



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

Aug 4, 1992

Mr. Rex D. Johnson
Director
Hawaii Department of Transportation
869 Punchbowl street
Honolulu, Hawaii 96813-5097

Dear Mr. Johnson:

In response to our July 6 letter requesting additional information regarding restrictions at West Maui Airport, we have received a copy of the lease agreement signed in 1987.

The Federal Aviation Administration (FAA) has reviewed this information and concludes that this additional evidence supports the position that the restrictions agreed to in 1987 need not undergo the process established under the Airport Noise and Capacity Act (ANCA). We note, however, discrepancies in the information provided in your March 13, 1992, letter and in the 1987 lease which was submitted by West Maui Airport. The zoning ordinance which you quote pre-dated the lease agreement. The restrictions issued in 1987 would be considered to supersede those issued in 1986 and hence constitute those which need not undergo ANCA review. The special conditions paragraph 46 in the February 26, 1987 lease states:

that the types of aircraft utilizing the airstrip shall be limited to a maximum seating capacity of 50 passengers. In addition, jet powered aircraft shall not be allowed regardless of seating capacity or STOL capabilities.

that daily flights shall not exceed 35 aircraft with a passenger seating capacity of 25 passengers or less and 35 aircraft with a passenger seating capacity between 26 and 50 passengers.

that lessee shall take all reasonable actions to operate the airstrip in such a manner as to minimize the noise generated by such aircraft operations at and in the airspace of the airstrip Lessee shall take all reasonable actions required to insure that the noise standard set forth [below] is complied with at all times by lessee and all others operating aircraft to and from the airstrip.

All aircraft operated at the airstrip...shall have a current aircraft type or airworthiness certificate or its equivalent issued by the FAA certifying that such aircraft generates noise levels no greater than the following:

(1) for propeller-driven aircraft of 12,500 pounds or less maximum FAA certificated takeoff weight only: the maximum allowable noise levels for "propeller-driven small airplanes" under Appendix F to Part 36...as the same may be amended from time to time, with noise levels measured and corrected as provided in such appendix, but in no event in excess of a noise level of 82 dB(A) measured pursuant to said appendix F; [this noise level varies from that contained in the 1986 ordinance and in your March 1992 letter. As stated in our July 6 letter, the ANCA provisions covering noise and access restrictions do not apply to aircraft not specifically identified as stage 2 or stage 3 aircraft.] and

(2) for all other aircraft: The "Effective Perceived Noise Levels," as that term is defined in said Part 36...as follows: (a) for takeoff: 93 EPNdB; (b) for sideline: 102 EPNdB; and (c) for approach: 102 EPNdB. [These levels are also at variance from those contained in the 1986 ordinance and in your March 13 letter. If formal agreement was issued subsequent to the 1987 lease which restated the 1986 limits, this information would need to be provided.]

that notwithstanding any other provisions in the lease to the contrary, no helicopter operations shall be permitted at the airstrip, and all references herein to helicopter operations are hereby deleted and shall be of no force or effect.

The limitation on hours of operation is included in paragraph 8 of the lease agreement and is also not subject to ANCA.

The factors relevant to this determination on applicability of ANCA to each of the restrictions are the same as those set forth in our July 6 letter, to wit: (1) the airport is currently privately-owned and private use, (2) the restrictions were adopted well before the transfer of ownership and do not appear to have been put into effect with the intent of circumventing ANCA, and (3), in these circumstances, the transfer of ownership will make the airport available for public use for the first time. We restate our position that we do not here address the applicability of ANCA to use restrictions under other circumstances and that this letter is intended only as a response to your concerns about compliance with ANCA requirements.

I believe that this resolves the outstanding ANCA questions. If you need additional information or have any further questions, please feel free to contact me.

Sincerely,

Leonard L. Griggs, Jr.
Assistant Administrator for Airports