

**Exhibit 3 – Letter re Historic Property Identification,
dated October 26, 2023, and Responses**



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

October 26, 2023

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

Richard Begay
Tribal Historic Preservation Officer
Navajo Nation
PO Box 4950
Window Rock, AZ 86515

Dear Tribal Historic Preservation Officer Begay:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated May 21, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

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

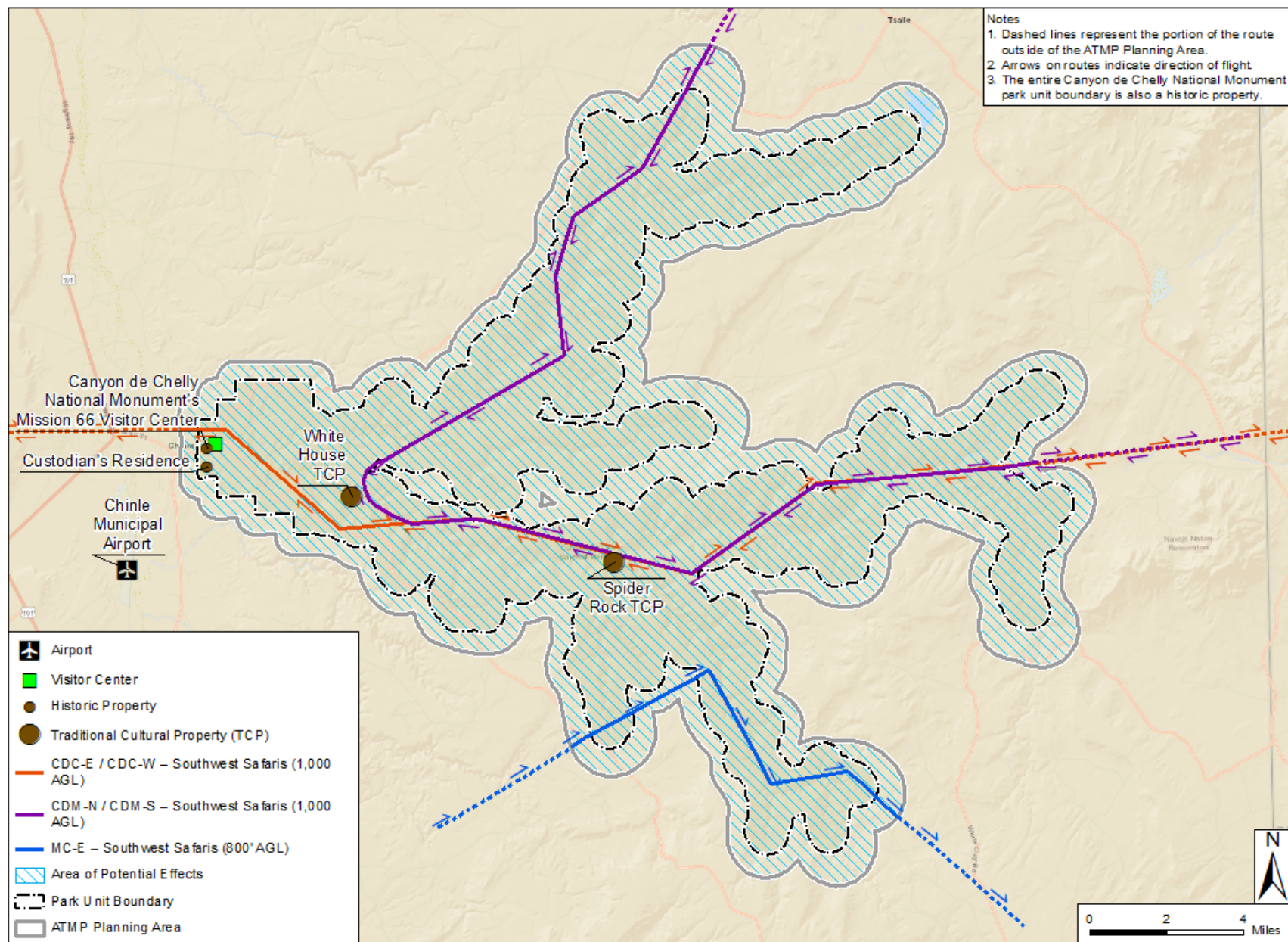
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. Many of the sites are cliff dwellings containing large amounts of dry, cultural debris. In addition, 18th, 19th and 20th century A.D. sites of Navajo occupancy remain in the monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of brightly colored sandstone walls and rock promontories that tower above sinuous bands of vegetation and agricultural fields along the narrow canyon floors. Canyon rim overlooks provide breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



United States Department of Transportation
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NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

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

Shanna Pearce
Planning and Zoning Assistant
Apache County (Cities of Chinle and Del Muerto)
75 West Cleveland
St. Johns, AZ 85936

Dear Ms. Pearce:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated August 6, 2021. In a follow-up letter dated June 2, 2023, we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

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The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

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

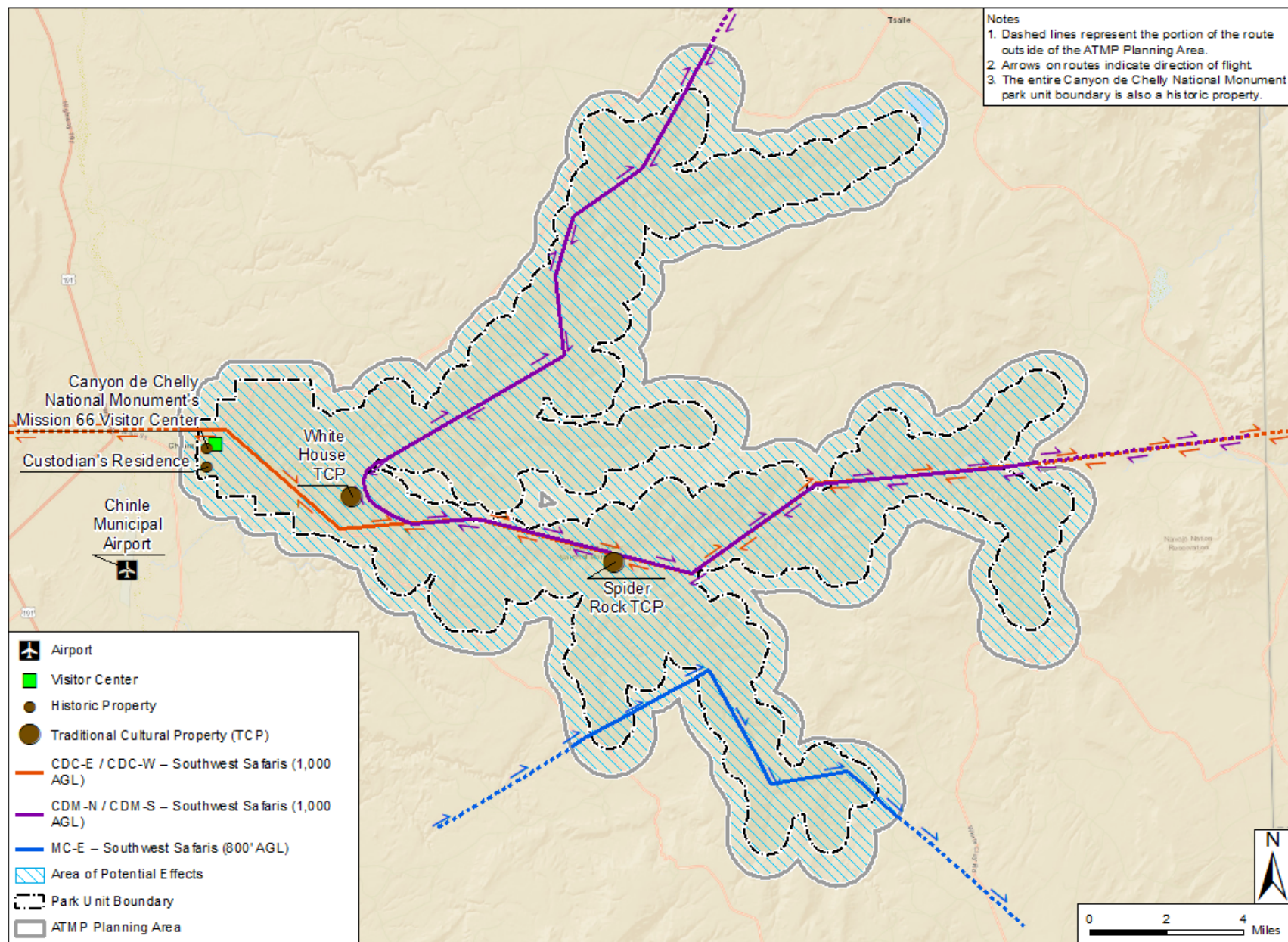
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
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ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

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Hopi Tribe of Arizona
Kewa Pueblo
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Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
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¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

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Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. Many of the sites are cliff dwellings containing large amounts of dry, cultural debris. In addition, 18th, 19th and 20th century A.D. sites of Navajo occupancy remain in the monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of brightly colored sandstone walls and rock promontories that tower above sinuous bands of vegetation and agricultural fields along the narrow canyon floors. Canyon rim overlooks provide breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

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NATIONAL PARKS AIR TOUR MANAGEMENT PROGRAM

October 26, 2023

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

Ernie Atencio
Southwest Regional Director
National Parks Conservation Association – Arizona
PO Box 2896
Santa Fe, NM 87504

Dear Ernie Atencio:

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On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

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

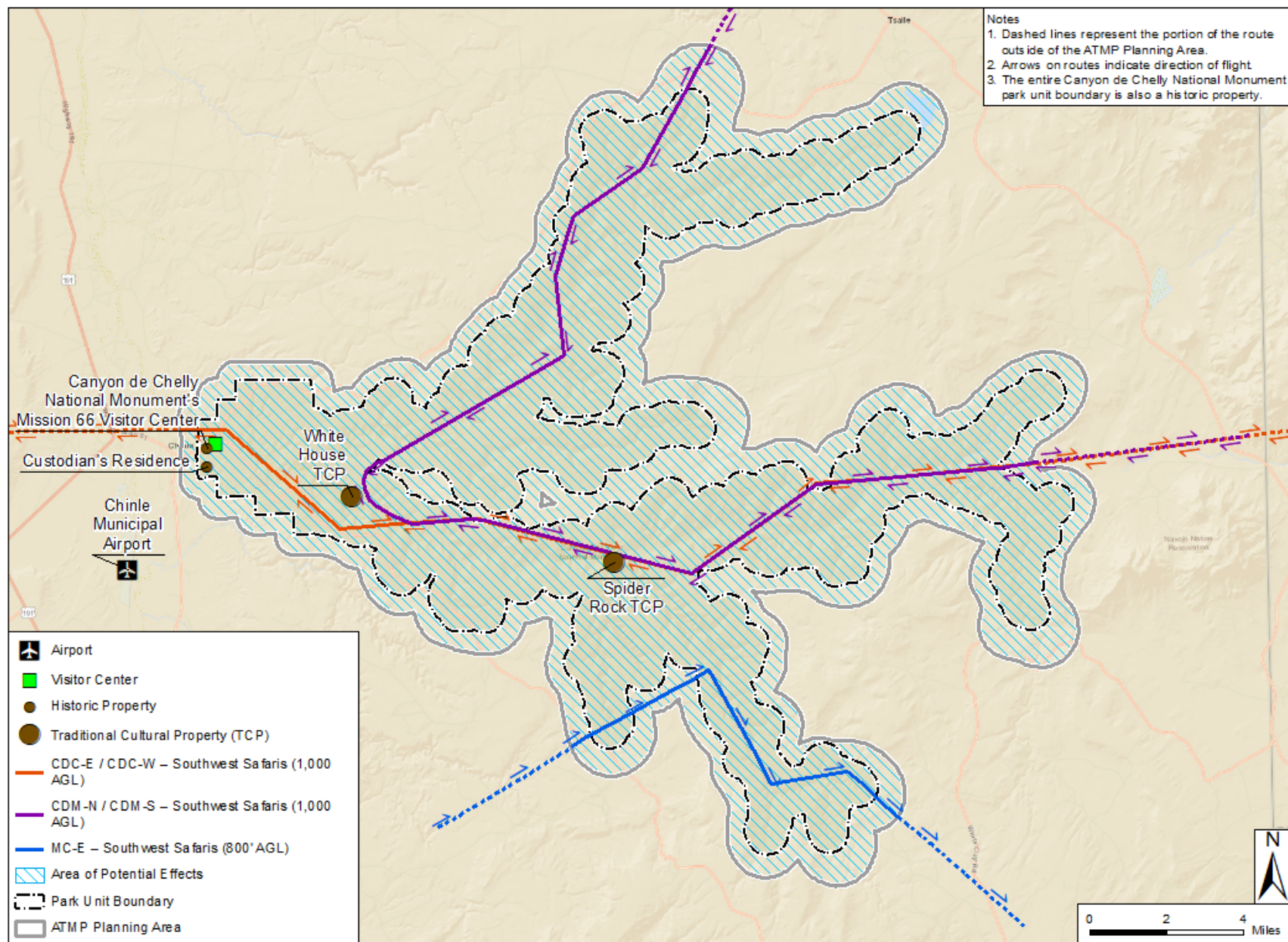
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. Many of the sites are cliff dwellings containing large amounts of dry, cultural debris. In addition, 18th, 19th and 20th century A.D. sites of Navajo occupancy remain in the monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of brightly colored sandstone walls and rock promontories that tower above sinuous bands of vegetation and agricultural fields along the narrow canyon floors. Canyon rim overlooks provide breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



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

October 26, 2023

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

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

Dear Betsy Merritt:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 2, 2023. In the same letter we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

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: Elaine Chang, Legal Coordinator

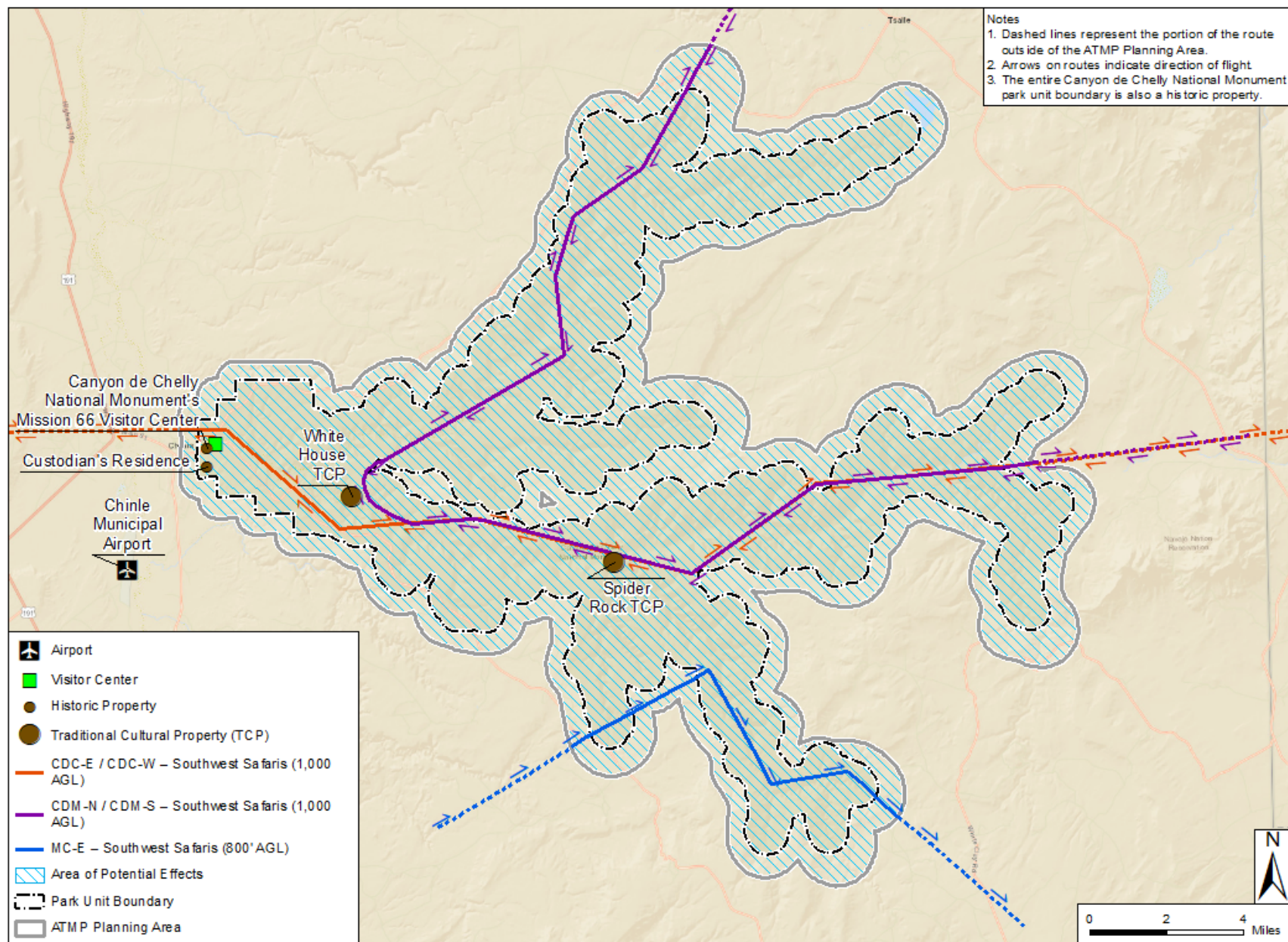
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
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Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. Many of the sites are cliff dwellings containing large amounts of dry, cultural debris. In addition, 18th, 19th and 20th century A.D. sites of Navajo occupancy remain in the monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of brightly colored sandstone walls and rock promontories that tower above sinuous bands of vegetation and agricultural fields along the narrow canyon floors. Canyon rim overlooks provide breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



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

October 26, 2023

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

Bruce M. Adams
Southwest Safaris
712 Felipe Place
Santa Fe, NM 87505

Dear Mr. Adams:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 2, 2023. In the same letter we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

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The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

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

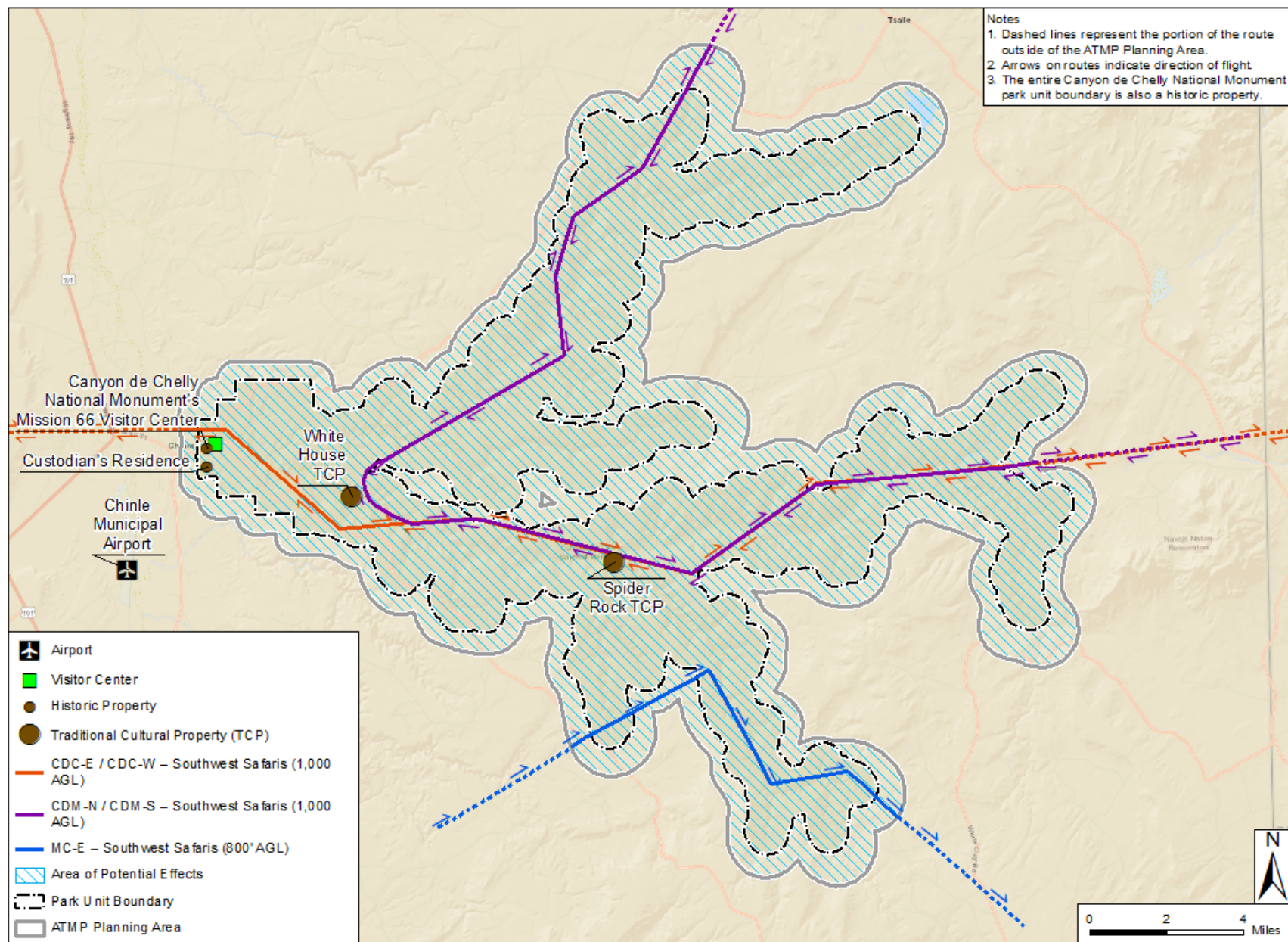
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
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Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
Ysleta Del Sur Pueblo
Zuni Tribe of the Zuni Reservation

¹Consulting party has opted out of further Section 106 consultation for the undertaking.

²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

ATTACHMENT C

List of Historic Properties in the APE and Description of Historic Characteristics

Property Name	Property Type	Eligibility Status	Significant Characteristics
Canyon de Chelly National Monument	District	Listed	<p>Canyon de Chelly National Monument preserves the remains of aboriginal Anasazi ruins from the Basket Maker II, ca. A.D. 350 through Pueblo III, ca. A.D. 1300, periods. It contains several large and hundreds of small excellently preserved sites of the prehistoric Anasazi. Many of the sites are cliff dwellings containing large amounts of dry, cultural debris. In addition, 18th, 19th and 20th century A.D. sites of Navajo occupancy remain in the monument. The monument is occupied by families who farm and graze the Canyons today. Canyon de Chelly was the site of Carson's campaign of 1864 which ended the American wars with the Navajo.</p> <p>The remarkable scenery of Canyon de Chelly National Monument reflects the dramatic contrast of brightly colored sandstone walls and rock promontories that tower above sinuous bands of vegetation and agricultural fields along the narrow canyon floors. Canyon rim overlooks provide breathtaking panoramic views into and across the canyons to distant vistas. The presence of Navajo hogans and fields within the canyons set against a backdrop of ancient cliff dwellings visually reinforce the long span of human history and the continuing importance of the canyons for the resident Navajo community.</p>
Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
White House TCP (ID#184)	TCP	Eligible	White House Ruins in Canyon de Chelly (Kiníí'na'ígai) has an associated ceremonial history. Pre-Columbian sites can be sources of spiritual, sacred power to Navajo people. Offerings are made at these sites, and oral histories (of the people, of ceremonies, of clans) refer to these places at times when people were still living there. This place has been continuously used for contemplation and prayer by the Navajo people. Significant characteristics of this TCP include the natural scenery and vegetation, which are linked to ceremonial visions.
Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.



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

October 26, 2023

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

Jake Tomlin
Grand Canyon Airlines
1265 Airport Road
Boulder City, NV 89005

Dear Mr. Tomlin:

The Federal Aviation Administration (FAA), in coordination with the National Park Service (NPS), seeks to continue consultation with your office under Section 106 of the National Historic Preservation Act (NHPA) for the development of an Air Tour Management Plan (ATMP) at Canyon de Chelly National Monument (the Park). At this time, the FAA is seeking your valuable input and requests your comments on the historic properties we have identified within the area of potential effects (APE), in accordance with 36 CFR 800.4, as detailed below.

The FAA initiated consultation with your office by letter dated June 2, 2023. In the same letter we described the proposed undertaking in more detail, proposed the APE, and provided the results of our preliminary identification of historic properties within the proposed APE.

This letter describes the FAA's further efforts to identify and evaluate historic properties within the APE, which is depicted in **Attachment A**, and the results of those efforts, as summarized below.

Identification of Historic Properties

The FAA, in cooperation with the NPS, coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The FAA and NPS performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The FAA also consulted with the various consulting parties, including federally recognized tribes, listed in **Attachment B** regarding the identification of any other previously

unidentified historic properties that may also be located within the APE. While the TCPs are noted in **Attachment C** in a general manner, they are not mapped in **Attachment A** to ensure confidentiality.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The FAA has taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). Informed by the records search at the Navajo Nation Heritage and Historic Preservation Department, the presence of TCPs has been added to the preliminary list of historic properties to generate the revised historic property list enclosed as **Attachment C**.

Consultation Summary

The FAA contacted 23 federally recognized tribes via letter on March 26, 2021, inviting them to participate in consultation and request their expertise regarding historic properties, including TCPs that may be located within the APE. On December 3, 2021, and December 9, 2021, the FAA sent follow up emails to the federally recognized tribes once again inviting them to participate in Section 106 consultation. On December 15, 2021, and December 20, 2021, the FAA followed up with phone calls to those tribes that did not respond to our prior consultation requests. The FAA received responses from four tribes expressing interest in participating in the Section 106 consultation process: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Tesuque, and Pueblo of Picuris. Five tribes asked to opt out of additional consultation for the undertaking: Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of Santa Ana, San Carlos Apache Tribe, and White Mountain Apache Tribe.

On June 2, 2023, the FAA sent the participating federally recognized tribes a Section 106 consultation letter describing the proposed undertaking in greater detail in which we proposed an APE and provided the results of our preliminary identification of historic properties. The agencies recognize that these tribes have a long-standing and deeply rooted association with the landscape that encompasses Canyon de Chelly National Monument, which includes numerous sites of religious and cultural significance. The agencies recognize all of the lands within the Park remain on Navajo Nation Tribal Trust Lands. The tribes whom the FAA contacted as part of this undertaking are included in the list of consulting parties enclosed as **Attachment B**.

On June 2, 2023, the FAA also invited the National Trust for Historic Preservation, Southwest Safaris, and Grand Canyon Airlines to consult under Section 106. The National Parks Conservation Association – Arizona and Apache County were also invited to participate in consultation by letter dated June 9, 2021, and August 6, 2021, respectively. On June 15, 2023, Grand Canyon Airlines and Air Grand Canyon responded to the FAA noting that they oppose eliminating air tours over the Park and requesting that the number of allowed air tour operations remain the same or be increased. Southwest Safaris provided comments in letters dated June 9, 2023, June 12, 2023, and June 30, 2023. In those letters, Southwest Safaris did not agree with the proposed undertaking and noted that overflights do not harm historic properties. On July 31, 2023, the National Parks Conservation Association provided comments stating that they did not have additions to the preliminary list of historic properties and encouraged the FAA to continue consulting with the Navajo Nation.

Review Request

In accordance with 36 CFR 800.4, the FAA has made a reasonable and good faith effort to identify historic properties within the APE. Those efforts resulted in the identification of one National Register-listed historic district, which includes many contributing properties and encompasses the entire Park, and two National Register-eligible buildings. A total of 29 TCPs within the Park boundary and 4 TCPs within the half-mile boundary around the Park were identified, some of which are within the larger cultural landscape of the historic district. The identified historic properties are listed in **Attachment C** and shown in the APE map provided in **Attachment A**.

The FAA is seeking your valuable input and requests that you provide any comments you may have regarding the historic property identification efforts. In particular, we would appreciate your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help us to identify additional properties for which setting or feeling is a characteristic of significance.

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 flourish extending to the right.

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

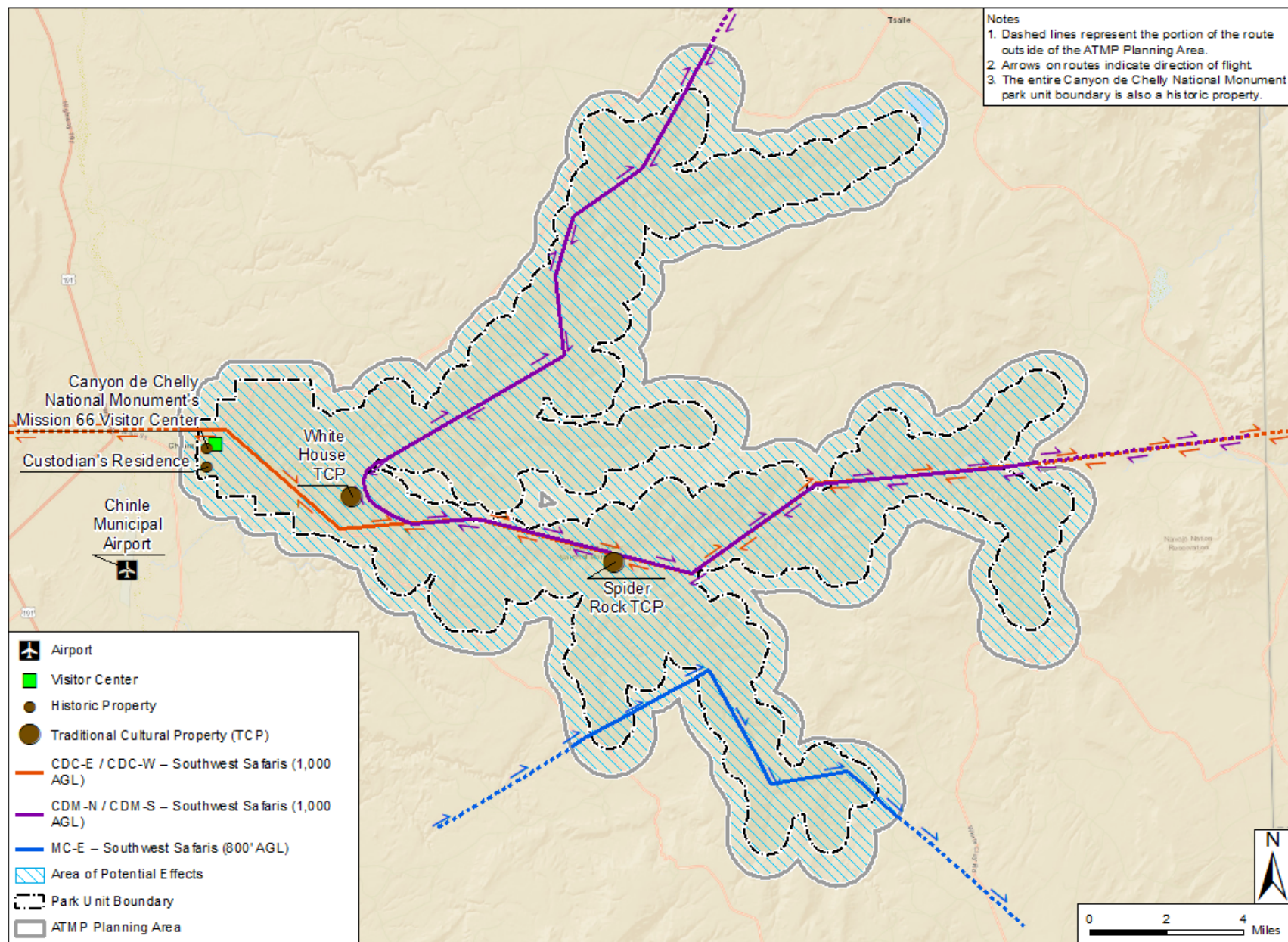
Attachments

- A. APE Map Including Existing Commercial Air Tour Routes
- B. List of Parties Invited to Participate in Consultation for the Undertaking
- C. List of Historic Properties in the APE and Description of Historic Characteristics

ATTACHMENT A

**Area of Potential Effects Map
Including Existing
Commercial Air Tour Routes**

AREA OF POTENTIAL EFFECTS INCLUDING EXISTING COMMERCIAL AIR TOUR ROUTES



ATTACHMENT B

List of Additional Consulting Parties Invited to Participate in Section 106 Consultation

Apache County (Cities of Chinle and Del Muerto)
Grand Canyon Airlines, Inc. (Grand Canyon Airlines, Scenic Airlines, Grand Canyon Scenic Airlines) ²
Hopi Tribe of Arizona
Kewa Pueblo
National Parks Conservation Association -Arizona
National Trust for Historic Preservation
Navajo Nation
Ohkay Owingeh
Pueblo de Cochiti
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Jemez
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque ¹
Pueblo of San Felipe
Pueblo de San Ildefonso
Pueblo of Sandia ¹
Pueblo of Santa Ana ¹
Pueblo of Santa Clara
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
San Carlos Apache Tribe of the San Carlos Reservation ¹
Southwest Safaris

White Mountain Apache Tribe of the Fort Apache Reservation ¹
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²The point of contact for Air Grand Canyon and Grand Canyon Airlines are the same.

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Property Name	Property Type	Eligibility Status	Significant Characteristics
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Custodian's Residence	Building	Eligible	<p>Constructed in 1935-7, the building is an excellent example of Pueblo Revival Architecture. It is a good example of the Southwestern atmosphere of Canyon de Chelly. Although its architectural roots were not Navajo, its design was appropriate for the site in a broader, regional context. Its significance is arguably conveyed through setting and feeling by way of spatial relationships with other historic buildings nearby. The building used to be considered contributing to the Thunderbird Lodge historic district (delisted from the National Register). The character of the building's setting and feeling is still conveyed through its association with these other buildings in the Thunderbird Lodge complex.</p>
Canyon de Chelly National Monument's	Building	Eligible	<p>From 1956 to 1966, the Park Service commissioned over one hundred new visitor centers and additions to existing museum buildings. Local contract architects were responsible for some of the designs, but the bulk of the work went to Park Service architects. The Canyon de Chelly National Monument's Mission 66 Visitor Center was constructed in 1964 by Cecil Doty, an architect from</p>

Property Name	Property Type	Eligibility Status	Significant Characteristics
Mission 66 Visitor Center			Oklahoma trained in the traditional Park Service Rustic style of design. These buildings were designed to harmonize with the surrounding landscape. Some of them, including the Visitor Center, contain viewing terraces overlooking an area of the Park. The specific visitor center viewsheds at CACH overlook the mouth of the canyon from two (east and west-facing) adjoining courtyard terraces. These viewsheds are likely character defining features of the building as it is sitting at the mouth of the canyon and offers interpretive value from the building's courtyard terraces.
TCPs within the Park boundary	TCPs	Eligible	<ul style="list-style-type: none"> • North: ID#88, ID#395, ID#455 • West: ID#16, ID#87, ID#172, ID#182, ID#184, ID#217, ID#219, ID#373, ID#375, ID#378, ID#379, ID#392, ID#393, ID#406, ID#414, ID#424, ID#434, ID#435, ID#437, ID#477, ID#552, ID#1052, ID#1058 • East: ID#202, ID#234, ID#898 <p>Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim of an overlook and prays, for prayers in general, or as storage places for bundles or offerings that are used during ceremony.</p>
TCPs within the half-mile boundary around the Park.	TCPs	Eligible	ID#32, ID#73, ID#574, ID#1080: Setting and feeling are significant characteristics for several of the TCPs that were identified within the APE. For example, some places are used as the person stands on the rim at the overlook and prays, for prayers in general or as storage places for bundles or offerings that are used during ceremony.
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Spider Rock TCP (ID#414)	TCP	Eligible	Spider Rock is a significant TCP for the Navajo. The rock is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector and healer, teacher, disciplinarian, adviser and/or spiritual leader. Spider Rock is eligible for inclusion in the National Register because of its association with cultural practices or beliefs that are rooted in various Southwestern Native American histories and because it is important in

Property Name	Property Type	Eligibility Status	Significant Characteristics
			maintaining cultural identity. Spider Rock's natural surroundings, viewshed and noise constraints are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories as well as healing ceremonies.

SOUTHWEST SAFARIS

PO Box 945
Santa Fe, NM 87504
505-988-4246

Ms. Judith Walker
Senior Environmental Policy Analyst
Environmental Policy Division (AEE-400)
Federal Aviation Administration
Washington, DC

November 14, 2023

CACH ATMP - 4th Response
Re. Historic Properties & Sec. 106

Dear Ms. Walker:

This my fourth response to your “request for comments” on a draft Air Tour Management Plan (ATMP) for Canyon de Chelly (CACH, or “the Park”). I am writing in response to your letter of October 26, 2023. In that transmittal, you asked for comments from Southwest Safaris (SWS) relating to the selection of historic sites under Section 106 and the Area of Potential Effects (APE) for the proposed ATMP for Canyon de Chelly National Monument.

First, I will comment on the specific sites that the FAA has added to the list of Traditional Cultural Properties (TCPs) the FAA would like to include in the Area of Potential Effect of the CACH ATMP. I will then transition to a general discussion of the flaws in the Section 106 process that you and I have addressed piecemeal on so many occasions, hoping to clarify under permission of continuing consultation my overall objections to the way the FAA is managing regulation under the National Historic Preservation Act (NHPA). Our differences of opinion on process implementation are significant.

I disagree with the FAA’s selection of historic sites for inclusion in the APE at CACH. Title 36, Part 60 gives the regulations relating to the eligibility of properties to the National Register of Historic Places (National Register, or NR). §60.4 specifies the “Criteria for Evaluation” to be eligible for listing on the National Register. Southwest Safaris argues that, according to 36 CFR §60.4, none (with the exception of White House Ruin) of the Traditional Cultural Properties listed in Attachment C of your letter of Oct. 26 qualify for listing on the NR as historic properties (HPs), based on the information the FAA has presented.

In your letter of October 26, the FAA states:

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight.

According to §60.4, “setting” and “feeling” alone are not enough to make a property eligible for listing on the NR. The NR regulation concerning qualification of properties reads as follows:

§60.4 *National Register criteria for evaluation.* The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, *sites*, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; **or** (b) that are associated with the lives of persons significant in our past; **or** (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; **or** (d) that have yielded, or may be likely to yield, information important in prehistory or history. (Emphasis added.)

There is an “and” coordinating conjunction involved in the regulation, followed by a long line of “or” conditionals. The regulation is a logic syllogism consisting of “and/or” construction. In order to be eligible for listing on the National Register for religious/spiritual/cultural reasons, property categories of the classes the FAA mentions would need to have “setting/feeling” qualities plus meet at least one of the “criteria considerations” listed in the above regulation stipulation.

All but one of the TCP properties listed in Attachment C fail to meet the standards of the “or” clauses/ subparagraphs (a) through (d) above. With the exception of White House Ruin, none of the individual TCP properties are even generally associated with identifiable historic events of significant record, (a); none are associated with specific persons, (b); none but White House Ruin are associated with works of construction or creative design, (c); and none but White House Ruin “yield information important in prehistory or history,” (d). In the case of Spider Rock, Spider Woman is a figure of current reality to the Navajo people; she is a living figure whose importance is primarily in the present. Attachment C lists no identifiable connection with historic events, citing no specific commemorative aspects of Spider Woman’s actuality, only general reference to her as a teacher of timeless spiritual values. A towering rock monolith is not an architectural achievement; it is a landmark, not a structure. No historic battles occurred at Spider Rock. Moreover, the NR makes no mention of anthropomorphic qualities passing from spiritual persons to physical properties so that the identity of a natural object would become that of the spiritual, allowing the property to take on timeless historic significance. Spider Rock is a popular tourist attraction, lacking privacy and silence viewed from the overlooking parking lot.

Beyond listed NPS buildings, other possible historic properties in the Park are only identified in Attachment C by number. With the exception of White House Ruin, nothing substantive is said about the individual identities, histories, or integral importance of these numbered properties to the overall historic characteristics of the Park, only that several of the sites have “setting and feeling” attributes that are “significant,” whatever that means. By concealing the majority of the

sites' identities, the FAA has deliberately made the sites impossible to critique for veil of secrecy. The FAA denies ATOs due process by withholding from ATOs constructive opportunity to comment on the numbered properties. I challenge the numbered properties authenticity. I argue that the 33 numbered TCPs within and outside the Park boundary should be eliminated from eligibility in the National Register for lack of qualifying criteria (specificity and relevance) and eliminated from consideration in the proposed CACH ATMP for lack of connection with any particular route (lack of definition and location).

All but one of the TCP's fail the eligibility test for reason of itemized "criteria considerations." These §60.4 stipulations follow in the regulation immediately after the "National Register Criteria for Evaluation" paragraph referenced above. Cemeteries and graves of historical figures and properties primarily commemorative in nature are not considered eligible for the NR. §60.4 states that "Ordinarily properties . . . used for religious [including prayerful, meditative, and ceremonial] purposes . . . shall not be considered eligible for the National Register." None of the listed extenuating exceptions to this rule apply under §60.4, with the possible allowance for (f) as it pertains to White House Ruin.¹ However, none of the other properties in question are "primarily commemorative in intent," nor do they have "*exceptional* significance." None of the other properties listed were originally created by man for celebratory purposes, and natural properties do not "inherit" man-made "traditional significance" over time unless an extraordinary historic event is directly associated therewith. The FAA makes no claim that any of the listed TCPs have commemorative association attached to identifiable events. Therefore, all but one of the numbered properties lack overall "integrity" of presentation with respect to the NR.

The criteria for eligibility of listing on the NR do not include landscape locations "that have been continuously used for contemplation and prayer," nor do the criteria for eligibility allow listing "because of association with cultural practices or beliefs." The concept of "cultural landscape" including "outdoor spaces designed for meditation or contemplation" is completely foreign to the wording of the Criteria for Evaluation and to the qualities of stipulated exception/eligibility that follow, the FAA having artfully crafted the misleading and prejudicial terminology. The NR considers such sweeping categories to be much too broad. On the other hand, individual TCPs are not automatically and separately included in the NR just because they have cultural importance for current time. Their eligibility for listing comes solely from being part of the Park.

The main justification for all but one of the TCPs (White House Ruin) being included in the APE as historic sites is that they fall within the boundaries of CACH, which is a "district" that does meet the criteria for listing on the NR. However, the majority of the properties, considered by themselves, would not meet the criteria. Moreover, the exception for reason of district inclusion is nullified by the fact that the individual properties are not "integral parts of districts," meaning that they cannot be cognitively recognized as such by laymen and cannot readily be observed as historic sites by normal visual means, lacking unique physical characteristics (again, with the exception of White House Ruin). Their presence is not essential to the identity of the Park. They are cultural locations of importance to local residents, not material or objective sites that contain

¹ With regards to exceptions for governing listing on the NR, §60.4 says: "However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the following categories: (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or . . ."

specific historic importance/relevance to the Park, having only general “setting and feeling” of note.

The FAA would have realized the accuracy of my objections if the agency had complied with 36 CFR §800.4(b)(2), which requires, under heading of “Identification of Historic Properties,” the FAA to “conduct an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects . . .” The FAA has no authority, I claim, to ask for comments relating to itemized historic properties till it has walked the Park. Under regulation, this obligation cannot be delegated to another agency.

Moreover, even TCP sites such as White House Ruin lose their viability as historic properties for the purpose of the APE. The FAA is claiming that the historic properties need to be protected from air tours for reasons of noise, visual intrusion, and physical violation of spiritual space associated with prayer and meditation experienced from a wide number of observation points on the rim of the canyons. These contentions are invalid on the face of argument.

There are no historic properties of any kind in the Park that need to be protected from air tours, because air tours are conducted so infrequently as to be of de minimis quantifiable objection. 99.9% of the supposed noise, visual intrusion of viewsheds, and spiritual trespass occurs by welcome permission of the Navajos and NPS in the form of tourist travel by car and commercial, Navajo-owned, four/six-wheel-drive, back country vehicles that cruise the rim and bottom of the canyon floors continuously, every day of the week. White House Ruin and Spider rock are two of the most traveled sites, the noise there and all along the tour routes being significant, well above 54 dBA.² The FAA has provided no current “pertinent”³ sound studies that would contradict this observation. I argue that it would be difficult to hear an aircraft overhead with all the vehicle and sightseer noise in and around the canyon. Furthermore, the steep canyon walls make it impossible to observe air tours by anyone standing on the canyon floor, because of the lateral stand-off distance from the immediate canyon by tour aircraft. Roads line the tops of both Canyon de Chelly and Canyon del Muerto. The eye is naturally drawn to vehicles of close proximity, not to small targets on the distant horizon. The concept of protecting the historic properties in the Park from infrequent air tours that have no physical contact with historic structures, while allowing continuous visitation of the properties by foot, car, trucks, buses, and four/six-wheel-drive SUVs, makes a mockery of the entire ATMP undertaking. These are significant Section 106 realities that the FAA has failed to take into consideration in compiling the Section 106 list of affected historic properties and the draft CACH ATMP.

² According to NPS statements, interference with Park interpretive programs would reasonably occur at 52 dBA. Noise related to ground-visitation of the Park are well above that level. On the other hand, the “Time Above 52 dBA” for air tours at CACH is so low as to be unmeasurable, if such a metric even exists at the Park. The NPS does not contest the low audio levels associated with air tours at CACH. Instead, the agencies (FAA & NPS) wrongly argue Section 106 allegations against air tours at the Park solely on Theory of Mere Presence (See Footnote #4), which NPATMA and the FAA (everywhere else) do not allow. Distinguishable adverse noise impacts on TCPs from air tours at CACH under Section 106 have not been shown by the agencies to exist. The TCPs, based on FAA presentation of them, are phantom distractions of argument.

³ In Southwest Safaris’ letter to Volpe of August 7, 2023, on page 17, SWS defined “pertinent” sound-study data to mean “current, comprehensive, relevant, accurate, and science-based.” See also Appendix.

Just because a property might have cultural importance for present times does not make it a “historic property.” Just because a TCP might actually be a HP does not mean that the presence of the HP in the APE has relevance to the purpose of the ATMP. Neither air tour noise nor invasion of sacred privacy are objectionable considerations for CACH ... because of the dominant competing existing noises in the Park which drown out those of aircraft and because the overwhelming presence of persons and vehicles everywhere in the Park make visual trespass by air tours a moot point ... and are therefore outside the scope and/or relevance of Sec. 106.

The listing of questionable TCPs is just a distraction of argument, designed to prejudice the opinion of the reader. The entirety of the Park is highly advertised/promoted by the Navajo Nation as a tourist attraction. Of all the methods of visiting the Park, rare air tours have the least lasting impact thereon. There being no objection to the other modes of visitation, under Section 106 there should be even less for air tours, which are rarely, if ever, even noticed.

Protesting air tours over the Park on the basis of cultural intrusion and physical violation of spiritual space ... which are the very evidentiary reasons that the numbered TCPs were added to the list of historic properties ... is also beyond the scope of NPATMA, so their listing under Section 106 is unfounded for reason of relevancy, the National Parks Air Tour Management Act being the controlling legal authority for the creation of ATMPs. NPATMA brings ATMPs into existence, not NHPA, so its methods and purposes limit the scope and applicability of Sec. 106.

The FAA appears to agree. The Act is based on “existing conditions,” not “no air tours.” The arguable base-line assumption of “no air tours” at CACH ... a determinant assumption buried deep within the Section 106 investigation of historic properties ... is predicated on the theory that the mere presence of air tours over the Park is a violation of the Act. The FAA has already argued against this theory in the case of Hawaii Volcanoes National Park (HAVO). In response to the ACHP’s charge that “there does not appear to be a way to eliminate the potential for adverse effects” from HAVO air tours, the FAA replies in a letter of rejoinder to the ACHP dated September 12, 2023:

Though its reasoning is not clear, the ACHP seems to assume that air tour operations under existing conditions have an adverse effect on historic properties. Therefore, [the false argument goes,] the FAA’s undertaking must completely ban air tours to remove the adverse effect, and any action that does less than a total ban does not address the adverse effect of air tours. That view goes beyond the authority of the Section 106 process and its implementing regulations [i.e., NPATMA, NHPA, and NEPA].

Using the FAA’s own logic ... which discredits the Theory of Mere Presence,⁴ the FAA having rejected arguments elsewhere against air tours based on simple operational existence, for lack of

⁴ The Theory of Mere Presence is brought forward by parties opposed to the conduct of air tours in any form or manner over units of the National Park Service. The Theory of Mere Presence states that air tours, by definition, impose adverse impacts on persons and property on the ground, including religious and cultural sites and events, and that there is no way to lessen the impact of same, invasion of privacy in particular. According to this theory, all Air Tour Management Plans must completely ban all air tours of all types to eliminate any possibility for adverse effects in the future. This extremist theory asserts that any Plan that does not ban all air tours does not address “the problem” of air tours at all. In the case of Hawaii Volcano National Park (HAVO), the FAA flatly states that it will not consider the theory. For unstated reasons, the FAA appears to have reversed its opinion at CACH. The FAA

any other documentable objection ... mention of the additional TCPs in Attachment C must be omitted. The allowance and justification for the extra TCPs being included in Attachment C was to prove that the mere existence of air tours is objectionable for general reasons of “setting and feeling,” which theory of rejection, according to the FAA at HAVO, is predicated on disallowed conceptual assumptions “beyond the authority of the Section 106 process and its implementing regulations,” including both NPATMA and NEPA. However, at CACH the FAA’s implied main argument for including the numbered properties within the APE is precisely that “setting and feeling” are violated by “mere presence.” Thus, the FAA argues against itself.

Moreover, with reference to the APE for Canyon de Chelly, it is not fair to ask an ATO to comment on boundaries based on TCPs that the FAA will not identify as to location. The offer for ATOs to comment on the area of the APE, in this instance, is hollow and indicative of agency indifference to due process. All claimed historic properties at CACH should be identified on a map, the argument for privacy notwithstanding. The FAA is wrongly withholding the locations of historic sites that would be essential for planning air tour routes. The requirement to withhold location of unmapped sacred sites for reason of confidentiality should not legally apply to situations where persons claiming said sites as TCPs request route modification based on the very denied location of those sites.

Additionally, because of the principle of Primacy of Law,⁵ making the National Parks Air Tour Management Act of 2000 the controlling legal authority in the creation of ATMPs, the FAA errs by acting preemptively to initiate the Section 106 investigation of CACH without having first acted on Section 808 of NPATMA in order to test the “if any” condition contained in the “Objective” paragraph of the Act, 49 USC §(b)(1)(B). Additionally, the Principle of Continuity of Law⁶ means that Section 106 cannot be called upon by the FAA to negate the effect of NPATMA, the agency otherwise being able to declare by means of Section 106 that sound studies at selected Parks are irrelevant to determination of adverse impact of air tours on TCPs. Without the Principle of Continuity of Law, the FAA could ground its objections to air tours over CACH on the Theory of Mere Presence (setting aside consistency of argument) and simple allegations of noise intrusion, ignoring the requirement for noise studies altogether.⁷ The power

added 33 TCPs to the original list of historic properties primarily to buttress a NHPA-originated claim of potential adverse impact of air tours on cultural sites that encompass the whole of the Park, based entirely on theoretical proximate presence of air tours anywhere in the area. The suddenly but conveniently “revised” opinion held by the FAA ... that the mere presence of air tours in the Park is objectionable, in contrast to HAVO ... lacks explanation and, therefore, credibility. The FAA everywhere else claims that the standard for determination of adverse impact of air tours under NPATMA is “existing conditions,” not “no air tours.”

⁵ The principle of Primacy of Law directs the order of application of laws in a vertical manner. Where multiple laws affect a result, course of action, or determination, the laws must be satisfied in accordance with the most controlling to the least. See my letters to the FAA dated September 25 and October 1, 2023, wherein I give a detailed discussion on the Principle of Primacy of Law as it applies to NPATMA, NEPA, and NHPA working together.

⁶ The principle of Continuity of Law means that one law cannot horizontally contradict another where they overlap.

⁷ The FAA tries to use Section 106 to end run NPATMA, there being no requirement under NHPA to conduct sound studies to prove the validity of claims for adverse effect of air tours on historic properties as defined by the NR. Under Section 106, a mere claim of the potential for adverse effect is considered evidentiary proof of legitimacy of

of the two principles working together means that Section 106 cannot be used to bypass Section 808. Moreover, it means that Section 106 is only called into conditional effect ... meaning that NHPA decisions must be based on comprehensive, relevant, and current sound studies ... after NPATMA passes authority to it by means of satisfying the all determining “if any” phraseology of the Act. Therefore, the FAA is currently exceeding its authority by prematurely asking for comment on historic properties within the APE before the subject of air tour noise has even been addressed by NPATMA, the FAA having failed to comply with Section 808 and standards of due diligence.

In other words, the FAA has not determined by means of NPATMA’s Section 808 that there is any need to proceed with changes to existing conditions based on the alleged impact of aircraft noise on Traditional Cultural Properties. ATMPs only apply to certain units of the NPS, not all units. Until certain conditions and exceptions are met for individual parks, the requirement for an ATMP does not exist; that is, the requirement for an ATMP (and, therefore, for an “undertaking”) does not exist just because the Act exists. In the case of CACH, if legal procedures were followed, the creation of an ATMP would be an “undertaking,” 36 CFR §800.16(y). Southwest Safaris argues that by law, Section 106 cannot be activated without the existence of an “undertaking,” 36 CFR §800.3(a). The FAA appears to agree. Paradoxically, therein lies a major problem and source of paralyzing disagreement between SWS and the FAA.

In the case of the CACH ATMP initiative, Southwest Safaris argues that legal process has not been followed. An “undertaking” in the case of an ATMP cannot commence without the “if any” phrase of NPATMA being satisfied by science-based sound studies (see Appendix) using “pertinent data” (see footnote #2) ; or, it cannot begin unless the NPS determines that creating an ATMP is necessary to “protect park resources and values or park visitor use and enjoyment,” 49 USC §40128(a)(5)(B), the NPS nonetheless having to prove the necessity for bypassing normal categorical exclusion rulemaking in *extraordinary* circumstances, 40 CFR §1501.4. In any case, either way, the “if any” and Section 808 requirements of NPATMA must be fully satisfied by law; Section 808 cannot be bypassed, because inclusion of its “shall clause” makes it mandatory in all circumstances.

In the case of CACH, said “pertinent” (see footnote #3) sound studies have not been conducted, nor has the NPS demonstrated, outside of claiming Theory of Mere Presence ... which argument is not allowed by the FAA elsewhere ... that critical park resources and values or visitor use and enjoyment are adversely affected by air tours under “existing conditions.” No “extraordinary circumstances” per 40 CFR §1501.4(b)(1) exist at CACH, Tribal objection arguably founded on the Theory of Mere Presence notwithstanding.

allegation. Therefore, NHPA, considering the “if any” phrase in NPATMA and Section 808 methodology of compliance, is inconsistent with NPATMA ... the Act requiring thorough sound studies to satisfy the “if any” conditional test ... and must, at least at first, be set aside under the twin Theory of Primacy of Law and Consistency of Law, until NPATMA conditionally allows it by making sound studies mandator as a condition for NHPA review, the Act being the controlling legal authority for ATMPs. Regardless, at CACH, Section 106 only comes into qualified force and effect if and when NPATMA passes authority to it ... which happens only when a *legal* undertaking is commenced, not before.

The relevant undisputed fact is that Southwest Safaris has been conducting air tours over CACH for 49 years, without a single documentable complaint. Until the present ATMP process was initiated, the Navajo Tribe and Chapter Houses on the perimeter of CACH were unaware that fixed-wing air tours were even being conducted over the Park. Any alleged “potential” impacts of air tours on the few TCPs within the park that are protected by Section 106 are purely theoretical, imaginary, and conjectural, based on deductive assertions (NHPA), not inductive research (NPATMA).⁸ Existing conditions at Canyon de Chelly include the conduct of very noisy ground tours which dominate the soundscape of the Park during all daylight hours. This reality makes the presence of rare air tours under Section 106 immaterial for argument.

The FAA’s Section 106 request for comments on TCPs at CACH at this time, in fact all of NHPA currently, lacks justification and authority, both under NHPA and NHPA, for lack of initiation of a *legitimate* CACH “undertaking,” the safeguards of NPATMA⁹ for air tour operators having been purposefully ignored by agency.

The FAA, I argue, errs in assuming that Section 106 process can begin just because the agency has declared that an ATMP “undertaking” has commenced, even if the “undertaking” is being federally financed. The FAA, I allege, has wrongly begun the ATMP process at CACH without going through Congressionally-directed process necessary to activate the “undertaking.” The FAA, I assert, is illegally funding an “undertaking” which has no authorization. The FAA’s action leads to multiple disturbing legal complications, not the least of which is abuse of process and misappropriation of Federal funds.¹⁰

⁸ The conflict between NHPA and NPATMA over deductive versus inductive determination can only be resolved by acknowledging that NPATMA is the controlling legal authority, the Principle of Continuity of Law being, once again, of critical affect. Guided additionally by the Principle of Primacy of Law and Intent of Congress, all assessments of air tour noise under Section 106 re. ATMPs must be based on “reasonable scientific methods” and “pertinent” data, per Section 808 of the Act. By refusing to comply, under Section 106 the FAA fails to act/decide according to law.

⁹ Congress never intended that NPATMA would be used to destroy the air tour industry. In order to ensure the rights of air tour operators (ATOs), including due process of hearing, Congress insisted that all ATMP initiatives under NPATMA would have to pass the test of reasonableness, the standard of determination being that of “existing conditions,” not “no air tours.” To safeguard these rights, Section 808 was added to the Act, the purpose of which was to create measures of decision that could be tested against science-based observations and allow for judicial review. By failing to conduct timely science-based noise studies using “pertinent data” (footnote #3), the FAA has knowingly deprived ATOs of the ability to defend their right of operation by means of hard sound data and, thus, deprived them of constructive administrative and judicial hearing. Had timely, science-based, sound studies been conducted early in the ATMP process, most of the ATMPs the FAA has since created would have been proven to be without cause. Air tour operators cry “foul!” The FAA’s lack of regard for Section 808 serves to negate operators’ right of judicial review under 49 US §40128(b)(5), it being impossible under both NPATMA and Section 106 to provide credible evidence without authoritative sound studies.

¹⁰ After NPATMA was passed by Congress, it would have been appropriate for the FAA to expend funds to test for conditions that would trigger the creation of ATMPs. Prior to that determination, predicated on Section 808 science-based studies, no further federal money was authorized by Congress to be spent. In no case was an “undertaking” to arbitrarily and capriciously put air tour operators out of business. The FAA and NPS (the agencies), I allege, have together conspired to misuse Federal funds to achieve a political agenda, involving the radical curtailment of the air tour industry, never contemplated by Congress. In the process, I allege, the agencies have defrauded the U.S. Court of Appeals for the District of Columbia Circuit by deliberately withholding relevant information so as to deceive the court to “compel” the agencies to prematurely initiate “undertakings” that had, as

To emphasize the point, in the case of CACH, a legal Federal “undertaking” does not exist just because the FAA and NPS have inappropriately expended Federal funds to initiate process. An “undertaking” must first be *legally* triggered. This has enormous implications for NHPA and NEPA considerations. Legal order must precede political expediency. A decision by the U.S. Court of Appeals for the District of Columbia Circuit¹¹ to expedite implementation of ATMPs does not excuse the FAA from proceeding with implementation of ATMPs contrary to Law of Congress.

Because the “undertaking” for Canyon de Chelly has not been *legally* triggered, I argue, the “undertaking” for CACH to this day does not legitimately exist. Therefore, the development, implementation, and funding of the CACH ATMP is out of order, including the Section 106 process as well as the Environmental Assessment that is currently being compiled under cloak of NEPA.

I allege that the FAA errs by having commenced the ATMP-related Section 106 process at CACH without first initiating a legal “undertaking” of any sort, as defined by the above criteria, and that by so doing the FAA is in violation of NPATMA, NEPA¹², and NHPA, all three, the Court order for the FAA to expedite ATMP process notwithstanding. A court cannot compel an unlawful act. An order to expedite process is not an order to break Congressional law. Under NHPA, the FAA may begin investigative initiatives prior to activation of an “undertaking” under certain conditions, but the Agency cannot implement decision-making actions (e.g., requests for input and/or concurrence) prior to actual existence of a legal “undertaking,” 36 CFR §800.1(c). Under NEPA, the FAA has no such latitude to commence work on a draft EA without “authorization” from the NPATMA process. The FAA’s alleged flagrant disregard for NPATMA’s controlling legal authority, using Court order as cover for action, leads to the grave and probably irreversible injury, even demise, of the general air tour industry, to the detriment of the economy of rural America.¹³

of then and now, no legal basis for coming into existence, the requirements for same not being satisfied. The results are all too obvious for all to see: abuse of law and tragic/unnecessary destruction of the air tour industry.

¹¹ See USACA Casse #19-1044, Document #2001434, Filed 5/31/2023.

¹² NEPA is equally impacted by the Controlling legal authority of NPATMA. The requirement for satisfying the “if any” phrase and Section 808 sound studies under NPATMA are mandatory prior to the justification for, and commencement of, a NEPA Environmental Assessment. After the former is accomplished, NPATMA permits the latter to commence, in that order, if the creation of an ATMP is justified by the Objectives of the Act.

¹³ For these reasons, I submit that it would be much better to stop the ATMP process at CACH now, correct the situation (there and at other units of the NPS, Bandelier National Monument, Badlands, and Mount Rushmore in particular), and then proceed, rather than force the issue of ATMP management back before the U.S. Court of Appeals, the outcome of which would be far from certain for all parties.

Finally, the FAA's failure to establish a legal undertaking before beginning an ATMP initiative leads to violation of fundamental clauses of the Constitution. I refer to the Fifth and Fourteenth Amendments, both guaranteeing due process.

The Fifth Amendment protects persons from being forced to testify against themselves. Section 106 is being used by the FAA at CACH to commit a substantial breach of law. The whole purpose of asking under Section 106 for the identification of additional TCPs in the Park is to build the case for disallowing flights over any portion of the Park. The next step the FAA plans to take ... as the FAA is currently attempting to do while implementing an ATMP at Bandelier National Monument ... will be to force ATOs operating in the park to concur with a Finding of "No Adverse Effects" from denying all air tours over the entire Park. The FAA at CACH is in the process of "requesting" that ATOs defend themselves against a syllogism of double negatives. The FAA is preparing to issue a demand, cloaked as it is, via a formal Statement of Concurrence, that air tour operators disprove that "no flights over CACH can have no adverse effects on the Park."

As a matter of formal logic, it is impossible to disprove a syllogism based on a double negative. The FAA has artfully contrived a means by which ATOs are forced to testify against themselves no matter how they address the challenge of rebuttal, which is a violation of their civil rights.¹⁴ Moreover, under both the 5th and the 14th Amendments, ATOs are guaranteed the right to fair trial and/or administrative hearing. By failing to honor the language of the 5th and 14th Amendments, and the requirement of Section 808 of NPATMA at CACH, the FAA makes it impossible, as I said in Footnote #9, for ATOs to bring their grievances under NHPA and NPATMA before a body of hearing, because the ATOs have been denied the right to constructive argument under NHPA and the ability to present current objective evidence under NPATMA that ATOs could otherwise present in their own defense. Therefore, the FAA violates under Section 106 both the Constitution and the judicial review clause of NPATMA per 49 US §40128(b)(5).

¹⁴ If the ATO agrees that imposition of Alternative 2 (no air tours allowed over the Park) of the pending draft CACH ATMP would have "no adverse effect," he loses his defense for right of operation. If the ATO declines to engage in pointless argument against a flawed and self-fulfilling double-negative syllogism leading to a conclusion favoring a decision of "no adverse effect," the FAA will decide against him, the ATO having made no argument to the contrary. If the ATO argues against the finding of "no adverse effect," his arguments are thrown out for not being relevant to Section 106, but to NEPA. Section 106 language is built into the entirety of the agencies' draft BAND ATMP and EA, so the distinction between Sec 106 and NEPA argument is very difficult, if not impossible, to delineate and untangle. This makes defense against a decision in favor of "no adverse effect" and "no air tours allowed" nearly impossible, constituting obstruction of argument, which is not allowed under the 5th and 14th Amendments. The FAA's "request" for a Statement of Concurrence amounts to a forced acknowledgement by the ATO that depriving him of the right to fly over the Park will have no adverse impact on the Park, grossly prejudicing a decision of the agencies (FAA and NPS) against his right of operation.

In somewhat simpler language, the 5th and 14th Amendments were both drafted to ensure a review process of executive actions that would guarantee fundamental fairness, both substantively and procedurally considered. The FAA's application of NHPA and NPTMA to the CACH ATMP defies both. The FAA disallows substantive argument under rules of logic (Section 106) and makes presentation of credible facts under rules of evidence impossible (the Act), in the meanwhile forcing ATOs to testify against their own interests.

I respectfully request, then, that the FAA's multiple notices for comment on Section 106 historic properties at CACH be withdrawn, as such untimely requests for opinion greatly, unfairly, and intentionally prejudice the outcome of the agency's eventual ATMP determinations, in violation of due process, and because the Sec. 106 initiatives at this time are being implemented contrary to Federal regulation and law.

I also ask that the FAA respond in writing to this petition, the need for the courts to rule on these matters of jurisprudence being imminent.

I further request that the entirety of my objections, including all my letters relating to Canyon de Chelly, be brought to the attention of the ACHP for third-party opinion, the issues being materially and procedurally related to, but applicably different from, those of Bandelier National Monument, for which the FAA is currently seeking separate ACHP concurrence.

I appreciate the opportunity to comment on historic properties and Section 106.

Sincerely yours,

A handwritten signature in dark ink that reads "Bruce Adams". The signature is written in a cursive, slightly slanted style.

Bruce Adams

Appendix

Section 106 Sound Studies Conducted under NPATMA

The FAA's second letter of October 26, 2023 ... wherein the agency requested input for CACH to help "identify additional properties of which setting or feeling is a characteristic of significance" ... is part of an investigation into the effects of air tour noise on Traditional Cultural Properties (TCPs) at Canyon de Chelly National Monument. The FAA states that it "has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight."

A major part of Section 106 involves assessment of air tour impact on Areas of Potential Effect within units of the NPS governed by ATMPs. To do this, Section 106 relies, directly and indirectly, on measurement of noise generated by tour aircraft.

The FAA incorrectly, I argue, relies on noise modeling technology to make its determinations as to the level of air tour noise at CACH. This reliance, I maintain, adversely impacts the correct assessment of harmful impact of said noise on TCPs and, therefore, incorrectly influences FAA opinion and determinations under Section 106.

At Canyon de Chelly National Monument, the FAA is in violation of NPATMA, NEPA, and NHPA because the use of noise models does not satisfy Section 808.

NPATMA says that "*any methodology*" used by the FAA to assess air tour noise shall be based on "reasonable scientific methods." Noise models do not constitute scientific methodology, especially if the studies do not incorporate timely (which means, current), accurate, thorough, and objective data obtained from vigorous field research ... none of which was provided at CACH. A noise model is just another term for an "Aviation Environmental Design Tool" (AEDT), to use an FAA term. The output from an AEDT is totally dependent on whatever numbers (including formulas) are input. The input data the FAA is using at CACH is too old, too few, too isolated, and too infrequently gathered, representing unreliable assumptions of present conditions, this on top of biased formulas. Southwest Safaris claims that the FAA, under Section 106, is relying on noise modeling at CACH to control the input so as to get a predetermined output that is contrary to the interests of the ATO.

Spreadsheets, themselves, are not science. Science is based on acquiring original data gathered by observation in the field. Noise models, in contrast, are based on deductive armchair reasoning. Therefore, I argue, principal reliance on AEDT technology is not allowable under NPATMA (and, therefore, NHPA) as the primary or conclusive means of determining "adverse impact." This is one of the reasons I have argued in the body of this letter that NPATMA is the controlling legal authority for ATMPs, not NHPA or NEPA, for that matter. Under NPATMA, Section 808, the NEPA §1502.23 possible allowance for using AEDT technology does not exist, because NEPA regulations are incompatible with NPATMA law, per 40 CFR §1500.3.

Even if NEPA's §1502.23 did apply, the FAA would still be required to use scientific methodology to control the input with current, comprehensive, relevant, accurate, and science-based (i.e., pertinent) data. I argue that the FAA's input data for CACH, even if one allows use of AEDT noise modeling, falls short of these tests.

Noise modeling is particularly problematic at CACH, where the FAA conducts no actual current noise studies in the field but relies entirely on its Aviation Environmental Design Tool (AEDT), i.e., noise modeling technology, and outdated data upon which to base its calculations of "adverse impact." This is allowable under NEPA. 40 CFR §1502.23 of NEPA says, "Agencies are not required to undertake new scientific and technical research to inform their analyses." However, this statement is directly contrary to NPATMA, which is the controlling legal authority in the present instance.

I point out that §1502.23 does not apply to NPATMA because of the "shall clause" (Section 808). Moreover, Congress does not refer to §1502.23 in NPATMA's §40128(b)(4)(C), in order to grant special exception. So, the requirement for noise studies based on "reasonable scientific method" still applies, NEPA notwithstanding.

NPATMA imposes a clear and unequivocal requirement to conduct pertinent sound studies, using "reasonable scientific methods," before implementing ATMPs for respective Parks. NPATMA is the controlling legal authority, not NHPA or NEPA. The FAA has a duty, therefore, to perform sound studies which cannot be excused. This is a due diligence mandate.

So, the use of noise modeling technology does not satisfy the requirements of Sec. 808 for use of "reasonable scientific methods." Noise modeling may incorporate sophisticated computer technology, but it is not science, and it is prone to error. In support of my theory, I direct the reader's attention to a FAA Memorandum, dated June 13, 2018, titled "Noise Screening Assessments,"¹⁵

In general, the Memorandum is intended to "clarify existing FAA policy and guidance on noise screening assessments and the appropriate use of noise screening tools and methodologies." The Memorandum makes it abundantly clear that noise screening tools and methodologies afford only approximate analysis of air tour noise impacts, and are not appropriate for detailed EA or EIS analysis presented to the public, nor for Section 106 analysis. Therefore, the FAA has chosen to use AEDT (Version 3e), instead, as that constitutes "approved" analysis technology. The FAA does not say who approved it.

Regardless, the Memorandum also makes it abundantly clear that noise modeling ... irrespective of the technology incorporated, whether noise screening or technical noise analysis (AEDT) ... is not science. The inadequacies of AEDT technology (noise modeling) logically follow the shortcomings of sound-level estimation (noise screening). Had Congress wanted to allow reliance on AEDT analysis of air tour noise, it could have easily specified to that effect in the Act (i.e., done so expressly). This is a noticeable omission, but *not* by oversight. Reliance on AEDT technology is *not* allowed under NPATMA any more than reliance on noise screening. In

¹⁵ See http://www.faa.gov/sites/faa.gov/files/air_traffic/environmental_issues/environmental_tetam/screening-memo.pdf.

any case, the data fed into either modeling tool would have to be “pertinent,” defined by reason to mean “current, comprehensive, relevant, accurate, and science-based.” Both noise modeling methodologies used by the FAA (noise screening and AEDT) fail to make use of “pertinent” data at CACH, so the outcome from noise modeling at CACH is flawed from the outset, irrespective of the computer programs used for analysis.

For all of the above reasons, I argue that the FAA’s efforts to gather input on TCPs for CACH are misplaced for lack of appropriate sound data at this time upon which to base decision. This conclusion is in addition to the fact, as I explained in the body of this letter, that no legal “undertaking” has yet occurred at CACH which would authorize pursuit of a Section 106 determination, either, for much the same logic.