

Exhibit 10 – ATMP Boundary Expansion: APE Letter; Responses to APE Letter; Effects Assessment; and Responses to Effects Assessment

ATMP Boundary Expansion – Expanded APE, Historic Property Identification, and Effects Assessment



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

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

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

July 26, 2023

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

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act (NHPA) for the development of an air tour management plan (ATMP) for Haleakalā National Park (Park). The FAA is continuing consultation on the ATMP at this time due to a minor scope change.

Consistent with the National Parks Air Tour Management Act of 2000 (Act), the proposed ATMP for the Park would regulate commercial air tours within the ATMP planning area. Following consultation, the FAA sent a letter with the proposed finding of no adverse effect on historic properties on March 27, 2023. This finding of effect letter provided an overview of the undertaking – the reduction of air tours, which is the preferred alternative under the National Environmental Policy Act (NEPA); a description of the Area of Potential Effects (APE); a list of historic properties that have been identified to date; and proposed a finding of no adverse effect.

The Park has recently acquired new parcels that expand the Park boundary, and the ATMP planning area (the Park and a ½-mile buffer around the Park) was consequently expanded. When reviewing the changes needed for new parcels, the NPS also found other small parcels that needed to be added to the maps, and consequently expanded the ATMP planning area. Therefore, the agencies are adjusting the APE to include the areas of expanded buffer, as depicted in the purple shaded areas on the APE map provided in **Attachment A**. The APE description remains the same as what was provided in the March 2023 letter; the description of the undertaking also remains the same. The purpose of this letter is to notify you of the expanded APE and request any comments you may have regarding the identification of historic properties and potential effects within the new areas of the APE.

Review Request

The FAA requests that you provide any information you may have regarding the identification of historic properties and potential effects within the new areas of the APE by August 11, 2023. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

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

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

cc: Stephanie Hacker, Archaeologist, HI SHPD
Jessica Puff, Architecture Branch Chief, HI SHPD

Attachments

- A. Area of Potential Effects Map

ATTACHMENT A
AREA OF POTENTIAL EFFECTS MAP

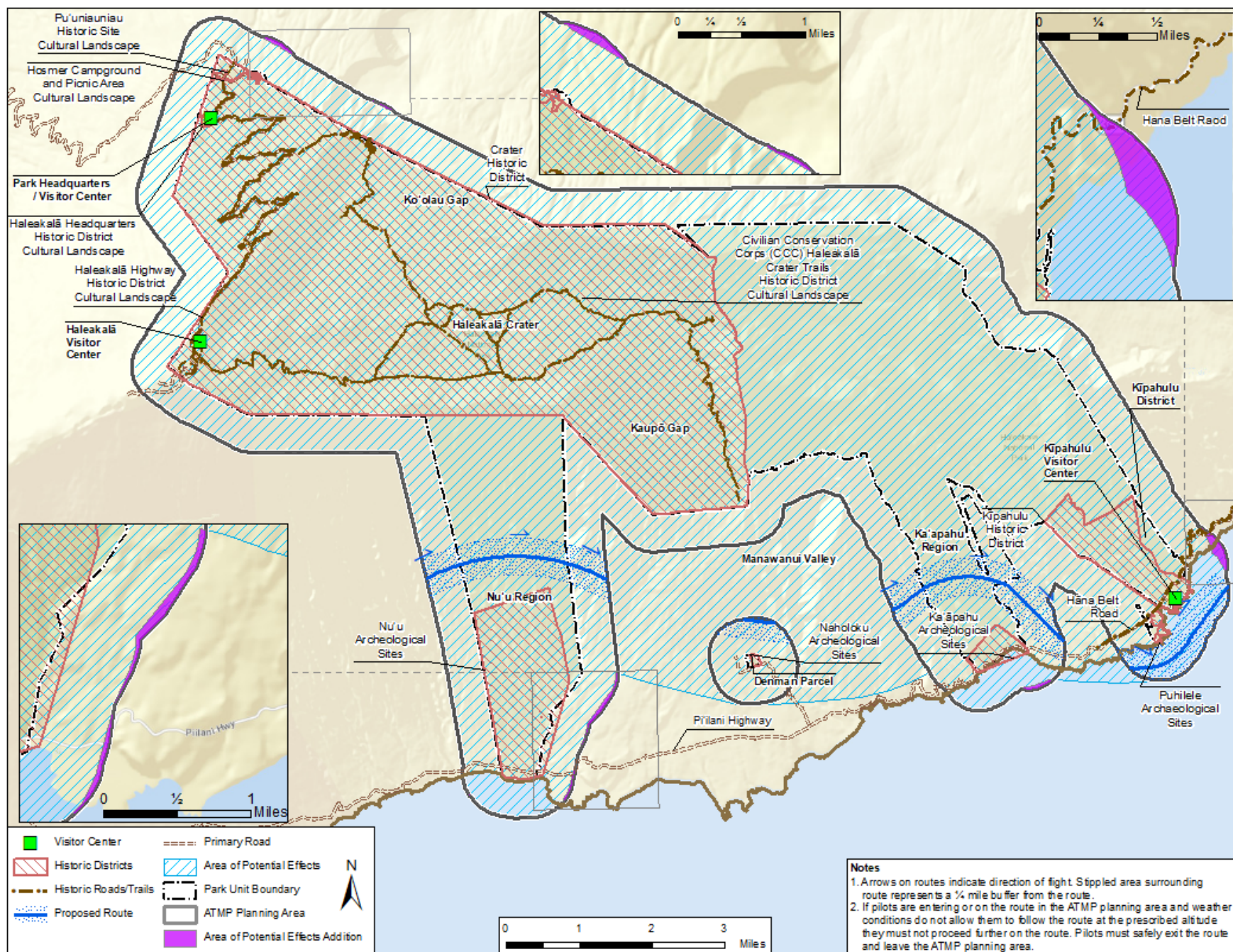


Figure 1. Haleakalā National Park APE Map

Hootman, Amy (Volpe)

From: [REDACTED]
Sent: Wednesday, July 26, 2023 1:10 PM
To: ATMPTeam
Subject: Re: Section 106 Continuing Consultation – ATMP for Haleakalā National Park - George K. Cypher 'Ohana

Follow Up Flag: Follow up
Flag Status: Flagged

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Aloha,

We have no comment at this time. We ask that you confer with the Hawaiian civic clubs of Maui Council, Association of Hawaiian Civic Clubs - info online at aohcc.org

- Mahealani Cypher

On Wednesday, July 26, 2023 at 08:03:47 AM HST, ATMPTeam <atmpteam@dot.gov> wrote:

Dear Mahealani Cypher:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act (NHPA) for the development of an air tour management plan (ATMP) for Haleakalā National Park (Park). The FAA is continuing consultation on the ATMP at this time due to a minor scope change that expanded the APE.

The FAA requests that you provide any information you may have regarding the identification of historic properties and potential effects within the new areas of the APE by **August 11, 2023**. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Best regards,

Judith Walker

Hootman, Amy (Volpe)

From: Hokulani Holt-Padilla [REDACTED]
Sent: Thursday, July 27, 2023 2:15 PM
To: ATMPTeam
Cc: Walker, Judith <FAA>; [REDACTED]
Subject: Re: Section 106 Continuing Consultation – ATMP for Haleakalā National Park - Hōkūlani Holt

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Thank you for the update. I am assuming that the flight pattern does not affect residents of the area.

‘O au iho nō,
Hōkūlani

Hōkūlani Holt
Director, Kahōkūala, Hawaiian Cultural Arts Institute
Director, Ka Hikina O Ka Lā
Hawai'i Papa o Ke Ao
University of Hawaii Maui College
310 W. Kaʻahumanu Ave., Kahului, HI 96732
Laulima 217
[REDACTED]

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On Wed, Jul 26, 2023 at 8:38 AM ATMPTeam <ATMPTeam@dot.gov> wrote:

Dear Hōkūlani Holt:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act (NHPA) for the development of an air tour management plan (ATMP) for Haleakalā National Park (Park). The FAA is continuing consultation on the ATMP at this time due to a minor scope change that expanded the APE.

The FAA requests that you provide any information you may have regarding the identification of historic properties and potential effects within the new areas of the APE by **August 11, 2023**. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Best regards,

Judith Walker

From: [REDACTED]
To: [ATMPTeam](#)
Cc: [Walker, Judith <FAA>](#); [REDACTED]
Subject: Re: Section 106 Continuing Consultation – ATMP for Haleakalā National Park - Ki'ope Raymond
Date: Sunday, July 30, 2023 8:31:36 PM

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Aloha,

I have no further comment at this time other than reiterating that I believe that the proposed ATMP does not sufficiently protect the visitor experience and does not sufficiently protect the Wilderness character of Haleakala National Park from both audio and visual pollution caused by commercial air tours that are allowed by the proposed ATMP. Also, the proposed ATMP does not sufficiently protect historic and culturally sensitive properties and locations in and near the park from visual and noise disturbance from air tours. Specifically, air tours should not be allowed to fly over or near historic trails that are a part of or extensions of the Park's wilderness trail system. The plan should provide the maximum protection allowed to protect Haleakala National Park.

Mahalo,
Ki'ope Raymond

On Wed, Jul 26, 2023 at 8:34 AM ATMPTeam <ATMPTeam@dot.gov> wrote:

Dear Ki'ope Raymond:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act (NHPA) for the development of an air tour management plan (ATMP) for Haleakalā National Park (Park). The FAA is continuing consultation on the ATMP at this time due to a minor scope change that expanded the APE.

The FAA requests that you provide any information you may have regarding the identification of historic properties and potential effects within the new areas of the APE by **August 11, 2023**. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Best regards,
Judith Walker

--

S. Kī'ope Raymond
Professor, HWST (retired)



"O ko kakou makemake io no ia o ka loaa o kekahi mea oiaio loa." J. H. Kānepu'u

From: [Neal Desai](#)
To: [ATMPTeam](#)
Cc: [Walker, Judith <FAA>](#); [REDACTED]
Subject: RE: Section 106 Continuing Consultation – ATMP for Haleakalā National Park - National Parks Conservation Association
Date: Friday, August 11, 2023 2:36:01 PM

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Hello FAA/Judith,
Considering the emergency situation on Maui with the fires, and the request for responses by today, we request this Haleakala 106 process be put on hold. Please let us know. Thank you,
Neal

From: ATMPTeam <ATMPTeam@dot.gov>
Sent: Wednesday, July 26, 2023 11:48 AM
To: Neal Desai <ndesai@npca.org>
Cc: Walker, Judith <FAA> <judith.walker@faa.gov>; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: Section 106 Continuing Consultation – ATMP for Haleakalā National Park - National Parks Conservation Association

Dear Neal Desai:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act (NHPA) for the development of an air tour management plan (ATMP) for Haleakalā National Park (Park). The FAA is continuing consultation on the ATMP at this time due to a minor scope change that expanded the APE.

The FAA requests that you provide any information you may have regarding the identification of historic properties and potential effects within the new areas of the APE by **August 11, 2023**. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Best regards,
Judith Walker

From: [Elizabeth Merritt](#)
To: [ATMPTeam](#)
Cc: [REDACTED]
Subject: Haleakala Air Tour Management Plan
Date: Saturday, August 12, 2023 12:44:05 AM
Attachments: [Section 106 Continuing Consultation ATMP for Haleakala National Park- National Trust for Historic Preservation.msg](#)
[NTHP comments on FAA-NAE for Haleakala ATMP - Apr 28 2023.pdf](#)

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Dear ATMP Team,

In response to the revised Area of Potential Effects proposal for the Haleakala ATMP, the National Trust for Historic Preservation continues to have concerns about the proposed undertaking, and we continue to disagree with the FAA's proposed determination of no adverse effect. Attached is a copy of our earlier letter dated April 28, 2023, describing in more detail the basis for our disagreement.

We wish to continue our participation as a consulting party, but we respectfully recommend that it may be appropriate for the FAA to suspend the consultation process for the time being, in the wake of the recent tragic fires that have occurred on Maui.

Sincerely,
Betsy Merritt

Elizabeth Merritt, Deputy General Counsel
National Trust for Historic Preservation
(202) 297-4133



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

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

August 14, 2023

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

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act (NHPA) for the development of an air tour management plan (ATMP) for Haleakalā National Park (Park). The FAA is continuing consultation on the ATMP at this time due to a minor scope change that resulted in the expansion of the area of potential effects (APE).

Historic Property Identification

The agencies shared a map showing the expanded APE with the Hawai'i State Historic Preservation Division (SHPD) and 60¹ consulting parties (listed in **Attachment A**) in a letter dated July 26, 2023, which included a request for consulting parties to provide comments regarding historic properties and potential effects on historic properties within the new areas of the APE. On July 26, 2023, the agencies also requested historic property data within these areas from the SHPD. The SHPD noted that the Nu'u-Waiu Complex and contributing features to the Hāna Belt Road extend into the new areas of the APE, however, both properties were included on the historic property identification list and effects analysis in the March 27, 2023, finding of effect letter. No new historic properties were identified through consultation.

¹ Three newly identified consulting parties were invited to consult, in addition to the SHPD and 57 consulting parties that were included in the March 27, 2023, finding of effect letter.

Consulting Party Comments

The agencies received responses to the July 26, 2023, APE letter from three consulting parties. In a July 26, 2023, email, the George K. Cypher 'Ohana noted that they have no comments at this time but requested that the agencies also confer with the Association of Hawaiian Civic Clubs (AHCC). The AHCC is a consulting party for the undertaking, and the agencies sent the APE letter to the AHCC for their review and comment on July 26, 2023, but did not receive a response from the organization. Hōkūlani Holt responded on July 27, 2023, that she assumes the flight pattern does not affect residents of the area. The Section 106 process focuses on the undertaking's potential to affect historic properties. The agencies have delineated the APE to include any areas where the undertaking would result in reasonably foreseeable direct or indirect effects on historic properties. As further explained in the March 27, 2023, finding of effect letter, the undertaking (implementation of the ATMP) is expected to reduce visual and noise effects from air tours on historic properties and reduce the likelihood that an air tour would interrupt cultural practices within the APE.

In a July 30, 2023, email, Ki'ope Raymond noted that he does not believe the ATMP sufficiently protects the visitor experience, Wilderness character of the Park, or historic and culturally sensitive properties in or near the Park from the visual and noise disturbance from air tours. Mr. Raymond requested that air tours not be allowed to fly over or near historic trails that are part of or extensions of the Park's wilderness trail system. Comments regarding Wilderness areas are beyond the scope of Section 106; however, the agencies have received similar comments regarding Wilderness areas during the public comment period for the draft ATMP and Environmental Assessment (EA) and have addressed them through that process. The ATMP flight path has been delineated to reduce air tour impacts to natural and cultural resources, areas of historic and spiritual significance to Native Hawaiians, wilderness character, and visitor experience. The ATMP also removes direct overflights of historic trails within the Park that are part of the wilderness trail system. As further detailed in the March 27, 2023, finding of effect letter, the ATMP would reduce visual and noise effects from air tours on historic properties compared to existing conditions, and the duration of air tour noise would decrease throughout the entire Park. The restrictions under the ATMP would also reduce the likelihood that an air tour would interrupt Native Hawaiian traditional practices.

The agencies did not receive any comments with new information regarding unidentified historic properties or potential effects within the new areas of the APE.

Effects Assessment

The APE description remains the same as what was provided in the March 27, 2023, finding of effect letter. The parcels that have been acquired by the Park and added to the maps were already within the APE; the agencies simply adjusted the APE to include the updated ATMP planning area boundaries as a result of these acquisitions, as depicted in the purple shaded areas on the APE map provided in

Attachment B.

The expansion of the ATMP planning area boundaries in these areas would not result in any new or different effects, nor would it be likely to contribute to any different reasonably foreseeable indirect effects, from those discussed in the March 27, 2023, finding of effect letter. The designated flight paths under the ATMP do not extend into the new areas of the APE. There are no or few flights in these areas under existing conditions, and no flights would be allowed in these areas under the ATMP. Furthermore, no new historic properties were identified within the expanded areas of the APE. Therefore, the FAA maintains its finding of no adverse effect on historic properties for the reasons described in the March 27, 2023, finding of effect letter (**Attachment C**).

Review Request

Based on the analysis above and in the March 27, 2023, finding of effect letter, the FAA maintains its finding of no adverse effect on historic properties per 36 CFR § 800.5(b). We request that you review the information and respond whether you concur with the finding within thirty days of receiving this letter.

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

Sincerely,



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

cc: Stephanie Hacker, Archaeologist, HI SHPD
Jessica Puff, Architecture Branch Chief, HI SHPD

Attachments

- A. List of Consulting Parties
- B. APE Map
- C. March 27, 2023, Finding of Effect Letter

ATTACHMENT A

List of Consulting Parties

‘Aha Moku o Kahikinui
‘Aha Moku o Kaupō
‘Aha Moku o Maui Inc.
AlexAir, Inc. (Maverick Helicopters) [Alika Aviation, Inc. (Alexair) in FR]
Angela Tavares (Individual)
Aris, Inc. (Air Maui Helicopter Tours)
Association of Hawaiian Civic Clubs
Brian Kaniela Nae‘ole Na‘auao
Clifford Hashimoto (Individual)
County of Maui Mayor's Office
Daisy Lind (Individual)
Dana Hall (Individual)
Daniel K. Inouye Solar Telescope (DKIST)
Department of Hawaiian Homelands
Department of Land and Natural Resources, Division of Forestry and Wildlife
Department of Land and Natural Resources, Division of Forestry and Wildlife, Maui Branch
Donna Sterling (Individual)
East Maui Irrigation
East Maui Watershed Partnership
Friends of Haleakala National Park
George K. Cypher ‘Ohana
Haleakalā Conservancy
Haleakalā Ranch
Hawaiian Islands Land Trust
Hawai‘i Island Coalition Malama Pono
Historic Hawai‘i Foundation
Helicopter Consultants of Maui, LLC (Blue Hawaiian Helicopters)
Helicopter Consultants of Maui, LLC (Hawaii Helicopters)
Hōkūlani Holt (Individual)
Kahu Dane Maxwell (Individual)
Kahu Lyons Naone (Individual)

Ka'ono'ulu Ranch
Kaupō Community Association
Kaupō Ranch
Kī'ope Raymond (Individual)
Kīpahulu 'Ohana
Kumu A'o
Leeward Haleakalā Watershed Restoration Partnership
Ma'ano Smith (Individual)
Mahi Pono LLC
Maui County Parks Department
Na Koa Ikaika Ka Lāhui Hawai'i
Nan Cabatbat (Individual)
National Parks Conservation Association
National Trust for Historic Preservation
The Nature Conservancy
Nekaifes 'Ohana
Nu'u Mauka Ranch
Office of Hawaiian Affairs
Public Employees for Environmental Responsibility
The Royal Order of Kamehameha I - Moku O Kahekili - Helu Eha
Schuman Aviation Company, Ltd. (Makani Kai Helicopters, Magnum Helicopters)
Sunshine Helicopters, Inc.
Terry Poaipuni (Individual)
Thompson Ranch
Tweetie Lind (Individual)
'Ulupalakua Ranch
U.S. Fish and Wildlife Service
Waiehu Kou Phase 3 Association
Wananalua Congregational Church



National Trust *for*
Historic Preservation®



August 21, 2023

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
judith.walker@faa.gov
ATMPTeam@dot.gov

Submitted via email to all recipients

**Re: Request for Correction to FAA's August 14, 2023 Letter to Consulting Parties
for Air Tour Management Plan at Haleakalā National Park**

Dear Ms. Walker,

The National Trust for Historic Preservation ("NTHP") and the National Parks Conservation Association ("NPCA") write regarding the August 14, 2023 letter from the Federal Aviation Administration ("FAA") to Section 106 consulting parties, including our organizations, requesting responses within 30 days regarding whether consulting parties concur with the FAA's renewed finding of no adverse effect for the proposed Air Tour Management Plan ("ATMP") at Haleakalā National Park.

The FAA's previous letter dated July 26, 2023 had requested responses by August 11, 2023 "regarding the identification of historic properties and potential effects within the new areas of the APE." Our organizations both submitted written responses by August 11. However, the FAA's most recent letter to the consulting parties on August 14 stated that the FAA only received three responses to its July 26 letter, none of which were from our organizations. This is simply incorrect. We request that FAA circulate a correction to all consulting parties explaining that our organizations' position was misrepresented in the August 14th letter.

NTHP and NPCA both Submitted Timely Responses to the July 26 Letter

On August 11, 2023, the NTHP wrote to the FAA, stating:

"Dear ATMP Team,

In response to the revised Area of Potential Effects proposal for the Haleakala ATMP [i.e., the July 26 letter, which was attached], the National Trust for Historic Preservation continues to have concerns about the proposed undertaking, and we continue to disagree with the FAA's proposed determination of no adverse effect. Attached is a copy of our earlier letter dated April 28, 2023, describing in more detail the basis for our disagreement. We wish to continue our participation as a consulting party, but we respectfully recommend that it may be appropriate for the FAA to suspend the consultation process for the time being, in the wake of the recent tragic fires that have occurred on Maui.

Sincerely,
Betsy Merritt”¹

And on August 11, 2023,² the NPCA wrote to the FAA, stating:

“Hello FAA/Judith,
Considering the emergency situation on Maui with the fires, and the request for responses by today, we request this Haleakala 106 process be put on hold. Please let us know. Thank you,
Neal”

Since our organizations advocate on behalf of our members, including members living in Hawai‘i, on critical national park issues such as the ATMPs, we called attention to the tragic fires that have impacted communities and led President Biden to approve an emergency disaster declaration the day before on August 10, 2023. The NTHP’s August 11, 2023 response also stated its ongoing disagreement with the FAA’s proposed determination of no adverse effect, and ongoing concerns about the proposed undertaking. These comments and concerns should have been included in the FAA’s August 14th letter, in which the FAA represented to the consulting parties that it was reporting on all of the comments that it had received.

NTHP and NPCA’s Comments Were Not Reported by the FAA in its August 14, 2023 Letter to the Consulting Parties

In contrast, the FAA referenced in its August 14, 2023 letter a response it received from a consulting party who the FAA characterized as having “no comments at this time but requested that the agencies also confer with the Association of Hawaiian Civic Clubs.” It is unclear to us why the FAA would selectively mention certain consulting parties who had “no comments at this time,” but fail to mention the comments received from two highly engaged consulting parties – NPCA and NTHP – that are on record objecting to the FAA’s proposed determination of effects. The FAA’s selective reporting of responses has the effect of misleading consulting parties and subverting the Section 106 consultation by creating the false impression that our organizations, (which have been very engaged, and critical of the ATMP), were losing interest in the consultation and disengaging.

The FAA’s Omission is Part of a Troubling Pattern

The FAA has taken an unorthodox approach to this consultation that has repeatedly resulted in the exclusion of consulting parties from communications, meetings, and consideration. The ACHP has already opined that the FAA’s practice of separating the objecting consulting parties for individual meetings is inadvisable (advice the FAA has rejected), and NTHP has repeatedly stated that this “divide and conquer” approach prevents the communication of local knowledge and concerns to national organizations and vice versa. The FAA has also excluded the Historic Hawai‘i Foundation from important consultation meetings, and from all mention as an objecting party, under the pretense that their initial letter to the FAA, which explained their objections in great detail, somehow expired. Now, NTHP and NPCA find ourselves and our comments also inexplicably

¹ The NTHP email was sent at 8:42 PM Hawaii time on August 11.

² The NPCA email was sent at 9:36 AM Hawaii time on August 11.

excluded.

This pattern of excessively restrictive and exclusive actions is in stark contrast to our organization's typical experience with Section 106 consultations. It is also especially troubling given the nature of the objections being raised by the parties being excluded, which primarily ask for the adverse effects caused by this ATMP to be acknowledged in a way consistent with other ATMPs. It is unclear whether the FAA's refusal to acknowledge the adverse effects of the ATMPs in Hawai'i national parks (vs. national parks on the mainland) is a reflection of less weight being given to the objections of Native Hawaiians and Native Hawaiian Organizations (vs. Native American Tribes).³

In sum, we request that the FAA circulate a correction to its August 14 letter to include a reference to the comments received from both of our organizations in response to the FAA's July 26 letter. We hope that this incident will be the end of the pattern that we note above. Thank you very much for your consideration of our request.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel
National Trust for Historic Preservation



Chris Cody
Associate General Counsel
National Trust for Historic Preservation



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

³ *August 17, 2023 Letter from Congressman Case to the Advisory Council on Historic Preservation.* "It is unacceptable that the FAA, in the draft ATMPs for Badlands National Park and Mount Rushmore National Memorial, concedes that air tours cause additional adverse effects that make them incompatible based on concerns raised during consultation there, yet completely disregards the significant concerns raised during consultation at the Hawaii's parks."

July 26, 2023 letter from Hawai'i State Historic Preservation Division to the FAA and Advisory Council on Historic Preservation. "Despite holding numerous consultation meetings, FAA has not made a good faith effort to consult, rather they have only moved through the motions to comply with the four-step process and 36 CFR § 800. The FAA has not taken into consideration how the air tour management plan could be amended to avoid, minimize, or mitigate effects to historic properties, nor have they amended their determination of effect to consider these effects, which have been raised by the SHPO and consulting parties throughout the consultation meetings including those held recently as referenced above."

cc: Rachel Mangum and Jaime Loichinger, Advisory Council on Historic Preservation
Karen Trevino, Lead Staff for Hawai'i ATMPs, National Park Service
Alan Downer, Hawai'i State Historic Preservation Officer
Susan Lebo, Jessica Puff, and Stephanie Hacker,
Hawai'i State Historic Preservation Division
Kamakana Ferreira, Office of Hawaiian Affairs
Kiersten Faulkner, Historic Hawai'i Foundation
Olena Alec, Executive Director, Haleakalā Conservancy
Friends of Haleakalā National Park

August 22, 2023

Judith Walker
Federal Preservation Office
Senior Environmental Policy Analyst
Environment Policy Division
Federal Aviation Administration

Dear Ms. Walker,

We agree that the designated flight paths under the ATMP do not extend into the new areas of the APE. There are no or few flights in these areas under existing conditions, and no flights would be allowed in these areas under the ATMP. Furthermore, no new historic properties were identified within the expanded areas of the APE. The above analysis is valid for the DKIST location as well, and we concur with the FAA findings of No Adverse Effect.

Sincerely,

Jen Ditsler
Head of Administration & Support Facilities
National Solar Observatory
Daniel K. Inouye Solar Telescope

Cc: Charlie Fein, KC Environmental

From: [REDACTED]
To: [ATMPTeam](#)
Subject: Re: Section 106 Continuing Consultation – ATMP for Haleakalā National Park - Nu'u Mauka Ranch
Date: Monday, August 28, 2023 6:55:19 PM

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Aloha.

I have no issue with the plan as outlined. Unless things change again I'm OK with it.

Mahalo

Andy Graham

Nuu Mauka Ranch

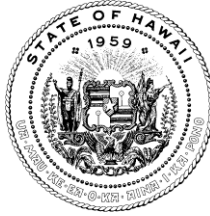
On August 14, 2023 2:08:26 PM MDT, ATMPTeam <ATMPTeam@dot.gov> wrote:

Dear Andy Graham:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation under Section 106 of the National Historic Preservation Act for the development of an air tour management plan (ATMP) for Haleakalā National Park. The FAA is continuing consultation on the ATMP at this time due to a minor scope change that expanded the area of potential effects (APE). The attached letter details the finding of effects analysis for the undertaking within the expanded APE.

Please review the information and respond whether you concur with the proposed finding within 30 days of receiving this letter. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Best regards,
Judith Walker



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
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

August 29, 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.: 2308SH09
Archaeology
Architecture

Dear Judith Walker:

SUBJECT: **National Historic Preservation Act (NHPA) Section 106 Review –
Revised Area of Potential Effects 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, Kipahulu, Kaupō, Honua'ula, and Kahikinui Districts,
Island of Maui
TMK: (2) various**

On July 26, 2023, the State Historic Preservation Division (SHPD) received a letter from the U.S. Department of Transportation, Federal Aviation Administration (FAA) to continue the Section 106 historic preservation process and to notify the State Historic Preservation Officer (SHPO), and request an expedited review, of the revised Area of Potential Effects for the Development of an Air Tour Management Plan for Haleakalā National Park on the island of Maui (HICRIS Submission No. 2022PR00396.016). On August 14, 2023, the SHPD received another letter from FAA requesting the SHPO's concurrence with the effect determination (HICRIS Submission 2022PR000396.017).

The proposed project, in coordination with the National Park Service (NPS), 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. The project proposes to develop an Air Tour Management Plan (ATMP) for Haleakalā National Park (Park).

According to the letter received, the Park has recently acquired new parcels that expand the Park boundary, and the ATMP planning area (the Park and a ½-mile buffer around the Park) was therefore expanded. When reviewing the changes needed for new parcels, the NPS also found other small parcels that needed to be added to the maps and consequently expanded the ATMP planning area. Therefore, the agencies are adjusting the APE to include the areas of expanded buffer. The FAA's July 26, 2023 letter requests comments regarding the identification of historic properties and potential effects within the new areas of the APE. The FAA's August 14, 2023 letter states that no historic properties were newly identified through consultation. It also states that the parcels that have been acquired by the Park and added to the maps were already within the APE; the agencies simply adjusted the APE to include the updated ATMP planning area boundaries as a result of these acquisitions.

Haleakalā has been determined to be a Traditional Cultural Property (TCP). As stated by FAA, commercial air tours, by their nature, have the potential to impact resources for which feeling and setting are contributing elements. The

ATMP includes a provision for the NPS to establish temporary no-fly periods for special events, such as native Hawaiian ceremonies or other similar events, with a minimum of two months' notice to the operators.

Based on the information provided by FAA, and comments provided by consulting parties, **the SHPO does not concur** with FAA's determination that the proposed Air Tour Management Plan will have *no adverse effect* on historic properties. **The SHPO has determined** that the proposed plan will result in an *adverse effect* to TCPs and traditional cultural practices.

Federal agencies are required to avoid, minimize, or mitigate adverse effects. Please note that if the federal agency and the SHPO concur that the adverse effect cannot be avoided, the Section 106 process will not conclude until the consultation process is complete, an MOA is developed, executed, and implemented, and if applicable, the formal comments of the Advisory Council on Historic Preservation have been received, pursuant to 36 CFR § 800.6.

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 to Project No. 2022PR00396 using the Project Supplement option.

The FAA and the 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 (808) 462-3083 or at Jessica.Puff@hawaii.gov for matters related to the identification of historic places, architectural resources, or the built environment. Please contact 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

From: [ATMPTeam](#)
To: [ATMPTeam](#)
Cc: [Walker, Judith <FAA>](#); [REDACTED]

Bcc: [REDACTED]

Subject: Section 106 Continuing Consultation – ATMP for Haleakalā National Park
Date: Friday, September 1, 2023 1:07:21 PM
Attachments: [ATMP Boundary Expansion Effect Letter HI SHPD.pdf](#)

Dear Consulting Party:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), is continuing consultation under Section 106 of the National Historic Preservation Act for the development of an air tour management plan (ATMP) for Haleakalā National Park. On August 14, 2023, the FAA sent you the attached letter that details the finding of effects analysis for the undertaking within the expanded area of potential effects (APE).

The agencies understand that consulting parties on this project may be directly impacted by the devastating wildfires on Maui or involved in the efforts to support their community during this tragedy. Therefore, the FAA is extending the review period for this letter an additional 30 calendar days.

The FAA received two additional consulting party responses to the July 27, 2023, APE letter for the expanded boundary that were not noted in the August 14, 2023 finding of effects letter and are providing summaries of those comments to consulting parties. The National Parks Conservation Association (NPCA) requested that the Section 106 process for Haleakalā National Park be put on hold due to the emergency situation on Maui. The National Trust for Historic Preservation also sent a request to suspend the consultation process and attached their objection to the agencies' March 27, 2023, proposed finding of no adverse effect.

We appreciate your participation in this process and ask that you review the information and respond whether you concur with the proposed finding by **October 15, 2023**. Should you have any questions regarding any of the above, please contact Judith Walker at 202-267-4185 or Judith.Walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Best regards,
Judith Walker

5 September 2023

Aloha Ms. Walker,

Mahalo for the opportunity to respond to your letter of September 1, 2023. I was certain I had submitted comments on the Haleakalā ATMP previous to July 30, but I must have been mistaken. My comments of July 30 and, the comments in this letter, should apply to the entire process, please.

I would like to clarify something I read in your letter. The letter quotes me as having written, “In a July 30, 2023, email, Ki’ope Raymond noted that he does not believe the ATMP sufficiently protects the visitor experience, Wilderness character of the Park, or historic and culturally sensitive properties in or near the Park from the visual and noise disturbance from air tours. Mr. Raymond requested that air tours not be allowed to fly over or near historic trails that are part of or extensions of the Park’s wilderness trail system.” That statement is correct. However, I would like to make clear that when I wrote of protecting the “visitor” experience I was also including any native Hawaiian religious practitioner’s experience; not only tourists visiting the Park. Not all visitors to the Park are native Hawaiian religious practitioners but all native Hawaiian religious practitioners are visitors to the Park. I would rather it convey, “....he does not believe the ATMP sufficiently protects the visitor, *especially native Hawaiian religious practitioners, experience.*”?

I am observing a growing commitment on the part of native Hawaiians to reconnect to Hawaiian religious practices. I believe it can be anticipated that audible elements that disrupt religious practices in the future, destroying the sanctity of Haleakalā, will be even more of a concern than they already are. I believe now is the time for as sincere and as complete an abatement of audible impacts to Haleakalā as possible.

Noise disturbance particularly is an affront to, and has an adverse affect on, some Hawaiian religious practices. The National Park Service in its publication, “PU’UKOHOLA HEIAU NHS • KALOKO-HONOKOHAU NHP • PU’UHONUA O HONAUNAU NHP, A Cultural History of Three Traditional Hawaiian Sites on the West Coast of Hawai’i Island” states in the section regarding religion, “High officials declared general kapu and had them publicly announced. On specific nights of every lunar month, rituals and sacrifices took place at the temple of each major deity. During a strict kapu period, when the ruler especially needed the favor of the deities, *absolute silence was mandated* in order not to break the sacred spell of the rites. All human activity ceased, no fires were built, domestic animals were shut away or muzzled, and everyone except priests remained indoors.” And, the scholastic literature is replete with references to “silence” necessary to effectuate Hawaiian religious ceremony.

In reading the statement, “The restrictions under the ATMP would also reduce the likelihood that an air tour would interrupt Native Hawaiian traditional practices.”, I am concerned that to merely “reduce the likelihood” of interrupting Native Hawaiian traditional practices is not proactive enough to satisfy Section 106.

Me ka mahalo a me ke aloha,

Stanley Ki’ope Raymond





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

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

NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

September 29, 2023

Re: Continuing Consultation under Section 106 of the National Historic Preservation Act for the development of an Air Tour Management Plan for Haleakalā National Park

Betsy Merritt
Deputy General Counsel
National Trust for Historic Preservation
2600 Virginia Ave. NW, Ste 1100
Washington, D.C. 20037

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

Greetings:

The FAA is in receipt of the National Parks Conservation Association (NPCA) and the National Trust for Historic Preservation (NTHP) requests to put the Section 106 Process on hold as well as their concerns regarding the Section 106 consultation process. This letter is in response to the misrepresentations and request made by the NTHP and the NPCA in their August 21, 2023, letter.

On July 26, 2023, due to a minor scope change that expanded the area of potential effects (APE) at Haleakalā National Park, the Federal Aviation Administration (FAA) in coordination with the National Park Service (NPS) requested input from the consulting parties regarding identifying historic properties and any potential effects within the new areas of the APE. The FAA had not assessed the effects of the undertaking within the new APE yet. The FAA requested a response by August 11, 2023.

The National Parks Conservation Association (NPCA) Request

On August 11, 2023, the NPCA requested that the Section 106 process for Haleakalā National Park be put on hold due to the emergency situation on Maui. Because the agencies are completing this ATMP under court supervision in the matter *In Re: Public Employees for Environmental Responsibility (PEER)*, 957 F.3d 267 (D.C. Cir. (2020) and must complete it by December 31, 2023, the agencies asked counsel for PEER if they had any objection to extending the timeframe by thirty days to accommodate the requests for a hold to the Section 106 process due to the Maui fires. With PEER's agreement, the agencies requested a thirty-day extension to the process, which the Court granted. Consequently, the agencies have extended the consulting party review period 30 days for the proposed finding of no adverse effect for the undertaking. Comments concurring or objecting to the proposed finding are now due on Oct. 15, 2023. Although the agency was not required to, a summary of the NPCA's request was included in the notification to all consulting parties that the review period for the proposed finding was extended.

The National Trust for Historic Preservation (NTHP) Comment

The NTHP's comments were not included in the agencies finding of effect letter that was sent to the consulting parties on August 14, 2023, because the submission was late. The emailed submission was received on August 12, 2023. The NTHP late submission included a request to suspend the consultation process and attached the NTHP's earlier objection to the agencies earlier proposed finding of no adverse effect. Although the agency was not required to, a summary of the NTHP's letter was included in the notification to all consulting parties that the review period for the proposed finding was extended.

NTHP and NPCA Misstatements

The NTHP and the NPCA state that the "FAA has taken an unorthodox approach to this consultation that has repeatedly resulted in the exclusion of consulting parties from communications, meetings, and consideration." This statement is not supported by the facts. The FAA has been very transparent in carrying out its Section 106 obligations with respect to this undertaking.

The FAA initiated consultation with consulting parties for the undertaking (ATMP) in April 2021. The FAA sent a preliminary APE and property identification list to all the consulting parties on Oct. 31, 2022. As a result of consultation party meeting for the ATMP for Haleakalā National Park held on November 10, 2022, the APE was revised. The FAA sent to all consulting parties a description of the revised APE, a map of the revised APE, a revised historic property list, written responses to consulting party questions that were raised at the consulting party meeting, and a request for input. The FAA did not receive any comments or concerns regarding the revised APE. The FAA included any additional properties identified by the consulting parties in the revised APE in subsequent consultation. On March 27, 2023, the FAA sent a letter with the proposed finding of effect for the undertaking to all the consulting parties in accordance with 36 CFR § 800.5(c). The letter requested that the consulting parties state whether they concur with the proposed finding within 30 days of receipt of the letter. The FAA held an informational meeting for all the consulting parties to explain how the agency assessed effects and arrived at the proposed finding. The FAA made clear to the consulting parties that these meetings were informational and that any objections to the proposed finding needed to be in writing and submitted within 30 days of receipt of the finding of effect letter. The FAA responded to questions raised at the informational meeting both verbally and in writing. The only time the FAA met with consulting parties individually was if the party objected to the proposed finding. This was done in order to resolve objections.

The NTHP and the NPCA characterize the FAA consultations with objecting parties as "a divide and conquer approach." This characterization is not accurate. The FAA was not required to conduct consultation with the objecting parties at all. Furthermore, the FAA's consultation with each objecting party is supported in the Section 106 regulations (see 36 CFR § 800.5(c)(2)) and allowed the FAA to conduct meaningful consultation with all consulting parties. When the agencies held consultation meetings that included all of the objecting parties, some individual objectors were not able to discuss their concerns. In one case, comments from one of the objecting parties only served to add confusion to the discussion the agency was having with another objecting party. The FAA found that consultation with each objecting party individually allowed that party and the FAA to conduct meaningful consultation with the goal of resolving the disagreement related to the proposed finding. While the NTHP and the NPCA note the Advisory Council on Historic Preservation's (ACHP)

recommendation¹, it is also important to note that the ACHP acknowledged that the FAA including additional consulting parties in the consultation(s) with the objecting parties was discretionary.

The NTHP and the NPCA contend that the FAA excluded the Historic Hawai'i Foundation (HHF) "from important consultation meetings, and from all mention as an objecting party, under the pretense that [HHF's] initial letter to the FAA, which explained their objections in great detail, somehow expired." This is factually inaccurate. All consulting parties, including HHF, have been invited to consulting party meetings and informational meetings for this undertaking. In a letter dated Nov. 18, 2022, the HHF provided input on the initial APE for the undertaking at Haleakalā National Park and the request for the identification of properties. The HHF has also attended consulting party meetings as well as informational meetings for the undertaking at the Park. The FAA responded in writing to all of the concerns the HHF had raised in its letter and comments made during meetings regarding the undertaking in letters dated February 10, 2023, and April 28, 2023. The FAA's responses were sent to all the consulting parties. The HHF did not raise any additional issues or provide any additional comments on the Section 106 process for this undertaking. The FAA did not treat the HHF as an objecting party because the HHF did not object to the agency's proposed finding of no adverse effect, nor have they provided any indication that their past concerns had not been addressed. The HHF, like some other consulting parties, did not respond to the FAA's request for concurrence on the proposed finding of no adverse effect regarding assessment of effects of the undertaking on historic properties within the APE. The HHF, as well as all the other consulting parties, has had every opportunity afforded under the Section 106 regulations to provide input on the undertaking and concur or object to the proposed finding the agency had made.

Finally, the NPCA and the NTHP assert that the FAA has "refused to acknowledge the adverse effects caused by this ATMP in a way consistent with other ATMPs." The NPCA and NTHP go on to state that "it is unclear whether the FAA's refusal to acknowledge the adverse effects of the ATMPs in Hawai'i national parks (vs. national parks in the mainland) is a reflection of less weight being given to the objections of Native Hawaiians and Native Hawaiian Organizations (vs. Native American Tribes)." This claim is not supported by facts. Under the National Parks Air Tour Management Act, (NPATMA) the FAA in cooperation with the NPS must develop an air tour management plan (ATMP) or voluntary agreement (VA) for each park where commercial air tour operations occur or are proposed. The agencies have completed ten ATMPs covering thirteen parks, not including Badlands National Park, Mount Rushmore National Memorial, and Hawai'i Volcanoes National Park, all of which are scheduled to be completed by Dec. 31, 2023, as well as Haleakalā National Park, which is now scheduled to be completed by January 30, 2024. For all the ATMPs that have been completed, the FAA has been consistent in how the effects of the undertaking on historic properties were assessed under Section 106. The FAA found that none of the completed ATMPs had an adverse effect on historic properties. Furthermore, most of the completed ATMPs retain some level of air tour operations.

¹ The ACHP advised that 36 CFR § 800.5(c)(2)(i) does not require the agency to consult with only consulting parties that objected to the agency's proposed finding of no adverse effect. The FAA could at its discretion, invite all parties who have been participating in the consultations with the FAA throughout the Section 106 process to the consultations with objecting parties.

The FAA will continue to comply with the National Historic Preservation Act and the Section 106 process. Should you have any questions regarding the Section 106 process for Haleakalā National Park, please feel free to contact me at judith.walker@faa.gov and copy the ATMP team at ATMPTeam@dot.gov.

Sincerely,

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

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

cc: Chris Cody, National Trust for Historic Preservation
Rachel Mangum, Advisory Council on Historic Preservation
Jaime Loichinger, Advisory Council on Historic Preservation
Alan Downer, Hawai'i State Historic Preservation Officer
Susan Lebo, Hawai'i State Historic Preservation Division
Jessica Puff, Hawai'i State Historic Preservation Division
Stephanie Hacker, Hawai'i State Historic Preservation Division
Kamakana Ferreira, Office of Hawaiian Affairs
Kiersten Faulkner, Historic Hawai'i Foundation
Olena Alec, Haleakalā Conservancy
Matt Wordeman, Friends of Haleakalā National Park

From: [Betsy Merritt](#)
To: [ATMPTeam](#)
Cc: [Walker, Judith <FAA>](#); [REDACTED]

Subject: RE: Section 106 Continuing Consultation – ATMP for Haleakalā National Park
Date: Monday, October 16, 2023 7:50:13 PM
Attachments: [NTHP-NPCA letter to FAA re Requested Correction HALE ATMP Sec106 8-19-23.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.

On behalf of the National Trust for Historic Preservation and the National Parks Conservation Association (NPCA), I am writing to confirm our disagreement with the FAA's proposed finding of No Adverse Effect for the draft Air Tour Management Plan (ATMP) at Haleakala National Park, pursuant to 36 C.F.R. 800.5(c)(2)(i). Since the date by which the FAA requested a response to its September 1 email fell on a Sunday (October 15), we are submitting this response on the next business day. We appreciate the FAA's acknowledgement in the email below that comments from the National Trust and NPCA had been omitted from the FAA's August 14, 2023 letter, and the FAA provided one-sentence summaries of those comments (which had been submitted to the FAA by email on August 11, 2023).

In addition, I am attaching a four-page letter that was sent jointly by the National Trust and NPCA on August 19, 2023, which criticized the FAA for failing to acknowledge our August 11 comments in the FAA's August 14 letter. Our joint August 19 letter also reiterates in detail the basis for our disagreement with the proposed No Adverse Effect finding, and includes quotes from Congressman Ed Case and the Hawaii State Historic Preservation Office, which also criticized the proposed No Adverse Effect finding.

We continue to stand behind our disagreement, and we urge the FAA to revise its finding in order to acknowledge the potential for adverse effects as a result of this ATMP.

In the event that the FAA declines to modify its proposed No Adverse Effect determination, we await notification of the FAA's referral to the Advisory Council on Historic Preservation, pursuant to 36 C.F.R. 800.5(c)(2)(i).

Thank you for considering these comments from the National Trust and NPCA.

Sincerely,
Betsy Merritt

Elizabeth S. Merritt, Deputy General Counsel
National Trust for Historic Preservation
600 14th St. NW, Suite 500
Washington, DC 20005
emerritt@savingplaces.org



National Trust *for*
Historic Preservation®



August 19, 2023

Judith Walker
Federal Preservation Officer
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
judith.walker@faa.gov
ATMPTeam@dot.gov
Submitted via email to all recipients

Re: Request for Correction to FAA's August 14, 2023 Letter to Consulting Parties for Air Tour Management Plan at Haleakalā National Park

Dear Ms. Walker,

The National Trust for Historic Preservation ("NTHP") and the National Parks Conservation Association ("NPCA") write regarding the August 14, 2023 letter from the Federal Aviation Administration ("FAA") to Section 106 consulting parties, including our organizations, and requesting responses within 30 days regarding whether consulting parties concur with the FAA's renewed finding of no adverse effect for the proposed Air Tour Management Plan ("ATMP") at Haleakalā National Park.

The FAA's previous letter dated July 26, 2023 had requested responses by August 11, 2023 "regarding the identification of historic properties and potential effects within the new areas of the APE." Our organizations both went out of our way to submit written responses by August 11, even though we didn't have specific information about newly identified historic properties or effects within the expanded areas of the APE, because of the FAA's previous action in which it excluded the Historic Hawaii Foundation ("HHF") from the consultation process simply because HHF had assumed that its earlier comment letter describing its objections in thorough detail was still in effect, and did not submit a new comment reiterating its concerns. The FAA's response to HHF's reliance on its earlier letter was wrong. But we didn't want to risk being subjected to a similar penalty from the FAA, so we submitted responses on August 11, even though they weren't very detailed.

The FAA's August 14 letter specifically stated that it received responses to its July 26 letter from only three consulting parties. **However, this statement from the FAA is incorrect because our organizations both submitted timely responses to the FAA's July 26 letter, but the August 14 letter failed to acknowledge or mention those two timely responses. The FAA's selective reporting of responses has the effect of misleading consulting parties and subverting the Section 106 consultation by creating the false impression that our organizations, (which have been very engaged, and critical of the ATMP), were losing interest in the**

consultation and disengaging. We write to seek an immediate correction from the FAA, and we ask the FAA to circulate a corrected letter to all consulting parties.

On August 11, 2023,¹ the NTHP wrote to the FAA, stating:

“Dear ATMP Team,

In response to the revised Area of Potential Effects proposal for the Haleakala ATMP [i.e., the July 26 letter, which was attached], the National Trust for Historic Preservation continues to have concerns about the proposed undertaking, and we continue to disagree with the FAA's proposed determination of no adverse effect. Attached is a copy of our earlier letter dated April 28, 2023, describing in more detail the basis for our disagreement.

We wish to continue our participation as a consulting party, but we respectfully recommend that it may be appropriate for the FAA to suspend the consultation process for the time being, in the wake of the recent tragic fires that have occurred on Maui.

Sincerely,
Betsy Merritt”

And on August 11, 2023,² the NPCA wrote to the FAA, stating:

“Hello FAA/Judith,

Considering the emergency situation on Maui with the fires, and the request for responses by today, we request this Haleakala 106 process be put on hold. Please let us know. Thank you,
Neal”

Since our organizations advocate on behalf of our members, including members living in Hawai‘i, on critical national park issues such as the ATMPs, we called attention to the tragic fires that have impacted communities and led President Biden to approve an emergency disaster declaration the day before on August 10, 2023. The NTHP’s August 11, 2023 response also stated its ongoing disagreement with the FAA’s proposed determination of no adverse effect, and ongoing concerns about the proposed undertaking. The NTHP attached and resubmitted to the FAA its April 28, 2023 letter describing its concerns in detail.

None of this was reported by the FAA in its August 14, 2023 letter to the consulting parties and the other agencies.

In contrast, the FAA referenced in its August 14, 2023 letter a response it received from a consulting party who the FAA characterized as having “no comments at this time but requested that the agencies also confer with the Association of Hawaiian Civic Clubs.” It is

¹ The NTHP email was sent at 8:42 PM Hawaii time on August 11.

² The NPCA email was sent at 9:36 AM Hawaii time on August 11.

unclear to us why the FAA would selectively mention certain consulting parties who had “no comments at this time,” but fail to mention the comments received from two highly engaged consulting parties – NPCA and NTHP – that are on record objecting to the FAA’s proposed determination of effects.

It is also unclear whether the FAA’s refusal to acknowledge the adverse effects of the ATMPs in Hawai‘i national parks (vs. national parks on the mainland) is a reflection of less weight being given to the objections of Native Hawaiians and Native Hawaiian Organizations (vs. Native American Tribes).³

In sum, we request that the FAA correct and reissue its August 14 letter to include a reference to the comments received from both of our organizations in response to the FAA’s July 26 letter. Thank you very much for your consideration of our request.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel
National Trust for Historic Preservation



Chris Cody
Associate General Counsel
National Trust for Historic Preservation



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

³ *August 17, 2023 Letter from Congressman Case to the Advisory Council on Historic Preservation.* “It is unacceptable that the FAA, in the draft ATMPs for Badlands National Park and Mount Rushmore National Memorial, concedes that air tours cause additional adverse effects that make them incompatible based on concerns raised during consultation there, yet completely disregards the significant concerns raised during consultation at the Hawaii’s parks.”

July 26, 2023 letter from Hawai‘i State Historic Preservation Division to the FAA and Advisory Council on Historic Preservation. “Despite holding numerous consultation meetings, FAA has not made a good faith effort to consult, rather they have only moved through the motions to comply with the four-step process and 36 CFR § 800. The FAA has not taken into consideration how the air tour management plan could be amended to avoid, minimize, or mitigate effects to historic properties, nor have they amended their determination of effect to consider these effects, which have been raised by the SHPO and consulting parties throughout the consultation meetings including those held recently as referenced above.”

cc: Rachel Mangum and Jaime Loichinger, Advisory Council on Historic Preservation
Karen Trevino, Lead Staff for Hawai'i ATMPs, National Park Service
Alan Downer, Hawai'i State Historic Preservation Officer
Susan Lebo, Jessica Puff, and Stephanie Hacker,
Hawai'i State Historic Preservation Division
Kamakana Ferreira, Office of Hawaiian Affairs
Kiersten Faulkner, Historic Hawai'i Foundation
Olena Alec, Executive Director, Haleakalā Conservancy
Friends of Haleakalā National Park