation is involved with serious criminal investigations.
- Resolution of the Resources Committee of the Navajo Tribal Council, 1985 (RCS-51-85) – established a protection zone within the boundaries of Canyon de Chelly National Monument to protect scenic, scientific, natural, and cultural 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 National Park Service is developed and approved.
- This 1985 Navajo Nation resolution established a moratorium on new construction and development within the park’s administrative boundary. The resolution designated an additional protection zone that includes a buffer along the south and north rim drives at a distance of 1,000 feet away from the roads on the side opposite the canyon rims.
- 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. Section 1031 prohibits visitation or investigation of cultural properties on Navajo lands, except those properties designated as open to the public within the boundaries of a Navajo Nation park or a national park or monument. The prohibition against visitation of cultural resources does not apply to enrolled members of the Navajo Nation or to Navajo Nation employees engaged in official activities as described in section 1033. The same section also allows for the alteration, collection, disturbance, excavation, or removal of cultural resources and collection of ethnographic data by Navajo traditional practitioners engaged in activities related to the practice of traditional Navajo religion. Section 1038 identifies civil assessments associated with violations of prohibitions.

Administrative Commitments

Please see appendix B for an inventory of administrative commitments.

Assessment of Planning and Data Needs

Once the core components of part 1 of the foundation document have been identified, it is important to gather and evaluate existing information about the park's fundamental resources and values, and develop a full assessment of the park's planning and data needs. The assessment of planning and data needs section presents planning issues, the planning projects that will address these issues, and the associated information requirements for planning, such as resource inventories and data collection, including GIS data.

There are three sections in the assessment of planning and data needs:

1. analysis of fundamental resources and values
2. identification of key issues and associated planning and data needs
3. identification of planning and data needs (including spatial mapping activities or GIS maps)

The analysis of fundamental resources and values and identification of key issues leads up to and supports the identification of planning and data collection needs.

Analysis of Fundamental Resources and Values

The fundamental resource or value analysis table includes current conditions, potential threats and opportunities, planning and data needs, and selected laws and NPS policies related to management of the identified resource or value.



Fundamental Resource or Value	Archeological Landscapes and Associated Museum Collections
Related Significance Statements	Cultural continuity, watershed, cultural resources, scenic values.
Current Conditions and Trends	<p>Conditions</p> <ul style="list-style-type: none"> • The monument's broad range of significant archeological resources include buried/ stratified site deposits with diagnostic ceramic, lithic, and occasionally perishable organic artifacts and materials; large aboveground structural complexes; smaller structural remains in canyon wall alcoves; pictographs and petroglyphs; evidence of trails (e.g., handholds/footholds carved into the canyon walls). All require a correspondingly broad range of specialized skills, expertise, and protocols for proper preservation management. • Overall, the archeological resources comprising the archeological landscape are in fair condition, although baseline inventory information has been completed for only about 30% of the monument. • Some standing prehistoric structures / wall features have been stabilized. • The condition of petroglyph and pictograph sites varies from very good to at risk (threatened primarily by wind/water erosion and vandalism). • About 1,600 sites have been identified and recorded. NPS archeologists conduct routine monitoring of identified sites to assess changed conditions and the need to carry out preservation/stabilization measures. • Canyon residents often fence their homesites and agricultural fields. Fencing has helped preserve archeological resources from disturbance by livestock and burrowing animals, and the placement of fencing has increased since the late 1990s. • There are approximately 600,000 items in the monument's museum collection. The collections include archeological, biological, and ethnographic objects (including organic materials, dendrochronology samples, and ceramics) systematically recovered from sites within the boundaries of the national monument. Associated field records include reports, photographic materials, maps, and working papers. • About 95% of the collected archeological artifacts are stored at the NPS Western Archeological and Conservation Center in Tucson, Arizona. The Museum of Northern Arizona (Flagstaff) and the University of Arizona Tree Ring Lab (Tucson) are the principal repositories providing curatorial storage for the remainder of the collected artifacts. • The location of natural history collections made under permit and probably housed in nonfederal repositories is not known. • Unexpected discoveries occasionally contain human remains and burial items that require tribal consultation for proper care and reinternment. • Geometric (three-dimensional) laser scanning / modeling has been completed for upper White House and Antelope House sites. <p>Trends</p> <ul style="list-style-type: none"> • Although impacts on archeological resources from grazing sheep entering alcoves remain a threat, the numbers of sheep have decreased, lessening the impact severity. • Fencing of sites will continue as an effective means of excluding livestock from sensitive site areas and protecting sites. • Lateral erosion is increasing due in part to invasive vegetation.
Threats and Opportunities	<p>Threats</p> <ul style="list-style-type: none"> • Wind/water erosion and vandalism threaten petroglyphs and pictographs. • Water erosion is a significant threat to archeological sites along the canyon floors, particularly during periods of high runoff. • Rockfalls threaten sites (e.g., overlying rock falling onto pueblo structures). • Vandalism or graffiti is a threat to archeological sites and rock art panels. • Grazing impacts from horses, cattle, sheep, deer, etc. can disturb the stratigraphic context of buried sites or threaten the stability of structural features (e.g., rock/adobe wall remnants).

Fundamental Resource or Value	Archeological Landscapes and Associated Museum Collections
Threats and Opportunities	<p>Threats (continued)</p> <ul style="list-style-type: none"> • Burrowing mammals dig into sites, disturbing artifacts and stratigraphy. • Illegal entry into the canyons by nonresident/nonguided individuals presents a threat of resource disturbance and potential looting of sites. • Invasive vegetation species (e.g., Russian olive and tamarisk) threaten sites by increasing lateral erosion and directing water against resources and scouring rock art panels. • Unauthorized entry by visitors and others into prehistoric structures can destabilize structural features and contribute to erosional impacts. • Increase in mean annual temperature, storm frequency/intensity, and extreme temperature events projected for the region due to climate change could impact the archeological landscape through erosion, flooding, and increases in invasive species. <p>Opportunities</p> <ul style="list-style-type: none"> • Implement preservation strategies for archeological sites and rock art. • Opportunities to work with and interpret museum collections digitally in museum / visitor center exhibits. Could use replica items to protect fragile or sensitive original items. • Opportunity to use selected collection items to a greater degree for educational purposes with guidance from a museum exhibit plan. • Expand visitor outreach and educational programs/media to convey the importance of protecting archeological resources to the public. • Possibly provide virtual tours of pueblo structures (e.g., White House, Antelope House) that have been laser-scanned and digitally recorded.
Data and/or GIS Needs	<ul style="list-style-type: none"> • Complete baseline archeological investigations. • Rock art documentation. • Historic American Buildings Survey / Historic American Engineering Record / Historic American Landscapes Survey (HABS/HAER/HALS) documentation of standing architecture. • Update List of Classified Structures (LCS) database. • National Register of Historic Places nominations. • Update Archeological Site Management Information System (ASMIS) database. • Update Facility Management Software System (FMSS) database. • Cultural landscape inventory – de Chelly and del Muerto canyons. • Historic resource study. • Hydrologic data. • Conduct an archival survey. • Research natural history collections and associated field records. • Ethnobotanical studies.
Planning Needs	<ul style="list-style-type: none"> • Joint management plan. • Museum exhibit plan. • Inadvertent discovery plan for Native American Graves Protection and Repatriation Act compliance. • Revegetation plan. • Collections management plan. • Integrated pest management plan. • Complete museum housekeeping plan. • Resource stewardship strategy. • Cultural resources management plan. • Comprehensive interpretive plan. • Historic structure reports. • Climate change scenario planning.

Fundamental Resource or Value	Archeological Landscapes and Associated Museum Collections
<p>Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance</p>	<p>Laws, Executive Orders, and Regulations That Apply to the FRV</p> <ul style="list-style-type: none"> • “Protection of Historic Properties” (36 CFR 800) • National Historic Preservation Act of 1966, as amended (54 USC §300101 et seq.) • Antiquities Act of 1906 • Archaeological Resources Protection Act of 1979 • Archeological and Historic Preservation Act of 1974 • American Indian Religious Freedom Act of 1978 • Executive Order 13007, “Indian Sacred Sites” • Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” • Historic Sites Act of 1935 • Native American Graves Protection and Repatriation Act of 1990 • Executive Order 11593, “Protection and Enhancement of the Cultural Environment” • “Curation of Federally-Owned and Administered Archaeological Collections” (36 CFR 79) • RCS-51-85 (Resolution of the Resources Committee of the Navajo Tribal Council, 1985) • The Navajo Nation Cultural Resources Protection Act of 1988 (Navajo Nation Code, Title 19) • Museum Properties Management Act of 1955 (PL 84-127) • “Canyon de Chelly National Monument” (36 CFR 7.19) (special regulations regarding prohibition of unguided/unauthorized visitor entry into the canyons of Canyon de Chelly National Monument) • Secretarial Order 3289, “Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources” <p>NPS Policy-level Guidance (NPS <i>Management Policies</i> 2006 and Director’s Orders)</p> <ul style="list-style-type: none"> • NPS <i>Management Policies</i> 2006 (chapter 5) “Cultural Resource Management” • <i>The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation</i> • <i>The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes</i> • Director’s Order 28: <i>Cultural Resource Management</i> • Director’s Order 28A: <i>Archeology</i> • Programmatic Agreement Among the National Park Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers for Compliance with Section 106 of the National Historic Preservation Act • Director’s Order 24: <i>NPS Museum Collections Management</i> • NPS <i>Museum Handbook</i>, parts I, II, and III • NPS Intermountain Region Indian Sacred Sites policy • Department of the Interior Policy on Consultation with Indian Tribes



Fundamental Resource or Value	Cultural Landscapes
Related Significance Statements	Cultural continuity, watershed, cultural resources, scenic values.
Current Conditions and Trends	<p>Conditions</p> <ul style="list-style-type: none"> • The monument's cultural landscapes retain good integrity with regard to spatial organization and land use patterns, topography, circulation, natural hydrologic features, prehistoric structures and archeological sites, sacred sites, cultural landscapes, dark night skies, and other character-defining features. • Within the context of ethnographic landscapes, Canyon de Chelly remains fundamentally linked to the cultural practices and beliefs of the Navajo and other traditionally associated tribes and groups. • The recent removal of introduced nonnative vegetation (primarily Russian olive and tamarisk) from large sections of the canyons has helped to open viewsheds to approximate historic conditions. • The NPS Southern Colorado Plateau Inventory & Monitoring Network has undertaken or is in the process of developing long-term strategies to monitor the monument's water quality, aquatic macroinvertebrates, riparian bird communities, and integrated riparian communities and springs. • Canyon terraces are fragile and are susceptible to incising from vehicle use, water erosion, grazing, and other factors. • Canyon rims are an important component of the cultural landscapes at the monument. There is a Navajo Nation moratorium on additional construction/building along the canyon rims (RCS-51-85: Resolution of the Resources Committee of the Navajo Tribal Council, 1985). • The Canyon de Chelly watershed provides a perpetual source of water that has sustained diverse plant, animal, and human communities for millennia. The quantity of water in the canyons is primarily the result of natural precipitation events; it is subject to drought and seasonal availability, climate change, the release of water from the upstream Tsaile Dam, and other variables. The cultural landscape has been dramatically shaped by the availability and dynamics of surface and ground water, with perennial streams in the upper reaches of the canyons and springs (often associated with the locations of prehistoric habitation areas) contributing to the flow of water entering Chinle Wash. Baseline water quality information has been collected. The water table in the canyons is low and water quality is poor. • During periods of drought, canyon residents must often bring in water for domestic use and irrigation. • Canyon residents and other authorized users (e.g., guides and NPS staff) access the canyons primarily by four-wheel-drive vehicles that entail multiple crossings of stream courses along Chinle Wash. <p>Trends</p> <ul style="list-style-type: none"> • Although resident canyon families have not been using their farm sites as much as previously, the trend may be reversing as more people return and attempt to reuse agricultural and grazing properties. • The terraces will probably continue to be heavily used. • Existing trails are deteriorating from erosion and other factors. • The existence of traditionally used medicinal plants in the canyons has decreased. • Seven hundred fifty acres of the canyon's watershed have been improved through invasive species removal and mitigation. • Long-term monitoring of natural resource conditions by the NPS Southern Colorado Plateau Inventory & Monitoring Network will continue to inform the management of the monument's watershed and other critical resources. • A new National Register of Historic Places determination of eligibility assessment is planned for the Canyon de Chelly Headquarters Area Historic District. The district was previously delisted on April 20, 1990.

Fundamental Resource or Value	Cultural Landscapes
Threats and Opportunities	<p>Threats</p> <ul style="list-style-type: none"> • Channel incision along Chinle Wash and lateral erosion threaten soil loss along the terraces and associated resource damage. • Increase in mean annual temperature, storm frequency/intensity, and extreme temperature events projected for the region due to climate change could impact the cultural landscape through erosion, flooding, increases in invasive species, and changes in hydrology. • Nonnative vegetation removal efforts have been successful, but ongoing management and revegetation measures are required to prevent recurrences. • Lowering of the water table threatens livelihoods of canyon residents and resource protection. • Tourism-related road and trail ruts cause resource impacts. • Fencing placed by canyon residents, while sometimes serving to protect archeological resources, can alter patterns of circulation and other contributing elements of the cultural landscape. • Random or unplanned development along the rims or in the canyon can impact the scenic and visual qualities of the cultural landscape. • Illegal dumping, livestock manure, and trash burning sometimes occur that can impact water and air quality. • Noise from air tours threatens the serene qualities of the cultural landscape and can potentially damage archeological structures. <p>Opportunities</p> <ul style="list-style-type: none"> • Opportunities can be explored to promote the growth and recovery of traditionally used medicinal herbs. • Trails can be rehabilitated to provide safe continuing use for canyon residents and visitors. • Effective livestock management practices can be implemented in cooperation with the Navajo Nation and the Bureau of Indian Affairs. • Comprehensive intergovernmental watershed restoration and revegetation projects are a high priority. • Removal of invasive vegetation would restore the canyon streams to their predevelopment morphology. This would help reduce the frequency of damaging floods and raise the groundwater level, making it more accessible for canyon agriculture. • There may be a possibility of opening up another hiking trail (other than the White House Trail) to allow additional unguided public access. • Cooperative educational programs could be implemented regarding sustainable orchard and dryland agricultural practices. Demonstration projects could be undertaken to showcase effective treatments and practices.
Data and/or GIS Needs	<ul style="list-style-type: none"> • GIS mapping. • Cultural landscape inventory – de Chelly and del Muerto canyons. • Condition assessment of trails. • Oral histories. • Canyon road assessment. • Traditional cultural property assessment. • Comprehensive land use assessment. • Hydrologic data. • Visual resource inventory.

Fundamental Resource or Value	Cultural Landscapes
Planning Needs	<ul style="list-style-type: none"> • Joint management plan. • Backcountry management plan. • Cultural landscape report. • Revegetation plan. • Watershed restoration plan. • Historic structure reports.
Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance	<p>Laws, Executive Orders, and Regulations That Apply to the FRV</p> <ul style="list-style-type: none"> • “Protection of Historic Properties” (36 CFR 800) • National Historic Preservation Act of 1966, as amended (54 USC §300101 et seq.) • Antiquities Act of 1906 • Archaeological Resources Protection Act of 1979 • Archeological and Historic Preservation Act of 1974 • Historic Sites Act of 1935 • American Indian Religious Freedom Act of 1978 • Executive Order 11593, “Protection and Enhancement of the Cultural Environment” • Executive Order 13007, “Indian Sacred Sites” • RCS-51-85 (Resolution of the Resources Committee of the Navajo Tribal Council, 1985) • The Navajo Nation Cultural Resources Protection Act of 1988 (Navajo Nation Code, Title 19) • Museum Properties Management Act of 1955 (PL 84-127) • “Canyon de Chelly National Monument” (36 CFR 7.19) (special regulations regarding prohibition of unguided/unauthorized visitor entry into the canyons of Canyon de Chelly National Monument) • Secretarial Order 3289, “Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources” <p>NPS Policy-level Guidance (NPS Management Policies 2006 and Director’s Orders)</p> <ul style="list-style-type: none"> • NPS <i>Management Policies 2006</i> (§1.6) “Cooperative Conservation Beyond Park Boundaries” • NPS <i>Management Policies 2006</i> (chapter 5) “Cultural Resource Management” • NPS <i>Management Policies 2006</i> (§1.4.3) “The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values” • <i>The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation</i> • <i>The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes</i> • Director’s Order 24: <i>NPS Museum Collections Management</i> • Director’s Order 28: <i>Cultural Resource Management</i> • Director’s Order 28A: <i>Archeology</i> • Director’s Order 47: <i>Soundscape Preservation and Noise Management</i> • NPS Intermountain Region Indian Sacred Sites Policy



Fundamental Resource or Value	Continuing Cultural Connections
Related Significance Statements	Relationships, cultural continuity, watershed, cultural resources, scenic values.
Current Conditions and Trends	<p>Conditions</p> <ul style="list-style-type: none"> • The monument continues to be a physical and spiritual home for those Navajo (Diné) who reside in the canyons as well as a sacred place linking all Navajo to their cultural heritage. Canyon de Chelly also has enduring cultural importance for other regional native peoples whose ancestors once occupied or claim cultural associations with the canyons. • Local Navajo residents live in and use the canyons for grazing, farming, orchard production and other customary activities on a primarily seasonal basis (few live in the canyons year-round). • Some nonresident Navajo and other tribal members visit the canyons to carry out traditional cultural activities. Those residing on the rims occasionally visit relatives and others living in the canyons by following traditional trails and access routes connecting the canyon floor with the rims. • 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. • While firmly grounded in tradition and respectful of the spirit of their ancestors, the Diné adapt to changes occurring in the larger world. Some canyon residents, for example, have adopted the use of solar energy collectors at their homesites. <p>Trends</p> <ul style="list-style-type: none"> • Although there are some concerns over declining use of traditional Navajo homesites and agricultural areas, there are indications that the trend may be reversing as more have returned to live and farm in the canyons. • Residents are likely to continue to live in the canyons seasonally rather than year-round. • Removal of Russian olive, tamarisk, and other nonnative species has helped make occupation of the canyons more desirable, although a lower water table and persistent drought conditions have led to the need for some residents to haul in water for domestic use and irrigation. • The timing and quantity of water released from the upstream Tsaile Dam can affect downstream farming and grazing in the canyons. However, starting in 2016 (following completion of dam rehabilitation construction), the only water released from the dam will occur on the basis of release requests that would typically come from Navajo chapter(s) or canyon residents.
Threats and Opportunities	<p>Threats</p> <ul style="list-style-type: none"> • There is a potential for the loss or decline of cultural connections associated with diminished use of the Navajo language, traditional knowledge, and lifeways. • Invasive vegetation and other species present potential threats to the continuance of traditional agricultural and cultural practices. • Erosion (potentially linked to climate change or human caused) threatens the viability of sustaining soils and agriculture/grazing. These impacts are exacerbated by extreme weather and climatic conditions (e.g., drought and flash flooding during monsoon events). • Although efforts to remove invasive species have been largely successful, where dense thickets persist the canyons are more inaccessible to canyon residents, stream crossings are more susceptible to increased incising, and there are greater risks from severe flooding. • Unplanned or random development in the canyons and on the rims can adversely impact cultural and spiritual connections.

Fundamental Resource or Value	Continuing Cultural Connections
Threats and Opportunities	<p>Threats (continued)</p> <ul style="list-style-type: none"> • Canyon residents are often confused when attempting to contact the appropriate officials to address issues; multiple governmental agencies have overlapping management jurisdiction in the monument. • Buildup of vegetation can contribute to fuel-loading and a risk of fire to homesites and property. <p>Opportunities</p> <ul style="list-style-type: none"> • New or enhanced interpretive exhibits and wayside planning can be developed to reflect current/updated information regarding enduring multiracial cultural connections to the monument. • Oral histories of canyon residents are being collected for use in interpretive programs and materials. • Shared management programs and initiatives among canyon residents, the National Park Service, Navajo Nation, Bureau of Indian Affairs, and other tribes and partners would help achieve positive stewardship objectives. • A cultural exchange program could be instituted to share cultural perspectives and convey the knowledge of tribal elders and others for effective management. • Research and partnerships with educational facilities (universities) could be developed centered around agricultural practices and other topics. • The stories and traditional tribal associations with Canyon de Chelly could be highlighted for visitors and others. • There may be opportunities to obtain additional funding or technical assistance associated with NPS centennial efforts. • A community history center could be developed where residents and others could go to examine photographs, listen to oral histories in multiple languages, or research databases. • A cultural heritage / learning center could be developed (perhaps a transitional use for the existing Sacred Canyon Lodge or the NPS visitor center). The center could provide a location for artisan/cultural demonstrations, expanded exhibits and interpretive media, research and conference facilities, and other activities/functions to engage the local community and outside visitors. The center could provide educational outreach showcasing sustainable agricultural practices and watershed protection strategies to advance stewardship of the canyons.
Data and/or GIS Needs	<ul style="list-style-type: none"> • Oral histories. • Climate change vulnerability assessment. • Conditional assessment of deep canyon areas. • GIS mapping. • Cultural landscape inventory – de Chelly and del Muerto Canyons. • Condition assessment of trails. • Canyon road assessment. • Traditional cultural property assessment. • Comprehensive land use assessment. • Ethnobotanical studies. • Land user maps.

Fundamental Resource or Value	Continuing Cultural Connections
Planning Needs	<ul style="list-style-type: none"> • Joint management plan. • Wayside plan. • Museum exhibit plan. • Comprehensive interpretive plan. • Climate change scenario planning. • Update fire management plan. • Site plan (Sacred Canyon Lodge). • Commercial services plan (Sacred Canyon Lodge). • Site plan (community center).
Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance	<p>Laws, Executive Orders, and Regulations That Apply to the FRV</p> <ul style="list-style-type: none"> • "Protection of Historic Properties" (36 CFR 800) • National Historic Preservation Act of 1966, as amended (54 USC §300101 et seq.) • Antiquities Act of 1906 • Archaeological Resources Protection Act of 1979 • Archeological and Historic Preservation Act of 1974 • Historic Sites Act of 1935 • Executive Order 11593, "Protection and Enhancement of the Cultural Environment" • Executive Order 13007, "American Indian Sacred Sites" • Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" • Native American Graves Protection and Repatriation Act of 1990 • American Indian Religious Freedom Act of 1978 • RCS-51-85 (Resolution of the Resources Committee of the Navajo Tribal Council, 1985) • The Navajo Nation Cultural Resources Protection Act of 1988 (Navajo Nation Code, Title 19) • "Canyon de Chelly National Monument" (36 CFR 7.19) (special regulations regarding prohibition of unguided/unauthorized visitor entry into the canyons of Canyon de Chelly National Monument) • Secretarial Order 3289, "Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources" <p>NPS Policy-level Guidance (NPS Management Policies 2006 and Director's Orders)</p> <ul style="list-style-type: none"> • NPS <i>Management Policies 2006</i> (chapter 5) "Cultural Resource Management" • <i>The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation</i> • <i>The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes</i> • Director's Order 28: <i>Cultural Resource Management</i> • Director's Order 28A: <i>Archeology</i> • Department of the Interior Policy on Consultation with Indian Tribes • NPS Intermountain Region Indian Sacred Sites policy • "Guidelines for Considering Traditional Knowledges in Climate Change Initiatives"



Fundamental Resource or Value	Experience of Place
Related Significance Statements	Watershed, cultural resources, scenic values.
Current Conditions and Trends	<p>Conditions</p> <ul style="list-style-type: none"> • Waysides are in poor condition due to exposure and age. Their content is difficult to read and needs to be updated. • Trails are in poor condition. From some overviews it is difficult to navigate and to identify trails on slick rock. Dirt trails are eroded in areas. Archeological resources adjacent to trails are at risk for vandalism. • At the monument visitor center, visitors can receive interpretive and educational information from NPS staff, view exhibits and artisan demonstrations, and purchase items at the bookstore. • Permanent museum exhibits are not available at the visitor center. A temporary exhibit space is currently used; however, museum collections largely cannot be displayed at this location due to a lack of temperature and humidity controls. • To access the majority of the interior of the canyons, visitors are required to hire an authorized Navajo guide. Accompanied by a guide, visitors have opportunities for hiking, backcountry camping, and horseback and four-wheel-drive vehicle tours into the canyons. Ranger-led hikes are also available. • Guided tours offer unique opportunities for visitors to experience the canyons in a nonstructured manner. Tours invoke a sense of discovery and can be customized depending on specific interests and time frames. • The 2.5-mile round-trip White House Trail that descends from the canyon rim to the White House cliff dwelling site is currently the only trail that can be used by visitors without a guide. • Visitors can drive unaccompanied by a guide along the 34-mile round-trip North Rim Drive and the 37-mile round-trip South Rim Drive. Overlooks along the drives provide views into and across the canyons of scenic vistas, notable prehistoric dwellings, historic sites, and other landmarks. • Visitor camping is available at the Cottonwood Campground near the entrance to Canyon de Chelly. The campground is open year-round and is managed by the Navajo Parks and Recreation Department. • The intimate manner in which visitors experience the canyons fosters a strong connection not common to other similar national park units. • Visitor use levels are currently stable. Over the last 10 years, the monument has received approximately 830,000 recreational visits a year. <p>Trends</p> <ul style="list-style-type: none"> • Outreach efforts have resulted in an increase of recreational visits by local Navajo people. • NPS interpretation staff has been actively engaging local communities in an effort to increase outreach services. • Use types are changing as more visitors use the White House trail for physical fitness, particularly trail running. • Vending at overlooks is increasing. • Development, particularly along the canyon rim, is increasing. Development includes homesites, business building, and utilities and infrastructure placement. • Demand is increasing for special use permits at the canyon, particularly for photography, weddings, movies, and other special events. • Efforts to manage vending have increased. Vending is currently not allowed at White House and Spider Rock overlooks. • Restrooms are being added to overlooks in order to reduce the presence of human waste in these areas.

Fundamental Resource or Value	Experience of Place
Threats and Opportunities	<p>Threats</p> <ul style="list-style-type: none"> • A lack of regulation for vending is creating an unappealing situation for visitors. Some vendor interactions with visitors are pressuring and can make visitors uncomfortable. As vending increases, visitor experience of canyon views and resources are negatively impacted. • Resources such as rocks, pictographs and petroglyphs, and petrified wood are being removed from the canyon for sale to visitors. • The visitor experience can be impacted by nearby development occurring outside the monument (on the canyon rims and elsewhere) associated with tourism, new homesites, businesses, and the placement of utilities. The moratorium on new development issued by the Navajo Nation has helped deter development on the rims, although unauthorized development occurs and development could potentially increase if the moratorium were rescinded. • Guide services are only somewhat regulated and are not standardized. Messages that visitors receive are inconsistent and inner canyon tours may threaten sensitive cultural resources. • Illegal entry into the canyon and on trails is occurring. Without ranger or guide assistance, visitors entering illegally may damage resources or unknowingly put themselves in danger. Some illegal entries are tied to special uses such as photography and filming. • Requested special use permits are at times in conflict with the purpose of the monument and NPS values. • Inappropriate visitor uses such as base jumping and rock climbing have occurred in the monument. Activities are not only illegal but also inconsistent with fundamental resources and values and are dangerous to those who participate in them. Responding to such activities is taxing on law enforcement and requires considerable time and effort. • Nonpermitted hunting and trapping occurs at the monument, impacting wildlife and disturbing habitat. • Nonpermitted woodcutting occurs at the monument, impacting visual resources and causing fire threats. • Speeding occurs on monument roads both in the canyon and along the rim, creating dangerous situations for those on roadways and exacerbating ruts on dirt roads. • Soliciting for money occurs at overviews and in the campground, impacting visitor experiences. • Human waste is frequently present at overlooks and in the canyon largely due to a lack of restrooms and visitor knowledge of restroom availability. • Ground-level ozone sometimes reaches levels that can make breathing difficult for sensitive groups. <p>Opportunities</p> <ul style="list-style-type: none"> • Interpretive exhibits could be installed at the Sacred Canyon Lodge. Exhibits would reach locals who go to the lodge as well as visitors. • Development of sustainable tourism programs and businesses in the local area would support tourism that is aligned with fundamental resources and values. • Completion of the museum exhibit space in order to interpret objects associated with or from the canyon to enrich visitor understanding of the canyon. • Update waysides to improve their condition and provide relevant content to visitors. • Update publications to reflect current NPS and scholarly work that has been conducted in the canyon but is not currently accessible to the public. • Agreements with schools and universities to create curricula that incorporate the canyon. • Current knowledge on sites within the canyon, specifically White House, should be applied to information and educational materials. • Make additional trails available for public use in order to provide additional visitor opportunities and address demand for recreational activities such as hiking and trail running.

Fundamental Resource or Value	Experience of Place
Threats and Opportunities	<p>Opportunities (continued)</p> <ul style="list-style-type: none"> • Create and provide information materials on the watershed restoration projects that have been and will continue to take place in the canyon. The public may not understand why plants are being removed or how management actions are supporting this effort. • Increase safety in the canyon and along the rim by expanding law enforcement patrols in the backcountry and establishing emergency helicopter landing zones. Create agreements with the Navajo Parks and Recreation Department as well as other departments of the Navajo Nation in order to provide staffing for a kiosk at the head of the canyon to monitor entrance and egress. • Advanced interpretation on the range of climate-related influences on park resources.
Data and/or GIS Needs	<ul style="list-style-type: none"> • Inner canyon guide. • Condition assessment of trails. • Update wildlife list. • Baseline for special use permits. • Publications (professional and public). • Ethnobotanical studies. • Visual resource inventory.
Planning Needs	<ul style="list-style-type: none"> • Joint management plan. • Backcountry management plan. • Frontcountry management plan. • Emergency response plan. • Helicopter landing zone plan. • Museum exhibit plan. • Collections management plan. • Wayside plan. • Site plan (Sacred Canyon Lodge). • Commercial services plan (Sacred Canyon Lodge). • Visual resource management plan.
Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance	<p>Laws, Executive Orders, and Regulations That Apply to the FRV</p> <ul style="list-style-type: none"> • Americans with Disabilities Act of 1990 • Architectural Barriers Act of 1968 • Rehabilitation Act of 1973 • National Park Service Concessions Management Improvement Act • Clean Air Act (42 USC §7401 et seq.) • Museum Properties Management Act of 1955, as amended • "Accessibility Guidelines" (36 CFR 1191.1) <p>NPS Policy-level Guidance (NPS Management Policies 2006 and Director's Orders)</p> <ul style="list-style-type: none"> • NPS Management Policies 2006 (chapter 7) "Interpretation and Education" • NPS Management Policies 2006 (chapter 8) "Use of the Parks" • NPS Management Policies 2006 (chapter 9) "Park Facilities" • NPS Management Policies 2006 (chapter 10) "Commercial Visitor Services" • Director's Order 6: <i>Interpretation and Education</i> • Director's Order 24: <i>NPS Museum Collections Management</i> • Director's Order 42: <i>Accessibility for Visitors with Disabilities in National Park Service Programs and Services</i> • NPS Transportation Planning Guidebook



Fundamental Resource or Value	Partnerships and Relationships
Related Significance Statements	Relationships, cultural continuity, watershed, cultural resources, scenic values.
Current Conditions and Trends	<p>Conditions</p> <ul style="list-style-type: none"> • A formal partnership exists with the Navajo Nation. The monument collaborates with four chapters of the Navajo Nation. This partnership is a legal agreement. In addition to a formal agreement, there is a need and desire to collaborate informally with the Navajo Nation. • Monument staff most commonly works with the following departments within the Navajo Nation: tourism, parks and recreation, fish and wildlife, historic preservation, forestry, animal control, police, and tribal rangers. Both relationships (e.g., historic preservation, fish and wildlife) and formal partnerships (e.g., Navajo Nation tourism, parks and recreation, forestry) are in place with Navajo Nation departments. Some relationships and partnerships are stronger than others depending on the focus and priorities of the department. Navajo Nation Parks and Recreation Department has a very similar mission as the National Park Service. • Relationships exist with canyon residents and the larger local community including schools, other agencies, etc. Relationships with residents and the larger community are fair to good. While relationships are informal, they are an important part of monument activities, particularly for interpretation and educational efforts. • Being inclusive with the Navajo Nation as well as community residents is always a goal as planning and management decisions that affect these communities are made. Considerable time and effort has been invested into creating and strengthening these relationships and partnerships. An open door policy at the National Park Service for communication with community members and the Navajo Nation has been established in addition to frequent in-person contact in the field. • There is currently a moratorium (RC-51-85) on development along the rim of the canyon. The moratorium is an interim resolution that can only be rescinded or replaced by the Navajo Nation. While the moratorium does not expire, it is not permanent. <p>Trends</p> <ul style="list-style-type: none"> • There is currently a high degree of political and leadership uncertainty within the Navajo Nation. • There is a recent trend of direct cooperation between the National Park Service and the parks and recreation department of the Navajo Nation. Some agreements are in place with the parks and recreation department and the tourism department (e.g., operation of the Cottonwood Campground and restrooms at White House). The restroom agreement is being amended to allow the placement of restrooms at the Antelope House site. • Relationships with the local community are improving due to NPS efforts to be present and efforts to engage in the community. Relations are positive and improving. • Monument involvement with local schools and in educational events is increasing. • The Navajo Nation is increasingly taking responsibility for aspects of the monument, particularly for the campground. There is an expressed interest by the Navajo Nation in concessions operations within the canyon. • The monument has taken the approach to build plans and to conduct decision making from the bottom up starting with involvement with the local community and the Navajo Nation. • The monument has been working closely on workforce development. People are hired under other payrolls (e.g., Navajo Nation Office of Diné Youth, Student Conservation Association) to work for the National Park Service. Using programs such as the Student Conservation Association and other national programs is an important trend for the canyon.

Fundamental Resource or Value	Partnerships and Relationships
Threats and Opportunities	<p>Threats</p> <ul style="list-style-type: none"> • Levels of communication vary between different departments within the Navajo Nation and the National Park Service. The lack of consistency of involvement across all departments can make it difficult to engage with the Navajo Nation overall. • Within the local community there is some resistance toward the Navajo Nation being heavily involved with the National Park Service. For some there is a desire for the National Park Service to not engage in a government-to-government relationship with the Navajo Nation. This conflict creates a difficult situation for monument staff as formal partnerships with the Navajo Nation and relationships with the local community are both vital. • Similarly as above, differing desires for involvement and levels of disagreement between the Navajo Nation, canyon residents, and other Navajos exist. These differences are sources for potential conflict and can make decision making for the canyon difficult. <p>Opportunities</p> <ul style="list-style-type: none"> • Continuing to build partnerships with the Navajo Nation will result in more efficient joint management of the canyon. The Navajo Nation can aid this effort by taking on increasing levels of responsibility for aspects of the canyon. • Assist with training and the transferring of tasks as the Navajo Nation takes on more responsibility within the canyon. • Build strong relationships with local educational programs, schools, and universities through increased outreach. • Explore research opportunities with universities. Research could center on both cultural and natural resources. • Develop a community center or other central location where people can get information on the canyon as well as the broader history associated with it. The center would also serve as a place for people to communicate their concerns, learn about local laws, and get pertinent information directly from high quality resources. • Increase hiring diversity in order to support economic development in the local area. • Establish an agreement for law enforcement needs at the monument. An agreement with the Navajo Nation on this topic is critical. • Continue to work on a memorandum of agreement with the Navajo Nation Historic Preservation Department regarding development in the canyon mouth area. • Develop a newsletter or other forms of communication in order to inform canyon residents on NPS and Navajo Nation actions. This could be an annual mailer or science update. This would alleviate confusion and a lack of knowledge regarding NPS management actions. These communications could be implemented in coordination with the local school district. • Develop social media for the canyon to reach a broader audience of current and potential visitors. • Help to provide Community Emergency Response Teams training within the local community. • Building partnerships, potentially with the Navajo Nation, to adaptively manage climate-related impacts at a larger landscape scale.
Data and/or GIS Needs	<ul style="list-style-type: none"> • Oral histories. • Jurisdiction baseline data. • Update administrative history. • Publications (professional and public).

Fundamental Resource or Value	Partnerships and Relationships
Planning Needs	<ul style="list-style-type: none"> • Joint management plan. • Site plan (community center). • Emergency response plan. • Backcountry management plan. • Museum exhibit plan. • Site plan (Sacred Canyon Lodge). • Commercial services plan (Sacred Canyon Lodge).
Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance	<p>Laws, Executive Orders, and Regulations That Apply to the FRV</p> <ul style="list-style-type: none"> • Superintendent's Compendium (2015) • Executive Order 13112, "Invasive Species" • Executive Order 11593, "Protection and Enhancement of the Cultural Environment" • Executive Order 13007, "Indian Sacred Sites" • Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" • "Curation of Federally-Owned and Administered Archaeological Collections" (36 CFR 79) • "Protection of Historic Properties" (36 CFR 800) • National Historic Preservation Act of 1966, as amended (54 USC §300101 et seq.) • Antiquities Act of 1906 • Archeological and Historic Preservation Act of 1974 • Archaeological Resources Protection Act of 1979 • American Indian Religious Freedom Act of 1978 • Historic Sites Act of 1935 • Management of Museum Properties Act of 1955, as amended • Native American Graves Protection and Repatriation Act of 1990 • Endangered Species Act of 1973, as amended • National Invasive Species Act of 1996 • Lacey Act, as amended • Federal Noxious Weed Act of 1974, as amended <p>NPS Policy-level Guidance (NPS Management Policies 2006 and Director's Orders)</p> <ul style="list-style-type: none"> • NPS Management Policies 2006 (§4.1.4) "Partnerships" • NPS Management Policies 2006 (§4.2) "Studies and Collections" • NPS Management Policies 2006 (§5.1) "Research" • NPS Management Policies 2006 (§8.10) "Natural and Cultural Studies, Research, and Collection Activities" • Director's Order 24: NPS Museum Collections Management • Department of the Interior Policy on Consultation with Indian Tribes • NPS Intermountain Region Indian Sacred Sites Policy



Fundamental Resource or Value	Scenic Views and Vistas
Related Significance Statements	Relationships, cultural continuity, watershed, cultural resources, scenic values.
Current Conditions and Trends	<p>Conditions</p> <ul style="list-style-type: none"> • Incredible vistas are available from both the rim of the canyon and inside of the canyon. Views include those of natural canyon and water features as well as outstanding cultural resources. Scenic vistas and views into and within the canyon are in good condition. • A unique aspect of the monument is that scenic vistas include both remnants of the past and modern structures. The opportunity to view active farms and households in the canyon is not available to the public elsewhere. • The expansive night sky visible from the monument is impressive, particularly within the canyons where the intrusion of external light sources are blocked or minimized. Many nighttime visitors experience a heightened sense of being in the natural environment. The Milky Way is often visible from horizon to horizon, and constellations are visible in great detail. • One opportunity for scenic vistas is currently closed (Ledge Ruin) due to vandalism and security concerns. • While the views from overlooks are in good condition, some of the overlooks themselves are in poor condition. Trails, fences, and signs are weathered and in need of repair or updating. • Panoramic views across the canyons to distant mountains are sometimes obscured by pollution-caused haze. At night, air pollution scatters artificial light, increasing the effect of light pollution on the night sky. <p>Trends</p> <ul style="list-style-type: none"> • Development along the canyon rim is increasing. A moratorium on development is in place; however, ad hoc development does occur. • Economic development in the local area is increasing. The local community has faced economic hardship in the past but the situation is slightly improving. • The population in Chinle, Arizona, is growing; however, the city infrastructure has not expanded in response. The ad hoc development along the rim is related to this population increase. • Scenic qualities are improving through monument staff efforts to remove invasive species. The invasive tamarisk and Russian olive are large plants that dramatically change the landscape from the native plants that would otherwise be in existence. • For the 2004–2013 decade, the trend in visibility improved on both the clearest and haziest days. • Coal-fired power plants and vehicle exhaust are believed to be major contributors to air quality impacts regionally in the Southwest. Both sources have reduced emissions significantly in the past decade to reduce ozone and fine particles, and these reductions should also improve air quality conditions at the monument. Additional reductions required by the Regional Haze Rule and Environmental Protection Agency requirements for cleaner engines and cleaner fuels for vehicles are also expected by 2019.
Threats and Opportunities	<p>Threats</p> <ul style="list-style-type: none"> • Air quality is negatively impacted by trash burning that occurs in the canyon and in the surrounding area. • Air quality is also negatively impacted by vehicle emissions in the canyon. Vehicles speeding along the rim also impact air quality. • Ad hoc development occurring on the rim threatens the currently high quality views both from the rim and from within the canyon. Visible development diminishes the quality of vistas.

Fundamental Resource or Value	Scenic Views and Vistas
Threats and Opportunities	<p>Threats (continued)</p> <ul style="list-style-type: none"> • Sanctioned development largely resulting from an increasing population in the area is occurring within visible range of the canyon rim. Development includes cell phone towers, water lines, water tanks, utilities, and billboards. • Increased development nearby has led to more artificial light, noise, and structures, which can impact night skies and vistas. • Air tours, though illegal, originate from nearby areas. The presence of low-flying aircraft and helicopters is an intrusion on the scenic views. • Illegal activities such as base jumping, climbing, rappelling, and drone flying occur in the monument. These inappropriate visitor activities detract from the high quality scenic vistas as they are not in alignment with the purpose of the monument or the sense of serenity and sacredness of Canyon de Chelly. • Vending at rim overlooks can detract from the visual aesthetics of these overlooks as it causes congested parking areas and trash is often left behind. Aggressive physical and verbal behavior negatively impacts visitors' experiences at the overlooks. There are some associated visitor security threats at the overlooks. • Paving of State Route 7 would result in increased traffic. When and if paving occurs, resources could be exposed and scenic vistas would be temporarily negatively impacted. • Surficial and engraved graffiti occurs at the overlooks and in both canyons, especially along heavily traveled routes such as White House Trail and at White House. Graffiti negatively impacts the quality of visual resources at these locations. • Oil and gas development in the region has increased significantly in the last decade, as new technologies such as horizontal drilling and hydraulic fracturing have become available. Regional emissions from oil and gas activity are contributing to nitrogen deposition and ozone levels in the park. If development trends continue, impacts from oil and gas could be a concern in the future. • Increase in mean annual temperature, storm frequency/intensity, and extreme temperature events projected for the region due to climate change could impact the viewshed through erosion, flooding, increases in invasive species, changes in hydrology, and changes in species composition. <p>Opportunities</p> <ul style="list-style-type: none"> • Work with the Navajo Nation to limit air tours over the canyons and to eliminate helicopter tours in the canyon. • Develop educational and outreach opportunities related to night skies. Issues of light pollution could be incorporated into these opportunities to protect night skies. • Expand interpretative and educational tools to communicate the connections between scenic views and vistas, night sky, air quality / pollution, cultural landscapes, stewardship ethic, climate change, recreation, human health, and other associated resources. • Archeological investigations and/or other cultural resource research could be pursued to support the possibility that particular places and sightlines at the monument were used by early canyon residents for long-distance communication with outlying points, or for strategic hunting/defensive purposes within the canyons. The presence of culturally important viewsheds or sightlines could be incorporated into interpretive programs. • Retrofit lighting within NPS-managed sites to improve night skies. • Provide additional night sky programs. • Incorporate air and sound quality data into educational and interpretation programs and outreach efforts to build support for local improvements to each. • Define visitor opportunities that are appropriate for the monument (i.e., jeeping, all-terrain vehicles, mules, mountain bikes). • Partner with the Navajo Nation Parks and Recreation Department to staff the Ledge Ruin Overlook.

Fundamental Resource or Value	Scenic Views and Vistas
Threats and Opportunities	<p>Opportunities (continued)</p> <ul style="list-style-type: none"> • Open more trails to visitors. Currently, White House is the only opportunity for visitors to use park trails without a guide. Increased opportunities would increase vistas available to visitors. • Remove illegible waysides from overlooks to decrease detracting visuals at those locations. • Work cooperatively with other federal, state, and tribal air quality agencies and other local stakeholders to reduce air quality impacts in the park from sources of air pollution. Partnering with potential nearby developers or planners could similarly help increase awareness about the importance of park air quality and important views. • Improve park sustainability and environmental leadership through the Climate Friendly Park certification including an environmental management system (Director's Order 13A).
Data and/or GIS Needs	<ul style="list-style-type: none"> • Updated air quality monitoring data. • Updated acoustical studies. • Updated night sky studies and light pollution data. • Canyon road assessment. • GIS mapping. • Comprehensive land use assessment. • Visual resource inventory.
Planning Needs	<ul style="list-style-type: none"> • Joint management plan. • Revegetation plan. • Backcountry management plan. • Frontcountry management plan. • Visual resource management plan. • Wayside plan. • Museum exhibit plan.
Laws, Executive Orders, and Regulations That Apply to the FRV, and NPS Policy-level Guidance	<p>Laws, Executive Orders, and Regulations That Apply to the FRV</p> <ul style="list-style-type: none"> • Clean Air Act (42 USC 7401 et seq.) • Museum Properties Management Act of 1955, as amended <p>NPS Policy-level Guidance (NPS Management Policies 2006 and Director's Orders)</p> <ul style="list-style-type: none"> • NPS <i>Management Policies 2006</i> (§1.4) "Park Management" • NPS <i>Management Policies 2006</i> (§1.6) "Cooperative Conservation Beyond Park Boundaries" • NPS <i>Management Policies 2006</i> (§3.1) "General" • NPS <i>Management Policies 2006</i> (§4.7) "Air Resource Management" • NPS <i>Management Policies 2006</i> (§4.10) "Lightscape Management" • NPS <i>Management Policies 2006</i> (§4.9) "Soundscape Management" • NPS <i>Management Policies 2006</i> (§5.3.1.7) "Cultural Soundscape Management" • NPS <i>Management Policies 2006</i> (§8.2.2) "Recreational Activities" • NPS <i>Management Policies 2006</i> (§8.2.3) "Use of Motorized Equipment" • NPS <i>Management Policies 2006</i> (§8.4) "Overflights and Aviation Uses" • NPS <i>Natural Resource Management Reference Manual 77</i> • Director's Order 24: <i>NPS Museum Collections Management</i> • Director's Order 47: <i>Soundscape Preservation and Noise Management</i>

Identification of Key Issues and Associated Planning and Data Needs

This section considers key issues to be addressed in planning and management and therefore takes a broader view over the primary focus of part 1. A key issue focuses on a question that is important for a park. Key issues often raise questions regarding park purpose and significance and fundamental resources and values. For example, a key issue may pertain to the potential for a fundamental resource or value in a park to be detrimentally affected by discretionary management decisions. A key issue may also address crucial questions that are not directly related to purpose and significance, but which still affect them indirectly. Usually, a key issue is one that a future planning effort or data collection needs to address and requires a decision by NPS managers.

The following are key issues for Canyon de Chelly National Monument and the associated planning and data needs to address them:

- **Unclear Jurisdictional Responsibilities.** Because the management of monument lands is shared primarily among the Navajo Nation, the National Park Service, and the Bureau of Indian Affairs, overlapping jurisdictional authorities have long led to confusion over respective roles and responsibilities. The monument contains a mosaic of grazing and school districts as well as five Navajo Nation chapters (local political units). The boundary lines of the national monument, Bureau of Indian Affairs, chapters, and county are not always clearly defined. Sometimes inadequate communication has contributed to misunderstandings, duplications of effort, and frustration for local residents in their attempts to resolve problems. There is a need for the establishment of a collaborative executive management board to identify how best to address jurisdictional requirements and authorities. The National Park Service and the Navajo Nation recognize that improved government-to-government communications would help to effectively engage the institutional knowledge and resources across all governmental agencies having jurisdictional authority to collectively improve the management of the monument.
 - **Associated data needs:** Agreements (memorandums of understanding) with law enforcement and emergency service entities need to be established (tribal, state, federal, county); boundary study to research and delineate jurisdictional boundaries within the monument; baseline data on agency/governmental authorities.
 - **Associated planning needs:** Joint management plan (developed in partnership with all stakeholders to lay the groundwork for establishment of a membership board composed of all stakeholders and governmental entities; need to reassess 1990 joint management plan and similar efforts to examine effective strategies and planning pitfalls); emergency response plan.
- **Update Interpretive Media and Planning Documents.** The monument's interpretive exhibits and media are out of date, including visitor center exhibits and waysides displayed at the rim overlooks. Several of the exhibits do not reflect the results of recent research, contain inaccuracies, or do not fully present multiple perspectives including those of the Navajo and other traditionally associated tribes. Although contemporary Navajo life and important aspects of Navajo history are interpreted through ranger talks, only a small percentage of participating visitors receive these interpretive messages. Another problem is the lack of space for additional exhibits in the visitor center. Because most visitors do not explore the canyon bottoms, an orientation film is recommended by park staff to provide some experience of the inner canyons. However, there is limited space in the existing visitor center for an audiovisual program.
 - **Associated planning needs:** Recent interpretive theme development provides a framework toward a consistent direction and coordination of the park's interpretive media and programs, but a comprehensive interpretive plan is still needed. A museum exhibit plan and wayside plan would help to address this issue.

- **Preservation of Archeological Resources.** There is a need to complete comprehensive baseline archeological inventories and investigations for approximately 70% of the monument, along with the preparation/implementation of condition assessments of known sites, preservation guides, and strategies. Recommendations for higher level preservation treatment and documentation of pictographs and petroglyphs are needed (e.g., measured drawings, analysis, descriptions). Measures are also needed to protect archeological sites and resources from threats of wind and water erosion, rockfalls, impacts from grazing and burrowing animals, unauthorized entry into sites, and vandalism.
 - **Associated data needs:** Baseline inventory and site mapping; HABS /HAER / HALS documentation; updated FMSS and ASMIS databases; publications (interpretive and professional); synthesis of existing data; updated LCS information; National Register of Historic Places nominations needed for specific sites/resources; updated azimuth data for selected sites.
 - **Associated planning needs:** Cultural resource management plan; collections management plan; historic structure reports; inadvertent discovery plan (e.g., to address urgent data recovery when cultural materials and human remains are exposed by erosion); revegetation plan; integrated pest management plan.
- **Local Economic Conditions.** It is often difficult for the local community to fully comply with the NPS mission and management requirements when faced with extremely depressed economic conditions and a 57% unemployment rate. There is limited infrastructure in the canyons to support residential activities (e.g., no trash removal service or electrical utilities are available although some residents have installed solar energy systems). Water for home consumption and irrigation is often hauled in to supplement locally available water in the canyons. There is a need to support responsible economic development that allows local communities and residents to sustain their lifeways while protecting monument resources.
 - **Associated data needs:** Socioeconomic statistics.
 - **Associated planning need:** Joint management plan.



- **Invasive Plants / Watershed Restoration.** The monument has undertaken extensive efforts to remove invasive tamarisk and Russian olive from the canyon bottomlands, although strategies to complete and sustain the removal of nonnative species is needed along with subsequent revegetation and erosion control measures. Sustainable restoration of the watershed and its dynamic geomorphology are critical to achieving long-term protection of the monument's physical and natural resources, archeological and other cultural resources, and its enduring cultural connections for the resident canyon community and other tribal members. These efforts are closely linked with associated needs for community outreach, education, ongoing biological/vegetation management studies and research, watershed restoration analysis, and cultural landscape assessments / preservation strategies.
 - ***Associated data needs:*** Hydrologic analysis; threatened and endangered species study; cultural landscape inventory; water release statistics (from Tsaile Dam into Canyon del Muerto).
 - ***Associated planning needs:*** Resource stewardship strategy; revegetation plan / environmental assessment; watershed restoration plan; cultural landscape report.
- **Appropriate Development.** There is a need to balance the demand for new homes (primarily on the canyon rims but in the canyons as well) with the monument's resource preservation requirements. There are no zoning requirements for the monument area, and extensive development or inappropriate/unplanned siting of homes presents the potential to adversely impact cultural landscapes, archeological resources, scenic values, and visitor experience. The placement of unpermitted water and other utility lines poses a threat to archeological resources because of ground disturbance. The Navajo Nation has issued a moratorium on new development. The enforcement of permitting laws and policies has been problematic but improvements in enforcement have recently been made. Issues associated with development are sensitive and politically controversial. NPS managers are often pressured to provide water or allow construction although these actions are outside the purview of the agency.
 - ***Associated data needs:*** Gateway community analysis; canyon community spatial data and contact information; visual resource inventory.
 - ***Associated planning needs:*** Joint management plan; backcountry management plan; frontcountry management plan; emergency response plan.
- **Sacred Canyon Lodge.** The future of the Sacred Canyon Lodge (formerly Thunderbird Lodge) concession operation near the visitor center presents several important management considerations. The former concessioner discontinued canyon tours and had difficulty realizing profits. They elected not to negotiate a contract extension and the contract expired in December 2015. The National Park Service determined that it was appropriate to convert the operation of the Sacred Canyon Lodge from a concession contract to a lease agreement, and entered into a short-term lease with the Navajo Nation Hospitality Enterprise that extended from January 1, 2016, to February 29, 2016. The National Park Service intends to enter into a long-term lease with Navajo Nation Hospitality Enterprise once the terms of the lease are approved. The National Park Service recently acquired several of the lodge buildings and there are plans for the monument's administrative staff to move to the former custodial residence. However, there has not been a corresponding increase in base funding to adequately cover maintenance costs. The franchise fee returned to the National Park Service from the former concessioner was minimal and did not adequately cover management time and expenses. Several of the lodge buildings are historic and may comprise a historic district. There are concerns that incompatible development and uses could affect the historic integrity of the lodge facilities.

- ***Associated data needs:*** Space utilization study (to determine how the lodge and NPS buildings could be most effectively used and maintained); determination of national register eligibility for the lodge buildings and potential historic district; feasibility study of lodge and gateway communities; historic structure reports.
- ***Associated planning needs:*** Site plan / environmental assessment (could explore previous planning concept of converting the lodge to a community / research / art center); commercial services plan (needed for new lease agreement).

Planning and Data Needs

To maintain connection to the core elements of the foundation and the importance of these core foundation elements, the planning and data needs listed here are directly related to protecting fundamental resources and values, park significance, and park purpose, as well as addressing key issues. To successfully undertake a planning effort, information from sources such as inventories, studies, research activities, and analyses may be required to provide adequate knowledge of park resources and visitor information. Such information sources have been identified as data needs. Geospatial mapping tasks and products are included in data needs.

Items considered of the utmost importance were identified as high priority, and other items identified, but not rising to the level of high priority, were listed as either medium- or low-priority needs. These priorities inform park management efforts to secure funding and support for planning projects.

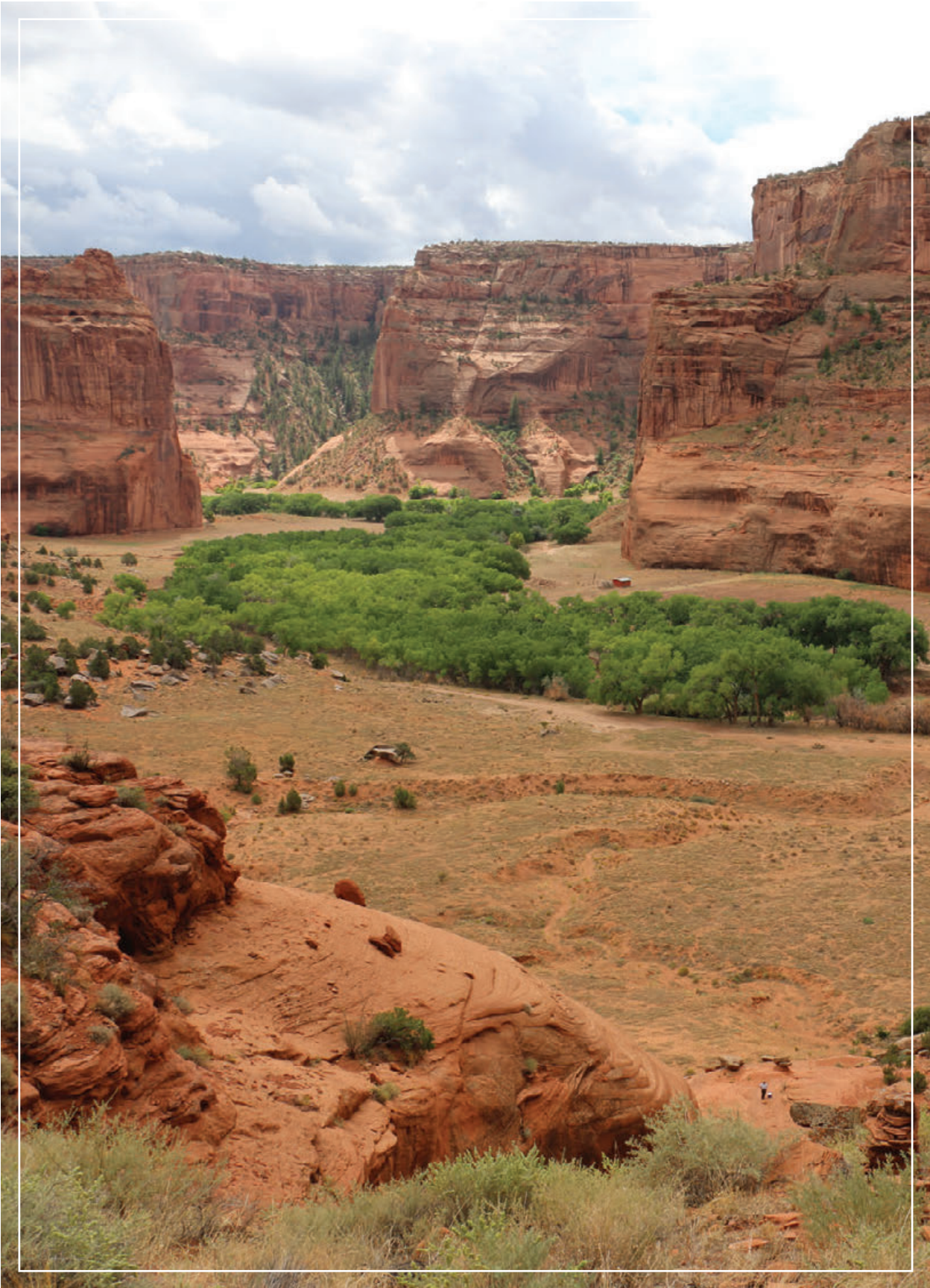


Planning Needs – Where A Decision-making Process Is Needed			
Related to an FRV or Key Issue?	Planning Needs	Priority (H, M, L)	Notes
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes; Continuing Cultural Connections; Experience of Place; Partnerships and Relationships; Scenic Views and Vistas	Joint management plan	H	<p>This plan is necessary to provide guidance to both the Navajo Nation and the National Park Service to clarify individual and shared responsibilities between the agencies and has been needed since the establishment of the monument. Clarification on roles and responsibilities would allow park staff to better focus on managing resources and addressing other management needs rather than often having to sort out who is responsible for what action. The plan would be the first step in resolving multiple issues currently faced in the park. In order to develop this plan, input is needed from all involved parties on the future of the monument.</p> <p>The process of developing the plan would be an equally important outcome as it would allow all parties to be heard and create invaluable ownership.</p>
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes	Cultural resources management plan	H	<p>This plan is needed to address core resource protection for both immediate and long-term time frames. Within this plan, management actions, including mitigation efforts, would be identified. This is particularly needed as watershed restoration efforts advance. The plan would frame how fundamental resources should be managed and would identify additional plans needed. This plan would be separate from a resource stewardship strategy as alternatives would be needed.</p>
Archeological Landscapes and Associated Museum Collections; Continuing Cultural Connections; Key Issue	Comprehensive interpretive plan	H	<p>An overarching plan that can be used for a variety of interpretation and outreach efforts is needed. This plan is needed before specific actions such as updating waysides and developing exhibit plans can be undertaken. The guidance in this plan would also provide context for how messaging for interpretation and outreach is crafted.</p>
Cultural Landscapes	Watershed restoration plan	H	<p>Watershed restoration efforts have been underway at the monument for the past 10 years with removal of invasive species. As plant removal comes to a completion and revegetation efforts need to begin, maintenance actions to continue watershed restoration need to be identified. This plan would be associated with the revegetation planning effort. This plan is an immediate need as watershed protection impacts important resources throughout the monument. Many resources, particularly cultural, are highly sensitive to erosion and other water-related impacts. A longer-term portion of this plan should address climate change impacts on both natural and cultural resources that are tied to the larger cultural landscapes of the monument.</p>
Archeological Landscapes and Associated Museum Collections; Continuing Cultural Connections; Experience of Place; Partnerships and Relationships; Scenic Views and Vistas; Key Issue	Museum exhibit plan	H	<p>This plan would address a critical component of how messages are relayed to the public. The museum is a highly visible area where visitors and community members alike obtain information about the monument. There is a strong need, particularly in the local community, for an accessible source of information on topics connected to the canyon. Museum exhibits are also a way for those who cannot go into the canyon to gain valuable information about why this is such an important place to so many people.</p>

Planning Needs – Where A Decision-making Process Is Needed			
Related to an FRV or Key Issue?	Planning Needs	Priority (H, M, L)	Notes
Cultural Landscapes; Continuing Cultural Connections; Experience of Place; Partnerships and Relationships; Scenic Views and Vistas	Backcountry management plan (also see emergency response plan and helicopter landing zone plan)	M	This plan would be a cooperative effort with the Navajo Nation. It would address key issues relating to the types of activities that occur in the backcountry and how those uses are managed. Emergency response planning would need to be done as a core part of this plan. Most emergencies occur in the backcountry. The plan would also need to address zoning and some frontcountry needs that are directly tied to emergency response. This plan could be tied to a helicopter landing zone plan.
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes; Scenic Views and Vistas	Resource stewardship strategy	M	Overall guidance for the natural and cultural resources of the monument is needed. The quantity and concentration of these resources warrants creating a resource stewardship strategy. There are currently plans that focus on specific sites within the monument but none that take a holistic approach to identify resource needs that may otherwise not receive much attention. There are currently many natural resource planning needs that could begin to be articulated and addressed in this plan. This planning effort should involve the local community and serve as a communication tool so that community members can better understand the importance of this site within a larger NPS context.
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes; Scenic Views and Vistas	Revegetation plan	M	Removal of invasive plant species in the canyon has been a particular focus for the park over the past 10 years. In areas where plants have been removed, soil needs to be stabilized and revegetated. This plan is needed to avoid future resource impacts by identifying the type and location of revegetation needs. This would be a proactive plan to ensure that all of the hard work of plant removal is successful. The plan would probably be an environmental assessment level of the National Environmental Policy Act so that alternatives could be considered. (Also see backcountry management plan and helicopter landing zone plan.)
Experience of Place; Partnerships and Relationships	Emergency response plan	M	This plan is needed in order to clarify responsibilities between the National Park Service and the Navajo Nation so that when human safety issues arise, response teams can be gathered efficiently. A backcountry management plan might address this to a certain degree; however, specifics on emergency response are needed at a higher level of detail. Issues relating to helicopter landing would also be related to this planning effort.
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes; Continuing Cultural Connections	Climate change scenario planning	L	Outcomes from a scenario planning effort could be integrated in park planning and management to bring appropriate climate change adaptation into those documents (e.g., watershed restoration plan, resource stewardship strategy). This planning process would allow the monument to explore the range of climate futures that are plausible based on the latest modeled projections and identify the associated impacts and management implications.

Planning Needs – Where A Decision-making Process Is Needed			
Related to an FRV or Key Issue?	Planning Needs	Priority (H, M, L)	Notes
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes	Historic structure reports	L	Historic structure reports are needed for archeological sites to guide future preservation efforts. Approximately 300 reports are needed. These would ensure that character-defining features and materials are not lost, and it would assist with prioritizing management actions.
Archeological Landscapes and Associated Museum Collections; Experience of Place	Collections management plan	L	This plan would be a key first step examining the possibility of collection items being stored at the canyon itself. The majority of the collection is currently housed at the NPS Western Archeological and Conservation Center in Tucson, Arizona. Through this plan, the possibility of bringing some items to the monument would be explored. Many of the collection items are inherently tied to the monument and could be interpreted if housed at the canyon. Additionally, traditionally associated tribes have expressed a desire to have objects returned to the canyon.
Continuing Cultural Connections; Experience of Place; Scenic Views and Vistas; Key Issue	Wayside plan	L	Wayside exhibits are currently out of date and in poor condition. A wayside plan would provide overall guidance as improvements are made and new waysides are developed.
Archeological Landscapes and Associated Museum Collections	Inadvertent discovery plan for Native American Graves Protection and Repatriation Act of 1990	L	There is a high likelihood of human remains being present throughout the canyon. Human remains result from past traditional tribal burial practices. This plan would outline how discoveries of human remains are to be handled by monument staff.
Archeological Landscapes and Associated Museum Collections	Integrated pest management plan	L	In order to prevent unacceptable levels of pest damage to resources, an integrated pest management plan is needed. This plan would coordinate best practices in order to cost-effectively and efficiently manage pests in a manner that is most beneficial to resources and the least impacting on the environment.
Archeological Landscapes and Associated Museum Collections	Complete museum housekeeping plan	L	The current museum housekeeping plan needs to be completed to cover all areas where museum collections are stored at the monument. This plan would formalize a process and schedule for maintaining areas where museum collections are stored in order to prevent damage to collection items.
Cultural Landscapes	Cultural landscape report	L	Cultural landscape reports are needed in order to provide documentation and guidance for cultural landscapes at the monument. The reports would provide managers with an in-depth understanding of the history, evolution, and significance of the properties that comprise cultural landscapes. The reports would enable informed and thoughtful stewardship of these resources. Each completed report would include a narrative site history, an inventory and assessment of existing conditions, as well as any other documentation needed for resources tied to cultural landscapes.

Planning Needs – Where A Decision-making Process Is Needed			
Related to an FRV or Key Issue?	Planning Needs	Priority (H, M, L)	Notes
Experience of Place; Scenic Views and Vistas	Frontcountry management plan	L	This plan would outline appropriate uses in frontcountry areas for visitors and the local community and would include elements of zoning. It could potentially address vending issues, trails, vehicle use and traffic, camping, etc.
Continuing Cultural Connections	Update fire management plan	L	The current fire management plan needs to be updated to provide guidance for fuel reduction activities in targeted areas of the monument.
Continuing Cultural Connections; Experience of Place	Helicopter landing zone plan	L	This plan would provide guidance primarily for determining appropriate locations for emergency helicopter landings on the canyon rims and in the frontcountry. Unauthorized helicopter flights and landings have occurred in the past. The plan would take into consideration the effects of noise on the park and the park resources to inform decision-making. The plan should also include strategies for communicating with nearby communities, businesses, and agencies.
Continuing Cultural Connections; Experience of Place; Partnerships and Relationships	Site plan (Sacred Canyon Lodge)	L	A site development plan for the Sacred Canyon Lodge is needed in order to maximize the utility of this facility. Conceptual designs, including alternatives, might be necessary as part of this plan. This need is ranked as low; however, future decisions concerning the long-term management of the facility may require more immediate attention.
Continuing Cultural Connections; Experience of Place; Partnerships and Relationships	Commercial services plan (Sacred Canyon Lodge)	L	Depending on the nature of the long-term lease agreement and management direction for the Sacred Canyon Lodge, this plan would be needed to ensure that commercial services provided at the lodge are in keeping with NPS needs and standards. While this need is currently ranked low, future decisions concerning the management of the site may require more immediate attention.
Continuing Cultural Connections; Partnerships and Relationships	Site plan (community center)	L	A community center where information related to the canyon can be easily accessed by local community members is needed. This need is related to the museum collections plan and exhibit plan. The visitor center currently serves as a proxy for a community center. Additional options, possibly including use of the former custodian's residence building at the Sacred Canyon Lodge, need to be explored in this plan.
Experience of Place; Scenic Views and Vistas	Visual resource management plan	L	A holistic approach to conserving scenery and landscapes is needed in order to create effective partnerships or programs with the Navajo Nation. Conserving scenery is directly tied to the cultural landscapes that are located within or associated with the monument.



Data Needs – Where Information Is Needed Before Decisions Can Be Made			
Related to an FRV or Key Issue?	Data and GIS Needs	Priority (H, M, L)	Notes, Including Which Planning Need This Data Need Relates To
Partnerships and Relationships	Jurisdiction baseline data	H	Baseline data concerning jurisdictional responsibilities between the National Park Service and the Navajo Nation are needed. This information would inform the future joint management plan. A key aspect of that plan would be identifying the roles and responsibilities of each party. This information would immediately be useful as incidents occur or questions are asked that require a response from the National Park Service. This data need is a first step needed for many of the planning and data needs listed in this document.
Cultural Landscapes; Continuing Cultural Connections; Scenic Views and Vistas	GIS mapping	H	Geographic Information System (GIS) mapping of archeological site boundaries, canyon resident land boundaries, cultural landscapes, trails, and other features within the monument are vital as decisions are made about the monument. During both long-term planning efforts and immediate emergency response efforts, knowing where park resources are located is critical. GIS data are a powerful management tool that assists with decision making across all divisions. Within this GIS effort, sensitive cultural and natural resource areas should be identified so that management efforts that influence these resources and areas can be prioritized.
Archeological Landscapes and Associated Museum Collections	Complete baseline archeological investigations	H	In order to protect archeological resources in the monument, a thorough identification and understanding of these resources is needed. Currently about 30% of the monument has been inventoried. Inventories include condition assessments and GIS data collection. The high density of archeological resources in the monument makes investigations a major task that requires significant NPS staff time and resources. As resources are identified, content could be incorporated into interpretive programming to convey the true depth of resources present at the monument. Contributing to interpretive programming is particularly pertinent to the repeat visitors and to people who have cultural ties to this place. The presence of human remains in the monument ties this data need to the inadvertent discovery plan.
Continuing Cultural Connections	Climate change vulnerability assessment	H	In order to plan for impacts caused by climate change, baseline information about resources that are likely to be impacted is needed. The monument needs to be a leader in the community on this topic. Being able to speak to climate change vulnerability would help monument staff bring awareness of climate change to the local community. Incorporating traditional ecological knowledge would be an important component of this data need. Human response to changes in climate is documented in archeological resources at Canyon de Chelly National Monument and other associated sites. Relaying traditional knowledge applicable to climate change would be helpful to both local community members and visitors alike.

Data Needs – Where Information Is Needed Before Decisions Can Be Made			
Related to an FRV or Key Issue?	Data and GIS Needs	Priority (H, M, L)	Notes, Including Which Planning Need This Data Need Relates To
Experience of Place; Partnerships and Relationships	Publications (professional and public)	H	Current and future knowledge of resources within the monument need to be disseminated in both professional and public domains. There is a strong desire from both visitors and local community members to have access to information on park resources, particularly as new discoveries are made. Both user groups come to the monument to learn about the monument and the sense of discovery is an important visitor experience. By publishing information in professional publications such as journals, information about the monument is spread to a wider audience. In addition to publications, information needs to be displayed in interpretive programming and media, such as social media, that is easily digestible by the public. There is currently a backlog of information that needs to be shared. All of these efforts serve to build stewardship and strong community (both the local community, academic community, and cultural resource community) support for preservation of the monument.
Cultural Landscapes; Continuing Cultural Connections; Partnerships and Relationships	Oral histories	H	Oral histories of canyon residents as well as others from traditionally associated tribes are needed. The wealth of knowledge that individuals have about the canyon's history is invaluable. Capturing this knowledge in a way that would be preserved for future generations is vital and time sensitive. Appropriate consultation would be conducted during the course of this effort.
Cultural Landscapes; Continuing Cultural Connections; Experience of Place	Cultural landscape inventory – de Chelly and del Muerto canyons	H	This need is part of the baseline information needed for the monument in order to protect cultural landscapes. By understanding the cultural landscapes present in both the de Chelly and del Muerto canyons, associated planning needs would be better informed (i.e., joint management plan, cultural resource management plan, watershed restoration plan).
Archeological Landscapes and Associated Museum Collections; Cultural Landscapes	Hydrologic data	H	The timing and quantity of water released from the upstream Tsale Dam can affect downstream farming and grazing in the monument canyons. Starting in 2016 (following completion of dam rehabilitation construction), the only water released from the dam will occur on the basis of release requests that would typically come from Navajo chapter(s) or canyon residents. Compiling and understanding data regarding the release of water from the dam and other hydrological studies pertaining to the monument would inform the watershed restoration plan. The NPS Southern Colorado Plateau Inventory & Monitoring Network is currently collecting quantitative ground and surface water data.
Cultural Landscapes; Continuing Cultural Connections; Experience of Place	Condition assessment of trails	M	Many of the trails at the monument have been used over hundreds of years by people who both traveled to and lived in the canyon. They continue to be used by canyon residents today. Foot and handholds and even carved stairs are present on the trails as they traverse rock surfaces. Work to assess the conditions of trails began in 2015 along White House, Bat, Tunnel, Bear, White Sands, and Twin trails. As with other baseline information efforts identified in this document, knowledge of resources is needed in order for effective management decisions, particularly for preservation, to be made.

Data Needs – Where Information Is Needed Before Decisions Can Be Made			
Related to an FRV or Key Issue?	Data and GIS Needs	Priority (H, M, L)	Notes, Including Which Planning Need This Data Need Relates To
Cultural Landscapes; Continuing Cultural Connections; Scenic Views and Vistas	Comprehensive land use assessment	M	There is currently a lack of clear information on land use occurring in the canyon. This assessment would identify which land parcels are being managed by whom and what land uses are occurring. A spatial (GIS) element of this information would be useful. Having a clear picture of what is going on in the canyon would help with planning needs that directly relate to canyon residents and management of resources in the canyon (i.e., joint management plan, cultural resource management plan, watershed restoration plan, resource stewardship strategy, revegetation plan, climate change scenario planning).
Archeological Landscapes and Associated Museum Collections	Update FMSS database	M	There are currently needs at archeological sites that need to be addressed but that are not listed in the database. In order to prioritize the needed work, the database needs to be updated to accurately reflect the work needed in the monument.
Cultural Landscapes; Continuing Cultural Connections	Traditional cultural property assessment	M	The Navajo Nation Historic Preservation District has requested NPS assistance with managing traditional cultural properties. As part of this assistance, identification and assessment of those properties is first needed. There are many properties within the monument itself. This assessment would inform planning efforts and management decisions that relate to preservation efforts.
Archeological Landscapes and Associated Museum Collections; Continuing Cultural Connections; Experience of Place	Ethnobotanical studies	M	Ethnobotanical studies examine and document the relationships between peoples and plants. By understanding how humans traditionally used plants in the past and currently use them, restoration and protection efforts for plants could be prioritized and planned. Very little information on ethnobotany is known for the monument. This information would be particularly useful as climate change vulnerability assessments are completed and plans are developed.
Archeological Landscapes and Associated Museum Collections	Rock art documentation	L	Detailed documentation of pictographs and petroglyphs is needed throughout the canyon. Measured drawings would document these sites in a meaningful way that could be shared through professional and public publications. As some sites degrade through natural processes and climate change-influenced processes, this documentation would be vital for the overall study and knowledge of the canyon's past. Consultation, as appropriate, would be conducted during the course of this project.
Archeological Landscapes and Associated Museum Collections	HABS / HAER / HALS documentation of standing architecture	L	HABS, HAER, and HALS documentation are needed for standing architecture within the monument. Preservation efforts are taken with historic structures within the monument. However, as structures degrade, information about them will be lost if they are not adequately documented.
Archeological Landscapes and Associated Museum Collections	Update LCS database	L	The current LCS database needs to be updated to include all known sites within the monument. Approximately 70% of the current LCS records need to be updated.

Data Needs – Where Information Is Needed Before Decisions Can Be Made			
Related to an FRV or Key Issue?	Data and GIS Needs	Priority (H, M, L)	Notes, Including Which Planning Need This Data Need Relates To
Archeological Landscapes and Associated Museum Collections	National Register of Historic Places nominations	L	The vast majority of archeological sites within the canyon and along the rims—potentially more than 3,000 prehistoric and historic sites—need national register nominations. In addition, national register nominations may be necessary for historic frontcountry buildings following determinations of eligibility. Consultation, as appropriate, would be conducted during the course of this work.
Archeological Landscapes and Associated Museum Collections	Update ASMIS database	L	The ASMIS database needs to be updated with current information pertaining to sites within the monument. As inventories and assessments are completed, the database would need to be updated in order to track resources and prioritize preservation efforts.
Archeological Landscapes and Associated Museum Collections	Historic resource study	L	A historic resource study is needed to document all significant prehistoric and historic themes in the monument. This study would help to inform and update national register nominations.
Continuing Cultural Connections	Land user maps	L	Maps that depict current land users in the canyon would help management coordinate NPS actions near or on canyon resident land. These maps would be generated from the comprehensive land use assessment listed previously.
Cultural Landscapes; Continuing Cultural Connections; Scenic Views and Vistas	Canyon road assessment	L	Vehicles currently in the canyon use two-track roads that have developed over time. These roads traverse the water channel at many locations and often change depending on water conditions. An assessment of the road would allow potentially negative impacts to be identified and possibly mitigated.
Continuing Cultural Connections	Condition assessment of deep canyon areas (hazardous fuels, knowledge of remote locations)	L	Archeological resources and natural resources are found in high quantities throughout the canyon. Areas deep within canyons are particularly unexplored and undocumented. Visitation of these areas is low, therefore making this a lower priority than other more easily accessible areas of the canyon. This assessment would include documentation of cultural resources and natural resources. Knowing what exists in this area would inform management actions. For instance, if a high amount of hazardous fuels threaten archeological resources, action may be needed.
Experience of Place	Inner canyon guide	L	This guide could be a handbook or similar publication providing standardized, consistent, and understandable information regarding canyon resources to assist guided services and visitor interpretation.
Experience of Place	Update wildlife list	L	Published wildlife lists need to be updated with more current information. This information would be helpful not just for NPS managers but also for visitors who participate in bird and wildlife watching while visiting the monument.

Data Needs – Where Information Is Needed Before Decisions Can Be Made			
Related to an FRV or Key Issue?	Data and GIS Needs	Priority (H, M, L)	Notes, Including Which Planning Need This Data Need Relates To
Archeological Landscapes and Associated Museum Collections	Conduct an archival survey	L	An archival survey is needed to identify and catalog field records, which may be located in other repositories.
Archeological Landscapes and Associated Museum Collections	Research natural history collections and associated field records	L	Research to identify the locations of natural history collections and associated field records produced over the years under Research Permit and Reporting System permits and by staff. Often, these collections are located in nonfederal repositories, are not cataloged, and are not managed as museum collections.
Experience of Place	Baseline for special use permits	L	Requests for special use permits have increased in recent years at the monument. A tracking system of requests and approvals or denials of permits is needed in order to identify trends.
Key Issue	Threatened and endangered species study	L	Information on threatened and endangered species within the monument is needed in order to ensure that necessary management actions are taken. In addition, mitigation measures could effectively be put in place where needed with this information. Among the monument's threatened and endangered species are Mexican spotted owl, peregrine falcon, willow flycatcher, Navajo sedge, and other plant and animal species.
Partnerships and Relationships	Socioeconomic statistics	L	Conditions in nearby communities influence many aspects of the monument. Vending and concession operations serve as employment opportunities within a very depressed local economy. Gathering socioeconomic data would be one more way that the monument could be a leader in the community and a partner with the Navajo Nation. This information would help garner support for programs or development for local communities.
Partnerships and Relationships	Gateway community analysis	L	Nearby communities rely on the monument as a source of employment and information. This analysis would help NPS managers understand how the monument influences these communities in multiple ways: educational opportunities for local schools (e.g., field trips), socioeconomic implications of tourism on the local communities including financial costs/benefits, etc.
Partnerships and Relationships	Update administrative history	L	The administrative history of the monument is currently out of date and needs to be updated. This documentation would be an important way for institutional knowledge about management of the monument to be captured and retained for future managers. It would also be an important collection of data to reference during planning efforts in order to identify actions that have been taken in the past.
Scenic Views and Vistas	Air quality monitoring	L	Air quality monitoring is needed within the canyon and on the rim. This type of data is not currently collected by the Navajo Nation but is vital for monitoring the condition of cultural landscapes as well as climate change. This information would inform the climate change adaptive strategy.

Data Needs – Where Information Is Needed Before Decisions Can Be Made			
Related to an FRV or Key Issue?	Data and GIS Needs	Priority (H, M, L)	Notes, Including Which Planning Need This Data Need Relates To
Cultural Landscapes; Scenic Views and Vistas; Experience of Place	Visual resource inventory	L	A visual resource inventory would provide information identifying important views and scenic qualities contributing to the monument's cultural landscape and visitor experience. It would assist with collaborative management initiatives to preserve the monument's viewsheds from incompatible development or new/proposed development encroaching near the boundary of the monument.
Scenic Views and Vistas	Acoustical studies	L	Artificial sounds, particularly originating along the canyon rim, such as people yelling or talking loudly, airplanes, and cars have been observed within the canyon. By updating acoustical studies, monument staff would be able to understand what nonnatural sounds are audible at the park. This knowledge would allow monument staff to develop management strategies to effectively improve or safeguard soundscapes.
Scenic Views and Vistas	Baseline night sky data	L	The remote location of the monument results in impressive night skies. Increasing artificial light pollution from nearby development as well as lower air quality is currently threatening the quality of the night skies visible. These studies would provide a baseline for current conditions and allow the monument to track changes in conditions over time. By understanding baseline conditions monument staff can effectively communicate and partner with local communities on the importance of reducing light pollution and improving air quality.



Part 3: Contributors

Canyon de Chelly National Monument

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David Wagner, Equipment Operator

Hubbell Trading Post National Historic Site

Lloyd Masayumptewa, Superintendent
Ailema Benally, Chief of Interpretation
Kathy Tabaha, Museum Technician

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Michele D'Arcy, Landscape Architect (retired), Planning Division
Sami Powers, Planner, Planning Division

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Ken Bingenheimer, Editor
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Nancy Shock, Foundation Coordinator
Pam Holtman, Quality Assurance Coordinator, Washington Support Office, Park Planning and Special Studies
Angie Marie Wing, Visual Information Specialist (former)

Partners

Yvonne Towne, Western National Parks Association

Appendixes

Appendix A: Enabling Legislation and Legislative Acts for Canyon de Chelly National Monument

Pursuant to the authorizing legislation, Canyon de Chelly National Monument was established by Presidential Proclamation 1945 on April 1, 1931 (47 Stat 2448), for the preservation of a great number of cliff dwellings and for their archeological interest. The National Park Service was to administer the monument under the provisions of the National Park Service Organic Act of August 25, 1916 (39 Stat 535).

Because of an error in the boundary description and uncertainty as to the accuracy of the township boundary surveys, the original boundary was amended by Congress. The amendment was signed by the president on March 1, 1933. Presidential Proclamation 2036 on March 3, 1933 (47 Stat 2562), established the new boundary, which included “[a]ll lands in del Muerto, de Chelly, and Monument Canyons, and the canyons tributary thereto, and the lands within one-half mile of the rims of the said canyons.”



Authorization – Act of February 14, 1931 (41 Stat. 1161)

SEVENTY-FIRST CONGRESS. SESS. III. CH. 188. 1931.

1161

CHAP. 188.—An Act To authorize the President of the United States to establish the Canyon De Chelly National Monument within the Navajo Indian Reservation, Arizona.

February 14, 1931.
[H. R. 15987.]
[Public, No. 667.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That with the consent of the tribal council of the Navajo Tribe of Indians the President of the United States is hereby authorized to establish by presidential proclamation, the Canyon De Chelly National Monument, within the Navajo Indian Reservation, Arizona, including the lands hereinafter described.

Canyon De Chelly
National Monument,
Ariz.
Established, within
Navajo Indian Reser-
vation, with consent of
their council.

Township 4 north, range 7 west, north half section 5, and northeast quarter section 6; township 5 north, range 7 west, south half section 15, section 19, south half section 20, section 21, section 22, south half section 23, north half section 26, north half section 27, north half section 28, sections 29, 30, 31, and 32; township 3 north, range 8 west, section 4, east half section 5; township 4 north, range 8 west, sections 6 and 7, southwest quarter section 17, sections 18 and 19, west half and southeast quarter section 20, sections 29 and 30, north half section 31, sections 32 and 33; township 5 north, range 8 west, section 7, section 13, south half section 14, south half section 15, south half and northwest quarter section 16, sections 17 to 24, inclusive, north half section 25, north half section 26, section 27, north half and southeast quarter section 28, north half section 29, north half section 30 and southwest quarter section 31; township 6 north, range 8 west, north half section 3, sections 4 to 8, inclusive, west half section 18 and northwest quarter section 19; township 7 north, range 8 west, south half section 33, section 34 and west half section 35; township 4 north, range 9 west, sections 1 to 3, inclusive, east half section 4, north half section 10, north half section 11, sections 12 and 13, east half section 24 and east half section 25; township 5 north, range 9 west, sections 4 to 31, inclusive, east half section 33, and sections 34 to 36, inclusive; township 6 north, range 9 west, sections 1 to 3, inclusive, sections 10 to 15, inclusive, sections 21 to 23, inclusive, sections 10 to 15, inclusive, sections 21 to 23, inclusive, north half section 24; north half section 26, sections 27 to 29, inclusive, southeast quarter section 30, and sections 31 to 34, inclusive; township 5 north, range 10 west, sections 1 to 18, inclusive, north half section 22, sections 23 to 25, inclusive, north half section 26, and north half section 36; township 6 north, range 10 west, east half section 34, section 35, and south half section 36, embracing about eighty-three thousand eight hundred and forty acres of unsurveyed land, all west of the Navajo meridian, in Arizona.

Description.

SEC. 2. That nothing herein shall be construed as in any way 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 as hereinafter defined; and the said tribe of Indians shall be, and is hereby, granted the preferential right, under regulations to be prescribed by the Secretary of the Interior, of furnishing riding animals for the use of visitors to the monument.

Rights of Indians re-
served.

SEC. 3. That the National Park Service, under the direction of the Secretary of the Interior, is hereby charged with the administration of the area of said 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, and shall have the right to construct upon the lands such roads, trails, or other structures or improvements as may be necessary in connection with the administration and protection of the monument.

Control etc.

[CHAPTER 161.]

AN ACT

To amend the description of land described in section 1 of the Act approved February 14, 1931, entitled "An Act to authorize the President of the United States to establish the Canyon De Chelly National Monument within the Navajo Indian Reservation, Arizona."

March 1, 1933.
[H. R. 13960.]
[Public, No. 404.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the description of the tract of land described in section 1 of the Act approved February 14, 1931, entitled "An Act to authorize the President of the United States to establish the Canyon De Chelly National Monument within the Navajo Indian Reservation, Arizona" (U. S. C., title 16, secs. 445, 445b), be, and the same is hereby, amended to read as follows:

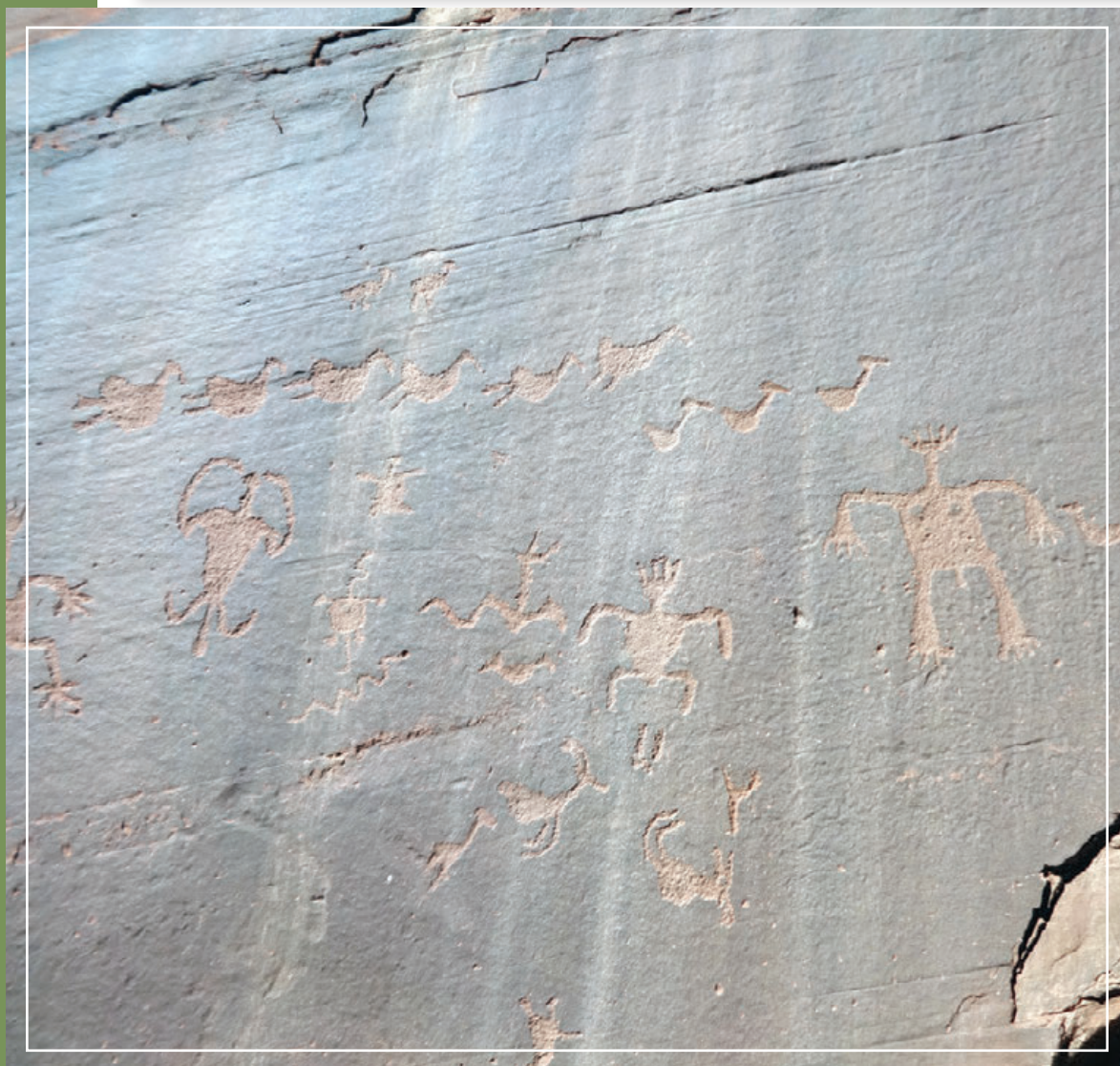
Canyon De Chelly
National Monument,
Ariz.

Vol. 46, p. 1161.
U. S. C., Supp. VI,
p. 219, amended.

"All lands in Del Muerto, De Chelly, and Monument Canyons, and the canyons tributary thereto, and the lands within one-half mile of the rims of the said canyons, situated in unsurveyed townships 4 and 5 north, range 7 west; townships 4, 5, and 6 north, range 8 west; townships 4 and 5 north, range 9 west; and in surveyed townships 4 and 5 north, range 6 west; townships 3, 6, and 7 north, range 7 west; township 6 north, range 9 west; and township 5 north, range 10 west; embracing about eighty-three thousand eight hundred and forty acres, all of the Navajo meridian, in Arizona."

Description of tract
amended.

Approved, March 1. 1933.



Boundary Revisions – Act of March 1, 1933, P.L. 72-404 (1419)

2562

PROCLAMATIONS, 1933.

CANYON DE CHELLY NATIONAL MONUMENT—ARIZONA

March 3, 1933.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Canyon De Chelly National Monument, Ariz. Establishment, within Navajo Indian Reservation, with consent of their council. Vol. 46, p. 1161.

Statutory provision for modifying area. Ante, p. 1417.

Approval by Navajo Council Assembly.

Ante, p. 2449.

Description amended.

Location.

Warning against unlawful acts.

Supervision.

Vol. 39, p. 535.
U. S. C., p. 389.

WHEREAS Congress by act of February 14, 1931 (Public, No. 667—71st Cong.), entitled “AN ACT To authorize the President of the United States to establish the Canyon De Chelly National Monument within the Navajo Indian Reservation, Arizona,” authorized the President of the United States, with the consent of the Tribal Council of the Navajo Tribe of Indians, to establish the said Canyon De Chelly National Monument by Executive proclamation; and

WHEREAS Congress by act of March 1, 1933 (Public, No. 404—72nd Cong. 2nd Session), entitled “AN ACT To amend the description of land described in section 1 of the act approved February 14, 1931, entitled “AN ACT To authorize the President of the United States to establish the Canyon De Chelly National Monument within the Navajo Indian Reservation, Arizona,” amended the description of the land described in section 1 of the act of February 14, 1931; and

WHEREAS the Navajo Tribal Council Assembly at Fort Wingate, New Mexico, on July 8, 1930, adopted a resolution approving the establishment of the Canyon De Chelly National Monument; and

WHEREAS it appears to be in the public interest that the cliff dwellings and other features of scientific and educational interest desired to be preserved be more accurately described by amending the description of the land for the Canyon De Chelly National Monument as established by Proclamation No. 1945 dated April 1, 1931;

NOW, THEREFORE, I, HERBERT HOOVER, President of the United States of America, by virtue of the power in me vested by the said acts of Congress approved February 14, 1931, and March 1, 1933, do proclaim that the Canyon De Chelly National Monument as heretofore established by proclamation shall comprise the following described lands:

“All lands in Del Muerto, De Chelly, and Monument Canyons, and the canyons tributary thereto, and the lands within one-half mile of the rims of the said canyons, situated in unsurveyed townships 4 and 5 north, range 7 west; townships 4, 5, and 6 north, range 8 west; townships 4 and 5 north, range 9 west; and in surveyed townships 4 and 5 north, range 6 west; townships 3, 6, and 7 north, range 7 west; township 6 north, range 9 west; and township 5 north, range 10 west; embracing about eighty-three thousand eight hundred and forty acres, all of the Navajo meridian, in Arizona,”

and the proclamation dated April 1, 1931, heretofore issued for the establishment of the said national monument is hereby accordingly modified.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled “AN ACT To establish a National Park Service, and for other purposes,” approved August 25, 1916 (39 Stat. 535), and acts additional thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.



Appendix B: Inventory of Administrative Commitments

Title / Agency / Organization	Purpose / Description	Expiration Date	Responsible Party
Memorandums of Agreement			
Memorandum of agreement between the National Park Service and the Navajo Tribal Utility Authority	Agreement addresses natural gas, electricity, and sewage services.		National Park Service, Navajo Tribal Utility Authority
Memorandum of agreement with the Navajo Communications Company, Inc.	Agreement covers telephone service to the monument.		National Park Service, Navajo Communications Company, Inc.
Cooperative Agreements			
Cooperative agreement between the National Park Service and the Bureau of Indian Affairs	Agreement addresses control of forest, brush, and grass fires on the Navajo Indian Reservation and in Canyon de Chelly National Monument.	Agreement executed in 1965 and remains effective until terminated.	National Park Service, Bureau of Indian Affairs, Navajo Nation
Wildland fire management planning agreement for the Navajo Nation and cultural and National Park Service units within Navajo Nation	The cooperative planning agreement was developed to reduce the risk of severe large-scale wildland fires that threaten public safety, property, and economic, cultural, and natural resources. The document provides broad direction for fire-related decision making from which specific actions are tiered. A related Finding of No Significant Impact was signed in 2005.	Agreement executed in 2006 and remains effective until terminated.	Bureau of Indian Affairs, National Park Service (Canyon de Chelly National Monument and other cooperating NPS units), Navajo Nation
Cooperative agreement between the National Park Service and the Navajo Nation (Parks and Recreation Department)	The agreement addresses the operation of the Cottonwood Campground by Navajo Parks and Recreation Department.		National Park Service, Navajo Nation
Cooperative agreement between the National Park Service and the Navajo Nation (Parks and Recreation Department)	The agreement addresses the installation and maintenance of vault toilets.		National Park Service, Navajo Nation
Western National Parks Association (WNPA)	National cooperating association agreement with WNPA to provide support and assistance to the interpretive, educational and research activities of the National Park Service and provide interpretive and educational materials to visitors.	February 24, 2011, to February 24, 2016	NPS WASO coordinator for cooperating associations; regional coordinators for cooperating associations; park coordinators; and WNPA executive director and/or on-site WNPA manager

Title / Agency / Organization	Purpose / Description	Expiration Date	Responsible Party
General Agreements			
Agreements among the Navajo Nation and the Bureau of Indian Affairs; the National Park Service is sometimes invited to comment	Permits are granted to Navajo tribal members for land uses within the monument.		National Park Service, Navajo Nation, Bureau of Indian Affairs
Special Park Uses			
Easement granted by the Navajo Nation for 3 miles (outside the monument) of an 11-mile-long pavement extension to the Spider Rock overlook	There is an understanding that the road will be left open to the general public to improve and enlarge school bus service and to develop the economic potential for recreation and tourism.		National Park Service, Navajo Nation
Commercial Services			
Concessions contract between the National Park Service and Thunderbird Lodge	Provides for visitor meals, overnight accommodations, souvenirs, and canyon vehicle tours.	2004	National Park Service, concession operator
Concessions contract between the U.S. Department of the Interior, NPS – Canyon de Chelly National Monument, Thunderbird Lodge (Shadii Company); Concession Contract No. TC-CACH001-13	Category 1 commercial services contract to provide lodging, food and beverage, and retail services.	December 31, 2015	National Park Service, concession operator
Lease agreement between the National Park Service and the Navajo Nation Hospitality Enterprise for operation of the Sacred Canyon Lodge (former Thunderbird Lodge)	The National Park Service entered into a short-term lease agreement with the Navajo Nation Hospitality Enterprise on January 1, 2016, which is renewed for recurring 60-day terms until a long-term lease is established upon negotiation and approval of lease terms with the Navajo Nation.	Ongoing 60-day terms	National Park Service, Navajo Nation
Concession Contract CC-IMFA001-13 Western National Parks Association	Category III concession contract for sale of visitor convenience items by Western National Parks Associations.	February 22, 2013, to December 31, 2022	The contract is managed by NPS Intermountain Region (IMR) Concessions and IMR Concessions is the recipient of the franchise fee paid on an annual basis



Appendix C: Summary of Tribal Input Efforts for Foundation Development

On January 13, 2015, Canyon de Chelly National Monument held a tribal and community listening session in support of the foundation document and invited the participation of canyon residents, representatives from the Navajo Nation Historic Preservation Department, Hopi Tribe, the Pueblo of Zuni, and the Pueblo of Jemez. Monument staff emphasized that the foundation planning effort is not a National Environmental Policy Act (NEPA) process and is not a joint management plan. A questionnaire was sent to invitees before the listening session, so although all individuals were not able to attend, all were able to submit input and provide valuable information and feedback to the National Park Service. The tribal input is organized consistently with the questions posed in the questionnaire.

Why is Canyon de Chelly special?

Navajo: Canyon de Chelly is special for many reasons to many people. Canyon de Chelly has profound spiritual importance to many tribes with ancestral connections to the area. The canyon continues to support traditional livelihoods year round and also remains a place for sacred stories and ceremonies to perpetuate. The canyon, a divine gift from God, has a rich history that transcends time and connects current residents to their past origin and to an untouched way of life. The canyon and its associated stories remind Navajo descendants of their duty to the canyon and of their responsibility to protect it for future generations. The canyon is a place for farming, ranching, refuge, and peace, but it is also a classroom to connect youth to their elders and teach them the traditions of the Navajo people. This beautiful and unique canyon contains sacred sites that are irreplaceable and remind future caretakers of their ancestral and also aboriginal rights. The canyon remains the sacred homeland of the spirit people, the ancestral Diné, and also the creator.

Hopi: Canyon de Chelly, or *Koyongtupqa*, meaning the “Canyon of the Wild Turkey,” is part of the Hopi “Footprints” of the ancestors; a representation of the tribe’s time in or migrating through the canyon. Koyongtupqa is part of Hopi’s history and is both a tangible representation of adaptation and struggle and also a reminder of the communal atmosphere needed to survive in this inhospitable environment. The canyon holds many Hopi ruins and sacred areas, and inspired ceremonial songs that remind the Hopi people of the canyon and the special places within the canyon walls.

What do you value most about the monument?

Navajo: The canyon maintains profound spiritual importance to the Navajo people. It also provides food, shelter, farmland, and ranching opportunities. The ability to maintain a traditional livelihood within the canyon is extremely important. The Navajo canyon residents emphasized the importance of preserving traditional lifestyles but also noted their willingness to support emerging canyon related jobs and other sources of income. Canyon residents value the relationship with the National Park Service and the collaborative efforts to work together to preserve their livelihoods. Canyon residents also value the access and inclusion to the canyon and the opportunity to contribute to both the foundation document and the upcoming joint management plan.

Hopi: The canyon maintains profound spiritual importance to the Hopi and other descendants of the Ancestral Puebloan occupants of Canyon de Chelly. The canyon is part of the Hopi’s history. Koyongtupqa is a special place that holds many ancestral Hopi ruins and sacred areas. The intrinsic connection to the canyon is part of the Hopi culture.

Are there specific areas or features of the park that you feel need special care?

Navajo: Special care needs to be taken to preserve and protect archeological areas and sacred sites from damage and overuse. Increased regulations for the tourism industry should be developed including guides, backcountry use, and vendors. These regulations will help protect sites such as the sacred White House area and other Ancestral Pueblo ruins. Special attention is needed to protect livelihoods and traditional lifestyles such as farming and ranching areas and the associated techniques. In addition, the recognition of residents' homesites and history will help preserve their traditions and foster awareness and relevance with youth. Canyon de Chelly is the largest watershed on the Navajo Nation and protection and conservation of this resource is extremely important and deserves special care and attention.

Hopi: Special care is needed to protect archeological sites, human remains, shrines, and granaries that are within the canyon. Granaries are important because they represented "the bank" where people stored emergency food.

What are the issues you feel need special consideration by park staff?

Navajo: Park staff needs to continue to support and include canyon residents, the original caretakers of Canyon de Chelly, in park decisions. Operational issues that the park needs to consider are (in no particular order): erosion, damage to roads, litter, reckless driving, graffiti, invasive species including tamarisk and Russian olive management, stray dogs, law enforcement, staffing at the canyon kiosk, trail maintenance, and impacts from guides, vendors, and tourists. There are also external factors that are affecting Canyon de Chelly that the park needs to consider, including: drought, genetically modified seeds, and noise and air issues. In addition, residents would like to see coordination between the National Park Service, Bureau of Indian Affairs, tribes, state, and the county to continue the process of canyon restoration and to improve harmony for future canyon management. Two Codetalkers were from the canyon. The Navajo would like to work with park staff to commemorate the Codetalkers at Canyon de Chelly.

Hopi: Park staff needs to involve the Hopi in educational programs and interpretation and training. Hiring a Hopi interpreter would be one way to foster this involvement. The extension of Hopi interpretive programs to school group visits with a teacher, cultural resource specialist, or elder at Canyon de Chelly would increase youth involvement. The park should also consider the addition of a work crew of Hopi students; similar to the current Student Conservation Association work crew. In addition, the Hopi suggested improving the effort to capture the history of the Hopi and ancestral pueblos by finding common threads that effectively interpret and deliver the history of Canyon de Chelly. This interpretation includes an honest representation of life in the cliff dwellings. The past here is often romanticized, but life in the cliff dwellings presented hardships that are not being adequately identified and communicated to visitors.

Water is Life: Both the Navajo and Hopi contributors emphasized the importance of water in this desert environment. Water is key to past, present, and future lifeways.

Listening Session Participants

- | | |
|-----------------------|-------------------|
| Larry Tso | Dan Nez |
| Oscar Bia | Leander Staley |
| Nora McKerry | Francis Draper |
| Sharon Yazzie | Cyndey Thompson |
| Wilson Hunter | Ben Teller |
| Eugene Tso | Deb Lem |
| Howard Smith | Alice Dixon |
| Benjamin Yazzie | Danielle Yazzie |
| Corina Teller | Deswood Yazzie |
| Katherine Paymella | Daniel Draper |
| Sonya Thompson | Lupita McClanahan |
| Tyron J. Begay | Eleanor Yoe |
| Christeson Blacksheep | Ravis M. Henry |
| Karen Benally | Keith Lyons |



Appendix D: List of American Indian Tribes Traditionally Associated with Canyon de Chelly National Monument

Traditionally associated tribes and pueblos refer to those groups that have had a significant connection to a place that has endured for two generations or more. The following list was derived from the NPS Intermountain Region's tribal contact database.

Hopi Tribe of Arizona
Kewa Pueblo, New Mexico
Navajo Nation, Arizona, New Mexico, and Utah
Ohkay Owingeh, New Mexico
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Ysleta Del Sur Pueblo of Texas
Zuni Tribe of the Zuni Reservation, New Mexico

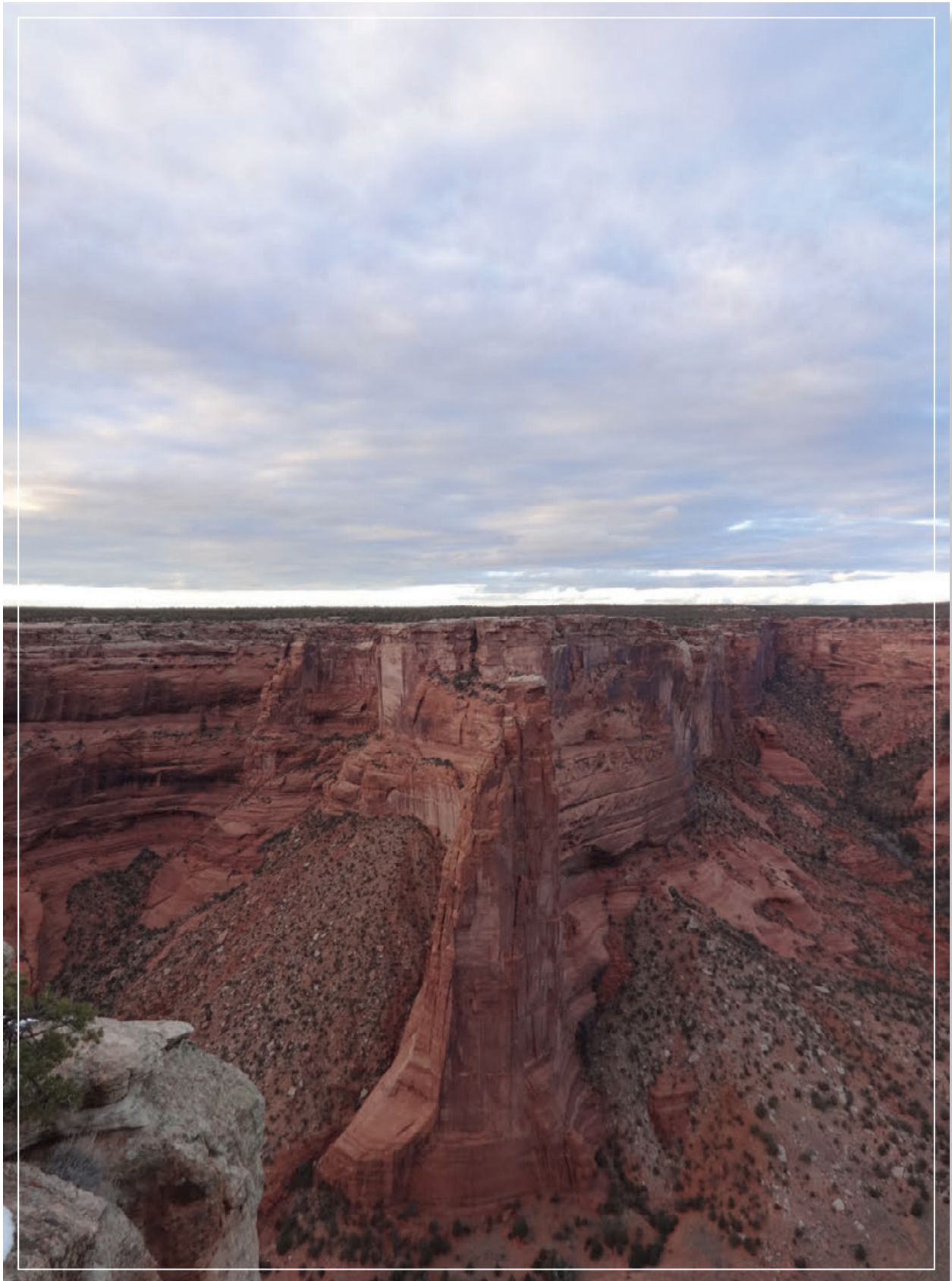


Appendix E: Past and Ongoing Park Planning and Data Collection Efforts

Planning / Data Document	Year
Master Plan for the Preservation and Use of Canyon de Chelly National Monument: Mission 66 Edition	1/1/1960
Burgess, Tony L., <i>Mammals of the Canyon De Chelly Region, Apache Co., Tucson, AZ</i>	1/1/1970
National Register of Historic Places Inventory – Nomination Form: Canyon de Chelly National Monument	8/21/1970
Canyon de Chelly National Monument Administrative History	1/1/1976
Wachter, Bruce G., <i>Geologic Analysis of Rock Deterioration At Selected National Park Service Archeological Sites</i>	6/1/1978
Euler, Robert C., George J. Gumerman, Thor N. V. Karlstrom, Jeffrey S. Dean and Richard H. Hevly. "The Colorado Plateaus: Cultural Dynamics and Paleoenvironment." <i>Science</i> , no. 4411 (1979): 1089–1101	9/14/1979
Interpretive Prospectus: Canyon de Chelly National Monument	11/1/1981
Resources Management Plan and Environmental Assessment for Canyon de Chelly National Monument	1982 (revised 1987)
Water-Right Docket: Canyon De Chelly National Monument Docket No: 1: Headquarters Water System Preliminary Docket Information	6/14/1982
Development Concept Plan, Canyon de Chelly Headquarters Area	10/21/1982
Concessions Economic Feasibility Study: Thunderbird Lodge, Canyon de Chelly National Monument	8/1/1983
Canyon de Chelly National Monument Statement for Management	3/31/1986
Mitchell, Joan. "Planning at Canyon de Chelly National Monument," <i>CRM Bulletin</i> , no. 1 (1987): 19–30	2/1/1987
Resources Management Plan and Environmental Assessment: Canyon De Chelly National Monument	3/20/1989
Harrison, Laura Soulliere and Beverley Spears. <i>Historic Structure Report: Chinle Trading Post, Thunderbird Ranch, and Custodian's Residence: Canyon de Chelly National Monument</i>	10/1/1989
Canyon de Chelly National Monument Joint Management Plan	8/13/1990
Crowley, Jill. "Canyon de Chelly – An Ethnographic Landscape." <i>CRM Bulletin</i> , no. 6 (1991): 10-11	1/1/1991
Dolan, Michael T. <i>Quaternary Alluvial Chronology of Canyon Del Muerto, Canyon De Chelly National Monument, Navajo Reservation, Arizona</i>	12/1/1993
Travis, Tara. "Canyon de Chelly National Monument: Interpreting a Dynamic Cultural System." <i>CRM Bulletin</i> , no. 7 (1994): 19–22	1/1/1994
Cook, Kerry Lee. <i>The Desert Plateau and Canyon Floor: Contrasting the Plant Communities of Canyon de Chelly</i>	3/6/1994

Planning / Data Document	Year
Littlejohn, Margaret. <i>Visitor Services Project: Canyon de Chelly National Park</i>	6/1/1994
Canyon de Chelly National Monument Strategic Plan FY 1998–FY 2003	9/29/1997
NPS Water Resources Division. Baseline Water Quality Data Inventory and Analysis: Canyon de Chelly National Monument	10/1/1999
Kelley, Klara and Harris Francis. "Canyon de Chelly National Monument Ethnographic Resources." <i>CRM Cultural Resource Management</i> , no. 5 (2001): 41–43	1/1/2001
Report: Canyon de Chelly National Monument Alternative Transportation System Study	3/27/2001
Stuart, Maureen, ed. <i>Biological Inventory of National Park Areas on the Southern Colorado Plateau</i>	11/1/2002
Rink, Glenn. <i>Vascular Flora and Vegetation Change at Canyon de Chelly National Monument</i>	1/1/2004
Rink, Glenn. Southern Colorado Plateau Network Floristic Inventory	2005
McKendry, J.E. and Others. <i>A Socioeconomic Atlas for Canyon de Chelly National Monument and its Region, 2004</i> . National Park Service. Mapbook-Atlas-620070	1/1/2005
Cooperative Watershed Restoration Project: Tamarisk and Russian Olive Management at Canyon de Chelly National Monument: Final Environmental Assessment	4/1/2005
Macy, J.P., and Monroe, S.A. <i>Water-quality data for selected National Park units in the Southern Colorado Plateau Network, Arizona, Utah, Colorado, and New Mexico, water years 2005 and 2006</i>	1/1/2006
Wildland Fire Management Plan, Canyon de Chelly National Monument	3/8/2006
Davey, C. A., K. T. Redmond, and D. B. Simeral. <i>Weather and Climate Inventory, National Park Service, Southern Colorado Plateau Network</i>	9/1/2006
Canyon de Chelly National Monument Environmental Assessment/Assessment of Effect: South Rim Road Rehabilitation	11/1/2006
White, Dave D., Carena J. van Riper, Jill Wodrich, Jessica Aquino, and Chelsea McKinney. <i>Canyon de Chelly National Monument Visitor Survey, Final Technical Report</i>	5/1/2007
First Annual Centennial Strategy for Canyon De Chelly National Monument	8/1/2007
Richardson, David J. <i>Intermountain Region, New Deal Resources: Research Findings for Canyon de Chelly National Monument</i>	4/8/2008
Mikesic, David. <i>Inventory of Amphibians and Reptiles for Canyon De Chelly National Monument</i>	5/1/2008
LaRue, Charles T. and David G. Mikesic. <i>Avian Inventory of Canyon de Chelly National Monument</i>	6/1/2008
Thomas, K. A., M. L. McTeague, L. Ogden, K. Schulz, T. Fancher, R. Waltermire, and A. Cully. <i>Vegetation classification and distribution mapping report: Canyon de Chelly National Monument. National Resource Technical Report NPS/SCPN/ NRTR—2010/306</i>	4/1/2010

Planning / Data Document	Year
Sullivan, T. J., T. C. McDonnell, G. T. McPherson, S. D. Mackey, and D. Moore. <i>Evaluation of the sensitivity of inventory and monitoring national parks to nutrient enrichment effects from atmospheric nitrogen deposition: Southern Colorado Plateau Network (SCPN)</i>	2/1/2011
Sullivan, T. J., G. T. McPherson, T. C. McDonnell, S. D. Mackey, and D. Moore. <i>Evaluation of the sensitivity of inventory and monitoring national parks to acidification effects from atmospheric sulfur and nitrogen deposition: main report.</i>	4/1/2011
Martin, L. <i>Water Supply Wells at Canyon de Chelly National Monument</i>	3/1/2011
Spurr, Kimberly, L. Theodore Neff and Jason Nez. <i>Inventory Survey and Mapping of White House Trail, Tunnel Trail, and Twin Trail (West Segment) in Canyon de Chelly National Monument</i>	5/30/2011
Stumpf, S. E., and S. A. Monroe. <i>Aquatic macroinvertebrate and physical habitat monitoring for Tsaile Creek and Black Rock Canyon in Canyon De Chelly National Monument: 2010 summary report</i>	2/1/2012
University of Idaho Cooperative Park Studies. <i>Canyon de Chelly NM 2013 Visitor Survey Card Data Report</i>	7/1/2013
Dyer, M., and S. A. Monroe. <i>Water quality monitoring for Tsaile Creek and Chinle Wash in Canyon de Chelly National Monument: 2011 summary report</i>	9/1/2013
Begly, Ally, Douglas Eury, Yen Le, and Steven J. Hollenhorst. <i>Canyon de Chelly National Monument Visitor Study, Summer 2012</i>	11/1/2013
Cook, P. S. <i>Impacts of visitor spending on the local economy: Canyon de Chelly National Monument, 2012</i>	11/1/2013
Holmes, J. A., and M. J. Johnson. <i>Bird community monitoring for Canyon de Chelly National Monument: 2012 summary report</i>	2/1/2014
Monahan, W.B. and N.A. Fisichelli. <i>Recent Climate Change Exposure of Canyon De Chelly National Monument</i>	7/24/2014
Canyon de Chelly National Monument Species Checklist	9/2/2014
B. Fox, N. Holste and R. Hilldale. <i>Bank Protection at Antelope House, Canyon de Chelly National Monument: Investigation of Alternatives, Bureau of Reclamation</i>	2015
S. Vrooman and W. Dorshow. <i>Canyon de Chelly LiDAR Analysis of Geomorphology</i>	2015
Thomas et. al. <i>Southern Colorado Plateau Network Vegetation Map</i>	2015
Regional air quality monitoring for ozone, visibility and atmospheric deposition	Ongoing
Baseline night sky data	Ongoing
Baseline light pollution data	Ongoing
Baseline acoustical data	Ongoing
Greenhouse gas emissions study	Ongoing



Appendix F: Existing Data Related to Archeological Resources

“Archeological Investigations at Thunderbird Lodge,” P. McKenna & S. Travis, National Park Service, 1989.

“Archeological Investigations at Antelope House,” D. Morris, National Park Service, 1986.

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Intermountain Region Foundation Document Recommendation Canyon de Chelly National Monument

December 2016

This Foundation Document has been prepared as a collaborative effort between park and regional staff and is recommended for approval by the Intermountain Regional Director.



RECOMMENDED

Lyn Carranza, Superintendent, Canyon de Chelly National Monument

12-9-2016

Date



APPROVED

Sue E. Masica, Regional Director, Intermountain Region

12/27/16

Date



As the nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historic places; and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

CACH 334/129453

December 2016

Foundation Document • Canyon de Chelly National Monument



NATIONAL PARK SERVICE • U.S. DEPARTMENT OF THE INTERIOR

Attachment B – Permit Number B23698



THE NAVAJO NATION

Heritage & Historic Preservation Department
P.O. Box 4950 • Window Rock, Arizona 86515
(928) 871-7198 (tel) • (928) 871-7886 (fax)



CULTURAL RESOURCES INVESTIGATION PERMIT

AUTHORIZED DATES: 9/11/2023 thru 12/11/2023

PERMIT NUMBER: B23698

HPD NUMBER:

Under the authority of the Navajo Nation Cultural Resources Protection Act (CRPA), (CMY-19-88 - Section 302), The Navajo Nation Heritage & Historic Preservation (NNHHPD) hereby grants this permit to: FAA & National Park Service, Volpe National Transportation Systems Center, U.S. DOT,...

This Permit Authorizes: The Class III inventory for the FAA and NPS will be implementing an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument the proposed ATMP would regulate commercial air tours over the Park.

Names of All Personnel Authorized to Conduct Research and Field Work Under this the Permit:

Person in General Charge: Kathering Giraldo

Person in Direct Charge: Kathering Giraldo

Other Field Staff:

Stipulations of this Permit: Reviewing NNHHPD archival records/maps and performing fieldwork without the proper permit(s) is illegal. According to NNCRPA (NN Code Title 19, Section 1037 and 1038), it will result in prosecution and the Archaeological Resources Protection Act (43 CFR Part 7).

- A.) The permittee must obtain appropriate permission from NNHHPD before disseminating any reports belonging to the Navajo Nation. The permittee will NOT share sensitive archaeological site locations, Traditional Cultural Property (TCP) locations, burial locations, or ethnographic information. They will limit the use of data to the purposes authorized within the scope of job responsibilities.
- B.) The staff must have a copy of this permit while conducting fieldwork on Navajo Nation lands.
- C.) The permittee must adhere to the Fieldwork, Report Standards & Guidelines in the permit package.
- D.) All applicable fees under this permit will be paid to NNHHPD as indicated in the Cultural Resource Investigation Permit Fee Schedule.
- E.) This Permit is not a grant of authority
 - (1) Before initiating fieldwork, the permittee must notify the Chapter, Chapter Official (President, Vice President, Secretary, or Chapter Project Coordinator) to familiarize them with the proposed fieldwork and the permit's provisions.
 - (2) The permittee will exclusively employ Navajos for all positions to ensure that qualified Navajos are available.
- F.) Failure to follow these provisions may result in suspension or revocation of this permit and any future permits from the Navajo Nation.

PERMIT GRANTED:


Richard M. Begay, Department Manager III / THPO
Navajo Nation Heritage and Historic Preservation Department


Date

PLEASE BE ADVISED THAT THE PERMIT AND HPD NUMBER ASSIGNED ARE TO BE REFERENCED IN ALL CORRESPONDENCES AND REPORTS.

Attachment C – Volpe Notes – NOT INCLUDED

Attachment D – Finding of Effects Letter dated 12/28/2023, with the following attachments

Attachment A. List of Consulting Parties (23 tribes; 5 opted out of further Section 106 consultation for the undertaking)

Attachment B. APE Map Including Existing Commercial Air Tour Route

Attachment C. List of Historic Properties in the APE & Description of Historic Characteristics

Attachment D. Summary of Noise Technical Analysis from NEPA Review



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Richard Begay
Tribal Historic Preservation Officer
Navajo Nation
PO Box 4950
Window Rock, AZ 86515

Dear Tribal Historic Preservation Officer Begay:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated May 21, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith Walker', with a long horizontal flourish extending to the right.

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

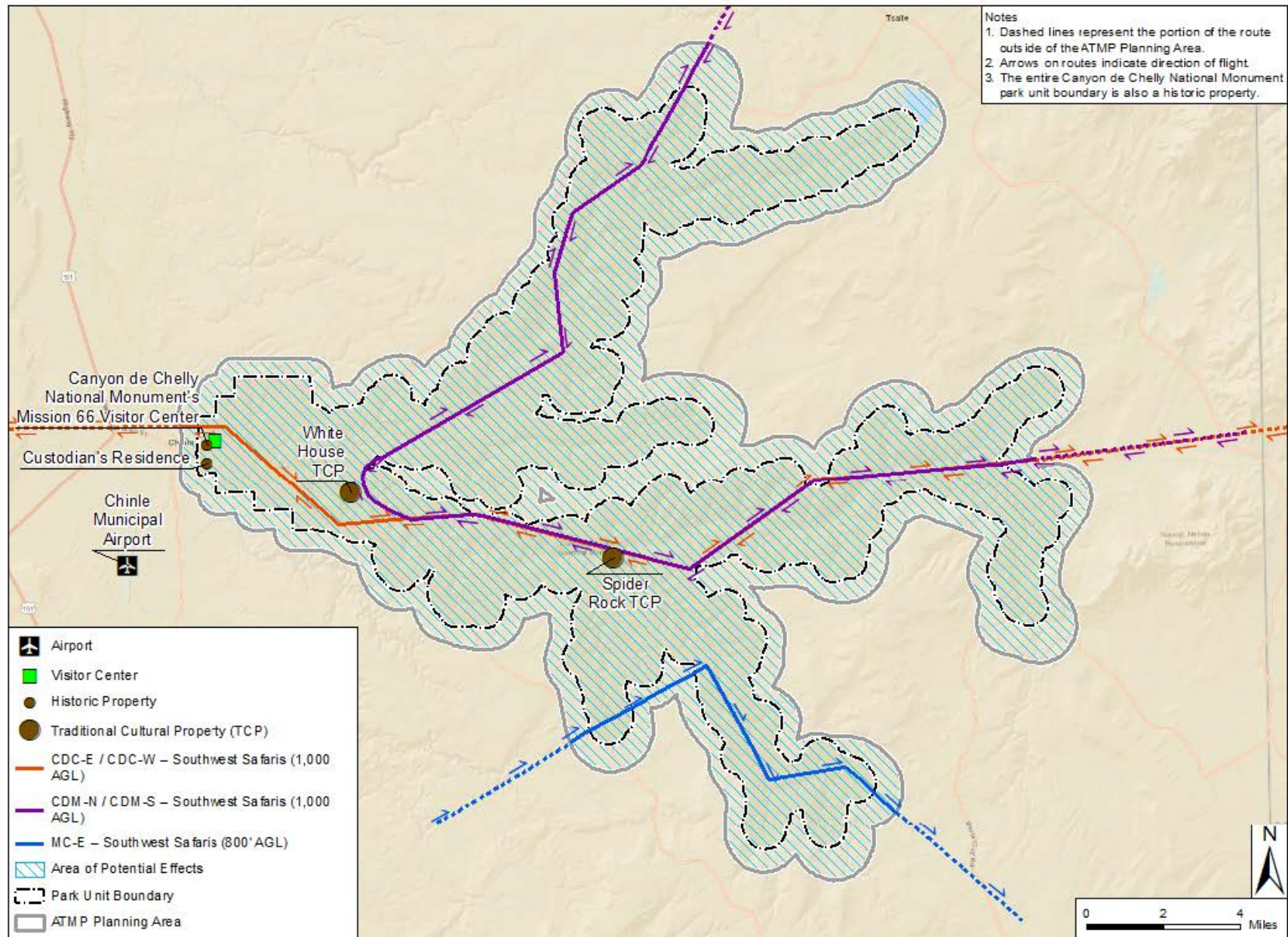
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12 \text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12 \text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> Increases in both the loudness and duration of noise events The number of noise events during specific time period (12 hours for $L_{Aeq, 12 \text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12 \text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time dBA Above 35	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

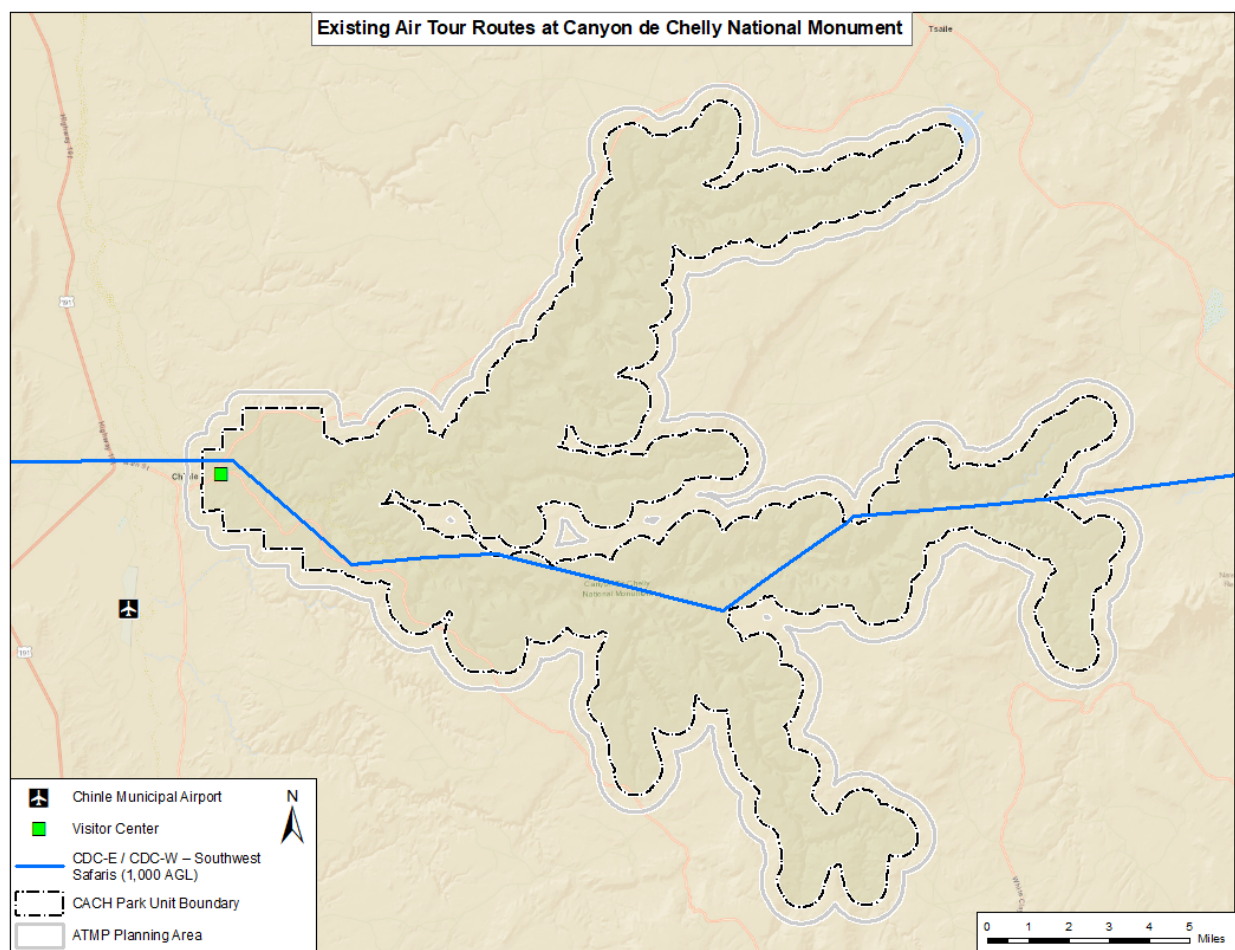


Figure 1. Modeled flight route

⁶As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

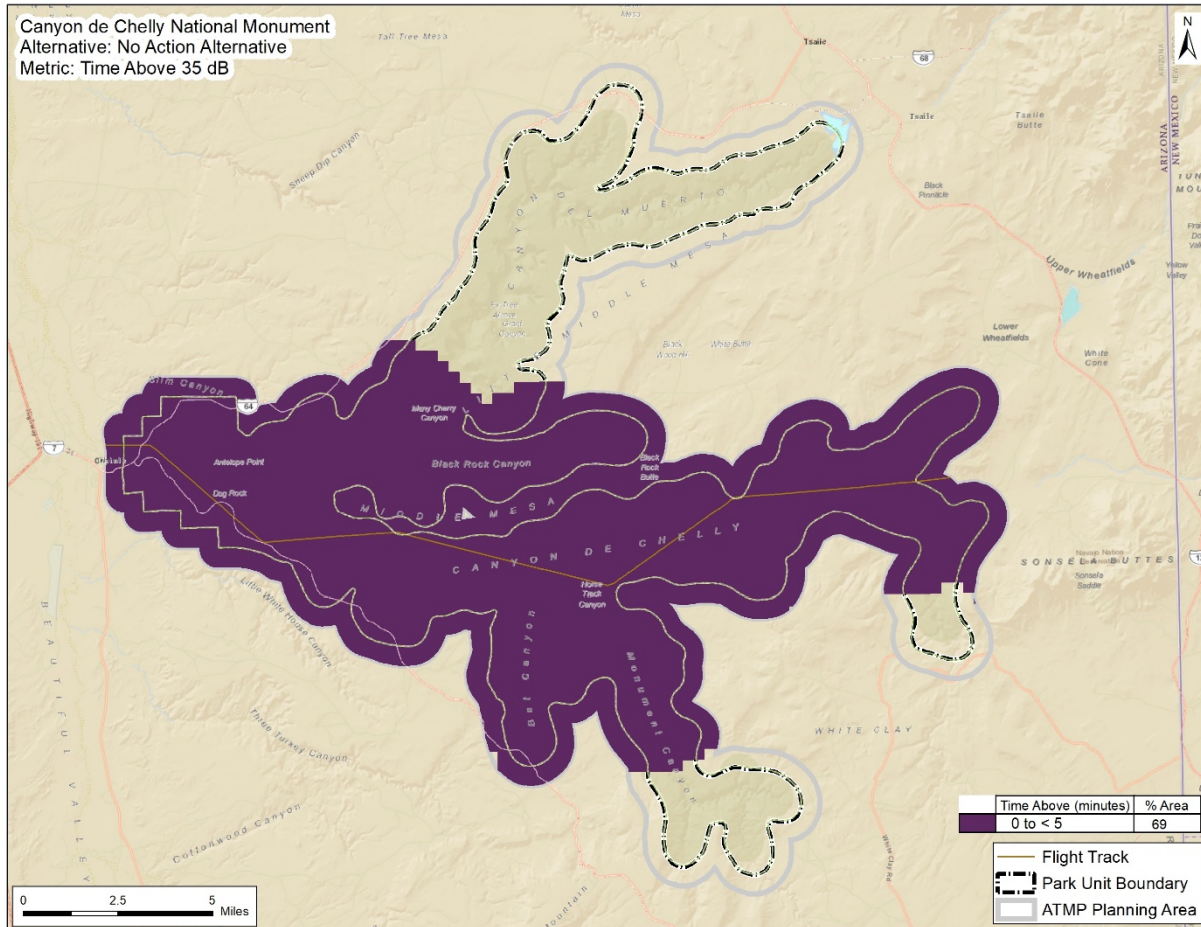


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

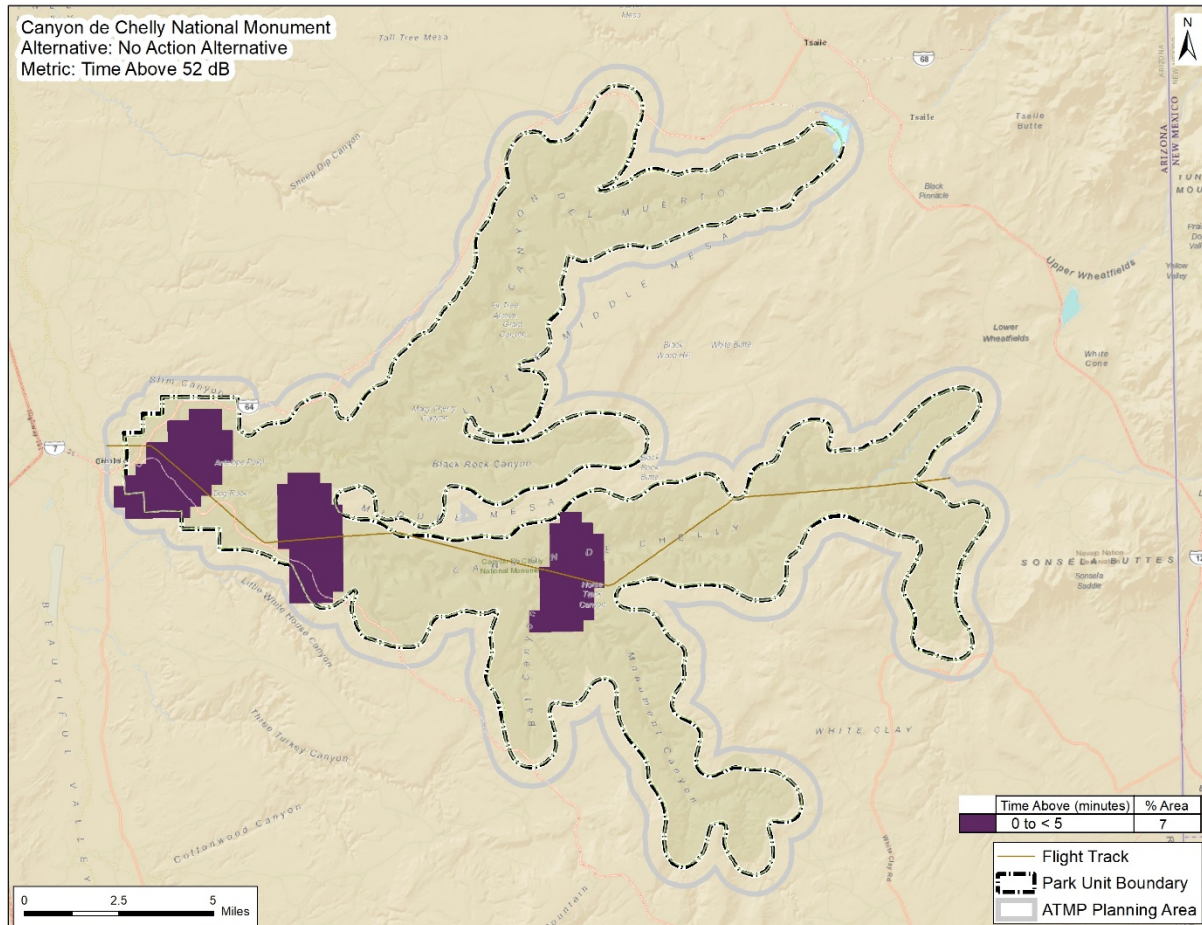


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

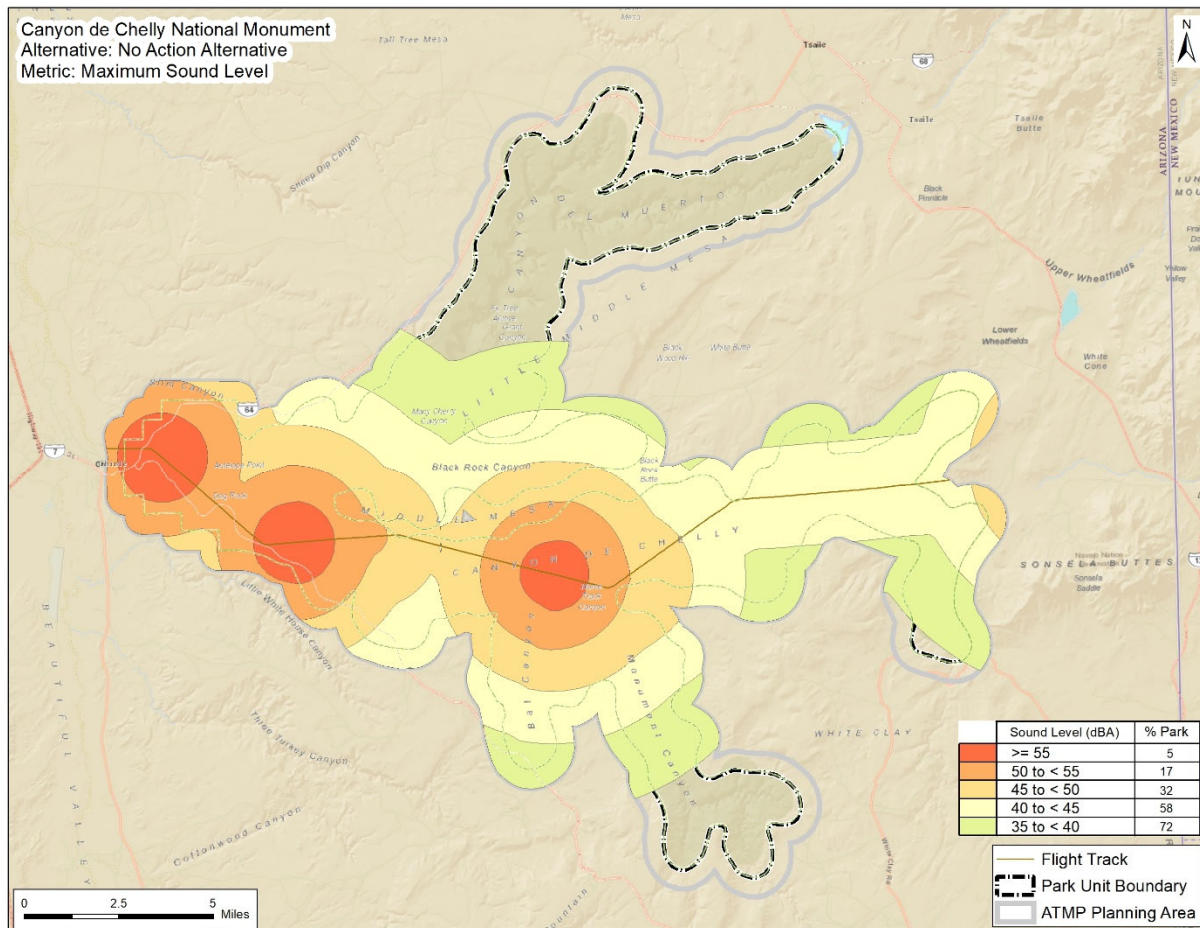


Figure 4. Maximum Sound Level contour map for the No Action Alternative

Attachment E – Southwest Safaris Objection dated 01/29/24

SOUTHWEST SAFARIS

PO Box 945
Santa Fe, NM 87504
505-988-4246

Ms. Judith Walker
Senior Environmental Policy Analysts
Environmental Policy Division (AEE-400)
Federal Aviation Administration
Washington, DC

January 29, 2024

CACH Section 106 – FAA ‘s Request for Concurrence
Southwest Safaris’ Statement of Disagreement

Dear Ms. Walker:

This is Southwest Safaris (SWS) fifth response to the FAA’s request for concurrence with the agency’s proposed finding of “no adverse effects” from the Canyon de Chelly National Monument (CACH, or “the Park”) draft Air Tour Management Plan (ATMP) in compliance with the National Parks Air Tour Management Plan of 2000 (NPATMA, or “the Act”).

Other letters were dated June 9, June 12, June 30, and November 14, 2023. All of these letters should be included in SWS’ record of response to the FAA’s *Request for Concurrence* to the agency’s Finding of “no adverse effects.”

Southwest Safaris does not concur with the FAA’s proposed finding (the Finding) that there will be “no adverse effects” from denying SWS continued air tour overflight rights at Canyon de Chelly National Monument. SWS argues that reason based on facts is sufficient to discredit the FAA’s Finding. Moreover, SWS argues that the FAA’s methods of assessment for arriving at the finding of “no adverse effects” lacks procedural and substantive legality.

I The FAA's Finding of "no adverse effects" is incorrect; banning air tours increases noise.**a. The FAA's finding is wrong based on physics.**

In the FAA's Request for Concurrence of "no adverse effects" from banning air tours over CACH, the FAA makes the following remark at the bottom of page 7:

The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

Southwest Safaris takes particular exception to the FAA's conclusion.¹ It is not true that elimination of air tours within the ATMP planning area will reduce noise effects to historic properties either directly below the current route of flight or for the Park in general. Eliminating all air tours over the Park will actually increase the number of air tours flying immediately around the Park and will, therefore, increase the associated noise bleeding over into the Park.

Southwest Safaris does not fly helicopters. Helicopters would fly directly over the canyons of the Park. Fixed-wing airplanes fly at an offset distance from the objects of view, the perspective from an airplane being oblique, not vertical. Therefore, the above remarks of the FAA are irrelevant to Canyon de Chelly. Southwest Safaris routes are already offset from the canyons and away from parking/view areas. Flying outside the Park will mean flying at lower altitudes, so the ever-so-slight reduction in noise from relatively minor increases in horizontal displacement will be more than offset by major increases in noise generated from significantly lower vertical heights. The air tour operator (ATO) already flies near the southern border of the Park (new routes) where there are no historic properties or tourists and flies at relatively high altitudes and low power settings, the ideal solution to reducing noise and visual presence. On the west side of the Park, the ATO has also modified its routes so as to fly on the east side of the upper (northern) end of Canyon del Muerto and then west of that canyon on the lower (southern) end before exiting the Park west of the Visitors Center. So, the noise directly beneath the new routes of SWS' planes is currently of no consequence for fixed-wing aircraft, the routes having already been modified to achieve measurable reduction in noise and visual presence compared to past existing conditions. Offsetting SWS' tracks eliminates one of the FAA's main objections to flying current routes.

Moreover, eliminating direct flights across the major diameter of the Park (i.e., eliminating the route paralleling Canyon de Chelly) would actually increase the noise impact on all historic properties within the APE by a factor of 260%. The issue is a question of math and geometry. The physics of the problem demonstrates that there will be a marked increase in noise created by circling CACH as opposed to flying along the length of the longest canyon in a straight line.

¹ See my letters of August 11, 2023, "4th Response to Request for Concurrence on Sec 106," page 5, and of August 14, "5th Response to Request for Concurrence on Sec 106, page 2.

The formula for the circumference of a circle is $C = \pi D$, where D is the diameter, represented in the present instance by Canyon de Chelly, itself. SWS calculates that the distance for flying half way around the circle to circumnavigate the Park, would be $\pi D/2$. By this computation, it will require almost 60% more flying time to circumnavigate the Park instead of flying across the Park on a straight line. Moreover, instead of gradually descending, using minimal power to fly the shortest distance across the Park, tour aircraft will use full power, generating twice as much noise at much lower altitudes to circle the park as fast as possible to make up for the greater distance. That means at least twice the noise for 60% longer, or 260% more noise and visual presence in total. That figure is significant and directly confirms the FAA's statement in the middle of page 7, that "aircraft are transitory elements in a scene and visual impacts tend to be relatively short" ... as long as aircraft are allowed to fly in a straight line. The least impactful route in and around the Park is straight across it, in a glide, which is the manner in which SWS already flies outside "the cone of annoyance." Flying the shortest route with the least amount of power eliminates the second reason the FAA might have for objecting to Southwest Safaris continuing to fly its current routes.

Finally, eliminating straight flights across the southern end of Canyon de Chelly will force SWS' flights to be conducted around the north end of the Park on the way out to Chinle and around the southern flank of Canyon de Chelly on the return route, increasing by a factor of 2 the impactful noise from all directions instead of just one. That will increase the total new noise by a factor of approximately 5.0. Two low flights per tour will be required around the Park instead of just one over it. More people and historic sites will be adversely affected from more directions more often than before, which eliminates the FAA's third and final objection to flying existing routes.

The most logical overall pronouncement, therefore, should be a Finding of "significant adverse impact" from eliminating air tours over the Park. This would support a decision, under NEPA, for "Alternative 1" of the draft ATMP, meaning a ruling in favor of "no change" in the way air tours at CACH are conducted in the future.

b. The FAA's Finding is wrong based on operations.

On the bottom of page 7 (*Indirect Effects*) of the FAA's Request for Concurrence, the FAA makes the statement that:

It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

In rejoinder, Southwest Safaris claims that every Section 106-related assumption the FAA makes here is wrong. In interest of brevity, SWS will only briefly comment on each of the errors.

First, if denied access to the Park, Southwest Safaris will definitely fly the circumference of the circle defined by the ends of the canyons. SWS needs to cross the Park from east to west to get to the Chinle, AZ airstrip, where ground tours commence. Flying around the Park means that the minimal aircraft noise that otherwise would have been generated over the southern and least sensitive areas of the Park (flying on the south side of Canyon de Chelly just inside the Park boundary), will be intensified (see math computations above) and transferred to the Navajo communities on the northeast and north ends of the canyons, instead, which will inflict adverse impacts on Tribal lands SWS has ardently tried to avoid. Second, flying the circumference will highlight the views of the Park from the north and west, including all of Canyon del Muerto (on the outbound leg) as well as Canyon de Chelly (viewed on the return flight), so the new routes will have great advantages (marketing value) leading to selling more air tours than before, producing ever more alleged “adverse impacts” on the Park. Third, there is no need to fly 5,000 feet above the Park if flying outside the Park; flying 500-feet AGL around the Park will yield even better views of the canyons, be just as legal as flying 5,000-feet over the Park, and require no use of oxygen. Fourth, flying around the Park to the west will increase the noise blown over the Park by the prevailing westerly winds, not decrease the noise. Fifth, noise generated from low-flying air tours circling the Park at full power will be audible for a longer period and at a higher intensity than higher flights traversing the Park at 4,000 AGL initial altitude using minimum power while descending for landing at Chinle. Sixth, the walls of the canyons, themselves, tend to block aircraft noise projected at a slant angle. The FAA calls this “terrain shielding.” Fixed-wing airplanes fly obliquely to canyons, not over them (as opposed to helicopters), so Southwest Safaris’ air tours generate almost no measurable noise at the bottom of the Park as it is. By flying just outside the boundaries of the Park (1/2 mile) to the north and west, SWS will adjust its “magic altitude” to about 800 feet AGL to allow views of the bottom of the canyons for a longer time at high power settings, so noise exposure directed at the bottom of the canyons will be unavoidably maximized by flying at the lower elevations AGL. The FAA’s proposals will be counterproductive.

The FAA has performed no sound studies in Canyon de Chelly. The agency has no actual figures with which to document its allegations of adverse sound and visual impacts. So, the FAA has no proof, upon which it can reasonably rely, to back up its theorem that eliminating all air tours over the Park will actually have “no adverse effects” on CACH. The FAA Finding, based on NHPA contrivances, is just an untested hypothesis that does not stand the test of real-world analysis. Multiple factual analyses of Southwest Safaris’ actual air tours serve to eliminate any remaining FAA objections to Southwest Safaris continued flights along existing routes.

Southwest Safaris has been conducting air tours across CACH for 49 years. During that time, the ATO has received no complaints of noise or aircraft presence from the FAA, the NPS, or from the Navajo Nation, even along its old routes. Neither the FAA, the NPS, nor the Tribe has any record of complaints against Southwest Safaris for any reason.

This observation leads to two general conclusions. First, the lack of complaints alone testifies that the FAA's grounds for pursuing Section 106 (also "S106" or "106") process are without merit. The FAA is trying to provide a fix for a problem that does not exist.

According to FAA figures, operationally speaking, SWS flies less than 50 air tours over the Park per year. So, there is no regulatory requirement for an ATMP for the Park at all, 49 USC §40128(a)(5)(A), unless an extraordinary circumstance exists ... "making it necessary to protect park resources and values or park visitor use and enjoyment" ... that requires the NPS to withdraw the exception for Parks with 50 or less air tours. The FAA has never said that the NPS has declared the existence of an exceptional circumstances at CACH, has never justified a decision to withdraw the "exception" for parks with 50 or less air tours per year, and has never conducted any science-based sound studies under Section 808 of the Act that are required to validate any such "justification" of withdrawal of exception. See Attachment 2. See also 49 USC §40128(b)(3)(F).

Air tours over CACH do not have a significant effect on the human environment any more than they do at ARCH, CANY, RABR, NABR, or BRCA. All these parks were "categorically excluded" from the requirement for an environmental assessment. All of them were determined worthy of having air tour operations. The FAA and NPS (the agencies) must provide substantial documentation to justify their decision to make a regulatory distinction for CACH, which they have failed to do anywhere in the Section 106 process.

The FAA has created a "catch 22." It claims that the "justification" the ATO seeks properly belongs under the NEPA process, and that process can not commence till after the S106 process has been completed. Therefore, the FAA will argue, the "justification" does not have to be provided in time for the ATO to argue against it to critique the agencies abuse of Section 106 procedures. The FAA's rejoinder is convenient, but illegal on grounds of denial of due process.

Second, Southwest Safaris has an amazing record for "doing no harm," probably unique in all of the National Park Service's history with air tours. SWS is mystified as to why the NPS would want to throw out the research and methodology developed by the company when the results of prohibiting air tours over the Park are going to produce no net gain for anyone. The FAA appears not to care, being more concerned with arriving at an extremist political solution for a non-existent problem than rational operational remedies that would avoid "potential" adverse impacts in the first place.

Therefore, Southwest Safaris alleges that the FAA has violated NHPA's 36 CFR §800.5, *Assessment of Adverse Effects*, by knowingly and deliberately arriving at an improper Section 106 finding of "no adverse effects" from eliminating all air tours over CACH contrary to fact, operational analysis, and law. A more thorough analysis of violation of regulation and law follows.

II The FAA's finding is wrong, based on reason and law.

a. The FAA's Finding is wrong based on logic.

The FAA's Statement of Effects Letter is logically incoherent. The FAA asks Southwest Safaris to disprove a double negative and concur that "no flights over the Park cause no adverse effects thereon." It is impossible to argue against a double-negative syllogism with formal logic. The proof of FAA error can only be demonstrated with real-world illustrations to the contrary of allegation. Southwest Safaris has already performed this duty.

SWS has demonstrated above, with reference to physics and real-world operations, that existing air tours over the Park cause no adverse impact on persons and cultural properties in the Area of Potential Effect (APE). There have been no complaints to the FAA or NPS against SWS' air tours in 49 years. SWS also demonstrated mathematically and operationally how being forced to fly around the Park would actually increase the noise impact on the overall Park. Moreover, SWS argued that the FAA has no legal basis for taking away the exception for CACH and creating an ATMP.

In further rejoinder to the FAA's Finding, Southwest Safaris alleges that the Section 106 process has been deliberately abused by the FAA so as to make constructive comment and consultation under NHPA impossible. The FAA's construction of its double-negative Finding is designed to block any attempt to arrive at any alternative method ... other than banning all air tours ... for reducing alleged adverse impacts on historic properties in the APE. The FAA's methods defeat the whole purpose of trying to arrive at reasonable compromise under Section 106's consulting process. Therefore, the FAA's Finding must be withdrawn, because it violates both Section 106 and NPATMA and serves no constructive purpose of remediation.

b. The FAA's finding is wrong, based on reasonable interpretation of regulation.

The FAA says on page 8 under *Finding of No Adverse Effect Criteria*:

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates [that] the undertaking does not meet those criteria [and therefore is valid].

The truth is just the opposite. As Southwest Safaris has demonstrated above, the FAA's finding of "no adverse effects" from eliminating all air tours over the Park is contrary both to physics and operational reality. The FAA's undertaking does meet the criteria set forth in 36 CFR 800.5(a)(2)(v), because of "introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features." In regulatory language, the FAA's undertaking would definitely introduce both auditory and visual elements that would "diminish the integrity of the significant historical features of any historic properties in the APE." So, the FAA's finding under Section 106 "flies" against its own regulations upon which the agency relies. The FAA cannot justify a Finding of "no adverse effect" as a matter of both fact and regulation.

If the FAA wishes to contest the assertions of Southwest Safaris, the FAA has the responsibility to produce reasonable evidence to the contrary. This can only be done by generating real evidence from real sound studies, not imaginary noise modeling estimates based on hypothetical conditions where the variables are controlled by parties who have a vested interest in the outcome. The FAA's noise modeling results have no credibility in this situation. Besides, the above arguments notwithstanding, the FAA's Section 106 process at CACH is without legal authority, because the findings are contrary to the purpose and methods of NPATMA. The Act is the controlling legal authority for ATMPs, not NHPA. More on this later.

The FAA's finding of "no adverse effects" is predicated on the "potential" elimination of all air tours over the Park. The actuality of the removal has never been tested. So, strictly considered, there is no proof of the accuracy of the FAA's finding that prohibiting all air tours over the Park will have no adverse effects. Deductive reasoning is not enough, according to NPATMA. Therefore, the agency's finding of "no adverse effects" is pure speculation, not being based on science, which requires testing (see Section 808 of NPATMA) and which is the basis for decision. A definite finding cannot be based on "potential" assumptions.

Thus, the FAA's finding under Section 106 is incompatible, on the basis of regulatory analysis, not only with NHPA, but with NPATMA, as well, and must be rejected. This because NPATMA demands science-based determinations and because the Act is the controlling legal authority.

The FAA's artful demand that Southwest Safaris concur with a double-negative syllogism contained in the FAA's *Request for Concurrence (Letter of Effect)* is not enough to get to a logically infallible conclusion. The FAA's errant finding is based on the premise that the only way to absolutely eliminate all potential adverse effects from air tours is to eliminate all air tours. The test must be based on science, not untested deductive reasoning. Deductive reasoning ... based in this case on the NEPA Theory of Mere Presence and the NHPA Theory of Mere Allegations,² whereby noise studies are not required at all ... has its own set of errors, as already demonstrated.

² The Theory of Mere Allegation is a uniquely NHPA concept. It holds that real adverse effects do not have to exist to be objectionable. They only have to be "potential." This means that hard evidence (based on "reasonable scientific methods") required by NPATMA to support allegations of "significant adverse impacts," are not required under terms of NHPA. The Council considers allegations by themselves to be credible evidence.

The FAA tries to use Section 106 to end run NPATMA, there being no requirement under NHPA to conduct sound studies to prove the validity of claims for adverse impacts of air tours on historic properties which are defined by the National Register. Under Section 106, a mere claim of the potential for adverse effect is considered evidentiary proof of legitimacy of allegation. Therefore, NHPA, considering the "if any" phrase in NPATMA and Section 808 methodology of compliance, is inconsistent with NPATMA. The Act requires, through sound studies, performance of the "if any" conditional test. The FAA failed to conduct the test. Thus, the FAA's Finding must be set aside under the twin Theories of Primacy of Law and Consistency of Law until NPATMA conditionally allows NHPA to come into effect. Sound studies are mandatory under NPATMA, the Act being the controlling legal authority for ATMPs. At CACH, Section 106 only comes into partial force and effect if and when NPATMA passes qualified authority to it ... by controlling NHPA's timing, language, and methods ... which happens only when a legal undertaking is commenced, not before.

Southwest alleges that the FAA's S106 finding of "no adverse effects" has additionally, and most significantly, violated NPATMA, the controlling legal authority for NHPA, by not complying with NPATMA's Section 808 (49 USC §40128.808). Southwest Safaris argues that the FAA has no latitude of discretion re. sound studies required by NPATMA. In the present instance, the Act controls implementation of Section 106. The Act is explicitly clear with respect to mandatory application of Section 808. The FAA tries to use NHPA to undermine NPATMA's authority, claiming that NPATMA language does not apply to NHPA procedure. On the other hand, the FAA appears to believe that NHPA language does control NEPA's and NPATMA's methods. Violation of regulatory language and process is immediately obvious. FAA interpretation of the three sets of regulations results in legal chaos.

By way of sidebar, Southwest Safaris alleges that the reason for the FAA's intractable argument against complying with Section 808 is that the FAA is afraid that sound studies would reveal the agency has no case against SWS that the FAA can justify and document (see 49 USC §40128(b)(3)(F)). The FAA's alleged intent is to deprive the ATO at CACH of due process, preventing SWS from bringing "sound" evidence to the attention of a court that would discredit the agency's Finding and undermine the agency's justification for action. The wrongfulness of the FAA's methods is transparent.

c. The FAA's Finding is wrong, based on misinterpretation of law.

The FAA says on page 6 under *Statement of Effects*:

The FAA, in coordination with the NPS, focused the assessment of effects on the **potential** for adverse effects from the introduction of audible or visual elements that **could** diminish the integrity of the property's significant historic features. (Emphasis added.)

This statement is antithetical to the purpose and methods of the entire ATMP undertaking. It demonstrates, by use of the words, "potential" and "could," the FAA's fundamental misunderstanding of applicable law in relation to complying with the provisions of NPATMA, NHPA (Section 106), and NEPA, combined.

Southwest Safaris has repeatedly argued, in relation to the creation of Air Tour Management Plans (ATMPs), that (1) NPATMA is the controlling legal authority; that (2) the Act, itself, triggers the activation of NHPA and NEPA at the appropriate time; and that (3) the Act controls, with respect to sound studies, the way those other statutes are to be implemented. The application of NHPA and NEPA is "directed and controlled" by NPATMA to the degree that these other laws must found their decisions on science-based sound studies incorporating "pertinent data,"³ because of the presence of the "shall clause" imbedded in Section 808 of the Act mandating same. The FAA's confusion as to the proper role and timing of each of the three

³ In Southwest Safaris' letter to Volpe of August 7, 2023, on page 17, SWS defined "pertinent" sound-study data to mean "current, comprehensive, relevant, accurate, and science-based."

statutes has led the agency to make major errors in the process of creating ATMPs. In the present instance, the agency's errors and omissions began with the errant creation of the CACH undertaking, progressed to wrongful application of Section 106 initiatives, and then ultimately undermined the CACH ATMP project by now arriving at a flawed Finding of "no adverse effects"... this conclusion permitting a determination of "no air tours." The FAA's multiple errors stem from basing its findings of "no adverse effects" and decision for "no air tours" on use of NHPA terms such as "potential" and "could" instead of on NPTMA precepts of "actual" and "measurable," which allows the vague and uncertain to control the defined and definite, contrary to Congressional intent for ATMPs.

d. The FAA's Finding is wrong, based on misapplication of law.

On November 7, 2023, the FAA wrote Southwest Safaris and discussed the definition of an "undertaking" and the interaction between NAPA and NPATMA. On page 3, under *The Applicable Law*, the FAA said:

With respect to the NHPA, **any** federal action that meets the definition of an undertaking under the NHPA and Section 106 regulations trigger compliance with Section 106 of the NHPA. **The development and implementation of an ATMP [necessarily] meets the definition of an undertaking triggering the Section 106 process.** Thus, under Section 106 of the NHPA, federal agencies must consider the impact of their actions on historic properties. So, while NPATMA governs how the FAA and NPS develop and implement ATMPs, if the development and implementation of an ATMP meets the definition of an undertaking, the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties. Compliance with NPATMA does not preclude compliance with other federal statutes and regulations. Put differently, the agencies must comply with both NPATMA and Section 106 of the NHPA. **Compliance with other applicable statutes and regulations does not mean that the agencies are not fully complying with NPATMA.** (Emphasis added.)

The first sentence of the FAA's statement⁴ of position is only half-true. It is true that federal actions which meet the definition of a legal undertaking require compliance with Section 106 of NHPA. However, the agency incorrectly adds the use of the word, "any."

It is not true that "*any* federal action" that might appear on the basis of agency initiatives to be an "undertaking" is, in fact, an "undertaking" in the eyes of the Law. A Federal action can appear to be an "undertaking," but not meet the requirements thereof. A Federal action that does not meet both the definition of and the requirements for an "undertaking," is not a *legitimate* "undertaking." This is the case with the FAA's application of NHPA with respect to the CACH ATMP. SWS argues that the CACH "undertaking" the FAA supposedly relies upon to justify the creation of an ATMP has not yet been *legally* triggered by meeting the requirements of NPATMA, which authority of Act is required by Congress.

Southwest Safaris offers three different amplified explanations for the illegality of the FAA's BAND ATMP "undertaking."

⁴ The FAA's remark comes from its November 7, 2023 letter to Southwest Safaris, page 3, *The Applicable Law*.

Explanation 1: At CACH, the FAA has never performed the “if any” test⁵ required by NPATMA to check for significant, actual, present, adverse impacts on historic properties in the APE using science-based sound studies employing pertinent data. Therefore, a legal “undertaking” at CACH has never existed. Consequently, actions under NHPA and NEPA cannot *legally* proceed at CACH until the noise tests required by Section 808 of NPATMA are conducted to satisfy the “if any” condition in compliance with Section 808 of the Act. This is the short version of SWS’ allegation.

The long version of the allegation requires some flushing out.

The principle of Primacy of Law⁶ makes the National Parks Air Tour Management Act of 2000 the controlling legal authority in the creation of ATMPs. The FAA errs by acting preemptively to initiate the Section 106 investigation of CACH without having first acted on Section 808 of NPATMA in order to test the “if any” condition contained in the “Objective” paragraph of the Act, 49 USC §(b)(1)(B). Moreover, the Principle of Continuity of Law⁷ means that Section 106 cannot be called upon by the FAA to negate the effect of NPATMA. Otherwise, the agency would be able to declare, by means of Section 106, that sound studies at selected Parks are irrelevant to determination of adverse impact of air tours on TCPs. Without the Principle of Continuity of Law, the FAA could base its objections to air tours at CACH on the Theory of Mere Presence⁸ and simple allegations of noise intrusion, ignoring the requirement for noise

⁵ See Attachment 2: NPATMA’s Primary & Secondary Objectives: The “if any” test and Section 808 compliance; how NPATMA, NHPA, and NEPA interact.

⁶ The Principle of Primacy of Law directs the order of application of laws in a vertical manner. Where multiple laws affect a result, course of action, or determination, the laws must be satisfied in accordance with the most controlling to the least. See my letters to the FAA dated September 25 and October 1, 2023, wherein SWS gives a detailed discussion on the Principle of Primacy of Law as it applies to NPATMA, NEPA, and NHPA working together.

⁷ The Principle of Continuity of Law means that one law cannot horizontally contradict another where they overlap.

⁸ The Theory of Mere Presence is brought forward by parties opposed to the conduct of air tours in any form or manner over units of the National Park Service. The Theory of Mere Presence states that air tours, by definition, impose adverse impacts on persons and property on the ground, including religious and cultural sites and events, and that there is no way to lessen the impact of same, invasion of privacy in particular. According to this theory, all Air Tour Management Plans must completely ban all air tours of all types to eliminate any possibility for adverse effects in the future. This extremist theory asserts that any Plan that does not ban all air tours does not address “the problem” of air tours at all. In the case of Hawaii Volcano National Park (HAVO), the FAA flatly states that it will not consider the theory. For unstated reasons, the FAA appears to have reversed its opinion at BAND. The suddenly but conveniently “revised” opinion held by the FAA ... that the mere presence of air tours in the Park is objectionable, in contrast to HAVO ... lacks explanation and, therefore, credibility. The FAA everywhere else claims that the standard for determination of adverse impact of air tours under NPATMA is “existing conditions,” not “no air tours.”

studies altogether.⁹ However, the power of the two principles working together means that Section 106 cannot be used to bypass Section 808. Furthermore, it means that Section 106 is only then called into conditional effect ... meaning that NHPA decisions must be based on comprehensive, relevant, and current sound studies ... after NPATMA passes authority to it by means of satisfying the all determining “if any” phraseology of the Act. Therefore, the FAA is currently exceeding its authority by prematurely asking for comment on historic properties within the APE before the subject of air tour noise has even been addressed by NPATMA. The FAA has failed to comply with Section 808 and standards of due diligence contained therein.

For these reasons, the FAA’s comment, “The development and implementation of an ATMP [necessarily] meets the definition of an undertaking triggering the Section 106 process,” is entirely untrue. That being the case, everything that follows is also mostly untrue. For instance, the FAA says, “If the development and implementation of an ATMP meets the definition of an undertaking, the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties.” This statement is only true providing that the “if” conditional is true. In the case of CACH, the “if” conditional is not true. The CACH ATMP only has the appearance of legality, not the actuality of it. So, it is not true in the case of CACH that “the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties.” In fact, the agencies have no authority to do so at all, without first complying with NPATMA. For this very reason, the FAA’s conclusion is not true in the case of BAND, either. AT BAND, the FAA also never complied with the “if any” condition and Section 808 process. The FAA erroneously says in grand summary, “Compliance with other applicable statutes and regulations does not mean that the agencies are not fully complying with NPATMA.” As a point of law, to date the agencies have not complied with NPATMA at all. Therefore, the FAA’s Section 106 initiatives at CACH and BAND are not in compliance with law and must be withdrawn, the Act being the controlling legal authority.

Explanation #2: The FAA has not determined by means of NPATMA’s Section 808 that there is any need to proceed with changes to existing conditions based on the alleged impact of aircraft noise on Traditional Cultural Properties. All parks do not require ATMPs. ATMPs only apply to certain units of the NPS. Until certain conditions and exceptions are met for individual parks, the requirement for an ATMP does not exist. That is, the triggering requirement for an ATMP (and, therefore, for an “undertaking”) does not exist just because the Act exists. In the case of CACH, if all legal procedures had been followed, the initiation of the ATMP process would indeed be an “undertaking,” 36 CFR §800.16(y). Southwest Safaris agrees with the FAA,

⁹ The FAA tries to use Section 106 to end run NPATMA, there being no requirement under NHPA to conduct sound studies to prove the validity of claims for adverse effect of air tours on historic properties as defined by the NR. Under Section 106, a mere claim of the potential for adverse effect is considered evidentiary proof of legitimacy of allegation. Therefore, NHPA, considering the “if any” phrase in NPATMA and Section 808 methodology of compliance, is inconsistent with NPATMA ... that Act requiring, thorough sound studies, the satisfying of the “if any” conditional test ... and must, at least at first, be set aside under the twin Theories of Primacy of Law and Consistency of Law, until NPATMA conditionally allows it by making sound studies mandator as a condition for NHPA review, the Act being the controlling legal authority for ATMPs. Regardless, at CACH, Section 106 only comes into qualified force and effect if and when NPATMA passes authority to it ... which happens only when a **legal** undertaking is commenced, not before.

arguing, as does the NPS, that by law Section 106 cannot be activated without the existence of an “undertaking,” 36 CFR §800.3(a) ... but the undertaking has to be legal. To date, the supposed undertaking at CACH is not legal for lack of compliance with NPATMA’s “if any” test and Section 808’s mandatory sound studies.

Explanation #3: In the case of the ATMP initiative at Canyon de Chelly, Southwest Safaris argues that legal process has not been followed. An “undertaking” in the case of an ATMP cannot commence without the “if any” phrase of NPATMA being satisfied by science-based sound studies using “pertinent data”; or, it cannot begin unless the NPS determines that creating an ATMP is necessary to “protect park resources and values or park visitor use and enjoyment,” 49 USC §40128(a)(5)(B). The NPS, nonetheless, has to prove the necessity for bypassing normal categorical exclusion rulemaking in *extraordinary* circumstances, 40 CFR §1501.4. Either way, the “if any” test and Section 808 sound-study requirements of NPATMA must be fully satisfied by law to comply with the Act’s requirement for justification and documentation per 49 USC §40128(b)(3)(F). Section 808 cannot be bypassed, because inclusion of its “shall clause” makes it mandatory in all circumstances. In any case, the FAA has not performed the “if any” test, so the FAA’s actions to proceed with its *Request for Concurrence* (i.e., Finding of “no adverse effects”) as well as the whole CACH ATMP are illegal, at this time.

The FAA will certainly argue that Southwest Safaris’ legal theories, though interesting, are irrelevant with respect to ATMPs. According to the Principle of Parallel Laws,¹⁰ the FAA will assert, NHPA can act independently of NPATMA. Southwest disagrees, reaffirming that NPATMA creates a vertical stacking of statutes, in so far as the creation of ATMPs is concerned. SWS argues it is the FAA’s position that is actually irrelevant in the current instance. Even if a court were to decide against SWS’ theory of jurisprudence based on the Principle of Primacy of Law, affirming the FAA’s Principle of Parallel Laws, the FAA’s “undertaking” would still be illegal. The FAA’s “undertaking” lacks initiation of a legal process (the “if any” test) and Section 808 sound studies under NPATMA before it can arrive at a final determination for “no air tours.” Under the FAA’s errant theory of jurisprudence, NPATMA may be postponed. Southwest Safaris rejoins that NPATMA acts first, then NHPA, thereby controlling NYPA at all times.

NPATMA cannot be avoided. In the case of CACH, “pertinent” sound studies have not been conducted at all. Without sound studies, the NPS cannot demonstrate, outside of claiming Theory of Mere Presence ... which argument is not allowed by the FAA elsewhere ... that critical “park resources and values” or “visitor use and enjoyment” have been adversely affected by air tours under existing conditions. The FAA has no other mechanisms of avoidance at its disposal. The FAA cannot rely on 49 USC 40128(a)(5)(B) to withdraw an exception, nor can the FAA justify using extreme corrective measures outside of an exception. No “extraordinary

¹⁰ The Principle of Parallel Laws states that all laws run equal and parallel to one another. No one law is superior to another. All laws run concurrently, each triggered by its own enabling language. Under this theory, the FAA claims that NHPA has equal authority with that of NPATMA and is in no manner controlled by that Act. SWS argues to the contrary, that NPATMA creates a vertical column of laws, each triggered in sequence and controlled, in some degree, by higher law. This is a point of jurisprudence that the FAA, being a party to the dispute, cannot resolve administratively, without the help of the courts. Resolution of the disputed interpretation of law will have a major effect on the implementation of both Section 106 process and of the ATMP “undertaking.”

circumstances” per 40 CFR §1501.4(b)(1) exist at CACH, the FAA’s arguable Theory of Mere Presence notwithstanding.

The relevant undisputed fact is that Southwest Safaris has been conducting air tours over CACH for 49 years, without a single documentable complaint. Until the present ATMP process was initiated, the Navajo chapter houses surrounding CACH were unaware that fixed-wing air tours were even being conducted over the Park. Any alleged “potential” impacts of air tours on the few TCPs within the park that are protected by Section 106 are purely theoretical, imaginary, and conjectural, based on deductive assertions (NHPA), not inductive research (NPATMA).¹¹ Existing conditions at Canyon de Chelly, regarding sound levels of air tours, are well below noise levels that are objectionable to persons in the Park. This reality makes the de minimis presence of infrequent air tours (currently averaging 1.4 tours per week, but frequently averaging less than 50 flights per year) under Section 106 immaterial for argument. CACH should never have been selected for ATMP status in the first place; the decision is obviously being driven by politics, not operations. This explains why the Section 106 process has been so corrupted and why the FAA is loathed to comply with NPATMA, the Act standing in the way of unrestrained application of NHPA.

The FAA’s Section 106 request for concurrence on a finding of “no adverse effects” at CACH at this time, lacks justification and authority, both under NPATMA and NHPA, for lack of initiation of a *legitimate* CACH “undertaking.” The safeguards of NPATMA for air tour operators have been purposefully ignored by agency¹² to achieve a political objective beyond the reach of due process.

To return to an earlier point, the FAA errs in assuming that Section 106 process can begin just because the agency has declared that an ATMP “undertaking” has commenced, even if the “undertaking” is being federally financed. In the first place, under NPATMA the FAA has wrongly begun the ATMP process at CACH without going through Congressionally-directed process necessary to activate the “undertaking.” In other words, the FAA, SWS alleges, is

¹¹ The conflict between NHPA and NPATMA over deductive versus inductive determination can only be resolved by acknowledging that NPATMA is the controlling legal authority, the Principle of Continuity of Law being, once again, of critical effect. Guided additionally by the Principle of Primacy of Law and Intent of Congress, all assessments of air tour noise under Section 106 re. ATMPs must be based on “reasonable scientific methods” and “pertinent data,” per Section 808 of the Act. By refusing to comply, under Section 106 the FAA fails to act/decide according to law.

¹² Congress never intended that NPATMA would be used to destroy the air tour industry. In order to ensure the rights of air tour operators (ATOs), including due process of hearing, Congress insisted that all ATMP initiatives under NPATMA would have to pass the test of reasonableness, the standard of determination being that of “existing conditions,” not “no air tours.” To safeguard these rights, Section 808 was added to the Act, the purpose of which was to create measures of decision that could be tested against science-based observations and allow for judicial review. By failing to conduct timely science-based noise studies using “pertinent data” (Footnote #3), the FAA has knowingly deprived ATOs of the ability to defend their right of operation by means of hard sound data and, thus, deprived them of constructive administrative and judicial hearing. Had timely, science-based, sound studies been conducted early in the ATMP process, most of the ATMPs the FAA has since created would have been proven to be without cause. Air tour operators cry “foul!” The FAA’s lack of regard for Section 808 serves to negate operators’ right of judicial review under 49 US §40128(b)(5), it being impossible under both NPATMA and Section 106 to provide credible evidence without authoritative sound studies.

illegally funding an “undertaking” which has no authorization. The FAA’s action leads to accusation of abuse of process and misappropriation of Federal funds.¹³

In the second place, there is a question regarding the financial legality under Section 106 of the FAA’s timing for the CACH ATMP relevant to NHPA. In 36 CFR 800.1(c) the ACHP (the Council) says:

The agency official must complete the section 106 process *prior to* the approval of the expenditure of *any* Federal funds on the undertaking or prior to the issuance of any license. (Emphasis added.)

It appears that the FAA is in violation of NHPA’s regulation. The FAA currently is well on its way to completing the CACH ATMP before consultation under Section 106 has been finished, and before fundamental legal questions ... which have been outlined in this letter ... have been resolved.¹⁴ SWS submits that significant Federal funds (e.g., salaries and other administrative costs) have already been expended on the CACH ATMP without the FAA having even *legally* commenced an “undertaking” for same, let alone having completed the Section 106 process. For this reason alone, the FAA’s Finding is in violation of NHPA regulation. The FAA’s misinterpretation of law pervades the entire ATMP “undertaking.”

In summation of argument, returning to the greater issue, the point in the case of CACH is that a legal Federal “undertaking” does not exist just because the FAA and NPS have inappropriately expended Federal funds to initiate a “process.” Southwest Safaris’ allegation keeps coming back to the same declaration of principle; implementation of an “undertaking” does not cleanse the method of bringing the action into being. An “undertaking” must first be *legally* triggered and legally financed. SWS alleges that the FAA errs by having commenced the ATMP-related Section 106 process at CACH without first initiating a *legal* “undertaking,” as defined by the language of Congressional statute, NPATMA. By so doing, the FAA is in violation of NPATMA,

¹³ After NPATMA was passed by Congress, it would have been appropriate for the FAA to expend funds to test for conditions that would trigger the creation of ATMPs. Prior to that determination, predicated on Section 808 science-based studies, no further federal money was authorized by Congress to be spent. In no case was an “undertaking” meant to arbitrarily and capriciously put air tour operators out of business. The FAA and NPS (the agencies), SWS alleges, have together conspired to misuse Federal funds to achieve a political agenda, involving the radical curtailment of the air tour industry, never contemplated by Congress. In the process, SWS contends, the agencies have defrauded the U.S. Court of Appeals for the District of Columbia Circuit by deliberately withholding relevant information so as to deceive the court to “compel” the agencies to prematurely initiate “undertakings” that had, as of then and now, no legal basis for coming into existence, the requirements for same not being satisfied. The results are all too obvious for all to see: abuse of law and tragic/unnecessary destruction of the air tour industry.

¹⁴ As of this date, the FAA has all but completed the ATMP for Canyon de Chelly. The FAA long ago gave copies of the draft CACH ATMP and EA to “cooperating agencies” but not to SWS.

NEPA¹⁵, and NHPA, all three, the Court order¹⁶ for the FAA to expedite ATMP process notwithstanding.

A court cannot compel an unlawful act. An order to expedite process is not an order to break Congressional law. Under NHPA, the FAA may begin investigative initiatives prior to activation of an “undertaking” under certain conditions, but the Agency cannot implement decision-making actions (e.g., requests for input and/or concurrence) prior to actual existence of a legal “undertaking,” 36 CFR §800.1(c). Under NEPA, the FAA also has no latitude to commence work on a draft EA without “authorization” from the NPATMA process, meaning conduct of the “if any” test. The FAA’s alleged disregard for NPATMA’s controlling legal authority, using Court order as cover for action, has already led to grave injury of the general air tour industry, to the detriment of the economy of rural America.¹⁷

Moreover, SWS argues that the FAA’s failure to establish a legal undertaking before beginning an ATMP initiative has precipitated violation of fundamental clauses of the Constitution. SWS refers to the Fifth and Fourteenth Amendments, both guaranteeing due process.

The Fifth Amendment protects persons from being forced to testify against themselves. The FAA’s Request for Concurrence under Section 106, “allowed” by the illegal undertaking, requires the ATO to admit that depriving him of his right to fly over the Park will have “no adverse effects” on the Park, itself. The FAA thereby compels the ATO to agree that any counter-arguments submitted by the operator, though meritorious by themselves, have neither validity with respect to the purpose of the ATMP nor relevance to the process of Section 106 objection. Thus, the agency deprives him of his right to both argument and hearing.

By means of the Section 106 Request for Concurrence, the FAA has artfully contrived a means by which the ATO is forced to testify against himself, no matter how he frames his objections, grossly prejudicing a decision of the agencies (FAA and NPS) against his right of operation.

If the ATO agrees that imposition of Alternative d2 (no air tours allowed over the Park) of the pending draft CACH ATMP would have “no adverse effect,” he loses his defense claiming right of operation. If the ATO declines to engage in pointless argument against a flawed and self-fulfilling double-negative syllogism leading to a conclusion favoring a decision of “no adverse effect,” the FAA will decide against him, the ATO having made no argument to the contrary. If the ATO argues against the finding of “no adverse effects,” his arguments are thrown out for not

¹⁵ NEPA is equally impacted by the Controlling legal authority of NPATMA. The requirement for satisfying the “if any” phrase and Section 808 sound studies under NPATMA are mandatory prior to the justification for, and commencement of, a NEPA Environmental Assessment. After the former is accomplished, NPATMA permits the latter to commence, in that order, if the creation of an ATMP is justified by the Objectives of the Act.

¹⁶ *Order of U.S. Court of Appeals, District of Columbia Circuit, supra* Footnote #35

¹⁷ For these reasons, SWS submits that it would be much better to stop the ATMP process at CACH now, correct the situation (there and at other units of the NPS, Bandelier National Monument, Badlands, and Mount Rushmore in particular), and then proceed, rather than force the issue of ATMP management back before the U.S. Court of Appeals, the outcome of which would be far from certain for all parties.

being relevant to Section 106 objection, but to NEPA concerns. That is, if the ATO engages in argument, he is told that his arguments are irrelevant under S106 and too late for NEPA objection. The comment period for the ATMP (as in the case of BAND) will have already closed before the S106 process was completed. That was the actual case at BAND. The same forces are aligning themselves at CACH, the FAA having initiated the ATMP process long before the S106 process can be finalized.

Under both the 5th and the 14th Amendments, ATOs are guaranteed the right to fair trial and/or administrative hearing. By failing to honor the language of the 5th and 14th Amendments pertaining to self-incrimination, and the requirement of Section 808 of NPATMA at CACH for science-based sound studies, the FAA makes it impossible for the ATO to bring his grievances under NHPA and NPATMA before a body of hearing. The ATO has been denied not only the right to constructive argument under NHPA ... the ATO having to contend with double-negative syllogisms... but also the ability to present current objective evidence under NPATMA ... the ATO being deprived of access to sound studies that SWS could otherwise offer in its own defense. Therefore, the FAA violates, under Section 106, both the Constitution and the judicial review clause of NPATMA, 49 US §40128(b)(5).

The 5th and 14th Amendments were both drafted to ensure a review process of executive actions that would guarantee fundamental fairness, both procedurally and substantively considered. The FAA's application of NHPA and lack of application of NPATMA to the CACH ATMP defies both. The FAA disallows substantive argument under rules of logic (violating the intent of Section 106) and makes presentation of credible facts (i.e., sound studies) under rules of evidence impossible, in the meanwhile forcing ATOs, by means of the FAA's *Request for Concurrence*, to testify against themselves and their own interests. The entire Section 106 process is so flawed and so aligned against fair and impartial hearing of ATOs' grievances that it must be halted pending judicial review of the ATMP process.

e. The FAA's Finding is wrong, because it attempts to override controlling law.

NHPA and NPATMA war against one another.

Under NHPA there is no requirement for sound studies. Under NPATMA, sound studies must be performed. Under NHPA, mere allegations suffice as convicting evidence; under NPATMA there has to be hard evidence based on reasonable scientific methods. Under NHPA, the standard for decision is "potential" adverse effects; under NPATMA, the adverse impacts have to be "existing." Under NHPA, "feelings" and "cultural setting" can be the basis of complaint; under NPATMA, complaints have to be moored to measurable effects. NHPA is predicated on deductive speculation; NPATMA, on inductive methodology. NHPA means are the extremes; NPATMA seeks reasonable compromise based on common-sense solutions. The two statutes are completely incompatible. Without there being a priority of authority, the war between the two will destroy the principle of controlling jurisprudence.

Clearly, one of these laws has to control the other in the matter of ATMP creation. Congress wrote NHPA back in 1966. It was drafted as a general law to preserve historic properties. NPATMA was meant to be an aviation law. It was passed in 2000. Under the Principle of Primacy of Law, the specific law controls the general; the later law controls the earlier; the law that activates the other, is the controlling law; the law that contains the purpose and intent of Congress for a specific “undertaking” is the controlling law. In the case of ATMPs, where NPATMA, NEPA, and NHPA all must work together, NPAMA is the managing regulating statute, residing in a vertical manner on top of the other two.

Contrary to FAA theory, NHPA does not stand on its own with respect to the creation of ATMPs. In the present instance, NHPA only has power to the extent that it is called into effect by NPATMA. It is NPATMA which creates the existence of a NHPA undertaking, so NPATMA determines the timing of NHPA’s calling and the methods and vocabulary that NHPA can employ. In short, NPATMA contains the “genetic code” written by Congress for the creation of ATMPs. NPATMA, therefore, is the controlling legal authority for managing the ATMP process.

The FAA’s *Letter of Effects* endeavors to use NHPA methodology to override NPATMA law ... but to no avail.

NPATMA specifically demands a three-step process for an ATMP undertaking to be called into being. First, at any given park, possible adverse effects from air tour operations must be tested for an “if any” condition (49 CFR §40128(b)(1)(B)). Second, the test for the “if any” condition must be performed in compliance with Section 808 of the Act, which requires sound studies using “reasonable scientific methods” based on pertinent data. Third, a reasonable solution for remedying adverse solutions must be chosen that is both “acceptable and effective.” “Acceptable” means agreeable to all parties. “Effective” includes the application of reasonable compromise by all parties to achieve a common goal. Without compromise, no solution will hold together, destroying its “effectiveness.”

The FAA’s *Letter of Effect/Request for Concurrence* (the Letter) attempts to use Section 106 language and methods to undermine NPATMA’s authority. The Letter makes not a single mention of NPATMA, fails to perform the “if any” test mandated by NPATMA (see Attachment 2), completely ignores the Section 808 requirement to perform sound studies (see Attachment 2), imposes unreasonable assumptions meant to predetermine the outcome of the Finding (see Section 2a), is based on hearsay evidence (see section 4), and offers not even the pretense of compromise. In fact, its Finding of “no adverse effects” is, indeed, extremist (see Section 4).

Contrary to FAA and ACHP opinion, there is nothing in NHPA that requires the FAA to take the most radical approach to quelling alleged adverse impacts from air tours (see Section 4). The FAA resorts to extremist measures by eliminating air tours altogether. The agency falsely claims that doing so will have no consequential effect (see Section 1b).

The FAA’s Finding is based on deductive noise assessments derived from noise modeling. The FAA AEDT methodology consists of sophisticated technology, not science. In fact, it is based on very elaborate spreadsheet algorithms. It is not suitable for weighty environmental analysis, according to Congress (Section 808 of the Act) (see Section 6).

Moreover, the methods and goals of Section 106, as used by the FAA, are diametrically opposed to the Will of Congress, as documented many times by SWS (see Attachment 1).

Therefore, the FAA's Finding of "no adverse effects" must be rejected because its illogic rips at the fabric of American law. The FAA's theory of jurisprudence is predicated on the assumption of guilt until proven innocent. Innocence is impossible to prove under the tenants of S106 double-negative syllogisms.

The FAA's Finding, in fact, violates NPATMA entirely. It is a mere untested hypothesis masquerading as a proof, presented as an axiom, that makes constructive "consultation" impossible, because the axiom arrives at a predetermined decision of "no air tours." Without conducting sound studies, the agencies have made it impossible to break the axiom. This makes a mockery of due process. The agencies need to go back to the Court and get an interpretation of the order of law. Administrative discretion cannot be substituted for Constitutional interpretation. The power of legal interpretation properly resides with the courts.

At the top of page 4 of the ACHP's December 21, 2023 Opinion re. the FAA's Finding of "no adverse effects," at BAND, the ACHP says:

NPATMA does not exempt or waive responsibility for compliance with Section 106 of the NHPA; therefore, the FAA must also comply with Section 106's requirements prior to making a final decision under NPATMA.

The ACHP's statement of Dec. 21 agrees with the FAA's statement of November 7:

So, while NPATMA governs how the FAA and NPS develop and implement ATMPs, if the development and implementation of an ATMP meets the definition of an undertaking, the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties. Compliance with NPATMA does not preclude compliance with other federal statutes and regulations.

Both the ACHP and the FAA err by hitting a bullseye on the wrong target. The point is not that the FAA has to comply with Section 106, SWS acknowledges that. The issue is that NPATMA controls the target that Section 106 must hit, both the when and the how, i.e., the timing, vocabulary, and method of NHPA analysis.

The ACHP's statement of December 21, however, is incorrect. To paraphrase, the ACHP says that because NPATMA does not expressly exempt the FAA from responsibility for compliance with Section 106 of NHPA, the FAA must fully comply with Section 106 without regard for the purpose and methods dictated by NPATMA. This could not be further from the truth, but explains the refrain that the ATO keeps saying. The statutes naturally war against one another, so Congress gave control to NPATMA.

In the present instance of the ACHP's misstatement, SWS rejoins by clarifying that NPATMA does not have to incorporate specific language that would "exempt or waive ... compliance with Section 106 of the NHPA." The very Act, itself, controls the overall process and keeps NHPA from warring with NPATMA in such a manner as would destroy the purpose of the entire ATMP process. NPATMA requires that certain parts of NHPA be implemented to assess significant adverse effects on historic properties, but also requires NHPA to make the assessments utilizing science-based sound studies and verifiable evidence grounded on existing, not hypothetical or "potential," conditions. In the case of the FAA, its Finding is flawed at Canyon de Chelly, because the "if any" conditional is not tested for positive results. The FAA has not verified that adverse conditions even exist, as previously discussed.

The ACHP and FAA abuse Section 106 process by ignoring the overriding goal of the ATMP initiative. This was to implement a reasonable and common-sense approach to mitigating provable existing significant adverse impacts on historic properties. Only NPATMA can accomplish this. Both NHPA and NEPA innately have propensity to work towards the extremes, not the means. In defiance of Will of Congress, the ACHP boldly states, and the FAA agrees, that the FAA is not compelled by that governing body to consider NPATMA at all for purpose of Section 106 implementation, that NHPA regulations stand on their own. Southwest Safaris rejoins that this is why the ATMP process has gotten out of control, doing untold damage to ATOs, rural communities, and regional economies and that this approach, as demonstrated, represents an unreasonable analysis of the proper interaction of the laws at hand, sending a wrecking ball through the rural air transportation system.

III The FAA's Finding is wrong, because the agency's list of historic properties in the APE is based on hearsay.

SWS alleges that the FAA's list of 37 cultural resources in the APE of the BAND ATMP is based on hearsay. None of the corroborating testimony in support of the list has been gathered or verified by the FAA, itself.

To verify the authenticity of the historic properties at CACH, the FAA had a legal responsibility to "walk the park" to validate the NPS' claims for legitimacy of National Registry (NR) eligibility. The FAA failed to perform this duty. The FAA would have realized the legitimacy of SWS' objections to the agency's selection of historic properties if the agency had complied with 36 CFR §800.4(b)(2). This regulation requires, under heading of "Identification of Historic Properties," the FAA to "conduct an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects" Under regulation, this obligation cannot be delegated to another agency, particularly the NPS, which has an obvious self-interest in the outcome of the ATMP process. The FAA has no authority, SWS claims, to ask for comments from the public/ATO relating to itemized historic properties till the agency has personally conducted field investigation to verify the accuracy of the list of properties. Without the verification, the public comments would be irrelevant. As it is, the FAA relies 100% on other people's/agencies' untested memories and unchallenged records.

Until the FAA reveals the location of each of the FAA's claimed "cultural resources," the FAA list of historic properties has no credibility. Each site needs to be verified. Otherwise, the evidence the FAA relies on merely consists of a general aggregate of testimony involving unidentified third parties (tribes, consultants, and archaeologists) presented as unsubstantiated facts by second parties (the NPS and State Historic Offices) that have little firsthand expertise with the field research behind this specific data. Such testimony, both verbal and written, with a few exceptions, is inadmissible in either court or hearing body, without field confirmation by the FAA.

Incredibly, the FAA counterclaims that hearsay, under the rules of NHPA, is admissible for Sec.106 purposes. The FAA claims that it is not bound by rules of evidence applied by courts.

SWS rejoins that the FAA can cite no source that allows the agency to use hearsay.

The FAA counters by reliance on the fact that NHPA (under Section 106) generally considers all testimony, especially that of Indians, to be appropriate evidence, without any verification.

In turn, Southwest Safaris responds: (1) the FAA's opinion allows unsubstantiated evidence to "poison" objective analysis; and (2) the courts have long recognized that contamination of evidence with hearsay must be arduously avoided in order to ensure due process.

Because (1) the FAA failed to conduct and/or verify any kind of actual field investigation; and because (2) the agency relied in large part on testimony and records of unidentified "consulting parties," all of whom SWS assumes had a personal/agency interest in the outcome of the eventual S106 finding; and because (3) the NPS and the Navajo Nation (e.g., local Chapter Houses and the Navajo Heritage and Historic Preservation Department, plus members of the Tribal Council¹⁸) have an admitted vested interest in denying Southwest Safaris right to fly over the Park ... which predilection makes objective analysis and presentation of data impossible. SWS asserts that the FAA and the NPA (the agencies) working jointly, in fact made neither "a reasonable and good faith effort to identify historic properties within the APE,"¹⁹ nor did the agencies use reasonable and appropriate means of identifying historic properties consistent with the ACHP's regulations.

It remains, then, for Southwest Safaris to demonstrate that the 1,637 cultural resources that the FAA claims lie within the District of the APE, including 1,600 archaeological sites, are not properly included or eligible for inclusion on the National Register. The reasons have to do with current eligibility. The sites are only eligible for listing on the NR for reason of general historic accommodation. The claims for specific historic importance/and relevance are impossible for the FAA to verify.

¹⁸ See Footnote #38 in reference to testimony of Mr. Carl Slater, member of the Navajo Nation Council, delivered on December 5, 2023 to the House Natural Resources Subcommittee on Oversight and Investigations. See also Footnote #39 for quote from Navajo Council Speaker Crystalyne Curley in Gallup Sun newspaper.

¹⁹ See FAA's *Finding of Effects* letter, December 28, 2023, page 5, *Identification of Historic Properties*.

As it turns out, the FAA, itself, admits that 1,600 of the claimed properties are irrelevant to the “undertaking.” On page 6 of the FAA’s *Letter of Effect*, the FAA says:

1,600 additional inventoried and recorded below-ground archaeological sites [lie] within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.²⁰

So, Southwest Safaris has only to refute the listing of the other 37 sites in the APE.

Title 36, Part 60 is concerned with the National Register of Historic Places (National Register, or “NR”). §60.4 lists the “Criteria for Evaluation” that must be used to determine the characteristics of a property that might make it eligible for listing on the National Register. All of the properties referenced by the FAA in the APE are technically considered “sites,” because they have physical presence over and above cultural significance. So, they fall under the eligibility rules of §60.4.

According to 36 CFR §60.4, none of the individual properties included in the “districts” listed in Schedule C of the FAA’s *Letter of Effects* would qualify on their own as Historic Properties (HPs). Sacred space and religious/cultural setting (e.g., “cultural landscapes” and “traditional cultural properties”) are not enough to make a property (i.e., a “site”) eligible for listing on the NR. Nor are properties qualified whose only distinctive characteristics are “setting and feeling.”²¹ The NR does not include “outdoor spaces designed for meditation or contemplation,”²² either.

The NR regulation concerning qualification of properties reads as follows:

§60.4 *National Register criteria for evaluation.* The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, *sites*, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, *feeling*, and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; **or** (b) that are associated with the lives of persons significant in our past; **or** (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; **or** (d) that have yielded, or may be likely to yield, information important in prehistory or history. (Emphasis added.)

²⁰ Southwest Safaris points out that this line of reasoning is diametrically opposed to that used by the FAA for the BAND ATMP. At BAND, the FAA argues that all 3,000 some ancestral cultural sites of the local Tribes are still sacred and have to be protected by the ATMP for reasons of “settings and feelings.” The FAA argues inconsistently from park to park, undermining the agency’s credibility.

²¹ Non-listing of TCPs. See FAA’s Finding of Effects Letter, December 28, 2012, page 5, Identification of Historic Properties.

²² Ibid

There is an “and” coordinating conjunction involved in the regulation, followed by a long line of “or” conditionals. The regulation is a logic statement consisting of “and/or” construction. In order to be eligible for listing on the National Register for religious/spiritual/cultural reasons, property categories of the classes the FAA mentions would need to have “setting/feeling” qualities *plus* meet at least one of the “criteria considerations” listed in the above regulation stipulation.

All but one of the TCP properties listed in the FAA’s Attachment C fail to meet the standards of the “or” clauses/ subparagraphs (a) through (d) above. With the exception of White House Ruin, none of the individual TCP properties are even generally associated with identifiable historic events of significant record, (a); none are associated with specific persons, (b); none but White House Ruin are associated with works of construction or creative design, (c); and none but White House Ruin “yield information important in prehistory or history,” (d). In the case of Spider Rock, Spider Woman is a figure of current reality to the Navajo people; she is a living figure whose importance is primarily in the present. Attachment C lists no identifiable connection of Spider Woman with historic events, citing no specific commemorative aspects of Spider Woman’s actuality, only general reference to her as a teacher of timeless spiritual values. A towering rock monolith is not an architectural achievement; it is a landmark, not a structure. No historic battles occurred at Spider Rock. Moreover, the NR makes no mention of anthropomorphic qualities passing from spiritual persons to physical properties (rocks) so that the identity of a natural object would become that of the spiritual, allowing the property to take on timeless historic significance. Spider Rock is a popular tourist attraction, lacking privacy and silence viewed from the overlooking parking lot.

Beyond two listed NPS buildings plus White House Ruin and Spider Rock, other possible historic properties in the Park are only identified in Attachment C by number. With the exception of White House Ruin, nothing substantive is said about the individual identities, histories, or integral importance of these numbered properties to the overall historic characteristics of the Park, only that several of the sites have “setting and feeling” attributes that are “significant,” whatever that means.²³ By concealing the majority of the sites’ identities, the FAA has deliberately made the sites impossible to critique for veil of secrecy. The FAA denies ATOs due process by withholding from ATOs constructive opportunity to comment on the numbered properties. SWS challenges the numbered properties authenticity. SWS further argues that the 33 numbered TCPs within and outside the Park boundary should be eliminated from eligibility on the National Register for lack of qualifying criteria (specificity and relevance)

²³ The FAA makes reference to the National Register Bulletin 36, pointing out that “A contributing resource has the following characteristics: it was present during the period of time that the property achieved its significance; it relates to the documented significance of the property; and it possesses historical integrity or is capable of yielding important information relevant to the significance of the property.” SWS counters by observing that this reference is far too general, too abstract, does not apply to specific physical sites, and is too vague with respect to application. Moreover, the information contained in the contested “contributing resources” is not of *significance* or *importance* with reference to each individual site.

and eliminated from consideration in the proposed CACH ATMP for lack of connection with any particular route (lack of definition and location).²⁴

Attachment C lists only 37 individual historic sites. Only two “building properties” are included in the Park HQ inventory, and neither one of them counts²⁵; none of the sites lie along or directly under the routes flown by SWS. Within the districts, the FAA claims that there exist 35 “cultural resources,” but none of them are actually listed on the NR. For 33 of the sites, the FAA gives no proof of even their actual existence by any sort of geographic reference that either the agency or the ATO can verify. This is a point of important contention; the sites are “faceless,” having no individual characteristics.

The FAA says that the “information provided by consulting parties, including tribes, is reasonable and an appropriate means of identifying historic properties and is also consistent with the ACHP’s regulations.” Southwest Safaris disagrees.

In the first place, the information garnered from consulting parties relating to historic properties dating back far beyond collective memory can only have been derived from historic hearsay passed down from one consulting “expert” to the next. Consulting with Indian tribes, as required by NHPA regulation per PL 102-575, does not change the type of reliance (hearsay) that the FAA is depending on.

PL 102-575 states:

In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

²⁴ It is interesting to note that none of the “cultural resources” claimed by the FAA for inclusion on the National Register have been listed in the registration for the historic property. The registration form has not been updated since 1970.

²⁵ One of the properties listed is the “Custodian’s Residence.” This property is ineligible for inclusion in the FAA list of historic properties in the APE because it properly belongs to the Thunderbird Lodge historic district. This district was not listed as one of the included “Districts” in the APE because the cluster of buildings has been specifically delisted from the National Register. Moreover, the Lodge is a working partner with Southwest Safaris, providing numerous ground services for the ATO. By standing agreement, SWS signals the Lodge of the ATO’s arrival by flying over the Lodge at a low enough altitude to be heard in the office, to confirm need for pickup at the local airstrip. Noise and physical presence of air tours at CACH is obviously not an issue with Thunderbird Lodge, the FAA’s obsession with “settings and feelings” notwithstanding. The Lodge is a major employer of Navajos in Chinle, who, upon inquiry, appear to share the opinions of management. The other building serves as the HQ for the Park. It, too, is not listed as a site on the NR, because its construction is neither unique nor commemorative. It sits immediately adjacent to the main visitor parking lot. It is one of the noisiest parking sites in the Park, so the applicability of “setting and feelings” as a characteristic of the property that would qualify it for inclusion in the APE is completely inappropriate.

Complying with this law does not mean that the FAA necessarily has to incorporate the statements and figures of the Tribes. To do so without verification of data would still imply reliance on hearsay. The FAA has provided no evidence of fact-checking, relying only of the highly biased testimony of the NPS and Tribal Historic Office for concurrence.

In the second place, listing on the NR is not determined by NHPA, but by a different set of regulations. In the present instance, eligibility of the properties is solely determined by the “Criteria for Evaluation” enumerated under 36 CFR §60.4. Very few of the tests of qualifying criteria would successfully apply to the individual “sites” in question. Southwest Safaris claims, therefore, that the supposed “cultural resources” listed by the FAA likely represent grossly exaggerated claims by the NPS and Tribes. These are highly prejudiced parties to the ATMP undertaking, whose word, therefore, cannot be taken at face value, 36 CFR §800.4(c)(1) notwithstanding. Of the 37 TCP properties listed in Attachment C, all but White House Ruin fail to meet the standards of the “or” clauses/subparagraphs (a) through (d) above.

All of the sites, including the buildings,²⁶ fail the eligibility test for reason of itemized “criteria considerations.” These §60.4 stipulations follow in the regulation immediately after the “National Register Criteria for Evaluation” paragraph referenced above. Cemeteries and graves of historical figures and properties primarily commemorative in nature, characteristics obviously alluded to with reference to the 35 cultural and archaeological sites, are not considered eligible for the NR. §60.4 states that “Ordinarily properties . . . used for religious [including prayerful, meditative, and ceremonial] purposes . . . shall not be considered eligible for the National Register.” None of the listed extenuating exceptions to this rule apply under §60.4, with the possible allowance for (f) White House Ruin.²⁷ However, none of the other properties in question are “primarily commemorative in intent,” nor do they have “*exceptional* significance.” None of the other properties listed were originally created by man for celebratory purposes, and natural properties do not “inherit” man-made “traditional significance” over time unless an extraordinary historic event is directly associated therewith. The FAA makes no claim that any of the listed TCPs have commemorative association attached to identifiable events. Therefore, all of the unnamed TCPs lack overall “integrity” of presentation with respect to the NR.

The criteria for eligibility of listing on the NR do not include landscape locations “that have been continuously used for contemplation and prayer.” Nor do the criteria for eligibility allow listing “because of association with cultural practices or beliefs.” The concept of “cultural landscape” including “outdoor spaces designed for meditation or contemplation” is completely foreign to the wording of the NR’s Criteria for Evaluation and to the qualities of stipulated exception/eligibility that follow. The FAA has artfully crafted the misleading and prejudicial terminology. The NR considers such sweeping categories to be much too broad. On the other hand, individual TCPs are not automatically and separately included in the NR just because they have cultural importance for current time. Their eligibility for listing comes solely from being part of the Park.

²⁶ *Ibid.*

²⁷ With regards to exceptions for governing listing on the NR, §60.4 says: “However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories: (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or . . .”

The main justification for all of the TCPs but White House Ruin being included in the APE as historic sites is that they fall within the boundaries of CACH. This is a “district” that does meet the criteria for listing on the NR. However, the majority of the properties, considered by themselves, would not meet the criteria.²⁸ Moreover, the exception for reason of district inclusion is nullified by the fact that the individual properties are not “integral parts of districts,” meaning that they cannot be cognitively recognized as such by laymen and cannot readily be observed as historic sites by normal visual means. The sites lack unique physical characteristics (being “faceless”). Their presence is not essential to the identity of the Park. They are cultural locations of importance to local residents, not material or objective sites that contain specific historic importance/relevance to the Park. The sites have only general “setting and feeling” of note.

Southwest Safaris acknowledges the existence of special wording in PUBLIC LAW 102-575—OCT. 30, 1992 106 STAT. 4757 which says that “Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.” SWS notes, however, that the wording does not include, “without further consideration” at the end of the statutory language. SWS alleges that the FAA errs in two ways. First, the agency misinterprets the “may be determined” clause to mean “shall be determined.” This clause carries vastly different meaning than the alternative interpretation, which would mean, instead: “is allowed to be considered for” Under the alternative interpretation, the properties would be given favorable consideration, but would still have to abide by 36 CFR §60.4. Southwest Safaris argues in favor of the alternative interpretation, contending that inclusion of the properties on the NR is not automatic.

Second, the FAA does not recognize the full meaning of 36 CFR §800.4(c)(1). With reference to the current instance, the relevant portion of the NCHP regulation states:

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

Certainly, the passage of time has affected the qualities of the 35 sites that the FAA is claiming as cultural properties for inclusion in the NR. Many of these sites are over 1,000 years old. They have been buried by sand at the rate of one shovel of time per year and deteriorated to the point where they are unrecognizable to the untrained eye. They have been ravaged by fire, wind, storm, flood, sun, and vandalism. Their relevance to the NR by current standards has become sadly irrelevant except in the most historic context. Most of the 1,600 “cultural resources” at CACH supposedly listed on the NR no longer constructively exist anymore and, for the sake of accuracy and credibility, should not be considered eligible for listing on the NR, their “potential presence” undermining the integrity of the Register. Currently, except for the well-meaning but unverified testimony of tribal members, there is no way to know which of the listed cultural properties are “real” for purposes of NR listing and which are not anymore.

²⁸ *Non-listing of TCPs, supra* Footnote #21.

SWS points out that creation of Prohibited Airspace in the CACH ATMP above TCPs cannot be based on undefinable “cultural landscapes” of vague social and religious significance from bygone times. Moreover, considerations of airspace surrounding historic properties is not relevant to the National Registry’s *Criteria for Evaluation*. §60.4 makes no mention of “viewsheds” being a part of a historic property’s intrinsic value. “Diminishment of viewshed” is a concept foreign to the *Criteria for Evaluation* and not a factor of relevance under NPATMA when determining adverse impact of aircraft presence. This discounts most of the FAA’s criticism of air tours over the Park.

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

The FAA’s attempt to rely on hearsay was erroneously reinforced by the ACHP when the ACHP responded to the FAA’s request for opinion regarding a pending ATMP for Bandelier National Monument (BAND). In the ACHP’s letter to the FAA of December 21, 2023, the ACHP said on page 4, *ACHP’s Review of Finding*:

Based on the information provided by Tribes, noise and visual elements from air tours [at Bandelier National Monument] have the potential to alter characteristics of historic properties significant to them by diminishing integrity of setting and feeling, among other aspects of integrity. The ACHP has developed policy statements and other guidance that affirm the validity of Indigenous Knowledge in identifying historic properties of religious and cultural significance. Therefore, the information provided by Tribes is sufficient for the FAA to determine that properties of significance to Tribes are historic properties without further archaeological evaluation, and the characteristics that make the properties significant could be adversely affected by continued air tours above and around them.

Relying on the arguments and regulatory language cited earlier, Southwest Safaris strenuously refutes the ACHP’s statement. The Council claims that information provided by Tribes is sufficient unto itself as qualifying evidence of historic properties without any archaeological evaluation. They further claim that allegations of “potential” adverse effects from air tours have to be accepted without cross-examination or any means of verification. The NHPA regulations, themselves, make it patently clear that this is not the case, which is probably why the ACHP cites no regulations upon which its flawed interpretation rests. Moreover, NPATMA also disagrees with ACHP opinion, the Act requiring performance of the “if any” test by means of Section 808 sound measurements in order to verify any alleged statements of adverse impacts from air tour overflights. SWS says yet gain, in refrain, that NPTMA, not NHPA and not NEPA acting by themselves, is the controlling legal authority re. all matters relating to the creation of ATMPs.

SWS concludes this section by stating, with reference to the APE for Canyon de Chelly, that the FAA is asking for the impossible. It is not fair under Section 106 for the FAA to ask an ATO to comment on boundaries of the APE based on TCPs that the FAA will not identify as to location. All claimed historic properties at CACH should be identified on a map, the argument for privacy notwithstanding. The FAA is wrongly withholding the locations of historic sites that would be essential for planning air tour routes.

IV The FAA's Finding is wrong, because it is based on extremist interpretation of law, ignoring NPATMA.

There is nothing in the Federal Code that justifies the FAA's extremist interpretation of law and regulation. The FAA misuses the regulatory body to ban all air tours over Canyon de Chelly and Bandelier.

The ACHP, upon whose opinion the FAA relies, apparently agrees. In the ACHP's Opinion letter of December 21, 2023, in which the Council comments on the FAA's Finding of "no adverse effects" for the BAND ATMP, the ACHP says at the bottom of page 4:

Further, while the **Section 106 process does not mandate a specific outcome**, the regulations implementing Section 106 present an order to the consideration of alternatives with regard to adverse effects, if any. The agency should first consider ways to avoid adverse effects to historic properties; if such options are not available, then the agency would consider ways to minimize or mitigate adverse effects (see 36 CFR §800.6(a)). (Emphasis added.)

The FAA builds a huge untruth around a small truth. While it is true that "Section 106 process does not mandate a specific outcome" ... meaning that NHPA does not require the FAA to choose the most radical remedy for addressing adverse impacts ... the rest of the FAA's sentence is blatantly false. NHPA regulations do not require or even suggest an order of remediation for "potential" adverse effects.

The actual language of the regulation to which the ACHP refers is contained in 36 CFR §800.1(a) (not §800.6(a), which the ACHP erroneously cites). That wording says:

§800.1 Purposes

The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

The ACHP and the FAA base their entire theory of extremist remedy on misinterpretation of this single, informative sentence. The rationale of the statement was simply to give the "purposes" behind the NHPA statute and the general methods of accomplishing them. It serves as introductory text for the NHPA statute. The text gives an explication of goals and the means of attaining them, not instructions for how to achieve them; that comes later in the law. The wording of the sentence does not include any mandatory terminology such as "must" or "shall."

The ACHP incorrectly declares that the first and major priority of Section 106 is to avoid adverse effects on historic properties altogether and, if that option is not available, only then would the FAA, empowered by the ACHP, elect alternative remedies that would either minimize or mitigate adverse effects. The regulation, as quoted, says no such thing.

Textual analysis of the regulation refutes the Council's interpretation. In the first place, Congress presents the words, "avoid, minimize or mitigate," merely in alphabetical order. In the second place, Congressional use of the coordinating conjunction, "or," creates equal standing

between the terms, not priority of order. Congress gave agencies three choices of remedy; they could choose any one of them, providing that the agencies could justify it (49 USC §40128(b)(3)(F)). In the third place, had Congress intended the interpretation adopted by the ACHP/FAA, Congress would have expressly used wording calling attention to that effect, such as adding “in that order” to the end of the sentence. In the fourth place, Congress uses words that do not express a clear difference of degree. By using the words, “minimize or mitigate,” Congress attempts to draw a distinction that does not make a clear difference, the degree of difference being just too subtle for regulatory purposes. If Congress had meant the words to apply in descending order of degree for aviation purposes, where clarity is of utmost importance, it would have employed more useful vocabulary. It might have said, “... seek ways to prevent, accept, or modify any adverse effects on historic properties, in that order.” Evidently, Congress had no obvious order of preference for implementing the three choices for correcting adverse impact. Congress simply directed that the decision would be “reasonable” ... meaning made with the aid of the intentional “if any” test required by NPATMA ... and “justifiable ... meaning consistent with the findings from performing the science-based sound studies required under Section 808 of the Act.

NHPA was never written to be an aviation regulation. NPATMA was. The FAA is relying on language that is not applicable to its endeavor. This is yet another example of why Congress intended NPATMA to be the controlling legal authority re. ATMPs, where the language is specific to the “undertaking.”

The ACHP’s/FAA’s gross misunderstanding of Federal code as it applies to the ATMP process goes to the heart of the FAA’s justification for using extremist remedies for eliminating all “potential” (i.e., currently nonexistent) adverse impacts on historic properties. This policy drives the FAA’s interpretation of NHPA regulations to allow the agency to arrive at an erroneous Finding of “no adverse effects” from banning all air tours over the Park. In this manner, the agency can conclude the ATMP process with a decision of “no air tours” allowed, which contradicts the Will of Congress (see Appendix 1).

It appears that the ACHP has been caught in a misstatement of huge proportions, The Council attempts to grab powers under Section 106 that Congress never granted. Then the Council gives them to the FAA. Of course, one would expect NPATMA to come to the opposite conclusion ... and it does. Ergo, the FAA’s reason for hating NPATMA and trying to skirt, or negate, or violate it.

NPATMA, 49 USC 40128(b)(1)(B), voices just the opposite of the Council’s Opinion, that:

The objective of any air tour management plan shall be to develop acceptable and effective measures to *mitigate or prevent* the *significant* adverse impacts, *if any*, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

The language of the Act is very clear. There is an “or” between “mitigate” and “prevent.” Under NPATMA, there is no imperative to “avoid” all “potential” adverse impacts, the concept of “avoidance” being foreign to the Act. By incorporation of the word, “or,” NPATMA expressly allows latitude of mitigation methods. The *Objections* section of the Act gives the FAA power only to prevent the defined “*significant*” existing adverse impacts of air tours over

parks, not eliminate all “potential,” unmaterialized, future consequences of same. The ACHP methodology, in contrast, favors avoidance schemes based on the theory of “potential” adverse effects. This is a speculative concept which is unsupported by regulation of either NHPA or NPATMA origin. The policy would deny the ATO at BAND the right to fly over the Park regardless of the results of the “if any” test, even if the test proves “no adverse impacts.” The ACHP attempts to use NHPA as a weapon with which to war against NPATMA, in violation of basic principles of jurisprudence (Primacy of Law and Continuity of Law). However, the Council’s aim falls short of its mark, failing the test of strict scrutiny.

To elaborate in greater textual detail, the word “potential” does not even appear in NPATMA, nor does the Act include the word, “avoid.” “Avoid” carries the inference of “potential,” as in the FAA’s favorite NHPA phrase, “avoid potential effects.” The word, “prevent,” however, used in the *Objective* section of NPATMA, points to “existing conditions,” as in “mitigate or prevent significant [existing] adverse impacts.” So, the Act being the controlling legal authority for ATMP implementation, and the textual meaning of the Act being clear, the ACHP’s “do no possible harm” theory imported from NHPA ... incorrectly interpreted to mean the application of the most restrictive measures for reducing adverse impacts ... is inappropriate and inapplicable in the case of all ATMPs. This is especially true for CACH and BAND, where noise and physical presence of aircraft are not problems in the first place.

A decision in favor of Southwest Safaris’ interpretation of statutory language is logical even if one were to decide that the mitigation language of NHPA and NPATMA is not clear. According to the canon of Chevron deference, in cases where Congress does not specify agency actions, and the law is either ambiguous or silent, a specific textual test of reasonableness is required. Under NPATMA ... the Act being the controlling legal authority re. ATMPs ... the measure of reasonableness is expressly determined by application of the “if any” test for adverse impact, which in turn must be performed against existing conditions by means of science-based sound studies under Section 808. The standard of reasonableness cannot be construed under latitude of statutory interpretation to mean the elimination of all “potential adverse effects.” The Act provides specific language and methods to the contrary.

In the case of NHPA and NPATMA, the general contextual test of reasonableness is whether the agency’s interpretation of the law is consistent with legislative intent. In the present instance, the intent of NPATMA is clearly identified in its *Objectives* section, 49 USC 40128(b)(1)(B). The intent of NHPA is spelled out in 36 CFR 800.1(a). Both sets of regulations make significant use of “or” between the words “mitigate or prevent” in the former case and “avoid, minimize, or mitigate” in the latter. The intent of Congress in both statutes was to allow considerable latitude as to methodology for lessening alleged adverse impacts, if any. Southwest Safaris clarifies that the Opinion of the ACHP fails legal scrutiny thrice over. There is neither specific nor general interpretation of NPATMA and NHPA that would allow extremist interpretation for excessive remedies. Moreover, the “if any” test required by NPATMA was never performed, so the FAA’s methods fail the test of reasonableness, yet again.

The FAA has no problem recognizing the validity of Southwest Safaris’ arguments when it comes to major parks throughout the USA. Take Hawaii, for example. At HAVO, the FAA argues against the ACHP, saying the standard of decision is not “no air tours” based on the

Theory of Mere Presence,²⁹ but rather that of “existing conditions” and historical precedent. At HAVO, the FAA claims that air tours existed *at the time* NPATMA was created, so the noise levels at that time should be the standard of acceptance, and any measures taken to mitigate such noise will be sufficient to accomplish the objective of the Act.³⁰ Moreover, the FAA also argues that air tours over the park existed long *before* HAVO was created as a national park, asserting that air tour noise was, therefore, part of acceptable “existing conditions” even before the park was created³¹.

The FAA’s arguments at HAVO, HALE, ARCH, CANY, BRCA, and NABR are completely contrary to those at CACH and BAND, the difference in reasoning going unexplained. At CACH and BAND, the FAA argues that the basis for decision is “no air tours” predicated on the Theory of Mere Presence, no deference being given to the fact that air tours existed when the Park was created and long before.

The ACHP had a duty to address this glaring inconsistency and to ask the FAA to clarify the FAA’s reasoning. The failure to confront the FAA speaks to the Councils predilection to opine against SWS from the very outset and disqualifies the Council’s Opinion for lack of

²⁹ *Theory of Mere Presence, supra* Footnote #1.

³⁰ See FAA’s letter to ACHP of July 24, 2023, top of Page 3. There, the FAA states:

The standard set out in the ACHP’s regulations for assessing visual and audible effects is whether there is an introduction of visual or audible elements that diminish the integrity of the property’s significant historic features. See 36 CFR § 800.5(a)(2)(v). The FAA’s assessment of the effects of the undertaking is consistent with this standard For these reasons, **the FAA’s use of existing conditions as the baseline against which to measure the impacts of its undertaking is appropriate.** The FAA’s finding that the undertaking would not diminish the characteristics of any historic properties located within the APE but instead would represent a reduction in audible and visual effects on historic properties when compared to existing conditions is supported and consistent with the ACHP’s regulations implementing Section 106 of the NHPA. (Emphasis added.)

See also FAA’s letter to ACHP of September 12, 2023. In the middle of Page 4, the FAA states:

Impacts from the **existing condition** of air tours over the Park **is the appropriate baseline** for determining whether the undertaking (ATMP) will adversely affect historic properties. . . .

And, at the bottom of Page 4, the FAA states:

As the FAA explained in its request to the ACHP for an opinion on this finding, neither the National Parks Air Tour Management Act (NPATMA) nor the National Historic Preservation Act (NHPA) require the effects of the undertaking to be measured against a condition under which no air tours are occurring. (Emphasis added.)

³¹ *Ibid*, Page 9. The FAA states therein:

Furthermore, neither NPATMA nor NHPA require the agency to assess the effects of the undertaking assuming that the existing conditions already have an adverse effect.

objectivity, let alone misinterpretation and misapplication of law and regulation.³² Disqualification of ACHP opinion serves to disqualify the FAA's extremist methodology.

The ACHP's tacit S106 support for the FAA's double-standards for different parks notwithstanding, NPATMA will not tolerate the FAA's order of amelioration of adverse effects. NPATMA disagrees that the agency must first avoid, then minimize, and lastly mitigate "potential" adverse impacts. The basis of decision under the Act is *reasonable* reduction of adverse effects based first on implementing NPATMA's "if any" test by means of Section 808 sound studies and then by using a common-sense approach rather than resort to an extreme remedy that would bar all air tours entirely. Evidence to this effect is presented in Appendix 1, "NPATMA and the Will of Congress," where reasonable compromise and common-sense is touted. Based on these measures, the ACHP's Opinion at BAND and the FAA's application of it at CACH is unreasonable by any measure. Moreover, the Council's Opinion attempts to support the FAA's efforts to interpret existing regulation on an inconsistent park by park basis, as already demonstrated. By denying the Theory of Constructive Remedy³³ and its associated methodologies, the ACHP attempts to fabricate new regulatory interpretation to the effect of "new law," which, according to NPATMA, "will not fly."

Because the ACHP (and thereby the FAA) has no intention of ever concurring with a decision to allow air tours at CACH and BAND, the ACHP does not support any sound studies at the Parks and neither does the Council care how draconian are the measures the FAA uses to destroy all air tours thereover. By eliminating all "potential" adverse consequences of flying over Canyon de Chelly and Bandelier, the ACHP justifies eliminating all air tours over all parks, which is contrary to the intent of NPATMA. Southwest Safaris alleges that this is the real reason the

³² The FAA loves to point out that Southwest Safaris' arguments have little to do with Section 106, saying that S106 is only a "process regulations" that does not arrive at a decision, only an opinion. The fact that the FAA is trying to make a distinction without a difference notwithstanding, SWS' rebuttal has everything to do with Section 106. Moreover, the FAA uses broad NPATMA language under the Objectives section to justify a finding of "no adverse effects," narrowly focusing on the use of the words, "prevent," "cultural resources," and "tribal lands." The FAA claims that it does not have to "justify and document" its finding by NPATMA standards, which sets forth the basis for decisions under ATMP process. The FAA broke with regulations when it prematurely gave draft copies of the CACH ATMP to Navajo "consulting parties" which were not "consulting agencies," but continues to withhold the document from SWS, just as the FAA did when the agency prematurely published the BAND ATMP before completing the S106 process. So, the decision to find for "no air tours" is incorporated into the Section 106 process by direct association therewith. The finding of "no adverse effects" from disallowing air tours over the Park is used as the direct link to arrive at the decision in favor of "no air tours," so the logic and methods used to arrive at a Section 106 finding are very much on the table. SWS has many times pointed out the FAA's techniques for obstruction of argument and the agency's failure to properly order the presentation of documents and the problems it raises in written and oral argument, both to the ACHP and to the FAA, but gets stonewalled every time.

³³ The Theory of Constructive Remedy states that general remedies for adverse effects must be applied starting with the least harmful remedies for all parties impacted and ending with the most harmful remedies for those who most will suffer the pain of corrective action. In other words, apply the least impactful remedies first; the most impactful remedies last. This theory of social justice, promoting "reasonable and common-sense compromise," see Attachment 1, directly contradicts the FAA's methods and remedies for "potential" adverse effects addressed by ATMPs. The FAA's means and methods for ATMPs are unacceptable, according to NPATMA, because they only consider the interests of one end of a fix, not both ends, favoring one party to a dispute and ignoring the other, thereby tending to be "extremist."

Council incorrectly claims that “the agency should first and primarily consider ways to *avoid* adverse effects to historic properties.” The obvious goal of the FAA is to dismantle the air tour industry. NHPA is the primary tool in the FAA’s arsenal for doing so. The FAA’s actions to improperly use the Section 106 tool, encouraged and endorsed by the Council, speak to the effective failings of the majority of the ATMP undertakings.

V The FAA’s Finding is wrong, because it is based on false environmental analysis.

Had the FAA “walked the Park” according to regulation, the agency would have realized how incorrect and pointless the agency’s assessment of Canyon de Chelly’s environment really is. The Navajo Tribe has done everything they can to popularize the Park and encourage motorized access to it, both along the rims and in the bottom of the canyons. There is virtually no privacy in the Park due to commercial vehicles roaring up and down the sandy canyon floors and along the rims. CACH is probably one of the noisiest of all the units of the NPS.

Even the FAA artfully acknowledges this “inconvenient truth.” At the bottom of the FAA’s January 11, 2023 response to the ACHP’s December 21 Opinion regarding the BAND ATMP, the FAA says:

However, the elimination of air tours within the [BAND] ATMP planning area will [only] slightly reduce noise and visual intrusions within the APE and adverse effects are not anticipated as a direct or indirect result of the ATMP. (Emphasis added.)

The only “slight” reduction the FAA is talking about in the case of Bandelier applies equally to Canyon de Chelly. The arguable reduction in aircraft noise and visual intrusions achieved by the proposed CACH ATMP, allowing “no air tours,” assuming that they might prove to be the case, will be immeasurable and statistically insignificant compared with the prevailing noise in the Park all day long. One air tour a week gliding over CACH from 4,000 AGL in preparation for landing at Chinle is hardly a significant impact, no matter how measured. NPATMA is only concerned with the reduction of *significant* adverse impacts. No significant noise impact from air tours exists at Canyon de Chelly.

The agencies really do not seem to care very much; remedy of significant adverse conditions is not the point. The corrupted objective of the CACH ATMP is now the elimination of air tours over the Park altogether, by any means and justification necessary. This is why the FAA seeks a draconian remedy for a non-existent problem. The agency argues that all it has to do is come up with a proposal that will reduce noise by even the slightest degree and then use that method to justify a decision for “no air tours.” The goal is to win a political victory, not seek an operational solution. Southwest Safaris alleges that the FAA misuses authority of Congress by not considering minimizing or mitigating air tour noise before attempting to avoid it altogether. The FAA’s methods are inconsistent with the Theory of Constructive Remedy,³⁴ contrary to the purpose and methods of NPATMA, and work in violation to Will of Congress (see Appendix 1).

³⁴ *Theory of Constructive Remedy, supra* Footnote #33

VI The FAA's Finding is wrong, based on inaccurate data and sloppy noise modeling.

The FAA bases its Finding of “no adverse effects” from banning air tours over CACH on false data and flawed noise analysis.

Figures 2, 3, and 4 of the FAA's *Finding of Effects Letter* depict sound contour maps. Attachment D gives a *Summary of Noise Technical Analysis from NEPA Review*. The summary of noise produced by Southwest Safaris' air tours is misleading and wrong.

In the first place, SWS' current routes have changed since the charts were produced. The FAA never asked the ATO whether its routes have changed from those submitted several years ago, but acknowledges that changes might have occurred. They have, significantly. SWS now flies further away from Canyon de Chelly, staying south of the main road paralleling the canyon as its planes fly west, and north of the canyon as the planes fly east. The current air tour route flies east of Canyon del Muerto as the plane flies south, crosses the canyon between overlook sites, and then flies west of that canyon till exiting the Park. Southwest Safaris has already offset its current routes so that noise and visual presence are almost impossible to detect. Total avoidance of the Park is entirely unnecessary to achieve the purposes of NPATMA.

In any case, the figures 2, 3, and 4 give a false picture of what is actually going on, past and present. The figures are designed to give a worst-case graphical picture, which is entirely misleading. The charts make it appear that the noise and physical presence of air tour planes entirely “soaks” the canyon, the whole canyon being painted black in the case of figure 1. In point of fact, the “noise shadow” follows the aircraft, immediately disappearing after the plane passes out of the local area because of “terrain shielding” due to the plane's offset angle to the canyons ... which tends to block vertical entrance of sound ... and because of the bends in the canyons ... which tend to block horizontal movement of sound. Southwest Safaris has many times asked Navajo ground tour guides if they are aware of Southwest Safaris aircraft in the vicinity of the Canyon. The answer is always the same: “No, we never see you, but wonder if you are going to land to meet us at the airport; we worry that you will cancel ... maybe weather when birds don't fly. Actually, we would like to see you fly overhead; it would be a beautiful sight against a turquoise sky.” This is a uniquely Navajo reply: short, to the point, and creative.

In the second place, the FAA's noise modeling assumptions are total fiction. The FAA has never measured Southwest Safaris actual sounds in the vicinity of the canyon, so its base assumptions are completely incorrect. For instance, the FAA's AEDT assumptions are based on standard noise patterns of a Cessna 182 in cruise configuration. That is not how Southwest Safaris flies CACH. After crossing the Chuska mountains, heading west, SWS' plane is almost 10,500 feet MSL. The plane has to lose almost 5,000 feet of altitude over 30 miles to land at Chinle, just to the west of the Park. As the tour plane flies west along (not over) Canyon de Chelly, the tour aircraft is descending, using minimum power. No one on the ground can hear SWS coming in to land. The actual sound footprint of the plane would be much lower than 32 dB the entire route. The dBs are too low and the “noise shadow” is but a few seconds at any given spot in the Canyon. The FAA's *theoretical* sound *projections* are completely untested and unrealistic.

In the third place, figures 2 & 3 are wrong. There is no reason for the noise at any spot in the canyon to be above 32 dB, let alone above 52 dB, given the facts specified above. However, even if it were true that the plane generated brief exposure to noise above 52 dB, it would not matter. The three locations the FAA picked correspond to Spider Rock, White House Ruin, and the visitor parking area, where noise from ground vehicles and tourist voices are already maximized. No one would hear the plane over existing noise, and no one would see the plane, either, because the plane is on the south side of the canyon, benefiting from “terrain shielding,” and tourists are looking north to view the scenery, where the cliff dwellings are.

In the fourth place, the FAA makes no mention of the fact that Southwest Safaris is not really giving an air tour in the manner the agency is trying to portray. The routes in and out of Chinle are as much for transportation as for scenic viewing. Southwest Safaris is not circling Canyon de Chelly, unless forced to do so by the FAA’s newly proposed Alternative 2, “no air tours.” The FAA’s charts do not convey to the public that the maximum time over the Canyon, flown in either direction, is ten minutes total, flown less than once per week, according to the FAA’s figures. Viewed from the bottom of the canyons, the aircraft’s presence is but a few seconds. The FAA says in the margins of the maps that “the noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level.” The map conspicuously does not present the percentage of daily time that the noise levels are audible, which would give an entirely different picture of the alleged “potential” adverse effects of SWS’ air tours over CACH. The actual on-site percent-audible (PA) noise presence from Southwest Safaris’ air tours is so low as to be undetectable.

In the fifth place, the charts fail to disclose the alternative scenarios, so the basis for comparison is totally misleading. If forced to circle the park, Southwest Safaris will fly barely to the west of Canyon del Muerto on the flight out to Chinle, and then fly scarlessly to the south of Canyon de Chelly on the return flight. This will expose the canon to at least 2.6 times the noise as just flying over the canyon once on the inbound flight, as argued earlier. Moreover, the return flight will be conducted at full power in the immediate vicinity of the Park as the plane climbs to get over the Chuska Mountains, so that noise saturation will be at a maximum. The FAA needs to add charts to its presentation to reflect this certainty, along with text to explain the negative consequences of the alternative. The FAA has not revealed the big picture.

The reality, that the FAA tries to conceal, is that air tours over Canyon de Chelly, as actually being conducted today, have virtually no sound or visual impact on the Park.

However, all of this is irrelevant. There is no point in going into any more detail to perform a technical analysis on the flaws of the numbers the FAA presents. None of the FAA’s data is admissible evidence, another “inconvenient truth” that the FAA tries to conceal.

NPATMA is the controlling legal authority for the creation of ATMPs. As stated, many times already, NPATMA controls the timing of NHPA and NEPA and also controls the language and methods that NHPA and NEPA can employ to carry out their tasks.

NPATMA dictates that NHPA is not called into effect until: (1) the “if any” test under NPATMA is conducted; (2) the “if any” test indicates that there exist “significant” adverse effects from air

tours, and (3) all measurements of sounds are science-based using pertinent data. Until all of this is accomplished, there is no legal undertaking at CACH. Without a legal undertaking, no Findings can be launched and no NEPA EAs can be funded. To date, the FAA has ignored all of the above.

The FAA has clearly fully funded two different agency decisions, one each for CACH and BAND ATMPs. The initiatives are already almost completed before the projects have even been “approved” by Congress (by means of the “if any” test). Furthermore, the “undertakings” have already been largely completed well before Section 106 will be finished, two more violations of NHPA on top of the first set. At BAND, the FAA has already held a public meeting and closed a public comment period for the “proposed” ATMP before completing S106 process. At both CACH and BAND, the FAA has compiled the final version of the proposed ATMP, told all the consulting agencies/parties that the agency intends to adopt alternative 2, performed an Environmental Analysis, and distributed the “draft ATMP” to all parties except, in the case of CACH, Southwest Safaris. All of this has been done without the knowledge or consent of SWS, without a public hearing at CACH, and without a public comment period for CACH in violation of NHPA regulation, 36 CFR §800.1(c). The FAA’s juggernaut just keeps on rolling.

Moreover, the FAA bases its sound studies on noise modeling, not “reasonable scientific methods,” as required by Section 808 of NPATMA. There is no allowance for AEDT-based sound studies in the Act, but this does not slow the FAA’s progress to “satisfy the court.”³⁵

³⁵ See USCA Case #19-1044, Document #2001434, Filed 5/31/2023. The U.S. Court of Appeals, District of Columbia Circuit, said, “We fully expect that the agencies will make every effort to produce a plan that will enable them to complete the task [of creating ATMPs for 23 parks] within two years, as Congress directed. If the agencies anticipate that it will take them more than two years, they must offer specific, concrete reasons for why that is so in their proposal.”

Southwest Safaris alleges that the agencies (FAA and NPS, acting jointly) defrauded the court by withholding information that would have revealed that the agencies were required to meet the “if any” test in NPATMA by conducting science-based sound studies using pertinent data under Section 808 of the Act, which they would not be able to accomplish under the timeline of the Court. By knowingly withholding critical information, the agencies deceived the Court to: (1) justify violating NPATMA in order to misuse NHPA; and (2) expedite creation of ATMPs without having to worry about any civil rights violations that ATOs might claim. There would be no checks and balances to “agency discretion,” which would give the FAA a free hand to do as it pleased regardless of the ever-nagging Will of Congress. See Attachment 1.

The agencies argue that the court order prevents the agencies from complying with otherwise required administrative process. This allows the agencies to use one law (NHPA) to break another (NPATMA), circumventing Congressional mandate to perform sound studies required by the Act.

Southwest Safaris alleges that the agencies want to avoid sound studies because the field tests would provide data that ATOs could take to court to argue against the agencies’ decisions. Thus, the agencies have additionally conspired to deprive ATOs, Southwest Safaris in specific, of due process in the cases of CACH and BAND and obstruction of evidence (sound-study data) that could otherwise have been used in court against the agencies.

These reasons alone document incredible agency abuse of due process and complete disregard for regulation and law, requiring cessation of ATMP process until the agencies get clarification from the Court as to how to proceed.

The FAA incorrectly relies on noise modeling technology to make its determinations as to the level of air tour noise at CACH and BAND. This reliance, SWS maintains, adversely impacts the correct assessment of harmful impact of said noise on TCPs and, therefore, incorrectly influences FAA opinion and determinations under Section 106.

Actually, at Canyon de Chelly and Bandelier National Monuments, the FAA is in violation of NPATMA, NEPA, and NHPA, all three, because the use of noise models does not satisfy Section 808, in any case.

NPATMA says that “*any methodology*” used by the FAA to assess air tour noise shall be based on “reasonable scientific methods.” Noise models do not constitute scientific methodology, especially if the studies do not incorporate timely, accurate, thorough, and objective data obtained from vigorous field research ... none of which was provided at CACH. A noise model is just another term for an “Aviation Environmental Design Tool” (AEDT), to use an FAA term. The output from an AEDT is totally dependent on whatever numbers (including formulas) are input. The field-gathered input data the FAA is using at CACH, if it ever even existed, is too old, too few, too isolated, and too infrequently gathered, representing unreliable assumptions of present conditions, this on top of biased formulas. In fact, the FAA’s *Assessment of Effects* letter makes no claim to the FAA’s having ever conducted a sound study at CACH to which the agency is willing to admit ... for reason of withholding evidence that could be used against the agency to disprove its theories. Southwest Safaris alleges that the FAA, under Section 106, is relying on noise modeling at CACH to control the input so as to get a predetermined output that is contrary to the interests of the ATO. Regardless, the FAA appears to have no science-based sound study data with which to refute SWS’ claims of no adverse impact.

Spreadsheets, themselves, are not science. Science is based on acquiring original data gathered by observation in the field. Noise models, in contrast, are based on deductive armchair reasoning. Therefore, SWS argues, principal reliance on AEDT technology is not allowable under NPATMA (and, therefore, NHPA) as the primary or conclusive means of determining “adverse impact” where significant decisions are involved. This is one of the reasons SWS has argued in the body of this letter that NPATMA is the controlling legal authority for ATMPs, not NHPA or NEPA. Under the Principle of Primacy of Law and the Principle of Continuity of Law, NPATMA keeps NHPA and NEPA from warring with the Act. For example, under NPATMA, Section 808, the NEPA §1502.23 arguable allowance for using AEDT technology does not exist, because NEPA regulations are incompatible with NPATMA law, per 40 CFR §1500.3.

Even if NEPA’s §1502.23 did apply, the FAA would still be required to use scientific methodology to control the input with current, comprehensive, relevant, accurate, and science-based (i.e., pertinent) data. SWS argues that the FAA’s input data for CACH, even if one allows use of AEDT noise modeling, falls short of meeting these requirements for any given “test.”

The “warring” problem over noise modeling (NHPA v. NPATMA) is particularly problematic at CACH, where the FAA conducts no actual current noise studies in the field. The FAA instead relies entirely on its Aviation Environmental Design Tool (AEDT), i.e., noise modeling technology, and outdated data upon which to base its calculations of “adverse impact.” This is allowable under NEPA. 40 CFR §1502.23 of NEPA says, “Agencies are not required to

undertake new scientific and technical research to inform their analyses.” However, this statement is directly contrary to NPATMA, which is the controlling legal authority in the present instance.

SWS clarifies that §1502.23 does not apply to NPATMA because of the “shall clause” (Section 808). Moreover, Congress does not refer to §1502.23 in NPATMA’s §40128(b)(4)(C), in order to grant special exception. So, the requirement for noise studies based on “reasonable scientific method” still applies, NHPA and NEPA notwithstanding.

To avoid the “warring personalities” of NHPA and NEPA, NPATMA imposes a clear and unequivocal requirement to conduct pertinent sound studies, using “reasonable scientific methods,” before and during implementation of ATMPs for respective Parks. The FAA has a duty to perform sound studies which cannot be excused. This is a due diligence mandate.

As said many times, the use of noise modeling technology does not satisfy the requirements of Sec. 808 for use of “reasonable scientific methods.” Noise modeling may incorporate sophisticated computer technology, but it is not science, and it is prone to error. In support of this theory, SWS directs the reader’s attention to a FAA Memorandum, dated June 13, 2018, titled “Noise Screening Assessments,”³⁶

In general, the Memorandum is intended to “clarify existing FAA policy and guidance on noise screening assessments and the appropriate use of noise screening tools and methodologies.” The Memorandum makes it abundantly clear that noise screening tools and methodologies afford only approximate analysis of air tour noise impacts, and are not appropriate for detailed EA or EIS analysis presented to the public, nor for Section 106 analysis. Therefore, the FAA has chosen to use AEDT (Version 3e), instead, as that constitutes “approved” analysis technology. The FAA does not say who approved it; apparently, the FAA “approves” its own technologies.

Regardless, the Memorandum also makes it abundantly clear that noise modeling ... irrespective of the technology incorporated, whether noise screening or technical noise analysis (AEDT) ... is not science. The inadequacies of AEDT technology (noise modeling) logically follow the shortcomings of sound-level estimation (noise screening). Had Congress wanted to allow reliance on AEDT analysis of air tour noise, it could have easily specified to that effect in the Act (i.e., done so expressly). This is a noticeable omission, but *not* by oversight. Reliance on AEDT technology is *not* allowed under NPATMA any more than reliance on noise screening. In any case, the data fed into either modeling tool would have to be “pertinent,” defined by reason to mean “current, comprehensive, relevant, accurate, and science-based.” Both noise modeling methodologies used by the FAA (noise screening and AEDT) fail to make use of “pertinent” data at CACH, so the outcome from noise modeling at CACH in any case is flawed from the outset, irrespective of the computer programs used for analysis.

For all of the above reasons, SWS argues that the FAA’s efforts to gather input on TCPs for CACH are misplaced for lack of appropriate sound data upon which to base decision.

³⁶ See http://www.faa.gov/sites/faa.gov/files/air_traffic/environmental_issues/environmental_tetam/screening-memo.pdf.

VII The FAA's Finding is wrong, because it misrepresents the Navajo Nation's attitude towards air tours.

The FAA knowingly misrepresents the attitude of the Navajo Nation towards air tours. At the top of page 2 of the FAA's Letter of Effects, the agency says:

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentator expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Southwest Safaris takes great exception to the FAA's negative characterization of Navajo sentiment towards air tours. At best, the FAA's representation is a half-truth. At worst, it constitutes fraudulent misrepresentation and withholding of evidence.

In the first place, only five written comments were received. Of these, only three were opposed to air tours over Canyon de Chelly. There are approximately 400,000 Navajos, half of whom live on the Navajo reservation. The percentage of negative letters compared with the total population is a mere 0.0000075. Compared to the Navajo population living on the reservation, the number is still only 0.000015. The FAA's claim of negative Navajo reaction to air tours at CACH has no statistical value. The FAA has no grounds to make a significant Finding in support of a decision for "no air tours" based on such de minimis feedback. One is led to believe that the other two comments were either strongly in favor of air tours or were neutral, which information the FAA fails to disclose.

Moreover, the statement of the FAA is mostly false. The official position of the Navajo Tribe is just the opposite of that represented by the FAA. The Tribal leadership actually favors air tours over the reservation; the tribe just wants to appropriate the air tour industry for itself. If the Tribe cannot get a significant portion of the revenues from air tours, only then does it have qualified reservations about air tours in general. The local business at Chinle, AZ that are making money off Southwest Safaris love the fact that SWS is bringing business to the local community while flying respectfully over the Park. Competitive ground services that are not doing business with the sole ATO serving the Park, of course, will have a different point of view ... until air tour business starts to flow their way.

On December 5, 2023, the House Natural Resources Subcommittee on Oversight and Investigations held a special hearing on the subject of “Limiting Access and Damaging Gateway Economies: Examining the National Parks Air tour Management Program.” A representative from the Navajo Nation testified at length. Mr. Carl Slater is a member of the 25th Navajo Nation Council, representing the communities of Tsailé/Wheatfields, Lukachukai, Round Rock, Tséché’izhí, and Rock Point. He is also the Vice Chair of the Navajo Budget and Finance Committee. Mr. Slater presented oral³⁷ and written³⁸ testimony.

On page 5 of his written testimony, Mr. Slater states:

Management Plan with Tribal Consent

Despite all of the risks associated with expanding air tourism in and around the Navajo Nation, I want to be clear that we [the Navajo tribal Council] do not oppose air tourism across the board. This is why tribal consultation is so important. **The Navajo Nation would happily endorse additional air tours in the surrounding national parks** under the condition that a comprehensive management plan is developed in collaboration and with the consent of the affected tribal communities, ensuring that their perspectives, concerns, and cultural considerations are incorporated into those plans. (Emphasis added.)

SWS notes that this is the official statement from a representative of the Navajo Nation delivered to an official investigative body of U.S. Congress. These words carry enormous weight.

Mr. Slater verbally stated that the Tribe is not against air tours. In fact, the Tribes welcomes the contribution of air tours to the Tribe’s regional and local economies; the tribe just wants to see that a portion of the revenues therefrom goes to local Navajos. Mr. Slater orally testified that the Tribe, itself, wants to get into the business of conducting air tours, and stated that he would like to see existing air tour operators provide the training!

On page 6 of his written testimony, Mr. Slater said:

Even assuming consultation is adequate, an essential aspect of securing the Navajo Nation's support for air tours is the firm belief that tribal members should have the opportunity to benefit economically from such activities.

On page 7, Slater went on to say:

Engaging local Navajo residents in the economic aspects of air tours could also remedy some of the potential risks of air tours as well as enhance the experience for the tourist.

³⁷ The link to the Hearing is: <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415213>

³⁸ The link to printed testimony of Carl Slater is:
<https://www.congress.gov/118/meeting/house/116617/witnesses/HHRG-118-II15-Wstate-SlaterC-20231205.pdf>

Then he added:

But to enjoy the greatest economic benefit, it would be ideal if more tour companies were established on the Navajo Nation and owned by local Navajo entrepreneurs. For this reason, air tour management plans should include incentives for existing tour operators to mentor Navajo entrepreneurs, and a certain percentage of available flights should be reserved for Navajo-owned businesses to ensure local residents benefit from the existence of tours.

Slader concluded his remarks on *Economic Opportunities for Tribal Members* by testifying that:

If done right, the air tourism industry has the potential to spur economic development across the Navajo Nation. Economic opportunities generated by air tours can act as catalysts for community development within the Navajo Nation by improving our airports and related infrastructure. This will not only support the tours directly, but increase transportation options for all tribal members, making it easier for tribal members to access essential services and connect with other communities.

Other Navajo leaders have come forward with much the same testimony. Navajo Council Speaker Crystalyne Curley agreed that the federal government needs to consult with the tribes when it comes to air tours. Southwest Safaris found her testimony in the Gallup Sun newspaper, dated Friday, January 19, 2023:³⁹

Air Tour Management Plans can be devised responsibly through tribal consultation. The federal government has the responsibility for consultation at every step,” Curley said. “The federal government needs to meet tribes at their level of capacity and let tribes set the pace of consultation. We need to ensure that tribes benefit from economic development and revenue generation related to air tourism.

It is perfectly clear that the leadership of the Navajo Nation want to keep the window open to air tours, hoping to capture some of the economic benefits for the Tribe. The two testimonies offered here are in direct opposition to those presented by the agencies. In fairness, that might be because one set of testimonies represents the long-term vision of the Tribal Council, whereas the FAA is only measuring the short-term interests of local chapter houses. However, it really does not matter.

The FAA and NPS, acting jointly, have presented a knowingly false and misleading *Request for Concurrence*. The FAA’s Finding serves as a prototype of administrative weaponry intended to destroy the air tour industry at large, Southwest Safaris in specific. At the same time, the Finding undermines the interests and aspirations of the very People, the Dine, that the agencies purport to represent in consultation, i.e., the Navajos. The Finding represents abuse of public trust. The agencies had a due-diligence obligation to get input from all levels of Navajo government and grassroots groups, which clearly the agency did not seek. Both comments by members of the Council reflect the validity of SWS allegations.

³⁹ The link to the testimony of Crystalyne Curley is:
https://gallupsun.com/index.php?option=com_content&view=article&id=18024:staff-reports-&catid=186:politics&Itemid=616

It also appears that the FAA has not made it clear to the Navajo Nation that the proposed ATMP for CACH will not make any meaningful decrease in overall noise but will actually increase it in and around the Park; will not meaningfully increase privacy for residents in the canyons; and will actually hurt the community of Chinle economically by cutting off significant tourist revenues. It appears that the agencies have misrepresented the CACH ATMP “undertaking” to the Navajo People.

It is evident that the Navajos are looking for “reasonable” mitigation of “potential adverse effects” on historic properties, not radical elimination of all air tours at CACH, from which the Navajos greatly benefit already. The Navajos seem to want the same as Southwest Safaris, the lone air tour operator at the Park. The FAA would pit the parties against each other, when they actually appear to see things eye to eye.⁴⁰ Therefore, the disparity in public perception over the intent of the ATMP calls for immediate withdrawal of the *Request for Concurrence* and suspension of the ATMP process. The “undertakings,” at CACH, BAND, and many other parks, have been misrepresented on many different levels. As demonstrated, the ATMPs at CACH and BAND, for example, will actually increase the “significant” adverse impacts on persons and historic properties in the APEs and the local communities will suffer “significant” adverse economic effects, which the FAA refuses to measure. The agencies have managed to turn the hopes of Congress into a nightmare of administrative mismanagement. The real “undertaking” of the agencies at CACH is administrative fraud and public deception.

VII Conclusion

Southwest Safaris respectfully petitions the FAA to reconsider its proposed Finding of “no adverse effects” from banning all air tours over the Park. There are no mathematical, operational, regulatory, or lawful arguments to support the FAA’s ultimate proposal for “no air tours.” The FAA’s untimely requests for opinion and consent for a Finding of “no adverse effects” are out of order and greatly, unfairly, and intentionally prejudice the outcome of the agency’s eventual ATMP determination. The FAA’s *Letter of Effect* is being implemented under theories contrary to Federal regulation, law, and public interest. The FAA and NPS, acting jointly, wrongly attempt to employ NHPA to negate NPATMA, thus using one law, NHPA (Section 106), to break another, NPATMA, in order to defy the Will of Congress, with which the agencies do not agree. The agencies forever strive to overreach their authority by not recognizing basic principles of jurisprudence, attempting to use an assortment of laws as tools to accomplish the undoing of orderly regulation by devious schemes and conflation of regulations never anticipated by Congress. The consequences will be legal, administrative, and operational chaos for the Navajo People, struggling small communities across the USA, and a rural air

⁴⁰ Southwest Safaris has been conducting air tours over CACH for 49 years. In the nearly five-decade history of the company, SWS has never received a single complaint relating to its flights, either pertaining to noise or physical presence. Few locals even realize that the company flies over CACH. The ATO typically lands at Chinle, contracts with Navajo drivers to be transported into a local Navajo lodge, contracts for Navajo ground tours, procures lunch at a Navajo restaurant, and purchases arts & crafts from a Navajo gift shop. Then, SWS flies back to Santa Fe, NM, the point of origin for the tours, after leaving a lot of money on the table at Chinle, AZ. At least, that is what SWS has been doing for 49 years. That is all about to change, at great potential loss for the Navajo community at Chinle.

transportation system that has taken 100 years and untold investment to develop. By failing to recognize the Principles of Priority of Law and Continuity of Law, and failing to heed the content of law, the FAA has challenged the canons of Separation of Powers, Due Process, and limitations on Federal administrative authority. The FAA attempts to selectively use old laws to make “new law” constituting a national transportation policy outside the intent and reach of Congress and out of effective remedy by the judiciary. The result will be crisis in the courts, in this Great Land, and in the air.

Because the “undertaking” for CACH has not been *legally* triggered, SWS argues, the “undertaking” for CACH to this day does not legitimately exist. Therefore, the development, implementation, and funding of the CACH and BAND ATMPs are out of order. So also are Section 106 processes as well as the Environmental Assessments. Both EAs for the parks were compiled under cloak of the FAA’s Theory of Parallel Laws. SWS’ objections to the FAA’s reliance on its Theory of Parallel Laws have significant implications for NPATMA, NHPA and NEPA, indeed for much of American administrative law. Legal order must precede political expediency

The FAA asserts that it has no duty to consider the adverse economic effects of its actions on the Navajo Nation. Southwest Safaris strongly disagrees, arguing in favor of Navajo interests to agencies who have apparently turned a deaf ear to the long-term needs of the Tribe as well as to the present benefits Southwest Safaris provides for the communities at Canyon de Chelly while “doing no harm.”

The FAA’s efforts fail because the agency has weaponized NHPA, using it as a wrecking ball instead of a constructive tool to rebuild the air tour industry and the economies of small rural communities desperately in need of help after the ravaging impact of the Pandemic.

The FAA’s methods and procedures have been shown to violate the provisions of NHPA, NEPA, and NPATMA, all three. That is because, under FAA theory of jurisprudence, there is no priority of authority, there being no recognition of the Principle of Primacy of Law and Principle of Continuity of Law. The FAA has come up with no method of bringing harmony to the laws so that they work together instead of tearing each other apart, allowing the parts to destroy the whole. The concept of “reasonableness” is everywhere written into the wording of NPATMA, which Act the FAA, through Section 106 process, knowingly attempts to override and/or ignore. In contrast, Southwest Safaris’ arguments bring unity and rationality to the table, achieving the Will of Congress.

The FAA’s theories and methods do not satisfy NPATMA. Harmony between laws and operations is the ultimate test of conformity with legislative intent for ATMPs. The agency’s tactical approach has produced neither “acceptable” nor “effective” strategic results, no predictability or continuity of decision, and failure to logically and legally identify, “mitigate” or “prevent” significant and existing adverse impacts. The FAA’s and NPS’ misguided coordination of NPATMA, NHPA, and NEPA will throw the implementation of ATMPs back on the courts with an admission that politics has destroyed the ability of the agencies to work together. It is the hope of Southwest Safaris that reason can prevail between the parties of contention, allowing

the ATO to openly negotiate at the ATMP table after the CACH and BAND ATMP “undertakings” have begun anew.

Southwest Safaris, one more time, respectfully petitions the FAA that the agency withdraw its notice for comment on Section 106 historic properties at CACH and BAND and withdraw the FAA’s *Requests for Concurrence* thereof.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in dark ink that reads "Bruce Adams". The signature is written in a cursive, slightly slanted style.

Bruce Adams

Appendix 1

NPATMA and the Will of Congress

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

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

On November 17, 1997, in Dixie College, St. George, Utah, the House of Representatives’ Subcommittee on National Parks and Public Lands (Committee on Natural Resources) joint with the Subcommittee on Aviation (Committee on Transportation and Infrastructure) held a public meeting to discuss the pending regulation of air tours over units of the National Park Service. Congressman John Duncan went on record with a prepared statement, which summed up most of the Congressional testimonies that day. His prepared statement is particularly relevant because, at the time, Rep. Duncan headed the House Transportation and Infrastructure Committee. On 2/11/1999, Rep. Duncan introduced *H.R. 717 - National Parks Air Tour Management Act of 1999* to the 106th Congress (1999-2000). That bill eventually became the final *National Parks Air Tour Management Act of 2000*.

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

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

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

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

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

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

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

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

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

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

Congressman Duncan used the phrase, “reasonable and common-sense approach,” as synonym language for that of “acceptable and effective” which appears in 49 USC §40128(b)(1)(B) of the Act. Reason and common sense were meant to rule the application of NPATMA, not extremism.

Congress had two purposes in mind when it drafted NPATMA. The first, as stated by the Chairman, was to “support the goal of protecting our National Parks from unnecessary aircraft noise.”

The second unambiguous purpose of the Act was to protect and preserve the right of air tour operators to provide air tours over the National Park System. That is why the Honorable Chairman John Duncan said for the record in writing, speaking for Congress and for future generations: “*I also believe that sightseeing by aircraft is a legitimate manner in which to experience the Grand Canyon National Park and other Park areas.*” This is a statement by a congressman who sat on both the House Subcommittee on National Parks & Public Lands and chaired the House Subcommittee on Aviation. There can be no clearer enunciation of the Will

Attachment 2

NPATMA's Primary & Secondary Objectives: the "if any" test and Section 808 compliance. How NPATMA, NHPA, and NEPA interact.

NPATMA has a prime directive and a secondary directive, both derived from the stated *Objective* section of the Act. The relevant language, 49 USC §40128(b)(1)(B), stipulates:

Objective. The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, **if any**, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands. (Emphasis added.)

The first objective of NPATMA, one that *must* be fulfilled, is to determine if any impacts from air tours at a particular park significantly adversely affect persons and property on the ground. The interjection of the "if any" wording into the Act is not a casual remark by Congress. The "if any" question must be satisfied before the Act can be employed to affect a determination as to the type of ATMP that will be employed for any particular park, if any. Only after the "if any" question is resolved can NPATMA make such a determination and empower NEPA and NHPA to act accordingly. If there are no significant adverse impacts from air tours at a given park, then NPATMA (and, therefore, NEPA and NHPA) has no power to direct an ATMP to curtail or eliminate air tours over that park, there being no reason to do so. In this case, the ATMP for the respective park must make a determination of "No Change" in the way current air tours are being conducted. Unless "extraordinary circumstances" exist, if the park has 50 or less flights per year, the ATO would be allowed by NPATMA to continue operations under existing IOA.

The secondary objective of NPATMA (there being more) is to stipulate the type and manner of methodology that *must* be used to assess the "if any" question. To this end, NPATMA calls into effect Section 808 of the Act.

Section 808 of the Act stipulates that:

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

Section 808 of the Act *must* be employed in order to satisfy the "if any" question. Without answering the "if any" question, the Act cannot go forward... meaning that an ATMP cannot be introduced for lack of cause (program decision). In this case, the "if" component of the "if ... then ... else" syllogism would not have been positively satisfied, causing the Act to freeze like a computer program. Without first applying the "if any" test by means of science-based noise studies using pertinent data, the Act prohibits flights over a given park if more than 50 air tours are conducted per year but allows continued flights under IAO if the authorized flights are 50 or less (unless extraordinary circumstances exist). In either case, without performing the "if any" test, NEPA and NHPA would not yet be activated.

If the “if any” test is performed for a park that has more than 50 air tours per year, then NPATMA would authorize the creation of an ATMP “undertaking,” requiring “reasonable and common-sense” methods of avoiding (which does not necessarily mean preventing), accepting, or lessening *significant* adverse effects from air tours. The degree of “significance” present, if any, is to be determined solely by the “if any” test. Unless extraordinary circumstances exist, the “if any” test would not normally be performed for parks that have less than 50 air tours per year. If extraordinary circumstances to exist, then the “if any” test would be required to prove the circumstances.

NPATMA makes it mandatory to use “reasonable scientific methods” for investigation of noise impacts on units of the National Park Service (NPS). No other methodology will suffice. The “*shall*” clause of Section 808 controls both NHPA and NEPA, because NHPA is concerned with the operational conduct and NEPA is focused on the environmental analysis of any “undertaking.” Section 808 negates the power of NEPA’s §§1502.21, .23, which would otherwise exonerate the FAA from performing any disciplined current sound studies at all.⁴¹ Under NPATMA, science-based sound studies must provide the measure of need for corrective action to mitigate or prevent alleged adverse impacts of air tours. Because NPATMA controls the timing, vocabulary, and methodology of NHPA and NEPA, and because NHPA is silent on the subject of sound studies and NEPA is not exempted from the requirement for sound studies, the “*shall*” demand of Section 808 is the controlling legal authority for noise studies for all three statutes (NPATMA, NHPA, and NEPA).

⁴¹ See my letter dated September 25, 2023, page 3, top, 6th *Response to Request for Concurrence on Sec.106*. In that letter, I argue that “Section 808 negates any authority of NEPA’s 43 CFR §1502.21 ... wherein NEPA excuses incomplete or unavailable information and allows theoretical approaches or research methods instead of science-based studies; and §1502.23, wherein NEPA allows agencies to make use of existing data and resources instead of pertinent, scientifically-researched data. NPATMA makes it mandatory to conduct sound studies, based on ‘reasonable scientific methods.’ This agency-specific power of Act by itself asserts the authority of NPATMA over NEPA.

Attachment F – ACHP Opinion dated 06/30/24



June 30, 2024

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
800 Independence Avenue, SW
Suite 900W
Washington, DC 20591

Ref: *Proposed Air Tour Management Plan at Canyon de Chelly National Monument*
Apache County, Arizona
ACHP Project Number: 021045

Dear Ms. Walker:

On June 4, 2024, the Federal Aviation Administration (FAA) requested that the Advisory Council on Historic Preservation (ACHP) review its finding of “no adverse effect” for the referenced undertaking. The ACHP’s opinion was requested pursuant to 36 CFR §§ 800.5(c)(2) and (3) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), “Protection of Historic Properties” (36 CFR Part 800). On June 13, 2024, the ACHP notified the FAA that it was extending its review period for an additional 15 days pursuant to 36 CFR § 800.5(c)(3)(i). One consulting party, Southwest Safaris, an air tour operator operating under an Interim Operating Authority (IOA) to provide air tours over Canyon de Chelly National Monument, has objected to the FAA’s finding. In an effort to resolve the objection, the FAA continued consultation with Southwest Safaris in correspondence from April 2024. In addition to the information provided by the FAA documenting its Section 106 review and finding of effect, the ACHP has also reviewed the objection letter sent by Southwest Safaris and other letters and comments provided by consulting parties and the public.

Based on the documentation submitted, it appears FAA conducted a Section 106 review to consider the effects of its undertaking on historic properties and to allow the ACHP a reasonable opportunity to comment. As further articulated below, the FAA has appropriately applied the criteria of adverse effect for this undertaking and a finding of “no adverse effect” to historic properties is reasonable.

It also appears the FAA has made a reasonable effort to address the concerns of the objecting party, Southwest Safaris, many of which do not relate to determinations or findings in the Section 106 process and instead relate to misunderstanding the scope of the Section 106 review. Section 106 does not require an agency to consider alternatives to its proposed undertaking that may or would result in adverse effects to historic properties. The alternatives that the Section 106 process focuses on are those that may avoid, minimize, or mitigate adverse effects. That is why the Section 106 regulations at 36 CFR § 800.1(c) allow agencies to conduct nondestructive planning activities before initiating their Section 106 compliance “provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize

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or mitigate the undertaking's adverse effects on historic properties.” The rationale for this advisory opinion follows.

Background

The FAA’s undertaking consists of the development and implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park) to regulate commercial air tours within the ATMP planning area. The undertaking does not include the operation of air tours themselves but implementing a plan that applies to all commercial air routes over the Park and within ½ mile outside the boundary of the Park, all of which are Navajo Nation Tribal Trust lands. Commercial air tours subject to the ATMP are those conducted for compensation or hire in a powered aircraft for the purposes of sightseeing during which the aircraft flies below 5,000 feet above ground level (or AGL, with minor safety exceptions) and less than one mile laterally from any geographic feature within the Park.

Development of this ATMP or a voluntary agreement is required to comply with the National Parks Air Tour Management Act (NPATMA), enacted in 2000. While commercial air tours have been operating over the Park prior to NPATMA and the undertaking, air tour operators were subject only to FAA’s general safety regulations. After 2005, air tours operated in accordance with an IOA, also required by NPATMA, for which FAA stated that compliance with Section 106 was not required because it did not impose any conditions other than an annual limit on the number of flights.

The FAA initiated consultation under Section 106 for the development of the ATMP in May 2021 and established the existing conditions against which they would base their analysis as air tour operation prior to the implementation of the ATMP. Currently, four commercial air tour operators are authorized to conduct air tours over the Park with the IOA for 175 commercial air tours annually, but only one commercial air tour operator, Southwest Safaris, currently operates. FAA considers the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, averaging 43 tours per year conducted by Southwest Safaris. Under the IOA, the operator is not restricted to any route when conducting commercial air tours, and the routes could change without notice to the FAA or the National Park Service (NPS). The operator currently flies between 800 to 1,000 feet AGL, on all routes while over the Park or outside the Park but within ½ mile of its boundary, although no minimum altitude is currently required.

The FAA, in coordination with the NPS, consulted with numerous consulting parties, including the Navajo Nation Heritage & Historic Preservation Department (NNHHPD, serving as Tribal Historic Preservation Officer), 23 additional Indian Tribes, and the air tour operator, Southwest Safaris, to delineate the Area of Potential Effects (APE). The FAA focused identification efforts on previously recorded historic properties for which feeling and setting are aspects of integrity that convey the significance criteria under which those properties are eligible for listing in the National Register of Historic Places (NRHP), as they are the types of historic properties with characteristics most sensitive to the effects of aircraft overflights from both visual and audible intrusions.

The agencies recognize that Tribes have a long-standing and deeply rooted association with the landscape encompassing Canyon de Chelly, which includes numerous sites of religious and cultural significance to those Tribes. Cultural resources within the canyon have been extensively documented over time, with the entirety of the Park boundaries constituting an historic district listed in the NRHP. In the course of its review, the FAA identified numerous traditional cultural places (TCPs) located throughout the APE, in addition to two buildings individually eligible for NRHP listing. The eligible TCPs were also evaluated as properties of religious and cultural significance to Tribes, important for cultural, traditional, and religious use and practices deemed by the Tribes, and especially the Navajo Nation citizens who reside within the

Park boundaries, as integral to the identity of their people and critical in the retention and transmission of their culture and history.

In total, the FAA and NPS identified 39 historic properties in the APE for which integrity of feeling and setting are integral to conveying the significance of those properties. Additionally, the effort identified approximately 1,600 inventoried and recorded below-ground archaeological sites; however, the FAA determined that there was no potential for the undertaking to affect these resources. The ACHP understands that these findings were based upon research and consultation, in addition to review of records at the NRHP and NNHHPD, but involved no additional fieldwork or onsite investigation.

The objective of the 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” (49 U.S.C. § 40128(b)(1)(B)). In the draft ATMP, the NPS determined that air tour routes continuing at even their current levels on current routes in the Park presented unacceptable impacts to the Park’s cultural resources, including the potential for adverse effects on historic properties, which does not meet the purpose and need for the ATMP. The FAA and NPS selected the preferred alternative, which prohibits all air tours, as the undertaking to be assessed for effects to historic properties in the Section 106 review.

The FAA determined that an ATMP that prohibited air tours would have “no adverse effect” on historic properties because eliminating air tours would eliminate noise or visual elements from air tours on historic properties in the Park. The FAA acknowledges that aircraft conducting tours in airspace over the Park create noise and are visible from historic properties in the Park, further evaluated through noise modeling. Consultation with Tribes and the public provided FAA with evidence that air tours intrude on and can disrupt traditional practices involving historic properties, a point which the ACHP has repeatedly encouraged the FAA to consider in its Section 106 reviews for ATMPs at other national parks. The FAA found no indirect effects from the undertaking because it believes it would be unlikely for the air tour operator to continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area or above 5,000 feet above ground level, as these distances would be unlikely to afford meaningful views into the canyon and its predominant features. However, the ACHP acknowledges such flights as being reasonably foreseeable—as similarly stated by Southwest Safaris—and the FAA or NPS may need to reassess indirect effects if conditions considered in the analysis change.

The FAA states that the objections of the air tour operator include the following concerns 1) NPATMA is the controlling law and therefore should direct how the FAA complies with the NHPA and the Section 106 regulations; 2) the FAA’s identification and documentation efforts under Section 106 were inadequate; 3) the aircraft noise and visual impacts do not have an adverse effect on persons and historic properties on the ground; and 4) the noise modelling used by FAA to assess the effects of the undertaking in the Section 106 process was not based on science.

ACHP’s Review of Finding

Much of the written objections expressed by Southwest Safaris questions the federal agency’s requirement to comply with both the NPATMA and Section 106 of the NHPA, and by extension the requirements of the NPATMA, such as the perceived need to conduct sound studies before approving an ATMP. As the agency responsible for overseeing the requirements of Section 106 of the NHPA, the ACHP clarifies that federal agencies are required to comply with Section 106 of the NHPA when undertakings they propose to carry out, license, permit, or fund may have effects on historic properties. Per the Section 106 regulations, it is the federal agency’s unilateral responsibility to establish the undertaking, and to initiate the Section 106 process early in the undertaking’s planning so that a broad range of alternatives to avoid, minimize, or mitigate adverse effects to historic properties may be

considered (see 36 CFR §§ 800.1(c), 800.3(a)). The term “undertaking” is defined in the Section 106 regulations at 36 CFR § 800.16(y) and it applies to actions carried out, licensed, or funded by federal agencies, whether directed by Congress in laws like NPATMA or through agency decisions, that may have effects on historic properties. The ACHP cannot comment on the adequacy of the FAA’s compliance with NPATMA or other associated laws and regulations. In this case, however, the NPATMA does not exempt or waive responsibility for compliance with Section 106 of the NHPA; therefore, the FAA must also comply with Section 106’s requirements prior to making a final decision under NPATMA. This includes the timing mandate in Section 106 to complete the review process prior to the approval or issuance of any license for the undertaking. The FAA has conducted Section 106 reviews for implementing ATMPs at other national park units across the country and is carrying out the same type of review for this Park. As in the development and Section 106 review of ATMPs in other parks, the Section 106 process must be completed before FAA makes a final decision on the undertaking, which in this case would be approving the ATMP, which has not occurred yet as air tour operations are subject only to the IOA.

The purpose of the Section 106 process is for federal agencies to consider the effects of their undertakings on historic properties, separate and distinct from other laws requiring review of federal actions. The Section 106 process “seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the *effects of the undertaking on historic properties*...The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and *seek ways to avoid, minimize or mitigate any adverse effects on historic properties*” (36 CFR § 800.1(a)) (*emphasis added*). Accordingly, the FAA carried out an effort to identify historic properties consistent with the purpose and process of Section 106. This primarily consisted of a records review of existing information made available by the NPS and NNHHPD regarding properties that had previously been listed in or determined eligible for NRHP listing.

Southwest Safaris has objected to the methodology used by the FAA to identify historic properties: namely, that the FAA did not conduct field identification to independently verify the presence and eligibility of these properties. The ACHP notes that the Section 106 regulations at 36 CFR § 800.4(b)(1) require the federal agency to “...make a reasonable and good faith effort to carry out appropriate identification efforts.” This may, but is not required to, include sample field investigation or field survey. In this case, the FAA determined that the extent of previous evaluations—and notably the entirety of the Park being listed on the NRHP as a historic district—as being adequate to understand the nature and location of historic properties within the APE. Unless evidence exists to suggest that the information is not complete, accurate, or current, then an existing records search may constitute a reasonable and good faith effort to identify historic properties, especially in areas where extensive identification efforts have been completed to date, as is the case here.

Southwest Safaris has also expressed concern about the lack of transparency in the FAA’s documentation of its identification findings. In its correspondence to consulting parties, the FAA listed more than thirty eligible TCPs inside of or within ½ mile of the Park’s boundaries, but did not include substantive descriptive information associated with them, such as National Register property type, the NRHP significance criteria under which they had been previously determined eligible, or any other qualifying characteristics, citing general confidentiality concerns. The ACHP notes that blanket restriction of information regarding the nature and location of historic properties is contrary to the intent of the NHPA and Section 106 implementing regulations, which are intended to provide consulting parties and the public a reasonable insight into a federal agency’s analysis and determinations made pursuant to their Section 106 reviews. If the FAA had determined that disclosure of this information presented a risk of harm to the historic property or would have impeded the use of a traditional religious site by practitioners, then it should have undergone the consultation process described under Section 304 of the NHPA and 36

CFR § 800.11(c) to address those confidentiality concerns and determine which specific pieces of information could be withheld or disclosed.

Additionally, the objecting party presented concerns that noise modeling conducted by the FAA pertained to the *potential* for adverse effects, not the actuality of those effects. The ACHP has previously advised FAA and other federal agencies that adverse effects do not need to be a certainty. Rather, adverse effects are found for Section 106 purposes when an undertaking *may* alter, directly or indirectly any of the characteristics that qualify it for inclusion in the NRHP, in a manner that would diminish the property's aspects of integrity (see 36 CFR § 800.5(a)(1)). Based on the information provided by consulting parties and the public, noise and visual elements from air tours have the potential to alter characteristics of historic properties significant to them by diminishing integrity of setting and feeling, among other aspects of integrity. Though the Section 106 process only assesses effects to historic properties, the process does seek to include the views of consulting parties with a "demonstrated interest in the undertaking...due to the nature of their legal or economic relation to the undertaking or affected properties." However, the Section 106 process is only focused on the potential effects on historic properties, not on effects to other types of resources or concerns, such as economic interests. The impacts of the undertaking on other resource types are considered by the agency through compliance with other laws, such as the National Environmental Policy Act.

Further, while the Section 106 process does not mandate a specific outcome, the regulations implementing Section 106 present an order to the consideration of alternatives with regard to adverse effects, if any. The agency should first consider ways to avoid adverse effects to historic properties; if such options are not available, then the agency would consider ways to minimize or mitigate adverse effects (see 36 CFR §800.6(a)). An agency is not required by Section 106 to avoid adverse effects to historic properties; however, if an agency determines that the undertaking as proposed would avoid all such adverse effects, then the agency may conclude its review with a finding of "no historic properties affected," or "no adverse effect." There are opportunities in the regulations for consulting parties to object or disagree with the agency's effect finding. But there is no process or requirement in the Section 106 regulations for the agency to consider alternatives that would allow adverse effects. The ACHP agrees that the FAA's finding of no adverse effect for this undertaking is supported by its Section 106 review and record of consultation, and that the implementation of an ATMP that eliminates air tours at the Park and the ATMP planning area reasonably avoids adverse effects to historic properties.

In accordance with 36 CFR § 800.5(c)(3)(ii)(B), the FAA is required to take into account this advisory opinion in reaching a final decision on its finding of no adverse effect and provide to the ACHP, the SHPO, Tribes, and other consulting parties its rationale and a summary of how this opinion was considered. If the FAA affirms its initial finding, once the summary of the decision has been sent to the ACHP and other parties, the agency official's Section 106 responsibilities are fulfilled for review of this undertaking.

Thank you for the opportunity to comment on this dispute regarding effects to historic properties. If we may be of further assistance, or you would like to discuss this matter, please contact Mr. Bill Marzella, at (202) 517-0209, or via e-mail at bmarzella@achp.gov.

Sincerely,



Jaime Loichinger
Director
Office of Federal Agency Programs

06/04/24 FAA to ACHP Request for Review from the ACHP Pursuant to 36 CFR 800.5(c)(2) of the FAA's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan for Canyon de Chelly National Monument, with the following enclosures:

Exhibit 1 – Letters Initiating Consultation and Responses

Exhibit 2 – Letter re Proposed Undertaking and APE, dated June 2, 2023, and June 5, 2023, and Responses, with the following attachments:

Attachment A. APE Map Including Existing Commercial Air Tour Routes

Attachment B. List of Historic Properties in the APE and Description of Historic Characteristics

Exhibit 3 – Letter re Historic Property Identification, dated October 26, 2023, and Responses, with the following attachments:

Attachment A. APE Map Including Existing Commercial Air Tour Routes

*Attachment B. List of Parties Invited to Participate in Consultation for the Undertaking
(23 tribes; 5 opted out of further Section 106 consultation for the undertaking)*

Attachment C. List of Historic Properties in the APE and Description of Historic Characteristics

Exhibit 4 – Federal Register Notice re Public Involvement Period, dated November 2, 2023, and Public Comments Received

Exhibit 5 – Finding of Effects Letter, dated December 28, 2023, Notification of Additional Comments, and Concurrences, with the following attachments:

Attachment A. List of Consulting Parties

(23 tribes; 5 opted out of further Section 106 consultation for the undertaking)

Attachment B. APE Map Including Existing Commercial Air Tour Routes

Attachment C. List of Historic Properties in the APE and Description of Historic Characteristics

Attachment D. Summary of Noise Technical Analysis from NEPA Review

Exhibit 6 – Objection to Finding of Effects Letter and Response



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 4, 2024

Re: Request for Review from the Advisory Council on Historic Preservation Pursuant to 36 CFR §800.5(c)(2) of the Federal Aviation Administration's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan for Canyon de Chelly National Monument

Ms. Jaime Loichinger
Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street, Ste. 308
Washington, DC 20001

Dear Ms. Loichinger:

The Federal Aviation Administration (FAA), as the lead Federal agency and in coordination with the National Park Service (NPS), respectfully requests that the Advisory Council on Historic Preservation (ACHP or the Council) review the FAA's proposed finding of no adverse effect on historic properties from the implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park) made under Section 106 of the National Historic Preservation Act (NHPA). The FAA submits this request in accordance with 36 CFR §800.5(c)(2)(i) in response to Southwest Safaris' objection to the proposed finding. The FAA is concurrently notifying all consulting parties about this request and will make the request documentation available to the public at:

https://www.faa.gov/about/office_org/headquarters_offices/apl/aee/air_tour_management_plan

Enclosed is the correspondence sent to, and received from, consulting parties throughout the consultation process (see Exhibits 1 through 6). In particular, Exhibit 5 contains the agency's December 28, 2023, finding of effect letter to the Navajo Nation Tribal Historic Preservation Officer (THPO), which meets the requirements of 36 CFR §800.11(e). The finding of effect letter describes the undertaking, the Area of Potential Effects (APE), a description of steps taken to identify historic properties, a description of affected historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register), and an explanation of why the criteria of adverse effect do not apply to this undertaking. It also describes the Section 106 consultation process and public involvement completed for this undertaking.

Included in Exhibits 5 and 6 are the responses to FAA's December 28, 2023, letter received from consulting parties. The FAA received concurrence with the proposed finding of no adverse effect from the National Parks Conservation Association. Southwest Safaris, an operator who currently conducts air tours over the Park, objected to the FAA's determination in a letter dated January 29, 2024. Through Southwest Safaris correspondence, it is clear that Southwest Safaris objects to the undertaking, prohibiting air tours within the ATMP planning area, rather than the FAA's no adverse effect finding. However, since Southwest Safaris raised concerns regarding the applicability of the Section 106 regulations to the ATMP process, the FAA addressed those concerns in this request.

This letter includes background about the National Parks Air Tour Management Act (NPATMA), describes the undertaking and the history of air tours over the Park, and addresses the elements of Southwest Safaris' objection and the FAA's response.

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). As amended by the FAA Modernization and Reform Act of 2012, NPATMA further requires the FAA, in cooperation with the NPS, to establish an ATMP or voluntary agreement for each park for which applications were made, unless a park has been exempted from this requirement. *Id.* §40128(b)(1)(A), (b)(7). 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).

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).

Because Congress anticipated that the development of ATMPs would take time, it provided in NPATMA 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) (emphasis added). NPATMA required that interim operating authority was the greater of the number of commercial air tour flights over the park during the 12-month period, or the average number of commercial air tour flights within the 36-month period, prior to the enactment of NPATMA. *Id.* §40128(c)(2).

The History of Air Tours Over the Park

Commercial air tours have been operating over the Park well before NPATMA was enacted in 2000. Prior to NPATMA, the FAA did not regulate air tours over national parks, and the NPS did not have authority to regulate commercial air tours. Air tour operators were subject only to FAA's general safety regulations, which applied to the operators of various types of aircraft, including those used to conduct commercial air tour operations, whether inside or outside of national parks. At that time there were no limits on the number of air tours that could be conducted per year and no designated routes or altitudes for flights.

Since 2005, most commercial air tours over national parks, including Canyon de Chelly National Monument, have been conducted pursuant to interim operating authority issued by the FAA in accordance with NPATMA. See 70 Fed. Reg. 36,456 (June 23, 2005). Because the FAA's grant of interim operating authority was a non-discretionary agency act mandated by Congress, compliance with the National Environmental Policy Act (NEPA) and Section 106 of the NHPA was not required. See *Sugarloaf Citizens Ass'n v. FERC*, 959 F.2d 508, 513 (4th Cir. 1992) (holding that where an agency did not have the discretion to deny certification to a facility that met certain criteria, compliance with NEPA and Section 106 was not required); *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1263 (10th Cir. 2001) (compliance with Section 106 and NEPA is not required for nondiscretionary actions).

Currently, four commercial air tour operators are authorized to conduct air tours over the Park with Interim Operating Authority for 175 commercial air tours annually, but only one commercial air tour operator, Southwest Safaris, currently operates. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, averaging 43 tours per year conducted by Southwest Safaris. Air tour operators currently fly under visual flight rules (VFR). VFR is based on the principle of "see and avoid" and does not require specific routes or altitudes. 14 CFR § 91.155. Interim operating authority does not itself include any operating parameters (e.g., routes, altitudes, time of day, etc.) for air tours other than an upper limit of the total number of air tours operators may conduct each year. Attachment B to the FAA's finding of effect letter (Exhibit 5 to this letter) depicts the routes currently flown by the operator, however, under interim operating authority the operator is not restricted to any route when conducting commercial air tours, and the routes could change without notice to the FAA or the NPS. The operator currently flies between 800 feet (ft.) to 1,000 ft. above ground level (AGL), on all routes while over the Park or outside the Park but within ½ mile of its boundary although no minimum altitude is currently required.

In accordance with NPATMA and a plan approved by the U.S. Court of Appeals for the District of Columbia Circuit (Court), the FAA and the NPS are developing an ATMP for the Park. The Court retained jurisdiction to monitor the agencies' progress consistent with the approved plan. Thus, the planning process to implement an ATMP for the Park has proceeded, and remains, under Court supervision. The provisions and conditions in the draft ATMP are designed to protect the Park's cultural resources which necessarily include resources that are culturally and spiritually significant to the Navajo Nation because the Park is located entirely on Tribal trust lands and thus are consistent with the co-management relationship that NPS has with the Navajo Nation regarding specific decisions involving the monument.

The Undertaking

The FAA has determined that the development and implementation of an ATMP for the Park is an undertaking under the NHPA. The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. The ATMP for the Park includes the following:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize protection of the Park's natural and cultural resources, and the privacy of Tribal practices on the Navajo Nation's Tribal trust lands within the ATMP planning area. . Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 ft. AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 ft. AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority	Terminates 180 days from the effective date of the ATMP.

Under NPATMA, all IOA for the Park terminates 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 operating specifications issued under IOA as authority to conduct commercial air tours within the ATMP planning area.

Southwest Safaris' Objection and the FAA's Response

The FAA thoroughly analyzed the effects of the undertaking and supported its determination of no adverse effect in its December 28, 2023, letter. See Exhibit 5. The FAA sent the correspondence to all consulting parties, including the Navajo Nation THPO, requesting that all consulting parties concur with the agency's finding. The National Parks Conservation Association concurred with the FAA's proposed

finding of no adverse effects for the undertaking, Southwest Safaris objected to the finding in a letter dated January 29, 2024.

In its letter Southwest Safaris submitted various comments that were directly related to the ATMP for this Park and related to ATMPs for other Parks as well as the NEPA process. The comments related to the Section 106 process or the assessment of effects of the undertaking are summarized and addressed below:

- Southwest Safaris argues that the NPATMA is the controlling law and therefore should direct how the FAA complies with the NHPA and the Section 106 regulations.
- Southwest Safaris challenged how the FAA identified historic properties under Section 106.
- Southwest Safaris argued that aircraft noise and visual impacts do not have an adverse effect on persons and historic properties on the ground.
- Southwest Safaris challenged whether the noise modelling used to assess the effects of the undertaking in the Section 106 process was based on science.

See Exhibit 6, Letter from Southwest Safaris.

Southwest Safaris' objection is misplaced for the following reasons:

The Applicable Law

Southwest Safaris argues that the NPATMA is the controlling statute when developing and implementing an ATMP. Specifically, Southwest Safaris argues that before Section 106 of the NHPA is triggered, the FAA must first act "on Section 808 of NPATMA in order to test the 'if any' condition contained in the 'Objective' paragraph of the Act, [49 U.S.C. § 40128(b)(1)(B)]" (Southwest Safaris, January 29, 2024 pg. 10). While NPATMA sets certain requirements for an ATMP, when establishing an ATMP for a park the agencies must comply with all applicable laws. Southwest Safaris erroneously believes that if NPATMA is the controlling statute then no other statute or regulation can apply to the development and implementation of an ATMP or that the agency must apply NPATMA's provisions to the other statutes. With respect to the NHPA, any federal action that meets the definition of an undertaking under the NHPA and Section 106 regulations trigger compliance with Section 106 of the NHPA. The development and implementation of an ATMP meets the definition of an undertaking triggering the Section 106 process. Thus, under Section 106 of the NHPA, the agencies must consider the impact of their actions (development and implementation of the ATMP) on historic properties. So, while NPATMA governs how the FAA and NPS develop and implement ATMPs, if the development and implementation of an ATMP meets the definition of an undertaking, the agencies must comply with Section 106 of the NHPA, and the Council's implementing regulations, and consider the effects of the undertaking on historic properties. Compliance with NPATMA does not preclude compliance with other federal statutes and regulations. Put differently, the agencies must comply with both NPATMA and Section 106 of the NHPA. Compliance with other applicable statutes and regulations does not mean that the agencies are not fully complying with NPATMA.

Historic Property Identification

Southwest Safaris states that, "the FAA's Finding is wrong, because the agency's list of historic properties in the APE is based on hearsay" (Southwest Safaris, January 29, 2024 pg. 19). Based on the analysis done by Southwest Safaris "... 'potential' impacts of air tours on the few TCPs within the park that are protected by Section 106 are purely theoretical, imaginary, and conjectural, based on deductive assertions (NHPA), not inductive research (NPATMA)" (Southwest Safaris, January 29, 2024 pg. 13). Southwest Safaris states

that the FAA is “wrongly withholding the locations of historic sites that would be essential for planning air tour routes” (Southwest Safaris, January 29, 2024 pg. 26).

The FAA has complied with the property identification provisions in Section 106 of the NHPA and has appropriately identified historic properties within the APE for this undertaking. The Section 106 regulations require federal agencies “in consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO), and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects,” to take the necessary steps to identify historic properties within the APE. 36 CFR § 800.4(1). The regulations describe the level of effort to identify historic properties which may include “background research, consultation, oral history interviews, sample field investigations, and field surveys.” 36 CFR § 800.4(b)(1). For the undertaking at Canyon De Chelly National Monument the FAA’s identification efforts focused on identifying properties where setting and feeling are the type of characteristics that contributed to a property’s eligibility on the National Register. In its efforts to identify historic properties, the agencies engaged in consultation, conducted background research that included reviewing nomination documentation, and records searches. The FAA gathered information on historic properties within the APE from the National Register and verbal and written information received from tribes and other consulting parties through the Section 106 consultation process. Additionally, data was gathered from the NPS, including the NPS Foundation Document for Canyon de Chelly National Monument (NPS, 2016) and the National Register Nomination Form for Canyon de Chelly National Monument (1970). The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023. In accordance with the Section 106 regulations, the FAA relied on background research, prior investigations and consultation to determine the historic properties within the APE.

Southwest Safaris claims that the FAA did not comply with 36 CFR § 800.4(c). The FAA did not make any determinations of eligibility because all of the properties identified in the APE were already listed on the National Register or previously determined eligible for listing on the National Register. Based on consultation with Tribal nations that attach religious and cultural significance to the properties, the FAA confirmed the eligibility of listed properties or properties previously determined eligible .

Southwest Safaris alleges that the FAA withheld the locations of historic sites that would be essential for planning air tour routes. Southwest Safaris misunderstands the goal of the Section 106 process. The goal of consultation under the Section 106 process is to “identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize, or mitigate any adverse effects on the historic properties,” not to aid in planning air tour routes that are not included in the undertaking. 36 CFR § 800.1(a). The FAA disclosed that the Park was listed in the National Register in its entirety. The FAA did not disclose the locations of certain TCPs within the ATMP planning area, including the park, due to confidentiality concerns of the Tribal nations involved in the Section 106 consultations, in accordance with 54 USC 307103 and 36 CFR § 800.2(c)(2)(ii)(A).

The FAA’s identification efforts and consideration of the historic properties identified in the APE is appropriate.

Assessment of Effects

Southwest Safaris raises three main issues that relate to how the FAA assessed the effects of the undertaking. First, it appears that Southwest Safaris misunderstands that the proposed finding of no adverse effect applies to the undertaking and not air tour operations in general. Second, Southwest Safaris alleges that aircraft noise and visual impacts from aircraft do not have an adverse effect on people or historic properties on the ground. Third, Southwest Safaris alleges that the noise modelling was not based on science.

The undertaking for this Park is the implementation of the prohibition of air tours within the ATMP planning area which includes the airspace over the Park and areas outside the Park but within ½ mile of its boundary and below 5,000 ft. AGL (referred to as the ATMP planning area). The FAA assessed the effects of the prohibition of air tours on historic properties identified within the APE and found that the undertaking would not have an adverse effect on those properties. The FAA did not assess the effects of air tour operations generally. In assessing the effects of the undertaking, the FAA compared implementing the undertaking with existing conditions. The FAA focused on whether the undertaking would “alter any characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials workmanship, feeling or association.” 36 CFR § 800.5(a)(1). The FAA found that the undertaking (prohibiting air tours) would not have an adverse effect on historic properties within the APE. The FAA did not make a determination regarding the effects of air tours on historic properties. Thus, contrary to Southwest Safaris’ allegation, in assessing the effect of the undertaking on historic properties, the FAA did not determine that aircraft noise and visual impacts from aircraft have an adverse effect on people or historic properties.

Finally, Southwest Safaris challenges whether the noise analysis used to assess the effects of the undertaking was based on science. The agencies’ assessment of air tour noise within the ATMP planning area was based on reasonable scientific methods. The FAA’s Aviation Environmental Design Tool (AEDT), Version 3e (Lee et al., 2022), which was relied on by the agencies to model the noise impacts of air tours within the ATMP planning area, is the FAA-approved computer program for modeling noise, as listed under Appendix A of FAA’s Part 150 Airport Noise Compatibility Planning (14 CFR sec. A150.103(a)). The FAA’s requirements for aircraft noise modeling are defined in FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, and in FAR 14 CFR Part 150, Airport Noise Compatibility Planning. Noise modeling conducted for the draft ATMP and draft Environmental Assessment (EA) was consistent with these FAA requirements. Additional information about noise modeling can be found in Appendix F, of the EA, Noise Technical Analysis. AEDT dynamically models aircraft performance in space and time.

Request for Review and Concurrence

For the reasons stated in the finding of effect letter and as stated above, the FAA has proposed a finding of no adverse effect on historic properties. The FAA respectfully requests the ACHP’s review of its proposed finding in accordance with 36 CFR § 800.5(c)(3).

Should you have any questions regarding any of the above, please contact me at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith Walker', with a long horizontal flourish extending to the right.

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

CCs: Rachael Mangum, Advisory Council on Historic Preservation
Bruce Adams, Southwest Safaris

Enclosures

- Exhibit 1 – Consultation Initiation Letter and Responses
- Exhibit 2 – Undertaking APE Letter and Responses
- Exhibit 3 – Historic Property Identification Letter and Responses
- Exhibit 4 – Section 106 Public Involvement
- Exhibit 5 – Finding of Effect letter, Additional Public Involvement Comments, and Concurrences
- Exhibit 6 - Objection to Finding of Effect letter and Responses

Exhibit 1 – Letters Initiating Consultation and Responses

- 05/21/21 to Navajo Nation THPO
- 08/06/21 to Apache County (Cities of Chinle and Del Muerto)
- 06/09/21 to National Parks Conservation Association
- 12/05/23 to Chuck Howe, IKG Air, LLC dba American Aviation with 3 attachments (not included)
 - 05/21/21 Section 106 ATMP Navajo Canyon de Chelly.pdf
 - 06/02/23 CACH Undertaking_APE Navajo Nation THPO.pdf
 - 10/26/23 CACH Historic Property ID Navajo Nation THPO.pdf
- List of Additional Consulting Parties Invited to Participate in Section 106 Consultation (23 tribes)
- 03/29/21 Response from San Carlos Apache Tribe (finding of no effect) – Concurrence dated 04/26/21
- 03/30/21 Response from White Mountain Apache Tribe (not have an adverse effect) and decline CP status

**Exhibit 1 – Letters Initiating
Consultation and Responses**



United States Department of the Interior
NATIONAL PARK SERVICE
Natural Resource Stewardship & Science
Natural Sounds and Night Skies Division



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

May 21, 2021

Re: Initiation of consultation with the Navajo THPO acting as SHPO on Navajo lands pursuant to 36 CFR 800.2(c)(2)(i)(A)

Richard Begay, Navajo THPO
Navajo Nation
P.O. Box 7440
Window Rock, AZ 86515

Dear Richard Begay,

The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS) (collectively, the agencies) is developing an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. The ATMP will apply to commercial air tours flown at or below 5,000 feet above ground level and within ½ mile of the park boundary. The agencies have determined that development of an ATMP is an “undertaking” subject to Section 106 of the National Historic Preservation Act (NHPA). As the entirety of Canyon de Chelly is located on Navajo tribal lands, we are initiating Section 106 consultation with you - the Navajo Nation Tribal Historic Preservation Officer (THPO) - in lieu of the State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800.2(c)(2)(i)(A) for this undertaking.

Background

In response to a May 1, 2020 court order, the agencies are working to complete ATMPs for 23 parks, including Canyon de Chelly, by August 31, 2022, pursuant to a court-approved plan and schedule.¹ The ATMPs are being developed in accordance with National Parks Air Tour Management Act (NPATMA). NPATMA directs the agencies to either enter into voluntary agreements with air tour operators or to establish ATMPs for national parks where commercial air tour operations are conducted or proposed.

The FAA serves as the lead federal agency with respect to compliance with Section 106 of the NHPA for these undertakings. The FAA will be coordinating its Section 106 compliance with its analysis required under the National Environmental Policy Act (NEPA). Each ATMP will be unique and therefore, each ATMP will be assessed individually under Section 106 and NEPA.

¹ For more information about the court order and proposed plan, see here:
https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/

We look forward to meaningful consultation on the air tours and their overall effect on historic properties. Because only Navajo lands will be overflowed by aircraft involved in a commercial air tour operation at Canyon de Chelly, we are initiating consultation with you, the Navajo Nation THPO acting as SHPO, in accordance with 36 CFR 800.2(c)(2)(i)(A) and also inviting the Navajo Nation to act as a cooperating agency in the NEPA process pursuant to 40 CFR § 1501.8.

There will be no ground disturbance, construction or demolition associated with this undertaking. Air tours have been operating over Canyon de Chelly for over 20 years. Since 2005, these air tours have been conducted pursuant to interim operating authority (IOA) as provided in NPATMA. The agencies are creating ATMPs to replace IOAs and, to the extent possible, propose to limit the number of annual air tour operations to the average for the years 2017-2019. At this time we anticipate little or no increase in air tour operations.

Information Request

We ask that you provide us with any preliminary information that you believe pertinent to this undertaking. In the near future, we will request your expertise in the development of the Area of Potential Effect and with the identification of properties of traditional religious and cultural significance to the Navajo Nation. In addition or alternatively, if you feel that this action may have significant, unique or substantial direct effects on your tribe or on the relationship or distribution of power between your tribe and the Federal government, we invite you to engage in government-to-government consultation with the FAA pursuant to Executive Order 13175 and FAA Order 1210.20.

We will follow up with you soon. In the meantime, if you would like to receive additional information regarding this undertaking, please contact Cathy Nadals at ATMPTeam@dot.gov or (202) 267-0746.

Sincerely,



Raquel Girvin
Regional Administrator
Western-Pacific Region
Federal Aviation Administration



Lyn Carranza
Park Superintendent
Canyon de Chelly National Monument
National Park Service

CC: President Jonathan Nez



United States Department of the Interior
NATIONAL PARK SERVICE
Natural Resource Stewardship & Science
Natural Sounds and Night Skies Division



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

August 6, 2021

Re: Initiation of consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan at Canyon de Chelly National Monument.

Shanna Pearce, Planning and Zoning Assistant
Apache County (Cities of Chinle and Del Muerto)
75 West Cleveland
St. Johns, AZ 85936

Dear Ms. Pearce,

The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS) (collectively, the agencies) is developing an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. The ATMP will apply to commercial air tours flown at or below 5,000 feet above ground level and within ½ mile of the park boundary. The agencies have determined that development of this ATMP is an “undertaking” subject to Section 106 of the National Historic Preservation Act (NHPA). This letter is intended to initiate Section 106 consultation and solicit any initial comments you may have on the proposed undertaking.

In response to a May 1, 2020 court order, the agencies are working to complete the ATMPs for 23 national parks, by August 31, 2022, pursuant to a court-approved plan and schedule.¹ The ATMPs are being developed in accordance with National Parks Air Tour Management Act (NPATMA). NPATMA directs the agencies to either enter into voluntary agreements with air tour operators or to establish ATMPs for national parks and adjacent tribal lands where commercial air tour operations are conducted or proposed.

The FAA is acting as the lead federal agency with respect to compliance with Section 106 of the NHPA for these undertakings. The FAA will be coordinating its review under Section 106 with its compliance with the National Environmental Policy Act (NEPA). As ATMPs are unique to each park, the agencies consider the development of each ATMP as a stand-alone action or undertaking and will thus comply with Section 106 for each ATMP individually.

There will be no ground disturbance, construction or demolition associated with this undertaking. Air tours have been operating over Canyon de Chelly National Monument for over 20 years. Since 2005,

¹ For more information about the court order and proposed plan, see here:
https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/

these air tours have been conducted pursuant to interim operating authority (IOA) as provided in NPATMA. The agencies are creating ATMPs to replace IOAs.

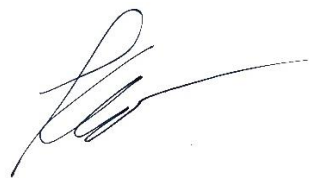
Please let us know within the next 30 days of your interest in participating as a consulting party for this undertaking. We look forward to hearing from you regarding any initial comments you may have. As a consulting party, we will seek your input in the near future regarding the Area of Potential Effect and the identification of historic properties for the undertaking.

Should you wish to receive additional information or clarification regarding any of the above, please contact Cathy Nadals at Catherine.l.nadals@faa.gov, ATMPTeam@dot.gov or (202) 267-0746.

Sincerely,



Raquel Girvin
Regional Administrator
Western-Pacific Region
Federal Aviation Administration



Lyn Carranza
Park Superintendent
Canyon de Chelly National Monument
National Park Service



United States Department of the Interior
NATIONAL PARK SERVICE
Natural Resource Stewardship & Science
Natural Sounds and Night Skies Division



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 09, 2021

Re: Request to participate as a consulting party for the development of an Air Tour Management Plan at Canyon de Chelly National Monument

Kevin Dahl
Arizona Senior Program Manager
National Parks Conservation Association
307 West 200 South
Suite 5000
Salt Lake City, UT 84101

Dear Mr. Dahl:

The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS) (collectively, the agencies) is developing an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. The ATMP will apply to commercial air tours flown at or below 5,000 feet above ground level and within ½ mile of the park boundary. The agencies have determined that development of this ATMP is an “undertaking” subject to Section 106 of the National Historic Preservation Act (NHPA). This letter is intended to initiate Section 106 consultation with you and solicit any initial comments you may have regarding the proposed undertaking.

In response to a May 1, 2020 court order, the agencies are working to complete ATMPs for 24 national parks by August 31, 2022, pursuant to a court-approved plan and schedule.¹ The ATMPs are being developed in accordance with National Parks Air Tour Management Act (NPATMA). NPATMA directs the agencies to either enter into voluntary agreements with air tour operators or to establish ATMPs for national parks and adjacent tribal lands where commercial air tour operations are conducted or proposed.

The FAA is acting as the lead federal agency with respect to compliance with Section 106 of the NHPA for these undertakings. The FAA will be coordinating its review under Section 106 with its compliance with the National Environmental Policy Act (NEPA). As ATMPs are unique to each park, the agencies consider the development of each ATMP as a stand-alone action or undertaking and will thus comply with Section 106 for each ATMP individually.

¹ For more information about the court order and proposed plan, see here:
https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/

There will be no ground disturbance, construction or demolition associated with this undertaking. Air tours have been operating over Canyon de Chelly National Monument for over 20 years. Since 2005, these air tours have been conducted pursuant to interim operating authority (IOA) as provided in NPATMA. The agencies are creating ATMPs to replace IOAs.

In accordance with 36 CFR 800.2(c)(5) we are inviting you to participate as a consulting party in the Section 106 process. Please let us know of your interest in participating as a consulting party for this undertaking. If we do not hear from you in the next 30 days, we will assume you do not intend to participate in the Section 106 consultation process as a consulting party. As we move into the next phase of consultation, we will seek your input during development of the Area of Potential Effect and the identification of historic properties.

If you would like to receive additional information regarding this undertaking, please contact Cathy Nadals at ATMPTeam@dot.gov or (202) 267-0746.

Sincerely,



Raquel Girvin
Regional Administrator
Western-Pacific Region
Federal Aviation Administration



Lyn Carranza
Superintendent
Canyon de Chelly National Monument
National Park Service

From: [ATMPTeam](#)
To: chowe@c2-env.com
Cc: [Walker, Judith <FAA>](#); [Pearson, Georgina A](#); [Lyn Carranza@nps.gov](mailto:Lyn_Carranza@nps.gov); [Papazian, Jennifer \(Volpe\)](#); [Haas, Shauna \(Volpe\)](#); [Lignell, Brent \(Volpe\)](#)
Subject: Section 106 Continuing Consultation – ATMP for Canyon de Chelly National Monument - IKG Air, LLC
Date: Tuesday, December 5, 2023 4:31:43 PM
Attachments: [Section 106 ATMP for Canyon de Chelly.pdf](#)
[CACH Undertaking for Section THPO.pdf](#)
[CACH Historic Property Identification THPO.pdf](#)

Dear Chuck Howe,

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are developing an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. The ATMP is being developed in accordance with the National Parks Air Tour Management Act (NPATMA). In addition to the requirements of NPATMA, the agencies have determined that development of an ATMP qualifies as an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA).

The FAA is acting as the lead federal agency overseeing compliance with Section 106 of the NHPA. The FAA has been coordinating its review under Section 106 with the process for complying with the National Environmental Policy Act (NEPA). Although the agencies are developing ATMPs for multiple parks, each ATMP will be unique and therefore, each ATMP will be assessed individually under Section 106 and NEPA. In accordance with 36 CFR § 800.2(c)(5), we are inviting you to participate as a consulting party in the Section 106 process for this undertaking at Canyon de Chelly National Monument.

For your information, the FAA is providing materials from earlier in the Section 106 process for development of the ATMP at Canyon de Chelly National Monument. The FAA initiated consultation with the Navajo Nation and other consulting parties by letter dated May 21, 2021. In a follow up letter dated June 2, 2023, the FAA described the proposed undertaking in more detail, proposed an Area of Potential Effects (APE), and provided the results of preliminary identification of historic properties within the proposed APE. The latest letter, dated October 26, 2023, describes the FAA's further efforts to identify and evaluate historic properties within the APE.

The FAA requests that you provide any information you may have regarding the identification of historic properties and potential effects within the APE. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Thank you for your time and consideration.

Best Regards,
Judith Walker

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Hopi Tribe of Arizona
Kewa Pueblo
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation
White Mountain Apache Tribe of the Fort Apache Reservation
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation



Received from Tribal Admin 04/29/21
E-mailed 04/30/21 (initial & date)
Scanned 04/30/21 (initial & date)

SAN CARLOS APACHE TRIBE
Historic Preservation & Archaeology Department
P.O. Box 0
San Carlos Arizona 85550
Tel. (928) 475-5797, apachevern@yahoo.com

Tribal Consultation Response Letter

Date: March 29, 2021

Contact Name: Raquel Girvin

(202) 267-0746/atmpteam@dot.gov

Company: United States Department of the Interior National Park/U.S. Department of Transportation
Federal Aviation Administration

Address:

Project: National Parks Air Tour Management Program

Name/#:

Dear Sir or Madam:

Under Section 106 and 110 of the National Historic Preservation Act, we are replying to the above referenced project. Please see the appropriate marked circle, including the signatures of Vernelda Grant, Tribal Historic Preservation Officer (THPO), and the concurrence of the Chairman of the San Carlos Apache Tribe:

☐ NO INTEREST/NO FURTHER CONSULTATION/NO FUTURE UPDATES

We defer to the Tribe located nearest to the project area.

☐ CONCURRENCE WITH REPORT FINDINGS & THANK YOU *for consulting w/ the tribe.*

☐ REQUEST ADDITIONAL INFORMATION

I require additional information in order to provide a finding of effect for this proposed undertaking, i.e.

Project description ___ Map ___ Photos ☒ Other *Please work closely w/ the*

☒ NO EFFECT

Navajo Nation & nearby tribes to ensure cultural sensitivity of area isn't negatively impacted.
I have determined that there are no properties of religious and cultural significance to the San Carlos Apache Tribe that are listed on the National Register within the area of potential effect or that the proposed project will have no effect on any such properties that may be present.

☐ NO ADVERSE EFFECT

Properties of cultural and religious significance within the area of effect have been identified that are eligible for listing in the National Register for which there would be no adverse effect as a result of the proposed project.

☐ ADVERSE EFFECT

I have identified properties of cultural and religious significance within the area of potential effect that are eligible for listing in the National Register. I believe the proposed project would cause an adverse effect on these properties. Please contact the THPO for further discussion.

We were taught traditionally not to disturb the natural world in a significant way, and that to do so may cause harm to oneself or one's family. Apache resources can be best protected by managing the land to be as natural as it was in pre-1870s settlement times. Please contact the THPO, if there is a change in any portion of the project, especially if Apache cultural resources are found at any phase of planning and construction. Thank you for contacting the San Carlos Apache Tribe, your time and effort is greatly appreciated.

DIRECTOR/THPO:

Vernelda J. Grant
Vernelda J. Grant, Tribal Historic Preservation Officer

04/11/21
Date

CONCURRENCE:

Terry Rambler
Terry Rambler, Tribal Chairman

4/26/21
Date

Tribal Consultation Response Letter

Date: March 29, 2021
Contact Name: Raquel Girvin (202) [267-0746/atmpteam@dot.gov](tel:267-0746)
Company: United States Department of the Interior National Park/U.S. Department of Transportation
Federal Aviation Administration
Address:
Project Name/#: National Parks Air Tour Management Program

Dear Sir or Madam:

Under Section 106 and 110 of the National Historic Preservation Act, we are replying to the above referenced project. Please see the appropriate marked circle, including the signatures of Vernelda Grant, Tribal Historic Preservation Officer (THPO), and the concurrence of the Chairman of the San Carlos Apache Tribe:

Thank you for consulting with the Tribe.

Please work closely with the Navajo Nation and nearby Tribes to ensure cultural sensitivity of area isn't negatively impacted.

☐ **NO INTEREST/NO FURTHER CONSULTATION/NO FUTURE UPDATES**

We defer to the Tribe located nearest to the project area.

☐ **CONCURRENCE WITH REPORT FINDINGS & THANK YOU**

☐ **REQUEST ADDITIONAL INFORMATION**

I require additional information in order to provide a finding of effect for this proposed undertaking, i.e.,
Project description ___ Map ___ Photos ___ Other ___

☐ **NO EFFECT (This option was selected.)**

I have determined that there are no properties of religious and cultural significance to the San Carlos Apache Tribe that are listed on the National Register within the area of potential effect or that the proposed project will have no effect on any such properties that may be present.

☐ **NO ADVERSE EFFECT**

Properties of cultural and religious significance within the area of effect have been identified that are eligible for listing in the National Register for which there would be no adverse effect as a result of the proposed project.

☐ **ADVERSE EFFECT**

I have identified properties of cultural and religious significance within the area of potential effect that are eligible for listing in the National Register. I believe the proposed project would cause an adverse effect on these properties. Please contact the THPO for further discussion.

We were taught traditionally not to disturb the natural world in a significant way, and that to do so may cause harm to oneself or one's family. Apache resources can be best protected by managing the land to be as natural as it was in pre-1870s settlement times. Please contact the THPO, if there is a change in any portion of the project, especially if Apache cultural resources are found at any phase of planning and construction. Thank you for contacting the San Carlos Apache Tribe, your time, and effort is greatly appreciated.

Vernelda J. Grant, Tribal Historic Preservation Officer signed on April 11, 2021

Terry Rambler, Tribal Chairman signed in concurrent on April 26, 2021



White Mountain Apache Tribe

Office of Historic Preservation

PO Box 1032

Fort Apache, AZ 85926

Ph: (928) 338-3033 Fax: (928) 338-6055

To: Raquel Girvin, Regional Administrator Western-Pacific Region FAA

Date: March 30, 2021

Re: *Proposed Air Toru Management Plans for Canyon de Chelly National Monument*

.....

The White Mountain Apache Tribe Historic Preservation Office appreciates receiving information on the project dated; March 26, 2021. In regards to this, please attend to the following statement below.

Thank you for allowing the White Mountain Apache tribe the opportunity to review and respond to the above proposed development of the Air Tour Management Plans for Canyon de Chelly National Monument, located in northeastern Arizona on the Navajo Nations Reservation.

Please be advised, we reviewed the consultation letter and the information provided, and we've determined that the proposed project plans will ***"Not have an Adverse Effect"*** on the tribe's cultural heritage resources and/or traditional cultural properties, and as the proposed plans will not impact the tribe's cultural resources we feel it is not necessary at this time to be a consulting party in the Section 106 process.

Thank you for your continued collaborations in protecting and preserving places of cultural and historical importance.

Sincerely,

Mark T. Altaha

White Mountain Apache Tribe – THPO
Historic Preservation Office

Exhibit 2 – Letter re Proposed Undertaking and APE, dated June 2, 2023, and June 5, 2023, and Responses, with the following attachments:

Attachment A. APE Map Including Existing Commercial Air Tour Routes

Attachment B. List of Historic Properties in the APE and Description of Historic Characteristics

- 06/02/23 to Navajo Nation THPO
- 06/02/23 to Apache County (Cities of Chinle and Del Muerto)
- 06/05/23 to National Parks Conservation Association
- 06/02/23 to National Trust for Historic Preservation
- 06/02/23 to Grand Canyon Airlines
- 06/02/23 to Southwest Safaris
- List of Additional Consulting Parties Invited to Participate in Section 106 Consultation (23 tribes; 4 opted out of further Section 106 consultation for the undertaking)
- 12/09/21 Response from Pueblo of Acoma THPO
- 06/05/23 Response from Pueblo of Pojoaque (declines)
- 06/09/23 Response from Southwest Safaris
- 06/15/23 Response from Air Grand Canyon
- 06/15/23 Response from Grand Canyon Scenic Airlines
- 06/12/23 Response from Southwest Safaris
- 06/30/23 Response from Southwest Safaris
- 07/31/23 Response from National Parks Conservation Association

**Exhibit 2 – Letter re Proposed Undertaking and APE,
dated June 2, 2023 and June 5, 2023, and
Responses**



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 2, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Richard Begay
Tribal Historic Preservation Officer
Navajo Nation
P.O. Box 7440
Window Rock, AZ 86515

Dear Tribal Historic Preservation Officer Richard Begay:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park). The FAA initiated consultation with your office by letter dated May 21, 2021.

This letter presents a description of the proposed undertaking in accordance with 36 CFR 800.3(a) and 800.16(y). This letter also describes the proposed Area of Potential Effects (APE) pursuant to 36 CFR 800.4(a)(1). The FAA has completed its initial historic property identification effort within the proposed APE in accordance with 36 CFR 800.4. The FAA specifically requests your comments on our proposed APE and initial historic property identification efforts.

Description of the Undertaking

The undertaking for purposes of Section 106 is implementing an ATMP for the Park. Consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

This area is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. One commercial air tour operator currently conducts tours over the Park, Southwest Safaris. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change their operations to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in **Attachment A**.

The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours. Based on 2017-2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) ¹ depending on the route.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the establishment date of the ATMP.

Proposed Area of Potential Effects (APE)

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.³

In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA will consider the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register of Historic Places (National Register).

Since the undertaking will prohibit commercial air tours within the ATMP planning area, it is reasonable that air tours may potentially operate outside of the planning area and may introduce new noise or visual impacts as a result. The FAA is initially proposing an APE comprising the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment A** below. The FAA requests comments on the proposed APE. The agencies continue to gather information on the relocation of air tours as a result of the undertaking and based upon input received from consulting parties, the APE may be revised.

Preliminary Historic Property Identification

The agencies have undertaken preliminary efforts to identify historic properties within the APE. In so doing, the FAA has taken into consideration past planning, research and studies, the magnitude and

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that NPATMA required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under NPATMA, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

³ The term historic property is defined in 54 U.S.C. 300308 and 36 CFR 800.16(l)(1).

nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). As such, the historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility. The FAA is also considering whether air tours could affect the use of traditional cultural properties (TCPs) associated with cultural practices, customs or beliefs that continue to be held or practiced today.

The agencies have invited 23 other federally recognized tribes to participate in the consultation process for the Park. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which include numerous sites of religious and cultural significance. The agencies recognize all of the lands within the monument remain on Navajo Nation Tribal Trust Lands.

The FAA, with assistance from NPS Park staff and using "Significant Traditional Cultural Properties of the Navajo People" by Judy Martin, has identified five historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing in the National Register. Historic properties with unrestricted locations are shown in the proposed APE map provided in **Attachment A**. All historic properties mentioned above are listed in **Attachment C**.

Review Request

The FAA requests that you provide any comments you may have regarding the proposed APE and initial identification of historic properties. In particular, we would appreciate your views regarding the characteristics of historic properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a significant characteristic. Should you wish to receive additional information regarding this undertaking, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



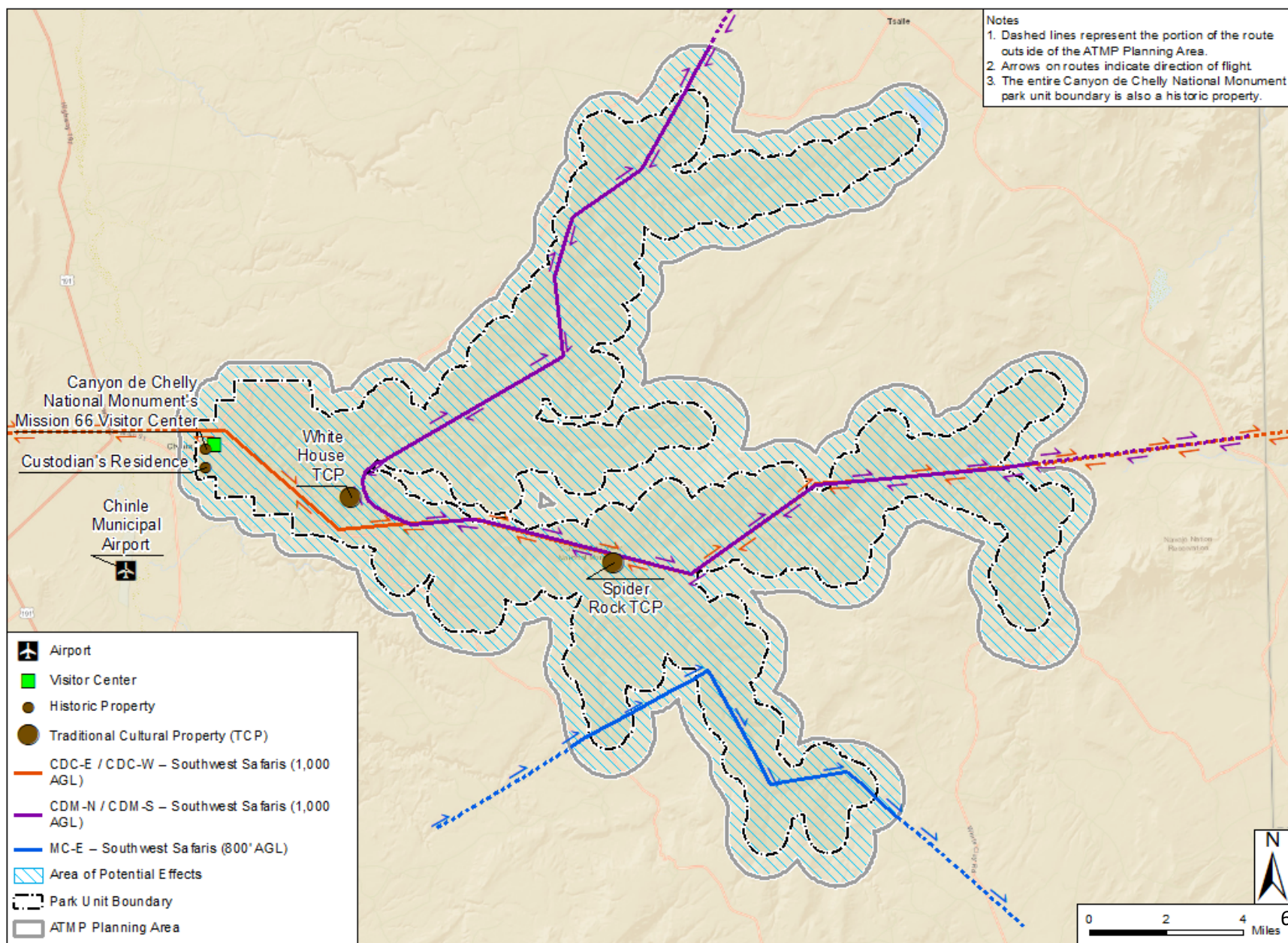
Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP
INCLUDING EXISTING
COMMERCIAL AIR TOUR ROUTES

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B
LIST OF HISTORIC PROPERTIES IN THE APE AND DESCRIPTION OF HISTORIC CHARACTERISTICS

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Nominated	Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the basket maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by Navajo Indians who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.
White House TCP	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there.
Spider Rock TCP	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.
Custodian's Residence	Building	Eligible	Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships

Property Name	Property Type	Eligibility Status	Significant Characteristics
			with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the park. The specific visitor center viewsheds at CACH overlooks the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it siting at the mouth of the canyon offers interpretive value from the building's courtyard terraces.

*Location is restricted and therefore cannot be shown on the APE map.



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 2, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Shanna Pearce
Planning and Zoning Assistant
Apache County (Cities of Chinle and Del Muerto)
75 West Cleveland
St. Johns, AZ 85936

Dear Ms. Pearce,

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park). The FAA initiated consultation with your office by letter dated August 6, 2021.

This letter presents a description of the proposed undertaking in accordance with 36 CFR 800.3(a) and 800.16(y). This letter also describes the proposed Area of Potential Effects (APE) pursuant to 36 CFR 800.4(a)(1). The FAA has completed its initial historic property identification effort within the proposed APE in accordance with 36 CFR 800.4. The FAA specifically requests your comments on our proposed APE and initial historic property identification efforts.

Description of the Undertaking

The undertaking for purposes of Section 106 is implementing an ATMP for the Park. Consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

This area is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. One commercial air tour operator currently conducts tours over the Park, Southwest Safaris. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change their operations to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in **Attachment A**.

The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours. Based on 2017-2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) ¹ depending on the route.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the establishment date of the ATMP.

Proposed Area of Potential Effects (APE)

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.³

In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA will consider the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register of Historic Places (National Register).

Since the undertaking will prohibit commercial air tours within the ATMP planning area, it is reasonable that air tours may potentially operate outside of the planning area and may introduce new noise or visual impacts as a result. The FAA is initially proposing an APE comprising the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment A** below. The FAA requests comments on the proposed APE. The agencies continue to gather information on the relocation of air tours as a result of the undertaking and based upon input received from consulting parties, the APE may be revised.

Preliminary Historic Property Identification

The agencies have undertaken preliminary efforts to identify historic properties within the APE. In so doing, the FAA has taken into consideration past planning, research and studies, the magnitude and

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that NPATMA required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under NPATMA, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

³ The term historic property is defined in 54 U.S.C. 300308 and 36 CFR 800.16(l)(1).

nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). As such, the historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility. The FAA is also considering whether air tours could affect the use of traditional cultural properties (TCPs) associated with cultural practices, customs or beliefs that continue to be held or practiced today.

The agencies have invited 23 other federally recognized tribes to participate in the consultation process for the Park. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which include numerous sites of religious and cultural significance. The agencies recognize all of the lands within the monument remain on Navajo Nation Tribal Trust Lands.

The FAA, with assistance from NPS Park staff and using "Significant Traditional Cultural Properties of the Navajo People" by Judy Martin, has identified five historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing in the National Register. Historic properties with unrestricted locations are shown in the proposed APE map provided in **Attachment A**. All historic properties mentioned above are listed in **Attachment C**.

Review Request

The FAA requests that you provide any comments you may have regarding the proposed APE and initial identification of historic properties. In particular, we would appreciate your views regarding the characteristics of historic properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a significant characteristic. Should you wish to receive additional information regarding this undertaking, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



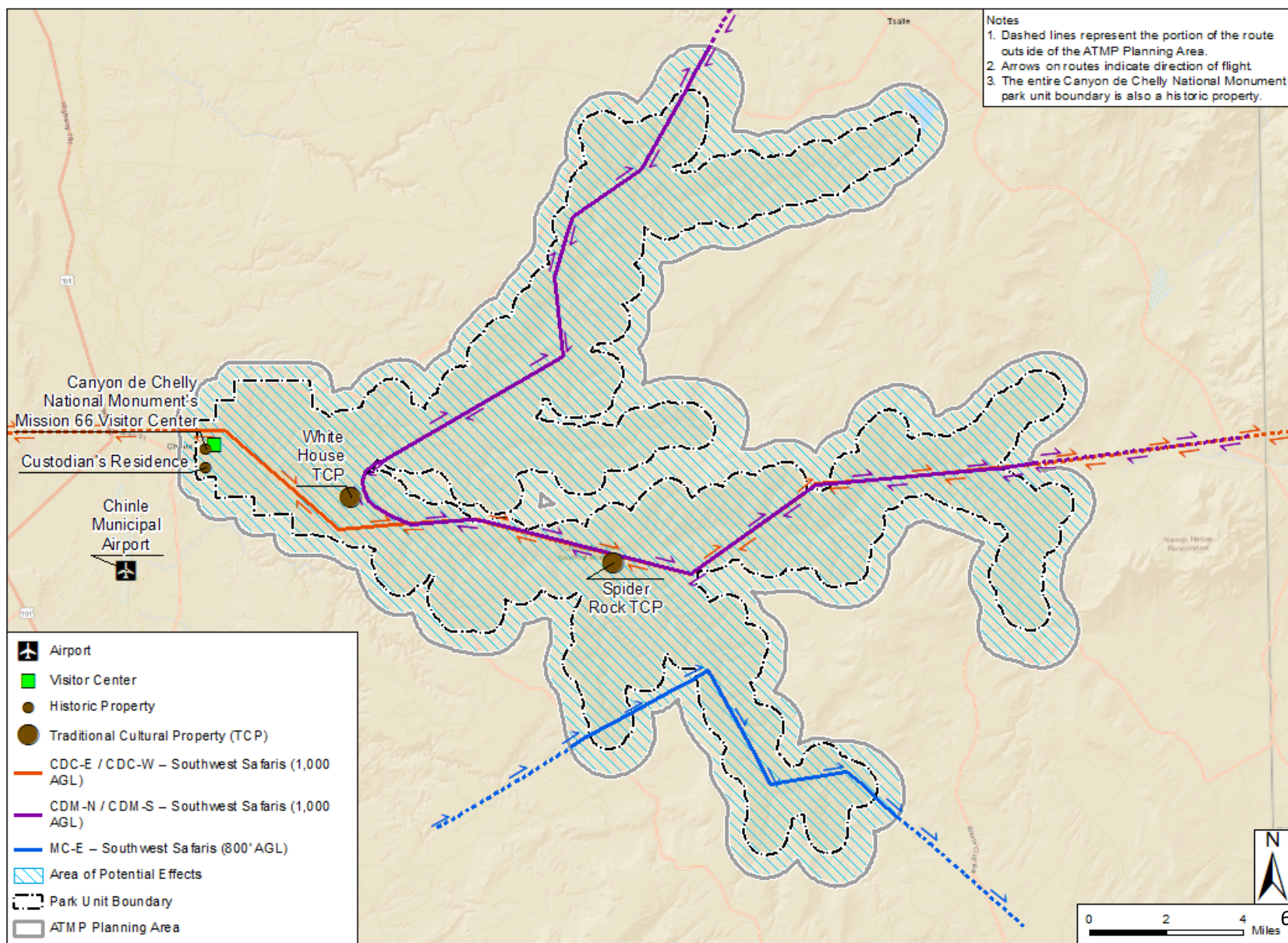
Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP
INCLUDING EXISTING
COMMERCIAL AIR TOUR ROUTES

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B
LIST OF HISTORIC PROPERTIES IN THE APE AND DESCRIPTION OF HISTORIC CHARACTERISTICS

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Nominated	Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the basket maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by Navajo Indians who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.
White House TCP	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there.
Spider Rock TCP	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.
Custodian's Residence	Building	Eligible	Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships

Property Name	Property Type	Eligibility Status	Significant Characteristics
			with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the park. The specific visitor center viewsheds at CACH overlooks the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it siting at the mouth of the canyon offers interpretive value from the building's courtyard terraces.

*Location is restricted and therefore cannot be shown on the APE map.



U.S. Department
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**Federal Aviation
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United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 5, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Ernie Atencio
Southwest Regional Director
National Parks Conservation Association – Arizona
PO Box 2896
Santa Fe, NM 87504

Dear Ernie Atencio:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park). The FAA initiated consultation with your office by letter dated June 9, 2021.

This letter presents a description of the proposed undertaking in accordance with 36 CFR 800.3(a) and 800.16(y). This letter also describes the proposed Area of Potential Effects (APE) pursuant to 36 CFR 800.4(a)(1). The FAA has completed its initial historic property identification effort within the proposed APE in accordance with 36 CFR 800.4. The FAA specifically requests your comments on our proposed APE and initial historic property identification efforts.

Description of the Undertaking

The undertaking for purposes of Section 106 is implementing an ATMP for the Park. Consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

This area is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. One commercial air tour operator currently conducts tours over the Park, Southwest Safaris. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change their operations to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in **Attachment A**.

The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours. Based on 2017-2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) ¹ depending on the route.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the establishment date of the ATMP.

Proposed Area of Potential Effects (APE)

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.³

In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA will consider the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register of Historic Places (National Register).

Since the undertaking will prohibit commercial air tours within the ATMP planning area, it is reasonable that air tours may potentially operate outside of the planning area and may introduce new noise or visual impacts as a result. The FAA is initially proposing an APE comprising the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment A** below. The FAA requests comments on the proposed APE. The agencies continue to gather information on the relocation of air tours as a result of the undertaking and based upon input received from consulting parties, the APE may be revised.

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³ The term historic property is defined in 54 U.S.C. 300308 and 36 CFR 800.16(l)(1).

Preliminary Historic Property Identification

The agencies have undertaken preliminary efforts to identify historic properties within the APE. In so doing, the FAA has taken into consideration past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). As such, the historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility. The FAA is also considering whether air tours could affect the use of traditional cultural properties (TCPs) associated with cultural practices, customs or beliefs that continue to be held or practiced today.

The agencies have invited 23 other federally recognized tribes to participate in the consultation process for the Park. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which include numerous sites of religious and cultural significance. The agencies recognize all of the lands within the monument remain on Navajo Nation Tribal Trust Lands.

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Review Request

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Sincerely,



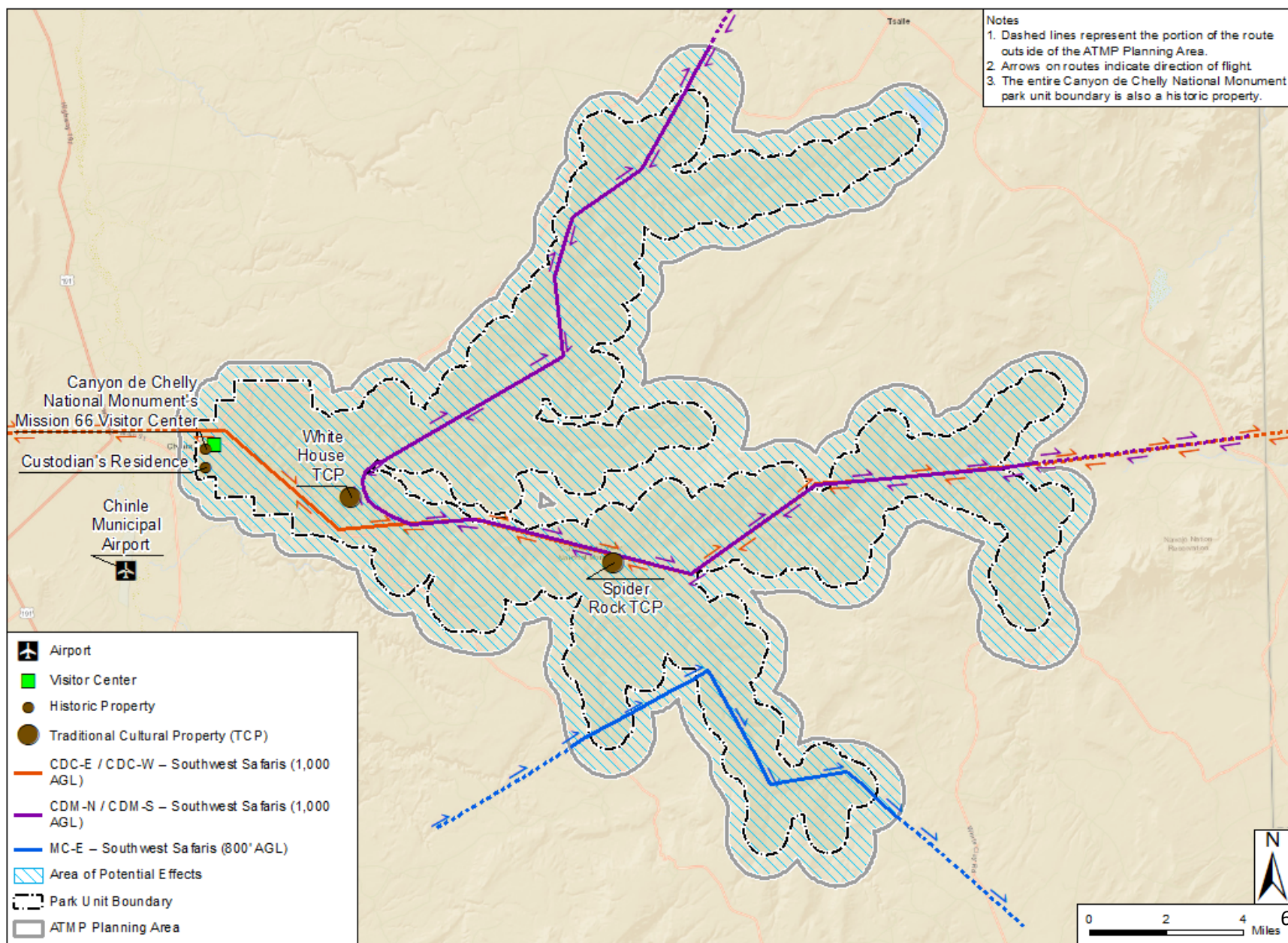
Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP
INCLUDING EXISTING
COMMERCIAL AIR TOUR ROUTES

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B
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Property Name	Property Type	Eligibility Status	Significant Characteristics
			with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.
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*Location is restricted and therefore cannot be shown on the APE map.



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 2, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Betsy Merritt
Deputy General Counsel
National Trust for Historic Preservation
2600 Virginia Ave. NW, Ste 1100
Washington DC 20037

Dear Betsy Merritt:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park).

This letter presents a description of the proposed undertaking in accordance with 36 CFR 800.3(a) and 800.16(y). This letter also describes the proposed Area of Potential Effects (APE) pursuant to 36 CFR 800.4(a)(1). The FAA has completed its initial historic property identification effort within the proposed APE in accordance with 36 CFR 800.4. The FAA specifically requests your comments on our proposed APE and initial historic property identification efforts.

Description of the Undertaking

The undertaking for purposes of Section 106 is implementing an ATMP for the Park. Consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

This area is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. One commercial air tour operator currently conducts tours over the Park, Southwest Safaris. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change their operations to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in **Attachment A**.

The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours. Based on 2017-2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) ¹ depending on the route.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the establishment date of the ATMP.

Proposed Area of Potential Effects (APE)

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.³

In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA will consider the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register of Historic Places (National Register).

Since the undertaking will prohibit commercial air tours within the ATMP planning area, it is reasonable that air tours may potentially operate outside of the planning area and may introduce new noise or visual impacts as a result. The FAA is initially proposing an APE comprising the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment A** below. The FAA requests comments on the proposed APE. The agencies continue to gather information on the relocation of air tours as a result of the undertaking and based upon input received from consulting parties, the APE may be revised.

Preliminary Historic Property Identification

The agencies have undertaken preliminary efforts to identify historic properties within the APE. In so doing, the FAA has taken into consideration past planning, research and studies, the magnitude and

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that NPATMA required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under NPATMA, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

³ The term historic property is defined in 54 U.S.C. 300308 and 36 CFR 800.16(l)(1).

nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). As such, the historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility. The FAA is also considering whether air tours could affect the use of traditional cultural properties (TCPs) associated with cultural practices, customs or beliefs that continue to be held or practiced today.

The agencies have invited 23 other federally recognized tribes to participate in the consultation process for the Park. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which include numerous sites of religious and cultural significance. The agencies recognize all of the lands within the monument remain on Navajo Nation Tribal Trust Lands.

The FAA, with assistance from NPS Park staff and using "Significant Traditional Cultural Properties of the Navajo People" by Judy Martin, has identified five historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing in the National Register. Historic properties with unrestricted locations are shown in the proposed APE map provided in **Attachment A**. All historic properties mentioned above are listed in **Attachment C**.

Review Request

The FAA requests that you provide any comments you may have regarding the proposed APE and initial identification of historic properties. In particular, we would appreciate your views regarding the characteristics of historic properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a significant characteristic. Should you wish to receive additional information regarding this undertaking, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

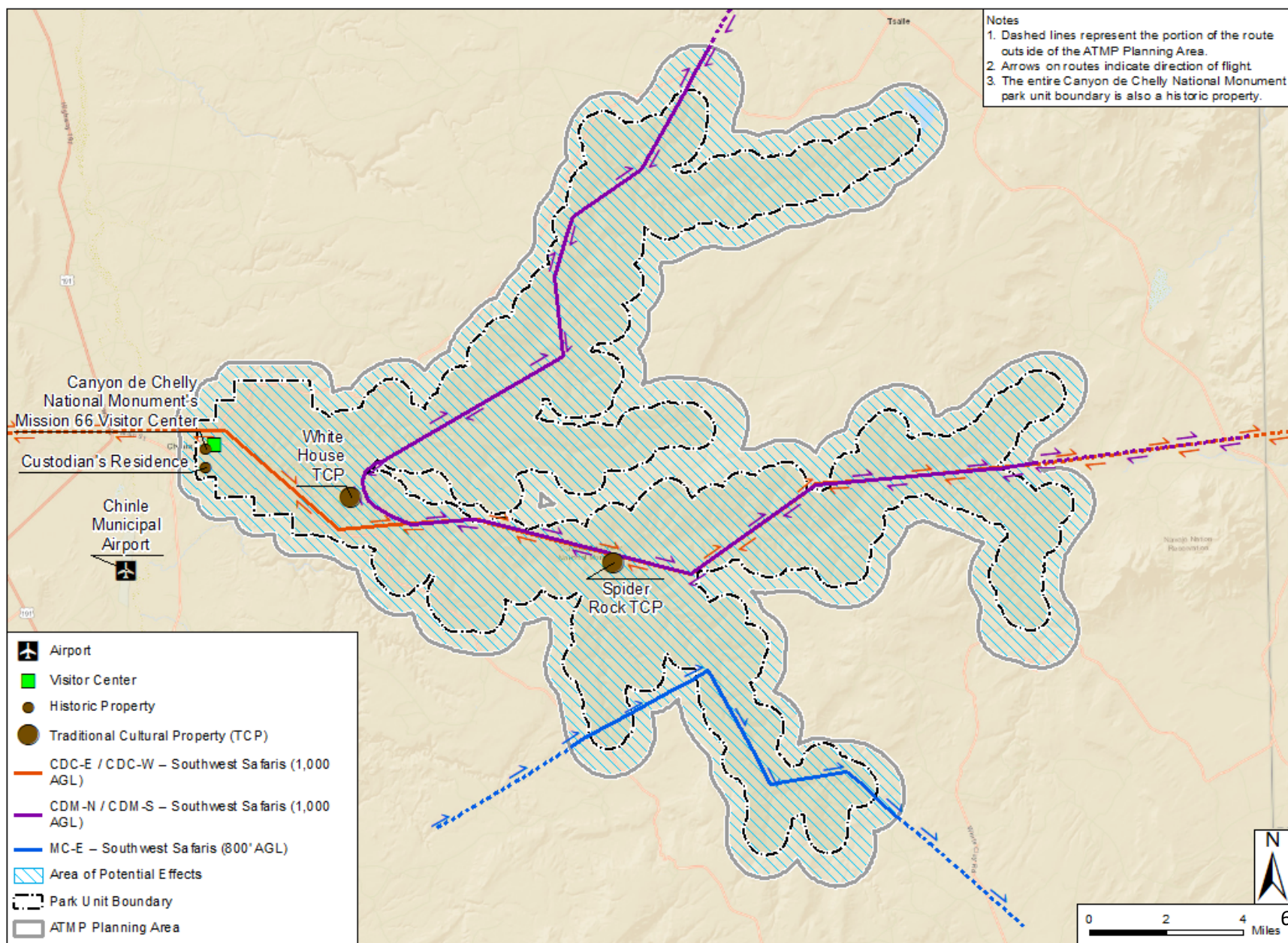
CC: Elaine Chang, Legal Coordinator

Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP
INCLUDING EXISTING
COMMERCIAL AIR TOUR ROUTES

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B
LIST OF HISTORIC PROPERTIES IN THE APE AND DESCRIPTION OF HISTORIC CHARACTERISTICS

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Nominated	Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the basket maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by Navajo Indians who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.
White House TCP	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there.
Spider Rock TCP	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.
Custodian's Residence	Building	Eligible	Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships

Property Name	Property Type	Eligibility Status	Significant Characteristics
			with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the park. The specific visitor center viewsheds at CACH overlooks the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it siting at the mouth of the canyon offers interpretive value from the building's courtyard terraces.

*Location is restricted and therefore cannot be shown on the APE map.



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 2, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Jake Tomlin
Grand Canyon Airlines
1265 Airport Road
Boulder City, NV 89005

Dear Mr. Tomlin:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park).

This letter presents a description of the proposed undertaking in accordance with 36 CFR 800.3(a) and 800.16(y). This letter also describes the proposed Area of Potential Effects (APE) pursuant to 36 CFR 800.4(a)(1). The FAA has completed its initial historic property identification effort within the proposed APE in accordance with 36 CFR 800.4. The FAA specifically requests your comments on our proposed APE and initial historic property identification efforts.

Description of the Undertaking

The undertaking for purposes of Section 106 is implementing an ATMP for the Park. Consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

This area is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. One commercial air tour operator currently conducts tours over the Park, Southwest Safaris. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change their operations to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in **Attachment A**.

The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours. Based on 2017-2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) ¹ depending on the route.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority ²	Terminates 180 days from the establishment date of the ATMP.

Proposed Area of Potential Effects (APE)

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.³

In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA will consider the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register of Historic Places (National Register).

Since the undertaking will prohibit commercial air tours within the ATMP planning area, it is reasonable that air tours may potentially operate outside of the planning area and may introduce new noise or visual impacts as a result. The FAA is initially proposing an APE comprising the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment A** below. The FAA requests comments on the proposed APE. The agencies continue to gather information on the relocation of air tours as a result of the undertaking and based upon input received from consulting parties, the APE may be revised.

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³ The term historic property is defined in 54 U.S.C. 300308 and 36 CFR 800.16(l)(1).

Preliminary Historic Property Identification

The agencies have undertaken preliminary efforts to identify historic properties within the APE. In so doing, the FAA has taken into consideration past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). As such, the historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility. The FAA is also considering whether air tours could affect the use of traditional cultural properties (TCPs) associated with cultural practices, customs or beliefs that continue to be held or practiced today.

The agencies have invited 23 other federally recognized tribes to participate in the consultation process for the Park. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which include numerous sites of religious and cultural significance. The agencies recognize all of the lands within the monument remain on Navajo Nation Tribal Trust Lands.

The FAA, with assistance from NPS Park staff and using "Significant Traditional Cultural Properties of the Navajo People" by Judy Martin, has identified five historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing in the National Register. Historic properties with unrestricted locations are shown in the proposed APE map provided in **Attachment A**. All historic properties mentioned above are listed in **Attachment C**.

Review Request

The FAA requests that you provide any comments you may have regarding the proposed APE and initial identification of historic properties. In particular, we would appreciate your views regarding the characteristics of historic properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a significant characteristic. Should you wish to receive additional information regarding this undertaking, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



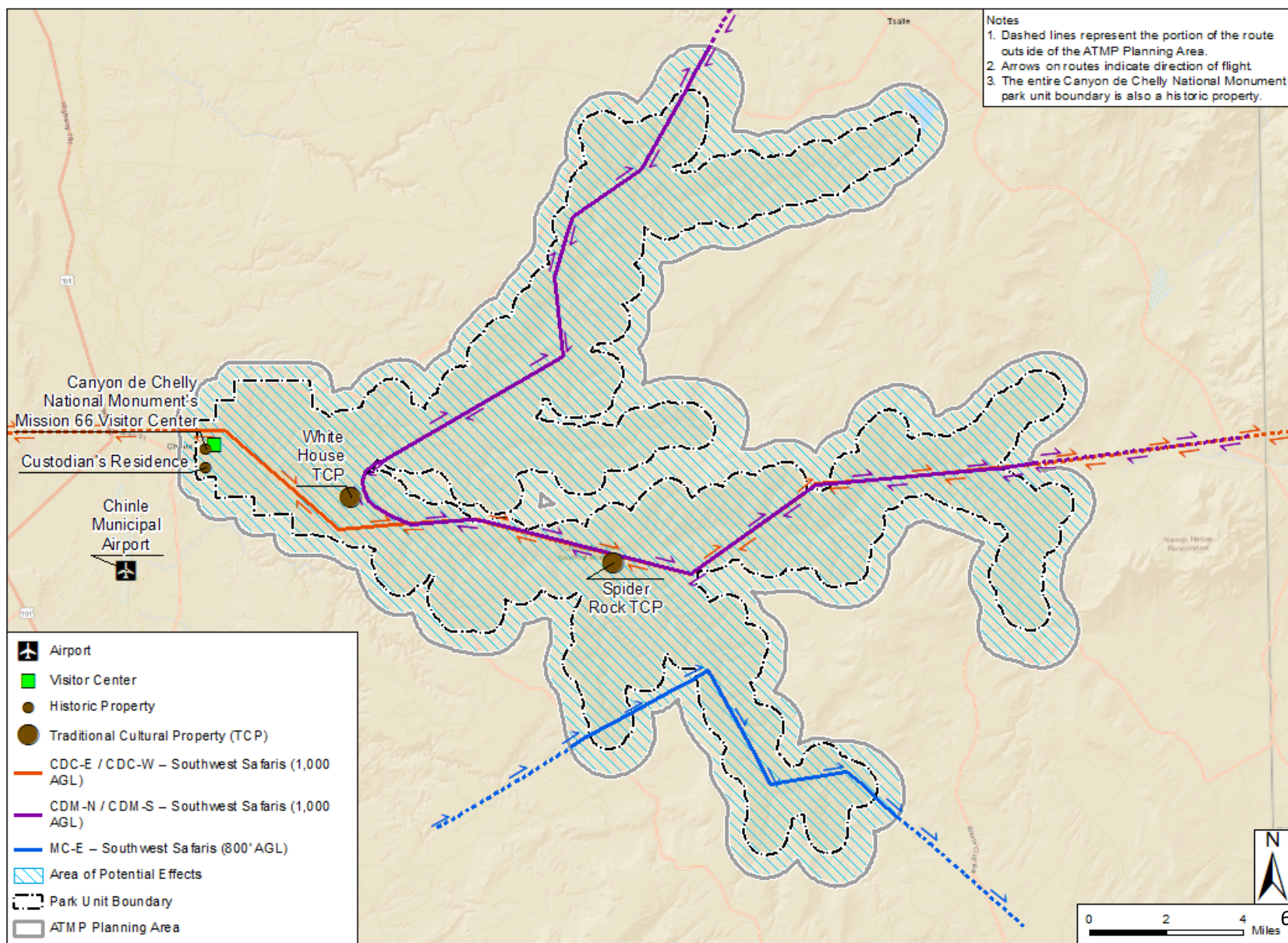
Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP
INCLUDING EXISTING
COMMERCIAL AIR TOUR ROUTES

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B
LIST OF HISTORIC PROPERTIES IN THE APE AND DESCRIPTION OF HISTORIC CHARACTERISTICS

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Nominated	Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the basket maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by Navajo Indians who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.
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Custodian's Residence	Building	Eligible	Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships

Property Name	Property Type	Eligibility Status	Significant Characteristics
			with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the park. The specific visitor center viewsheds at CACH overlooks the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it siting at the mouth of the canyon offers interpretive value from the building's courtyard terraces.

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U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

June 2, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Bruce M. Adams
Southwest Safaris
712 Felipe Place
Santa Fe, NM 87505

Dear Mr. Adams:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park).

This letter presents a description of the proposed undertaking in accordance with 36 CFR 800.3(a) and 800.16(y). This letter also describes the proposed Area of Potential Effects (APE) pursuant to 36 CFR 800.4(a)(1). The FAA has completed its initial historic property identification effort within the proposed APE in accordance with 36 CFR 800.4. The FAA specifically requests your comments on our proposed APE and initial historic property identification efforts.

Description of the Undertaking

The undertaking for purposes of Section 106 is implementing an ATMP for the Park. Consistent with the National Parks Air Tour Management Act of 2000 (NPATMA), the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

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The agencies have documented the existing conditions for commercial air tour operations over the Park. One commercial air tour operator currently conducts tours over the Park, Southwest Safaris. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change their operations to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in **Attachment A**.

The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours. Based on 2017-2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) ¹ depending on the route.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

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Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the establishment date of the ATMP.

Proposed Area of Potential Effects (APE)

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.³

In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA will consider the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register of Historic Places (National Register).

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Preliminary Historic Property Identification

The agencies have undertaken preliminary efforts to identify historic properties within the APE. In so doing, the FAA has taken into consideration past planning, research and studies, the magnitude and

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³ The term historic property is defined in 54 U.S.C. 300308 and 36 CFR 800.16(l)(1).

nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). As such, the historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility. The FAA is also considering whether air tours could affect the use of traditional cultural properties (TCPs) associated with cultural practices, customs or beliefs that continue to be held or practiced today.

The agencies have invited 23 other federally recognized tribes to participate in the consultation process for the Park. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which include numerous sites of religious and cultural significance. The agencies recognize all of the lands within the monument remain on Navajo Nation Tribal Trust Lands.

The FAA, with assistance from NPS Park staff and using "Significant Traditional Cultural Properties of the Navajo People" by Judy Martin, has identified five historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing in the National Register. Historic properties with unrestricted locations are shown in the proposed APE map provided in **Attachment A**. All historic properties mentioned above are listed in **Attachment C**.

Review Request

The FAA requests that you provide any comments you may have regarding the proposed APE and initial identification of historic properties. In particular, we would appreciate your views regarding the characteristics of historic properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a significant characteristic. Should you wish to receive additional information regarding this undertaking, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



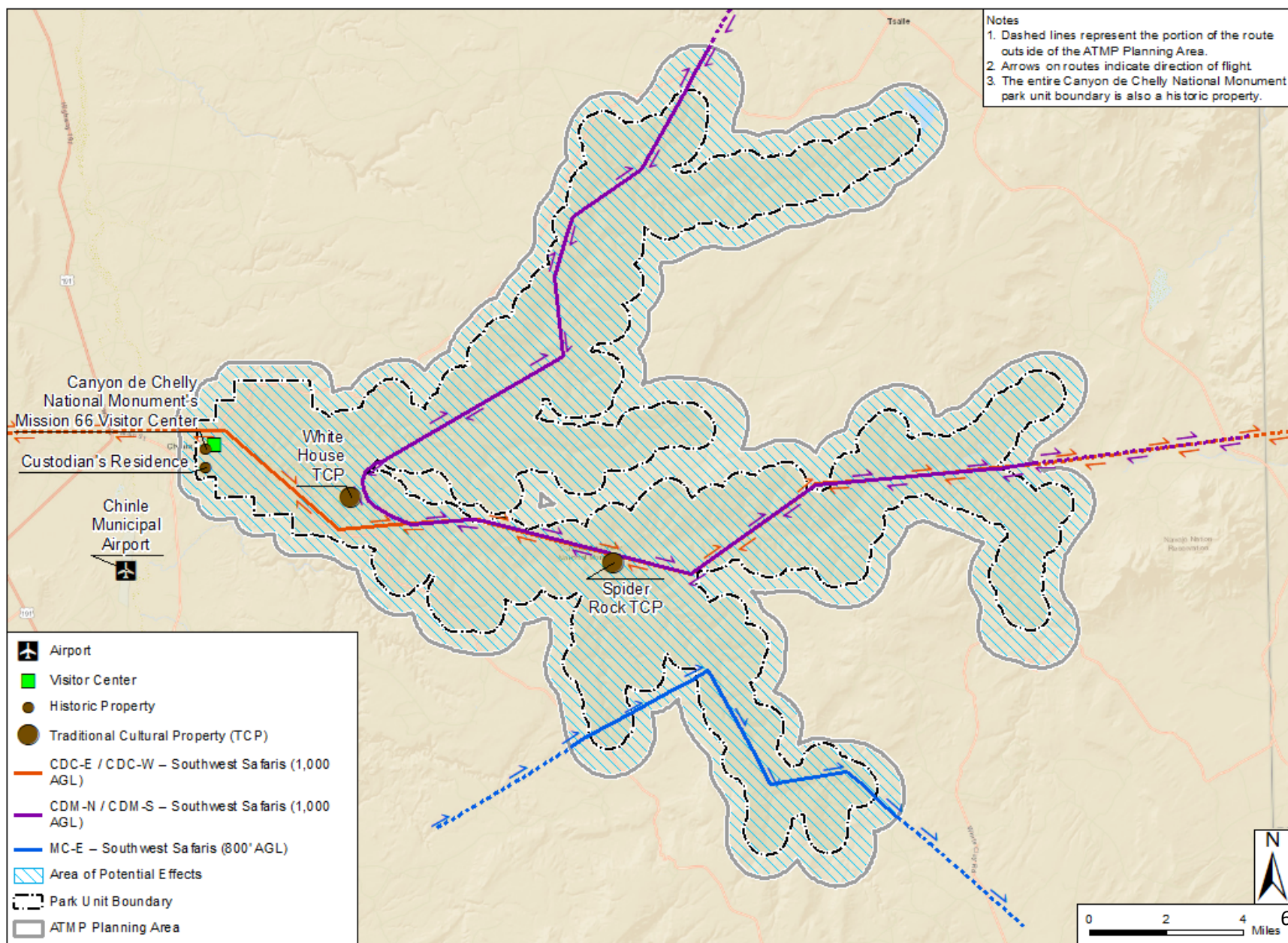
Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP
INCLUDING EXISTING
COMMERCIAL AIR TOUR ROUTES

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B
LIST OF HISTORIC PROPERTIES IN THE APE AND DESCRIPTION OF HISTORIC CHARACTERISTICS

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Nominated	Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the basket maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by Navajo Indians who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.
White House TCP	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there.
Spider Rock TCP	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.
Custodian's Residence	Building	Eligible	Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships

Property Name	Property Type	Eligibility Status	Significant Characteristics
			with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the park. The specific visitor center viewsheds at CACH overlooks the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it siting at the mouth of the canyon offers interpretive value from the building's courtyard terraces.

*Location is restricted and therefore cannot be shown on the APE map.

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Hopi Tribe of Arizona
Kewa Pueblo
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.



P.O. Box 309

Acoma, New Mexico 87034

PUEBLO OF ACOMA

Tribal Historic Preservation Office

TELEPHONE: 505-552-5124

505-552-5127

December 9, 2021

Mr. David C. Suomi
Regional Administrator
Northwest Mountain Region
Federal Aviation Administration
1601 Lind Avenue Southwest
Renton, WA 98057

Dear Mr. Suomi and team,

Thank you for your letter to the Pueblo of Acoma dated March 26, regarding *Initiation of consultation under 36 CFR 800, the National Park Air Tour Management Act, and Invitation for Government-to-Government Tribal consultation pursuant to Executive Order 13175 and FAA Order 1210.20*. The Pueblo of Acoma appreciates the Federal Aviation Administration's (FAA) solicitation of our input and your effort to address our concerns.

The Pueblo of Acoma continues to claim cultural affiliation to many areas in New Mexico, Arizona, Colorado, and Utah including those within the boundaries of Arches National Park, Bandelier National Monument, Canyon de Chelly National Monument, and Canyonlands National Park. Furthermore, the Acoma Tribal Historic Preservation Office (ATHPO), recognizes each of these places contains the cultural and archeological "footprints" of our ancestors, along with cultural landscape, shrines, and gathering places, and because they remain tied to our present-day village of Haak'u, they are also considered Traditional Cultural Properties.

The Pueblo of Acoma has concerns with the proposed Air Tours. Our concerns stem from the direct experience the Pueblo of Acoma has had over the years with both authorized and non-authorized "fly-overs." We have seen the direct effect the flyovers can have on fragile historic structures and sensitive cultural areas in and around the pueblo. Sadly, it has been our experience that although the pueblo has requested "no-fly" periods for tribal ceremonies, non-authorized flights still occur and have lasting consequences on tribal members as they continue mark cultural observances and practice with sensory intrusions from flights.

The average number of tours projected for a three-year period, at Bandelier National Monument, is 101 air tours. The Pueblo of Acoma experiences "fly-overs" on an annual basis, from military aircraft, private aircraft, helicopters, and commercial aircraft, and understands the direct effects on the buildings, sacred

areas, livestock grazing, and wildlife patterns. Although the air tours have operated for over 20 years, the Pueblo remains concerned with the cumulative effects that will occur from direct flyovers, as well as the disruption caused to these sacred places.

The Pueblo of Acoma requests continued consultation on this proposal, as well as feedback from other tribes. Should you have any questions or concerns you can contact me at (505) 552-5124 ext. 5538 or at sconcho@poamail.org.

Respectfully,

A handwritten signature in black ink, appearing to read "Steven Concho", written in a cursive style.

Steven Concho
Pueblo of Acoma Tribal Historic Preservation Officer

CC: HPO
Administration
Cathy Nadals
Rob Lowe
Raquel Girvin
Southeast Utah Group, NPS
Bandelier National Monument, NPS
Canyon de Chelly National Monument, NPS

From: [Bernstein, Bruce](#)
To: [ATMPTeam](#); [Jenelle Roybal, Governor](#)
Cc: [Pearson, Georgina A](#); [Lyn_Carranza@nps.gov](#); [Walker, Judith <FAA>](#); [Papazian, Jennifer \(Volpe\)](#); [Rimol, Kaitlyn \(Volpe\)](#); [Haas, Shauna \(Volpe\)](#); [FireCloud, Dorothy M](#); [albert_lebeau@nps.gov](#); [Castiano, Melissa S](#)
Subject: RE: Section 106 Continuing Consultation - Air Tours at Canyon de Chelly National Monument - Pueblo of Pojoaque
Date: Monday, June 5, 2023 7:32:01 PM
Attachments: [image002.png](#)

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Walker,

Thank you for the opportunity to participate in a 106 consultation regarding a proposed air tour of Canyon de Chelly. The Pueblo declines the opportunity to consult because the Canyon is within the modern boundaries of the Navajo Nation.

Please note for your records that the Governor of the Pueblo is Ms. Jenelle Roybal.

Bruce Bernstein, PhD
Tribal Historic Preservation Officer
P'osuwageh Owingeh - Pueblo of Pojoaque
O: 505-455-5505
C: 505-795-6152



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From: ATMPTeam <ATMPTeam@dot.gov>
Sent: Friday, June 2, 2023 1:55 PM
To: Jenelle Roybal, Governor <jcroybal@pojoaque.org>
Cc: Bernstein, Bruce <bbernstein@pojoaque.org>; Pearson, Georgina A <Gina_Pearson@nps.gov>; Lyn_Carranza@nps.gov; Walker, Judith <FAA> <judith.walker@faa.gov>; Papazian, Jennifer (Volpe) <Jennifer.Papazian@dot.gov>; Rimol, Kaitlyn (Volpe) <Kaitlyn.Rimol@dot.gov>; Haas, Shauna (Volpe) <shauna.haas@dot.gov>; FireCloud, Dorothy M <Dorothy_FireCloud@nps.gov>; albert_lebeau@nps.gov; Castiano, Melissa S <melissa_castiano@nps.gov>

Subject: Section 106 Continuing Consultation - Air Tours at Canyon de Chelly National Monument - Pueblo of Pojoaque

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Governor Talachy:

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are continuing Section 106 consultations with your office for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument. FAA is the lead federal agency for purposes of complying with Section 106 for this undertaking.

We are providing the attached letter to describe the undertaking in accordance with 36 CFR 800.3(a) and present our proposed APE pursuant to 36 CFR 800.4(a)(1). FAA has also conducted preliminary historic property identification in accordance with 36 CFR 800.4 and seeks your assistance in identifying additional historic properties that may be affected by the undertaking.

Please let us know if you have any comments regarding our proposed APE and initial historic property identification efforts.

If you would like any additional information regarding the above, please contact Judith Walker at Judith.Walker@faa.gov or 202-267-4185 and copy the ATMP team at ATMPTeam@dot.gov.

Thank you for your time and consideration.

Best Regards,
Judith Walker

SOUTHWEST SAFARIS

PO Box 945
Santa Fe, NM 87504
505-988-4246

Ms. Judith Walker
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
AMA-200, Building 5, Room 206
PO Box 25082
Oklahoma, OK 73125

June 9, 2023

1st Response to Request for Input re. CACH ATMP
Statement of Disagreement - Submitted by Email

Dear Ms. Walker:

This is my first response to your request for comments on the FAA's draft air tour management plan (ATMP) for Canyon de Chelly National Monument (CACH).

I find your request for comment somewhat confusing. I am not sure what you are asking me to respond to: the general position the FAA has adopted towards air tours over Canyon de Chelly; or the specifics of the ATMP, itself; or a Section 106 draft finding; or the dimensions of the proposed APE. So, I'll start at the top and analyze the entirety of FAA's proposed "undertaking." Please be more specific in the future.

I regret to say that I am shocked over the whole of the FAA's draft ATMP for Canyon de Chelly. The proposal needs to be completely reworked for obvious shortcomings. It is a shame that so much work has produced so little positive results. Clearly, this ATMP is headed for judicial review.

In the first place, the draft is blatantly discriminatory. Unlike Canyon de Chelly, the FAA allows park overflights of Arches, Canyonlands, Natural Bridges, Glen Canyon, and Bryce Canyon, all located in the same Southwest region as CACH. The FAA has even declared the "five favored parks" exempt from environmental assessment under the guise of "categorical exclusion." At least one of these parks allows local air tour operators (ATOs) well over 1,000 flights in total per year under a voluntary agreement. Such precedent notwithstanding, the FAA is now in the process of ruling that all of the handful of flights (only 73 in 2023) Southwest Safaris (SWS) conducts over Canyon de Chelly are unacceptable. Why? What is the difference between the flights? What is the difference between the air tour operators? The FAA's draft ATMP for

CACH does not even provide a hint of justification for banning SWS' flights. Furthermore, it appears that no other version of the FAA's proposal was ever even considered.

What is it about Canyon de Chelly, itself, that makes it so different from all the other parks listed above? The FAA's Office of Environment and Energy never gives an answer. The FAA's undertaking functions as an unprovoked attack on a small air tour business which has done no demonstrated harm. The FAA allows large air tour companies to continue flying their established routes over their respective parks; yet the same kind of flights over the same kind of terrain conducted less frequently are banned for the single-pilot at Canyon de Chelly. The FAA's actions bristle with hostility aimed towards a targeted small business, in blatant defiance of the fair and reasoned treatment prescribed under Section 808 of NPATMA.

I submit that the FAA's draft proposal is openly defiant of the Will of Congress, the intention of which was to reduce the noise level of aircraft over National Parks by reasonable means, not to do so by destroying the air tour industry business by business, one at a time.

Moreover, the FAA has started off with a draft proposal that represents the most extreme form of "remedy" for a "harmful" situation that the FAA cannot even document. The FAA has failed to perform any sound studies whatsoever at CACH to justify the "administrative taking" of operational rights, in open defiance of Section 808 of NPATMA. In its Section 106 nonexistent "finding" to date, the FAA has tried to hide behind NHPA to justify its refusal to perform empirical studies to determine "harm." I allege that the FAA's "undertaking" with respect to the CACH ATMP is clear abuse of administrative process. Determination of need must predate prescription of remedy.

Moving on to ATMP specifics, if you are asking whether I agree with the draft ATMP's exclusion of all air tours over Canyon de Chelly, the answer is obviously, "NO, I do not." Why has the FAA offered no alternative measures of noise mitigation? In a report issued to the United States Court of Appeals for the District of Columbia Circuit, the FAA stated that, "Based on tribal feedback, the agencies have developed alternatives to be considered in an environmental assessment" for CACH. Why were these "alternatives" not presented in the ATMP, or in an accompanying packet, for timely comment? The answer is obvious. There were no alternatives listed in the draft ATMP because no alternative plans are wanted by environmentalists, who now control the FAA. Environmental arguments have been "perfected" since the original issuance of NPATMA. The real issue today is not aircraft noise; but rather the mere presence of aircraft in the airspace over a Park. The FAA is trying to use CACH as a platform upon which to build precedent for banning all air tours over all parks, starting with the smallest operator. However, there is no provision under NPATMA for taking such extremist measures until all other remedies have been tried and failed. Therefore, I submit, the FAA's proposal must be withdrawn because it undermines the purpose and methods of NPATMA. The need for the draconian "remedies" of the draft ATMP has never been demonstrated.

If you are asking whether I agree that the Area of Potential Effect (APE) should include all of Canyon de Chelly, the answer, again, is "No, it should not." There are three areas that should be excluded from the APE. The first is the southern branch of Canyon de Chelly, beginning at Spider Rock and extending southeast, known as Monument Canyon. No persons live in that

portion of the National Monument; the draft proposal lists no historic properties in that area; and no roads access the gorge. Few people ever visit Monument Canyon, as there is no easy access, so overflights obviously have little or no impact on nonexistent persons and property there. The second APE that should be excluded includes the upper reaches of Canyon de Chelly. No one lives there, either; I never see any foot or horseback travel in the upper canyon; and there are no publicly declared sacred landmarks east of Spider Rock up to and encompassing Whiskey/Wheatfields Creeks. The third area of exclusion should be Canyon del Muerto. That canyon has a major highway paralleling it on the north side; harbors numerous noise-centered overlooks for cars, busses, and motorcycles; advertises commercial tour vehicles accessing the canyon all day long; and the draft ATMP lists no historic properties in that canyon. Aircraft noise and visual impact will have no possible adverse effect on this northern portion of the National Monument. Including all three of the itemized locations in the APE will accomplish no beneficial protection for the National Monument, as SWS's occasional overflights are already having no demonstrable adverse impact there, or anywhere else for that matter.

If you are asking whether Southwest Safaris' air tours have ever had, or might have in the future, an adverse impact on the five historic properties you listed in your draft ATMP, the answer, yet again, is also in the negative. SWS's flights will have "No Adverse Effects." The properties have never been affected in any way by SWS' overflights. Southwest Safaris makes a big effort to avoid all of the listed properties. When SWS flies abreast of the properties, our aircraft remain well outside the rim of the canyon in the vicinity of these locations, so neither aircraft noise nor physical presence of aircraft can be considered issues of valid complaint. Moreover, as I have reported above, all of the properties are visited constantly during daylight hours by noisy, 4- and 6-wheel-drive, commercial, ground vehicles carrying tourists, which trucks make many times the noise and have many times the visual impact than that of a small, lone, single-engine plane descending in low power setting 1000 feet above the surrounding landscape.

The sacredness of the historic sites listed by the FAA in its draft ATMP seems to be a relative concept, applying to the sky but not to the ground, applying to one group of businesses but not another. The cliff dwellings in the walls of Canyon de Chelly are truly historic but, with respect to each of SWS's airplanes, the aircraft propeller creates no vibrations nor does its engine create any noise that can be perceived over the roar of the ground tour vehicles. Again and again, I have asked local tour guides if they hear tour aircraft in the vicinity of the canyons, and the answer is always, "No;" but they invariably add, "The sight of a plane would be very pretty silhouetted against a turquoise sky," or something similar and equally receptive to the concept of ATOs overflying the National Monument. The undisputed fact is, no one in Canyon de Chelly has ever had any sound or visual awareness of Southwest Safaris', fixed-wing, aerial presence until the advent of the ATMP staging process of recent weeks. Local tour guides welcome the arrival of Southwest Safaris clients, have no objection to the "invisible" flights over the canyon, and, in fact, want to see SWS' air tours increase, because the flights economically benefit the local Navajo community.

If you intend to ask at a later date whether prohibiting all overflights of CACH will prevent substantial damage to persons and property on the ground, referring to Section 106 of NHPA, then my answer will be, "The FAA's finding of 'no adverse effect' in support of revocation of SWS' operating rights," is both senseless and outside the law." I will demonstrate the logical

absurdity of the FAA's inevitable future finding under NHPA in a forthcoming letter. However, what particularly galls me in the present instance is the fact that the FAA's Office of Environment and Energy has issued a public notice of "intent to act" (by issuing a draft ATMP for CACH) without actually issuing a formal "finding" under Section 106 of NHPA. A "finding" of "no adverse effect" from banning Southwest Safaris' overflights of CACH is never openly stated in the FAA's June 2, 2023 announcement, nor is there any justification in the draft ATMP for the FAA's "undertaking." Under Section 800.5(c), NHPA says:

If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in 800.11(e). The [consulting parties] shall have 30 days from receipt to review the finding.

Southwest Safaris alleges that the FAA has artfully concealed its implied "finding of no adverse effect" in order to discourage response to a contentious rational, and that the FAA has thereby failed to comply not only with the substantive but also with the procedural requirements of NHPA. This "failure to comply" disqualifies the FAA's "undertaking" from present consideration.

If you are asking Southwest Safaris to disprove its guilt, that is, prove that its overflights do no harm to the natural environment, to persons, or to historic properties, then I will say that you are asking a defendant to disprove a negative. You are, in effect, asserting that, in the eyes of the FAA, an ATO is guilty until proven innocent. That may be the way environmentalists think today, but it is not the way the American system of justice works. The FAA's Office of Environment and Energy knows full well that it is impossible to disprove a negative. The convicting logic of the draft proposal is unconstitutional at its core. Southwest Safaris is innocent until proven guilty by the FAA. The FAA has presented no evidence to substantiate any of its implied environmental accusations. Due process requires that the FAA give specific documentation of complaints of fixed-wing aircraft noise and/or presence (dates, times, type of aircraft, and methods of measurement) so that defense in court is possible for Southwest Safaris. I submit that the FAA can provide no such convicting evidence because, for the last 49 years that Southwest Safaris has been conducting these air tours over Canyon de Chelly, there has never been a single complaint about the way SWS specifically flies. The FAA has no witnesses and therefore no case with which to attack Southwest Safaris. The agency is relying on an artfully-contrived loophole in Section 106 of NHPA to say that it does not need to present any such evidence, that accusations alone, based on "feelings," are sufficient. I will destroy this line of argument in the above-mentioned letter of rebuttal, which will soon enough be forthcoming to your office.

In coming weeks, I will write in greater detail about many of the above objections (in addition to the above-mentioned letter of rebuttal). For now, I will conclude by saying that there is no demonstrated reason to deny Southwest Safaris the right to conduct scenic flights in a more-or-less straight line over Canyon de Chelly. Many of our flights over the canyon are for transportation purposes enroute to the Grand Canyon, Monument Valley, and Lake Powell. Other flights down the canyon are for the purpose of landing at Chinle, AZ. These flights will continue regardless of the ATMP. In any case, the local guides and hotels in Chinle make a lot

of money off Southwest Safaris' air/land adventure tours. During COVID, Southwest Safaris provided essential air service to the Navajo Nation when few others would. Why kill the goose that lays the golden egg? The FAA, NPS, and Navajo Nation have a strange way of saying "thank you."

The purpose of NPATMA was to reduce unnecessary noise in the skies over National Parks, not to eliminate air tour operators altogether. Congress was very specific about this. The FAA and the NPS (the Agencies) have flagrantly overlooked the goal of amelioration in pursuit, it appears, of a dark political objective they could not achieve by other means. The proof is the fact that the Agencies have not even considered doing sound studies in the Park Service Unit, nor have they come up with any alternative plans for reducing alleged noise that they can evidence, nor have the Agencies initiated a process of pre-judicial review to ward off needless lawsuits from an extreme and unwarranted "taking" contrary to the Will of Congress. It is the Agencies' reasoning that "will not fly." I allege that the FAA and NPS are simply fixated on putting one specific air tour operator out of business in pursuit of administrative efficiency. Storm clouds lie on the horizon.

As part of the Agencies' responsibility under NHPA to proactively consult with parties of interest, which is a 2-way process of communication, I request that the FAA, as lead agency, substantively respond in writing, within 30 days, to each of the objections I have raised. Silence will be interpreted to mean that the Agencies concur with my arguments.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink that reads "Bruce Adams". The script is cursive and fluid, with the first name "Bruce" and last name "Adams" clearly legible.

Bruce Adams



Air Grand Canyon

P.O. Box 3038
Grand Canyon, AZ 86023

June 15, 2023

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Submitted to: Judith Walker and ATMP Team via email

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Dear Ms. Walker:

Although Air Grand Canyon has not been consulted yet for the Canyon De Chelly National Monument proposed ATMP, AGC would like to make some comments regarding the proposal to eliminate all air tours over this National Monument.

AGC has only 9 Interim Operating Authority (IOA) overflights that are allotted on an annual basis. During the period of 2017-2019 AGC did not conduct any air tours. In previous years we have had clients that specifically requested to overfly the park departing from Grand Canyon National Park Airport or Page Airport. Markets trend differently over time between various National Parks and Monuments, and it is only a matter of time before we will be requested to have an air tour experience over this Monument. Passengers who have disabilities are also afforded the opportunity to view these amazing sites by air when often they are unable to have a scenic view from the ground.

The process leading to the development of an ATMP at National Parks has been deeply flawed and does not properly consider the air tour operators nor the general public. This proposal denies existing and future opportunities to experience this National Monument from the air. Our request is that the number of overflights allowed remain the same or even increase, not a decrease that effectively eliminates the opportunity for Canyon de Chelly visitors to experience the park from the air.

We request the existing overflight altitude remain at 1,000' AGL. Flying over this Monument at an altitude of over 5,000' AGL greatly diminishes the experience of a scenic air tour over Canyon de Chelly and makes the scenic points of view no longer visible and valuable to the experience.



Air Grand Canyon

P.O. Box 3038
Grand Canyon, AZ 86023

There has not been a study conducted about how AGC's 9 maximum overflights annually could negatively affect any of the resources. If there has been, it has not been published for operators to mitigate any effects and the public to review.

If demand picks up as customers and market trends shift AGC does not desire to be treated as a "new entrant" to apply for air tour allocations since it already has 9 allowed overflights.

Thank you for your consideration as an ATMP Team in allowing AGC and the public's ability to keep its existing overflights which cause zero known negative effects to the Monument and its resources.

Sincerely,

Jake Tomlin
General Manager
Air Grand Canyon



June 15, 2023

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Submitted to: Judith Walker and ATMP Team via email

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Dear Ms. Walker:

This letter is in response to the notification I received on June 2nd about the intent of the ATMP Team to eliminate all air tours from the Canyon de Chelly National Monument. Our company opposes eliminating 100% of the air tours at this National Monument.

Grand Canyon Airlines has been conducting aerial sightseeing flights since 1927 to millions of visitors to the National Parks and Monuments. Over the nearly 100 years of service to National Park visitors, we have experienced many ups and downs, but one thing remains constant, visitors to the National Parks demand to experience the Parks in a way that cannot be duplicated. Grand Canyon Airlines passengers are multi-generational because experiencing the National Parks from the air leaves a lasting impression that people cherish for their entire lives. The desire to experience the National Parks from the air is undeniable.

The process leading to the development of an ATMP at National Parks has been deeply flawed and does not properly consider the air tour operators nor the general public. This proposal denies existing and future opportunities to experience this National Monument from the air. Our request is that the number of overflights allowed remain the same or even increase, not a decrease that effectively eliminates the opportunity for Canyon de Chelly visitors to experience the park from the air.

GCA has only 5 Interim Operating Authority (IOA) overflights that are allotted on an annual basis. During the period of 2017-2019 GCA did not conduct any of these flights because our customers did not make any of these requests during that timeframe. In previous years we have had clients that specifically requested to overfly the park departing from Grand Canyon National Park Airport or Page Airport. Markets trend differently over time between various National Parks and Monuments, and it is only a matter of time before we will be requested to have an air tour experience over this Monument. Passengers who have disabilities are also



afforded the opportunity to view these amazing sites by air when often they are unable to have a scenic view from the ground.

We request the existing overflight altitude remain at 1,000' AGL. Flying over this Monument at an altitude of over 5,000' AGL greatly diminishes the experience of a scenic air tour over Canyon de Chelly and makes the scenic points of view no longer visible and valuable to the experience.

There has not been a study conducted about how GCA's 5 maximum overflights annually could negatively affect any of the resources. If there has been, it has not been published for operators to mitigate any effects and the public to review.

Was there any consideration given to allowing operators with quiet technology to keep their overflights or increase them? GCA is 100% outfitted with quiet technology.

If demand picks up as customers and market trends shift GCA does not desire to be treated as a "new entrant" to apply for air tour allocations since it already has 5 allowed overflights.

Thank you for your consideration as an ATMP Team in allowing GCA and the public's ability to keep its existing overflights which cause zero known negative effects to the Monument and its resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake Tomlin", with a stylized flourish extending to the right.

Jake Tomlin
President
Grand Canyon Scenic Airlines

SOUTHWEST SAFARIS

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Ms. Judith Walker
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June 12, 2023

CACH ATMP - 2nd Response
Statement of Objection - Submitted by Email

Dear Ms. Walker:

This my second response to your “request for comments” on a draft Air Tour Management Plan (ATMP) for Canyon de Chelly (CACH, or “the Canyon”). The FAA’s proposed ATMP (the undertaking) would disallow all air tours over the Canyon. I object to the content of and instructions included with the form the FAA used to present this radical undertaking. I request that the solicitation for comments on the draft ATMP be withdrawn at this time, until the deficiencies of the invitation to comment can be corrected.

Section 800.3(a) of the National Historic Protection Act (NHPA) talks about the steps that an agency shall take to initiate a Section 106 process. Of primary importance, an agency official must decide “whether [the proposed undertaking] is a type of activity that has the potential to cause effects on historic properties.” The FAA has not yet publicly made any deliberated decision for CACH, nor has it put any related announcement out for public review.

However, the FAA has inserted a section, “Summary of ATMP Elements,” into the initial wording of the ATMP initiative which will be highly prejudicial against air tour operators (ATOs) in the final ATMP ruling. The Summary section implicitly embodies carefully-cloaked “findings” that erroneously assume the above decision was made. By bold announcement, the FAA says that no air tours will be allowed over the Park. Under Section 106 of NHPA, this infers (1) that a “finding” of “no adverse effects” has been made; (2) that the “finding” is in the interest of the public good; and (3) that this “finding” of “no adverse effect” has been preemptively approved. Without this approval, there is no path the FAA could have taken to justify including its Summary mandate in the solicitation for comment. In other words, the stated determination (that the FAA can/will ban all flights over CACH) appears to be empowered by a researched assessment (that the lack of flights over CACH will not have any adverse effect on people and property on the ground).

I argue that neither the assertion nor the assessment is true and that there was no public process used to arrive at either stipulation. In fact, these are the most contentious issues of the entire ATMP process; neither the assertion nor the assessment have been accepted by ATOs. The assumptions are simply unilateral edicts issued by the FAA without any consultation with ATOs whatsoever.

So, the FAA's request for directed comments on the draft ATMP is not actually a request for general review; rather, it is controlled input process which only allows discussion of the lesser issues (EPA and historic sites) but not of the greater determination (ATO rights). The solicitation has the appearance of duplicity. It constitutes an offer to negotiate that was never genuine and which was presented under false pretense of being a good-faith effort to arrive at a reasonable resolution of sound mitigation methods. In fact, the draft ATMP for CACH allows for no compromise at all re. the FAA's determination and represents a failed outreach to ATOs.

Specifically, the draft ATMP proposal "jumps the gun" and arrives at a conclusion (deprivation of ATO rights) without even mentioning any of the premises of the FAA's argument ("findings" supporting need for action). By devious means of art, objections to the proposed ATMP's prime "determination" are artfully and categorically excluded from documentation and discussion.

The FAA's cover letter and draft ATMP ask merely for comments on superficial "findings" having only to do with the Area of Potential Effects and a listing of proposed historic properties. The FAA gives ATOs no opportunity to critique the background assumptions that got the undertaking to this point. I submit that this is not an accidental error of omission.

This breach of due process forces ATOs who wish to reply to the draft ATMP to do mental gymnastics. In order to challenge the FAA's invisible "finding" of "no adverse effect," the ATO has first to attack the Summary determination involving deprivation of rights, which he is not given the opportunity to do. Considered the other way around, air tour operators (ATOs) are implicitly asked to challenge the determination which deprives them of their rights in order to attack an inaccessible finding of "no adverse effect." Either way, what the FAA is asking of ATOs is unfair, because both the direct object of and source justification for their complaint are out of reach. One cannot criticize a conclusion if he is denied access to the premises. The logical dilemma makes it difficult or impossible for ATOs to meaningfully critique the ATMP, to which my first letter of response testifies.

The FAA has taken the primary issue, the hidden ultimatum depriving ATOs of their rights, off the table of discussion. In addition, the FAA never tells the recipient of the solicitation what type of documents will follow, so the reader does not know if he will get another opportunity to analyze the undertaking. The ATO does not know specifically when, how, or where to direct his objections to the ATMP initiative. The result is confusion of issues and obstruction of argument. I believe this was part of the intended outcome of the deliberative process, giving the FAA the upper hand. The FAA's request for "Continuing Consultation under Section 106 of NHPA," as written, effectively makes the exercise of "continuing consultation" impossible, drawing it to a premature close contrary to the intent of NHPA.


Moreover, including the Summary section in the draft ATMP implies a “finding” that the FAA has no right to make at this point. The imbedded assumption by the FAA of “no adverse effect” by-passes the legislated process for making that finding. Under NHPA, the FAA must first perform at least an environmental assessment before arriving at an environmental conclusion. The FAA has not yet performed due diligence in this regard; thus, there is no factual or circumstantial cause for initiating the FAA’s undertaking in the first place. In short, the FAA has announced a cure for a problem that it has not shown to exist and then the agency has asked those who will be most adversely impacted (ATOs) to concur if they wish to object. The FAA’s concept of due process is flawed from the outset and irreversibly prejudices the public initiative in favor of a predetermined outcome.

I thereby respectfully request that the FAA withdraw its draft ATMP plan for Canyon de Chelly National Monument until such time as the agency can manage to reintroduce the plan in accordance with the Acts (NHPA and NPATMA) under which it was initiated, including sound studies based on reasonable scientific methods. In the meanwhile, to correct the abuse of process, the FAA must: (1) withdraw its current solicitation for comment; (2) issue a corrected invitation to comment; and (3) publicly announce that it has prematurely arrived at a “determination” of operational rights based on a nonexistent “assessment” of consequential effects at the time of original publication of the draft ATMP.

Until I receive a response in writing, I respectfully ask that the 30-day window in which to further respond to the draft ATMP be stayed.

Thank you for your consideration.

Sincerely,


Bruce Adams

SOUTHWEST SAFARIS

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June 30, 2023

CACH ATMP – 3rd Response
Statement of Objection - Submitted by Email

Dear Ms. Walker:

This my third response to your “request for comments” on a draft Air Tour Management Plan (ATMP) for Canyon de Chelly (CACH, or “the Park”). The FAA’s proposed ATMP (the undertaking) would prohibit all air tours from operating over the Park. Southwest Safaris is the only air tour operator that currently flies over Canyon de Chelly, only doing so occasionally.

I am writing to bring attention to the fact the FAA has not complied with Section 808 of the National Parks Air Tour Management Act (NPATMA, or the Act). Apparently, the agency has no intention of doing so. Section 808 requires the FAA, in essence, to conduct sound studies in all units of the National Park Service where it intends to impose ATMPs. In my opinion, the FAA’s failure to comply with Section 808 constitutes the biggest single barrier to implementation of the Act and the creation of an acceptable Air Tour Management Plan (ATMP) for CACH and most other units of the National Park Service (UNPS). The FAA’s seemingly callous disregard for Congressional law is already spawning innumerable legal problems of significant import, upon which I will elaborate. Formal legal challenges to ATMPs will surely rise. All of this is totally unnecessary. However, Southwest Safaris has protested so long and so loudly about the FAA’s breach of duty to comply that it is impossible to assume that the alleged disregard for law was a simple “oversight.”

The complaint at hand is the FAA’s stubborn resistance to acknowledge the authority of Section 808 of NPATMA. This spawned the FAA’s determination not to perform sound studies relating to aircraft noise at Canyon de Chelly and all other units of the National Park Service (NPS). By refusing to conduct sound studies that could be used to determine the legitimacy of aircraft noise complaints in all units of the NPS, I contend, the FAA is knowingly and deliberately abusing the law, violating the Will of Congress, denying Southwest Safaris and all other air tour operators due process, and engaging in misuse of administrative discretion. The FAA has turned what

could have been a simple objective determination of aircraft noise into a nightmarish subjective assessment fraught with political complications that will only get worse with time.

I believe, and will demonstrate, that the FAA is committing gross violations of process as the agency creates Air Tour Management Plans for CACH and most other Park Service Units. First, an error of misapplication of law is everywhere apparent. The principle of primacy of law is being ignored and the principle of regulatory acquiescence to statutes is being discarded. Second, the FAA is disregarding specific instructions by Congress that the FAA not arbitrarily and capriciously dismantle the air tour industry. The facts show that the FAA is obsessed with methodically deconstructing scenic flying operations over all units of the National Parks Service, leading to systemic disablement of a significant sector of commercial air carriers without proven cause. The damage will be irreparable, so it must be stopped immediately. Third, by not allowing sound studies to be presented into evidence, the FAA has obstructed administrative justice and deprived air tour operators (ATOs) of judicial due process. Fourth, by trying to hide behind regulations instead of recognizing the sovereignty of law, and by turning a blind eye to the carnage the FAA has created amongst commercial air carriers, the FAA has exercised abuse of administrative discretion, unjustly causing ATOs many millions of dollars in damages. Congress needs to intervene, if the FAA will not take prompt corrective action, itself.

I will substantiate each one of these allegations, stating at the outset that the issues go way beyond the walls of Canyon de Chelly. Other arguments, which might at first appear to be foreign to the Park, will be shown to have direct relevance to the CACH ATMP. On the other hand, each of the principles I enumerate for CACH has immediate and consequential application to ATMPs across the country.

In my past letters, I have accused the FAA (the agency) of knowingly abusing both the National Parks Air Tour Management Act and the National Historic Preservation Act (NHPA) to get around the FAA's duty to perform aircraft sound studies at National Parks and Monuments. Specifically, in my letter to you of June 6, 2023 (re. Bandelier National Monument), I objected that the FAA is trying to use Sec. 106 of NHPA to accomplish an end-run around NPATMA's Section 808 for all units of the National Park Service. The FAA, I alleged, has incorrectly decided that NHPA controls the actual creation of Air Tour Management Plans, not NPATMA. This, despite the fact that Congress wrote NPATMA as agency-directed legislation.

I have argued in great detail that NPATMA is the controlling legal authority for all matters relating to ATMPs, and that the sound studies required by Section 808 of the Act take priority over any regulatory actions and determinations stipulated by NHPA and drafted by the Council on Environmental Quality (CEQ). I gave testimony in my letter of June 6 (re. BAND) that the agency is wrongly insisting that no sound studies are required to get a determination of "adverse effects" emanating from aircraft noise and aircraft presence. Using procedures of investigation and determination stipulated under NHPA, the agency, I asserted, erroneously contends that mere testimonies relating to "feelings" are enough to secure a finding that air tours are having a "significant adverse impact" on persons and historic properties in all units of the National Park Service.

To the contrary, I argue, Section 808 of NPATMA demands the application of “reasonable scientific methods” to all examinations of theoretical aircraft noise, “if, in fact, any excessive noise even exists” (interpreted Congressional wording). ATMPs not based on reasonable scientific inquiry into actual sound effects at each respective unit of the NPS violate the intent and legitimacy of the enabling Act. NPATMA grants no exception for National Parks that have received the status of “categorical exemption” (or, CATEX). CATEX is a regulatory creation, not a statutory reality, and it only applies to exemption from performing an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Neither EAs nor EISs actually require sound studies, though an EIS comes close. So, granting a Park CATEX status does not relieve the FAA from responsibility to perform due diligence regarding sound studies.

Therefore, one must ask whether any ATMPs to date have power of law. It is not clear that ATOs are compelled by an unactualized Act to obey ATMPs, at this point in time. The Act, I maintain, only becomes authoritative for ATOs, and ATMPs only have legal effect, after the FAA complies with Section 808, thus fulfilling Congressional directive and completing the activation of Statute.

Legal interpretation follows process, for better or worse. Being sensitive to its delicate legal position, the FAA has become noticeably hostile to “pushback” from the air tour industry. Deliberately misinterpreting NHPA, the FAA has developed a prosecutorial mindset towards ATOs, based on the unproven accusation, in a worst-case scenario, that ATOs are profiting from “environmental injustice,” i.e., deriving “unconscionable” revenue from ruining the peace and privacy of a National Park experience while providing no commensurate benefit to the public. I have alleged that the FAA is treating air tour operators as being guilty until proven innocent. I argue that this attitude is unconstitutional, because it is impossible to disprove a negative premise and because the assumption of guilt denies ATOs administrative and judicial due process by obstructing the evidentiary process. The problems the FAA is creating for itself just get worse and worse. This is particularly true of the ATMP for CACH (and BAND), where the FAA intends to ban air tours entirely.

No body of evidence would ever be sufficient to prove that hypothetical adverse effects will not be produced by aircraft noise that has never been measured at CACH. However, one can demonstrate, by use of “reasonable scientific methods,” that no adverse effects actually emanate from activities that an ATO is provably performing. By denying any reference to sound studies ... because the FAA will not produce any analysis of aircraft noise ... I allege that the FAA has deliberately deprived ATOs in general, and Southwest Safaris in specific at CACH (and BAND), of two essential judicial opportunities: (1) the ability to disprove a negative assumption (e.g., asking Southwest Safaris to prove that it is not continuing to engage in commercial abuse of the environment); and (2) the ability to provide a positive defense (e.g., asking SWS to prove that its sound emissions do not exceed a reasonable level). NPATMA states that an ATOs has the right to submit an ATMP to the courts for judicial review, but the FAA makes it impossible for Southwest Safaris to argue before a judge for lack of objective sound measurements conducted by the government (so that the studies have authority). The FAA has thus deprived Southwest Safaris, in the case of the CACH ATMP (also BAND), of administrative and judicial rights, by denying all ATOs any power of argument based on reality in the field (i.e., sound

measurements). The FAA's environmental "determinations" are, therefore, a fraud on the public as well as the courts.

I believe that the FAA and the NPS know full well that they are obligated by reason and by NPATMA to conduct sound studies at CACH (and all other units of the NPS) before the agencies arrive at any findings, or issue any determinations, regarding ATMPs. Neither agency, however, wants to invest the time, money, or effort to perform studies based on "reasonable scientific methods." The proof is the fact that for twenty years after the passage of NPATMA no progress was made to implement ATMPs, because of a contrived impasse between the FAA and NPS over sound studies. In the meanwhile, unable to face actual law as written in NPATMA, the two agencies conveniently invented the supposed logic that no sound studies are necessarily required under NHPA. In this manner, the FAA, serving as the lead agency, has not only altered the priority of law (putting NHPA above NPAMA), but reversed the effect of law, itself (denying a defendant the right of self-defense by withholding scientific evidence otherwise required by statute). The FAA has knowingly made it nearly impossible for Southwest Safaris at CACH (also BAND) in particular, and ATOs in general, to protect their right to fly over units of the National Park Service, because ATOs cannot mount a specific defense against "general environmental crimes" they are not committing. The agencies have created an unamerican system of justice where, under NHPA, accusations, themselves, are presented as convicting evidence.

The FAA's stubborn insistence on NHPA being the controlling legal ATMP authority for all units of the NPS, including CACH, had another darker purpose, however. The implementation impasse referenced above was manipulated, I allege, being allowed to become so serious that the US Court of Appeals for the District of Columbia Circuit, Washington, DC was forced to rule "against" the FAA and NPS combined, mandating the agencies to implement ATMPs immediately, regardless of administrative difficulties but ensuing violations of due process. This ploy was artfully used by the FAA and NPS to get the proverbial monkey off the agencies' backs. The Court was thus used by the agencies to "force" them to do what they had in mind all along.

Whether or not the FAA agrees with my accusation, the unintended consequence of the Court's decision has been to make a difficult situation even worse. The irony is that the Court has compelled the agencies to do what the agencies, by themselves, wanted but dared not pursue. The Court has, in essence, required the agencies to deny ATOs due evidentiary process (by not allowing time for production of sound studies) in order to rectify a failure to act in a timely manner on ATMPs from the outset. The court's cure is worse than the original disease. The end is worse than the beginning. Either way, however, with or without the Court's decision, the agencies would win and ATOs lose. If the court did not rule, the agencies would never have acted. If the courts did rule, then the agencies could act with impunity. The agencies would get their way, regardless.

The FAA has allowed the court to unwittingly turn an administrative impasse into a judicial roadblock, because of legal challenges yet unresolved. In the meantime, ATOs cannot make any plans for the future and perish in a three-way crossfire between the FAA, NPS, and the Court. These issues are still far from settled.

Not so in the minds of the FAA, however. By prematurely finalizing ATMPs, i.e., washing its hands of the whole affair, the FAA is forcing ATOs all over the country to overwhelm the courts . . . to the advantage of the FAA. This time, the FAA has artfully connived to move the monkey away from the court (making the court the agencies' friend), onto the backs of ATOs, forcing ATOs to go to court themselves for legal remedy of administrative abuse. By so doing, the FAA, has conveniently solved "the ATO problem" by callously finalizing ATMPs at no immediate cost to the agencies, while ignoring the cost to the Constitution. But I get ahead of myself.

I argue that the FAA is trying to use the National Environmental Policy Act (NEPA) to circumvent the statutory requirements for sound studies found in NPATMA. The FAA has turned to the little used and all-but-forgotten administrative "creation" of "categorical exemption" for certain favored National Parks in Utah to exclude said major Parks from the need for environmental assessment (including EIS) and, therefore, sound studies. This has been stealthily done under Title 40, Chapter V, Subchapter A, Parts 1500.4(a); 1500.5(a) and 1501.4. (The FAA has codified its own interpretation of NEPA's Council on Environmental Quality (CEQ) in FAA Order 1050.1F, Chapters 3-6.) The problem is, none of the incorporated citations, both those of the EPA and FAA, are relevant, because in the present instance the FAA is engaging in reconstruction of law. The FAA is picking and choosing which laws it will conform to, while discarding the rest, without regard to the purpose and intended effects of Congressional Act (as opposed to administrative policy). Section 808 still stands, because the emphatic Congressional "shall" clause of NPATMA preempts discretionary EPA interpretative regulations re. Section 102 of NEPA, and because NEPA drives the application of NHPA.

Nonetheless, the FAA is undeterred. Having artfully established "creative precedent" for blatantly ignoring and/or breaking the requirement for sound studies mandated under Section 808 of NPATMA, the FAA is now cleverly "reasoning" that sound studies are also not required if all air tours are banned from parks that are not "categorically exempted." The "reasoning" is that if no air tours are allowed, then sound studies are irrelevant and, thus, expendable for the sake of "simplification of process," to use a NEPA term. The FAA is trying to hide behind the EPA's CEQ regulations, which rules control the FAA's implementation of NEPA. But the FAA's efforts are to no avail. Statute takes command over regulations. I therefore disagree with both the FAA and with the EPA. So also does NPATMA, NHPA, NEPA and, surprisingly enough, even the FAA's AEE, in that order. Not only are sound studies required before ATMPs can be drafted, but ATOs must also be allowed to co-exist with National Parks and Monuments . . . which is contrary to the FAA's pending decision at CACH (and BAND).

NPATMA disagrees with the FAA's methods of ATMP enactment. According to NPATMA, Section 808:

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

In brief, I argue that the Act grants no exceptions to the application of due process. Section 808 was designed to protect the rights of air tour operators (ATOs). There is no provision provided

in NPATMA for “agency discretion” or “prioritization of needs, values, and efficiencies” for any specific unit of the National Park Service to justify avoiding sound studies. The Section 808 stipulation is stated as an imperative, incorporating the word “*shall*.” The EPA’s Section 1500 and 1501 simplification loopholes are inapplicable. Again, law controls regulation, not the other way around.

Moreover, under NPATMA rules, sound studies have to be conducted and allowable thresholds have to be agreed upon before any ATMPs can be drafted. Otherwise, “the cart is put before the horse,” meaning that a conclusion regarding the requirement for any particular ATMP will be reached before the research is conducted to determine the respective necessity for flight restrictions in the first place. Thus, the outcomes of the “studies” will be predetermined, in violation of the intent of Section 808. By the FAA’s engaging in such orchestrated activity, I allege, the agency has completely corrupted the intent of NPATMA for the FAA’s own purposes.

NHPA also strenuously disagrees with the FAA’s methods for implementing ATMPs. The very outset of the Statute’s Section 801 declares that NPATMA is the controlling legal authority, a major point that the FAA has also “missed.” In support of this argument, I quote from the language of NHPA, itself (see 36 CFR Part 800, Subpart A, 801.2(a)(4)):

The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the Section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement *and coordinate with other requirements of other statutes as applicable, such as . . . agency-specific legislation.* [Emphasis added.]

NPATMA is agency-specific legislation. NHPA officials are required to “coordinate” with “agency specific legislation,” not the other way around. That makes NPATMA primary statutory law.

I argue that NPATMA controls the rule-making process that creates ATMPs, because: (1) it calls the decision-making process into existence; (2) because NPATMA never cedes specific authority to NHPA or NEPA; and (3) because NPATMA is the most current statute, so its mandates have the most import and relevance. Section 808 of NPATMA, as written, is an iron mandate that must be followed in the case of all ATMPs, the FAA’s interpretation of NHPA and NEPA notwithstanding. No administrative discretion . . . such as a ruling that “purpose and need” for a park take priority over congressionally-directed due process . . . is allowed under NPATMA. Section 808 must be complied with by “operation of law,” to use a phrase from NHPA.

The sound studies required of NPATMA’s Section 808 are not just a means of achieving technically defensible environmental remedies. The studies are mandated in order to give ATOs some small measure of fairness in determining the means, measures, and mandates of ATMPs. Without sound studies, ATOs are deprived of any way to defend their right of operation and to ensure a fair and equitable outcome from the ATMP process. The sound studies are required to ensure that the Will of Congress (to allow ATOs to prove that they do no harm, as Congress suspects is the case) is safeguarded. So, by denying the necessity for sound studies, the FAA has

not only distorted the facts relating to ATMPs, but also denied ATOs due process. Sound studies play a multiple roll in the creation of ATMPs and are part of the essential fabric of NPATMA. Sound studies and ATMPs cannot be separated.

NEPA, too, is adamant in its disagreement with the FAA's implementation of ATMPs. The FAA employs counter-logical use of Sec. 106 of NHPA and 101 of NEPA to ban air tours over Canyon de Chelly, or over any other unit of the National Park Service. In order to arrive at the decision to disregard NPATMA, the FAA first turns to the National Environmental Policy Act. The FAA argues, incorrectly, that the dictates to "preserve important historic, cultural, and natural aspects of our national heritage" (NEPA 101(b)(4)) together justify excluding all overflights of Canyon de Chelly National Monument. Then, using extremist interpretation of NHPA (namely exaggerated claims of environmental injustice, social impact, and historic-property rights violations) the FAA contends that all that is further necessary to ban Park overflights is untested testimony, allegation, conjecture, supposition, hearsay, innuendo, opinion, speculation, and feelings of abuse. In other words, the FAA uses NPATMA to activate NEPA, then NEPA to activate NHPA, and then uses NHPA to negate (exempt itself from) NPATMA. The FAA contrives its grand "criteria of adverse effect" (36 CFR, Part 800.5(a)(1), (2)(v)) to "prove" its finding of harmful impacts without ever having to perform sound studies. In fact, the FAA has "proven" nothing at all. The FAA's strategic tactic is affective only to "confuse the issue" in order to get away with legal slight-of-hand. The FAA adds insult to abuse by then claiming that under NEPA all the FAA is required to perform is a brief Environmental Assessment including a cursory summery of its findings. In brief, the FAA uses NPATMA to justify not performing sound studies required by NPATMA, using NHPA as its authority. The legal shenanigans, once exposed, are quickly found to be contrary to the overriding purpose of NEPA, the basis for all environmental statutes.

The real NEPA now screams to be heard. To quote from the grandfather of all environmental law (modifying language extracted), NEPA Title 1, Sec. 101(a) says:

The Congress, recognizing...new and expanding technological advances, declares that it is the continuing policy of the Federal Government...to use all practicable means and measures, including technical assistance, ...to create and maintain conditions under which man and nature can exist in productive harmony.

I term this "the prime directive" of NEPA. It was precisely the approach to "environmental remedy" used by Congress to draft NPATMA. After numerous public hearings and internal investigations, Congress found no demonstrated reason to exempt ATOs from flying over National Parks and Monuments. Recognizing the politics of the times, Congress simply stated that it wished to identify and ameliorate excess aircraft noise, "if any," (Congressional wording) from said parks. Congress did not desire to arbitrarily put air tour operators out of business (see Congressman Duncan below), but wished, as stated in NEPA and which policy was in effect at the time NPATMA was drafted, "to create and maintain conditions under which man and nature can exist *in productive harmony*" [emphasis added]. This concept has specific application to air tours and "environmental, land-based protectorates" (meaning, units of the National Park Service).

By setting aside this prime directive in its implementation of the CACH ATMP (and also that of BAND), I maintain that the FAA has flagrantly ignored the Will of Congress by first refusing to afford Southwest Safaris statutory due process through sound studies; and then by taking harsh, unjustified measures to adversely affect the operations of that ATO and thereby insure the carrier's demise.

The concept of allowing air tours to operate over units of the National Park Service is buttressed over and over by NEPA. In Title 1, Sec. 101(b)(3), the Statute says that Congress wishes to "attain the widest range of beneficial uses of the environment...without degradation...or other undesirable and unintended consequences." This is the whole purpose of NPATMA and Congressional insistence on conducting sound studies, i.e., to first measure adverse effects, "if any," and then determine that a cure, "if any," (again, Congressional wording) is even necessary, in that order.

Going on, in Title 1, Sec. 101(b)(4), NEPA says that it is the Intent of Congress to "preserve...and maintain, wherever possible, an environment which supports diversity and variety of individual choice." This, once more, speaks to the inclusion of air tours as a viable and eco-sensitive way to view units of the National Park Service.

The concept of allowing air tours over Parks is yet again clarified in NEPA's Paragraph 5 of subsection 101(b), in which Congress states that it wishes to "permit high standards of living and a wide sharing of life's amenities." The FAA's regulations ensure the highest standards of aviation safety and the existence of air tours guarantees a wide sharing of life's enjoyments with long-lasting, positive, environmental effects that outweigh fleeting undocumented impacts.

Moreover, Congress goes on to say in Sec. 102(2)(A and B, combined) that "all agencies of the Federal Government shall utilize a systematic, interdisciplinary approach...in planning...and decision-making along with economic and technical considerations." This "approach" specifically points to Section 808 of NPATMA, requiring sound studies based on "reasonable scientific methods" (referred to by NEPA as the employment of "technical considerations").

NEPA, contrary to the radical determinations of the FAA Office of Environment and Energy, is adamantly in favor of preserving the rights of air tour operators, which is the position of Congress, the FAA and NPS notwithstanding. NEPA is in favor of using science to determine the extent of any alleged but unproven complaints of aircraft noise, and of using a "systematic, interdisciplinary approach" to problem solving, not relying solely on radical findings of two heavily biased agencies (FAA and NPS). NEPA is in favor of conducting detailed economic analysis on the totality of impact of agency undertakings, not just on the most immediate and narrow interpretation of "impact." NEPA wants to encourage technological innovation applied in such a manner as to encourage human interaction with nature, as long as the two (nature and man) can coexist in a "harmonious manner," respectful of the rights of ALL. In other words, NEPA trumpets the rights of ATOs and welcomes their contribution to society, with the provision that the safeguards in NHPA can be insured by application of sound studies required by NPATMA. NEPA stands shoulder to shoulder with air tour operators and with Congress to protest the FAA's self-serving logic to shut down the air tour industry in general, but Southwest Safari in specific at CACH (and BAND).

The FAA is attempting to outright deny Southwest Safaris permission to fly over Canyon de Chelly and Bandelier National Monuments. Soon, other units of the National Park Service will be added to the list. The agency is inexorably moving to deprive Southwest Safaris of fair administrative decision without regards to the intent of NPATMA, NEPA, and NHPA, combined. The FAA, I argue, has demonstrated, specifically in its ATMP initiatives for Canyon de Chelly (and Bandelier National Monument), complete disregard for facts, science, law, and due process.

Furthermore, with regards to Southwest Safaris and CACH (also BAND), the language of NEPA, as quoted above, requires the FAA to engage in serious and comprehensive economic studies of intended and unintended adverse financial impact on the entirety of governmental “undertakings.” A finding of “no adverse effects” must include studies that go way beyond a simplistic determination that denial of all operating rights cannot possibly significantly affect a greater society than those immediately below a certain flightpath. Alas, with regards to the CACH (also BAND) solicitation(s) for comment on economic impact, the agency has again failed to comply with NPATMA, NHPA, and NEPA. and even to heed explicit forward-looking statements by important members of Congress at the time the Act was drafted.

The intent of Congress to encourage air tour operations over National Parks and Monuments is everywhere evident both in NEPA and in Congressional hearings, reinforcing my interpretation of NEPA. In fact, there is an abundance of authoritative Congressional testimony in support of air tours conducted over National Parks and Monuments. On November 17, 1997, in Dixie College, St. George, Utah, the House of Representatives, Subcommittee on National Parks and Public Lands (Committee on Resources joint with the Subcommittee on Aviation, Committee on Transportation and Infrastructure) held a public meeting to discuss the pending regulation of air tours over units of the National Park Service. Congressman John Duncan went on record with a prepared statement, which summed up most of the Congressional testimonies that day. His prepared statement is particularly relevant because, at the time, Rep. Duncan headed the House - Transportation and Infrastructure Committee. On 2/11/1999, Rep. Duncan introduced *H.R. 717 - National Parks Air Tour Management Act of 1999* to the 106th Congress (1999-2000). That bill became the final *National Parks Air Tour Management Act of 2000*.

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

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

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

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

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

number of aircraft, quiet aircraft technology and management of visitor use patterns.

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

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

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

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

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

The Will of Congress at the time of the Act could not have been clearer. The warning was that we can either “work together” constructively to allow air tours over units of the National Park Service (note, CACH and BAND), or pull apart with unfortunate public consequence.

Therefore, I respectfully petition the FAA’s Office of Environment and Energy to halt any further promulgation of the CACH and BAND ATMPs, as well as all other ATMPs, until the courts can rule on: (1) the issue of primacy of law; (2) the power of agency regulation to override Congressional law (e.g., by means of “categorical exemptions”); (3) the FAA’s failure to heed Section 808 of the NPATMA; and (4) the FAA’s failure to conduct comprehensive economic analysis of its “undertakings.” In previous letters, I have petitioned using the same force of argument for the same determinations of law and facts. I further petition the FAA, in keeping with the Will of Congress, to rescind its two draft-ATMPs for CACH and BAND which would disallow all air tour operations over said parks.

Humorously, even the FAA seems to agree that NPATMA is the controlling legal authority when it comes to the creation and management of ATMPs. Many an ATO has argued, unsuccessfully, that ATMPs unjustly put all the “blame” of alleged excessive aircraft noise on the backs of commercial air tour operators. In parks such as CACH and BAND, a single ATO only very occasionally flies over the Park Service Units. To be fair, an extremist might contend, all general aviation flights should be banned from such overflights, not only to actually reduce the totality of noise over Parks and Monuments, but also to achieve consistency in the FAA’s regulations. The FAA rightly is quick to point out, however, that NPATMA only applies to air tours, and thus the agency has no authority to ban all flights over National Parks. In self-serving fashion, the FAA does not see that the same authority of NPATMA mandates sound studies before respective ATMPs can be implemented. If the FAA does not want to pursue shutting down all flights over all National Parks, the FAA must agree that the authority of NPATMA is universal.


In closing, I allege that the above abuses of law and due process have not occurred by accident. It is impossible to conclude that two giant agencies, the FAA and the NPS, have both innocently overlooked all three major Acts of Congress. I allege that there is a conspiracy afoot to dismantle the air tour industry, contrary to the Will of Congress. The modus operandi, as I alluded to before, is the US Court of Appeals for the District of Columbia Circuit, Washington, DC. The Court has given the agencies only two years in which to bring all units of the National Park Service into compliance with the requirement for ATMPs. The agencies have willingly fallen into line, sacrificing the rights of air tour operators for political expediency while fixing the source of blame on the Court. All the while, the agencies have tried to hide behind not only the Court but also EPA and its Council on Environmental Quality. The agencies have deliberately overlooked the requirement of NPATMA to conduct sound studies, because: (1) it is not possible to do so in the time allotted by the Court; and because (2) the sound studies would open the door to errors of interpretation alleged by ATOs, thus giving ATOs a well-justified seat at the ATMP negotiating table. Without sound studies, the agencies realize that ATOs can mount no defense of administrative abuse, so the agencies persist.

The FAA's Office of Environment and Energy is the worst offender. The philosophy of that Office seems to be, "If you want to make an omelet, you have to break a few eggs." The office seems to think that the end (speedy implementation of ATMPs) justifies the means (denying ATOs of due process and defying the Will of Congress). The FAA's "logic" for proceeding with ATMP implementation is all too transparent to the eye and all too tragic for the Constitution.

I therefore ask that the highest offices of the FAA conduct a serious, top-level, review of their administrative philosophies and procedures and put an end to the administrative abuse aimed at air tour operators. I reinforce my original petition to Mr. Lawrence Fields, AFX-1 Executive Director, for reconsideration of the ABQ FSDO's premature decision to modify the Operations Specifications of Southwest Safaris before the FAA can go back to the Court and ask for rulings on the judicial issues I have raised. The FAA has so far refused to comply with Congressional Act, but persists in piecemeal, selective application of NPATMA and other statutes to achieve an outcome clearly contrary to the workings of law and the Will of Congress. My allegations are very serious; please take them to heart. A summary brush-off will not stand. The course of action of the agencies sets a dangerous precedent for the Country. We are still a Nation under Law, but that Constitutional premise is being tested by my appeals. I see storm clouds on the horizon.

Thank you for your kind consideration.

Sincerely,


Bruce Adams

cc: Ms. Polly Trottenberg, Acting FAA Administrator
Mr. Lawrence Fields, AFX-1 Executive Director

From: [Ernie Atencio](#)
To: [Walker, Judith <FAA>](#)
Cc: [ATMPTeam](#); Lyn_Carranza@nps.gov
Subject: RE: Section 106 Continuing Consultation - Air Tours at Canyon de Chelly National Monument - National Parks Conservation Association -Arizona
Date: Monday, July 31, 2023 1:55:53 PM

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Judith and Team,

Apologies for my very late response. This email arrived during a particularly busy time, then I was off on vacation for a while.

We welcome the opportunity to engage in this important conversation, but I was surprised to see that we are an official consulting party for ATMPs at Canyon de Chelly, and I do not find the June 9, 2021 letter you referenced in our files. That said, at this stage NPCA does not have anything to add to historic property identification.

I am curious, however, about a couple of items in Attachment B.

1. Under the first item, is "Anasazi" a preferred term in this context with the Navajo Nation and/or other associated Tribes, rather than Ancestral Puebloan?
2. Also under the first item, I suggest that the last line about "(ending) the American wars with the Navajo" glosses over the much more traumatic reality of that campaign, which included brutal treatment of the Navajo people and led to the tragic Navajo Long Walk still remembered and commemorated today. It's not my place to suggest a different description, but I would urge you to consult with the Navajo Nation about that.

Thank you very much for your correspondence and I will look forward to the next step in the process.

Sincerely,
Ernie Atencio

Ernie Atencio (he/him/él)
Southwest Regional Director | National Parks Conservation Association
505-444-0032 | eatencio@npca.org | npca.org
Preserving Our Past. Protecting Our Future.

From: ATMPTeam <ATMPTeam@dot.gov>
Sent: Monday, June 5, 2023 10:08 AM
To: Ernie Atencio <eatencio@npca.org>
Cc: Pearson, Georgina A <Gina_Pearson@nps.gov>; Lyn_Carranza@nps.gov; Walker, Judith <FAA> <judith.walker@faa.gov>; Papazian, Jennifer (Volpe) <Jennifer.Papazian@dot.gov>; Rimol, Kaitlyn (Volpe) <Kaitlyn.Rimol@dot.gov>; Haas, Shauna (Volpe) <shauna.haas@dot.gov>
Subject: Section 106 Continuing Consultation - Air Tours at Canyon de Chelly National Monument -

National Parks Conservation Association -Arizona

Dear Ernie Atencio:

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are continuing Section 106 consultations with your office for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument. FAA is the lead federal agency for purposes of complying with Section 106 for this undertaking.

We are providing the attached letter to describe the undertaking in accordance with 36 CFR 800.3(a) and present our proposed APE pursuant to 36 CFR 800.4(a)(1). FAA has also conducted preliminary historic property identification in accordance with 36 CFR 800.4 and seeks your assistance in identifying additional historic properties that may be affected by the undertaking.

Please let us know if you have any comments regarding our proposed APE and initial historic property identification efforts.

If you would like any additional information regarding the above, please contact Judith Walker at Judith.Walker@faa.gov or 202-267-4185 and copy the ATMP team at ATMPTeam@dot.gov.

Thank you for your time and consideration.

Best Regards,
Judith Walker

Exhibit 3 – Letter re Historic Property Identification, dated October 26, 2023, and Responses, with the following attachments:

Attachment A. APE Map Including Existing Commercial Air Tour Routes

*Attachment B. List of Parties Invited to Participate in Consultation for the Undertaking
(23 tribes; 5 opted out of further Section 106 consultation for the undertaking)*

Attachment C. List of Historic Properties in the APE and Description of Historic Characteristics

- 10/26/23 to Navajo Nation THPO
- 10/26/23 to Apache County (Cities of Chinle and Del Muerto)
- 10/26/23 to National Parks Conservation Association
- 10/26/23 to National Trust for Historic Preservation
- 10/26/23 to Southwest Safaris
- 10/26/23 to Grand Canyon Airlines
- 11/14/23 Response from Southwest Safaris

**Exhibit 3 – Letter re Historic Property Identification,
dated October 26, 2023, and Responses**



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Richard Begay
Tribal Historic Preservation Officer
Navajo Nation
PO Box 4950
Window Rock, AZ 86515

Dear Tribal Historic Preservation Officer Begay:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated May 21, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

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. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith Walker', with a stylized flourish extending to the right.

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

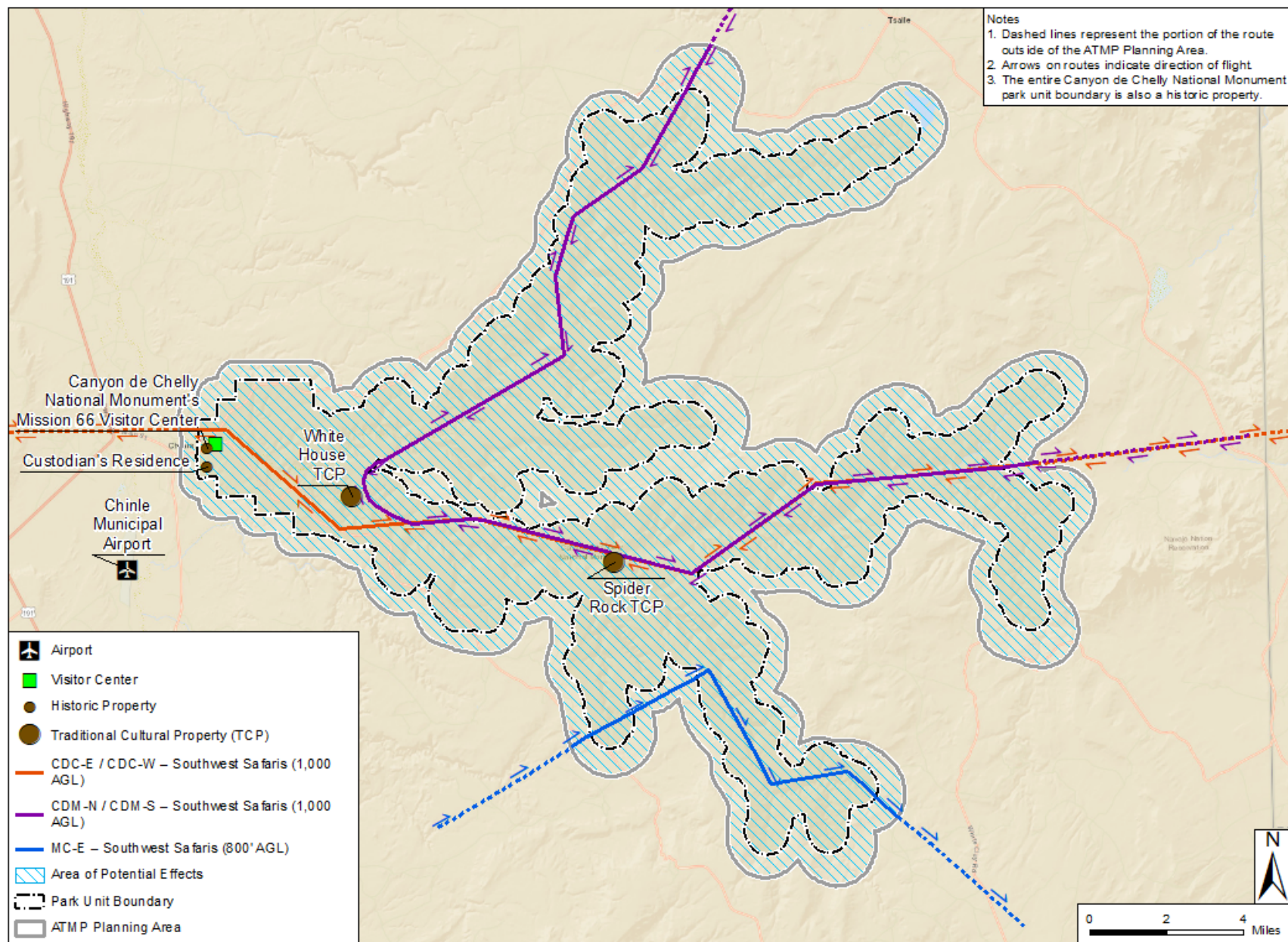
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Shanna Pearce
Planning and Zoning Assistant
Apache County (Cities of Chinle and Del Muerto)
75 West Cleveland
St. Johns, AZ 85936

Dear Ms. Pearce:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated August 6, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

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. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

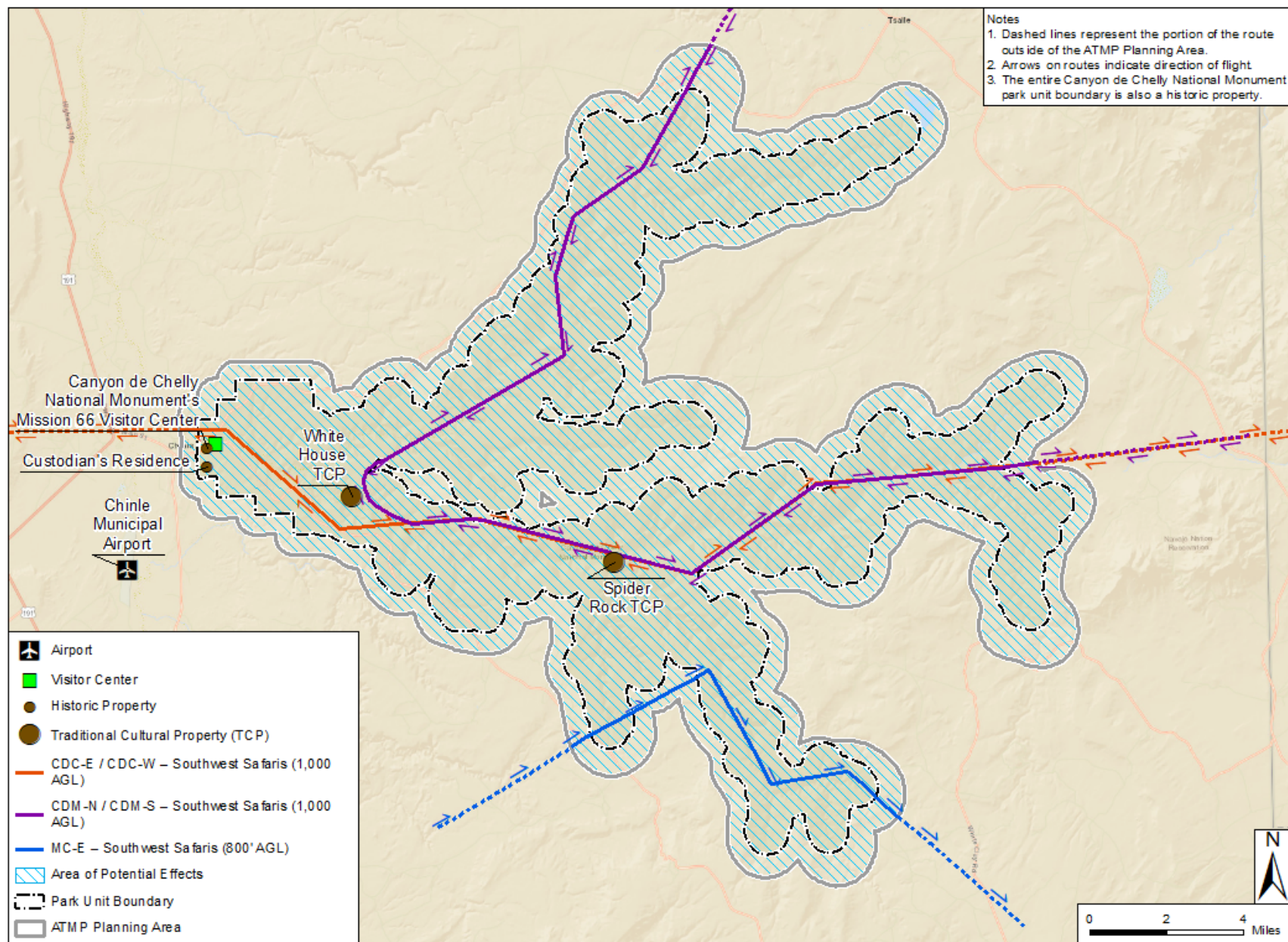
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Ernie Atencio
Southwest Regional Director
National Parks Conservation Association – Arizona
PO Box 2896
Santa Fe, NM 87504

Dear Ernie Atencio:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 9, 2021. In a follow-up letter dated June 5, 2023, we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

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. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
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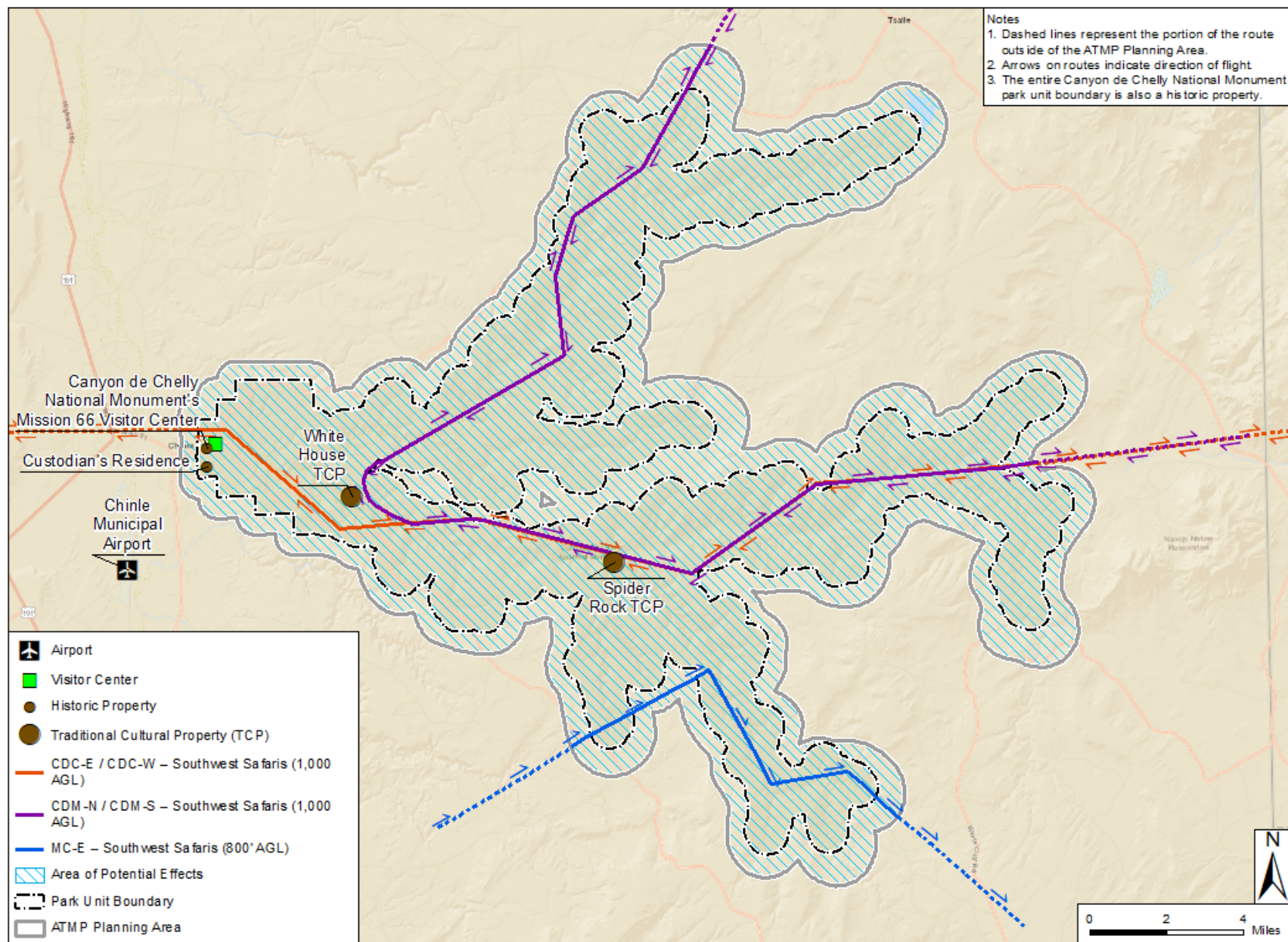
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

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Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
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²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
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TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
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Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Betsy Merritt
Deputy General Counsel
National Trust for Historic Preservation
2600 Virginia Ave. NW, Ste 1100
Washington DC 20037

Dear Betsy Merritt:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 2, 2023. In the same letter we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

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. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

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Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

CC: Elaine Chang, Legal Coordinator

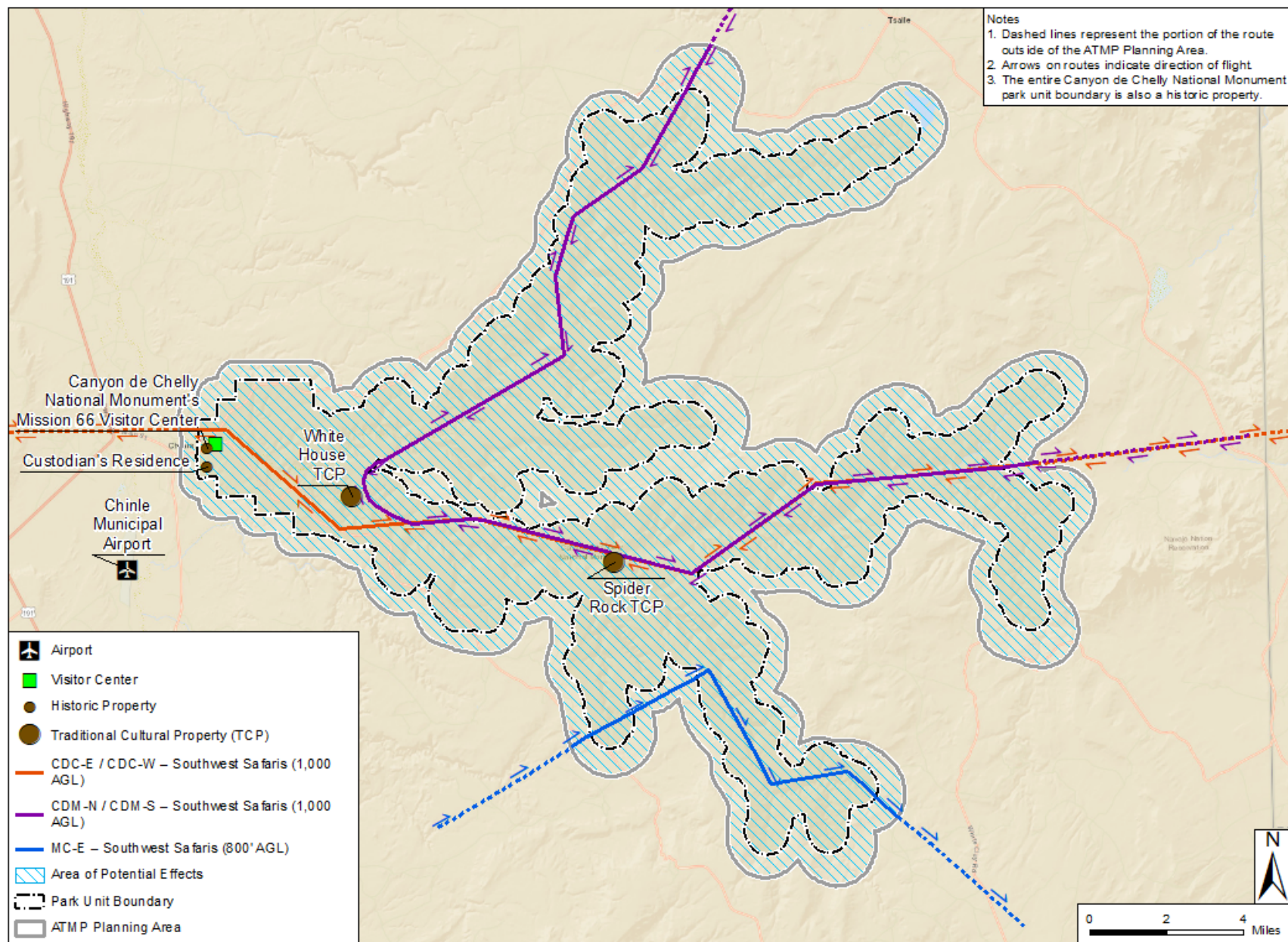
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
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ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Bruce M. Adams
Southwest Safaris
712 Felipe Place
Santa Fe, NM 87505

Dear Mr. Adams:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 2, 2023. In the same letter we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

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. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

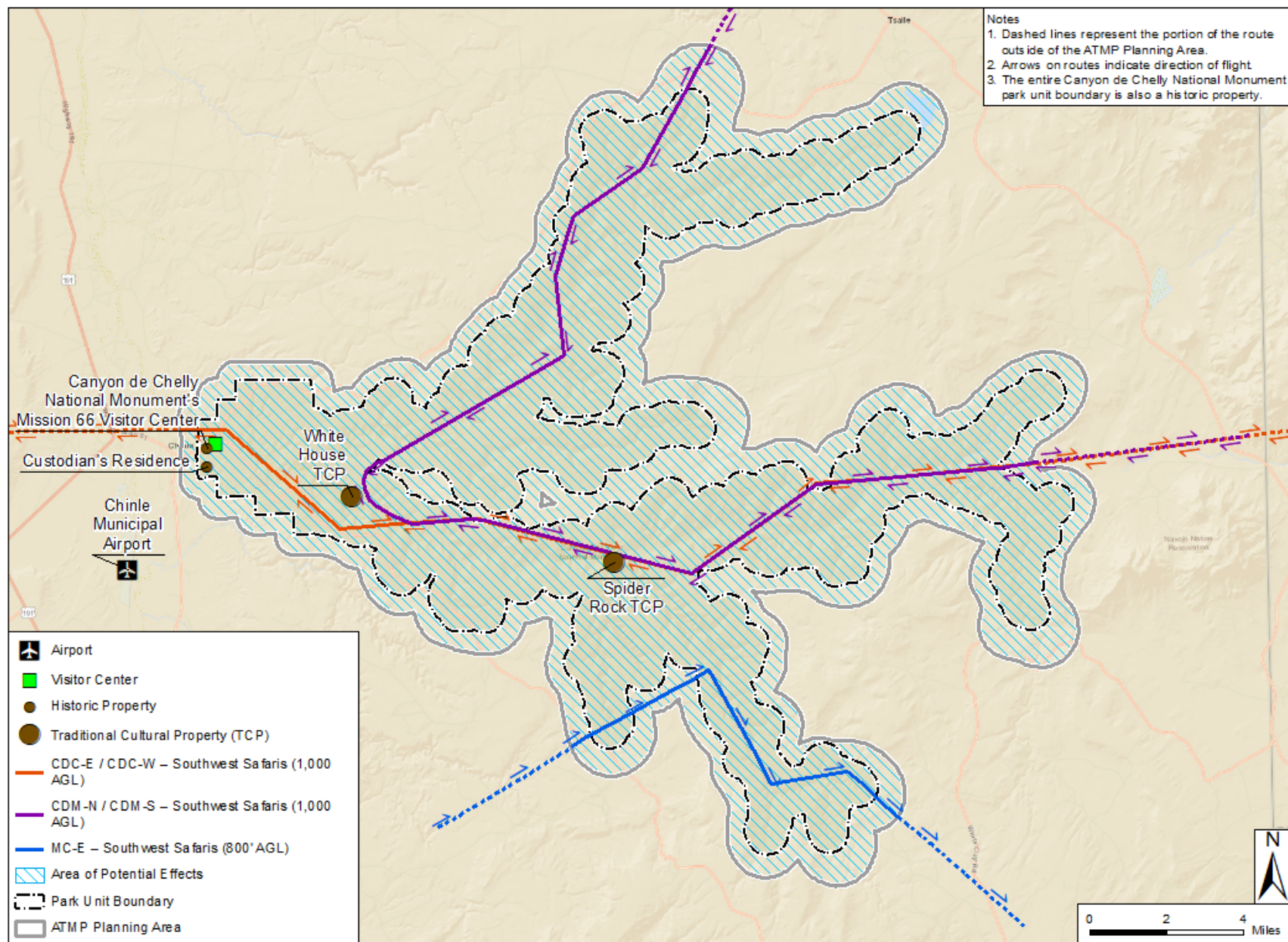
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Jake Tomlin
Grand Canyon Airlines
1265 Airport Road
Boulder City, NV 89005

Dear Mr. Tomlin:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 2, 2023. In the same letter we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

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. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

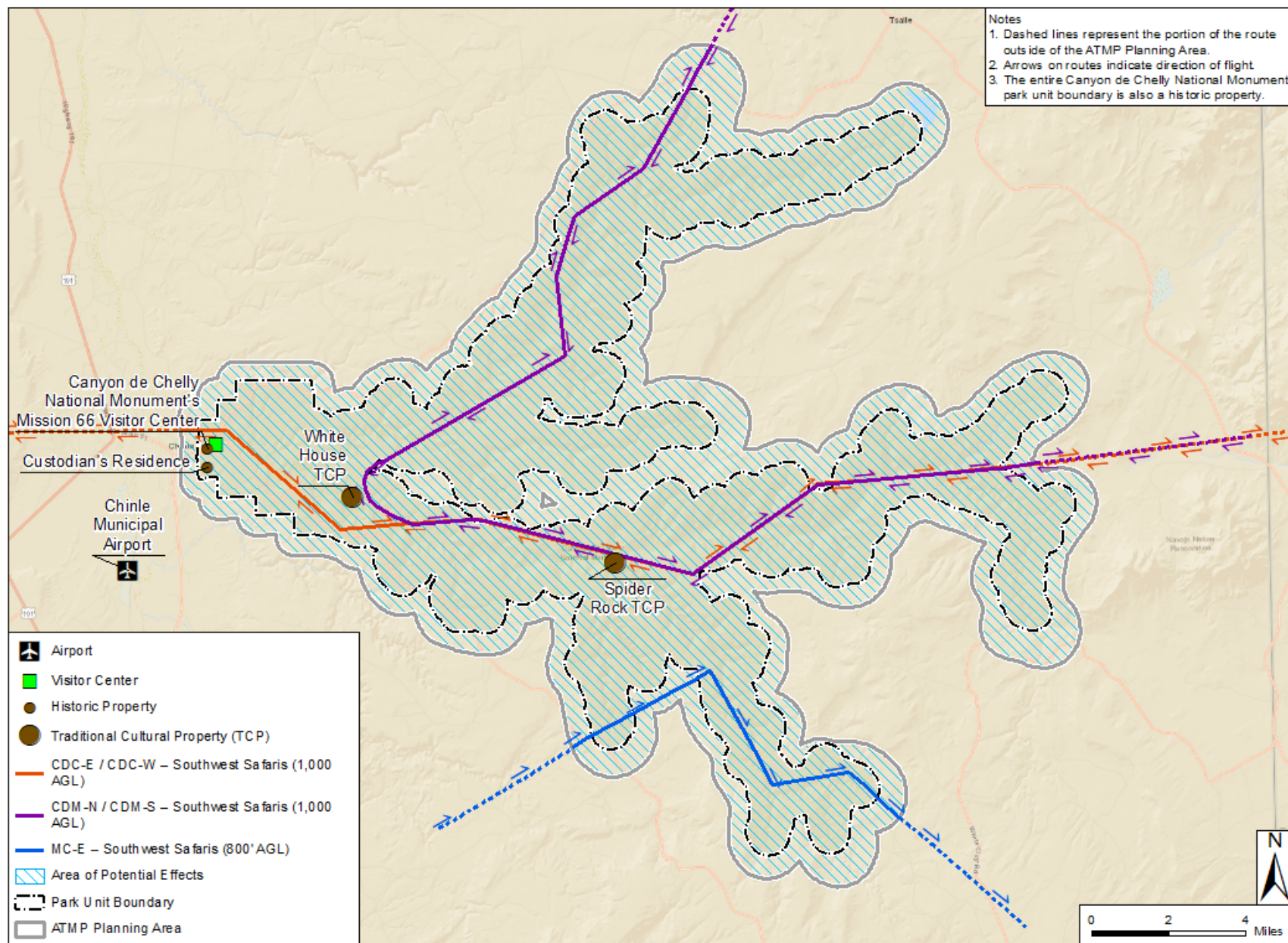
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
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TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

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Washington, DC

November 14, 2023

CACH ATMP - 4th Response
Re. Historic Properties & Sec. 106

Dear Ms. Walker:

This my fourth response to your “request for comments” on a draft Air Tour Management Plan (ATMP) for Canyon de Chelly (CACH, or “the Park”). I am writing in response to your letter of October 26, 2023. In that transmittal, you asked for comments from Southwest Safaris (SWS) relating to the selection of historic sites under Section 106 and the Area of Potential Effects (APE) for the proposed ATMP for Canyon de Chelly National Monument.

First, I will comment on the specific sites that the FAA has added to the list of Traditional Cultural Properties (TCPs) the FAA would like to include in the Area of Potential Effect of the CACH ATMP. I will then transition to a general discussion of the flaws in the Section 106 process that you and I have addressed piecemeal on so many occasions, hoping to clarify under permission of continuing consultation my overall objections to the way the FAA is managing regulation under the National Historic Preservation Act (NHPA). Our differences of opinion on process implementation are significant.

I disagree with the FAA’s selection of historic sites for inclusion in the APE at CACH. Title 36, Part 60 gives the regulations relating to the eligibility of properties to the National Register of Historic Places (National Register, or NR). §60.4 specifies the “Criteria for Evaluation” to be eligible for listing on the National Register. Southwest Safaris argues that, according to 36 CFR §60.4, none (with the exception of White House Ruin) of the Traditional Cultural Properties listed in Attachment C of your letter of Oct. 26 qualify for listing on the NR as historic properties (HPs), based on the information the FAA has presented.

In your letter of October 26, the FAA states:

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight.

According to §60.4, “setting” and “feeling” alone are not enough to make a property eligible for listing on the NR. The NR regulation concerning qualification of properties reads as follows:

§60.4 *National Register criteria for evaluation.* The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, *sites*, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; **or** (b) that are associated with the lives of persons significant in our past; **or** (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; **or** (d) that have yielded, or may be likely to yield, information important in prehistory or history. (Emphasis added.)

There is an “and” coordinating conjunction involved in the regulation, followed by a long line of “or” conditionals. The regulation is a logic syllogism consisting of “and/or” construction. In order to be eligible for listing on the National Register for religious/spiritual/cultural reasons, property categories of the classes the FAA mentions would need to have “setting/feeling” qualities plus meet at least one of the “criteria considerations” listed in the above regulation stipulation.

All but one of the TCP properties listed in Attachment C fail to meet the standards of the “or” clauses/ subparagraphs (a) through (d) above. With the exception of White House Ruin, none of the individual TCP properties are even generally associated with identifiable historic events of significant record, (a); none are associated with specific persons, (b); none but White House Ruin are associated with works of construction or creative design, (c); and none but White House Ruin “yield information important in prehistory or history,” (d). In the case of Spider Rock, Spider Woman is a figure of current reality to the Navajo people; she is a living figure whose importance is primarily in the present. Attachment C lists no identifiable connection with historic events, citing no specific commemorative aspects of Spider Woman’s actuality, only general reference to her as a teacher of timeless spiritual values. A towering rock monolith is not an architectural achievement; it is a landmark, not a structure. No historic battles occurred at Spider Rock. Moreover, the NR makes no mention of anthropomorphic qualities passing from spiritual persons to physical properties so that the identity of a natural object would become that of the spiritual, allowing the property to take on timeless historic significance. Spider Rock is a popular tourist attraction, lacking privacy and silence viewed from the overlooking parking lot.

Beyond listed NPS buildings, other possible historic properties in the Park are only identified in Attachment C by number. With the exception of White House Ruin, nothing substantive is said about the individual identities, histories, or integral importance of these numbered properties to the overall historic characteristics of the Park, only that several of the sites have “setting and feeling” attributes that are “significant,” whatever that means. By concealing the majority of the

sites' identities, the FAA has deliberately made the sites impossible to critique for veil of secrecy. The FAA denies ATOs due process by withholding from ATOs constructive opportunity to comment on the numbered properties. I challenge the numbered properties authenticity. I argue that the 33 numbered TCPs within and outside the Park boundary should be eliminated from eligibility in the National Register for lack of qualifying criteria (specificity and relevance) and eliminated from consideration in the proposed CACH ATMP for lack of connection with any particular route (lack of definition and location).

All but one of the TCP's fail the eligibility test for reason of itemized "criteria considerations." These §60.4 stipulations follow in the regulation immediately after the "National Register Criteria for Evaluation" paragraph referenced above. Cemeteries and graves of historical figures and properties primarily commemorative in nature are not considered eligible for the NR. §60.4 states that "Ordinarily properties . . . used for religious [including prayerful, meditative, and ceremonial] purposes . . . shall not be considered eligible for the National Register." None of the listed extenuating exceptions to this rule apply under §60.4, with the possible allowance for (f) as it pertains to White House Ruin.¹ However, none of the other properties in question are "primarily commemorative in intent," nor do they have "*exceptional* significance." None of the other properties listed were originally created by man for celebratory purposes, and natural properties do not "inherit" man-made "traditional significance" over time unless an extraordinary historic event is directly associated therewith. The FAA makes no claim that any of the listed TCPs have commemorative association attached to identifiable events. Therefore, all but one of the numbered properties lack overall "integrity" of presentation with respect to the NR.

The criteria for eligibility of listing on the NR do not include landscape locations "that have been continuously used for contemplation and prayer," nor do the criteria for eligibility allow listing "because of association with cultural practices or beliefs." The concept of "cultural landscape" including "outdoor spaces designed for meditation or contemplation" is completely foreign to the wording of the Criteria for Evaluation and to the qualities of stipulated exception/eligibility that follow, the FAA having artfully crafted the misleading and prejudicial terminology. The NR considers such sweeping categories to be much too broad. On the other hand, individual TCPs are not automatically and separately included in the NR just because they have cultural importance for current time. Their eligibility for listing comes solely from being part of the Park.

The main justification for all but one of the TCPs (White House Ruin) being included in the APE as historic sites is that they fall within the boundaries of CACH, which is a "district" that does meet the criteria for listing on the NR. However, the majority of the properties, considered by themselves, would not meet the criteria. Moreover, the exception for reason of district inclusion is nullified by the fact that the individual properties are not "integral parts of districts," meaning that they cannot be cognitively recognized as such by laymen and cannot readily be observed as historic sites by normal visual means, lacking unique physical characteristics (again, with the exception of White House Ruin). Their presence is not essential to the identity of the Park. They are cultural locations of importance to local residents, not material or objective sites that contain

¹ With regards to exceptions for governing listing on the NR, §60.4 says: "However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories: (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or . . ."

specific historic importance/relevance to the Park, having only general “setting and feeling” of note.

The FAA would have realized the accuracy of my objections if the agency had complied with 36 CFR §800.4(b)(2), which requires, under heading of “Identification of Historic Properties,” the FAA to “conduct an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects . . .” The FAA has no authority, I claim, to ask for comments relating to itemized historic properties till it has walked the Park. Under regulation, this obligation cannot be delegated to another agency.

Moreover, even TCP sites such as White House Ruin lose their viability as historic properties for the purpose of the APE. The FAA is claiming that the historic properties need to be protected from air tours for reasons of noise, visual intrusion, and physical violation of spiritual space associated with prayer and meditation experienced from a wide number of observation points on the rim of the canyons. These contentions are invalid on the face of argument.

There are no historic properties of any kind in the Park that need to be protected from air tours, because air tours are conducted so infrequently as to be of de minimis quantifiable objection. 99.9% of the supposed noise, visual intrusion of viewsheds, and spiritual trespass occurs by welcome permission of the Navajos and NPS in the form of tourist travel by car and commercial, Navajo-owned, four/six-wheel-drive, back country vehicles that cruise the rim and bottom of the canyon floors continuously, every day of the week. White House Ruin and Spider rock are two of the most traveled sites, the noise there and all along the tour routes being significant, well above 54 dBA.² The FAA has provided no current “pertinent”³ sound studies that would contradict this observation. I argue that it would be difficult to hear an aircraft overhead with all the vehicle and sightseer noise in and around the canyon. Furthermore, the steep canyon walls make it impossible to observe air tours by anyone standing on the canyon floor, because of the lateral stand-off distance from the immediate canyon by tour aircraft. Roads line the tops of both Canyon de Chelly and Canyon del Muerto. The eye is naturally drawn to vehicles of close proximity, not to small targets on the distant horizon. The concept of protecting the historic properties in the Park from infrequent air tours that have no physical contact with historic structures, while allowing continuous visitation of the properties by foot, car, trucks, buses, and four/six-wheel-drive SUVs, makes a mockery of the entire ATMP undertaking. These are significant Section 106 realities that the FAA has failed to take into consideration in compiling the Section 106 list of affected historic properties and the draft CACH ATMP.

² According to NPS statements, interference with Park interpretive programs would reasonably occur at 52 dBA. Noise related to ground-visitation of the Park are well above that level. On the other hand, the “Time Above 52 dBA” for air tours at CACH is so low as to be unmeasurable, if such a metric even exists at the Park. The NPS does not contest the low audio levels associated with air tours at CACH. Instead, the agencies (FAA & NPS) wrongly argue Section 106 allegations against air tours at the Park solely on Theory of Mere Presence (See Footnote #4), which NPATMA and the FAA (everywhere else) do not allow. Distinguishable adverse noise impacts on TCPs from air tours at CACH under Section 106 have not been shown by the agencies to exist. The TCPs, based on FAA presentation of them, are phantom distractions of argument.

³ In Southwest Safaris’ letter to Volpe of August 7, 2023, on page 17, SWS defined “pertinent” sound-study data to mean “current, comprehensive, relevant, accurate, and science-based.” See also Appendix.

Just because a property might have cultural importance for present times does not make it a “historic property.” Just because a TCP might actually be a HP does not mean that the presence of the HP in the APE has relevance to the purpose of the ATMP. Neither air tour noise nor invasion of sacred privacy are objectionable considerations for CACH ... because of the dominant competing existing noises in the Park which drown out those of aircraft and because the overwhelming presence of persons and vehicles everywhere in the Park make visual trespass by air tours a moot point ... and are therefore outside the scope and/or relevance of Sec. 106.

The listing of questionable TCPs is just a distraction of argument, designed to prejudice the opinion of the reader. The entirety of the Park is highly advertised/promoted by the Navajo Nation as a tourist attraction. Of all the methods of visiting the Park, rare air tours have the least lasting impact thereon. There being no objection to the other modes of visitation, under Section 106 there should be even less for air tours, which are rarely, if ever, even noticed.

Protesting air tours over the Park on the basis of cultural intrusion and physical violation of spiritual space ... which are the very evidentiary reasons that the numbered TCPs were added to the list of historic properties ... is also beyond the scope of NPATMA, so their listing under Section 106 is unfounded for reason of relevancy, the National Parks Air Tour Management Act being the controlling legal authority for the creation of ATMPs. NPATMA brings ATMPs into existence, not NHPA, so its methods and purposes limit the scope and applicability of Sec. 106.

The FAA appears to agree. The Act is based on “existing conditions,” not “no air tours.” The arguable base-line assumption of “no air tours” at CACH ... a determinant assumption buried deep within the Section 106 investigation of historic properties ... is predicated on the theory that the mere presence of air tours over the Park is a violation of the Act. The FAA has already argued against this theory in the case of Hawaii Volcanoes National Park (HAVO). In response to the ACHP’s charge that “there does not appear to be a way to eliminate the potential for adverse effects” from HAVO air tours, the FAA replies in a letter of rejoinder to the ACHP dated September 12, 2023:

Though its reasoning is not clear, the ACHP seems to assume that air tour operations under existing conditions have an adverse effect on historic properties. Therefore, [the false argument goes,] the FAA’s undertaking must completely ban air tours to remove the adverse effect, and any action that does less than a total ban does not address the adverse effect of air tours. That view goes beyond the authority of the Section 106 process and its implementing regulations [i.e., NPATMA, NHPA, and NEPA].

Using the FAA’s own logic ... which discredits the Theory of Mere Presence,⁴ the FAA having rejected arguments elsewhere against air tours based on simple operational existence, for lack of

⁴ The Theory of Mere Presence is brought forward by parties opposed to the conduct of air tours in any form or manner over units of the National Park Service. The Theory of Mere Presence states that air tours, by definition, impose adverse impacts on persons and property on the ground, including religious and cultural sites and events, and that there is no way to lessen the impact of same, invasion of privacy in particular. According to this theory, all Air Tour Management Plans must completely ban all air tours of all types to eliminate any possibility for adverse effects in the future. This extremist theory asserts that any Plan that does not ban all air tours does not address “the problem” of air tours at all. In the case of Hawaii Volcano National Park (HAVO), the FAA flatly states that it will not consider the theory. For unstated reasons, the FAA appears to have reversed its opinion at CACH. The FAA

any other documentable objection ... mention of the additional TCPs in Attachment C must be omitted. The allowance and justification for the extra TCPs being included in Attachment C was to prove that the mere existence of air tours is objectionable for general reasons of “setting and feeling,” which theory of rejection, according to the FAA at HAVO, is predicated on disallowed conceptual assumptions “beyond the authority of the Section 106 process and its implementing regulations,” including both NPATMA and NEPA. However, at CACH the FAA’s implied main argument for including the numbered properties within the APE is precisely that “setting and feeling” are violated by “mere presence.” Thus, the FAA argues against itself.

Moreover, with reference to the APE for Canyon de Chelly, it is not fair to ask an ATO to comment on boundaries based on TCPs that the FAA will not identify as to location. The offer for ATOs to comment on the area of the APE, in this instance, is hollow and indicative of agency indifference to due process. All claimed historic properties at CACH should be identified on a map, the argument for privacy notwithstanding. The FAA is wrongly withholding the locations of historic sites that would be essential for planning air tour routes. The requirement to withhold location of unmapped sacred sites for reason of confidentiality should not legally apply to situations where persons claiming said sites as TCPs request route modification based on the very denied location of those sites.

Additionally, because of the principle of Primacy of Law,⁵ making the National Parks Air Tour Management Act of 2000 the controlling legal authority in the creation of ATPMs, the FAA errs by acting preemptively to initiate the Section 106 investigation of CACH without having first acted on Section 808 of NPATMA in order to test the “if any” condition contained in the “Objective” paragraph of the Act, 49 USC §(b)(1)(B). Additionally, the Principle of Continuity of Law⁶ means that Section 106 cannot be called upon by the FAA to negate the effect of NPATMA, the agency otherwise being able to declare by means of Section 106 that sound studies at selected Parks are irrelevant to determination of adverse impact of air tours on TCPs. Without the Principle of Continuity of Law, the FAA could ground its objections to air tours over CACH on the Theory of Mere Presence (setting aside consistency of argument) and simple allegations of noise intrusion, ignoring the requirement for noise studies altogether.⁷ The power

added 33 TCPs to the original list of historic properties primarily to buttress a NHPA-originated claim of potential adverse impact of air tours on cultural sites that encompass the whole of the Park, based entirely on theoretical proximate presence of air tours anywhere in the area. The suddenly but conveniently “revised” opinion held by the FAA ... that the mere presence of air tours in the Park is objectionable, in contrast to HAVO ... lacks explanation and, therefore, credibility. The FAA everywhere else claims that the standard for determination of adverse impact of air tours under NPATMA is “existing conditions,” not “no air tours.”

⁵ The principle of Primacy of Law directs the order of application of laws in a vertical manner. Where multiple laws affect a result, course of action, or determination, the laws must be satisfied in accordance with the most controlling to the least. See my letters to the FAA dated September 25 and October 1, 2023, wherein I give a detailed discussion on the Principle of Primacy of Law as it applies to NPATMA, NEPA, and NHPA working together.

⁶ The principle of Continuity of Law means that one law cannot horizontally contradict another where they overlap.

⁷ The FAA tries to use Section 106 to end run NPATMA, there being no requirement under NHPA to conduct sound studies to prove the validity of claims for adverse effect of air tours on historic properties as defined by the NR. Under Section 106, a mere claim of the potential for adverse effect is considered evidentiary proof of legitimacy of

of the two principles working together means that Section 106 cannot be used to bypass Section 808. Moreover, it means that Section 106 is only called into conditional effect ... meaning that NHPA decisions must be based on comprehensive, relevant, and current sound studies ... after NPATMA passes authority to it by means of satisfying the all determining “if any” phraseology of the Act. Therefore, the FAA is currently exceeding its authority by prematurely asking for comment on historic properties within the APE before the subject of air tour noise has even been addressed by NPATMA, the FAA having failed to comply with Section 808 and standards of due diligence.

In other words, the FAA has not determined by means of NPATMA’s Section 808 that there is any need to proceed with changes to existing conditions based on the alleged impact of aircraft noise on Traditional Cultural Properties. ATMPs only apply to certain units of the NPS, not all units. Until certain conditions and exceptions are met for individual parks, the requirement for an ATMP does not exist; that is, the requirement for an ATMP (and, therefore, for an “undertaking”) does not exist just because the Act exists. In the case of CACH, if legal procedures were followed, the creation of an ATMP would be an “undertaking,” 36 CFR §800.16(y). Southwest Safaris argues that by law, Section 106 cannot be activated without the existence of an “undertaking,” 36 CFR §800.3(a). The FAA appears to agree. Paradoxically, therein lies a major problem and source of paralyzing disagreement between SWS and the FAA.

In the case of the CACH ATMP initiative, Southwest Safaris argues that legal process has not been followed. An “undertaking” in the case of an ATMP cannot commence without the “if any” phrase of NPATMA being satisfied by science-based sound studies (see Appendix) using “pertinent data” (see footnote #2) ; or, it cannot begin unless the NPS determines that creating an ATMP is necessary to “protect park resources and values or park visitor use and enjoyment,” 49 USC §40128(a)(5)(B), the NPS nonetheless having to prove the necessity for bypassing normal categorical exclusion rulemaking in *extraordinary* circumstances, 40 CFR §1501.4. In any case, either way, the “if any” and Section 808 requirements of NPATMA must be fully satisfied by law; Section 808 cannot be bypassed, because inclusion of its “shall clause” makes it mandatory in all circumstances.

In the case of CACH, said “pertinent” (see footnote #3) sound studies have not been conducted, nor has the NPS demonstrated, outside of claiming Theory of Mere Presence ... which argument is not allowed by the FAA elsewhere ... that critical park resources and values or visitor use and enjoyment are adversely affected by air tours under “existing conditions.” No “extraordinary circumstances” per 40 CFR §1501.4(b)(1) exist at CACH, Tribal objection arguably founded on the Theory of Mere Presence notwithstanding.

allegation. Therefore, NHPA, considering the “if any” phrase in NPATMA and Section 808 methodology of compliance, is inconsistent with NPATMA ... the Act requiring thorough sound studies to satisfy the “if any” conditional test ... and must, at least at first, be set aside under the twin Theory of Primacy of Law and Consistency of Law, until NPATMA conditionally allows it by making sound studies mandator as a condition for NHPA review, the Act being the controlling legal authority for ATMPs. Regardless, at CACH, Section 106 only comes into qualified force and effect if and when NPATMA passes authority to it ... which happens only when a *legal* undertaking is commenced, not before.

The relevant undisputed fact is that Southwest Safaris has been conducting air tours over CACH for 49 years, without a single documentable complaint. Until the present ATMP process was initiated, the Navajo Tribe and Chapter Houses on the perimeter of CACH were unaware that fixed-wing air tours were even being conducted over the Park. Any alleged “potential” impacts of air tours on the few TCPs within the park that are protected by Section 106 are purely theoretical, imaginary, and conjectural, based on deductive assertions (NHPA), not inductive research (NPATMA).⁸ Existing conditions at Canyon de Chelly include the conduct of very noisy ground tours which dominate the soundscape of the Park during all daylight hours. This reality makes the presence of rare air tours under Section 106 immaterial for argument.

The FAA’s Section 106 request for comments on TCPs at CACH at this time, in fact all of NHPA currently, lacks justification and authority, both under NHPA and NHPA, for lack of initiation of a *legitimate* CACH “undertaking,” the safeguards of NPATMA⁹ for air tour operators having been purposefully ignored by agency.

The FAA, I argue, errs in assuming that Section 106 process can begin just because the agency has declared that an ATMP “undertaking” has commenced, even if the “undertaking” is being federally financed. The FAA, I allege, has wrongly begun the ATMP process at CACH without going through Congressionally-directed process necessary to activate the “undertaking.” The FAA, I assert, is illegally funding an “undertaking” which has no authorization. The FAA’s action leads to multiple disturbing legal complications, not the least of which is abuse of process and misappropriation of Federal funds.¹⁰

⁸ The conflict between NHPA and NPATMA over deductive versus inductive determination can only be resolved by acknowledging that NPATMA is the controlling legal authority, the Principle of Continuity of Law being, once again, of critical affect. Guided additionally by the Principle of Primacy of Law and Intent of Congress, all assessments of air tour noise under Section 106 re. ATMPs must be based on “reasonable scientific methods” and “pertinent” data, per Section 808 of the Act. By refusing to comply, under Section 106 the FAA fails to act/decide according to law.

⁹ Congress never intended that NPATMA would be used to destroy the air tour industry. In order to ensure the rights of air tour operators (ATOs), including due process of hearing, Congress insisted that all ATMP initiatives under NPATMA would have to pass the test of reasonableness, the standard of determination being that of “existing conditions,” not “no air tours.” To safeguard these rights, Section 808 was added to the Act, the purpose of which was to create measures of decision that could be tested against science-based observations and allow for judicial review. By failing to conduct timely science-based noise studies using “pertinent data” (footnote #3), the FAA has knowingly deprived ATOs of the ability to defend their right of operation by means of hard sound data and, thus, deprived them of constructive administrative and judicial hearing. Had timely, science-based, sound studies been conducted early in the ATMP process, most of the ATMPs the FAA has since created would have been proven to be without cause. Air tour operators cry “foul!” The FAA’s lack of regard for Section 808 serves to negate operators’ right of judicial review under 49 US §40128(b)(5), it being impossible under both NPATMA and Section 106 to provide credible evidence without authoritative sound studies.

¹⁰ After NPATMA was passed by Congress, it would have been appropriate for the FAA to expend funds to test for conditions that would trigger the creation of ATMPs. Prior to that determination, predicated on Section 808 science-based studies, no further federal money was authorized by Congress to be spent. In no case was an “undertaking” to arbitrarily and capriciously put air tour operators out of business. The FAA and NPS (the agencies), I allege, have together conspired to misuse Federal funds to achieve a political agenda, involving the radical curtailment of the air tour industry, never contemplated by Congress. In the process, I allege, the agencies have defrauded the U.S. Court of Appeals for the District of Columbia Circuit by deliberately withholding relevant information so as to deceive the court to “compel” the agencies to prematurely initiate “undertakings” that had, as

To emphasize the point, in the case of CACH, a legal Federal “undertaking” does not exist just because the FAA and NPS have inappropriately expended Federal funds to initiate process. An “undertaking” must first be *legally* triggered. This has enormous implications for NHPA and NEPA considerations. Legal order must precede political expediency. A decision by the U.S. Court of Appeals for the District of Columbia Circuit¹¹ to expedite implementation of ATMPs does not excuse the FAA from proceeding with implementation of ATMPs contrary to Law of Congress.

Because the “undertaking” for Canyon de Chelly has not been *legally* triggered, I argue, the “undertaking” for CACH to this day does not legitimately exist. Therefore, the development, implementation, and funding of the CACH ATMP is out of order, including the Section 106 process as well as the Environmental Assessment that is currently being compiled under cloak of NEPA.

I allege that the FAA errs by having commenced the ATMP-related Section 106 process at CACH without first initiating a legal “undertaking” of any sort, as defined by the above criteria, and that by so doing the FAA is in violation of NPATMA, NEPA¹², and NHPA, all three, the Court order for the FAA to expedite ATMP process notwithstanding. A court cannot compel an unlawful act. An order to expedite process is not an order to break Congressional law. Under NHPA, the FAA may begin investigative initiatives prior to activation of an “undertaking” under certain conditions, but the Agency cannot implement decision-making actions (e.g., requests for input and/or concurrence) prior to actual existence of a legal “undertaking,” 36 CFR §800.1(c). Under NEPA, the FAA has no such latitude to commence work on a draft EA without “authorization” from the NPATMA process. The FAA’s alleged flagrant disregard for NPATMA’s controlling legal authority, using Court order as cover for action, leads to the grave and probably irreversible injury, even demise, of the general air tour industry, to the detriment of the economy of rural America.¹³

of then and now, no legal basis for coming into existence, the requirements for same not being satisfied. The results are all too obvious for all to see: abuse of law and tragic/unnecessary destruction of the air tour industry.

¹¹ See USACA Casse #19-1044, Document #2001434, Filed 5/31/2023.

¹² NEPA is equally impacted by the Controlling legal authority of NPATMA. The requirement for satisfying the “if any” phrase and Section 808 sound studies under NPATMA are mandatory prior to the justification for, and commencement of, a NEPA Environmental Assessment. After the former is accomplished, NPATMA permits the latter to commence, in that order, if the creation of an ATMP is justified by the Objectives of the Act.

¹³ For these reasons, I submit that it would be much better to stop the ATMP process at CACH now, correct the situation (there and at other units of the NPS, Bandelier National Monument, Badlands, and Mount Rushmore in particular), and then proceed, rather than force the issue of ATMP management back before the U.S. Court of Appeals, the outcome of which would be far from certain for all parties.

Finally, the FAA's failure to establish a legal undertaking before beginning an ATMP initiative leads to violation of fundamental clauses of the Constitution. I refer to the Fifth and Fourteenth Amendments, both guaranteeing due process.

The Fifth Amendment protects persons from being forced to testify against themselves. Section 106 is being used by the FAA at CACH to commit a substantial breach of law. The whole purpose of asking under Section 106 for the identification of additional TCPs in the Park is to build the case for disallowing flights over any portion of the Park. The next step the FAA plans to take ... as the FAA is currently attempting to do while implementing an ATMP at Bandelier National Monument ... will be to force ATOs operating in the park to concur with a Finding of "No Adverse Effects" from denying all air tours over the entire Park. The FAA at CACH is in the process of "requesting" that ATOs defend themselves against a syllogism of double negatives. The FAA is preparing to issue a demand, cloaked as it is, via a formal Statement of Concurrence, that air tour operators disprove that "no flights over CACH can have no adverse effects on the Park."

As a matter of formal logic, it is impossible to disprove a syllogism based on a double negative. The FAA has artfully contrived a means by which ATOs are forced to testify against themselves no matter how they address the challenge of rebuttal, which is a violation of their civil rights.¹⁴ Moreover, under both the 5th and the 14th Amendments, ATOs are guaranteed the right to fair trial and/or administrative hearing. By failing to honor the language of the 5th and 14th Amendments, and the requirement of Section 808 of NPATMA at CACH, the FAA makes it impossible, as I said in Footnote #9, for ATOs to bring their grievances under NHPA and NPATMA before a body of hearing, because the ATOs have been denied the right to constructive argument under NHPA and the ability to present current objective evidence under NPATMA that ATOs could otherwise present in their own defense. Therefore, the FAA violates under Section 106 both the Constitution and the judicial review clause of NPATMA per 49 US §40128(b)(5).

¹⁴ If the ATO agrees that imposition of Alternative 2 (no air tours allowed over the Park) of the pending draft CACH ATMP would have "no adverse effect," he loses his defense for right of operation. If the ATO declines to engage in pointless argument against a flawed and self-fulfilling double-negative syllogism leading to a conclusion favoring a decision of "no adverse effect," the FAA will decide against him, the ATO having made no argument to the contrary. If the ATO argues against the finding of "no adverse effect," his arguments are thrown out for not being relevant to Section 106, but to NEPA. Section 106 language is built into the entirety of the agencies' draft BAND ATMP and EA, so the distinction between Sec 106 and NEPA argument is very difficult, if not impossible, to delineate and untangle. This makes defense against a decision in favor of "no adverse effect" and "no air tours allowed" nearly impossible, constituting obstruction of argument, which is not allowed under the 5th and 14th Amendments. The FAA's "request" for a Statement of Concurrence amounts to a forced acknowledgement by the ATO that depriving him of the right to fly over the Park will have no adverse impact on the Park, grossly prejudicing a decision of the agencies (FAA and NPS) against his right of operation.

In somewhat simpler language, the 5th and 14th Amendments were both drafted to ensure a review process of executive actions that would guarantee fundamental fairness, both substantively and procedurally considered. The FAA's application of NHPA and NPTMA to the CACH ATMP defies both. The FAA disallows substantive argument under rules of logic (Section 106) and makes presentation of credible facts under rules of evidence impossible (the Act), in the meanwhile forcing ATOs to testify against their own interests.

I respectfully request, then, that the FAA's multiple notices for comment on Section 106 historic properties at CACH be withdrawn, as such untimely requests for opinion greatly, unfairly, and intentionally prejudice the outcome of the agency's eventual ATMP determinations, in violation of due process, and because the Sec. 106 initiatives at this time are being implemented contrary to Federal regulation and law.

I also ask that the FAA respond in writing to this petition, the need for the courts to rule on these matters of jurisprudence being imminent.

I further request that the entirety of my objections, including all my letters relating to Canyon de Chelly, be brought to the attention of the ACHP for third-party opinion, the issues being materially and procedurally related to, but applicably different from, those of Bandelier National Monument, for which the FAA is currently seeking separate ACHP concurrence.

I appreciate the opportunity to comment on historic properties and Section 106.

Sincerely yours,

A handwritten signature in dark ink that reads "Bruce Adams". The signature is written in a cursive, slightly slanted style.

Bruce Adams

Appendix

Section 106 Sound Studies Conducted under NPATMA

The FAA's second letter of October 26, 2023 ... wherein the agency requested input for CACH to help "identify additional properties of which setting or feeling is a characteristic of significance" ... is part of an investigation into the effects of air tour noise on Traditional Cultural Properties (TCPs) at Canyon de Chelly National Monument. The FAA states that it "has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight."

A major part of Section 106 involves assessment of air tour impact on Areas of Potential Effect within units of the NPS governed by ATMPs. To do this, Section 106 relies, directly and indirectly, on measurement of noise generated by tour aircraft.

The FAA incorrectly, I argue, relies on noise modeling technology to make its determinations as to the level of air tour noise at CACH. This reliance, I maintain, adversely impacts the correct assessment of harmful impact of said noise on TCPs and, therefore, incorrectly influences FAA opinion and determinations under Section 106.

At Canyon de Chelly National Monument, the FAA is in violation of NPATMA, NEPA, and NHPA because the use of noise models does not satisfy Section 808.

NPATMA says that "*any methodology*" used by the FAA to assess air tour noise shall be based on "reasonable scientific methods." Noise models do not constitute scientific methodology, especially if the studies do not incorporate timely (which means, current), accurate, thorough, and objective data obtained from vigorous field research ... none of which was provided at CACH. A noise model is just another term for an "Aviation Environmental Design Tool" (AEDT), to use an FAA term. The output from an AEDT is totally dependent on whatever numbers (including formulas) are input. The input data the FAA is using at CACH is too old, too few, too isolated, and too infrequently gathered, representing unreliable assumptions of present conditions, this on top of biased formulas. Southwest Safaris claims that the FAA, under Section 106, is relying on noise modeling at CACH to control the input so as to get a predetermined output that is contrary to the interests of the ATO.

Spreadsheets, themselves, are not science. Science is based on acquiring original data gathered by observation in the field. Noise models, in contrast, are based on deductive armchair reasoning. Therefore, I argue, principal reliance on AEDT technology is not allowable under NPATMA (and, therefore, NHPA) as the primary or conclusive means of determining "adverse impact." This is one of the reasons I have argued in the body of this letter that NPATMA is the controlling legal authority for ATMPs, not NHPA or NEPA, for that matter. Under NPATMA, Section 808, the NEPA §1502.23 possible allowance for using AEDT technology does not exist, because NEPA regulations are incompatible with NPATMA law, per 40 CFR §1500.3.

Even if NEPA's §1502.23 did apply, the FAA would still be required to use scientific methodology to control the input with current, comprehensive, relevant, accurate, and science-based (i.e., pertinent) data. I argue that the FAA's input data for CACH, even if one allows use of AEDT noise modeling, falls short of these tests.

Noise modeling is particularly problematic at CACH, where the FAA conducts no actual current noise studies in the field but relies entirely on its Aviation Environmental Design Tool (AEDT), i.e., noise modeling technology, and outdated data upon which to base its calculations of "adverse impact." This is allowable under NEPA. 40 CFR §1502.23 of NEPA says, "Agencies are not required to undertake new scientific and technical research to inform their analyses." However, this statement is directly contrary to NPATMA, which is the controlling legal authority in the present instance.

I point out that §1502.23 does not apply to NPATMA because of the "shall clause" (Section 808). Moreover, Congress does not refer to §1502.23 in NPATMA's §40128(b)(4)(C), in order to grant special exception. So, the requirement for noise studies based on "reasonable scientific method" still applies, NEPA notwithstanding.

NPATMA imposes a clear and unequivocal requirement to conduct pertinent sound studies, using "reasonable scientific methods," before implementing ATMPs for respective Parks. NPATMA is the controlling legal authority, not NHPA or NEPA. The FAA has a duty, therefore, to perform sound studies which cannot be excused. This is a due diligence mandate.

So, the use of noise modeling technology does not satisfy the requirements of Sec. 808 for use of "reasonable scientific methods." Noise modeling may incorporate sophisticated computer technology, but it is not science, and it is prone to error. In support of my theory, I direct the reader's attention to a FAA Memorandum, dated June 13, 2018, titled "Noise Screening Assessments,"¹⁵

In general, the Memorandum is intended to "clarify existing FAA policy and guidance on noise screening assessments and the appropriate use of noise screening tools and methodologies." The Memorandum makes it abundantly clear that noise screening tools and methodologies afford only approximate analysis of air tour noise impacts, and are not appropriate for detailed EA or EIS analysis presented to the public, nor for Section 106 analysis. Therefore, the FAA has chosen to use AEDT (Version 3e), instead, as that constitutes "approved" analysis technology. The FAA does not say who approved it.

Regardless, the Memorandum also makes it abundantly clear that noise modeling ... irrespective of the technology incorporated, whether noise screening or technical noise analysis (AEDT) ... is not science. The inadequacies of AEDT technology (noise modeling) logically follow the shortcomings of sound-level estimation (noise screening). Had Congress wanted to allow reliance on AEDT analysis of air tour noise, it could have easily specified to that effect in the Act (i.e., done so expressly). This is a noticeable omission, but *not* by oversight. Reliance on AEDT technology is *not* allowed under NPATMA any more than reliance on noise screening. In

¹⁵ See http://www.faa.gov/sites/faa.gov/files/air_traffic/environmental_issues/environmental_tetam/screening-memo.pdf.

any case, the data fed into either modeling tool would have to be “pertinent,” defined by reason to mean “current, comprehensive, relevant, accurate, and science-based.” Both noise modeling methodologies used by the FAA (noise screening and AEDT) fail to make use of “pertinent” data at CACH, so the outcome from noise modeling at CACH is flawed from the outset, irrespective of the computer programs used for analysis.

For all of the above reasons, I argue that the FAA’s efforts to gather input on TCPs for CACH are misplaced for lack of appropriate sound data at this time upon which to base decision. This conclusion is in addition to the fact, as I explained in the body of this letter, that no legal “undertaking” has yet occurred at CACH which would authorize pursuit of a Section 106 determination, either, for much the same logic.

Exhibit 4 – Federal Register Notice re Public Involvement Period, dated November 2, 2023, and Public Comments Received

- 11/02/23 FRN Notice of Availability of Consultation Documents for Public Comment Under Section 106 of the National Historic Preservation Act (period ending 12/01/23 11:59 MDT)
- Copies of All Public Comments Received for the National Historic Preservation Act Section 106 Documents for Air Tour Management Plan

**Exhibit 4 – Federal Register Notice re Public
Involvement Period, dated November 2, 2023, and
Public Comments Received**

contracting Scorecard and the governmentwide prime contracting scorecard by disregarding actions using Funding Office code 36135Y. This code refers to the Office of Integrated Veteran Care within the Veterans Health Administration, which reports the claims for payments under the CCN contracts for submission to FPDS.

Larry Stubblefield,

Acting Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2023–24206 Filed 11–1–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Consultation Documents for Public Comment Under Section 106 of the National Historic Preservation Act

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability of consultation documents for public comment under section 106 of the National Historic Preservation Act.

SUMMARY: The FAA, in cooperation with the National Park Service (NPS) (together the agencies), has initiated development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park) pursuant to the National Parks Air Tour Management Act (NPATMA) of 2000 and its implementing regulations. The agencies determined that the development of an ATMP constitutes a Federal undertaking subject to compliance the National Historic Preservation Act of 1966, as amended (NHPA). The agencies have initiated the section 106 process with the Navajo Nation Tribal Historic Preservation Officer, Tribes, and other consulting parties. This notice announces the opportunity for the public to comment on the results of the FAA's efforts to identify historic properties, evaluate the properties' significance, and assess the undertaking's effects on them. The agencies are seeking public input on the FAA's efforts to date in identifying consulting parties, determining the area of potential effects, identifying historic properties, and assessing the effects of the undertaking on historic properties within the area of potential effects. The agencies are providing the description of the undertaking, the consulting party list, the delineation of the proposed Area of Potential Effects (APE), the

results of the agencies' efforts to identify historic properties within the APE, the evaluation of their significance, and the agencies' approach to assessing the undertaking's effects upon the identified historic properties. Supporting documentation can be found at the following link: <https://parkplanning.nps.gov/CACHATMP>.

DATES: Any member of the public is encouraged to provide views on this project to the agencies. The agencies will accept and consider comments related to section 106. Comments must be received on or before December 1, 2023, by 11:59 MDT. Comments will be received on the PEPC website. The Park's website link is <https://parkplanning.nps.gov/CACHATMP>.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

ADDRESSES: The public is encouraged to provide written comments regarding the section 106 documents provided in the PEPC website throughout the comment period.

Contact: Any request for reasonable accommodation related to providing comments on the Section 106 documents should be sent to the person listed on the Park's PEPC website. The U.S. Department of Transportation and U.S. Department of the Interior are committed to providing equal access to the meetings for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sandra Fox, (202) 267–0928, Sandra.Y.Fox@faa.gov.

SUPPLEMENTARY INFORMATION:

Description of the Undertaking. The undertaking for purposes of section 106 is implementing an ATMP for the Park. Consistent with the NPATMA, the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is

sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

(1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

(2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

Overflights that do not meet the definition above of a commercial air tour are not subject to the NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator currently conducts tours over the Park. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change routes to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in Attachment A in the supporting documentation. The agencies consider the existing operations for commercial air tours to be an average of 2017–2019 annual air tours flown, which is 43 air tours. Based on 2017–2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL)¹ depending on the route. The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of

¹ Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (<i>i.e.</i> , at or above 5,000 feet AGL or more than 1/2-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than 1/2-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A.
Day of Week	N/A.
Seasonal	N/A.
Quiet Technology (QT) Incentives	N/A.
Annual Meeting, Operator Training and Education	N/A.
Restrictions for Particular Events	N/A.
Adaptive Management	N/A.
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A.
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority ²	Terminates 180 days from the establishment date of the ATMP.

Delineation of the Proposed APE and Historic Property Identification. In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA proposed an APE comprising the Park plus 1/2 mile outside the boundary of the Park. A map of the APE can be found on the Planning, Environment and Public Comment System (PEPC) website linked below.

To identify historic properties within the APE, the FAA coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or be eligible for listing in the National Register of Historic Places (National Register). The agencies performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The agencies have also consulted with other

consulting parties, including Tribes that have an interest in the area, to identify any historic properties not previously identified in the APE or additional information on historic properties previously documented in the APE. A summary of the identified historic properties and whether they are listed or eligible to be listed on the National Register can be found on the PEPC website linked below.

Assessment of Effects. In assessing the effect of the undertaking on historic properties within the APE, the FAA will take into consideration that the undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The agencies will assess the effects of the undertaking on a historic property to determine if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The agencies will focus the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features. The FAA is also considering whether air tours could affect the use of TCPs associated with cultural practices, customs, or beliefs that continue to be held or practiced today.

The agencies request that you provide any comments you may have regarding the undertaking, the historic property identification efforts, your views

regarding the significant characteristics of listed or eligible properties, and any information you might have that would help identify additional properties for which setting or feeling is a characteristic of significance. Your feedback on the potential of the undertaking to cause adverse effects to the historic properties is also welcomed.

This notice affords the public an opportunity to participate in section 106 activities for the development of an ATMP at Canyon de Chelly National Monument, including reviewing and providing comments on the section 106 process to date. The FAA and NPS encourage public participation and provide information on how to submit comments or feedback below. Supporting documentation can be found at the following link: <https://parkplanning.nps.gov/CACHATMP>.

The FAA and NPS are issuing this notice pursuant to section 800.2(d) of 36 CFR part 800, Protection of Historic Properties, and section 106 of 54 U.S.C. Subtitle III, National Historic Preservation Act. The section 106 implementing regulations at 36 CFR part 800 require FAA, as the lead Federal agency, to identify any properties within the project area that are listed in or eligible for listing in the National Register; to assess the effects the undertaking may have on historic properties; and to seek ways to avoid, minimize, or mitigate any adverse effects.

The FAA and the NPS are inviting comments from the public, Federal and State agencies, Tribes, and other interested parties on the section 106

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that NPATMA required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under NPATMA, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

process for Canyon de Chelly National Monument.

The FAA and the NPS have determined that the ATMP constitutes a Federal undertaking subject to compliance with section 106 of the NHPA and its implementing regulations at 36 CFR part 800. The FAA and the NPS have consulted with the Tribal Historic Preservation Officer, federally recognized Tribes, and other interested parties to identify historic properties and assess the potential effects of the ATMP on them.

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The agencies have taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). The historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility.

In assessing the effects of the undertaking on historic properties in the APE, the FAA will consider the number and altitude of commercial air tours over historic properties to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties

qualifying them for the National Register.

The comment period is open to the public. The FAA and the NPS request that comments be as specific as possible. All written comments become part of the official record. Written comments regarding the section 106 consultation documents can be submitted via PEPC or sent to the mailing addresses provided on the Park's PEPC site. Comments will not be accepted by fax, email, or any other way than those specified above.

Issued in Washington, DC, on October 30, 2023.

Sandra Fox,

*Environmental Protection Specialist, FAA
Office of Environment & Energy.*

[FR Doc. 2023-24191 Filed 11-1-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2023-0002-N-22]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 25, 2023, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before December 4, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: (571) 609-1285 or Ms.

Joanne Swafford, Information Collection Clearance Officer, at email:

joanne.swafford@dot.gov or telephone: (757) 897-9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 25, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. See 88 FR 58435. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30-days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Critical Incident Stress Plans.

OMB Control Number: 2130-0602.

Abstract: Under 49 CFR part 272, Class I, intercity passenger, and commuter railroads are required to develop, and submit to FRA for approval, a critical incident stress plan

Copies of All Public Comments Received for the National Historic Preservation Act Section 106 Documents for Air Tour Management Plan

Correspondence ID:	1	Project: 103419	Document: 132671
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Name:	Winney, Melissa S
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Received:	Nov,02 2023 11:14:10
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Correspondence Type:	Web Form
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Correspondence: Good Morning,

I agree with the National Park Service I believe there should be NO air tours to fly over the Canyon De Chelly Monument. I feel that our canyon is scared to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts. My family has land down in the canyon and I don't support air tours.

Thank you

Correspondence ID:	1863	Project: 103419	Document: 132671
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Name:	
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Received:	Nov,30 2023 11:44:49
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Correspondence Type:	Web Form
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Correspondence: NO. NO to air tours over Canyon de Chelly. Air tours are not hozho. The rock and stone nations say NO. The plant and tree nations DO NOT want air traffic polluting their air, water, and ground. The four legged and winged nations DO NOT want the unnatural noise of air traffic. NO to colonizing the canyons air space. NO AIR TOURS.

Correspondence ID:	1864	Project: 103419	Document: 132671
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Name:	B, M
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Received:	Dec,04 2023
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Correspondence Type:	Web Form
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Correspondence: I DO NOT support the 106 Documents for Air Tour Management Plan for Canyon de Chelly National Park. Our family lived in Chinle for years and continue to return to visit family. We have always enjoyed going into the canyon for various family reasons. We enjoy the beauty, the peacefulness and the connection to the land, water, plants, gardens, animals and families in the canyon. We also went up the canyon rims to get away from town to feel and smell the fresh air, listen to and watch the birds, lizards and wildlife around us.

If there are air tours around the canyon everything I mentioned would be invaded upon. There would be un-natural noise pollution, air pollution and a feeling of being watched like our people are on exhibit. Overtime I believe the noise/sound waves would begin to shake, vibrate and cause our ancient ruins to crumble. The same noise would scare the wildlife and upset the natural ecosystem that exists today. We need to keep our beautiful canyons as is for our future generations. There are already ways for tourists to see the canyon. That's enough, leave our airspace alone. Let our people have some peace and quiet and privacy. We are not here to further abuse Mother Earth and disrespect the gifts She has given us. DO NOT APPROVE AIR TOURS FOR CANYON DE CHELLY!

Correspondence ID:	1865	Project: 103419	Document: 132671
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Name:	Draper, Pliny M
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Received:	Dec,04 2023 16:35:57
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Correspondence Type:	Web Form
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Correspondence: Canyon Del Muerto/De Chelly National Monument contains the two canyons that are the heartland of the Dine' (Navajo). These canyons differ from others, because they have so much history that they are sacred. They are also the spiritual home of the Anasazi, who lived there from more than 2,000 years. I am half Dine' and half Hopi, so my bloodline goes back over 2,000 years (Antelope House ruin is where my clan originated). The Hopi still make trips to their canyon shines. The White man is not spiritual, so he cannot understand that these spirits still live there. He also does not understand that the animal and trees and wind have spirits.

I have held a grazing permit for half of Canyon Del Muerto, since April 1978 (45 years). I inherited it from my grandfather, Philip Draper, Sr. The late US Senator Barry Goldwater was an avid hiker, and visited my grandfather, in the canyon, more than once. My great, great Dine' grandmother is believed to have been the first captured by Kit Carson and his army, in 1863. Before her, were our family ancestors that lived there for more than 500 years.

There are very strong canyon cross winds and updrafts, and the canyon walls very close in some places. It is not a safe place for helicopters. There are family homes in some of these areas. The canyon walls are solid sandstone that echo sounds for at least 10 miles away. I live 19.3 miles from the canyon mouth, so I would hear them before they halfway to my home.

The canyons are the last refuge for many of the animals and plant life, due to 'progress' on the rim. Some the plant and wildlife are on the endangered species list. The helicopter noise would likely cause stress, leading to lower birth rates.

The canyons are not a national monument to us, they are home to us, the animals, birds, plants and trees. What if the canyons were your home?

Correspondence ID:	1866	Project: 103419	Document:	132671
Name:	Tsosie, Charmaine T			
Received:	Dec,04 2023 21:31:52			
Correspondence Type:	Web Form			

Correspondence: 'Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.

The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community' Canyon DE Chelly and Canyon Del Muerto is home to Navajo residents. Airway traffic WILL disrupt the natural order of animal life and the preserved ruins and even the Canyon itself. Vibrations from the air traffic will weaken any loose walls and destroy the Canyon formation. Families still plant and reside with grazing animals in the Canyon. Please do not allow air traffic planning to proceed. It will not benefit our livelihood and will further destroy any remaining preserved historical sites and will disrupt natural habitat for people and animals alike.

Correspondence ID:	1867	Project: 103419	Document:	132671
Name:	Tsosie, Jon			
Received:	Dec,04 2023 21:43:18			
Correspondence Type:	Web Form			

Correspondence: The idea of having air tours is not in the interest of the Navajo people .

Who is going to benefit from this? Definitely not the residents of Canyon de Chelly or surrounding areas. It is a selfish act on the NPS for their benefit. If NPS what's to do something, then why not open the restrooms inside the canyon for the guest

to use. Open white house trail and let the people have the freedom to sell their art without harassment.
Once again who benefits from this?
With air traffic, wildlife and domestic animals will be affected by the noise.
Who is going to control the traffic too?
With so many fragile things the noise could damage what my ancestors have built and left for use to care for .
I do not agree with the idea and hope that the idea is left at that, just a idea
No air tours over canyon de chelly

Correspondence ID:	1868	Project: 103419	Document:	132671
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Name:	Richards, Lisa
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Received:	Nov,29 2023
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Correspondence Type:	Letter
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Correspondence: Nov. 29, 2023

To: Nation Park Service Canyon do Chelly, National Monument + Volpe National Transportation

From: Lisa Richards, Phillip Draper's Granddaughter
Big Flow Canyon Canyon del Muerto

To whom it may concern -

This is a formal request to oppose the introduction of helicopter tours, to fly over, any part of Canyon del Muerto and Canyon de Chelly.

As a canyon resident in the summer, noise from the helicopters would greatly disrupt the peace and quiet, and pastoral environment, the animals and people need, to restore their spirit, and find solace in the canyon. The loud echoes would be unbearable.

Please do not allow any air tours over the canyon.

Sincerely,
Lisa + Mark + the Draper Family

Correspondence ID:	1869	Project: 103419	Document:	132671
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Name:	Lem, Deborah
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Received:	Dec,4 2023
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Correspondence Type:	Other
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Correspondence: December 04, 2023

Dear Sir or Madam,

My name is Deborah Lem, I'm full Diné, and I reside within the boundaries of Canyon De Chelly, AZ.

Thank you for giving us the opportunity to comment on air tours above our serene homeland Canyon De Chelly, Tseyi'. As a person who tries to co exist, honor, and respect all living beings above me, beneath me, and around me, this plan of air tours will be of no benefit whatsoever to our Diné, Tseyi' community, in fact it will compromise and further frustrate our commitment of sacred Tseyi' stewardship from times millenia. The air pollution will envitably cause irrevocable, adverse, and tragic effects, from the sky above Tseyi' to the land beneath. It will cause irreparable, irreversible, harm and damage, to the precious, delicate, fragile, historic ancient homesites, which abound in Tseyi'. Canyon De Chelly has been home for past Native peoples for thousands of years. Our ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day. These sacred art panels, trails and ancient home sites are monuments to us. Surely, NPS, nor FAA would allow low, daily, tourism flyovers over the Statue of Liberty or Mount Rushmore.. WHY OUR BEAUTIFUL Canyon De Chelly, TSEYI' MONUMENT?? Most of our ancestral monuments stand today because of our sacred respect and deep, abiding ties to our homeland and the tender teaching of KE', which means respect in Diné. Respecting, caring, and being sensitive to those all around, the physical and spiritual, the

land, the animals; air, water, sky, rocks, trees, plants, and most certainly our ancestors' homes and pathways. These ancient sites draw visitors worldwide. One of the primary comments visitors make is that the canyon is so quiet, so serene. Ancient, amazing architecture stand today because of our ancestors respectful, responsible, canyon land management. As Diné children we were taught to never enter or bother archaeological sites.

Our family has had land in the canyon for many centuries. Canyon De Chelly is one of the most beautiful places on earth, attracting and sustaining many ancient peoples from before Jesus Christ time. I have land in the canyon maintaining our traditional farming ways. I also hold a legal "land use permit" in Canyon De Chelly. My time in the canyon is always a time of physical rejuvenation and spiritual restoration. Our canyon is alive and living, giving life, and sustaining life. We enjoy the solitude and don't want that disrupted by air tours.

The current air restrictions above Canyon De Chelly should remain in place so that we can maintain our sacred, beautiful, serene, partnership of life with our awesome Tseyi'. Thank you for your time and attention in this matter.

Sincerely,

Deborah Lem/Canyon De Chelly Resident
PO Box 3471
Chinle, AZ 86503

Correspondence ID:	1870	Project: 103419	Document:	132671
Name:	McClanahan, Lupita			
Received:	Nov,25 2023			
Correspondence Type:	Other			
Correspondence:	November 25, 2023			

To whom it may concern:

My name is Lupita McClanahan and my family has lived in Canyon de Chelly for as long as there have been stories. When Charles Linberg landed his plane alongside my family, we welcomed him. Then his companions got out and took pottery from our ancestors' homes. Another story is when we visited the beautiful Beehive Cave Cliff Dwelling in its pristine condition. Then the government's airplane testing, their sonic booms caused rock falls and destroyed some of the cliff dwellings.

I make my living by giving people from the modern world a sense of what traditional Diné (Navajo) relationship with the land, the air, and the canyon can be. What I can offer is becoming more and more rare everyday. Bringing airplanes overhead, accelerates the decay of our connection to the land. The Park Service has told us that we cannot use ATV's, generators, water pumps, and other noisy machines. Why should an air tour airplane be allowed?

Most importantly, by flying over my ancestral land you are blocking my spiritual connection with "Talking God". I would suggest that you speak more openly to the residents and the elders - the medicine man and woman before you do this. Many of us still practice the secret ways of our ceremonies. Quietness and privacy are always required.

We (I) feel that an intrusion into our ceremonies in this way, is a violation of the freedom of religion act. Therefore, we (I) are considering legal action to prevent this happening.

However, I know that if people developed the same kind of relationship with the land and the air breath, there would be no possible way for this to happen. I invite you to come and visit me in my hogan on the canyon floor to listen to the silence and connect with the creators. Then we can talk about if any of this makes sense.

Thank you for your time and I look forward to your visit.

Lupita McClanahan / Resident of Canyon de Chelly

Exhibit 5 – Finding of Effects Letter, dated December 28, 2023, Notification of Additional Comments, and Concurrences, with the following attachments:

Attachment A. List of Consulting Parties

(23 tribes; 5 opted out of further Section 106 consultation for the undertaking)

Attachment B. APE Map Including Existing Commercial Air Tour Routes

Attachment C. List of Historic Properties in the APE and Description of Historic Characteristics

Attachment D. Summary of Noise Technical Analysis from NEPA Review

- 12/28/23 to Navajo Nation THPO
- 12/28/23 to Apache County (Cities of Chinle and Del Muerto)
- 12/28/23 to National Parks Conservation Association
- 12/28/23 to National Trust for Historic Preservation
- 12/28/23 to Southwest Safaris
- 12/28/23 to Grand Canyon Airlines and Air Grand Canyon
- 12/28/23 to IKG Air, LLC dba American Aviation (Chuck Howe)
- 04/08/24 and 05/10/24 Correction to Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument (correction to number of comments received – from 5 to 8 and 8 to 9)
- 01/23/24 Response from National Parks Conservation Association

**Exhibit 5 – Finding of Effects Letter, dated
December 28, 2023, Notification of
Additional Comments, and Concurrences**



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Richard Begay
Tribal Historic Preservation Officer
Navajo Nation
PO Box 4950
Window Rock, AZ 86515

Dear Tribal Historic Preservation Officer Begay:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated May 21, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith Walker', with a long, sweeping horizontal line extending to the right.

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

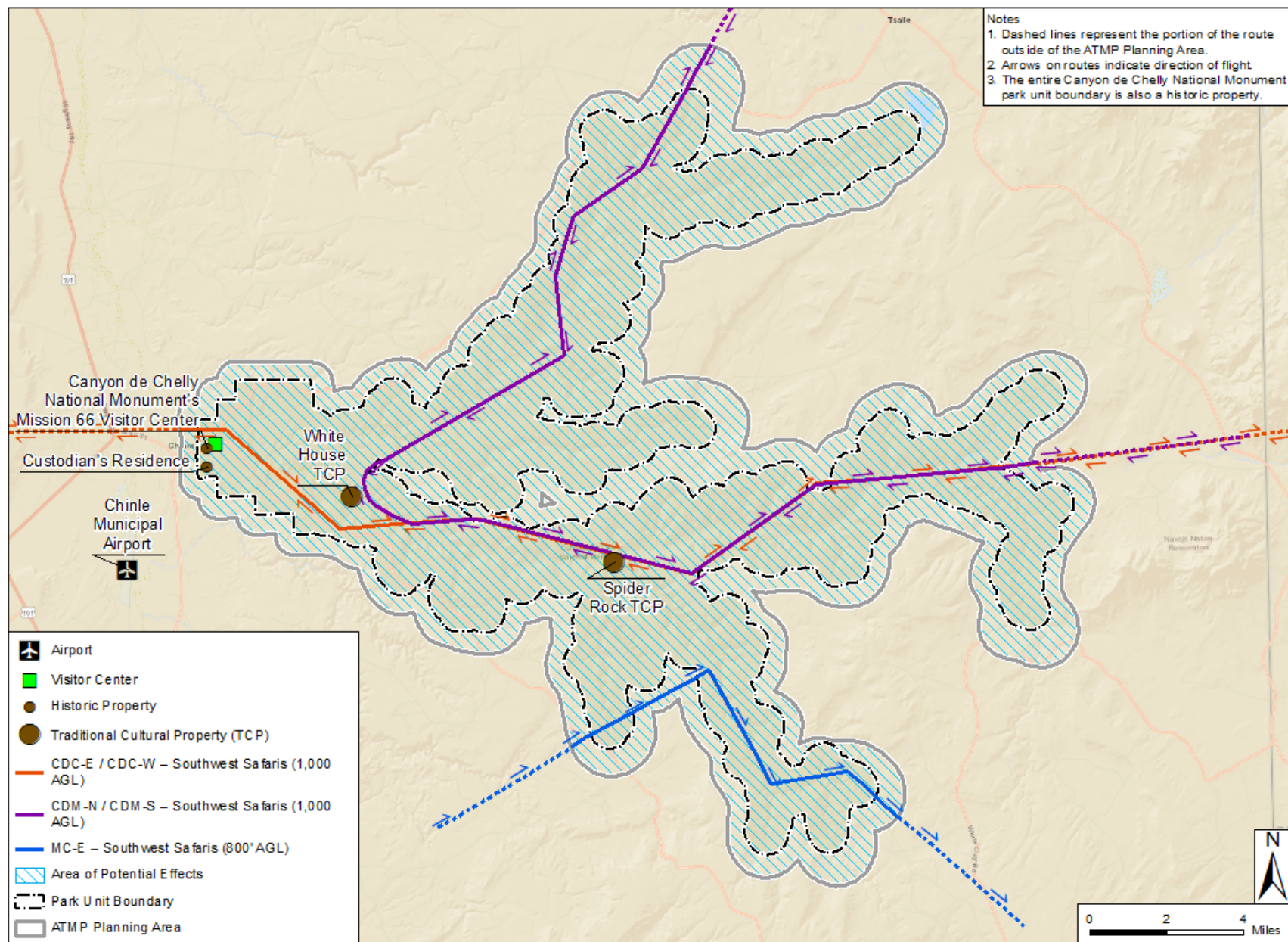
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12\text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12\text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> Increases in both the loudness and duration of noise events The number of noise events during specific time period (12 hours for $L_{Aeq, 12\text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12\text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

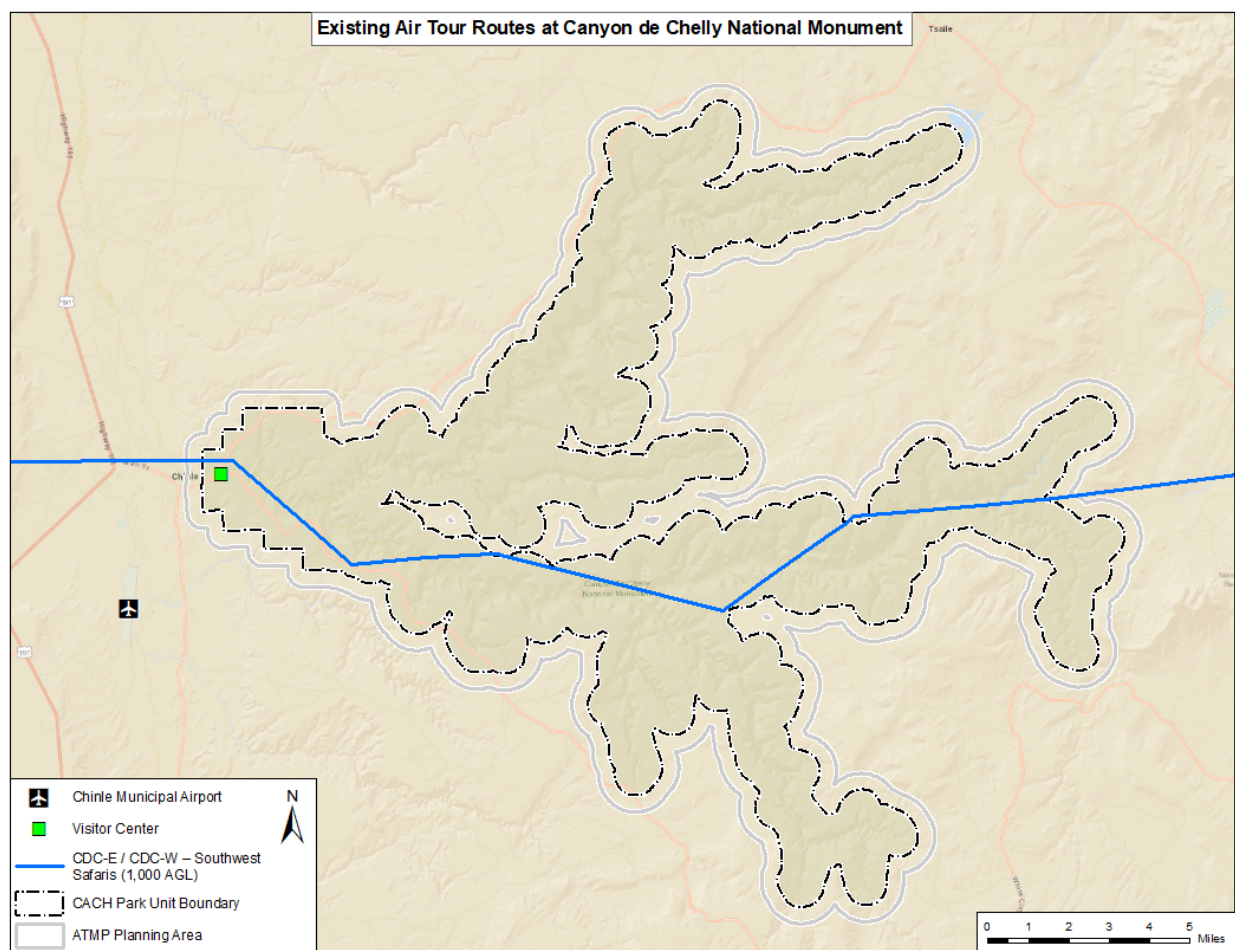


Figure 1. Modeled flight route

⁶As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

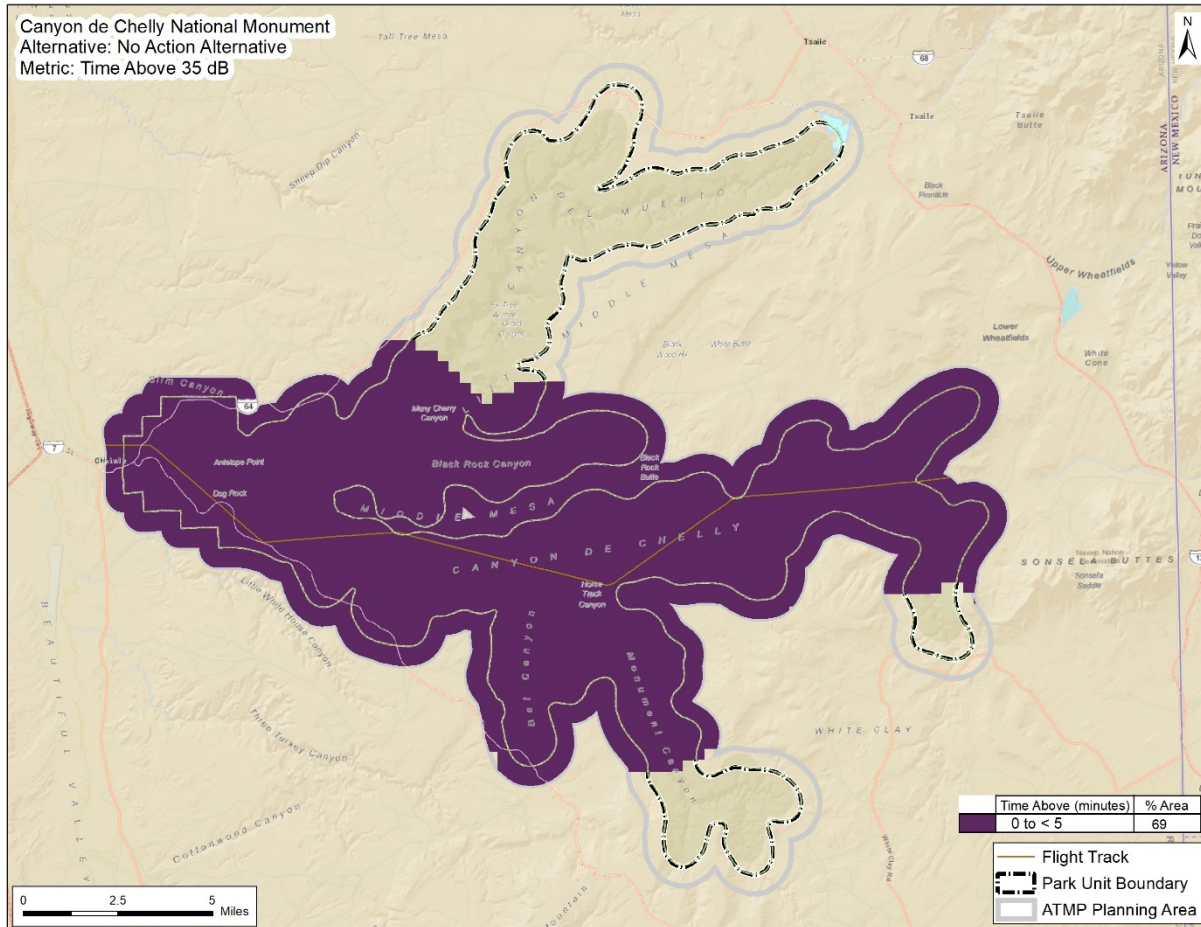


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

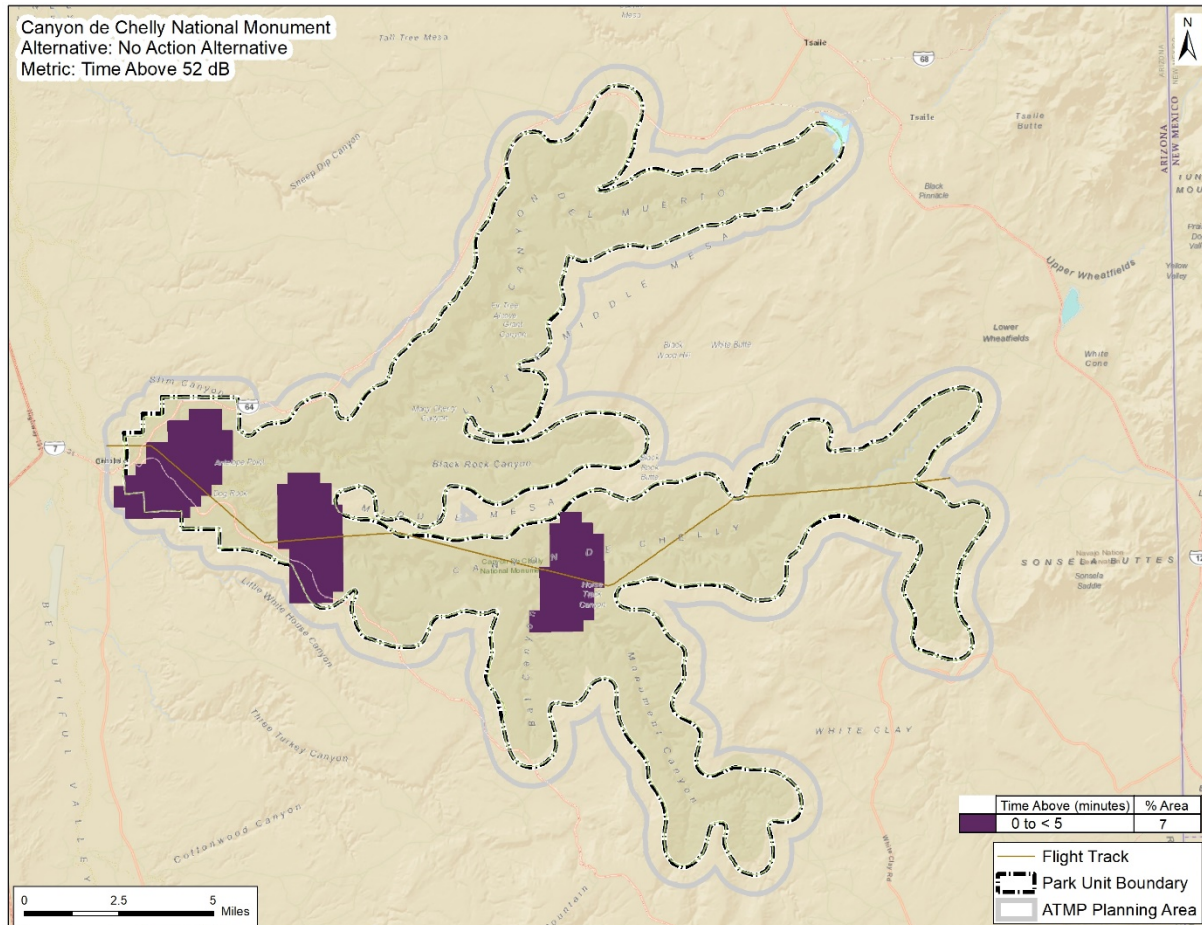


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

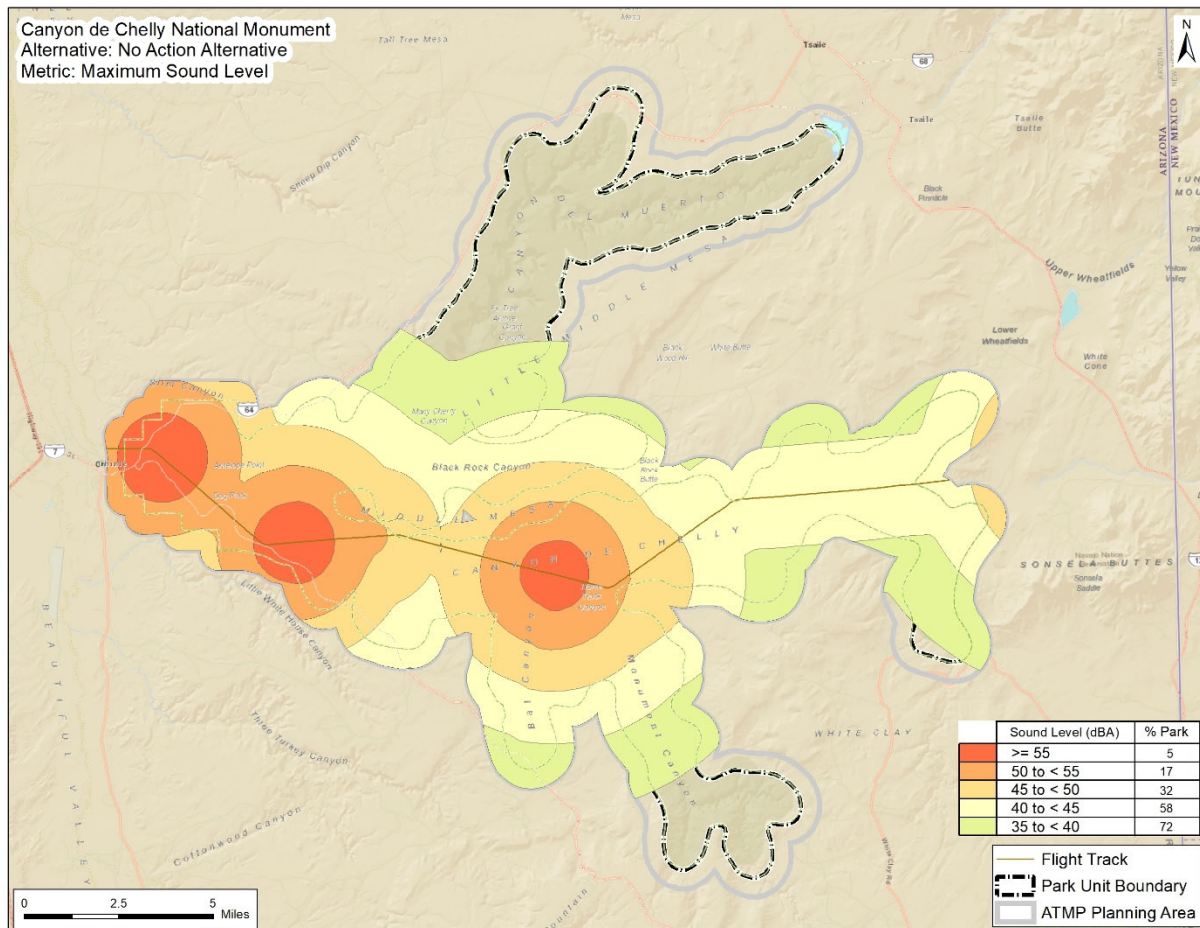


Figure 4. Maximum Sound Level contour map for the No Action Alternative



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Shanna Pearce
Planning and Zoning Assistant
Apache County (Cities of Chinle and Del Muerto)
75 West Cleveland
St. Johns, AZ 85936

Dear Ms. Pearce:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated August 6, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

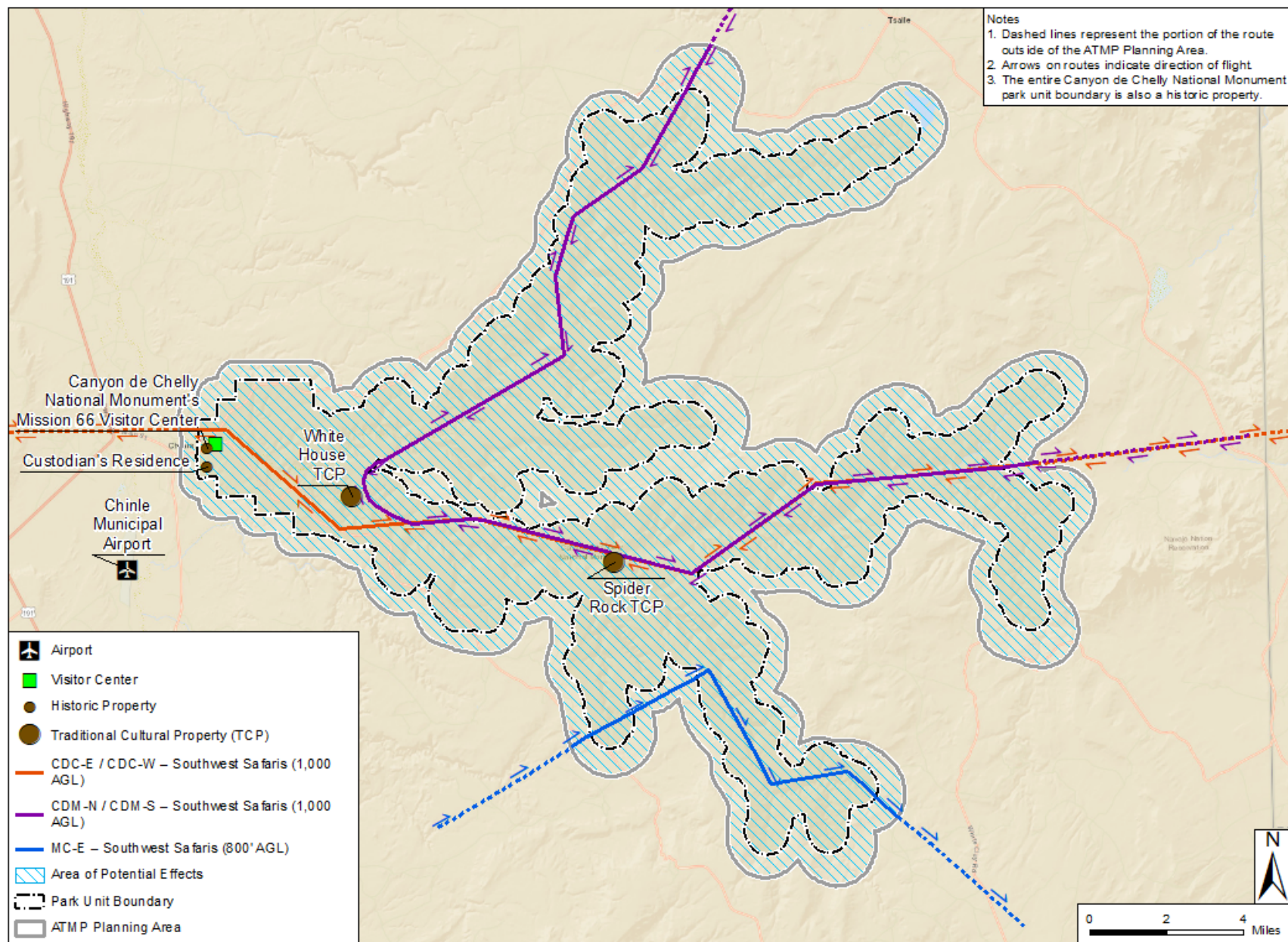
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12 \text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12 \text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> Increases in both the loudness and duration of noise events The number of noise events during specific time period (12 hours for $L_{Aeq, 12 \text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12 \text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

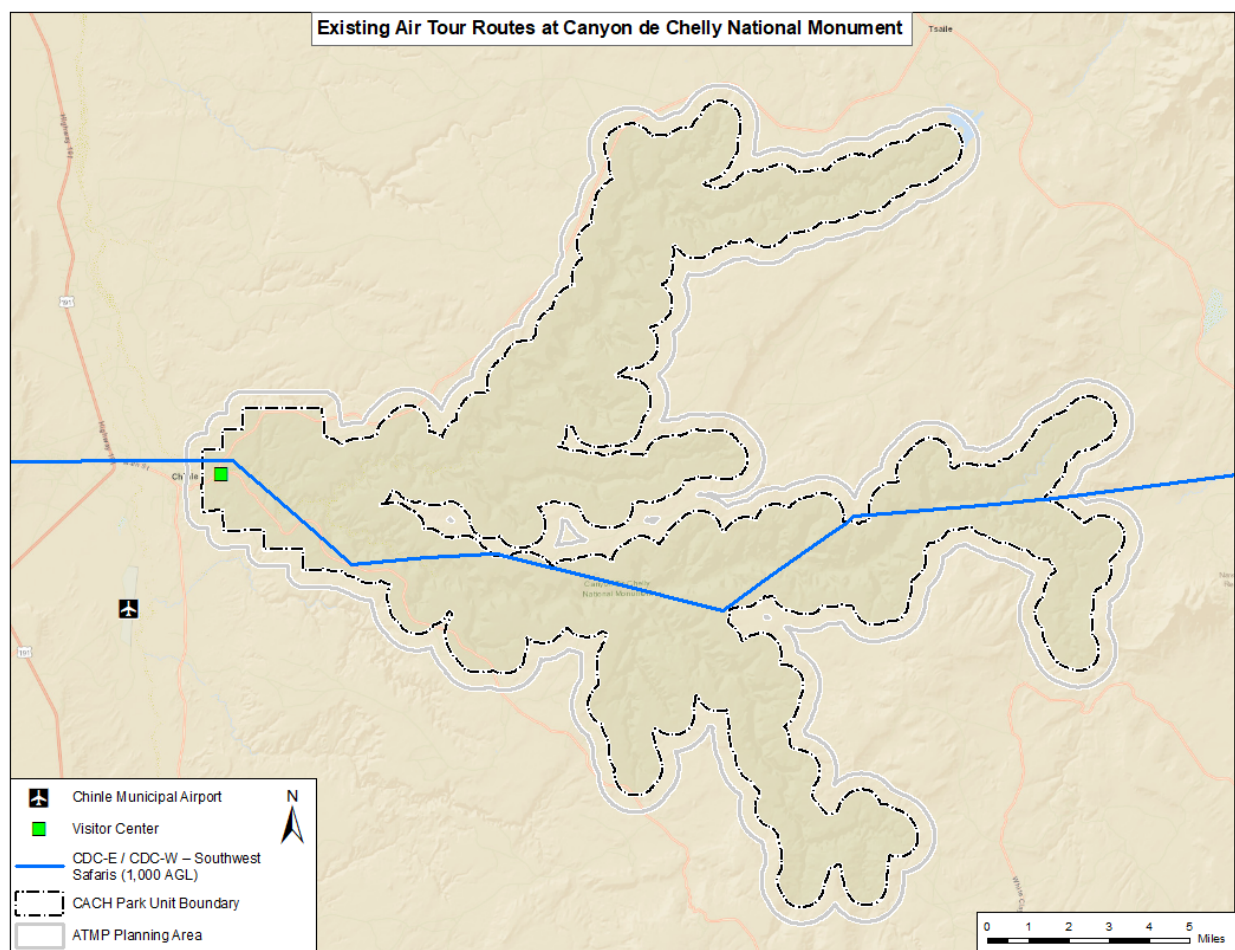


Figure 1. Modeled flight route

⁶As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

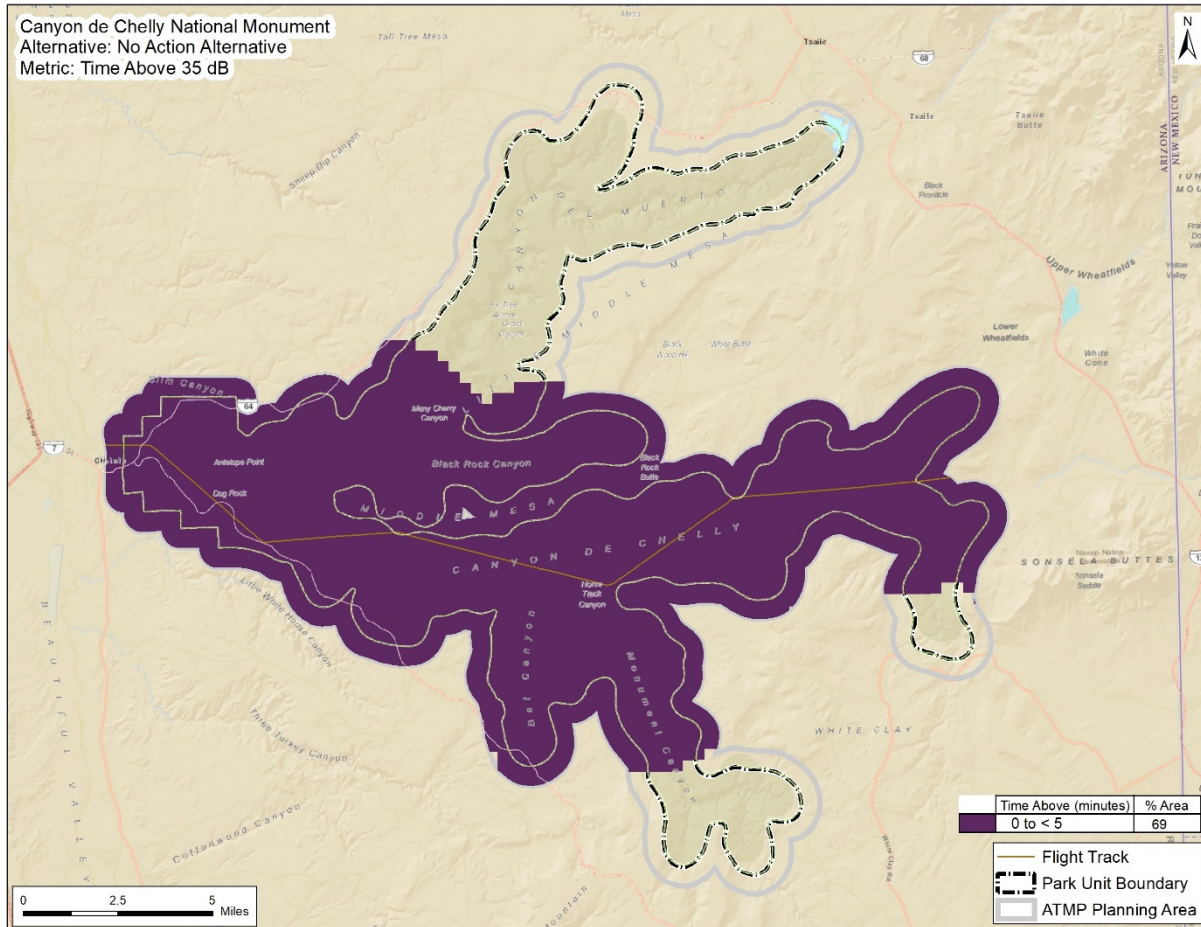


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

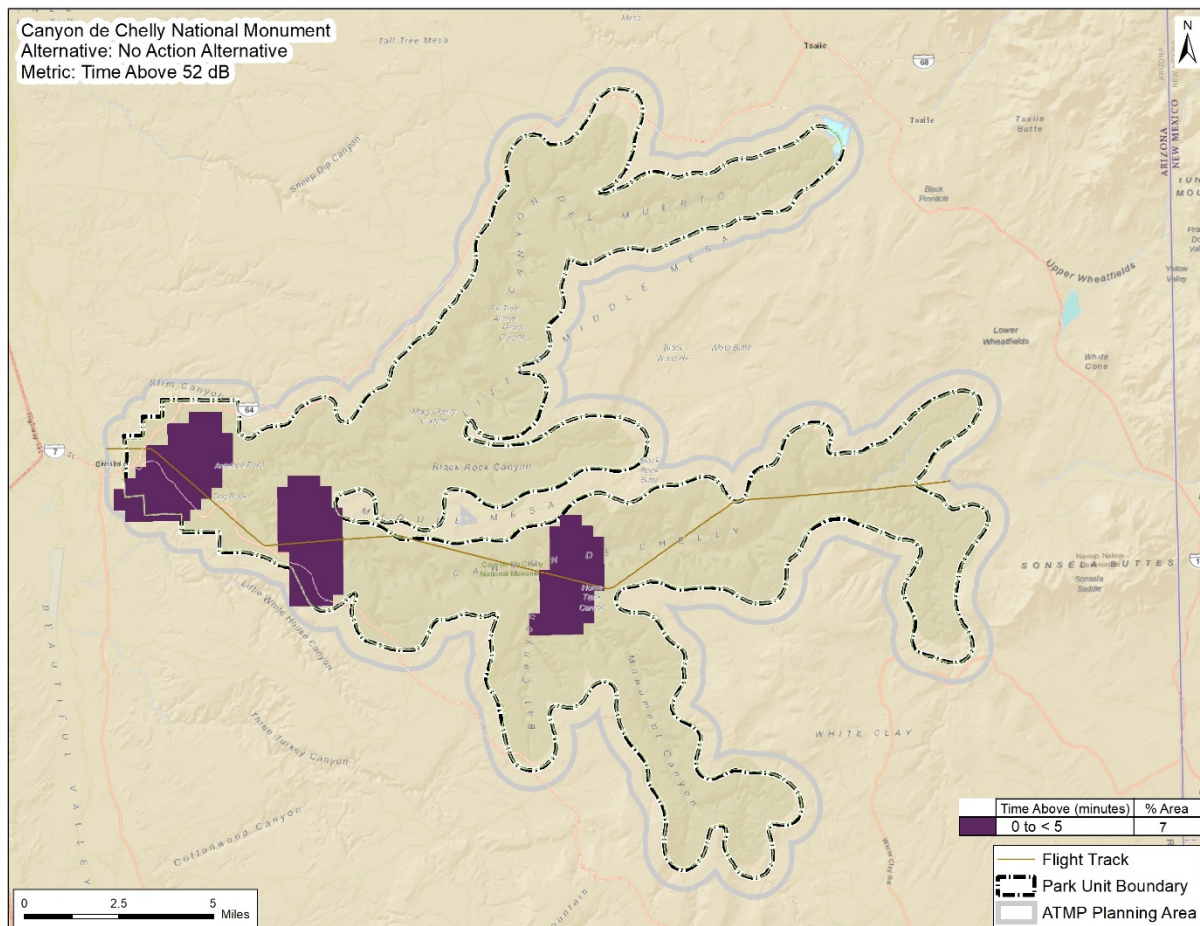


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

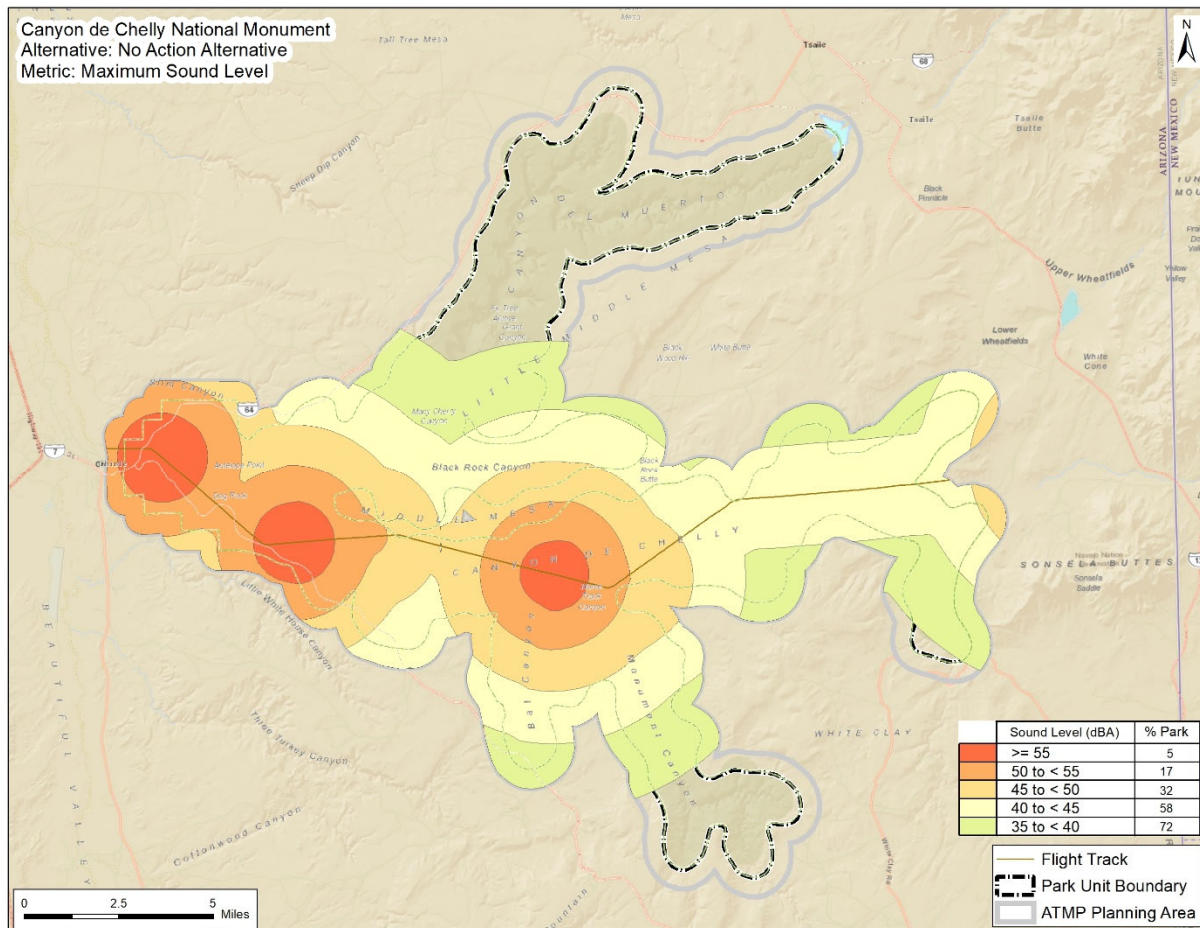


Figure 4. Maximum Sound Level contour map for the No Action Alternative



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Ernie Atencio
Southwest Regional Director
National Parks Conservation Association – Arizona
PO Box 2896
Santa Fe, NM 87504

Dear Ernie Atencio:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated June 9, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for

review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

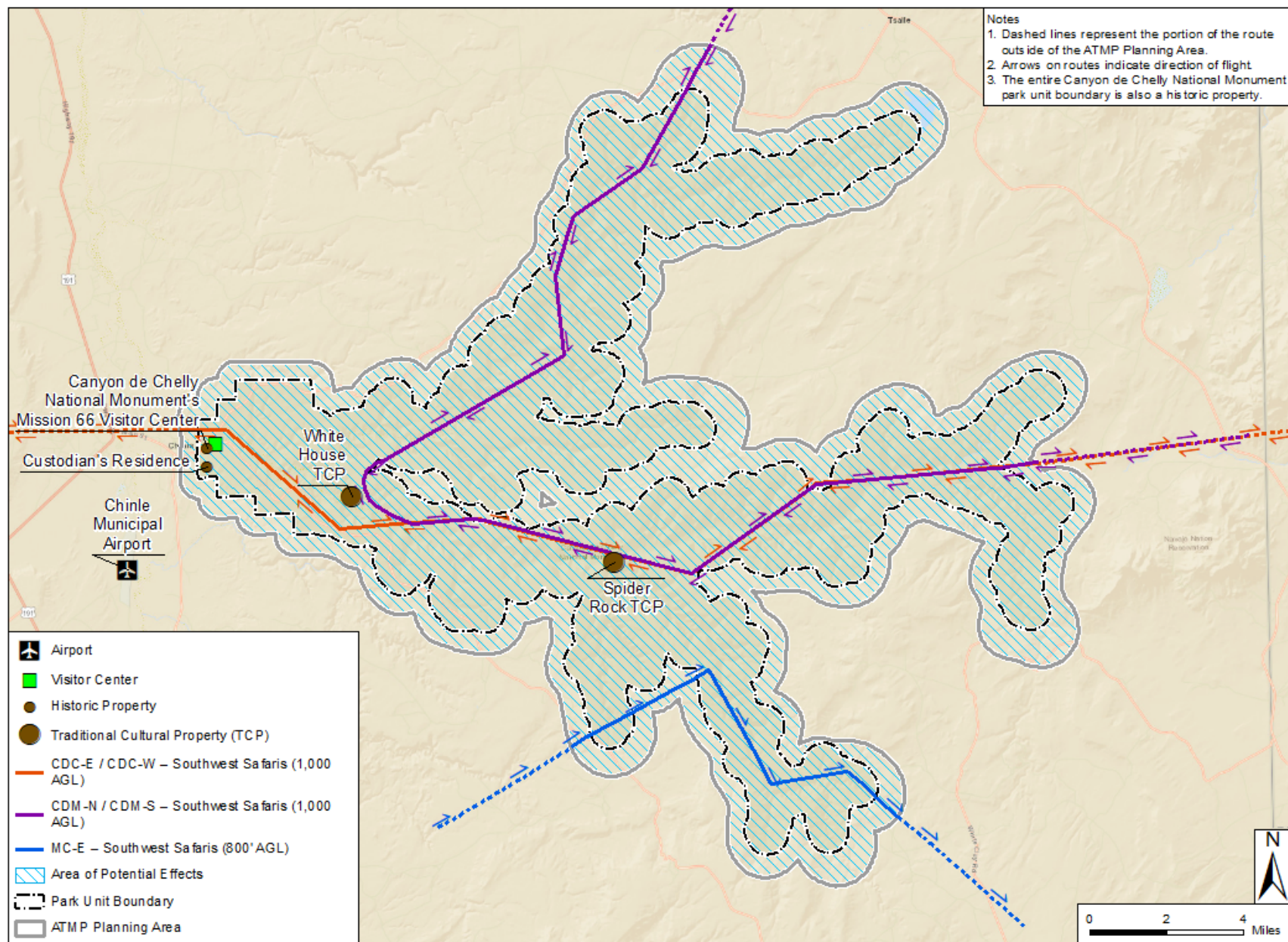
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12\text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12\text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> • Increases in both the loudness and duration of noise events • The number of noise events during specific time period (12 hours for $L_{Aeq, 12\text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12\text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

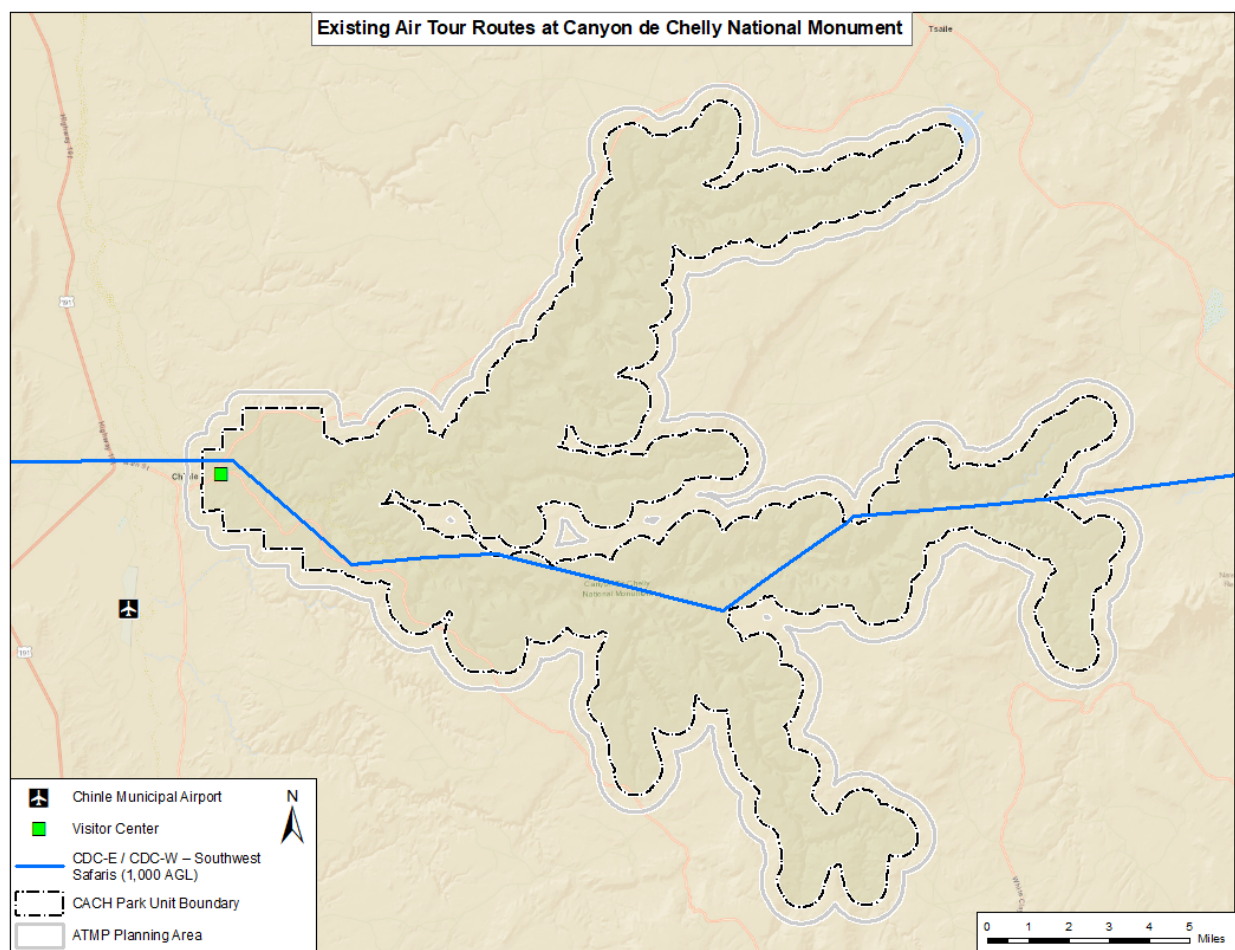


Figure 1. Modeled flight route

⁶As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

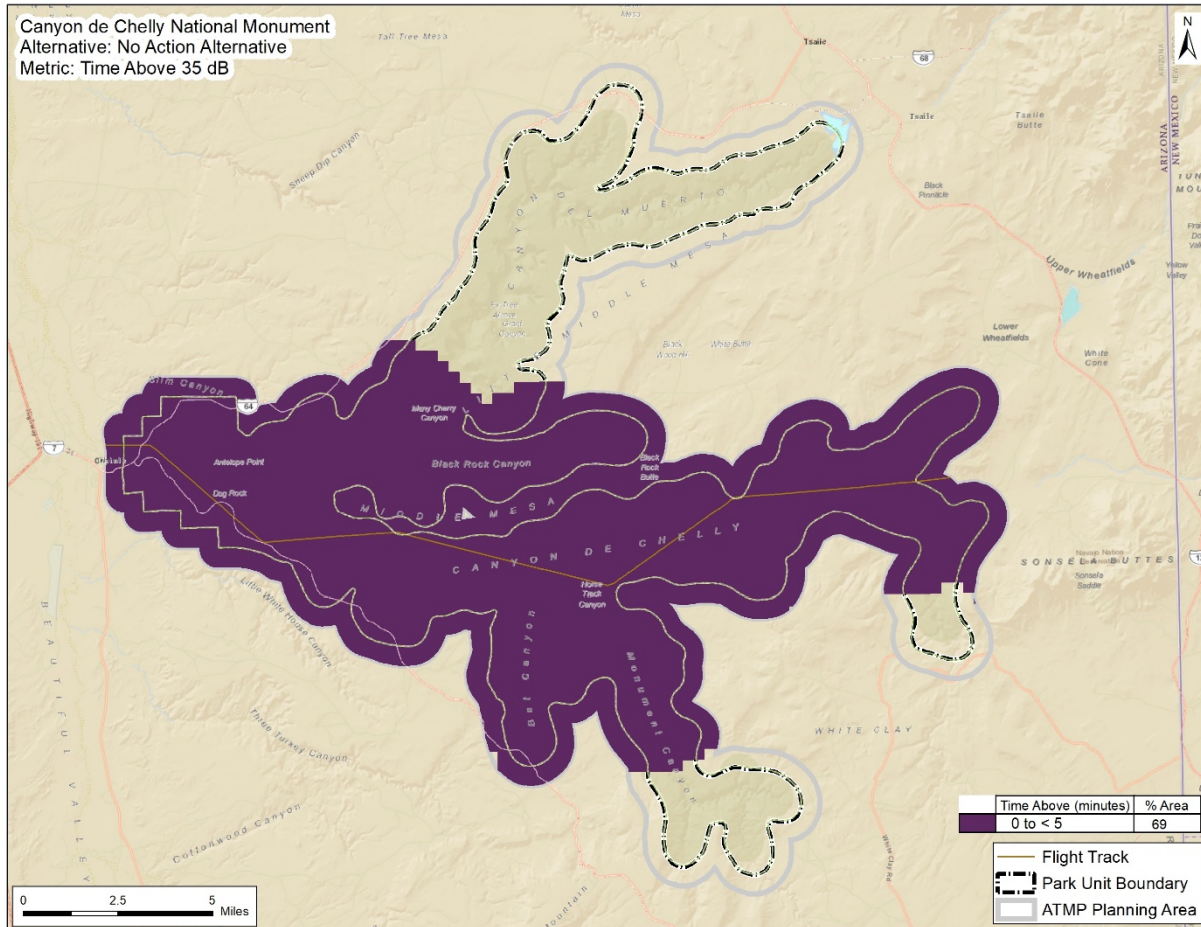


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

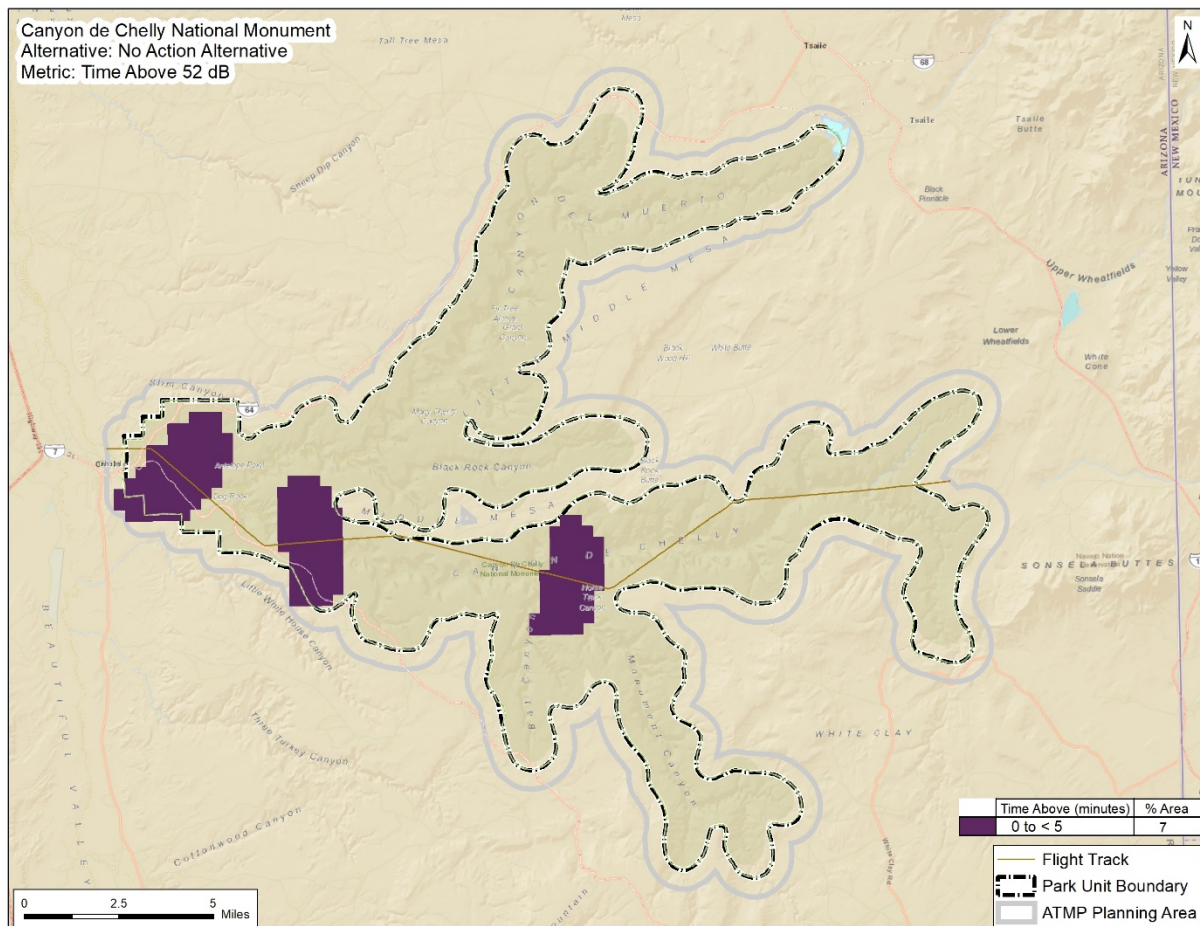


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

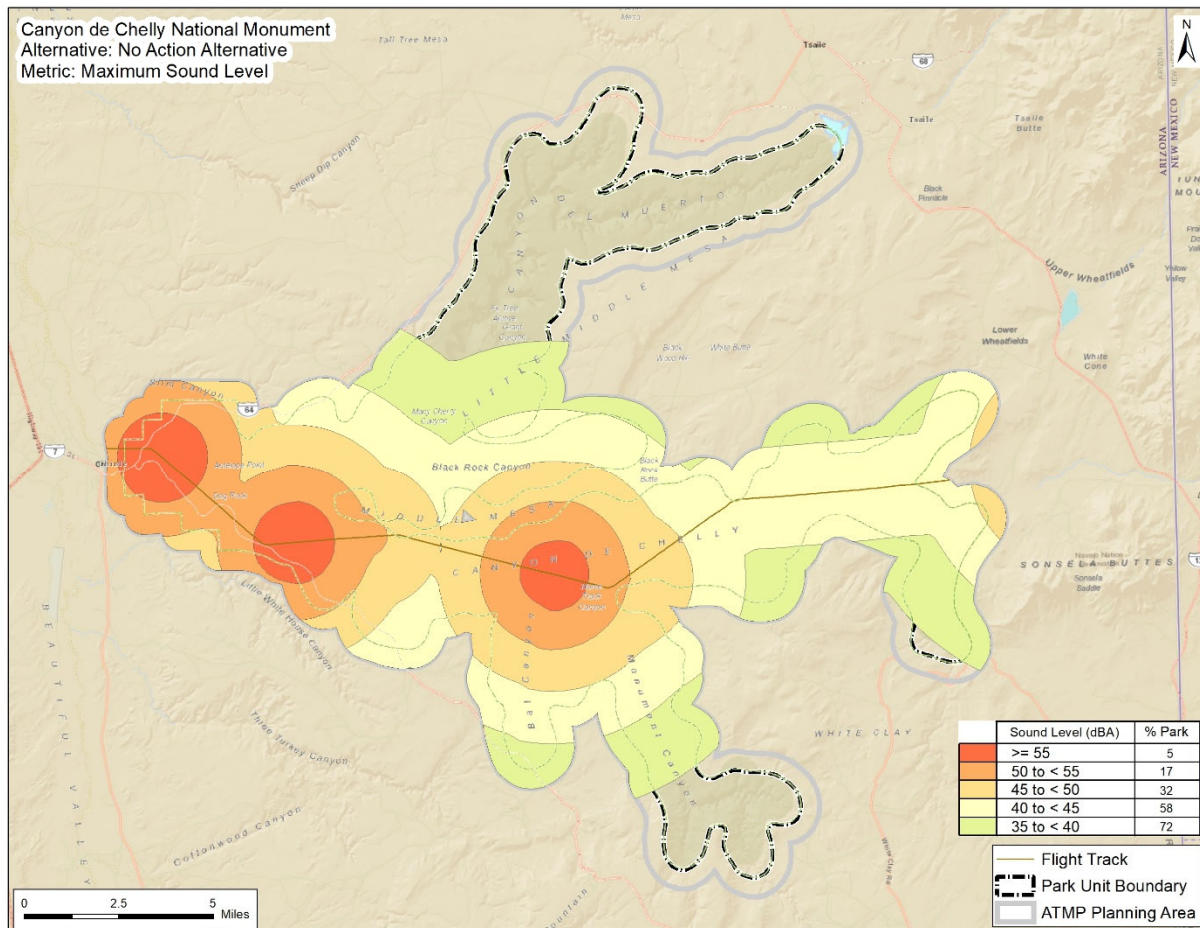


Figure 4. Maximum Sound Level contour map for the No Action Alternative



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Betsy Merritt
Deputy General Counsel
National Trust for Historic Preservation
2600 Virginia Ave. NW, Ste 1100
Washington DC 20037

Dear Betsy Merritt:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated June 9, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

CC: Elaine Chang, Legal Coordinator

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes

- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

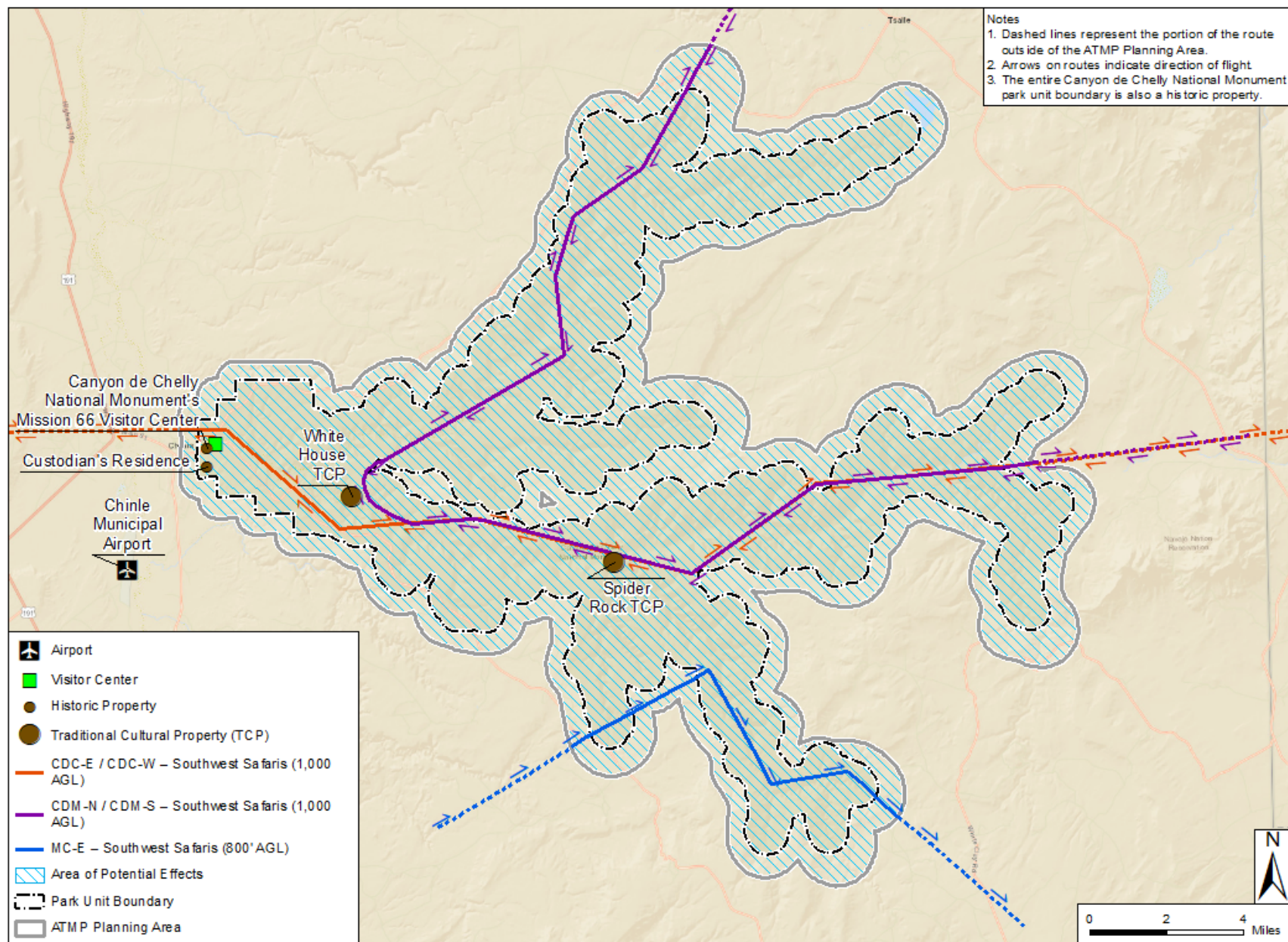
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12\text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12\text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> Increases in both the loudness and duration of noise events The number of noise events during specific time period (12 hours for $L_{Aeq, 12\text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12\text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

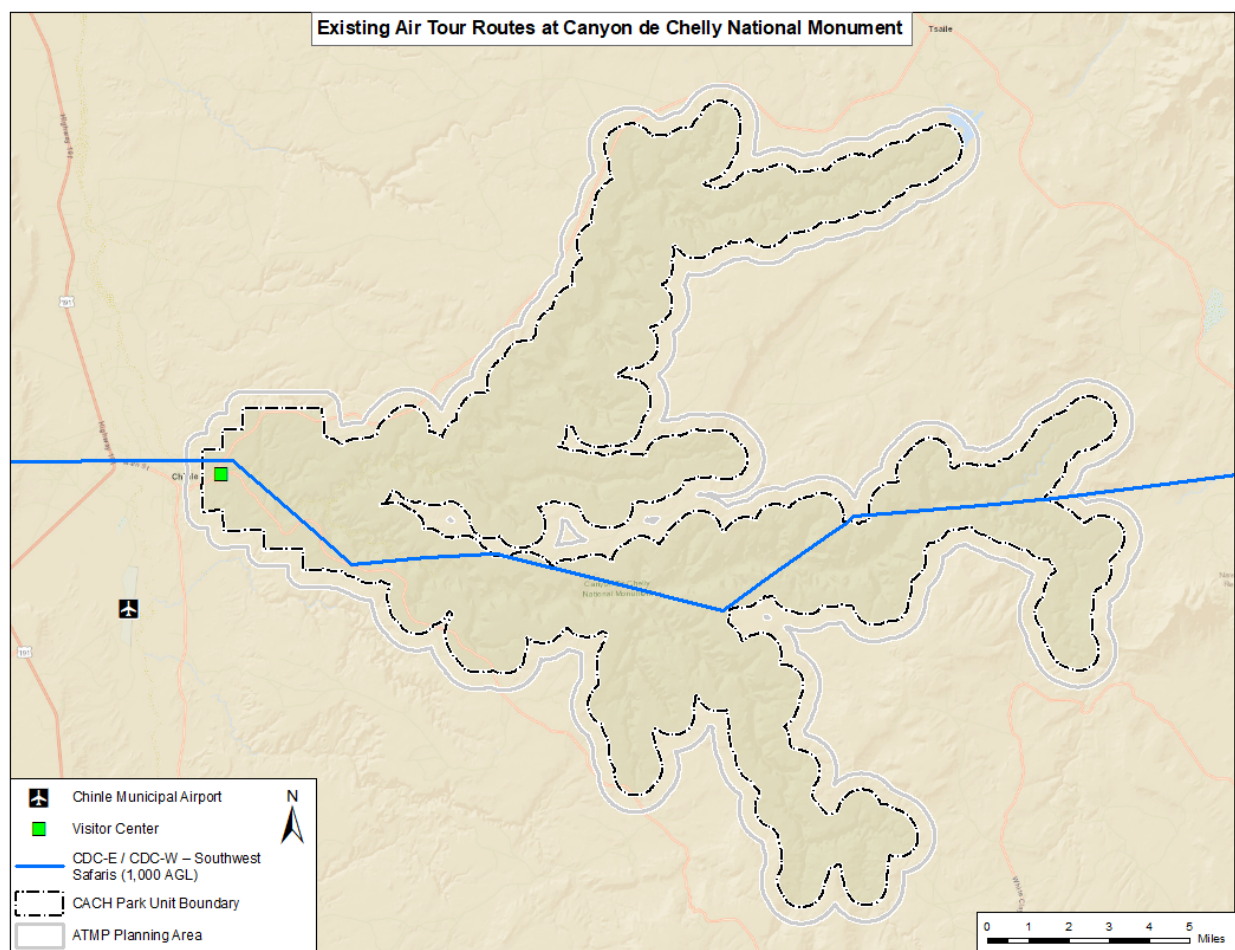


Figure 1. Modeled flight route

⁶As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

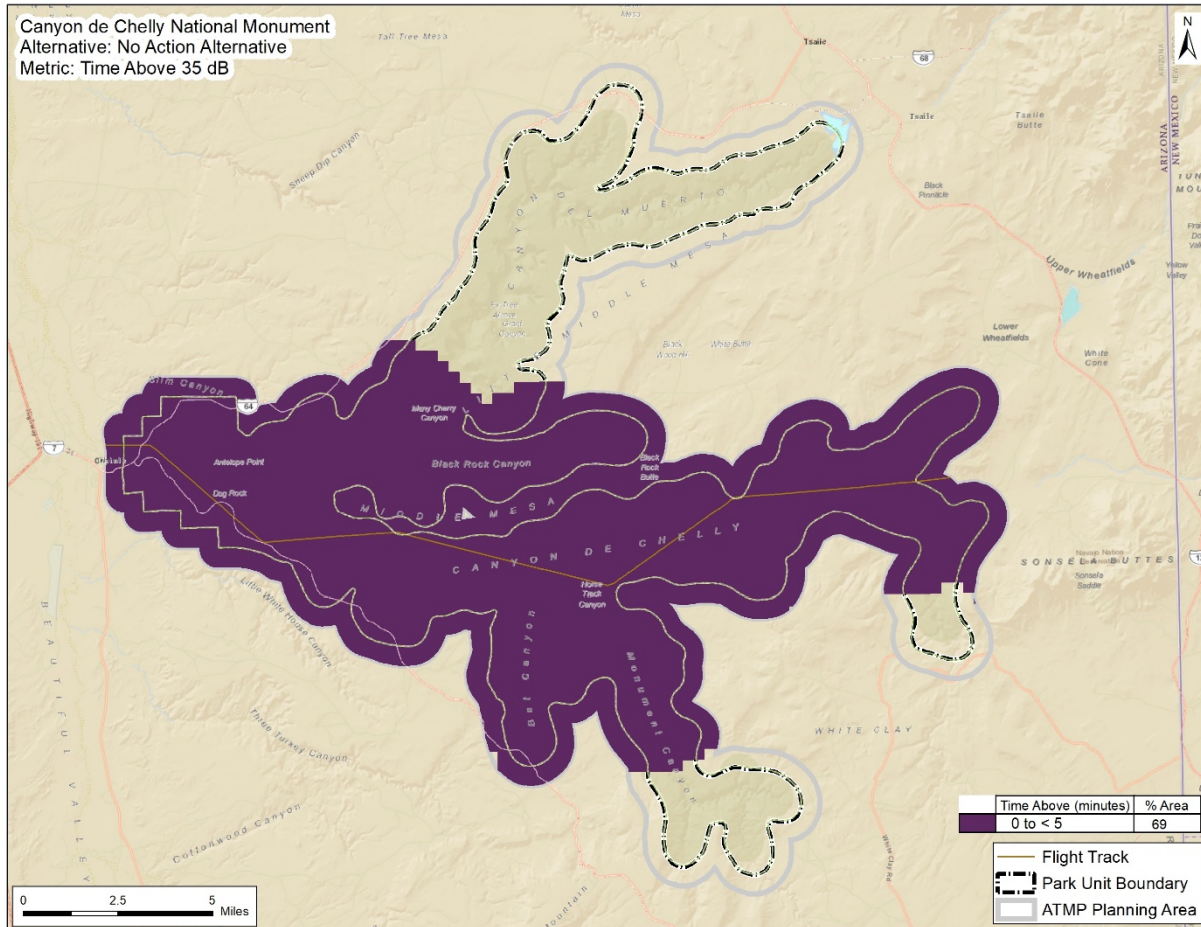


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

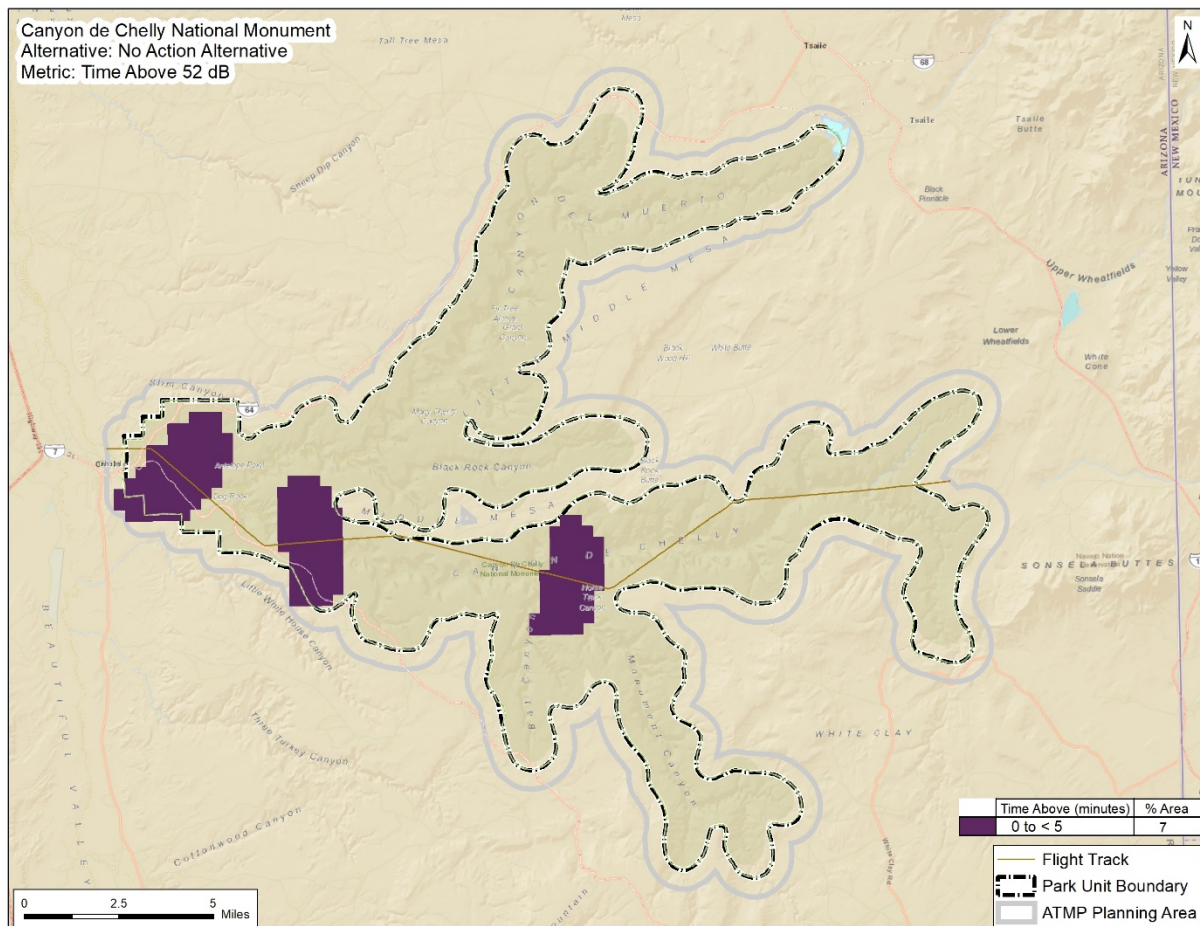


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

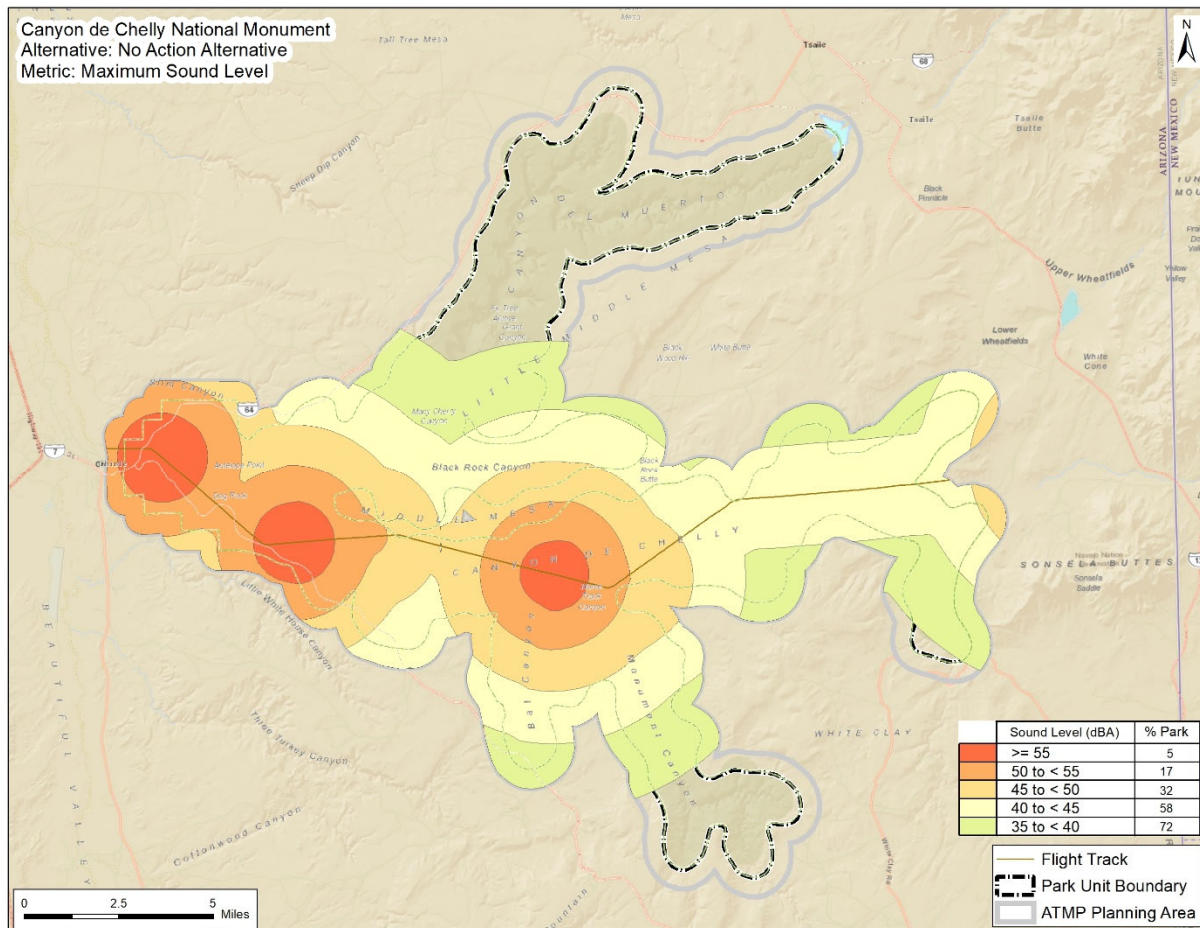


Figure 4. Maximum Sound Level contour map for the No Action Alternative



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Bruce M. Adams
Southwest Safaris
712 Felipe Place
Santa Fe, NM 87505

Dear Mr. Adams:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated June 2, 2023, where we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

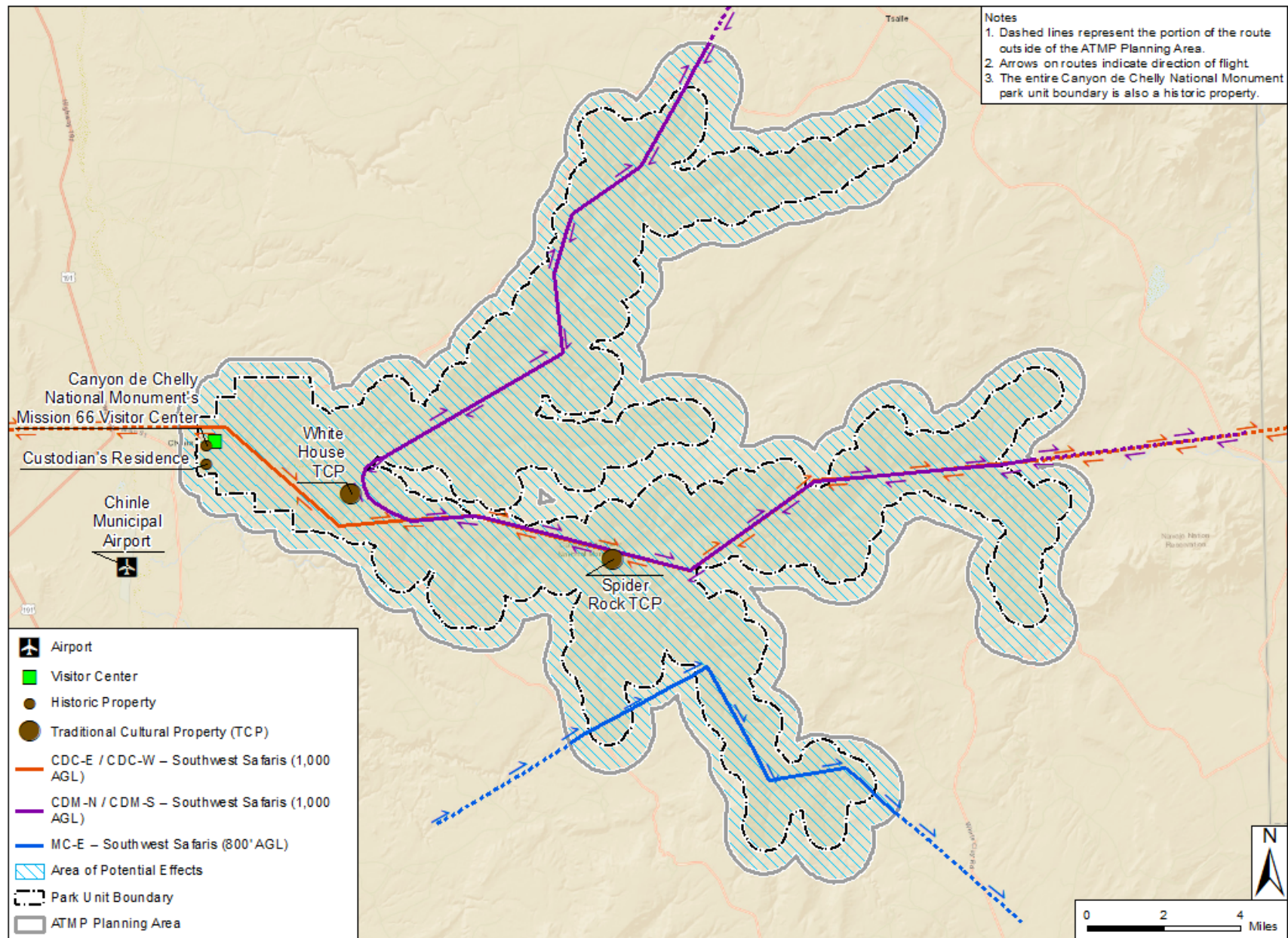
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12\text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12\text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> Increases in both the loudness and duration of noise events The number of noise events during specific time period (12 hours for $L_{Aeq, 12\text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12\text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

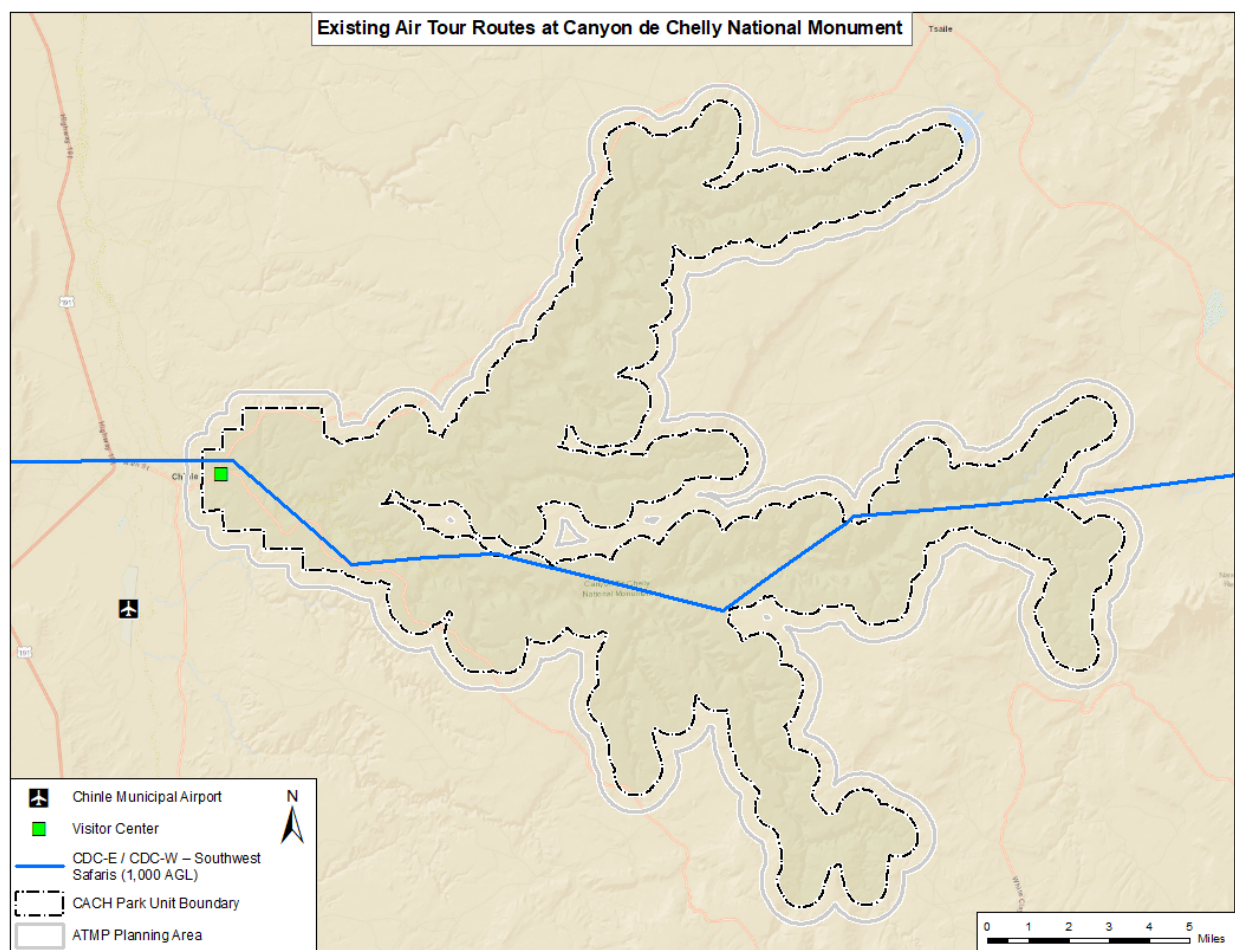


Figure 1. Modeled flight route

⁶ As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

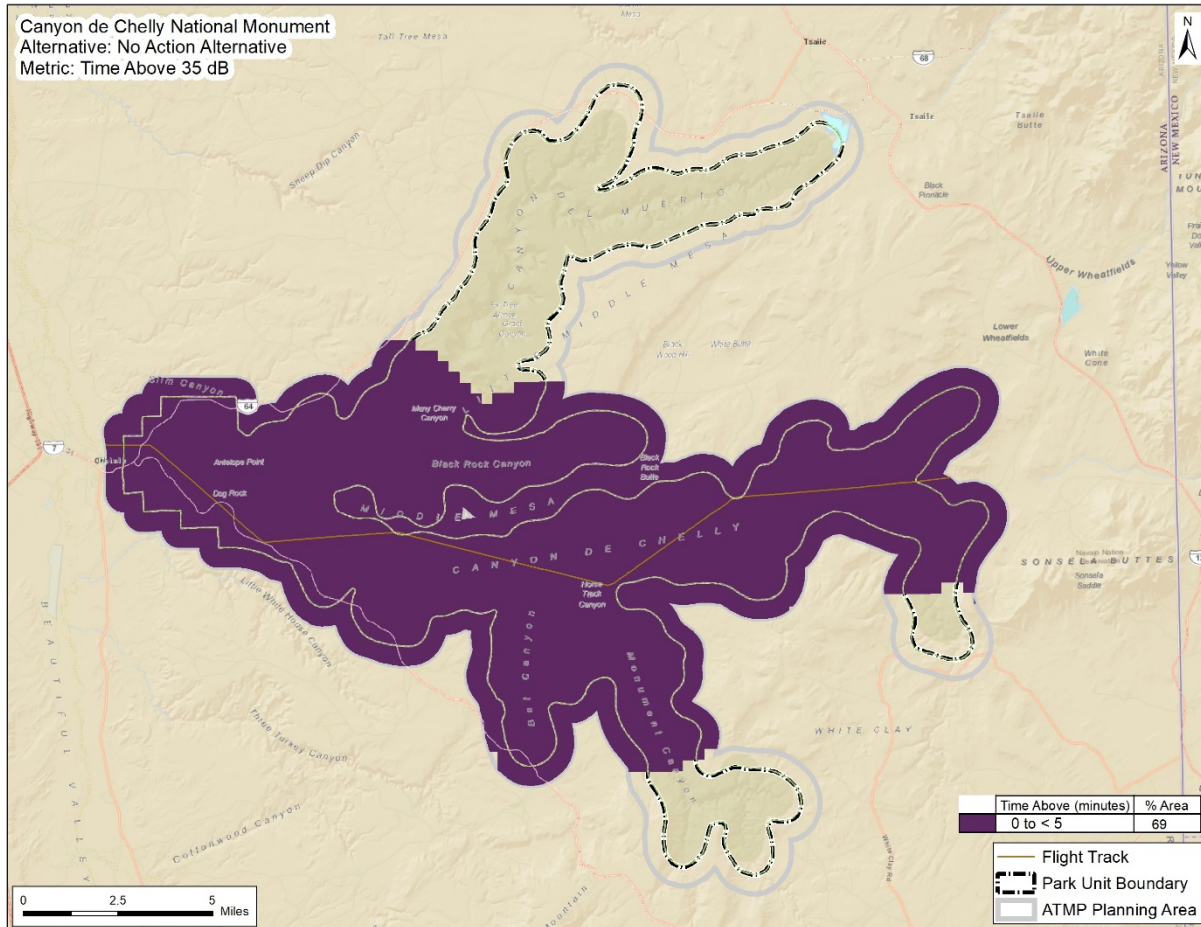


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

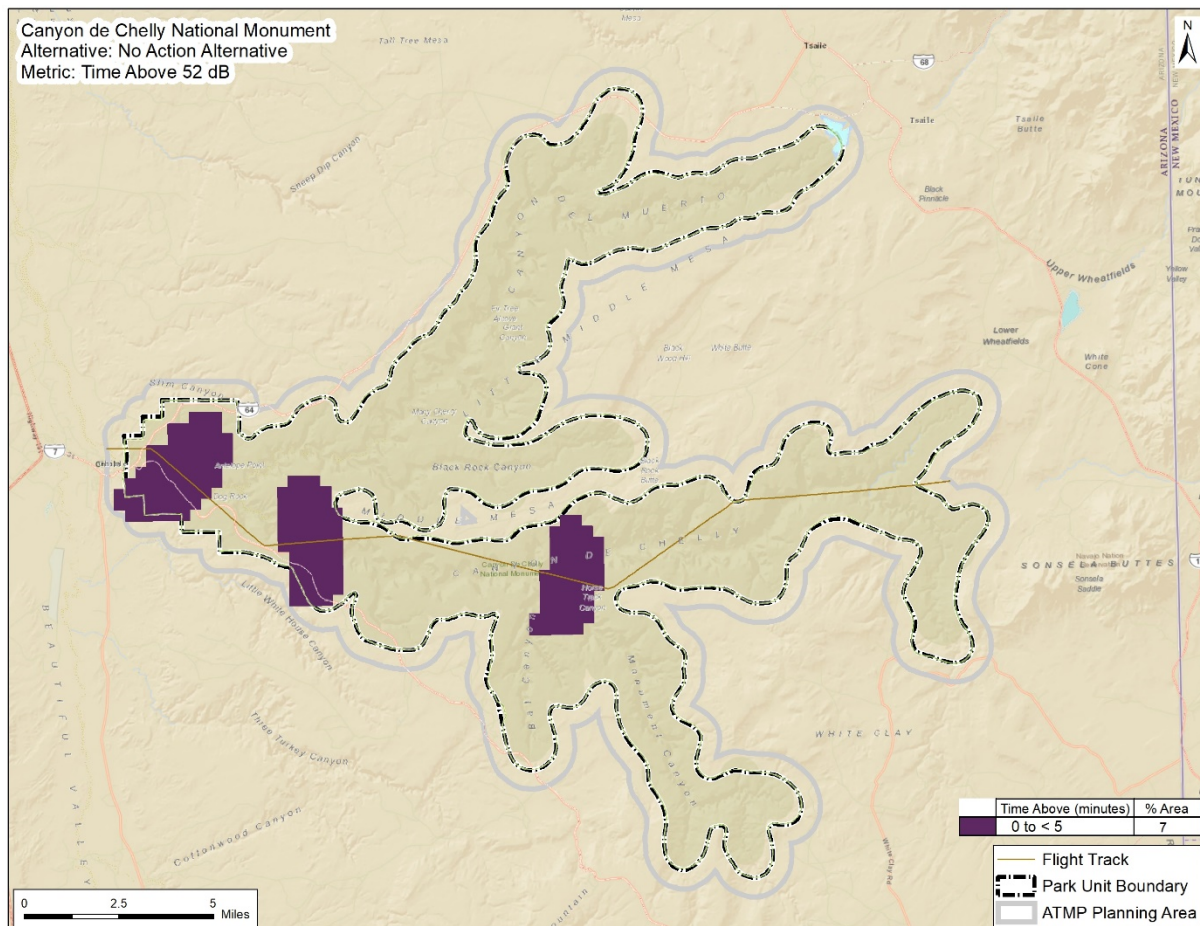


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

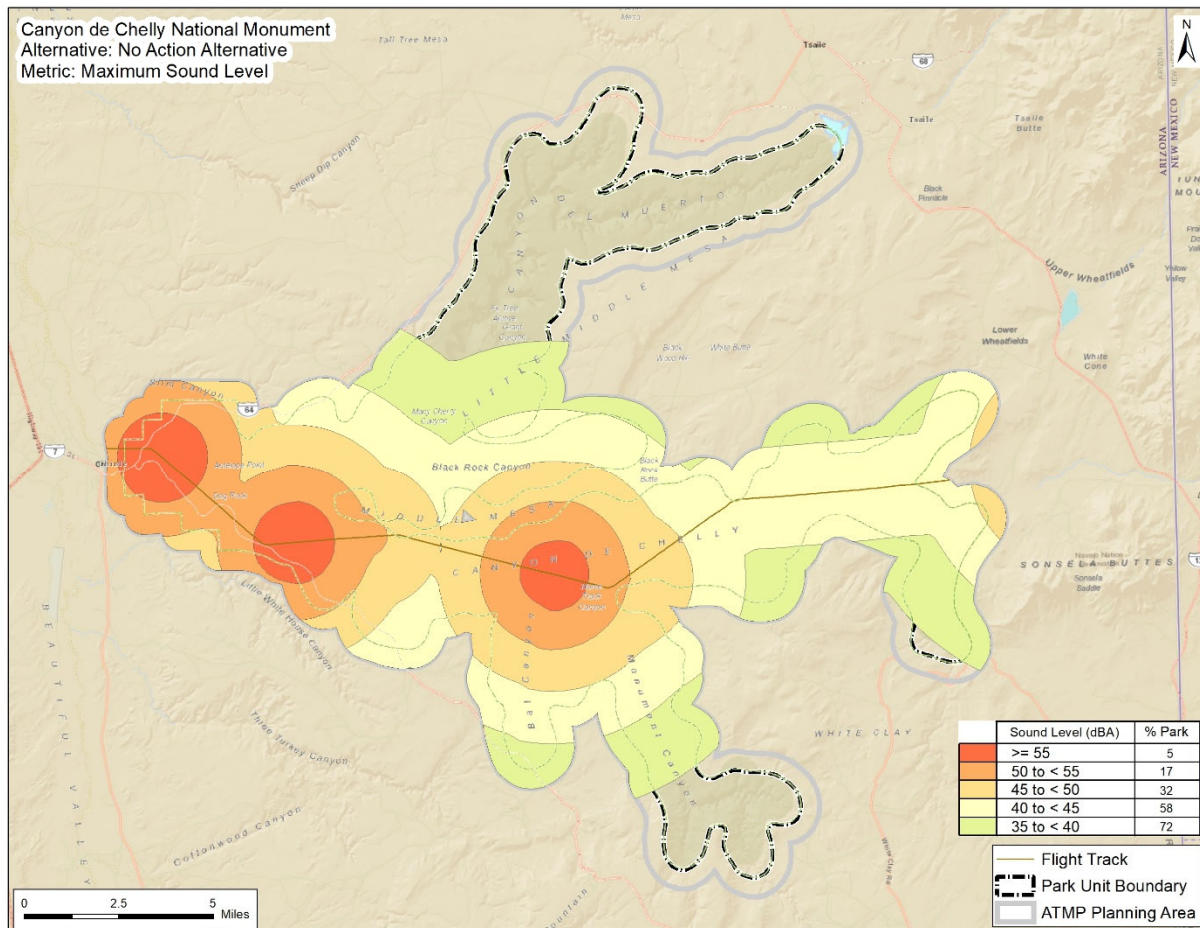


Figure 4. Maximum Sound Level contour map for the No Action Alternative



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Jake Tomlin
Grand Canyon Airlines and Air Grand Canyon
1265 Airport Road
Boulder City, NV 89005

Dear Mr. Tomlin:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office by letter dated June 2, 2023, where we described the proposed undertaking in more detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

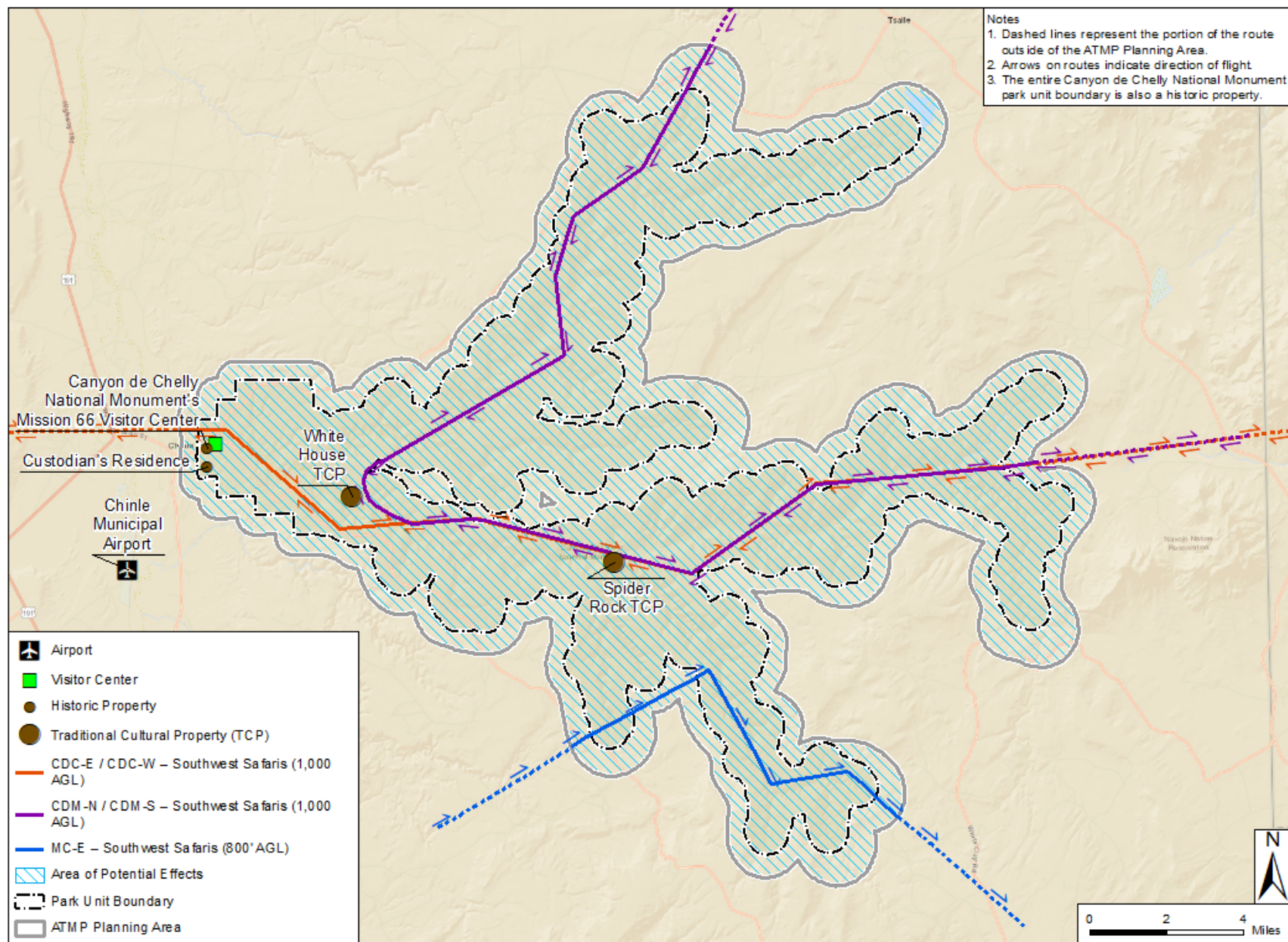
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12\text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12\text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> • Increases in both the loudness and duration of noise events • The number of noise events during specific time period (12 hours for $L_{Aeq, 12\text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12\text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

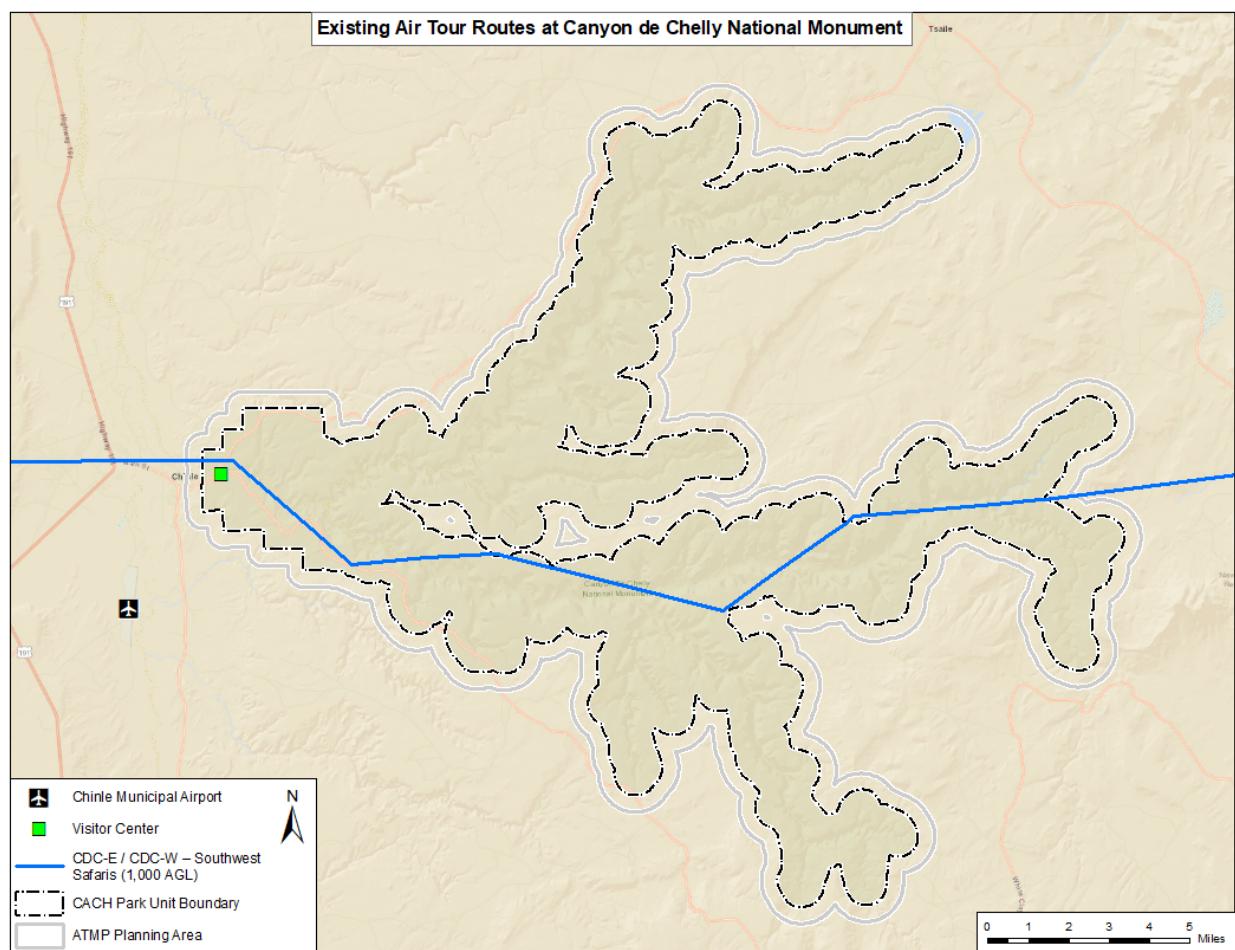


Figure 1. Modeled flight route

⁶As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

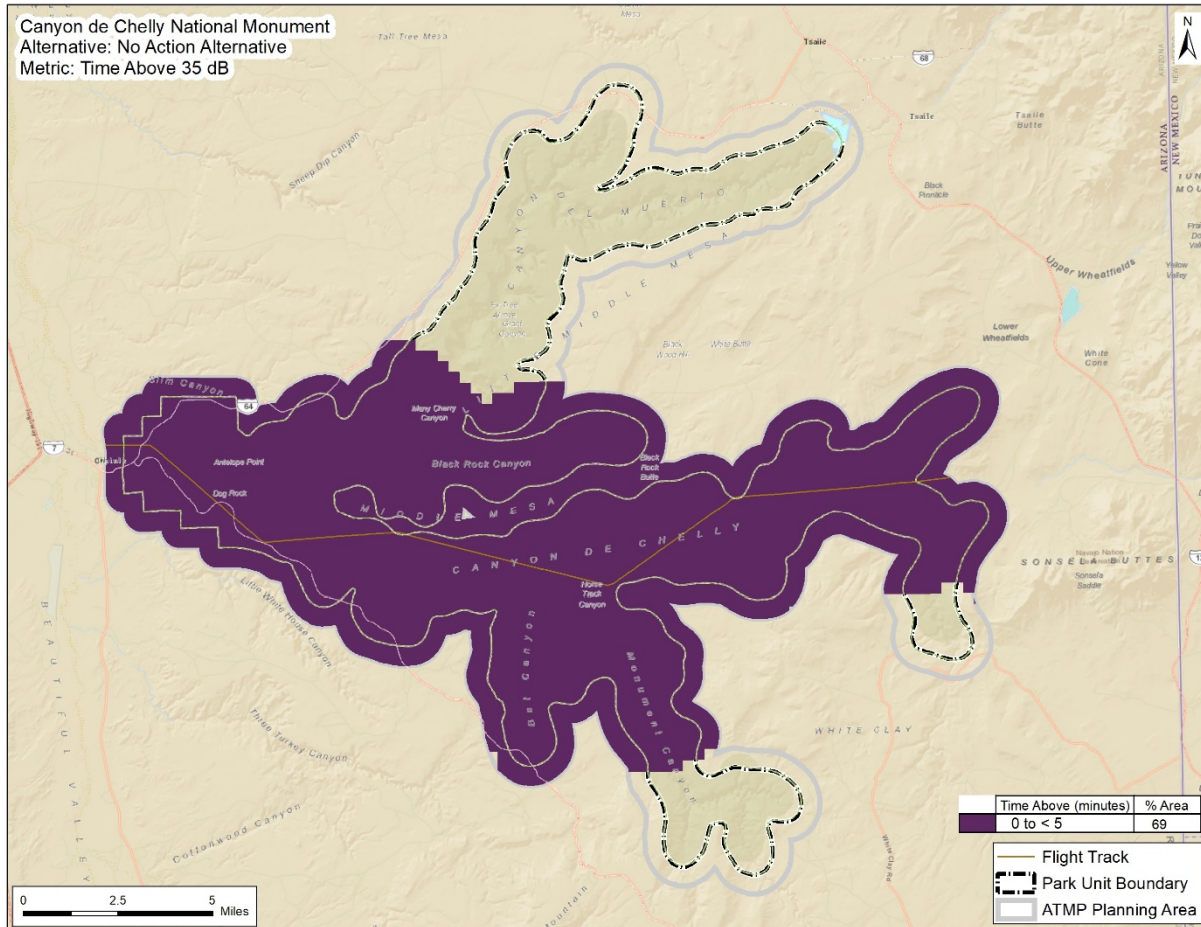


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

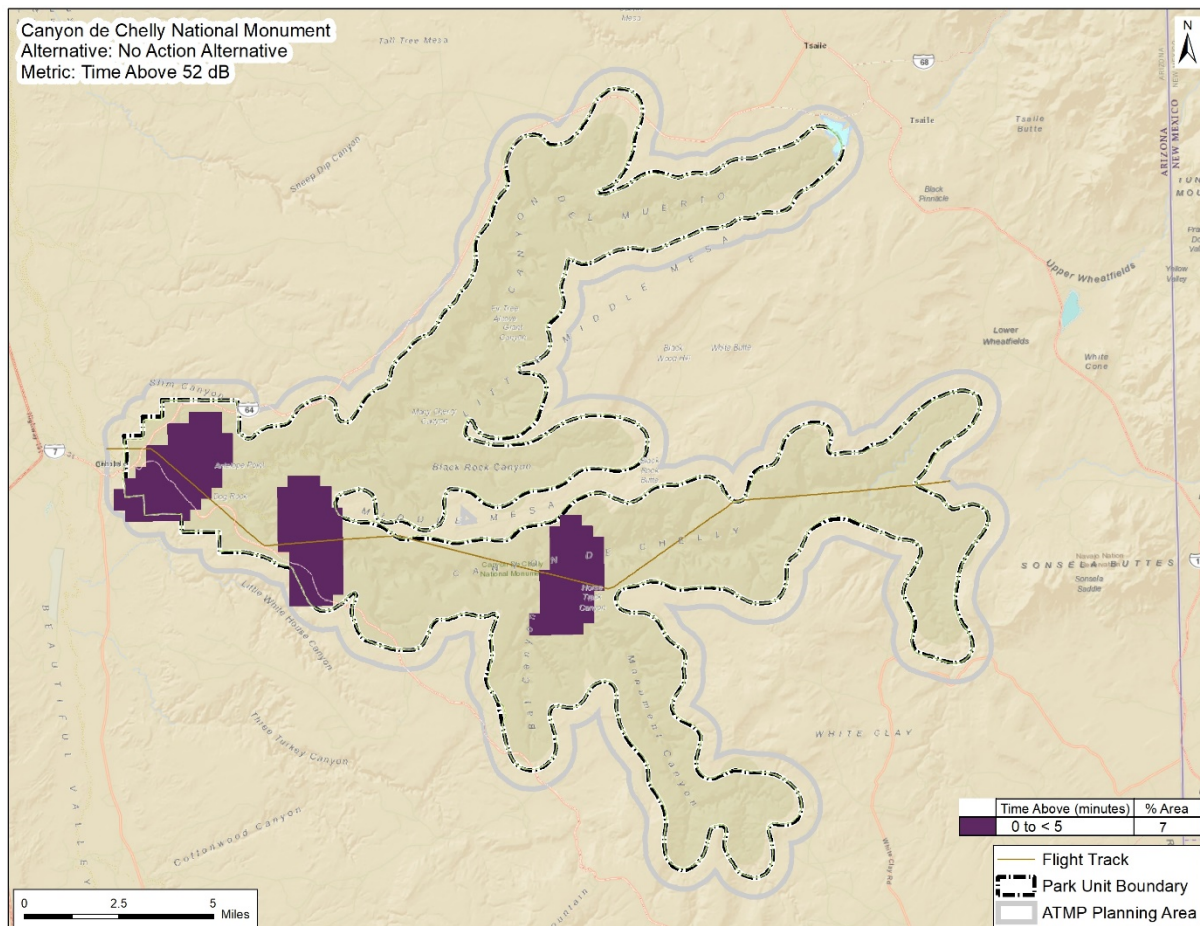


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

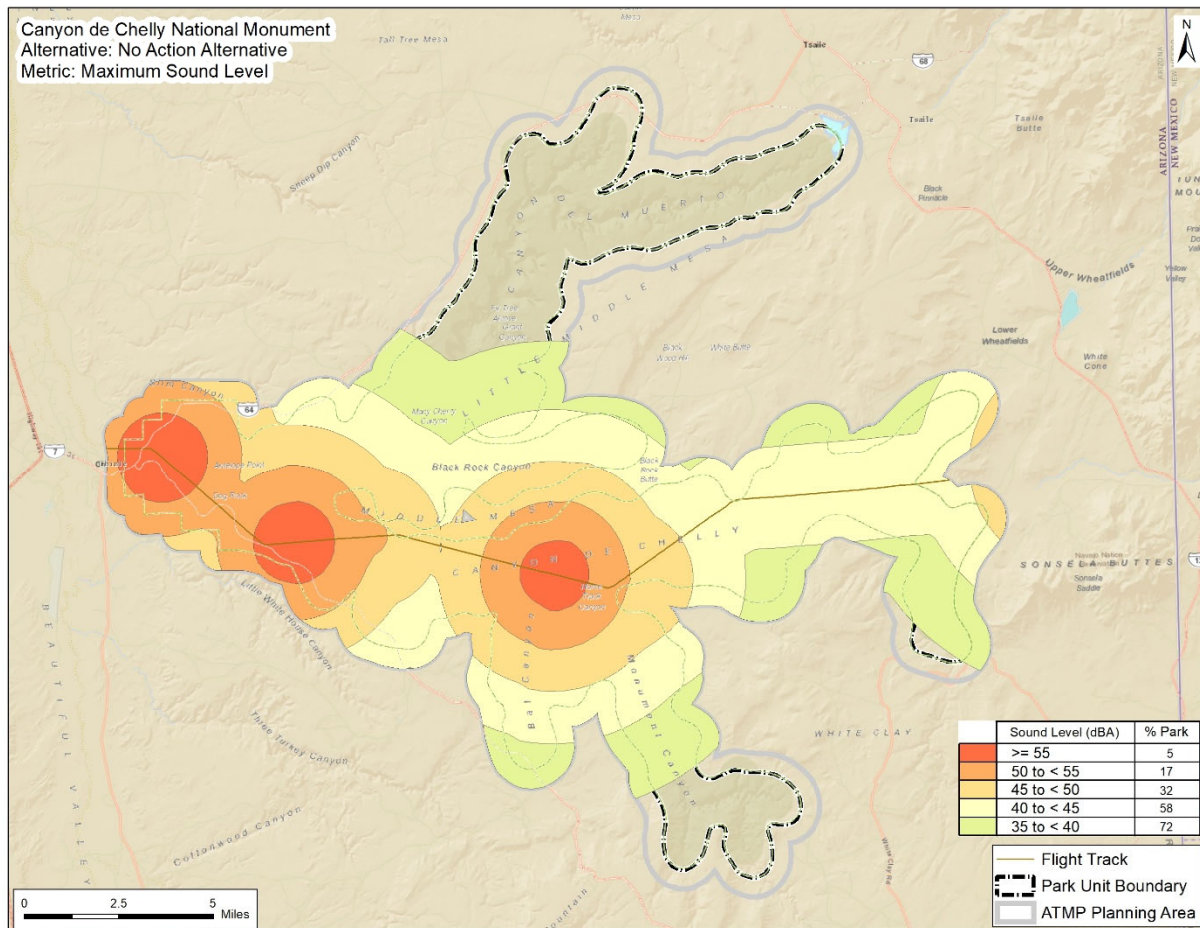


Figure 4. Maximum Sound Level contour map for the No Action Alternative



United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

December 28, 2023

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Chuck Howe
President
IKG Air, LLC
P.O. Box 4871
Page, AZ 86040

Dear Chuck Howe:

Introduction

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). At this time, the FAA requests your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). On this date, we are also notifying all consulting parties of this proposed finding and providing the documentation below for their review.

In accordance with the requirements of 36 CFR 800.11(e), this letter provides: a description of the undertaking - an ATMP that would not permit commercial air tours in the planning area (the preferred alternative under the National Environmental Policy Act (NEPA)); the Area of Potential Effects (APE); a description of steps taken to identify historic properties; a description of historic properties in the APE and the characteristics that qualify them for listing in the National Register of Historic Places (National Register); and an explanation of why the criteria of adverse effect do not apply to this undertaking. This letter also describes the Section 106 consultation process and public involvement for this undertaking.

The FAA initiated Section 106 consultation with your office on December 5, 2023. The FAA provided all previous Section 106 consultation including a letter dated June 2, 2023, where we described the proposed undertaking in detail, proposed a preliminary APE, and provided our initial list of historic properties identified within the APE. In a letter dated October 26, 2023, we provided an updated list of historic properties identified within the APE for review and comment. Similar letters were sent to all

consulting parties listed in **Attachment A**. Section 106 consultation with consulting parties including federally recognized tribes is further described below.

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentor expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Description of the Undertaking

The undertaking for the purposes of Section 106 compliance is implementing an ATMP that applies to all commercial air tours over the Park and within ½ mile outside the Park's boundary. Under NPATMA and its implementing regulations, a commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

- (1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
- (2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

The area regulated by the ATMP is referred to as the ATMP planning area. Overflights that do not meet the definition of a commercial air tour above are not subject to NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator, Southwest Safaris, currently conducts tours over the Park. The agencies consider the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, which is 43 air tours that occurred. A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using a fixed wing aircraft, CE-182-R and CE-T207A. The fixed-wing operator flew 38 tours in 2017, 30 tours in 2018, and 62 tours in 2019. Southwest Safaris conducts commercial air tours on the three routes depicted in **Attachment B**. Reported minimum

altitudes range from 800 ft. to 1,000 ft. AGL¹. Under existing conditions, the operator is not required to use these routes and may change the routes without notice to the agencies.

The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A
Day of Week	N/A
Seasonal	N/A
Quiet Technology (QT) Incentives	N/A
Annual Meeting, Operator Training and Education	N/A
Restrictions for Particular Events	N/A
Adaptive Management	N/A
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority²	Terminates 180 days from the effective date of the ATMP.

¹ Altitude expressed in units above ground level (AGL) is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

² Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that the Act required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under the Act, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

Area of Potential Effects (APE)

The undertaking does not require land acquisition, construction, or ground disturbance. In establishing the APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under any of the selectable draft alternatives, including those over the Park or those that are reasonably foreseeable to take place adjacent to the ATMP planning area. The FAA considered the number and altitude of commercial air tours over historic properties in these areas to further assess the potential for visual effects and any incremental change in, or elimination of, noise levels that may result in alteration of the characteristics of historic properties qualifying them for listing in the National Register.

The APE was delineated based on the undertaking's potential effects in consultation with the Navajo Nation's Tribal Historic Preservation Officer (THPO) and in consideration of input by consulting parties. The FAA also requested input on the relocation of air tours outside of the ATMP planning area but did not receive any additional input on this issue. Therefore, the APE for this undertaking comprises the Park plus ½ mile outside the boundary of the Park, as depicted in **Attachment B** below.

The APE for the undertaking was proposed in the Section 106 consultation letter dated June 2, 2023, which was sent to all consulting parties. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and took the position that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation. The THPO did not provide input on the APE and no additional comments were received regarding the APE. Therefore, the APE has not changed.

Summary of Section 106 Consultation

The FAA contacted the Navajo Nation and 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and requesting their expertise regarding historic properties, including Traditional Cultural Properties (TCPs) that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes opted out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes 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 agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. All of the lands within the Park are Navajo Nation Tribal Trust Lands.

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.

The consulting parties whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment A**.

Identification of Historic Properties

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. As the undertaking would not result in physical effects, the identification effort focused on identifying properties where setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic properties most sensitive to the effects of aircraft overflights. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, and outdoor spaces designed for meditation or contemplation. The FAA is specifically considering whether air tours could affect the use of TCPs associated with cultural practices, customs or beliefs that continue to be held or practiced today. In so doing, the FAA has taken into consideration the views of consulting parties, past planning, research and studies, the magnitude and nature of the undertaking, the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1).

The initial identification of historic properties relied upon data submitted by the NPS regarding known historic properties in the Park. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known TCPs within the APE. While the TCPs are noted in **Attachment C** in a general manner, TCPs identified solely by ID number in **Attachment C** are not mapped in **Attachment B** to ensure confidentiality.

The FAA also consulted with the consulting parties, including federally recognized tribes listed in **Attachment A** regarding the identification of any other previously unidentified historic properties that may be located within the APE. The FAA also invited the public to provide feedback on the list of historic properties identified.

A preliminary list of historic properties was provided to all consulting parties for their review and comment in a letter dated June 2, 2023. 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 and provided results of those efforts. The list of historic properties within the planning area and a description of significant characteristics can be found in **Attachment C**. The agencies did not receive any comments from consulting parties identifying additional historic properties within the APE.

The effort described resulted in the identification of 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register, which are listed in **Attachment C**. Those historic properties identified with available non-restricted location data are shown in the APE map provided in **Attachment B**. There are approximately 1,600 additional inventoried and recorded below-ground archaeological sites within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.

Assessment of Effects

The undertaking could have an effect on a historic property if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. The characteristics of the historic properties within the APE that qualify them for inclusion in the National Register are described in **Attachment C**. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The FAA, in coordination with the NPS, focused the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features.

Assessment of Noise Effects

To assess the potential for the introduction of audible elements, including changes in the character of aircraft noise, the agencies considered whether there would be a change in the annual number, daily frequency, routes, or altitudes of commercial air tours, as well as the type of aircraft used to conduct those tours. The level of commercial air tour activity under the ATMP is expected to improve the protection of cultural resources within the APE.

The ATMP prohibits commercial air tours within the ATMP planning area and would reduce noise effects to historic properties. Therefore, the undertaking would not alter the characteristics of historic properties within the APE in comparison to existing conditions. The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

For purposes of assessing noise impacts from commercial air tours on the acoustic environment of the Park under NEPA, the FAA noise evaluation is based on Yearly³ Day Night Average Sound Level (L_{dn} or DNL); the cumulative noise energy exposure from aircraft over 24 hours. The DNL analysis indicates that the undertaking would not result in any noise impacts that would be "significant" or "reportable" under the FAA's policy for NEPA.⁴

³ Yearly conditions are represented as the Average Annual Day (AAD)

⁴ Under FAA policy, an increase in the Day-Night Average Sound Level (DNL) of 1.5 dBA or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dBA noise exposure level, or that will be exposed at or above the DNL 65 dBA level due to a DNL 1.5 dBA or greater increase, is significant. FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, Exhibit 4-1. Noise increases are "reportable" if the DNL increases by 5 dB or more within areas exposed to DNL 45-60 dB, or by 3 dB or more within areas exposed to DNL 60-65 dB. FAA Order 1050.1F, Appendix B, section B-1.4.

As part of the ATMP noise analysis, the NPS provided supplemental metrics to further assess the impact of commercial air tours in quiet settings: time above 35 dBA, time above 52 dBA And Maximum Sound Level (L_{max}). These metrics account for the amount of time in minutes that aircraft sound levels are above a given threshold (i.e., 35 dBA and 52 dBA). In quiet settings, outdoor sound levels exceeding 35 dB degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). Interference with Park interpretive programs would reasonably occur at 52 dBA. **Attachment D** provides further information about the supplemental noise metrics and presents the results of modeling.

Attachment D presents noise contours (i.e. graphical illustration depicting noise exposure) for existing conditions. Under existing conditions, noise related to commercial air tours is greater than 35 dBA for less than 5 minutes within 69% of the ATMP planning area on days in which air tours occur and greater than 52 dBA for less than 5 minutes in 7% of the ATMP planning area on days in which air tours occur. Because noise is modeled using conservative assumptions (see **Attachment D**) and implementing the ATMP would eliminate flights and routes within the ATMP planning area, noise is expected to be reduced within the ATMP planning area. The elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features.

Assessment of Visual Effects

Recognizing that some types of historic properties may be affected by visual effects of commercial air tours, the agencies considered the potential for the introduction of visual elements that could alter the characteristics of a historic property that qualify it for inclusion in the National Register. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The elimination of flights within the ATMP planning area make it unlikely a historic property within the ATMP planning area would experience a visual effect from the undertaking. The agencies also considered the experience of tribal members who may be conducting ceremonies or practices that could involve looking toward the sky. The elimination of air tour aircraft overhead represents an improvement as compared to existing conditions.

The ATMP prohibits commercial air tours within the ATMP planning area and would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register. All historic properties within the APE would experience a reduction in visual intrusions from air tours, therefore the undertaking would not introduce visual elements that would alter the characteristics of any historic property that qualifies it for inclusion in the National Register.

Indirect Effects

Because the undertaking would eliminate air tours within the ATMP planning area, the agencies also considered the potential for indirect effects on historic properties within the APE that could occur from air tours displaced outside the ATMP planning area as a result of the undertaking. It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude

would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

Finding of No Adverse Effect Criteria

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates the undertaking does not meet those criteria. The undertaking would not have any physical impact on any property. The undertaking would not result in any alteration or physical modifications to historic properties. The undertaking would not remove any property from its location. The undertaking would not change the character of any property's use or any physical features in any historic property's setting. As discussed above, the undertaking would not introduce any auditory or visual elements that would diminish the integrity of the significant historical features of any historic properties in the APE. The undertaking would not cause any property to be neglected, sold, or transferred.

Proposed Finding and Request for Review and Concurrence

FAA and NPS approval of the undertaking would not alter the characteristics of any historic properties located within the APE in a manner that would diminish its integrity as there would be a reduction in audible or visual effects from existing conditions. Based on the above analysis, the FAA proposes a finding of no adverse effect on historic properties. We request that you review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,



Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

Attachments

- A. List of Consulting Parties
- B. APE Map including existing Commercial Air Tour Routes
- C. List of Historic Properties in the APE and Description of Historic Characteristics
- D. Summary of Noise Technical Analysis from NEPA Review

ATTACHMENT A
List of Consulting Parties

American Aviation
Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) and Air Grand Canyon ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹

Southwest Safaris
White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

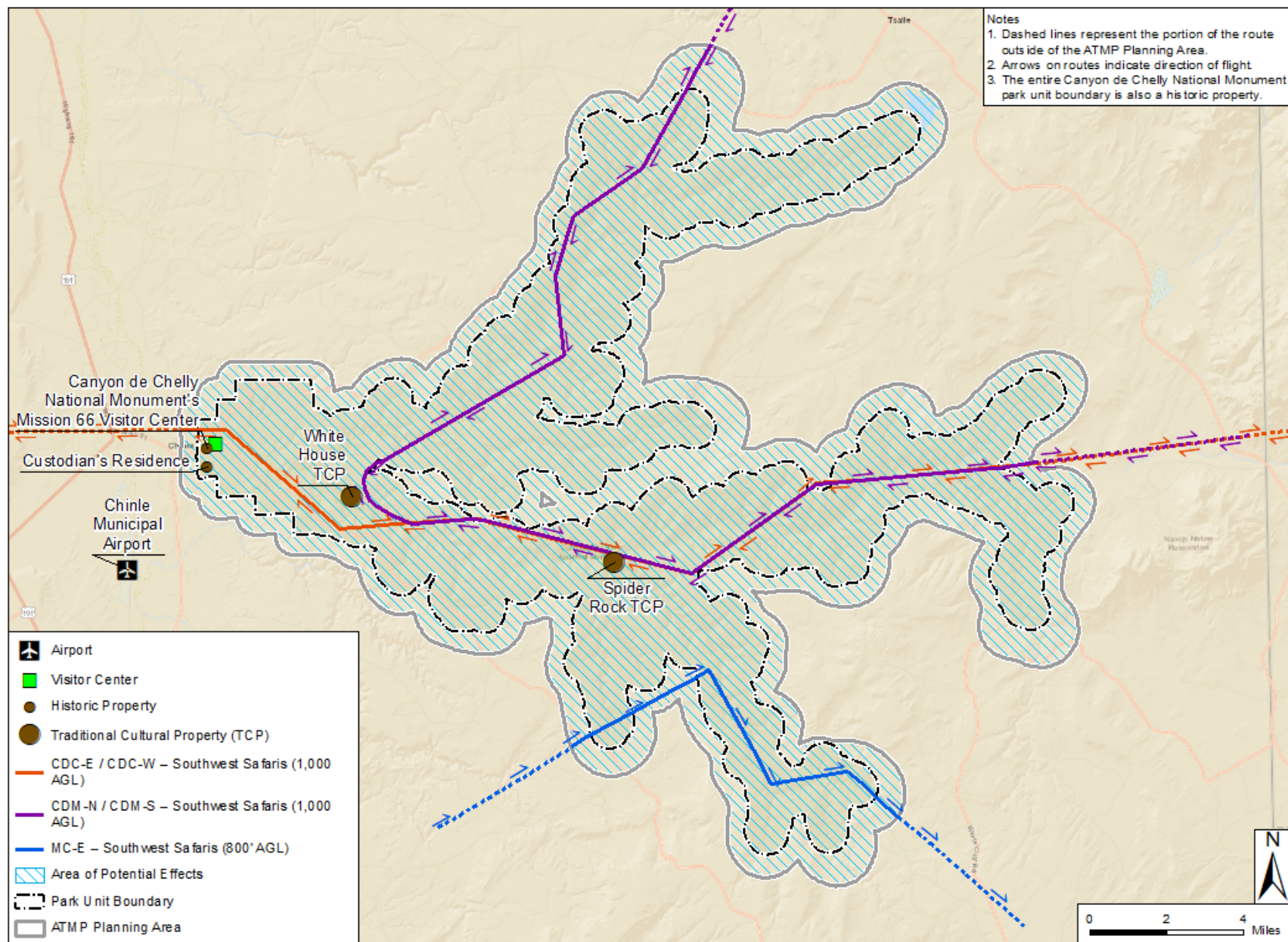
¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT B

**Area of Potential Effects Map
Including
Existing Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. 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 monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of 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 breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's Mission 66 Visitor Center	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
			designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary ⁵	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park. ⁵	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiní'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs

⁵ Location is restricted and therefore cannot be shown on the APE map.

Property Name	Property Type	Eligibility Status	Significant Characteristics
			that are rooted in various Southwestern Native American histories and because it is important in maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

ATTACHMENT D

Summary of Noise Technical Analysis from NEPA Review

There are numerous ways to measure the potential impacts from commercial air tours on the acoustic environment of a park, including intensity, duration, and spatial footprint of the noise. The metrics and acoustical terminology used for the ATMPs are shown in the table below.

Metric	Relevance and citation
Equivalent sound level, $L_{Aeq, 12\text{ hr}}$	The logarithmic average of commercial air tour sound levels, in dBA, over a 12-hour day. The selected 12-hour period is selected to represent typical daytime commercial air tour operating hours.
Day-night average sound level, L_{dn} (or DNL)	<p>The logarithmic average of sound levels, in dBA, over a 24-hour day, DNL takes into account the increased sensitivity to noise at night by including a 10 dB penalty between 10 PM and 7 AM local time.</p> <p>Note: Both $L_{Aeq, 12\text{ hr}}$ and DNL characterize:</p> <ul style="list-style-type: none"> Increases in both the loudness and duration of noise events The number of noise events during specific time period (12 hours for $L_{Aeq, 12\text{ hr}}$ and 24-hours for DNL) <p>If there are no nighttime events, then $L_{Aeq, 12\text{ hr}}$ is arithmetically three dBA higher than DNL.</p>
Time Above 35 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 35 dBA).</p> <p>In quiet settings, outdoor sound levels exceeding 35 dBA degrade experience in outdoor performance venues (American National Standards Institute (ANSI), 2007). This level is also shown to cause blood pressure increases in sleeping humans (Haralabidis et al., 2008); as well as exceeding recommended maximum background noise level inside classrooms (ANSI S12.60/Part 1-2010).</p>
Time Above 52 dBA	<p>The amount of time (in minutes) that aircraft sound levels are above a given threshold (i.e., 52 dBA).</p> <p>This metric represents the level at which one may reasonably expect interference with Park interpretive programs. At this background sound level (52 dBA), normal voice communication at five meters (two people five meters apart), or a raised voice to an audience at ten meters would result in 95% sentence intelligibility (United States Environmental Protection Agency, Office of Noise Abatement and Control, 1974).</p>
Maximum sound level, L_{max}	The loudest sound level, in dBA, generated by the loudest event; it is event-based and is independent of the number of operations. L_{max} does not provide any context of frequency, duration, or timing of exposure.

The analysis for the No Action Alternative is based on a peak month, average day⁶ (PMAD) of commercial air tour activity – identified as one operation. For the three-year average of commercial air tour activity from 2017-2019, the PMAD was identified in terms of number of operations, and then further assessed for the type of aircraft and route flown to determine if it is a reasonable representation of the commercial air tour activity over the Park. The existing commercial air tour operator provided route information for three general route options and reports flying a Cessna 182 and a Cessna 207 – which results in six potential aircraft/route combinations for analysis. Because the PMAD is identified as one operation using a Cessna 182 aircraft, for purposes of the noise analysis, the No Action Alternative modeled the CDC-E/W route using a Cessna 182 aircraft. 1 shows the modeled route. This route and aircraft combination was most frequently utilized by the operator and thus chosen as a representation of existing activity. Aircraft altitude of 1,000 feet above ground level was modeled based on information provided by the operator.

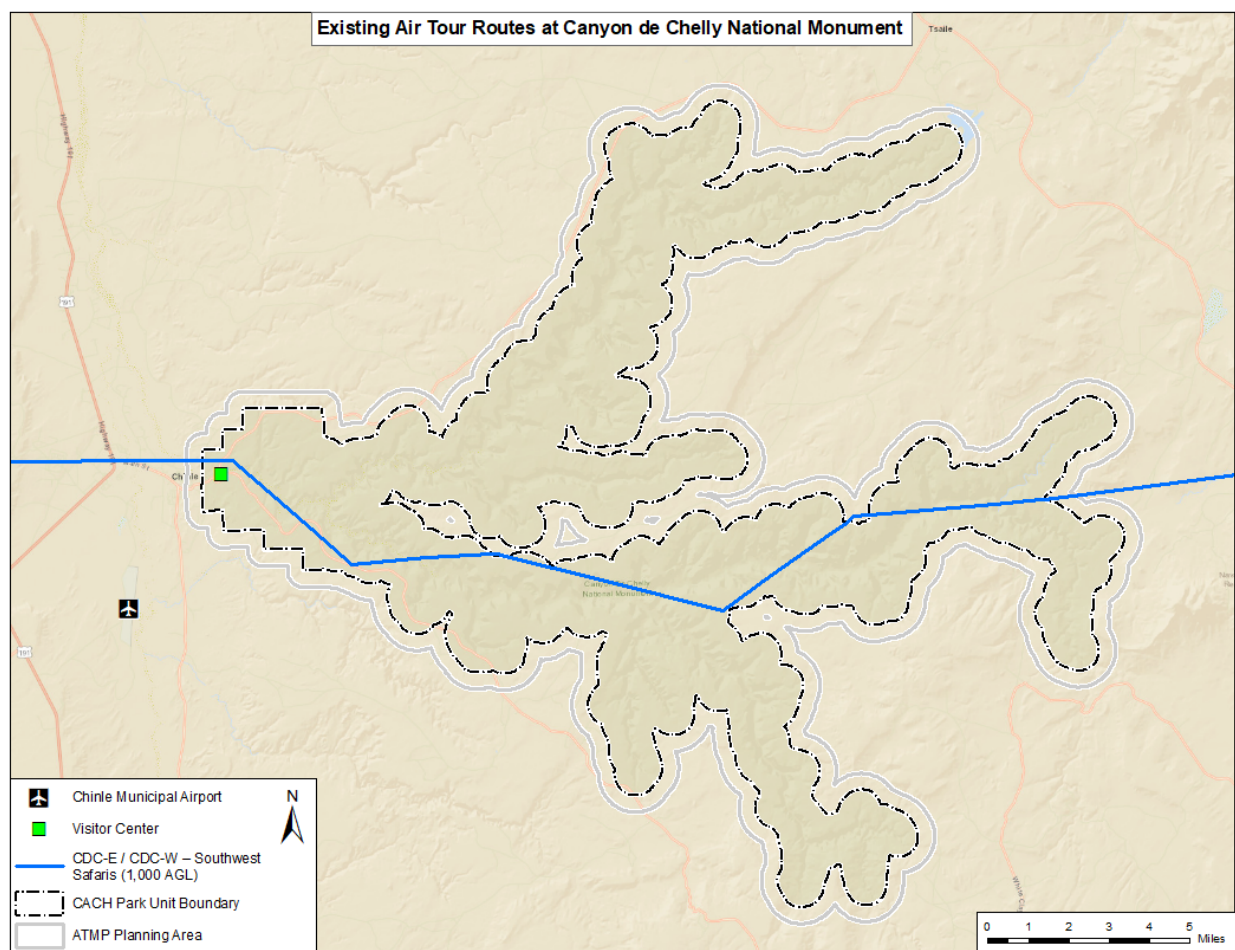


Figure 1. Modeled flight route

⁶ As required by FAA policy, the FAA typically represents yearly conditions as the Average Annual Day (AAD). However, it was determined that a peak month, average day (PMAD) representation of the operations would more adequately allow for disclosure of any potential impacts. PMAD has therefore been used as a conservative representation of assessment of AAD conditions.

Noise Model Results

Noise contours for acoustic indicators Time Above 35, Time Above 52, and Maximum Sound Level under the No Action Alternative were developed using the FAA's AEDT version 3e and are provided below (Figure 2, Figure 3, and Figure 4, respectively). A noise contour presents a graphical illustration or "footprint" of the area potentially affected by the noise. The noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level. Note: Noise contour results are not presented for the $L_{Aeq,12hr}$ metric, as levels would not exceed 35 dBA for this metric for any of the alternatives.

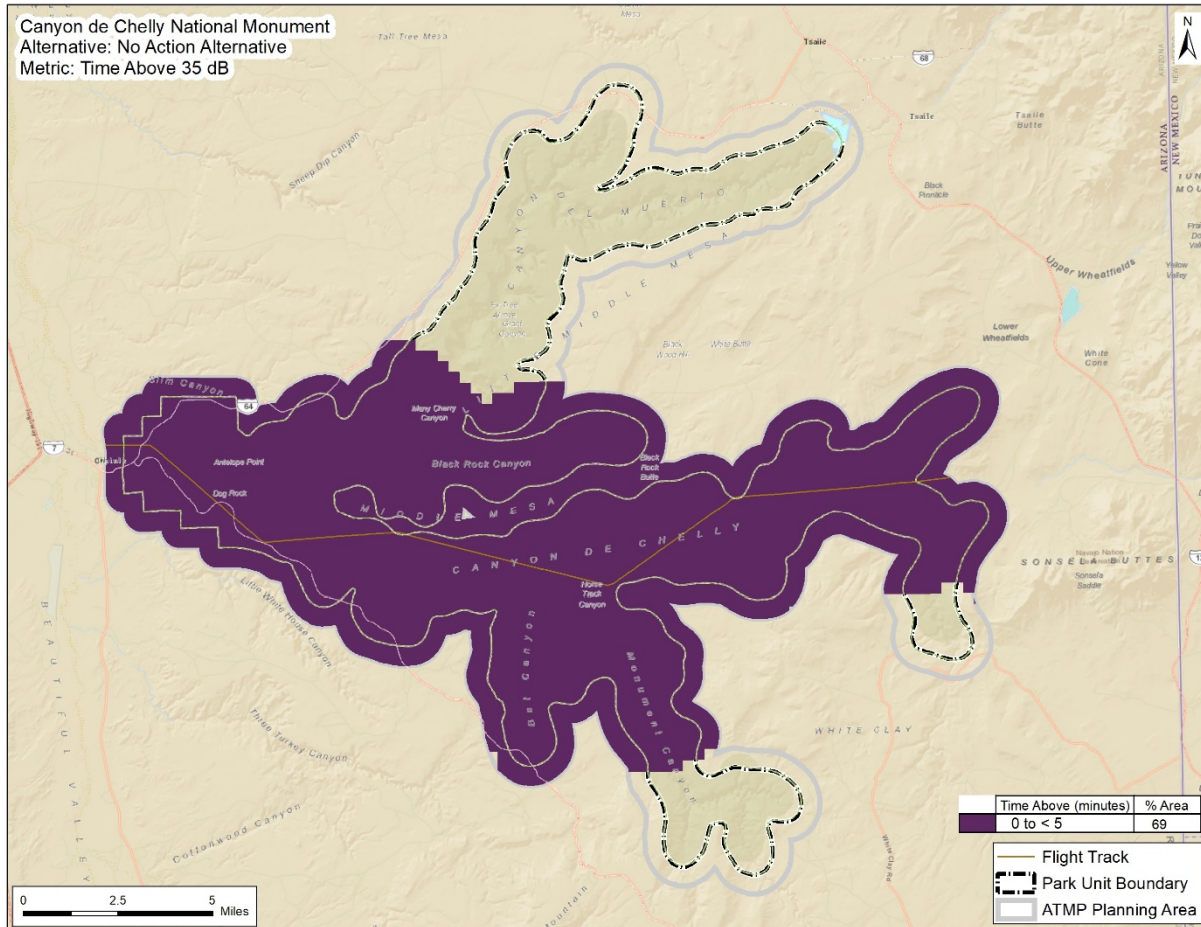


Figure 2. Time Above 35 dBA contour map for the No Action Alternative

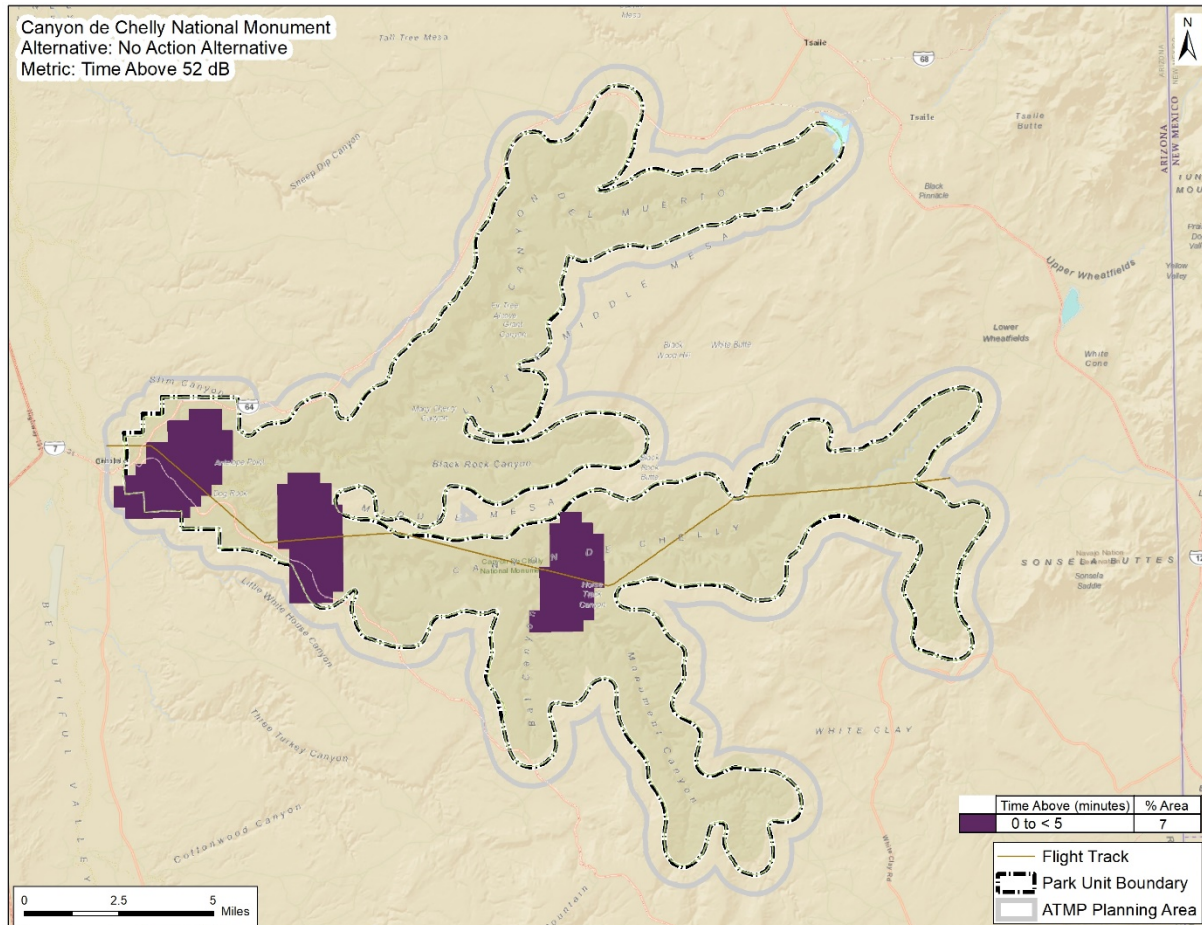


Figure 3. Time Above 52 dBA contour map for the No Action Alternative

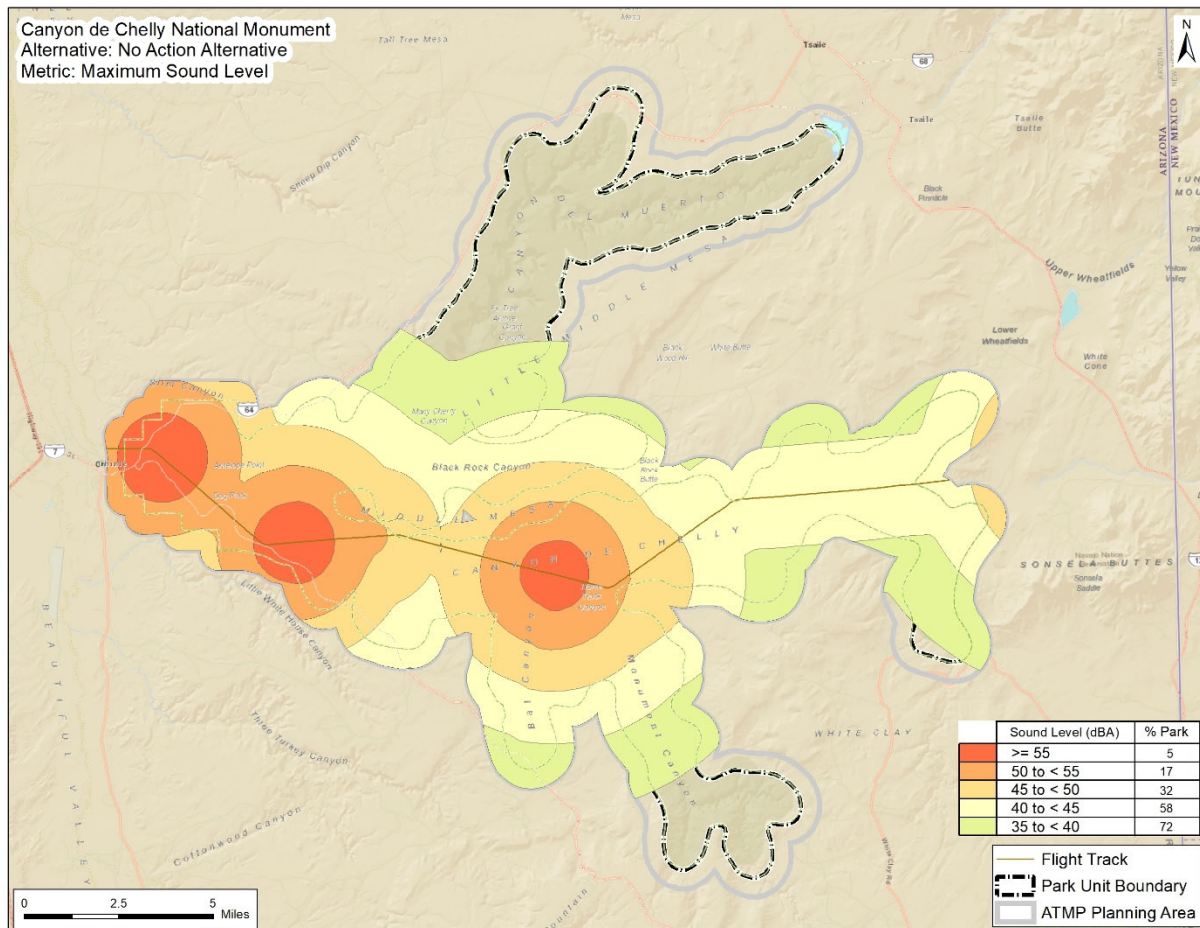


Figure 4. Maximum Sound Level contour map for the No Action Alternative



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

April 8, 2024

Re: Correction to Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Greetings:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) (together, the agencies), have been in consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park). On December 28, 2023, the FAA requested your concurrence with its proposed finding that the undertaking would have no adverse effect on historic properties, in accordance with 36 CFR 800.5(c). In that letter, the FAA informed your office that the agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. The FAA stated that five comments were received during the thirty-day comment period. This notification serves as a correction to inform you that the agencies received a total of eight comments during the thirty-day comment period. Some of the additional comments noted the sacredness of the Canyon and highlighted the many preserved sites of the prehistoric Anasazi in the Canyon. The additional comments were similar in nature to the comments previously summarized in the December 28, 2023, letter. Therefore, the FAA maintains that the public's views were appropriately summarized in accordance with 36 CFR § 800.11(d)(6). The FAA also maintains that based on the analysis presented in the December 28, 2023, letter the undertaking would have no adverse effect on historic properties.

Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration

From: [ATMPTeam](#)
To: [ATMPTeam](#)
Cc: [Gina_Pearson@nps.gov](#); [Lyn_Carranza@nps.gov](#); Walker, Judith <FAA>; Papazian, Jennifer (Volpe); Haas, Shauna (Volpe); Lignell, Brent (Volpe); Litchholt, Briana (VOLPE); FireCloud, Dorothy M; [albert_lebeau@nps.gov](#); Castiano, Melissa S
Bcc: [info@southwestsafaris.com](#); [bruce@southwestsafaris.com](#); [craig@papillon.com](#); [jake@papillon.com](#); [chowe@c2-env.com](#); [spearce@co.apache.az.us](#); [emerritt@savingplaces.org](#); [echang@savingplaces.org](#); [eatencio@npca.org](#); [r.begay@navajo-nsn.gov](#); [president.buunygren@navajo-nsn.gov](#); [skoviyumptewa@hopi-nsn.us](#); [malcolm.nieto@kewa-nsn.us](#); [larry.phillips@ohkay.org](#); [tnuvangyaoma@hopi-nsn.us](#); [beverly.garcia@kewa-nsn.us](#); [bquintana@kewa-nsn.us](#); [governor@ohkay.org](#); [SConcho@poamail.org](#); [administration@poamail.org](#); Jayson A Romero; [henryj@toast.net](#); [ctoya@jemezpuablo.org](#); [rsmith@pol-nsn.gov](#); [dmartinez@nambepueblo.org](#); [tribal.interpreter@picurispueblo.org](#); Governor of Pueblo de Cochiti; [lt.governor@cochiti.org](#); [Poigov@isletapueblo.com](#); [Max.Zuni@isletapueblo.com](#); [vernon.abeita@isletapueblo.com](#); [Dominic.Gachupin@jemezpuablo.org](#); [jantonio@pol-nsn.gov](#); [governor@nambepueblo.org](#); [governor@picurispueblo.org](#); [rortiz@sfpueblo.com](#); [thpo@sanipueblo.org](#); [info@sfpueblo.com](#); [gov.aortiz@sfpueblo.com](#); [bchavarria@santaclarapueblo.org](#); [Governor@taospueblo.com](#); [Isamuel@pueblooftesuque.org](#); [thpo@ziapueblo.org](#); [ddnaranjo@santaclarapueblo.org](#); [governor@pueblooftesuque.org](#); [Governor@ZiaPueblo.org](#); [jloera@ydsp-nsn.gov](#); [kdongoske@cableone.net](#); [vanessa.ukestine@ashiwi.org](#); [brittany.garcia@ashiwi.org](#); [arden.kucate@ashiwi.org](#)
Subject: RE: Section 106 Additional Comments Notification - Air Tour Management Plan for Canyon de Chelly National Monument
Date: Friday, May 10, 2024 3:31:40 PM
Attachments: [CACH Finding of Interest - Air Tour Management Comments Notification.pdf](#)

Greetings,

On April 8, 2024, the FAA sent you the attached letter to notify you that there was a correction to the number of comments received through the Section 106 public involvement period for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the undertaking). The letter notes that a total of eight (8) comments were received. This is a further correction to notify you that a total of nine (9) comments were received.

Best Regards,
Judith Walker

From: ATMPTeam <ATMPTeam@dot.gov>
Sent: Monday, April 8, 2024 12:24 PM
To: ATMPTeam <ATMPTeam@dot.gov>
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Subject: Section 106 Additional Comments Notification - Air Tour Management Plan for Canyon de Chelly National Monument

Greetings:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS) has been in consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. The attached letter is notifying all consulting parties that there is a correction to the number of comments received through the Section 106 public involvement period for this

undertaking. Public involvement for the Section 106 process was held through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website from April 3, 2023, through May3, 2024.

Best Regards,
Judith Walker



January 23, 2024

Judith Walker and ATMP Team
Environmental Policy Division
Federal Aviation Administration
Judith.Walker@faa.gov
CC: ATMPTeam@dot.gov

Re: Continuing Consultation and Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Dear FAA Air Tour Management Planning Team,

I write to comment on the proposed finding under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument. Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice in protecting our National Park System. On behalf of our nearly 1.6 million members and supporters nationwide, we agree with your proposed finding under Section 106 and encourage the continued prioritization of the voices of the associated Native American Tribes and Pueblos.

Under the proposed undertaking, commercial air tour operations would be prohibited within the ATMP planning area. We agree with the Federal Aviation Administration (FAA) that this proposed undertaking would have no adverse effect on historic properties in accordance with 36 CFR 800.5(c). This proposed undertaking would allow for the protection of important and culturally-sensitive sites.

The analysis does include data-specific information to judge adverse effects on resources and Tribal lands, including an assessment of noise effects. We agree with the FAA's finding that "the elimination of air tours within the ATMP planning area will also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies, as compared to existing conditions. Therefore, the undertaking would not diminish the integrity of any historic property's significant historic features" (Section 106 Finding Page 7). The proposed undertaking appears to adequately consider the information assessing the noise, visual, and indirect effects on the ATMP planning area. The Finding of No Adverse Effect allows for the protection of the resources affected by air tours in Canyon de Chelly and protects them from harm as well as disruptions to Tribal and visitor experiences.

National Historic Preservation Act

In the NHPA (16 U.S.C. §§ 470a et seq.), Section 106 is the portion that addresses federal undertakings which include a project, activity, or program either funded, permitted, licensed, or approved by a federal agency including the FAA and the National Park Service (NPS). Undertakings may take place either on or off federally controlled property and include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106. This provision

Arizona Field Office

requires the FAA and NPS to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment. In addition, FAA and NPS are required to consult on the Section 106 process with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), Indian Tribes (to include Alaska Natives) [Tribes], and Native Hawaiian Organizations (NHO).

Historic properties are any prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places. Also included are any artifacts, records, and remains (surface or subsurface) that are related to and located within historic properties and any properties of traditional religious and cultural importance to Tribes or NHOs. The Section 106 regulations (36 CFR 800) place particular emphasis on consultation with THPOs, Tribes, and NHOs.

Federal agencies must consult THPOs, Tribes, and NHOs about undertakings when they may affect historic properties to which a Tribe or NHO attaches religious or cultural significance. This requirement applies regardless of the location of the historic property. The finding from the FAA that the proposed undertaking would not have any physical impact on historic properties or change the character of any property's use is accurate, as the best way to ensure the protection of the ATMP planning area is to ensure that no commercial air tours are permitted to disrupt or disturb historic sites and traditional activities in Canyon de Chelly.

Justification for Prohibiting Air Tours

In this proposed finding, the FAA provides enough justification to prohibit air tours in Canyon de Chelly National Monument. This demonstrates a prioritization of Canyon de Chelly's natural and cultural resources. With the monument's limited resources in terms of staff and funding that are already dedicated to a variety of important projects and programs, the time and cost of managing an air tour program which has the potential to harm the park unit's resources is not worth it. With over 350,000 recreation visitors to Canyon de Chelly in 2022, it is important that the FAA and NPS consider how air tours fit in with the overall visitor experience and resource protection efforts.

Conclusion

NPCA has determined that the Finding of No Adverse Effect under the Section 106 Consultation process is correct and properly considers the historic properties in Canyon de Chelly National Monument. This finding supports the proposed ATMP that would prohibit commercial air tours in the planning area. This plan is key to protecting the natural soundscape in Canyon de Chelly and indicates that the FAA and NPS have considered the acoustics, evaluated the impact on historic properties, and conducted Tribal consultation.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sanobar Mirza", with a stylized flourish at the end.

Sanobar Mirza
Arizona Program Manager

Exhibit 6 – Objection to Finding of Effects Letter and Response

- 01/29/24 Objection from Southwest Safaris
- 04/10/24 Response to Southwest Safaris
- 06/30/24 Response from Advisory Council on Historic Preservation

**Exhibit 6 – Objection to Finding of
Effects Letter and Response**

SOUTHWEST SAFARIS

PO Box 945
Santa Fe, NM 87504
505-988-4246

Ms. Judith Walker
Senior Environmental Policy Analysts
Environmental Policy Division (AEE-400)
Federal Aviation Administration
Washington, DC

January 29, 2024

CACH Section 106 – FAA ‘s Request for Concurrence
Southwest Safaris’ Statement of Disagreement

Dear Ms. Walker:

This is Southwest Safaris (SWS) fifth response to the FAA’s request for concurrence with the agency’s proposed finding of “no adverse effects” from the Canyon de Chelly National Monument (CACH, or “the Park”) draft Air Tour Management Plan (ATMP) in compliance with the National Parks Air Tour Management Plan of 2000 (NPATMA, or “the Act”).

Other letters were dated June 9, June 12, June 30, and November 14, 2023. All of these letters should be included in SWS’ record of response to the FAA’s *Request for Concurrence* to the agency’s Finding of “no adverse effects.”

Southwest Safaris does not concur with the FAA’s proposed finding (the Finding) that there will be “no adverse effects” from denying SWS continued air tour overflight rights at Canyon de Chelly National Monument. SWS argues that reason based on facts is sufficient to discredit the FAA’s Finding. Moreover, SWS argues that the FAA’s methods of assessment for arriving at the finding of “no adverse effects” lacks procedural and substantive legality.

I The FAA's Finding of "no adverse effects" is incorrect; banning air tours increases noise.**a. The FAA's finding is wrong based on physics.**

In the FAA's Request for Concurrence of "no adverse effects" from banning air tours over CACH, the FAA makes the following remark at the bottom of page 7:

The elimination of air tours within the ATMP planning area will reduce maximum noise levels at sites directly below commercial air tour routes compared to existing conditions. All historic properties within the APE would experience a reduction in noise from air tours.

Southwest Safaris takes particular exception to the FAA's conclusion.¹ It is not true that elimination of air tours within the ATMP planning area will reduce noise effects to historic properties either directly below the current route of flight or for the Park in general. Eliminating all air tours over the Park will actually increase the number of air tours flying immediately around the Park and will, therefore, increase the associated noise bleeding over into the Park.

Southwest Safaris does not fly helicopters. Helicopters would fly directly over the canyons of the Park. Fixed-wing airplanes fly at an offset distance from the objects of view, the perspective from an airplane being oblique, not vertical. Therefore, the above remarks of the FAA are irrelevant to Canyon de Chelly. Southwest Safaris routes are already offset from the canyons and away from parking/view areas. Flying outside the Park will mean flying at lower altitudes, so the ever-so-slight reduction in noise from relatively minor increases in horizontal displacement will be more than offset by major increases in noise generated from significantly lower vertical heights. The air tour operator (ATO) already flies near the southern border of the Park (new routes) where there are no historic properties or tourists and flies at relatively high altitudes and low power settings, the ideal solution to reducing noise and visual presence. On the west side of the Park, the ATO has also modified its routes so as to fly on the east side of the upper (northern) end of Canyon del Muerto and then west of that canyon on the lower (southern) end before exiting the Park west of the Visitors Center. So, the noise directly beneath the new routes of SWS' planes is currently of no consequence for fixed-wing aircraft, the routes having already been modified to achieve measurable reduction in noise and visual presence compared to past existing conditions. Offsetting SWS' tracks eliminates one of the FAA's main objections to flying current routes.

Moreover, eliminating direct flights across the major diameter of the Park (i.e., eliminating the route paralleling Canyon de Chelly) would actually increase the noise impact on all historic properties within the APE by a factor of 260%. The issue is a question of math and geometry. The physics of the problem demonstrates that there will be a marked increase in noise created by circling CACH as opposed to flying along the length of the longest canyon in a straight line.

¹ See my letters of August 11, 2023, "4th Response to Request for Concurrence on Sec 106," page 5, and of August 14, "5th Response to Request for Concurrence on Sec 106, page 2.

The formula for the circumference of a circle is $C = \pi D$, where D is the diameter, represented in the present instance by Canyon de Chelly, itself. SWS calculates that the distance for flying half way around the circle to circumnavigate the Park, would be $\pi D/2$. By this computation, it will require almost 60% more flying time to circumnavigate the Park instead of flying across the Park on a straight line. Moreover, instead of gradually descending, using minimal power to fly the shortest distance across the Park, tour aircraft will use full power, generating twice as much noise at much lower altitudes to circle the park as fast as possible to make up for the greater distance. That means at least twice the noise for 60% longer, or 260% more noise and visual presence in total. That figure is significant and directly confirms the FAA's statement in the middle of page 7, that "aircraft are transitory elements in a scene and visual impacts tend to be relatively short" ... as long as aircraft are allowed to fly in a straight line. The least impactful route in and around the Park is straight across it, in a glide, which is the manner in which SWS already flies outside "the cone of annoyance." Flying the shortest route with the least amount of power eliminates the second reason the FAA might have for objecting to Southwest Safaris continuing to fly its current routes.

Finally, eliminating straight flights across the southern end of Canyon de Chelly will force SWS' flights to be conducted around the north end of the Park on the way out to Chinle and around the southern flank of Canyon de Chelly on the return route, increasing by a factor of 2 the impactful noise from all directions instead of just one. That will increase the total new noise by a factor of approximately 5.0. Two low flights per tour will be required around the Park instead of just one over it. More people and historic sites will be adversely affected from more directions more often than before, which eliminates the FAA's third and final objection to flying existing routes.

The most logical overall pronouncement, therefore, should be a Finding of "significant adverse impact" from eliminating air tours over the Park. This would support a decision, under NEPA, for "Alternative 1" of the draft ATMP, meaning a ruling in favor of "no change" in the way air tours at CACH are conducted in the future.

b. The FAA's Finding is wrong based on operations.

On the bottom of page 7 (*Indirect Effects*) of the FAA's Request for Concurrence, the FAA makes the statement that:

It is unlikely that the operator would continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area because it is difficult to see the predominant features of the Park from outside the ATMP planning area. Flights at or above 5,000 ft. AGL are unlikely due to the Park's elevation and safety requirements for unpressurized aircraft flying over 10,000 ft. MSL for more than 30 minutes. If air tours are conducted at or above 5,000 ft. AGL over the ATMP planning area, the increase in altitude would likely decrease impacts on ground level resources as compared to current conditions because the noise would be dispersed over a larger geographical area. Noise from air tours conducted at or above 5,000 ft. AGL would be audible for a longer period, but at lower intensity. Similarly, aircraft are transitory elements in a scene and visual impacts tend to be relatively short, especially at higher altitudes.

In rejoinder, Southwest Safaris claims that every Section 106-related assumption the FAA makes here is wrong. In interest of brevity, SWS will only briefly comment on each of the errors.

First, if denied access to the Park, Southwest Safaris will definitely fly the circumference of the circle defined by the ends of the canyons. SWS needs to cross the Park from east to west to get to the Chinle, AZ airstrip, where ground tours commence. Flying around the Park means that the minimal aircraft noise that otherwise would have been generated over the southern and least sensitive areas of the Park (flying on the south side of Canyon de Chelly just inside the Park boundary), will be intensified (see math computations above) and transferred to the Navajo communities on the northeast and north ends of the canyons, instead, which will inflict adverse impacts on Tribal lands SWS has ardently tried to avoid. Second, flying the circumference will highlight the views of the Park from the north and west, including all of Canyon del Muerto (on the outbound leg) as well as Canyon de Chelly (viewed on the return flight), so the new routes will have great advantages (marketing value) leading to selling more air tours than before, producing ever more alleged “adverse impacts” on the Park. Third, there is no need to fly 5,000 feet above the Park if flying outside the Park; flying 500-feet AGL around the Park will yield even better views of the canyons, be just as legal as flying 5,000-feet over the Park, and require no use of oxygen. Fourth, flying around the Park to the west will increase the noise blown over the Park by the prevailing westerly winds, not decrease the noise. Fifth, noise generated from low-flying air tours circling the Park at full power will be audible for a longer period and at a higher intensity than higher flights traversing the Park at 4,000 AGL initial altitude using minimum power while descending for landing at Chinle. Sixth, the walls of the canyons, themselves, tend to block aircraft noise projected at a slant angle. The FAA calls this “terrain shielding.” Fixed-wing airplanes fly obliquely to canyons, not over them (as opposed to helicopters), so Southwest Safaris’ air tours generate almost no measurable noise at the bottom of the Park as it is. By flying just outside the boundaries of the Park (1/2 mile) to the north and west, SWS will adjust its “magic altitude” to about 800 feet AGL to allow views of the bottom of the canyons for a longer time at high power settings, so noise exposure directed at the bottom of the canyons will be unavoidably maximized by flying at the lower elevations AGL. The FAA’s proposals will be counterproductive.

The FAA has performed no sound studies in Canyon de Chelly. The agency has no actual figures with which to document its allegations of adverse sound and visual impacts. So, the FAA has no proof, upon which it can reasonably rely, to back up its theorem that eliminating all air tours over the Park will actually have “no adverse effects” on CACH. The FAA Finding, based on NHPA contrivances, is just an untested hypothesis that does not stand the test of real-world analysis. Multiple factual analyses of Southwest Safaris’ actual air tours serve to eliminate any remaining FAA objections to Southwest Safaris continued flights along existing routes.

Southwest Safaris has been conducting air tours across CACH for 49 years. During that time, the ATO has received no complaints of noise or aircraft presence from the FAA, the NPS, or from the Navajo Nation, even along its old routes. Neither the FAA, the NPS, nor the Tribe has any record of complaints against Southwest Safaris for any reason.

This observation leads to two general conclusions. First, the lack of complaints alone testifies that the FAA's grounds for pursuing Section 106 (also "S106" or "106") process are without merit. The FAA is trying to provide a fix for a problem that does not exist.

According to FAA figures, operationally speaking, SWS flies less than 50 air tours over the Park per year. So, there is no regulatory requirement for an ATMP for the Park at all, 49 USC §40128(a)(5)(A), unless an extraordinary circumstance exists ... "making it necessary to protect park resources and values or park visitor use and enjoyment" ... that requires the NPS to withdraw the exception for Parks with 50 or less air tours. The FAA has never said that the NPS has declared the existence of an exceptional circumstances at CACH, has never justified a decision to withdraw the "exception" for parks with 50 or less air tours per year, and has never conducted any science-based sound studies under Section 808 of the Act that are required to validate any such "justification" of withdrawal of exception. See Attachment 2. See also 49 USC §40128(b)(3)(F).

Air tours over CACH do not have a significant effect on the human environment any more than they do at ARCH, CANY, RABR, NABR, or BRCA. All these parks were "categorically excluded" from the requirement for an environmental assessment. All of them were determined worthy of having air tour operations. The FAA and NPS (the agencies) must provide substantial documentation to justify their decision to make a regulatory distinction for CACH, which they have failed to do anywhere in the Section 106 process.

The FAA has created a "catch 22." It claims that the "justification" the ATO seeks properly belongs under the NEPA process, and that process can not commence till after the S106 process has been completed. Therefore, the FAA will argue, the "justification" does not have to be provided in time for the ATO to argue against it to critique the agencies abuse of Section 106 procedures. The FAA's rejoinder is convenient, but illegal on grounds of denial of due process.

Second, Southwest Safaris has an amazing record for "doing no harm," probably unique in all of the National Park Service's history with air tours. SWS is mystified as to why the NPS would want to throw out the research and methodology developed by the company when the results of prohibiting air tours over the Park are going to produce no net gain for anyone. The FAA appears not to care, being more concerned with arriving at an extremist political solution for a non-existent problem than rational operational remedies that would avoid "potential" adverse impacts in the first place.

Therefore, Southwest Safaris alleges that the FAA has violated NHPA's 36 CFR §800.5, *Assessment of Adverse Effects*, by knowingly and deliberately arriving at an improper Section 106 finding of "no adverse effects" from eliminating all air tours over CACH contrary to fact, operational analysis, and law. A more thorough analysis of violation of regulation and law follows.

II The FAA's finding is wrong, based on reason and law.

a. The FAA's Finding is wrong based on logic.

The FAA's Statement of Effects Letter is logically incoherent. The FAA asks Southwest Safaris to disprove a double negative and concur that "no flights over the Park cause no adverse effects thereon." It is impossible to argue against a double-negative syllogism with formal logic. The proof of FAA error can only be demonstrated with real-world illustrations to the contrary of allegation. Southwest Safaris has already performed this duty.

SWS has demonstrated above, with reference to physics and real-world operations, that existing air tours over the Park cause no adverse impact on persons and cultural properties in the Area of Potential Effect (APE). There have been no complaints to the FAA or NPS against SWS' air tours in 49 years. SWS also demonstrated mathematically and operationally how being forced to fly around the Park would actually increase the noise impact on the overall Park. Moreover, SWS argued that the FAA has no legal basis for taking away the exception for CACH and creating an ATMP.

In further rejoinder to the FAA's Finding, Southwest Safaris alleges that the Section 106 process has been deliberately abused by the FAA so as to make constructive comment and consultation under NHPA impossible. The FAA's construction of its double-negative Finding is designed to block any attempt to arrive at any alternative method ... other than banning all air tours ... for reducing alleged adverse impacts on historic properties in the APE. The FAA's methods defeat the whole purpose of trying to arrive at reasonable compromise under Section 106's consulting process. Therefore, the FAA's Finding must be withdrawn, because it violates both Section 106 and NPATMA and serves no constructive purpose of remediation.

b. The FAA's finding is wrong, based on reasonable interpretation of regulation.

The FAA says on page 8 under *Finding of No Adverse Effect Criteria*:

To support a Finding of No Adverse Effect, an undertaking must not meet any of the criteria set forth in the Advisory Council on Historic Preservation's Section 106 regulations at 36 CFR 800.5(a). This section demonstrates [that] the undertaking does not meet those criteria [and therefore is valid].

The truth is just the opposite. As Southwest Safaris has demonstrated above, the FAA's finding of "no adverse effects" from eliminating all air tours over the Park is contrary both to physics and operational reality. The FAA's undertaking does meet the criteria set forth in 36 CFR 800.5(a)(2)(v), because of "introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features." In regulatory language, the FAA's undertaking would definitely introduce both auditory and visual elements that would "diminish the integrity of the significant historical features of any historic properties in the APE." So, the FAA's finding under Section 106 "flies" against its own regulations upon which the agency relies. The FAA cannot justify a Finding of "no adverse effect" as a matter of both fact and regulation.

If the FAA wishes to contest the assertions of Southwest Safaris, the FAA has the responsibility to produce reasonable evidence to the contrary. This can only be done by generating real evidence from real sound studies, not imaginary noise modeling estimates based on hypothetical conditions where the variables are controlled by parties who have a vested interest in the outcome. The FAA's noise modeling results have no credibility in this situation. Besides, the above arguments notwithstanding, the FAA's Section 106 process at CACH is without legal authority, because the findings are contrary to the purpose and methods of NPATMA. The Act is the controlling legal authority for ATMPs, not NHPA. More on this later.

The FAA's finding of "no adverse effects" is predicated on the "potential" elimination of all air tours over the Park. The actuality of the removal has never been tested. So, strictly considered, there is no proof of the accuracy of the FAA's finding that prohibiting all air tours over the Park will have no adverse effects. Deductive reasoning is not enough, according to NPATMA. Therefore, the agency's finding of "no adverse effects" is pure speculation, not being based on science, which requires testing (see Section 808 of NPATMA) and which is the basis for decision. A definite finding cannot be based on "potential" assumptions.

Thus, the FAA's finding under Section 106 is incompatible, on the basis of regulatory analysis, not only with NHPA, but with NPATMA, as well, and must be rejected. This because NPATMA demands science-based determinations and because the Act is the controlling legal authority.

The FAA's artful demand that Southwest Safaris concur with a double-negative syllogism contained in the FAA's *Request for Concurrence (Letter of Effect)* is not enough to get to a logically infallible conclusion. The FAA's errant finding is based on the premise that the only way to absolutely eliminate all potential adverse effects from air tours is to eliminate all air tours. The test must be based on science, not untested deductive reasoning. Deductive reasoning ... based in this case on the NEPA Theory of Mere Presence and the NHPA Theory of Mere Allegations,² whereby noise studies are not required at all ... has its own set of errors, as already demonstrated.

² The Theory of Mere Allegation is a uniquely NHPA concept. It holds that real adverse effects do not have to exist to be objectionable. They only have to be "potential." This means that hard evidence (based on "reasonable scientific methods") required by NPATMA to support allegations of "significant adverse impacts," are not required under terms of NHPA. The Council considers allegations by themselves to be credible evidence.

The FAA tries to use Section 106 to end run NPATMA, there being no requirement under NHPA to conduct sound studies to prove the validity of claims for adverse impacts of air tours on historic properties which are defined by the National Register. Under Section 106, a mere claim of the potential for adverse effect is considered evidentiary proof of legitimacy of allegation. Therefore, NHPA, considering the "if any" phrase in NPATMA and Section 808 methodology of compliance, is inconsistent with NPATMA. The Act requires, through sound studies, performance of the "if any" conditional test. The FAA failed to conduct the test. Thus, the FAA's Finding must be set aside under the twin Theories of Primacy of Law and Consistency of Law until NPATMA conditionally allows NHPA to come into effect. Sound studies are mandatory under NPATMA, the Act being the controlling legal authority for ATMPs. At CACH, Section 106 only comes into partial force and effect if and when NPATMA passes qualified authority to it ... by controlling NHPA's timing, language, and methods ... which happens only when a legal undertaking is commenced, not before.

Southwest alleges that the FAA's S106 finding of "no adverse effects" has additionally, and most significantly, violated NPATMA, the controlling legal authority for NHPA, by not complying with NPATMA's Section 808 (49 USC §40128.808). Southwest Safaris argues that the FAA has no latitude of discretion re. sound studies required by NPATMA. In the present instance, the Act controls implementation of Section 106. The Act is explicitly clear with respect to mandatory application of Section 808. The FAA tries to use NHPA to undermine NPATMA's authority, claiming that NPATMA language does not apply to NHPA procedure. On the other hand, the FAA appears to believe that NHPA language does control NEPA's and NPATMA's methods. Violation of regulatory language and process is immediately obvious. FAA interpretation of the three sets of regulations results in legal chaos.

By way of sidebar, Southwest Safaris alleges that the reason for the FAA's intractable argument against complying with Section 808 is that the FAA is afraid that sound studies would reveal the agency has no case against SWS that the FAA can justify and document (see 49 USC §40128(b)(3)(F)). The FAA's alleged intent is to deprive the ATO at CACH of due process, preventing SWS from bringing "sound" evidence to the attention of a court that would discredit the agency's Finding and undermine the agency's justification for action. The wrongfulness of the FAA's methods is transparent.

c. The FAA's Finding is wrong, based on misinterpretation of law.

The FAA says on page 6 under *Statement of Effects*:

The FAA, in coordination with the NPS, focused the assessment of effects on the **potential** for adverse effects from the introduction of audible or visual elements that **could** diminish the integrity of the property's significant historic features. (Emphasis added.)

This statement is antithetical to the purpose and methods of the entire ATMP undertaking. It demonstrates, by use of the words, "potential" and "could," the FAA's fundamental misunderstanding of applicable law in relation to complying with the provisions of NPATMA, NHPA (Section 106), and NEPA, combined.

Southwest Safaris has repeatedly argued, in relation to the creation of Air Tour Management Plans (ATMPs), that (1) NPATMA is the controlling legal authority; that (2) the Act, itself, triggers the activation of NHPA and NEPA at the appropriate time; and that (3) the Act controls, with respect to sound studies, the way those other statutes are to be implemented. The application of NHPA and NEPA is "directed and controlled" by NPATMA to the degree that these other laws must found their decisions on science-based sound studies incorporating "pertinent data,"³ because of the presence of the "shall clause" imbedded in Section 808 of the Act mandating same. The FAA's confusion as to the proper role and timing of each of the three

³ In Southwest Safaris' letter to Volpe of August 7, 2023, on page 17, SWS defined "pertinent" sound-study data to mean "current, comprehensive, relevant, accurate, and science-based."

statutes has led the agency to make major errors in the process of creating ATMPs. In the present instance, the agency's errors and omissions began with the errant creation of the CACH undertaking, progressed to wrongful application of Section 106 initiatives, and then ultimately undermined the CACH ATMP project by now arriving at a flawed Finding of "no adverse effects"... this conclusion permitting a determination of "no air tours." The FAA's multiple errors stem from basing its findings of "no adverse effects" and decision for "no air tours" on use of NHPA terms such as "potential" and "could" instead of on NPTMA precepts of "actual" and "measurable," which allows the vague and uncertain to control the defined and definite, contrary to Congressional intent for ATMPs.

d. The FAA's Finding is wrong, based on misapplication of law.

On November 7, 2023, the FAA wrote Southwest Safaris and discussed the definition of an "undertaking" and the interaction between NAPA and NPATMA. On page 3, under *The Applicable Law*, the FAA said:

With respect to the NHPA, **any** federal action that meets the definition of an undertaking under the NHPA and Section 106 regulations trigger compliance with Section 106 of the NHPA. **The development and implementation of an ATMP [necessarily] meets the definition of an undertaking triggering the Section 106 process.** Thus, under Section 106 of the NHPA, federal agencies must consider the impact of their actions on historic properties. So, while NPATMA governs how the FAA and NPS develop and implement ATMPs, if the development and implementation of an ATMP meets the definition of an undertaking, the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties. Compliance with NPATMA does not preclude compliance with other federal statutes and regulations. Put differently, the agencies must comply with both NPATMA and Section 106 of the NHPA. **Compliance with other applicable statutes and regulations does not mean that the agencies are not fully complying with NPATMA.** (Emphasis added.)

The first sentence of the FAA's statement⁴ of position is only half-true. It is true that federal actions which meet the definition of a legal undertaking require compliance with Section 106 of NHPA. However, the agency incorrectly adds the use of the word, "any."

It is not true that "*any* federal action" that might appear on the basis of agency initiatives to be an "undertaking" is, in fact, an "undertaking" in the eyes of the Law. A Federal action can appear to be an "undertaking," but not meet the requirements thereof. A Federal action that does not meet both the definition of and the requirements for an "undertaking," is not a *legitimate* "undertaking." This is the case with the FAA's application of NHPA with respect to the CACH ATMP. SWS argues that the CACH "undertaking" the FAA supposedly relies upon to justify the creation of an ATMP has not yet been *legally* triggered by meeting the requirements of NPATMA, which authority of Act is required by Congress.

Southwest Safaris offers three different amplified explanations for the illegality of the FAA's BAND ATMP "undertaking."

⁴ The FAA's remark comes from its November 7, 2023 letter to Southwest Safaris, page 3, *The Applicable Law*.

Explanation 1: At CACH, the FAA has never performed the “if any” test⁵ required by NPATMA to check for significant, actual, present, adverse impacts on historic properties in the APE using science-based sound studies employing pertinent data. Therefore, a legal “undertaking” at CACH has never existed. Consequently, actions under NHPA and NEPA cannot *legally* proceed at CACH until the noise tests required by Section 808 of NPATMA are conducted to satisfy the “if any” condition in compliance with Section 808 of the Act. This is the short version of SWS’ allegation.

The long version of the allegation requires some flushing out.

The principle of Primacy of Law⁶ makes the National Parks Air Tour Management Act of 2000 the controlling legal authority in the creation of ATMPs. The FAA errs by acting preemptively to initiate the Section 106 investigation of CACH without having first acted on Section 808 of NPATMA in order to test the “if any” condition contained in the “Objective” paragraph of the Act, 49 USC §(b)(1)(B). Moreover, the Principle of Continuity of Law⁷ means that Section 106 cannot be called upon by the FAA to negate the effect of NPATMA. Otherwise, the agency would be able to declare, by means of Section 106, that sound studies at selected Parks are irrelevant to determination of adverse impact of air tours on TCPs. Without the Principle of Continuity of Law, the FAA could base its objections to air tours at CACH on the Theory of Mere Presence⁸ and simple allegations of noise intrusion, ignoring the requirement for noise

⁵ See Attachment 2: NPATMA’s Primary & Secondary Objectives: The “if any” test and Section 808 compliance; how NPATMA, NHPA, and NEPA interact.

⁶ The Principle of Primacy of Law directs the order of application of laws in a vertical manner. Where multiple laws affect a result, course of action, or determination, the laws must be satisfied in accordance with the most controlling to the least. See my letters to the FAA dated September 25 and October 1, 2023, wherein SWS gives a detailed discussion on the Principle of Primacy of Law as it applies to NPATMA, NEPA, and NHPA working together.

⁷ The Principle of Continuity of Law means that one law cannot horizontally contradict another where they overlap.

⁸ The Theory of Mere Presence is brought forward by parties opposed to the conduct of air tours in any form or manner over units of the National Park Service. The Theory of Mere Presence states that air tours, by definition, impose adverse impacts on persons and property on the ground, including religious and cultural sites and events, and that there is no way to lessen the impact of same, invasion of privacy in particular. According to this theory, all Air Tour Management Plans must completely ban all air tours of all types to eliminate any possibility for adverse effects in the future. This extremist theory asserts that any Plan that does not ban all air tours does not address “the problem” of air tours at all. In the case of Hawaii Volcano National Park (HAVO), the FAA flatly states that it will not consider the theory. For unstated reasons, the FAA appears to have reversed its opinion at BAND. The suddenly but conveniently “revised” opinion held by the FAA ... that the mere presence of air tours in the Park is objectionable, in contrast to HAVO ... lacks explanation and, therefore, credibility. The FAA everywhere else claims that the standard for determination of adverse impact of air tours under NPATMA is “existing conditions,” not “no air tours.”

studies altogether.⁹ However, the power of the two principles working together means that Section 106 cannot be used to bypass Section 808. Furthermore, it means that Section 106 is only then called into conditional effect ... meaning that NHPA decisions must be based on comprehensive, relevant, and current sound studies ... after NPATMA passes authority to it by means of satisfying the all determining “if any” phraseology of the Act. Therefore, the FAA is currently exceeding its authority by prematurely asking for comment on historic properties within the APE before the subject of air tour noise has even been addressed by NPATMA. The FAA has failed to comply with Section 808 and standards of due diligence contained therein.

For these reasons, the FAA’s comment, “The development and implementation of an ATMP [necessarily] meets the definition of an undertaking triggering the Section 106 process,” is entirely untrue. That being the case, everything that follows is also mostly untrue. For instance, the FAA says, “If the development and implementation of an ATMP meets the definition of an undertaking, the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties.” This statement is only true providing that the “if” conditional is true. In the case of CACH, the “if” conditional is not true. The CACH ATMP only has the appearance of legality, not the actuality of it. So, it is not true in the case of CACH that “the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties.” In fact, the agencies have no authority to do so at all, without first complying with NPATMA. For this very reason, the FAA’s conclusion is not true in the case of BAND, either. AT BAND, the FAA also never complied with the “if any” condition and Section 808 process. The FAA erroneously says in grand summary, “Compliance with other applicable statutes and regulations does not mean that the agencies are not fully complying with NPATMA.” As a point of law, to date the agencies have not complied with NPATMA at all. Therefore, the FAA’s Section 106 initiatives at CACH and BAND are not in compliance with law and must be withdrawn, the Act being the controlling legal authority.

Explanation #2: The FAA has not determined by means of NPATMA’s Section 808 that there is any need to proceed with changes to existing conditions based on the alleged impact of aircraft noise on Traditional Cultural Properties. All parks do not require ATMPs. ATMPs only apply to certain units of the NPS. Until certain conditions and exceptions are met for individual parks, the requirement for an ATMP does not exist. That is, the triggering requirement for an ATMP (and, therefore, for an “undertaking”) does not exist just because the Act exists. In the case of CACH, if all legal procedures had been followed, the initiation of the ATMP process would indeed be an “undertaking,” 36 CFR §800.16(y). Southwest Safaris agrees with the FAA,

⁹ The FAA tries to use Section 106 to end run NPATMA, there being no requirement under NHPA to conduct sound studies to prove the validity of claims for adverse effect of air tours on historic properties as defined by the NR. Under Section 106, a mere claim of the potential for adverse effect is considered evidentiary proof of legitimacy of allegation. Therefore, NHPA, considering the “if any” phrase in NPATMA and Section 808 methodology of compliance, is inconsistent with NPATMA ... that Act requiring, thorough sound studies, the satisfying of the “if any” conditional test ... and must, at least at first, be set aside under the twin Theories of Primacy of Law and Consistency of Law, until NPATMA conditionally allows it by making sound studies mandator as a condition for NHPA review, the Act being the controlling legal authority for ATMPs. Regardless, at CACH, Section 106 only comes into qualified force and effect if and when NPATMA passes authority to it ... which happens only when a **legal** undertaking is commenced, not before.

arguing, as does the NPS, that by law Section 106 cannot be activated without the existence of an “undertaking,” 36 CFR §800.3(a) ... but the undertaking has to be legal. To date, the supposed undertaking at CACH is not legal for lack of compliance with NPATMA’s “if any” test and Section 808’s mandatory sound studies.

Explanation #3: In the case of the ATMP initiative at Canyon de Chelly, Southwest Safaris argues that legal process has not been followed. An “undertaking” in the case of an ATMP cannot commence without the “if any” phrase of NPATMA being satisfied by science-based sound studies using “pertinent data”; or, it cannot begin unless the NPS determines that creating an ATMP is necessary to “protect park resources and values or park visitor use and enjoyment,” 49 USC §40128(a)(5)(B). The NPS, nonetheless, has to prove the necessity for bypassing normal categorical exclusion rulemaking in *extraordinary* circumstances, 40 CFR §1501.4. Either way, the “if any” test and Section 808 sound-study requirements of NPATMA must be fully satisfied by law to comply with the Act’s requirement for justification and documentation per 49 USC §40128(b)(3)(F). Section 808 cannot be bypassed, because inclusion of its “shall clause” makes it mandatory in all circumstances. In any case, the FAA has not performed the “if any” test, so the FAA’s actions to proceed with its *Request for Concurrence* (i.e., Finding of “no adverse effects”) as well as the whole CACH ATMP are illegal, at this time.

The FAA will certainly argue that Southwest Safaris’ legal theories, though interesting, are irrelevant with respect to ATMPs. According to the Principle of Parallel Laws,¹⁰ the FAA will assert, NHPA can act independently of NPATMA. Southwest disagrees, reaffirming that NPATMA creates a vertical stacking of statutes, in so far as the creation of ATMPs is concerned. SWS argues it is the FAA’s position that is actually irrelevant in the current instance. Even if a court were to decide against SWS’ theory of jurisprudence based on the Principle of Primacy of Law, affirming the FAA’s Principle of Parallel Laws, the FAA’s “undertaking” would still be illegal. The FAA’s “undertaking” lacks initiation of a legal process (the “if any” test) and Section 808 sound studies under NPATMA before it can arrive at a final determination for “no air tours.” Under the FAA’s errant theory of jurisprudence, NPATMA may be postponed. Southwest Safaris rejoins that NPATMA acts first, then NHPA, thereby controlling NYPA at all times.

NPATMA cannot be avoided. In the case of CACH, “pertinent” sound studies have not been conducted at all. Without sound studies, the NPS cannot demonstrate, outside of claiming Theory of Mere Presence ... which argument is not allowed by the FAA elsewhere ... that critical “park resources and values” or “visitor use and enjoyment” have been adversely affected by air tours under existing conditions. The FAA has no other mechanisms of avoidance at its disposal. The FAA cannot rely on 49 USC 40128(a)(5)(B) to withdraw an exception, nor can the FAA justify using extreme corrective measures outside of an exception. No “extraordinary

¹⁰ The Principle of Parallel Laws states that all laws run equal and parallel to one another. No one law is superior to another. All laws run concurrently, each triggered by its own enabling language. Under this theory, the FAA claims that NHPA has equal authority with that of NPATMA and is in no manner controlled by that Act. SWS argues to the contrary, that NPATMA creates a vertical column of laws, each triggered in sequence and controlled, in some degree, by higher law. This is a point of jurisprudence that the FAA, being a party to the dispute, cannot resolve administratively, without the help of the courts. Resolution of the disputed interpretation of law will have a major effect on the implementation of both Section 106 process and of the ATMP “undertaking.”

circumstances” per 40 CFR §1501.4(b)(1) exist at CACH, the FAA’s arguable Theory of Mere Presence notwithstanding.

The relevant undisputed fact is that Southwest Safaris has been conducting air tours over CACH for 49 years, without a single documentable complaint. Until the present ATMP process was initiated, the Navajo chapter houses surrounding CACH were unaware that fixed-wing air tours were even being conducted over the Park. Any alleged “potential” impacts of air tours on the few TCPs within the park that are protected by Section 106 are purely theoretical, imaginary, and conjectural, based on deductive assertions (NHPA), not inductive research (NPATMA).¹¹ Existing conditions at Canyon de Chelly, regarding sound levels of air tours, are well below noise levels that are objectionable to persons in the Park. This reality makes the de minimis presence of infrequent air tours (currently averaging 1.4 tours per week, but frequently averaging less than 50 flights per year) under Section 106 immaterial for argument. CACH should never have been selected for ATMP status in the first place; the decision is obviously being driven by politics, not operations. This explains why the Section 106 process has been so corrupted and why the FAA is loathed to comply with NPATMA, the Act standing in the way of unrestrained application of NHPA.

The FAA’s Section 106 request for concurrence on a finding of “no adverse effects” at CACH at this time, lacks justification and authority, both under NPATMA and NHPA, for lack of initiation of a *legitimate* CACH “undertaking.” The safeguards of NPATMA for air tour operators have been purposefully ignored by agency¹² to achieve a political objective beyond the reach of due process.

To return to an earlier point, the FAA errs in assuming that Section 106 process can begin just because the agency has declared that an ATMP “undertaking” has commenced, even if the “undertaking” is being federally financed. In the first place, under NPATMA the FAA has wrongly begun the ATMP process at CACH without going through Congressionally-directed process necessary to activate the “undertaking.” In other words, the FAA, SWS alleges, is

¹¹ The conflict between NHPA and NPATMA over deductive versus inductive determination can only be resolved by acknowledging that NPATMA is the controlling legal authority, the Principle of Continuity of Law being, once again, of critical effect. Guided additionally by the Principle of Primacy of Law and Intent of Congress, all assessments of air tour noise under Section 106 re. ATMPs must be based on “reasonable scientific methods” and “pertinent data,” per Section 808 of the Act. By refusing to comply, under Section 106 the FAA fails to act/decide according to law.

¹² Congress never intended that NPATMA would be used to destroy the air tour industry. In order to ensure the rights of air tour operators (ATOs), including due process of hearing, Congress insisted that all ATMP initiatives under NPATMA would have to pass the test of reasonableness, the standard of determination being that of “existing conditions,” not “no air tours.” To safeguard these rights, Section 808 was added to the Act, the purpose of which was to create measures of decision that could be tested against science-based observations and allow for judicial review. By failing to conduct timely science-based noise studies using “pertinent data” (Footnote #3), the FAA has knowingly deprived ATOs of the ability to defend their right of operation by means of hard sound data and, thus, deprived them of constructive administrative and judicial hearing. Had timely, science-based, sound studies been conducted early in the ATMP process, most of the ATMPs the FAA has since created would have been proven to be without cause. Air tour operators cry “foul!” The FAA’s lack of regard for Section 808 serves to negate operators’ right of judicial review under 49 US §40128(b)(5), it being impossible under both NPATMA and Section 106 to provide credible evidence without authoritative sound studies.

illegally funding an “undertaking” which has no authorization. The FAA’s action leads to accusation of abuse of process and misappropriation of Federal funds.¹³

In the second place, there is a question regarding the financial legality under Section 106 of the FAA’s timing for the CACH ATMP relevant to NHPA. In 36 CFR 800.1(c) the ACHP (the Council) says:

The agency official must complete the section 106 process *prior to* the approval of the expenditure of *any* Federal funds on the undertaking or prior to the issuance of any license. (Emphasis added.)

It appears that the FAA is in violation of NHPA’s regulation. The FAA currently is well on its way to completing the CACH ATMP before consultation under Section 106 has been finished, and before fundamental legal questions ... which have been outlined in this letter ... have been resolved.¹⁴ SWS submits that significant Federal funds (e.g., salaries and other administrative costs) have already been expended on the CACH ATMP without the FAA having even *legally* commenced an “undertaking” for same, let alone having completed the Section 106 process. For this reason alone, the FAA’s Finding is in violation of NHPA regulation. The FAA’s misinterpretation of law pervades the entire ATMP “undertaking.”

In summation of argument, returning to the greater issue, the point in the case of CACH is that a legal Federal “undertaking” does not exist just because the FAA and NPS have inappropriately expended Federal funds to initiate a “process.” Southwest Safaris’ allegation keeps coming back to the same declaration of principle; implementation of an “undertaking” does not cleanse the method of bringing the action into being. An “undertaking” must first be *legally* triggered and legally financed. SWS alleges that the FAA errs by having commenced the ATMP-related Section 106 process at CACH without first initiating a *legal* “undertaking,” as defined by the language of Congressional statute, NPATMA. By so doing, the FAA is in violation of NPATMA,

¹³ After NPATMA was passed by Congress, it would have been appropriate for the FAA to expend funds to test for conditions that would trigger the creation of ATMPs. Prior to that determination, predicated on Section 808 science-based studies, no further federal money was authorized by Congress to be spent. In no case was an “undertaking” meant to arbitrarily and capriciously put air tour operators out of business. The FAA and NPS (the agencies), SWS alleges, have together conspired to misuse Federal funds to achieve a political agenda, involving the radical curtailment of the air tour industry, never contemplated by Congress. In the process, SWS contends, the agencies have defrauded the U.S. Court of Appeals for the District of Columbia Circuit by deliberately withholding relevant information so as to deceive the court to “compel” the agencies to prematurely initiate “undertakings” that had, as of then and now, no legal basis for coming into existence, the requirements for same not being satisfied. The results are all too obvious for all to see: abuse of law and tragic/unnecessary destruction of the air tour industry.

¹⁴ As of this date, the FAA has all but completed the ATMP for Canyon de Chelly. The FAA long ago gave copies of the draft CACH ATMP and EA to “cooperating agencies” but not to SWS.

NEPA¹⁵, and NHPA, all three, the Court order¹⁶ for the FAA to expedite ATMP process notwithstanding.

A court cannot compel an unlawful act. An order to expedite process is not an order to break Congressional law. Under NHPA, the FAA may begin investigative initiatives prior to activation of an “undertaking” under certain conditions, but the Agency cannot implement decision-making actions (e.g., requests for input and/or concurrence) prior to actual existence of a legal “undertaking,” 36 CFR §800.1(c). Under NEPA, the FAA also has no latitude to commence work on a draft EA without “authorization” from the NPATMA process, meaning conduct of the “if any” test. The FAA’s alleged disregard for NPATMA’s controlling legal authority, using Court order as cover for action, has already led to grave injury of the general air tour industry, to the detriment of the economy of rural America.¹⁷

Moreover, SWS argues that the FAA’s failure to establish a legal undertaking before beginning an ATMP initiative has precipitated violation of fundamental clauses of the Constitution. SWS refers to the Fifth and Fourteenth Amendments, both guaranteeing due process.

The Fifth Amendment protects persons from being forced to testify against themselves. The FAA’s Request for Concurrence under Section 106, “allowed” by the illegal undertaking, requires the ATO to admit that depriving him of his right to fly over the Park will have “no adverse effects” on the Park, itself. The FAA thereby compels the ATO to agree that any counter-arguments submitted by the operator, though meritorious by themselves, have neither validity with respect to the purpose of the ATMP nor relevance to the process of Section 106 objection. Thus, the agency deprives him of his right to both argument and hearing.

By means of the Section 106 Request for Concurrence, the FAA has artfully contrived a means by which the ATO is forced to testify against himself, no matter how he frames his objections, grossly prejudicing a decision of the agencies (FAA and NPS) against his right of operation.

If the ATO agrees that imposition of Alternative d2 (no air tours allowed over the Park) of the pending draft CACH ATMP would have “no adverse effect,” he loses his defense claiming right of operation. If the ATO declines to engage in pointless argument against a flawed and self-fulfilling double-negative syllogism leading to a conclusion favoring a decision of “no adverse effect,” the FAA will decide against him, the ATO having made no argument to the contrary. If the ATO argues against the finding of “no adverse effects,” his arguments are thrown out for not

¹⁵ NEPA is equally impacted by the Controlling legal authority of NPATMA. The requirement for satisfying the “if any” phrase and Section 808 sound studies under NPATMA are mandatory prior to the justification for, and commencement of, a NEPA Environmental Assessment. After the former is accomplished, NPATMA permits the latter to commence, in that order, if the creation of an ATMP is justified by the Objectives of the Act.

¹⁶ *Order of U.S. Court of Appeals, District of Columbia Circuit, supra* Footnote #35

¹⁷ For these reasons, SWS submits that it would be much better to stop the ATMP process at CACH now, correct the situation (there and at other units of the NPS, Bandelier National Monument, Badlands, and Mount Rushmore in particular), and then proceed, rather than force the issue of ATMP management back before the U.S. Court of Appeals, the outcome of which would be far from certain for all parties.

being relevant to Section 106 objection, but to NEPA concerns. That is, if the ATO engages in argument, he is told that his arguments are irrelevant under S106 and too late for NEPA objection. The comment period for the ATMP (as in the case of BAND) will have already closed before the S106 process was completed. That was the actual case at BAND. The same forces are aligning themselves at CACH, the FAA having initiated the ATMP process long before the S106 process can be finalized.

Under both the 5th and the 14th Amendments, ATOs are guaranteed the right to fair trial and/or administrative hearing. By failing to honor the language of the 5th and 14th Amendments pertaining to self-incrimination, and the requirement of Section 808 of NPATMA at CACH for science-based sound studies, the FAA makes it impossible for the ATO to bring his grievances under NHPA and NPATMA before a body of hearing. The ATO has been denied not only the right to constructive argument under NHPA ... the ATO having to contend with double-negative syllogisms... but also the ability to present current objective evidence under NPATMA ... the ATO being deprived of access to sound studies that SWS could otherwise offer in its own defense. Therefore, the FAA violates, under Section 106, both the Constitution and the judicial review clause of NPATMA, 49 US §40128(b)(5).

The 5th and 14th Amendments were both drafted to ensure a review process of executive actions that would guarantee fundamental fairness, both procedurally and substantively considered. The FAA's application of NHPA and lack of application of NPATMA to the CACH ATMP defies both. The FAA disallows substantive argument under rules of logic (violating the intent of Section 106) and makes presentation of credible facts (i.e., sound studies) under rules of evidence impossible, in the meanwhile forcing ATOs, by means of the FAA's *Request for Concurrence*, to testify against themselves and their own interests. The entire Section 106 process is so flawed and so aligned against fair and impartial hearing of ATOs' grievances that it must be halted pending judicial review of the ATMP process.

e. The FAA's Finding is wrong, because it attempts to override controlling law.

NHPA and NPATMA war against one another.

Under NHPA there is no requirement for sound studies. Under NPATMA, sound studies must be performed. Under NHPA, mere allegations suffice as convicting evidence; under NPATMA there has to be hard evidence based on reasonable scientific methods. Under NHPA, the standard for decision is "potential" adverse effects; under NPATMA, the adverse impacts have to be "existing." Under NHPA, "feelings" and "cultural setting" can be the basis of complaint; under NPATMA, complaints have to be moored to measurable effects. NHPA is predicated on deductive speculation; NPATMA, on inductive methodology. NHPA means are the extremes; NPATMA seeks reasonable compromise based on common-sense solutions. The two statutes are completely incompatible. Without there being a priority of authority, the war between the two will destroy the principle of controlling jurisprudence.

Clearly, one of these laws has to control the other in the matter of ATMP creation. Congress wrote NHPA back in 1966. It was drafted as a general law to preserve historic properties. NPATMA was meant to be an aviation law. It was passed in 2000. Under the Principle of Primacy of Law, the specific law controls the general; the later law controls the earlier; the law that activates the other, is the controlling law; the law that contains the purpose and intent of Congress for a specific “undertaking” is the controlling law. In the case of ATMPs, where NPATMA, NEPA, and NHPA all must work together, NPATMA is the managing regulating statute, residing in a vertical manner on top of the other two.

Contrary to FAA theory, NHPA does not stand on its own with respect to the creation of ATMPs. In the present instance, NHPA only has power to the extent that it is called into effect by NPATMA. It is NPATMA which creates the existence of a NHPA undertaking, so NPATMA determines the timing of NHPA’s calling and the methods and vocabulary that NHPA can employ. In short, NPATMA contains the “genetic code” written by Congress for the creation of ATMPs. NPATMA, therefore, is the controlling legal authority for managing the ATMP process.

The FAA’s *Letter of Effects* endeavors to use NHPA methodology to override NPATMA law ... but to no avail.

NPATMA specifically demands a three-step process for an ATMP undertaking to be called into being. First, at any given park, possible adverse effects from air tour operations must be tested for an “if any” condition (49 CFR §40128(b)(1)(B)). Second, the test for the “if any” condition must be performed in compliance with Section 808 of the Act, which requires sound studies using “reasonable scientific methods” based on pertinent data. Third, a reasonable solution for remedying adverse solutions must be chosen that is both “acceptable and effective.” “Acceptable” means agreeable to all parties. “Effective” includes the application of reasonable compromise by all parties to achieve a common goal. Without compromise, no solution will hold together, destroying its “effectiveness.”

The FAA’s *Letter of Effect/Request for Concurrence* (the Letter) attempts to use Section 106 language and methods to undermine NPATMA’s authority. The Letter makes not a single mention of NPATMA, fails to perform the “if any” test mandated by NPATMA (see Attachment 2), completely ignores the Section 808 requirement to perform sound studies (see Attachment 2), imposes unreasonable assumptions meant to predetermine the outcome of the Finding (see Section 2a), is based on hearsay evidence (see section 4), and offers not even the pretense of compromise. In fact, its Finding of “no adverse effects” is, indeed, extremist (see Section 4).

Contrary to FAA and ACHP opinion, there is nothing in NHPA that requires the FAA to take the most radical approach to quelling alleged adverse impacts from air tours (see Section 4). The FAA resorts to extremist measures by eliminating air tours altogether. The agency falsely claims that doing so will have no consequential effect (see Section 1b).

The FAA’s Finding is based on deductive noise assessments derived from noise modeling. The FAA AEDT methodology consists of sophisticated technology, not science. In fact, it is based on very elaborate spreadsheet algorithms. It is not suitable for weighty environmental analysis, according to Congress (Section 808 of the Act) (see Section 6).

Moreover, the methods and goals of Section 106, as used by the FAA, are diametrically opposed to the Will of Congress, as documented many times by SWS (see Attachment 1).

Therefore, the FAA's Finding of "no adverse effects" must be rejected because its illogic rips at the fabric of American law. The FAA's theory of jurisprudence is predicated on the assumption of guilt until proven innocent. Innocence is impossible to prove under the tenants of S106 double-negative syllogisms.

The FAA's Finding, in fact, violates NPATMA entirely. It is a mere untested hypothesis masquerading as a proof, presented as an axiom, that makes constructive "consultation" impossible, because the axiom arrives at a predetermined decision of "no air tours." Without conducting sound studies, the agencies have made it impossible to break the axiom. This makes a mockery of due process. The agencies need to go back to the Court and get an interpretation of the order of law. Administrative discretion cannot be substituted for Constitutional interpretation. The power of legal interpretation properly resides with the courts.

At the top of page 4 of the ACHP's December 21, 2023 Opinion re. the FAA's Finding of "no adverse effects," at BAND, the ACHP says:

NPATMA does not exempt or waive responsibility for compliance with Section 106 of the NHPA; therefore, the FAA must also comply with Section 106's requirements prior to making a final decision under NPATMA.

The ACHP's statement of Dec. 21 agrees with the FAA's statement of November 7:

So, while NPATMA governs how the FAA and NPS develop and implement ATMPs, if the development and implementation of an ATMP meets the definition of an undertaking, the FAA and the NPS must also comply with the Section 106 process under the NHPA and consider the effect of the undertaking on historic properties. Compliance with NPATMA does not preclude compliance with other federal statutes and regulations.

Both the ACHP and the FAA err by hitting a bullseye on the wrong target. The point is not that the FAA has to comply with Section 106, SWS acknowledges that. The issue is that NPATMA controls the target that Section 106 must hit, both the when and the how, i.e., the timing, vocabulary, and method of NHPA analysis.

The ACHP's statement of December 21, however, is incorrect. To paraphrase, the ACHP says that because NPATMA does not expressly exempt the FAA from responsibility for compliance with Section 106 of NHPA, the FAA must fully comply with Section 106 without regard for the purpose and methods dictated by NPATMA. This could not be further from the truth, but explains the refrain that the ATO keeps saying. The statutes naturally war against one another, so Congress gave control to NPATMA.

In the present instance of the ACHP's misstatement, SWS rejoins by clarifying that NPATMA does not have to incorporate specific language that would "exempt or waive ... compliance with Section 106 of the NHPA." The very Act, itself, controls the overall process and keeps NHPA from warring with NPATMA in such a manner as would destroy the purpose of the entire ATMP process. NPATMA requires that certain parts of NHPA be implemented to assess significant adverse effects on historic properties, but also requires NHPA to make the assessments utilizing science-based sound studies and verifiable evidence grounded on existing, not hypothetical or "potential," conditions. In the case of the FAA, its Finding is flawed at Canyon de Chelly, because the "if any" conditional is not tested for positive results. The FAA has not verified that adverse conditions even exist, as previously discussed.

The ACHP and FAA abuse Section 106 process by ignoring the overriding goal of the ATMP initiative. This was to implement a reasonable and common-sense approach to mitigating provable existing significant adverse impacts on historic properties. Only NPATMA can accomplish this. Both NHPA and NEPA innately have propensity to work towards the extremes, not the means. In defiance of Will of Congress, the ACHP boldly states, and the FAA agrees, that the FAA is not compelled by that governing body to consider NPATMA at all for purpose of Section 106 implementation, that NHPA regulations stand on their own. Southwest Safaris rejoins that this is why the ATMP process has gotten out of control, doing untold damage to ATOs, rural communities, and regional economies and that this approach, as demonstrated, represents an unreasonable analysis of the proper interaction of the laws at hand, sending a wrecking ball through the rural air transportation system.

III The FAA's Finding is wrong, because the agency's list of historic properties in the APE is based on hearsay.

SWS alleges that the FAA's list of 37 cultural resources in the APE of the BAND ATMP is based on hearsay. None of the corroborating testimony in support of the list has been gathered or verified by the FAA, itself.

To verify the authenticity of the historic properties at CACH, the FAA had a legal responsibility to "walk the park" to validate the NPS' claims for legitimacy of National Registry (NR) eligibility. The FAA failed to perform this duty. The FAA would have realized the legitimacy of SWS' objections to the agency's selection of historic properties if the agency had complied with 36 CFR §800.4(b)(2). This regulation requires, under heading of "Identification of Historic Properties," the FAA to "conduct an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects" Under regulation, this obligation cannot be delegated to another agency, particularly the NPS, which has an obvious self-interest in the outcome of the ATMP process. The FAA has no authority, SWS claims, to ask for comments from the public/ATO relating to itemized historic properties till the agency has personally conducted field investigation to verify the accuracy of the list of properties. Without the verification, the public comments would be irrelevant. As it is, the FAA relies 100% on other people's/agencies' untested memories and unchallenged records.

Until the FAA reveals the location of each of the FAA's claimed "cultural resources," the FAA list of historic properties has no credibility. Each site needs to be verified. Otherwise, the evidence the FAA relies on merely consists of a general aggregate of testimony involving unidentified third parties (tribes, consultants, and archaeologists) presented as unsubstantiated facts by second parties (the NPS and State Historic Offices) that have little firsthand expertise with the field research behind this specific data. Such testimony, both verbal and written, with a few exceptions, is inadmissible in either court or hearing body, without field confirmation by the FAA.

Incredibly, the FAA counterclaims that hearsay, under the rules of NHPA, is admissible for Sec.106 purposes. The FAA claims that it is not bound by rules of evidence applied by courts.

SWS rejoins that the FAA can cite no source that allows the agency to use hearsay.

The FAA counters by reliance on the fact that NHPA (under Section 106) generally considers all testimony, especially that of Indians, to be appropriate evidence, without any verification.

In turn, Southwest Safaris responds: (1) the FAA's opinion allows unsubstantiated evidence to "poison" objective analysis; and (2) the courts have long recognized that contamination of evidence with hearsay must be arduously avoided in order to ensure due process.

Because (1) the FAA failed to conduct and/or verify any kind of actual field investigation; and because (2) the agency relied in large part on testimony and records of unidentified "consulting parties," all of whom SWS assumes had a personal/agency interest in the outcome of the eventual S106 finding; and because (3) the NPS and the Navajo Nation (e.g., local Chapter Houses and the Navajo Heritage and Historic Preservation Department, plus members of the Tribal Council¹⁸) have an admitted vested interest in denying Southwest Safaris right to fly over the Park ... which predilection makes objective analysis and presentation of data impossible. SWS asserts that the FAA and the NPA (the agencies) working jointly, in fact made neither "a reasonable and good faith effort to identify historic properties within the APE,"¹⁹ nor did the agencies use reasonable and appropriate means of identifying historic properties consistent with the ACHP's regulations.

It remains, then, for Southwest Safaris to demonstrate that the 1,637 cultural resources that the FAA claims lie within the District of the APE, including 1,600 archaeological sites, are not properly included or eligible for inclusion on the National Register. The reasons have to do with current eligibility. The sites are only eligible for listing on the NR for reason of general historic accommodation. The claims for specific historic importance/and relevance are impossible for the FAA to verify.

¹⁸ See Footnote #38 in reference to testimony of Mr. Carl Slater, member of the Navajo Nation Council, delivered on December 5, 2023 to the House Natural Resources Subcommittee on Oversight and Investigations. See also Footnote #39 for quote from Navajo Council Speaker Crystalyne Curley in Gallup Sun newspaper.

¹⁹ See FAA's *Finding of Effects* letter, December 28, 2023, page 5, *Identification of Historic Properties*.

As it turns out, the FAA, itself, admits that 1,600 of the claimed properties are irrelevant to the “undertaking.” On page 6 of the FAA’s *Letter of Effect*, the FAA says:

1,600 additional inventoried and recorded below-ground archaeological sites [lie] within the APE; however, these below-ground archaeological resources are not further described in this letter because feeling and setting are not characteristics that make these properties eligible for listing on the National Register and there is no potential for the undertaking to affect these resources.²⁰

So, Southwest Safaris has only to refute the listing of the other 37 sites in the APE.

Title 36, Part 60 is concerned with the National Register of Historic Places (National Register, or “NR”). §60.4 lists the “Criteria for Evaluation” that must be used to determine the characteristics of a property that might make it eligible for listing on the National Register. All of the properties referenced by the FAA in the APE are technically considered “sites,” because they have physical presence over and above cultural significance. So, they fall under the eligibility rules of §60.4.

According to 36 CFR §60.4, none of the individual properties included in the “districts” listed in Schedule C of the FAA’s *Letter of Effects* would qualify on their own as Historic Properties (HPs). Sacred space and religious/cultural setting (e.g., “cultural landscapes” and “traditional cultural properties”) are not enough to make a property (i.e., a “site”) eligible for listing on the NR. Nor are properties qualified whose only distinctive characteristics are “setting and feeling.”²¹ The NR does not include “outdoor spaces designed for meditation or contemplation,”²² either.

The NR regulation concerning qualification of properties reads as follows:

§60.4 *National Register criteria for evaluation.* The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, *sites*, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, *feeling*, and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; **or** (b) that are associated with the lives of persons significant in our past; **or** (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; **or** (d) that have yielded, or may be likely to yield, information important in prehistory or history. (Emphasis added.)

²⁰ Southwest Safaris points out that this line of reasoning is diametrically opposed to that used by the FAA for the BAND ATMP. At BAND, the FAA argues that all 3,000 some ancestral cultural sites of the local Tribes are still sacred and have to be protected by the ATMP for reasons of “settings and feelings.” The FAA argues inconsistently from park to park, undermining the agency’s credibility.

²¹ Non-listing of TCPs. See FAA’s Finding of Effects Letter, December 28, 2012, page 5, Identification of Historic Properties.

²² Ibid

There is an “and” coordinating conjunction involved in the regulation, followed by a long line of “or” conditionals. The regulation is a logic statement consisting of “and/or” construction. In order to be eligible for listing on the National Register for religious/spiritual/cultural reasons, property categories of the classes the FAA mentions would need to have “setting/feeling” qualities *plus* meet at least one of the “criteria considerations” listed in the above regulation stipulation.

All but one of the TCP properties listed in the FAA’s Attachment C fail to meet the standards of the “or” clauses/ subparagraphs (a) through (d) above. With the exception of White House Ruin, none of the individual TCP properties are even generally associated with identifiable historic events of significant record, (a); none are associated with specific persons, (b); none but White House Ruin are associated with works of construction or creative design, (c); and none but White House Ruin “yield information important in prehistory or history,” (d). In the case of Spider Rock, Spider Woman is a figure of current reality to the Navajo people; she is a living figure whose importance is primarily in the present. Attachment C lists no identifiable connection of Spider Woman with historic events, citing no specific commemorative aspects of Spider Woman’s actuality, only general reference to her as a teacher of timeless spiritual values. A towering rock monolith is not an architectural achievement; it is a landmark, not a structure. No historic battles occurred at Spider Rock. Moreover, the NR makes no mention of anthropomorphic qualities passing from spiritual persons to physical properties (rocks) so that the identity of a natural object would become that of the spiritual, allowing the property to take on timeless historic significance. Spider Rock is a popular tourist attraction, lacking privacy and silence viewed from the overlooking parking lot.

Beyond two listed NPS buildings plus White House Ruin and Spider Rock, other possible historic properties in the Park are only identified in Attachment C by number. With the exception of White House Ruin, nothing substantive is said about the individual identities, histories, or integral importance of these numbered properties to the overall historic characteristics of the Park, only that several of the sites have “setting and feeling” attributes that are “significant,” whatever that means.²³ By concealing the majority of the sites’ identities, the FAA has deliberately made the sites impossible to critique for veil of secrecy. The FAA denies ATOs due process by withholding from ATOs constructive opportunity to comment on the numbered properties. SWS challenges the numbered properties authenticity. SWS further argues that the 33 numbered TCPs within and outside the Park boundary should be eliminated from eligibility on the National Register for lack of qualifying criteria (specificity and relevance)

²³ The FAA makes reference to the National Register Bulletin 36, pointing out that “A contributing resource has the following characteristics: it was present during the period of time that the property achieved its significance; it relates to the documented significance of the property; and it possesses historical integrity or is capable of yielding important information relevant to the significance of the property.” SWS counters by observing that this reference is far too general, too abstract, does not apply to specific physical sites, and is too vague with respect to application. Moreover, the information contained in the contested “contributing resources” is not of *significance* or *importance* with reference to each individual site.

and eliminated from consideration in the proposed CACH ATMP for lack of connection with any particular route (lack of definition and location).²⁴

Attachment C lists only 37 individual historic sites. Only two “building properties” are included in the Park HQ inventory, and neither one of them counts²⁵; none of the sites lie along or directly under the routes flown by SWS. Within the districts, the FAA claims that there exist 35 “cultural resources,” but none of them are actually listed on the NR. For 33 of the sites, the FAA gives no proof of even their actual existence by any sort of geographic reference that either the agency or the ATO can verify. This is a point of important contention; the sites are “faceless,” having no individual characteristics.

The FAA says that the “information provided by consulting parties, including tribes, is reasonable and an appropriate means of identifying historic properties and is also consistent with the ACHP’s regulations.” Southwest Safaris disagrees.

In the first place, the information garnered from consulting parties relating to historic properties dating back far beyond collective memory can only have been derived from historic hearsay passed down from one consulting “expert” to the next. Consulting with Indian tribes, as required by NHPA regulation per PL 102-575, does not change the type of reliance (hearsay) that the FAA is depending on.

PL 102-575 states:

In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

²⁴ It is interesting to note that none of the “cultural resources” claimed by the FAA for inclusion on the National Register have been listed in the registration for the historic property. The registration form has not been updated since 1970.

²⁵ One of the properties listed is the “Custodian’s Residence.” This property is ineligible for inclusion in the FAA list of historic properties in the APE because it properly belongs to the Thunderbird Lodge historic district. This district was not listed as one of the included “Districts” in the APE because the cluster of buildings has been specifically delisted from the National Register. Moreover, the Lodge is a working partner with Southwest Safaris, providing numerous ground services for the ATO. By standing agreement, SWS signals the Lodge of the ATO’s arrival by flying over the Lodge at a low enough altitude to be heard in the office, to confirm need for pickup at the local airstrip. Noise and physical presence of air tours at CACH is obviously not an issue with Thunderbird Lodge, the FAA’s obsession with “settings and feelings” notwithstanding. The Lodge is a major employer of Navajos in Chinle, who, upon inquiry, appear to share the opinions of management. The other building serves as the HQ for the Park. It, too, is not listed as a site on the NR, because its construction is neither unique nor commemorative. It sits immediately adjacent to the main visitor parking lot. It is one of the noisiest parking sites in the Park, so the applicability of “setting and feelings” as a characteristic of the property that would qualify it for inclusion in the APE is completely inappropriate.

Complying with this law does not mean that the FAA necessarily has to incorporate the statements and figures of the Tribes. To do so without verification of data would still imply reliance on hearsay. The FAA has provided no evidence of fact-checking, relying only of the highly biased testimony of the NPS and Tribal Historic Office for concurrence.

In the second place, listing on the NR is not determined by NHPA, but by a different set of regulations. In the present instance, eligibility of the properties is solely determined by the “Criteria for Evaluation” enumerated under 36 CFR §60.4. Very few of the tests of qualifying criteria would successfully apply to the individual “sites” in question. Southwest Safaris claims, therefore, that the supposed “cultural resources” listed by the FAA likely represent grossly exaggerated claims by the NPS and Tribes. These are highly prejudiced parties to the ATMP undertaking, whose word, therefore, cannot be taken at face value, 36 CFR §800.4(c)(1) notwithstanding. Of the 37 TCP properties listed in Attachment C, all but White House Ruin fail to meet the standards of the “or” clauses/subparagraphs (a) through (d) above.

All of the sites, including the buildings,²⁶ fail the eligibility test for reason of itemized “criteria considerations.” These §60.4 stipulations follow in the regulation immediately after the “National Register Criteria for Evaluation” paragraph referenced above. Cemeteries and graves of historical figures and properties primarily commemorative in nature, characteristics obviously alluded to with reference to the 35 cultural and archaeological sites, are not considered eligible for the NR. §60.4 states that “Ordinarily properties . . . used for religious [including prayerful, meditative, and ceremonial] purposes . . . shall not be considered eligible for the National Register.” None of the listed extenuating exceptions to this rule apply under §60.4, with the possible allowance for (f) White House Ruin.²⁷ However, none of the other properties in question are “primarily commemorative in intent,” nor do they have “*exceptional* significance.” None of the other properties listed were originally created by man for celebratory purposes, and natural properties do not “inherit” man-made “traditional significance” over time unless an extraordinary historic event is directly associated therewith. The FAA makes no claim that any of the listed TCPs have commemorative association attached to identifiable events. Therefore, all of the unnamed TCPs lack overall “integrity” of presentation with respect to the NR.

The criteria for eligibility of listing on the NR do not include landscape locations “that have been continuously used for contemplation and prayer.” Nor do the criteria for eligibility allow listing “because of association with cultural practices or beliefs.” The concept of “cultural landscape” including “outdoor spaces designed for meditation or contemplation” is completely foreign to the wording of the NR’s Criteria for Evaluation and to the qualities of stipulated exception/eligibility that follow. The FAA has artfully crafted the misleading and prejudicial terminology. The NR considers such sweeping categories to be much too broad. On the other hand, individual TCPs are not automatically and separately included in the NR just because they have cultural importance for current time. Their eligibility for listing comes solely from being part of the Park.

²⁶ *Ibid.*

²⁷ With regards to exceptions for governing listing on the NR, §60.4 says: “However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories: (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or . . .”

The main justification for all of the TCPs but White House Ruin being included in the APE as historic sites is that they fall within the boundaries of CACH. This is a “district” that does meet the criteria for listing on the NR. However, the majority of the properties, considered by themselves, would not meet the criteria.²⁸ Moreover, the exception for reason of district inclusion is nullified by the fact that the individual properties are not “integral parts of districts,” meaning that they cannot be cognitively recognized as such by laymen and cannot readily be observed as historic sites by normal visual means. The sites lack unique physical characteristics (being “faceless”). Their presence is not essential to the identity of the Park. They are cultural locations of importance to local residents, not material or objective sites that contain specific historic importance/relevance to the Park. The sites have only general “setting and feeling” of note.

Southwest Safaris acknowledges the existence of special wording in PUBLIC LAW 102-575—OCT. 30, 1992 106 STAT. 4757 which says that “Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.” SWS notes, however, that the wording does not include, “without further consideration” at the end of the statutory language. SWS alleges that the FAA errs in two ways. First, the agency misinterprets the “may be determined” clause to mean “shall be determined.” This clause carries vastly different meaning than the alternative interpretation, which would mean, instead: “is allowed to be considered for” Under the alternative interpretation, the properties would be given favorable consideration, but would still have to abide by 36 CFR §60.4. Southwest Safaris argues in favor of the alternative interpretation, contending that inclusion of the properties on the NR is not automatic.

Second, the FAA does not recognize the full meaning of 36 CFR §800.4(c)(1). With reference to the current instance, the relevant portion of the NCHP regulation states:

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

Certainly, the passage of time has affected the qualities of the 35 sites that the FAA is claiming as cultural properties for inclusion in the NR. Many of these sites are over 1,000 years old. They have been buried by sand at the rate of one shovel of time per year and deteriorated to the point where they are unrecognizable to the untrained eye. They have been ravaged by fire, wind, storm, flood, sun, and vandalism. Their relevance to the NR by current standards has become sadly irrelevant except in the most historic context. Most of the 1,600 “cultural resources” at CACH supposedly listed on the NR no longer constructively exist anymore and, for the sake of accuracy and credibility, should not be considered eligible for listing on the NR, their “potential presence” undermining the integrity of the Register. Currently, except for the well-meaning but unverified testimony of tribal members, there is no way to know which of the listed cultural properties are “real” for purposes of NR listing and which are not anymore.

²⁸ *Non-listing of TCPs, supra* Footnote #21.

SWS points out that creation of Prohibited Airspace in the CACH ATMP above TCPs cannot be based on undefinable “cultural landscapes” of vague social and religious significance from bygone times. Moreover, considerations of airspace surrounding historic properties is not relevant to the National Registry’s *Criteria for Evaluation*. §60.4 makes no mention of “viewsheds” being a part of a historic property’s intrinsic value. “Diminishment of viewshed” is a concept foreign to the *Criteria for Evaluation* and not a factor of relevance under NPATMA when determining adverse impact of aircraft presence. This discounts most of the FAA’s criticism of air tours over the Park.

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

The FAA’s attempt to rely on hearsay was erroneously reinforced by the ACHP when the ACHP responded to the FAA’s request for opinion regarding a pending ATMP for Bandelier National Monument (BAND). In the ACHP’s letter to the FAA of December 21, 2023, the ACHP said on page 4, *ACHP’s Review of Finding*:

Based on the information provided by Tribes, noise and visual elements from air tours [at Bandelier National Monument] have the potential to alter characteristics of historic properties significant to them by diminishing integrity of setting and feeling, among other aspects of integrity. The ACHP has developed policy statements and other guidance that affirm the validity of Indigenous Knowledge in identifying historic properties of religious and cultural significance. Therefore, the information provided by Tribes is sufficient for the FAA to determine that properties of significance to Tribes are historic properties without further archaeological evaluation, and the characteristics that make the properties significant could be adversely affected by continued air tours above and around them.

Relying on the arguments and regulatory language cited earlier, Southwest Safaris strenuously refutes the ACHP’s statement. The Council claims that information provided by Tribes is sufficient unto itself as qualifying evidence of historic properties without any archaeological evaluation. They further claim that allegations of “potential” adverse effects from air tours have to be accepted without cross-examination or any means of verification. The NHPA regulations, themselves, make it patently clear that this is not the case, which is probably why the ACHP cites no regulations upon which its flawed interpretation rests. Moreover, NPATMA also disagrees with ACHP opinion, the Act requiring performance of the “if any” test by means of Section 808 sound measurements in order to verify any alleged statements of adverse impacts from air tour overflights. SWS says yet gain, in refrain, that NPTMA, not NHPA and not NEPA acting by themselves, is the controlling legal authority re. all matters relating to the creation of ATMPs.

SWS concludes this section by stating, with reference to the APE for Canyon de Chelly, that the FAA is asking for the impossible. It is not fair under Section 106 for the FAA to ask an ATO to comment on boundaries of the APE based on TCPs that the FAA will not identify as to location. All claimed historic properties at CACH should be identified on a map, the argument for privacy notwithstanding. The FAA is wrongly withholding the locations of historic sites that would be essential for planning air tour routes.

IV The FAA's Finding is wrong, because it is based on extremist interpretation of law, ignoring NPATMA.

There is nothing in the Federal Code that justifies the FAA's extremist interpretation of law and regulation. The FAA misuses the regulatory body to ban all air tours over Canyon de Chelly and Bandelier.

The ACHP, upon whose opinion the FAA relies, apparently agrees. In the ACHP's Opinion letter of December 21, 2023, in which the Council comments on the FAA's Finding of "no adverse effects" for the BAND ATMP, the ACHP says at the bottom of page 4:

Further, while the **Section 106 process does not mandate a specific outcome**, the regulations implementing Section 106 present an order to the consideration of alternatives with regard to adverse effects, if any. The agency should first consider ways to avoid adverse effects to historic properties; if such options are not available, then the agency would consider ways to minimize or mitigate adverse effects (see 36 CFR §800.6(a)). (Emphasis added.)

The FAA builds a huge untruth around a small truth. While it is true that "Section 106 process does not mandate a specific outcome" ... meaning that NHPA does not require the FAA to choose the most radical remedy for addressing adverse impacts ... the rest of the FAA's sentence is blatantly false. NHPA regulations do not require or even suggest an order of remediation for "potential" adverse effects.

The actual language of the regulation to which the ACHP refers is contained in 36 CFR §800.1(a) (not §800.6(a), which the ACHP erroneously cites). That wording says:

§800.1 Purposes

The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

The ACHP and the FAA base their entire theory of extremist remedy on misinterpretation of this single, informative sentence. The rationale of the statement was simply to give the "purposes" behind the NHPA statute and the general methods of accomplishing them. It serves as introductory text for the NHPA statute. The text gives an explication of goals and the means of attaining them, not instructions for how to achieve them; that comes later in the law. The wording of the sentence does not include any mandatory terminology such as "must" or "shall."

The ACHP incorrectly declares that the first and major priority of Section 106 is to avoid adverse effects on historic properties altogether and, if that option is not available, only then would the FAA, empowered by the ACHP, elect alternative remedies that would either minimize or mitigate adverse effects. The regulation, as quoted, says no such thing.

Textual analysis of the regulation refutes the Council's interpretation. In the first place, Congress presents the words, "avoid, minimize or mitigate," merely in alphabetical order. In the second place, Congressional use of the coordinating conjunction, "or," creates equal standing

between the terms, not priority of order. Congress gave agencies three choices of remedy; they could choose any one of them, providing that the agencies could justify it (49 USC §40128(b)(3)(F)). In the third place, had Congress intended the interpretation adopted by the ACHP/FAA, Congress would have expressly used wording calling attention to that effect, such as adding “in that order” to the end of the sentence. In the fourth place, Congress uses words that do not express a clear difference of degree. By using the words, “minimize or mitigate,” Congress attempts to draw a distinction that does not make a clear difference, the degree of difference being just too subtle for regulatory purposes. If Congress had meant the words to apply in descending order of degree for aviation purposes, where clarity is of utmost importance, it would have employed more useful vocabulary. It might have said, “... seek ways to prevent, accept, or modify any adverse effects on historic properties, in that order.” Evidently, Congress had no obvious order of preference for implementing the three choices for correcting adverse impact. Congress simply directed that the decision would be “reasonable” ... meaning made with the aid of the intentional “if any” test required by NPATMA ... and “justifiable ... meaning consistent with the findings from performing the science-based sound studies required under Section 808 of the Act.

NHPA was never written to be an aviation regulation. NPATMA was. The FAA is relying on language that is not applicable to its endeavor. This is yet another example of why Congress intended NPATMA to be the controlling legal authority re. ATMPs, where the language is specific to the “undertaking.”

The ACHP’s/FAA’s gross misunderstanding of Federal code as it applies to the ATMP process goes to the heart of the FAA’s justification for using extremist remedies for eliminating all “potential” (i.e., currently nonexistent) adverse impacts on historic properties. This policy drives the FAA’s interpretation of NHPA regulations to allow the agency to arrive at an erroneous Finding of “no adverse effects” from banning all air tours over the Park. In this manner, the agency can conclude the ATMP process with a decision of “no air tours” allowed, which contradicts the Will of Congress (see Appendix 1).

It appears that the ACHP has been caught in a misstatement of huge proportions, The Council attempts to grab powers under Section 106 that Congress never granted. Then the Council gives them to the FAA. Of course, one would expect NPATMA to come to the opposite conclusion ... and it does. Ergo, the FAA’s reason for hating NPATMA and trying to skirt, or negate, or violate it.

NPATMA, 49 USC 40128(b)(1)(B), voices just the opposite of the Council’s Opinion, that:

The objective of any air tour management plan shall be to develop acceptable and effective measures to *mitigate or prevent* the *significant* adverse impacts, *if any*, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

The language of the Act is very clear. There is an “or” between “mitigate” and “prevent.” Under NPATMA, there is no imperative to “avoid” all “potential” adverse impacts, the concept of “avoidance” being foreign to the Act. By incorporation of the word, “or,” NPATMA expressly allows latitude of mitigation methods. The *Objections* section of the Act gives the FAA power only to prevent the defined “*significant*” existing adverse impacts of air tours over

parks, not eliminate all “potential,” unmaterialized, future consequences of same. The ACHP methodology, in contrast, favors avoidance schemes based on the theory of “potential” adverse effects. This is a speculative concept which is unsupported by regulation of either NHPA or NPATMA origin. The policy would deny the ATO at BAND the right to fly over the Park regardless of the results of the “if any” test, even if the test proves “no adverse impacts.” The ACHP attempts to use NHPA as a weapon with which to war against NPATMA, in violation of basic principles of jurisprudence (Primacy of Law and Continuity of Law). However, the Council’s aim falls short of its mark, failing the test of strict scrutiny.

To elaborate in greater textual detail, the word “potential” does not even appear in NPATMA, nor does the Act include the word, “avoid.” “Avoid” carries the inference of “potential,” as in the FAA’s favorite NHPA phrase, “avoid potential effects.” The word, “prevent,” however, used in the *Objective* section of NPATMA, points to “existing conditions,” as in “mitigate or prevent significant [existing] adverse impacts.” So, the Act being the controlling legal authority for ATMP implementation, and the textual meaning of the Act being clear, the ACHP’s “do no possible harm” theory imported from NHPA ... incorrectly interpreted to mean the application of the most restrictive measures for reducing adverse impacts ... is inappropriate and inapplicable in the case of all ATMPs. This is especially true for CACH and BAND, where noise and physical presence of aircraft are not problems in the first place.

A decision in favor of Southwest Safaris’ interpretation of statutory language is logical even if one were to decide that the mitigation language of NHPA and NPATMA is not clear. According to the canon of Chevron deference, in cases where Congress does not specify agency actions, and the law is either ambiguous or silent, a specific textual test of reasonableness is required. Under NPATMA ... the Act being the controlling legal authority re. ATMPs ... the measure of reasonableness is expressly determined by application of the “if any” test for adverse impact, which in turn must be performed against existing conditions by means of science-based sound studies under Section 808. The standard of reasonableness cannot be construed under latitude of statutory interpretation to mean the elimination of all “potential adverse effects.” The Act provides specific language and methods to the contrary.

In the case of NHPA and NPATMA, the general contextual test of reasonableness is whether the agency’s interpretation of the law is consistent with legislative intent. In the present instance, the intent of NPATMA is clearly identified in its *Objectives* section, 49 USC 40128(b)(1)(B). The intent of NHPA is spelled out in 36 CFR 800.1(a). Both sets of regulations make significant use of “or” between the words “mitigate or prevent” in the former case and “avoid, minimize, or mitigate” in the latter. The intent of Congress in both statutes was to allow considerable latitude as to methodology for lessening alleged adverse impacts, if any. Southwest Safaris clarifies that the Opinion of the ACHP fails legal scrutiny thrice over. There is neither specific nor general interpretation of NPATMA and NHPA that would allow extremist interpretation for excessive remedies. Moreover, the “if any” test required by NPATMA was never performed, so the FAA’s methods fail the test of reasonableness, yet again.

The FAA has no problem recognizing the validity of Southwest Safaris’ arguments when it comes to major parks throughout the USA. Take Hawaii, for example. At HAVO, the FAA argues against the ACHP, saying the standard of decision is not “no air tours” based on the

Theory of Mere Presence,²⁹ but rather that of “existing conditions” and historical precedent. At HAVO, the FAA claims that air tours existed *at the time* NPATMA was created, so the noise levels at that time should be the standard of acceptance, and any measures taken to mitigate such noise will be sufficient to accomplish the objective of the Act.³⁰ Moreover, the FAA also argues that air tours over the park existed long *before* HAVO was created as a national park, asserting that air tour noise was, therefore, part of acceptable “existing conditions” even before the park was created³¹.

The FAA’s arguments at HAVO, HALE, ARCH, CANY, BRCA, and NABR are completely contrary to those at CACH and BAND, the difference in reasoning going unexplained. At CACH and BAND, the FAA argues that the basis for decision is “no air tours” predicated on the Theory of Mere Presence, no deference being given to the fact that air tours existed when the Park was created and long before.

The ACHP had a duty to address this glaring inconsistency and to ask the FAA to clarify the FAA’s reasoning. The failure to confront the FAA speaks to the Councils predilection to opine against SWS from the very outset and disqualifies the Council’s Opinion for lack of

²⁹ *Theory of Mere Presence, supra* Footnote #1.

³⁰ See FAA’s letter to ACHP of July 24, 2023, top of Page 3. There, the FAA states:

The standard set out in the ACHP’s regulations for assessing visual and audible effects is whether there is an introduction of visual or audible elements that diminish the integrity of the property’s significant historic features. See 36 CFR § 800.5(a)(2)(v). The FAA’s assessment of the effects of the undertaking is consistent with this standard For these reasons, **the FAA’s use of existing conditions as the baseline against which to measure the impacts of its undertaking is appropriate.** The FAA’s finding that the undertaking would not diminish the characteristics of any historic properties located within the APE but instead would represent a reduction in audible and visual effects on historic properties when compared to existing conditions is supported and consistent with the ACHP’s regulations implementing Section 106 of the NHPA. (Emphasis added.)

See also FAA’s letter to ACHP of September 12, 2023. In the middle of Page 4, the FAA states:

Impacts from the **existing condition** of air tours over the Park **is the appropriate baseline** for determining whether the undertaking (ATMP) will adversely affect historic properties. . . .

And, at the bottom of Page 4, the FAA states:

As the FAA explained in its request to the ACHP for an opinion on this finding, neither the National Parks Air Tour Management Act (NPATMA) nor the National Historic Preservation Act (NHPA) require the effects of the undertaking to be measured against a condition under which no air tours are occurring. (Emphasis added.)

³¹ *Ibid*, Page 9. The FAA states therein:

Furthermore, neither NPATMA nor NHPA require the agency to assess the effects of the undertaking assuming that the existing conditions already have an adverse effect.

objectivity, let alone misinterpretation and misapplication of law and regulation.³² Disqualification of ACHP opinion serves to disqualify the FAA's extremist methodology.

The ACHP's tacit S106 support for the FAA's double-standards for different parks notwithstanding, NPATMA will not tolerate the FAA's order of amelioration of adverse effects. NPATMA disagrees that the agency must first avoid, then minimize, and lastly mitigate "potential" adverse impacts. The basis of decision under the Act is *reasonable* reduction of adverse effects based first on implementing NPATMA's "if any" test by means of Section 808 sound studies and then by using a common-sense approach rather than resort to an extreme remedy that would bar all air tours entirely. Evidence to this effect is presented in Appendix 1, "NPATMA and the Will of Congress," where reasonable compromise and common-sense is touted. Based on these measures, the ACHP's Opinion at BAND and the FAA's application of it at CACH is unreasonable by any measure. Moreover, the Council's Opinion attempts to support the FAA's efforts to interpret existing regulation on an inconsistent park by park basis, as already demonstrated. By denying the Theory of Constructive Remedy³³ and its associated methodologies, the ACHP attempts to fabricate new regulatory interpretation to the effect of "new law," which, according to NPATMA, "will not fly."

Because the ACHP (and thereby the FAA) has no intention of ever concurring with a decision to allow air tours at CACH and BAND, the ACHP does not support any sound studies at the Parks and neither does the Council care how draconian are the measures the FAA uses to destroy all air tours thereover. By eliminating all "potential" adverse consequences of flying over Canyon de Chelly and Bandelier, the ACHP justifies eliminating all air tours over all parks, which is contrary to the intent of NPATMA. Southwest Safaris alleges that this is the real reason the

³² The FAA loves to point out that Southwest Safaris' arguments have little to do with Section 106, saying that S106 is only a "process regulations" that does not arrive at a decision, only an opinion. The fact that the FAA is trying to make a distinction without a difference notwithstanding, SWS' rebuttal has everything to do with Section 106. Moreover, the FAA uses broad NPATMA language under the Objectives section to justify a finding of "no adverse effects," narrowly focusing on the use of the words, "prevent," "cultural resources," and "tribal lands." The FAA claims that it does not have to "justify and document" its finding by NPATMA standards, which sets forth the basis for decisions under ATMP process. The FAA broke with regulations when it prematurely gave draft copies of the CACH ATMP to Navajo "consulting parties" which were not "consulting agencies," but continues to withhold the document from SWS, just as the FAA did when the agency prematurely published the BAND ATMP before completing the S106 process. So, the decision to find for "no air tours" is incorporated into the Section 106 process by direct association therewith. The finding of "no adverse effects" from disallowing air tours over the Park is used as the direct link to arrive at the decision in favor of "no air tours," so the logic and methods used to arrive at a Section 106 finding are very much on the table. SWS has many times pointed out the FAA's techniques for obstruction of argument and the agency's failure to properly order the presentation of documents and the problems it raises in written and oral argument, both to the ACHP and to the FAA, but gets stonewalled every time.

³³ The Theory of Constructive Remedy states that general remedies for adverse effects must be applied starting with the least harmful remedies for all parties impacted and ending with the most harmful remedies for those who most will suffer the pain of corrective action. In other words, apply the least impactful remedies first; the most impactful remedies last. This theory of social justice, promoting "reasonable and common-sense compromise," see Attachment 1, directly contradicts the FAA's methods and remedies for "potential" adverse effects addressed by ATMPs. The FAA's means and methods for ATMPs are unacceptable, according to NPATMA, because they only consider the interests of one end of a fix, not both ends, favoring one party to a dispute and ignoring the other, thereby tending to be "extremist."

Council incorrectly claims that “the agency should first and primarily consider ways to *avoid* adverse effects to historic properties.” The obvious goal of the FAA is to dismantle the air tour industry. NHPA is the primary tool in the FAA’s arsenal for doing so. The FAA’s actions to improperly use the Section 106 tool, encouraged and endorsed by the Council, speak to the effective failings of the majority of the ATMP undertakings.

V The FAA’s Finding is wrong, because it is based on false environmental analysis.

Had the FAA “walked the Park” according to regulation, the agency would have realized how incorrect and pointless the agency’s assessment of Canyon de Chelly’s environment really is. The Navajo Tribe has done everything they can to popularize the Park and encourage motorized access to it, both along the rims and in the bottom of the canyons. There is virtually no privacy in the Park due to commercial vehicles roaring up and down the sandy canyon floors and along the rims. CACH is probably one of the noisiest of all the units of the NPS.

Even the FAA artfully acknowledges this “inconvenient truth.” At the bottom of the FAA’s January 11, 2023 response to the ACHP’s December 21 Opinion regarding the BAND ATMP, the FAA says:

However, the elimination of air tours within the [BAND] ATMP planning area will [only] slightly reduce noise and visual intrusions within the APE and adverse effects are not anticipated as a direct or indirect result of the ATMP. (Emphasis added.)

The only “slight” reduction the FAA is talking about in the case of Bandelier applies equally to Canyon de Chelly. The arguable reduction in aircraft noise and visual intrusions achieved by the proposed CACH ATMP, allowing “no air tours,” assuming that they might prove to be the case, will be immeasurable and statistically insignificant compared with the prevailing noise in the Park all day long. One air tour a week gliding over CACH from 4,000 AGL in preparation for landing at Chinle is hardly a significant impact, no matter how measured. NPATMA is only concerned with the reduction of *significant* adverse impacts. No significant noise impact from air tours exists at Canyon de Chelly.

The agencies really do not seem to care very much; remedy of significant adverse conditions is not the point. The corrupted objective of the CACH ATMP is now the elimination of air tours over the Park altogether, by any means and justification necessary. This is why the FAA seeks a draconian remedy for a non-existent problem. The agency argues that all it has to do is come up with a proposal that will reduce noise by even the slightest degree and then use that method to justify a decision for “no air tours.” The goal is to win a political victory, not seek an operational solution. Southwest Safaris alleges that the FAA misuses authority of Congress by not considering minimizing or mitigating air tour noise before attempting to avoid it altogether. The FAA’s methods are inconsistent with the Theory of Constructive Remedy,³⁴ contrary to the purpose and methods of NPATMA, and work in violation to Will of Congress (see Appendix 1).

³⁴ *Theory of Constructive Remedy, supra* Footnote #33

VI The FAA's Finding is wrong, based on inaccurate data and sloppy noise modeling.

The FAA bases its Finding of “no adverse effects” from banning air tours over CACH on false data and flawed noise analysis.

Figures 2, 3, and 4 of the FAA's *Finding of Effects Letter* depict sound contour maps. Attachment D gives a *Summary of Noise Technical Analysis from NEPA Review*. The summary of noise produced by Southwest Safaris' air tours is misleading and wrong.

In the first place, SWS' current routes have changed since the charts were produced. The FAA never asked the ATO whether its routes have changed from those submitted several years ago, but acknowledges that changes might have occurred. They have, significantly. SWS now flies further away from Canyon de Chelly, staying south of the main road paralleling the canyon as its planes fly west, and north of the canyon as the planes fly east. The current air tour route flies east of Canyon del Muerto as the plane flies south, crosses the canyon between overlook sites, and then flies west of that canyon till exiting the Park. Southwest Safaris has already offset its current routes so that noise and visual presence are almost impossible to detect. Total avoidance of the Park is entirely unnecessary to achieve the purposes of NPATMA.

In any case, the figures 2, 3, and 4 give a false picture of what is actually going on, past and present. The figures are designed to give a worst-case graphical picture, which is entirely misleading. The charts make it appear that the noise and physical presence of air tour planes entirely “soaks” the canyon, the whole canyon being painted black in the case of figure 1. In point of fact, the “noise shadow” follows the aircraft, immediately disappearing after the plane passes out of the local area because of “terrain shielding” due to the plane's offset angle to the canyons ... which tends to block vertical entrance of sound ... and because of the bends in the canyons ... which tend to block horizontal movement of sound. Southwest Safaris has many times asked Navajo ground tour guides if they are aware of Southwest Safaris aircraft in the vicinity of the Canyon. The answer is always the same: “No, we never see you, but wonder if you are going to land to meet us at the airport; we worry that you will cancel ... maybe weather when birds don't fly. Actually, we would like to see you fly overhead; it would be a beautiful sight against a turquoise sky.” This is a uniquely Navajo reply: short, to the point, and creative.

In the second place, the FAA's noise modeling assumptions are total fiction. The FAA has never measured Southwest Safaris actual sounds in the vicinity of the canyon, so its base assumptions are completely incorrect. For instance, the FAA's AEDT assumptions are based on standard noise patterns of a Cessna 182 in cruise configuration. That is not how Southwest Safaris flies CACH. After crossing the Chuska mountains, heading west, SWS' plane is almost 10,500 feet MSL. The plane has to lose almost 5,000 feet of altitude over 30 miles to land at Chinle, just to the west of the Park. As the tour plane flies west along (not over) Canyon de Chelly, the tour aircraft is descending, using minimum power. No one on the ground can hear SWS coming in to land. The actual sound footprint of the plane would be much lower than 32 dB the entire route. The dBs are too low and the “noise shadow” is but a few seconds at any given spot in the Canyon. The FAA's *theoretical* sound *projections* are completely untested and unrealistic.

In the third place, figures 2 & 3 are wrong. There is no reason for the noise at any spot in the canyon to be above 32 dB, let alone above 52 dB, given the facts specified above. However, even if it were true that the plane generated brief exposure to noise above 52 dB, it would not matter. The three locations the FAA picked correspond to Spider Rock, White House Ruin, and the visitor parking area, where noise from ground vehicles and tourist voices are already maximized. No one would hear the plane over existing noise, and no one would see the plane, either, because the plane is on the south side of the canyon, benefiting from “terrain shielding,” and tourists are looking north to view the scenery, where the cliff dwellings are.

In the fourth place, the FAA makes no mention of the fact that Southwest Safaris is not really giving an air tour in the manner the agency is trying to portray. The routes in and out of Chinle are as much for transportation as for scenic viewing. Southwest Safaris is not circling Canyon de Chelly, unless forced to do so by the FAA’s newly proposed Alternative 2, “no air tours.” The FAA’s charts do not convey to the public that the maximum time over the Canyon, flown in either direction, is ten minutes total, flown less than once per week, according to the FAA’s figures. Viewed from the bottom of the canyons, the aircraft’s presence is but a few seconds. The FAA says in the margins of the maps that “the noise contour map legends indicate the cumulative percentage of the total ATMP planning area covered by each contour level.” The map conspicuously does not present the percentage of daily time that the noise levels are audible, which would give an entirely different picture of the alleged “potential” adverse effects of SWS’ air tours over CACH. The actual on-site percent-audible (PA) noise presence from Southwest Safaris’ air tours is so low as to be undetectable.

In the fifth place, the charts fail to disclose the alternative scenarios, so the basis for comparison is totally misleading. If forced to circle the park, Southwest Safaris will fly barely to the west of Canyon del Muerto on the flight out to Chinle, and then fly scarlessly to the south of Canyon de Chelly on the return flight. This will expose the canon to at least 2.6 times the noise as just flying over the canyon once on the inbound flight, as argued earlier. Moreover, the return flight will be conducted at full power in the immediate vicinity of the Park as the plane climbs to get over the Chuska Mountains, so that noise saturation will be at a maximum. The FAA needs to add charts to its presentation to reflect this certainty, along with text to explain the negative consequences of the alternative. The FAA has not revealed the big picture.

The reality, that the FAA tries to conceal, is that air tours over Canyon de Chelly, as actually being conducted today, have virtually no sound or visual impact on the Park.

However, all of this is irrelevant. There is no point in going into any more detail to perform a technical analysis on the flaws of the numbers the FAA presents. None of the FAA’s data is admissible evidence, another “inconvenient truth” that the FAA tries to conceal.

NPATMA is the controlling legal authority for the creation of ATMPs. As stated, many times already, NPATMA controls the timing of NHPA and NEPA and also controls the language and methods that NHPA and NEPA can employ to carry out their tasks.

NPATMA dictates that NHPA is not called into effect until: (1) the “if any” test under NPATMA is conducted; (2) the “if any” test indicates that there exist “significant” adverse effects from air

tours, and (3) all measurements of sounds are science-based using pertinent data. Until all of this is accomplished, there is no legal undertaking at CACH. Without a legal undertaking, no Findings can be launched and no NEPA EAs can be funded. To date, the FAA has ignored all of the above.

The FAA has clearly fully funded two different agency decisions, one each for CACH and BAND ATMPs. The initiatives are already almost completed before the projects have even been “approved” by Congress (by means of the “if any” test). Furthermore, the “undertakings” have already been largely completed well before Section 106 will be finished, two more violations of NHPA on top of the first set. At BAND, the FAA has already held a public meeting and closed a public comment period for the “proposed” ATMP before completing S106 process. At both CACH and BAND, the FAA has compiled the final version of the proposed ATMP, told all the consulting agencies/parties that the agency intends to adopt alternative 2, performed an Environmental Analysis, and distributed the “draft ATMP” to all parties except, in the case of CACH, Southwest Safaris. All of this has been done without the knowledge or consent of SWS, without a public hearing at CACH, and without a public comment period for CACH in violation of NHPA regulation, 36 CFR §800.1(c). The FAA’s juggernaut just keeps on rolling.

Moreover, the FAA bases its sound studies on noise modeling, not “reasonable scientific methods,” as required by Section 808 of NPATMA. There is no allowance for AEDT-based sound studies in the Act, but this does not slow the FAA’s progress to “satisfy the court.”³⁵

³⁵ See USCA Case #19-1044, Document #2001434, Filed 5/31/2023. The U.S. Court of Appeals, District of Columbia Circuit, said, “We fully expect that the agencies will make every effort to produce a plan that will enable them to complete the task [of creating ATMPs for 23 parks] within two years, as Congress directed. If the agencies anticipate that it will take them more than two years, they must offer specific, concrete reasons for why that is so in their proposal.”

Southwest Safaris alleges that the agencies (FAA and NPS, acting jointly) defrauded the court by withholding information that would have revealed that the agencies were required to meet the “if any” test in NPATMA by conducting science-based sound studies using pertinent data under Section 808 of the Act, which they would not be able to accomplish under the timeline of the Court. By knowingly withholding critical information, the agencies deceived the Court to: (1) justify violating NPATMA in order to misuse NHPA; and (2) expedite creation of ATMPs without having to worry about any civil rights violations that ATOs might claim. There would be no checks and balances to “agency discretion,” which would give the FAA a free hand to do as it pleased regardless of the ever-nagging Will of Congress. See Attachment 1.

The agencies argue that the court order prevents the agencies from complying with otherwise required administrative process. This allows the agencies to use one law (NHPA) to break another (NPATMA), circumventing Congressional mandate to perform sound studies required by the Act.

Southwest Safaris alleges that the agencies want to avoid sound studies because the field tests would provide data that ATOs could take to court to argue against the agencies’ decisions. Thus, the agencies have additionally conspired to deprive ATOs, Southwest Safaris in specific, of due process in the cases of CACH and BAND and obstruction of evidence (sound-study data) that could otherwise have been used in court against the agencies.

These reasons alone document incredible agency abuse of due process and complete disregard for regulation and law, requiring cessation of ATMP process until the agencies get clarification from the Court as to how to proceed.

The FAA incorrectly relies on noise modeling technology to make its determinations as to the level of air tour noise at CACH and BAND. This reliance, SWS maintains, adversely impacts the correct assessment of harmful impact of said noise on TCPs and, therefore, incorrectly influences FAA opinion and determinations under Section 106.

Actually, at Canyon de Chelly and Bandelier National Monuments, the FAA is in violation of NPATMA, NEPA, and NHPA, all three, because the use of noise models does not satisfy Section 808, in any case.

NPATMA says that “*any methodology*” used by the FAA to assess air tour noise shall be based on “reasonable scientific methods.” Noise models do not constitute scientific methodology, especially if the studies do not incorporate timely, accurate, thorough, and objective data obtained from vigorous field research ... none of which was provided at CACH. A noise model is just another term for an “Aviation Environmental Design Tool” (AEDT), to use an FAA term. The output from an AEDT is totally dependent on whatever numbers (including formulas) are input. The field-gathered input data the FAA is using at CACH, if it ever even existed, is too old, too few, too isolated, and too infrequently gathered, representing unreliable assumptions of present conditions, this on top of biased formulas. In fact, the FAA’s *Assessment of Effects* letter makes no claim to the FAA’s having ever conducted a sound study at CACH to which the agency is willing to admit ... for reason of withholding evidence that could be used against the agency to disprove its theories. Southwest Safaris alleges that the FAA, under Section 106, is relying on noise modeling at CACH to control the input so as to get a predetermined output that is contrary to the interests of the ATO. Regardless, the FAA appears to have no science-based sound study data with which to refute SWS’ claims of no adverse impact.

Spreadsheets, themselves, are not science. Science is based on acquiring original data gathered by observation in the field. Noise models, in contrast, are based on deductive armchair reasoning. Therefore, SWS argues, principal reliance on AEDT technology is not allowable under NPATMA (and, therefore, NHPA) as the primary or conclusive means of determining “adverse impact” where significant decisions are involved. This is one of the reasons SWS has argued in the body of this letter that NPATMA is the controlling legal authority for ATMPs, not NHPA or NEPA. Under the Principle of Primacy of Law and the Principle of Continuity of Law, NPATMA keeps NHPA and NEPA from warring with the Act. For example, under NPATMA, Section 808, the NEPA §1502.23 arguable allowance for using AEDT technology does not exist, because NEPA regulations are incompatible with NPATMA law, per 40 CFR §1500.3.

Even if NEPA’s §1502.23 did apply, the FAA would still be required to use scientific methodology to control the input with current, comprehensive, relevant, accurate, and science-based (i.e., pertinent) data. SWS argues that the FAA’s input data for CACH, even if one allows use of AEDT noise modeling, falls short of meeting these requirements for any given “test.”

The “warring” problem over noise modeling (NHPA v. NPATMA) is particularly problematic at CACH, where the FAA conducts no actual current noise studies in the field. The FAA instead relies entirely on its Aviation Environmental Design Tool (AEDT), i.e., noise modeling technology, and outdated data upon which to base its calculations of “adverse impact.” This is allowable under NEPA. 40 CFR §1502.23 of NEPA says, “Agencies are not required to

undertake new scientific and technical research to inform their analyses.” However, this statement is directly contrary to NPATMA, which is the controlling legal authority in the present instance.

SWS clarifies that §1502.23 does not apply to NPATMA because of the “shall clause” (Section 808). Moreover, Congress does not refer to §1502.23 in NPATMA’s §40128(b)(4)(C), in order to grant special exception. So, the requirement for noise studies based on “reasonable scientific method” still applies, NHPA and NEPA notwithstanding.

To avoid the “warring personalities” of NHPA and NEPA, NPATMA imposes a clear and unequivocal requirement to conduct pertinent sound studies, using “reasonable scientific methods,” before and during implementation of ATMPs for respective Parks. The FAA has a duty to perform sound studies which cannot be excused. This is a due diligence mandate.

As said many times, the use of noise modeling technology does not satisfy the requirements of Sec. 808 for use of “reasonable scientific methods.” Noise modeling may incorporate sophisticated computer technology, but it is not science, and it is prone to error. In support of this theory, SWS directs the reader’s attention to a FAA Memorandum, dated June 13, 2018, titled “Noise Screening Assessments,”³⁶

In general, the Memorandum is intended to “clarify existing FAA policy and guidance on noise screening assessments and the appropriate use of noise screening tools and methodologies.” The Memorandum makes it abundantly clear that noise screening tools and methodologies afford only approximate analysis of air tour noise impacts, and are not appropriate for detailed EA or EIS analysis presented to the public, nor for Section 106 analysis. Therefore, the FAA has chosen to use AEDT (Version 3e), instead, as that constitutes “approved” analysis technology. The FAA does not say who approved it; apparently, the FAA “approves” its own technologies.

Regardless, the Memorandum also makes it abundantly clear that noise modeling ... irrespective of the technology incorporated, whether noise screening or technical noise analysis (AEDT) ... is not science. The inadequacies of AEDT technology (noise modeling) logically follow the shortcomings of sound-level estimation (noise screening). Had Congress wanted to allow reliance on AEDT analysis of air tour noise, it could have easily specified to that effect in the Act (i.e., done so expressly). This is a noticeable omission, but *not* by oversight. Reliance on AEDT technology is *not* allowed under NPATMA any more than reliance on noise screening. In any case, the data fed into either modeling tool would have to be “pertinent,” defined by reason to mean “current, comprehensive, relevant, accurate, and science-based.” Both noise modeling methodologies used by the FAA (noise screening and AEDT) fail to make use of “pertinent” data at CACH, so the outcome from noise modeling at CACH in any case is flawed from the outset, irrespective of the computer programs used for analysis.

For all of the above reasons, SWS argues that the FAA’s efforts to gather input on TCPs for CACH are misplaced for lack of appropriate sound data upon which to base decision.

³⁶ See http://www.faa.gov/sites/faa.gov/files/air_traffic/environmental_issues/environmental_tetam/screening-memo.pdf.

VII The FAA's Finding is wrong, because it misrepresents the Navajo Nation's attitude towards air tours.

The FAA knowingly misrepresents the attitude of the Navajo Nation towards air tours. At the top of page 2 of the FAA's Letter of Effects, the agency says:

The agencies invited public involvement for this undertaking through a Federal Register Notice and NPS's Planning, Environment and Public Comment System (PEPC) website. Through these platforms, the public was invited to participate in Section 106 activities, specifically reviewing and providing comments on the Section 106 process and the FAA's efforts to identify consulting parties, determine the APE, identify historic properties, and assess the effects of the undertaking on historic properties within the APE. In total, five comments were received during the thirty-day comment period. Of the five, two of the comments opposed air tours over the Park generally. One commenter stated, "I feel that our canyon is [sacred] to us and should be preserved as long as we can plus the noise from the aircrafts will disturb historic ruins and animal life not to mention the pollution it will cause in the air from the aircrafts." Another commenter mentioned that "ancestors' ancient homes, rock art panels, burial sites, historic fortresses, peach orchards, trails, pole ladders, ceremonial chambers still stand and are intact to this day... As Dine' children we were taught to never enter or bother archaeological sites." A fifth commentator expressed that air tours over ancestral land block spiritual connections during sacred ways of ceremonies, which require quietness and privacy.

Southwest Safaris takes great exception to the FAA's negative characterization of Navajo sentiment towards air tours. At best, the FAA's representation is a half-truth. At worst, it constitutes fraudulent misrepresentation and withholding of evidence.

In the first place, only five written comments were received. Of these, only three were opposed to air tours over Canyon de Chelly. There are approximately 400,000 Navajos, half of whom live on the Navajo reservation. The percentage of negative letters compared with the total population is a mere 0.0000075. Compared to the Navajo population living on the reservation, the number is still only 0.000015. The FAA's claim of negative Navajo reaction to air tours at CACH has no statistical value. The FAA has no grounds to make a significant Finding in support of a decision for "no air tours" based on such de minimis feedback. One is led to believe that the other two comments were either strongly in favor of air tours or were neutral, which information the FAA fails to disclose.

Moreover, the statement of the FAA is mostly false. The official position of the Navajo Tribe is just the opposite of that represented by the FAA. The Tribal leadership actually favors air tours over the reservation; the tribe just wants to appropriate the air tour industry for itself. If the Tribe cannot get a significant portion of the revenues from air tours, only then does it have qualified reservations about air tours in general. The local business at Chinle, AZ that are making money off Southwest Safaris love the fact that SWS is bringing business to the local community while flying respectfully over the Park. Competitive ground services that are not doing business with the sole ATO serving the Park, of course, will have a different point of view ... until air tour business starts to flow their way.

On December 5, 2023, the House Natural Resources Subcommittee on Oversight and Investigations held a special hearing on the subject of “Limiting Access and Damaging Gateway Economies: Examining the National Parks Air tour Management Program.” A representative from the Navajo Nation testified at length. Mr. Carl Slater is a member of the 25th Navajo Nation Council, representing the communities of Tsailé/Wheatfields, Lukachukai, Round Rock, Tséché’izhí, and Rock Point. He is also the Vice Chair of the Navajo Budget and Finance Committee. Mr. Slater presented oral³⁷ and written³⁸ testimony.

On page 5 of his written testimony, Mr. Slater states:

Management Plan with Tribal Consent

Despite all of the risks associated with expanding air tourism in and around the Navajo Nation, I want to be clear that we [the Navajo tribal Council] do not oppose air tourism across the board. This is why tribal consultation is so important. **The Navajo Nation would happily endorse additional air tours in the surrounding national parks** under the condition that a comprehensive management plan is developed in collaboration and with the consent of the affected tribal communities, ensuring that their perspectives, concerns, and cultural considerations are incorporated into those plans. (Emphasis added.)

SWS notes that this is the official statement from a representative of the Navajo Nation delivered to an official investigative body of U.S. Congress. These words carry enormous weight.

Mr. Slater verbally stated that the Tribe is not against air tours. In fact, the Tribes welcomes the contribution of air tours to the Tribe’s regional and local economies; the tribe just wants to see that a portion of the revenues therefrom goes to local Navajos. Mr. Slater orally testified that the Tribe, itself, wants to get into the business of conducting air tours, and stated that he would like to see existing air tour operators provide the training!

On page 6 of his written testimony, Mr. Slater said:

Even assuming consultation is adequate, an essential aspect of securing the Navajo Nation's support for air tours is the firm belief that tribal members should have the opportunity to benefit economically from such activities.

On page 7, Slater went on to say:

Engaging local Navajo residents in the economic aspects of air tours could also remedy some of the potential risks of air tours as well as enhance the experience for the tourist.

³⁷ The link to the Hearing is: <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415213>

³⁸ The link to printed testimony of Carl Slater is:
<https://www.congress.gov/118/meeting/house/116617/witnesses/HHRG-118-II15-Wstate-SlaterC-20231205.pdf>

Then he added:

But to enjoy the greatest economic benefit, it would be ideal if more tour companies were established on the Navajo Nation and owned by local Navajo entrepreneurs. For this reason, air tour management plans should include incentives for existing tour operators to mentor Navajo entrepreneurs, and a certain percentage of available flights should be reserved for Navajo-owned businesses to ensure local residents benefit from the existence of tours.

Slader concluded his remarks on *Economic Opportunities for Tribal Members* by testifying that:

If done right, the air tourism industry has the potential to spur economic development across the Navajo Nation. Economic opportunities generated by air tours can act as catalysts for community development within the Navajo Nation by improving our airports and related infrastructure. This will not only support the tours directly, but increase transportation options for all tribal members, making it easier for tribal members to access essential services and connect with other communities.

Other Navajo leaders have come forward with much the same testimony. Navajo Council Speaker Crystalyne Curley agreed that the federal government needs to consult with the tribes when it comes to air tours. Southwest Safaris found her testimony in the Gallup Sun newspaper, dated Friday, January 19, 2023:³⁹

Air Tour Management Plans can be devised responsibly through tribal consultation. The federal government has the responsibility for consultation at every step,” Curley said. “The federal government needs to meet tribes at their level of capacity and let tribes set the pace of consultation. We need to ensure that tribes benefit from economic development and revenue generation related to air tourism.

It is perfectly clear that the leadership of the Navajo Nation want to keep the window open to air tours, hoping to capture some of the economic benefits for the Tribe. The two testimonies offered here are in direct opposition to those presented by the agencies. In fairness, that might be because one set of testimonies represents the long-term vision of the Tribal Council, whereas the FAA is only measuring the short-term interests of local chapter houses. However, it really does not matter.

The FAA and NPS, acting jointly, have presented a knowingly false and misleading *Request for Concurrence*. The FAA’s Finding serves as a prototype of administrative weaponry intended to destroy the air tour industry at large, Southwest Safaris in specific. At the same time, the Finding undermines the interests and aspirations of the very People, the Dine, that the agencies purport to represent in consultation, i.e., the Navajos. The Finding represents abuse of public trust. The agencies had a due-diligence obligation to get input from all levels of Navajo government and grassroots groups, which clearly the agency did not seek. Both comments by members of the Council reflect the validity of SWS allegations.

³⁹ The link to the testimony of Crystalyne Curley is:
https://gallupsun.com/index.php?option=com_content&view=article&id=18024:staff-reports-&catid=186:politics&Itemid=616

It also appears that the FAA has not made it clear to the Navajo Nation that the proposed ATMP for CACH will not make any meaningful decrease in overall noise but will actually increase it in and around the Park; will not meaningfully increase privacy for residents in the canyons; and will actually hurt the community of Chinle economically by cutting off significant tourist revenues. It appears that the agencies have misrepresented the CACH ATMP “undertaking” to the Navajo People.

It is evident that the Navajos are looking for “reasonable” mitigation of “potential adverse effects” on historic properties, not radical elimination of all air tours at CACH, from which the Navajos greatly benefit already. The Navajos seem to want the same as Southwest Safaris, the lone air tour operator at the Park. The FAA would pit the parties against each other, when they actually appear to see things eye to eye.⁴⁰ Therefore, the disparity in public perception over the intent of the ATMP calls for immediate withdrawal of the *Request for Concurrence* and suspension of the ATMP process. The “undertakings,” at CACH, BAND, and many other parks, have been misrepresented on many different levels. As demonstrated, the ATMPs at CACH and BAND, for example, will actually increase the “significant” adverse impacts on persons and historic properties in the APEs and the local communities will suffer “significant” adverse economic effects, which the FAA refuses to measure. The agencies have managed to turn the hopes of Congress into a nightmare of administrative mismanagement. The real “undertaking” of the agencies at CACH is administrative fraud and public deception.

VII Conclusion

Southwest Safaris respectfully petitions the FAA to reconsider its proposed Finding of “no adverse effects” from banning all air tours over the Park. There are no mathematical, operational, regulatory, or lawful arguments to support the FAA’s ultimate proposal for “no air tours.” The FAA’s untimely requests for opinion and consent for a Finding of “no adverse effects” are out of order and greatly, unfairly, and intentionally prejudice the outcome of the agency’s eventual ATMP determination. The FAA’s *Letter of Effect* is being implemented under theories contrary to Federal regulation, law, and public interest. The FAA and NPS, acting jointly, wrongly attempt to employ NHPA to negate NPATMA, thus using one law, NHPA (Section 106), to break another, NPATMA, in order to defy the Will of Congress, with which the agencies do not agree. The agencies forever strive to overreach their authority by not recognizing basic principles of jurisprudence, attempting to use an assortment of laws as tools to accomplish the undoing of orderly regulation by devious schemes and conflation of regulations never anticipated by Congress. The consequences will be legal, administrative, and operational chaos for the Navajo People, struggling small communities across the USA, and a rural air

⁴⁰ Southwest Safaris has been conducting air tours over CACH for 49 years. In the nearly five-decade history of the company, SWS has never received a single complaint relating to its flights, either pertaining to noise or physical presence. Few locals even realize that the company flies over CACH. The ATO typically lands at Chinle, contracts with Navajo drivers to be transported into a local Navajo lodge, contracts for Navajo ground tours, procures lunch at a Navajo restaurant, and purchases arts & crafts from a Navajo gift shop. Then, SWS flies back to Santa Fe, NM, the point of origin for the tours, after leaving a lot of money on the table at Chinle, AZ. At least, that is what SWS has been doing for 49 years. That is all about to change, at great potential loss for the Navajo community at Chinle.

transportation system that has taken 100 years and untold investment to develop. By failing to recognize the Principles of Priority of Law and Continuity of Law, and failing to heed the content of law, the FAA has challenged the canons of Separation of Powers, Due Process, and limitations on Federal administrative authority. The FAA attempts to selectively use old laws to make “new law” constituting a national transportation policy outside the intent and reach of Congress and out of effective remedy by the judiciary. The result will be crisis in the courts, in this Great Land, and in the air.

Because the “undertaking” for CACH has not been *legally* triggered, SWS argues, the “undertaking” for CACH to this day does not legitimately exist. Therefore, the development, implementation, and funding of the CACH and BAND ATMPs are out of order. So also are Section 106 processes as well as the Environmental Assessments. Both EAs for the parks were compiled under cloak of the FAA’s Theory of Parallel Laws. SWS’ objections to the FAA’s reliance on its Theory of Parallel Laws have significant implications for NPATMA, NHPA and NEPA, indeed for much of American administrative law. Legal order must precede political expediency

The FAA asserts that it has no duty to consider the adverse economic effects of its actions on the Navajo Nation. Southwest Safaris strongly disagrees, arguing in favor of Navajo interests to agencies who have apparently turned a deaf ear to the long-term needs of the Tribe as well as to the present benefits Southwest Safaris provides for the communities at Canyon de Chelly while “doing no harm.”

The FAA’s efforts fail because the agency has weaponized NHPA, using it as a wrecking ball instead of a constructive tool to rebuild the air tour industry and the economies of small rural communities desperately in need of help after the ravaging impact of the Pandemic.

The FAA’s methods and procedures have been shown to violate the provisions of NHPA, NEPA, and NPATMA, all three. That is because, under FAA theory of jurisprudence, there is no priority of authority, there being no recognition of the Principle of Primacy of Law and Principle of Continuity of Law. The FAA has come up with no method of bringing harmony to the laws so that they work together instead of tearing each other apart, allowing the parts to destroy the whole. The concept of “reasonableness” is everywhere written into the wording of NPATMA, which Act the FAA, through Section 106 process, knowingly attempts to override and/or ignore. In contrast, Southwest Safaris’ arguments bring unity and rationality to the table, achieving the Will of Congress.

The FAA’s theories and methods do not satisfy NPATMA. Harmony between laws and operations is the ultimate test of conformity with legislative intent for ATMPs. The agency’s tactical approach has produced neither “acceptable” nor “effective” strategic results, no predictability or continuity of decision, and failure to logically and legally identify, “mitigate” or “prevent” significant and existing adverse impacts. The FAA’s and NPS’ misguided coordination of NPATMA, NHPA, and NEPA will throw the implementation of ATMPs back on the courts with an admission that politics has destroyed the ability of the agencies to work together. It is the hope of Southwest Safaris that reason can prevail between the parties of contention, allowing

the ATO to openly negotiate at the ATMP table after the CACH and BAND ATMP “undertakings” have begun anew.

Southwest Safaris, one more time, respectfully petitions the FAA that the agency withdraw its notice for comment on Section 106 historic properties at CACH and BAND and withdraw the FAA’s *Requests for Concurrence* thereof.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in dark ink that reads "Bruce Adams". The signature is written in a cursive, slightly slanted style.

Bruce Adams

Appendix 1

NPATMA and the Will of Congress

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

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

On November 17, 1997, in Dixie College, St. George, Utah, the House of Representatives’ Subcommittee on National Parks and Public Lands (Committee on Natural Resources) joint with the Subcommittee on Aviation (Committee on Transportation and Infrastructure) held a public meeting to discuss the pending regulation of air tours over units of the National Park Service. Congressman John Duncan went on record with a prepared statement, which summed up most of the Congressional testimonies that day. His prepared statement is particularly relevant because, at the time, Rep. Duncan headed the House Transportation and Infrastructure Committee. On 2/11/1999, Rep. Duncan introduced *H.R. 717 - National Parks Air Tour Management Act of 1999* to the 106th Congress (1999-2000). That bill eventually became the final *National Parks Air Tour Management Act of 2000*.

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

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

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

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

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

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

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

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

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

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

Congressman Duncan used the phrase, “reasonable and common-sense approach,” as synonym language for that of “acceptable and effective” which appears in 49 USC §40128(b)(1)(B) of the Act. Reason and common sense were meant to rule the application of NPATMA, not extremism.

Congress had two purposes in mind when it drafted NPATMA. The first, as stated by the Chairman, was to “support the goal of protecting our National Parks from unnecessary aircraft noise.”

The second unambiguous purpose of the Act was to protect and preserve the right of air tour operators to provide air tours over the National Park System. That is why the Honorable Chairman John Duncan said for the record in writing, speaking for Congress and for future generations: “*I also believe that sightseeing by aircraft is a legitimate manner in which to experience the Grand Canyon National Park and other Park areas.*” This is a statement by a congressman who sat on both the House Subcommittee on National Parks & Public Lands and chaired the House Subcommittee on Aviation. There can be no clearer enunciation of the Will

Attachment 2

NPATMA's Primary & Secondary Objectives: the "if any" test and Section 808 compliance. How NPATMA, NHPA, and NEPA interact.

NPATMA has a prime directive and a secondary directive, both derived from the stated *Objective* section of the Act. The relevant language, 49 USC §40128(b)(1)(B), stipulates:

Objective. The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, **if any**, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands. (Emphasis added.)

The first objective of NPATMA, one that *must* be fulfilled, is to determine if any impacts from air tours at a particular park significantly adversely affect persons and property on the ground. The interjection of the "if any" wording into the Act is not a casual remark by Congress. The "if any" question must be satisfied before the Act can be employed to affect a determination as to the type of ATMP that will be employed for any particular park, if any. Only after the "if any" question is resolved can NPATMA make such a determination and empower NEPA and NHPA to act accordingly. If there are no significant adverse impacts from air tours at a given park, then NPATMA (and, therefore, NEPA and NHPA) has no power to direct an ATMP to curtail or eliminate air tours over that park, there being no reason to do so. In this case, the ATMP for the respective park must make a determination of "No Change" in the way current air tours are being conducted. Unless "extraordinary circumstances" exist, if the park has 50 or less flights per year, the ATO would be allowed by NPATMA to continue operations under existing IOA.

The secondary objective of NPATMA (there being more) is to stipulate the type and manner of methodology that *must* be used to assess the "if any" question. To this end, NPATMA calls into effect Section 808 of the Act.

Section 808 of the Act stipulates that:

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

Section 808 of the Act *must* be employed in order to satisfy the "if any" question. Without answering the "if any" question, the Act cannot go forward... meaning that an ATMP cannot be introduced for lack of cause (program decision). In this case, the "if" component of the "if ... then ... else" syllogism would not have been positively satisfied, causing the Act to freeze like a computer program. Without first applying the "if any" test by means of science-based noise studies using pertinent data, the Act prohibits flights over a given park if more than 50 air tours are conducted per year but allows continued flights under IAO if the authorized flights are 50 or less (unless extraordinary circumstances exist). In either case, without performing the "if any" test, NEPA and NHPA would not yet be activated.

If the “if any” test is performed for a park that has more than 50 air tours per year, then NPATMA would authorize the creation of an ATMP “undertaking,” requiring “reasonable and common-sense” methods of avoiding (which does not necessarily mean preventing), accepting, or lessening *significant* adverse effects from air tours. The degree of “significance” present, if any, is to be determined solely by the “if any” test. Unless extraordinary circumstances exist, the “if any” test would not normally be performed for parks that have less than 50 air tours per year. If extraordinary circumstances to exist, then the “if any” test would be required to prove the circumstances.

NPATMA makes it mandatory to use “reasonable scientific methods” for investigation of noise impacts on units of the National Park Service (NPS). No other methodology will suffice. The “*shall*” clause of Section 808 controls both NHPA and NEPA, because NHPA is concerned with the operational conduct and NEPA is focused on the environmental analysis of any “undertaking.” Section 808 negates the power of NEPA’s §§1502.21, .23, which would otherwise exonerate the FAA from performing any disciplined current sound studies at all.⁴¹ Under NPATMA, science-based sound studies must provide the measure of need for corrective action to mitigate or prevent alleged adverse impacts of air tours. Because NPATMA controls the timing, vocabulary, and methodology of NHPA and NEPA, and because NHPA is silent on the subject of sound studies and NEPA is not exempted from the requirement for sound studies, the “*shall*” demand of Section 808 is the controlling legal authority for noise studies for all three statutes (NPATMA, NHPA, and NEPA).

⁴¹ See my letter dated September 25, 2023, page 3, top, 6th *Response to Request for Concurrence on Sec.106*. In that letter, I argue that “Section 808 negates any authority of NEPA’s 43 CFR §1502.21 ... wherein NEPA excuses incomplete or unavailable information and allows theoretical approaches or research methods instead of science-based studies; and §1502.23, wherein NEPA allows agencies to make use of existing data and resources instead of pertinent, scientifically-researched data. NPATMA makes it mandatory to conduct sound studies, based on ‘reasonable scientific methods.’ This agency-specific power of Act by itself asserts the authority of NPATMA over NEPA.



U.S. Department
of Transportation
**Federal Aviation
Administration**

United States Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Office of Policy, International Affairs & Environment
Office of Environment and Energy

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

April 10, 2024

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Canyon de Chelly National Monument

Bruce M. Adams
Southwest Safaris
712 Felipe Place
Santa Fe, NM 87505

Dear Bruce M. Adams:

The Federal Aviation Administration (FAA) and National Park Service (NPS) (together the agencies) are in receipt of Southwest Safaris' (the operator) five letters in response to the Section 106 process for the undertaking at Canyon de Chelly National Monument (the Park). Southwest Safaris' June 9, June 12, and June 30, 2023, letters were in response to the Area of Potential Effects (APE) letter at Canyon de Chelly National Monument that the FAA provided on June 2, 2023. A letter dated November 14, 2023, was provided in response to the agencies' request for comments on the historic properties the agencies identified within the APE. Lastly, the agencies have received your January 29, 2024, letter in response to the Finding of No Adverse Effect under Section 106 of the National Historic Preservation Act (NHPA). In all the letters, Southwest Safaris expressed concerns with the Section 106 process as well as concerns regarding compliance with the National Parks Air Tour Management Act (NPATMA) and the National Environmental Policy Act (NEPA). This letter is in response to Southwest Safari's letters and focuses solely on addressing the issues raised that pertain to the Section 106 process. Southwest Safaris raises the following issues:

- Southwest Safaris argues that the NPATMA is the controlling law and therefore should direct how the FAA complies with the NHPA and the Section 106 regulations.
- Southwest Safaris challenges how the FAA identified historic properties under Section 106.
- Southwest Safaris argued that aircraft noise and visual impacts do not have an adverse effect on persons and historic properties on the ground.
- Southwest Safaris challenged whether the noise modelling used to assess the effects of the undertaking in the Section 106 process was based on science.

Overview of Section 106 Process

Section 106 of the NHPA, 54 U.S.C. § 306108, requires federal agencies to consider the effects of the projects they carry out, approve, or fund on historic properties (undertakings). Section 106 review ensures that preservation values are taken into account in federal agency planning and decisions. Federal agencies

are responsible for initiating Section 106 review of their undertakings, most of which takes place between the agency, state, and consulting parties, including tribal nations. For more information see <https://www.achp.gov/sites/default/files/documents/2017-01/CitizenGuide.pdf>.

To successfully comply with Section 106 of the NHPA and its implementing regulations, 36 CFR Part 800, federal agencies must generally follow a four-step process:

1. **Initiate the Section 106 process.** This includes determining the undertaking; identifying the appropriate State or Tribal Historic Preservation Officer (SHPO or THPO), consulting parties including tribal nations, and developing plans to involve the public in the process.
2. **Identify historic properties.** This step requires consultation with the SHPO/THPO and consulting parties to determine the geographic area(s) within which an undertaking may directly or indirectly cause changes in the character or use of historic properties or the area of potential effects (APE). This step also includes consultation with the SHPO/THPO and consulting parties to identify historic properties in the APE that may be affected by the project and determining whether they are listed, or are eligible for listing, in the National Register of Historic Places (National Register).
3. **Assess effects.** This step requires the federal agency to assess the effect of the undertaking on historic properties within the APE, applying the standards in the Section 106 regulations. If the agency finds that the undertaking would have no adverse effect on historic properties within the APE and the consulting parties do not object, the Section 106 process is concluded. If consulting parties object to the finding, the agency may continue consultation or request an opinion from the Advisory Council on Historic Preservation (ACHP). Once the ACHP provides an opinion the agency must consider it in determining whether to affirm the finding or change it. If the agency affirms the finding, then it must show the ACHP and the consulting parties how it considered the ACHP's opinion. Once this is done the Section 106 process is concluded. If the agency changes its finding to that of adverse effect, then it moves to resolving the adverse effect step.
4. **Resolve adverse effects.** If the agency finds that the undertaking would have an adverse effect on historic properties in the APE, then the agency is required to notify the ACHP and resolve the adverse effect through consultation. The Section 106 process concludes when the agency and the relevant SHPO/THPO (and the ACHP in some cases) reach agreement.

The Applicable Law

Southwest Safaris argues that NPATMA is the controlling statute when developing and implementing an ATMP. Specifically, Southwest Safaris argues that before Section 106 of the NHPA is triggered, the FAA must first act "on Section 808 of NPATMA in order to test the 'if any' condition contained in the 'Objective' paragraph of the Act, [49 U.S.C. § 40128(b)(1)(B)]." While NPATMA sets certain requirements for an ATMP, when establishing an ATMP for a park the agencies must comply with all applicable laws. Section 106 of the NHPA, 54 U.S.C. § 306108, applies to all federal actions that meet the definition of an undertaking, 54 U.S.C. § 300320. The development of an ATMP meets the definition of an undertaking triggering the agencies' responsibility to comply with Section 106 and its implementing regulations, 36 CFR Part 800. NPATMA, 49 U.S.C. § 40128(b)(1)(B) does not provide an exception to the agencies' responsibilities under Section 106 for ATMPs, nor does it otherwise alter the statutory and regulatory requirements for Section 106 consultation. Instead, the agencies are required to comply with both statutes when completing an ATMP, as they have done with respect to the ATMP for Canyon de Chelly National Monument. It is under the sole purview of Section 106 of the NHPA, not NPATMA, that federal agencies must consider the impact of their actions on historic properties. Put differently while NPATMA governs how the FAA and NPS develop and implement ATMPs, the agencies must also comply with Section 106 of the NHPA and consider

the effect of the undertaking on historic properties consistent with the process set forth in its implementing regulations, 36 CFR Part 800.

Historic Property Identification

Southwest Safaris disagrees with the “FAA’s selection of historic sites for inclusion in the APE at [Canyon de Chelly National Monument].” Based on the analysis done by Southwest Safaris “all but one of the TCPs fail the eligibility test...” Southwest Safaris further alleges that the FAA has not complied with 36 CFR § 800.4(c) and contends that “there are no historic properties of any kind in the Park that need to be protected because air tours are conducted so infrequently as to be of de minimis quantifiable objection.” Southwest Safaris states that the FAA is “wrongly withholding the locations of historic sites that would be essential for planning air tour routes.”

The FAA has complied with the property identification provisions in Section 106 of the NHPA and has appropriately identified historic properties within the APE for this undertaking. The Section 106 regulations require federal agencies “in consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO), and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects,” to take the necessary steps to identify historic properties within the APE. 36 CFR § 800.4(1). The regulations describe the level of effort to identify historic properties which may include “background research, consultation, oral history interviews, sample field investigations, and field surveys.” 36 CFR § 800.4(b)(1). For the undertaking at Canyon De Chelly National Monument the FAA’s identification efforts focused on identifying properties where setting and feeling are the type of characteristics that contributed to a property’s eligibility on the National Register. In its efforts to identify historic properties, the agencies engaged in consultation, conducted background research that included reviewing nomination documentation, and records searches. The FAA gathered information on historic properties within the APE from the National Register and verbal and written information received from tribes and other consulting parties through the Section 106 consultation process. Additionally, data was gathered from the NPS, including the NPS Foundation Document for Canyon de Chelly National Monument (NPS, 2016) and the National Register Nomination Form for Canyon de Chelly National Monument (1970). The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register. The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023. In accordance with the Section 106 regulations, the FAA relied on background research, prior investigations and consultation to determine the historic properties within the APE.

Southwest Safaris claims that the FAA did not comply with 36 CFR § 800.4(c). The FAA did not make any determinations of eligibility because all of the properties identified in the APE were already listed on the National Register or previously determined eligible for listing on the National Register. Based on consultation with Tribal nations that attach religious and cultural significance to the properties, eligibility of previously listed or eligible properties was confirmed.

Southwest Safaris alleges that the FAA withheld the locations of historic sites that would be essential for planning air tour routes. Southwest Safaris misunderstands the goal of the Section 106 process. The goal of consultation under the Section 106 process is to “identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize, or mitigate any adverse effects on the historic properties,” not to aid in planning air tour routes that are not included in the undertaking. 36 CFR

§ 800.1(a). The FAA disclosed that the Park was listed in the National Register in its entirety. The FAA did not disclose the locations of certain TCPs within the ATMP planning area, including the park, due to confidentiality concerns of the Tribal nations involved in the Section 106 consultations, in accordance with 54 USC 307103 and 36 CFR § 800.2(c)(2)(ii)(A).

Assessment of Effects

Southwest Safaris alleges that the FAA has not properly evaluated and tested the effects of air tours under NPATMA since the agency has not conducted “science-based sound studies.” Southwest Safaris also alleges that the FAA has not taken into account the effect of pedestrian and vehicular traffic in the Park. The assessment of effects under the Section 106 process is concerned solely with the effects of the undertaking on the historic properties within the APE. The undertaking for this Park is the implementation of the prohibition of air tours within the ATMP planning area, which includes the Park boundary and within ½ mile outside the Park’s boundary and below 5,000 feet above ground level. So, the consideration of the effect of ground transportation and foot traffic on historic properties within the APE is not appropriate as those modes of transportation are not included in the undertaking.

Finally, Southwest Safaris challenges whether the noise analysis used to assess the effects of the undertaking is based on science. The agencies’ assessment of air tour noise within the ATMP planning area is based on reasonable scientific methods. The FAA’s AEDT, Version 3e (Lee et al., 2022) which was relied on by the agencies to model the noise impacts of air tours within the ATMP planning area, is the FAA-approved computer program for modeling noise, as listed under Appendix A of FAA’s Part 150 Airport Noise Compatibility Planning (14 CFR § A150.103(a)). The FAA’s requirements for aircraft noise modeling are defined in FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, and in FAR 14 CFR Part 150, Airport Noise Compatibility Planning.

Please be advised that this letter addresses the issues or concerns raised related to the Section 106 process. All other substantive concerns raised in the letters will be addressed through responses to the public comments on the NEPA and ATMP documents. If you have any questions or concerns regarding this correspondence, please do not hesitate to contact me at (202) 267–4185 or Judith.Walker@faa.gov, copying ATMPTeam@dot.gov.

Best regards,

A handwritten signature in black ink, appearing to read 'Judith Walker', with a stylized flourish extending to the right.

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration



June 30, 2024

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
800 Independence Avenue, SW
Suite 900W
Washington, DC 20591

Ref: *Proposed Air Tour Management Plan at Canyon de Chelly National Monument*
Apache County, Arizona
ACHP Project Number: 021045

Dear Ms. Walker:

On June 4, 2024, the Federal Aviation Administration (FAA) requested that the Advisory Council on Historic Preservation (ACHP) review its finding of “no adverse effect” for the referenced undertaking. The ACHP’s opinion was requested pursuant to 36 CFR §§ 800.5(c)(2) and (3) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), “Protection of Historic Properties” (36 CFR Part 800). On June 13, 2024, the ACHP notified the FAA that it was extending its review period for an additional 15 days pursuant to 36 CFR § 800.5(c)(3)(i). One consulting party, Southwest Safaris, an air tour operator operating under an Interim Operating Authority (IOA) to provide air tours over Canyon de Chelly National Monument, has objected to the FAA’s finding. In an effort to resolve the objection, the FAA continued consultation with Southwest Safaris in correspondence from April 2024. In addition to the information provided by the FAA documenting its Section 106 review and finding of effect, the ACHP has also reviewed the objection letter sent by Southwest Safaris and other letters and comments provided by consulting parties and the public.

Based on the documentation submitted, it appears FAA conducted a Section 106 review to consider the effects of its undertaking on historic properties and to allow the ACHP a reasonable opportunity to comment. As further articulated below, the FAA has appropriately applied the criteria of adverse effect for this undertaking and a finding of “no adverse effect” to historic properties is reasonable.

It also appears the FAA has made a reasonable effort to address the concerns of the objecting party, Southwest Safaris, many of which do not relate to determinations or findings in the Section 106 process and instead relate to misunderstanding the scope of the Section 106 review. Section 106 does not require an agency to consider alternatives to its proposed undertaking that may or would result in adverse effects to historic properties. The alternatives that the Section 106 process focuses on are those that may avoid, minimize, or mitigate adverse effects. That is why the Section 106 regulations at 36 CFR § 800.1(c) allow agencies to conduct nondestructive planning activities before initiating their Section 106 compliance “provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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or mitigate the undertaking's adverse effects on historic properties.” The rationale for this advisory opinion follows.

Background

The FAA’s undertaking consists of the development and implementation of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (Park) to regulate commercial air tours within the ATMP planning area. The undertaking does not include the operation of air tours themselves but implementing a plan that applies to all commercial air routes over the Park and within ½ mile outside the boundary of the Park, all of which are Navajo Nation Tribal Trust lands. Commercial air tours subject to the ATMP are those conducted for compensation or hire in a powered aircraft for the purposes of sightseeing during which the aircraft flies below 5,000 feet above ground level (or AGL, with minor safety exceptions) and less than one mile laterally from any geographic feature within the Park.

Development of this ATMP or a voluntary agreement is required to comply with the National Parks Air Tour Management Act (NPATMA), enacted in 2000. While commercial air tours have been operating over the Park prior to NPATMA and the undertaking, air tour operators were subject only to FAA’s general safety regulations. After 2005, air tours operated in accordance with an IOA, also required by NPATMA, for which FAA stated that compliance with Section 106 was not required because it did not impose any conditions other than an annual limit on the number of flights.

The FAA initiated consultation under Section 106 for the development of the ATMP in May 2021 and established the existing conditions against which they would base their analysis as air tour operation prior to the implementation of the ATMP. Currently, four commercial air tour operators are authorized to conduct air tours over the Park with the IOA for 175 commercial air tours annually, but only one commercial air tour operator, Southwest Safaris, currently operates. FAA considers the existing operations for commercial air tours to be an average of 2017-2019 annual air tours flown, averaging 43 tours per year conducted by Southwest Safaris. Under the IOA, the operator is not restricted to any route when conducting commercial air tours, and the routes could change without notice to the FAA or the National Park Service (NPS). The operator currently flies between 800 to 1,000 feet AGL, on all routes while over the Park or outside the Park but within ½ mile of its boundary, although no minimum altitude is currently required.

The FAA, in coordination with the NPS, consulted with numerous consulting parties, including the Navajo Nation Heritage & Historic Preservation Department (NNHHPD, serving as Tribal Historic Preservation Officer), 23 additional Indian Tribes, and the air tour operator, Southwest Safaris, to delineate the Area of Potential Effects (APE). The FAA focused identification efforts on previously recorded historic properties for which feeling and setting are aspects of integrity that convey the significance criteria under which those properties are eligible for listing in the National Register of Historic Places (NRHP), as they are the types of historic properties with characteristics most sensitive to the effects of aircraft overflights from both visual and audible intrusions.

The agencies recognize that Tribes have a long-standing and deeply rooted association with the landscape encompassing Canyon de Chelly, which includes numerous sites of religious and cultural significance to those Tribes. Cultural resources within the canyon have been extensively documented over time, with the entirety of the Park boundaries constituting an historic district listed in the NRHP. In the course of its review, the FAA identified numerous traditional cultural places (TCPs) located throughout the APE, in addition to two buildings individually eligible for NRHP listing. The eligible TCPs were also evaluated as properties of religious and cultural significance to Tribes, important for cultural, traditional, and religious use and practices deemed by the Tribes, and especially the Navajo Nation citizens who reside within the

Park boundaries, as integral to the identity of their people and critical in the retention and transmission of their culture and history.

In total, the FAA and NPS identified 39 historic properties in the APE for which integrity of feeling and setting are integral to conveying the significance of those properties. Additionally, the effort identified approximately 1,600 inventoried and recorded below-ground archaeological sites; however, the FAA determined that there was no potential for the undertaking to affect these resources. The ACHP understands that these findings were based upon research and consultation, in addition to review of records at the NRHP and NNHPD, but involved no additional fieldwork or onsite investigation.

The objective of the 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” (49 U.S.C. § 40128(b)(1)(B)). In the draft ATMP, the NPS determined that air tour routes continuing at even their current levels on current routes in the Park presented unacceptable impacts to the Park’s cultural resources, including the potential for adverse effects on historic properties, which does not meet the purpose and need for the ATMP. The FAA and NPS selected the preferred alternative, which prohibits all air tours, as the undertaking to be assessed for effects to historic properties in the Section 106 review.

The FAA determined that an ATMP that prohibited air tours would have “no adverse effect” on historic properties because eliminating air tours would eliminate noise or visual elements from air tours on historic properties in the Park. The FAA acknowledges that aircraft conducting tours in airspace over the Park create noise and are visible from historic properties in the Park, further evaluated through noise modeling. Consultation with Tribes and the public provided FAA with evidence that air tours intrude on and can disrupt traditional practices involving historic properties, a point which the ACHP has repeatedly encouraged the FAA to consider in its Section 106 reviews for ATMPs at other national parks. The FAA found no indirect effects from the undertaking because it believes it would be unlikely for the air tour operator to continue to conduct commercial air tours of the Park by flying along the perimeter of the ATMP planning area or above 5,000 feet above ground level, as these distances would be unlikely to afford meaningful views into the canyon and its predominant features. However, the ACHP acknowledges such flights as being reasonably foreseeable—as similarly stated by Southwest Safaris—and the FAA or NPS may need to reassess indirect effects if conditions considered in the analysis change.

The FAA states that the objections of the air tour operator include the following concerns 1) NPATMA is the controlling law and therefore should direct how the FAA complies with the NHPA and the Section 106 regulations; 2) the FAA’s identification and documentation efforts under Section 106 were inadequate; 3) the aircraft noise and visual impacts do not have an adverse effect on persons and historic properties on the ground; and 4) the noise modelling used by FAA to assess the effects of the undertaking in the Section 106 process was not based on science.

ACHP’s Review of Finding

Much of the written objections expressed by Southwest Safaris questions the federal agency’s requirement to comply with both the NPATMA and Section 106 of the NHPA, and by extension the requirements of the NPATMA, such as the perceived need to conduct sound studies before approving an ATMP. As the agency responsible for overseeing the requirements of Section 106 of the NHPA, the ACHP clarifies that federal agencies are required to comply with Section 106 of the NHPA when undertakings they propose to carry out, license, permit, or fund may have effects on historic properties. Per the Section 106 regulations, it is the federal agency’s unilateral responsibility to establish the undertaking, and to initiate the Section 106 process early in the undertaking’s planning so that a broad range of alternatives to avoid, minimize, or mitigate adverse effects to historic properties may be

considered (see 36 CFR §§ 800.1(c), 800.3(a)). The term “undertaking” is defined in the Section 106 regulations at 36 CFR § 800.16(y) and it applies to actions carried out, licensed, or funded by federal agencies, whether directed by Congress in laws like NPATMA or through agency decisions, that may have effects on historic properties. The ACHP cannot comment on the adequacy of the FAA’s compliance with NPATMA or other associated laws and regulations. In this case, however, the NPATMA does not exempt or waive responsibility for compliance with Section 106 of the NHPA; therefore, the FAA must also comply with Section 106’s requirements prior to making a final decision under NPATMA. This includes the timing mandate in Section 106 to complete the review process prior to the approval or issuance of any license for the undertaking. The FAA has conducted Section 106 reviews for implementing ATMPs at other national park units across the country and is carrying out the same type of review for this Park. As in the development and Section 106 review of ATMPs in other parks, the Section 106 process must be completed before FAA makes a final decision on the undertaking, which in this case would be approving the ATMP, which has not occurred yet as air tour operations are subject only to the IOA.

The purpose of the Section 106 process is for federal agencies to consider the effects of their undertakings on historic properties, separate and distinct from other laws requiring review of federal actions. The Section 106 process “seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the *effects of the undertaking on historic properties*...The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and *seek ways to avoid, minimize or mitigate any adverse effects on historic properties*” (36 CFR § 800.1(a)) (*emphasis added*). Accordingly, the FAA carried out an effort to identify historic properties consistent with the purpose and process of Section 106. This primarily consisted of a records review of existing information made available by the NPS and NNHHPD regarding properties that had previously been listed in or determined eligible for NRHP listing.

Southwest Safaris has objected to the methodology used by the FAA to identify historic properties: namely, that the FAA did not conduct field identification to independently verify the presence and eligibility of these properties. The ACHP notes that the Section 106 regulations at 36 CFR § 800.4(b)(1) require the federal agency to “...make a reasonable and good faith effort to carry out appropriate identification efforts.” This may, but is not required to, include sample field investigation or field survey. In this case, the FAA determined that the extent of previous evaluations—and notably the entirety of the Park being listed on the NRHP as a historic district—as being adequate to understand the nature and location of historic properties within the APE. Unless evidence exists to suggest that the information is not complete, accurate, or current, then an existing records search may constitute a reasonable and good faith effort to identify historic properties, especially in areas where extensive identification efforts have been completed to date, as is the case here.

Southwest Safaris has also expressed concern about the lack of transparency in the FAA’s documentation of its identification findings. In its correspondence to consulting parties, the FAA listed more than thirty eligible TCPs inside of or within ½ mile of the Park’s boundaries, but did not include substantive descriptive information associated with them, such as National Register property type, the NRHP significance criteria under which they had been previously determined eligible, or any other qualifying characteristics, citing general confidentiality concerns. The ACHP notes that blanket restriction of information regarding the nature and location of historic properties is contrary to the intent of the NHPA and Section 106 implementing regulations, which are intended to provide consulting parties and the public a reasonable insight into a federal agency’s analysis and determinations made pursuant to their Section 106 reviews. If the FAA had determined that disclosure of this information presented a risk of harm to the historic property or would have impeded the use of a traditional religious site by practitioners, then it should have undergone the consultation process described under Section 304 of the NHPA and 36

CFR § 800.11(c) to address those confidentiality concerns and determine which specific pieces of information could be withheld or disclosed.

Additionally, the objecting party presented concerns that noise modeling conducted by the FAA pertained to the *potential* for adverse effects, not the actuality of those effects. The ACHP has previously advised FAA and other federal agencies that adverse effects do not need to be a certainty. Rather, adverse effects are found for Section 106 purposes when an undertaking *may* alter, directly or indirectly any of the characteristics that qualify it for inclusion in the NRHP, in a manner that would diminish the property's aspects of integrity (see 36 CFR § 800.5(a)(1)). Based on the information provided by consulting parties and the public, noise and visual elements from air tours have the potential to alter characteristics of historic properties significant to them by diminishing integrity of setting and feeling, among other aspects of integrity. Though the Section 106 process only assesses effects to historic properties, the process does seek to include the views of consulting parties with a "demonstrated interest in the undertaking...due to the nature of their legal or economic relation to the undertaking or affected properties." However, the Section 106 process is only focused on the potential effects on historic properties, not on effects to other types of resources or concerns, such as economic interests. The impacts of the undertaking on other resource types are considered by the agency through compliance with other laws, such as the National Environmental Policy Act.

Further, while the Section 106 process does not mandate a specific outcome, the regulations implementing Section 106 present an order to the consideration of alternatives with regard to adverse effects, if any. The agency should first consider ways to avoid adverse effects to historic properties; if such options are not available, then the agency would consider ways to minimize or mitigate adverse effects (see 36 CFR §800.6(a)). An agency is not required by Section 106 to avoid adverse effects to historic properties; however, if an agency determines that the undertaking as proposed would avoid all such adverse effects, then the agency may conclude its review with a finding of "no historic properties affected," or "no adverse effect." There are opportunities in the regulations for consulting parties to object or disagree with the agency's effect finding. But there is no process or requirement in the Section 106 regulations for the agency to consider alternatives that would allow adverse effects. The ACHP agrees that the FAA's finding of no adverse effect for this undertaking is supported by its Section 106 review and record of consultation, and that the implementation of an ATMP that eliminates air tours at the Park and the ATMP planning area reasonably avoids adverse effects to historic properties.

In accordance with 36 CFR § 800.5(c)(3)(ii)(B), the FAA is required to take into account this advisory opinion in reaching a final decision on its finding of no adverse effect and provide to the ACHP, the SHPO, Tribes, and other consulting parties its rationale and a summary of how this opinion was considered. If the FAA affirms its initial finding, once the summary of the decision has been sent to the ACHP and other parties, the agency official's Section 106 responsibilities are fulfilled for review of this undertaking.

Thank you for the opportunity to comment on this dispute regarding effects to historic properties. If we may be of further assistance, or you would like to discuss this matter, please contact Mr. Bill Marzella, at (202) 517-0209, or via e-mail at bmarzella@achp.gov.

Sincerely,



Jaime Loichinger
Director
Office of Federal Agency Programs

Additional Communications

12/03/21 Follow-up email regarding invitation to consult

12/09/21 Follow-up email regarding invitation to consult

12/15/21 Follow-up phone call logs regarding invitation to consult

12/20/21 Follow-up phone call logs regarding invitation to consult

10/25/23 Notification from IKG Air, LLC dba American Aviation

From: [Cowan, Durre \(FAA\)](#)
To: [skoyiyumtewa@hopi.nsn.us](#); [tnuvangyaoma@hopi.nsn.us](#)
Cc: [Gina_Pearson@nps.gov](#); [karen_belvin@nps.gov](#); [laura_martin@nps.gov](#); [Ashley_Pipkin@nps.gov](#); [Nadals, Catherine L <FAA>](#); [Manning, Derek \(Volpe\)](#); [Papazian, Jennifer \(Volpe\)](#); [Schmidt, Jonathan \(Volpe\)](#); [jamie_civitello@nps.gov](#); [scott_mcfarland@nps.gov](#); [Brett_Cockrell@nps.gov](#); [Lyn_Carranza@nps.gov](#); [david_alberg@nps.gov](#); [abigail_peeples@partner.nps.gov](#)
Subject: FAA Consultation with the Hopi Tribe of Arizona
Date: Friday, December 3, 2021 9:27:45 AM

Chairman Nuvangyaoma:

I am writing to follow up with you regarding earlier correspondence Cathy Nadals sent to you about the proposed development of an Air Tour Management Plan (ATMP) for Arches National Park, Bandelier National Monument, Bryce Canyon National Park, Canyon de Chelly National Monument, Canyonlands National Park, Lake Mead National Recreation Area, and Natural Bridges National Monument. I would like to confirm that you received our previous correspondence and to determine your interest in participating in consultations for the proposed undertaking.

As background, the Federal Aviation Administration (FAA) and the National Park Service (NPS) are developing ATMPs for 24 national parks in accordance with the National Parks Air Tour Management Act (NPATMA). The FAA is serving as the lead federal agency overseeing Section 106 compliance for the development of the ATMPs. On 3/26/2021, Cathy Nadals sent an email to you with a letter attached formally requesting initiation of government-to-government consultation with the Hopi Tribe of Arizona for the development of the ATMP for the parks listed above. She also copied your Tribal Historic Preservation Officer, Stewart Koyiyumtewa, on that email.

On 7/30/2021, we sent additional correspondence to you via email outlining the draft ATMP for each of these same parks, and requesting your comments on the draft Area of Potential Effects for the proposed ATMP. Please let me know if you received the above correspondence. If not, we can resend the letter and would be happy to provide any additional information you might need. Please also indicate your interest in participating in consultations for the parks listed above, along with your preferred method of communication (e.g., email, telephone, mail) and any other representatives of your tribe we should be communicating with on this undertaking. If we do not hear from you in one week I will follow up with your office by phone to confirm your receipt of this correspondence.

Should you have any questions regarding any of the above, please do not hesitate to contact me at durre.cowan@faa.gov.

Information about the development of ATMPs can be viewed on the following websites:

- FAA ATMP website: https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/
- NPS ATMP website: <https://www.nps.gov/subjects/sound/airtours.htm>

Thank you for your time.

Best regards,

Durre Cowan

Office of Environment and Energy

Federal Aviation Administration



Federal Aviation
Administration

From: [Cowan, Durre \(FAA\)](#)
To: [malcolm.nieto@kewa-nsn.us](#); [Info@Kewa-NSN.us](#); [christopher.chavez@kewa-nsn.us](#); [bquintana@kewa-nsn.us](#)
Cc: [Lyn_Carranza@nps.gov](#); [Gina_Pearson@nps.gov](#); [jamie_civitello@nps.gov](#); [scott_mcfarland@nps.gov](#); [karen_belvin@nps.gov](#); [laura_martin@nps.gov](#); [Ashley_Pipkin@nps.gov](#); [Nadals, Catherine L <FAA>](#); [Manning, Derek \(Volpe\)](#); [Papazian, Jennifer \(Volpe\)](#); [Schmidt, Jonathan \(Volpe\)](#)
Subject: FAA Consultation with the Kewa Pueblo, New Mexico
Date: Thursday, December 9, 2021 2:08:08 PM
Attachments: [image.png](#)

Dear Governor Tenorio,

I am writing to follow up with you regarding earlier correspondence Cathy Nadals sent to you about the proposed development of an Air Tour Management Plan (ATMP) for Bandelier National Monument, Canyon de Chelly National Monument, and Canyonlands National Park. I would like to confirm that you received our previous correspondence and to determine your interest in participating in consultations for the proposed undertaking.

As background, the Federal Aviation Administration (FAA) and the National Park Service (NPS) are developing ATMPs for 24 national parks in accordance with the National Parks Air Tour Management Act (NPATMA). The FAA is serving as the lead federal agency overseeing Section 106 compliance for the development of the ATMPs. On 3/26/21, Cathy Nadals sent an email to you with a letter attached formally requesting initiation of government-to-government consultation with the Kewa Pueblo, New Mexico for the development of the ATMP for Bandelier National Monument, Canyon de Chelly National Monument, and Canyonlands National Park. She also copied your Tribal Historic Preservation Officer, Malcom Nieto, on that email.

On 8/27/21, we sent additional correspondence to you via email outlining the draft ATMP for Bandelier National Monument, Canyon de Chelly National Monument, and Canyonlands National Park and requesting your comments on the draft Area of Potential Effects for the proposed ATMP. (Correspondence for Canyon de Chelly has not been sent, as the agencies are still in the preliminary stages regarding the development of the ATMP.)

Please let me know if you received the above correspondence. If not, we can resend the letter and would be happy to provide any additional information you might need. Please also indicate your interest in participating in consultations for the [PARK ATMP], along with your preferred method of communication (e.g., email, telephone, mail) and any other representatives of your tribe we should be communicating with on this undertaking. If we do not hear from you in one week I will follow up with your office by phone to confirm your receipt of this correspondence.

Should you have any questions regarding any of the above, please do not hesitate to contact me at durre.cowan@faa.gov.

Information about the development of ATMPs can be viewed on the following websites:

- FAA ATMP website: https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/
- NPS ATMP website: <https://www.nps.gov/subjects/sound/airtours.htm>

Thank you for your time.

Best regards,

Durre Cowan

Office of Environment and Energy

Federal Aviation Administration



Consulting Party	Follow-up Email Date
Navajo Nation, Arizona, New Mexico & Utah	Engaged through meetings
Hopi Tribe of Arizona	12/3/21
Kewa Pueblo, New Mexico	12/9/21
Ohkay Owingeh, New Mexico	12/9/21
Pueblo of Acoma, New Mexico	12/3/21
Pueblo de Cochiti, New Mexico	Engaged through meetings
Pueblo of Isleta, New Mexico	12/9/21
Pueblo of Jemez, New Mexico	12/9/21
Pueblo of Laguna, New Mexico	12/9/21
Pueblo of Nambe, New Mexico	12/9/21
Pueblo of Picuris, New Mexico	12/9/21
Pueblo of Pojoaque, New Mexico	Engaged through separate E-mails
Pueblo of San Felipe, New Mexico	Separate follow-up email with specific concerns from the tribe – 12/3/2021
Pueblo of San Ildefonso, New Mexico	Engaged through separate E-mails
Pueblo of Sandia, New Mexico	12/9/2021
Pueblo of Santa Ana, New Mexico	12/9/2021
Pueblo of Santa Clara, New Mexico	Engaged through meetings
Pueblo of Taos, New Mexico	12/9/21
Pueblo of Tesuque	12/9/21
Pueblo of Zia, New Mexico	12/9/21
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Opted out 3/29/21
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Opted out 3/30/21
Ysleta Del Sur Pueblo	12/9/21
Zuni Tribe of the Zuni Reservation, New Mexico	12/9/21

ANSWER SHEET FOR TRIBAL CALLS ATMPs

Tribal Name	Date of Call	Did you reach the tribe? (Y or N)	Who Answered and what was said?
Hopi Tribe of Arizona	12/15/2021 9:55AM		Phone number isn't working. I checked the website, and the phone listed is correct, but it's as though the phone is off the hook.
Pueblo of Acoma, New Mexico	12/15/2021 10:09AM	N	Left a message.
Pueblo of Isleta, New Mexico	12/15/2021 10:11AM		Spoke with Ramona (very helpful). She gave me this number, 505-869-9767, but it did not work. She also gave me: Cassandra Smith (archivist), 505-869-5376. I spoke to Cassandra, and she agreed to pass along my name and phone number to Dr. Walt (the THPO). Dr. Walt called me back at 11:38AM – they would like the documents resent to them and they would like to consult. New phone number for Dr. Walt: (505) 255-7481
Pueblo of Jemez, New Mexico	12/15/2021 10:29AM	Y	Attempted to leave a message. Left a detailed message for Christopher Toya with the receptionist. (Did not get her name.)
Pueblo of Laguna, New Mexico	12/15/2021 10:35AM	N	Left a message.
Pueblo of Nambe, New Mexico	12/15/2021 10:37AM	N	Called both numbers listed. Busy signal each time. Checked the website, called this number 505-455-4410 – also received a busy signal.
Pueblo of Picuris, New Mexico	12/15/2021 10:40AM	Y	Spoke with Cecilia Shields, please resend the information. Update: 12/20/21 Cecilia called back and I returned her call – she has found the information and will let us know this week.
Pueblo of Sandia, New Mexico	12/15/2021 10:46AM	Y/N	Spoke with Tonya the receptionist. And left a message for Greg Kaufman (Enviro Director), as he will not be in until later this afternoon.
Pueblo of Santa Ana, New Mexico	12/15/2021 10:51AM	Y	Spoke with Monica Murrell (THPO) -- No interest in consultation.

ANSWER SHEET FOR TRIBAL CALLS ATMPs

Pueblo of Taos, New Mexico	12/15/2021 10:54AM	N	Attempted to leave a message, it kept cutting off, but I got my phone number in!
Pueblo of Tesuque	12/15/2021 11:02AM	Y	Spoke with Larry Samuel. They will have an interest in consulting.
Pueblo of Zia, New Mexico	12/15/2021 11:06AM	N	Left a message.
Ysleta Del Sur Pueblo	12/20/2021 1:46PM	Y	Left a message with the front desk.
Zuni Tribe of the Zuni Reservation, New Mexico	12/20/2021 1:50PM	N/Y	Attempt 1: Spoke to the receptionist at (505) 782-7022 – she didn't have a phone number for Kurt Dongoske, and couldn't confirm the one I called first -- (505) 782-4814. The latter rang with no voicemail pickup. Will try again later.
	12/22/2021 4:50PM	N	Attempt 2: Tried calling again, no answer, no voicemail.
Kewa Pueblo, New Mexico	12/20/2021 2:03PM	N	Left a voicemail for Malcolm Nieto (505) 465-2214 (x3012)
Ohkay Owingeh, New Mexico	12/20/2021 2:08PM	N	I called both numbers listed [(505)852-4400 & 505-852-4211] when one didn't pick up and one didn't seem correct, I went on the website and called the number for the environmental office (505) 852-4212, where I left a message for Larry Philips.

From: [Chuck Howe](#)
To: [Elmore, Eric \(FAA\)](#)
Cc: [Fox, Sandra Y \(FAA\)](#); [Larry Wright](#); [Lionel Bighumb](#); [Teller, Arlando \(OST\)](#)
Subject: American Aviation Overflight Allocations - Ownership Transfer
Date: Wednesday, October 25, 2023 5:42:00 PM

Good afternoon Eric,

As stated during our recent conversation, IKG Air, LLC completed its stock purchase of American Aviation last month. We have retained Mr. Larry Wright as our Director of Operations as an employee, as well as our Chief Pilot Mr. Alan Dortch.

While the ownership has changed, we continue to conduct air tours throughout the region. I am writing to notify your office, in addition to seeking your assistance in notifying the respective National Park Service points of contact in the Park Units that maintain the overflight allocations for American Aviation.

IKG Air, LLC, as the new owners of American Aviation, wishes to maintain all of the existing overflight allocations, as referenced in the listing below. These numbers are based on the research and discussion that we had earlier today and the information from your files under both the Air Tour Management Plans as well as the Commercial Air Tour Management Voluntary Agreement (Glen Canyon NRA).

Additionally, as IKG Air continues discussions with the Navajo Nation Tribal Parks and Recreation Department regarding expanded tour operations within the boundaries of the Navajo Nation, we would like to initiate discussions related to conducting air tours within the NPS boundaries of Canyon de Chelly and Navajo National Monument within Chinle and Shonto Chapters respectively. As we understand the ATMP development process is currently underway for Canyon de Chelly, and we respectfully request to be considered as a prospective future air tour operator. Specifically, we are seeking to be engaged in the scoping and development process of this plan and future allocations that may be available.

Likewise, we understand that the Lake Mead NRA ATMP is also currently under review and we request to be engaged in that process related to current scoping, alternatives and final decisions to be established within that NRA unit.

As I shared with you today, IKG Air is a 100% Navajo member-owned private aviation company conducting air tours, charter and other service flights utilizing its fixed-wing and rotorcraft fleet, located currently in Page and Cottonwood Arizona. We fully intend to continue to utilize the transferred allocations resulting from the acquisition of American Aviation, in addition to expanding into other areas of air tour operations, for both fixed wing and rotorcraft equipment. We look forward to working with your office to explore any possible aircraft platform substitutions that we may be considering related to the allocations for individual park units.

Current allocations by unit:

Glen Canyon NRA (VA) - 462, in addition to pre-VA allocations

Rainbow Bridge (VA) - 138, in addition to pre-VA allocations

Arches NP - 1

Canyonlands NP - 1

Bryce Canyon NP - 3

Zion NP - 29

Lake Mead NRA - 3

Copied to this email are:

Larry Wright - previous owner and current Director of Operations

Lionel Bighumb - CEO of IKG Air, LLC

Arlando Teller - Assistant Secretary USDOT Tribal Government Affairs

Please let me know what additional information you may need in order to proceed with formally transferring and acknowledging these allocations under the new ownership, in addition to engaging us in our interest areas as defined above.

Thank you again for your time and assistance in transitioning us in the ownership process and opening the lines of communication for us with the National Park Service unit Superintendents and Managers.

--

Chuck Howe
IKG Air, LLC - President
928-310-6898 call/text

Final EA

Additional Materials Appendix I – Navajo Nation Cooperating Agency

Correspondence

Email to Navajo Nation for Cooperating Agency Review of Draft EA

Letters from the Chinle House of the Navajo Nation

Documents from the May 12, 2021 with the Navajo Nation

Gillham, Lindsay B

From: Pearson, Georgina A <Gina_Pearson@nps.gov>
Sent: Wednesday, January 24, 2024 8:08 AM
To: Lignell, Brent (Volpe)
Subject: Fw: Final Fatal Flaw Review of CACH ATMP and EA
Attachments: CACH_ATMP_2024-0116_fatal flaw.docx; CACH_3rd_Internal_Draft EA_Jan_2024.docx

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

FYI

From: Pearson, Georgina A
Sent: Thursday, January 18, 2024 9:30 AM
To: president.buunygren@navajo-nsn.gov <president.buunygren@navajo-nsn.gov>
Cc: r.begay <r.begay@navajo-nsn.gov>; Brent Powers <bpowers@nndfw.org>; Carranza, Lyn R <Lyn_Carranza@nps.gov>; Repeta, Barbara J <Barbara_Repeta@nps.gov>
Subject: Final Fatal Flaw Review of CACH ATMP and EA

Dear President Nygren,

Please find attached for your review the INTERNAL Final Fatal Flaw review of the DRAFT Canyon de Chelly National Monument Air Tour Management Plan and Environmental Assessment.

The goal of this review is to correct any previously unseen errors. Please provide edits by inserting track changes directly into the documents. Please DO NOT review grayed out text.

Your comments are requested by Monday January 29, 2024.

This final review by the agencies (NPS and FAA) and the Navajo Nation is being conducted before the documents go out for public review - targeted for April 4, 2024.

Thank you for your time and valuable input on this planning process.

Respectfully,

Gina Pearson
Natural Sounds and Night Skies Office POC for CACH ATMP

Gina Pearson, Acting National Trails System Specialist
National Park Service

559-936-1785 cell

[National Trails System \(U.S. National Park Service\) \(nps.gov\)](https://www.nps.gov/natsys/)

On detail from:

Natural Sounds and Night Skies Division

[Natural Sounds and Night Skies](#) Program (public website)

[Natural Sounds & Night Skies Division \(internal sharepoint\)](#)

From: Brent Powers <bpowers@nndfw.org>

Sent: Tuesday, February 6, 2024 9:28 AM

To: Pearson, Georgina A <Gina_Pearson@nps.gov>

Cc: w.mike.halona@navajo-nsn.gov <w.mike.halona@navajo-nsn.gov>; Lyons, Keith D <Keith_Lyons@nps.gov>; Gillham, Lindsay B <Lindsay_Gillham@nps.gov>; Carranza, Lyn R <Lyn_Carranza@nps.gov>

Subject: Re: Fw: Final Fatal Flaw Review of CACH ATMP and EA

□

Hi Georgina,

Thank you for reaching out again regarding this matter. I appreciate the opportunity to review and provide comments to the ATMP. I think the local chapters and President's Office has provided the necessary comments regarding the Navajo position on this topic. Therefore, I have no comments to provide regarding the ATMP.

Cheers,

Brent

On Mon, Feb 5, 2024 at 12:27 PM Pearson, Georgina A <Gina_Pearson@nps.gov> wrote:
Hi Brent!

We are in the process of consolidating comments on the documents sent for your review last month. The internal comment period ended Jan 29, 2024, but we want to make sure that we capture any comments, edits, clarifications, etc. you may have before the docs go out for public review in early April 2024. If you have any comments, please add them directly to the documents in track changes. We are on a tight timeframe, please provide comments by COB 2/8/24.

Please reach out if you have any questions.

Thank you,
Gina Pearson

From: Pearson, Georgina A

Sent: Thursday, January 18, 2024 9:30 AM

To: president.buunygren@navajo-nsn.gov <president.buunygren@navajo-nsn.gov>

Cc: r.begay <r.begay@navajo-nsn.gov>; Brent Powers <bpowers@nndfw.org>; Carranza, Lyn R <Lyn_Carranza@nps.gov>; Repeta, Barbara J <Barbara_Repeta@nps.gov>

Subject: Final Fatal Flaw Review of CACH ATMP and EA

Dear President Nygren,

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Your comments are requested by Monday January 29, 2024.

This final review by the agencies (NPS and FAA) and the Navajo Nation is being conducted before the documents go out for public review - targeted for April 4, 2024.

Thank you for your time and valuable input on this planning process.

Respectfully,

Gina Pearson
Natural Sounds and Night Skies Office POC for CACH ATMP

Gina Pearson, Acting National Trails System Specialist
National Park Service
559-936-1785 cell
[National Trails System \(U.S. National Park Service\) \(nps.gov\)](https://www.nps.gov/)

On detail from:
Natural Sounds and Night Skies Division

[Natural Sounds and Night Skies](#) Program (public website)
[Natural Sounds & Night Skies Division](#) (internal sharepoint)

--

Brent Powers
Zoologist Navajo Nation Natural Heritage Program
P.O. Box 1480
Window Rock, AZ 86515
Phone: 928-871-7070
Email: bpowers@nndfw.org

**Chinle Chapter House Chapter Meeting, February 29, 2024, Navajo Nation, Comments
Submitted to the National Park Service**

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I am the local residents from Lukachukai Arizona

We don't NEED No Air Tour here in Chinle Canyon de Chelly, Tséyi' NO NEED TO VIBRATE

"NO PLAN TOUR"

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I absolutely don't approve of the tour flight!! We as the canyon residents do not want to be (gennies) and have others to generate the money using us and the land. The Presidents had already release us back to the Canyon de Chelly. The canyon is fragile with ruins etc. Please hear voice.

Correspondence ID:, 9, Project:, 103419, Document:, 135960

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I really disagree with Air Tourism. We won't get a penny out of it and it would be danger for us and for the animals in the canyon. so much more why i don't want air tourism.

I'm a Spider Rock resident

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: We do need the air tourism

We are doing the Jeep tours

NO PLANE TOUR!!

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: To whom it may concern:

Please the people of Canyon de Chelly do not want air tourism in Canyon de Chelly, take it somewhere else.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: We don't want air tourism in Canyon de Chelly, I'm one of them

I vote against it in the past at Chinle Chapter meeting... some months back

- NO -

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I Bessie Henry a Canyon resident (The Window) don't appreciate the Discovery air tours + Scenic Flights to Canyon de Chelly. Me and my family are not gonna benefit from it.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: At this time, I do not appreciate or agree with the Air Tourism especially Navajo Nation Canyon Residents is approval or knowledge. Even the past tours that were done, none of the residents benefited. in the tours have infringed on our privacy.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: No air tour

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: this statement is to confirm that i oppose the Air Tourism in Canyon de Chelly.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I'm a local residence of the Canyon Grew up in the Canyon a very sacred place to a lot of us residence

NO PLANE TOUR

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I do not want the air tour over our residence. Due to the vibration(s) of the walls, objects, home(s), etc. and with the horse tour operator here in our canyon, the horses might spook from the noise, and the nearness of the flight close to the river etc., the corners, please don't allow any type of flights

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: - NO! Air Tourism

- Noisy

- Polution

- All ruin will not be there

- Too many air traffic.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: The Canyon people weren't told about the airplane going over the canyon, I think it's unsafe for the plane to go over the canyon, the air changes in the canyon. Plus it too loud, when it flies over the canyon. We don't know it maybe dropping the ash of the people.

I say no for the plane fly over the canyon.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: I'm canyon resident on the south canyon

"No Air Tour"

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: Start a group that will look oure all activities so people can volenteer to help and on to help. Have people go over the sourse and clean the starting point.

If there are helicopter, I don't think they don't land in the canyon

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: It is invasion of our privacy, serenity, and wildlife. Our beautyway songs started in the Canyon, our daily prayers start there. Our birds will disappear, their feathers used in ceremonies. Some planes fly too close to homes + scare our livestock. They are way too loud and will not benefit us those of us that live in the Canyon. There are dangerous energies positive or negative on some of the ruins that can cause accidents.

NO AIR TOURS!

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: The sound of airplanes and or helicopters distract our animals that live in the canyon & on the rim of the canyons. The noise of engines hovering above, sometimes at a close distant, scares them & they run at times ending up injuring themselves. Some of our livestock like to stay high side of the rocks to look for coverage & end up falling to their death because they have no place to hide.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: We are living by the Sliding House Overlook and have a property inside the canyon. I disagree with the air tour because of the respect, the noise, and have our animals inside the canyon.

SO NO TOUR!!!

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: Please do not allow air tours of our Canyon de Chelly.

One of the aspects of our magnificent Canyon is that it is a sacred place. As a secret place, you can experience a place that provides a quiet environment that is restorative to the human spirit. Within the Canyon walls, a person can feel isolated from the clamor and noise of modern activities. This is a way of spiritual healing and relaxation. Also, the animals, both wild and domesticated will be bothered and upset by aircraft flying by. Please show respect for the residents of Canyon de Chelly and say no to air tours.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: My father lives down the canyon most of the year. I'm afraid if the planes or any other aircraft flies to close, that they may disturb the canyon walls and cause it to collapse. The echo of the loud engines isn't very pleasant to hear because it gets to loud. I believe that the loud sounds of the engines flying over and inside the walls of the canyon, it may cause harm to the residents and or animals that live inside the sacred canyon walls.

Received: February 29, 2024

Correspondence Type: Letter

Correspondence: No to air fare.

We/our own Jeep tour, horse tour, hiking and families living in the Canyon 24/7 days.

So Please No To Air Tourism in Canyon de Chelly.

Harry Clark and Rena Lynch

Howard, Symone (VOLPE)

Subject: Copy: FW: Introductory Meeting for Development of Air Tour Management Plan for Canyon de Chelly National Monument

Location: <https://faavideo.zoomgov.com/j/16073294923>

Start: Wed 5/12/2021 11:00 AM

End: Wed 5/12/2021 1:00 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Nadals, Catherine L <FAA>

The Federal Aviation Administration (FAA) and National Park Service (NPS) will jointly host an initial introductory webinar for the Navajo Nation to discuss the development of an Air Tour Management Plan (ATMP) for Canyon de Chelly. The webinar will be held on May 12th at 9:00 am MT, 11:00 am EST via Zoom and is anticipated to last two hours. A link to the webinar is provided below.

The purpose of the webinar is to familiarize participants with ATMPs including the National Parks Air Tour Management Act (NPATMA) which provides the legal basis for their development. FAA and NPS staff will provide an introduction to ATMPs including the legal impetus and background that is requiring their development at the present time. The webinar will include a discussion on how FAA and NPS plan to comply with the National Environmental Policy Act, the National Historic Preservation Act, and other umbrella legislation required in developing this plan.

You are invited to the following ZoomGov meeting provided by FAVES. Optional ways to join are:

Click to Join:

<https://faavideo.zoomgov.com/j/16073294923>

- Passcode: 593695
- If prompted, accept the Zoom application as instructed.

Web Browser:

<https://faavideo.zoomgov.com>

- Click the JOIN button; enter Meeting ID: 160 7329 4923
- Passcode: 593695
- If prompted, accept the Zoom application as instructed.

Mobile Device:

- Download the 'Zoom Cloud Meetings' App.
- Select 'Join a Meeting' and enter Meeting ID: 160 7329 4923
- Passcode: 593695

Phone Audio Only:

- Call 1-888-924-3239; enter Meeting ID: 160 7329 4923
- Passcode: 593695
- Unmute or mute yourself by pressing *6.

Traditional VTC Room System (Via Polycom, Tandberg or Cisco):

- Dial/Call the following IP address 160 7329 4923@ sip.zoomgov.com (No Spaces)
- If Applicable, with passcode: < 160 7329 4923 >< . >< Passcode: 593695 > @ sip.zoomgov.com
- Press #1 to bring up the menu to unmute, mute, change the view and additional features.
- There are many makes/models of traditional VTC room systems. For an easy 'how to connect' your system document, contact FAVES Customer Support.

FAVES Customer Support

1-800-537-6269

FAVESHelp@GDIT.com

National Parks Air Tour Management Program



**Federal Aviation
Administration**



**National Park
Service**

WELCOME – WE WILL BEGIN SHORTLY

May 12, 2021



National Parks Air Tour Management Program



**Federal Aviation
Administration**



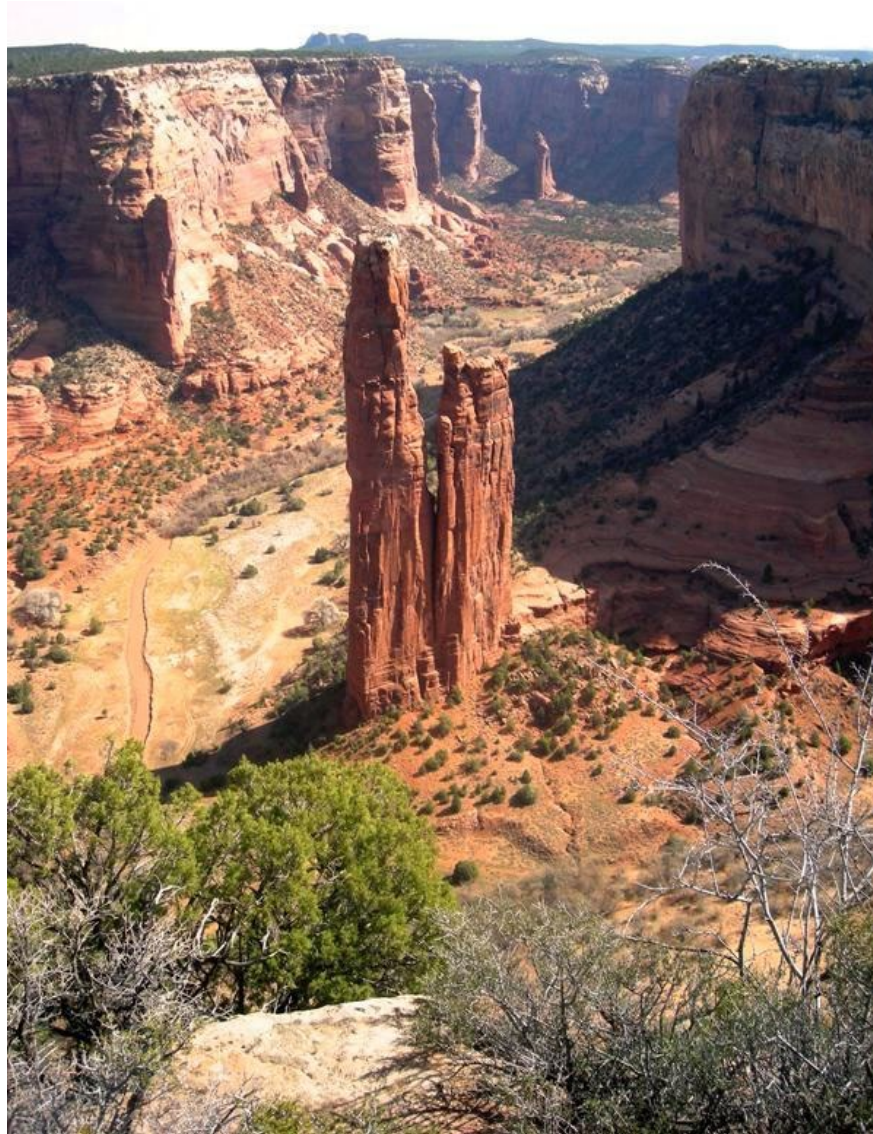
**National Park
Service**

Air Tour Management Plans: Introductory Overview

May 12, 2021



Opening Prayer



Agenda

- Opening Remarks
(Carl Slater, Raquel Girvin, Ray Sauvajot, Dorothy Firecloud 20 minutes)
- Meeting Purpose and Participants
(Cathy Nadals, FAA – 5 minutes)
- Agency Roles (FAA & NPS)
(Keith Lusk, FAA – 5 minutes)
- Introduction to Air Tour Management Plans
(Keith Lusk, FAA and Vicki Ward, NPS – 30 minutes)
- Next Steps – Section 106 Consultation
(Cathy Nadals – 10 minutes)
- Questions



Webinar Participants and Opening Remarks

Introductions:

- Carl Slater, Navajo Nation & NPOAG Member
- Raquel Girvin, FAA Regional Administrator Western-Pacific
- Ray Sauvajot, NPS Associate Director, Natural Resource Stewardship and Science
- Dorothy Firecloud, NPS Tribal Liaison

Presenters:

- Cathy Nadals, FAA Cultural Resources Specialist
- Keith Lusk, FAA Program Manager
- Vicki Ward, NPS Overflights Program Manager
- Derek Manning, Volpe Cultural Resources Specialist



Meeting Purpose and Participants

- Provide an introduction to the National Parks Air Tour Management Act (NPATMA) and current efforts to develop Air Tour Management Plans (ATMPs).
- Provide an opportunity for you to ask ATMP process-related questions (*via a raised hand or in the chat*)



Agency Roles (Keith Lusk)

- The FAA and the NPS are working together to develop ATMPs
 - The FAA is the lead agency overseeing compliance with NEPA and Section 106/Tribal consultation
 - The NPS is a cooperating agency for NEPA
- General agency roles:
 - The FAA has sole authority to control airspace over the U.S. and has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of overflights on public and tribal lands.
 - The NPS has responsibility for conserving the scenery, natural and historic objects, and wildlife in national parks and ensuring they remain unimpaired for the enjoyment of future generations.



NPATMA Overview

- Enacted April 5, 2000
- Requires the FAA, in cooperation with the NPS, to develop an ATMP for those parks and tribal lands where operators have applied to conduct commercial air tours
 - As an alternative to an ATMP, the FAA and NPS may enter into a voluntary agreement with a commercial air tour operator
- Both the FAA and NPS must prepare the environmental documentation and sign the decision document for the ATMP
- The objective of any ATMP is to develop acceptable and effective measures to mitigate or prevent significant adverse impacts, if any, of commercial air tour operations upon natural and cultural resources, visitor experiences, and tribal lands



NPATMA Overview

- Act applies to commercial air tours:
 - Within ½ mile of park
 - Over tribal lands within or abutting a park
 - 5,000 feet altitude or less above ground level (AGL)
- Parks not covered by NPATMA include:
 - Alaska parks
 - Grand Canyon National Park
 - Rocky Mountain National Park
 - Parks with fewer than 50 reported flights per year, unless this exemption is withdrawn
- If abutting tribal lands are or may be overflowed, tribes must be invited as cooperating agency for NEPA compliance

NPATMA Overview

- Requires commercial air tour operators to apply for FAA Operating Authority in order to operate over National Park System units and abutting tribal land
- Commercial air tour operators fall into two categories:
 - Existing commercial air tour operator
 - Actively engaged in the business of providing commercial air tour operations over the park during the period 12 months prior to NPATMA
 - Those operators who provided tours prior to passage of NPATMA and have continued to fly air tours under interim operating authority
 - New entrant commercial air tour operator
 - Applies for operating authority over a park and has not been engaged in the business of providing commercial air tour operations over the park
 - May not fly air tours until granted approval by FAA and NPS



NPATMA Overview

- Established Interim Operating Authority (IOA) for existing commercial air tour operations
 - Based on the number of flights conducted in the 12-month period prior to enactment of NPATMA (or average of three prior years)
 - Granted over 200,000 IOA to 80 operators for over 100 parks in 2003
 - IOA was published in the Federal Register in 2005
- Established the National Parks Overflights Advisory Group (NPOAG) to provide advice and guidance to the agencies from personnel with aviation and environmental interests, and tribal representatives

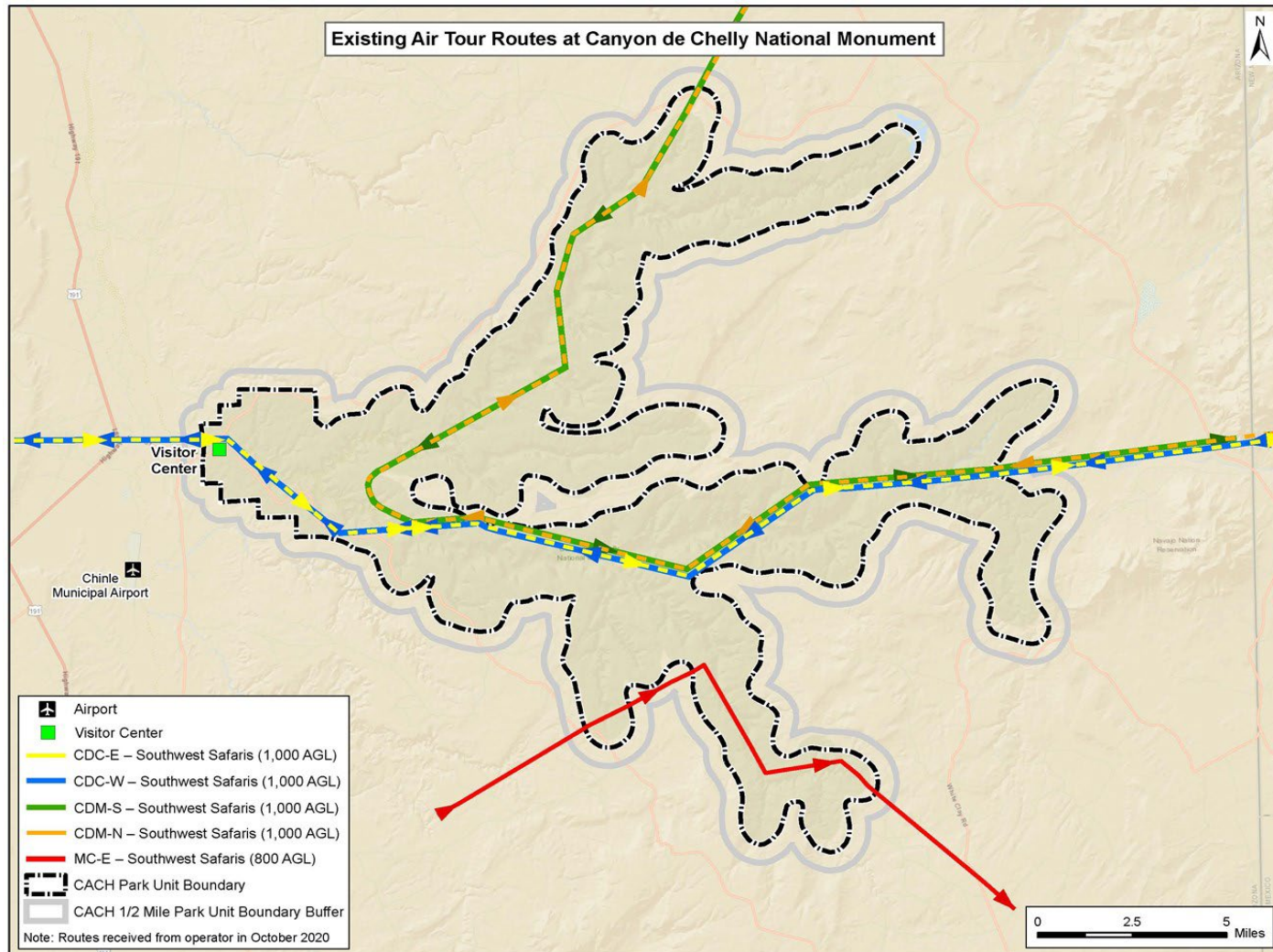


Commercial Air Tours

- Commercial air tours, as defined in NPATMA are:
 - Conducted for compensation or hire;
 - In a powered aircraft;
 - For the purpose of sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands; and
 - Flying below 5,000 feet AGL (except for takeoff/landing or as necessary for safe operation) or < 1 mile laterally from any geographic feature (unless more than ½ mile outside the park boundary)
- Does not include general aviation, commercial airline aircrafts, or military flights



Existing Air Tour Operations – Canyon de Chelly



**4 Existing Operators
(all Fixed Wing)**

Total IOA – 175

Recent Tour Data

2017 – 38*

2018 – 30*

2019 - 62*

3 year average – 43

***all flights are by
Southwest Safaris**

Operator Reports (Vicki Ward)

- Since 2013, each operator providing a commercial air tour over a national park under IOA authority or in accordance with an ATMP has been required to submit a report to the FAA and NPS regarding the number of operations and other required information
- The FAA and NPS use this reporting to know the number of flights conducted over the parks in recent years
- The operator reports between 2013 and 2019 are available at the NPS Air Tours website under “Air Tour Reports”:
<https://www.nps.gov/subjects/sound/airtours.htm>



Air Tour Management Plans

- The objective of any ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, resulting from commercial air tour operations upon natural and cultural resources, visitor experiences, and tribal lands.
- An ATMP:
 - A. May prohibit commercial air tour operations in whole or in part
 - B. May establish conditions for the conduct of air tour operations including routes, altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights, etc.
 - C. Shall apply to all commercial air tour operations within ½ mile outside the boundary of a national park
 - D. Shall include incentives for the adoption of quiet aircraft technology
 - E. Shall provide for the allocation of opportunities to conduct air tours when the ATMP limits the number of operations
 - F. Shall justify and document the need for measures taken pursuant to items (A) through (E), above, and include such justifications in the record of decision



Recent Developments: 2019 – Present

- **February 14, 2019:**
 - Public Employees for Environmental Responsibility and the Hawai'i Coalition Malama Pono filed a petition in the U.S. Court of Appeals for the D.C. Circuit to require the FAA and the NPS to complete ATMPs or VAs for seven parks
- **May 1, 2020:**
 - The Court granted the petition and ordered the FAA and the NPS to file a proposed plan within 120 days to bring all 23 eligible parks (based on reported air tour data from 2018) into compliance with NPATMA within two years
- **August 31, 2020:** The FAA and NPS submitted the Proposed Plan and Schedule to the Court
- **November 20, 2020:** The Court approved the [Proposed Plan and Schedule](#)
- **November 30, 2020:** The FAA and NPS submitted [their first quarterly report](#)
- **March 1, 2021:** The FAA and NPS submitted [their second quarterly report](#)



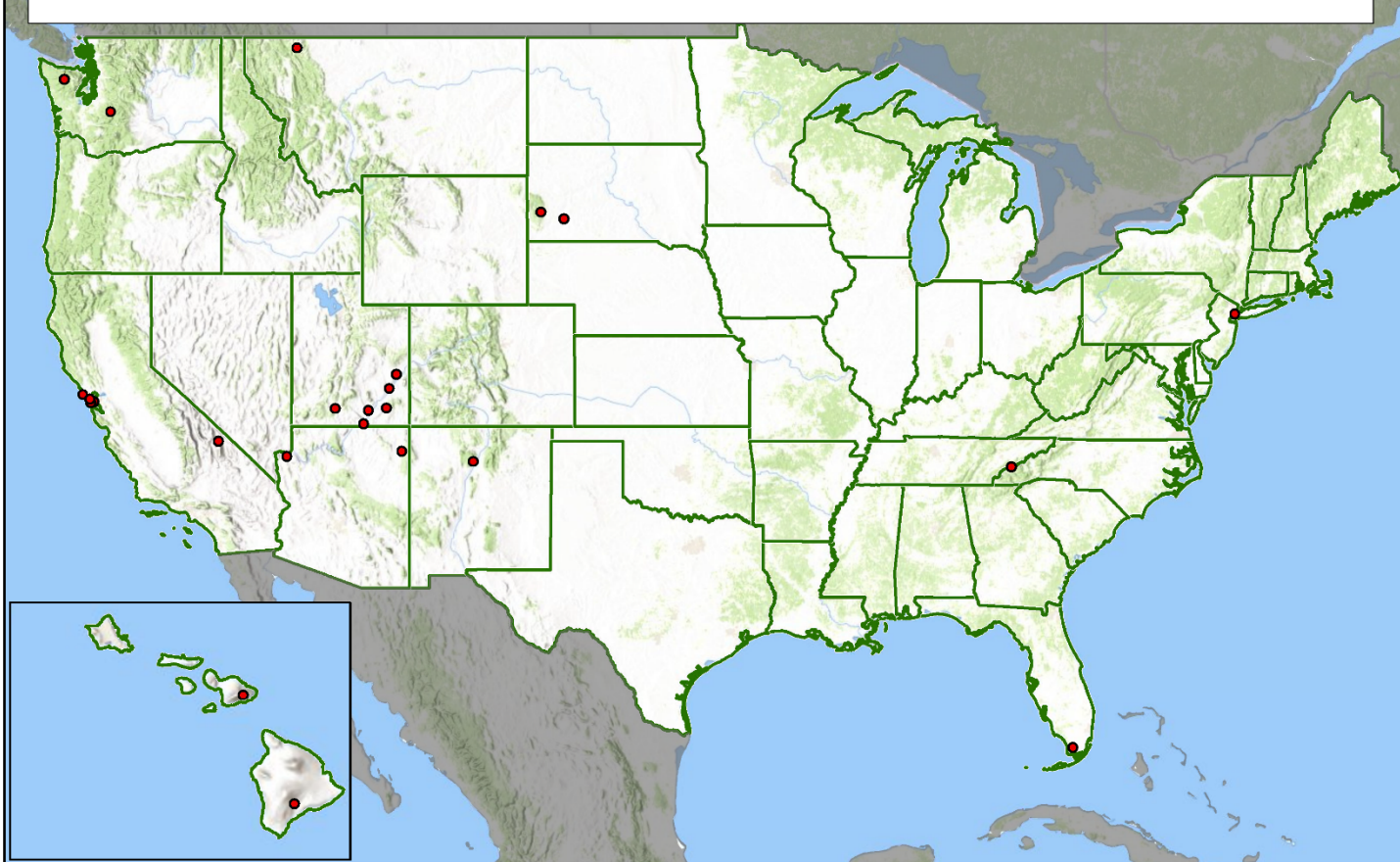
ATMP Parks

24 Parks

- Mount Rainier National Park (WA)
- Olympic National Park (WA)
- Point Reyes National Seashore (CA)
- San Francisco Maritime National Historical Park (CA)
- Golden Gate National Recreation Area (CA)
- Muir Woods National Monument (CA)
- Death Valley National Park (CA/NV)
- Glacier National Park (MT)
- Bryce Canyon National Park (UT)

- Canyonlands National Park (UT)
- Rainbow Bridge National Monument (UT)
- Natural Bridges National Monument (UT)
- Glen Canyon National Recreation Area (UT)
- Arches National Park (UT)
- Canyon de Chelly National Monument (AZ)
- Lake Mead National Recreation Area (NV/AZ)
- Bandelier National Monument (NM)
- Mount Rushmore National Memorial (SD)
- Badlands National Park (SD)

- Great Smoky Mountains National Park (NC/TN)
- National Parks of New York Harbor (NY)
- Everglades National Park (FL)
- Haleakala National Park (HI)
- Hawai'i Volcanoes National Park (HI)



Court-Approved Plan and Schedule

- The FAA and the NPS are prioritizing efficiency using an integrated approach to initiate work on all twenty-three ATMPs concurrently
- For each ATMP, the agencies are required to:
 1. Hold at least one public meeting;
 2. Publish proposed ATMPs in the Federal Register;
 3. Comply with NEPA, and other legal requirements; and,
 4. Invite tribes to participate as cooperating agencies for NEPA compliance in cases where tribal lands are, or may be, overflown.



Court-Approved Plan and Schedule

- The FAA and the NPS plan to work together in a coordinated fashion to develop ATMPs for each park, including seeking administrative efficiencies wherever possible, in order to complete all ATMPs within two years.
 - The Court ordered that, if the agencies anticipate that it will take them more than two years, the FAA and NPS must offer specific, concrete reasons for why that is so.



Next Steps for Section 106: Cathy Nadals

Each ATMP will be unique and therefore, each ATMP will be assessed individually under Section 106.

- The FAA and NPS will:
 - Meet with SHPOs/THPOs, Tribes, and other consulting parties (CPs) to discuss the development of ATMPs and the Area of Potential Effect (APE).
 - Work with SHPOs/THPOs, Tribes, and CPs to identify National Register-eligible or listed historic properties (including traditional cultural properties and sacred sites) within the APE.
 - Consult with SHPOs/THPOs, Tribes, and CPs to assess effects of air tours on identified historic properties.
 - Identify ways, as needed, to modify ATMPs to avoid, minimize or mitigate any adverse effects.



Questions

For More Information:

https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/ (General ATMP Slide Deck here)

<https://www.nps.gov/subjects/sound/airtours.htm>

Section 106 Points of Contact:

- Catherine Nadals, FAA: Catherine.L.Nadals@faa.gov
- ATMPTeam@dot.gov

Introductory Meeting for Development of ATMP for Canyon de Chelly National Monument

Wednesday, May 12th, 2021 from 11:00 AM – 1:00 PM ET

Call Participants:

- **Federal Participants:**
 - **U.S. Department of Transportation (U.S. DOT):** Arlando Teller
 - **Federal Aviation Administration (FAA):** Katherine Andrus, Catherine Basic, Tina Buskirk, Raquel Girvin, Keith Lusk, Catherine Nadals, Craig Tompkins, Kevin Welsh
 - **National Park Service (NPS):** Lyn Carranza, Dorothy FireCloud, Lindsay Gillham, Keith Lyons, Sara Porsia, Barbara Repeta, Mike Reynolds, Ray Sauvajot, Vicki Ward, Michael Williams
 - **U.S. DOT Volpe Center:** Derek Manning, Zoe McAlear, Jennifer Papazian, Jonathan Schmidt
- **Tribal Participants:**
 - Jonah Begay, Navajo Nation DOT
 - Richard Begay, THPO
 - Rodgerick Begay, Assistant Attorney General
 - Donovan Hanley, Office of the Speaker
 - Glenna Lee, Navajo Nation EPA, Environmental Program Supervisor
 - Santee Lewis, Navajo Nation Washington Office, Executive Director
 - Erika Pirotte, Navajo Nation DOJ, Natural Resources Unit Attorney
 - Carl Slater, Navajo Nation Council Delegate
 - Vanessa Vandever, Navajo Nation Parks and Recreation, Assistant Department Manager
 - Danielle Yazzie

Commented [MZ(1)]: I found online that she works for the Navajo Nation Food Distribution Program, but I'm not sure if that's the affiliation that should be listed here

Call Notes:

Opening Remarks

- Carl Slater: I am a Navajo Nation Council Delegate and in my life prior to Council I was Airports Manager for the Navajo DOT and in the Office of the Speaker of the Council. I want to welcome everyone to the meeting. I also represent Native American interests on NPOAG, and have been helping the FAA and NPS to reach out to tribes and form the consultation process for the ATMPs. I want to convey to tribal leadership and staff that I am always available as a resource to understand this process, connect you to anyone at FAA and NPS, and to affirm their commitment. I have seen their intent to consult meaningfully with tribes, including Navajo Nation. This is a place that's very important to me. I'm not from the Canyon, but I know a lot about the Canyon and its cultural and religious significance to my own individual practice and for our people, including what is documented inside the Canyon and what originates in the Canyon. This is the first step in what will be meaningful consultation. If anyone ever believes that they want to get others involved, I'm happy to help do that with the FAA and NPS. Thank

you for convening today and I ask you to keep an open heart and mind while we have these conversations. Don't be afraid to ask questions. Thank you very much.

- Raquel Girvin: I'm the Regional Administrator for the FAA's Western Pacific Region. I want to acknowledge Arlando Teller, Deputy Assistant Secretary for Tribal Affairs at the USDOT. In previous conversations with Arlando, he has emphasized the importance of working collaboratively and establishing relationships with tribes in the everyday work of our agency. FAA's leadership shares Arlando's view. Our leadership includes Kevin Welsh, Executive Director of the FAA's Office of Environmental and Energy. Our region has taken the lead in working with the NPS to develop ATMPs at park units nationwide. We've had a cooperative and collaborative relationship with the NPS and are looking to continue that approach with Federally-recognized tribes, including at Canyon de Chelly National Monument. We understand the importance that the Navajo Nation attaches to these lands. FAA is taking the lead in Section 106 and consulting with you early in the process to bring you in as a full partner in developing the ATMP. We are here to provide background information and, more importantly, to hear from you about issues and concerns and other information that would be helpful as we move forward. Today is an introductory meeting and we will continue to engage going forward. Thank you to FAA, NPS, Volpe Center, and Navajo Nation participants for taking the time to participate today.
- Ray Sauvajot: I'm the National Park Service's Associate Director of Natural Resource Stewardship and Science. We are the part of the NPS that is overseeing the efforts to work on air tour issues and air tour planning in national parks. To start, thank you very much for the opportunity to participate with everyone today. It's an ambitious challenge for NPS and FAA to move forward in a pretty rapid time period to complete air tour plans across the country, but I'm extremely heartened and pleased that the effort has been collaborative. An important component of that work is to collaborate with and work closely with the tribal nations that have such important and significant areas across the country, including places where there are national parks and in some areas where air tours occur. It will be critical to work as a partner and collaborator with tribes across the country so that we together can look at how to sensitively balance the enjoyment of the amazingly beautiful and also significant lands, including sacred significance, across our country, including at Canyon de Chelly National Monument. I'm very honored to be here with you today. I look forward to continuing these conversations and interactions long into the future through this process. Mike Reynolds is the Regional Director for the NPS working out of our offices in Denver and he is on the line too. I am especially honored to introduce Dorothy FireCloud, the NPS Tribal Liaison. She works with our Director's office in Washington D.C. and is participating here today as well.
- Dorothy FireCloud: Good morning. I'm the Native American Liaison for the NPS in the Office of Native American Affairs. It's a revitalized program in NPS and I am came into the position in October. I'm an assistant to the NPS Director. On behalf of our Acting Director, Shawn Bengel, we are happy to be in these consultations and please feel free to reach out to me on any of your NPS-related issues. Thank you very much for participating today.

Questions and Answers

During the presentation:

- Arlando Teller: On the point of the FAA as the lead agency overseeing the compliance of Section 106 and NEPA, and for NPS as a cooperating agency for NEPA: When it comes to Section 106 and NEPA, how often do the lead agency roles work with the Bureau of Indian Affairs and the THPO, and are there ethnographers that provide input to culturally-sensitive areas that have already been recorded, particularly in the Canyon de Chelly area?
 - Cathy Nadals: We're viewing this introductory webinar as primarily informational and we will be sending a formal letter requesting nation-to-nation consultation. We're viewing this as informational and will take any recommendations that you have regarding who you believe should be included in consultations from the Bureau of Indian Affairs or other entities. We are accepting comments and advice. We are at the beginning and have not yet initiated consultation. We're open to any suggestions of other entities that should be included.
 - Arlando: I highly recommend a consideration for local medicine men and women to provide areas of high sensitivity throughout the Canyon. As Mr. Slater mentioned, the headwaters are in the mountains east of the Canyon so those areas as well in the mountains that lead to the runoff that became the Canyon are of sacred significance to Navajo's origin stories. If we could consider a listing of traditional medicine men and women to be part of the conversation to ensure that we have covered not only the physical, but also the spiritual space of the Canyon. That's creating a comprehensive government-to-government session, not just a listening session. Thank you very much. I appreciate this opportunity.
 - Cathy: If you have contact information of who should be included, and any information on the sites, please share that. I imagine that you would want to keep that information private.
 - Arlando: Yes, that's correct. We will provide information on those contacts.
- Arlando Teller: I was going to ask about the exemption of Canyon de Chelly National Monument. I have several concerns regarding the overflights and the parameters shared. In terms of the 5,000 or less AGL, there have been discussions prior to my appointment as a former Deputy Director for DOT for Navajo Nation and Department Manager for the Airports Management Program to increase the parameters to 10,000 or 8,000 above the Canyon. There have been several community members that have talked about low-flying helicopters through the Canyon, particularly during a ceremony, and about attention to sensitive archaeological sites. The conversation at that time was to increase to more than 5,000 ft. I want to know more about NPS' discussion about the exemption of Canyon de Chelly National Monument as well.
 - Vicki Ward: Prior to 2017, the operator was reporting more than 50 flights for Canyon de Chelly National Monument so it was on the list for needing an ATMP. In 2017, the operator didn't do as many tours in that area and he reported fewer than 50 tours. Because of the previous pattern and the concern of impacts to tribal lands, we went ahead and withdrew it. In 2018, it went above again. We didn't want to be in a situation

Commented [MZ(2)]: The comment related to the parameter of 5,000 or less AGL was not addressed.

where it went off and on the list, but instead have consistency in how we were addressing air tours in Canyon de Chelly National Monument.

Following the presentation:

- Arlando: Thank you for this introductory presentation. This is a comprehensive program that is looking for successes in addressing cultural sensitivity and providing a safe corridor for air users, and documentation of operations is really important to address and provide concerning reports when it comes to congestion, if any. I'm glad to see, and it's informative to hear, that there's one operator from Santa Fe and that the concerns are a part of the underlying policy development. When it comes to the ceremonies practiced within the Canyon, there are seasonal ceremonies. Ceremonies only in the spring, summer, and fall, and those conducted during the winter-time. They are year-round, not on a particular time. We have a highly sacred puberty ceremony when a girl becomes a woman and those are established by the families. I don't know if NPS has a number of families in the Canyon; the number of families that lives there year-round has declined. My role with DOT is to ensure that government-to-government consultation is a part of the conversation in any process cradle to grave, and that we allow tribes to provide comments, as you heard from Cathy Nadals and NPS that they're open to comments. My role is to ensure we have a comprehensive understanding of how this program will be successful for all involved with a spirit and intent of partnership.
- Jonah Begay: Thank you for the presentation. From the Navajo DOT side, we do receive concerns from the community, from concerned sensitivities in Canyon de Chelly areas where they report a low-flying aircraft. As far as the ceremonies and those living in the Canyon, that will require a lot of coordination with FAA and NPS of when these events will be happening. They happen year-round, so there would need to be coordination with FAA and NPS on these events as they're coming up. One question, will there be a comment period where tribes and others can submit comments online?
 - Cathy Nadals: We will send a letter to Navajo Nation to start the process. Once we begin the consultation process, we will be looking at a timeframe for comments based on the Section 106 process. We would advise you in any correspondence about those timeframes.
- Lyn Carranza: I'm the superintendent for the Southern Four Corners Group of national parks, including Canyon de Chelly National Monument, Hubbell Trading Post National Historic Site, and Navajo National Monument. I want to thank Keith and Vicki for doing this presentation, and Cathy as well. I want to express that, as the superintendent here, I do get a lot of concerns and comments from Canyon residents regarding overflights. There are people who practice agriculture in the Canyon who are concerned about livestock, privacy, and interruptions to their daily life. The reason we wanted to pull out the exemption is we felt strongly that there needs to be a conversation with the Navajo Nation about these overflights. I'm glad this process is underway and that there will be an opportunity for our neighbors and Navajo Nation officials to have comment on this moving forward. I want to thank you all for taking the time to be here today and for your presentation.