



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

December 7, 2023

Re: Response to the Advisory Council on Historic Preservation's Opinion Pursuant to 36 CFR 800.5(c)(3)(ii)(B) on the Federal Aviation Administration's Proposed Finding of No Adverse Effect on Historic Properties from the Implementation of an Air Tour Management Plan for Haleakalā National Park (ACHP Project Number: 020182)

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

Dear Ms. Loichinger:

Thank you for your advisory opinion dated November 20, 2023, in response to the Federal Aviation Administration's (FAA) request for the Advisory Council on Historic Preservation's (ACHP) review of the proposed finding of no adverse effect for the undertaking (ATMP) at Haleakalā National Park (Park). After careful review of the ACHP advisory opinion, the FAA is confirming the finding that implementing the ATMP at the Park would have no adverse effect. The FAA respectfully disagrees with the rationale in the ACHP opinion for the reasons stated below.

Property Identification:

The ACHP states that the FAA omitted documentation on the identification of historic properties, specifically failing to identify the entire Park as eligible for listing on the National Register of Historic Places (National Register) as a Traditional Cultural Property (TCP) and in so doing failed to meet the documentary standards stated in 36 CFR § 800.11(e)(3). The FAA did identify the entire Park as a TCP eligible for listing on the National Register on Attachment C in the Finding of Effect letter and met the documentary standards in the Section 106 regulations. The entire Park was depicted as a TCP on the initial area of potential effects (APE) map that showed the ATMP planning area (see Exhibit 4 of the FAA's Request for ACHP Review letter, dated October 18, 2023). Through consultation, the APE was expanded to include areas beyond the ATMP planning area and the notation that the entire Park was considered a TCP was inadvertently left off the revised APE maps. The Haleakalā Summit TCP noted in Attachment C includes the entire Park. The FAA identified historic properties listed in Attachment C and

their significant characteristics through consultation. Specifically, in prior consultation SHPD identified the significant features included in the description of the Haleakalā Summit TCP in Attachment C in a January 3, 2007, letter to FAA, noting that the TCP included the Haleakalā Summit, Kīpahulu Valley, and Kaupō Gap, and that the “...summit as well as the larger National Park Boundaries clearly provide an “experience” of place...”.¹ While the significant features description in Attachment C could have clarified that the Haleakalā Summit TCP included the entire Park, it was noted in the body of the Finding of Effect letter, and the effects evaluation consistently noted the TCP in the discussion of each noise point. Section 800.11(e)(3), requires, in pertinent part, that the finding of adverse effect documentation include “a description of the affected historic properties, including information on the characteristics that qualify them for the National Register.” The FAA met those standards by identifying the characteristics of the Haleakalā Summit TCP in Attachment C and stating that the Haleakalā Summit TCP encompasses the entire Park in the Finding of Effect letter.

Assessment of Effects:

The ACHP alleges that the FAA did not adequately assess the effects of the undertaking because the agency did not consider the entire Park as a TCP and the agency did not apply the correct standard in the regulation in assessing the effects of the undertaking.

The FAA acknowledges that 36 CFR § 800.5(a)(2)(v) provides examples of adverse effects and is not an exhaustive list. However, as the FAA explained in the Finding of Effect letter, in assessing the effects of the undertaking on historic properties within the APE, the standard the FAA used was whether implementing the ATMP would alter the characteristics that qualify the property for eligibility for listing or inclusion on the National Register in accordance with 36 CFR § 800.5(a)(1). Due to the nature of the undertaking, in determining whether an effect was adverse, the agency analyzed whether implementing the ATMP would introduce visual or audible elements or change the character of the property within the setting that contributes to its historic significance in a manner that would diminish the integrity of the property. The ACHP suggests that “other changes” may also result in an adverse effect, however, the ACHP does not state what those changes are. Additionally, the ACHP suggests that the FAA consider how the “undertaking would increase effects from these activities,” but the assessment of effects shows that the undertaking would not cause an adverse effect on historic properties within the APE.

The ACHP alleges that had the FAA depicted the entire Park as a TCP on a map, “it would have shown that the four route segments do fly directly over an NRHP-eligible TCP [presumably the Park] and in these areas, the FAA does not meet its stated attempt to *avoid noise sensitive resources, including historic properties* as overflights over the Park as an historic property would not be avoided.” As stated in the Finding of Effect letter, the undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The undertaking also would not limit access to or change ceremonial use of Native Hawaiian sacred sites, ethnographic resources, or TCPs. The FAA focused its assessment on whether the undertaking would cause adverse effects, applying the standard in 36 CFR § 800.5(a)(1) rather than focusing the assessment on avoiding noise-sensitive resources.

As detailed in the Finding of Effect letter, the assessment of effects of the undertaking showed that on those days that air tour operations are authorized (under the ATMP there are approximately 104 no-fly

¹ The FAA’s recent consultation efforts are included in the FAA’s request for ACHP to review its finding for this Park, Exhibits 1-10. While the current documentation goes back to the initiation of Section 106 in March 2021, the FAA also took prior consultation efforts into consideration.

days), noise intensity and/or duration is reduced over the *entire Park (i.e., the entire TCP)* compared to existing conditions. In other words, the assessment of effects of the undertaking showed that the implementation of the undertaking would not alter directly or indirectly any of the characteristics of any historic property within the APE, including the Haleakalā Summit TCP, that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association.

The ACHP contends that since a TCP study was not done to identify resources contributing to the Park TCP (Haleakalā Summit TCP), the FAA "cannot conclude that its proposed flight path for air tours would avoid effects from noise and visual intrusions to characteristics of the historic property that qualify it for inclusion in the NHRP." Although the FAA and National Park Service (NPS) agree that a TCP study could be beneficial, completing a study would not change the proposed finding of no adverse effect for implementing the ATMP at the Park. The undertaking only has the potential to adversely affect historic properties that have a quiet or natural setting, and/or viewshed as a character defining feature. As stated above, the evaluation of effects of the undertaking showed that noise intensity and/or duration is reduced over the entire Park compared to existing conditions. Because the ATMP reduces the number and the frequency of air tour operations over the Park, visual effects are greatly reduced as well. So even if a study was conducted and additional properties identified where setting and feeling and/or viewshed were significant characteristics of the property, implementing the ATMP would not cause an adverse effect on those properties.

Consultation:

The ACHP recommends that the FAA include all consulting parties in meetings with objecting parties when the agency is trying to resolve objections in accordance with 36 CFR § 800.5(c)(2). The stated purpose of consultation in 36 CFR § 800.5(c)(2) is to resolve objections. In accordance with that purpose, the FAA at its discretion, conducted consultation solely with the objecting party and found this to be the most effective method to resolve objections. The FAA agrees with the ACHP that "consultation is most effective when it is open and transparent and keeping all consulting parties apprised of efforts to resolve disputes is one method for doing so." However, in consultations where, as here, there are a large number of consulting parties (more than 60), the FAA found that there were more effective ways to keep consulting parties informed of the status and substance of consultations with objecting parties than including them in the meetings. With respect to the consultations the agency conducted with objecting parties for this undertaking, the FAA informed all objecting parties of the status of all objections once the consultations had concluded. Furthermore, in accordance with the regulations, the FAA notified the public as well as the consulting parties of the objections and provided them with access to the actual objection(s) and the agency's responses to them.

Recommendations:

1. The ACHP recommends that the FAA reconsider its no adverse effect finding and conduct a TCP study of the Park. For the reasons stated above the FAA affirms its finding of no adverse effect and respectfully declines to conduct a TCP study at this time. While the FAA and the NPS agree that conducting a TCP study might be beneficial, the agencies are required to bring the Park into compliance with NPATMA by January 30, 2024, and completion of both the study and the ATMP process cannot be accomplished by this court mandated deadline.
2. The ACHP recommends that the FAA consider conducting an after-action analysis detailing how the Section 106 reviews were conducted for ATMPs completed for other parks. The FAA will

consider conducting an after-action analysis to review the agency's Section 106 process for the ATMPs, identify best practices, areas of improvement and whether the Section 106 process was used appropriately by consulting parties, after the completion of all ATMPs or voluntary agreements for the parks.

3. The ACHP recommends that the FAA include all consulting parties in consultation meetings with objecting parties. For the reasons stated above, the FAA respectfully declines to include all consulting parties in consultation meetings with objecting parties.

After careful consideration of the ACHP's advisory opinion, the FAA is confirming its finding that the ATMP for Haleakalā National Park would have no adverse effect on historic properties within the APE.

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

Sincerely,



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

CCs: Olena Alec, Haleakalā Conservancy
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Jessica Puff, Hawai'i SHPD
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Enclosure

Exhibit 1 – ACHP Opinion Letter, dated November 20, 2023