

## ATTACHMENT B

### NATIONAL PARK SERVICE NON-IMPAIRMENT DETERMINATION FOR CANYON DE CHELLY NATIONAL MONUMENT AIR TOUR MANAGEMENT PLAN

#### **Compliance with NPS Management Policies Unacceptable Impact and Non-Impairment Standard**

As described in National Park Service (NPS or Service) 2006 Management Policies, § 1.4.4, the National Park Service Organic Act prohibits the impairment of park resources and values. *Guidance for Non-Impairment Determinations and the NPS NEPA Process* (September 2011) provides guidance for completing non-impairment determinations for NPS selected actions requiring preparation of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA). The NPS has completed a non-impairment analysis for the impacts to Canyon de Chelly National Monument (Park) from the Air Tour Management Plan (ATMP) and determined that it will not result in impairment of Park resources, or in unacceptable impacts as described in § 1.4.7.1 of the 2006 NPS Management Policies.

Sections 1.4.5 and 1.4.6 of Management Policies 2006 further explain impairment. Section 1.4.5 defines impairment as an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Section 1.4.5 goes on to state:

An impact to any park resource or value may, but does not necessarily, constitute an impairment. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is;

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- identified in the park's general management plan or other relevant NPS planning documents as being of significance.

Section 1.4.6 of *Management Policies 2006* identifies the park resources and values that are subject to the no-impairment standard. These include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;

- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- 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; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

NPS non-impairment analysis normally does not include discussion of impacts on resource topics such as visitor experience, socioeconomics, public health and safety, environmental justice, land use, park operations, and Wilderness, as these do not constitute impacts to Park resources and values subject to the non-impairment standard under the Organic Act. *See* Management Policies § 1.4.6.

### **Non-Impairment Determination for the Canyon de Chelly National Monument ATMP**

The purposes of Canyon de Chelly National Monument, along with Park significance statements and a description of the Park's fundamental resources and values, are described in the *Foundation Document Canyon de Chelly National Monument* (Foundation Document), 2015.

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 (Foundation Document, page 5).

The Park's significance statements and fundamental resources and values highlight resources that may be impacted by commercial air tours including cultural resources, cultural continuity, relationships and partnerships, cultural landscapes, continuing cultural connections, experience of place, and scenic views and vistas. Commercial air tours do not impact watersheds or museum collections (See Foundation Document, page 6-7).

As a basis for evaluating the potential for impairment or unacceptable impacts on Park resources, the NPS relied on the *Final Environmental Assessment for an Air Tour Management Plan for Canyon de Chelly National Monument* (EA). The EA includes analysis of impacts to the soundscape (noise and noise-compatible land use); air quality and climate change; biological resources (including birds, mammals, reptiles, and federally listed species); cultural resources (including ethnographic resources, sacred sites, traditional cultural properties, archeological resources, cultural landscapes, and prehistoric and historic structures); visitor use and experience and other recreational opportunities; environmental justice and socioeconomics; and viewsheds (visual effects). The EA evaluated the impacts of the no action alternative and one action alternative, the selected alternative. Consistent with NPS guidance described above, the NPS has developed this non-impairment determination for the selected alternative only and has not

included an analysis here for environmental justice and socioeconomics and visitor use and experience and other recreational opportunities.

The NPS interdisciplinary team was composed of park staff along with natural and cultural resource subject matter experts from both the Regional and Washington Offices. Throughout the Government-to-Government consultation process, the team engaged with various tribes, placing particular emphasis on input from the Navajo Nation. The interdisciplinary team met with a representative from the Navajo Nation's Department of Recreation to discuss air tours several times in 2022. Additionally, Park staff, as part of their regular co-management of the Park discussed air tours and their impacts on the Diné during several meetings. The interdisciplinary team used this input gathered over multiple meetings and discussions to develop the alternatives and to understand the ongoing impacts of air tours on the Diné people.

Though the NPS found that there were significant adverse impacts under the National Parks Air Tour Management Act on the Park's cultural resources and on Tribal lands as a result of air tours over the Park, the selected alternative, which is reflected in the ATMP, is the most protective alternative evaluated in the EA and the most protective alternative that the NPS has the authority to select. The ATMP will prohibit commercial air tours over the Park and within ½-mile outside the Park's boundary during which the aircraft flies below 5,000 feet (ft.) above ground level (AGL) (referred to as the ATMP boundary). Air tours outside of the ATMP boundary are not subject to the National Parks Air Tour Management Act of 2000 and therefore may not be regulated under the ATMP. Because air tours outside of the ATMP boundary are outside the jurisdiction of the ATMP and NPS, this non-impairment determination focuses on the impacts from implementation of the ATMP on resources inside the Park boundary, not the unknown impacts over which NPS does not have jurisdiction.

To determine the severity of the effect and potential for impairment, the NPS considered not just the presence of noise and potential for disturbance, but also the duration, frequency, and amplitude of noise. Currently, approximately 69% of the Park experiences air tour noise above 35 decibels, A-weighted (dBA) for less than 5 minutes a day from air tours within the ATMP boundary. Noise from air tours may exceed 52 dBA for less than five minutes across 7% of the ATMP planning area. (See EA, page 33). Under the ATMP, these impacts would be reduced since there will be no noise from commercial air tours within the ATMP boundary. The only potential for noise within the Park from air tours would occur from air tours flying above 5,000 ft. AGL or just outside the ATMP boundary.

The adverse effects to the Park's cultural resources from air tours relate to traditional cultural properties and the intrusion of commercial air tours upon the performance of ceremonies, rituals prayers, and other traditional practices. During the performance of ceremonies, rituals, prayers, and other traditional practices, the invasion of privacy creates an aversion to perform ceremonies, rituals, prayers and traditional practices under observation. This aversion can lead to a deterioration of the link between the resource and the communities that value it, thus impacting the association that creates the cultural resource's significance.

The elimination of air tours under the ATMP would reduce intrusions on the privacy of the Navajo within the ATMP boundary from commercial air tours. Thus, it would also reduce the

adverse impacts on the Park's cultural resources, including ethnographic resources and sacred sites, traditional cultural properties, archeological resources, cultural landscapes, historic districts, and prehistoric and historic buildings and structures compared to the No Action Alternative and also reduce the likelihood that an air tour would interrupt traditional practices such as ceremonies.

As noted in the EA, it is difficult to predict if, where, and to what extent any air tours would be displaced to areas outside the ATMP boundary including over the Park at altitudes at or above 5,000 ft. AGL (See EA, page 39). However, because the ceremonies and cultural life take place within the canyon, out of the view of perimeter flights, impacts on the privacy of the Navajo people, and on the Park's cultural resources, as a result of air tours outside the ATMP boundary will be reduced, leaving the Park's cultural resources unimpaired from air tours and without unacceptable impacts.

Further, because noise from air tours within the ATMP boundary will be eliminated, the natural and cultural soundscapes of the Park benefit from the selected alternative, leaving the resource unimpaired from air tours and without unacceptable impacts under the ATMP. After the implementation of the ATMP, the Park's natural and cultural soundscape will be largely unimpacted by air tours (though air tours may occur outside the Park and be audible within the Park) and available for the enjoyment by present and future generations.

The EA also includes an air quality analysis. Because the ATMP eliminates commercial air tours within the ATMP boundary, there are no adverse impacts to air quality over the Park from the ATMP. Thus, there is no potential for impairment of the Park's air quality from the ATMP. Any air quality impacts from commercial air tours would occur from those flying outside the ATMP boundary over which NPS has no jurisdiction.

The EA evaluated impacts to wildlife (birds, mammals, reptiles, and federally listed species) and cultural resources since air tour noise can impact these resources. As described above, cultural resources, and specifically the cultural connection of the Diné to the Park, are fundamental values of the Park. Because the Park is located entirely on lands held in trust by the United States for the Navajo Nation, resources within the Park, such as wildlife, are Tribal trust resources and implicate Tribal interests. The ATMP fulfills the responsibility to protect and enhance these resources by eliminating commercial air tours within the ATMP boundary. Because the ATMP will eliminate noise from air tours within the ATMP boundary, it is expected there will be limited impacts to wildlife and cultural resources from the ATMP, if any. Any noise impacts from air tours would occur from those flying outside the ATMP boundary over which NPS has no jurisdiction. Therefore, after the implementation of the ATMP, the Park's wildlife and cultural resources will be largely unimpacted by air tours (though air tours may occur outside the Park and be audible within the Park) and available for enjoyment by present and future generations.

The EA also evaluated impacts to scenery. As described above for wildlife and cultural resources, the ATMP fulfills the NPS's responsibility to protect and enhance these scenic resources by eliminating air tours within the ATMP boundary. While air tours may still be visible outside the ATMP boundary (aircraft at or above 5,000 ft. AGL or more than ½ outside

the Park boundary), because the noise associated will be less intense, aircraft are likely to be less noticeable within the Park. This reduces and eliminates in some areas the potential for commercial air tours to disrupt the outstanding views and scenery, leaving these resources unimpaired and available for enjoyment by present and future generations.

As demonstrated here and in the analysis referenced above, the impacts to these resources, neither individually nor cumulatively, would preclude the NPS from achieving the purpose of the Park or desired conditions for resources; and would not unreasonably interfere with Park programs or activities, another appropriate use, the overall atmosphere of peace and tranquility or the natural soundscape, or NPS concessioner operations or services. As a result, there will not be impairment of or unacceptable impacts to the Park's natural and cultural resources or visitor experience from the ATMP. Impacts on other resources potentially affected were considered so small and insignificant that they did not warrant a written analysis here.

## **References**

National Park Service. (2006). Management Policies, 2006. Available at [https://www.nps.gov/subjects/policy/upload/MP\\_2006.pdf](https://www.nps.gov/subjects/policy/upload/MP_2006.pdf)

National Park Service. (2011). Guidance for Non-Impairment Determinations and the NPS NEPA Process. Available at <https://www.nps.gov/subjects/nepa/>

National Park Service. (2016). Foundation Document for Canyon de Chelly National Monument. Available at <http://npshistory.com/publications/foundation-documents/cach-fd-2016.pdf>