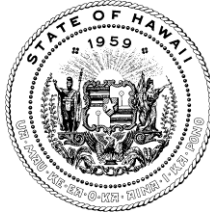


**Exhibit 9 – Responses to Finding of Effect Letter; National Parks
Conservation Association (NPCA) Consulting Party Request; and
Office of Hawaiian Affairs (OHA) Objection Resolution**

Effects Assessment

JOSH GREEN, M.D.
GOVERNOR | KE KOA'AINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 21, 2023

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
Email Reply to: judith.walker@faa.gov
Electronic Transmittal Only, No Hard Copy to Follow

IN REPLY REFER TO:
Project No.: 2022PR00396
Doc No.: 2304SH08
Archaeology/Architecture

Dear Judith Walker:

**SUBJECT: National Historic Preservation Act (NHPA) Section 106 Review –
Continued Consultation and Request for Concurrence with Effect Determination
Air Tour Management Plan for Haleakalā National Park
Ke'anae, Ha'ikū Uka, Pūlehunui, Ko'olau, Kalialinui, Kawaipapa, Kamehamenui,
Waiakoa, 'Alaenui, Nu'u, Papa'anui, Nakula, Kahikinui, Naholoku, 'Alaeiki, Pu'uhaaoa,
Wailua, Ka'āpahu, Kukui'ula, Pua'alu'u, Kukui'ulaiki, Kīko'o and Ahupua'a
Ko'olau, Hāmākualoa, Kula, Hāna, Kīpahulu, Kaupō, Honua'ula, and Kahikinui Districts,
Island of Maui
TMK: (2) various**

The State Historic Preservation Division (SHPD) received a letter dated March 27, 2023, from the U.S. Department of Transportation, Federal Aviation Administration (FAA) to continue the Section 106 historic preservation process and to request the State Historic Preservation Officer's (SHPO's) concurrence with the effect determination for the Development of an Air Tour Management Plan for Haleakalā National Park on the island of Maui. The SHPD received this submittal on March 27, 2023 (HICRIS Submission No. 2022PR00396.009). Included within the FAA's letter is an invitation to a Section 106 consultation meeting to be held April 20, 2023 "to explain how the FAA arrived at the proposed finding of no adverse effect on historic properties". On April 12, 2023, the SHPD received a PowerPoint presentation in support of the April 20th meeting (HICRIS Submission 2022PR000396.010).

The proposed project has been determined to be a federal undertaking as defined in 36 CFR 800.16(y) and is subject to compliance with Section 106 of the NHPA. The FAA is acting as the lead federal agency for this undertaking.

To reach a determination of concurrence with the proposed effect determination, the SHPO must take into consideration the information, and any consulting party comments, received by the FAA. Therefore, per 36 CFR 800.11(e)(6), please submit to SHPD any comments received from consulting parties during the April 20th meeting or regarding the information and findings provided in FAA's March 27th letter. The SHPO will review and comment on the submission received March 27th after receiving a copy of the comments the FAA received in writing or during public meetings.

Judith Walker
April 21, 2023
Page 2

The SHPD looks forward to continuing the Section 106 process for the proposed project. **Please submit** all forthcoming information and correspondence related to the subject project to SHPD via HICRIS under Project No. 2022PR00396 using the Project Supplement option.

The FAA and the National Park Service (NPS) are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Jessica Puff, Architecture Branch Chief, at Jessica.Puff@hawaii.gov and (808) 692-8015; or, Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046 for matters regarding archaeological resources or this letter.

Aloha,

Alan Downer

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: ATMPTeam@dot.gov
Shauna Haas, US DOT (shauna.haas@dot.gov)
Katherine Giraldo, US DOT (k.giraldo@dot.gov)
Amy Hootman, US DOT (amy.hootman@dot.gov)
Andrew McCallister, SHPD (andrew.mccallister@hawaii.gov)



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

April 27, 2023

Judith Walker
Federal Preservation Officer
Federal Aviation Administration
800 Independence Ave
Washington, DC 20591

Re: National Parks Air Tour Management Plan for Haleakalā National Park
NHPA Section 106, Continuing Consultation and Finding of No Adverse Effect
Papaulana, 'Aleiki, 'Alaenui and Kakalehale Ahupua'a; Kīpahulu Moku; Maui
Mokupuni
Tax Map Keys: (2) 1-6-002:001-004, 007, 008, 011, 012; 1-6-03:001, 002, 008,
015, 017, 021, 022, 023, 025, 028, 029; 1-6-004:001, 002; 1-6-005:013, 016, 024;
and 1-6-006:001, 002, 003, 004, 006, 020

Aloha e Ms. Walker:

The Office of Hawaiian Affairs (OHA) is in receipt of your March 27, 2023, letter continuing National Historical Preservation Act (NHPA) Section 106 consultation and providing a Finding of No Adverse Effect for the Haleakalā National Park (HALE) Air Tour Management Plan (ATMP). The Federal Aviation Administration (FAA) is preparing this ATMP in cooperation with the National Park Service (NPS) for all commercial air tours flown at or below 5,000 feet above ground and within a half mile of the HALE park boundaries. Absent an ATMP, commercial air tour flights over HALE would continue virtually unrestricted under the FAA's Interim Operating Authority (IOA) with no limits on flight routes, altitudes, or times of day. Consultation was first initiated in March 2021 via a letter from the FAA, with various virtual meetings and updates occurring between October 2021 and present.

The current letter indicates that Alternative 3 has been selected as the preferred alternative and that there would be no adverse effect to historic properties from its implementation. This Alternative would include a single flight route that moves air tours away from the most sensitive cultural resources in the area of potential effect (APE) and avoids direct overflights of most resources, including Haleakalā. Set flight times would occur between 11AM to 2PM for non-quiet tech flights and 11AM to 4PM for quiet-tech (QT) flights. Sundays and Wednesdays would be designated as no-fly days. 6 no-fly days will also be observed during the Hawaiian moon calendar and Makahiki season. 2 additional fly no-fly days will be observed for Hawai'i State holidays of historical importance with prior notice to operators.

The FAA argues that implementation of Alternative 3 would reduce existing air traffic by at least 50%, minimizing flights from an annual average of 4,824 to 2,412. Further, the *Noise Technical Analysis* conducted by the FAA establishes specific noise level decibel thresholds that would interrupt the outdoor experience and interpretive programs. It is believed that the implementation of QT flights per the ATMP would keep noise within these thresholds and greatly reduce existing aircraft related noise. Soundscape monitoring would be conducted by NPS to ensure thresholds are met.

Background on OHA Section 106 Involvement

Previously, OHA participated in NHPA Section 106 consultations for the ATMP and did submit formal comments on November 28, 2022. As noted in our letter, a member of the Kīpahulu and Lind ‘Ohana had indicated that the Kīpahulu Kupuna Council, originally formed in cooperation with NPS,¹ has adamantly been against helicopter tours in the area since 1998. The Kīpahulu Kupuna Council has argued that all of Haleakalā is sacred and that there are significant adverse effects caused by low flying commercial flights impacting the use and serenity of the vast cultural landscape of Kīpahulu. We further observed complaints from consulting parties alleging that flight operators were flying below minimum altitudes.

Our letter strongly recommended that a traditional cultural property (TCP) study be done to better understand cultural resources within the park and to ensure that adequate vertical buffers were implanted to protect cultural practitioners and the cultural landscape. Through follow up conversations between OHA and the Lind ‘Ohana, there was a concern over “poor consultation” conducted by NPS under current leadership. They generally felt as if they were not being listened to and that prior HALE Superintendents were more involved in NPS related consultation efforts. OHA believes that a proper TCP study with an extensive consultation component has the potential to help mend any fractured relationships with cultural practitioners and re-establish some level of trust with them.

OHA Comments on FAA Finding of No Adverse Effect

1) Traditional Cultural Property Study

OHA certainly acknowledges that the current preferred Alternative would indeed greatly reduce the number of flights occurring per year and likely reduce the amount of existing flight related noise. However, we believe, that the determination of no adverse effect is still premature, as it is solely based on improving current flight conditions without a full understanding of the cultural resources within HALE. Since our initial

¹ The Kīpahulu Ohana has had a partnership agreement with Haleakalā NPS for the operation of Kapahu Living Farm and has helped coordinate Kupuna Council meetings.

comments, it has been our stance that such knowledge could be obtain through a TCP study. The FAA has opted not to do one and further fails to even acknowledge the utility of completing such a study. OHA maintains that a TCP study be done first prior to issuing an adverse effect determination and that appropriate vertical buffers be established given the abundance of cultural concerns presented during Section 106 consultations. It is simply not enough to make an adverse effect determination based on a reduction of the current number of flights without fully understanding the cultural needs of the Native Hawaiian people and cultural resources within HALE.

2) No-Fly Days

As stated above, the current Alternative will include 6 no-fly days during the Hawaiian moon calendar and Makahiki. However, its unclear to OHA how this number was derived and who was consulted to obtain it. During the most recent consultation meeting on April 20, 2023, members of the Lind ‘Ohana had expressed a desire to increase the number of no-fly days during Makahiki to 12. In response, the FAA stated that this could be addressed through the National Environmental Protection Act (NEPA) process that still needs to be initiated.

OHA points out that the amount of no-fly days during Makahiki was not initially included in the Alternative options when Section 106 consultations began. As it is based on cultural needs and something that changed during the consultations, OHA had assumed it came about through the Section 106 process. However, it seems the FAA was not able to answer where the idea to have 6 no-fly days came from. OHA believes the amount of no-fly days is directly related to the current Section 106 effort as it pertains to mitigating adverse effects to ongoing cultural practices. Thus, adjusting it should not have to be deferred to the NEPA process. As such, OHA asks that the FAA and NPS reconsider the amount of no-fly days as requested by the Lind ‘ohana as part of the Section 106 process and that an explanation be provided as to how the no-fly days during Makahiki was developed.

3) Possible Impacts to Lo‘alo‘a Heiau in Kaupō

Its OHA’s understanding that following comments that the FAA and NPS received from consulting parties in November 2022, the APE was expanded to include the entire Kaupō area south of the “Kaupō Gap” to the Denman Parcel near the shoreline. During the April 20, 2023, consultation meeting, residents of Kaupō had noted that the Lo‘alo‘a heiau is in this area and that helicopter noise has been disturbing cultural practices. OHA notes that this heiau is in fact recognized as being on the National Register of Historic Places (NHRP) by NPS and also the Noholoku archaeological sites.² Yet, it would appear that these sites were not included in the FAA’s list of historic properties within the APE.

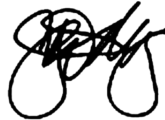
² <https://www.nps.gov/places/loaloa-heiau.htm>

The FAA claims that the current flight route for Alternative 3 was chosen to move air tours away from the most sensitive areas. However, this decision appears to have been prematurely made as it does not account for Lo‘alo‘a heiau within the expanded APE area. OHA requests that Lo‘alo‘a heiau and Naholoku archaeological sites be included as part of the list of historic properties in the APE and a re-evaluation of the current flight route in light of this information.

Closing Remarks

Mahalo for the opportunity to comment. OHA looks forward to continuing consultation and seeing that the FAA fully consider our recommendations. Should you have any questions, please contact OHA’s Lead Compliance Specialist, Kamakana C. Ferreira at (808) 594-0227 or by email at kamakanaf@oha.org.

‘O wau iho nō me ka ‘oia ‘i‘o,



Sylvia M. Hussey, Ed.D.
Ka Pouhana, Chief Executive Officer

SH:kf

CC: Natalia Gates, Super Intendant, Haleakalā National Park
Carmen “Hulu” Lindsey, OHA Chairperson and Maui Island Trustee



April 26, 2023

Board of Directors

J. Scott Meidell
President

Erik McLellan
Vice President

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Olena Alec
Executive Director

United States Department of Transportation
Federal Aviation Administration
Office of Policy, International Affairs, and Environment
Office of Environment and Energy
800 Independence Ave, SW Suite 900 West
Washington DC 20591

To Judith Walker and the larger ATMP Team,

Haleakalā Conservancy does not concur with the finding of no impact, as presented within the Section 106 Consulting Party Meeting for the Haleakalā National Park Air Tour Management Plan on April 20th, 2023.

Haleakalā Conservancy is the philanthropic partner to Haleakalā National Park, with our philanthropy focused on ways to improve the Park for our community and support projects that protect and provide access to the varied resources of the Park. We believe that we share a common goal of preserving and protecting our natural resources and cultural heritage for future generations. It is for this reason that we support a full ban on commercial air tour flights over the Park's air space, as the proposed plan still includes an allowance of 2,412 flights annually, for the following reasons:

1. The vast majority of Haleakalā National Park is formally designated as Wilderness Area wherein there are strict prohibitions against any kind of motorized activity - ranging from vehicles to battery-powered hand tools. While this designation, when originally created, did not contemplate commercial air tours, it should be understood in the context of its fundamental intent to protect our most fragile ecosystems in the face of evolving impacts.
2. Commercial air tour overflights profoundly compromise one of the documented and cherished hallmarks of Haleakalā National Park - its silence.



3. Allowing commercial overflights of Haleakalā National Park will demonstrate a complete dismissal of and disregard for the concerns expressed by the community and Kānaka Maoli about the disastrous impacts of overflights to sacred lands and disrupt cultural practices that are integral to the vitality of Hawaiian culture.

Two additional moments from the call show the lack of adequate review during the assessment period, leading to our belief that this proposal needs to be revisited from the beginning and the proposal for a no-fly zone over all of Haleakalā National Park reconsidered. The two instances were:

1. The Area of Potential Effect was not appropriately expanded to include sacred cultural sites like the Loaloa Heiau, which had been brought up in prior stakeholder calls as an area of impact but was summarily forgotten, leading to a general mistrust of the nature of the entire assessment.
2. A request for information by a Kanaka Maoli cultural practitioner as to how to add other dates to the no-fly calendar was dismissed by the FAA representative. The questioner and the rest of the participants were told they should hold on submitting any such requests for the future NEPA review. This directive from the FAA is incorrect, as clearly, this review was the most appropriate time to submit this type of request. The unavoidable conclusion from this unfortunate exchange was that the Kānaka Maoli were, once again, asked not to comment.

Thank you for your time and review of our comments. We appreciate your commitment to formalizing the plan for air tours above Haleakalā National Park and want to ensure that due diligence has been given to the comments of its stakeholders.

Mahalo,

J. Scott Meidell, *President of the Board of Directors*

Erik McLellan, *Vice President*

Donne Dawson

Donna Howard

Wendy Rice Peterson

Jamie Woodburn

Olena Alec, *Executive Director*



National Trust *for*
Historic Preservation®

April 28, 2023

Judith Walker
Federal Preservation Officer
Federal Aviation Administration
U.S. Department of Transportation
Office of Policy, International Affairs & Environment
Office of Environment and Energy
800 Independence Ave. SW, Suite 900 West
Washington D.C. 20591

Sent via email to: judith.walker@faa.gov and ATMPTeam@dot.gov

**Re: Comments on Proposed Finding of No Adverse Effect for
Haleakala National Park Air Tour Management Plan**

Dear Ms. Walker,

The National Trust for Historic Preservation (“National Trust”) appreciates this opportunity to comment on the Haleakala National Park Air Tour Management Plan (“ATMP”) pursuant to Section 106 of the National Historic Preservation Act (“NHPA”) and 36 C.F.R. §§ 800.2(c)(5) and 800.3(f)(3). We support the comments and concerns that have previously been raised by the Historic Hawai’i Foundation in/ their November 18, 2022 letter, and by the Office of Hawaiian Affairs in their letter dated November 28, 2022. Many of these comments remain unaddressed. We encourage the FAA to more directly address these concerns, as well as those raised by the Native Hawaiian organizations and individuals who have participated in this consultation.

This letter responds to the proposed finding of no adverse effect by the Federal Aviation Administration (“FAA”) for this undertaking, and to the discussion at the April 20, 2023 consultation meeting. The National Trust disagrees with the FAA’s proposed finding of no adverse effect, pursuant to 36 C.F.R. § 800.5(c)(2)(i). In our view, this undertaking will indeed have adverse effects upon historic properties, and the majority of the other consulting parties obviously agree that adverse effects will occur. We believe the FAA’s proposed finding is based on an erroneous interpretation of relevant law.

During the April 20, 2023 consultation meeting, the FAA’s representative stated that the proposed finding of no adverse effect was based on a comparison of future air tour operations under the new ATMP versus current air tour operations. The FAA’s representative stated that, since the undertaking does not propose to increase existing adverse effects to historic properties, the undertaking merits a finding of no adverse effect. This represents a fundamental misstatement of the scope of this undertaking and of the FAA’s statutory responsibility to evaluate adverse effects under Section 106 of the NHPA.

This undertaking is being developed pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106-181) and its implement is appropriate in regulations contained in 14 C.F.R. Part 136. Nowhere in either the statute or the regulations are ATMPs required to permit existing adverse effects. The development of this ATMP is instead a *de novo* evaluation of appropriate air tour uses within Haleakala National Park. It is an exercise of federal jurisdiction and management authority. There is thus no baseline that is required to be accepted in the Section 106 process, and *all* adverse effects resulting from this undertaking must be taken into account.

Indeed, the FAA has the authority to prohibit air tours within Haleakala National Park. The National Trust supports Alternative 2, as it would truly avoid or minimize adverse effects.¹ If the FAA instead adopts an ATMP that allows air tours, a finding of adverse effects is appropriate in connection with the Section 106 review of this undertaking.

The National Trust specifically asserts that the permitting of air tours within Haleakala National Park would cause adverse effects by diminishing the “setting ... feeling, or association” of the park’s historic resources per 36 C.F.R. § 800.5(a)(1). Air tours within the park also result in an “[I]ntroduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features;” per 36 C.F.R. § 800.5(a)(2)(v).

During the April 20, 2023 consultation meeting, the FAA did not explicitly dispute that air tours cause adverse effects to historic properties within the Haleakala National Park. Rather, the FAA’s position that this undertaking will have no adverse effects seemed primarily based on the argument that it would not result in an overall increase to existing adverse effects, and under some metrics, existing adverse effects would be reduced. As we stated during the consultation meeting, this represents a failure to consider *cumulative* impacts. The Section 106 regulations explicitly require the consideration of “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be *cumulative*.” 36 C.F.R. § 800.5(a)(1) (emphasis added). And cumulative effects are defined to include “past” effects:

Cumulative effects . . . result from the incremental effects of the action when added to the effects of other *past*, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.1(g)(3) (emphasis added).

The National Trust remains concerned about the potential precedent that an agency management plan or decision explicitly authorizing adverse effects could be deemed allegedly *not* adverse, simply because the authorized adverse effects are not as severe as

¹ Comments submitted digitally on April 1, 2022.

they used to be, when the agency has the authority to prohibit the adverse effects. Accordingly, we urge the FAA to revise its proposed finding of effect to reflect the reality that the undertaking as currently proposed would result in cumulative adverse effects to historic properties. In the absence of a revised finding, it will be necessary for the FAA to refer this disagreement to the ACHP, pursuant to 36 C.F.R. § 800.5(c)(2)-(3), given the widespread opposition to the finding among the consulting parties.

Thank you for your consideration of our comments, and we look forward to continuing to participate in this Section 106 consultation.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel



Chris Cody
Associate General Counsel

cc: Rachel Mangum and Jaime Loichinger, ACHP
Natalie Gates, NPS Superintendent, HALE
Rachel Hodara, NPS Cultural Resources Program Manager
Honeygirl Duman, NPS Hawaiian Community Liaison
Alan Downer, Jessica Puff, Stephanie Hacker, and Susan Lebo
Hawaii State Historic Preservation Office
Kiersten Faulkner, Historic Hawai'i Foundation



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

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

April 28, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan at Haleakalā National Park (HICRIS Project 2022PR00396)

Dr. Alan Downer
Deputy State Historic Preservation Officer
Hawai'i State Historic Preservation Division
Hawai'i Department of Land and Natural Resources
Kakuhihewa Building, Room 555
601 Kamokila Boulevard
Kapolei, HI 96707

Dear Dr. Alan Downer:

Thank you for confirming receipt of the proposed finding of no adverse effect for the undertaking at Haleakalā National Park, as well as the invitation to the informational meeting that was scheduled for April 20, 2023. The FAA is in receipt of your request for any comments from consulting parties in response to the proposed finding of effect letter as well as any comments from the April 20th meeting.

The FAA proposed a finding of no adverse effect for the undertaking at Hawai'i Volcanoes National Park. On March 27, 2023, in accordance with 36 CFR § 800.5(c), the FAA notified the consulting parties including the State Historic Preservation Division (SHPD) by letter of the proposed finding and provided the documentation specified in 36 CFR § 800.11(e) in the correspondence.

A response to the agency's proposed finding of no adverse effect for the undertaking has been received from State of Hawai'i Office of Hawaiian Affairs. Their response is attached.

Summaries of public input received to date have been included in the March 27, 2023 letter. The SHPD has already received consulting party comments and the agency responses to the consulting party meeting held Nov. 21, 2022. The agency held an informational meeting on April 20, 2023. The purpose of the informational meeting was to explain the assessment of effects for the undertaking and the proposed finding of no adverse effects. Consequently, the agency did not accept comments on the proposed finding at the meeting. Consulting parties were invited to provide written responses to the finding of effects letter. The agency will also be requesting public input through the environmental review process. The public review period will commence in May.

The agency has provided the SHPD with the documentation specified in 36 CFR § 800.11(e) as well as public input and consulting party comments and agency responses received to date. Please state with specificity any additional information that your agency has not already received regarding this undertaking.

Otherwise, we respectfully request the SHPD's response to the agency's proposed finding of no adverse effect with respect to the ATMP undertaking at Hawai'i Volcanoes National Park by May 1, 2023. If needed, I am happy to schedule a time to discuss this matter.

Sincerely,

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

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

cc: Jessica Puff, Architecture Branch Chief

Attachments

- A. Responses Received Regarding the FAA's Proposed Finding of No Adverse Effect
- B. April 20, 2023, Meeting Summary and Q&A for Haleakalā National Park

Friends of Haleakalā National Park
PO Box 322
Makawao, HI 96768

May 2, 2023

United States Department of Transportation
Federal Aviation Administration
Office of Policy, International Affairs, and Environment
Office of Environment and Energy
800 Independence AVE, SW Suite 900 West
Washington DC 20591

To Judith Walker and the larger ATMP Team,

The Friends of Haleakalā does not concur with the finding of no impact of the proposed ATMP for Haleakala National Park as described in your letter of March 27, 2023.

Instead, we find that by your (FAA) own analysis, the provisions of the proposed ATMP for Haleakalā National Park allow both audible and visual impact on visitors to historic sites in the management area. Many of these sites are renowned for their silence and/or for their wilderness character. Introduced noise and visual disruption at these sites clearly will have an impact and an adverse impact on the visitor experience at these sites.

While we acknowledge that the proposed ATMP will likely result in a reduction of the adverse impact on these sites from commercial air tours as compared to what is currently allowed or practiced, a plan that allows flights within the management area, (that is within 1/2 mile outside the Park boundaries) still has an adverse effect on historic sites in the management area.

Hence, we do not concur with a finding of no adverse effect.

Regards,

Matt Wordeman

Matt Wordeman, President, Friends of Haleakalā National Park



June 14, 2023

Judith Walker
Federal Preservation Officer
Federal Aviation Administration
800 Independence Ave.
Washington, DC 20591
judith.walker@faa.gov
Submitted via email

Dave Louter
Federal Preservation Officer
National Park Service
333 Bush Street, #500
San Francisco, CA 94104
[REDACTED]

Re: Seeking Consulting Party Status re Hawaii Volcanoes and Haleakala National Parks ATMPs

Dear Federal Aviation Administration and National Park Service:

The National Parks Conservation Association (NPCA) is deeply concerned about the proposed Hawaii Volcanoes and Haleakala National Parks ATMPs (ATMPs) in Hawaii and their potential effects on historic properties. We understand that consultation has been initiated under Section 106 of the National Historic Preservation Act (NHPA) for the ATMPs, and that compliance with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act (NEPA) will also be required. NPCA would like to participate actively in the review process, both as a “consulting party” under Section 106 of the NHPA, pursuant to 36 C.F.R. §§ 800.2(c)(5) and 800.3(f)(3), and by receiving and commenting on any documents prepared pursuant to Section 4(f) and NEPA. While we acknowledge and are aware that the Section 106 consultation is well underway, NPCA is able to provide constructive input because of our involvement in reviewing other ATMP proposals and our involvement in the NEPA process for the Hawaii parks.

NPCA is a non-partisan, 501(c)3 non-profit organization founded in 1919 with a mission to protect and enhance our national parks for current and future generations. We have more than 1.6 million members and supporters nationwide, including several thousand in Hawaii. NPCA works to protect historic and cultural resources in the area through advocacy and educational tours. We have members who visit these national parks and would be adversely affected by the ATMPs.

Because of NPCA’s knowledge and concern about historic properties potentially affected by the ATMPs, we believe we can provide important information and a valuable perspective as a consulting party under Section 106 and in the review process under NEPA and Section 4(f).

We seek your confirmation adding NPCA as a consulting party, and we request you please include NPCA in your distribution list for public notices of any meetings, and for the circulation of documents for comment.

We look forward to participating as the review and consultation process moves forward for the ATMPs.

Sincerely,

A handwritten signature in cursive script that reads "Neal Desai".

Neal Desai
Senior Program Director
National Parks Conservation Association

cc: Advisory Council on Historic Preservation
Office of Hawaiian Affairs
National Trust for Historic Preservation

From: [Neal Desai](#)
To: [ATMPTeam](#)
Cc: [Walker, Judith <FAA>](#); [REDACTED]
Subject: NPCA Objection to Proposed Findings for Haleakalā National Park and Hawai'i Volcanoes National Park
Date: Tuesday, July 11, 2023 12:24:07 AM
Attachments: [Final Air tour letter from NPCA and NTHP - HAVO and HALE 6-20-2023.pdf](#)

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

FAA:

This email letter follows up on our discussion on Friday July 7, 2023, where the National Parks Conservation Association (NPCA) expressed our objection to the proposed Finding of No Adverse Effect for both Haleakala and Hawaii Volcanoes National Parks. Per your prompt inquiring if NPCA would be submitting an objection in writing, we write here to do that.

Despite consultation with Native Hawaiian Organizations, Kupuna, and others highlighting that allowing even a reduced level of air tours, as proposed in the undertaking, would not sufficiently mitigate the impacts to traditional, ceremonial, cultural, and religious use and connection to the Park, the FAA decided to find No Adverse Effects for both parks. This finding is factually incorrect. NPCA agrees with commentors, for the reasons they have outlined and which are referenced in the proposed Finding, that adverse effects will be present under the proposed undertaking. NPCA's NEPA comment letter, which speaks to acoustical data and analyses found within the proposed Findings for both parks and is attached here, also explains why there would be adverse effects in both parks under the proposed undertakings.

Thank you,
Neal

=====
Neal Desai

Senior Program Director, Pacific Region | National Parks Conservation Association

Mobile: [REDACTED] | ndesai@npca.org

(Pronouns: he/him/his)

Preserving Our Past. Protecting Our Future.

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From: ATMPTeam <ATMPTeam@dot.gov>
Sent: Friday, July 7, 2023 2:49 PM
To: ATMPTeam <ATMPTeam@dot.gov>
Cc: Walker, Judith <FAA> <judith.walker@faa.gov>; [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
Subject: FAA/NPS Section 106 Meeting for Haleakalā National Park and Hawai'i Volcanoes National Park

Greetings,

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are scheduling a meeting to report back to the objecting parties on next steps in the Section 106 process for the development of Air Tour Management Plans (ATMP) for Haleakalā National Park and Hawai'i Volcanoes National Park. The meeting is scheduled for 10 am HT on Tuesday, July 11, 2023. A calendar file is attached for your use.

Connection information for the meeting is included below. Should you have any questions, please contact me at (202) 267-4185 or at judith.walker@faa.gov, copying ATMPTeam@dot.gov. If you have any logistical issues accessing the meeting, please reach out to ATMPTeam@dot.gov or 857-998-3008.

Best regards,
Judith Walker

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National Trust *for*
Historic Preservation®

June 20, 2023

National Park Service and Federal Aviation Administration
c/o Volpe National Transportation Systems Center
Kaitlyn Rimol, V-326
Attn: HAVO/HALE ATMPs
55 Broadway
Cambridge, MA 02142

Re: Opposition to the preferred alternatives (Alternative 3) in the Air Tour Management Plans for
Hawai'i Volcanoes and Haleakala National Parks

Dear NPS Director Chuck Sams and FAA Administrator Billy Nolen:

On behalf of the National Parks Conservation Association and the National Trust for Historic Preservation, and our nearly 2.6 million members and supporters nationwide, we submit these comments on the Air Tour Management Plans (ATMP) for Hawai'i Volcanoes and Haleakala National Parks.

Since 1919, National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. The National Trust for Historic Preservation in the United States is a private nonprofit organization chartered by Congress in 1949 to "facilitate public participation" in the preservation of our nation's heritage, and to further the historic preservation policy of the United States.

We believe the National Park Service (NPS) and Federal Aviation Administration's (FAA) should have prohibited air tours in both parks in order to protect natural sounds, visitor experiences, Indigenous sacred sites and ceremonial areas, natural and cultural resources, wildlife, and wilderness resources and values. We assert the preferred alternatives allowing commercial air tours 1) result in unacceptable impacts to the aforementioned resources and people and 2) do not support the management objectives of the parks.

The agencies incorrectly applied the National Air Tour Management Act (49 U.S.C. 40128) and National Park Service laws (54 U.S.C.) in the ATMPs for both parks. These laws are intended to protect national parks, not promote commercial air tours.

The NPS Organic Act and the Redwoods Amendment Act together create a clear conservation mandate, and that use of national parks cannot derogate from the values and purposes for which those protected areas were established. The NPS's 2006 Management Policies create a binding interpretation of the

Organic Act (*Greater Yellowstone Coal. v. Kempthorne*, 577 F. Supp. 2d 183, 196). The NPS Management Policies explain that the Organic Act creates two independent mandates: a conservation mandate and a prohibition on impairment. Those mandates require NPS to “seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values” but also “allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of the park, so long as the impact does not constitute impairment of the affected resources and values.” § 1.4.3. Further, where there is conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.

In Hawai’i Volcanoes and Haleakala National Parks, the NPS has identified the protection of natural sounds as a primary purpose for each park. The NPS 2006 Management Policies define the natural soundscape as a park resource. § 1.4.6. The policies also define “unacceptable impacts” as “impacts that, individually or cumulatively, would... unreasonably interfere with... the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.” § 1.4.7. There is no doubt natural sound is a resource protected under the NPS Organic Act.

Furthermore, NPS 2006 Management Policies’ section on “soundscape management” states, in part, that “The National Park Service will preserve, to the greatest extent possible, the natural soundscapes of parks” (§ 4.9) and a section on “cultural soundscape management” provides that “The Service will preserve soundscape resources and values of the parks to the greatest extent possible to protect opportunities for appropriate transmission of cultural and historic sounds that are fundamental components of the purposes and values for which the parks were established” (§ 5.3.1.7).

Air tours are and will continue under the preferred alternatives to cause unacceptable impacts to park resources including natural sounds, visitors and Indigenous communities that utilize the parks. Existing air tours are already impairing park resources and conditions per the NPS Organic Act.

Furthermore, when implementing the Wilderness Act (16 U.S. C. 1131-1136), NPS is obligated to choose Alternative 2 which offers the “greatest protection” for the designated, eligible and proposed wilderness for both parks. In a case involving snowmobile noise near wilderness, *Izaak Walton League of America, Inc. v. Kimbell*, 516 F. Supp.2d 982 (D. Minn. 2007). Conservation organizations sued U.S. Forest Service challenging the decision to construct a snowmobile trail connecting lakes adjacent to Boundary Waters Canoe Area Wilderness. The plaintiffs claimed that the trail at issue would project the sights and sounds of snowmobiles into the wilderness area in violation of § 4(b) of the Wilderness Act.

The court held, *inter alia* on cross motions for summary judgment: (1) fact issues existed as to whether the agency's actions degraded the wilderness character of designated wilderness area; (2) the Environmental Assessment (EA) failed to properly analyze noise impact resulting from snowmobile use on the trail; and (3) the EA did not conduct any quantitative measurements of the sound impact in the wilderness. The court concluded:

“[T]he analysis of sound impact contained in the EA is inadequate to support the [Finding of No Significant Impact]. The EA provides no quantitative evidence or analysis of decibel levels projected by the South Fowl Trail into the adjoining wilderness... As discussed above, agency activity that results in sound that is louder, more constant, more frequent, or of a different quality, than the sound that presently exists within the wilderness, is more likely to degrade the wilderness character from its present condition and thus result in a violation of § 4(b) of the Wilderness Act.

Id. at 995-96. (Emphasis added.). Notably, the court also observed that “an agency's duty to preserve the wilderness character under § 4(b) of the Wilderness Act may apply to agency activity that occurs outside of the boundaries of the wilderness area.”¹ *Id.* at @989. We raise this specific issue because both parks are considering commercial air tour management within and near federally designated wilderness.

For both parks units, we believe the National Environmental Policy Act (42 United States Code (U.S.C.), 4321 et seq.) has not been correctly applied. The starting point of the analysis should be the natural ambient sounds of each park unit, and the impact analysis must judge the noise impacts of commercial air tours while they are taking place in each park—specifically which areas will be impacted by noise from air tours in each park. We encourage the agencies to apply this approach to every ATMP.

Hawai'i Volcanoes National Park

NPS created foundational documents for every park unit. They are grounded by each park's enabling legislation and provide guidance for planning and management decisions. Foundation documents speak to the purpose, significance, fundamental resources and values, and interpretive themes for each park.

NPS describes fundamental resources in the following way:

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

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

The following fundamental resources and values have been identified for [Hawai'i Volcanoes National Park](#):

- **Volcanoes and Associated Volcanic Features and Processes.** Two active hot-spot shield volcanoes, dynamic geologic processes, and volcanic features demonstrate the effects of the forces of nature and record the geologic history.
- **Body of Scientific Knowledge and Investigations.** Documents, collections, and observations contribute to scientific discovery and range from early first-hand accounts of eruptive events to current scientific research and museum collections.

¹ But note: The court also stated that: “In other words, where the agency activity does not increase or exacerbate the existing sound impact on the wilderness area, such activity would not degrade the wilderness character of the area. On the other hand, agency activity that results in noise that is louder, more constant, more frequent, or of a different quality, is more likely to degrade the wilderness character from its present condition and thus violate § 4(b).” *Id.* at 989-990.

- **Opportunities for Scientific Research and Monitoring.** The park serves as a world-class living laboratory for geologic research, conservation biology, ecosystem development, island biogeography, and evolution that continues to build on the existing body of scientific knowledge for resource protection, public safety, and environmental understanding.
 - **Biological Diversity.** The park contains an extraordinary assemblage of native plants and animals—more than 90% of which are endemic to the Hawaiian Islands and many of which are rare, endangered, and threatened with extinction.
 - **Ecological Integrity.** The park perpetuates native ecosystems and communities, many of which are unique to the park, and provides a refuge for endemic plants and animals that span seven ecological zones ranging from seacoast to alpine. The park also supports the continuation of natural processes and interactions among species and between the biotic and abiotic environments.
 - **Natural Sounds.** Park soundscapes are protected from many human-caused sounds and are dominated by the sounds of wind, ocean, volcanic activity, and native species.
- Night Sky and Scenic Vistas.** The unobscured night sky is characterized by an absence of artificial light and scenic vistas are unobstructed by development and human-caused air pollution.
- **Remote and Challenging Experiences.** The park promotes opportunities for visitors to experience solitude, primitive conditions, and challenge.
 - **Natural Landscape Character.** From mauka (toward the mountain) to makai (toward the ocean), vast expanses of the park's wilderness have been affected primarily by the forces of nature—retaining their primeval character.
 - **First-hand Volcanic Experiences.** The park provides opportunities for visitors to approach and experience active volcanic eruptions including fountains, fissures, and flows.
 - **Pelehonuamea.** Volcanic landscapes and all active flows and products of eruptive events are the representation of Pelehonuamea, deity of Hawaiian volcanoes.
 - **Wahi Kapu (Sacred Places) and Wahi Pana (Celebrated Places).** The entire park landscape and all of its inhabitants and features, including the sky as a layered extension of the landscape, are sacred to Native Hawaiians, particularly Halema'uma'u Crater (home of Pelehonuamea), Mauna Loa's Moku'āweoweo caldera (a focal point for the greater Hawaiian relationship to the universe-stars, sun, moon), and mauka forested areas.
 - **Opportunity for Traditional Cultural Use.** Native Hawaiian traditional uses in the park perpetuate traditional practices, knowledge, and the cultural importance of this area. These practices, including chants and dances, depend upon natural sounds, unobstructed views of mountain summits, and an environment that has not been greatly altered by human-caused changes.
 - **Cultural Resources.** The park's rich and varied cultural resources, including objects, archeological sites, cultural landscapes, historic structures, and ethnographic resources are preserved and contribute to interpreting and understanding the greater Hawaiian culture and the more recent human history within the park.

As described above, Hawaii Volcanoes is national park with many unique resources and attributes. From active volcanoes to rare, endemic species, this wilderness is enjoyed by over a million visitors a year. The park is sacred to many Native Hawaiians and part of their centuries-old culture. Commercial air tours are not a fundamental resource or value and create unacceptable impacts to those resources and values.

In the Environmental Assessment, the agencies conclude that Alternative 2 prohibiting commercial air tours will best protect the fundamental resources identified by the NPS in its foundational document. It states:

Noise: “Alternative 2 would provide 365 days per year without noise from air tours within the ATMP planning area and would reduce noise in the most noise sensitive regions of the Park resulting in direct beneficial effects compared to the No Action Alternative and Alternative 3.” (page 39)

Biological Resources: “Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area which would eliminate this source of noise from the planning area. Therefore, there would be a direct beneficial effect on biological resources since the intensity and likely presence of noise from commercial air tours would be less than under the No Action Alternative.” (page 73).

Cultural Resources: “Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area. The elimination of commercial air tours from the ATMP planning area would reduce the noise and visual intrusions from directly impacting the feeling and setting of cultural resources within the APE and result in beneficial impacts to ethnographic resources and sacred sites, TCPs, archeological resources, cultural landscapes, historic districts, and prehistoric and historic buildings and structures compared to current conditions.” (page 93).

Wilderness: “Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area, which would offer the greatest protection to Wilderness. Compared to current conditions, this would enhance Wilderness character by reducing the intensity of noise and number of noise events over Wilderness areas. There would be direct beneficial impacts to the natural quality of Wilderness and the opportunities for solitude under Alternative 2.” (page 105)

Visitor Use and Experience: “Under Alternative 2, commercial air tours would not fly within the ATMP planning area which would eliminate this source of noise from the ATMP planning area. Therefore, there would be a direct beneficial impact to Park visitor use and experience since the intensity and presence of noise from commercial air tours would be less than under the No Action Alternative. Alternative 2 offers the greatest protection of visitor use and experience.” (page 115).

It is obvious the ATMP should have recommended eliminating commercial air tours as it provides the “greatest protection” and “direct beneficial impact” for the park. Both the ATMP and Environmental Assessment provide evidence that the current commercial air tours as well as Alternative 3 that would continue to allow air tours, will harm visitors, natural and cultural resources, wilderness, and wildlife. The agencies found that, “The Park has the highest visitor use among the nine NPS units in Hawai‘i. Noise from low flying air tours can have notable impacts on visitor experience. A 2007 survey conducted at the Park found that the majority of people who reported hearing aircraft considered it either unacceptable or annoying and reported negative emotions or feelings associated with aircraft sound.” (ATMP at page 11). These broad statements about noise impacts to visitor experience have been ignored for decades by NPS and FAA. Now that the agencies have an opportunity to address this direct conflict by prohibiting commercial air tours, this ATMP recommends continuing this conflict in areas of the park.

Knowing several species could be harmed by noise, the agencies propose mitigation measures that do not guarantee the best possible conditions for them. The ATMP states, “Helicopter noise detrimentally affects physiology, pairing and breeding success, and territory size of birds by limiting communication between individuals. These effects could have a greater impact on critically endangered Hawaiian endemics, which already face a number of additional stressors.” (page 11). This careless approach to ensuring the survival of many species violates NPS laws and policies.

We continue to be baffled by the ATMP’s recommendations allowing helicopters to hover over the park. On one hand the ATMP states, “Hovering, loitering and/or circling on the Kahuku Route and the Coastal Route are prohibited because they could negatively impact visitor experience and cultural and natural resources, including sensitive sites.” (page 12). As a general matter, we agree that hovering over an area is hugely disruptive for visitors and resources. Yet, the ATMP allows hovering where it states, “Hovering, loitering, and/or circling for up to five minutes is permitted on the Pu ‘u ‘o ‘o Route and in the Pu ‘u ‘o ‘o QT Zone. Circling aircraft must turn away from the advancing blade as much as possible minimize noise.” (at page 7). The flight path where hovering is allowed is directly adjacent to a state protected area, Kahauale’a Natural Area Reserve and close to the East Rift Designated Wilderness in the park. As we mentioned earlier, the Wilderness Act’s protections apply to activities inside and outside of a wilderness area. Allowing commercial air tours is already problematic in the park, adding up to five minutes of hovering and loitering only adds to the violation of laws and policies.

Haleakala National Park

The following fundamental resources and values have been identified for [Haleakalā National Park](#):

- **Natural Sounds, Viewsheds, and Dark Night Skies** – Natural sounds, panoramic views, and dark night skies greatly contribute to Haleakalā’s unique sense of place. Ambient sound levels in the Haleakalā Crater are so low that they approach the threshold of human hearing, and the crater and summit offer world-renowned stargazing opportunities. Visitors flock to the summit to witness spectacular sunrises over the park’s natural landscape—this and other views in the park are supported by its excellent air quality. In addition to being highly desired values for visitors, dark night skies and natural soundscapes are vital components of a healthy, intact, biological community. Each plays an important role in wildlife communication and behavior. The preservation of natural sounds, viewsheds, and dark night skies is also critical to effective wilderness management.
- **Kīpahulu Moku District (including ‘Ohe’o Gulch and Palikea Stream)** – Handed down over the centuries through oral tradition and practice, the ‘Aha Moku system is the traditional Hawaiian system of natural resource division and management for ocean and land resources. The undiverted free-flowing Palikea stream and ‘Ohe’o Gulch are part of an intact East Maui watershed that begins at the piko, or navel, of the island. The park is fortunate to protect nearly all of the Kīpahulu moku, including intact ahupua’a (smaller land divisions) within it. The Kīpahulu Biological Reserve is discussed and analyzed as part of the Native Hawaiian Biological Diversity fundamental resource and value.
- **Wilderness** – Approximately 24,000 acres of Haleakalā National Park is federally designated wilderness. The wilderness area includes the majority of the Haleakalā Crater and the Kīpahulu Biological Reserve, which protects one of the most intact rainforest ecosystems in the Hawaiian

Islands. The wilderness area also has cultural and spiritual significance to Native Hawaiians, who have used these lands since ancient times, and continue to visit sites and features within the wilderness for traditional practices. Visitors have opportunities to participate in wilderness experiences—from expansive views across undeveloped lands to primitive recreation and solitude.

- **Ongoing Connections to Living Hawaiian Culture** – Haleakalā National Park has cultural and spiritual value for Native Hawaiians who have used particular places, sites, and resources in the park for a broad range of activities from ancient times to the present. Among these traditional cultural activities are ritual ceremonies, spiritual training, and practices related to birth and burial. For Native Hawaiians, traditional uses and connections between people and all things spiritual and physical are incorporated in the ancient, sacred tradition of the *Kumulipo* that has been passed down orally for generations in the form of a *mele ko’ihonua* or chant of more than 2,000 lines. The *Kumulipo* recounts the origin of the universe and the beginnings of the Hawaiian world; it inventories and explains the existence of all resources so that proper care and respect is applied through *kuleana* (responsibility). Sustaining the connections and interrelationships between Native Hawaiians and culturally significant park resources and places is an important objective of park managers.
- **Outstanding Geological Resources, Including the Haleakalā Volcano and Crater** – Rising to 10,023 feet in elevation, the Haleakalā volcano—also known as the East Maui volcano—is the primary geological feature of the park, and preserves a record of Maui’s volcanic history. At the volcano’s summit is the enormous depression known as Haleakalā Crater—described by Congress in the 1916 enabling legislation as the “largest and most spectacular crater in the world.” In truth, the label “crater” is somewhat of a misnomer, as this impressive depression was not shaped solely by volcanic activity, but also by water and erosion. Northeasterly tradewinds collided with the great volcano, producing rainfall, and over time streams cut channels down the slopes of the mountain. Eventually, two streams that eroded their way up the mountain joined, ultimately creating the long and deep depression that survives today. Later, volcanic vents in this area formed richly colored cinder cones and young lava flows—major scenic features of the park. Lava at Haleakalā National Park includes lower viscosity “ropy flows” (also called *pāhoehoe*) and the higher viscosity “rough and jagged flows” (also called *‘ā’ā*). There are at least 24 known lava tube caves in the park.
- **Archeological and Historic Resources Associated with Native Hawaiian Culture** – Haleakalā National Park preserves a high density and variety of precontact and historic archeological resources. These resources exist in many locations and include Native Hawaiian temples (*heiau*s), trails, altars, fishing shrines, house platforms, and other features. Historic resources such as historic agricultural sites and astrological shelters are also preserved by the park. Some of these resources are still used today as part of the vibrant Hawaiian culture. The upper Kīpahulu Valley, on the park’s windward side, exemplifies this rich biodiversity – With its wet rainforests and bogs, the upper Kīpahulu Valley is a key refuge for native Hawaiian plant and animal species that are disappearing elsewhere. The park manages this area as the Kīpahulu Biological Reserve. Within the reserve, no trails or roads are planned in order to prevent nonnative species, which are capable of rapidly spreading and outcompeting native rainforest plants, from penetrating the valley. Entry to the reserve is allowed only to resource managers and scientists who are conducting research and management essential to understanding and protecting this rare relict ecosystem.
- **Native Hawaiian Biological Diversity** – Haleakalā, rising from sea to summit, and exposed to both the windward moist tradewinds and leeward drying air, features a striking variety of ecosystems that support a tremendous range of native biological diversity. The park protects endemic and iconic species including the nēnē (Hawaiian goose), ‘ahinahina (Haleakalā silversword), ‘akohekohe (the

critically endangered crested honeycreeper), and many other threatened and endangered species. The park's remarkable ecological diversity is recognized by its designation as a United Nations International Biosphere Reserve. Haleakalā serves as a scientific laboratory for studies in climate history and change, classification of species, and taxonomy.

The upper Kīpahulu Valley, on the park's windward side, exemplifies this rich biodiversity – With its wet rainforests and bogs, the upper Kīpahulu Valley is a key refuge for native Hawaiian plant and animal species that are disappearing elsewhere. The park manages this area as the Kīpahulu Biological Reserve. Within the reserve, no trails or roads are planned in order to prevent nonnative species, which are capable of rapidly spreading and outcompeting native rainforest plants, from penetrating the valley. Entry to the reserve is allowed only to resource managers and scientists who are conducting research and management essential to understanding and protecting this rare relict ecosystem.

- **Kuleana** – The Native Hawaiian concept of kuleana is generally recognized as the responsibility passed down from the kūpuna (ancestors) to present and future generations for stewardship and respect for all things spiritual and physical. Under the traditional 'Aha Moku system of regional boundary management based on observational knowledge and sense of place, certain people had kuleana for site specific management and families had certain roles within their moku (land division). The Pōhaku Pālaha (the place where the moku boundaries converge) marks the beginning of the interconnected system linking the heavens to the depths of the ocean. How kuleana is managed affects other moku outside park boundaries as well as ocean resources. The National Park Service has accepted kuleana for the management of Haleakalā National Park. The National Park Service and the individuals who serve as konohiki (managers and stewards) represent the kia'i, or guardians of this sacred place for Hawaiian people.

There is no doubt Haleakala is a celebrated national park because of its spectacular natural resources from the volcano, rainforest, desert to its rich biodiversity. The cultural traditions and resources are abundant, park managers embrace stewardship concepts handed down by generations of Native Hawaiians. The ATMP should have chosen the most protective management for such a special place. The Environmental Assessment validates the best, most protective management for the park is Alternative 2 which would prohibit commercial air tours, it states:

Noise: "Alternative 2 would provide 365 days per year that are free of noise from air tours within the ATMP planning area and would reduce noise in the most noise sensitive regions of the Park resulting in direct beneficial effects compared to the No Action Alternative and Alternative 3." (page 39).

Biological Resources: "Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area which would eliminate this source of noise from the planning area. Therefore, there would be a direct beneficial effect on biological resources since the intensity and likely presence of noise from commercial air tours would be less than under the No Action Alternative." (page 64).

Cultural Resources: "Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area. The elimination of commercial air tours from the ATMP planning area would reduce the noise and visual intrusions from impacting the feeling and setting of cultural resources within the ~~AE~~ and result in beneficial impacts, including ethnographic resources and sacred sites, TCPs, archeological resources, cultural landscapes, historic districts, and prehistoric and historic buildings and structures compared to current conditions." (page 81).

Wilderness: “Under Alternative 2, commercial air tour aircraft would not fly within the ATMP planning area, which would offer the greatest protection to Wilderness. Compared to current conditions, this would enhance Wilderness character by reducing the intensity of noise and number of noise events over Wilderness areas. There would be direct beneficial impacts to the natural quality of Wilderness and the opportunities for solitude under Alternative 2.” (page 93).

Visitor Use and Experience: “Under Alternative 2, commercial air tours would not fly within the ATMP planning area which would eliminate this source of noise from the ATMP planning area for up to 1.05 million Park visitors each year. Therefore, there would be a direct beneficial impact to Park visitor use and experience since the intensity and presence of noise from commercial air tours would be less than under the No Action Alternative. Alternative 2 offers the greatest protection of visitor use and experience.” (page 102).

NPS and FAA should be choosing the alternative that had a “direct beneficial impact” and offers the “greatest protection” for Haleakala.

According to the ATMP’s “justification for measures taken,” “The number of flights authorized per year was selected to reduce impacts to noise sensitive areas in the Park including those with Wilderness values, cultural resources, natural acoustic environment, wildlife, and visitor experience while also providing expansive views of the coastal areas to commercial air tour customers. These are noise sensitive areas of the Park where a quiet setting is a generally recognized feature or attribute.” (page 14). This is a subjective goal determined by the agencies in the ATMP, but this does not comport with the National Park Air Tour Management Act (NPATMA), the law that governs this process. The National Park Air Tour Management Act does not guarantee “customers” anything, in fact, allowing commercial activity in a park is a privilege and not a goal under NPATMA or any other the law. The law states:

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.

The agencies continuously admit in the ATMP that natural and cultural resources, visitor experiences and Native Hawaiian cultural sites and interactions will be negatively impacted by commercial air tours. The current noisy conditions in the park are violating laws and policies, slight management changes will not protect the park. The ATMP seeks to minimize flights to one path, but this is guidance and likely won’t be strictly enforced. This is just a shell game rather than a true comparison of the ideal protection for the park. The “reduction” noted above is not significant enough to justify continuing commercial air tours. In fact, on page 13 of the ATMP, the agencies pick winners and losers where they identify some areas that will have less noise than others. More specifically, in the Environment Assessment appendices (at Table 8. Location point results for Alternative 3), there are a total of 44 locations surveyed for noise, of those, 21 locations report some level of noise above 35 decibels during the day.

We disagree with the NPS and FAA approach comparing noise impacts among the alternatives studied by the agencies. Instead of using the ambient natural sounds (a fundamental resource) as a baseline for judging noise impacts, it compares the alternatives with the current conditions that include thousands of noisy air tours. The ATMP chooses Alternative 3 as its preferred alternative for future air tour management. Using this approach, the Environmental Assessment states, “Time Audible Natural

Ambient: Compared to the No Action Alternative, the overall time audible noise footprint for Alternative 3 potentially is only 1% smaller than the No Action Alternative..." (page 42). This means noise will continue to permeate the park under the agencies' chosen alternative.

The Environmental Assessment states, "Native Hawaiians have consistently noted that the persistent air tours over the Park unreasonably interfere with the silence needed to perform ceremonies conducted by Native Hawaiian practitioners at these sacred sites, some of which rely on hearing natural sounds. Under the No Action Alternative, these impacts to ethnographic resources would continue to occur." (page 80). There is no mention of Native Hawaiian views of continued commercial air tours under Alternative 3, the ATMP chosen management direction.

The forest birds in Haleakala require proactive protection to ensure their survival. The ATMP states, "At least two federally endangered forest bird species within the Park, the kiwikiu and 'akohekohe, are at imminent risk of extinction, with fewer than 200 and 1800 individuals, respectively, left in the wild. In addition to impacts to the birds themselves, aircraft noise adversely impacts the NPS's ability to monitor federally protected Hawaiian forest birds, which is done primarily by acoustic-based surveys to detect birdsongs." (at page 13). If the NPS cannot conduct the studies, the agency could be violating several laws from those governing the NPS to the Endangered Species Act. We would urge the agencies to use the precautionary principle, do not put the forest birds at risk in order to allow commercial air tours.

The ATMP has a prohibition on hovering or circling. The Environment Assessment provides the following reason for this restriction where it states, "This alternative would prohibit hovering and circling because it could negatively impact visitors, cultural, and natural resources, including sensitive sites." (page 22). We appreciate the consideration of visitors and resources, but we find it baffling air tours are allowed at all when the agencies know they have a negative impact.

General concerns that apply to both parks

As described above, only Alternative 2 meets the Park management objective to protect natural sounds. Alternative 3 does not achieve this objective. Similarly, only Alternative 2 meets management objectives to protect wilderness character. Alternative 3 does not achieve this objective. Had the ATMPs taken as the starting point of the analysis the natural ambient sounds of each park unit, this would have been obvious.

Moreover, the ATMPs EAs for both parks failed to account for the indirect and cumulative impacts of air tour noise in their assessment of the Alternative 3s. In particular, there are a number of entirely foreseeable adaptations to the Alternative 3s that operators will make that will significantly impact park resources, but that were not analyzed, including flights outside the ½ mile ATMP buffer around national parks, the use of larger, noisier equipment, and the use of slower flights that extend the time and noise exposure over the park. Also, the policies to implement the Quiet Technology incentives are too weak and ill-defined to actually mitigate impacts. Each of these is further described below. By not properly analyzing each of these, the assessment of Alternative 3 understates the actual impacts that will result.

Flights outside the ½ mile buffer

As the EA notes in several places, with fewer permitted operations within the ATMP planning areas, some operations will be displaced outside the ½ mile boundary. This could be particularly problematic when the noise of the ATMP routes is added to the noise from the non-ATMP flights. Consequently, the

EA understated the noise impact on the park of the ATMP flights because it did not address the cumulative impact of the non-ATMP flights. There are numerous locations where the Park Objectives concerning wilderness character and natural sounds are not met by Alternative 3, and additional noise will further degrade those resources. The Hawaii Volcanoes Coastal Route provides one example, where the ATMP route is only 640 feet from the ATMP planning boundary.² The noise of aircraft flying 640 feet further from the Wilderness Area was not analyzed.

The noise from non ATMP tours should have been modeled by the EA where such occurrences are predictable. In the case of the Coastal Route, it is likely that two flights outside the ATMP planning area would have similar noise impacts to one flight on the ATMP Coastal Route. Moreover, it is likely that not only will operations be displaced, but in order to meet Quiet Technology incentives, it is likely that operators will use Quieter Technology flights within the park and noisier technology outside the park. The noisier equipment on the “half mile” coastal route could have a greater impact than the actual ATMP Coastal Route. The expected cumulative adverse effects of the “half-mile” coastal route, coupled with the lack of analysis in the EA, make the ATMP Coastal Route severely deficient.

Even without considering the cumulative impacts, the Coastal Route is extremely problematic. It should be noted that the ATMP Coastal Route does not provide an adequate buffer for the adjacent Wilderness Area. The Coastal Route is 2000 feet off shore but extends $\frac{1}{4}$ mile (1,320 feet) on either side, leaving only a 680 foot buffer to the wilderness area. According to the EA, “The Coastal Route runs bi-directionally offshore along the edge of the Park boundary, but within $\frac{1}{2}$ -mile of the Park boundary. Air tours on the Coastal Route would maintain 2,000 ft. lateral distance from shore and a minimum altitude of 2,000 ft. AGL” (EA, 21). But the EA for both parks also notes that “Air tour routes within the ATMP planning area are represented by a line with a $\frac{1}{4}$ -mile buffer on either side of the route that indicates the acceptable range of deviation that would not trigger enforcement action” (EA, 20).

Flights 680 lateral feet from a wilderness area provide negligible additional buffer than what is provided by the 2,000 foot minimum height. The noise path following the hypotenuse of a triangle with legs of 2,000 feet (height) and 680 feet (lateral distance) is only 112 feet longer than a direct overflight path. The lateral distance to the Wilderness Area is not sufficient.

The cumulative impacts of non-ATMP and ATMP routes, including the Coastal Route and other routes where displaced flights may impact the parks, and particularly wilderness areas, must be quantified and analyzed.

Larger, noisier aircraft

Larger, and likely noisier, aircraft are another possible indirect impact not considered. Given that operations are allocated, and not the number of passengers, it is entirely foreseeable that operators will seek to maximize the number of passengers with possibly noisier aircraft to increase the number of paying passengers. This outcome will change the mix of aircraft modeled by the EA. The only protection is the unspecified (by the EA and AMTP) Quiet Technology and replacement requirements (see below for a further discussion concerning the insufficient Quiet Technology policy). **The replacement and Quiet Technology policy must be updated as described below.**

² The Coastal Route is 2000 lateral feet from the wilderness area, while the half mile ATMP planning area is 2640 feet from the wilderness area, a difference of only 640 lateral feet.

Longer Time in the ATMP area

It is almost certain that the EAs' noise modeling has understated the time aircraft will spend in the ATMP planning areas. Given that only operations are allocated, and not time in the ATMP planning airspace, it is entirely foreseeable that operators will seek to lengthen flights or increase revenue generating hours of flights, by flying at a slower rate, increasing noise exposure in the Park.³ This scenario, which the ATMP allows for, would make the impacts analysis in the EAs inaccurate and inadequate. The ATMPs and EAs should have included time limits to routes in the form of an annual time budget for the year. The annual time over the ATMP planning areas that was modeled should have been disclosed. That time was the basis for the EAs' decision and should have been described in the EA as a condition of the operations granted. Instead, the time over the ATMP planning areas was not disclosed. It is not possible to know if the time assumptions were reasonable and what impact operations of greater time might have, as the ATMPs allow for aircrafts to spend greater time in the ATMP planning areas than the EAs analyzed. The lack of this information makes the ATMPs and EAs analysis of Alternative 3 inadequate.

The FAA and NPS relied on numerous time-above metrics⁴ in assessing the impact of noise, and **more time in the ATMP planning area is directly related to more impacts**. To achieve the impacts shown in the Alternative 3 analysis, the time operators are over the ATMP areas must be limited to those times in the modeling.

Consequently, Alternative 3 needed to contain an annual noise budget as much as it needed to limit operations to the number modeled. The budget should be based on the assumptions in the EA noise modeling, and if the budget is exceeded before the permitted operations are used, no further operations shall occur that year or those operations shall be deducted from the following year's allocation.⁵

It should be noted that the total time an operator is over the ATMP planning areas is currently required to be tracked and is part of the required reporting data, so determination of compliance with the operations would be no different than for the time.

Moreover, without a time limit within the ATMP planning areas, the ATMP's no hovering or circling rules are ineffective. Not only are these terms not defined, but operators could easily evade the no hovering rule by simply flying slower at specific locations, and possibly during the entire flight. Consequently, without adding a time limit, the EA modeling almost certainly understates the noise impacts.

In addition to prescribing annual operations, the ATMPs Alternative 3 should have prescribed the annual time permitted in the ATMPs planning areas. Otherwise operators will just fly slower and

³ It should be noted that we have heard concerns from helicopter operators who feel that the sharing of routes by fixed wing and helicopters, due to their different speeds, creates safety hazards. While we are not in a position to judge the level of hazard, there is no need to create multiple routes for each aircraft type. The aircraft can be segregated by simple time of day or day of week schedules for each aircraft type on a particular route.

⁴ E.g. time audible, time above 35dba, time above 52dba

⁵ An annual time budget, based on the cumulative time each operation was modeled in the ATMPs planning areas in the EA, would provide operators with flexibility due to weather, traffic, and other factors throughout the year, yet ensure that impacts are no greater than those modeled by the EA. If operators were to claim that the annual budget developed from the modeling assumptions is not sufficient due to safety or some other consideration, this would mean that the initial EA modeling assumptions were wrong and understated the noise impact of flights, and would need to be recalculated with operations further limited to limit impacts on park resources.

increase impacts to resources beyond those described in the EA. The impact of operations is directly related to the time those operations are over the park.

Quiet Technology Policy

Neither the EAs nor the ATMPs define or describe Quiet Technology. Consequently, the proposed Quiet Technology policy is insufficient to protect park resources from increasing impacts. The current plan treats quiet technology as a static condition and will not encourage further reductions in noise levels; it rewards quieter technology with more times to fly (extending hours during the day and on Wednesdays), but does not incentivize future gains. In fact, as more quiet technology aircraft are integrated into the fleet mix, the “quiet technology times” will only get louder as more aircraft take advantage of those times.

The proposed incentives for Quiet Technology are poorly designed and do not reflect a serious effort to reduce adverse impacts from operators. Had the agencies taken this aspect seriously, they would have proposed and analyzed incentives in the ATMPs and EAs that create a competitive marketplace for quiet not incentives that expand operating times and days.

For example, a much more effective Quiet Technology incentive would be to reserve 25% to 50% of **operations** for the operators who fly the quietest technology. To implement such a policy, the FAA/NPS, based on the reporting data submitted by operators, would determine the rank of each operator in terms of their use of Quiet Technology equipment. In the first and second year of the ATMP, the distribution of operations would be the same as currently proposed in the ATMP, with the 25% -50% reward for Quiet Technology incentive being awarded as in the current ATMP. In the third year, the 25%-50% would be allocated to operators in proportion to their rank during the first year. In subsequent years, the 25% - 50% Quiet Technology incentive would be redistributed based on the next calculation year. Effectively, this would create a 1 year lag to allow the NPS/FAA time to collect and analyze the reporting data and allow operators to adjust their schedules based on the new allocation.

The ATMP does not define Quiet Technology, but the definition is critical to the minimization of impacts on park resources. We propose a very simple definition of Quiet Technology aircraft. Quiet Technology aircraft are those aircraft with the least noise impact on the park.

Before exploring this definition, however, it is important to recognize that previous work by the FAA published in Advisory Circular AC-93-2, is not helpful or appropriate for application in AMTPs. This document lists aircraft meeting a “noise efficiency standard” that reduces noise per seat.

The Advisory Circular is outdated and a “noise efficiency standard” is a poor definition of Quiet Technology because it may or may not correspond to a lesser impact of overflight noise on parks. The simple reason is because **noise efficiency** and **quiet technology** are not the same thing. Less noise per passenger seat does not equate to less noise and fewer impacts per operation on the park. Therefore, noise efficiency does not measure the effectiveness of quiet technology on parks.

It is actually impossible to determine which technology is quietest using AC-93-2 criteria, because the Advisory Circular employs five different equations (see below), three different metrics (EPNL, SEL, and L_{Amax}), and 5 different methodologies.

$$EPNL(H) = 80 + 10\log(\# \text{ PAX seats}/2) \text{ dB}$$

$$\text{SEL(J)} = 77 + 10\log(\# \text{ PAX seats}/2) \text{ dB}$$

$$\text{LAm}_{\text{ax}}(\text{F}) = 69 + 10\log(\# \text{ PAX seats}/2) \text{ dB}$$

$$\text{LAm}_{\text{ax}}(\text{G}) = 74 + 10\log(\# \text{ PAX seats}/2) \text{ dB}$$

$$\text{LAm}_{\text{ax}}(\text{G}) = 77 + 10\log(\# \text{ PAX seats}/2) \text{ dB}$$

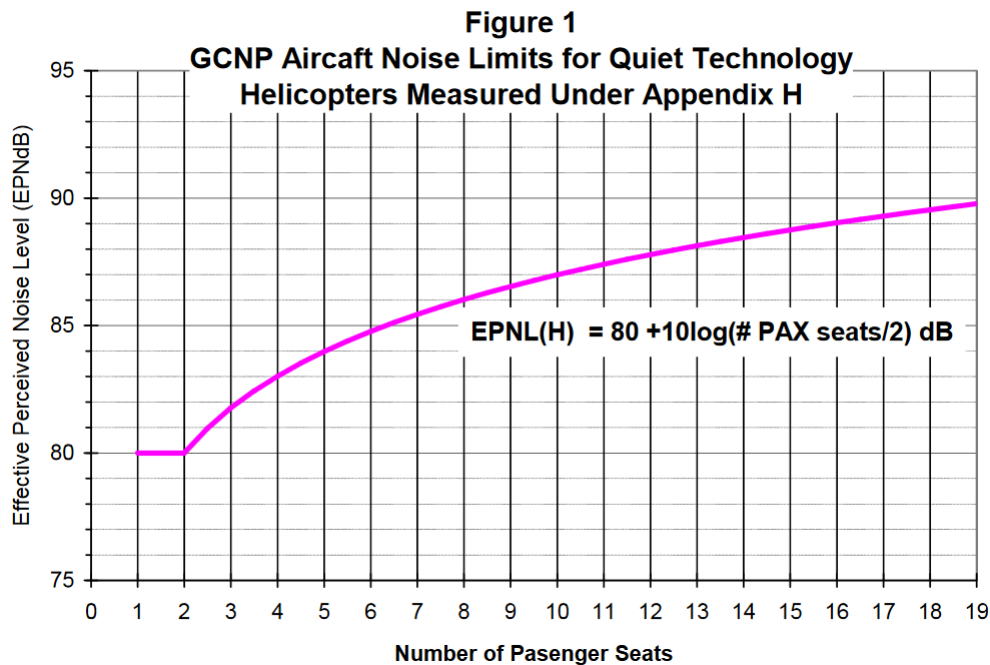
The FAA AC-93-2 noise efficiency or per passenger seat noise metric, as expressed by the equation Noise

$$\text{Threshold} = X \text{ dB} + 10\log(\# \text{ PAX seats}/2) \text{ dB}$$

is not a useful metric to identify technology that has the least impact on a national park. If it were used as the criteria, it would be very problematic and exacerbate the problem discussed above in the section entitled “Larger, noisier aircraft.” It is a metric suited for minimizing the noise per passenger, not the noise imposed on the park. **Only if the park were allocating passenger seats would it be a viable option.** But since parks allocate operations and not passenger seats, the metric has the perverse effect of *maximizing* aircraft noise impacts on the park per operation.⁶

Consider, for example, Figure 1 from AC-93-2

(https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_93-2.pdf).



The vertical axis is the noise level; the horizontal axis is number of passengers. Aircraft that fall below the pink line qualify as quiet technology. The pink line defining quiet technology is actually a function of the number of passenger seats on the aircraft. In the equation, the independent variable is passenger

⁶ It should be noted that it maximizes noise impacts within a given bound, the set of aircraft meeting the A-93-2 criteria. It encourages operators to use the largest/noisiest equipment the market can sustain, and therefore incentivizes those aircraft with the most noise.

seats while the dependent variable is the noise level experienced in the park. The greater the number of passenger seats, the greater the noise impact on the park that qualifies as quiet technology.

The curve of the pink line results from the logarithmic component of the equation (ten times the logarithm of the number of passenger seats divided by 2). The shape of the curve seems to be based on an equal energy hypothesis. The rationale for the initial threshold value (the initial starting value for 1 passenger in Figures 1-4 of AC-93-2) is not given.

The assumption underlying this equal energy hypothesis is that the combined impact of aircraft noise events on the park is related to the combined sound energy of those individual noise events on a per passenger seat basis. Consequently, each doubling of the number of passenger seats allows the addition of 3 dB to the permitted level, just as each doubling of the number of equal noise events (flights for example) adds 3 dB to the total noise level. For example, a helicopter with 4 passengers is permitted to be 83 dBA, a helicopter with 8 passengers is permitted to be 86 dB, and two operations of the 4 passenger helicopter have the same combined noise level as one operation of the 8 passenger helicopter.

The major problem with the AC-93-2 equal energy hypothesis is that it would be an effective metric **only if** the parks allocated passenger seats, not operations, to operators.⁷ If parks allocated a limited number of passenger seats, then any distribution of those seats among aircraft would have the same noise impact on the park.⁸ In this case, the impact on the park is dependent on the number of seats allocated, and independent of the number of operations used to meet the allocation.

The ATMPs, however, allocate operations instead of allocating passenger seats. In this real world condition, the noise in the park is dependent on the size of the aircraft conducting the allocated operations: the larger the aircraft, the more the impact on the park.

Instead of all configurations of seats among operations resulting in the same noise impact when allocating passenger seats, when operations are allocated using the A-93-2 equations, the incentive is to increase the noise effect on the park. For example, if the limit were four operations, that could be met with either four 4-passenger seat operations which combine to 89 dB, or four 8-passenger operations which combine to 92 dB, or four 16-passenger operations which combine to 95 dB. Clearly, the impact on the park in the above example is dependent on, and increases with, the number of seats per aircraft. With limited operations, the operator will have an incentive to use the largest aircraft the market can sustain, causing the largest noise impact on the park.

The reason for quiet technology incentives in the ATMPs is to promote the use of quieter equipment. But the currently proposed incentives, and particular, if they are combined with the AC definition of Quiet Technology, will instead, incentivize larger noisier aircraft. There are other incentives that more effectively promote the use of quiet technology, such as rewarding operators with operations for their

⁷ There are additional problems with the AC-93-2 quiet technology designation that should also be noted, including:

1. The use of multiple non-comparable noise metrics.
2. The use of a threshold for quiet technology designation.

The threshold actually is a disincentive for the development of future quiet technology and a disincentive for the use of the quietest technology currently since there is no reward for being quieter than the threshold.

⁸ If for example, 16 passenger seats were allocated, then that allocation can be accomplished for the same approximately 89 dB with either one 89 dB 16 seat aircraft, or two 86 dB 8 seat aircraft, or perhaps a 83 dB 4 passenger aircraft and a 88 dB 12 passenger aircraft (or any other combination of aircraft with seats that add to 16).

use of quiet technology, that we outline but which were not studied and presented in the ATMPs and EAs.

Because quieter technology exists and is constantly being developed, and that today's quietest technology is tomorrow's noisy technology,⁹ it is important to define quiet aircraft technology in terms of the quietest aircraft. Static definitions, such as those in AC-93-2 become outdated and disincentives that discourage future technology improvements beyond the minimum threshold. Once the threshold for quiet technology is met, there is no incentive to develop even quieter equipment and no differentiation between aircraft meeting the threshold.¹⁰

A better alternative to the AC method of identifying quiet technology equipment is to use the AEDT model to determine which operators used the quietest equipment, but such a process is very time and labor intensive, and ultimately unnecessary.

The simplest and most relevant measure of Quiet Technology for national parks is the Sound Exposure Level (SEL) of an aircraft in level flight at 2,000 feet, and it can easily be employed to determine which operators used the quietest equipment. The SEL¹¹ metric provides a good comparison of noise between aircraft. The other possible metric, the L_{Amax}¹² provides the highest decibel level and measures the impact when it is most intrusive, but it lacks a measure of the duration of the event. The SEL metric combines both magnitude and duration in one metric. The 2,000 foot height is the most common operation permitted by the ATMP.¹³

The SEL noise level can be measured from overflights or derived from the FAA's AEDT noise model, either through modeling or the so called "Noise Power Distance" curves. Once the SEL of each aircraft used in overflights is known, the aircraft can be ranked from quietest to noisiest. From that, a simple weighted average of the "noise rankings" based on the number of operations of each operator will allow comparison between operators to determine their relative rank. For example if there were two operators, and one flew 75 operations with the quietest aircraft and 25 with the second quietest aircraft, and the other operator flew 50 operations with the quietest aircraft and 30 operations with the second quietest aircraft, their weighted average noise ranking would be:

Operator 1: $[(75 \text{ ops} \times 1 \text{ rank}) + (25 \text{ ops} \times 2 \text{ rank})] / 100 \text{ Total ops} = 1.25$

Operator 2: $[(50 \text{ ops} \times 1 \text{ rank}) + (30 \text{ ops} \times 2 \text{ rank})] / 80 \text{ Total ops} = 1.375$

The operator with the lowest weighted average ranking is the operator with the least impact on the park, and the one entitled to the greatest reward or incentive for quiet technology.

⁹ For example, Stage II commercial aircraft are now considered noisy but, were once considered quiet technology.

¹⁰ Moreover, it should be noted that "quiet technology" is really a misnomer, since these "quiet technology" aircraft are still very loud. Quietest available technology is a better term.

¹¹ "The Sound Exposure Level (SEL) metric represents all the acoustic energy (a.k.a. sound pressure) of an individual noise event as if that event had occurred within a one-second time period. SEL captures both the level (magnitude) and the duration of a sound event in a single numerical quantity, by "squeezing" all the noise energy from an event into one second. This provides a uniform way to make comparisons among noise events of various durations." (FAA, Fundamentals of Noise and Sound, https://www.faa.gov/regulations_policies/policy_guidance/noise/basics/)

¹² L_{Amax} is the maximum A-weighted sound level of an event such as an overflight.

¹³ The FAA and NPS should develop criteria beyond just the A-weighted SEL to account for other acoustic characteristics such as frequency and sound quality that also determine the intrusiveness of the noise.

After the Quiet Technology rankings of each operator are calculated, and each operator is ranked, the 25% - 50% of operations reserved for operators with the quiet technology can be distributed using a formula such as:

| Rank of Operator in Use of Quiet Technology | Incentive (Percentage of Quiet Technology Operations Awarded) |
|---|---|
| 1 | 30% |
| 2 | 25% |
| 3 | 20% |
| 4 | 15% |
| 5 | 10% |

The ATMPs and EAs analysis of Alternative 3s failed to adequately define Quiet Technology and provide meaningful incentives for use of Quiet Technology.

Conclusion

In order to protect and preserve Haleakala and Hawaii Volcanoes, the agencies should adopt Alternative 2 (prohibition on air tours).

The ATMPs and EAs for these parks do not propose a serious attempt to address the significant adverse impacts from air tours to the natural and cultural resources and the visitor experiences. A serious attempt would have studied and presented alternatives that include features such as no new entrants, elimination of the Coastal Route at Hawaii, the consideration of cumulative impacts of non-ATMP air tours, the establishment of time in ATMP airspace allocations, and the establishment of an effective Quiet Technologies incentives program.

Sincerely,

Neal Desai
Senior Program Director, Pacific Region
National Parks Conservation Association

Elizabeth Merritt
Deputy General Counsel
National Trust for Historic Preservation



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

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

July 11, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan at Haleakalā National Park and Hawai'i Volcanoes National Park

Dear Kamakana Ferreira:

The Federal Aviation Administration (FAA) and National Park Service (NPS) appreciate your participation in ongoing consultation under Section 106 of the National Historic Preservation Act for the Air Tour Management Plans (ATMPs) at Haleakalā National Park and Hawai'i Volcanoes National Park (Parks). The FAA, as lead federal agency for Section 106, is following up on the meeting of July 6, 2023, which was held to discuss the Office of Hawaiian Affairs' (OHA's) letters from April 20 and April 27, 2023, objecting to the findings of no adverse effect for the ATMPs at the Parks. The FAA is providing confirmation of the commitments agreed to at this meeting and the resolution of OHA's objections.

1) Traditional Cultural Property (TCP) Studies

OHA provided comments strongly recommending a TCP study be done at each of the Parks to better understand cultural resources within the Parks and to ensure that adequate vertical buffers are implemented. The development of the ATMPs is under court supervision and the agencies must complete the ATMPs by December 31, 2023. While a TCP study is underway at Hawai'i Volcanoes National Park, it will not be completed in 2023. Haleakalā National Park has an eligibility determination for the park as a TCP, but a complete study has not been conducted. While the agencies acknowledge the value of TCP studies, due to the time needed to complete a TCP study in good faith, the agencies have instead opted to take a conservative approach in treating properties without a formal designation to be eligible for listing in the National Register of Historic Places and considering the entirety of each Park as a TCP. The agencies based their assessment on information from existing sources, including comments received from cultural practitioners and consulting parties and ethnographic studies/archaeological overviews, including an Ethnographic Study of the Cultural Impacts of Commercial Air Tours over Haleakalā National Park. Based on these sources and cultural concerns presented during Section 106 consultations, the FAA extended the APE to 10,000 ft above MSL at Haleakalā National Park and has no vertical limit at Hawai'i Volcanoes National Park to ensure effects to historic resources extending above the ATMP planning area were taken into consideration.

The agencies also emphasize that the ATMPs are living documents and allow for an amendment process. The effectiveness of the ATMPs will be monitored following their implementation and annual meetings will be held to discuss any amendments or other changes needed to the ATMPs

(Sections 3 and 4). The ATMPs allow for amendments if new or unanticipated effects are identified, new information is received, including information received through Native Hawaiian input and/or consultation, or circumstances have changed. These provisions are more fully explained in the ATMPs, including Section 8 for Adaptive Management and Section 9 Amendment.

While a TCP study for each park would be helpful in understanding historic properties within each park, the studies would not be completed in time to assist in evaluating historic properties for the undertakings at each park. Based on this understanding by the parties, the FAA considers this objection resolved.

2) *No-Fly Days*

OHA requested an explanation on how the current no-fly days were determined at Haleakalā National Park and that the agencies reconsider the number of no-fly days in response to comments received as part of Section 106 consultation. The ATMP at Haleakalā National Park currently includes 6 no-fly days generated by following the Hawaiian Moon Calendar and Makahiki Season. The park added two Hawai'i State Holidays that are historically significant to Native Hawaiians, bringing the number of culturally and/or historically significant no-fly days related to 8. Additionally, every Sunday and Wednesday are no-fly days bringing the total number of no-fly days up to 112.¹ The ATMP also includes provisions for NPS to establish additional temporary no fly periods for other special events.

The no-fly days were determined through joint Kīpahulu and Summit Kūpuna Group meeting held in 2014 to discuss commercial free days for the Park's Commercial Services Plan. These days were identified with the intention to provide opportunities for Native Hawaiians to conduct cultural practices without interruption from commercial tours. The Park asked for input from Hawaiian staff and community members, as requested through Kūpuna Group consultation. The input included Kamehameha Day, days honoring the passing of Hawaiian park staff and astrologically significant days.

During the April 20, 2023, Section 106 information meeting to explain and respond to questions about the agency's proposed finding and assessment of effects, a consulting party requested the agencies increase the number of no-fly days associated with days of significance to Native Hawaiians. The matter was deferred to the National Environmental Policy Act (NEPA) process, as changes to the ATMP are being considered through the public comment process on the Draft EA and ATMP and increasing the number of no-fly days would not change the agency's proposed finding of no adverse effect. The comments received through the Section 106 consultation process requesting additional no-fly days have been sent to the NPS's Planning, Environment and Public Comment (PEPC) site on behalf of the commenters. The NPS is considering these requests.

The FAA understands this objection is resolved as the matter is being considered through the NEPA process and identification of any additional no-fly days would be determined through ongoing consultation outside of Section 106.

¹ This number is assuming that the eight culturally and/or historically significant no fly days do not fall on a Sunday or Wednesday.

3) *Possible Impacts to the Lo'alo'a Heiau in Kaupō*

Following comments that the FAA and NPS received from consulting parties in November 2022, the APE at Haleakalā National Park was expanded to include the Kaupō area bounded to the south by the southern limits of the ½ mile buffer around the Kaupō Denman parcel. During the April 20, 2023, information meeting, residents of Kaupō had noted that the Lo'alo'a Heiau is in this area and that helicopter noise has been disturbing cultural practices. OHA noted and the agencies recognize that this heiau is listed in the National Register of Historic Places. OHA requested that Lo'alo'a Heiau and Naholoku archaeological sites be included as part of the list of historic properties in the APE and a re-evaluation of the current flight route in light of this information.

The Naholoku archaeological sites are within the APE and listed as a historic property in the Finding of Effects Letter. The FAA received boundary information from the SHPD for the Lo'alo'a Heiau and determined it is outside the APE. Mapping was screen shared at the July 6, 2023, meeting and a map showing the location of the heiau in relation to the APE is attached to this letter to confirm. The OHA requested that the location of the heiau is depicted on a map showing the APE and is shared with the consulting parties. The concerns noted in the April information meeting were regarding current noise, and the agencies do not believe it is reasonably foreseeable that impacts from the ATMP would extend outside the APE.

The agencies are providing the attached map to show the location of the Lo'alo'a Heiau, which is close to but outside the APE, and will be including this in future correspondence to all consulting parties. Based on this information and the commitment by the agencies, the FAA understands this objection is resolved.

4) *Improved pilot training accountability and aircraft maintenance*

OHA has made additional recommendations regarding improved pilot training accountability and aircraft maintenance that are outside the scope of Section 106 considerations. These comments have been sent to PEPC in full on behalf of OHA for consideration in the continued development of the ATMP. Due to the nature of these recommendations, the FAA does not consider them to be objections under Section 106.

If you have any questions or concerns regarding this correspondence, please do not hesitate to contact me at (202) 267-4185 or Judith.Walker@faa.gov, copying ATMPTeam@dot.gov.

Sincerely,



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

Cc: Mililani Trask, Office of Hawaiian Affairs
Hulu Lindsey, Office of Hawaiian Affairs
Stephanie Hacker, Archaeologist, HI SHPD
Jessica Puff, Architecture Branch Chief, HI SHPD

Enclosure:

APE map showing Lo'alo'a Heiau (Not for public release)

From: [Kamakana Ferreira](#)
To: [ATMPTeam](#)
Cc: [REDACTED] [Walker, Judith <FAA>](#);
Subject: RE: Office of Hawaiian Affairs - Resolution of Objections under Section 106 for the Haleakalā and Hawai'i Volcanoes National Parks ATMPs
Date: Wednesday, July 12, 2023 1:19:46 PM

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Aloha Judith,

The Office of Hawaiian Affairs (OHA) acknowledges receipt of the provided written documentation that resolves our objections that were raised during the National Historic Preservation Act (NHPA) Section 106 consultation process. We thank you again for a very productive meeting last week and look forward to continued consultation opportunities.

Mahalo,
Kamakana C. Ferreira, M.A.
Lead Compliance Specialist
Office of Hawaiian Affairs
560 N. Nimitz Hwy
Honolulu, Hi. 96817

[REDACTED]

From: ATMPTeam <ATMPTeam@dot.gov>
Sent: Tuesday, July 11, 2023 7:24 AM
To: Kamakana Ferreira <kamakanaf@oha.org>
Cc: [REDACTED]

Walker, Judith <FAA> <judith.walker@faa.gov> [REDACTED]

Subject: Office of Hawaiian Affairs - Resolution of Objections under Section 106 for the Haleakalā and Hawai'i Volcanoes National Parks ATMPs

Dear Kamakana Ferreira,

The Federal Aviation Administration (FAA) and National Park Service (NPS) appreciate your

participation in ongoing consultation under Section 106 of the National Historic Preservation Act for the Air Tour Management Plans (ATMPs) at Haleakalā National Park and Hawai'i Volcanoes National Park (Parks). The FAA, as lead federal agency for Section 106, is following up on the meeting of July 6, 2023, which was held to discuss the Office of Hawaiian Affairs' (OHA's) letters from April 20 and April 27, 2023, objecting to the findings of no adverse effect for the ATMPs at the Parks. In the attached letter, the FAA is providing confirmation of the commitments agreed to at this meeting and the resolution of OHA's objections.

If you have any questions or concerns regarding this correspondence, please do not hesitate to contact me at (202) 267-4185 or Judith.Walker@faa.gov, copying ATMPTeam@dot.gov.

Best regards,
Judith Walker

From: [ATMPTeam](#)
To: [Hacker, Stephanie](#)
Cc: [Walker, Judith <FAA>](#); [REDACTED]
Subject: RE: FAA/NPS Section 106 Meeting for Haleakalā National Park and Hawai'i Volcanoes National Park
Date: Thursday, July 20, 2023 9:36:58 AM

Hello Ms. Hacker,

The purpose of today's meeting is to inform all the objecting parties of the status of their objections and the next steps in the Section 106 process.

The FAA has provided all consulting parties including the State Historic Preservation Division (SHPD), State of Hawaii Department of Land and Natural Resources with the documents specified in 36 CFR § 800.11(e) as is required by 36 CFR § 800.5(c) when the agency sent the proposed no adverse effect finding letters to the consulting parties on March 27, 2023, and requested their review and concurrence. The FAA responded to the SHPD's separate requests for additional information for both Parks in letters dated April 28, 2023. The FAA provided a summary of the April 18, 2023 meeting including the questions asked during the meeting and the agencies' responses to the questions. The FAA also provided all of the written objections and concurrences received in response to the March 27, 2023, letter. The FAA explained that the March 27, 2023 letter included summaries of the public input received. The FAA also requested that the SHPD respond to the March 27, 2023 letter by May 1, 2023. While we agree that the Section 106 process has not concluded, your office has received all of the written consulting party comments that have been sent to the FAA as well as all the documents and information under 36 CFR § 800.11(e).

Since that time, and as you are aware, the FAA and the NPS in accordance with 36 CFR § 800.5(c)(2) (i), have been consulting with the parties that have objected to the agency's proposed finding of no adverse effect of the undertakings at each Park. At first, the agency intended to conduct group meetings by Park with all of the objecting parties. However, after the first meetings, the agency determined that meeting individually with each objecting party would provide more meaningful consultation. The agencies met with each party that objected to the proposed findings of no adverse effect for each Park, as well as your office, to in order to resolve the disagreements. The SHPD was also invited to the individual objecting party meetings. The agency is currently developing summaries of each of the consultation meetings with the objecting parties and will provide them to the objecting parties, including the SHPD, once they are complete.

During the consultation meeting with your office, a representative from the SHPD's office explained that the SHPD does not respond to an agency's proposed finding of no adverse effect for an undertaking until all consultation is complete. While this approach appears to be different than the process stated in 36 CFR § 800.5(c), the FAA noted that the under the Section 106 regulations, the agency was not required to wait until the SHPD provided its concurrence or nonconcurrence to move to the next step in the Section 106 process.

I hope this correspondence addresses the concerns raised in your July 16, 2023 email. We hope that a representative from the SHPD's office is able to attend the final meeting with all of the objecting

parties discussed above. Furthermore, the FAA renews its April 28, 2023, request that the SHPD state with specificity any additional information that your office has not received regarding the undertakings at both Parks.

Best regards,
Judith Walker

From: Hacker, Stephanie <stephanie.hacker@hawaii.gov>

Sent: Friday, July 14, 2023 8:40 PM

To: ATMPTeam <ATMPTeam@dot.gov>

Cc: Walker, Judith <FAA> <judith.walker@faa.gov>; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: Re: FAA/NPS Section 106 Meeting for Haleakalā National Park and Hawai'i Volcanoes National Park

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

What is the purpose of this meeting?

On another note, I wanted to touch base with you regarding the Section 106 process for these two undertakings. When we last met this month I understood you to say that although FAA is still holding consultation with consulting parties, that the SHPO has missed the opportunity to comment and therefore the FAA views the next step in the 106 process as going to the ACHP for comment. Correct me if I misunderstood. However, I learned this week that the SHPD did send out a response letter to FAA's effect determination (received March 27th) within the 30 day timeline stating:

"To reach a determination of concurrence with the proposed effect determination, the SHPO must take into consideration the information, and any consulting party comments, received by the FAA. Therefore, per 36 CFR 800.11(e)(6), please submit to SHPD any comments received from consulting parties during the April 20th meeting or regarding the information and findings provided in FAA's March 27th letter. The SHPO will review and comment on the submission received March 27th after receiving a copy of the comments the FAA received in writing or during public meetings."

With the continuation of Section 106 consultation, information is still being gathered from consulting parties and the SHPD is still awaiting receipt of FAA's record of consultation to afford

the SHPO the opportunity to make an independent and good faith effort while considering the determination of effect for each of these undertakings. Further, comments received should be considered by FAA prior to reaching an effect determination. Therefore, if my understanding as described above is correct, I wanted to touch base and notify FAA that it is SHPD's understanding that the Section 106 process is still ongoing and that SHPD anticipates receiving a complete account of the consultation record per 36 CFR 800.11(e)(6) from FAA along with the FAA's documentation of how comments received were considered, and an opportunity for the SHPO to review and respond to this information and the FAA's effect determination.

Thank you,
Stephanie

Stephanie Hacker, M.A.
Archaeologist IV

Hawaii State Historic Preservation Division
Kakuhihewa Building
601 Kamokila Blvd., Suite 555
Kapolei, Hawaii 96707

All submissions for SHPD review must be submitted through SHPD's intake system at <https://shpd.hawaii.gov/hicris>. Individual SHPD staff are not responsible for processing intake of materials for review. Please do not mail hard copy documents to our office.

SHPD initiated "I MUA MONDAYS" in April 2019. Every Monday, SHPD is closed to the public, allowing staff to focus exclusively on project reviews. Staff will not accept meetings, phone calls, emails, or "walk-ins" on Mondays. The SHPD Library will be closed to the public. This policy has been approved at the highest levels in the Administration.

From: ATMPTeam <ATMPTeam@dot.gov>

Sent: Tuesday, July 11, 2023 5:33 AM

To: ATMPTeam <ATMPTeam@dot.gov>

Cc: Walker, Judith <FAA> <judith.walker@faa.gov>; [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: [EXTERNAL] RE: FAA/NPS Section 106 Meeting for Haleakalā National Park and Hawai'i Volcanoes National Park

Hello,

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are rescheduling this afternoon's meeting to go over next steps in the Section 106 process for the development of an Air Tour Management Plan (ATMP) for Haleakalā and Hawai'i Volcanoes National Parks.

We have identified the following potential dates/times as available for the agencies (presented in HT), anticipating the meeting to take one hour:

- Thursday, July 13: 9:30-11am
- Tuesday, July 18: 8-11am
- Wednesday, July 19: 8-11am
- Thursday, July 20: 8-11am
- Friday, July 21: 8-10am

Please indicate your or a representative of your organization's availability to attend in this doodle poll: [REDACTED]

We ask that you provide your availability at your earliest convenience, no later than close of business on **Wednesday, July 12**. We will send an updated invitation once a new time is selected.

Best regards,
Judith Walker

From: ATMPTeam <ATMPTeam@dot.gov>

Sent: Friday, July 7, 2023 4:49 PM

To: ATMPTeam <ATMPTeam@dot.gov>

Cc: Walker, Judith <FAA> <judith.walker@faa.gov>; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: FAA/NPS Section 106 Meeting for Haleakalā National Park and Hawai'i Volcanoes National Park

Greetings,

The Federal Aviation Administration (FAA) and the National Park Service (NPS) are scheduling a meeting to report back to the objecting parties on next steps in the Section 106 process for the development of Air Tour Management Plans (ATMP) for Haleakalā National Park and Hawai'i Volcanoes National Park. The meeting is scheduled for 10 am HT on Tuesday, July 11, 2023. A calendar file is attached for your use.

Connection information for the meeting is included below. Should you have any questions, please contact me at (202) 267-4185 or at judith.walker@faa.gov, copying ATMPTeam@dot.gov. If you have any logistical issues accessing the meeting, please reach out to ATMPTeam@dot.gov or 857-998-3008.

Best regards,
Judith Walker

Join ZoomGov Meeting

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