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

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

January 8, 2024

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Dear Mses. Marrin and van Heuven and Messrs. Silversmith and Pilsk:

Re: ***Skydive Academy of Hawaii Corp. dba Skydive Hawaii and Frank Hinshaw*** **v.** ***State of Hawaii - FAA Docket No. 16-23-06***

Enclosed is a copy of the Federal Aviation Administration (FAA) determination with respect to the above-referenced matter.

We find that the State of Hawaii, sponsor and operator of the Kawaihapai Airfield, is not currently in violation of its Federal obligations regarding Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights* by requiring Skydive Hawaii to request permission to access the Airport during the hours of 7 pm and 7 am to conduct aircraft maintenance. We do recommend State review and revise its policy to make it more flexible and transparent to allow for tenants to better plan their nighttime access and to be clear when a request for nighttime access would be denied.

Accordingly, the above-referenced matter is dismissed.

The reasons for dismissal are set forth in the enclosed Director's Determination.

Sincerely,

MICHAEL W HELVEY
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Date: 2024.01.08 07:48:09 -05'00'

Michael Helvey
Director, Office of Airport Compliance
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

SKYDIVE ACADEMY of HAWAII CORP. d/b/a SKYDIVE HAWAII and FRANK HINSHAW, **COMPLAINANTS,** **v.** **STATE of HAWAII,** **RESPONDENT.**

FAA Docket No. 16-23-06

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) on a complaint filed under Title 14 of the Code of Federal Regulations, Part 16 (14 CFR Part 16) by Skydive Academy of Hawaii Corp. dba Skydive Hawaii and Frank Hinshaw (Complainant or Skydive Hawaii) against the State of Hawaii (Respondent or State), sponsor of the Kawaihapai Airfield also known as Dillingham Airfield (HDH or Airport).

Skydive Hawaii alleges that the State violated Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights* as a result of its policy to restrict Skydive Hawaii's access to the airfield to perform maintenance activities between 7 pm and 7 am without first receiving prior permission from the State. The Complaint states "[t]he primary issue in this Complaint is that the State is restricting access to Skydive Hawaii (and other tenants of HDH) by imposing burdensome conditions for accessing the airport between the hours of 7 pm and 7 am" and "tenants must request advance written permission to utilize their premises during those hours." (FAA Exhibit 1, Item 2, p. 2). The Complaint also claims that the State may potentially be in violation of Grant Assurance 5, *Preserving Rights and Powers* and Grant Assurance 19, *Operation and Maintenance* based on the same restrictions.

The State denies that its policy to require prior permission for tenants to access the Airport between 7 pm to 7 am violates its grant assurances. It states, "the State has granted every request for nighttime access Skydive Hawaii has made in recent years." And "the State's prior permission rule is both reasonable and necessary given the unique circumstances at HDH." (FAA Exhibit 1, Item 7, p. 2).

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the Administrative Record in this proceeding, the Director finds the State is not in violation of Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights* by requiring Skydive Hawaii to request permission to access the Airport during the hours of 7 pm and 7 am to conduct aircraft maintenance. The Director, however, recommends the State revisit its policy on nighttime access at HDH to

provide clearer expectations for civilian tenants of the Airport when military operations occur or could otherwise create safety hazards.

The FAA's decision in this matter is based on applicable Federal law, FAA policy, and review of the pleadings and supporting documentation submitted by the parties, which comprise the Administrative Record reflected in the attached FAA Exhibit 1.

II. PARTIES

A. Complainant

Frank Hinshaw is the principal of Skydive Hawaii, a Hawaii corporation that has provided skydiving services since the 1980s. Since September 1, 2016, Skydive Hawaii has had a license to operate and use the premises at the Airport.[1] It does not conduct skydiving operations at night, but claims it needs access to its hangar and aircraft at night to conduct maintenance and other aeronautical-related activities (FAA Exhibit 1, Item 2, p. 2).

B. Respondent

The State is the sponsor of the Airport, which is located on the island of Oahu in Hawaii. The Airport is a "joint-use airport." The FAA defines the term "joint-use airport" as an airport owned by the U.S. Department of Defense at which both military and civilian aircraft make shared use of the airfield.[2] The State operates the Airport under a lease agreement with the United States Army (Army) which owns the property. The current lease with the Army is set to expire in 2024. Negotiations regarding a new lease are currently underway between the State and the Army.

HDH is a general aviation airport located on the northwest side of Oahu located in the Dillingham Military Reservation. The airfield has one runway (8/26) that is 9,007 feet long and 75 feet wide. A 5,000-foot-long portion of the runway is marked for civilian use. The Airport does not have an Air Traffic Control Tower and there are no lights on the runway. There are 18 based aircraft located at the airfield and an additional 20 gliders and two ultralights. The Airport supports over 37,000 annual operations (FAA Exhibit 1, Item 17).

The Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. § 47107, *et seq.*). The State has accepted $1,326,380 in AIP funds and $31,000 in other grant program funding for HDH.[3] The last AIP development grant was received in 2005 (FAA Exhibit 1, Item 18).

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[1] The State provides revocable permits to the tenants of the Airport. It does not offer leases, but the revocable permits are similar to leases in that it provides the terms of the use of the facilities. Skydive Hawaii refers to its revocable permit as a license. The term permit and license are used interchangeably in this determination. The word "lease" in the DD refers to the lease between the State and the Army.

[2] See Joint Civilian/Military (Joint-Use) Airports webpage accessible at https://www.faa.gov/airports/planning_capacity/joint_use_airports (last accessed on October 24, 2023).

[3] HDH received $9,000 in Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act and $22,000 in American Rescue Plan Act (ARPA) funds.

III. PROCEDURAL HISTORY

1) On April 6, 2023, Skydive Hawaii submitted its Complaint (FAA Exhibit 1, Item 2).

2) On April 13, 2023, the FAA docketed the Complaint as FAA Docket 16-23-06 (FAA Exhibit 1, Item 3).

3) On April 25, 2023, the Respondent filed a Motion to Extend Time to Respond to the Compliant (FAA Exhibit 1, Item 4).

4) On April 28, 2023, the FAA issued an Order granting the Motion to Extend Time to Respond to the Complaint (FAA Exhibit 1, Item 5).

5) On June 1, 2023, the Respondent filed a second Motion to Extend Time to Respond to the Compliant (FAA Exhibit 1, Item 6).

6) On June 6, 2023, the FAA issued an Order granting the Motion to Extend Time to Respond to the Complaint (FAA Exhibit 1, Item 7).

7) On June 23, 2023, the Respondent filed its Answer to the Complaint and Brief in Support of Its Answer to the Complaint (FAA Exhibit 1, Item 8).

8) On June 23, 2023, the Complainant filed a Motion for Extension of Time to File Its Reply to the Answer (FAA Exhibit 1, Item 9).

9) On June 27, 2023, the FAA issued an Order granting the Motion for Extension of Time to File a Reply (FAA Exhibit 1, Item 10).

10) On July 13, 2023, the Complainant filed its Reply (FAA Exhibit 1, Item 11).

11) On July 18, 2023, the Respondent filed a Motion for a 7-day Extension of Time to File Its Rebuttal (FAA Exhibit 1, Item 12).

12) On July 20, 2023, the FAA issued an Order granting the Motion of Extension of Time to File Its Rebuttal (FAA Exhibit 1, Item 13).

13) On July 31, 2023, the Respondent Filed its Rebuttal (FAA Exhibit 1, Item 14).

14) On September 5, 2023, the Complainant filed its Motion to Supplement the Record (FAA Exhibit 1, Item 15).

15) On September 11, 2023, the Respondent filed its Opposition to the Complainant's Motion to Supplement the Record (FAA Exhibit 1, Item 16).

IV. FACTUAL BACKGROUND

The undisputed facts in this matter are as follows:

December 10, 1976	The State entered into a lease and operating agreement with the Army to operate the Airport (Contract No. DACA84-1-76-153). The term of the lease was for 25 years. The lease specified that the civil operations would be permitted during daylight hours only (FAA Exhibit 1, Item 2, Exhibit 11).
May 11, 1983	The State entered into a new lease and operating agreement (Contract No. DACA84-1-81-27) with the Army to operate the Airport. The term of the lease was for 25 years and leased a portion of the military reservation including the runways, taxiways, ramp, and various buildings for use by the State. The State's use included the ability to construct, repair, maintain, and operate a public airport. The lease also set the priorities for use "(1) military flight operations, (2) civil aviation and sport parachute operations; and (3) military ground maneuvers." This lease superseded the 1976 lease and did not include the statement regarding civilian operations during daylight hours only (FAA Exhibit 1, Item 8, Exhibit D).
June 3, 2009	The State issued Airport Notice # 09-017 that indicated the closure of gates at the Airport from 7 pm to 7 am (FAA Exhibit 1, Item 2, Exhibit 10a).
June 18, 2009	The State issued Airport Notice # 09-020 that prohibited any civilians from being on the airfield after 10 pm and that special requests to stay beyond this time would be approved on a case-by-case basis (FAA Exhibit 1, Item 2, Exhibit 10b).
July 9, 2009	The State entered into a new lease with the Army for a 25-year term with similar terms as previous leases. Note priority uses were labeled as (a) military flight operations, (b) civil aviation and sport parachute operations, and (c) military ground operations (FAA Exhibit 1, Item 2, Exhibit 2).
August 13, 2009	The State issued Airport Notice # 09-023 that updated the policy for nighttime access and made keys to the gate unavailable to tenants (FAA Exhibit 1, Item 2, Exhibit 10c).
September 9, 2011	The FAA's Honolulu Airports District Office (ADO) issued a 14 CFR Part 13 informal determination regarding Skydive Hawaii's complaint regarding restricted access at nighttime. The informal determination found that the State had not violated its grant assurances in relation to this matter. However, it did state "HDOT should develop comprehensive policy/procedures to grant access to HDH tenants when closed to eliminate any claim of discrimination." (FAA Exhibit 1, Item 2, Exhibit 13 p. 2).

June 7, 2012	The State issued Airport Notice #12-022 that established the policy and procedure for requesting access to the Airport between 7 pm and 7 am (FAA Exhibit 1, Item 2, Exhibit 9).
August 30, 2012	The State issued Airport Notice #12-030 that changed the time gates were opened in the morning to 6 am (FAA Exhibit 1, Item 2, Exhibit 8).
September 25, 2012	The FAA's Western-Pacific Regional Airports Division sent a memo to the State regarding its request to close the Airport for civilian use. The State was considering not renewing the lease due to the cost of operating the facility and other concerns summarized in the memo (FAA Exhibit 1, Item 8, Exhibit H).
November 28, 2012	The State and Army executed Supplemental Agreement 1 to the 2009 Lease for the Airport. The Agreement reduced the length of the term to five years or from 2009 to 2014. All other terms remained the same (FAA Exhibit 1, Item 8, Exhibit E-2).
August 15, 2015	The State and Army executed Supplemental Agreement 2 to the 2009 Lease for the Airport that extended the term for one year to 2015. All other terms remained the same (FAA Exhibit 1, Item 8, Exhibit E-3).
July 25, 2017	The State issued a revokable permit (#8441) to Skydive Hawaii to lease hangar and apron at the Airport effective September 1, 2016 (FAA Exhibit 1, Item 2, Exhibit 1).
August 23, 2017	The State and Army executed Supplemental Agreement 3 which extended the term for four years and added new terms (34 and 35) that were specific to contractor's payroll and benefits (FAA Exhibit 1, Item 8, Exhibit E-4).
April 23, 2019	The State and Army executed Supplemental Agreement 4 which extended the term five years from 2019 to 2024 and corrected condition 5 regarding supervision by the installation commander (FAA Exhibit 1, Item 8, Exhibit E-5).
December 2022 – March 2023	Skydive Hawaii corresponded with the State and the Honolulu ADO regarding the State's policy requiring permission to remain on the Airport between 7 pm and 7 am (FAA Exhibit 1, Item 14 to Item 17).

V. ISSUES

The Complaint states "The access restrictions in effect at HDH violate grant assurance #22, which prohibits unjust economic discrimination and requires all types of aeronautical activities to be allowed to utilize federally obligated airports on reasonable terms, as well as grant assurance #23 and Section 40103(e), which prohibit exclusive rights, including constructive exclusive rights derived from unjust economic discrimination – and potentially other assurances, including

#5 (Preserving Rights and Powers) and #19 (Operation and Maintenance)." (FAA Exhibit 1, Item 2, p. 1).

Upon review of the allegations and the relevant airport-specific circumstances, the Director has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

Issue 1 – Whether the State violated Grant Assurance 22, Economic Nondiscrimination, by requiring Skydive Hawaii to request permission from the State for it to perform aircraft maintenance between the hours of 7 pm and 7 am.

Issue 2 – Whether the State violated Grant Assurance 23, Exclusive Rights due to its policy to require Skydive Hawaii to request permission from the State for it to perform aircraft maintenance activities between the hours of 7 pm and 7 am.

The Director finds that it does not need to reach a decision on Grant Assurance 5, *Preserving Rights and Powers* or Grant Assurance 19, *Operations and Maintenance* in regard to the access issue raised by Skydive Hawaii. The FAA has already communicated questions to the State regarding the terms of the lease specifically related to these grant assurances and unrelated to the access issue outlined in the Complaint. The FAA has recognized that the State is attempting to address the FAA's questions by negotiating a longer-term lease.

VI. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor.[4] Title 49 U.S.C. § 47107(a) sets forth certain sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See FAA Exhibit 1, Item 1 in the Index for a list of all the grant assurances.

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA must ensure that airport owners comply with their Federal grant assurances.

[4] FAA Exhibit 1, Item 1

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ANALYSIS

Preliminary Issue – Whether the State's acceptance of the Army's assessment that military training operations and ground maneuvers may be inconsistent with or create a hazard to civilian aircraft operations is a violation of the State's obligations.

1. Skydive Hawaii's Position

Skydive Hawaii argues that the State does not provide an explanation of how performing maintenance on its aircraft would interfere with the Army's training activities. It claims, "the State has provided no explanation of how civilian aviation *maintenance and repair* activities would conflict with military *flight* operations at HDH – nor why such activities should be prohibited every night irrespective of whether any military use of HDH is actually occurring." (emphasis original) (FAA Exhibit 1, Item 2, p. 3). Further, it argues that the FAA is the final arbiter of safety and has not assessed or made a determination on the safety related to the Army's training activity and simultaneous aircraft maintenance or other civilian use. It cites a previous Part 16 stating "[i]n any case, FAA– not the State – is the final arbiter of whether operations at an airport are safe. *See, e.g.,* Dakota Territory Tours v. Yavapai County, No. 16-17-18, Final Agency Decision, at 9 (May 9, 2023)" (FAA Exhibit 1, Item 11, p. 6).

2. State's Position

The State claims that the Army has stated in its lease that the civilian use of the Airport during its nighttime training activities may cause a hazard. It refers to the language of the 2009 lease[5] agreement and states "The 2009 Lease acknowledges that Army operations 'may … create a hazard to civil aircraft operations." (FAA Exhibit 1, Item 8, p. 7). It also refers to the Declaration of the Army (Declaration of James Knight) to support its claim which states "[b]ecause the Army's nighttime training operations involve the use of night vision goggles, it is critical that the Airfield remain dark during these operations. Specifically, during training missions, it is critical

[5] There were 4 supplemental agreements to the 2009 lease, however none of these changed the terms of the lease related to this issue. Therefore, the original language in the 2009 lease represents the current terms.

to the training missions that there be no bright lights or other activity on the Airfield that would distract from, or interfere with, the training operations." (FAA Exhibit 1, Item 8, Exhibit A, pp. 1-2). Further, the State argues "Skydive Hawaii offers no evidence that contradicts the testimony of Mr. Knight, an Army official with direct knowledge of the Army's needs and the nature of its operations, that civilian use of HDH at night is incompatible with Army training missions and that some Army operations at HDH would endanger civilians." Secondly, it claims "[t]he State agrees that the FAA is the final arbiter of civil airport safety, but that does not undermine the Army's determination that civilian activities are incompatible with Army operations or that Army operations would be dangerous to civilians. Moreover, the Army is the final arbiter of what activities it will allow on its airport." (FAA Exhibit 1, Item 14, p. 10).

3. Director's Determination

Although the FAA is the final arbiter of safety for civilian aviation, the Director confirms that the FAA does not regulate or render an assessment of the safety requirements of the Army's flight or ground training activities. This is particularly true in the context of an airfield, like HDH, that is owned by the Army. The Army, not the FAA, is responsible for assessing its needs and requirements and, although it works with the FAA to integrate its activities into the National Airspace System, it prescribes its own specific safety requirements for its training activities on its airport. The Director agrees with the State that the Army has the right to determine the necessary safety requirements of its training missions and to ensure that its mission is not compromised by civilian use. The Director concludes that the FAA is not in a position to substitute its safety judgment for that of the Army and therefore declines to take a position on the safety requirements espoused by the Army as being necessary for its training activities at HDH and accepts the Army's assessment. The Director finds that by accepting the Army's safety rationale, the State has not violated its grant obligations.

Issue 1 – Whether the State violated Grant Assurance 22, Economic Nondiscrimination, by requiring Skydive Hawaii to request permission from the State for it to perform aircraft maintenance activities between the hours of 7 pm and 7 am.

1. Skydive Hawaii's Position

Skydive Hawaii provides two main reasons for its claim that the State is in violation of Grant Assurance 22 as follows.

a) Skydive Hawaii's claim that the Lease does not specify priority use by the Army

Skydive Hawaii claims that the lease agreement between the Army and the State does not specifically prioritize military operations over civilian aeronautical activities. Skydive Hawaii argues "[t]he lease does provide that there will be three "priorities" for the use of HDH: "(a) military flight operations, (b) civil aviation and sport parachute operations; and (c) military ground maneuvers." *See* § 32. But none of them is described as being a *higher* priority than any of the others; *i.e.*, the lease provides no basis for favoring military over civilian activities." Further, it claims, "even if the lease could be interpreted to give priority to the Army and to allow corresponding restrictions on civilian access to HDH, that interpretation would be contrary

to the State's obligations to FAA" (FAA Exhibit 1, Item 2, p. 3). It cites two previous Part 16 cases to support its argument that access restrictions are not permitted.[6]

b) Skydive Hawaii's claim that the prior permission rule is unreasonable and in violation of Grant Assurance 22

Skydive Hawaii claims that the 7 pm to 7 am nighttime prior permission requirements to conduct aircraft maintenance in its leased hangar is unreasonable and violates Grant Assurance 22, *Economic Nondiscrimination*. First, it argues that aircraft maintenance is considered an aeronautical activity covered by the grant assurances by stating "Skydive Hawaii requires nighttime access to its premises in order to perform repair and maintenance work – which is unquestionably an aeronautical activity. *See, e.g., Minimum Standards for Commercial Aeronautical Activities,* Advisory Circular 150/5190.7, Appendix 1, § 1.1(a) (August 28, 2006); assurance #23(b)" (FAA Exhibit 1, Item 2, p. 2). Second, it claims its license does not specifically require prior permission for nighttime aeronautical activities and that even if it did the State has a responsibility to meet its Federal obligations associated with accepting Federal funds to develop the airfield. It states "[a]lthough the 'Special Conditions' to the license do note that the airfield on occasion may be closed for military exercises, there is not even the slightest suggestion therein that Skydive Hawaii would be unable to access its premises at HDH 50% of the time, and irrespective of whether any military activities are actually occurring." (FAA Exhibit 1, Item 2, p. 3). Third, it claims that the State policy provides no explanation or criteria for when a request would be denied and although it hasn't been denied in recent years, it is still a violation of the grant assurances. Fourth, it claims that the State denying all administrative functions at night is unreasonable. "Skydive Hawaii respectfully posits that maintenance-related record-keeping and similar "administrative" activities have a direct relationship to the operation of aircraft and should be deemed an aeronautical activity." (FAA Exhibit 1, Item 2, p. 3). Finally, it states "[t]he burden [having to request permission to access at night] is not just the procedures to communicate with the State but the associated uncertainty which interferes with the Complainants' ability to plan and operate their aeronautical business." (FAA Exhibit 1, Item 11, p. 3).

Skydive Hawaii filed a motion to supplement the record that included information obtained from a Freedom of Information request regarding the negotiation of the 1983 lease. It claims that the letter from the FAA providing comments on the lease demonstrates the FAA's position on the lease is not consistent with the State's position. The motion states "The FAA since has provided documents to Skydive Hawaii which are not consistent with the State's narrative … "which indicate that the FAA specifically opined that the lease could not allow the Army to impose restrictions which would be at odds with the Federal obligations applicable to HDH" (FAA Exhibit 1, Item 14, p. 1). The motion provides a letter from FAA with comments on the draft lease.

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[6] *Aircraft Owners and Pilots Association* v. *City of Pompano Beach, Florida,* No. 16-04-01, Director's Determination (December 15, 2005) (restrictions on the times during which touch-and-go operations, taxi-back operations, and engine run-ups could be conducted held to be inconsistent with the airport's Federal obligations); U.S. v. County of Westchester, 571 F. Supp. 786, 798 (S.D.N.Y. 1983) (curfew violates assurances)" (FAA Exhibit 1, Item 2, p. 4).

2. State's Position

a) Skydive Hawaii's claim that the lease does not specify priority use by the Army

The State claims it is simply following the lease agreement with the Army that prioritizes military nighttime operations over civilian use. It states "[t]he Army has reserved priority use of HDH in order to conduct its nighttime training missions and to ensure that no civilian use will compromise any military operations." (FAA Exhibit 1, Item 8, p. 5).

> It notes that the Airport's development plan supports priority of military use and that this priority has always been a part of the lease agreements. The State cites the FAA's Part 13 determination from 2011 to support this position. The Part 13 determination states "[b]ased on the circumstances applicable to this matter, Grant Assurance 22a *Economic Discrimination* or 27 Use by Government Aircraft are not violated. Because HDOT is not the owner and the lease includes several stipulations, it is not unreasonable for the U.S. Army to prioritize military operations and it is not considered an exclusive use. The U.S. Army, as the owner of the airport, may reserve to itself preferential use of the facility. Civilian users of the airport should be aware that their business operations will have to accommodate the U.S. Army's preferential rights.

(FAA Exhibit 1, Item 2, Exhibit 13)

In response to Skydive Hawaii's interpretation of the lease that suggests no priority, the State claims "[t]he mutual understanding of the parties controls here, not Skydive Hawaii's self-serving, third-party interpretation of the Lease." (FAA Exhibit 1, Item 14, p. 8).

The State claims the lease is unconventional and that the State is required to abide by the terms of the lease that prioritize military or else risk closure of the Airport for civilian use. It states that "HDH presents a unique situation because the Army has imposed restrictions on the State's use of HDH as a condition of the 2009 Lease." (FAA Exhibit 1, Item 8, p. 12). In response to the previous Part 16 cases referenced by Skydive Hawaii, the State claims "[n]one of those cases addresses anything like the situation here, where the Army has reserved for itself a priority of use for nighttime activity and has required the State to assure that priority of use." (FAA Exhibit 1, Item 8, pp. 21-22).

b) Skydive Hawaii's claim that the prior permission rule is unreasonable and in violation of Grant Assurance 22

The State denies that the prior permission requirement is a violation of Grant Assurance 22 and is necessary given the unique circumstances at the Airport. In fact, it claims "[the] State's use of a prior permission rule that imposes very few actual restrictions is consistent with, and likely mandated by, the State's obligations under Grant Assurance 19 and 22(h) to assure the safe and efficient operation of HDH." (FAA Exhibit 1, Item 8, p. 17). The State claims "[the] prior permission rule is permissible under Grant Assurance 22 because it provides a reasonable and appropriate way of implementing the Army's priority right of use in the least restrictive manner while also accommodating requests for after-hours access in a manner designed to assure the

safety of civilian users." (FAA Exhibit 1, Item 8, p. 12). It suggests the Part 16 cases cited by Skydive Hawaii, are not relevant because they represent different circumstances.[7]

It further claims that the Army has placed this restriction on the State under the terms of the lease and that the State has no choice but to comply and suggests that if it does not, they may be found in breach of the lease. It references the Declaration of James Knight which states "Retaining priority of use and ensuring that no civilian use will compromise any military operations are essential terms of any lease for the Airfield and a precondition for the Army's willingness to lease the Airfield to the State." (FAA Exhibit 1, Item 8, Exhibit A).

The State claims that the language in the permit with Skydive Hawaii states that the permit is subject to the lease agreement and therefore, is required to restrict access when necessary to prioritize the Army training activities. It states "[t]hose conditions are express in the State's lease with the Army, are expressly incorporated into Skydive Hawaii's Revocable Permits [license] to use HDH and are enforced through the State's prior permission rule that Skydive Hawaii has known about for well over a decade." (FAA Exhibit 1, Item 8, p. 3).

It indicates that it has not denied Skydive Hawaii's request to be on the Airport after hours and would only do so if the military training activities were scheduled to take place. It states "Importantly, the rule only operates to restrict civilian activity when the Army is actually using HDH. The rule is not a blanket prohibition, but rather a prudent measure to prevent an unsafe condition." (FAA Exhibit 1, Item 8, p. 21). It suggests that a prior permission rule that doesn't deny access is allowable and not a violation of its Federal obligations.[8]

In terms of denying access to Skydive Hawaii to conduct administrative tasks the State claims that the tenants can conduct these during the day and does not require nighttime access. It states "[t]he State limits nighttime access to non-administrative functions because administrative functions should be able to be accomplished in the 12 hours a day HDH is fully accessible, and the State has no obligation to accommodate non-aeronautical functions." (FAA Exhibit 1, Item 8, p. 14).

The State does not believe the prior permission rule is a burden, stating "A simple e-mail, telephone call, or even text is all that is required, Metcalfe Decl. at ¶¶ 7-9, and Skydive Hawaii provides no evidence of actual burden or impracticality. Further, given the general lack of civilian need for nighttime access and the Army's actual nighttime training schedule, there is only a modest risk that specific requests for nighttime access will be denied." (FAA Exhibit 1, Item 8, p. 14).

In response to Skydive Hawaii's Motion to Supplement the record the State claims "If anything, the documents support the State's position that the FAA has long understood that the Army's operations on HDH, including nighttime operations, were not compatible with civilian use of the

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[7] "Fundamentally, all of the cases cited in the Complaint involve the airport sponsor contracting away its authority and powers or deciding for itself to impose an access restriction for noise reduction." (FAA Exhibit 1, Item 8, p. 21).

[8] The State cites *BMI Salvage Corp. & Blue side Services*, Inc. v. *Miami-Dade County, FL*, FAA Docket No. 16-05-16, Director's Determination at 31-39 (July 25, 2006), a prior permission rule that does not actually deny access does not violate Grant Assurance 22.

HDH and that civilian uses cannot occur during military use of the airfield." The State further claims "the FAA's concern that any lease with the Army be consistent with the State's [F]ederal obligations is well understood by all parties, as the Complaint itself and the Answer make clear." (FAA Exhibit 1, Item 15).

3) Director's Determination

a) Skydive Hawaii's claim that the lease does not specify priority use by the Army

To address Skydive Hawaii's claim, the Director reviewed the 1976, 1983 and 2009 leases and supplemental agreements between the Army and the State.

The **1976 lease** in paragraph 6 stated "the use of Dillingham Airfield is subject to the following operational provisions (a) civil operations will consist of light aircraft transition flying during daylight hours only." (FAA Exhibit 1, Item 2, Exhibit 11). This lease had a specific restriction for civilian aviation at nighttime. This may have been included in the initial lease since there are no airfield lights to support nighttime aircraft operations. It may also have been seen as too restrictive since it was a blanket ban at nighttime. However, it is unclear from the pleadings exactly why this language was removed in subsequent leases.

In the **1983 lease,** the language under Paragraph 6 changed to "(b) the priorities for use of Dillingham Airfield shall be: (1) military flight operations, (2) civil aviation and sport parachute operations; and (3) military ground maneuvers." Further, the lease stated in paragraph 6(g) "That as specified in paragraph 6 (b), Dillingham Airfield shall be subject to military flight operations and ground maneuvers for limited periods. Those operations or maneuvers may be inconsistent with or create a hazard to civil aircraft operations. Prior to commencing such operations or maneuvers, the Government shall give reasonable advance notice to the lessee who will be responsible for notifying civil aviation users." (FAA Exhibit 1, Item 8, Exhibit D).

The **2009 lease** had similar language to the 1983 lease, but it was moved to Paragraph 32 of the lease and states "c. That the use of Dillingham Airfield is subject to the following operational provisions: ... (ii) The priorities for use of Dillingham Airfield shall be: (a) military flight operations, (b) civil aviation and sport parachute operations; and (c) military ground maneuvers." The 2009 lease has identical language regarding 6(g) above; however, it references the new location of the priorities in paragraph 32(c)(ii) (FAA Exhibit 1, Item 2, Exhibit 2). The 2012 and subsequent three additional supplemental agreements, extended the length of the 2009 lease, but did not change the terms of the underlying lease as it relates it to the above citations. The 2009 lease language is what currently applies to this analysis.

The **1983 lease** did not have the daylight requirement but replaced it with the language above. The 2009 lease and the four subsequent supplemental agreements did not substantially change, other than moving the language to Paragraph 32 and changing the headings (a, b, c) which appears to correspond with the new formatting of the lease and is likely coincidental.

The 1983 and 2009 leases list the military flight operations first with either a 1) or a) heading. The Director believes that the order of the activities is intentional because there aren't any other aeronautical users that are not identified. The Director believes that, in context of an Army-

owned airfield, a reasonable observer would logically conclude that the order is intentional and that military flight operations have the first priority by design. The second priority is civilian aviation and sport parachutes.

Further, there is a long-held position by the State and the Army that both interpret the lease in this manner. In addition to the language of the successive leases that list military flight operations first, declarations from representatives from the State and the Army have each noted that its interpretation of the lease is such. For example, the declaration of James Knight (Action Officer for the joint-use agreement) states "As a condition of allowing the State to use the Airfield for civil aviation, the Army has reserved priority use of the Airfield in order to preserve the Army's ability to conduct its training missions – including the frequent nighttime operations. Retaining priority of use and ensuring that no civilian use will compromise any military operations are essential terms of any lease for the Airfield and a precondition for the Army's willingness to lease the Airfield to the State." His declaration further states "The State can authorize nighttime Airfield access, but at all times, the State is obligated to ensure that any such access is consistent with its terms of the lease with the Army, which prioritizes military uses, and which explicitly acknowledges that the military uses can be inconsistent with – and hazardous to – civilian operations and uses." (FAA Exhibit 1, Item 8, Exhibit A).

The State, for its part, claims "the lease gives the Army priority of use of HDH to conduct nighttime training operations, which the Army specifies are incompatible with and dangerous to civilian uses of HDH. Those conditions are express in the State's lease with the Army, are expressly incorporated into Skydive Hawaii's Revocable Permits to use HDH and are enforced through the State's prior permission rule that Skydive Hawaii has known about for well over a decade." (FAA Exhibit 1, Item 8, pp. 2-3).

Whether the lease specifically prioritizes military flight operations (which the Director believes it does) is secondary to the fact that, the Army is the owner of the Airport and has a right as owner of HDH to conduct its mission-based operations using HDH facilities in a manner it deems necessary to complete the mission. In fact, the entire purpose of the Army's ownership of the facility is to support that mission. The Director agrees with the State's assessment that the previous Part 16 determinations cited in the Complaint are distinguishable. In this case, the Army grants civilian use of the Airport but maintains its right to prioritize its operation over the civilian use.

Accordingly, the Director disagrees with Skydive Hawaii and finds that the lease prioritizes the Army's mission over civilian use of the Airport, and the Army has this right as the owner of the Airport and by virtue of the original and subsequent lease terms between it and the State. The Director finds that the State has abided by terms of its lease with the Army since 1983. The State, by following the lease terms that prioritizes the military mission, has imposed the lease terms on all civilian users of HDH, treating them similarly. Therefore, the State has not economically discriminated against Skydive Hawaii or created an exclusive right for any other civilian user.

b) Skydive Hawaii's claim that the prior permission rule is unreasonable and in violation of Grant Assurance 22

The Director agrees with Skydive Hawaii in noting that the lease does not specifically prescribe the 7 pm to 7 am restriction or a prior permission rule. As discussed above, the lease prioritizes military use and notes that its training activities are inconsistent with civilian use and may create a hazard to civilian aircraft operations. However, it leaves the specifics up to the State. The State's policy is not specifically required by the lease as implied by the State. The lease only requires the state to prioritize military operations and coordinate with civilian users to ensure that they do not interfere with the Army's mission.

Unlike the airport sponsor in *AOPA* v. *City of Pompano Beach, supra*, pp. 44-45, the State has provided supporting justification with respect to the Army's access restrictions. Although not defined in the lease, the policy is the State's method to manage the separation of civilian and nighttime military operations to ensure safety. The State argues that the policy has been effective, in that it has provided reasonable access to the tenants and – crucially – has actually not resulted in denying access to any of the tenants when requested in recent years. In addition, it has been effective in separating the civilian use from the Army's nighttime training as noted by the Army in the James Knight Declaration (FAA Exhibit 1, Item 8, Exhibit A).[9]

An airport sponsor is afforded the right and responsibility to manage the operation of the airport in a safe and efficient manner. This may include adopting reasonable rules (policy) and regulations.[10] Skydive Hawaii believes the State's policy is unreasonable. The FAA's Part 13 determination partially agreed in that it found that the State was not in violation of its obligations by having a policy in place but did have the State modify the policy to be more consistent and transparent in order to avoid a future violation. This included ensuring that all tenants were treated the same, and the policy provided a clear method for tenants to follow to gain access at night.

The State refers to its policy as a prior permission rule. Skydive Hawaii is correct in noting that, the FAA broadly discourages the use of a prior permission rule for access at federally obligated airports. The State references a Part 16 case, *BMI Salvage Corp. & Blueside Services, Inc.* v. *Miami-Dade County, Florida*, FAA Docket No. 16-05-16 (2011), to justify its use of a prior permission rule. In that case, the Director found insufficient evidence to determine if the prior permission rule violated the sponsor's Federal obligations. Further, that case is distinguishable from the facts present here because in *BMI Salvage Corp.* there was no evidence that the airport sponsor enforced or implemented a prior permission rule. That case did not, however, suggest that the FAA broadly approves of prior permission rules. The Director cautions sponsors from entering into agreements that may require some type of prior permission rule. Further, any prior permission rule that a sponsor considers must be very narrow in scope and designed to address a specific safety concern.

Here, the Director notes that the policy or prior permission rule at HDH is limited to nighttime and access is only denied when the military training activities would be hazardous to civilian use or in other words for safety reasons outlined by the Army (see the preliminary issue). Skydive

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[9] "The State's current system of requiring prior permission for nighttime use accomplishes that goal." (FAA Exhibit 1, Item 8, Exhibit A).

[10] *Airport Compliance Manual* FAA Order 5190.6B p. 78 states "Grant Assurance 19, *Operation and Maintenance*, requires the sponsor to protect the public using the airport by adopting and enforcing rules, regulations, and ordinances as necessary to ensure safe and efficient flight operations."

Hawaii suggests that it is unclear what criteria are used to either deny or grant access. On that point, the Director agrees –the policy does not provide any insight to when access would be denied. However, the State claims that it only denies permission when the civilian use would interfere with military training and Skydive Hawaii provides no specific evidence to dispute the State's claim. Skydive Hawaii likewise admits that it has not been denied access to the airport in recent years suggesting it is coincidental stating "it is only by sheer chance that Skydive Hawaii's requests have been for access on nights that would not have been automatically denied." (FAA Exhibit 1, Item 11, p. 2).

The Director agrees with the State that the HDH joint-use facility and lease are unconventional. FAA's policy requires sponsors to meet their obligations even if it is a joint use agreement relationship.[11] However, joint-use agreements are unique since they must balance the military's requirements to meet its mission with reasonable civilian access. This balance is generally outlined in the agreement between the parties, including limited restrictions to access, as necessary. For example, it is not unusual for joint-use agreements to restrict certain civilian flight activities at the airport on some level that may conflict with the military's need to conduct its mission.[12] In this case, the Army has by agreement indicated that nighttime training is inconsistent with civilian activity and may cause a safety hazard and the lease outlines priority use of the facility. The Director agrees with the State that the additional pleading provided by Skydive Hawaii highlighting the lease negotiations demonstrates that all parties have been aware of the need to strike this balance. The FAA provided comments to assist the State and Army to negotiate terms that balance the Army's need as the owner of the Airport, with its obligation to provide reasonable civilian access in accordance with its grant assurances.

The State has adopted a policy to provide access to civilian users at night when the Army is not conducting its mission. That arrangement appears to be effective and Skydive Hawaii has not provided evidence to the contrary. Grant Assurance 22 does not provide for unlimited access, only reasonable access. The Director finds that the policy the State employs is not unreasonable because it has not resulted in a denial of access when Skydive Hawaii has requested it and is put in place to maintain safety and not compromise the Army's mission. Finally, Skydive Hawaii failed to show that the State economically discriminated against it as compared to other civilian operators at the Airport.

c) Recommendation

The Director recognizes that the State's policy is not the only method to manage the separation of the military nighttime training activity from civilian use of the airfield. The State could adopt a more flexible and transparent policy to achieve its same goals. For example, the State's existing access policy allows certain "special groups" to request access for specific dates a year

[11]The FAA Order 5190.6B Change 2, pp. 3-12 -3-13 states "For example, if the airport sponsor agrees to certain limitations on the number of civilian aircraft takeoffs and landings or agrees to Prior Permission Requirements (PPRs), this may effectively prevent or limit general aviation access in a way that is impermissible under the grant assurances."

[12] Eglin Air Force Base in its Joint Use Agreement has restrictions on the number of scheduled civilian flights that can occur in order to prioritize the mission of the Air Force.

in advance.[13] This same policy could be applied to the aeronautical tenants. This would allow Skydive Hawaii to plan its aeronautical activity and have more predictability.[14] Further, the State receives a monthly report from the Army identifying when it has planned training operations that require the airfield to be closed to civilian activities (FAA Exhibit 1, Item 8, Exhibit B-2). The State could provide more transparency to the tenants to make them aware of the Army's schedule so that a tenant could plan its activities, accordingly, still noting that if the Army has an unscheduled activity, it may be required to alter its plans.

Skydive Hawaii claims that the State will not approve any administrative functions on the airfield at night. The Director declines to make a determination on whether the specific administrative functions of the aeronautical users are considered an aeronautical activity for the purposes of reasonable access. However, the Director notes the purpose of the restriction, as defined by the State, is to separate civilian and military use to ensure safety. Therefore, the specific nature of the use by the tenant (barring any unsafe, unsecure, activities that may be in violation of the tenant's permit) should not be a determining factor, particularly when other special groups having nothing to do with aviation are afforded nighttime access upon request. The Director strongly recommends the State review and revise its nighttime access policy to be more accommodating to the tenants as discussed above. Further, the policy must clearly spell out the reason for any denial of access. Making these changes would move away from the prior permission rule label and would be more in line with the FAA's posture regarding the balance between joint use agreement terms and a sponsor's requirement to meet its Federal obligations.

d) Summary

In summary, the Director finds that the State did not violate Grant Assurance 22, by prioritizing the Army's use of the Airport, and by implementing a reasonable policy that has not resulted in a denial of access and that is designed to ensure civilian activities do not compromise the Army's mission. However, the Director notes that the policy should be more transparent and flexible. He encourages the State to review and revise the policy to clearly state the reason for any denial of access and to be more flexible to allow the tenants to better plan for any necessary restrictions on access.

Issue 2 – Whether the State violated Grant Assurance 23, Exclusive Rights due to its policy to require Skydive Hawaii to request permission from the State for it to perform aeronautical activities between the hours of 7 pm and 7 am.

1. <u>Skydive Hawaii's Position</u>

Skydive Hawaii claims that the State has violated Grant Assurance 23 due to its unreasonable access requirements including "constructive exclusive rights derived from unjust economic discrimination." (FAA Exhibit 1, Item 2, p. 1).

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[13] The policy states "People who need repeated access through HDH to gain access to their property and astronomy groups may request access up to one year in advance." (FAA Exhibit 1, Item 8, Exhibit B-2).

[14] Skydive Hawaii claims that the current policy does not allow them to plan ahead. It states "[t]he burden is not just the procedures to communicate with the State but the associated uncertainty which interferes with the Complainants' ability to plan and operate their aeronautical business." (FAA Exhibit 1, Item 11, p. 3).

2. State's Position

The State denies Skydive Hawaii's claim that its policy to require prior permission at nighttime is unjustly discriminating against Skydive Hawaii and therefore is not granting an exclusive right.

3. Director's Determination

Grant Assurance 23 states "It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public." Further, 49 U.S.C. § 40103(e) is the statutory prohibition on exclusive rights and states "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended." And 49 U.S.C. § 47107(a)(4) states "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport."

As discussed in the preliminary issue above, the military has a right to prioritize its training activities over civilian use of the airfield. Further, all civilian tenants of the Airport are treated the same and subject to the Airport Notice that requires permission to be on the airfield between the hours of 7 pm and 7 am. Skydive Hawaii has provided no evidence to refute this. Therefore, an exclusive right provision violation does not exist. The Director finds the State is not in violation of Grant Assurance 23, *Exclusive Rights*, by prioritizing the military use of the facility at night.

VIII. CONCLUSION

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

1) The Respondent is currently not in violation of Grant Assurance 22, *Economic Nondiscrimination,* and Grant Assurance 23, *Exclusive Rights*, due to its policy to require tenants to request permission to access the Airport between the hours of 7 pm and 7 am.

2) The Director strongly encourages the State to review and revise its policy to make it more flexible and transparent to allow for tenants to better plan their nighttime access and to be clear when a request for nighttime access would be denied.

ORDER

ACCORDINGLY, it is ordered that:

1. The Complaint is dismissed.
2. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-23-06 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

MICHAEL W HELVEY Digitally signed by MICHAEL W HELVEY Date: 2024.01.08 15:52:24 -05'00'

Michael Helvey
Director, Office of Airport Compliance
and Management Analysis
Federal Aviation Administration

Date

Skydive Academy of Hawaii Corp. d/b/a

Skydive Hawaii and Frank Hinshaw, Complainants

v.

State of Hawaii, Respondent

FAA Docket No. 16-23-06

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA EXHIBIT 1

Item 1 - FAA Grant Assurances

Item 2 - *Skydive Academy of Hawaii Corp. dba Skydive Hawaii and Frank Hinshaw* v. *State of Hawaii* Complaint, dated April 6, 2023

Exhibit 1 State of Hawaii Department of Transportation Airports Division Revocable Permit #8441 cover letter, dated July 25, 2017

Exhibit 2 Department of the Army Lease - Dillingham Military Reservation, executed July 6, 2009

Exhibit 3 Dillingham Airfield Airport Master Record (Form 5010) dated March 16, 2023

Exhibit 4 Supplemental Agreement No. 4 to Army Lease - Dillingham Military Reservation, executed April 23, 2019

Exhibit 5 Hawaii Department of Transportation Airport Notice #23-009, dated February 28, 2023

Exhibit 6 Letter from FAA Honolulu Airports District Office to Hawaii Airports Division, dated January 24, 2020

Exhibit 7 Letter from FAA Honolulu Airports District Office to Hawaii Airports Division, dated March 31, 2020

Exhibit 8 State of Hawaii Department of Transportation Airport Notice #12-030, dated August 30, 2012

Exhibit 9 State of Hawaii Department of Transpiration Airport Notice #12-022, dated June 7, 2021

Exhibit 10a State of Hawaii Department of Transportation Airport Notice #09-017, dated June 3, 2009

Exhibit 10b State of Hawaii Department of Transportation Airport Notice #09-020, dated June 18, 2009

Exhibit 10c State of Hawaii Department of Transportation Airport Notice #09-2023, dated August 12, 2009

Exhibit 11 Department of Army Lease of Property on Dillingham Military Reservation, dated December 10, 1976

Exhibit 12 Letter from FAA Eastern Regional Counsel to Islip Town Supervisor, dated August 24, 2001

Exhibit 13 Dillingham Airfield Informal Complaint Resolution (revised), dated September 9, 2011

Exhibit 14 Email chain between Skydive Hawaii, Hawaii DOT, and the Manager of the FAA Honolulu ADO, between December 3, 2022 and January 25, 2023

Exhibit 15 Email chain between Skydive Hawaii, HDOT, and FAA Honolulu ADO, between February 3, 2023 and February 24, 2023

Exhibit 16 Email chain between Skydive Hawaii and HDOT between March 16 and March 17, 2023

Exhibit 17 Email Chain between Skydive Hawaii, HDOT, and FAA Honolulu ADO, between March 6, 2023 and March 18, 2023

Item 3 - FAA Notice of Docketing, dated April 18, 2023

Item 4 - Hawaii Department of Transportation Motion to Extend Time to Reply, dated April 25, 2023

Item 5 - FAA Order Granting Motion to Extend Time to Reply, dated April 28, 2023

Item 6 - Hawaii Department of Transportation Unopposed Motion to Extend Time to Respond to the Complaint, dated June 1, 2023

Item 7 - FAA Order Granting Motion to Extend Time to Respond to Complaint, dated June 6, 2023

Item 8 - Respondent State of Hawaii's Answer to the Complaint and Brief in Support its of Answer the Complaint, dated June 26, 2023

Exhibit A Declaration of James Knight in Support of the Answer of the State of Hawaii to Skydive Hawaii's Complaint, dated June 22, 2023

Exhibit B Declaration of Anna P. Metcalfe in Support of the Answer of the State of Hawaii to Skydive Hawaii's Complaint, dated June 19, 2023

Exhibit B-1 Military Exercises Notice

Exhibit B-2 Airport Notice 23-009

Exhibit B-3 January 2, 2023 Log

Exhibit B-4 January 14, 2023 Log

Exhibit B-5 CBS Access Agreement, dated February 10, 2023

Exhibit B-6 Keilia Quad Crusher Hold Harmless Agreement, dated April 28, 2023

Exhibit C HDH Development Plan, dated October 2007

Exhibit D State of Hawaii and Department of Army Lease executed May 11, 1983

Exhibit E-1 State of Hawaii and Department of Army Lease Agreement, executed July 6, 2009, with exhibits

Exhibit E-2 Supplemental Agreement 1, executed November 28, 2012

Exhibit E-3 Supplemental Agreement 2, executed August 15, 2012

Exhibit E-4 Supplemental Agreement 3, executed August 23, 2017

Exhibit E-5 Supplemental Agreement 4, executed April 23, 2019

Exhibit F Department of Transportation Hawaii Administrative Rules, dated January 14, 2002

Exhibit G State of Hawaii Department of Transportation Revocable Permit No. 8437, dated January 8, 2016

Exhibit H FAA Memorandum to the Administrator, dated September 25, 2012

Item 9 - Skydive Hawaii's Unopposed Motion for an Extension of Time, dated June 24, 2023

Item 10 - FAA's Order granting the Motion for and Extension of Time, dated June 28, 2023

Item 11 - Skydive Hawaii's Reply, dated July 14, 2023

Exhibit 18 Declaration of Sidney A Hayakawa, dated April 25, 2013

Exhibit 19 Declaration of Frank Hinshaw in Support of the Reply of the Complaint, dated July 11, 2023

Item 12 - State of Hawaii's Unopposed Motion to File its Response to the Reply, dated July 18, 2023

Item 13 - FAA Order Granting the Motion for an Extension to File its Response, dated July 20, 2023

Item 14 - Respondent State of Hawaii's Rebuttal, dated July 31, 2023

Item 15 - Skydive Hawaii's Motion to Supplement the Record, dated September 5, 2023

Item 16 - Respondent State of Hawaii's Opposition to the Complainant's Motion to Supplement the Record, dated September 11, 2023

Item 17 - FAA 5010, dated October 23, 2023

Item 18 - HDH Grant History, dated August 3, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 2024 I caused to be emailed and/or to be placed in the Federal Express a true copy of this foregoing Director's Determination for FAA Docket No. 16-23-06 addressed to:

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Copy to:
FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Office of Airport Compliance and Management Analysis (ACO-100)
FAA Office of Airports Western Pacific Region (AWP-600)
FAA Honolulu Airports District Office

D. Hinnant

Danielle Hinnant
Office of Airport Compliance
and Management Analysis

Walenga, Pat (FAA)

From: 9-ARP-Part16-Complaints (FAA)
Sent: Monday, January 8, 2024 4:44 PM
To: jsilversmith@kmazuckert.com; bmarrin@kmazuckert.com; epilsk@kaplankirsch.com; cvanheuven@kaplankirsch.com; patrick.k.kelly@hawaii.gov; catherine.goodwin@hawaii.gov
Cc: 9-AWA-AGC-Part-16 (FAA)
Subject: Director's Determination - FAA Docket No. 16-23-06
Attachments: P16_Docket_16-23-06_Skydive Hawaii v Hawaii_DD_Final 2023 01 04 Signed.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please see the attached Director's Determination for FAA Docket No. 16-23-06.

v/r
Danielle S. Hinnant
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