



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

Office of Airport Compliance  
and Management Analysis

800 Independence Avenue, SW  
Washington, D.C. 20591

February 16, 2024

Melissa C. Rueschhoff, Esq.  
Founder/Partner  
Holon Law Partners, LLP  
442 5th Ave., Suite 2697  
New York, NY 10018

**RECEIVED**

FEB 16 2024

Patrick K. Kelly  
Deputy Attorney General, State of Hawaii  
Land Transportation Division  
465 South King Street, Room 300  
Honolulu, HI 96813

**PART 16 DOCKETS**

Yvonne R. Shinamura  
Deputy Attorney General, State of Hawaii  
465 South King Street, Room 300  
Honolulu, HI 96813

Re: *South Pacific Flying v. State of Hawaii Department of Transportation, Hawaii*,  
FAA Docket No. 16-21-15.

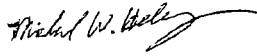
Dear Mses. Rueschhoff and Shinamura and Mr. Kelly:

Enclosed is a copy of the Director's Determination issued in the above-referenced matter.

As set forth in the enclosed Determination, we find the State of Hawaii Department of Transportation (HDOT), Sponsor and Operator of Daniel K. Inouye International Airport (HNL) is in violation of its Federal obligations regarding Grant Assurance 22, *Economic Nondiscrimination*. HDOT is not in violation of its Federal obligations regarding Grant Assurance 19, *Operations and Maintenance*, and Grant Assurance 23, *Exclusive Rights*. This Determination is an initial agency decision and does not constitute a Final Agency Decision subject to judicial review. [14 CFR § 16.247(b)(2)]. A party adversely affected by the Director's Determination may appeal the initial decision to the Federal Aviation Administration's (FAA)

Associate Administrator for Airports under 14 CFR § 16.33(c) within 30 days after the service of the Director's Determination.

Sincerely,



Michael Helvey  
Director, Office of Airport Compliance  
and Management Analysis

Enclosure

**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that on February 16, 2024, I caused to be emailed and/or to be placed in the Federal Express a true copy of this Director's Determination for FAA Docket No. 16-21-15 addressed to:

**For the Complainant**

Melissa C. Rueschhoff, Esq.  
Founder/Partner  
Holon Law Partners, LLP  
442 5th Ave., Suite 2697  
New York, NY 10018  
mrueschhoff@holonlaw.com

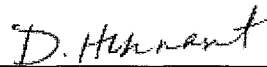
**For the Respondent**

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**Copy to:**

FAA Part 16 Airport Proceedings Docket (AGC-600)  
FAA Airport Compliance and Management Analysis (ACO-100)  
FAA Western Pacific Regional Office (AWP-600)



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Danielle S. Hinnant  
Office of Airport Compliance  
and Management Analysis

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D C

RECEIVED

FEB 16 2024

PART 16 DOCKETS

**SOUTH PACIFIC FLYING CLUB,**  
**COMPLAINANT,**  
**v.**  
**STATE of HAWAII DEPARTMENT of**  
**TRANSPORTATION, HAWAII,**  
**RESPONDENT.**



FAA Docket: 16-21-15

**ORDER**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) based on a complaint filed on May 8, 2021, under Title 14 of the Code of Federal Regulations, Part 16 (Part 16) by South Pacific Flying Club (“Complainant” or “SPFC”) against the State of Hawaii Department of Transportation (“Respondent” or “HDOT”), sponsor and operator of Daniel K. Inouye International Airport (“Airport” or “HNL”).<sup>1</sup>

SPFC alleges that HDOT violated: 1) Grant Assurance 19, *Operations and Maintenance* by not providing safe and serviceable conditions in their operation of the South Ramp; 2) Grant Assurance 22, *Economic Nondiscrimination (a) and (h)* when it failed to impose the same treatment in a uniform manner to those who find the same use of the airport and denied SPFC a revocable permit for hangars at non-commercial rates (FAA Exhibit 1, Item 1, pp. 26-41); and 3) Grant Assurance 23, *Exclusive Rights*, when it granted an exclusive right to other aeronautical users by prohibiting SPFC from renting hangar space at standard rates for non-commercial tenants (FAA Exhibit 1, Item 1, pp. 38-40). SPFC also claims HDOT discriminated against it by not providing reasonable access to the Airport Operations Area (AOA) and to the club’s aircraft.

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<sup>1</sup> For the purposes of this Determination, “HDOT” refers to the various personnel that work for or on behalf of Daniel K. Inouye International Airport with regards to airport operations, leasing, security, and/or tenant relations.

Based on the allegations presented in this Complaint, the circumstances described at the Airport, and the evidence in the record of this proceeding, the Director finds that the Airport is in violation of Grant Assurance 22, *Economic Nondiscrimination*, and not in violation of Grant Assurance 19, *Operation and Maintenance*, or Grant Assurance 23, *Exclusive Rights*.

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 attachment FAA Item 1.

## II. PARTIES

### A. Complainant

The Complainant is South Pacific Flying Club ("SPFC"), a Hawaiian based nonprofit organization formed as a flying club to offer recreational flying "exclusive" to its members.<sup>2</sup> Based in Haleiwa, Hawaii, SPFC was established as a flying club at Daniel K. Inouye International Airport (HNL) and claims to also provide aviation education and aviation exposure to the local community (FAA Exhibit 1, Item 1, Exhibit M, Exhibit B, Exhibit I, Exhibit J, Exhibit L, and Exhibit M). In January 2020, the Complainant rented a hangar at the Airport in support of its flying club activities. SPFC's revocation of hangar access is the subject of this complaint.

### B. Respondent

The State of Hawaii's Department of Transportation in association with the Airports Division is the "Owner/Operator" of HNL, also known as Honolulu International Airport. HDOT operates and maintains 15 airports throughout the state of Hawaii and HNL, on the island of Oahu, is the principal airport providing international, domestic, and inter-island flights to include general aviation operations.<sup>3</sup> HDOT receives Federal grant assistance for airport improvements through the State of Hawaii. Specifically, the planning and development of HNL has been financed, at least in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982 ("the Act"), as amended, 49 U.S.C. § 47101, et seq. HDOT has received AIP grants entitlements totaling well over \$81,000,000.00 from 2012 to 2020.<sup>4</sup> Additionally, HDOT operations and general aviation services, including air tour operators on the airport's southeastern perimeter (FAA Item 1, Exhibit 8). The Airport is obligated by Surplus Property

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<sup>2</sup> SPFC's organization as a Hawaii nonprofit entity is at the heart of the dispute in this matter. As explained in Section V of this document (see below), the Director requested additional information to help ascertain its current organizational status.

<sup>3</sup> Department of Transportation, Airports Division, State of Hawaii, An Enterprise Fund of the State of Hawaii, Financial Statements, June 30, 2021, and 2020, completed by KPMG LLP, Honolulu, HI, December 23, 2021, pp. 2-7.

<sup>4</sup> Federal Aviation Administration (FAA), Office of Airports (ARP), Grant History Report, April 12, 2022.

obligations under Regulation 16-WAA (War Assets Administration) or Public Law 80-289,<sup>5</sup> and incurs obligations in the form of restrictive deed covenants that arise from the 1947 and 1948 conveyances of land under quitclaim deeds executed under the powers and authority contained in the provisions of the Surplus Property Act of 1944.

### III. PROCEDURAL HISTORY

1. October 25, 2021 - SPFC files Complaint (FAA Exhibit 1, Item 1, Exhibit 1).
2. November 15, 2021 - FAA files Notice of Docketing (FAA Exhibit 1, Item 1, Exhibit 2).
3. November 30, 2021 - HDOT files Motion to Extend Time to respond to the Complaint (FAA Exhibit 1, Item 3, Exhibit 3).
4. December 6, 2021 - FAA issues Order of Extension of Time until January 4, 2022 (FAA Exhibit 1, Item 1, Exhibit 4).
5. January 4, 2022 - Respondent files Answer to the Complaint (FAA Exhibit 1, Item 5, Exhibit 5), and Memorandum in Support of Respondent's Answer (FAA Exhibit 1, Item 1, Exhibit 6).
6. January 11, 2022 - Complainant files Motion to Extend Time until February 14, 2022, to Reply to Answer and Memorandum in Support of Respondent's Answer (FAA Exhibit 1, Item 7, Exhibit 1).
7. February 14, 2022 - Complainant files Rebuttal to Respondent's Answer and Memorandum in Support of Respondent's Answer (FAA Exhibit 1, Item 8, and Exhibit 1).
8. April 3, 2023 – FAA Issues Request For Information (RFI) to both parties for response by April 18, 2023.
9. April 12, 2023 – Respondent files Response to the FAA's Request For Information.
10. April 17, 2023 – Complainant files Response to FAA's Request For Information.

**Note:** All other notices and orders can be found in the Index of the Administrative Record of this proceeding, noted as FAA Item 1 to this Determination.

### IV. FACTUAL BACKGROUND

The complainant raises the following facts that are relevant to this matter:

1. In June 2019, SPFC initiated communication with Respondent and local FAA officials about starting a flying club at HNL (FAA Exhibit 1, Item 1, Exhibit 1, Exhibit A, pp. 1-4). In August 2019, SPFC followed up with the HDOT regarding a T-Hangar and office space availability (FAA Exhibit 1, Item 1, Exhibit A, pp. 5-13, and Exhibit B).

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<sup>5</sup> See FAA Order 5190.2R *List of Public Airports Affected by Agreements with the Federal Government*, April 30, 1990. Prior to the amendment of the Surplus Property Act in 1947 by P.L. 80-289, surplus Federal properties were conveyed for airport purposes under the procedures of War Assets Administrator (WAA) Regulation 16.

2. On August 22, 2019, SPFC filed Articles of Organization for a Limited Liability Company (LLC) with the State of Hawaii Department of Commerce and Consumer Affairs, registering South Pacific Flying Club, LLC. On the same day, SPFC communicated with HDOT regarding SPFC's intent and requested guidance on how to legally form a Flying Club (FAA Exhibit 1, Item 1, Exhibit C, and Exhibit A, p. 7).
3. On September 3, 2019, HDOT responded to SPFC that the Club's inquiry had been sent to HNL's legal team as the Airport had never worked with a flying club before (FAA Exhibit 1, Item 1, Exhibit A, p. 9).
4. On September 6, 2019, SPFC purchased a 2010 Piper Sport Sportcruiser, N2122P and initiated the process to rent a hangar (FAA Item 1, Exhibit D). On September 16, 2019, HDOT responded that it was working on SPFC's application for a Revocable Permit (RP) (FAA Exhibit 1, Item 1, Exhibit A, p. 14).
5. On September 17, 2019, SPFC met with HDOT regarding office space for the club to use (FAA Exhibit 1, Item 1 p. 6, Exhibit A, Exhibit E, and Exhibit FF). From September 17 through September 27, 2019, SPFC engaged in multiple communications with the HDOT regarding permit requirements, badge requirements, etc. in an attempt to acquire a permit for a hangar (FAA Exhibit 1, Item 1, Exhibit A, pp. 21-30).
6. On October 4, 2019, HDOT Property Manager sent a Letter of Application to SPFC along with an application for a permit to apply for a specific t-hangar at established prices (FAA Exhibit 1, p. 7). In November 2019, SPFC's application for a hangar at non-commercial rates was processed with a planned schedule to be on the Department of Land and Natural Resources (DLNR) board meeting in January (FAA Exhibit 1, Item 1, p. 8).
7. On January 31, 2020, SPFC received the keys for Hangar 422-106 under a Revocable Permit in the name of the South Pacific Flying Club LLC (FAA Exhibit 1, Item 1, Exhibit F).
8. On December 2, 2020, SPFC received a Letter of Termination and Notice to Vacate. HDOT offered that it was exercising its right to terminate occupancy of SPFC's hangar access without cause upon 30 days advance notice (FAA Exhibit 1, Item 1, Exhibit G).
9. On December 10, 2020, SPFC applied for 501(c)(3) status to the Internal Revenue Service (IRS) at the behest of HDOT, who demanded SPFC prove its IRS nonprofit status as a condition of receiving hangar access to HNL at non-commercial rates (FAA Exhibit 1, Item 1, p. 9). On December 14, 2020, SPFC filed Articles of Conversion to convert SPFC from an LLC to a non-profit corporation under Hawaii state law (FAA Exhibit 1, Item 1, Exhibit H).
10. On January 8, 2021, SPFC received an e-mail from HDOT Property Manager that the Airport District Manager has granted SPFC temporary use of HNL Tie-down #423-125 for aircraft parking only (FAA Exhibit 1, Item 1, Exhibit I, p. 11).

11. On January 13, 2021, SPFC met with Oahu Airports District Manager to discuss a purported allegation that SPFC was running a commercial business out of hangars without paying commercial rates (FAA Exhibit 1, Item 1, p. 10). On January 26, 2021, SPFC emailed Oahu Airports District Manager for a follow up. SPFC received a response on January 29, 2021, in which the Manager was still educating himself on flying clubs (FAA Exhibit 1, Item 1, Exhibit I, pp. 3-6).
12. In early February 2021, SPFC filed an informal complaint with the FAA's HNL Airport District Office (ADO). On February 8, 2021, the ADO responded that the information provided was insufficient to show a violation of HDOT's Federal obligations had occurred (FAA Exhibit 1, Item 1, Exhibit J).
13. On February 23, 2021, SPFC emailed HDOT Oahu Airports District Manager to follow up on the status of SPFC regaining its hangar and access to its aircraft (FAA Item I, Attachment I, p. 6). Later, SPFC contacted HDOT Property Manager, who responded by sending a blank Space Application the following day (FAA Exhibit 1, Item 1, Exhibit K).
14. On April 9, 2021, SPFC was approved by the Airport Security Manager to be an authorized signatory for SPFC members to receive an AOA badge (FAA Exhibit 1, Item 1, Exhibit L).
15. On May 5, 2021, SPFC sent an email to HDOT with the documentation required by the hangar lease application, except for pending IRS tax clearance (FAA Exhibit 1, Item 1, Exhibit I, p. 9). On May 7, 2021, HDOT responded that the FAA registration for the plane and the lease agreement for the Club's use of the plane were missing. SPFC provided the missing documents (FAA Exhibit 1, Item 1, Exhibit I, pp. 9-10, Exhibit D, and Exhibit M).
16. On May 14, 2021, HDOT sent an email to SPFC granting temporary use of an HNL tie-down to give SPFC time to re-apply for a space, but it was understood the space should only be used for temporary aircraft parking and that SPFC does not have a contracted space at HNL. HDOT noted that SPFC's hangar application of May 5, 2021, does not immediately provide an active and approved contract because it needs to go through processing and DLNR board approval (FAA Exhibit 1, Item 1, Exhibit I, p. 13).
17. On May 17, 2021, SPFC President and Co-founder e-mailed the Honolulu ADO to formally complain she could not access her airplane on the Airport's South Ramp. SPFC outlined the timeline of events and "her frustrated efforts" (FAA Exhibit 1, Item 1, Exhibit N, pp. 3-8).
18. On May 26, 2021, the Club received an Application for Revocable Permit (RP), offering South Pacific Flying Club, LLC a permit for Hangar 420-113 for purposes of "storage and maintenance of aircraft for flying club," listing the Club's airplane, N2122P (FAA Exhibit 1, Item 1, Exhibit P).

19. On May 27, 2021, the Acting Airport Administrator e-mailed SPFC, to address whether SPFC is operating as a club or conducting commercial activity because rent would be higher for commercial activities (FAA Exhibit 1, Item 1, Exhibit O, pp. 7-9). HNL's Acting Aviation Officer indicated that guidelines or standards for flying clubs did not exist and, as a result, the Acting Airport Administrator directed him to establish such (FAA Exhibit 1, Item 1, Exhibit O, pp. 1-3, and Exhibit EE, p. 2).
20. On June 2, 2021, HDOT offered SPFC two access options: (1) to obtain access to the aircraft – get a badge under Pacific Flight Academy; or (2) be escorted or accompanied by a permanent badge holder and use a white “Temporary Escort Required” badge (FAA Exhibit 1, Item 1, Exhibit R, pp. 2-3).
21. On July 13, 2021, Counsel for SPFC spoke with HDOT Airport Operations Officer, followed with a letter on July 19, 2021 HDOT Airport Operation Officer explained that HDOT does not currently have a General Aviation (GA) Officer, or that he was not sure who the GA officer was, but provided an explanation that the “enumerated standards set forth in the letter are the minimum standards for Flying Clubs adopted by HNL the week prior” (FAA Exhibit 1, Item 1, Exhibit U).
22. On July 22, 2021, SPFC, HDOT Airport Operations Officer, the Airport's Management Analyst and the Statewide Security Manager held a discussion on the legal and appropriate way for SPFC to access its airplane through a Revocable Permit (FAA Exhibit 1, Item 1, pp. 21-22).
23. On July 23, 2021, HDOT Airport Operations Officer expressed that he would expedite SPFC request as soon as it was received. A scheduled meeting with DLNR was mandatory, since SPFC's hangar application would need to be approved at such meeting (FAA Exhibit 1, Item 1, Exhibit V, pp. 4-5).
24. On July 28, 2021, an SPFC tax clearance form was provided to HDOT in support of SPFC's hangar application process for consideration at the next DLNR board meeting on August 13, 2021 (FAA Exhibit 1, Item 1, Exhibit V, p. 3).
25. On August 4, 2021, HDOT Airport Operations Officer requested a copy of the Club's 501(c)(3) status. SPFC explained they do not have any formal 501(c)(3) paperwork from the IRS because the application was under review. SPFC provided HDOT a copy of the Club's tax-exempt application (FAA Exhibit 1, Item 1, Exhibit V, pp. 3-4).
26. On August 10, 2021, HDOT emailed SPFC stating that HDOT was unable to approve the Club's designation without a confirmed 501(c)(3) status document. SPFC was made aware that the Club's matter would not be on the agenda for the next DLNR board meeting and would need to either submit another space application at the commercial rate or apply for an official tie-down space (FAA Exhibit 1, Item 1, Exhibit W, p. 1).
27. On August 10, 2021, SPFC submitted an application for a tie-down space along with all required documents (FAA Exhibit 1, Item 1, Exhibit W, p. 5).

28. On August 11, 2021, HDOT Property Manager informed SPFC that despite having all paperwork prior to the deadline, SPFC would not make the August 27, 2021, DLNR board agenda because the application still needed to go through processing and packaging prior to being submitted to the DLNR board (FAA Exhibit 1, Item 1, Exhibit W, pp. 2-3).
29. On September 13, 2021, SPFC obtained a Revocable Permit for a tie-down spot on the South Ramp and anticipates club members being able to gain access to the AOA and fly the airplane. HDOT refuses to recognize SPFC as a non-profit flying club or to allow SPFC to apply for a t-hangar at noncommercial rates (FAA Exhibit 1, Item 1, Exhibit P).

## V. PRELIMINARY ISSUES

### *FAA Request For Information (RFI)*

During the Director's investigation, it was discovered through an online search of SPFC's website that the Complainant's HNL-based "non-profit flying club" was reflected as "permanently closed." Subsequently, the FAA reached out to the HNL ADO on March 20, 2023, to gather information to corroborate SPFC's operating status. On the same day, HDOT provided a status update to the HNL ADO that SPFC as a nonprofit flying club had changed its name to Belle Pacific Air LLC.

On April 3, 2023, the Director sent a letter to both SPFC and HDOT requesting each to respond to specific questions concerning SPFC's current legal organizational status and SPFC's access to HNL:

SPFC was requested to provide:

... a written factual response describing the current operating status of the flying club, the aircraft currently used for the club, and the club's current aeronautical access to Daniel K Inouye International Airport (HNL). If SPFC no longer exists, no longer requires aeronautical access to HNL, and/or is not operating as a Hawaii non-profit entity, provide a written factual response describing the changes, including a change from a Hawaii nonprofit (flying club) to a for profit LLC operation. Furthermore, describe the factual circumstances around the apparent closure of SPFC (if applicable), including whether the closure is related to any actions HDOT may or may not have taken concerning access to HNL. Lastly, provide a factual description of Belle Pacific's current operations and access to HNL (FAA Exhibit 1, Item 16, Exhibit pp. 1-4). Documentary evidence is requested in support of the Complainant's response (as applicable).

HDOT was requested to provide:

... a written factual response of its understanding of SPFC's current operation at HNL (if any), SPFC's current access to HNL (if any), and the circumstances surrounding the termination of SPFC's parking permit and subsequent reissue to Belle Air Pacific, LLC. Provide a written factual response of its understanding of Belle Air's current aeronautical operation at HNL and describe Belle Air's current access to HNL (FAA Exhibit 1, Item 15, pp. 1-2, Exhibit 3). Documentary evidence is requested in support of the Respondent's response (as applicable).

A summary of SPFC's and HDOT's responses are provided below. (FAA Exhibit 1, Item 15 and Item 16).

HDOT	SPFC
SPFC listed with the Hawaii State Department of Commerce and Consumer Affairs (DCCA) as a dissolved domestic nonprofit corporation, pursuant to Articles of Dissolution filed on December 13, 2022.	In December 2021, Annie Domko made the executive decision to dissolve SPFC – only in name. Ms. Domko met with her Certified Public Accountants (CPAs) to prepare Articles of Dissolution for the South Pacific Flying Club with the State of Hawaii.
SPFC is not currently operating at HNL and does not have badge access to HNL.	SPFC was effectively transferred to the LLC that owned the club aircraft, Belle Pacific, so that HDOT would recognize them for both AOA and hangar access.
Belle Pacific Air, L.L.C (Belle Pacific) is registered with DCCA as a domestic limited liability company with its member, manager, and agent listed as Anne Domko.	The Flying club continues to try to function as a flying club, without being named as such, and carry on its charitable mission under the name Belle Pacific Air, LLC (“Belle Pacific”).
SPFC's parking permit (PP-21-0012) for an aircraft tie-down space was voluntarily terminated by SPFC with the deposit on account of being transferred to Belle Pacific. Parking Permit No. PP-22-0005 was issued for the same space (HNL 423-125) to Belle Pacific.	Belle Pacific charges state taxes and higher hourly prices on flights because it is not a state recognized nonprofit and needs to charge enough to pay commercial rates at HNL. Club members continue to use N2122P, owned by Belle Pacific Air, LLC, and formerly leased to SPFC.
Belle Pacific has applied for a T-Hangar at HNL (submitted to the State of Hawaii Board of Land and Natural Resources for approval at its April 14, 2023, meeting).	On June 15, 2022, after obtaining all the Revocable Permit requirements now required for Belle Pacific Air LLC, Ms. Domko submitted a new tie-down application for Belle Pacific Air to remain in their current tie-down spot.
	Belle Pacific received approval of its tie-down application of July 22, 2022. On February 8, 2023, former SPFC/current Belle Pacific was financially able to apply for a commercial use, commercial rate hangar.

SPFC was dissolved and now operates under Belle Pacific Air LLC, a commercial entity that makes no further representation as a State of Hawaii non-profit organization attempting to operate as a flying club at HNL. The parties also confirm that Belle Pacific has applied for and received certain access for aircraft parking at HNL and, as of July 2022, has applied for a hangar at commercial rates. As of this writing, HDOT confirms that Belle Pacific has been placed on the agenda for DLNR consideration and approval, an apparent prerequisite for leasehold access to HNL hangar facilities.

As noted, SPFC indicates no or minimal changes to its day-to-day operation of a flying club with a separate community charitable mission. The difference, the record shows, is that SPFC is no longer organized as a State of Hawaii nonprofit organization and instead operates as a State of Hawaii for profit limited liability corporation. This distinction is relevant to this proceeding in that the Director is tasked with determining whether SPFC's changed legal organization was the result of actions taken by HDOT to deny reasonable flying club access to HNL. SPFC confirms that the reason for the reorganization as an LLC was based on HDOT's actions/inactions:

...after seven (7) months of harassment by HDOT regarding the validity of the South Pacific Flying Club (SPFC) as a flying club, denial of rights and access to SPFC's airplane, and continued requests to pay commercial hangar rates despite being a State of Hawaii non-profit, it became apparent that the HDOT would not allow or recognize the flying club to operate as a nonprofit out of the Honolulu Airport. Specifically, HDOT would not recognize SPFC as a nonprofit Flying Club without 501(c)(3) tax-exempt status and SPFC was not able to obtain such status. Because SPFC was a state nonprofit, however, the club could not charge members state tax. SPFC was thus unable to afford commercial rates for a hangar and without a hangar, could not function as a club. Therefore, SPFC could no longer financially or operationally execute their mission as the South Pacific Flying Club at HNL.

Under the circumstances, the core issues in this proceeding are not measurably changed by the parties' response to the Director's inquiry. While SPFC and Belle Air are two different legal entities, and while aeronautical access appears to have been granted to Belle Air, HDOT's actions leading up to the SPFC's decision to dissolve and reorganize as an LLC to gain aeronautical access to HNL must still be evaluated for compliance with reasonable access requirements under HDOT's Federal grant obligations.

## VI. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances summarized above, the FAA has determined that the following four issues require analysis to provide a complete review of the Airport's compliance with applicable Federal law and policies.

**Issue 1 – Whether HDOT violated Grant Assurance 19, *Operation and Maintenance* by allowing activity and action that interferes with the usage of facilities for airport purposes and whether HDOT failed to appropriately maintain facilities for aeronautical users of the airport?**

**Issue 2 - Whether HDOT failed to make airport facilities available for flying club access on reasonable terms and without unjust discrimination to SPFC in violation of Grant Assurance 22, *Economic Nondiscrimination*?**

**Issue 3 - Whether HDOT's flying club policy unjustly discriminates against flying clubs in violation of Grant Assurance 22, *Economic Nondiscrimination*?**

**Issue 4 – Whether HDOT violated Grant Assurance 23, *Exclusive Rights*, by imposing unreasonable requirements and standards in an unjustly discriminatory manner; and whether HDOT minimum standards for flying clubs are unreasonable and excluded flying clubs from accessing and enjoying the Airport?**

## **VII. APPLICABLE FEDERAL LAW AND POLICY**

### **A. Airport Sponsor Grant Assurances**

As a condition precedent to providing airport development assistance under the Airport Improvement Program (AIP), established by the Airport and Airway Improvement Act of 1982 as amended, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension of the Federal Aviation Administration (FAA) must receive assurances from the airport sponsor.

Title 49 U.S.C. § 47107(a) sets forth assurances to which an airport sponsor agrees as a condition of receiving the Federal financial assistance. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a contractual obligation between the airport sponsor and the Federal government. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances (See U.S. DOT/FAA – Grant Assurances (16-14-08), for a list of all the grant assurances).<sup>6</sup>

### **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. The Federal role in civil aviation has been augmented by various legislative actions which authorize programs for providing funds and other assistance to local communities for the development of airport facilities.

In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deed and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. 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 has a statutory mandate to ensure that airport owners comply with their Federal grant assurances.

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<sup>6</sup> See U.S. DOT/FAA-Grant Assurances (16-14-08). See also <https://www.regulations.gov/document/FAA-2015-0031-0033>.

Enforcement procedures regarding airport compliance matters, absent the filing of a formal complaint under the FAA Investigative and Enforcement Procedures (14 CFR Section 13.5), continue to be set forth in the predecessor order, FAA Order 5190.6 issued August 24, 2973, and incorporated by reference in FAA Order 5190.6A. See FAA Order 5190.6, Sec. 5-3, and FAA Order 5190.6A, Sec. 6-2. Enforcement procedures regarding airport compliance matters are set forth in the *FAA Rules of Practice for Federally Assisted Airport Proceedings* (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and were effective on December 16, 1996.

### **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 period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

## **VIII. ANALYSIS AND DISCUSSION**

### **Issue 1 – Whether HDOT violated Grant Assurance 19, *Operation and Maintenance* by allowing activity and action that interferes with the usage of facilities for airport purposes and whether HDOT failed to appropriately maintain facilities for aeronautical users of the airport?**

Grant Assurance 19, *Operations and Maintenance* states in part that:

*The airport and facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions (...). Further, nothing herein shall be construed as repairing the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.*

### **Complainant's Position**

SPFC alleges HDOT is operating the Airport in a manner inconsistent with the obligations in Grant Assurance 19. Specifically, SPFC alleges HDOT has 1) permitted activity and action that interferes with the use of facilities for airport purposes, and 2) failed to appropriately maintain facilities for aeronautical users of the airport (FAA Exhibit 1, Item 1, Exhibit I, pp. 26-27).

In sum, the Complainant alleges HDOT allows other tenants of the airport to store vehicles and other items in hangars, allows other tenants to park cars on the South Ramp, and allows homeless individuals to live in the hallways of facilities on the South Ramp intended for aeronautical users (FAA Exhibit 1, Item 1, Exhibit I, p. 26, Exhibit Y, and Exhibit JJ). SPFC argues these vehicles are not personal vehicles parked while the aircraft is in use, since "the aircraft is also in the hangar." SPFC further states these vehicles are used "for a non-aviation business" by George's Aviation (a tenant at the Airport) as a transportation service "to and from hotels and the main terminal at HNL" (FAA Exhibit 1, Item 8, Exhibit 1, p. 9).

### **Respondent's Position**

HDOT counters SPFC's allegations and denies that any "long-term parking of vehicles on the South Ramp" would be a clear violation of the grant assurance therein (FAA Exhibit 1, Item 5, Exhibit 1, pp. 18-19). In its Answer, HDOT offered that during the flight operation and maintenance of aircraft it is appropriate and, in many cases, convenient for such persons to park in or near the hangar (FAA Exhibit 1, Item 5, Exhibit 1, p. 19). Regarding maintenance of facilities, the HDOT shared that due to the "lack of funding and resources" the up-keep of buildings were not maintained and as a result the building was shown "AS IS" condition to a potential tenant (FAA Exhibit 1, Item 5, Exhibit 1, pp. 19-20). HDOT further argues that SPFC "never applied" for the use of office space on the South Ramp in their application for hangar space and as a result, the argument on facility maintenance has no bearing on SPFC's allegations. (FAA Exhibit 1, Item 8, Exhibit 1, pp. 11-12).

### **Director's Determination**

The Director is not persuaded that HDOT has violated Grant Assurance 19, *Operations and Maintenance* by allowing airport users to store or park vehicles in hangars or on the South Ramp while performing aeronautical activities, or otherwise. While FAA hangar use policies do describe certain requirements and limitations for the use of hangars for automobile storage, the policies do not explicitly preclude the use of automobiles to support airport/aeronautical activities and SPFC fails to demonstrate how the automobile activities on the South Ramp and HDOT's actions result in an unsafe operation.

Regarding leasable office facilities in disrepair, good airport business practices dictate that airside facilities be reasonably maintained to readily support airport revenue generating/leasing opportunities. However, as-is leases requiring tenant-funded improvements to achieve suitability for the desired use are a common industry practice and is not on its face a violation of Grant Assurance 19. The Director also notes that nothing in the record suggests the facilities in disrepair interfere with the use of the airport for airport purposes, or that the facilities were necessary for HDOT to serve the aeronautical users of the airport, both core requirements for a finding a Grant Assurance 19 violation. Lacking evidence of unsafe acts or conditions impacting the aeronautical use of the South Ramp or the airport in general, the Director declines to find HDOT has violated Grant Assurance 19, *Operation and Maintenance*.

**Issue 2 - Whether HDOT failed to make airport facilities available for flying club access on reasonable terms and without unjust discrimination to SPFC in violation of Grant Assurance 22, Economic Nondiscrimination?**

In the written guidance FAA Order 5190.6B, Change 2, describes the responsibilities under Grant Assurance 22:

*An airport sponsor must make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. If adequate space is available on the airport and the sponsor is not already providing identical aeronautical services, Grant Assurance 22, Economic Nondiscrimination, requires the sponsor to negotiate in good faith and on reasonable terms with prospective aeronautical service providers.*

**SPFC Position**

SPFC alleges that HDOT unjustly discriminated against SPFC: 1) in the conditions for obtaining and maintaining a lease for a hangar, 2) by strictly enforcing “airport rules” that are not enforced against other tenants, and 3) by failing to make airport facilities and services available on reasonable terms. The Complaint and associated exhibits are extensive; therefore, a summary of the specific allegations is as follows:

1. HDOT has acted unreasonably by repeatedly changing its position, failing to properly communicate with SPFC, not making standards or expectations clear, and failing to be informed of FAA standards and policies. HDOT granted SPFC a hangar at noncommercial rates and, without warning, HDOT unreasonably terminated SPFC’s revocable permit after receiving an unfounded and unsupported allegation that SPFC was a commercial operation. HDOT officials later granted SPFC temporary use of a tie-down and granted its members AOA badges, then suddenly and unreasonably accused SPFC of violating rules and revoked all badges. The Security Manager for HNL’s South Ramp and HDOT’s property manager informed SPFC (Ms. Domko) that as the owner of an airplane registered in Hawaii, she is not a transient pilot and can only access her airplane with an AOA badge (FAA Exhibit 1, Item 1, Exhibit 1, pp. 35-36).

2. HDOT has imposed unreasonable terms on SPFC in the documentation required to obtain a hangar at non-commercial GA rates and has refused to approve SPFC's application for a hangar because SPFC does not have proof of IRS 501(c)(3) status. SPFC claims there is nothing that requires an organization to be a tax-exempt charitable organization under 501(c)(3) of the IRS regulations to qualify as a non-profit and HDOT has been unable or unwilling to provide any authority or basis for the requirement. HDOT's minimum standard requiring flying clubs to be tax-exempt constitutes an unreasonable term, as most flying clubs will not qualify for 501(c)(3) status organizations and the requirement is contrary to the FAA's guidance on flying clubs (FAA Exhibit 1, Item 1, Exhibit 1, pp. 33-34).
3. HDOT has refused SPFC a lease below commercial rates or a lease that is not revocable, while other GA tenants have revocable permits for hangars at non-commercial rates. No other tenant has been evicted and had to reapply for a new revocable permit showing the same information that was already reviewed and approved by HNL and the DLNR board. SPFC is seeking a smaller hangar space but is being charged much higher rates than a for-profit company leasing a larger space. HDOT allows other tenants to rent hangars at non-commercial rates but use them for business purposes. (FAA Exhibit 1, Item 1, Exhibit 1, pp. 28-31).
4. HDOT refused to allow SPFC member's access to the South Ramp or a hangar before the DLNR review process was complete, despite other tenants and non-tenants being granted such privileges. SPFC cites Pacific Flight Academy as being given keys to one of its hangars at least two weeks prior to the DLNR meeting where its RP was considered and approved. HDOT unjustly discriminated against SPFC by refusing anyone else affiliated with SPFC a "temporary parking pass," despite such passes being available to other tenants. HDOT also imposed limitations on SPFC on the use of transient parking that are not enforced against other individuals (FAA Exhibit 1, Item 1, Exhibit 1, pp. 31-33).

HDOT refused to allow SPFC members access to the AOA on any condition other than having a revocable permit for a tie-down or hangar, a process that can take months to complete. HDOT's condition is unreasonable since SPFC's members had been issued approved AOA badges by airport security in accordance with TSA requirements, and SPFC's airplane was parked in a tie-down space for which SPFC was charged rent (FAA Exhibit 1, Item 1, Exhibit 1, pp. 34-35).

### **HDOT's Position**

HDOT's voluminous Answer provided a structured response to each of the allegations in the complaint, followed by a more detailed Memo in Support of the Answer. The Director provides the following summary of HDOT's refutations to SPFC's allegations:

1. On August 22, 2019, SPFC filed Articles of Organization for a Limited Liability Company (LLC) with the State of Hawaii Department of Commerce and Consumer Affairs, registering South Pacific Flying Club, LLC. On or about the same day, SPFC communicated with the HDOT Property Manager regarding SPFC's intent and requested guidance on how to legally form a flying club for operation on the South ramp at HNL. Around the same time, SPFC e-mailed HDOT regarding its request for hangar and office space (FAA Exhibit 1, Item 1, Exhibit 6, p. 1).

2. SPFC's application for hangar space included information for a 2010 Piper Sport Sportcruiser (N2122P). HDOT states that SPFC never provided insurance or registration information for any other aircraft in its hangar rental application. HDOT notes that N2122P is registered to Belle Pacific Air, LLC ("Lessor"), a single-member LLC owned by Annie Domko, who leases the aircraft to SPFC, LLC. HDOT claims that SPFC, LLC stored two more aircraft it does not own in the hangar and used them regularly, and insurance information was not provided for the two additional aircraft. HDOT notes this is a violation of the RP (FAA Exhibit 1, Item 1, Exhibit 6, pp. 2-3, p.20).
3. HDOT states that it compiled the information in the SPFC application for rental space and determined a rate based on SPFC "misrepresentation it was a nonprofit entity and according to the (HDOT) schedule of rates and charges." Per required procedure, HDOT presented the information to the Hawaii Department of Land and Natural Resources (DLNR), which approved a RP for SPFC at a non-commercial rate of \$772/month, revocable without cause with 30-day notice, beginning February 2020. DLNR specifically approved the use of the hangar for storage and maintenance of one aircraft, N2122P (FAA Exhibit 1, Item 1, Exhibit 6, pp. 3-4).
4. HDOT states the description of the flying club, and the provisions of the original lease agreement created some confusion regarding SPFC actual operations and grant assurance requirements. Additional confusion was created when SPFC claimed it was a nonprofit organization although formed as a limited liability corporation. HDOT points out that the Aircraft Lease Agreement provided to HDOT as part of the 2019 hangar application has significantly different lease/payment terms compared to the agreement provided as an exhibit to this Complaint (FAA Exhibit 1, Item 1, Exhibit 6, pp. 2-3).
5. HDOT states the State of Hawaii has two statutory schemes to form a nonprofit entity: Hawaii Nonprofit Corporations Act, HRS Chapter 414D, or Uniform Unincorporated Nonprofit Association Act, HRS Chapter 429. HDOT states "there is no specific provision to be legally recognized as a nonprofit entity under the Uniform Limited Liability Company Act, HRS chap. 428." HDOT further asserts that the IRS "requires that the member of the limited liability company must be section 501(c)(3) or governmental units to receive a tax exemption. HDOT cites IRS requirements to "preclude the inurement of net earnings to private individuals," which it says is the "exact same requirement the FAA described in Chapter 10 of the Airport Compliance Manual" which states specifically, "...no part of the net earnings of the club inure to the benefit of any individual" (FAA Exhibit 1, Item 6, Exhibit 1, pp. 3-4).
6. HDOT states that it received complaints and other information that SPFC was operating a commercial business, including storage of additional aircraft in the hangar. A series of inspections by HDOT personnel and the Airport Fire Chief indicated repeated safety violations (e.g., fuel trailer in the hangar), unauthorized aircraft parking, and unpermitted commercial activity (flight instruction) alleged to corroborate the complaints it received. Lastly, the inspections resulted in discovery of a loft being built for a flight instruction classroom. HDOT notes that flight instruction is a commercial activity per its standards and regulations (FAA Exhibit 1, Item 6, Exhibit 1, pp. 6-7).

7. On December 2, 2020, HDOT provided required 30-day notice to SPFC exercising its right to terminate the RP, effective January 2, 2021. HDOT claims that SPFC represented itself as a nonprofit entity for nearly a year and had 30-days in which to demonstrate compliance with its permit, prove itself a nonprofit entity, and to cease unpermitted commercial activity. HDOT notes that SPFC did not file state articles of conversion to a nonprofit corporation until December 2020, after HDOT's notice of termination of the SPFC RP (FAA Exhibit 1, Item 1, Exhibit 6, pp. 3-4). A Certificate of Conversion from the Hawaii Department of Commerce and Consumer Affairs certifying SPFC as a Hawaii nonprofit corporation, effective December 21, 2020 (FAA Exhibit 1, Item 1, Exhibit 6, pp. 8-9).
8. After revocation of the permit, SPFC partner Morgen Jackson formed a for profit flight school (Pacific Flight Academy) and removed two of the aircraft illegally parked in the hangar rented by SPFC. HDOT argues that this provides confirmation of the commercial activity allegations as well as the inspection observations. HDOT contends that this is evidence that one of the purposes of the flying club was to conduct commercial activity involving flight instruction "hidden within the flying club" (FAA Exhibit 1, Item 1, Exhibit 6, pp. 8-9).

SPFC attempted to apply for a new RP, but HDOT required additional clarification to resolve discrepancies pertaining to allocation of dues and revenues for providing flight instruction, whether the club was operating as a nonprofit, aircraft ownership vesting among club members, and which Aircraft Lease Agreement terms were currently applicable. SPFC argued that it should not have to resubmit information it had already provided. HDOT countered that "materially changed circumstances" required clarifications, including the reduction of members from 60 to 20, eliminating two aircraft, changing the legal structure of the organization, and changing the Aircraft Lease Agreement terms. HDOT required assurances that SPFC would operate as nonprofit entity, specifically evidence of IRS 501(c)(7) tax exemption to prove its nonprofit status. HDOT offered to provide hangar space to SPFC at commercial rates pending proof of IRS nonprofit status but indicates no application for hangar space has been made (FAA Exhibit 1, Item 1, Exhibit 6, pp. 8-11).

### **Director's Determination**

The primary issue here is whether HDOT has applied reasonable requirements on SPFC that comport with FAA flying club policy or precedent in compliance with Grant Assurance 22. Ancillary issues concerning AOA access and airport fees/charges are also briefly addressed.

### ***FAA Policy and Precedent Regarding Flying Clubs***

FAA Order 5190.6B, *Airport Compliance Manual* (Change 1, November 22, 2021), Chapter 10, para. 10.6 *Flying Clubs* defines a flying club as:

*as a nonprofit entity (e.g., corporation, association, or partnership) organized for the express purpose of providing its members with aircraft for their personal use and enjoyment only. (See 81 Fed. Reg. 13719 (March 15, 2016)).*

Paragraph (b) provides general requirements concerning ownership rights:

*The ownership of the club aircraft must be vested in the name of the flying club or owned by all its members. The property rights of the members of the club shall be equal; no part of the net earnings of the club will inure to the benefit of any individual in any form, including salaries, bonuses, etc. The flying club may not derive greater revenue from the use of its aircraft than the amount needed for the operation, maintenance, and replacement of its aircraft.*

Paragraph (c) provides additional club and sponsor rights and restrictions, including the right of the airport sponsor to take reasonable steps to ensure the nonprofit status of the flying club:

*A flying club qualifies as an individual under the grant assurances and, as such, has the right to fuel and maintain the aircraft with its members. The airport owner has the right to require the flying club to furnish documents, such as insurance policies and a current list of members, as may be reasonably necessary to assure that the flying club is a nonprofit organization rather than an FBO or other commercial entity.*

Flying club precedent was also established in the Director's Determination (DD) for *GFK Flight Support v. Grand Forks Regional Airport Authority* (FAA Docket 16-01-05, March 22, 2002, GFK). The Director in that case confirmed that the FAA interprets aircraft ownership to include a long-term, exclusive use agreement if the lease is vested in the flying club.

Instructively, the Director in GFK noted that taking an opposing position 1) would effectively prohibit the flying club from leasing an aircraft from a manufacturer, for example, 2) that leasing is generally indistinguishable from loan payment made by an owner, and 3) it would be imprudent and impractical to disallow a flying club from participating in a common industry practice such as aircraft leasing.<sup>7</sup> On its face, SPFC's lease of aircraft N2122P from registered owner Belle Pacific Air, LLC ("Lessor"), a single-member LLC owned by Annie Domko, is not incompatible with FAA policy so long as the aircraft is exclusively used by the flying club in accordance with FAA policy and precedent in GFK.

#### ***Termination of SPFC's Revocable Permit***

SPFC's application for hangar space included information for one a 2010 Piper Sport Sportcruiser (N2122P). HDOT states that SPFC never provided insurance or registration information for any other aircraft in its hangar rental application. HDOT claims that SPFC stored two more aircraft it does not own in the hangar and used them regularly, and insurance information was not provided for the two additional aircraft. HDOT notes this is a violation of the Revocable Permit (FAA Exhibit 1, Item 5, pp. 2-5, pp. 20-22). SPFC does not appear to dispute the presence of the additional aircraft in its hangar.

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<sup>7</sup> The Director's Determination in Grand Forks Regional Airport (GFK) does not include page numbers. Refer to PDF pages 23-26 for the discussion on aircraft leasing by flying clubs.

On December 2, 2020, HDOT provided the required 30-day notice exercising its right to terminate the permit, effective January 2, 2021. HDOT claims that SPFC represented itself as a nonprofit entity for nearly a year and had 30 days in which to demonstrate compliance with its permit, prove itself a nonprofit entity, and to cease unpermitted commercial activity. The record is inconclusive as to whether SPFC responded within 30 days. HDOT states that SPFC as an alleged nonprofit organization was believed to be engaged in “commercial activity” and that it is HDOT’s responsibility to “determine if a tenant is committing fraud or is complying with its representation operating as a nonprofit and not conducting commercial activity” (FAA Exhibit 1, Item 5, Exhibit 1, p. 21).

The Director agrees. As noted above, FAA Order 5190.6B, Chapter 10, para. 10.6 *Flying Clubs* specifically allows airport sponsors to request and require proof of operator compliance with flying club policies, and HDOT corroborates its claims with inspection reports, photos of aircraft, unapproved hangar improvements, flight training classroom tools, and other evidence indicating violations of the terms of SPFCs permit (FAA Exhibit 1, Item 5, pp. 6-8; pp. 22-27, and Exhibit 3).

SPFC also has specifically stated that its organizational model:

*...includes a philanthropic focus – providing free flights to those in the community wanting to learn more about general aviation, donating use of the plane to deliver gifts for the local chapter of the 99s, and delivering feminine hygiene supplies to the outer islands for free in conjunction with local nonprofit Ma’i Movement, among other charitable acts. SPFC has always functioned as a non-profit organization engaged in acts of charity. (FAA Exhibit 1, Item 8, Exhibit 1, p. 1)*

The Director finds that the charitable model SPFC sought to establish using club aircraft – whether actively engaged in such operations or not – is additional evidence of nonexclusive use of flying club aircraft and reasonably gave rise to suspicions by HDOT of noncompliance with FAA flying club requirements.

Considering the circumstances, the Director also holds that a lease that confers aircraft exclusivity to the flying club but is not exclusively used by the flying club provides adequate justification for the sponsor to take reasonable enforcement action. The Director’s position is underpinned by Part 16 precedent in *GFK*, which provides that “exclusive use means that the aircraft cannot be used by anyone other than the flying club and its members at any time during the term of the lease and may not be used by any member of the flying club to provide aeronautical services to the public” (DD at PDF p. 25). Further, FAA Order 5190.6B, Change 1, Chapter 10.6 provides that a “flying club that violates the requirements for a flying club – or that permits one or more members to do so – may be required to terminate all operations as a flying club at all airports controlled by the airport sponsor.”

Accordingly, the Director finds that HDOT’s actions are reasonable and did not – in this instance – violate Grant Assurance 22 through its revocation of SPFC’s permit and hangar access. The Director cautions HDOT that lease revocation “without cause” could itself be an unreasonable term and condition of airport access if unreasonably or inequitably applied, but in this case SPFC’s actions were sufficiently egregious to warrant enforcement action, including termination of the permit.

Regarding reasonable and equitably applied hangar access fees, the Director declines to take a position on HDOT's application of commercial or non-commercial fees to SPFC given HDOT's reasonable – and now proven – concern over SPFC misrepresenting its non-flying club activities. SPFC cannot reasonably request or expect the consistent application of commercial or non-commercial fees when SPFC's own actions preclude the sponsor from making an objective assessment of the club's activities.

### ***Nonprofit vs. Tax Exempt***

The Director notes that HDOT's actions in continuing to restrict SPFC's access to HNL *since the revocation of SPFC's permit in December 2020* is a cause for concern under Grant Assurance 22. Of primary interest are SPFC's allegations that HDOT has: 1) imposed unreasonable terms on SPFC in the minimum standards and documentation required to obtain a hangar at noncommercial GA rates and 2) has refused to approve SPFC's application for a hangar because SPFC does not have proof of IRS 501(c)(3) or IRS 501(c)(7) tax exemption status (FAA Exhibit 1, Item 1, Exhibit 1, pp. 33-34). SPFC claims HDOT's minimum standards will only allow flying clubs to obtain a hangar at noncommercial rates and operate as a flying club at HNL if the club obtains and provides proof of tax-exempt status from the IRS (FAA Exhibit 1, Item 1, Exhibit 1, p. 40).

The record confirms SPFC's allegation. HDOT states that “any applicant applying for hangar space as a nonprofit and seeking non-commercial rates may have to prove the entity is indeed nonprofit by submitting documents, including but not limited to tax clearances, tax returns, tax exempt status determinations by the IRS, audited or unaudited financial statements, or other documents that establish legitimate nonprofit status, rather than simply relying on the applicant's word” (FAA Exhibit 1, Item 5, Exhibit 1, p. 23). While HDOT appears to have inserted the conjunction “or” to suggest a range of evidentiary options, the record credibly shows that HDOT has required SPFC to show evidence of its IRS tax exemption status as a condition of access to HNL.

Specifically, HDOT states the State of Hawaii has two statutory schemes to form a nonprofit entity: Hawaii Nonprofit Corporations Act (HNCA), HRS Chapter 414D, or Uniform Unincorporated Nonprofit Association Act (UUNAA), HRS Chapter 429. HDOT states “there is no specific provision to be legally recognized as a nonprofit entity under the Uniform Limited Liability Company Act, HRS chap. 428.” HDOT further asserts that the IRS “requires that the member of the limited liability company must be section 501(c)(3) or governmental unit” to receive a tax exemption. HDOT also cites IRS requirements to “preclude the inurement of net earnings to private individuals,” which it says is the “exact same requirement the FAA described in Chapter 10 of the Airport Compliance Manual” which states specifically, “...no part of the net earnings of the club inure to the benefit of any individual” (FAA Exhibit 1, Item 6, Exhibit 1, pp. 3-4).

In a letter of July 19, 2021, to HDOT, SPFC counsel pointed out that “there is no requirement in the FAA definition of Flying Club or standards in the Airport Compliance Manual indicating that a flying club must be tax exempt. Rather, they must be a *nonprofit*, which is not necessarily the same thing.” SPFC counsel goes on to request “clarification as to what, specifically” tax documents HDOT would like to see considering SPFC had already established “SPFC’s non-profit status” with the State of Hawaii Department of Commerce and Consumer Affairs (FAA Exhibit 1, Item 1, Exhibit 1, and Exhibit U). And, in an email of August 11, 2021, SPFC counsel reiterated its concerns, directed HDOT to IRS guidance, and asked “On what authority are you requiring SPFC to become a tax-exempt charitable organization in order to obtain recognition as a non-profit Flying Club?” HDOT claims it is simply referring to SPFC’s stated intent to seek IRS tax exempt status as the basis for the requirement, defers to its internal “Fiscal Section,” and never provides a specific answer to SPFC’s inquiry (FAA Exhibit 1, Item 1, Exhibit 1, and Exhibit X, p. 3).

The Director agrees with SPFC that FAA policy requires only that a flying club be a nonprofit. While the FAA does not specifically define “nonprofit,” the IRS makes a crucial distinction between “nonprofit” and “tax exempt” that is relevant to this case:

*Nonprofit status is a state law concept. Nonprofit status may make an organization eligible for certain benefits, such as state sales, property, and income tax exemptions. Although most federal tax-exempt organizations are nonprofit organizations, organizing as a nonprofit organization at the state level does not automatically grant the organization exemption from federal income tax. To qualify as exempt from federal income tax, an organization must meet requirements set forth in the Internal Revenue Code.*

(<https://www.irs.gov/charities-non-profits/frequently-asked-questions-about-applying-for-tax-exemption>).

Importantly, the IRS confirms that nonprofit status is a state law concept and that organizing as a nonprofit at the state level is not an automatic granting of the Federal tax exemption status. Even as SPFC has been granted nonprofit status by the State of Hawaii, it is not necessarily possible that SPFC could meet IRS requirements to acquire 501(c)(3) or 501(c)(7) tax exempt status. In fact, HDOT argues on multiple occasions that it does not believe that SPFC can obtain IRS tax exempt status and speculates that SPFC likely received a rejection from the IRS in that regard (FAA Exhibit 1, Item 6, Exhibit 1, pp. 10-11). When reviewed against HDOT’s Federal grant obligations, HDOT’s position cannot be sustained.

First, FAA policy and precedent requires the flying club to be a nonprofit entity – not tax exempt – and provides the airport sponsor the right and responsibility to require evidence that a flying club is operating as a nonprofit. Here, the record plainly shows – and HDOT confirms – that SPFC, LLC filed its state articles of conversion to a nonprofit corporation in December 2020, and was granted a Certificate of Conversion from the Hawaii Department of Commerce and Consumer Affairs certifying SPFC as a Hawaii nonprofit corporation, effective December 21, 2020. SPFC submitted the certification to HDOT as evidence of its nonprofit status (FAA Exhibit 1, Item 1, Exhibit 6, pp. 3-4; 8-9). As such, there is no logical argument that SPFC is not a nonprofit entity recognized by the State of Hawaii.

Second, HDOT's Revocable Permit application requires the applicant to provide "Tax Clearance Certificates" from the State of Hawaii and the City/County of Honolulu, which SPFC provided (FAA Exhibit 1, Item 5, p. 5, p. 23-34, Exhibit 1, and Exhibit X). Nowhere in the application is there a specific or implied requirement that SPFC or any other airport user or applicant receive "tax exempt" status from the IRS as a condition of receiving signoff on the Tax Clearance documents. The Director confirms that such a requirement would be unjustly discriminatory on its face.

Third, HDOT's "Procedure No. 6.27 Criteria for Flying Club Status" outlined as "Airport Division Procedures" effective July 7, 2021, provides (correctly) that the criteria in FAA Order 5190.6B establishes the minimum standards for flying club access to a federally obligated airport, and that HDOT will request the flying club to provide information and documents to support that the club is meeting FAA policy. However, nowhere in FAA policy or the HDOT Procedure is there a requirement that the flying club be "tax exempt" in addition to being a "nonprofit" (FAA Exhibit 1, Item 5, Exhibit 1, and Exhibit 11). HDOT rightfully excludes the "tax-exempt" requirement from its newly developed flying club procedures, but still placed the unreasonable requirement on SPFC to demonstrate IRS tax exemption status. HDOT can neither qualify nor justify its position by law or policy.

HDOT acknowledges that it initially did not understand how to implement a new flying club policy at HNL. And, as airport sponsor, HDOT has the right to perform due diligence to understand flying club operations and to implement a reasonable access policy, including the ability to require the club to furnish information and documents as may be reasonably necessary to assure the club is a nonprofit entity. The Director affirms that flying clubs must comply with such requirements as a condition of airport access.<sup>8</sup>

In this case, HDOT had nearly two years after the issuance of SPFC's Revocable Permit in January 2020 to the filing of this complaint in October 2021 – and 10 months after revocation of SPFC's permit in December 2020 – to query FAA policy and precedent, draft/implement minimum standards, and initiate and conclude internal deliberations concerning Hawaii state protocols for assessing and approving nonprofit aeronautical entities. Instead, HDOT (reasonably) revoked SPFC's permit for unauthorized activities and then (unreasonably) engaged in a continuous, 10-month back-and-forth with SPFC over its arbitrary requirement that SPFC demonstrate IRS-approved tax-exempt status while providing no legal or policy basis for the requirement.

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<sup>8</sup> FAA Order 5190.6B, Chapter 10.6, para. (c)(1) states that: "All flying clubs desiring to base their aircraft and operate at an airport must comply with the applicable provisions of airport specific standards or requirements. However, flying clubs will not be subject to commercial FBO requirements provided the flying club fulfills the conditions contained in the stated airport standards or requirements satisfactorily."

Under the circumstances, the Director holds that HDOT has devised an arbitrary and unreasonable test for flying club access to HNL and its actions since the revocation of SPFC's permit in December 2020 are inconsistent with Grant Assurance 22 access requirements. HDOT's position that SPFC cannot be an LLC and a nonprofit under Hawaii state law, and that SPFC cannot be a Hawaii nonprofit if not tax exempt under IRS 501(c)(3) law effectively results in a dead-end in terms of SPFC access to HNL, which appears to be the goal. HDOT's actions are contrary to its Federal obligation to provide reasonable and not unjustly discriminatory access.

Lastly, the Director notes, with concern, that HDOT allegedly constrained SPFC's AOA access to its aircraft during the post-eviction period (in which HDOT compelled SPFC to prove its "tax exempt status") which remained parked in a temporary tie-down at HNL and allegedly accruing parking fee charges during the intervening period (FAA Exhibit 1, Item 5, pp. 9-14; pp. 16-23). The parties disagree on the degree to which access to SPFC's aircraft was denied, but HDOT's actions appear to involve multiple airport and non-airport personnel providing SPFC with confusing and conflicting information on badging policy and process for gaining AOA access. The actions appear to intentionally delay SPFC personnel access to the aircraft for reasons of security, which HDOT did not substantiate. The Director declines to take a position on the allegations but provides notice that any action taken – including unreasonably onerous and inequitably applied security badging procedures – to deny a user access to their aircraft at the airport for which relevant fees are collected could, if so proven, result in a violation of reasonable access requirements under Grant Assurance 22.

### ***Conclusion***

Through its actions, HDOT has effectively rejected longstanding FAA flying club policy and precedent, and the State of Hawaii's bureaucratic nonprofit certification process, by interjecting its own IRS-based tax exemption requirements as the evidentiary means for providing reasonable flying club access to HNL. HDOT's actions cannot be sustained. The record shows that SPFC – through its post-eviction attempt to secure hangar access at HNL – applied for and received a Certificate of Conversion from the Hawaii Department of Commerce and Consumer Affairs certifying SPFC as a Hawaii nonprofit corporation, effective December 21, 2020. The Director holds that State-level certification of nonprofit status sufficiently satisfies the component of FAA policy requiring that flying clubs demonstrate their status as nonprofit entities as a condition of access to the airport.

The Director affirms that the sponsor may require additional documents and information from the flying club to make a reasonable determination of nonprofit status. However, the Director holds that regardless of the state bureaucratic process, a sponsor cannot require "tax exempt" status from the IRS as a minimum threshold for obtaining reasonable aeronautical access to a federally obligated airport.

For the foregoing reasons, the Director finds that HDOT's position that SPFC must demonstrate IRS tax-exempt status to assure its status as a nonprofit flying club entity is arbitrary and an unreasonable condition of aeronautical access to HNL in violation of Grant Assurance 22, *Economic Nondiscrimination*.

**Issue 3 - Whether HDOT's procedures and standards for flying clubs unjustly discriminate against SPFC in violation of Grant Assurance 22, Economic Nondiscrimination?**

### **SPFC's Position**

1. HDOT unreasonably denied and delayed approval for access to HNL because HDOT officials did not understand flying clubs and were confused by the new concept of a flying club. HDOT has unreasonably failed to implement clear procedures for SPFC to comply with appropriate minimum standards or obtain access to HNL, or to provide guidance for SPFC in trying to understand what HDOT is requiring (FAA Exhibit 1, Item 1, Exhibit 1, pp. 37-40).
2. HDOT's minimum standards prohibit flying clubs from paying for maintenance performed by qualified mechanics who are registered club members and prohibit flight instructors from receiving payment for instruction in club aircraft to club members, both of which are contrary to FAA Order 5190.6B, *FAA Airport Compliance Manual*, as amended by 80 Fed. Reg. 41447<sup>9</sup>(July 15, 2015). These requirements unjustly discriminate against flying clubs in general and SPFC in particular (FAA Exhibit 1, Item 1, Exhibit 1, pp. 37-40).

### **HDOT's Position**

In its Answer, HDOT denies the allegations that "HDOT's minimum standards unjustly discriminate against flying clubs" (FAA Item 5, Exhibit 1, p.32). HDOT admits it "limits the amount of payment to a club mechanic or flight instructor to a credit against payment of dues or flight time for providing services to the aircraft or other club members" (FAA Exhibit 1, Item 5, Exhibit 1, p. 32, and DOTA Exhibit 10). HDOT says its policy on this matter is outlined in their July 7, 2021 "*Procedure No. 6.27, Criteria for Flying Club Status*," based on the minimum standards set forth in the FAA Order 5190.6B.

Additionally, HDOT states that in accordance with the policy outlined in FAA Order 5190.6B, Change 1, the Airport "has a right to limit the payment to club members" (FAA Exhibit 1, Item 5, Exhibit 1, p. 30-32.). The Respondent further contends that the limit set forth for qualified individual in this case "ensures the club truly operates as a nonprofit" and not as a commercial entity (FAA Exhibit 1, Item 5, pp. 35-36).

### **Director's Determination**

In sum, SPFC challenges HDOT's limitation in *Procedure No. 6.27* that flight instructors and mechanics who perform such services to club members or on club aircraft can only be compensated via credit to club dues or flight time. The record supports SPFC's allegation. HDOT's *Criteria for Flying Club Status, Procedures 6.27* (Effective 7/01/2021), states in Section 6.27.04 *Procedures* that:

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<sup>9</sup> 80 Fed. Reg. 41447 *Petition of the Aircraft Owner and Pilots Association (AOPA) To Amend FAA Policy Concerning Flying Club Operations at Federally Obligated Airports*. FAA sought public comments on the petition. The FAA adjudicated comments and issued the Final Policy in 81 Fed. Reg. 13719, March 15, 2016

... (3). *The Club may use any qualified mechanic who is a registered member and part owner of the aircraft owned and operated by the Club to perform maintenance work on aircraft owned by the Club. The Club may not pay for such maintenance work except that such mechanics may be compensated by credit against payment of dues and flight time.*

And,

... (6). *The Club shall not permit its aircraft to be used for flight instruction for any reason, including members of the Club owning the aircraft when such person pays or becomes obligated to pay for such instruction. An exception applies when the instruction is given by a lessee based on the airport who provides flight training and the reason receiving the training is a member of the Club. Flight instructors who are also club members may not receive payment for instructions except that they may be compensated by credit against payment of dues or flight time.*

As shown, *Procedure No. 6.27* specifies that mechanic and flight instructor club members cannot “receive payment” for such services and can only “be compensated by credit against payment of dues and [or] flight time.” However, the procedure only partially comports with revised FAA policy on flying clubs established in a Federal Register Notice 81 FR 13719 (March 15, 2016). Regarding flight instruction, FRN paragraph (c)(3) of the Final Policy provides that:

*A flying club may permit its aircraft to be used for flight instruction in a club-owned aircraft as long as both the instructor providing instruction and person receiving instruction are members of the club owning the aircraft, or when the instruction is given by a lessee based on the airport who provides flight training and the person receiving the training is a member of the flying club. In either circumstance, a flight instructor may receive monetary compensation for instruction or may be compensated by credit against payment of dues or flight time; however, that individual may not receive both compensation and waived or discounted dues or flight time concurrently. The airport sponsor may set limits on the amount of instruction that may be performed for compensation.*

The FRN specifically allows 1) club aircraft to be used for flight instruction, 2) when both the instructor and student are flying club members, or 3) when an airport-based flight school tenant provides flight training to a flying club member. The FRN further allows 1) monetary compensation, or 2) credit towards club dues or flight time, but not both. The airport sponsor can set limits on the amount of instruction performed for compensation.

As such, HDOT’s claim that it “has the right to limit the payment to club members” is in error. In revising the policy, the FAA specifically provided that club credit or monetary compensation is acceptable where the instructor is a club member or holds leasehold tenancy at the airport. It can reasonably be assumed that a non-club, flight instructor tenant would have no need for credit towards club dues for which the instructor is not a member, or credit towards flight time in a club aircraft the instructor otherwise has no access to, hence the flexibility in FAA policy.

Likewise, the condition in HDOT's *Procedure No. 6.27* limiting flying club flight instructor compensation (where both instructor/students are flying club members) to a credit against club dues or flight time contravenes the FRN. Club credit or monetary payment are each acceptable forms of compensation under FAA policy. Further, the policy allows HDOT to set limits on the "amount" of instruction performed for compensation, not the "type" of compensation received. For example, HDOT could specify that flight instruction be limited to a certain percentage of total hours flown in club-owned aircraft each month. HDOT may reasonably require the flying club to demonstrate compliance through documentary evidence or other means.

Regarding mechanic services on club aircraft, paragraph (c)(4) of the Final Policy states:

*A qualified mechanic who is a registered member and part owner of the aircraft owned and operated by a flying club may perform maintenance work on aircraft owned by the club. The mechanic may receive monetary compensation for such maintenance work or may be compensated by credit against payment of dues or flight time; however, that individual may not receive both compensation and waived or discounted dues or flight time concurrently. The airport sponsor may set limits on the amount of maintenance that may be performed for compensation.*

Unlike flight instruction, FAA policy limits access to club aircraft for mechanic services to mechanics who are also club members. No specific provision is provided for mechanic compensation for mechanics with leasehold tenancy at the airport. However, like flight instruction, club credit or monetary payment are each acceptable forms of compensation for mechanic services on club aircraft under FAA policy. And, regardless of compensation type, HDOT can set limits on the amount of maintenance performed for compensation by club mechanics and require the flying club to provide documentary evidence of compliance.

In any case, the Director holds that HDOT's policy limiting flight instruction and mechanic services compensation to credit towards club dues or flight time to contravene the revised policy in the FRN and is an unreasonable term and condition of flying club access to HNL in violation of Grant Assurance 22, *Economic Nondiscrimination*.

**Issue 4 – Whether HDOT violated Grant Assurance 23, *Exclusive Rights*, by imposing unreasonable requirements and standards on SPFC as a condition of flying club access to HNL?**

#### **Complainant's Position**

SPFC offers that the "FAA has recognized that airport sponsors might attempt to design their minimum standards to protect only the interests of one business operator, which can be interpreted as the grant of an exclusive right and a potential violation of the FAA's policy" (FAA Exhibit 1, Item 1, Exhibit 1, p. 38). SPFC cites *James Vernon Rick, Jr., et al v. County of San Diego, California* (FAA Docket 16-98-19, July 1, 1999), in that "the application of any unreasonable requirement or any standard...in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right" (FAA Exhibit 1, Item 1, Exhibit 1, p. 39).

The Complainant further alleges that HDOT has not developed a “reasonable procedure” for flying club operation on the South Ramp of HNL and airport “officials are confused about flying clubs” and as a result the Complainant purports that HDOT “unreasonably excluding flying clubs from accessing or enjoying HNL” (FAA Exhibit 1, Item 1, Exhibit 1, pp. 39-40).

### **Respondent's Position**

In its Answer, HDOT denies any violation of Grant Assurance 23 or imposing unreasonable requirements. The Respondent admits, “There are no nonprofit entities other than the SPFC that have applied for space so there is no need to require tax-exempt status from any other person or entity” (FAA Exhibit 1, Item 5, Exhibit 1, pp. 33-34).

HDOT further states that SPFC must “establish that (the) HDOT provided exclusive rights to another similarly situated airport user that makes the same or similar use of the airport” (FAA Exhibit 1 Item 5, Exhibit 1, p. 34).

### **Director's Determination**

The Director in *Issue 2* determined that HDOT engaged in unreasonable and unjustly discriminatory actions by requiring SPFC to demonstrate its IRS tax-exempt status as a term and condition of flying club access to HNL. In *Issue 3*, the Director found that HDOT's flying club minimum standards included unreasonable provisions concerning flight instructor and mechanic compensation involving club members and/or club aircraft.

Grant Assurance 23, *Exclusive Rights* requires, in pertinent part, that the owner or sponsor of a federally obligated airport:

*...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public.*

*...will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities...*

*...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.*

FAA Order 5190.6B, *FAA Airport Compliance Manual*, discusses the FAA's exclusive rights policy and broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights (FAA Order 5190.6B, Chapter 8, *Exclusive Rights*). While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, FAA has taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right.

Similarly, Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, dated January 4, 2007, provides that an exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum standards, or by any other means. Courts have found the constructive granting of an exclusive right exists where a significant burden has been placed on

one aeronautical user that is not placed on another [See *Pompano Beach v. FAA*, 774 F.2d 1529 (11th Cir. 1985)].

Since the Director found in *Issue 2* and *Issue 3* that HDOT imposed unreasonable requirements on SPFC, the Director need not establish whether an exclusive rights violation also occurred because of HDOT's actions. As earlier noted, HDOT did in fact apply unreasonable standards of access on SPFC that it does not appear to have applied to any other user. However, flying clubs are subject to FAA policies not applicable to other aeronautical users and there is no evidence in the record of any other similarly situated user (e.g., flying club) of HNL who was granted access or benefits otherwise not available to SPFC.

SPFC points to other aeronautical tenants making the same use of the South Ramp as evidence of HDOT giving preference to those users (e.g., George's Aviation), but the allegation cannot be sustained since SPFC is/was presumed to be a non-profit entity having FAA-required aircraft exclusivity requirements and no other tenant shares those requirements or attributes. These and other distinctions are integral to determining whether users are similarly situated. Also, it is notable that HDOT initially granted SPFC a Revocable Permit for hangar access and aircraft parking just as it did other users. SPFC's permit was revoked only after HDOT determined SPFC had engaged in prohibited commercial/non-flying club activity. SPFC's burden under Grant Assurance 23 is to prove that: 1). HDOT failed to equitably enforce the terms of the Revocable Permit against other similarly situated users, and 2). HDOT's enforcement of the terms of the Revocable Permit unreasonably excluded SPFC from HNL to its detriment (or to the benefit of others). Here, SPFC is the only flying club at, or seeking access to, HNL and therefore cannot meet its burden.

In consideration of the above, the Director does not in this case find that HDOT granted or otherwise conferred an exclusive right to other similarly situated users, and therefore HDOT is not currently in violation of Grant Assurance 23, *Exclusive Rights*.

## VIII. CONCLUSION AND FINDINGS

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 of Airports Compliance and Management Analysis finds that:

**Issue 1** - HDOT is not in violation of Grant Assurance 19, *Operation and Maintenance*.

**Issue 2** – HDOT is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by unreasonably requiring SPFC to demonstrate IRS tax-exempt status as a condition of aeronautical access to HNL.

**Issue 3** – HDOT is in violation of Grant Assurance 22, *Economic Nondiscrimination*, by developing flying club policies that limit compensation for flight instruction and mechanic services involving flying club aircraft in contravention of FAA policy resulting in an unreasonable term and condition of flying club access.

**Issue 4** - HDOT is not violation of Grant Assurance 23, *Exclusive Rights*.

## ORDER

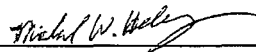
ACCORDINGLY, it is ordered that:

- 1) The Airport Sponsor shall present a corrective action plan (CAP) to the Director of the Office of Airports Compliance and Management Analysis within 30 days from the date of the Order. The plan shall explain in detail how it intends to return the Airport to compliance with its federal grant assurances by providing reasonable access in accordance with *Grant Assurance 22*.
- 2) The Airport Sponsor shall present in the corrective action plan (CAP) to include an update to their *Procedures No. 6.27 Criteria for Flying Club Status* to reflect the March 15, 2016, Federal Register Notice (FRN).
- 3) Pending the FAA's approval of the CAP, the FAA Director of the Office of Airports Compliance and Management Analysis will recommend to the FAA Director of the Office of Airports Planning and Programming to withhold approval of any applications submitted by HDOT for Airport Improvement Program (AIP) pursuant to the Airport and Airway Improvement Act of 1982 (AAIA), funding discretionary projects authorized under 49 U.S.C. § 47101.

All other Motions not expressly granted in this Determination are denied.

### RIGHT OF APPEAL

This Director's Determination 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). Any party to this proceeding adversely affected by the Director's Determination may file an appeal with the FAA Associate Administrator for Airports within 30 days after the date of service of the initial determination. If no appeal is filed within the time 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 Helvey  
Director, Office of Airport Compliance  
and Management Analysis

2/16/2024

Date

*South Pacific Flying Club, Complainant,*

v.

*State of Hawaii Department of Transportation, Hawaii, Respondent.*

FAA Docket 16-21-15

**INDEX OF ADMINISTRATIVE RECORD**

The following items constitute the administrative record in this proceeding:

**FAA Exhibit 1**

**Item 1 South Pacific Flying Club (SPFC) filed Complaint against State of Hawaii Department of Transportation (“HDOT” or “Owner/Operator”), dated October 25, 2021.**

- Exhibit A. HDOT E-mail to SPFC regarding Airport Space Request, dated June 27, 2019.
- Exhibit AA. HDOT Letter to Board of Land and Natural Resources, State of Hawaii, Honolulu, HDOT 1-1-72:23 regarding Issuance of a Hanger Facilities Lease for Air Charter, dated February 2020.
- Exhibit B. State of Hawaii Department of Transportation – Airports Division (HDOT) regarding Space Application, dated August 19, 2019.
- Exhibit BB. HDOT Letter to George’s Aviation Services, Inc., regarding Issuance of a Revocable Permit for a T-Hangar, dated April 2020.
- Exhibit C. Form LLC-1 – Articles of Organization for Limited Liability Company (LLC) SPFC LLC, dated August 22, 2019.
- Exhibit CC. SPFC E-mail to HDOT regarding Space Application, dated August 17, 2021.
- Exhibit D. FAA Certificate of Aircraft Registration, dated December 2, 2019.
- Exhibit DD. Photographs – Aircraft Parking.
- Exhibit E. HDOT E-mail to SPFC regarding SPFC Renewal Quote – Expires 9/14/2021, dated September 10, 2021.
- Exhibit EE. Contacts - HDOT, dated July 2021.
- Exhibit F. HDOT Revocable Permit (8931), SPFC, dated January 29, 2020.
- Exhibit FF. Sworn Statement, Annie Domko of SPFC, dated October 22, 2021.
- Exhibit G. HDOT Letter to SPFC regarding Termination and Notice to Vacate Revocable Permit (8931), dated December 2, 2020.

- Exhibit H. State of Hawaii, Department of Commerce and Consumer Affairs, Articles of Conversion to SPFC, dated December 21, 2020.
- Exhibit I. SPFC E-mail to Oahu Airports regarding SPFC SOP (v4), dated January 13, 2021.
- Exhibit J. Honolulu Airport District Office (ADO), FAA Letter to SPFC regarding Compliant of HNL not Operating within its Federal Obligations, dated February 8, 2021.
- Exhibit K. HDOT – Space Application.
- Exhibit L. SPFC Letter/Memo to HNL Pass & ID Office regarding Authorized Signatory Request, dated April 7, 2020.
- Exhibit M. SPFC and Belle Pacific Air, LLC regarding N2122P Aircraft Lease Agreement, dated October 31, 2020.
- Exhibit N. SPFC E-mail/Memo to Honolulu ADO FAA regarding Report of Violation WRT To HDOT Property Management Office and Security Manager, dated May 27, 2021.
- Exhibit O. SPFC E-mail/Memo HDOT regarding Following up Regarding South Pacific Flying Club, dated June 6, 2021.
- Exhibit P. HDOT Letter to SPFC regarding Application for Revocable Permit Application, dated May 19, 2021.
- Exhibit Q. SPFC E-mail to HDOT and regarding Revocable Lease for Hanger, dated June 8, 2021.
- Exhibit R. SPFC E-mail to HNL Pass & ID Office regarding Access to Aircraft on the South Ramp, dated June 3, 2021.
- Exhibit S. HDOT E-mail to SPFC regarding South Pacific Flying Club Update, dated July 21, 2021.
- Exhibit T. HDOT Letter to SPFC regarding Starting a Flying Club in the State of Hawaii, dated July 7, 2021.
- Exhibit U. SPFC Legal Counsel Letter to General Aviation regarding AIR-LG 21.0204, dated July 19, 2021.
- Exhibit V. SPFC E-mail to HDOT regarding AIR-LG 21.0204, dated August 3, 2021.
- Exhibit W. SPFC E-mail to HDOT regarding South Pacific Flying Club, dated August 12, 2021.
- Exhibit X. SPFC Legal Counsel E-mail to HDOT and FAA ADO, Honolulu regarding South Pacific Flying Club, dated August 12, 2021.
- Exhibit Y. Photographs – Aircraft Hangar.
- Exhibit Z. Photographs – Buildings.

- Item 2** FAA files Notice of Docketing, dated November 15, 2021.
- Item 3** HDOT files Motion for Extension of Time to respond to Complaint by January 4, 2022, dated November 30, 2021.
- Item 4** FAA issues Order of Extension of Time until January 4, 2022, dated December 6, 2021.
- Item 5** Respondent files Answer to the Complaint, dated January 4, 2022.
- Exhibit 1, Part 1. Space Application SPFC, LLC, dated August 19, 2019.  
 HODT Letter to SPFC regarding Application for Revocable Permit (Application), dated October 4, 2019.
- Exhibit 2, Part 1. HDOT Letter to SPFC regarding Revocable Permit (8931), dated February 3, 2020.  
 Oahu District Airport and HDOT to SPFC regarding Revocable Permit Application South Pacific Flying Club, LLC, dated October 21, 2019.  
 SPFC LLC and Belle Pacific Air, LLC regarding N2122P Aircraft Lease Agreement, dated October 28, 2019.  
 HDOT Aircraft Registration Form, SPFC, dated November 20, 2019.  
 State of Hawaii Department of Commerce and Consumer Affairs, regarding Certificate of Good Standing, SPFC, LLC, dated November 1, 2019.  
 State of Hawaii Department of Taxation regarding Tax Clearance Application to SPFC, dated November 4, 2019.  
 State of Hawaii, Honolulu, HI regarding Certificate of Insurance, SPFC, LLC, dated September 25, 2019.  
 Lessor Endorsement (N2122P), Belle Pacific Air, LLC, dated September 12, 2019.  
 HDOT regarding Space Application SPFC, dated May 5, 2021.
- Exhibit 3, Part 1. Affidavit of Glen Mitchell, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 4, 2022.  
 HDOT regarding Daniel K. Inouye International Airport Compliance Assessment Conducted for SPFC, dated October 28, 2020.  
 HDOT Environment Section regarding Storm water BMP Inspection Report, dated November 12, 2020.  
 HDOT regarding Daniel K. Inouye International Airport Compliance Assessment Conducted for SPFC, dated November 18, 2020.  
 HDOT Daniel K. Inouye International Airport Compliance Assessment Conducted for SPFC, dated November 27, 2020.

- Exhibit 4, Part 1. HDOT Daniel K. Inouye International Airport Compliance Assessment Conducted for HNL T-Hangars with Loft, dated December 3, 2020.
- Exhibit 4, Part 1. HDOT to SPFC regarding Parking Permit PP-21-0012, dated September 16, 2021.
- Exhibit 4, Part 1. HDOT to SPFC regarding Parking Permit PP-21-0012, dated September 10, 2021.
- Exhibit 4, Part 1. HDOT to Board of Land and Natural Resources State of Hawaii regarding Issuance of a Revocable Permit for Aircraft Parking SPFC HNL, dated September 10, 2021.
- Exhibit 4, Part 1. FAA, Certificate of Aircraft Registration, N2122P, dated December 2, 2019.
- Exhibit 4, Part 1. FAA, Special Airworthiness Certificate, dated December 22, 2010.
- Exhibit 4, Part 1. N2122P Aircraft Lease Agreement, Belle Pacific Air, LLC and SPFC, dated October 31, 2020.
- Exhibit 4, Part 2. Certificate of Insurance, SPFC dated August 31, 2021.
- Exhibit 4, Part 2. Certificate of Insurance, SPFC dated August 24, 2020.
- Exhibit 4, Part 2. HDOT regarding Space Application, SPFC, dated August 10, 2021.
- Exhibit 5, Part 2. Affidavit of Amy Fujioka, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 3, 2022.
- Exhibit 5, Part 2. HDOT E-mail to SPFC regarding South Pacific Flying Club, dated May 14, 2021.
- Exhibit 6, Part 2. Welcome to South Pacific Flying Club Flight Training HNL, dated December 2, 2021.
- Exhibit 7, Part 2. HDOT to SPFC regarding Revocable Permit (9044), dated March 12, 2021.
- Exhibit 7, Part 2. HDOT to SPFC regarding Revocable Permit (9147), dated October 4, 2021.
- Exhibit 8, Part 2. HDOT to SPFC regarding Revocable Permit (8978), dated March 16, 2020.
- Exhibit 8, Part 2. HDOT Memo to Board of Land and Natural Resources, State of Hawaii regarding Issuance of Hangar Facilities Lease for Air Charter and Air Medical and Related Services, dated March 2020.
- Exhibit 8, Part 2. Land Board Secretary Meeting Minutes for the Meeting of the Board of Land and Natural Resources, dated March 13, 2020.
- Exhibit 9, Part 2. Affidavit of Lilian A. Lareau, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 3, 2022.
- Exhibit 9, Part 2. HDOT regarding Processing Revocable Permits, dated July 2, 2003.

- HDOT regarding Property Management, dated July 9, 2003.
- Exhibit 10, Part 2. Affidavit of Ross Higashi, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 4, 2022.
- HDOT regarding Schedule of Rates and Charges, dated December 20, 2018.
- Exhibit 11, Part 2. HDOT regarding Criteria for Flying Club Status, dated June 24, 2021.
- Affidavit of Roy Sakata, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 3, 2022.
- Exhibit 13, Part 2. Affidavit of Alex Tamoria, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 3, 2022.
- Exhibit 14, Part 2. State of Hawaii, Department of Commerce and Consumer Affairs regarding Articles of Organization for Limited Liability Company, dated August 22, 2019.
- Hawaii Business Express, South Pacific Flying Club, LLC, dated November 1, 2021.
- Exhibit 15, Part 2. Limited Liability Companies as Exempt Organization – Update, dated 2001.
- Exhibit 16, Part 2. Affidavit of Craig Fujihara, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 3, 2022.
- Exhibit 17, Part 2. HDOT regarding Marjet Inc., Hangar Facilities Lease Honolulu International Airport Honolulu Island of Oahu, State of Hawaii, dated May 14, 2008.
- Exhibit 17, Part 3. HDOT Letter George’s Aviation Services, Inc., regarding Reopening and Establishment of Annual Ground Lease Rent five (5)-year Period of March 1, 2014, to February 28, 2019, State Lease, DOT-A-08-0010, Space 011-104 Honolulu International Airport, dated September 5, 2013.
- HDOT Letter to George’s Aviation Services, Inc., regarding Reopening and Establishment of the Annual Ground Lease Rent five (5)-year Period of March 1, 2019, through February 28, 2024, State Lease, DOT-A-08-0010 Daniel K. Inouye International Airport, dated December 17, 2018.
- HDOT Letter to George’s Aviation Services, Inc., regarding Revocable Permits, dated November 1, 2021.
- HDOT HNL Parking Permit PP-00-0005, dated September 22, 2000.
- Bill of Sale regarding 1962 Piper Aztec, Model “B” Twin Engine Aircraft Serial Number 27-2072 N5060Y, dated January 1, 2000.
- HDOT Letter to George’s Aviation Services, Inc., regarding Amendment to 1 to Parking Permit 00-0005 (PP-00-0005) HNL, dated May 4, 2016.

HDOT Letter to George's Aviation Services, Inc., Correction Revision of Rental Account 71663-01 Parking Permit Nos. PP-00-0005 and PP-02-0012, HNL, dated September 15, 2009.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71663-01 Parking Permit 00-0005 (PP-00-0005) HNL, dated August 26, 2014.

Oahu District Airports Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71663-01 Parking Permits Nos. PP-00-0005 and PP-02-0012 HNL, dated August 18, 2009.

HDOT regarding Space Application, George's Aviation Services, Inc., dated July 5, 2002.

HDOT Letter to George's Aviation Services, Inc., regarding Amendment 1 to Parking Permit 02-0011 PP-02-0011 HNL, dated May 4, 2016.

HDOT Letter to George's Aviation Services, Inc., regarding Amendment to Parking Permit 02-0012 HNL, dated July 16, 2002.

HDOT Letter to George's Aviation Services, Inc., regarding Amendment to Parking Permit PP-08-0013, dated July 7, 2008.

HDOT Letter to George's Aviation Services, Inc., regarding 1 to Parking Permit 08-0013 (PP-08-0013) HNL, dated May 4, 2016.

HDOT Letter to George's Aviation Services, Inc., regarding Revision Rental Account 71934-01 Parking Permit 08-0013 (PP-08-0013) HNL, dated August 26, 2014.

HDOT Parking Permit PP-12-0015, HNL, dated December 18, 2012.

FAA, Standard Airworthiness Certificate, George's Aviation Services, Inc., dated October 12, 2007.

HDOT Letter to George's Aviation Services, Inc., regarding Amendment 1 Parking Permit 12-0015 (PP-12-0015), HNL, dated May 4, 2016.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71934-01 Parking Permit 12-0015, HNL, dated August 26, 2014.

HDOT Parking Permit PP-15-0023 HNL, dated July 28, 2015.

HDOT Letter to George's Aviation Services, Inc., regarding Amendment 1 to Parking Permit 15-0023 (PP-15-0023) HNL, dated May 4, 2016.

HDOT Parking Permit PP-20-0002, HNL, dated January 19, 2021.

HDOT Letter to George's Aviation Services, Inc., regarding Revocable Permit 5870, dated January 6, 2000.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71663-01, Revocable Permit Nos. 5870 (RP-5870), 6059 (RP-6059) and 6970 (RP-6970), HNL, dated April 15, 2014.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71663-01 Revocable Permit 5870, HNL, dated August 7, 2007.

HDOT Revocable Permit 6059, dated June 14, 2001.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71663-01 Revocable Permit Nos. 5870 (RP-5870), 6059 (RP-6059) and 6970 (RP-6970), HNL, dated April 15, 2014.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71663-01 Revocable Permit 6059, HNL, dated April 7, 2008.

HDOT Revocable Permit 6417/005789, dated December 7, 2004.

FAA, Certificate of Aircraft Registration, N727EM, Cessna 172N, dated August 8, 003.

FAA, Standard Airworthiness Certificate, N727EM, Cessna 172N, dated September 23, 2017.

HDOT Revocable Permit 6970/010084, dated January 27, 2011.

HDOT Memo regarding George's Aviation Services, Inc., Account 71663-01 Revocable Permit 6970/010084 South Ramp Subdivision, HNL, dated March 8, 2011.

HDOT Revocable Permit 6971/010087, dated January 27, 2011.

HDOT Revocable Permit 7035, dated November 15, 2011.

HDOT Letter to George's Aviation Services, Inc., regarding Revision of Rental Account 71934-01 Revocable Permit Nos. 6417 (RP-6417), 6971 (RP-6971), and 7035 (RP-7035), HNL dated April 15, 2014.

HDOT Revocable Permit 8163, dated May 27, 2014.

HDOT Revocable Permit 8549, dated July 18, 2016.

Exhibit 17, Part 4. HDOT Memo to George's Aviation Services, Inc., dated December 29, 2016.

HDOT Revocable Permit 8976, dated December 3, 2020.

Exhibit 18, Part 4. FAA, Office of the Chief Counsel regarding Interpretation of 14 CFR 91.409 (b), dated May 4, 2016.

Mr. Nicholas F. Pipitone to Mr. Mark Bury, Assistant Chief Counsel, FAA regarding Clarification of Flying Club Maintenance Exemption, dated December 30, 2015.

- Mr. Nicholas F. Pipitone to Mr. Mark Bury Assistant Chief Counsel, FAA regarding Legal Interpretation of Flying Clubs Being Exempted from Performing the 100-hour Inspection, dated January 26, 2016.
- Exhibit 19, Part 4. Affidavit of Bertman Lee, South Pacific Flying Club v. State of Hawaii Department of Transportation, dated January 3, 2022.
- Exhibit 20, Part 4. US Department of Transportation, Federal Aviation Administration, regarding Legal Interpretation, Interpretation 1999-3 1999 WL 34788049 (DOT), dated March 31, 1999.
- Item 6 Memorandum In Support of Respondent's Answer, January 4, 2022.**
- Item 7 Complainant files Motion to Extend Time until February 14, 2022, to Reply to Answer and Memorandum in Support of Respondent's Answer, dated January 11, 2022.**
- Item 8 Complainant files Rebuttal to Respondent's Answer and Memorandum in Support of Respondent's Answer, dated February 14, 2022.**
- Item 9 FAA files Notice of Extension of Time until August 24, 2022, dated June 23, 2022.**
- Item 10 FAA files Notice of Extension of Time until October 15, 2022, dated August 19, 2022.**
- Item 11 Notice of Change in Designation of Person to Receive Service, dated September 22, 2022.**
- Item 12 FAA files Notice of Extension of Time until December 15, 2022, dated October 11, 2022.**
- Item 13 FAA files Notice of Extension of Time until February 15, 2023, dated December 12, 2022.**
- Item 14 FAA files Notice of Extension of Time until April 15, 2023, dated February 13, 2023.**
- Item 15 Respondent files Response to FAA Request For Information, dated April 13, 2023.**
- Exhibit 1. South Pacific Flying Club (Regarding Articles of Dissolution), dated December 21, 2020.
- Exhibit 2. Belle Pacific Air, LLC. (Regarding Articles of Organization), dated April 10, 2017.
- Exhibit 3. Notice of Termination (Regarding the Termination of Parking Permit PP-21-0012/015644), dated August 3, 2022.
- Exhibit 4. Parking Permit No. PP-22-0005, dated July 22, 2022.
- Exhibit 5. Belle Pacific Air, LLC. Space Application, dated April 30, 2023.

Exhibit 6. Issuance of a Revocable Permit for Commercial Use of a T-Hangar for Storage of Aircraft and a Maintenance Hangar to Support a Member-Based Aeronautical Flying Club, Belle Pacific Air, LLC, Daniel K. Inouye International Airport, dated February 2023.

Exhibit 7. Agenda for the Meeting of the Board of Land and Natural Resources, dated April 14, 2023.

**Item 16 Complainant files Response to FAA Request For Information (RFI), dated April 17, 2023.**

Exhibit 1. Sworn Statement of Anne Domko, dated April 16, 2023.

Exhibit 2. Belle Pacific Air Core Standard Operating Procedure, dated March 7, 2023.

Exhibit 3. E-mail Communications on Follow-up Questions regarding AOA Access, dated April 11, 2023 – February 28, 2023.

**Walenga, Pat (FAA)**

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**From:** 9-ARP-Part16-Complaints (FAA)  
**Sent:** Friday, February 16, 2024 4:32 PM  
**To:** mrueschhoff@holonlaw.com; patrick.f.kelly@hawaii.gov;  
yvonne.r.shinamura@hawaii.gov  
**Cc:** 9-AWA-AGC-Part-16 (FAA)  
**Subject:** FAA Docket 16-21-15  
**Attachments:** P16\_Docket 16-21-15\_SPFC v HDOT\_DD\_Signed\_2024 16 02.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see the attached Directors Determination for FAA Docket 16-21-15.

v/r

**Danielle S. Hinnant**  
**Administrative Assistant IV**  
Office of Airports  
Airports Compliance Division  
Federal Aviation Administration  
800 Independence Ave. SW  
Washington, DC 20591