



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

Jul 6, 1992

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

Dear Mr. Johnson:

This is in response to your March 13 letter to Mr. Jeffrey Shane and his reply to you of April 3 in which he indicated that the Federal Aviation Administration (FAA) would review the questions you raised regarding the State's ability to maintain the existing limitations on West Maui Airport if the airport is purchased by the state. We have reviewed the limitations in light of existing law, particularly the Airport Noise and Capacity Act of 1990, 49 U.S.C. App. sec. 2151 et. seg., (ANCA) and airport grant compliance requirements under the Airport and Airway Improvement Act, as amended (Airport Act).

Regarding applicability of ANCA, only two of the existing restrictions that the state proposes to maintain at West Maui are contained in 1986 zoning ordinance No. 1535: (1) the noise level limit on operations by propeller-driven aircraft of 12,500 pounds or less and (2) the EPNdB limits for takeoff, sideline, and approach noise.

ANCA does not apply to restrictions on operations by propeller driven aircraft weighing 12,500 pounds or less because none of these aircraft are classified as stage 2 or 3, and ANCA governs restrictions on operations by stage 2 and 3 aircraft.

The previously-adopted EPNdB limits need not undergo the process established under the Airport Noise and capacity Act. The factors relevant to our determination on West Maui include:

(1) the airport is currently privately-owned and private use, (2) the restriction was adopted well before the transfer of ownership and does 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. A major purpose of ANCA is to prevent the proliferation of uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system. The relaxation of existing restrictions and improvement of the availability of airports for public use is consistent with

this purpose. In these circumstances, it would not serve the purpose of ANCA to interpret ANCA to apply because the transfer, even with the existing restriction in place, represents an overall improvement in airport access. We do not here address the applicability of ANCA to use restrictions under other circumstances.

If these same factors can be demonstrated regarding the remaining restrictions, ANCA also would not apply to them. FAA requires evidence that they have been implemented and we welcome any additional information that you may be able to provide. We have also contacted the airport manager for further documentation.

We also wish to point out that, if the state proposes to implement new restrictions or to tighten existing ones, it will be required to comply with ANCA and 14 CFR Part 161.

As to the Federal grant assurances, they are not applicable to West Maui provided that no Federal funds are used to purchase or improve the airport. However, if the state applies for Federal grant funds in the future for use at West Maui Airport, then it must comply with the applicable grant assurances. Any ban on helicopter or jet operations would appear to violate Federal grant agreement Assurance No. 22, that the airport operator "will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses." (Also see section 511(a)(1) of the Airport and Airway Improvement Act, as amended). The state may use airport-generated revenues from other state-owned airports for capital improvements and maintenance expenses at West Maui Airport without violating the revenue use limitation under the Federal grant assurances (see section 511(a)(12) of the Airport and Airway Improvement Act, as amended). The revenue use limitation permits use of airport-generated revenues for capital and operating costs of the local airport system.

This letter pertains solely to the Department of Transportation/FAA interests in the airport's compliance with ANCA and the Federal grant assurances. It is intended only as a response to your concerns about compliance with those requirements.

I hope that this addresses your basic questions. We will provide you with further FAA decisions on ANCA applicability as soon as we have received and reviewed documentation implementing the restrictions.

Sincerely,

Leonard L. Griggs,  
Assistant Administrator for Airports