Final EA

Appendix K - Draft ATMP and Draft EA Public Involvement Materials

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

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

Federal Register Notice

Press Release

Frequently Asked Questions

Public Meeting Flyer

Public Meeting Sign-In Sheet – April 16, 2024

Powerpoint Presentation on April 16, 2024 (in person meeting)

Powerpoint Presentation on April 17, 2024 (virtual)

US Department of Transportation
Federal Aviation Administration

US Department of the Interior
National Park Service

Comment Summary Report

Canyon de Chelly National Monument Air Tour Management Plan

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

December 2024

CONTENTS

INTRODUCTION

The Federal Aviation Administration (FAA) and the National Park Service (NPS) have prepared an Air Tour Management Plan (ATMP), which regulates commercial air tours conducted over Canyon de Chelly National Monument (the Park) pursuant to the National Parks Air Tour Management Act of 2000 (NPATMA)[1]. NPATMA requires that the FAA, in cooperation with the NPS (collectively, the agencies), establish an ATMP or voluntary agreement for each National Park System unit for which one or more applications to conduct commercial air tours has been submitted, unless that unit is exempt from this requirement because 50 or fewer commercial air tour operations are conducted over the park on an annual basis, 49 United States Code (U.S.C.) § 40128(a)(5). The Park was previously exempt from the provision of NPATMA that requires the agencies to establish an ATMP or voluntary agreement for commercial air tours. On November 2, 2017, the NPS withdrew the Park's exemption (Appendix J to the EA). Thus, NPATMA requires an ATMP or voluntary agreement to be developed for the Park. The objective of the ATMP is to identify acceptable terms and conditions for commercial air tours conducted over the Park and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tours on natural and cultural resources, visitor experience, and Tribal lands within the jurisdictional boundaries of NPATMA.

The FAA, in coordination with NPS, has prepared an Environmental Assessment (EA) in compliance with the National Environmental Policy Act (NEPA) to analyze a range of alternatives and evaluate potential issues and impacts as part of the ATMP planning process. The ATMP has also been developed in accordance with Section 106 of the National Historic Preservation Act (NHPA) and other applicable laws, regulations, and policies. A Draft ATMP and Draft EA were released on April 3, 2024 for public review and comment.

The agencies notified the public of the availability of the Draft ATMP and Draft EA using various methods, including a notice in the Federal Register issued on April 3, 2024, a news release posted on the Park's website and social media accounts, and e-mails to the agencies' distribution list (see Appendix D of the EA, *Distribution List*). Comments were accepted on both the Draft ATMP and Draft EA from April 3 through May 3, 2024. The agencies posted frequently asked questions (FAQs), the Draft ATMP, and Draft EA to the NPS Planning, Environment, and Public Comment (PEPC) website at the start of the public comment period. In addition, Park staff responded to media inquiries. A total of 25 correspondences are included in this analysis. This report summarizes comments received during the public comment period including substantive comments received during the public meetings.

[1] An ATMP regulates commercial air tours over a national park or within ½-mile outside the park's boundary during which the aircraft flies below 5,000 feet above ground level (AGL). This is referred to as the ATMP planning area in this document and as the ATMP boundary in the ATMP itself.

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

COMMENT ANALYSIS METHODOLOGY

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

The process includes five main components:

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

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

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

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

SUMMARY OF COMMENTS AND RESPONSE TO COMMENTS

The following section summarizes the comments received during the public comment period and is organized by topic. The summarized text is formatted into concern statements to identify the thematic issues or concerns represented by comments within the code. The agencies only summarized comments with substantive content. The agencies collectively reviewed and analyzed each comment to determine if there were any changes warranted to the Draft ATMP or the Draft EA, based on the information, question, or concern provided. The agencies have provided a response following each concern statement.

The Agencies Characterization of Existing Air Tours

1. **Concern Statement:** One commenter stated that the operator conducts air tours of the "Great American Southwest", not Canyon de Chelly and that the air tours over Canyon de Chelly are "charter flights" with the only difference being that the operator provides a geologic narrative. The commentor also claims that the agencies are using NPATMA to impede interstate commerce by not allowing air tours to fly over the Park to get to locations outside the Park.

   Agencies' Response: The ATMP regulates commercial air tour operations as that term is defined by NPATMA and its implementing regulations. See 49 U.S.C. § 40128(g)(4); 14 CFR § 136.33(d). Flights that do not meet the definition of a commercial air tour operation under NPATMA and its implementing regulations are not regulated by the ATMP. The operator advertises air tours of Canyon de Chelly and reported the air tour operations to the agencies that were used to identify the existing condition of air tours over the Park.

2. **Concern Statement:** One commenter alleges that the agencies have misrepresented to the Navajo Nation and Chinle communities the purpose of Southwest Safaris' air tours. The commenter noted that the purpose of the flights over the Navajo Nation is to get to locations outside the Park, not to observe Navajo Nation residents and their practices.

   Agencies' Response: The agencies accurately described the commercial air tour operations conducted over the Park in all public facing communications, including in communications with the Navajo Nation and the communities in and around the Park.

3. **Concern Statement:** One commenter said that the routes presented in the EA as current conditions are not current routes. The commenter said that the current route the operator flies creates less noise and visual effects than those analyzed in the EA and are in less proximity to sacred sites compared to the route described under No Action in the EA.

   Agencies' Response: The routes and altitudes presented in the EA are based on information provided by the operator to the FAA regarding current routes and altitudes

flown. The operator has not provided any information identifying any specific changes to or inaccuracies in the routes or altitudes included in the EA.

Adverse Impacts: Cultural Resource Impacts and Tribal Resources

4. **Concern Statement:** A commenter suggested that all but one of the properties listed in Attachment C "fail to meet the standards of the "or" clauses/ subparagraphs (a) through (d) of the" 36 CFR § 60.4 National Register of Historic Places (National Register) criteria for evaluation. The commenter states that only White House Ruin meets these criteria and specifies that Spider Rock does not meet the National Register criteria. The commenter also notes that the majority of sites, Traditional Cultural Properties (TCPs) specifically, are listed by number only in Attachment C, List of Historic Properties in the APE and Description of Historic Characteristics, contained in the finding of effect letter dated December 28, 2023. Without the substantive information about the properties or geographic reference, the commentor claims that they are unable to provide comment and challenge the authenticity of the TCPs.

   Agencies' Response: The FAA has complied with the property identification provisions in Section 106 of the NHPA and has appropriately identified historic properties within the Area of Potential Effect (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, as further described in the draft EA, Section 3.5, Cultural Resources.

The agencies have also determined that information about the nature and location of these resources is protected under Section 304 of the National Historic Preservation Act, 54 U.S.C. § 307103 because disclosure may cause a significant invasion of Tribal privacy, risk harm to the historic properties, or impede the use of traditional religious sites by practitioners. In accordance with Section 304 of the National Historic Preservation Act, the FAA consulted with the Keeper of the National Register and the Keeper agreed with the agency's decision to withhold the locational and historic information regarding historic properties located within the APE and on Tribal trust lands.

Further, information regarding the nature and location of any archaeological resources located on lands that the United States holds in trust for the Navajo Nation is protected from disclosure by the Archaeological Resources Protection Act, which requires the agencies to keep such information confidential under 16 U.S.C. § 470hh. Protection of locational and other information regarding park resources from public disclosure is also within the NPS's Organic Act authority to protect park resources. 54 U.S.C. §§ 100101, 100107.

5. **Concern Statement:** A commenter suggested that most of the 1,600 cultural resources at the Park identified in Attachment C have been damaged such that they no longer meet the National Register criteria and also expresses concern about how these resources were identified and included as historic properties.

   Agencies' Response: In Attachment C, List of Historic Properties in the APE and Description of Historic Characteristics, contained in the finding of effect letter dated December 28, 2023, identified 39 historic properties within the APE for which feeling and setting are characteristics that make the properties eligible for listing on the National Register. 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 the finding of effect 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 1,600 archeological resources.

   While archaeological sites have been evaluated for listing on the National Register, and the vast majority of them still demonstrate their significance under Criteria A and/or D, no further in-depth assessment of effects were done for the purpose of this undertaking.

6. **Concern Statement:** A commenter states that "creation of Prohibited Airspace in the CACH ATMP above TCPs cannot be based on undefinable cultural landscapes of vague social and religious significance", stating that the National Register criteria make no mention of viewsheds contributing to a historic property's intrinsic values.

   Agencies' Response: NPATMA directs the FAA and the NPS to establish an air tour management plan or voluntary agreement for commercial air tours over certain national parks or Tribal lands. An air tour management plan may "prohibit commercial air tour operations over a national park in whole or in part." 49 U.S.C. § 40128 (b)(3)(A). However, flights other than commercial air tours are not regulated by NPATMA and therefore are not prohibited from utilizing the airspace within the ATMP boundary. The authority for any controls of commercial air tour operations airspace within the ATMP boundary stems from NPATMA, not the National Historic Preservation Act. The operational parameters set forth in the ATMP were based on information received from the Navajo Nation that supports the agencies cultural resource obligations under various authorities. Information received from the Navajo people and Tribal government state that air tours intrude on the Diné religious and cultural activities and could interrupt and diminish both the tangible and intangible associations the Diné experience during use of their TCPs, the protection of which is a significant Park purpose. Because the Park is located entirely on the Navajo Nation's Tribal trust lands, the agencies relied heavily on the input received from the chapters, the President of the Navajo Nation, and representatives from departments in the Executive Branch. See also, ATMP, Section 5.0 Justification. In his letter President Nygren stated that he "supports the position of the Navajo people (approximately 600 individuals that live in and around the monument) for a Canyon de Chelly Air Tour Management Plan that does not allow any air tours over these sacred lands." Because continuing cultural connections to the Park and relationships are fundamental values of the Park and are significant to the Park's purpose, the NPS determined that air tours and their resultant interference with Tribal connections to the land and Tribal privacy are inconsistent with the Park's purpose and values for which it was established. The NPS has determined that commercial air tours are causing significant adverse impacts on the Park's cultural resources and on Tribal lands. See also Concern Statement #32 below.

7. **Concern Statement:** A commenter suggested that the canyon is managed as a recreation area and therefore, that sacredness and privacy are not an issue. The commenter suggests that the presence of cars and tour buses within the canyon causes more noise than air tours and thus causes impacts on privacy and sacred sites. A commenter suggested that air tours cause less intrusion into privacy than bus tours and visitors on the ground within the Park.

   Agencies' Response: The purpose of the Park, as stated in its Foundation Document, is 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 ancestrally connected to these landscapes. Although the recreational activities do occur within the Park, the Park is not managed as a recreation area.

The commenter is incorrect that sacredness and privacy are not an issue for the Park. The Park is located entirely on the Navajo Nation's Tribal trust lands and the Park is occupied by Navajo families who farm and have livestock operations within the canyons, carrying on their traditional practices. Approximately 80 Navajo families live in and around the monument or over six hundred individuals live in the canyon community. This community is one of the longest, continually inhabited Native American communities in the United States. The Park has sacred cultural and spiritual value for the Navajo people.

Impacts from motor vehicles on privacy or Tribal resources are not regulated under NPATMA. Noise impacts from other sources do not lessen the impacts of air tours on these resources. However, the agencies note that the NPS prohibits visitors from entering the canyons of Canyon de Chelly National Monument unless accompanied by NPS employees or by authorized guides. 36 CFR § 7.19. To be an authorized guide, a tour operator must be authorized to operate within the canyon by the Navajo Nation. The NPS and Navajo Nation could choose to further regulate motor vehicles within the Park in the future if impacts warrant action.

8. **Concern Statement:** Commenters expressed opposition to continued air tour operations because of the impacts air tours have on sacred sites, ancestral lands, and cultural practices, citing the need to preserve the tranquility of the canyon for future generations.

   Agencies' Response: The draft ATMP prohibits commercial air tours within the area that the agencies have the authority to regulate under NPATMA.

9. **Concern Statement:** A commenter suggests that the agencies presented a false and misleading Request for Concurrence in the finding of effects letter under Section 106 of the NHPA. The commentor claims that the agencies did not seek input from all levels of the Navajo Nation government and grassroot groups in making the finding of effect.

   Agencies' Response: The purpose of the Section 106 process is to allow federal agencies to take into account the effects of undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) the opportunity to comment on such undertakings. The agencies complied with the Section 106 process as laid out in 36 CFR Part 800. The agencies held an initial public comment period and consulted with the air tour operators during the NHPA Section 106 consultation process (See Appendix G to

the Final EA). In accordance with 36 CFR § 800.5 the FAA requested consulting party concurrence to the proposed finding of no adverse effect for the undertaking. Throughout the Section 106 process, the agencies consulted with the Navajo Nation and 23 other Tribal nations, and none expressed opposition to selecting the undertaking, prohibiting air tours over the ATMP planning area. Refer to Appendix G of the Final EA for additional information. In addition, there was public involvement pursuant to both NEPA and the NPATMA processes. The agencies held a public comment period and two public meetings for the Draft ATMP (under NPATMA) and Draft EA (under NEPA). The agencies also separately consulted with NPOAG on the Draft ATMP. All comment periods and public meetings were noticed in the Federal Register. The agencies properly reviewed and considered all comments received.

Adverse Impacts: Soundscape Impacts

10. **Concern Statement:** A commenter suggests that noise data analyzed in the EA are not appropriate because they are outdated, based on outdated inputs and inaccurate data including outdated routes, and use incorrect assumptions regarding noise outputs of aircraft that actually fly over the Park. A commenter also stated that the Section 808 of NPATMA does not allow use of modeling technology, such as the FAA's Aviation Environmental Design Tool (AEDT). The commenter states that FAA Memorandum, June 13, 2018 titled Noise Screening Assessments, supports this argument.

    Agencies' Response: The Volpe Center conducted an acoustic monitoring study to characterize the natural and existing ambient conditions in 2004 and 2010 (Lee and MacDonald, 2016). Five sampling locations were selected for long-term acoustical monitoring and were selected to represent the range of habitats and visitor uses typical of the Park and sufficient to document existing ambient conditions. Ambient conditions are influenced by vegetation (land cover) and human activity in a particular area. Unless the vegetation cover and visitor use in an area change substantially, and no such change has occurred, the acoustic data collected are not outdated and are considered appropriate. The Lee and MacDonald report is reliable and the best available information for the natural ambient condition of the environment. Agencies are not required to undertake new scientific or technical analysis when existing information is available. See 40 CFR § 1502.23.

    Section 808 of NPATMA requires 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." The agencies' assessments of air tour noise within the ATMP planning area were based on reasonable scientific methods. AEDT is the FAA-approved computer program for modeling noise, as listed under Appendix A of FAA's Part 150 Airport Noise Compatibility Planning (14 CFR § A150.103(a)) and was used to model air tour noise for the Draft ATMP and Draft EA.

Further, the FAA Memorandum referenced above states that AEDT is the currently approved model for FAA actions subject to NEPA. Modeling inputs, including route and aircraft information, were provided by the existing commercial air tour operator. The modeling inputs are not outdated because detailed current information regarding the aircraft source, operational, and flight route information, terrain, atmospheric absorption, etc., was used to compute various noise metrics for aircraft noise emissions that can be used to assess the potential noise impacts of air tours on the acoustic environment of the Park. Therefore, the assessments of air tour noise within the ATMP boundary were based on reasonable scientific methods.

Contours of several noise metrics were mapped for the ATMP planning area. Additional information about noise modeling can be found in Appendix F of the EA, *Noise, Air Quality, and Greenhouse Gas Emissions Technical Analysis,* June 2023.

As to the comment regarding the accuracy of the route information relied on by the agencies, see Response to Concern Statement #3.

11. **Concern Statement:** One commenter contended that the Canyon de Chelly National Monument: Baseline Ambient Sound levels 2004 and 2010, DOT/FAA/ AEE/2016-13 report is not publicly available.

    Agencies' Response: The report used for the noise modeling was available and provided upon request when the EA was released. It has since been made publicly available at this link: DataStore - Canyon de Chelly National Monument Baseline Ambient Sound Levels 2004 and 2010 (nps.gov).

12. **Concern Statement:** A commenter states that the FAA analysis suggests that air tours make no objectionable noise at the Park and that if air tours have to fly the perimeter of the Park, noise impacts at the bottom of the canyon would be greater than under current operations. A commenter suggests that worst-case scenarios would only occur over small areas for only a few minutes per day and are thus not a burden and only a small component of man-made noise at the Park.

    Agencies' Response: The agencies considered the cumulative impact of noise in Section 3.2.2 of the EA, Environmental Consequences for Noise and Noise-Compatible Land Use. The noise analysis demonstrates that there are minimal differences in noise impacts between the no action (Alternative 1) and action alternative (Alternative 2). Those differences were small and not the primary justification for the agencies' decision to select Alternative 2 (Preferred Alternative). As noted in the Noise Technical Report, air tours flying above 5,000 ft AGL would result in noise within the ATMP planning area, however compared to current conditions, noise would be spread over a larger geospatial area and would be audible for a longer period but at lower intensity. (See Appendix F to the Final EA). Without specific information from the commenter regarding

routes and altitudes of air tour aircraft flying outside the perimeter of the ATMP boundary, the acoustic impacts cannot be modeled. Consistent with the CEQ regulations (See 40 CFR § 1502.21), the agencies disclosed that specific air tour routes, altitudes, and numbers of tours were not available with enough specificity to assess noise and other potential indirect and cumulative impacts associated with reducing or eliminating air tours within the ATMP planning area.

13. **Concern Statement:** A commenter suggests that adverse noise impacts have not been noted even though aircraft have flown over the Park for nearly 50 years.

    Agencies' Response: The NPS does not maintain a file of complaints and are unable to verify whether complaints have been received prior to the start of the planning process for the ATMP. However, the Navajo Nation President, Five Chapter Houses that cover the Park, and Tribal members have stated that overflights, including commercial air tours, are disruptive and limit their ability to engage freely in religious and cultural activities in the Park.

Adverse Impacts: Equity

14. **Concern Statement:** Commenters expressed concern that air tours would benefit a very small group of visitors and air tour operators instead of benefiting the members of the Navajo Nation including canyon residents.

    Agencies' Response: The ATMP would prohibit air tours within the ATMP planning area, largely addressing the commenters' concerns.

15. **Concern Statement:** A commenter suggests that the agencies discriminate against the air tour industry. The commenter contends that charter flights would be allowed to fly over the Park at altitudes for which air tour operators are not simply because of the type of business.

    Agencies' Response: Under the National Parks Air Tour Management Act, air tour management plans only apply to commercial air tours conducted over national parks (and adjacent lands within ½ mile of the park boundary). It does not include flights conducted for other purposes (e.g. charter flights, commercial jets or military overflights) nor does it apply to air tours conducted over lands that are greater than ½ mile from the Park boundary or public lands managed by agencies other than the NPS.

Adverse Impacts: Viewsheds

16. **Concern Statement:** A commenter suggests that the FAA's analysis indicates air tour operations would have minimal impacts on viewsheds as air tour aircraft are only visible in limited areas for short durations within the Park. A commenter suggests that visual impacts of overflights are difficult to identify because visitors primarily notice aircraft

from the accompanying noise rather than sight. The short duration and low number of flights and position in the scene as viewed from most locations make it unlikely the typical visitor will notice or be visually distracted by aircraft.

Agencies' Response: The agencies did not rely solely on noise or viewshed impacts in developing the preferred alternative. The agencies considered and relied on information provided by the Navajo Nation President, Five Chapter Houses that cover the Park, and Tribal members in determining the impacts of air tours. As described in Section 2.2.1, Air Tours within the ATMP Planning Area, the presence of existing low-altitude overflights over the Park, including commercial air tours, unreasonably interferes with Tribal connections to the sacred landscape of the Park. Air tours over the Park intrude on the privacy of the Navajo as they carry out ceremonies and sacred practices on Tribal lands, the protection of which is a primary purpose of the Park, including the Park's Fundamental Resources and Values. See Canyon De Chelly Foundation Document, 2016.

Impact Analysis

17. **Concern Statement:** One commenter noted that it is unlikely the Navajo Nation residents benefit economically from air tours but would be impacted from the noise overhead. Another commenter noted that the agencies failed to acknowledge the enormous economic benefits that air tours bring to the communities. The same commenter noted that the agencies assume that the Navajo Nation's desire for no air tours will remain static.

    Agencies' Response: Commenters did not provide specific supporting references. Refer to the agencies' analysis in Section 3.7 of the EA. The socioeconomic section acknowledges the air tour industry's contributions to the regional economy. As stated in Section 3.7.1 of the EA, Employment supported by the air tour industry provides income to workers and indirectly provides revenue to local businesses as a result of employee and operator spending.

    The agencies acknowledge that the Navajo Nation may choose to participate in the air tour industry at a future date. This possibility is expressly mentioned in the letter from the President of the Navajo Nation President, Dr. Buu Nygren, who stated that he supports the position of the people of the Navajo Nation for an Air Tour Management Plan for Canyon de Chelly that does not allow any air tours over these sacred lands, but noted that this position is based on the understanding that if the community desired overflights in the future, any changes to the air tour management plan of this nature would require an amendment under are Section 8.0 of the ATMP. The NPS's determination regarding the significant adverse impacts of air tours was based on input received from Chinle, Tsaile-Wheatfields, Nazlini, Lukachukai, and Sawmill Navajo Chapters, which represent the Diné people that live in and around the Park, Navajo

Nation Departments and Divisions, and Tribal members. If, based on information received in the future, the NPS found that there were no longer significant adverse impacts from air tours, the ATMP could be amended to allow commercial air tours within the ATMP planning area. Such amendment would need to comply with all applicable laws, including Section 106 of the NHPA and NEPA.

18. **Concern Statement:** One commenter noted that agencies incorrectly disclose "potential impacts" under NEPA. The commenter suggests that NPATMA does not allow for the development of an ATMP on the basis of "potential" adverse impacts, nor can the agency manage for "potential impacts" under NPATMA, but rather with real, existing, measurable deductive-based allegations of significant adverse impacts that can be proven to occur in present time.

    Agencies' Response: The agencies' disclosure of potential impacts in the Final EA is consistent with NEPA and the requirements under NPATMA. Under NEPA, agencies must disclose both direct and indirect effects of their actions. Indirect effects are those that are reasonably foreseeable as a result of the action. 40 CFR § 1508.1. NPATMA does not exempt the agencies from their obligations under NEPA to disclose reasonably foreseeable indirect effects (i.e., potential effects).

19. **Concern Statement:** One commenter said that the EA did not disclose the impacts of the ATMP. The EA does not disclose that because the operator will be forced to fly just outside the Park and ½ mile boundary, the operator will need to fly at a lower altitude around the entire Park which will increase the noise coming into the Park. The commenter said the ATMP would increase noise in the Park by 260% because now the operator must circle the Park instead of fly through the Park.

    Agencies' Response: Information about air tour routes, including their altitudes of 800 to 1,000 ft. AGL, were provided by the existing commercial air tour operator. There is no requirement for the air tour operator to fly at any specific altitude outside of the ATMP planning area. The agencies cannot speculate as to tour routes or altitudes that operators may choose to fly, now or in the future, outside the ATMP planning area. The commenter did not submit, and the agencies do not have, data that supports the commenter's contention as to a noise increase resulting from the ATMP.

20. **Concern Statement:** One commenter noted that the conclusions in the ATMP for Arches National Park Categorical Exclusion Form conflicts with the conclusions in the EA for the Canyon de Chelly ATMP. Specifically, the commenter noted that in the Arches form, the agencies said that if there is no noise there is no or extremely limited visual effect. Here, the agencies do not make the same argument and suggest there are visual impacts despite acknowledging minimal or no noise impacts. The same commenter suggested that air tours over Canyon de Chelly do not have any more significant impacts that they do at Arches National Park, Canyonlands National Park, Rainbow Bridge National

Monument, Natural Bridges National Monument, Glen Canyon National Recreation Area, Lake Mead National Recreation Area and Bryce Canyon National Park and air tours there were categorically excluded from NEPA review and allowed to continue.

Agencies' Response: The agencies acknowledge that they analyzed the existing condition of air tours over each park and appropriately applied a categorical exclusion for the ATMPs for Arches, Canyonlands, Natural Bridges, and Bryce Canyon. However, the fact that a categorical exclusion was appropriately applied for some ATMPs, does not mean that a categorical exclusion could be applied for the Canyon de Chelly ATMP. The Park is located entirely on lands held in trust by the United States for the Navajo Nation. It is a physical and spiritual home for the Navajo people that sustains the families who live in the canyons as well as a sacred place connecting all Navajo to their cultural heritage and belief. The EA assessed the impacts of air tours on Canyon de Chelly based on the unique circumstances of Canyon de Chelly and Tribal input.

Tribal Privacy

21. **Concern Statement:** One commenter argued that FAA's finding about privacy in the EA are not consistent with the FAA regulations. Specifically, the commenter stated that FAA's minimum altitude required over congested populations is 1000 Ft. AGL and ensures protection of privacy. The commenter suggests that current air tours over the Park are protective of the privacy of the Navajo Nation people at current AGL.

    Agencies' Response: The FAA does not have a standardized definition for a congested area. This designation is made on a case-by-case basis in order to balance pilot interests with the need to protect persons and property, which has been the purpose of the minimum safe altitudes set forth in 14 C.F.R. 91.119, Minimum Safe Altitudes, since its inception. The purpose of these minimum altitudes is safety, not privacy, and are more likely to be triggered in a "congested area of a city, town, or settlement, or over any open air assembly of persons." 14 C.F.R. 91.119(b). Conversely, the purpose of the prohibition of flights over the Park is not safety but the privacy of the Navajo people. The findings in the EA as to the significant adverse impacts on Tribal lands due to intrusions on the privacy of the Navajo people were made by the NPS and were based on Tribal input receive from the Tsaile/Wheatfields, Lukachukai, Nazlini, Chinle, and Sawmill Navajo Chapters, the Navajo Nation's President and Tribal members.

    The commenter's supposition regarding the privacy impacts to the Navajo is not consistent with the Tribal input received during Government-to-Government consultation. Nor are the privacy interests of Tribal members conducting traditional religious practices at sacred sites or practicing their traditional lifeways within the Park comparable to the privacy interests of the general population in a congested area. The Diné reside within the Park, and continually practice their traditional and contemporary

lifeways within the Park. Based on the information received during Government-to-Government consultation, air tour patrons' observation of Tribal members as they carry out traditional activities, such as farming and other daily activities around their residences and religious ceremonies, invades the privacy of those carrying out these activities and diminishes the connections to the sacred landscape. The NPS's finding is also consistent with the American Indian Religious Freedom Act that sets U.S. policy to preserve and protect Tribal freedom to worship through ceremonials and traditional rites. 42 U.S.C. § 1996.

Intrusions on the privacy of the Navajo people on Tribal lands were not analyzed under Sec. 106 of the NHPA. The NPS analyzed privacy concerns through Government -to-Government consultation with the Navajo Nation, a cooperating agency under NEPA, specifically the Navajo Nation, President, Divisions and Departments within the Executive Branch, and local Chapters and Tribal members, including people who live in and around the canyon.

22. **Concern Statement:** One commenter noted that vehicle viewpoints and other activities that occur along the canyon rim intrude more into Tribal privacy that air tours. Ceremonies could be viewed from these areas, but ceremonies are not viewed from air tours. The same commenter asserted that the EA failed to disclose that the ATMP will result in more of an invasion of Tribal privacy because the operator will fly along the perimeter of the Park at a lower altitude under the ATMP versus flying higher and in a line under current condition.

Agencies' Response: The agencies considered the intrusions on the privacy of the Navajo people on Tribal lands based on information received from Navajo Nation Departments and Divisions, Chapters that represent the people that live in and around the canyon, and Tribal members. The agencies disagree with the commenter's assertion that the privacy of the Navajo people will be more impacted by flights around the Park's perimeter. And the commenter's assertion that flights outside the ATMP planning area will occur at lower altitudes than under current conditions, does not appear consistent with the route and altitude information provided to the agencies by the operator. According to information provided by the operator, the current operator flies routes at 800- 1,000 ft AGL over the canyon on routes that follow the contours of the canyon. Compared to current conditions as reported by the operator, impacts on the privacy of the Navajo people will be reduced under Alternative 2 because the ceremonies and cultural life take place within the canyon, out of the view of perimeter flights. Though the agencies are unable to model the impacts of air tours outside the ATMP planning area due to uncertainty as to where the operator(s) may choose to fly, the visual and sound impacts in the Park will be reduced compared to flights over the canyon inside the ATMP planning area.

23. Concern Statement: One commenter noted that the agencies conflate cultural resources with Tribal Privacy in the ATMP.

Agencies' Response: Revisions were made to the ATMP to make clear that the NPS determined that air tours cause significant adverse impacts under NPATMA on the Park's intangible and tangible cultural resources and that air tours also cause significant adverse impacts on Tribal lands. However, because the Navajo people's connection to the lands and continued traditional practices on the lands are themselves cultural resources that can be impacted by a sense of loss of privacy, impacts on Tribal lands and cultural resources are separate concepts under NPATMA. They are also linked with respect to the impacts of commercial air tours over the Park due to the intrusion of the privacy of the Navajo people, which affects both the Park's cultural resources and Tribal lands.

Deficiencies in the ATMP Justification

24. Concern Statement: In the ATMP justification, the NPS misinterprets the definition of cultural resources found in page 157 of its 2006 Management Policies. The commenter contends that definition of cultural resources in NPS policy does not include cultural practices or values. The commenter also noted that Chapter 1 NPS-28 Cultural Resource Management Guidance makes clear it must have physical substance.

Agencies' Response: The commenter misinterprets the NPS Management Policies and the NPS's Cultural Resource Management Guidelines. The NPS's 2006 Management Policies, p. 157, defines the term "cultural resource" as "an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about a culture" and states that "[a] cultural resource may be a tangible entity or a cultural practice." The definition also states that a cultural resource can be ethnographic resources which, also defined on p.157, are: "objects and places, including sites, structures, landscapes, and natural resources, with traditional cultural meaning and value to associated peoples. Research and consultation with associated people identifies and explains the places and things they find culturally meaningful." The TCPs identified in the EA are classified as ethnographic resources and both NPS and FAA conducted consultation with the Navajo Nation and other Tribes to identify the places and things that represented cultural practices or values.

The NPS's Management Policies further state that the NPS "will adopt a comprehensive approach towards appreciating the diverse human heritage and associated resources that characterize the national park system" and that it "will identify the present-day peoples whose cultural practices and identities were, and often still are, closely associated with each park's cultural and natural resources." Management Policies, p. 71.

The NPS's 2006 Management Policies are level 1 guidance. Director's Order 28 and NPS-28: Cultural Resource Management Guideline should be interpreted to be consistent with NPS's Management Policies. The Cultural Resource Management Guidelines acknowledges that much of its discussion on the physical aspects of cultural resources. However, it explains that "cultural resource management extends beyond concern with tangible resources to recognition and accommodation of cultural processes." Chapter 1.A..2.

Further, both the NPS Management Policies and the cultural resource guidelines address TCPs, which are defined by Management Policies as properties "associated with the cultural practices, beliefs, the sense of purpose, or existence of a living community that is rooted in that community's history or is important in maintaining its cultural identity and development." Management Policies at 159. As explained by the Management Policies, the properties themselves may be tangible, but it is the intangible connections to the properties that make the property significant.

The NPS Foundation document for Canyon de Chelly includes intangible resources such as cultural continuity and relationships in its statement of significance and identifies intangible elements of resources as some of the fundamental resources and values essential to achieving the purpose of the Park and maintaining its significance, including cultural landscapes, continuing cultural connections, experience of place, and partnerships and relationships.

25. **Concern Statement:** One commenter noted that because the Justification in the ATMP does not offer evidence of noise and/or visual presence or reference to significant adverse impacts in the draft EA, the agencies cannot develop an ATMP that unnecessarily restricts them. This commenter noted that intangible cultural elements are not eligible cultural resources protected under NPATMA.

    Agencies' Response: The EA and ATMP have been revised to clarify that the NPS found that the that commercial air tours are causing significant adverse impacts under NPATMA on the Park's cultural resources and on Tribal lands and that the provisions in the ATMP are designed to mitigate or prevent significant adverse impacts to the Park's cultural resources and on Tribal lands, both due to the intrusion on the privacy of the Navajo people on Tribal lands. The cultural resource impacts specifically relate to TCPs and the intrusion upon the performance of ceremonies, rituals, prayers, and other traditional practices that take place at those locations. They concern the deterioration of attributes that contribute to a TCP's significance as a cultural resource. During the performance of ceremonies, rituals, prayers and other traditional practices, the invasion of privacy can create an aversion to perform ceremonies, rituals, prayers and traditional practices under observation. This can lead to a deterioration of the link between the

resource and the communities that value it, thus impacting the association that creates the cultural resource's significance.

As to the commenters' concern that intangible cultural resources are not protected, the agencies disagree. NPATMA specifically uses the term "cultural resources," an NPS term defined by its Management Policies to include intangible resources. Congress could have chosen to restrict the cultural resources protected by NPATMA to only tangible resources but did not do so. Moreover, NPATMA is also concerned with protecting visitor experience, which is also intangible.

26. **Concern Statement:** One commenter noted that the ATMP does not conform with the purpose of the Act. The purpose requires that mitigations be acceptable, which implies that air tour operators have some input into the acceptability of a mitigation.

    Agencies' Response: NPATMA does not require that the operator agree that measures included in an ATMP to mitigate or prevent the significant adverse impacts of commercial air tours are acceptable to the operator(s). NPATMA does not require that the operators agree to or accept the conditions in an ATMP. In this context, the use of the term "acceptable" means acceptable to both the NPS and the FAA.

Process Comments: Alternatives Considered

27. **Concern Statement:** A commenter suggested that the agencies misrepresented the position that the Navajo Nation leaders are in favor of ending air tours over the Park.

    Agencies' Response: The agencies conducted extensive government-to-government consultation with the Navajo Nation (specifically the Navajo Nation President, Divisions and Departments within the Executive Branch, and local Chapters and Tribal members) beginning in March 2021. The Chinle, Tsaile-Wheatfields, Nazlini, Lukachukai, and Sawmill Navajo Chapters, which represent the Diné people that live in and around the Park, passed Resolutions that support an alternative that would not allow air tours over the Park. The Chapters noted that overflights disturb residential areas, farmers and ranchers, domesticated animals, and wildlife, including endangered species; impact the serenity, peaceful enjoyment, and visitor experience of the natural soundscape; and produce safety and privacy concerns. The Navajo Nation President, Dr. Buu Nygren, sent a letter to the agencies forwarding the Chapters' Resolutions. In his letter President Nygren stated that he "supports the position of the Navajo people (approximately 600 individuals that live in and around the monument) for a Canyon de Chelly Air Tour Management Plan that does not allow any air tours over these sacred lands." The agencies presented tribes the number of commercial air tours, their routes and altitudes during consultation and the Tribal feedback determined commercial air tour operations were a significant impact on Tribal privacy.

The agencies also hosted a public meeting at the Chinle Chapter House to collect comments on the Draft ATMP and Draft EA from the Navajo people who live within and around the Park. During that meeting the overwhelming majority of comments were opposed to air tours over the Park. Because the Park is located entirely on the Navajo Nation's Tribal trust lands, the agencies relied heavily on the input received from the Chapters, the President of the Navajo Nation, and representatives from Departments in the Executive Branch. Refer to Appendix I of the EA for additional information.

28. **Concern Statement:** Commenters suggest that the agencies should retain and expand air tours at an altitude of 1,000 feet. A commenter suggests that the agencies did not present alternatives in the environmental assessment.

    Agencies' Response: Under current conditions, the one air tour operator that provides air tours over the Park reported using five routes ranging in altitudes from 800 to 1,000 feet above ground level. The agencies considered but eliminated alternatives that would allow commercial air tours within the ATMP planning area, including air tours at any altitude, at existing or reduced levels because the NPS determined under NPATMA that the air tours cause significant adverse impacts on the Park's cultural resources and on Tribal lands. The NPS made this determination based on the information and input provided by the five Navajo Nation Chapters that represent the Diné people living in and around the ATMP planning area (Chinle, Tsaile-Wheatfields, Nazlini, Lukachukai, and Sawmill Navajo Chapters), representatives from Departments in the Navajo Nation Executive Branch, and the President of the Navajo Nation regarding the impacts of air tours on Tribal privacy, Tribal sacred sites, and ceremonial areas. These other alternatives were also eliminated because they do not meet the purpose and need for the ATMP.

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

    Agencies' Response: As described in Section 2.4 of the EA, Alternative 1 (No Action Alternative), the No Action alternative does not meet the purpose and need for the ATMP. Under NPATMA, the agencies have the discretion to choose between whether to pursue an ATMP or voluntary agreement for a given park. The five Navajo Nation Chapters that represent the Navajo people that live in and around the Park have passed Resolutions opposing air tours over the Park and the Navajo Nation's President supports their position. These Resolutions indicate that air tours interfere with the Diné use of their lands and impact their privacy in carrying out traditional activities and religious ceremonies. Based on the above information, allowing commercial air tours within the ATMP planning area is inconsistent with the Park's purpose and values, which include perpetuating traditional Tribal cultural connections to the Park's landscapes. The NPS found under the Act that commercial air tours are causing significant adverse impacts

on the Park's cultural resources and Tribal lands. For these reasons, in consideration of the United States' unique trust obligations to the Navajo Nation, and because the NPS found that air tours caused significant adverse impacts on the Park's cultural resources and Tribal land, the agencies have considered but eliminated action alternatives that would allow air tours within the ATMP planning area and identified as their preferred alternative an alternative that would prohibit air tours within the ATMP planning area, which could not be done through a voluntary agreement.

Process Comments: Other

30. **Concern Statement:** Commenters suggest that the process was flawed and did not properly consider input from the public including air tour operators or the public.

    Agencies' Response: The agencies held an initial public comment period and consulted with the air tour operators during the NHPA Section 106 consultation process (See Appendix G to the Final EA). The agencies also held an additional public comment period and two public meetings for the Draft ATMP and Draft EA, and also separately consulted with NPOAG on the Draft ATMP. All comment periods and public meetings were noticed in the Federal Register. The agencies properly reviewed and considered all comments received. This Comment Response Report along with the Final EA, Finding of No Significant Impact and Record of Decision reflect the agencies' consideration of the comments.

Comments on the Agencies' Authority

31. **Concern Statement:** One commenter stated the agencies did not have the authority to establish an ATMP for Canyon de Chelly because the NPS did not meet the requirement for a withdrawal of Park's exemption from the Act's requirement to prepare an ATMP or voluntary agreement. The commenter asserted that the NPS's withdrawal of the Park's exemption was not based on protection of cultural resources because lifeways of past and present cultures connected to the landscape are not cultural resources.

    Agencies' Response: NPATMA provides the agencies the authority to establish an ATMP. The NPS withdrew Canyon de Chelly's exemption from NPATMA's requirement to prepare an ATMP or voluntary agreement in 2017. In its letter withdrawing the exemption, the NPS noted that Canyon de Chelly preserves one of the longest, continually inhabited Native American communities in the United States, spanning at least 5,000 years, and that the Park was then home to approximately 80 families. See Appendix J to the Draft EA. The NPS further noted that the Park preserves resources of sacred significance and perpetuates lifeways of past and present cultures connected to these landscapes. In light of the considerations identified in the withdrawal letter, the

NPS determined that an ATMP or voluntary agreement was necessary to protect the natural and cultural resources, visitor experiences, and Tribal lands of this unique park.

The commenter's assertion that withdrawal of the Park's exemption was not based on the protection of cultural resources is incorrect. The cultural resources that the NPS preserves under its Organic Act, and referred to in NPATMA, are broader than "historic properties" under the National Historic Preservation Act. As defined in NPS Management Policies (2006), a cultural resource is "an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about the culture." It may be tangible or may be a cultural practice or connection to a landscape. Tangible cultural resources in the Park include archeological sites, sacred sites, ancestral sites, cultural landscapes, and TCPs, all of which include the natural resources within them. Intangible cultural resources include the cultural connections that the Navajo people have to these lands, including carrying out traditional cultural practices and ceremonies within the Park. The tangible and intangible aspects of the Park's cultural resources are an integral component of contemporary Tribal culture and provide a context for ongoing traditional practices.

Under NPATMA, the NPS is required to withdraw a park's exemption if it determines that an air tour management plan or voluntary agreement is necessary to protect natural and cultural resources, visitor experiences, and Tribal lands. 49 U.S.C. § 40128(a)(5)(B). Because the NPS made these determinations with respect to Canyon de Chelly, its withdrawal of Canyon de Chelly's exemption was in accordance with, and indeed required by, NPATMA. NPATMA does not require the NPS to complete sound studies prior to withdrawing a park's exemption under 49 U.S.C. § 40128(a)(5)(B); rather, under NPATMA, this determination is made by the NPS based on its management expertise regarding the protection of natural and cultural resources, visitor experiences, and Tribal lands.

Although the NPS withdrew the exemption for Canyon de Chelly in 2017, reported air tours from 2017 to 2023 indicate that the average level of impacts on the Park have been similar to the 2017-2019 average.

	Aircraft Type (all fixed wing)	2017 Reported Tours	2018 Reported Tours	2019 Reported Tours	2020 Reported Tours	2021* Reported Tours	2022* Reported Tours	2023* Reported Tours	Average Number of Reported Air Tours (2017-2019)	Interim Operating Authority (IOA)
Southwest Safaris	Cessna 182 Cessna T207A	38	30	62	34	36	4	82	43	147
Air Grand Canyon, Inc	Unknown	0	0	0	0	0	0	0	0	9
American Aviation	Cessna 172-N, Cessna 206, Cessna 207-T207A	0	0	0	0	0	0	0	0	14
Grand Canyon Airlines, Inc.	Cessna 208B, de Havilland DHC-6 300	0	0	0	0	0	0	0	0	5
TOTAL		38	30	62	34	36	4	82	43	175

Source: 2013-2019 2020 Annual Reports, "Reporting Information for Commercial Air Tour Operations over Units of the National Park System". See: https://www.nps.gov/subjects/sound/airtours.htm.

* Based on unpublished reporting data

32. Concern Statement: One commenter argued that NPS improperly construed its Organic Act, which refers to natural and historic objects, and subsequent statutes to extend protection of cultural values and Native American practices. The commenter further stated that the agencies inappropriately applied the National Register Criteria for Evaluation to the Park's cultural resources and that the resources are not eligible under those criteria, which do not include cultural landscapes or outdoor spaces designed for meditation or contemplation, do not mention viewsheds as contributing to a historic property's intrinsic values, and attach "no vertical column of airspace to any historic property."

Agencies' Response: The commenter has adopted an inappropriately narrow reading of the NPS' Organic Act which, as originally enacted in 1916, required the NPS not only to conserve natural and historic objects but to provide for their enjoyment by such means as will leave them unimpaired for future generations. Subsequent amendments to the

NPS Organic Act require that the NPS's authorization of activities and management of National Park System units not be exercised in derogation of the values and purpose for which the System units were established, 54 U.S.C. § 100101(b), and recognize the NPS's responsibility for the protection of cultural resources. See e.g., 54 U.S.C § 100701. And legislation enacted after the 1916 NPS Organic Act has informed the NPS's understanding of its conservation responsibilities under the Act, including the Historic Sites Act, the American Indian Religious Freedom Act, and Section 110 of the National Historic Preservation Act. In particular, Section 110 of the NHPA requires the NPS to, consistent with its conservation mission, carry out agency programs and projects in accordance with the purposes of the NHPA, which include administering "federally owned, administered, or controlled historic property in the spirit of stewardship for the inspiration and benefit of future generations." See 54 U.S.C. §§ 300101, 306105.

The agencies identified properties eligible for or listed in the National Register of Historic Places and the NPS considered the significance of adverse impacts to those properties as a result of commercial air tours, consistent with 36 C.F.R. § 60.4 and relevant National Register Program guidance. The National Register of Historic Places contains a wide range of historic property types, reflecting the diversity of the nation's history and culture. The National Historic Preservation Act expressly provides 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." 54 U.S.C. § 302706. Also under 36 CFR § 800.4(c)(1), the agencies were required to: "acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them."

National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation (1997) provides guidance as to how to apply the National Register Criteria for Evaluation. National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Places (2002) provides guidelines for evaluating and documenting TCPs consistent with 36 C.F.R. § 60.4 and Bulletin 15. It explains that "[o]ne kind of cultural significance a property may possess, and that may make it eligible for inclusion in the Register, is traditional cultural significance." Bulletin 38 provides examples of properties that have traditional cultural significance, which include: "location[s] associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world"; "location[s] where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice"; and "location[s] where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historical identity." Bulletin 38 also states: "Tangible places and their intangible aspects must be considered together."

Understanding the direct and indirect effects on air tours to traditional landscapes is not just to consider the tangible cultural resources present on the ground as isolated features, but also to how and when traditionally associated people use, interact, feel, and associate to those traditional cultural landscapes.

The entirety of Canyon de Chelly National Monument was listed on the National Register of Historic Places (NRHP) as a historic district in 1970. The Monument was later included in the Navajo Nation Register of Historic Properties following the enactment of the Navajo Nation Cultural Resources Protection Act in 1988 by the Navajo Nation. As a historic district, Canyon de Chelly National Monument contains a significant concentration of contributing historic properties including National Register eligible TCPs. The TCPs recognized by the NPS under the ATMP are all currently listed as historic properties on the Navajo Nation Register and can be classified as "sites" under the NHPA. Each of these TCPs are eligible for listing on the National Register because they are associated with cultural practices and beliefs of living Navajo and/or Pueblo communities and are important in maintaining the cultural identity of those communities. Under the NHPA, these TCPs are significant through Criterion A: Association with Important Events and/or Criterion B: Association with an Important Person. The TCPs eligible for listing on the National Register continue to function sites for important cultural, traditional and religious practices. Each TCP conveys its significance through multiple recognized qualities, including location, setting, feeling, and association. The traditional cultural events, beliefs, observances, and activities shared within Navajo and Pueblo communities are inextricably tied to isolated physical features - and in some cases the relationships between those disparate physical features - identified as TCPs on the landscape. The impacts to these properties as a result of commercial air tours were appropriately considered by the NPS and within the NPS's authority to conserve park resources under its Organic Act, the NHPA, and other applicable laws and policies.

33. Concern Statement: One commenter stated the agencies did not have the authority to establish an ATMP for Canyon de Chelly.

Agencies' Response: The commenter's comment is based on a misreading of the Act. The Act requires the agencies to prepare an ATMP or voluntary agreement for Canyon de Chelly because the NPS withdrew its exemption from such requirement. See Response to Concern Statement #31. The agencies' obligation to establish an ATMP or voluntary agreement for the Park is not triggered by the result of a noise test. Indeed, NPATMA is concerned with mitigating or preventing the significant adverse impacts, if any, on the natural and cultural resources of national parks, the experiences of visitors to those parks, and on Tribal land, including intrusions on privacy on Tribal land. The impacts that may be mitigated are not limited to noise impacts. Here, because the

impacts concerned are on Park resources and Tribal lands, the NPS has determined whether the adverse impacts of commercial air tours are significant under NPATMA.

The agencies have revised the justification section of the ATMP to be clear that the terms and conditions in the ATMP are designed to mitigate or prevent significant adverse impacts to the Park's cultural resources and intrusions on the privacy of the Navajo people on Tribal lands. The justification section of the ATMP and the EA have been revised to state that the NPS found that the adverse impacts of commercial air tours on the Park's cultural resources and the privacy of the Navajo people on Tribal lands are significant under NPATMA and that prohibiting commercial air tours within the ATMP boundary/planning area is necessary to mitigate or prevent these significant adverse impacts.

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

Correspondence ID: 1, Project: 103419, Document: 135960

Received: Apr,05 2024 14:57:18

Correspondence Type: Web Form

Correspondence: I was born in Fort Defiance, AZ the same as everyone my age was probably born at. At that time my family resided in Chinle, AZ. Our family are descendants from the Long Walk of 1864. I have lived on the Navajo Reservation all my life have land in the canyon in which we do our farming. This is our private family business in which I do not agree with allowing anyone to utilize aircrafts of any sort to fly over and infringe on our privacy. If individuals are interested in taking a tour, there are tour guides available to provide. Taking a tour locally is very different than one flying over.

Additionally, there is NO GUARANTEE that my family will be safe from any fly overs.

Correspondence ID: 2, Project: 103419, Document: 135960

Received: Apr,05 2024 19:42:16

Correspondence Type: Web Form

Correspondence: I support the Canyon de Chelly draft ATMP for a number of reasons.
I had the pleasure of working on the Navajo Nation as an air-ambulance pilot for 7 years. Some of my time was spent based at the E91 Chinle airport.
I have explored the vast Navajo reservation by air, on land, by foot and by bicycle. I enjoyed interacting with the Navajo people as well as the unique scenery. I have hiked into Canyon de Chelly many times, admiring the ruins, cliffs and enjoying the peace and quiet along the way.

I encourage the creators of the draft ATMP to preserve and protect this special place by limiting the number of air tours allowed to operate in the area. Another concern would be the close proximity of the air tour area as it relates to the E91 airport. This could seriously impact the safety of the air-ambulance operations since the arrival and departure corridor is not far from the canyon.

More importantly than my comments here is for you to listen to and respect the wishes of the local Navajo Nation residents.This is their land and their traditional way of life that is impacted by air tours over the canyon. It is unlikely that they will benefit economically from air tours over the canyon yet they will be impacted from the noise overhead.

Thank you.
Paul

Correspondence ID: 3, Project: 103419, Document: 135960

Received: Apr,11 2024 14:43:06

Correspondence Type: Web Form

Correspondence: While I appreciate the desire to capture Canyon de Chelly's awe-inspiring appeal from every facet imaginable, I think we lose the heart of what she is if we cannot hear her heartbeat over helicopters. The Canyon is a spiritual center not to be disturbed with loud noises, flight patterns. It is a place to reflect on life, light, stillness. Please don't destroy this sacred space. Thank you so much for your time. This space has just always been very sacred to me.

Correspondence ID: 4, Project: 103419, Document: 135960

Received: Apr,16 2024 17:39:12

Correspondence Type: Web Form

Correspondence: As a resident of Canyon De Chelly, I am deeply concerned about the potential impacts that commercial air tours may have on our community and the cultural and natural resources within the Canyon De Chelly National Monument. The Draft Air Tour Management Plan (ATMP) and Draft Environmental Assessment (EA) being proposed by the National Park Service (NPS) and the Federal Aviation Administration (FAA) raise significant concerns about the potential disruption and harm that could come from increased air tour activity in our area.

The fact that the Park has typically received less than 50 air tours per year highlights the pristine and relatively undisturbed nature of our surroundings. The decision to withdraw the exemption and implement an ATMP in order to protect the cultural and natural resources of the Park, including the soundscapes and the Navajo community living within it, is a step in the right direction. However, we must ensure that any regulations put in place are comprehensive and effective in safeguarding our heritage and way of life.

Commercial air tours have the potential to not only impact the natural beauty of the Park but also disrupt the sacred sites, ancestral lands, and cultural practices that hold deep significance for the Navajo Nation. The protection of these resources must be a top priority in any decision-making process regarding air tour operations in the area.

I urge all residents of Canyon De Chelly, as well as tribal members, agencies, and interested parties, to actively participate in the public comment period and the upcoming public meetings to voice their concerns, suggestions, and input on the Draft ATMP and Draft EA. It is crucial that our voices are heard and that our concerns are taken into account in the decision-making process.

Together, we must work towards finding a balance that ensures the preservation of our cultural and natural heritage while also allowing for responsible and sustainable tourism activities in our beloved Canyon De Chelly National Monument.

Correspondence ID: 5, Project: 103419, Document: 135960

Received: Apr,18 2024 17:04:06

Correspondence Type: Web Form

Correspondence: I viewed the entire, well organized, well thought out FAA/NPS virtual presentation (virtual, online) last evening.

The preferred Alternative) ban on air tours within the Canyon De Chelley area will honor/emphasize "feeling and setting" of centuries of Native American spirituality here , fully protecting also natural reinforcing acoustic setting.

As required under the National Historic Protection Act and NEPA .

My personal exposure to Canyon De Chelley has twice (1970's) , and again on Oct 12, 2023, included drives/stops at all the key overlooks such as the always evocative Spider Rock; also groundtours better for views of ruins and long sacred, named places

Low altitudes of flight (unless pushed higher than the bounding ATMP heights set forth under law), only invites too much binocular or iPhone zooming, intrusive viewing and picture-taking.

: inappropriately , even if not actually physically intrusively distracting private airspace around such activities in a unwanted manner.Thus avoid intimidating ceremonial activities and formations.through likely or assumed use of binoculars or subsequent photographic magnification of 5-10 x (possible in aerial photographs further enlarged electronically by manipulating iPhone.

De facto this is the same as to snoop around/ into too many special dramatic/cultural/sacred corners (best left unobserved by those outside Native Culture,)

Let Ancient Tribal Culture Privacy reign, Unmolested.

That way, full privacy for ceremonies at special sites, whether planned or spontaneously, at special times of day or conditions.

And including celestial vistas unmarred by low aerial distractions of flying machines of any type.

Respectfully, Dick Hingson

Correspondence ID: 6, Project: 103419, Document: 135960

Received: Apr,25 2024 16:49:56

Correspondence Type: Web Form

Correspondence: I greatly appreciate the diligent and professional work involved in preparing the draft ATMP and EA.

I have experienced commercial air tours overhead while visiting national parks. I do not believe that these air tours are appropriate, necessary, or in the public interest. The airplane noise is disruptive to experiencing nature and solitude. This noise also disturbs wildlife and the sanctity of some cultural practices.

I believe that a rich small minority of people who can afford such air tours should not be able to disturb the park experiences of the vast majority of park visitors. This seems arrogant and decadent to me because parks should be enjoyed by everyone regardless of their level of wealth.

I strongly support and applaud the Preferred Alternative 2 to prohibit future air tours under the final ATMP. I believe that this alternative would best uphold and protect park values and serve the overall public. I hope the Preferred Alternative is approved and successfully implemented.

Thanks again for this important work and for considering my comments.

Correspondence ID: 29, Project: 103419, Document: 135960

Received: Apr,26 2024 13:53:35

Correspondence Type: Web Form

Correspondence: I agree. Flights over Canyon de Chelly should not be allowed.

Correspondence ID: 30, Project: 103419, Document: 135960

Received: May,02 2024 13:05:02

Correspondence Type: Web Form

Correspondence: Good morning, I've just come from a three-day camping experience in Canyon de Chelly with a Navajo guide, and am writing to express my strong disapproval of any helicopter or other air passage over the canyon for the purposes of tourism.

To my knowledge, there are more than 100 Navajo residents of the canyon. To allow the type of tourist experience being considered feels deeply intrusive and disrespectful. If visitors wish to experience the beauty of the canyon, there are overlooks, trails, and Navajo guides available for hire.

Any income derived from experiencing the canyon should, in my opinion, benefit the local Navajo Nation, its residents, and entrepreneurs.To allow an outside enterprise to disrupt the peace of the canyon feels like anathema.

I would hope that the powers of governance and administration of the canyon would understand and support this view, and vote to strike down the proposal being considered. Please don't destroy the silence that envelopes Canyon de Chelly.

The Navajo people nearly lost claim to their land already, through forced relocation and boarding school policies of the last century. There is no reason to compound the inequalities of past.

With hope that you will consider first and foremost the rights of the Navajo people who LIVE THERE over those who are merely out for a few minute's whim.

Respectfully, Margaret O'Loughlin

Correspondence ID: 31, Project: 103419, Document: 135960

Received: May,02 2024 14:44:20

Correspondence Type: Web Form

Correspondence: I'd like to comment on the proposal to allow air tours of Canyon De Chelly. I was privileged to spend three days in the Canyon with my wonderful guide Lupita. Her stories of her life life in the Canyon always included her close connection with nature in all of its forms. That connection often included her love of the quiet or natural sounds the Canyon. She was also consistent in asking us to be quiet in respect for others who lived in the Canyon. The Canyon does have its modern sounds of 4 wheel drive vehicles and cars on the distant rim road above. She made it clear that people are welcome and encouraged to enjoy and learn about the Navaho people and the Canyon. A limited access by 4 wheel is a necessary for people who live in the Canyon and for those with less mobility and time than I had to enter the Canyon on foot. Adding to the sound and visual pollution in the Canyon would certainly diminish the experience for visitors and residents alike. At some point it always comes down to enough is enough. To allow a service that would allow the relatively few affluent people to be able to say they experienced the Canyon in a cool, exciting, high tech kind of way seems to run completely contrary to to the stories of the indiginous people and their culture. Our guide made it clear that this would certainly not be in her interest as a resident and member of the Navaho nation. Her voice is so much more important than mine, so I ask you to listen to those that have lived their whole life in the Canyon and on its rim. No amount of flights, be they fixed wing or helicopter would be a good trade for the quality of life of the residents, all for the pleasure of a privileged few to play in the skies above.

Patrick O'Loughlin

Correspondence ID: 32, Project: 103419, Document: 135960

Received: May,02 2024 16:12:16

Correspondence Type: Web Form

Correspondence: Re: Comments on Draft Air Tour Management Plan and Draft Environmental Assessment for Canyon de Chelly National Monument

I am writing to express the National Parks Conservation Association's (NPCA) strong support for the proposal to eliminate air tours at Canyon de Chelly National Monument. Since 1919, NPCA has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our nearly 1.9 million members and supporters nationwide, we ask you to consider our views and support of this Draft Air Tour Management Plan (ATMP).

Under the proposed ATMP, commercial air tour operations would be prohibited within the ATMP boundary. This Draft ATMP would allow for the protection of culturally important and sensitive sites. We strongly agree with the rationale in this ATMP for eliminating air tours in Canyon de Chelly. In fact, the National Parks Air Tour Management Act of 2000 (P.L. 106-181) states, "The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands." The plan does include park-specific data and information to judge "adverse impacts" to resources, visitor experience, and tribal lands. We believe this Draft plan is necessary and appears to be appropriately consider acoustic information and identification of natural and cultural resources affected by air tours and their harm to visitor and tribal experiences.

The Draft Environmental Assessment (EA) clearly outlines that the National Park Service (NPS) and the Federal Aviation Administration (FAA) considered the "No Action" Alternative of continuing commercial air tours. Given the consultation with the Chapter Houses and the Navajo Nation Executive Office, it is clear that commercial air tours would disrupt traditional cultural and religious activities for the local communities and would encroach on privacy and jeopardize sensitive information and locations. NPCA is supportive of the Preferred Alternative 2 in the Draft EA. This alternative would not allow any commercial air tours within the ATMP planning area. As the Draft EA states, "Alternative 2 provides the greatest level of protection for the purposes, resources, and values of the Park and because the Park is located entirely on the Navajo Nation's Tribal trust lands, best safeguards Tribal resources and interests." Alternative 2 would benefit the acoustic environment by removing the noise that affects the physical environment and wildlife including the Mexican Spotted Owl as noted in the Draft EA. Alternative 2 would also remove direct emissions from air tours within the ATMP planning area, benefiting the air quality for residents in and around Canyon de Chelly. As also noted in the Draft EA, the No Action Alternative that allows the continuation of existing air tours has the potential to disrupt the visitor experience at Canyon de Chelly. This disruption could come in visual and audible effects due to the operation of commercial air tours. Last but not least, Alternative 2 considers important environmental justice concerns by recognizing and mitigating the adverse impacts of commercial scenic flights over a low-income, tribal population. As the Draft EA states, "it is unlikely that Alternative 2 would result in large socioeconomic impacts either to the region surrounding the Park or the region where the air tour operator is based, including those associated with changes to the community tax base associated with a loss of industry." In addition, there is the potential for cumulative beneficial effects for environmental justice communities from eliminating air tours that include "the acoustic environment, air quality, visual impacts, and privacy concerns."

Organic Act of 1916

The National Park Service Organic Act of 1916 sets forth the agency's central mission "to conserve the scenery and the natural and historic objects and the wild life [in national parks] and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. In the General Authorities Act, Congress "reaffirm[ed], declare[d], and direct[ed] that the promotion and regulation of the various areas of the National Park System … shall be consistent with and founded in the purpose established by [the Organic Act], to the common benefit of all of the people of the United States." Id. § 1a-1. Congress further provided that "[t]he authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established." Id. Air tour management must comply with these laws and other laws as well as the enabling legislation for each park unit. This Draft ATMP properly accounts for the resources and values intended to be protected and how to judge impacts to them.

National Historic Preservation Act

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

Historic properties are any prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places. Also included are any artifacts, records, and remains (surface or subsurface) that are related to and located within historic properties and any properties of traditional religious and cultural importance to Tribes or NHOs. The Section 106 regulations (36 CFR 800) place particular emphasis on consultation with THPOs, Tribes, and NHOs. Federal agencies must consult THPOs, Tribes, and NHOs about undertakings when they may affect historic properties to which a Tribe or NHO attaches religious or cultural significance. This requirement applies regardless of the location of the historic property. The Draft air tour plan does acknowledge compliance with the NHPA and considers the local of historic and cultural properties within and around Canyon de Chelly. We agree with the FAA that this proposed undertaking would have no adverse effect on historic properties in accordance with 36 CFR 800.5(c).

Endangered Species Act

The Endangered Species Act of 1973 (ESA) protects species that are listed as "endangered" or "threatened." (16 U.S.C. §§ 1531-1544). Section 7 of the ESA directs all agencies to ensure that any action authorized, funded, or carried out by it is not likely "to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species." (The "jeopardy provision"). (16 U.S.C. § 1536(a)(2)). Section 7 requires the NPS to consult with the Fish and Wildlife Service to ensure that an action does not violate the jeopardy provision. (Id.) Section 9 prohibits all persons (private and public) within the jurisdiction of the United States from "taking" a listed species. (16 U.S.C. §

1538(a)). It is important to note that a take does not necessarily require a "dead body." A take arises whenever the listed species is harassed, harmed, pursued, shot, wounded, killed, trapped, captured, or collected. Even an attempt at any of these actions constitutes a "take." (Id.) The Draft EA does acknowledge compliance with the ESA by highlighting the federally-listed species that are affected by the air tours alternatives, including the Mexican Spotted Owl.

National Park Service Management Policies of 2006

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

Impairment is an impact that affects a resource or value that is "necessary to fulfill specific purposes" identified in formation of the park or "key to the natural and cultural integrity of the park or to opportunities for enjoyment of the park". (NPS Management Policies at 1.4.5). The "park resources and values" that fall under the impairment standard include scenery, wildlife, natural soundscapes and smell, and all natural process and features. Also not to be impaired is "the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system." (NPS Management Policies at 1.4.6). The Canyon de Chelly Draft ATMP and Draft EA mention the prohibition of air tours due to their effects on wildlife species and visitors. This is an acknowledgement that resources could be impaired by air tours, which NPCA strongly agrees with.

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

The Foundation Document for the monument also states, "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" (page 5). NPCA strongly agrees with the NPS determination in the Draft EA for

Canyon de Chelly "that air tours inhibit the NPS's ability to meet the Park's purpose and values, which are described in its Foundation Document."

National Environmental Policy Act

It's important to note the following from the court decision that prompted this planning process: "Management plans must go through notice and comment and comply with the National Environmental Policy Act (NEPA)."https://www.peer.org/wp-content/uploads/2020/05/5_1_20-Court-Decision-Overflights.pdf. This ATMP complies with the National Environmental Policy Act (NEPA). The Federal Register notice announcing the ATMP states, "The FAA is issuing this notice pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106-181) and its implementing regulations contained in Title 14, Code of Federal Regulations, Part 136, Subpart B, National Parks Air Tour Management." §136.39 states, "In establishing an air tour management plan under this section, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement and the record of decision for the air tour management plan."

Justification for Prohibiting Air Tours

In Canyon de Chelly, we find that the NPS and FAA provide well-documented and appropriate justification to prohibit air tours. NPCA appreciates the clear justification for the decision to propose no commercial air tours presented in this Draft ATMP. The Draft ATMP states that "the provisions and conditions in this 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." This acknowledgement is critical for any planning considerations around the monument. Since NPS and the FAA gave strong consideration to the Navajo Nation's concerns about air tours on the monument, NPCA supports this resulting Draft ATMP. At the center of managing the monument is protecting the privacy and cultural significance of various properties and sites within the monument. To restrict commercial flights with a strong justification communicates a prioritization of the monument's natural and cultural resources.

Tribal Consultation

There appears to have been strong steps to consult with Tribal Nations in this ATMP planning process. The consultation process with Chapter House delegates outlined in the Draft ATMP highlights the local opposition for air tours within the monument. This led to a communication for Navajo Nation President Dr. Buu Nygren that supported the position of the residents in and around Canyon de Chelly. Secretary's Order 3403, which directs federal land management agencies under the Department of the Interior to consider how any decisions affects Native American Tribes, appears to be adhered to by the NPS in the planning of this ATMP.

An important consideration from the Navajo Nation--and particularly consistent with NHPA compliance--is to be able to protect religious, spiritual, and cultural activities and traditions, which as this Draft ATMP states could be disrupted by air tours. Since there are Navajo communities living in and around the monument, this Draft ATMP states that the timing of air tours cannot be adjusted as traditional activities are continuously occurring at Canyon de Chelly. Commercial air tours have the potential to affect the privacy of the families that reside within the ATMP boundary and as this Draft ATMP states, "the impacts from commercial airs tours cannot be mitigated." NPCA strongly agrees with this determination. The Draft EA states that "the most significant cultural and natural resources within

the ATMP planning area include archeological sites, Tribal sacred sites, traditional cultural properties, and ancestral sites, many of which are listed in National Register of Historic Places (National Register) or are eligible for listing." This demonstrates a wide variety of cultural sites and resources that must be protected. In addition, around 80 Navajo families live in and around Canyon de Chelly according to the Draft EA. Their privacy is important to protect and commercial air tours have the potential to disrupt this, which would harm the nation-to-nation relationship that the Canyon de Chelly NPS staff have with the Navajo Nation.

Conclusion

In the Draft EA and ATMP, FAA and NPS provide ample justification for prohibiting air tours in Canyon de Chelly National Monument. NPCA strongly supports the Draft ATMP, which demonstrates a prioritization of Canyon de Chelly's natural and cultural resources and is consistent with the NPS Organic Act and the agency's conservation mandate. With over 350,000 recreation visitors to Canyon de Chelly in 2022, in addition to permanent Navajo residents, it is critical that FAA and NPS consider how air tours fit in with the overall visitor experience and resource protection efforts.

Sincerely,

Sanober Mirza
Arizona Program Manager

Correspondence ID: 33, Project: 103419, Document: 135960

Received: May,03 2024 17:12:49

Correspondence Type: Web Form

Correspondence: As a resident of Canyon De Chelly National Monument , I am stating the following: Our canyon has a long history of being a sanctuary for both ancestral groups of native Americans, and wildlife living in the canyon ecosystems.
Noise and disruption from helicopter and airlines flying
within the boundary of Canyon De Chelly would greatly
affect the peace and natural sounds that make up the unique sound scape, within the steep canyon walls. Navajo people need quiet to speak to the spirits that
guide their daily routines and bless their crops. Thank you for your consideration.

Correspondence ID: 34, Project: 103419, Document: 135960

Received: May,06 2024

Correspondence Type: Other

Correspondence: 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 has 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.

Correspondence ID: 35, Project: 103419, Document: 135960

Received: May,06 2024

Correspondence Type: Other

Correspondence: 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.

Correspondence ID: 36, Project: 103419, Document: 135960

Received: May,06 2024

Correspondence Type: Other

Correspondence: Although Air Grand Canyon has not been consulted yet for the Canyon De Chelly National Monument proposed ATMP, AOC would like to make some comments regarding the proposal to eliminate all air tours over this National Monument.

AOC has only 9 Interim Operating Authority (IOA) overflights that are allotted on an annual basis. During the period of2017-2019 AOC 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.

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 AOC 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 A TMP Team in allowing AOC and the public's ability to keep its existing overflights which cause zero known negative effects to the Monument and its resources.

Correspondence ID: 37, Project: 103419, Document: 135960

Received: May,06 2024

Correspondence Type: Other

Correspondence: 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 Airp01t. 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 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.

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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.

Correspondence ID: 38, Project: 103419, Document: 135960

Received: May,06 2024

Correspondence Type: Other

Correspondence: 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 occassionally.

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 Stale 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 to 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.

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Correspondence: 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 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.

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 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 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). 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 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.

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 NPHPA 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

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

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).

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.

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 unequivocable 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 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.

Footnotes:

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 . . ."

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.

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 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 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.

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, scienace-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 NPTMA 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 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.
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 114th 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.

15

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

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Correspondence: 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 parallelling 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.

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 "Alterative 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.

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 NPATM 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 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."

Explanation1: 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 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 therrein.

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, 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 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 agency 12 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 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, 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 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 sciened-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 NPTMA 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.

NOTES:
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.
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.
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."
4 The FAA's remark comes from its November 7, 2023 letter to Southwest Safaris, page 3, The Applicable Law.
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."
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.
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."
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 NPTMA and Section
106 to provide credible evidence without authoritative sound studies.
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.
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.

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Correspondence: 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.

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.)

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) 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).

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.

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.

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 Section106 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 "mitigant 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 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 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).

NOTES:
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.
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 ae 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
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.

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.

25One 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.

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 . . ."

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

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.
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."
34 Theory of Constructive Remedy, supra Footnote #33

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Correspondence: 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 patters 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

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 unequivocable 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.

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 Section106 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.

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 Tsaile/Wheatfields, Lukachukai, Round Rock, Tséch'izhí, and Rock Point. He is also is 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.

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.

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 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 cannons 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 FAAs'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, 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 Stale 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 fights 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).

NOTES:

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."
36 See

http://www.faa.gov/sites/faa.gov/files/air_traffic/environmental_issues/environmental_tetam/screening-memo.pdf.
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
39 The link to the testimony of Crystalyne Curley is:
ttps://gallupsun.com/index.php?option=com_content&view=article&id=18024:staff-reports-&catid=186:politics&Itemid=616
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.
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.

Correspondence ID: 43, Project: 103419, Document: 135960

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Correspondence: Dear Sir/Madam:

Southwest Safaris (SWS) opposes the FAA's proposed Air Tour Management Plan (ATMP) for Canyon de Chelly (CACH, or "the Park," or "the Canyon") which was drafted by the agency in response to the National Parks Air Tour Management Plan of 2000 (NPATMA, or "the Act").

I will divide my critique of the Canyon de Chelly ATMP into four sections: a brief Introduction to the air tour management problem; Operational Analysis, Environmental Analysis, and Legal Analysis of the contested issues; plus a Summary of Observations.

I. Introduction
a. The root of the problem
In the year 2000, Congress passed NPATMA. The Act was intended to restore peace and harmony to both the national parks and to the air tour industry, which had been at odds with one another for decades. Both sides of the contention favored the legislation. The National Park Service (NPS) thought the Act would

guarantee that the alleged noise and visual/physical presence of air tours would come under control, because there were a few careless operators that needed management. Air tour operators (ATOs) welcomed the Act because Congress assured them that the legislation would ensure their legal right to operate in a responsible manner. But the peaceful harmony did not last very long.

Within a very short time, the NPS realized that NPATMA might be twisted and interpreted to give diehard environmentalists the upper hand, the goal of the NPS being to eliminate ATOs at the parks altogether. Air tour operators screamed foul to Congress. The result was significant changes to the Act in 2012, which at least gave the ATOs some rights by which to defend themselves against extremism.

But then the FAA itself became "environmentalized" under President Obama, with the creation of the Office of Environment and Energy. Now, the FAA became radicalized much as the NPS had. The agencies, under the excuse of court order, acting jointly, took a hardline approach to the creation of ATMPs, insisting on implementing them in the most draconian manner as fast as possible with no thought given to due process and due diligence. The agencies took it upon themselves, despite the Will of Congress, to require, at all but a handful of parks, either a drastic reduction of air tours or no air tours at all rather than the obvious choice for Voluntary Agreements between the agencies and the ATOs. The agencies have turned a deaf ear to the cries of the operators, asserting in essence that the ATOs have no rights under NPATMA, and that the agencies pretty much have a free hand to regulate and deny access to the parks. ATOs cry foul and are bringing their grievances to the courts for judicial review.

b. The agencies have ulterior motives that explain the measures taken.
Southwest Safaris alleges that the FAA and NPS, acting jointly ("the agencies") are using NPATMA to impede interstate air commerce, each for their own purposes: the NPS for environmental reasons aimed at restricting public access to the parks; the FAA for more complicated reasons, including a long-held prejudice that air tours are just another form of commuter air service serving as the backbone of a rural air transportation system that should be reserved for airline-like operations under tighter controls. Both agencies use air tour noise and mere presence as cover for extremist action. The results have produced legal chaos in certain parks, CACH being one of them, ranging from complete disregard for overtly stated laws of Congress to blatant denial of the Constitutional rights of air tour operators.

In order to accomplish their overlapping goals at Canyon de Chelly, the agencies have entirely misrepresented the nature and purpose of Southwest Safaris' air tours to members of the Navajo Nation and Chinle communities. At CACH, the agencies have wrongly and knowingly conflated educational air tours of a regional nature with local air tours of specific parks that would irritate local residents. The agencies have artfully concealed their goal of using the ATMP process to nationally deconstruct the air tour industry, contrary to the Will of Congress. The issues raised by Southwest Safaris re. CACH join with those of other ATOs at other parks to prevent such action and preserve the Congressionally-acknowledged right of the public to scenic air tours.

II. Operational Analysis of the CACH ATMP Problem
a. The CACH ATMP interferes with interstate commerce and degrades air safety.

The Canyon de Chelly National Monument is a large unit of the NPS. It has three branches, one each extending northeast, east, and southeast. The CACH ATMP acts as a barrier to air navigation for air tours that are providing transportation from Santa Fe, NM to the Grand Canyon and merely needs to pass over the national monument because of a low mountain pass situated just to the east of the Park. The ATMP acts as a similar block to air tour transportation flights flying from Gallup, NM (a refueling stop) to Monument Valley, UT. Safety in air commerce requires that SWS be allowed to fly its existing routes on east/west and north/south route structures for reasons of efficiency of flight (fuel burn) and weather

avoidance. The fact that the ATO is providing an oral description of the geography over which the plane is flying has no bearing on the cross-country nature of these flights and discriminates against Southwest Safaris as a licensed air carrier providing transportation services no different than that of any other charter flying service.

b. The FAA's decision for "no air tours" is wrong based on operations.
The FAA's ATMP is based on a fundamentally incorrect analysis of Southwest Safaris' flight operations. The FAA assumes that SWS is conducting air tours that circle the Park in a manner that focuses attention on specific points and places. This is the common perception of air tours.

Southwest Safaris concentrates, instead, on large scale landforms, conducting air tours of the Great American Southwest, not Canyon de Chelly. The air tour operator (ATO) merely flies across Canyon de Chelly, pointing out its geologic significance and its place in 800 million years of time (the study of geomorphology). It flies in a manner no different than any charter flying company would. Charter flights (as opposed to air tours) over BAND are perfectly allowable under NPATMA, the only difference being that SWS provides a geologic narrative. SWS crosses the park in more or less a straight line, either east-west or north-south. Canyon de Chelly is a significant geologic formation that happens to lie in a straight line along several of SWS' transportation routes to/from Santa Fe and the Grand Canyon/ Monument Valley. Safety in air commerce dictates that SWS cross the Chuska Mts at a slight dip in the range, flying around 10,500 MSL, which lines SWS up, by coincidence, for flight along the full length of the Canyon as the tour heads east/west, southeast/northwest, and northeast/southwest. Tours exiting the Painted desert fly southwest/northeast over Canyon del Muerto, heading for Colorado.

Southwest Safaris is not selling air tours for the specific purpose of conducting an air tour of the Park. CACH is a large park and simply lies directly under several of SWS' transportation routes. No one in the Park even notices the rapid, unobtrusive passage of SWS' overhead flights.

That being said, the FAA and NPS ("the agencies") have completely misunderstood the geometry, math, and physics of the air tours that Southwest Safaris conducts over Canyon de Chelly. The agencies' misperception of the operational reality of air transportation at CACH color the whole ATMP. The basic assumption of the agencies is that air tour noise and physical presence are enough to justify banning all air tours over the Park, but the FAA cannot prove it for lack of science-based sound studies. So, the agencies resort to extremist theories of social and religious trespass which are outside the authority of NPATMA as a basis for decision. The FAA's Justification for Measures Taken almost immediately falls apart.

c. The FAA's decision for "no air tours" is wrong based on physics.
In the FAA's Request for Concurrence of "no adverse effects," from banning air tours over CACH ... see FAA letter to SWS of June 2, 2023 ... 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 which serves as the foundation argument for banning air tours at the Park. 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. The FAA is so alarmed by this statement of fact, which SWS has pointed out many times already, that the agency has not yet, as of the date of this letter, submitted its flawed logic to the

Advisory Council for Historic Preservation (ACHP) for concurrence, as required by regulation (36 CFR §800.6 re. negotiating with "Consulting Parties" and working towards a Memorandum of Agreement).

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 all three of the FAA's main objections to flying current routes: proximity to sacred sites; noise going down into the Canyon; and physical presence in the direct vicinity of the Canyon.

Moreover, eliminating direct flights across the major diameter of the Park (i.e., eliminating the route parallelling Canyon de Chelly and flying around the Park) 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, following the main access road where ground vehicle noise is already concentrated.

So, here is the Math behind the physics. The formula for the circumference of a circle is C= rrD, where Dis 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 nD/2. By this computation (n/2 = 1.57, or 57% more flying), 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 confirms the FAA's statement in the middle of page 7 of the FAA's Request for Concurrence 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" that would exist for helicopters.

Flying the shortest route with the least amount of power all but eliminates the two biggest reasons the FAA might have for objecting to Southwest Safaris continuing to fly its current routes, noise and physical presence.

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 long 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 any possible remaining objection the FAA might have for 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 "Alterative I" of the draft ATMP, meaning a ruling in favor of "no change" in the way air tours at CACH are conducted in the future.

The agencies completely ignore the geometry, math, and physics of the proposed ATMP, leading to miscalculations that will have enormous adverse consequence for the Navajo people living in the vicinity of Canyon de Chelly.

d. The FAA's ATMP creates a problem where none currently exists.
The CACH ATMP would increase noise and physical presence in the Park, creating the very problem the agencies are trying to avoid.

On June 2, 2023, the FAA wrote Southwest Safaris, asking for concurrence that there would be "no adverse effects" from banning air tours at CACH. On the bottom of page 7, 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. !fair 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.

This deeply imbedded misperception pervades the whole of the CACH ATMP.
Southwest Safaris claims that every Section 106-based assumption the FAA makes in the ATMP 1s wrong.
1. 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, over the main access road), 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.
2. 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.
3. 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.

4. Flying around the Park to the west will increase the noise blown over the Park by the prevailing westerly winds, not decrease the noise.
5. 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.
6. 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 current sound studies in Canyon de Chelly. Tests performed in 2004 & 2025 were unconvincing. The agency has no actual figures with which to document its allegations of significant 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.

e. The FAA has no evidence to prove its allegations.
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. Nor has the FAA, NPS, or tribe ever called SWS to consult on ways to alleviate alleged adverse impacts of air tours over the Park. The agencies allegations of abuse of park purposes and values by the ATO are purely imaginative, inventive, and political in nature, and carry no proof of reality.
Furthermore, the FAA has no objective current sound studies, based on "reasonable scientific methodology" and pertinent field data that it can produce to prove that air tours over CACH actually create the adverse impacts the FAA claims. Noise modeling technology does not meet the standards ofNPATMA as a basis for decision. See Section III(h) of Environmental Analysis.
f. SWS' operations inflict no adverse effects on CACH.
Southwest Safaris' air tours have not been shown by the FAA to produce "significant adverse effects" relating to aircraft noise, or visual/physical impact, or invasion of privacy, or intrusion of cultural ceremonies. Nor has the FAA shown how SWS actually adversely impacts historic properties listed on, or qualified for listing in, the National Register. See Section III(g) of Environmental Analysis. The FAA has only generated a long list of allegations, but no evidence to back up any of them. The FAA fails to demonstrate that SWS' air tours have any more adverse impact on the Park than any other acceptable mode of travel therein.
g. Therefore, there is no operational justification for creating the ATMP.
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 ... as the park has less than 50 commercial air tours per year. See 49 USC §40128(a)(5)(A).
Nonetheless, there is a rare loophole that the NPS chooses to use involving an "exception to the exemption" for parks with less than 50 air tours per year. The exemption can be withdrawn.
§40128(a)(5)(B) - Withdrawal of exemption - If the Director determines that an air tour management plan or voluntary agreement is necessary to protect park resources and values or park visitor use and

enjoyment, the Director shall withdraw the exemption ofa park under subparagraph (A).
However, the exemption language can only be called upon if justified (§40 I 28(b)(3)(F)). This justification can only be accomplished under NPATMA regulations by complying with Section 808 of the Act, which the FAA and NPS have refused to do. The agencies have never conducted any science-based sound studies that are required to validate any such "justification" of withdrawal of exception. See Attachment 2. Instead, the agencies rely on their Environmental Analysis to verbally fabricate justifications based on unsubstantiated allegations of physical, cultural, and religious trespass of sacred lands, for which there is no corroborating evidence and for which the operational facts prove otherwise. See Environmental Evaluation below.

Air tours do not have any more significant adverse operational effect on the human environment at CACH than they do at ARCH, CANY, RABR, NABR, GLCA, LAKE, or BRCA. All these other 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 either NHPA Section 106 process or NEPA Environmental Analysis. The FAA's legal arguments re. tribal trust obligations will be dismissed in Section IV(k)(2), The Indians made us do it."
h. Besides, the CACH ATMP creates no net benefits for anyone.

SWS is mystified as to why the NPS would want to throw out the research and methodology developed by the ATO to avoid adverse impacts on the Park when the results of prohibiting air tours over it are going to produce no net gain for anyone, especially local Navajo business s. Air tourism creates enormous economic benefits for the American Southwest, a factor that the FAA has not even considered, in violation of NEPA §150l.3(b)(2)(i) & (ii). The FAA appears not to care, being more concerned with arriving at an extremist environmental/political solution for a non-existent problem than rational operational remedies that would avoid "potential" adverse impacts in the first place.

The FAA violates NEPA regulation §150 l .3(b)(2)(i and ii). The FAA has failed to consider both adverse as well as beneficial effects from denying air tours at the Park, not allowing for the future economic and employment needs of the local Navajo community, wrongly assuming that socioeconomic conditions and aspirations of the Navajo Nation will remain forever static. This assumption is far from correct.

III. Environmental Analysis of the CACH ATMP Problem and Indirect Effects
a. The FAA acknowledges that SWS' air tours make no objectionable noise at CACH.
Table 4, page 33 of the draft EA tells the whole story. The 12-hour Equivalent Sound Level (7 a.m. to 7 p.m.) for SWS' air tours are not expected to exceed 35 dBA. 35 dBA is a low whisper, a desirable noise level in a park. The Day-night Average Sound Level is estimated by AEDT figures to be around 32 dBA, a shockingly low figure. The Time Above 35 DBA is estimated to be significantly less than 5 minutes per day, probably closer to O minutes, because the sound level of SWS's aircraft is uniform throughout its descent along the Canyon in preparation for landing. The Time Above 52 dBA is also acknowledged to be less than 5 minutes a day, and at worst would only impact 7% of the Park. In reality, however, the noise level that would exceed 52 dBA a day would be zero, because there would be no sound emitted from the tour planes that would ever exceed 35 dBA, the airplane being in a powered glide as it descends just south of the Canyon, heading for the airport. The FAA says that the Maximum Sound Level projected for any of SWS' air tour routes would be at least 55 dba, but across only 5% of the ATMP planning area, which means that the noise would only be realized for only 20 seconds at only one or two spot locations in the Canyon, a brief impact which is hardly burdensome to people in the Park. However, again in reality, the

actual noise level in the Canyon at any spot location is never above 35 dBA, because of the low power settings of the plane in preparation for landing. So, the FAA's figures, as low as they are projected, are erroneously exaggerated to the high side. One of the reasons no one has ever complained about SWS's air tours at CACH is because no one can hear the airplanes. This, of course, is by design of Southwest Safaris. The FAA's allegations regarding noise have no basis in fact.

On page 36 of the draft EA, the FAA makes some interesting and deliberately humorous confessions regarding the noise generated by SWS' air tours. The FAA says that the Day-Night Average Sound Level (DNL), below which residential land uses are considered compatible, is a DNL of 65 dB. Then the FAA admits that, "Flying at an altitude of 1,000 ft AGL, 5,970 daily flights of a Cessna 182 (the ATO's plane) would be required to generate a cumulative noise exposure level at or above DNL 65 dB!" Admission of no air tour noise along "existing routes" does not get any stronger than this.

Then, on page 59 of the draft EA, the FAA incontestably admits that:

As stated in Section 2.4.1, reporting data from 2017-20 I 9 indicates that air tours fly over the APE approximately 43 times per year, and on days when air tours occur, an average of one tour is flown. Based on the Noise Technical Analysis (see Appendix F, Section 2.4), which uses an average of one flight per day (based on a peak month, average day of commercial air tour activity for the three-year average from 2017-2019), and Section 3.2.2, the maximum time that noise from air tours would be above 35 dBA, the level at which experience is degraded in quiet settings (ANSI 2007), is less than 5 minutes a day, across 69% of the ATMP planning area. Therefore, although some noise and visual intrusions would continue to be present, they would be infrequent and limited to a few minutes per day and approximately 43 instances per year.

So, what is the problem?
The FAA goes on to be crystal clear as to its meaning. In the next paragraph, the agency states:

The noise associated with existing commercial air tours over the Park is minimal, short in duration, and maximum sound levels are low. Noise from air tours [along existing routes] would result in infrequent detractions from the feeling and setting of the Park's cultural resources, including historic districts, cultural landscapes, archeological resources, TCP, sacred sites, ethnographic and natural features, and historic structures that are located closest to the existing air tour routes. These effects would continue to occur under the No Action Alternative. (Emphasis added.)

With respect to the noise generated by SWS' air tours, Southwest Safaris submits that the FAA acknowledges that it has no case regarding noise. The FAA does not contest low dBAs.2

b. The FAA admits that SWS' air tours have no significant visual/physical presence, either.
On page 78 of the draft ED, under section 3.8.2 Environmental Consequences, Alternative 1, No Action, the FAA makes a similar admission:

Commercial air tours would contrast with the natural scenery in locations where air tours are visible to Park visitors. The viewpoints where this would be most likely to occur are the highest points in the Park where 360-degree views are available. Existing commercial air tour routes are located near these viewpoints and would be seen by visitors overlooking natural scenic areas, which would continue to occur under the No Action Alternative. However, due to the minimal number of tours, the encroachment of commercial air tour aircraft on these viewsheds could !would onlyl minimally and temporarily detract from the visitor's opportunity to observe these unique scenic vistas and natural resources on days when air tours are flown !which are few in number!, (Emphasis and clarification added.)

This acknowledgment by the FAA is consistent with the testimony of Southwest Safaris, that its air tours are not noticed by Navajos and tourists in the Park. This is partly explained by the fact that SWS does not fly helicopters, and therefore SWS's routes are naturally offset from the canyons in order to give passengers an oblique view of the Park, not vertical. The routes of the ATO are already naturally offset from the floor of the Canyon by as much as half-a-mile. The canyon walls, themselves, block most of the view of the plane from anyone in the canyon. This intentional offset also horizontally displaces aircraft noise. FAA fails to specifically acknowledge these factors in its environmental analysis of SWS' air tours.

The geometry and physics of the "invisible aircraft" is explained by the NPS at Arches National Park (ARCH). The ARCH EA (Environmental Screening Form, "Evaluation of the ATMP," Table 1, "Viewsheds," P. 9), published in connection with the ARCH ATMP, observes:
Other literature for studies on impacts from commercial air tours or overflights generally on viewsheds conclude that the visual impacts of overflights are difficult to identify because visitors primarily notice aircraft because of the accompanying noise. Aircraft are transitory elements in a scene and visual impacts tend to be relatively short. The short duration and low number of flights (along with the position in the scene as viewed from most locations) make it unlikely the typical visitor will notice or be visually distracted by aircraft. The viewer's eye is often drawn to the horizon to take in a park view and aircraft at higher altitudes are less likely to be noticed. Aircraft at lower altitudes may attract visual attention but are also more likely to be screened by topography.

In other words, no noise means no physical presence. No physical presence means no visual presence. Hence, the NPS makes precisely the same argument in favor of air tours over Arches as Southwest Safaris makes for CACH.

Thus, air tours over Canyon de Chelly obviously have no "significant adverse impact" on visual effects at the national monument, using the Park Service's own words and logic. The FAA does not contest this fact.

c. The FAA thus forfeits its argument re. trespass of cultural resources and invasion of privacy. Under NPATMA, invasion of privacy is impossible to occur, either actually or potentially.
Given the fact that SWS' air tours do not cause more than minimal noise, and the fact that the ATO's aircraft create little or no visual presence, and given the fact that scenic flights at CACH are conducted at altitudes between 800 and 5,000-feet AGL, it is impossible for there to be trespass of cultural values or invasion of privacy. 1,000 feet of altitude AGL is the FAA minimum altitude over congested populations (which CACH is not) and ensures protection of privacy; 500 feet is the minimum standoff distance from individual persons and property in sparsely populated locations. Until the FAA changes its national regulations, the same standards apply to national monuments as anywhere else (though 2,000 feet is recommended, except if an aircraft is approaching for landing, as in the case of CACH). There is no wilderness area in CACH, which would otherwise require a minimum altitude of 2,000 feet AGL. But, by the standards the FAA is claiming for Navajos living in the vicinity of CACH, no flights would be allowed anywhere in the country below 5,000 feet. From an environmental analysis point of reference, then, the FAA's Justification section has no merit with respect to privacy. The FAA's claims to the contrary are hollow. Current Federal Air Regulations do not support the agency's allegations, nor does reason.

d. Other reasons exist as to why the FAA's claims for invasion of privacy at CACH are concocted allegations.
1. There already is no privacy in the Park.

Both Canyon de Chelly and Canyon del Muerto have major paved roads closely paralleling the canyons. Motorcycles, cars, and busses tour the access roads 24/7, stopping wherever they wish to walk over to the rim and view the canyon with binoculars. Designated pull-out parking lots concentrate the tourists at the most advantageous spots for maximum viewing possibilities.
Vehicle engines are generally left running, especially busses, which make the most noise. Down in the canyon, 11 tour companies, most with multiple vehicles and some of considerable size, drone up and down the canyons all day long. They can be heard way in advance and long after passing. Each vehicle holds between 3 and 12 passengers, the object being to fill all the seats. If even half the seats were filled (assuming five pax/vehicle), and each tour company had only two vehicles, and each tour vehicle performed only two tours per day in the summer season, there would be a minimum of 220 visitors in the canyon per day, each "potentially" with binoculars and cameras with telephoto lenses. That's a lot of "potential" invasion of privacy that is currently perfectly acceptable by the NPS, who manages the Park, and which is totally ignored by the FAA for comparative purposes.
2. It is impossible to see sacred ceremonies, let alone individuals, on a SWS air tour.

Southwest Safaris flies mostly in a straight line, offset by half-a-mile, along the lengths of Canyon de Chelly and Canyon del Muerto. Any closer than that, passengers cannot see the canyons from the side of the plane opposite the canyons. SWS tours never circle any part of the Park. No binoculars are allowed and telephoto lenses do not work because of air turbulence.
Furthermore, because people standing on the canyon floor cannot see the tour aircraft because of terrain shielding (steep canyon walls), neither can air travelers see individual persons or properties in the canyons, at least not in any detail, for more than a split second. Moreover, the speed and jolts of the light plane makes it impossible to focus on miniscule human activity in the canyons. For all these reasons, in the 49 years that SWS has been transporting passengers to and from Chinle, there has never been a single complaint rightly attributed to one of its air tours.

3. The FAA's alternative routes would create a greater privacy problem.

If Southwest Safaris is denied permission to fly its existing routes in the existing manner, invasion of privacy is almost assured. The ATO would then be forced to circle the Park, flying directly over houses and communities on the north side and west sides, at 500-foot altitudes AGL at full power settings, as close as possible to the park boundary (plus half-a-mile). No effort would be made to avoid people and properties on the ground, the point being to maximize forward speed to make up for the increased distance. The "potential" tragic adverse impacts are easy to imagine and totally preventable. At Bandelier National Monument, in New Mexico, where a similar situation exists, the ACHP has already cautioned the FAA that the agency might be creating a situation where the cure is worse than the alleged problem for identical reasons.

For this reason, SWS alleges, the FAA has not yet submitted the current CACH ATMP to the ACHP for similar review.

4. The sacredness of the Canyon is a moot issue, as well as privacy.

The fact that the Tribe advertises the Canyon as a de facto recreation area; plus the fact that 11 tour companies ... each with 3-5 vehicles and as many drivers ... are continuously running tours up and down the canyon; plus the fact that 200 - 500 tourists are in the canyon during the summer months on any given day ... most of them toting binoculars and cameras with telephoto lenses, shooting continuously; plus the fact that motorcycles, cars, and busses tour the rims of the canyons from dawn to dusk, all mean that the religious sanctity of the Canyon has already been reasonably and demonstrably compromised. A simple flight 1,000 feet AGL over the canyon, providing transportation services would have no relative impact

on the sacredness of the Park at all. The purpose of the flights is primarily transportation, not to provide a local tour of the national monument. The intent of a national monument, after all, is to provide national access to the cultural resource as well as to protect it. SWS' air tours accomplish both objectives, leaving no footprints, no lasting noise or visual presence, no trash, and using none of the resources of the Park. The same rejoinders apply to issues of privacy and cultural intrusion. The FAA's Justification for Measures Taken addresses none of these issues, because there is no justification for banning all air tours simply providing transportation services that happen to go over the Park.

e. The Act, itself, does not require an ATMP for CACH. The ATMP is legally unjustified.
The Department of the Interior wrote the FAA on November 2, IO17. See Attachment 2. In that transmittal, the DOI said, "The Act requires an ATMP or voluntary agreement to be developed for the Park. This is a half-truth.
It is true that NPATMA requires all parks that involve more than 50 air tours in a year have an ATMP or a VA. However, Parks that have less than 51 air tours per year, do not need either an ATMP or a VA. CACH has only 43 air tours per year, according to FAA figures for the years in question. The ATO at the Park would, therefore, normally be allowed to continue flight operations under the "no change" alternative for a park without an ATMP or VA. On November 2, 2017, the Dept. of Interior wrote the FAA to withdraw Canyon de Chelly National Monument from the exemption for air tour management (49 USC §40128(1)(5)(8)).

The DOI gave two reasons for withdrawing the exemption: (I) to preserve the resources of sacred significance, i.e., "cultural resources;" and to "perpetuate lifeways of past and present cultures connected to these landscapes." Neither reason is legitimate under NPATMA.

The phrase used by the DOI, "resources of sacred significance," refers in part to properties. As long as the parameters of the ATMP are set so as to protect physical properties, the ATMP is withing the bounds set by NPATMA. The problem is, the ATMP does nothing to protect historic properties, as admitted by the FAA above, there being no need to do so. Neither sound nor
visual presence are currently compromised by Southwest Safaris air tours. So protection of "cultural resources" ... which term relates to physical properties ... is irrelevant as an argument

for withdrawing CACH's exemption. Moreover, once the agencies remedies go beyond protecting physical properties, the agencies violate the Act because the Act gives the agencies no authority to do so. NPATMA only related to the protection of "cultural resources, visitor experience and issues that might adversely impact physical Tribal lands. None of these are fare legitimate causes of complaint at CACH. The second reason the DOI gave for withdrawing the exemption for CACH does not relate to physical properties in any manner, but to cultural matters again outside the province ofNPATMA. So, neither reason given by the DOI for withdrawing the exemption status of CACH is justified and the exempted status of the Park must be restored.

The FAA appears to be trying to change the purpose of NPATMA at Canyon de Chelly. The language of the Act relates to the protection of physical properties, the impact of which can be measured by science-based sound studies. NPATMA was not drafted to preserve cultural values, only" cultural resources" in the strictest sense of the definition. The FAA seems to be changing the definition of "cultural resources" to include "cultural values," and thereby is attempting to change the reach of NPATMA beyond what Congress intended.

In the draft ATMP, the FAA states on page 9 under Justification for Measures Taken, that:

The cultural resources that the NPS preserves under its Organic Act are broader than "historic properties" under the National Historic Preservation Act. As defined in NPS Management Policies (2006), a cultural resource is "an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about the culture." It may be tangible or may be a cultural practice. (Emphasis added.)

This statement is a misinterpretation of the definition of "cultural resources" given on page 157 of the NPS Management Policies 2006 Handbook, Glossary. The definition given by the FAA in the Justifications section of the CACH ATMP is substantially incorrect. "Cultural resources," strictly speaking, do not include "cultural practices."

"Cultural resources" is not a precise term, and never has been. It is often confused with the term, "cultural systems," which is much broader and does include both tangible and intangible elements, such as "cultural practices." However, there are certain elements of the term, "cultural resources," that the NPS and DOT are emphatically clear on, namely that the term relates to physical properties.

Chapter l of the NPS-28 Cultural Resource Management Guideline, titled "Fundamental Concepts of Cultural Resource Management," says under Section C: The Nature of Cultural Resource, I. Significance:

An idea common to all cultural resources is the concept of significance. To be significant, a cultural resource must have important historical, cultural, scientific, or technological associations and it must manifest those associations in its physical substance. Put another way, the significance of cultural resources is based on two interrelated qualities. A cultural resource consists of a number of physical, chemical, or biological features; at the same time, it consists of ideas, events, and relationships. This duality is evident in cultural resources as small as a penny or as large as the Statue of Liberty. Fashioned from copper, both share common material properties. Shaped into symbols-one of economic value, the other of a fundamental human right-both also serve as expressions of ideas. [Emphasis added.]

The physical and social dimensions of a cultural resource are inseparably interwoven. For a resource to be significant, its meaning must be indelibly fixed in form and fabric. The flag on Abraham Lincoln's box at Ford's Theatre epitomizes this relationship. Immediately after shooting the president, John Wilkes Booth jumped to the stage, catching his spur in a flag hung in front of the box. The material ripped, and so it remains-a small detail in the story of Lincoln's life, but tangible evidence of the horror of his death.

In a similar way but incorrect manner, the BAND ATMP hopelessly conflates cultural resources with privacy rights. The two are not the same nor do they work together.

NPATMA covers cultural resources, not issues of privacy. The former are physical properties, the latter constitutes rights under common law. Neither the defining characteristics of "cultural resources" nor the Act are concerned with common law.

For these reasons, the FAA's statement in summation of its Justifiction for Measures Taken section of the ATMP is unacceptable, both as an environmental assessment under the EA and as a legal issue under the draft ATMP. The FAA says:

Since commercial air tours would negatively impact the privacy of the Navajo families living within the ATMP boundary and are inconsistent with the Park's purpose, significance, and fundamental resources and values, the agencies have decided to prohibit commercial air tours within the ATMP boundary.

Southwest Safaris objects that the FAA is prohibiting air tours over CACH not for reasons of noise, visual presence, and adverse impact on historic properties, but because of unsupported allegations of cultural intrusion and invasion of privacy, neither one of which is allowed as an objection under NPATMA. The Act only allows consideration of significant adverse impact on cultural resources (not cultural practices), visitor experiences, and physical tribal lands.

Thus, the FAA's justification for the ATMP fails in terms of NHPA (no historical properties being adversely impacted by air tours), NEPA (no evidence of noise and/or visual presence), and NPATMA (disallows allegations relating to intangible cultural issues and common law complaints). The FAA cannot justify creating an ATMP which disallows air tours. The correct decision, under the circumstances, would be to either allow SWS' air tours to continue, opting for the "no change" alternative, or create a VA.

f. Under NPATMA there are no such things as "potential" adverse effects.

The words, "potential" and "potentially," combined are used 79 times in the draft EA. To the contrary, an ATMP cannot be justified on the basis of "potential" adverse effects from air tours. The word, "potential," does not appear in NPATMA. NPATMA is not concerned with potential, hypothetical, deductive-based allegation of "significant adverse impacts," but with real, existing, measurable adverse effects that can be proven to occur in present time. The FAA's justifications for the ATMP are grounded in NHPA language and regulations, where mere allegations serve as acceptable evidence of legitimacy of claim and where "potential" effects are allowed.

NPATMA, in contrast, requires situations that can be demonstrated to have factual existence and evidence that can be substantiated, which disallows hearsay submitted by tribes seeking to authenticate unevidenced claims for the existence of historic properties that have long ago been substantially diminished by the ravages of time. Most of the FAA's claims for the existence of "cultural resources," including the possibility of "potential adverse impacts" on them instead of "significant adverse impacts," would be eliminated if the FAA honored the NHPS regulations the

agency pretends to rely on, and conducted actual field investigation and survey to evaluate the existence and condition of alleged historic/cultural properties, 36 CFR §800.4(b)(1). Moreover, under NPATMA, real "cultural resources" have to exist in current time and real "significant adverse impacts" on them have to be demonstrated. The FAA's EA is the NEPA environmental document that the FAA relies on to "prove" its allegations and justify its determination of "no air tours." Because NHPA Section 106 findings and NEPA investigative conclusions presented in the draft EA are both based on "potential" circumstances, neither the findings nor conclusions are allowed under NPATMA. Accordingly, there is no basis for determination of "no air tours" at CACH.

g. The FAA's Justification/or Measures Taken is inadequate, because the agency's list of historic properties in the APE is mostly based on hearsay, not evidence. Southwest Safaris challenges the FAA's numbers.

SWS alleges that the FAA's list of 37 cultural resources in the APE of the BAND ATMP, included in the draft EA, 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 ofNHPA, is admissible for Sec. I06 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 tum, 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 Council3) 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,"4 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.

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.5

NOTES:

1 See my letters of August 11, 2023, "4th Response to Request for Concurrence on Sec I06," page 5, and of August 14, "5th Response to Request for Concurrence on Sec 106, page 2.

2 The FAA and NPS jointly conducted field evaluation of aircraft sounds in 2004 and 2010. See Lee, C. and MacDonald, J. (2016). Canyon de Chelly National Monument: Baseline Ambient Sound levels 2004

and 20 I0, DOTIFAA/AEE/2016-13 (Lee/MacDonald Report, or "the Report"). The Lee/MacDonald Report confirmed that sound from fixed-wing aircraft and helicopters was not a problem in 2004 and 20 I0. That was pre-pandemic (COVID) time, and much more flying was being done by all sources of aviation transportation back then. Even so, according to Table 2, at the noisiest overlook for the Park, Antelope House, the measured ambient sound level data for summer season was only 35.5 dBA. At Spider Rock Overlook, a second point that Southwest Safaris overflies to the south, the same measurement was only 25.9 dBA. These levels are at or significantly below whisper volume.
The Lee/MacDonald Report came to the same conclusion regarding percent-present noise analysis. According to Table 4, the"% Time Audible for Fixed Wing Aircraft and Helicopters" varied between a low of2.5% ofa working day for Antelope House Overlook and 7.9% for that of Spider Rock. The actual percentage attributable to a lone fixed-wing air tour, flying across the Park at most twice a week, was apparently deemed so de minim is as to be unmeasurable. This might explain why the Appendix to the CACH draft EA did not include a link to this hard-to get report. The Report is not publicly available through the internet.
3 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.
4 See FAA's Finding of Effects letter, December 28, 2023, page 5, Identification of Historic Properties.
5 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 ae still sacred and have to be protected by the ATMP for reasons of"settings and feelings." The FAA argues inconsistently from park to park, undennining the agency's credibility.

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Correspondence: 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."6 The NR does not include "outdoor spaces designed for meditation or contemplation,"7 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

arul (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 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. 8 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) and eliminated from consideration in the proposed CACH ATMP for lack of connection with any particular route (lack of definition and location). 9

Attachment C lists only 37 individual historic sites. Only two "building properties" are included in the Park HQ inventory, and neither one of them counts10; 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).

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)(l) 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, 11 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.12 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.

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.13 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)(l). 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.
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 infonnation 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 affinn 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.

h. The FAA's sound studies are flawed.

1. NPATMA does not allow the use of noise modeling technology.

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 adversely impacts the correct assessment of harmful impact of said noise on TCPs and, therefore, incorrectly influences the FAA's opinions and determinations underNHPA's Section 106.

Actually, at Canyon de Chelly, the FAA is in violation ofNPATMA, 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 pertinent data ... meaning timely, accurate, thorough,

representative, and objective measurements 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, is too old, too few, too isolated, and too infrequently gathered, being based on an abbreviated study conducted in 2004, twenty years ago, when times were very different, pre-COVID. Thus, the FAA's data incorporates unreliable assumptions of present conditions, this on top of biased formulas.

The FAA actually tries to hide the source of its data. The agency makes no reference in either the draft EA or in the list of technical reference provided at the end of Appendix F of the EA of the fact that an actual field study was conducted in 2004. One has to go through the list of published technical sources to find the reference, and then discover that there is no link to the study. The study appears to have been taken off the internet. Thus, there is no way for Southwest Safaris to comment on the source and accuracy of the data on which the FAA's AEDT analysis is based. It appears that the FAA is 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 clearly has no current science-based sound study data with which to refute SWS' claims of no adverse impact. Both the input data and the algorithms employed in the model are inadequate.

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, despite use of AEDT noise modeling, falls short of meeting these requirements for any given "test."

The FAA 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 solely 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 "undertakings" because of the "shall clause" (Section 808). The wording of NPATMA's Section 808, which language amended

NPATMA in 2012, directly negates that of §40128(b)(4)(C) ... which refers to 1501.3 and from there to § §1501.21 & .23, all of which is superseded by Section 808 ... of the Act, thus eliminating the exception language that would otherwise have exonerated the agencies from conducting new, science-based, sound studies to allow noise modeling. NEPA, itself, acknowledges the controlling authority of NPATMA in the last sentence of§ 1502.23: "Nothing in this section is intended to prohibit agencies from compliance with the requirements of other statutes [such as NPATMA's Section 808] pertaining to scientific and technical research." Thus, §1502.23 yields to Section 808. (Emphasis added).

NEPA's §1500.3(a) further confirms this interpretation:

§ I 500.3(a): Mandate - This subchapter is applicable to and binding on all Federal agencies for

implementing the procedural provisions of the National Environmental Policy Act of 1969...except where compliance would be inconsistent with other statutory requirements [such as NPATMA's Section 808]. (Emphasis added).

So, the requirement for actual, in-the-field, noise studies based on "reasonable scientific method" still applies, the FAA's interpretation ofNHPA and NEPA notwithstanding. That the FAA has a duty to perform said sound studies is clear and unequivocable. It cannot be excused. This is a due diligence mandate.

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"'14

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 amply 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.

2. The FAA's Finding is wrong, based on inaccurate data in its noise modeling system.

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

Pages 10, 11, and 12 of Appendix F of the draft EA depict sound contour maps. The Noise Model Results for 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 <lei 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, pages 10 (Time Above 35 dBA contour map), 11 (Time Above 52 dBA contour map), and 12 (Maximum Sound Level contour map) 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 patters 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, pages l O and 11 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" aqverse 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 in Appendix F but admits to in the main body of the draft EA, is that air tours over Canyon de Chelly, as actually being conducted today, have virtually no sound or physical or visual impact on the Park.

IV. Legal Analysis-The FAA's ATMP does not comply with law.
a. The CACH ATMP is based on flawed legal theory.
The CACH ATMP violates several principles of rational jurisprudence: Primacy of Law, Continuity of Law, and Controlling Legal Authority

The principle of Primacy of Law directs the order of application of laws. In general, 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. Sometimes laws must be complied with in parallel, being of equal weight and application. In this case, the laws would be applied simultaneously, each law being complied with in accordance with its own vertical hierocracy of stipulations. This is simple legal logic.
At other times, where complex legal logic is involved, multiple applications of law must be complied with vertically. In this situation, one law activates another in "if ... then ... else" fashion.15 In this case, the demands of the greater law control the application of the lesser law. Statutes that call into effect other statutes become the greater law, that is, the controlling legal authority. The controlling statute becomes the gatekeeper of decision, determining when and how the next level of law must be employed. The controlling statute must be implemented before the controlled statutes can be activated; controlled statues cannot be implemented on their own, unless the controlling statute contains exception clauses allowing to that effect.
The latter situation broadly applies to the creation and implementation of Air Tour Management Plans, in particular that of CACH. Congress enacted NPATMA to authorize the creation of ATMPs such as CACH. Terms and conditions of the plans were established in the Act. The Act is very complicated, calling for certain steps of implementation to be performed in a prescribed order and fashion.
Without NPATMA, NHPA would have no application to the undertaking, the purpose of NHPA being analysis of "significant adverse impacts" on historic properties. NPATMA calls into effect the application of NHPA.16 Until the Section 106 process of assessing the impact of an undertaking on historic properties is finalized, NEPA lies dormant. Then, once the Sec. 106 process is completed, funding can be spent to commence an Environmental Analysis under NEPA (§800.l(c)). So, in the present instance (CACH), the ATMP processes is initiated by NPATMA; that Act triggers NHPA, which in turn starts NEPA. Without NPATMA, NHPA and NEPA would have little authority re. ATMPs (CACH). NHPA cannot initially act on its own as stand-alone legislation used to create actions affecting ATMPs, any more than NEPA can (CACH). The purpose of NEPA's Environmental Analysis at CACH is to confirm the "if any" determination and existence of a legal "undertaking" made under NPATMA (see below, The CACH ATMP is not a legal undertaking," Section III(b)).

In this sense, at CACH, NPATMA "controls" NHPA and NEPA. Both NHPA and NEPA are valid laws which must be applied in their own right. However, the way they are applied is directed by the controlling

legal authority, in this case, NPATMA. NPATMA controls the manner in which NHPA and NEPA achieve their directed purposes. Here begins the problem.
With respect to the CACH ATMP. NPATMA, NHPA, and NEPA make very different demands of the FAA. NPATMA requires reasonableness of decision, NHPA and NEPA advocate extremism. NPATMA is based on "existing" conditions, NHPA and NEPA on "hypothetical." NPATMA is based on "current" conditions, NHPA and NEPA on "projected," reality. NPATMA is based on actual sound measurements (Section 808), NHPA and NEPA on synthetic noise modeling (§§800.21, .23). The Act demands real evidence that actually proves accusations, versus NHPA, which just accepts allegations as true. A more thorough listing in legal incompatibilities between the statutes will be presented below.

The FAA incorrectly assumes, in the case of CAH, that the three statutes (NPATMA, NEPA and NHPA) all run parallel and horizontal with one another and that they have equal power of decision and effect. In the case of CACH, this miscalculation of legal process has led to a breakdown in administrative law, pitting all three statutes against one another, because the FAA has failed to take into account the Principle of Continuity of Law.17 Without the restraints imposed by that principle, the three laws naturally war with one another (see letter to FAA, October 1, 2023, page 5; November 27, page 5, note 4), producing chaos in the air tour industry going far beyond CACH and crisis in the courts. In the current situation, it has led to a challenge by SWS' of the FAA application of administrative justice, based on Reason of Law.18 To this end, there exists an irreconcilable difference between the FAA and Southwest Safaris.
On April I 0, 2024, the FAA wrote Southwest Safaris to present the opposite, intractable position, carefully stated. The letter says, page 2, under section heading, 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)(l)(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 I06 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)(l)(B) does not provide an exception to the agencies' responsibilities under Section I 06 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. [Emphasis added.]
Southwest Safaris believes that the dispute over theories of jurisprudence can only be resolved by the courts at this point. The FAA has too much invested in the misdirected ATMP process at CACH and elsewhere to reverse course on its own.
For a complete analysis of"controlling legal authority" and its application to NPATMA, see Appendix 3.

b. The CACH ATMP is not a legal undertaking.
Before a federal agency can commence any project affecting historic properties (i.e., cultural resources),

the agency must initiate an undertaking. An "undertaking" is defined by NHPA 36 CFR §800.16(y) to mean:

A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf off a Federal agency; those carried out with Federal financial assistance; and those requiring Federal permit, license or approval.

Commencing an undertaking, under NHPA regulations, means complying with §800.1(a), which involves "taking into account the effects of [an agency's] undertakings on historic properties and affording the Council a reasonable opportunity to comment on such undertakings." The regulation goes on to say that, "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."

§800.l(c) adds, "The agency official [the FAA] 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."

Southwest Safaris alleges that the FAA has failed to comply with any of the above.

On November 7, 2023, the FAA wrote Southwest Safaris, in part to discuss the definition of an "undertaking" and the interaction between NHPA and NPATMA in regards thereto. 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 I 06 regulations trigger compliance with Section 106 of the NHPA.
The development and implementation ofan ATMP (necessarilyf 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 statement 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 and the environmental analysis provisions of NEPA. 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."
SWS argues that the CACH "undertaking" the FAA supposedly relies upon to justify the creation of an ATMP for that park has not yet been legally triggered by meeting the requirements of NPATMA, which authority of Act is required by Congress.

At CACH, the FAA has never performed the "if any" test required by NPATMA to check for significant, actual, present, adverse impacts on historic properties in the APE using science based sound studies employing pertinent19 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. Without complying with NHPA and NEPA, the FAA cannot issue a determination. Thus, the FAA issued its decision for "no air tours" in error.

The FAA erred by acting preemptively to initiate the Section I 06 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 §40128(b)(I)(8). Furthermore, the FAA erred by conducting a NEPA EA before the agency was cleared by NHPA to do so (§800. l (c) involving expenditures of monies20) and in complete disregard for NPATMA's requirements for science based sound studies (Section 808 and §40128(b)(4)(C),21 which do not allow AEDT). All are violations of the requirement for a legal undertaking involving the creation of an ATMP. At the very least, without first passing the "if any" test, NHPA cannot proceed. Without completion of NHPA process, NEPA cannot commence. Without a NEPA EA, NPATMA cannot issue a final ATMP determination.

For all these reasons, the FAA's comment that "The development and implementation of an ATMP [necessarily] meets the definition of an undertaking triggering the Section I06 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 ... meaning that the "if any" test has been accomplished, and that it is positive. In the case of BAND, the "if' conditional was never satisfied, meaning never performed. So, it is not necessarily true that noise is adversely impacting historic properties at CACH, and in fact it does not. Therefore, the creation of an ATMP with a "no air tours" proviso cannot commence. In short, the BAND ATMP only has the appearance of legality, not the actuality of it.

So, it is not true in the case of BAND 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's requirement for a legal undertaking by performing the "if any" test.

Therefore, the FAA's Section 106 and NEPA EA initiatives at CACH are not in compliance with law and the ATMP process must be halted, the Act being the controlling legal authority.

c. The CACH ATMP, and others like it, produce a Constitutional crisis.
The result of the FAA's ignoring the principles of Primacy and Continuity of Law is now the clashing of two different theories of jurisprudence involving three different laws. Unresolved, this state of affairs produces a Constitutional crisis. The source of confusion originated with Congress, not the agencies. The agencies, however, have wrongly exploited the oversight of Congress to use the chaos to their advantage. Both sides (Congress and the agencies) are using the courts to decide the Great Question of legal structure, which will ultimately affect all businesses. Unfortunately, air tour operators are the ones now caught in the crossfire.

When Congress drafted NPATMA, it took NEPA partially into account, but NHPA not at all. The problems remain to this day, each law requiring separate consideration for analytical purposes, the task at hand being to untangle the mess.
NEPA Considered: In 49 USC §40128(b)(4)(C), the Act specifically defines which parts of NEPA apply to the construction of ATMPs.

49 USC §40128(b)(4) - Procedure - In establishing an air tour management plan for a national park or tribal lands, the Administrator and the Director shall: (C) comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations.
The problem for the agencies is that they failed to recognize that the language of NPATMA' s Section 808 amended NPATMA in 2012, which directly negates that of §40128(b)(4)(C) of the original Act, thus eliminating the exception language of NEPA's §§1501.21 & .23 that would otherwise have exonerated the agencies from conducting new, science-based, sound studies.

NEPA, itself, acknowledges the controlling authority of NPATMA in the last sentence of §1502.23: "Nothing in this section is intended to prohibit agencies from compliance with the requirements of other states [such as NPATMA's Section 808] pertaining to scientific and technical research." Thus, §1502.23 yields to Section 808.

NEPA's §1500.3(a) further confirms this interpretation:

§ I 500.3(a): Mandate - This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969... except where compliance would be inconsistent with other statutory requirements !such as NPATMA's Section 8081. (Emphasis added).

The problem is that the FAA does not acknowledge that Congress rescinded incorporation of NEPA' s §§1502.21 & .23 into the revised NPATMA. This poses a dilemma for the FAA. In the case of a related ATMP, i.e., Bandelier National Monument, the FAA cites and/or alludes to these missing NEPA regulations(§§1502.21 & .23) as authority to bypass rigorous sound studies otherwise required.22 Having access to these regulations would grant the FAA permission to rely on noise modeling instead of rigorous field research (actual noise measurement). The agency's reach exceeds its grasp.
SWS argues that Congress deliberately excluded, by way of the revised Act, the §§1502.21 & .23 exemptions in NEPA to ensure that the FAA would honor the mandate for science-based sound studies utilizing pertinent data23 required by Section 808 of the Act. The excluded language ofNPATMA's §40128(b)(4)(C), plus Section 808 of that Act, make NPATMA the controlling legal authority over NEPA. The FAA must conduct science-based sound studies.
Relying on its theory of parallel laws,24 the FAA rejoins that the full body of NEPA regulations, including the arguable exemptions, still apply because, the agency argues, the whole of NEPA has been activated by the ATMP undertaking, not just a part of it. The FAA further argues that NPATMA has no control over NEPA, once any part of NEPA is activated. The FAA insists that said sound studies are unnecessary.
SWS counters that the FAA's theory of jurisprudence makes a mockery of legal order, that removing the requirement for sound studies which must be based on "reasonable scientific methods" undercuts the whole purpose of NPATMA to be fair, i.e., "acceptable and effective."

NOTES:
6 Non-listing of TCPs. See FAA's Finding of Effects Letter, December 28, 2012, page 5, Identification of Historic Properties.
7 Ibid
8 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 infonnation 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 infonnation contained in the contested "contributing resources" is not of significance or importance
with reference to each individual site.
9 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 fonn has not been updated since 1970.
I0 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.
11 Ibid.
12 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: (t) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or ... "
13 Non-listing of TCPs, supra Footnote #21.
14 See http://www.faa.gov/sites/faa.gov/fi
les/air_traffic/environmental_issues/environmental_tetam/screening memo.pdf.
15 NPATMA is difficult to understand and apply because it is predicated upon a hypothetical syllogism. Its implementation is contingent upon a disguised conditional argument. Statements of conditional argument make up a loosely defined family of deductive arguments that have an if-then statement ... that is, a conditional ... as a premise. The conditional has the standard form If P then Q. When an If...Then...Else statement is encountered, the condition is tested first. If the condition is True, the statements following Then are executed. If the condition is False, each IF statement (if there are any) is evaluated in order and the result is redirected.
In the case of NPATMA, the "if any" clause in the Objective section of the Act announces the conditional. In other words, NPATMA actually reads: "If it is true that circumstances exist whereby air tours produce an adverse impact on persons and property on the ground, then corrective measures can be employed." NHPA is called into effect, which subsequently calls NEPA into play. In that case, NHPA and NEPA are activated, but are limited to the terms and conditions of NPATMA regarding sound studies. If the conditional is false ... meaning that air tours cannot be shown to produce adverse impacts on persons and property on the ground ... then the "else" determination of"no change" is made regarding implementation of the ATMP, and NHPA and NEPA are considered dormant in effect. NAPA and NEPA are dependent on NPATMA as the controlling legal authority regarding their activation and implementation.

16 NHPA is activated by NPATMA when the Act detennines that the "if any" clause justifies proceeding with an ATMP undertaking. The "if' condition is tested by implementation of sound studies based on "reasonable scientific methods" and "pertinent" data, i.e., Section 808 of the Act.
17 The Principle of Continuity of Law states that one law cannot horizontally or vertically contradict another where they overlap. One must give way, or be controlled by, another. In the present instance, Congress meant that NPATMA would control NHPA, NHPA would trigger NEPA, and NEPA would redirect decision-making back to NPATMA, in vertical sequence, step by step, so that the powerful laws would never oppose one another. The FAA ignores this logic.
18 Reason of Law refers to theories of jurisprudence that are generally accepted as being logical, applicable, fair, consistent, and necessary for a fair determination.
19 Pertinent Data, supra note 7
20 It appears that the FAA has illegally funded an "undertaking" which has no authorization. There exists the possibility of abuse of process and misappropriation of Federal funds.
21 The FAA wrongly claims that Section 106 ofNHPA and §§1502.21, .23 of NEPA exonerate the FAA from conducting any sound studies at all. The Principle of Continuity of Law,21 the wording of§ 1502.23 ... "Nothing in this section is intended to prohibit agencies from compliance with the requirements of other statutes pertaining to scientific and technical research" ... and the wording ofNPATMA's Section 808 argue to the contrary, that sound measurements must be taken and that noise modeling will not suffice for the purpose of establishing a legal "undertaking." Otherwise, the FAA could base its objections to air tours at CACH on the Theory of Mere Presence and bypass the requirement for a legal "undertaking" altogether.
Moreover, NPATMA's being the controlling legal authority means that Section I 06 and NEPA are only called into conditional effect ... meaning that NHPA decisions must be based on comprehensive, relevant, and current sound studies ... after NPATMA passes authority to them by means of satisfying the all determining "if any" phraseology of the Act, that is, after creating a legal undertaking.
22 See draft BAND Environmental Assessment, page 36, first sentence. The FAA says, "Agencies are not required to conduct new scientific or technical research to analyze impacts and may rely on existing information to assess impacts. See 40 CFR Part 1502.21." NPATMA, the controlling legal authority, disagrees (49 USC §40 l28(b)(4)(C) as amended by Section 808).
23 Pertinent Data is defined to mean field observations which are current, comprehensive, relevant, accurate, and objective.
24 The Principle of Parallel Laws states that all laws run horizontal and parallel to one another and have equal standing. 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."

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Correspondence: Southwest Safaris claims that the issue of sound-study exemption under NEPA is not a matter for the courts to sort out, because agency discretion is irrelevant when it comes to overtly breaking

the law. Moreover, SWS remarks, agency discretion is inapplicable because the issue is neither ambiguous nor is Congress silent on the matter of sound studies. Even if the FAA's araguments prevail in court, until the Court rules, the ATMP process must come to a halt and existing ATMPs must be put on hold as this issue affects the legality of the entire ATMP process. SWS has complained and demonstrated in many letters to the agencies that the FAA and NPS have never complied with the provisions of the Act, let alone the Will of Congress.

Already, it is apparent that NEPA and NPATMA naturally claw at one another, each one ripping apart the authority of the other. NHPA makes things even worse.

NHPA Considered: When Congress drafted NPATMA, it failed to take NHPA into account, at all. The subject of NHPA is not even mentioned in NPATMA, which leaves the question of its application open to interpretation (or, more relevantly, "up in the air"). Southwest Safaris alleges that the FAA and NPS have taken advantage of this loophole (this void in Congressional instruction) to assert the full weight and power of NHPA over that of NPATMA. NHPA is completely silent on the subject of sound studies.

The FAA rejoins that the silence of NHPA combined with the exemption language of NEPA (§§1502.21 & .23) exonerates the agency from any need to comply with Section 808 of the Act.

SWS counters that the FAA uses NHPA as a plow to carve a wide path through NPATMA, the intent being to gut the purpose of the Act and to totally defeat the Will of Congress (see Appendix 1), turning the Act into an environmentalist's free-for-all while depriving ATOs of all rights to object to anything the agencies impose. The results of the agencies' theory of parallel rules have produced a cacophony of laws.

As things stand, without intervention by Congress, the tension between the statutes can only be resolved by the third theory of jurisprudence, the Principle of Continuity of Law. To review, this theory states that one law cannot contradict another where they overlap. Without the application of the Principle of Continuity of Law together with that of Primacy of Law, the three ATMP statutes (NPATMA, NHPA, & NEPA) ... were they horizontally and parallelly positioned under the FAA's theory of parallel laws... would endlessly war against one another, producing a Constitutional crisis. And indeed, that is the case. The crisis is real and everywhere apparent.

Each law fights with the other two. The record is replete with more examples.

Three-way Crossfire: The FAA and NPS claim that, using NHPA and NEPA statutes, the "if any" test in the Act, discussed in Section 3 above, is just a figure of speech that can be ignored. The agencies argue that sound studies in the field do not have to be performed at all under NHPA, and that NEPA(§§1502.21 & .23) allows noise models (AEDT) to be substituted for field observations of acoustic data. NPATMA asserts to the contrary. NPATMA says that Section 808 (§40128.800) explicitly requires science-based sound studies based on pertinent data,25 which wording specifically disallows technological substitution of computer projections for field research. NPATMA mandates that determination of "significant adverse impacts" starts with satisfaction of the "if any" test under the Objectives section of the Act and continues with science-based sound studies under Section 808 of the law. Moreover, §40128(b)(4)(C) as amended by Section 808 does not allow §§1502.21 & .23 to even be considered.

The three ATMP-related statutes are completely contradictory. Considered by themselves, NHPA ignores the requirement to conduct sound studies; NEPA arguably exempts the agency from having to conduct sound studies; and NPATMA exclaims that the "shall" imperative of Section 808 for science-based sound studies gives the agencies no way out of conducting sound studies. The three statutes naturally war against each other.

Undeterred, the FAA and NPS attempt to change the argument. The agencies counter that Southwest Safaris' rejoinder is irrelevant, because testimony by Native Americans by itself is sufficient evidence, under Section 106, of "significant adverse impact." SWS answers that the FAA's evidence relies on allegations and testimony derived from hearsay, which is not admissible in formal hearings, including court.

The disagreements between the laws compound upon themselves. The contentions grow in size and significance.
NHPA maintains that "potential" significant adverse events exist wherever air tours occur. This finding is derived from the Theory of Mere Presence. 26 Therefore, all air tours over all units of the NPS have to be prohibited under the Council's Theory of Extremist Remedy.27 NPATMA argues just the opposite, that the "if any" language of the Objective section of the Act is a bold statement that Congress is not convinced that "significant adverse impacts" from air tours even exist, in any form.

The FAA and NPS declare that, under NHPA, adverse impacts do not have to be "significant" and, in fact, they do not even have to exist, needing only the "potential" to be real. Therefore, their existence does not have to be tested. NPATMA counters that this argument flies in the face of the overt meaning of the "if any" challenge and that the measure of "significant adverse impacts" has to be determined using sound testing, thereby necessitating that the impacts have actuality.

The agencies assert that there is no language in the Act requiring "reasonable and common sense" remedy for alleged adverse impacts; NPATMA counters that the "acceptable and effective" language in the Act directs that a rational, agreeable, and practical approach be taken.

The FAA and NPS claim that the Act does not require the agencies to invite ATOs to the negotiating table; NPATMA says that the "acceptable and effective" clause emphatically requires that ATOs be allowed to weigh in with their facts, opinions, and manifold experience.

Furthermore, the FAA and NPS contend that NHPA remedies must be chosen in the order of most effective to the least, focusing on resolution regardless of cost; NPATMA stipulates that remedial methodologies have to be agreeable as well as effective, which requires that remediation proceed from the least costly and painful to the most, the two theories moving in opposite directions.

The FAA claims that, under NHPA, choice ofremedies must be applied in sequence, choosing avoid first and minimizing/mitigating last, citing §800.1(a). NPATMA screams to the contrary, citing Section 802(2), which lists the order of decision in the opposite direction, putting "minimizing" first. SWS claims that Congressional law trumps administrative regulation.

The FAA and NPS counters under NHPA and NEPA that the standard of decision is a "perfect world" where no air tours are allowed to exist because, they have no "environmental rite of passage;" NPATMA refutes that the standard is "existing conditions," which allow air tours based on prior existence, public demand, and merit.

NHPA and NEPA focus on the future, NPATMA on the past and present.

NHPA and NEPA are based on deductive speculation, NPATMA on inductive research.

NHPA, NEPA, and NPATMA could not be more at odds with one another. The agencies have taken advantage of the discord between the statutes to rule with a free hand, unincumbered by Congressional oversight. Depending on which law the agencies wish to emphasize, the outcome of ATMP process will be completely different from park to park. The FAA and NPS appear to change their basis of decision for different parks depending on which statute the agencies want to give priority in order to predetermine the

outcome of their decisions. Thus, there is no consistency, predictability, or rationality to the agencies' pronouncements. Of course, this will open the agencies to countless challenges of "judicial review," at enormous expense to the private sector ... and to the courts.

The warring between the statutes will go on and on, the agencies being incapable of analyzing and/or correcting the crisis of law because it works to their advantage. The result has already been 24 years (beginning in the year, 2000) of inaction followed by legal and operational chaos.

The FAA's and NPS' theory of jurisprudence is antithetical to the purpose and methods of the entire ATMP undertaking. The FAA's theories of parallel laws and chaos management are self perpetuating because they are self-serving in multiple ways.

SWS alleges that the agencies knowingly exploit the Principle of Parallel Laws in order to use two laws, NHPA and NPA, to break the third, NPATMA, allowing the agency to regulate outside the control of Congress.

SWS alleges that the FAA's theory of parallel statutes allows the agency to effectively create "new laws" by constantly rearranging the old, setting precedent for the executive branch of government to make legislative policy on its own without oversight of Congress. The current exercise will be a model for future initiatives of similar nature. The FAA constantly "kicks against the goad" ofNPATMA, because the Act constrains the agency's actions and holds them to Constitutional accountability with respect to substitute law-making.

Southwest Safaris alleges that the FAA knowingly takes advantage of the legal chaos in order to hide behind a shield of confusion. The interactive violations of law and process involved with untangling the NPATMA nightmare makes it almost impossible for an ATO to file comprehensive and coherent complaints. For instance, NPATMA requires the satisfaction of the "if any" test in the Act by means of science-based sound studies using pertinent data,28 required by Section 808. SWS alleges that the agencies have refused to conduct sound studies because the data could be used in court against the agencies. By declining to conduct sound studies, the agencies deprive air tour operators access to due process and any means of protesting the logic for and methods of imposing discriminatory ATMPs. That is, with sound-study data in hand, ATO's could prove that there are no "significant adverse impacts" from air tours over national parks such as would justify the FAA's extremist measures to severely curtail the operations of ATOs or shut down air tours entirely. The FAA has no incentive to see its abuse of process come to an end.

Southwest Safaris alleges that the FAA and NPS have targeted specific small businesses for "cancellation" purely for political reasons, not documentable operational concerns. There is no evidence that this abuse of agency power will ever be self-correcting.

Moreover, SWS alleges that the agencies have knowingly deceived the U.S. Court of Appeals, DC Circuit,29 as to why the sound studies, required by the Act, have not been conducted in a timely fashion. By withholding the real reason that ATMPs were not issued ... the real reason being not only issues of time, cost, and responsibility for complying with Section 808, but also the agencies' hesitancy to produce sound studies that ATOs could use to argue against the agencies' decisions ... the FAA and NPS have defrauded the Court to issue a Writ of Mandamus requiring immediate implementation of 23 ATMPs without the Court realizing the consequences of so doing. The major result has been that the agencies now claim that the Court has: (I) sanctioned the use of one set of laws (NHPA and NEPA) to break another (NPATMA); (2) approved "extremist" remedial methods to satisfy the Court's timeline; (3) approved proceeding with the ATMP "undertaking" without having to take the time and spend the money to comply with Section 808 mandates; and (4) allowed the ATMP process to continue without the FAA having ever

initiated a "legal undertaking" by satisfying the "if any" test for "potential adverse impacts" required by Section 808 of the Act. All of this works to the advantage of the FAA and NPS. Of course, the U.S. Court of Appeals, DC Circuit, gave its consent to none of these.

SWS alleges that the agencies deliberately encouraged the lawsuit brought before the Appellant Court (see Footnote 15) so as to get permission of the Court to proceed without authority of Congress, seemingly giving the agencies permission to do in perpetuity what they could not have accomplished on their own. By going to court, the FAA calculated it could not lose either way. If the agency had won the case, it would have gotten permission of the Court to proceed with its ways and means as before the suit. If it lost, the Court would "force" the agency to expedite creation of AMPS by all "reasonable" but arguably-effective means, in essence granting deference to agency discretion in all matters even remotely related to speedy implementation of ATMPs. The FAA's operable theory of jurisprudence, today, is that "the end justifies the means:" "if you want to make an omelet, you have to break a few eggs." This philosophy, of course, has gotten the agencies to the Constitutional crisis of today.

All of this was made possible under the FAA's errant theory of parallel laws.

Southwest Safaris alleges that the agencies (FAA and NPS, acting jointly) defrauded the court by withholding infonnation 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 infonnation, the agencies deceived the Court so as to: (I) justify violating NPATMA by misuse of NH PA and NEPA; 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 I .

The FAA and NPS argue that the court's order prevents the agencies from complying with otherwise required administrative process. This allows, amongst other things, the agencies to keep ATOs from getting to the negotiating table because of the requirement for expedient action; and it allows the agencies to use two laws (NHPA and NEPA) to break another (NPATMA), circumventing Congressional mandate to perfonn 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.

The agencies' abuse of due process and complete disregard for regulation and law require cessation of ATMP process until the agencies get clarification from the Court as to how to proceed. The U.S. Court of Appeals, DC Circuit, never authorized the agencies to break the law and defy Congress.

d. The CACH "exception" was exercised outside the law- has no legal basis.
On page 5 of the draft EA for the Park, under title of 1.4 Purpose and Need for the ATMP, the FAA says: Need: The Park was previously exempt from the portion of the Act that requires the agencies to establish an ATMP or voluntary agreement for commercial air tours. On November 2, 2017, the NPS withdrew the Park's exemption (Appendix J). Thus, the Act requires an ATMP or voluntary agreement to be developed for the Park.

Southwest Safaris argues that the exception for the exemption was not legal justification for the withdrawal.

On November 2, 2017, the Department of the Interior sent a letter to the FAA. See Attachment 5. The concluding sentence of the letter says:

Consequently, in light of the above, please be advised that NPS has determined that an air tour management plan or voluntary agreement is necessary to protect the specific cultural and historic resources and values, as well as visitor use and enjoyment, of this unique park.

The specific cultural and historic resources and values" that the DOI refers to consist of "resources of sacred significance" and "lifeways of past and present cultures connected to these [sacred] landscapes." Undoubtedly, the former group was meant to refer to "cultural resources," so protecting that group at first qualifies as reason to withdraw the exemption status. It is equally clear that the latter group has no physical connection with properties, only to landscapes, so they do not qualify under NPATMA as reason to except the exemption, and will not be considered further.

Upon closer examination, however, the justification for removing the exemption status of CACH on grounds of need for protection of"cultural resources" does not hold up, either.

The problem is, the ATMP does not protect cultural or historic properties, i.e., "cultural resources." As admitted by the FAA in the draft EA (see above Environmental Analysis, Sections III(a) and (b) of this letter), SWS' air tours over the Park impose no noise or visual/physical adverse impact. Neither sound nor visual presence are currently compromised by Southwest Safaris air tours, so the CACH ATMP, in fact, has nothing to do with protecting "cultural resources." If the agencies go beyond protecting physical properties and instead try to justify safeguarding "lifeways of past and present cultures connected to these [sacred] landscapes," the agencies violate the Act, as such efforts would have nothing to do with satisfying the expressed Objective section of NPATMA without unreasonably stretching the definition of words ... referring to "natural and cultural resources, visitor experiences, and tribal ands." Thus, the FAA, NPS, and DOI are withdrawing the exempted status of CACH under false pretenses. Neither reason given by the DOI for withdrawing the exemption status of CACH is justified. The exempted status of the Park must be restored.

It is clear that the real reason for excepting the exemption for CACH has nothing to do with operations. The motivation is purely political, for unstated reasons. Southwest Safaris objects that emotional and political defense permeates the entire Justification section of the CACH ATMP and poison the reasoning. Neither line of explication suffices under NPATMA.

e. The FAA wrongly tries to alter the outcome of NPATMA by changing definitions.
1. The FAA endeavors to manipulate the language of the Act.

Southwest Safaris alleges that the FAA is trying to change the purpose ofNPATMA by artfully changing the definition of words therein. The language of the Act relates to the mitigation or prevention of significant adverse impacts of air tours upon "the natural and cultural resources, visitor experiences, and tribal lands," not to the protection of intangible cultural elements. The impact on the latter group cannot be measured by science-based sound studies. NPATMA was not drafted to preserve "cultural environments," only "cultural resources." In the strictest sense of the definition, "cultural resources" is a NPS term that refers to properties with physical characteristics. The FAA attempts to modify the definition of "cultural resources" to include "cultural values, settings, traditions, practices, expectations, and landscapes" and thereby totally change the reach of NPATMA.

In the draft ATMP, the FAA states on page 9 under Justification for Measures Taken, that:

The cultural resources that the NPS preserves under its Organic Act are broader than "historic properties" under the National Historic Preservation Act. As defined in NPS Management Policies (2006), a cultural resource is "an aspect of a cultural system that is valued by or significantly representative of a culture, or that contains significant information about the culture." It may be tangible or may be a cultural practice [i.e., a value].

This statement is a misinterpretation of the definition of "cultural resources" given on page 157 of the NPS Management Policies 2006 Handbook, Glossary section. The definition is substantially and materially incorrect. "Cultural resources," strictly speaking, do not include "cultural practices or values."

"Cultural resources" is not a precise term, and never has been. It is often confused with the term, "cultural systems," which is much broader and does include both tangible and intangible elements, such as "cultural practices and values," and other aspects of a society such as anything which defines or is of importance to a culture. In contrast, there are certain elements of the term, "cultural resources," that the NPS and DOT are emphatically clear on, namely that the phrase relates to objects which have physical properties.

Chapter I of the NPS-28 Cultural Resource Management Guideline, titled "Fundamental Concepts of Cultural Resource Management," says under Section C: The Nature of Cultural Resource, I. Significance:

An idea common to all cultural resources is the concept of significance. To be significant, a cultural resource must have important historical, cultural, scientific, or technological associations and it must manifest those associations in its physical substance. Put another way, the significance of cultural resources is based on two interrelated qualities. A cultural resource consists of a number of physical, chemical, or biological features; at the same time, it consists of ideas, events, and relationships. This duality is evident in cultural resources as small as a penny or as large as the Statue of Liberty. Fashioned from copper, both share common material properties. Shaped into symbols-one of economic value, the other of a fundamental human right-both also serve as expressions of ideas. [Emphasis added.]

The physical and social dimensions of a cultural resource are inseparably interwoven. For a resource to be significant, its meaning must be indelibly fixed in form and fabric. The flag on Abraham Lincoln's box at Ford's Theatre epitomizes this relationship. Immediately after shooting the president, John Wilkes Booth jumped to the stage, catching his spur in a flag hung in front of the box. The material ripped, and so it remains-a small detail in the story of Lincoln's life, but tangible evidence of the horror of his death.

In a similar way but incorrect manner, the CACH ATMP hopelessly conflates cultural resources with privacy rights. The two are not the same nor do they work together. NPATMA covers cultural resources, not allegations of invasion of privacy which cannot be measured or tested.

The former entail physical properties, the latter constitutes rights under accepted practice. Neither the defining characteristics of "cultural resources" nor the Act are concerned with common law, which pertains to the FAA allegations of air tours invading privacy of tribes, for example. An ATMP may address issues of privacy only if there is proof of same, such as specific complaints relating to specific events, retained for the record, not because Tribes have speculated that supposed invasion of privacy might be or "potentially could be" a problem.

For these reasons, the FAA's statement in summation of its Justifictionfor Measures Taken section of the ATMP is unacceptable, both as an environmental assessment under the EA and as a legal issue under the draft ATMP. The FAA says on the bottom of page 9 of the draft ATMP:

Since commercial air tours would negatively impact the privacy of the Navajo families living within the

ATMP boundary and are inconsistent with the Park's purpose, significance, and fundamental resources and values, the agencies have decided to prohibit commercial air tours within the ATMP boundary.

Southwest Safaris objects that the FAA is prohibiting air tours over CACH not for reasons of noise, visual presence, and adverse impact on physical historic properties, but because of unsupported allegations of cultural intrusion, interruption of religious practices, diminishment of "fundamental resources" ... as opposed to "cultural resources," which is what NPATMA is concerned with ... and invasion of privacy and sacred airspace, none of which are allowed as objections under NPATMA. The Act only allows consideration of significant adverse impact on "cultural resources [not cultural gatherings/practices], visitor experiences, and physical tribal

lands]. "Tribal lands" does not mean the same thing as "cultural landscapes," the former being material, the later, undefinable abstractions of social values.

Thus, the FAA's justification for the ATMP fails under the terms of NPATMA, NHPA, and NEPA, because no historical properties are actually adversely impacted by air tours, visitor experiences have not been lessened, and tribal lands have not been harmed in any way (e.g., by excessive rotor blade harmonic vibrations or sonic booms).

To the contrary, Southwest Safaris' air tours at Canyon de Chelly actually promote the purpose and values of the CACH unit of the NPS, by giving maximum untouched exposure to the scenery of the park without diminishing "natural and historic objects" or affecting wildlife from 1,000 feet AGL. Compared with 4-wheel-drive ground tours, a 30-second maximum audial impact from an air tour, transiting the Park in a straight line, frequently gliding in for landing at Chinle, AZ, has virtually no adverse impact on local cultural or visitor experience at all. Air tours, unlike ground tours roaring up and down the canyons, leave no lasting sound footprint, have no physical impact on the structures, roads, and riverbeds of the Park, put no demands on park infrastructure, and leave no trash. Contrary to the simplistic and unthought-out allegations of the FAA and NPS, air tours, flown with small fixed-wing aircraft in the manner conducted by SWS, are totally consistent with the National Park Service Organic Act and promote the values of the Park.

Because the agencies' Justifications section of the ATMP offers no evidence of noise and/or visual presence or even refers to significant adverse impacts in the draft EA, and because the Act disallows allegations relating to intangible cultural issues and common law complaints, the FAA cannot justify creating an ATMP which disallows air tours or unreasonably restricts them.

The correct decision, under the circumstances, would be to either allow SWS' air tours to continue, opting for the "no change" alternative, or create a VA.

2. The FAA's new definitions are created outside the law.

Title 54 of the U.S. Code pertains to the National Park Service and its related purposes, including promotion and regulation. The code lays out the charter of the agency in the National Park Service Organic Act.

54 U.S.C. §lOOIOl(a) says:

(a) In general - -The Secretary, acting through the Director of the National Park Service, shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of

future generations.
The Code says that the purpose of the agency is to "conserve the scenery, natural and historic objects, and wildlife in the System units." That would include CACH. However, the language does not include protecting cultural values and practices of Native Americans and it would not allow the NPS to rewrite its definitions of "cultural resources" to include consideration of same.

The term, "cultural resources," as just discussed, pertains to properties that have physical characteristics. Cultural values and ceremonial practices have none. The Code refers to "natural and historic objects" which is consistent with the use of the term "cultural resources." Natural and historic objects have physical properties. Cultural values and cultural landscapes and cultural rights and cultural integrity do not. The NPS tries in error to extend the meaning of "cultural resources" to include these elements into the meaning of "cultural resources" in order to get around the intention of the Organic Act, which was, in part, to exclude such extensions.
The Organic Act was written in 1970. Congress reaffirmed and further defined the intentions of the statute in 1978. It said, of particular relevance to the present instance involving the purpose and methods ofNPATMA, that:
(b) Declarations - - (1)1970 declarations-(C) Congress declares that- - ... individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one System [of national parks] preserved and managed for the benefit and inspiration of all the people of the United States; ... [Emphasis added.]
In 1978, Congress reaffirmed its meaning in order to be explicitly clear:
(2)1978 Reaffirmation - - Congress reaffinns, declares, and directs that the promotion and regulation of the various System units shall be consistent with and founded in the purpose established by subsection (a), to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress. [Emphasis added.]
The phrase, "all the people," is repeated twice ... once each in the Declaration and Reaffirmation sections ... and is explicit. In the present instance, it includes people who highly value the perspective afforded by air tours over CACH. This is consistent with the quoted Will of Congress in Appendix 1. The NPS states unilaterally, without any supporting measurable evidence in its draft and final versions of the Environmental Analysis for CACH, that air tours are not compatible with the values and purposes for which the Park was created, thus turning the Organic Act against itself, using the last part of a sentence ("values and purposes") to refute the first part (for the benefit of "all the people"). If order of construction pertains to order of priority, however, the rights of "all the people" trump the secondary purpose of the NPS, namely to preserve the "values and purposes" of any given park. The right of the people to air tours, as clearly enunciated by NPATMA, may not be unreasonably restricted by NPS goals, objectives, and management policy statements, and certainly not without first conducting the "if any" test required by NPATMA's §40128(b)(l)(B) and Section 808. Congress, in essence, has declared that the purposes, values, and methods ofNPATMA must be incorporated into NPS management practices.
Thus, the NPS' air tour management policies fail to comply with both law and the Will of Congress on both operational and definition grounds.

f. The CACH ATMP Justification for Measures Taken argues outside the law.
1. Privacy issues are not allowed under NPATMA as a basis of determination.

The issues of invasion of privacy, trespass of spiritual space, and obstruction of sacred ceremonies go hand in hand with one another. They all fall under the category of right to privacy and so they will be treated under that premise.

The word "privacy" is mentioned 34 times in the draft ATMP and 9 times in the draft ATMP. It is one of the FAA's main arguments against allowing air tours over the Park. As an argument, however, the legal allegation of "invasion of privacy at CACH rings hollow, for the following reasons.

• There already is no privacy in the Park. Southwest Safaris has already argued this point extensively. See Sections III(c) and (d)(l-4), Environmental Analysis, of this letter.
• If Congress had meant for privacy to be an issue worth considering by itself and making it arguably the major contention for "no air tours," Congress would have explicitly mentioned it in NPATMA.
• Congress did not mention privacy as an environmental issue of concern because it does not properly belong in that category. Privacy is an issue under Common Law, not NPATMA regulation. Therefore, agency discretion as to whether or not to argue privacy under NPATMA instead of common law does not apply. Privacy is one of the elements that may be addressed by an ATMP, but is not an issue that was meant by Congress to be determinant of a decision for "no air tours."
• Though right of privacy is attached to ownership of property under common law, not FAA regulations, the Federal aviation regulations have a lot to s about the matter. The issue of invasion of privacy is quite common in general aviation. The FARs have settled the matter. Over wilderness, the suggested minimum altitude is 2,000 feet. There is no wilderness in CACH. Over congested airspace, the minimum acceptable altitude is 1,000 feet. Over sparsely populated locations, which most of CACH is, the minimum acceptable altitude in 500 feet. Federal air regulations apply equally to all people. The FAA does not make exceptions for certain ethnic groups, unless Congress intervenes with special regulations of its own. The FAA attempts to bypass its own regulation process and create special airspace over certain national parks, but not others, which places certain groups under burden of law while exempting other groups, which is unconstitutional (5th Amendment).
• The 5th Amendment also applies to treating all forms of travel equally in so far as compliance with law is concerned. An agency cannot accuse an ATO of invasion of privacy and not consider the equal impact on privacy of ground tour operators, who operate in a far more impactful manner in the Park, saying that NPATMA does not concern itself with that comparison. The Constitution does concern itself with such comparisons and impacts, because application of the law (in this case right of privacy) is involved in both instances. The fact that the FAA claims it has no requirement to consider the invasion of privacy by non-air-tour pilots is immaterial to the abuse of the 5th Amendment.

• The FAA artfully but wrongly tries to redefine "cultural resources" to include "cultural privacy" so as to make alleged invasion of privacy a determining issue that would justify a decision for "no air tours." The NPS's own discussion of "cultural resources" makes it clear that privacy has nothing to do with "cultural resources." See Section 11l(e).
• The FAA wrongly but knowingly attempts to make invasion of privacy a political issue subject to voting by the Tribe in order to get around the operational, environmental, and legal issues that rule to the contrary. There is no provision under NPATMA for voting on the basis of decision for ATMP determinations. The FAA attempts to put politics above the law.

2. NPATMA will not allow determinations for "no air tours" based on "potential" adverse impact.

The FAA's draft EA fails to recognize the underlying logic of NPATMA. The Act does not ask the FAA to demonstrate the existence of"potential adverse impacts" from air tours, but rather the existence of "significant adverse impacts" from existing flights.

There is nothing in the language of NEPA regulations that refers to "potential" environmental impacts. The word "potential" comes from NHPA regulations, which are extremely permissive (e.g., 36 CFR §800.3(a)).
36 CFR §800.3(a): Process - (a) Establish undertaking. The agency official shall determine whether the proposed Federal action is an undertaking as defined in§ 800.16(y) and, ifso, whether it is a type of activity that has the potential to cause effects on historic properties. (Emphasis added.)

However, the word "potential" is not used in NEPA terminology. It is much too broad for purposes of precise environmental analysis leading to decisions of major consequence. Instead, NEPA refers to "reasonably foreseeable significant adverse impacts" as the basis of analysis (see 40 CFR §1502.2l(d) and §1508.l(d)). However, NPATMA does not even allow the concept of "reasonably foreseeable" in analyzing "significant adverse impacts," because §40128.(b)(4)(C) precludes reference to §1502.21(d), which is the regulation that the FAA incorrectly relies on to utilize noise modeling technology. NPATMA is special purpose, aviation specific regulation, and it is the controlling legal authority for all matters relating to the justification for and creation of ATMPs.

The word, "potential," is never used in NPATMA and is not a basis for determination of adverse effect under Section 106 ofNHPA or §1502.24 of NEPA, because NPAMA controls the terminology ofNHPA and NEPA in the instance of ATMP construction. Under the Act, adverse impacts must be real, demonstrable, and provable. Under NHPA they can merely be potential, conjectural, and imaginary. Under NEPA, the bar is much higher, needing to be based on credible scientific evidence, but are still allowable even if their probability of occurrence is low. Under NPATMA, however, they must exist in the present; under NHPA and NEPA, they can exist in the future. Congress never authorized the FAA to regulate on the basis of"potential" risk and effects. This is why Congress refrained from using both the word "avoid" and "potential" in NPATMA. All flights have "potential" risk and adverse effects that need to be avoided. This is

a given in the air transport industry, regardless of aircraft size. If the ACHP is successful in setting the standard for decision on "potential" risk and total elimination of adverse consequence, then all flights in this Country will be grounded. The ACHP's assumption that no flights should have the potential for creating adverse effects is demonstrably absurd.

So, the FAA's effort to base its draft CACH EA on "potentially" harmful environmental effects from air tours is clearly outside the allowance of NPATMA. The words "potential" and "potentially" appear 79 times in the 86-page EA, almost once per page. The word, "could," which is used as a synonym for "potential," is used 97 times. "May" is used 91 times; "Expected," 43 times; "Possible," 6 times; "Might," 3 times. In contrast, "existing conditions" only appears 22 times. The word "actual" only appear 3 times. "Significand adverse impacts" appears 3 times. "Measurable" appears twice; "real" not at all. Textual analysis of the EA makes it abundantly clear that the whole document is speculative in nature, none of it being based on credible scientific evidence (as defined by Section 808 of NPATMA), instead being founded on an abundance of pure political conjecture and, therefore, outside the rule of reason. For these reasons, the draft EA does not comply with §1502.21(d). Furthermore, the EA does satisfy NPATMA's "if any" test imbedded in §404 l 28(b)(1)(B). Moreover, the EA totally fails to comply with Section 808 of the Act. The FAA artfully but improperly effectively substitutes the word "potential" for "significant" in the agency's interpretation of meaning in the "Objective" section of the draft CACH ATMP. The

concept of "potential adverse impact" on cultural resources does not exist under the Act. Because the draft EA is predicated on "potential adverse impacts" instead of "significant adverse impacts" of air tours, the Environmental Analysis must be rejected along with the decision for "no air tours." The EA does not satisfy the requirements of law. At the very least, until a court rules on the basis of decision being "potential" adverse impacts instead of"existing adverse effects," the ATMP process at CACH must be stayed.

g. The CACH ATMP does not comply with the "acceptable and effective" clause.
NPATMA, 49 USC §40128(b)(l)(B), spells out the purpose of the Act, including the requirement for mutual consent to the process outcome. The Act gives a mandate that negotiations be used to arrive at an "acceptable and effecive" remedy:

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 most important objective ofNPATMA is to develop "acceptable" as well as "effective" methods of addressing adverse impacts of air tours. The Act mentions "acceptable" first, so it is of primary importance. In any case, one condition without the other (e.g., "effective" without "acceptable") is not sufficient.

In NPATMA, the first requirement for acceptability is clearing the bar of the "if any" test. The existence of "significant adverse impacts" from air tours is not certain (as testified to by the

inclusion of the "if any" phrase) and must be established in order make the ATMP "acceptable." In fact, the wording of the Objective section of the Act requires that the "if any" question be resolved before corrective measures can be employed.

The second requirement for meeting the acceptability requirement of the Act, is that the remedies chosen must be reasonable, not extremist. Congressman Duncan explicitly stated this requirement in his public hearing on regulation of air tours under NPATMA (see Attachment 1). He used the phrase, "reasonable and common-sense approach" to describe the intended method to "achieve the appropriate balance between aircraft use and protection of the visitor experience." Extremist remedies, such as those imposed by the NHPA finding of "no adverse effects" from prohibiting all air tours over the Park, or radically and unreasonably cutting allocations to do so, according to Congressman Duncan ... who introduced the legislation and sat on both the House Subcommittee on National Parks & Public Lands and chaired the House Subcommittee of Aviation ... would not be acceptable. There can be no clearer enunciation of the Will of Congress. This statement of Congressional intent cannot be equivocated.

The third requirement for being "acceptable" was to be mutually agreeable. The use of the word, "acceptable," places an unmistakable mandate on negotiations that involve ATOs in two-way discussions with the agencies in order to determine questions of fact and to prevent abuse of process (e.g., imposition of extremist remedies, as in the present instance). For instance, without mutual consent, there would be no way to require the agencies to conduct the Section 808 science-based sound studies required by the Act. The inclusion of the word, "shall," makes arriving at mutual consensus on remedial methods compulsory. Because "acceptable" is the first word that appears as an Objective of the Act behind "shall," and because "acceptable" is placed before the word, "effective," the requirement for acceptable consensus is not an afterthought.
Thus, there is an obvious emphasis that remedial measures taken by the agencies must at least be acceptable. i.e., "agreeable," to ATOs. From the very beginning, the FAA and NPS have steadfastly

refused to acknowledge their statutory duty to perform this act of due diligence ...
i.e., invitation of ATOs to the negotiating table to satisfy the "acceptable and effective clause" ... , or to recognize that the requirement for negotiations is retroactive. The result has been denial of due process and abuse of agency discretion, which will produce chaos in the courts. NPATMA is neither ambiguous nor silent on the subject of required negotiations, so the matter is not an issue of agency discretion.

The objective of the Act, however, must meet both criteria, i.e., be both "acceptable" and "effective." The pertinent coordinating conjunction used in the text is "and," not "or."
The "effective" part of the clause was inserted by Congress to make certain that the agencies complied with Section 808 of the Act. The effectiveness of an ATMP, under NPATMA, can only be determined by application of science-based sound studies utilizing pertinent data.30 The "shall" mandate of Section 808 makes compliance with the requirement for science-based sound studies absolutely mandatory. For reasons already discussed in detail, noise modeling technology does not satisfy Section 808's requirement for "reasonable scientific methods."

Therefore, the agencies have twice-over failed to meet the stipulation that the CACH ATMP be both "acceptable" and "effective." The FAA's CACH ATMP and the justification for same fail on face of compliance and argument, both

h. The CACH ATMP does not provide due process for SWS.
1. The FAA provides no evidence to support its allegations
The majority of the FAA's "evidence" against Southwest Safaris for abuse of cultural resources, invasion of privacy, and disruption of sacred ceremonies is primarily based on five letters from Navajo Chapter houses and eight letters from individuals after consultation with the NPS. Most of the letters from individuals and resolutions from Chapter Houses read the same, indicating that the tribes were coached by the FAA and NPS as to what to say. Prior to the consultations, the Pueblos were not even aware of the Park overflights Southwest Safaris (SWS) has been conducting over the late 49 years. Suddenly, all the Navajos are now protesting the exact same issues, i.e., abuse of their cultural and religious rights. This line of evolved argument could only have come at this convenient time from the agencies. It appears that the FAA and NPS have conspired to manipulate the evidence against SWS in order to insure a determination against the ATO. The FAA hides behind Section 106 ofNHPA to rely on accusations (e.g., feelings) that are presented as stand-along evidence without need of proof. Thus, the FAA has conspired with the NPS to deprive SWS of legal defense.
The "shall" mandate of Section 808, quoted above, declares that objective scientific methodology was to prevail and that NPATMA was to be the controlling legal authority, not NHPA. The reason is very clear: under NHPA Section l 06 consultation regulations, there is no requirement to gather objective data; mere accusations alone constitute convicting evidence of "adverse impact." The FAA builds its case against SWS at CACH based on unsubstantiated charges of theoretical, possible, and potential abuse (e.g., spiritual trespass, invasion of privacy, and interruption of tribal ceremonies) without any reference to actual, present, or documented occurrences, often citing anecdotal "feelings alone" as legitimate evidence. No hard facts are offered, only emotions and undefinable allegations based entirely of supposition. Under NPATMA, this does not constitute substantiation of claim or presentation of "evidence."

2. The FAA and NPS have refused to comply with Section 808.
The burden of conducting science-based sound studies utilizing pertinent data31 was placed by Congress on agencies of the U.S. Government, not ATOs, so that the data would be acceptable to all parties involved in the decision-making and contesting process. The results of the studies could then be entered

into evidence. With timely, accurate, and objective sound data in hand, ATOs could reasonably debate the proposed actions or inactions of the FAA and, if necessary, submit differences of opinion to the courts for judicial review.
Pertinent sound studies (defined to mean "current, comprehensive, relevant, accurate, and science-based") were thus required by the Act not only to require objective data upon which to base basis for decision, but also to ensure due process for air tour operators. By failing to perform pertinent sound studies before implementing the CACH ATMPs, and by failing to recognize the principle of Priority of Law ... whereby statutes control regulations, not the other way around ... the FAA and NPS have denied access to sound studies that could have been used by SWS to present its case in court for judicial review. This makes the burden of proof much more difficult for the ATO and works towards denial of access to the courts.
3. The agencies knowingly misuse laws to deny due process.

Southwest Safaris alleges that the FAA has conflated NPATMA, NEPA, and NHPA so that the agency can pick whatever law it wants in effort to accomplish the implementation of ATMPs as fast as possible, in order to satisfy a writ of mandamus from the U.S. Court of Appeals, District of Columbia Circuit. The result has been compounding legal chaos, reckless destruction of small businesses, and denial of due process to air tour operators because there is no legal authority on which to argue against a decision. The agencies basis for decisions change from park to park, operator to operator, and law to law. There is no standard of fairness nor predictable reason for decision, the only recourse for the ATO being appeal to the courts. The agencies, themselves, are closed to any sort of appeal or meaningful response.

i. The FAA wrongly argues for extremism, using an incorrect basis for decision. NPATMA is incompatible with the FAA's Theory of Extremist Remedy. 32
1. The FAA misinterprets and misapplies NHPA regulations to justify extremism.

There is nothing in the Federal Code that justifies the FAA's extremist interpretation of law and regulation with respect to ATOs. The FAA knowingly applies an errant regulatory opinion supplied by the Advisory Council on Historic Properties (ACHP, or "the Council") to justify banning all air tours over Canyon de Chelly National Monument.

On December 21, 2023, the ACHP wrote to the FAA giving the Council's formal Opinion on a matter of critical importance to air tour management plans in general. The Opinion was rendered in regards to the FAA's Finding of "no adverse effects" for the Bandelier National Monument (BAND) ATMP, but it draws on interpretation of regulatory language applicable to all ATMPs. So, the errant Opinion is significant. The Council incorrectly interprets the regulatory language ofNHPA's Section 106 to mean that the harshest measures are the preferred/required remedies for "potential" adverse impacts from the presence of air tours. The ACHP wrongly instructs agencies that the most lenient measures of correction would be the least preferred, even if both lenient and strict resolutions arrived at the same results.

The FAA uses the ACHP's misinterpretation of the NHPA regulation (36 CFR §800.l(a)) to justify a Finding that denying all air tours over Canyon de Chelly would have "no adverse effects," because the total prohibition of all air tours at the Park would, at least theoretically, ensure no noise from air tours.33 The FAA's final decision to ban air tours was then used to "justify" the ACHP's Opinion that extremist determinations are required, if at all possible, before lesser alternatives are considered.

The whole Section 106 process has been an obvious exercise in circular reasoning and mutual justification of agency decision and, therefore, is invalid based on logic, alone. Surely, the FAA would have known about this flaw in reasoning from the beginning. Interestingly, in its reply to the Council's Opinion, the FAA never says it agrees with the Council's Theory of Extremist Remedy, but the FAA takes the ACHP's opinion and runs with it because of the view's usefulness at BAND for arriving at a decision

for "no air tours," regardless of the spectrum of possible alternatives. The situation at BAND is directly akin to that of CACH.

Unfortunately for the FAA and NPS, neither the ACHP's Opinion, i.e., Theory of Extremist Remedy, nor the FAA's Finding, i.e., "no significant effects" from banning air tours over the park(s) ... which Finding relies on the Theory of Extremist Remedy... have merit based on reason, law, or textual analysis.

On the bottom of page 4 of the ACHP's Dec. 21 Opinion re. the BAND ATMP, the Council says:

Further, while the Section I 06 process does not mandate a specific [extremist] outcome, the regulations implementing Section I 06 present an order to the consideration of alternatives with regard to [potential] adverse effects, if any. The agency should first consider ways to [entirely] avoid [potential] adverse effects to historic properties; if such options are not available, then the agency would consider ways to minimize or mitigate [potential] adverse effects (see 36 CFR §800.6(a)). (Emphasis added.)

The FAA builds a huge untruth around a small half-truth. While it is, of course, true that "Section 106 process does not mandate a specific [extremist] outcome" ... meaning that NHPA does not require the FAA to choose the most radical fix for remedying adverse air tour impacts that might not even exist, the impacts being only "potential" in nature... the rest of the FAA's sentence is blatantly false. NHPA regulations do not require or even suggest any prioritized order of remediation for "potential" adverse effects on historic properties.

NOTES:
25 Pertinent Data, supra note 22
26 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 and CACH. The suddenly but conveniently "revised" opinion held by the FAA ... that the mere presence of air tours in these parks is objectionable, in contrast to HAVO ... lacks explanation and 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." The inconsistence of logic and argument is unacceptable. Southwest Safaris cries foul.
27 The FAA's Theory of Extremist Remedy, discussed in detail in Attachment 2, is derived from a fundamental misunderstanding of NHPA's 36 CFR §800. l(a), originally put forward by the Advisory Council on Historic Properties (ACHP, or "the Council"). The ACHP's Theory incorrectly declares that the first and major priority of Section 106 of NHPA is to avoid adverse effects on historic properties altogether and, if that option is not available, only then would an agency (the FAA) elect alternative remedies that would either minimize or mitigate adverse effects. In actuality, §800. l(a) says no such thing. The regulation merely says that an agency has a choice as to whether it wants to "avoid, minimize, or mitigate any adverse effects on historic properties." The Council's Theory is used by the FAA to justify first imposing the most extreme remedy for aircraft noise/presence at national parks and only employing moderate fixes as a last resort, if no alternatives are available. This is the reverse of the order required by

NPATMA. The Council's Theory cannot be supported either by legal or textual analysis and must give way to NPATMA's mandates for moderation, the latter being the controlling legal authority in matters relating to ATMPs.

28 Pertinent Data, supra note 22

29 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." The FAA and NPS never complied with the second half of the court order.

30 Pertinent Data, supra note 22

31 Pertinent Data, supra note 22

32 The Theory of Extremist Remedy was originally put forward by the ACHP in a letter to the FAA dated December 21, 2023. The Council rendered a formal Opinion on the proper interpretation of NHPA's regulation that appears in 36 CFR §800. l(a). The Council asserts, incorrectly, whenever "potential" adverse impacts are found that "might affect" historic properties, defined in the broadest sense, that the preferred method of addressing the alleged problem is to start with the most irrefutably-effective method of eliminating the "problem" regardless of cost, and if that were not possible, then proceed to progressively less effective measures. In fact, §800.1(a) says no such thing, stating instead that an agency can elect, as determined by circumstances, to avoid, lessen, o accept the "potential" adverse impacts imposed by an "undertaking." In the case of ATMPs, the "circumstances" are determined by the "acceptable and effective" clause of NPATMA combined with Section 808 of the same Act. NPATMA thus controls the actual corrective methods demanded by NHPA for ATMPs, even if one were not to consider the multiple errors manifested in the Opinion of the Council, as will be discussed below.

33 The FAA's Finding of "no adverse effect" consists of a double-negative syllogism ... "no flights over Bandelier can have no adverse impacts on the Park." The formal argument is impossible for ATOs to refute logically, because of the double-negative and, therefore, only allows for a predetermined outcome of Finding and, thus, is not admissible argument. The FAA Section I 06 process fails, which would normally bring ATMP creation to a halt.

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Correspondence: ACHP wrongly instructs agencies that the most lenient measures of correction would be the least preferred, even if both lenient and strict resolutions arrived at the same results.

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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). The correct citation says:
§800.1 - Purposes - The goal of consultation [Section I06] 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. (Emphasis added.)

Even the most superficial analysis of the ACHP's Opinion, which refers to the arguable NHPA regulation (§800.l(a)), uncovers the underlying fallacy of the ACHP's argument. "Potential" adverse impacts include adverse effects that are not "real or existing." The ACHP is claiming that air tour operators, based on NHPA regulatory language, must demonstrate that their flights do not subject persons or property on the ground to any kind of "potential" (meaning "imaginary") adverse events, whether physical, cultural, emotional, or "spiritual." To say that air tours must meet a standard that no other branch of aviation can achieve is absurd. If aviation had to avoid all "potential" adverse impacts to persons and property on the ground, there would be no flying at all. The FAA sets a standard which makes it impossible for ATOs to avoid NHPA's objections to any evidence the ATO might present. The legal deck is stacked against ATOs from the outset of NHPA investigation.

2. The FAA's extremist Finding of "no adverse effect" is neither true, logical, or allowable under law. The FAA violates 36 CFR §800.5, Assessment of Adverse Effects.

One of the fundamental flaws with the FAA's Theory of Extremist Remedy is that there is an assumption of "guilt" built into the FAA's collection of evidentiary facts ... all based on "potential" reality, not actual ... that ATOs are asked to disprove. Furthermore, the ACHP's and FAA's case against the ATO is based on surrealistic evidence and accusation, the concept of which is foreign to American jurisprudence. The agencies assert that the mere likelihood of "guilt," based on the flimsiest of "potential" circumstances, requires the harshest of remedies to correct. The FAA's very structure of syllogistic argument, being impossible to answer, denies the ATO due process.

In essence, the FAA's Finding ... that there are "no adverse effects" from prohibiting air tours over national parks ... is a self-fulfilling argument, and therefore invalid. In this situation, the accusation serves as the verdict, the two being one and the same. The judgement is, "Because ATO XYZ actually flies over historic properties, he is guilty under NHPA of 'potential' environmental abuse." Stated differently, "The mere possibility of flying over a national park has negative impacts on sacred and cultural properties therein; so, an ATO actually abuses sensitive historic properties in national parks even by "potentially" flying over them." In any case, regardless of the absurdity of the FAA's accusations, the FAA Finds that by eliminating all "potential" flights, one eliminates all "potential" abuse. In fact, there is no difference between the conclusion and the premise, but the illogic is impossible for the average ATO to untangle.

There is no opportunity, based on the impossibility of arguing with the supposed facts ... the facts consisting of "potential situations" conflated with "real circumstances" ... to prove to the contrary. There is no alternative to a Finding of"no adverse effects," because the FAA's closed argument will not allow for one. So, the FAA's "request for concurrence" with the agency's Finding of "no adverse effects" is not only abusive, but meaningless. The FAA's Finding of "no adverse effects" from banning all air tours over CACH offers the illusion of due process, but not the actuality of it.

The FAA's contention (Finding of"no adverse effect") consists of a double-negative syllogism ... "no flights over Bandelier can have no adverse impacts on the Park." The formal argument is impossible to refute logically, because of the double-negative and, therefore, only allows for a predetermined outcome of Finding and, therefore, is not admissible argument.

Moreover, the FAA's Request for Concurrence letters to SWS of June 2 and Appril I 0, 2024, are actually demands that the ATO testify against himself by admitting, against his own interest, that there is no validity to any objections to the disallowance of air tours over the Park. The structure of the Finding syllogism is meant to be self-fulfilling, pretending to be irrefutable logic but in actuality being circular reasoning. The premise directs the conclusion: no air tours over the Park necessarily means that no noise can generated from flights that do not exist; therefore, all air tours should be prohibited in order to eliminate air tour noise over CACH. Such syllogistic illogic is not allowed under rules of administrative fairness.

In actuality, the FAA never arrived at a "finding" in the sense that the agency conducted an investigative process and came to a "finding" therefrom, because there never was any field research in the minds of the FAA that needed to be evaluated. The "Finding," in the case of CACH, and most other parks as well, was only a pronouncement of agency mandate ... a dictate supported by irrefutable illogic.

For all these reasons (circularity of argument, flawed syllogistic construction, and lack of field research to empirically verify the conclusion), the FAA's Finding is neither objective nor rational, but imperious. The FAA's actual argument is defective and so, therefore, is its uncompromising conclusion, which defies the whole purpose of Section I 06 consultation in the first place. The FAA's Finding destroys the process of Section 106 consultation, which was to arrive at a mutually acceptable solution for alleged adverse impacts from air tours over national parks, not forced concurrence with a false argument. The entire logic behind the FAA's Finding is an exercise in abusive sophistry. The FAA and NPS, acting jointly, have crafted an argument that is impossible to answer without going outside the syllogism,34 and therefore have conspired, yet again, to deprive ATOs of due process.

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 and operational analysis.

3. The FAA's decision for "no air tours" is inadmissible extremism.

There is no substantive or textual support in NPATMA law for radical interpretation of regulations.

Under law, there must be a standard of decision upon which any administrative determination relies. That standard, according to NPATMA, with respect to ATMPs, is "existing conditions." The Act takes existing conditions at national parks and tries to improve on them. There is nothing in the language of NPATMA that assumes a perfect world is the standard by which air tours have to be judged. If no adverse effects from air tours were allowed, then the language of §40128(b)(1)(B) would not have said that "the object 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 ...." Instead, the wording would have simply said, "The object of any air tour management plan shall be ... to prevent all potential adverse impacts." The FAA subtly imports the use of the word, "potential," from NHPA, and craftly but wrongly applies it to NPATMA. In fact, the word, "potential," never appears in the NPATMA statute. So, the FAA has fabricated a false standard of decision for ATMPs. Air tour management plans must be constructed on the basis of "existing" (i.e., "actual") conditions," not "potential" circumstances that "might" or "possibly could" adversely impact persons and property on the ground.

The FAA's having established the validity of the Theory of Existing Conditions,35 Southwest Safaris argues, it must be true that if air tours existed at a park before the creation of a respective ATMP for that park, then the standard of decision must accept the presence of air tours after the creation of the ATMP. The FAA's findings and decisions for most ATMPs across the Nation ignore this logic and conclusion of law, banning or unreasonably curtailing air tours in most parks. The FAA wrongly attempts to use NHPA's "perfect world" language ... based on the theory that an aircraft's mere presence over a national park is objectionable36 ... to undermine the authority of NPATMA's "real world" law, using the perfect to destroy the good. This is extremism.

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 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.
In other words, at HAVO, the FAA argues in favor of allowing air tours to fly over the park, endorsing the Theory of Existing Conditions. At Canyon de Chelly (and Bandelier), however, the FAA reverses its position, and asserts that the Theory of Mere Presence (see Footnote #28 below) is the operative authority for banning all air tours over the latter parks. The FAA offers no explanation for the logical inconsistency, arguing in favor of "moderation" at HAVO but extremism at CACH (and BAND).

NPATMA focuses on "reasonable and common-sense approaches" (see Attachment 1, The Will of Congress) to reducing actual adverse impacts from air tours. The Act is not concerned with conceivable, theoretical, suppositional, or conjectural analysis of "potential" or "possible" adverse effects, which speculations are the province ofNHPA. For this reason alone, NPATMA rejects the FAA's extremist finding, because the Finding is based on irrelevant and contradictory NHPA standards compared with those ofNPATMA.

NPATMA is outright hostile to the application of extremism. The Act always and everywhere tries to arrive at a solution to air tour noise and presence that is reasonable. NHPA, however, has no such constraint or objective. Therefore, NPATMA must control the timing, vocabulary, and methodology employed by NHPA. In other words, NHPA, if it is brought to bear on regulations impacting ATMP

decisions, must be controlled to ensure that the outcome ofNHPA process is sensible, practical, and realistic with respect to NPATMA, based at all times and places on existing prior conditions before the imposition of ATMPs.

So, again, with respect to ATMPs, NPATMA must be the controlling legal authority. NPATMA allows extremist remedies only in the most extreme circumstances, provable by science-based sound studies (Section 808). Excessively adverse conditions have not been found by Section 808 process to exist at Canyon de Chelly (or BAND) or most other national parks. Thus, the FAA's extremist ATMP policies may be allowable under NHPA and NEPA, but they are neither justified, warranted, or permitted (except under extreme circumstances) under NPATMA.

Textual analysis ofNHPA and NPATMA comes to the same conclusion as legal scrutiny, that there is no justification either under NHPA or NPATMA for the FAA's extremist approach to ATMPs.

The ACHP and the FAA base their entire Theory of Extremist Remedy on misinterpretation of the single, informative sentence found in §800. l (a), quoted again for ease ofreference:

§800.1 - Purposes - The goal of consultation [Section I 06] 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. (Emphasis added.)

The FAA's misunderstanding comes from its fundamental misreading of NHPA, demonstrated in multiple ways:
I. In the first place, the rationale of the §800. l (a) statement was simply to give the "purposes" behind the NHPA statute and the general methods of accomplishing them.
§800. l (a) serves merely as introductory text for the NHPA statute regarding "consultation" between parties of opposing opinions, not regulation of air tours.

2. In the second place, neither NHPA's §800. l(a) language nor the ACHP's Opinion have any binding authority for air tour management, being irrelevant thereto. NPATMA is the controlling legal authority re. ATMPs, not NHPA. The FAA errs by allowing NHPA phraseology ... meaning, "properties potentially affected by the undertaking" ... to

control NPATMA's regulation of "actual effects,", conflating NHPA's "avoid, minimize, or mitigate potential adverse effects" mandate with NPATMA's imperative to "mitigate or prevent significant [real] adverse impacts." The FAA misunderstands NHPA, thinking that the statute applies to regulation of aviation policies as well as to historic properties.
It does not. NHPA regulations only apply to aviation properties (e.g., airports), not aviation operational rulemaking (e.g., when, where, and how air tours are conducted).
3. In the third place, the text gives an explication ofNHPA's goals and the means of attaining them, not instructions for how to achieve NHPA objectives; that comes later in the NHPA statute. The wording of §800.l(a) does not include any mandatory terminology such as "must," "shall," or "will." So, even ifNHPA theory were determined to be applicable to NPATMA-based actuality, the quoted language, considered by itself, carries no authority for making policy.

4. In the fourth place, 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 actual regulation, as quoted above, says no such thing.

A. In NHPA regulation, Congress presents the words, "avoid, minimize or mitigate," merely in alphabetical order.

B. 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)).

C. 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.

D. Congress uses words that do not express a clear difference of degree. This disproves the Council's interpretation of §800. l(a). Under ACHP reasoning, by using the words, "minimize or mitigate," Congress would have attempted to draw a distinction that does not make a clear difference, the degree of difference being just too subtle for regulatory objectives. 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 avoid, lessen, or accept any adverse effects on historic properties, in that order."

Evidently, Congress agrees with Southwest Safaris' analysis. Congress did have an order of preference for implementing the three choices for correcting alleged adverse impacts from air tours ("avoid, minimize, or mitigate").

In 2012, Congress became aware of all of the problems implicit in the above textual analysis. So, Congress added wording to the Act to clarify Congressional intent. Section 802 of the Act says:

The order of preferred remedy is listed in reverse sequence to that ofNHPA. Thus, the two statutes war against one another. NPATMA being the controlling legal authority, must prevail under the principle of Priority of Law. The correct order of preferred remedy should first be to "minimize" (i.e. lessen) adverse impacts, then mitigate, and lastly "prevent" the adverse effects of aircraft overflights. The FAA fails to recognize the authority of NPATMA over NHPA.

In any case, Congress simply directed that the remedy, if any correction is required, must be "acceptable" ... meaning that it need be both "reasonable" to all parties, including ATOs, and must be "justifiable," meaning that it must pass the 'if any" test required by NPATMA. As well, the fix must be "effective," meaning that it must comply with the Section 808 sound-study tests for successful graduated improvement of "significant" adverse impacts, not avoid all "potential" adverse effects. Regardless, ATMP curative methodology must work from the least harmful impacts to the most, in the spirit of NPATMA, based on "reason and common sense." See the Will of Congress (Attachment I).

In summary, NHPA was never written to be an aviation regulation. NPATMA was. The FAA is incorrectly relying on NHPA language ("potential adverse impacts") to influence the outcome of the ATMP process ("no air tours allowed") that is not permitted in the NPATMA endeavor (defined and governed by the "acceptable and effective measures" clause). This is yet another example of why Congress intended NPATMA to be the controlling legal authority re. ATMPs. In NPATMA, the language of the Act is specific to the FAA's initiative, which prevents extremist remedies.

The FAA goes out of its way to impose the most punitive remedies on ATOs for air tours operating over units of the NPS. In the Federal Code, however, there is neither reason nor necessity for doing so. Southwest Safaris repeats for emphasis, the FAA's ATMP policies may be allowable under NHPA and NEPA, but they are neither justifiable, warranted, nor allowed in most circumstances under NPATMA.

Southwest Safaris complains that extremism serves to undermine the effectiveness ofNPATMA, preventing effective implementation thereof. Under the Act, NPATMA methods are just the opposite ofNHPA's and NEPA's approaches. Before any remedies are imposed, the "if any" test' for "significant adverse impacts" must be performed. Only then is the FAA authorized by Congress to apply corrective measures. NHPA and NEPA have no such constraints. Under NPATMA, corrective measures must use the least impacting solutions first, resorting to the most affecting last. NHPA appears to prefer remedies that emphasize punishment over mutually beneficial operational adjustments. NPATMA requires coming up with a solution that would be both acceptable ... meaning agreeable and justifiable ... and effective ... meaning measured (Section 808) by the reduction of "significant adverse impacts" for air tours, not all "potential" adverse effects. NHPA and NEPA have no such limitations on their applicability. In these manners, NHPA and NEPA war with NPATMA to the effect that constructive remedies are impossible to achieve.

Therefore, under the dual Principles of Primacy of Law and Continuity of Law, with respect to ATMPs, NPATMA must reign and "reasonableness" must control, which disallows the remedies otherwise permitted by NHPA and NEPA. Specific language in Section 808 of the Act concurs. The FAA's and NPS' extremist decisions to severely curtail air tours over units of the NPS, let alone prohibit all flights over designated parks, must be withdrawn, and retroactively reconsidered, because the agencies' decisions cannot be justified, as required by 49 CFR
§40128(b)(3)(F).

The FAA's and NPS' extremist policies have evolved into methodologies of legal entrapment of ATOs, forcing ATOs into a legislated battle between the laws (NPATMA, NHPA, and NEPA) from which there is little chance of escape or presenting coherent argument in court. The hope of constructive application of NPATMA remedies, based on "reasonableness and common sense" and the Will of Congress (see Attachment 1), has been all but lost on the agencies, to the detriment of society and the courts.

j. The FAA fails to consider both beneficial and adverse effects of the ATMP.

The FAA violates NEPA regulation §1501.3(b)(2)(i and ii). The FAA has failed to consider both adverse as well as beneficial effects from denying air tours access to the Park, not allowing for the future economic and employment needs of the local Navajo community, wrongly assuming that socioeconomic conditions and aspirations of the Navajo Nation will remain forever static.
This assumption is far from correct.
k. The FAA has dirty hands.
1. "The Court made us do it."
On April 17, 2024, during the public meeting by telephone to discuss the CACH ATMP, Southwest Safaris asked the NPS why the agencies had not considered a Voluntary Agreement (VA) for the park instead of an ATMP. After all, NEPA directly addresses this question.
NEPA §1502.14(a) says:
Agencies shall evaluate reasonable alternatives to the proposed action, and for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.

NEPA also says (§1502.14) that "In considering the degree of the effects, agencies should consider... both beneficial and adverse effects of carrying out an "undertaking." The agencies never complied with either of these regulations, arguing that compliance, because of court order, was now essentially a matter of voluntary discretion, that the court order gave the agencies full latitude as to what to do. But the real reason, the NPS admitted, was that the decision of the

U.S. Court of Appeals, DC Circuit,37 made it impossible for them to comply with NEPA (requirement to evaluate a VA alternative and to access benefits and costs of decisions), because the agencies were only given two years to complete 23 ATMPs. The NPS' statement is a half truth, at best.

What the NPS is not admitting to is the fact that the Court never ordered the agencies to ruthlessly employ the most extremist measures to impose ATMPs without consideration of the impacting laws involved and the civil rights of ATOs. The Court asked the agencies to inform it if there were any reasons why the agencies could not comply with the two-year time-line imposed. The agencies failed to inform the Court, Southwest Safaris alleges, of many things. Of significance, the agencies: (1) failed to inform the court of the need to conduct the "if any" tests demanded by the Act to legitimize the ATMP processes by creating legal "undertakings;" (2) failed to inform the Court of the need to comply with Section 808 of the Act which would involve time-consuming science-based sound studies; (3) failed to inform the court of the demand of the Act to arrive at "acceptable and effective" methods of reducing alleged "significant adverse impacts" of air tours through consultation with air tour operators; (4) failed to inform the court of the need to consider the creation of potentially-complicated VAs instead of autocratically-imposed ATMPs; and (4) failed to notify the court of the need to conduct a study of the negative consequences of ATMPs as well as the benefits(§1502.14) and to take the negative effects into account. All of this would have required far longer to achieve compliance than two years for all 23 parks and the agencies did not want to suffer the immediate anger of the Court. However, SWS alleges, the agencies actually had a deeper motive for their silence. By not informing the Court, the FAA could interpret the Court's ruling as a mandate to accomplish the implementation of 23 ATMP at any cost to the air tour industry, that is, as permission to use NHPA and NEPA to break the law of NPATMA in order to systematically deconstruct the air tour industry for political reasons coming from unidentified corners of government. In fact, the Court gave no such knowing authorization to misuse two laws to break a third.

SWS alleges that the agencies knowingly defrauded the Court in order to justify deliberate abuse of NPATMA and in order to negate the Will of Congress. Cf. note 29.

2. "The Indians made us do it."

There is no end to the imaginative arguments the FAA and NPS use to justify violating the explicit law of NPATMA and to vindicate themselves of ignoring the clear Will of Congress. Every time the agencies argue with Southwest Safaris, the agencies bring a different set of arguments, ignoring the rules of rational consistency.

In the public meeting of April 17, 2024, on the CACH ATMP, held by the FAA and NPS over the internet, the agencies, yet again, at the last moment, changed their entire line of argument for excepting the exemption status of CACH. The agencies suddenly claimed exceptional and unique circumstances at the Park that do not apply to any other unit of the NPS and, therefore, that the agencies' rational for withdrawing the exemption status of the Park does not have to be consistent with that of other units.

In fact, the agencies feel so strongly about their new-found justification for ignoring explicit laws and the civil rights of ATOs that the agencies have formally abandoned all other reasons for pursuing an extremist ATMP, the agencies not being able to defend any of their other justifications.

The FAA, as the lead agency, is now claiming that the Navajo Tribe actually owns the land on which the national monument lies, and that the fact apparently changes the rules. The FAA, arguing on behalf of the NPS, acknowledges that the agencies have an obligation to honor the fact that they have a tribal land trust to administer, which suddenly takes priority over all other management policies, even including Amendment 5 of the Constitution.

The FAA claims, incorrectly, that the Navajo Nation can have it both ways: the Tribe can grant the Federal agencies management authority over the Park, but withhold from them the right of sovereign

decision-making when it comes to the airspace over the Canyon.
In the first place, the FAA has never ceded control of the airspace above any tribal lands to the respective governing bodies over which the airspace lies. So, legally, the present Tribe has no authority to claim that there is a relationship between the Tribe's rights under tribal land trust relationship with the Federal government and prohibiting air tours from conducting transportation flights through the airspace over the Park. The FAA, and only the FAA, has control over National airspace. Even the FAA cannot relinquish that control; Conagress will not allow it. So, the FAA cannot justify prohibiting air tour flights through FAA airspace on grounds that the Tribe has the right to make governing decisions for that airspace, rights which incorrectly take priority over the authority of the agencies. The right of control over landholdings does not extend to the sky.
In the second place, the FAA is subtly arguing that the American Constitution does not apply to national parks that are co-managed with an Indian tribe. The FAA decision to prohibit commercial flights over Canyon de Chelly ignores Article V of the Constitution under theory of Indian Rights.
The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Due Process Clause applies in the present instance because the Federal government is attempting to deny a specific ATO the liberty to engage in air commerce otherwise available to all other classes of Federally recognized air carriers. The FAA argues that the sovereign right of the Tribe to remove this liberty from the ATO is greater than the operator's rights under the Constitution to retain said right, which is incorrect interpretation of law. If the agencies pursue the argument that treaties usurp the Constitution, there will be a crisis of jurisprudence which only the courts, not the agencies, can resolve.

Today, Canyon de Chelly is a national monument, not a tribal park. All rights of protection and equal treatment of the law available under the Constitution go with the Park. Neither the Tribe nor the Federal government can unfairly discriminate against classes of business, especially on racial/ethnic grounds.

In the third place, the agencies have thus created yet another Constitutional crisis. The agencies have pitted the rights of "all the people" against those that retain the benefits of the tribal land trust ("some of the people").

The wording of 54 U.S.C. § lO0I0l(a), referring to "all the people," does not have an "except" clause attached to it. It says:
§I00I0l(a): 1978 REAFFIRMATION - Congress reaffirms, declares, and directs that the promotion and regulation of the various System units shall be consistent with and founded in the purpose established by subsection (a), to the common benefit of .all the people of the United States. (Emphasis added).

Southwest Safaris alleges that the FAA is using tribal trust obligations as a means to skirt the 5th Amendment in order deny SWS equal treatment of the law by managing the Park for the benefit of some of the Navajo People rather than for "all the people" of the United States.

When the Tribe decided to co-manage the Park with the NPS by putting Canyon de Chelly into the National Park System, it consented to management of the Park, in part, under the primary Law of the Land, the U.S. Constitution. One of the provisions of the Constitution is the 5th Amendment. The National Parks Management Act quoted above states that all parks must me managed for the common benefit of "all the people" of the United States, not just for the benefit of any particular group, such as local Chapter Houses of the Navajo Nation. Five Chapter Houses passed resolutions saying that they do not want air tours to operate over the Park. This is in direct violation of Act of Congress. NPATMA says th t all American people are entitled to the benefits of air tours, unless said tours can be shown to produce "significant adverse impacts" that cannot be minimized, mitigated, or prevented (Section 802(2)), which

condition the FAA has failed to prove with respect to noise, visual presence, and privacy. Adding to the abuse of law by the Tribe, the FAA has withdrawn the exemption status of CACH based on categorical declaration that treaty rights of the Tribe exceed those of all Americans to equal access to benefit of National law, namely the protections afforded to patrons of air tours under the provisions of NPATMA. The FAA argues, incorrectly, that it does not have to even consider NPATMA, and that it can simply ban all air tours over the Park because that is the preference of the people who hold title to the land. SWS rejoins that those preferences and rights of decision were forfeited when the Canyon became part of the National Park System. The FAA's argument thus falls outside the law.

In the fourth place, Southwest Safaris argues that NPATMA has nothing to do with Tribal Land Trusts. When Congress created NPATMA, it was concerned with noise, visual presence, and privacy. There is no mention in the Act of Tribal Land Trusts. The Act was drafted by Senator John McCain, who represented Arizona. The Park lies entirely within the boundary of that Great State. Senator McCain would have been fully aware of, and probably fully sympathetic with, any objections of the Navajo Tribe to air tours over Canyon de Chelly at the time he compiled the Act. If Senator McCain had thought there were any reasons to ban air tours over CACH outright, as the FAA and NPS are now attempting to do, he/Congress would have pulled the Park out of any consideration for air tours just as Congress did in the case of Rocky Mountain National Park (see Section 806 of the Act). Congress did not take that option, so it is not an option for the agencies, either. The agencies attempt to create the equivalent of an amendment to a Act that Congress would not consider, bypassing

the Legislative Branch. The agencies err by trying to achieve a political agenda coming from the Executive Branch, rather than address operational concerns of the Legislative Branch, as required by law.

In the fifth place, unfortunately, racial overtones wrongly creep into the FAA's argument. Of parenthetical importance, in Canyon de Chelly, there are eleven commercial ground tour companies offering backcountry tours of the Canyon by foot, horse, and four/six-wheel drive vehicles. When questioned by Southwest Safaris in the CACH ATMP public meeting of
4/l 7/2024 as to how many visitors the ground vehicles transport in and out of the Park on an average annual basis, the NPS said it had no idea. When asked how many commercial ground vehicles accessed the Park annually, the NPS again said it had no idea. When asked if the NPS has any comparative figures that analyze the cumulative adverse impact from the obvious loud noise and intrusive physical presence of commercial ground vehicles, operating all day in the canons of the Park, compared to that of air tours merely traversing the park once or twice a week, at most, the NPS said that no such studies existed. The FAA specifically stated that, under NPATMA, the FAA had no obligation to pursue such comparative studies, even for reasons of fairness and equity of decision. This an answer that will be of interest to the courts.
Southwest Safaris alleges that the agencies are engaging in gross discrimination between classes of businesses based in part on the racial/ethnic component of businesses ownership. Ground tours make far more noise, for far more percentage of any given day, than occasional air tours merely transitioning the Park 1,000-3,000-feet AGL. The ground tours are exclusively owned and operated by Navajo proprietors. The noise and presence of the ground tours is perfectly acceptable to the agencies, but not air tours owned by non-natives. The unfairness and discrimination of the Tribal and Federal decision to ban all air tours over the Park screams in the face of the law. The ground tours have far more adverse impact on privacy and ceremonial practices than very short flights that cross the park 1000 feet above or more, which is legal altitude for interstate air commerce.

Again, The Navajo Nation and FAAINPS argue both sides of the fence. On the one hand, they argue that CACH is managed as a Federal unit of the NPS, on the other that the Park belongs to the Tribe. Both are true, but the U.S. Constitution and Amendment 4th prevails in either situation/interpretation. There is ample evidence to support SWS' allegations of abuse of the 5th.

On December 5,2023, the House Oversight & Accountability Subcommittee of the House Natural Resources Committee held a hearing on air tours in the Southwest. Mr. Carl Slater, a member of the Navajo Tribal Council, testified for the Navajo People. He clearly stated that, despite portions of his testimony to the contrary, the Tribe had no problem with air tours at Canyon de Chelly as long as they were owned, managed, and piloted by Navajos. At the public internet meeting held on April 17, 2024, SWS specifically asked the NPS whether this referenced policy would be acceptable to the NPS. The answer was an emphatic, but nonbinding, "No!" Thus, the agencies and the Navajo Nation argue against one another, making it difficult for the present ATO to argue successful against either point of view. However, Southwest Safaris rests its case on the 5th Amendment, which applies, regardless.
No matter how the FAA and NPS spin their arguments, the agencies have no case for "no air tours" at CACH.

I. The FAA wrongly engages in denial of interstate air commerce.

Congress has the clear authority under the Constitution (Article I, Section 8, Clause 3) to regulate interstate commerce. NPATMA, as a stand-alone statute, is not concerned with interstate commerce. However, the FAA and NPS are knowingly and wrongly using the Act to impose a barrier to air transportation of persons across state lines by blocking access to airspace that would otherwise be available to any other type of air commerce except air tours. By so doing, the agencies have clearly targeted the transportation of persons in regional air tours that act in a manner no differently than any charter company, except for the exercise of freedom of speech by giving a narration on the geology of the Great American Southwest. This constitutes an effort to unlawfully and systematically deconstruct the rural air transportation system in a manner never contemplated by Congress, the agencies misusing a law (NPATMA) with the intent to accomplish an unlawful purpose under the 5th Amendment (equal treatment clause).

The FAA and NPS could have chosen many other methods to "minimize" (Section 802) the alleged noise and visual/physical impact of air tours over CACH. Nothing in the Act compels the agencies to take the most radical approach to curtailing alleged adverse impacts. Moreover, nothing in the Act gives the FAA the authority to use the Act as a weapon to curtail transportation flights across the Park. To the contrary, precedence was set by the Act at Lake Meade National Recreation Area for an air tour transportation route that did not count as an air tour (§40128(f)). The principle of allowing for interstate transportation of passengers by air tour operators has already been set. Southwest Safaris argues that the FAA has the obligation to grant the same exemption for transportation routes at CACH and other parks where the issue of transportation arises. There is no indication that Congress ever envisioned the use of NPATMA to block legitimate interstate air commerce. SWS alleges that the agencies have exceeded their intended authority under the Act.

m. The agencies violate the ex post facto provision of the Constitution.

Article I, Section 9, Clause 3 says: "No bill of Attainder or ex post facto Law shall be passed." NPATMA violates the ex post facto clause by altering the rules of evidence under NHPA regulations after a supposed offense was committed. When NPATMA was written in 2000, the NPS had no rules affecting "cultural properties." The NPS Handbook on Management Policies - 2006 did not come into print until many years later. At the time NPATMA was passed, the definition of Cultural Resources only included

physical properties. Since that time, the NPS has tried to change the definition of "cultural resources" to include a plethora of "cultural elements" never anticipated by the drafters of the Act. The terms, "cultural landscapes," "cultural systems," "cultural practices," "cultural properties," and 'cultural connections" have only recently come into usage, in large measure to justify denying air tour operators access to national parks, such as CACH. The agencies are trying to expand the definition of "cultural resources" originally accepted by Congress in order to make it easier to convict the alleged "offender," i.e., Southwest Safaris, of environmental and cultural abuse of Tribal values without any evidence at all. See Calder, 3 U.S. at 390. Cf. Trop v. Dulles 356 &.S. 86, 95 (1958). By the time one finishes reading the litany of inditements presented against SWS in the FAA's Justification

section of the CACH ATMP, the original purpose and methods ofNPATMA become almost unrecognizable. The FAA is trying to change the definition of "cultural resources" after the fact in order to get an easier "conviction" on grounds of Tribal abuse, which has the same effect of passing an ex post facto law.

n. NPATMA, itself, is unconstitutional.
1. The Act denies due process (5th Amendment)

A. The Act allows the FAA to present charges without proof of evidence.

The FAA and NPS present no evidence of public complaint over 49 years of ATO operation, nor attempt to consult with SWS over issues of concern, nor evidence of field research to document adverse impacts to historic properties, nor data derived from science-based sound studies required by Section 808. These arguments are fully developed in Sections Il(e), Ill(e), and IV(h)(l) of this letter.

B. The Act denies ATOs right of access to evidence.

The Act does not grant ATOs explicit right to results of science-based sound studies. The FAA has taken advantage of this loophole. By refusing to conduct said studies, and by refusing to disclose the results thereof without undue burden on the ATO, as in the case ofCACH,38 the agencies have attempted to deprive SWS of the evidence the ATO would needed to defend its interests in the courts.

This argument is developed in Section IV(h)(2) of this letter.

C. The Act withholds from ATOs the right of legal defense.

The Act does not overtly state the rights of an ATO to administrative remedy under the "acceptable and effective clause," thereby denying air tour operators the right of legal self defense in actions opposing Federal agencies. ATOs have no rights under the Act, except to bring cause of action to the attention of the courts under right of judicia review. Justice delayed or placed out of reach is justice denied.

See also Section IV(h)(3) of this letter.

NOTES:
33 The FAA's Finding of"no adverse effect" consists ofa double-negative syllogism ... "noflights over Bandelier can have no adverse impacts on the Park." The formal argument is impossible for ATOs to refute logically, because of the double-negative and, therefore, only allows for a predetermined outcome of Finding and, thus, is not admissible argument. The FAA Section I 06 process fails, which would normally bring ATMP creation to a halt.
34 Southwest Safaris effectively disproved the FAA's Findings for Bandelier and Canyon de Chelly by demonstrating to the agency, with math and physics, that flying around BAND and CACH) would create more noise and have greater physical presence to visitors in the parks than crossing the parks in a straight

line. In both instances, the FAA ignored SWS' reasoning, and proceeded, like a juggernaut, to implement its Finding.
35 The FAA's Theory of Existing Conditions comes from its letter to the ACHP of September 12, 2023. 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 (Hawaii Volcanos National Park) air tours, the FAA replies:
36 Theory of Mere Presence, supra note 25
37 Decision of U.S. Court of Appeals, supra note 29
38 The FAA failed to disclose the source of its field-gathered data in the Environmental Analysis of the CACH ATMP. The FAA did not mention therein the name and source of the report it relied on as the basis for its noise modeling studies and when the source was discovered, buried deep in a list or resources in the Appendix to the EA, the FAA provided no link to it. Efforts to locate the report on the internet proved unfruitful. Letters to the FAA (Mr. Eric Elmore, senior policy manager of the FAA's office of Environment and Energy, where the report resided) went unanswered. Southwest Safaris alleges that the FAA knowingly withheld the information so as to obstruct the arguments of the ATO.

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Correspondence: D. The ATMP denies the ATO equal treatment of the law (5th Amendment).

Charter flights in general, irrespective of exercise of freedom of speech, are allowed to navigate the airspace over CACH, but Southwest Safaris, also a charter flying service, is not. Two identical flights ... except for the delivery of a geology discussion enroute ... might use identical airplanes, fly over CACH at the same time, at the same altitude, on parallel routes, with imperceptible difference to anyone on the ground, and one will be allowed, the other not, based solely on the supposed purpose of the flight, not the operation of it (i.e., individual conduct).
This type of discrimination based on "business color" is clearly outside the bounds of Constitutional allowance.

See Section Il(a) & (b) of this letter. Cf. IV(k)(2) The Indians made us do it.

2. The Act denies Southwest Safaris freedom of speech (1st Amendment).

NPATMA stipulates the definition of an air tour. 49 USC 40128(g)(4)(B)(i)) says:

(8) FACTORS TO CONSIDER- In making a determination of whether a flight is a commercial air tour operation over a national park for purposes of this section, the Administrator may consider: ... (ii) whether a narrative that referred to areas or points of interest on the surface below the route of flight was provided by the person offering the flight;

The FAA interprets this regulation to mean that a narration delivered at any point along the route of flight makes the entire flight an air tour. The FAA maintains that no air tour may fly over any park where such flights are prohibited. Therefore, the FAA denies some charter operators ... who exercise freedom of speech to talk about scenic landscapes... the right to fly over Canyon de Chelly but not others, who do not explain the landscape over which they fly. This is clearly punitive, hiding behind a definitional smoke screen. Pilots who talk about geology are not allowed to fly over the Park; pilots who do not engage in such freedom of speech, are allowed.

In this case, the exercise of speech is directly linked with the right to operate commercially. The denial of the latter constitutes denial of the former.

3. NPATMA favors certain ports and States over others.
Article I, Section 9, Clause 6 states:
No Preference shall be given by any Regulation of Commerce or Revenue to the Ports ofone State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.
The no-preference clause was designed to prevent preferences between ports because of their location in different states. To clarify, all discriminations between individual ports are not prohibited. Acting under the Commerce Clause, Congress may do many things that benefit particular ports and that incidentally result to the disadvantage of other ports in the same or neighboring states. This kind of preferential treatment is allowable. Congress may, for instance, establish ports of entry, erect and operate lighthouses, improve rivers and harbors, and provide structures for the convenient and economical handling of traffic, such as bridges. Nonetheless, these exceptions to the no-preference clause do not apply to NPATMA.

NPATMA is a federal statute that gives preference by blanket regulation of commerce to the Ports ... airports being the equivalent of seaports ... of some states over those of others (Artl.S9,C6,l), allowing operators in Nevada to fly over Lake Mead National Recreation Area as "transportation flights" (§40128(f) and exempting Alaska altogether from complying with ATMPs (Section 809 of the Act). Flying over Alaska is no different than flying over the remote regions of the Southwest.

The "Ports" of Arizona, e.g., the airstrip at Chinle, and ports of New Mexico, namely the Santa Fe Regional Airport, deserve the same rights of unobstructed access to Federal airspace as the airports of Nevada and Alaska. NPATMA is unconstitutional because the act of discrimination is committed in the law, itself (§40128(f) and Section 809).

V. Summary: The FAA has no case.

The FAA should decide in favor of the "no change" alternative. NPATMA should either be struck down by the courts or be substantially modified.

Despite the high hopes of Congress in 2000, by the year 2024, NPATM has largely proven to be a failure. Only a handful of VAs have been issued. Most of the parks where ATMP are required have been subject either to massive cuts in allowable air tours or outright banning of air tours, altogether. Except in the handful of cases where VAs are allowed, air tour operators are not expected to survive. The agencies have systematically and ruthlessly undertaken the destruction of the rural air transportation system, which largely consists of the community services provided by ATOs. Many emergency services are provided to local/regional communities by ATOs at no charge, such as those at Lahaina, Hawaii, which saved many lives.

The FAA and the NPS have had an agenda for years to do away with air tours in this country. They are using NPATMA, NHPA, and NEPA to accomplish this goal. These laws (and the Native Americans) are being manipulated by the agencies to destroy a uniquely American enterprise that benefits many communities and travelers. Entire regions of this Country heavily depend on air tourism.

In the draft CACH EA, the FAA and NPS concede that air tours at CACH neither make objectionable noise nor disrupt physical and cultural landscapes. Therefore, there was no legal basis to the DOI to have asked that the exception for the CACH exemption be withdrawn, because there is no justification for prohibiting air tours over the Park and none of the measures proposed by the FAA will have any effect except to make alleged matters worse.

Virtually all of the arguments in the FAA's Justification for Measures Taken section of the draft ATMP come from NHPA. The FAA is using NHPA logic and combining it with NEPA definitional changes ... the main change being the meaning of "cultural resources" ... attempting to use both laws to change the nature and outcome of the NPATMA process, in total defiance of the Will of Congress.

The FAA is hiding behind a decision of the U.S. Court of Appeals, DC Circuit,39 to justify moving at a reckless pace of implementation that knowingly denies air tour operators in general, and Southwest Safaris in specific, of virtually all rights. The agencies claim discretionary powers that do not exist under NPATMA and refuse to communicate with ATOs (read, SWS) on any matters except those relating to Section 106. The agencies make it impossible to object to any agency decision except by going through the expensive and arduous process of formal legal review, unavailable as a practical and economic matter to most ATOs.

The FAA argues outside the law, relying on "justifications" for allegations that it refuses to substantiate, based on NHPA theories of"potential" adverse effects ... versus "real;" and "theory of mere presence" ... versus "existing conditions;" and "extremism" ... versus "reasonable and effective" approaches ... see Will of Congress;" and hypothetical noise modeling ... versus science-based sound studies incorporating pertinent data40 derived from the field in current time.

Furthermore, the FAA administers the elements of NPATMA outside the law. At CACH, the FAA refuses to create a legal "undertaking" before issuing findings and making determinations; fails to perform the "if any" test; neglects to conduct science-based sound studies under Section 808 of the Act and thereby provide the means for due process; will not satisfy the "acceptable and effective" clause of the Act; and will not acknowledge that the agencies' remedies are based on extremist interpretations of the Act.

Moreover, the FAA incorrectly bases its legal theory of jurisprudence on the Theory of Parallel Laws versus Principle of Primary Law, thereby rejecting the Will of Congress that NPATA be the controlling legal authority in all matters pertaining to the creation of ATMPs. By so doing, the agencies have attempted to use two laws, NHPA and NEPA, to destroy a third, NPATMA, in order to create new law that enables them to regulate beyond the reach of Congress.

The result has been social, economic, and legal chaos which threatens even the Constitution. The manipulation of law, combined with run-away power of agency discretion, has enabled the agencies to proceed like an unstoppable juggernaut, wrecking the air tour industry and changing the nature of administrative law so as to be unreachable by industries that agencies serve. If the agencies are incapable of self-correction, Congress and/or the courts must intervene.

The FAA and NPS are grasping at straws. At CACH, there exists no proof of significant adverse impacts on cultural resources, visitor experience, and tribal lands. The agencies have not demonstrated any validity to their assertions, relying on the fact that, under NHPA, allegations alone constitute acceptable evidence for legitimacy of claim. The agencies have all but come out and admitted that the decision to ban all air tours over units of the Park Service, such as Canyon de Chelly, is a matter of pressing political imperative, not operational concern. The FAA's actions are brought about solely by NPATMA. Based strictly on the methods and definitions contained within the Act, the FAA and NPS have no case against Southwest Safaris ... whether based on operations, environment, or law ... for prohibiting all air tours over CACH or for denying the ATO right of transport over the Park.

Given all of the above, the FAA's only logical choices are to decide in favor of the "no change" alternative for air tour regulations at the Park; or in favor of a Voluntary Agreement; or to rewrite the CACH ATMP bearing in mind the principles outlined above; or to petition the courts to declare NPATMA as unworkable and/or unconstitutional. In any case, the agencies need to suspend any further action on the CACH ATMP and start all over again, with the assistance of Congress and/or the courts.

Thank you for your considered attention. Sincerely yours,
Bruce Adams

Attachment 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 HR. 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 overflig/1ts

while enhancing opportunities for Park visitors to experience natural quiet.
If we work togetlter to develop consensus on a reasonable and common sense approacl,, 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)(l)(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 of Congress. This statement of Congressional intent cannot be equivocated.

Attachment 2

NPATMA Is Incompatible with the FAA's Theory of Extremist Remedy41

Brief Summary: There is nothing in the Federal Code that justifies the FAA's extremist interpretation of law and regulation with respect to ATOs. The FAA knowingly applies an errant regulatory opinion supplied by the Advisory Council on Historic Properties (ACHP, or "the Council") to justify banning all air tours over Bandelier National Monument (BAND), and thereby Canyon de Chelly (CACH).

Argument: On December 21, 2023, the ACHP wrote to the FAA giving the Council's formal Opinion on a matter of critical importance to air tour management plans in general. The Opinion was rendered in regards to the FAA's Finding of "no adverse effects" for the BAND ATMP, but it draws on interpretation of regulatory language applicable to all ATMPs. So, the errant Opinion is significant. The Council incorrectly interprets the regulatory language of NHPA's Section 106 to mean that the harshest measures are the preferred/required remedies for "potential" adverse impacts from the presence of air tours. The ACHP wrongly instructs agencies that the most lenient measures of correction would be the least preferred, even if both resolutions arrived at the same results.

The FAA uses the ACHP's misinterpretation of the NHPA regulation (36 CFR §800.l(a)) to justify a Finding that denying all air tours over Bandelier and, therefore, Canyon de Chelly, would have "no adverse effects," because the total prohibition of all air tours at the park(s) would, at least theoretically, ensure no noise from air tours. The FAA's final decision to ban air tours was then used to "justify" the ACHP's Opinion that extremist determinations are required, if possible, before lesser alternatives are considered.

The whole Section 106 process has been an obvious exercise in circular reasoning and mutual justification of agency decision and, therefore, is invalid based on logic, alone. Surely, the FAA would

have known about this flaw in reasoning from the beginning. Interestingly, in its reply to the Council's Opinion, the FAA never says it agrees with the Council's Theory of Extremist Remedy, but the FAA takes the ACHP's opinion and runs with it because of the view's usefulness, regardless.

Unfortunately for both agencies, neither the ACHP's Opinion, i.e., Theory of Extremist Remedy, nor the FAA's Finding, i.e., "no significant effects" from banning air tours over the park(s) ... which Finding relies on that Theory ... have merit based on reason, law, or textual analysis.

On the bottom of page 4 of the ACHP's Dec. 21 Opinion re. the BAND ATMP, the Council says:

Further, while the Section 106 process does not mandate a specific [extremist] outcome. the regulations implementing Section I06 present an order to the consideration of alternatives with regard to [potential] adverse effects, if any. The agency should first consider ways to [entirely] avoid [potential] adverse effects to historic properties; if such options are not available, then the agency would consider ways to minimize or mitigate [potential] adverse effects (see 36 CFR §800.6(a)). (Emphasis added).

The FAA builds a huge untruth around a small half-truth. While it is, of course, true that "Section 106 process does not mandate a specific [extremist] outcome" ... meaning that NHPA does not require the FAA to choose the most radical fix for remedying adverse air tour impacts that might not even exist, the impacts being only "potential" in nature... the rest of the FAA's sentence is blatantly false. NHPA regulations do not require or even suggest any prioritized order of remediation for "potential" adverse effects on historic properties.

The actual language of the regulation to which the ACHP refers is contained in 36 CFR §800.l(a) (not §800.6(a), which the ACHP erroneously cites). The correct citation says:
§800.1 - Purposes - The goal of consultation [Section I06] 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. (Emphasis added).

Even the most superficial analysis of the ACHP's Opinion, which refers to the arguable NHPA regulation (§800.l(a)), uncovers the underlying fallacy of the ACHP's argument. "Potential" adverse impacts include adverse effects that are not "real or existing." The ACHP is claiming that air tour operators, based on NHPA regulatory language, must demonstrate that their flights do not subject persons or property on the ground to any kind of "potential" (meaning "imaginary") adverse events, whether physical, cultural, emotional, or "spiritual." To say that air tours must meet a standard that no other branch of aviation can achieve is absurd. If aviation had to avoid all "potential" adverse impacts to persons and property on the ground, there would be no flying at all. The FAA sets a standard which makes it impossible for ATOs to avoid NHPA's objections to any evidence the ATO might present. The legal deck is stacked against ATOs.
The fundamental flaw with the FAA's Theory of Extremist Remedy is that there is an assumption of "guilt" built into the FAA's collection of evidentiary facts ... all based on "potential" reality, not actual ... that ATOs are asked to disprove. Furthermore, the ACHP's and FAA's case against the ATO is based on surrealistic evidence and accusation, the concept of which is foreign to American jurisprudence. The agencies assert that the mere likelihood of "guilt," based on the flimsiest of "potential" circumstances, requires the harshest of remedies to correct. Extrapolating from the Council's Opinion, FAA's theory of jurisprudence (i.e., extremist remedy) is "perfected" so as to approximates something out of Russia. The FAA's very structure of argument, being impossible to answer, denies the ATO due process.

In essence, the FAA's Finding ... that there are "no adverse effects" from prohibiting air tours over national parks ... is a self-fulfilling argument, and therefore invalid. In this situation, the accusation serves

as the verdict, the two being one and the same. The judgement is, "Because ATO XYZ actually flies over historic properties, he is guilty under NHPA of 'potential' environmental abuse." Stated differently, "The mere possibility of flying over a national park has negative impacts on sacred and cultural properties therein; so, an ATO actually abuses sensitive historic properties in national parks even by "potentially" flying over them." In any case, regardless of the absurdity of the FAA's accusations, the FAA Finds that by eliminating all "potential" flights, one eliminates all "potential" abuse. In fact, there is no difference between the conclusion and the premise, but the illogic is impossible for an ATO to untangle. There is no opportunity, based on the impossibility of arguing with the supposed facts ... the facts consisting of "potential situations" being conflated with "real circumstances" ... to prove to the contrary.

There is no alternative to a Finding of "no adverse effects," because the FAA's closed argument will not allow for one. So, the FAA's "request for concurrence" with the agency's Finding of "no adverse effects" is not only abusive, but meaningless. The Finding offers the illusion of due process, but not the actuality of it.

Moreover, the FAA's contention consists of a double-negative syllogism ... "no flights over Bandelier can have no adverse impacts on the Park." The formal argument is impossible to refute logically, because of the double-negative and, therefore, only allows for a predetermined outcome of Finding.

In actuality, the FAA never arrived at a "finding" in the sense that the agency conducted an investigative process and came to a "finding" therefrom, because there never was any field research in the mind of the FAA that needed to be evaluated. The "Finding," in the case of BAND and CACH, and most other parks as well, was only a pronouncement of agency mandate ... a dictate supported by irrefutable illogic.

For all these reasons (circularity of argument, flawed syllogistic construction, and lack of field research to empirically verify the conclusion), the FAA's Finding is neither objective nor rational, but imperious. The FAA's actual argument is defective and so, therefore, is its uncompromising conclusion, which defies the whole purpose of Section 106 consultation in the first place. The FAA's Finding destroys the process of Section 106 consultation, which was to arrive at a mutually acceptable solution for alleged adverse impacts from air tours over national parks, not forced concurrence with a false argument. The entire logic behind the FAA's Finding is an exercise in abusive sophistry. The FAA and NPS, acting jointly, have crafted an argument that is impossible to answer without going outside the syllogism,42 and therefore have conspired, yet again, to deprive ATOs of due process.

Of equal objection, the ACHP's interpretation of NHPA language is extremist. There is no substantive or textual support in the laws for radical interpretation of the regulations.

Under law, there must be a standard of decision upon which any administrative determination relies. That standard, according to NPATMA, with respect to ATMPs, is "existing conditions." The Act takes existing conditions at national parks and tries to improve on them. There is nothing in the language of NPATMA that assumes a perfect world is the standard by which air tours have to be judged. If no adverse effects from air tours were allowed, then the language of
§40128(b)(1)(B) would not have said that "the object 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 ...." Instead, the wording would have simply said, "The object of any air tour management plan shall be ... to prevent all potential adverse impacts." The FAA subtly imports the use of the word, "potential," from NHPA, and craftly but wrongly applies it to NPATMA. In fact, the word, "potential," never appears in the NPATMA statute. So, the FAA has fabricated a false standard of decision for ATMPs. Air tour management plans must be constructed on the basis of "existing" (i.e., "actual") conditions," not "potential" circumstances that "might" or "possibly could" adversely impact

persons and property on the ground.
Having established the validity of the Theory of Existing Conditions,43 Southwest Safaris argues, it must be true that, if air tours existed at a park before the creation.of a respective ATMP for that park, then the standard of decision must accept the presence of air tours after the creation of the ATMP. The FAA's findings and decisions for most ATMPs across the Nation ignore this logic and conclusion of law. The FAA wrongly attempts to use NHPA's "perfect world" language ... based on the theory that an aircraft's mere presence over a national park is objectionable44 ... to undermine the authority of NPATMA's "real world" law, using the perfect to destroy the good. This is extremism.

NPATMA focuses on "reasonable and common-sense approaches" to reducing actual adverse impacts from air tours. The Act is not concerned with conceivable, theoretical, suppositional, or conjectural analysis of "potential" or "possible" adverse effects, which speculations are the province of NHPA. For this reason alone, NPATMA rejects the FAA's extremist finding, because the Finding is based on irrelevant and contradictory NHPA standards compared with those of NPATMA.

NPATMA is outright hostile to the application of extremism. The Act always and everywhere tries to arrive at a solution to air tour noise and presence that is reasonable. NHPA, however, has no such constraint or objective. Therefore, NPATMA must control the timing, vocabulary, and methodology employed by NHPA. In other words, NHPA, if it is brought to bear on regulations impacting ATMP decisions, must be controlled to ensure that the outcome of NHPA process is sensible, practical, and realistic with respect to NPATMA, based at all times and places on existing prior conditions before the imposition of ATMPs.

So, again, with respect to ATMPs, NPATMA must be the controlling legal authority. NPATMA allows extremist remedies only in the most extreme circumstances, provable by science-based sound studies (Section 808). Excessively adverse conditions have not been found by Section 808 process to exist at either Bandelier or Canyon de Chelly or most other national parks. Thus, the FAA's extremist ATMP policies may be allowable under NHPA and NEPA, but they are neither justifiable nor warranted under NPATMA.

Textual analysis of NHPA and NPATMA comes to the same conclusion as legal scrutiny, that there is no justification either under NHPA or NPATMA for the FAA's extremist approach to ATMPs.

NOTES:
39 US Court of Appeals, supra note 29
40 Pertinent Data, supra note 22
41 The Theory of Extremist Remedy was originally put forward by the ACHP in a letter to the FAA dated December 21, 2023. The Council rendered a formal Opinion on the proper interpretation of NHPA's regulation that appears in 36 CFR §800. l(a). The Council asserts, incorrectly, whenever "potential" adverse impacts are found that "might affect" historic properties, defined in the broadest sense, that the preferred method of addressing the alleged problem is to start with the most irrefutably-effective method of eliminating the "problem" regardless of cost, and if that were not possible, then proceed to progressively less effective measures. In fact, §800. I (a) says no such thing, stating instead that an agency can elect, as determined by circumstances, to avoid, lessen, or accept the "potential" adverse impacts imposed by an "undertaking." In the case of ATMPs, the "circumstances" are determined by the "acceptable and effective" clause of NPATMA combined with Section 808 of the same Act. NPATMA thus controls the actual corrective methods demanded by NHPA for ATMPs, even if one were not to consider the multiple errors manifested in the Opinion of the Council, as will be discussed below.
42 Southwest Safaris effectively disproved the FAA's Findings for Bandelier and Canyon de Chelly by

demonstrating to the agency, with math and physics, that flying around BAND and CACH) would create more noise and have greater physical presence to visitors in the parks than crossing the parks in a straight line. To date, the FAA has not acknowledged any of SWS's rejoinders.

43 The FAA's Theory of Existing Conditions comes from its letter to the ACHP of September 12, 2023. 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 (Hawaii Volcanos National Park) air tours, the FAA replies:

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 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.

In other words, at HAVO, the FAA argues in favor of allowing air tours to fly over the park, endorsing the Theory of Existing Conditions. At Bandelier and Canyon de Chelly, however, the FAA reverses its position, and asserts that the Theory of Mere Presence (see Footnote# IO below) is the operative authority for banning all air tours over the latter parks. The FAA offers no explanation for the logical inconsistency, arguing in favor of "moderation" at HAVO but extremism at BAND and CACH. See Footnote 10.

44 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 Bandelier and Canyon de Chelly. The suddenly but conveniently "revised" opinion held by the FAA ... that the mere presence of air tours over BAND and CACH is objectionable, in contrast to HAVO ... lacks explanation and 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." Southwest Safaris cries foul.

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Correspondence: The ACHP and the FAA base their entire Theory of Extremist Remedy on misinterpretation of the single, informative sentence found in §800. l(a), quoted again for ease of reference:

§800.1 - Purposes - The goal of consultation [Section I06] 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. (Emphasis added).

The FAA's misunderstanding comes from its fundamental misreading of NHPA, demonstrated in multiple ways:

5. In the first place, the rationale of the §800.l(a) statement was simply to give the "purposes" behind the NHPA statute and the general methods of accomplishing them.

§800.1(a) serves merely as introductory text for the NHPA statute regarding "consultation" between

parties of opposing opinions, not regulation of air tours.
6. In the second place, neither NHPA's §800. l(a) language nor the ACHP's Opinion have any binding authority for air tour management, being irrelevant thereto. NPATMA is the controlling legal authority re. ATMPs, not NHPA. The FAA errs by allowing NHPA phraseology ... meaning, "properties potentially affected by the undertaking " ... to control NPATMA's regulation of "actual effects,", conflating NHPA's "avoid, minimize, or mitigate potential adverse effects" mandate with NPATMA's imperative to "mitigate or prevent significant [real] adverse impacts." The FAA misunderstands NHPA, thinking that the statute applies to regulation of aviation policies as well as to historic properties.
It does not. NHPA regulations only apply to aviation properties (e.g., airports), not aviation operational rulemaking (e.g., when, where, and how air tours are conducted).
7. In the third place, the text gives an explication of NHPA's goals and the means of attaining them, not instructions for how to achieve NHPA objectives; that comes later in the NHPA statute. The wording of §800. l(a) does not include any mandatory terminology such as "must," "shall," or "will." So, even if NHPA theory were determined to be applicable to NPATMA-based actuality, the quoted language, considered by itself, carries no authority for making policy.
8. In the fourth place, 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 actual regulation, as quoted above, says no such thing.
E. Congress presents the words, "avoid, minimize or mitigate," merely in alphabetical order.

F. 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)).

G. 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.

H. Congress uses words that do not express a clear difference of degree. This disproves the Council's interpretation of §800.1(a). Under ACHP reasoning, by using the words, "minimize or mitigate," Congress would have attempted to draw a distinction that does not make a clear difference, the degree of difference being just too subtle for regulatory objectives. 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 avoid, lessen, or accept any adverse effects on historic properties, in that order."

Evidently, Congress had no obvious order of preference for implementing the three choices for correcting alleged adverse impacts from air tours ("avoid, minimize, or mitigate"). Congress simply directed that the remedy, if any correction is required, must be "acceptable" ... meaning that it need be both "reasonable" to all parties, including ATOs, and must be "justifiable," meaning that it must pass the 'if any" test required by NPATMA. As well, the fix must be "effective," meaning that it must comply with the Section 808 sound-study tests for successful graduated improvement of "significant" adverse impacts, not avoid all "potential" adverse effects. In any case, ATMP curative methodology must work from the least harmful impacts to the most, in the spirit ofNPATMA, based on "reason and common sense." See the Will of Congress (Attachment 1).

Summary: In brief, NHPA was never written to be an aviation regulation. NPATMA was. The FAA is incorrectly relying on NHPA language ("potential adverse impacts") to influence the outcome of the ATMP process ("no air tours allowed") that is not permitted in the NPATMA endeavor (defined and

governed by the "acceptable and effective measures" clause). This is yet another example of why Congress intended NPATMA to be the controlling legal authority re.
ATMPs. In NPATMA, the language of the Act is specific to the FAA's initiative, which prevents extremist therapies.

The FAA goes out of its way to impose the most punitive remedies on ATOs for air tours operating over units of the NPS. In the Federal Code, however, there is neither reason nor necessity for doing so. Southwest Safaris repeats for emphasis, the FAA's ATMP policies may be allowable under NHPA and NEPA, but they are neither justifiable nor warranted under NPATMA.

Southwest Safaris complains that extremism serves to undermine the effectiveness of NPATMA, preventing effective implementation thereof. Under the Act, NPATMA methods are just the opposite ofNHPA's and NEPA's approaches. Before any remedies are imposed, the "if any" test (see Attachment 3) 'for "significant adverse impacts" must be performed. Only then is the FAA authorized by Congress to apply corrective measures. NHPA and NEPA have no such constraints. Under NPATMA, corrective measures must use the least impacting solutions first, resorting to the most affecting last. NHPA appears to prefer remedies that emphasize punishment over mutually beneficial operational adjustments. NPATMA requires coming up with a solution that would be both acceptable ... meaning agreeable and justifiable ... and effective ... meaning measured (Section 808) by the reduction of "significant adverse impacts" for air tours, not all "potential" adverse effects. NHPA and NEPA have no such limitations on their applicability. In these manners, NHPA and NEPA war with NPATMA to the effect that constructive remedies are impossible to achieve.

Therefore, under the dual Principles of Primacy of Law and Continuity of Law, with respect to ATMPs, NPATMA must reign and "reasonableness" must control, which disallows the remedies otherwise permitted by NHPA and NEPA. The FAA's and NPS' extremist decisions to severely curtail air tours over units of the NPS, let alone prohibit all flights over designated parks, must be withdrawn, and retroactively reconsidered, because the agencies' decisions cannot be justified, as required by 49 CFR §40 l 28(b)(3)(F).

The FAA's and NPS' extremist policies have evolved into methodologies of entrapment of ATOs, forcing ATOs into a legal quagmire from which there is little chance of escape. The hope of constructive application ofNPATMA remedies, based on "reasonableness and common sense" and the Will of Congress (see Attachment I), has been all but lost on the agencies.

Attachment 3
Why Is NPATMA the Controlling Legal Authority?
What is the controlling legal process?
Why does all this matter?

I. Background
NPATMA controls the legal creation of air tour management plans (ATMPs). Congress designed NPATMA to take that role because the process of creating an ATMP is complicated and involves three major statutes ... the National Parks Air Tour Management Act of2000 (NPATMA), the National Historic Preservation Act (NHPA), and the National Environmental Preservation Act (NEPA). Regarding the creation of ATMPs, the three powerful statutes naturally compete amongst themselves for authority and priority. Southwest Safaris argues that the principles of Primacy of Law45 and Continuity of Law46 must be applied in sequence to achieve orderly, predictable, and consistent application of legal ATMP mandates. Otherwise, judiciary chaos will consume the courts.

II. WHY is NPATMA the Controlling Legal Authority?

a. NPATMA ("the Act") was drafted by congress almost 40 years after the implementation of NHPA and NEPA. Congress was well aware of the language in the latter statutes and meant for NPATMA to manage them so as to best achieve their respective roles but not predetermine the outcome of the ATMP process. Later laws generally manage the application of earlier.

b. Had Congress wanted the earlier statutes to control the Act, Congress would have said so up front, explicitly, in the beginning of NPATMA, where reference to controlling language and assumptions is normally put. There is no such mention at the outset.

c. Because NHPA and NEPA were written back in the l 960's to automatically apply to all succeeding statutes, Congress had to use NPATMA to specifically limit the powers of those acts, requiring science-based sound studies of both. The language of NPATMA's Section 808, which amended NPATMA in 2012, directly negates that of §40128(b)(4)(C) of the Act, thus eliminating the exception language of NEPA's §§1501.21 & .23 that would otherwise have exonerated the agencies from conducting new, science-based, sound studies. NEPA, itself, if not the FAA, acknowledges the controlling authority of NPATMA in the last sentence of §1502.23: "Nothing in this section is intended to prohibit agencies from compliance with the requirements of other states [such as NPATMA's Section 808] pertaining to scientific and technical research." Thus, §1502.23 yields to Section 808. NEPA's §l 500.3(a) further confirms this interpretation:

§ 1500.J(a): Mandate - This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969... except where compliance would be inconsistent with other statutory requirements. (Emphasis added).

NEPA, left to itself, is not compatible with NPATMA.

d. NPATMA was drafted by Congress to be agency and industry specific. NHPA and NEPA are generic regulations with general applicability. In the present instance, a specific law controls the general application of broad regulations.

e. NPATMA can initiate an ATMP "undertaking," but NHPA and NEPA cannot do likewise. Furthermore, NPATMA calls NHPA and NEPA into effect, not the other way around. Thus, NPATMA has authority that the other statutes lack.

f. PATMA controls NHPA and NEPA by dictating the type of sound studies that "shall" be employed. NHPA is silent on the subject, so NHPA can exercise no authority over NPATMA or NEPA. On the other hand, NEPA' s sound studies are controlled by NPATMA's §40128(b)(4)(C) phraseology which yields to Section 808's mandate. NPATMA demands science-based sound studies wherever issues of noise are to be considered and, therefore, controls both the other statutes, because they normally would not make any such demands.

g. NPATMA is written entirely as law; NHPA and NEPA are written entirely as regulations. Laws control regulations.

III. What is the controlling legal process?

To accomplish the management of legal process, certain explicit controls were written into the NPATMA Act to constrain the other two statutes.

a. Before any administrative action involving NHPA and NEPA could commence, a legal "undertaking" had to be established. This meant that Congress wanted "proof of need" for an ATMP in each respective park of the NPS before work on ATMPs would
begin. In order to accomplish this mandate, Congress stuck an "if any" conditional test into the Objectives language of the Act. It said:

49 USC §40 I 28(b)(I)(8): 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.)
b. The "if any" conditional47 would have to be satisfied by means of compliance with Section 808. That means that the FAA and NPS would first have to determine the existence of "significant adverse impacts" on persons and historic properties in park service units ... by performing science-based sound studies incorporating pertinent data48
... before launching any investigations under NHPA and NEPA.
c. In other words, NPATMA dictates that NHPA and NEPA cannot be activated until a three-step process is satisfied: (1) the creation of a legal undertaking; (2) the satisfaction of the "if any" test; and (3) the performance of sound studies based on "reasonable scientific methods." Moreover, (4) the continued findings of the agencies under NHPA's Section 106 and NEPA's EA requirements would have to be based entirely on "reasonable scientific methods (Section 808), as well."
d. After establishing a legal "undertaking," NPATMA would pass control of the ATMP process over to NHPA, which could then begin Section 106 investigation.
e. After NHPA completed Section 106 initiatives (36 CFR §800.l(c)), NHPA would authorize NEPA to allow the expenditure of funds to commence an Environmental Assessment of the ATMP "undertaking."
f. After the EA was completed, based on "reasonable scientific methods," NPATMA would consider the results of both the Section 106 "finding" and the Environmental Analysis and issue a determination as to what type of ATMP would be authorized for the respective park ... for example, either "no change" in the way air tours are currently being conducted, or "no air tours allowed."
g. Therefore, the ATMP process starts with NPATMA and ends with NPATMA, and is controlled in between by NPATMA, as well.

h. NPATMA also controls the vocabulary and methods of NHPA and NEPA.
1. NPATMA is concerned only with present, existing, real "significant adverse impacts" such as can be measured utilizing "reasonable scientific methods." NHPA, in contrast, is concerned with "potential" adverse effects,49 which means those of imaginative, speculative, hypothetical origin. Because of the obvious serious conflicts between the two different criteria for decision, Congress designed NPATMA to limit NHPA's investigative considerations to "existing conditions" ... because of the imposition of Section 808, science-based, sound studies which can only measure "existing conditions."

2. NEPA borrows its language from NHPA, under the justification that NHPA calls NEPA into effect, §800.l(c) and §800.8(a)(l). The FAA and NPS have based their EAs for various parks on "potential" environmental consequences of air tours (NHPA language), not actual measured impacts predicated on "reasonable scientific methods" (Section 808 wording). Because all findings and determinations must be based on the same set of standards ... each of the statutes having a different standard of decision ... NPATMA must control the language and investigative methodologies for NEPA as well as NHPA.

Therefore, Southwest Safaris forcefully argues, NPATMA always was and still remains the controlling legal authority for implementation of ATMPs. The implementation of ATMPs can only commence under theory of order of law (application of rational jurisprudence). The principles of Primacy of law and Controlling Legal Authority must prevail for the Act to hold together.

IV. Why does all this matter?
In chemistry, cooking, and law, the order of mixing determines the outcome of the "undertaking." In the

present instance ... referring to the FAA's final determination as to the type of ATMPs that will be implemented ... it matters greatly in which order the three primary statutes are applied.

Under the FAA's Theory of Parallel Laws,50 NPATMA, NHPA, and NEPA are all equal, horizontal, and parallel. It does not matter, says the agency, in which order they are applied.51 That is a matter of agency discretion. The FAA and NPS, in error, first unilaterally declare that the drafting of NPATMA, itself, broadly launches the process of ATMP "undertakings." Then then agencies completely ignore the significance of the "if any" test that SWS argues is demanded by NPATMA for each individual park. Under the FAA's and NPS' theory of jurisprudence, the agencies begin the ATMP process with Section 106 investigation, immediately arrive at a finding of "no adverse effect" from banning all air tours over certain parks (e.g., Bandelier and Canyon de Chelly National Monuments) by applying a double negative syllogism that is impossible for ATOs to refute.52 By means of this logical slight-of hand, the agencies get the ACHP to agree with an extremist Finding ("no air tours" allowed), and send that Finding on to the ATMP Team for decision. In the meantime, without respect for timing required by NHPA's §800.l(c), the agencies simultaneously complete their EA for a park, basing it entirely on "potentially" significant adverse effects that are never proven by "reasonable scientific methods" and also send their results on to the ATMP Team for simultaneous consideration. The two "studies" together (the Section 106 Finding and the EA) are then used to force the ATMP Team to determiner under authority ofNPATMA that there is no logical and/or legal reason for allowing air tours to operate at their respective parks, or to so drastically cut the allowable flight allocations thereof as to put the ATOs out of business either way. By applying NHPA and NEPA first, simultaneously, the agencies can predetermine the outcome of any NPATMA final determination and wrongly ... acting in defiance of the Will of Congress ... shut down the majority of the air tour industry.

On the other hand, if NPATMA is applied first, meaning that the initial application of the "if any" test is complied with, most of the ATMPs would never "get off the ground." ATO's would have undisputed data, produced by the agencies themselves, with which to prove in court that there are no "significant adverse impacts" from air tours over the respective parks and/or to prove that the primary motive for disallowing air tours is political, not operational. Due process would be restored to ATOs from the outset. Moreover, ATOs would be given the opportunity under NPATMA to object, before it is too late, to being excluded from the bargaining table and to any and all supposed "sound studies" based on noise modeling. The agencies' "deaf-ear, blind-eye" management agenda, controlled more by politics than by law, would be stopped at the outset. Moreover, the agencies would not have been allowed by ATOs to get away with defrauding the U.S. Court of Appeals, DC Circuit, because the ATO's could have intervened as matter of right in the original hearing of issues.53

IV. Conclusion

There are no greater issues to be considered by the courts, with respect to the implementation of ATMPs, than those of Theory of Jurisprudence, including Primacy of Law and Controlling Legal Authority. These governing principles follow one from the other like the day the night. The principles are meant to be implemented through the orderly, predictable, and logical application of individual laws. Until the above overriding questions of jurisprudence are settled by the courts, including the inclusion of double-negative syllogisms54 in formal findings, there can be no resolution to the impasse that has developed between Southwest Safaris and the agencies as to the outcome of the ATMP process. In so ruling, the courts will have to consider the manner in which the principles of Primacy of Law (including that of Controlling Legal Authority) and Continuity of Law, acting as guiding legal principles, affect the applicability of Chevron Discretion over disputed issues in the present series of agency challenges. See Loper Bright Enterprises v. Raimondo, Sec. of Commerce, US Supreme Court, 22-451, currently under review.

NOTES:
45 The Principle of Primacy of Law directs the order of application of laws. In general, 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. Sometimes laws must be complied with in parallel, being of equal weight and application. In this case, the laws would be applied simultaneously, each law being complied with in accordance with its own vertical hierocracy of stipulations. At other times, laws are logically stacked parallel but vertically, meaning that the laws above control those beneath, directing, redirecting, and relinquishing control one step at a time until all the laws are satisfied.
Such is the case with ATMPs (NPATMA, NHPA, and NEPA).
46 The Principle of Continuity of Law states that one law cannot horizontally or vertically contradict another where they overlap. One must give way, or be controlled by, another. In the present instance, Congress meant that NPATMA would control NHPA, NHPA would trigger NEPA, and NEPA would redirect decision-making back to NPATMA, in vertical sequence, step by step, so that the powerful laws would never oppose one another. The FAA ignores this logic.
47 The "If Any" Conditional, supra note 14
48 Pertinent Data, supra note 22
49 See 36 CFR §800.3(a) and §800.S(a)(l}. NPATMA does not allow consideration of "potential" adverse effects or the use of words such as "may alter," "might alter," or "would alter," nor does NPATMA allow consideration of "indirect effects." Under NPATMA, all affected effects must be measurable.
50 The Principle of Parallel Laws states that all laws run horizontal and parallel to one another and have equal standing. 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 ofNPATMA 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."
51 The FAA, being a regulatory body, misunderstands that laws and regulations must be treated differently. Regulations do run horizontal and parallel with one another, and do have equal standing. All regulations are applicable at the same time. Laws, however, emanating from a statutory body, i.e., Congress, consist of language that supersedes that of regulations, and so produce sets of regulations that can fight against each other. Care must be taken to activate and deactivate each set at the appropriate time.
52 The FAA 's Section I 06 contention (Finding of"no adverse effect") consists of a double-negative syllogism ... "no flights over Bandelier can have no adverse impacts on the Park." The formal argument is impossible to refute logically, because of the double-negative and, therefore, only allows for a predetermined outcome of Finding and, therefore, is not admissible argument. The FAA's Sec 106 process fails, which should have stopped the ATMP "undertaking" at its inception. Thus, Southwest Safaris argues, the FAA's determination that "no air tours be allowed" is rendered outside the law.
53 U.S. Court of Appeals, supra note 27. See also §IV(k)(I), "The Court made us do it."
54 Double-negative Syllogism, supra note 8

Correspondence ID: 49, Project: 103419, Document: 135960

Received: May,27 2024

Correspondence Type: Other

Correspondence: I do not agree with air tourism with Canyon de Chelly. It will impact the land, animals and community. There isn't enough restaurants and hotels to hold up tourism. Will the money from air tourism go to Navajo people? Will it help the community? Who will own the company? I vote no.

Correspondence ID: 50, Project: 103419, Document: 135960

Received: May,22 2024

Correspondence Type: Other

Correspondence: My name is Lupita Mcclanahan and my family has lived at Canyon De Chelly for as long as there have been stories. One of our stories is when Charles Lindberg 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 would visit the beautiful Beehive Cliff Dwelling in it's pristine condition. Then the government's airplane, testing their sonic booms caused a rock fall and destroyed some of the cliff dwellings.

I make my living by giving people from the modern world a sense of what traditional Dine' relationship with the land, the air, and the canyon can be. What I can offer is becoming more and more rare every day. Bringing airplanes overhead, accelerates the decay of our connection to the land. The Park Service has told us that we cannot use generators, water pumps, atv's, and other noisy machines. Why should airplanes 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 elderlies - the medicine men and women before you do this. Many of us still practice the sacred ways of our ceremonies. Quietness and privacy are always required.

We feel that an intrusion into our ceremonies in this way, is a violation of Freedom of Religion Act. Therefore, we are a 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 that I have, 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 creators. Then we can talk about if any of this makes sense.

Thank you for your time and I look forward to your visit.

Correspondence ID: 51, Project: 103419, Document: 135960

Received: May,16 2024

Correspondence Type: Other

Correspondence: As a concerned citizen and nature enthusiast, I am writing to express my opposition to the air tour plan for Canyon de Chelly National Monument. While I understand the desire to share the beauty of this incredible natural wonder with visitors, I strongly believe that air tours are not the right approach. Canyon de Chelly is a sacred and culturally sensitive site, home to numerous Navajo ruins, artifacts, and spiritual sites. The constant noise and disruptions from air tours would not only disturb the peaceful atmosphere of the canyon but also disrespect the cultural heritage of the Navajo people. Furthermore, air tours would also have a negative impact on the environment, contributing to noise pollution, air pollution and potentially disturbing wildlife habitats. The monument's natural beauty and tranquility are its greatest assets, and we should prioritize them for future generations.

Instead of air tours, I suggest alternative and sustainable ways to experience Canyon de Chelly, such as:
- ground-based tours with knowledgeable guides
- hiking and camping opportunities
- cultural programs and workshops
- virtual tours and educational resources

These options would allow visitors to appreciate the monument's beauty and cultural significance while minimizing our impact on the environment and respecting the Navajo Nation's heritage.

I urge the National Park Service to reconsider the air tour management plan and prioritize a more responsible and sustainable approach to preserving and sharing this incredible national treasure.

Correspondence ID: 52, Project: 103419, Document: 135960

Received: May,16 2024

Correspondence Type: Other

Correspondence: As an 84 year old woman resident of the canyon, I am writing to express my strong opposition to the air tour management plan. I have lived in harmony with this sacred land my entire life and the thought of constant air traffic overhead fills me with concern.

The noise, disruption and disrespect to our cultural heritage and the environment are unacceptable. Our canyon is a peaceful and spiritual place, and we must preserve its tranquility for future generations.

I urge you to consider alternative and sustainable ways to share the beauty of our canyon, such as ground based tours and cultural programs. Let us protect our home and honor our ancestor's legacy.

Correspondence ID: 53, Project: 103419, Document: 135960

Received: May,16 2024

Correspondence Type: Other

Correspondence: I am writing to express my strong opposition to the proposed air tour management plan for Canyon de Chelly National Monument. As a concerned citizen and a canyon resident, I am deeply troubled by the potential impact of air tours on the monuments fragile environment and cultural resources.

My specific concerns are:
- noise pollution and the potential disruption of the peaceful experience for visitors, wildlife and local residents
- potential disturbance of sensitive cultural and archeological resources
- increased carbon emissions and contributions to climate change
- lack of consideration for the monument's natural and cultural resources in the planning process

I urge you to prioritize the protection and preservation of this incredible national treasure and reject the air tour management plan. Instead I recommend exploring alternative, more sustainable and responsible ways to experience and appreciate the monument's beauty and significance.

Correspondence ID: 54, Project: 103419, Document: 135960

Received: Apr,30 2024

Correspondence Type: Other

Correspondence: On behalf of IKG Air, LLC, I thank you for the opportunity to comment on the Section 106 Consultation Process associated with the ATMP for Canyon de Chelly National Park.

As I'm sure you are aware, IKG Air, LLC was established as the first Private 100% Navajo member-owned aviation company. In May of 2023 IKG Air began rotorcraft operations as a Part 135 operator (Solid Edge Aviation dba Sedona Air Tours). Following that, IKG Air also began fixed-wing tour operations in September 2023 following the acquisition of American Aviation based in Page, Arizona. American Aviation also operates under a Part 135 Certificate, which includes assigned overflights within the Glen Canyon National Recreation Area as well as smaller allocations to several other National Parks within the greater Arizona and Utah region. The owners of IKG Air have worked with the Navajo Nation Parks and Recreation Department as a permittee for over 18 years and are a registered Navajo member-owned company in good standing with the Business Regulatory and Tax offices.

As IKG Air only recently assumed operations within the region, our leadership is just now engaging in the expanded development of additional fixed-wing and helicopter tour opportunities within our market territory, which includes Canyon de Chelly National Park. While we recognize the historically low number of overflights within the identified APE/Park Boundary, we would like to have the record reflect that IKG Air remains interested in expanding and increasing our tour and overflight operations within the Canyon de Chelly boundaries.

With respect to the request for input into consultation on Section 106 properties, IKG Air has no additional information to contribute. IKG Air is aware of the importance of preserving the identified resources and is very willing to continue to work with both Navajo Nation Historic Preservation Department, the Federal Aviation Administration, as well as the National Park Service management teams to ensure adequate protection of the identified resources can be achieved and maintained under all approved park operations guidelines.

IKG Air looks forward to the future opportunity to work in collaboration with these teams to provide safe and affordable access for visitors to see key features of the Park. Feel free to contact me with any further questions or to schedule a time to meet in-person or virtually. I have also copied Lionel Bigthumb (CEO and representative owner of IKG Air) to this response.

Chuck Howe
President IKG Air, LLC

additional hearings by the April 24, 2024 deadline, and any post-hearing written comments by the June 4, 2024 deadline. All submissions must be in English. USTR strongly encourages submissions via *Regulations.gov*. The docket number is USTR–2024–0002.

To submit via *Regulations.gov,* use Docket Number USTR–2024–0002 in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.' *Regulations.gov* allows users to make submissions by filling in a 'type comment' field, or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document named according to the following protocol, as appropriate: Commenter Name or Organization_ Supply Chain Resilience. If you provide submissions in an attached document, please type 'see attached comments' in the 'comment' field on the online submission form.

Requests to appear at an additional hearing must include the name, address, email address, and telephone number of the person presenting the testimony in the 'type comment' field. Attach a summary of the testimony specifying the relevant additional hearing, and a pre-hearing submission if provided, by attaching a document using the 'upload file' field. The file name should include the name of the person who will be presenting the testimony. In addition, please submit a request to appear by email to *supplychain@ustr.eop.gov.* The subject line of the email must begin with the starting date of the relevant additional hearing in the format 'May 14' followed by the name of the person who will be presenting the testimony, and then 'Request to Appear'. In the body of the email, include the name, address, email address, and telephone number of the person presenting testimony.

USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

Please include any information that might appear in a cover letter, exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

Please include the name, email address, and telephone number of an individual USTR can contact if there are issues or questions with the submission.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*.

For further information on using *Regulations.gov,* please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page. You can contact the *Regulations.gov* help desk at *regulationshelpdesk@gsa.gov* or 1–866–498–2945 for help with technical questions on submitting comments on *Regulations.gov*.

If you are unable to submit through *Regulations.gov* after seeking assistance from the help desk, please contact Sandy McKinzy at (202) 395–9483 before transmitting your document and in advance of the deadline to arrange for an alternative method of transmission. USTR will not accept hand-delivered submissions. USTR may not consider submissions that you do not make in accordance with these instructions.

General information concerning USTR is available at *https://www.ustr.gov.*

V. Business Confidential Information (BCI) Submissions

If you ask USTR to treat information you submit as BCI, you must certify that the information is business confidential and that you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the individual or organization submitting the comments.

VI. Public Viewing of Review Submissions

USTR will post written submissions in the docket for public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR–2024–0002 in the search field on the home page.

Juan Millan,

Acting General Counsel, Office of the United States Trade Representative.

[FR Doc. 2024–06975 Filed 4–2–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Air Tour Management Plan and Draft Environmental Assessment and Public Meeting

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice of Availability of Draft Air Tour Management Plan (ATMP) and Draft Environmental Assessment (EA) and public meeting.

SUMMARY: The FAA, in cooperation with the National Park Service (NPS), has initiated development of an ATMP for Canyon de Chelly National Monument (the Park) pursuant to the National Parks Air Tour Management Act of 2000 and its implementing regulations. This notice announces the public availability of the Draft ATMP and Draft EA for comment and the date of the public meeting for the Park in accordance with National Parks Air Tour Management Act of 2000 and National Environmental Policy Act (NEPA) of 1969. The purpose of the public meeting is to review the Draft ATMP with the public. 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 on the Park's resources and values.

DATES:

Comment Period

Comments must be received by 11:59 MDT on or before May 3, 2024. Comments will be received on the NPS Planning, Environment and Public Comment System (PEPC) website. The Park's website link is *https://parkplanning.nps.gov/projectHome.cfm?projectID=103419*.

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.

Public Meeting

The public meeting will be offered in-person and virtually at the dates and times listed below. Both meetings will convey the same information. Questions will be accepted during the virtual public meeting through a separate form. The link for the question form is provided in the **ADDRESSES** section. Questions asked during the in-person or submitted for the virtual public meeting are not considered an official comment as part of the public comment period. Attendees are encouraged to submit their comments for the official record via the link provided in this notice.

- *In-person public meeting:* Tuesday, April 16, 2024, from 10 a.m.–2 p.m. MDT
- *Virtual public meeting:* Wednesday, April 17, 2024, from 6 p.m.–7:30 p.m. MDT

ADDRESSES: The meeting will be offered in-person and virtually at the following locations:

Tuesday, April 16, 2024, from 10 a.m.–2 p.m. MDT
- Navajo Route 7, Ste. 4600, Chinle, AZ 86503
- *Phone:* (928) 674–2052

Wednesday, April 17, 2024, from 6 p.m.–7:30 p.m. MDT
- *Meeting Livestream: https://www.youtube.com/watch?v=LJdKCdtPw4g*
- *Submit questions for the meeting: https://forms.gle/6PCcyzMQrziCyLA46*

The meeting information will also be available at *Air Tour Management Plan | Federal Aviation Administration (faa.gov)* and on the NPS PEPC website for the Park listed above.

Contact: Any request for reasonable accommodation related to providing public comments on the Draft ATMP or Draft EA should be sent to the person listed on the Park's PEPC sites.

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: The FAA is issuing this notice pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations contained in title 14, Code of Federal Regulations (CFR) part 136, subpart B, National Parks Air Tour Management and the National Environmental Policy Act (NEPA) of 1969 and the Council of Environmental Quality NEPA Implementing Regulations (40 CFR parts 100–1508). The objective of this ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations on the Park's resources and values. The FAA and the NPS are inviting comment from the public, Federal and state agencies, tribes, and other interested parties on the Draft ATMP and Draft EA for Canyon de Chelly National Monument.

The FAA and the NPS request that comments be as specific as possible in response to the Draft ATMP and Draft EA. All written comments become part of the official record. Written comments on the Draft ATMP and Draft EA can be submitted via PEPC or sent to the mailing address provided on the Park's PEPC site. Comments will not be accepted by fax or email.

The FAA and the NPS have determined that the ATMP constitutes a Federal undertaking subject to compliance with Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800). The FAA and the NPS have consulted with tribes, State and Tribal Historic Preservation Officers, and other interested parties to identify historic properties and assess the potential effects of the ATMP on them.

The meetings will be open to the public. Members of the public who wish to participate can access the meetings in-person or virtually with the information provided in this notice.

Issued in Washington, DC, on March 29, 2024.

Sandra Fox,

Environmental Protection Specialist, FAA Office of Environment & Energy.

[FR Doc. 2024–07036 Filed 4–2–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2024–1077]

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Primary, Cargo, and Nonprimary Entitlement Funds Available to Date for Fiscal Year 2024

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Federal Register Notice.

SUMMARY: This action announces May 20, 2024, as the deadline for each airport sponsor to notify the FAA if it will use its Fiscal Year (FY) 2024 entitlement funds to accomplish Airport Improvement Program (AIP) eligible projects. Each sponsor has previously identified to the FAA such projects through the Airports Capital Improvement Plan process. This action further announces May 20, 2024, as the deadline for an airport sponsor to submit a final grant application, based on bids, for grants that will be funded with FY 2024 entitlement funds only.

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827.

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. 47105(f) provides that the sponsor of an airport for which entitlement funds (referred to as apportionments in 49 U.S.C. 47114) are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the airport sponsor's intent to submit a grant application for its available entitlement funds. Therefore, the FAA is hereby notifying such airport sponsors of the steps required to ensure that the FAA has sufficient time to carry over and convert remaining entitlement funds.

The AIP grant program is authorized by Public Law 118–41, the ''Airport and Airway Extension Act of 2024,'' enacted on March 8, 2024, which permits the FAA to make grants for planning and airport development and airport noise compatibility under the AIP through May 10, 2024. The funds allocated to the FAA to fund the AIP grant program are appropriated through September 30, 2024, by Public Law 118–42, the ''Consolidated Appropriations Act, 2024,'' enacted on March 9, 2024. Apportioned funds will be subject to allocation formulas prescribed by 49 U.S.C. 47114 and any other applicable legislative text.

This notice applies only to sponsors of airports that have entitlement funds

Canyon de Chelly National Monument, Az News Release

For Immediate Release: April 2, 2024

Contact: IMR News, IMRnews@nps.gov, 720-262-1058

National Park Service and Federal Aviation Administration announce the availability of the Draft Air Tour Management Plan and Environmental Assessment for Canyon de Chelly National Monument, AZ, and the opportunity for the public to review and comment

April 2, 2024, Canyon de Chelly National Monument, AZ

PUBLIC REVIEW PERIOD STARTS APRIL 3, 2024

CANYON DE CHELLY, Ariz. -- The Federal Aviation Administration (FAA) and the National Park Service (NPS) announce the availability of a proposed Air Tour Management Plan (ATMP) and Environmental Assessment for Canyon de Chelly National Monument. This plan will be used by the FAA and the NPS to manage commercial air tours over the park.

The National Parks Air Tour Management Act requires the FAA and NPS to develop Air Tour Management Plans for certain parks, including Canyon de Chelly. An ATMP manages commercial air tour operations over a national park by establishing conditions for the conduct of the air tour flights.

The proposed ATMP addresses many unique challenges while improving the condition of park resources and values, ensuring safe air tour operations, and being responsive to concerns raised by the Navajo Nation. It was developed between the FAA and the NPS in consultation with the Navajo Nation.

Commercial air tours have occurred over Canyon de Chelly for many years without operating parameters. Implementation of an ATMP helps protect park resources, visitor experience, and tribal lands within the ATMP boundary, without compromising aviation safety or the air traffic control system.

A 30-day public review period begins on April 3, 2024. Public comments can be submitted through the NPS Planning, Environment and Public Comment (PEPC) website starting April 3, 2024: https://parkplanning.nps.gov/projectHome.cfm?projectID=103419 through May 3, 2024. The draft ATMP and Frequently Asked Questions are available on the PEPC website.

Please visit this NPS site and this FAA site for more detailed information about air tour management plans and voluntary agreements.

www.nps.gov

About the National Park Service. More than 20,000 National Park Service employees care for America's 425 national parks and work with communities across the nation to help preserve local history and create close-to-home recreational opportunities. Learn more at www.nps.gov, and on Facebook, Instagram, Twitter, and YouTube.

Request for Public Input on Canyon De Chelly National Monument Draft Air Tour Management Plan and Draft Environmental Assessment

Pearson, Georgina A <Gina_Pearson@nps.gov>

Tue 4/2/2024 10:50 AM

Bcc:Mehojah, Gregory C <Gregory.Mehojah@bia.gov>;AZinfo.nrcs@usda.gov <AZinfo.nrcs@usda.gov>;Reid, Jane A <jareid@usgs.gov>;mcolaianni@azgfd.gov <mcolaianni@azgfd.gov>;Marie.Buck@wnpa.org <Marie.Buck@wnpa.org>; Christine.Horvath@wnpa.org <Christine.Horvath@wnpa.org>;president.buunygren@navajo-nsn.gov <president.buunygren@navajo-nsn.gov>;josie.bowman@navajo-nsn.gov <josie.bowman@navajo-nsn.gov>; hollyjames@navajo-nsn.gov <hollyjames@navajo-nsn.gov>;w.mike.halona@navajo-nsn.gov <w.mike.halona@navajo-nsn.gov>; Brent Powers <bpowers@nndfw.org>;r.begay@navajo-nsn.gov <r.begay@navajo-nsn.gov>;laurindagmoore@navajo-nsn.gov <laurindagmoore@navajo-nsn.gov>;tplatero@navajodot.org <tplatero@navajodot.org>;rosanna.jumbo@navajochapters.org <rosanna.jumbo@navajochapters.org>;lukachukai@navajochapters.org <lukachukai@navajochapters.org>; nazlini@navajochapters.org <nazlini@navajochapters.org>;tsaile@navajochapters.org <tsaile@navajochapters.org>; sawmill@navajochapters.org <sawmill@navajochapters.org>

Dear Partner,

The Federal Aviation Administration (FAA) and the National Park Service (NPS) invite public and stakeholder input on the Draft Air Tour Management Plan (Draft ATMP) and Draft Environmental Assessment (Draft EA) for Canyon De Chelly National Monument (the Park). The National Parks Air Tour Management Act ofĀ2000 (the Act) requires the FAA, in cooperation with the NPS, to develop an ATMP or voluntary agreement for parks where operators have applied to conduct commercial air tours. Because the Park typically receives less than 50 air tours per year, it was initially exempt from the requirements ofĀthe Act. However, the NPS withdrew its exemption in order to better protect the Park's cultural and natural resources, including its soundscapes as well as the Navajo community living within the Park.

The objective of the ATMP, under the Act, is to develop acceptable and effective measures to miĀgate or prevent the significant adverse impacts, ifĀany, ofĀcommercial air tour operaĀons upon the Park's resources and values. An ATMP may establish conditions for the conduct of commercial air tour operaĀons over a national park, including commercial air tour routes, maximum or minimum altitudes, Āme-of-day restrictions, restrictions for particular events, maximum number ofĀflights per unit of Āme, intrusions on privacy on Tribal lands, and mitigation of noise, visual, or other impacts.

The FAA and the NPS will initiate a 30-day public comment period from the date of publication in the Federal Register during which the public, agencies, Tribes, and other interested parĀes may provide comments, suggestions and input on the Draft ATMP and Draft EA.

This email also serves as an invitation to participate in an in-person public meeting and an on-line public meeting for the Park as part ofĀcompliance with the Act and the agencies' associated National Environmental Policy Act (NEPA) compliance process. Both meetings will convey the same information. Event information for the public meetings is listed in the table below:

Date	Time	Location
April 16, 2024	10:00 AM -2:00 PM MDT	Navajo Route 7, Ste. 4600, Chinle, AZ 86503. Phone: (928) 674-2052
April 17, 2024	6:00 - 7:30 PM MDT	**YouTube link:** National Park Air Tour Management Plan: Canyon de Chelly, Arizona (youtube.com) **Google Form (to submit questions during the meeting):**

		https://forms.gle/6PCcyzMQrziCyLA46

Comments must be received by **May 3, 2024** at **11:59 PM MDT.** The agencies are seeking substanĀve comments that:

- specifically describe why something will or will not work,
- provide new ideas or factual informaĀon to correct or adjust assumpĀons made,
- present reasonable alternaĀves other than those described.

Comments that merely support or oppose the proposals that provide personal opinions are not considered substantive.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your en re comment (including your personal identifying information) may be made publicly available at any me. While you can request in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Please see the following links for the project website, Draft ATMP and Draft EA, and instructions for submitting official comments: CACH ATMP Homepage or CACH ATMP and EA Documents.

Comment submission using the Planning, Environment & Public Comment (PEPC) system is preferred, although written comments sent via postal mail will also be accepted. Comments will not be accepted via email.

Written comments may be sent via postal mail to the following address:

Volpe National Transportation Systems Center
Kaitlyn Rimol, V-326
Attn: Canyon de Chelly National Monument ATMP
220 Binney Street
Cambridge, Massachusetts 02142

Thank you for your interest in Canyon de Chelly National Monument!

Please note that this is not a monitored email address. If you have ques ons or comments, please visit the project website at CACH ATMP Homepage.

Canyon De Chelly National Monument Air Tour Management Plan
Planning, Environment, & Public Comment – Frequently Asked Questions

Topics on this page and related links:

- Canyon De Chelly National Monument ATMP FAQs
- General ATMP FAQs:
  - FAA Website
  - NPS Website

- **Why is there an Air Tour Management Plan being developed for Canyon de Chelly National Monument?**
  - Although the National Parks Air Tour Management Act of 2000 (the Act) provided an exemption to develop an air tour management plan (ATMP) for parks with 50 or less commercial air tours per year, in 2017 the NPS withdrew the exemption for Canyon de Chelly National Monument to protect park resources and values, park visitor use and enjoyment, and to allow the Navajo Nation and its members an opportunity to have input on the planning process.

- **Who authorized air tours over Canyon de Chelly?**
  - The Act requires that commercial air tour operators conducting or intending to conduct commercial air tours over a unit of the National Park System apply to the Federal Aviation Administration (FAA) for authority to undertake such activity. Under the Act, the FAA was required to grant Interim Operating Authority (IOA) for commercial air tours over the Park and adjacent Tribal lands that are outside of the Park but within ½-mile of its boundary as a temporary measure until an ATMP could be established. IOA terminates 180 days after the date on which an air tour management plan is established.

- **Was the granting of IOA subject to review under the National Environmental Policy Act (NEPA) or compliance with Section 106 of the National Historic Preservation Act?**
  - No, the FAA's granting of IOA was not subject to NEPA review or compliance with Section 106 of the National Historic Preservation Act because it was a non-discretionary agency action mandated by Congress.

- **How many air tour flights are currently reported over Canyon De Chelly National Monument every year?**
  - Based on data from 2017-2019, one operator flew an average of 43 commercial air tours over Canyon De Chelly National Monument every year. There are four commercial air tour operators that have Interim Operating Authority (IOA) to fly up to 175 flights per year.
  - As of January 1, 2013, all operators with IOA or with commercial air tour allocations under an ATMP or voluntary agreement are required to report operations and other information semi-annually to the NPS and the FAA. These semi-annual reports are due no later than 30 days after the end of each six-month period.

- IOA does not provide any operating conditions (e.g., routes, altitudes, time of day, etc.) for air tours other than an annual limit. IOA for this Park was published in the Federal Register (FR) on October 7, 2005 (70 FR 58,778).

- **What will an ATMP do for Canyon de Chelly National Monument ?**
  - The Draft ATMP would prohibit commercial air tours within the ATMP planning area (below 5,000 feet altitude above ground level over the Park and within ½ -mile of the Park's boundary). This will protect Tribal trust cultural and natural resources and values that are within the Park, and the lifeways, traditional cultural practices, and sacred lands of the approximately 80 families that live in and around the Park.

- **What is the current status of the ATMP?**
  - The FAA and the NPS will initiate a 30-day public comment period from the date of publication in the Federal Register during which the public, agencies, Tribes, and other interested parties may provide comments, suggestions and input on the Draft ATMP and Draft Environmental Assessment (EA).
  - The agencies are hosting an in-person public meeting and an on-line public meeting for the Park as part of compliance with the Act and the agencies' associated National Environmental Policy Act (NEPA) compliance process. Both meetings will convey the same information. The in-person meeting will be held on April 16, 2024, from 10:00 AM – 2:00 PM MT, and the on-line meeting will be held on April 17, 2024, from 6:00 PM – 7:30 PM MT.
  - Hard copies of the Draft ATMP and the Executive Summary of the Draft EA will be available at the Chinle, Tsaile-Wheatfields, Lukachukai, Nazlini, and Sawmill Chapter Houses to provide the greatest opportunity for public participation and comment. Notice of availability of the Draft ATMP and Draft EA and instructions on how to comment will also be published in the Federal Register.

- **How do I submit a comment(s) on the Draft ATMP and Draft EA for Canyon De Chelly National Monument?**
  - The public is encouraged to submit official comments on the Draft ATMP and Draft EA through the NPS PEPC website. You can access the Draft ATMP and Draft EA by clicking "Open for Comment" on the left side of the page and then clicking on the link to the Draft ATMP and Draft EA under "Select a document to review and comment". Select the "Comment Now" button to enter your official comments on the Draft EA. Comments will not be accepted by email.
  - The agencies are seeking substantive comments that:
    - specifically describe why something will or will not work,
    - provide new ideas or factual information to correct or adjust assumptions made,
    - present reasonable alternatives other than those described.
  - Comments that merely support or oppose the proposals that provide personal opinions are not considered substantive.
  - Before including your address, phone number, e-mail 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 us in

your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

- Written comments may be sent via postal mail to the following address:

  Volpe National Transportation Systems Center
  Kaitlyn Rimol, V-326
  Attn: Canyon De Chelly National Monument ATMP
  220 Binney Street
  Cambridge, Massachusetts 02142

- **What are commercial air tours that are subject to the ATMP?**
  - Commercial air tours subject to the ATMP are powered flights for compensation or hire for the purpose of sightseeing over Canyon De Chelly National Monument or within ½-mile outside the Park's boundary at altitudes below 5,000 feet above ground level (AGL). This is referred to as the ATMP planning area in the Draft EA and as the ATMP boundary in the Draft ATMP.

- **What overflights are not subject to the ATMP?**
  - Overflights conducted for other purposes (e.g., commercial jets or military overflights), including to air tours conducted over lands that are greater than ½ mile from the Park boundary or public lands managed by agencies other than the National Park Service are not subject to the ATMP.

- **Will commercial air tours be allowed outside the ATMP planning area?**
  - Air tours outside of the ATMP planning area (i.e., at or above 5,000 feet AGL or more than ½-mile outside the Park boundary) are not subject to the Act and, therefore, are not regulated under this ATMP. Air tour operators could potentially fly outside the ATMP planning area if Park feature attractions can still be viewed, or en route to other parks where air tours occur such as Grand Canyon National Park and Glen Canyon National Recreation Area.

- **How will the ATMP be enforced?**
  - Aircraft monitoring and enforcement would still occur under the Act to ensure that commercial air tour operators are complying with the terms and conditions of the ATMP by not conducting tours within the ATMP planning area. The NPS and the FAA would both be responsible for the monitoring and oversight.

- **How was the Navajo Nation involved in the development of the ATMP?**
  - The Navajo Nation serves in three roles on this project. First, they are a sovereign, or independent, nation in the nation-to-nation consultation with the agencies. Second, the Navajo Nation was invited to be a cooperating agency, and although no formal acceptance was received, they participated as a cooperating agency and engaged in the development of the ATMP. Finally, the Nation is a consulting party for compliance with Section 106 of the National Historic Preservation Act.

- **How does the ATMP seek to protect cultural resources, protect Tribal lands, properties, ceremonies, or practices?**
    - The elimination of commercial air tours from the ATMP planning area would eliminate commercial air tour flights and routes within the ATMP planning area, the minimal noise impact is expected to be reduced. 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.

- **How are air tours outside of the ATMP planning area regulated?**
    - Applicable regulations that govern aviation safety are found at 14 CFR § 136, Appendix A (formerly Special Federal Aviation Regulation 71).

- **What happens after the public review period on a draft ATMP and draft EA?**
    - Agencies will consider comments received on the Draft ATMP and Draft EA and continue consultation with other agencies and Tribal governments, as necessary. A final ATMP and final EA documenting the project's outcomes (including comments received and consultations undertaken) will be developed with ultimate approval resting with the FAA and the NPS.

PUBLIC INPUT SESSION

WHAT

The Federal Aviation Administration and the National Park Service announce the public review of the Draft Air Tour Management Plan (ATMP) and Draft Environmental Assessment (EA).

WHEN

Tuesday, April 16, 2024

10 a.m. – 2 p.m. MDT

WHERE

Chinle Chapter House

Navajo Route 7 Ste 4600

Chinle, AZ 86503

(928) 674-2052

BACKGROUND

The Federal Aviation Administration (FAA) is working diligently with the National Park Service (NPS) to implement the National Park Air Tour Management Act of 2000, which was signed into law on April 5, 2000. The Act requires operators wishing to conduct commercial air tours over national parks, or over tribal lands within or bordering national parks, to apply to the FAA for authority to conduct such tours. The Act further requires FAA, in cooperation with the NPS, to develop Air Tour Management Plans for park or tribal lands within or bordering a National Park where air tour operations occur or are proposed.

VIRTUAL MEETING

A public virtual Zoom meeting covering the same content as the in-person meeting will be held:

Wednesday, April 17, 2024

6:00pm – 7:30pm MDT.

Meeting Livestream:

https://www.youtube.com/watch v=LJdKCdtPw4g

Sign in sheet

In-Person Public Information Meeting
Canyon de Chelly National Monument
Draft Air Tour Management Plan
April 16, 2024

Name	**Address**	**Affiliation** (Tribal member, air tour operator, etc.)
T. Yazzie	P.O. Box 976 Chinle AZ 86503	Tour Operator, Canyon De Chelly
Adrian Thompson	P.O Box 1515 Chinle AZ. 86503	Tribal Member.
Eleanor Yoe	P.O. 2999 Chinle, Az 86503	Navajo Tribe
Nova McKemy	PO Box 1404, Chinle, AZ 86503	S. Rim resident
Stanley Kedelty	P.O. Box 153 Navajo, New Mexico	Navajo
Howard Smith	PO Box 3797 Chinle, AZ 86503	Navajo native Spider Rock Campground
Elizabeth Tsosie	PO Box 645 Chinle, AZ 86503	Canyon Farmer
Deborah Lee	Box 3471 Chinle AZ 86503	canyon Resident
Leonard Begay SR	Bx 1218 Chinle AZ. 86503	Canyon Farmer
Cope Reynolds	POB 135 VERNON, AZ 85940	MEDIA
Rota Tillen	POB 2800 Chinle. AZ	REZ
Rosita Tsosie	Box 1008 Chinle, AZ	Tribal Member
Alvina Shirley	Box 827 Chinle, AZ	Tribal Member
Pamela Bia		
Karl Pearson	501 W. 5th St Loveland, CO 80537	

Sign in sheet

In-Person Public Information Meeting
Canyon de Chelly National Monument
Draft Air Tour Management Plan
April 16, 2024

Name	**Address**	**Affiliation** (Tribal member, air tour operator, etc.)
Betty Rose Draper	Bx 1541 Chinle Az	
Carmelita Litsoe	Bx #A252 Tsaile, Az	
Joe L. Benally Jr	" " " "	
Danielle Yazzie	PO BOX 25520 WindowRock, AZ 86515	NPRD-Chinle
Devonnia Yazzie	P.O. Bx 1466 Chinle AZ 86503	Tour Operator
Geraldine Henry		
Steven Halwood	P.O. Box 2865 Chinle AZ 86503	NTU - Student
Anslem Tsosie	POB 1073 Chinle Az	
Charmaine Tsosie	P.O Box 876 Chinle	
Jon Tsosie		
Bessie Henry	Box 1358 Chinle	
Adeline Tohannie	Monument Valley Navajo Tribal Park	
Elvina Saganey	Monument Valley Navajo Tribal Park	
Louise Madison	Monument Valley Welcome Center	NPRD
David Marlowe	PO Box 3802	

Sign in sheet

In-Person Public Information Meeting
Canyon de Chelly National Monument
Draft Air Tour Management Plan
April 16, 2024

Name	**Address**	**Affiliation** (Tribal member, air tour operator, etc.)
Lemuel Stacy	Box 1428 Chinle, AZ 86503	Beauty Way Jeep Tours
Lorraine Yazzie	P.O. Box # 2116. Chinle, AZ 86503	
Benny Yazzie	BOX 2915 Chinle, AZ 86503	Canyon de Chelly resident
Daniel Staff	Chinle	CDL
Winnie Henry	Chinle	
AL Bensley	P. O Box 1202 Chinle, Az 86503	Canyon de Chelly resident
Anita Jones	Chinle, AZ	CDC Resident
Kietel Jones	Chinle, AZ	CDC Resident
Conita Joe	Chinle AZ	
Viola Klain	P.O. Box 1026 Many Farms AZ 86538	CDC Resident
Theran Litson	P.O. Box 4052 Tsaile, Az 86556	
Larry Brown	P.O Box 1272 Chinle Az 86503	Resident
Clara Litson	Canyon Point	
John Begay	Canyon Point	
Casey Tesey	P.O. Box 1968 Chinle Az.	Chinle Resident

Sign in sheet

In-Person Public Information Meeting
Canyon de Chelly National Monument
Draft Air Tour Management Plan
April 16, 2024

Name	**Address**	**Affiliation** (Tribal member, air tour operator, etc.)
Denikka Tsosie	P/O/Box 4311 Window Rk 86515	Tribal Member

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

WELCOME –
We will begin shortly

April 16, 2024

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

Draft Air Tour Management Plan for:

Canyon de Chelly National Monument

April 16, 2024

Welcome

- Thank you for joining us today.
- Today's meeting focuses on the Draft Air Tour Management Plan (ATMP) for Canyon De Chelly National Monument.
- We invite you to share your feedback on this Draft ATMP.
- Specific instructions will be provided throughout this meeting on how to submit your questions.
- This meeting is held pursuant to the National Parks Air Tour Management Act (NPATMA) and its implementing regulations.

Presenters

- **Sandi Fox** – FAA, Environmental Protection Specialist
- **Gina Pearson –** NPS, Environmental Protection Specialist
- **Lyn Carranza –** NPS, Superintendent
- **Keith Lyons –** NPS, Integrated Resources Manager

Asking Questions

- Throughout the meeting, we invite you to share your questions.
- Questions will be addressed at the end of the presentations as part of the Q&A portion as time will allow.
- The purpose of today's meeting is to provide an opportunity for participants to ask questions and clarify information so that you can submit official comments.

Submitting Official Comments

- All written official comments for the record must be submitted via the NPS Planning, Environment and Public Comment (PEPC) site or sent to the mailing addresses listed on the Canyon De Chelly National Monument PEPC site.

- These written comments become part of the official record.

- Please note that written comments must be submitted on or before **May 3, 2024,** at **11:59 PM MDT**.

Format of Meeting

- This meeting will be 90 minutes long.
- We will adjourn at 2:00 PM Mountain Daylight Time.
- In the event all questions are addressed before this end time, we will continue to hold the meeting until this identified end time to allow for any additional questions that might come in.

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

Overview of the National Parks Air Tour Management Act and Air Tour Management Plans

April 16, 2024

NPATMA Overview

- Requires the FAA, in cooperation with the NPS, to develop an Air Tour Management Plan (ATMP) for those parks where operators have applied to conduct commercial air tours.

- An ATMP applies to commercial air tours:
  - Within ½-mile of a park; and
  - Below 5,000 feet altitude above ground level (AGL).

- Does not apply to general aviation, commercial airline, or military flights.

- Commercial air tour operators apply for FAA Interim Operating Authority (IOA) in order to operate over National Park System units.

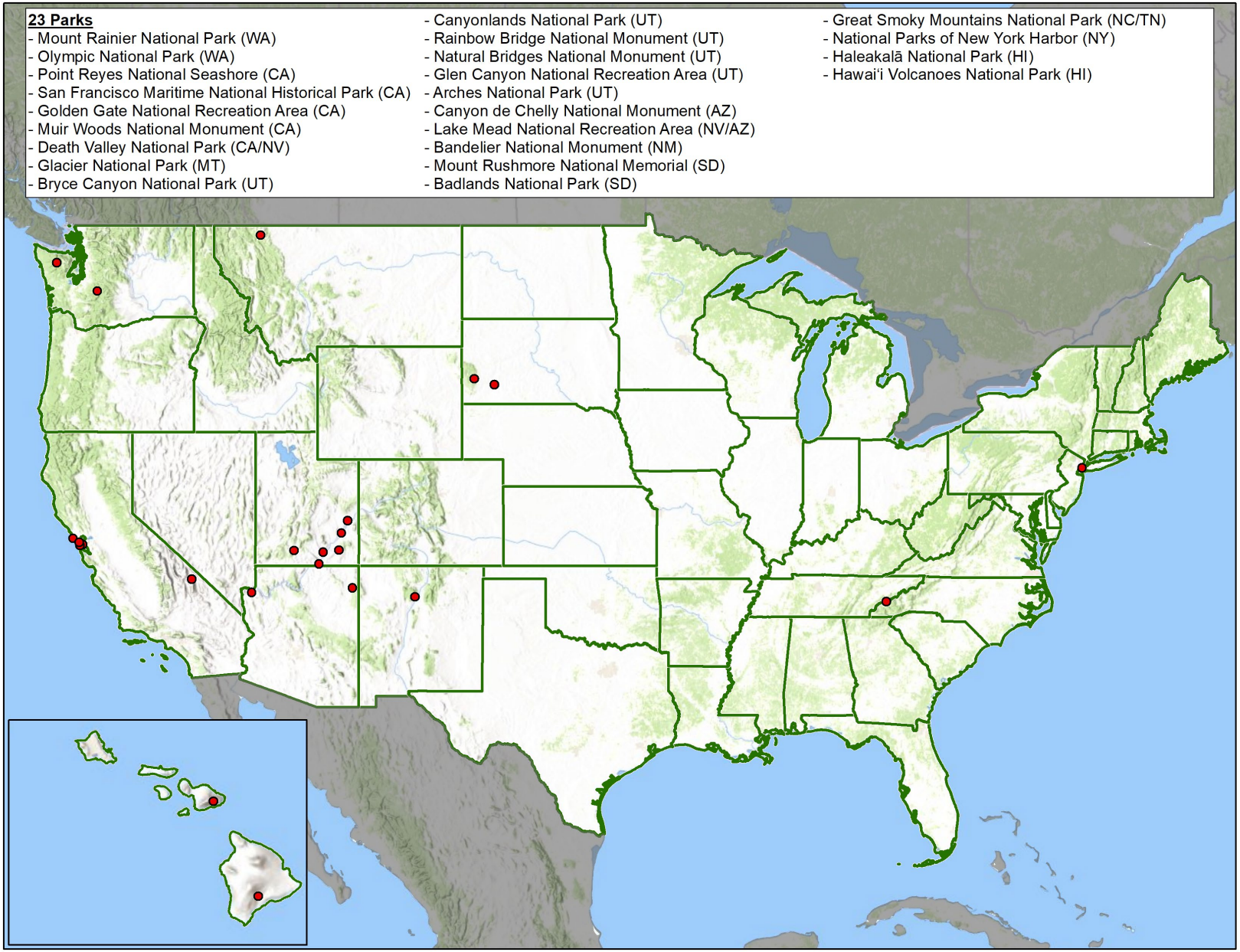
Air Tour Management Plans

The objective of this ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations on the Park's resources and values.

Air Tour Management Plans

An ATMP:

- May prohibit commercial air tour operations in whole or in part;
- 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.;
- Shall apply to all commercial air tour operations within ½-mile outside the boundary of a national park;
- Shall include incentives for the adoption of quiet aircraft technology;
- Shall provide for the allocation of opportunities to conduct air tours when the ATMP limits the number of operations; and
- Shall justify and document the need for measures taken pursuant to items above and include such justifications in the record of decision.


23 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)
- Haleakalā National Park (HI)
- Hawai'i Volcanoes National Park (HI)

ATMP Updates

Completed ATMPs

- Arches National Park (UT)
- Badlands National Park (SD)
- Bandelier National Monument (NM)
- Bryce Canyon National Park (UT)
- Canyonlands National Park (UT)
- Death Valley National Park (CA/NV)
- Glacier National Park (MT)
- Golden Gate National Recreation Area (CA)
- Great Smoky Mountains National Park (NC/TN)
- Haleakalā National Park (HI)
- Hawai‘i Volcanoes National Park (HI)
- Mount Rainier National Park (WA)
- Mount Rushmore National Memorial (SD)
- Muir Woods National Monument (CA)
- Natural Bridges National Monument (UT)
- Olympic National Park (WA)
- Point Reyes National Seashore (CA)
- San Francisco Maritime National Historical Park (CA)

Ongoing ATMPs

- Canyon de Chelly National Monument (AZ)

Completed Voluntary Agreements (VAs)

- Glen Canyon National Recreation Area (UT) /
- Rainbow Bridge National Monument (UT)
- National Parks of New York Harbor (NY)

Ongoing Voluntary Agreement

- Lake Mead National Recreation Area (NV/AZ)

ATMP Development

- For each ATMP, the agencies:
  - Publish proposed ATMPs in the Federal Register;
  - Hold at least one public meeting; and
  - Comply with the National Environmental Policy Act (NEPA), and other legal requirements.

- During today's meeting we will review the components of the Draft ATMP for Canyon de Chelly National Monument.

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

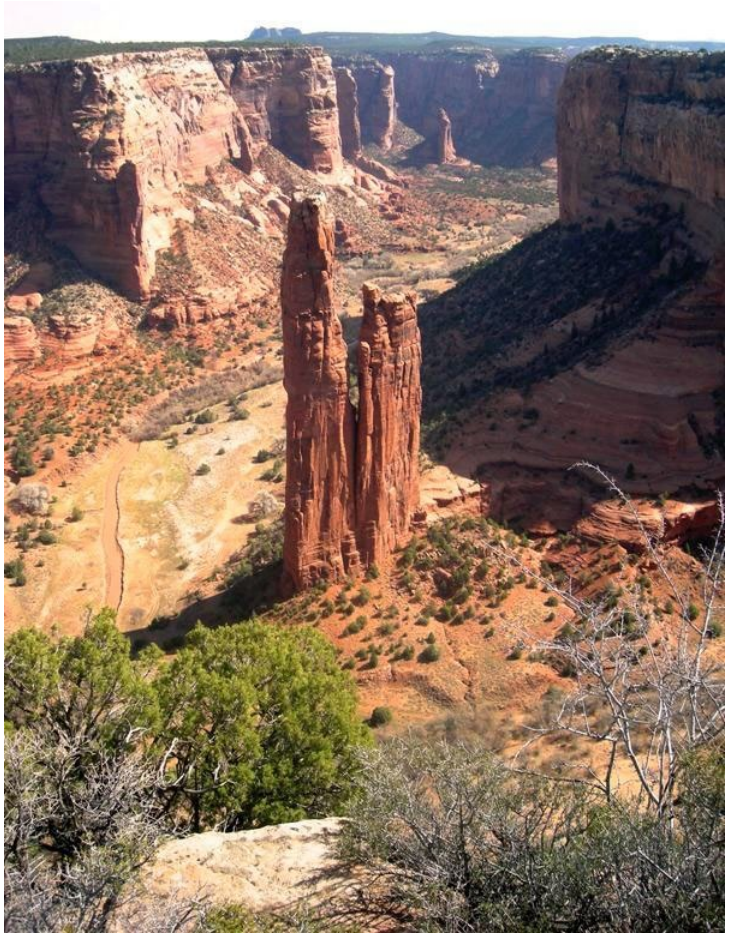
Draft Air Tour Management Plan for:

Canyon de Chelly National Monument

April 16, 2024

Park Overview

- The Park encompasses approximately 84,000 acres in northeastern Arizona within the Defiance Plateau on Tribal lands held by the United States in trust for the Navajo Nation. Approximately 80 Navajo families live in and around the Park.
- 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.
- Canyon de Chelly 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.




UTAH
COLORADO
ARIZONA
NEW MEXICO
Natural Bridges NM
Hovenweep NM
Glen Canyon NRA
Rainbow Bridge NM
Monument Valley NTP
Mesa Verde NP
Aztec Ruins NM
Canyon de Chelly NM
Navajo NM
Grand Canyon NP
Wupatki NM
Hopi Villages
Chaco Culture NHP
Bandelier NM
Hubbell Trading Post NHS
Sunset Crater NM
Petroglyph NM
Pecos NHP
Tuzigoot NM
Walnut Canyon NM
Petrified Forest NP
El Morro NM
El Malpais NM
Montezuma Castle NM
Cortez
Durango
Alamosa
Page
Kayenta
Farmington
Chinle
Tuba City
Ganado
Window Rock
Gallup
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Holbrook
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0
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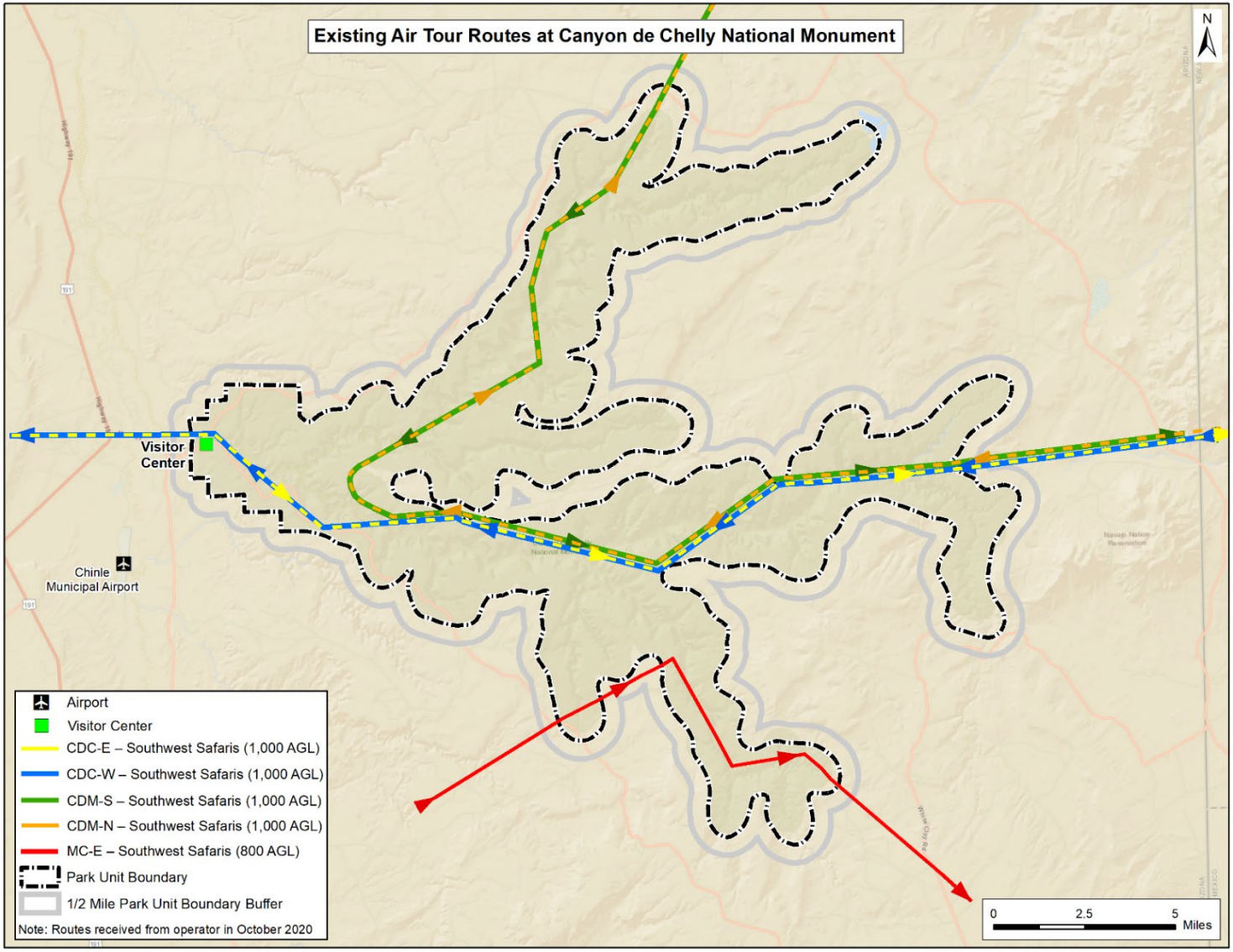

Existing Air Tour Routes at Canyon de Chelly National Monument
N
Visitor Center
Chinle Municipal Airport
Airport
Visitor Center
CDC-E – Southwest Safaris (1,000 AGL)
CDC-W – Southwest Safaris (1,000 AGL)
CDM-S – Southwest Safaris (1,000 AGL)
CDM-N – Southwest Safaris (1,000 AGL)
MC-E – Southwest Safaris (800 AGL)
Park Unit Boundary
1/2 Mile Park Unit Boundary Buffer
Note: Routes received from operator in October 2020
0
2.5
5
Miles

Existing Air Tour Conditions

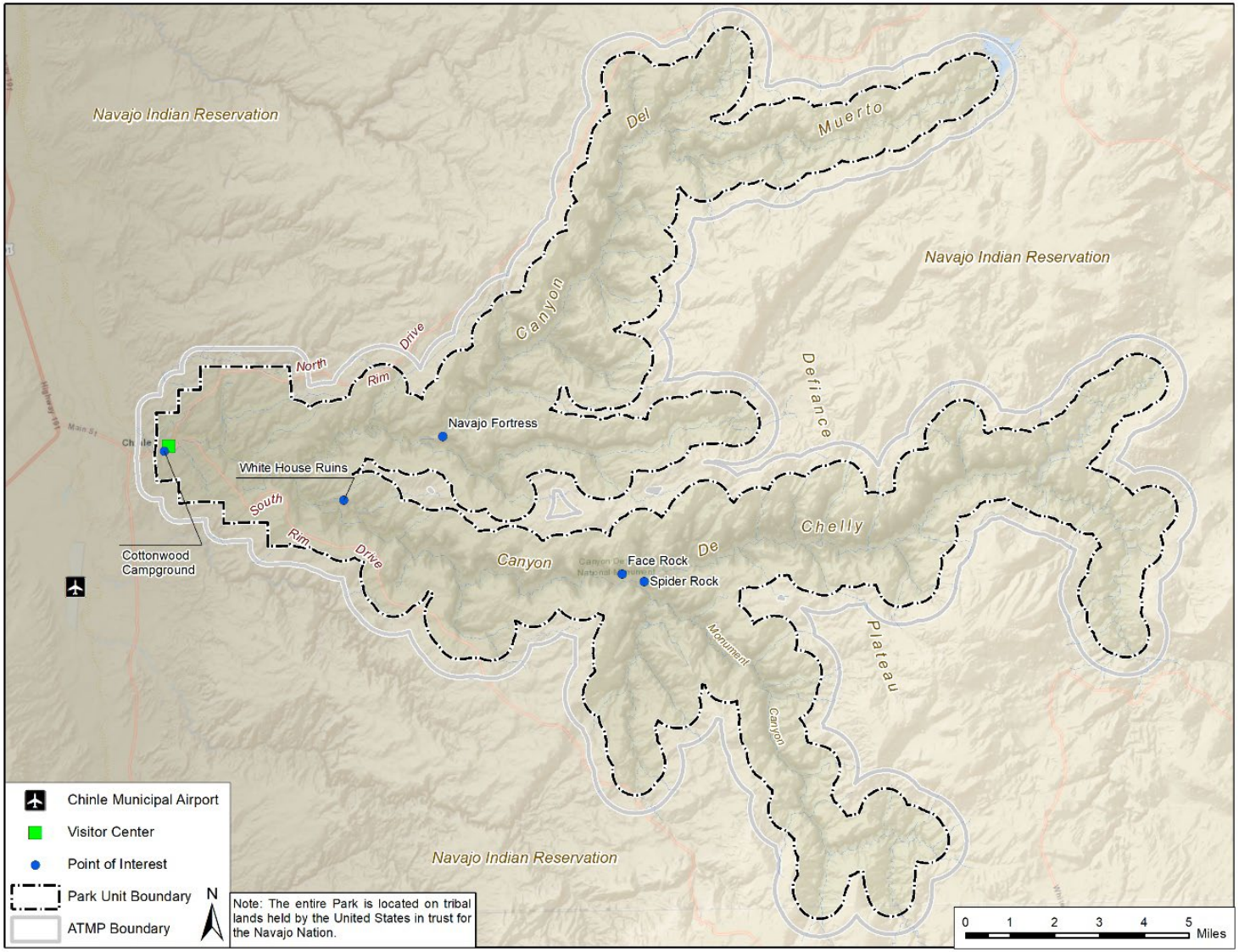
- Four commercial air tour operators currently hold Interim Operating Authority (IOA) for a total of 175 flights per year over the Park.
- Only one air tour operator reported data from 2017-2019 with an average of 43 total flights per year.
- Annual number of commercial air tours at the Park is limited by the IOA.
- IOA includes only an annual cap on the number of commercial air tours that may be conducted by an operator but does not designate the routes, time-of-day, altitudes, or other conditions for such tours.

Park Resources

- The Park contains several thousand archeological sites, cliff dwellings, prehistoric/historic structures, ethnographic resources and sacred sites:
  - White House Ruins
  - Spider Rock
  - Fortress Rock
- Canyon de Chelly National Monument has a range of habitats for wildlife, including:
  - Yellow-billed cuckoo, southwestern willow flycatcher, peregrine falcon, bald eagle, golden eagle, American dipper, and Mexican spotted owl
  - Mule deer, mountain lion, bobcat, coyote, gray fox, and American black bear

Draft ATMP for the Park

Attribute	Existing Air Tour Conditions	Draft ATMP
Number of Air Tours Authorized Per Year	IOA: 175 flights per year 3-Yr. Average (2017-2019): 43	0 flights per year The establishment of the ATMP would result in the termination of IOA for the operator.
Routes and Altitudes	No mandatory routes or no-fly zones	No air tours would be allowed within the ATMP boundary. Operators could fly routes outside the ATMP boundary, in unrestricted airspace, similar to existing flight paths, or routes could vary greatly from those currently flown and would depend on operator preference and weather conditions at the time of the tour, or above the ATMP boundary (at or above 5,000 ft. AGL).
Time-of-Day Restrictions	No restrictions, may occur at any time.	Commercial air tours would not be permitted within the ATMP boundary.
Day-of-Week Restrictions	No restrictions, may occur on any day of the week.	Commercial air tours would not be permitted within the ATMP boundary.
Restrictions for Particular Events	No restrictions, may occur on any day of the year.	Commercial air tours would not be permitted within the ATMP boundary.


Navajo Indian Reservation
Del
Muerto
Navajo Indian Reservation
Canyon
North
Rim
Drive
Navajo Fortress
Defiance
White House Ruins
South
Rim
Drive
Cottonwood
Campground
Canyon
Face Rock
Spider Rock
De
Chelly
Monument
Canyon
Plateau
Navajo Indian Reservation
Chinle Municipal Airport
Visitor Center
Point of Interest
Park Unit Boundary
ATMP Boundary
N
Note: The entire Park is located on tribal lands held by the United States in trust for the Navajo Nation.
0 1 2 3 4 5
Miles

Justification for Measures Taken

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

Justification for Measures Taken

- Allowing commercial air tours within the ATMP boundary is inconsistent with the Park's purpose and values, which include perpetuating traditional Tribal cultural connections to the Park's landscapes.
- Since commercial air tours would negatively impact the privacy of the Navajo families living within the ATMP boundary and are inconsistent with the Park's purpose, significance, and fundamental resources and values, the agencies have decided to prohibit commercial air tours within the ATMP boundary.

NEPA

- The FAA and the NPS are complying with the National Environmental Policy Act (NEPA) in development of the Draft ATMP.
- NEPA requires that the agencies:
  - Consider the human and natural environment that could be affected by their action (ATMP).
  - Determine the appropriate level of NEPA review.
  - Prepare associated environmental review documents.

Section 106 / NHPA

- The FAA and the NPS are complying with Section 106 of the National Historic Preservation Act (NHPA) in development of the Draft ATMP and Draft EA.
- Section 106 includes the requirement that the agencies:
  - Define the Undertaking and Identify Consulting Parties;
  - Determine the Area of Potential Effects and Identify Historic Properties;
  - Assess Effects to Historic Properties; and
  - Resolve Adverse Effects, if Any, to Historic Properties.
- The FAA and the NPS have consulted with the Navajo Nation Tribal Historic Preservation Officer (THPO), Pueblo of Jemez THPO, Native American Tribes, and other Consulting Parties.
- The FAA proposed a Finding of No Adverse Effect to historic properties in a letter that was sent to the State Historic Preservation Officer and all Consulting Parties.

Section 7 / ESA

- The FAA and the NPS are complying with Section 7 of the Endangered Species Act (ESA) in development of the Draft ATMP and Draft EA.
- Section 7 includes the requirement that the agencies:
  - Ensure their actions do not jeopardize the existence of any species listed under ESA or result in the destruction or adverse modification of designated critical habitat.
- The agencies completed the Section 7 analysis for federally listed species and anticipate the Preferred Alternative would have no effect on federally listed threatened or endangered species or designated critical habitat.

Public Review of the Draft ATMP and Draft EA

- The FAA and the NPS invite official comments from the public, agencies, Native Tribes, and other interested parties on the Draft ATMP and Draft EA.
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- **Submit your official comments**:
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  - Via Mail:

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Next Steps

- Following the end of the public comment period, the FAA and the NPS will:
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Questions and Comments

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  - At In-person public meeting, 4/16

Protecting Personally Identifiable Information (PII)

Before including your address, phone number, e-mail 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 us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

WELCOME –
We will begin shortly

April 17, 2024

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

Draft Air Tour Management Plan for:

Canyon de Chelly National Monument

April 17, 2024

Welcome

- Thank you for joining us today.
- Today's meeting focuses on the Draft Air Tour Management Plan (ATMP) for Canyon De Chelly National Monument.
- We invite you to share your feedback on this Draft ATMP.
- Specific instructions will be provided throughout this meeting on how to submit your questions.
- This meeting is held pursuant to the National Parks Air Tour Management Act (NPATMA) and its implementing regulations.

Presenters

- **Eric Elmore** – FAA, Senior Policy Advisor
- **Vicki Ward –** NPS, Overflights Program Manager
- **Lyn Carranza –** NPS, Superintendent
- **Keith Lyons –** NPS, Integrated Resources Manager

Asking Questions

- Throughout the meeting, we invite you to share your questions. Please submit questions using the Google form posted by the FAA in the chat.
- Questions will be addressed at the end of the presentations as part of the Q&A portion as time will allow.
- The purpose of today's meeting is to provide an opportunity for participants to ask questions and clarify information so that you can submit official comments.

Submitting Official Comments

- All written official comments for the record must be submitted via the NPS Planning, Environment and Public Comment (PEPC) site or sent to the mailing addresses listed on the Canyon De Chelly National Monument PEPC site.

- These written comments become part of the official record.

- Please note that written comments must be submitted on or before **May 3, 2024,** at **11:59 PM MDT**.

Format of Meeting

- This meeting will be 90 minutes long.
- We will adjourn at 7:30 PM Mountain Daylight Time.
- In the event all questions are addressed before this end time, we will continue to hold the meeting until this identified end time to allow for any additional questions that might come in.

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

Overview of the National Parks Air Tour Management Act and Air Tour Management Plans

April 17, 2024

NPATMA Overview

- Requires the FAA, in cooperation with the NPS, to develop an Air Tour Management Plan (ATMP) for those parks where operators have applied to conduct commercial air tours.

- An ATMP applies to commercial air tours:
  - Within ½-mile of a park; and
  - Below 5,000 feet altitude above ground level (AGL).

- Does not apply to general aviation, commercial airline, or military flights.

- Commercial air tour operators apply for FAA Interim Operating Authority (IOA) in order to operate over National Park System units.

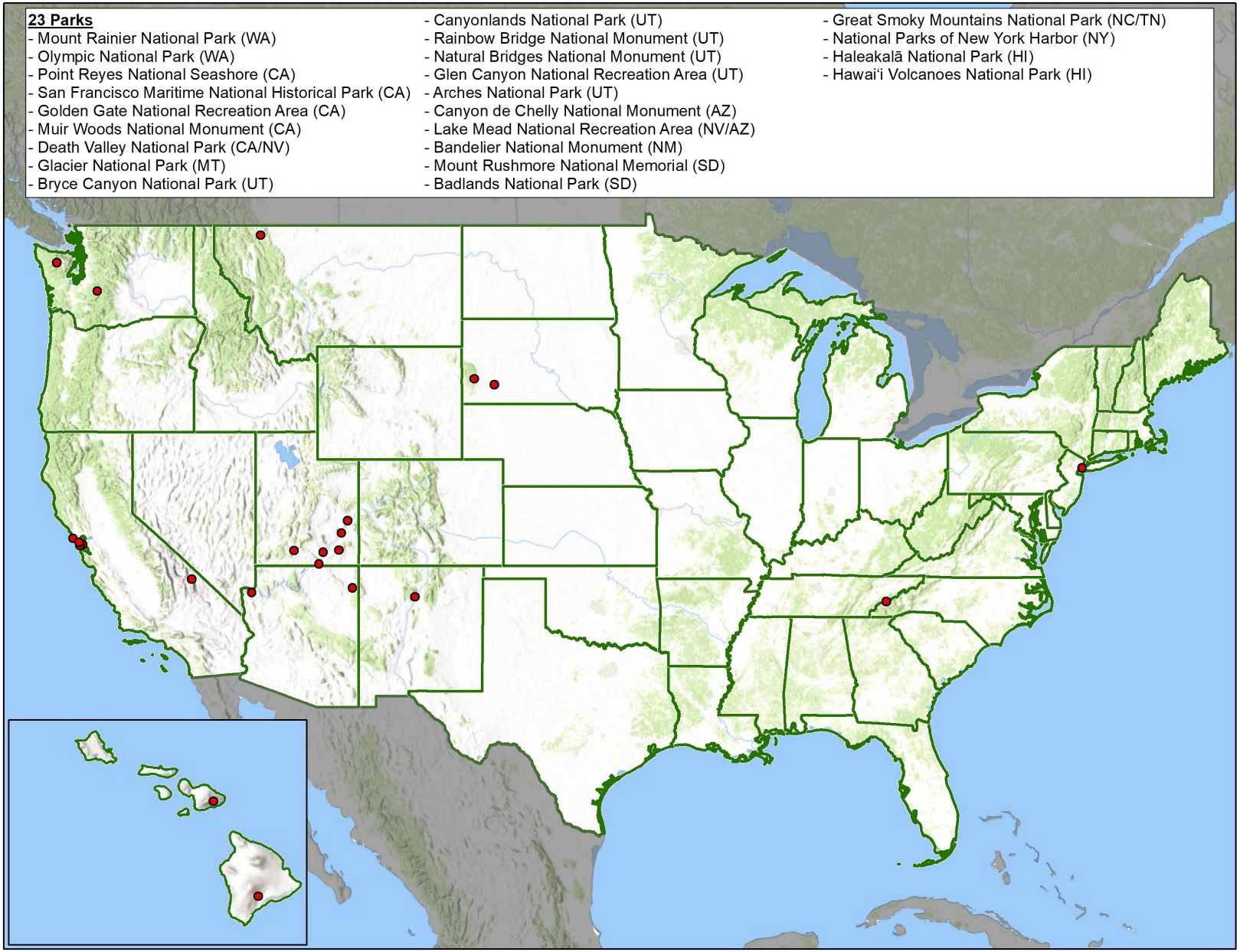
Air Tour Management Plans

The objective of this ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations on the Park's resources and values.

Air Tour Management Plans

An ATMP:

- May prohibit commercial air tour operations in whole or in part;
- 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.;
- Shall apply to all commercial air tour operations within ½-mile outside the boundary of a national park;
- Shall include incentives for the adoption of quiet aircraft technology;
- Shall provide for the allocation of opportunities to conduct air tours when the ATMP limits the number of operations; and
- Shall justify and document the need for measures taken pursuant to items above and include such justifications in the record of decision.


23 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)
- Haleakalā National Park (HI)
- Hawai'i Volcanoes National Park (HI)

ATMP Updates

Completed ATMPs

- Arches National Park (UT)
- Badlands National Park (SD)
- Bandelier National Monument (NM)
- Bryce Canyon National Park (UT)
- Canyonlands National Park (UT)
- Death Valley National Park (CA/NV)
- Glacier National Park (MT)
- Golden Gate National Recreation Area (CA)
- Great Smoky Mountains National Park (NC/TN)
- Haleakalā National Park (HI)
- Hawai‘i Volcanoes National Park (HI)
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- Natural Bridges National Monument (UT)
- Olympic National Park (WA)
- Point Reyes National Seashore (CA)
- San Francisco Maritime National Historical Park (CA)

Ongoing ATMPs

- Canyon de Chelly National Monument (AZ)

Completed Voluntary Agreements (VAs)

- Glen Canyon National Recreation Area (UT) /
- Rainbow Bridge National Monument (UT)
- National Parks of New York Harbor (NY)

Ongoing Voluntary Agreement

- Lake Mead National Recreation Area (NV/AZ)

ATMP Development

- For each ATMP, the agencies:
  - Publish proposed ATMPs in the Federal Register;
  - Hold at least one public meeting; and
  - Comply with the National Environmental Policy Act (NEPA), and other legal requirements.

- During today's meeting we will review the components of the Draft ATMP for Canyon de Chelly National Monument.

National Parks Air Tour Management Program

Federal Aviation Administration

National Park Service

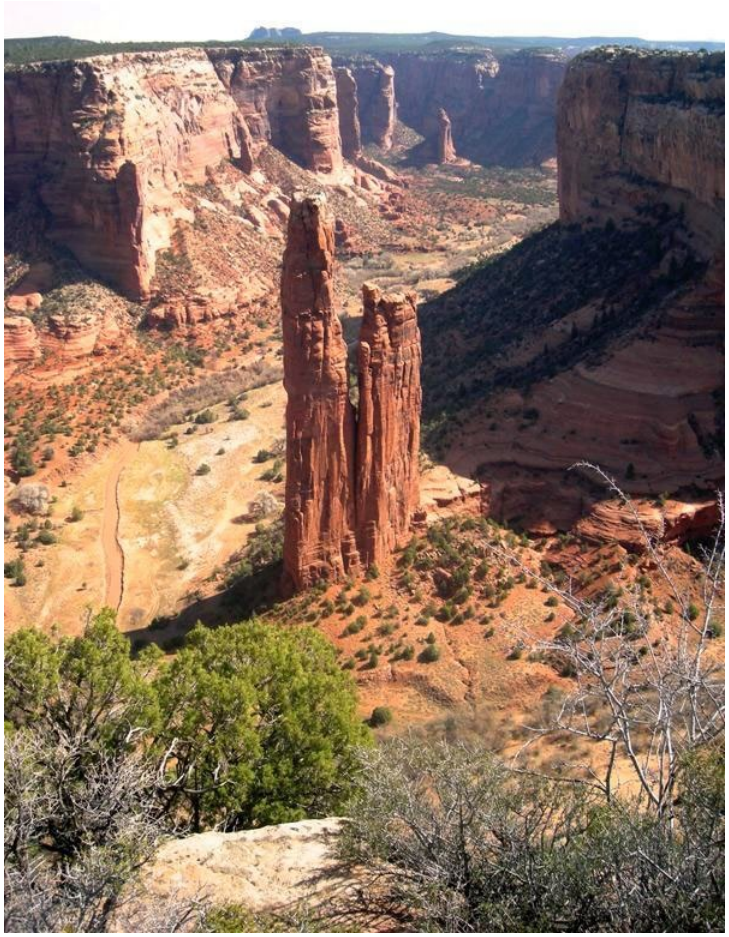
Draft Air Tour Management Plan for:

Canyon de Chelly National Monument

April 17, 2024

Park Overview

- The Park encompasses approximately 84,000 acres in northeastern Arizona within the Defiance Plateau on Tribal lands held by the United States in trust for the Navajo Nation. Approximately 80 Navajo families live in and around the Park.
- 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.
- Canyon de Chelly 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.




UTAH
COLORADO
ARIZONA
NEW MEXICO
Natural Bridges NM
Hovenweep NM
Glen Canyon NRA
Rainbow Bridge NM
Monument Valley NTP
Mesa Verde NP
Aztec Ruins NM
Canyon de Chelly NM
Navajo NM
Grand Canyon NP
Wupatki NM
Hopi Villages
Chaco Culture NHP
Bandelier NM
Hubbell Trading Post NHS
Sunset Crater NM
Petroglyph NM
Pecos NHP
Tuzigoot NM
Walnut Canyon NM
Petrified Forest NP
El Morro NM
El Malpais NM
Montezuma Castle NM
Cortez
Durango
Alamosa
Page
Kayenta
Farmington
Chinle
Tuba City
Ganado
Window Rock
Gallup
Flagstaff
Holbrook
Santa Fe
Albuquerque
0
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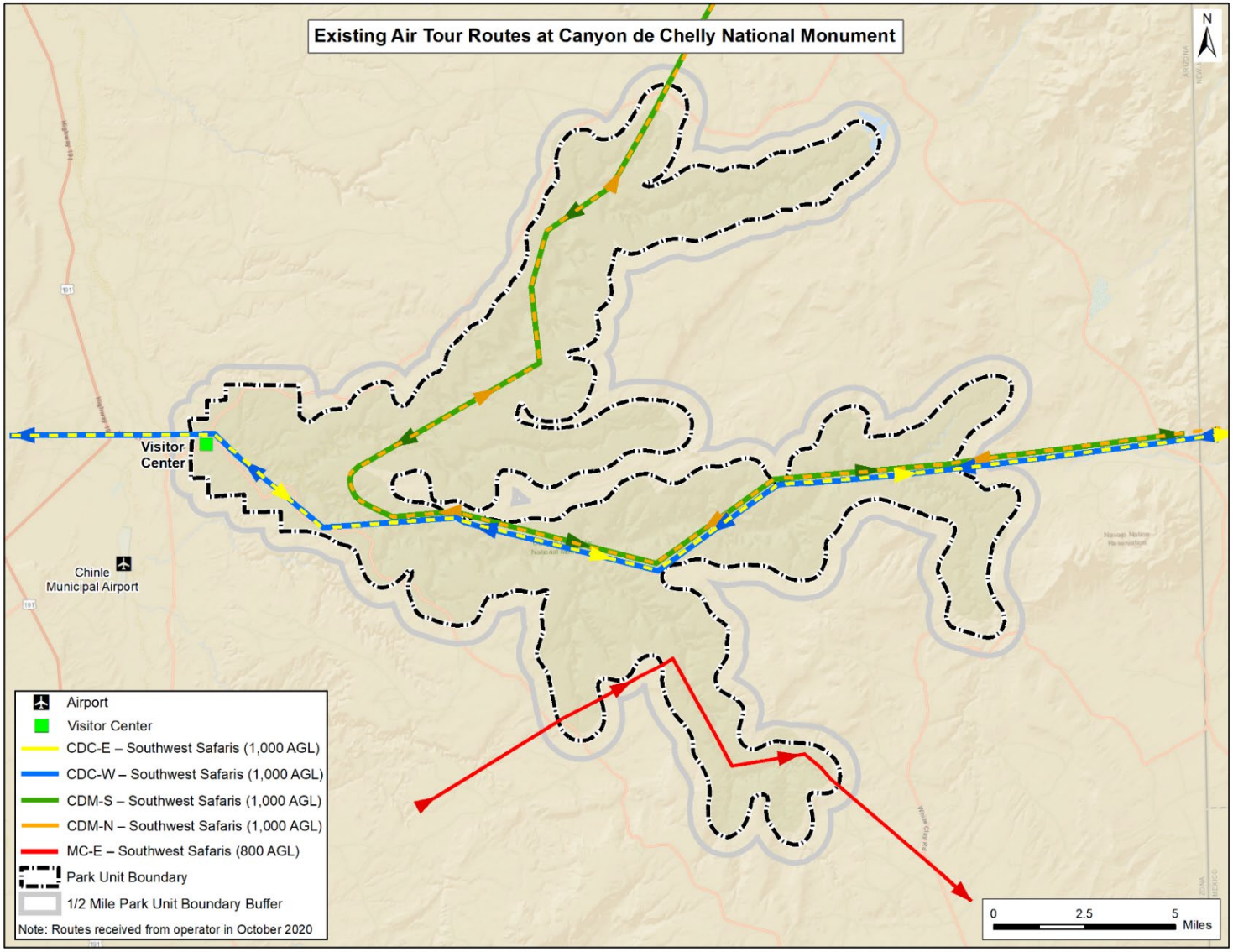

Existing Air Tour Routes at Canyon de Chelly National Monument
N
Visitor Center
Chinle Municipal Airport
Airport
Visitor Center
CDC-E – Southwest Safaris (1,000 AGL)
CDC-W – Southwest Safaris (1,000 AGL)
CDM-S – Southwest Safaris (1,000 AGL)
CDM-N – Southwest Safaris (1,000 AGL)
MC-E – Southwest Safaris (800 AGL)
Park Unit Boundary
1/2 Mile Park Unit Boundary Buffer
Note: Routes received from operator in October 2020
0
2.5
5
Miles

Existing Air Tour Conditions

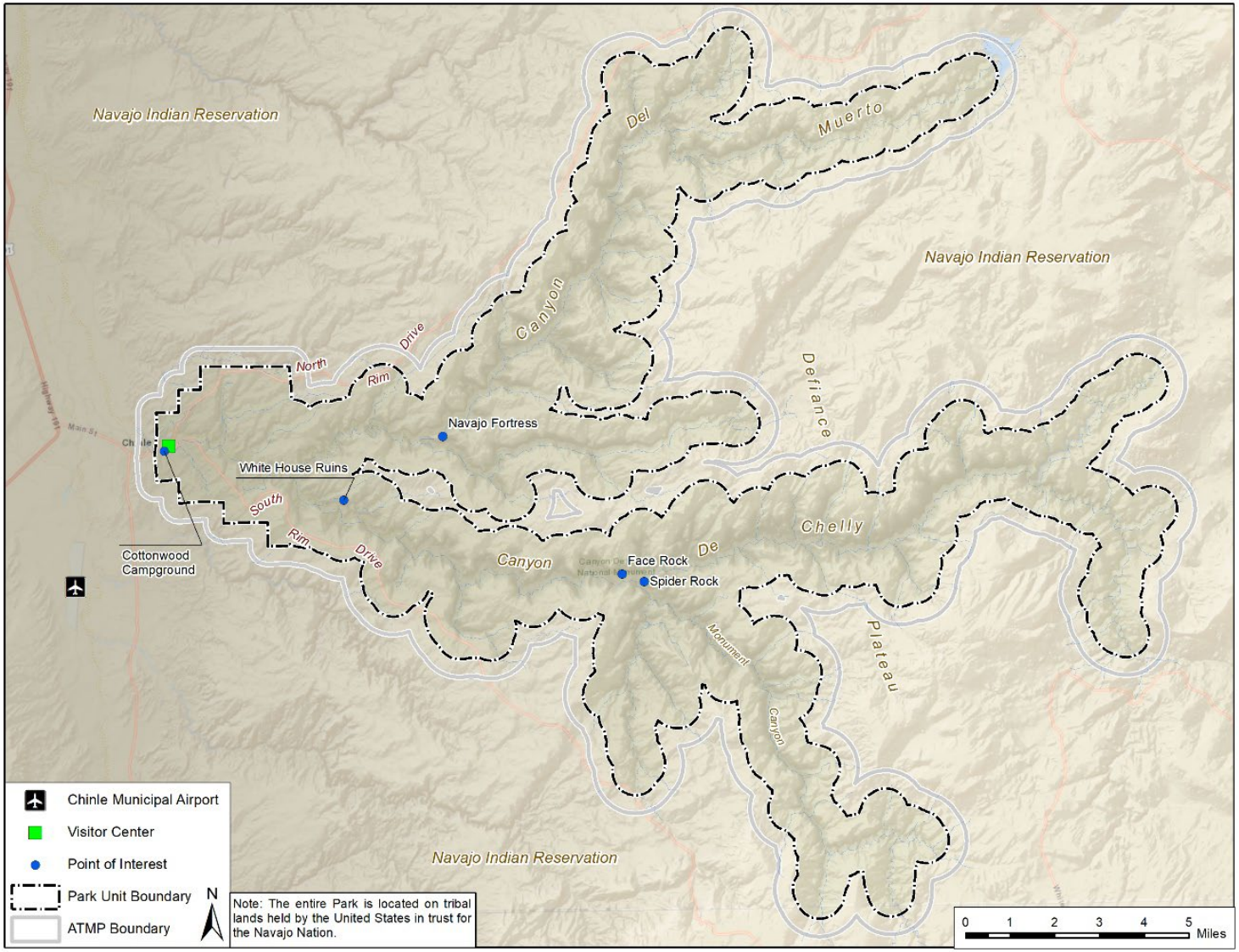
- Four commercial air tour operators currently hold Interim Operating Authority (IOA) for a total of 175 flights per year over the Park.
- Only one air tour operator reported data from 2017-2019 with an average of 43 total flights per year.
- Annual number of commercial air tours at the Park is limited by the IOA.
- IOA includes only an annual cap on the number of commercial air tours that may be conducted by an operator but does not designate the routes, time-of-day, altitudes, or other conditions for such tours.

Park Resources

- The Park contains several thousand archeological sites, cliff dwellings, prehistoric/historic structures, ethnographic resources and sacred sites:
  - White House Ruins
  - Spider Rock
  - Fortress Rock
- Canyon de Chelly National Monument has a range of habitats for wildlife, including:
  - Yellow-billed cuckoo, southwestern willow flycatcher, peregrine falcon, bald eagle, golden eagle, American dipper, and Mexican spotted owl
  - Mule deer, mountain lion, bobcat, coyote, gray fox, and American black bear

Draft ATMP for the Park

Attribute	Existing Air Tour Conditions	Draft ATMP
Number of Air Tours Authorized Per Year	IOA: 175 flights per year 3-Yr. Average (2017-2019): 43	0 flights per year The establishment of the ATMP would result in the termination of IOA for the operator.
Routes and Altitudes	No mandatory routes or no-fly zones	No air tours would be allowed within the ATMP boundary. Operators could fly routes outside the ATMP boundary, in unrestricted airspace, similar to existing flight paths, or routes could vary greatly from those currently flown and would depend on operator preference and weather conditions at the time of the tour, or above the ATMP boundary (at or above 5,000 ft. AGL).
Time-of-Day Restrictions	No restrictions, may occur at any time.	Commercial air tours would not be permitted within the ATMP boundary.
Day-of-Week Restrictions	No restrictions, may occur on any day of the week.	Commercial air tours would not be permitted within the ATMP boundary.
Restrictions for Particular Events	No restrictions, may occur on any day of the year.	Commercial air tours would not be permitted within the ATMP boundary.


Navajo Indian Reservation
Del
Muerto
Navajo Indian Reservation
Canyon
North
Rim
Drive
Navajo Fortress
Defiance
White House Ruins
South
Rim
Drive
Cottonwood
Campground
Canyon
Face Rock
Spider Rock
De
Chelly
Monument
Canyon
Plateau
Navajo Indian Reservation
Chinle Municipal Airport
Visitor Center
Point of Interest
Park Unit Boundary
ATMP Boundary
N
Note: The entire Park is located on tribal lands held by the United States in trust for the Navajo Nation.
0 1 2 3 4 5
Miles

Justification for Measures Taken

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

Justification for Measures Taken

- Allowing commercial air tours within the ATMP boundary is inconsistent with the Park's purpose and values, which include perpetuating traditional Tribal cultural connections to the Park's landscapes.

- Since commercial air tours would negatively impact the privacy of the Navajo families living within the ATMP boundary and are inconsistent with the Park's purpose, significance, and fundamental resources and values, the agencies have decided to prohibit commercial air tours within the ATMP boundary.

NEPA

- The FAA and the NPS are complying with the National Environmental Policy Act (NEPA) in development of the Draft ATMP.
- NEPA requires that the agencies:
  - Consider the human and natural environment that could be affected by their action (ATMP).
  - Determine the appropriate level of NEPA review.
  - Prepare associated environmental review documents.

Section 106 / NHPA

- The FAA and the NPS are complying with Section 106 of the National Historic Preservation Act (NHPA) in development of the Draft ATMP and Draft EA.
- Section 106 includes the requirement that the agencies:
  - Define the Undertaking and Identify Consulting Parties;
  - Determine the Area of Potential Effects and Identify Historic Properties;
  - Assess Effects to Historic Properties; and
  - Resolve Adverse Effects, if Any, to Historic Properties.
- The FAA and the NPS have consulted with the Navajo Nation Tribal Historic Preservation Officer (THPO), Pueblo of Jemez THPO, Native American Tribes, and other Consulting Parties.
- The FAA proposed a Finding of No Adverse Effect to historic properties in a letter that was sent to the State Historic Preservation Officer and all Consulting Parties.

Section 7 / ESA

- The FAA and the NPS are complying with Section 7 of the Endangered Species Act (ESA) in development of the Draft ATMP and Draft EA.
- Section 7 includes the requirement that the agencies:
  - Ensure their actions do not jeopardize the existence of any species listed under ESA or result in the destruction or adverse modification of designated critical habitat.
- The agencies completed the Section 7 analysis for federally listed species and anticipate the Preferred Alternative would have no effect on federally listed threatened or endangered species or designated critical habitat.

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