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

Western-Pacific Region 300 Ala Moana Blvd, Rm 7116
Airports District Office Honolulu, HI 96813
MAIL: Box 50244
Honolulu, HI 96850-0001
(808) 541-1230
FAX: (808) 541-3462

Sept 22, 1995

Mr. Owen Miyamoto
Airports Administrator
HDOT, Airports Division
Honolulu International Airport
400 Rodgers Boulevard, Suite 700
Honolulu, HI 96819-1880

Dear Mr. Miyamoto:

This is in response to your May 24 and July 5, 1995, letters in which you note that the airlines appear to be opposed to voluntary agreements to minimize aircraft noise impacts at Kahului Airport. You also request clarification of a statement in the Federal Aviation Administration's (FAA) letter dated May 1, 1995. Our letter provided comments on your March 1992 "Cost/Benefit Analysis Related to Alternative Noise Restrictions, Kahului Airport."

You request that we clarify the statement "...the FAA has serious concerns about the underlying assumption that the State of Hawaii has authority to implement a local phase out requirement II (FAA's May 1, 1995, letter, page 2, first full paragraph). The statement reflects FAA's concern that a proposal to phase out operations by all Stage 2 airplanes at Kahului Airport using the same deadlines that apply to operations by Stage 2 airplanes in the contiguous United States under the Federal
transition schedule, 14 CFR Part 91, would be Federally preempted under 49 USC 47521 et seq. (the former Airport Noise and Capacity Act, hereinafter "the Act"), particularly 49 USC 47528(e), and 49 USC 47530.

As the FAA stated in its May 1, 1995, letter, "Congress' decision to exempt and cap the number of Stage 2 aircraft operations that may operate in Hawaii and between Hawaii and areas outside the contiguous United States, in our view, expresses an intent to permit Stage 2 operations to continue in Hawaii beyond the year 2000 because of the unique role aviation plays there" (FAA May 1, 1995, letter, page 2, paragraph 3).

A local phase out requirement at Kahului Airport is preempted under the Act because Congress twice clearly considered and rejected the concept of including Hawaii in the national transition schedule. The Act's provisions for phase out of operations by Stage 2 airplanes by the year 2000 and for non-addition of Stage 2 airplanes applies only to the contiguous 48 states.

In addition, a phase out requirement at Kahului Airport would constitute an obstacle to the accomplishment of federal policy embodied in the Act, particularly 49 USC 47528(e) and 49 USC 47530, in one of two ways. Since Kahului is the second busiest airport in Hawaii and carriers at Kahului operate at more than one airport, the airport serves as an important link in the flow of passengers and cargo to the island of Maui, throughout the State of Hawaii, and abroad. Consequently, a phase out requirement would impact air carrier scheduling and fleet mix throughout the State. This would reduce the capacity of the national airport and airway system and impose additional costs on carriers and passengers.

Airline costs would be substantial. For example, the two primary carriers in Hawaii, Aloha Airlines and Hawaiian Airlines, presently have 16 Stage 2 airplanes for which hush-kits will be expensive and may not be readily available. Further, when the FAA chose the interim compliance dates for the 'Stage 3 transition, it did so based on a detailed economic analysis of the effect of the phase out on competition in the airline industry within the contiguous United States (see, 49 USC 47523). Since Hawaii was not part of the transition mandated by Congress, no analysis of the economic impact of the transition on any Stage 2 airplane operator within Hawaii was considered. The FAA is unwilling to stipulate that the transition compliance dates would have been the same if Hawaii had been included. The collateral effects and costs of any Stage 2 ban in Hawaii should not be underestimated.

A local phase out requirement would also frustrate the national aviation noise policy because action by the State of Hawaii to impose a local phase out at Kahului would prompt similar or more stringent restrictions on operations by Stage 2 aircraft at its other airports. A patchwork of airport use restrictions is the kind of situation that Congress sought to avoid by adopting the Act (see, 49 USC 47421).

The FAA understands that the State has agreed to prepare a cost-benefit analysis in accordance with the Stipulation Between the Parties for Stay of Proceedings, Order; Pitt v. Hirata, Circuit Court of the Second Circuit, State of Hawaii, Civil Docket No. 89-0048(1). As we have stated above, the FAA considers this proposal to be federally preempted. In addition to Federal preemption, there are other limitations on the noise abatement authority of the State as an airport proprietor. These include a duty not to impose an undue burden on interstate or foreign commerce, as well as existing requirements imposed by statute, airport development grant agreements, and case law. If the State proceeds with a cost- benefit analysis, the State should address these limitations in its analysis.

The issue of whether a local phase out requirement is federally preempted is distinct from the issue of whether the State has authority to restrict Stage 2 nighttime operations at Kahului Airport. As the FAA indicated in its May 1 letter, the State must comply with the Act and 14 CFR Part 161. In addition to the Act, the State must demonstrate that the

proposed curfew meets other Federal requirements. For example, the curfew may not impose an undue burden on interstate or foreign commerce and must be fair, reasonable, and not unjustly discriminatory. The State of Hawaii must comply with the Act and these other Federal requirements to remain eligible both to receive airport development grants and to collect and impose passenger facility charges.

We again strongly urge you to continue to pursue voluntary agreements as a possible solution to aircraft noise problems at Kahului Airport. We would be pleased to assist you in opening such discussions with Aloha Airlines and Hawaiian Airlines. If you have additional questions, please contact my office.

Sincerely,

Howard S. Yoshioka
Manager, Airports District Office