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April 4, 2019

Raquel Girvin
Regional Administrator, Western-Pacific Region
Federal Aviation Administration
777 S. Aviation Blvd., Suite 150
El Segundo, CA 90245

Re: Helicopter-Small Aircraft Commercial Air Tour Operations in Hawai'i

Dear Administrator Girvin:

Thank you very much for our March 22, 2019 telephone meeting on the above matter.

As discussed, disruption from noise and visual impacts as well as risks and other negative consequences of helicopter and small aircraft commercial operations continues and is escalating rapidly as a major issue throughout Hawai'i. This is the case in varying degrees and impacts in our national, state and county parks and natural resources, cemeteries and memorial sites, military installations, harbors and other government infrastructure, visitor industry locations, commercial and industrial areas, nearshore waters and recreational areas, and throughout our residential neighborhoods.

As I understand from our conversation and my own review to date (see, e.g., attached March 13, 2019 memo to me from the Congressional Research Service), these air tour operations are virtually unregulated at the federal level as to mitigating restrictions such as noise emission, time and place of operation, and altitude, the only real federal interest or authority at present being strictly operational safety and national airspace efficiency. And as the federal government largely claims exclusive jurisdiction over airspace, state and local governments are not authorized to legislate or regulate such mitigating restrictions.

This current situation is not acceptable. Commercial air tour operators are not or should not be entitled to exact widespread and virtually unlimited disruption and risk as a result of their operations. There has been no material effort by operators to mitigate disruption and risk on a voluntary basis and none can be reasonably expected. My commitment is therefore to pursue legislative and/or regulatory solutions, and I appreciate your undertaking to work with me and others in doing so.

This will follow up on some of the specific items we discussed:

(1) National Parks Air Tour Management Act of 2000.

This now-nineteen year old law followed an earlier law, the National Parks Overflights Act of 1987, in requiring management plans for air tours at national park units and within a half mile of their boundaries. Yet to date no such management plans have been implemented at

any such parks. In 2017, there were 16,520 reported air tour overflights at Hawai'i Volcanoes National Park and 4,839 at Haleakalā National Park (or an average of 45 and 13, respectively, every day year-round).

This not only destroys the natural qualities which are the essence of our parks but disrupt whole communities along the way. Could you please provide a specific explanation of the status of implementation of management plans for our national park units as required by law with specific attention to Hawai'i Volcanoes and Haleakalā National Parks and to include reference to any specific obstacles to prompt implementation and your recommendations or requests as to how to address them.

(2) Minimum Altitude Restrictions (14 C.F.R. Part 136 Appendix A and Related).

As I understand from our discussion and my other review: (a) air tours may not operate below an altitude of 1,500 feet above ground level (not above sea level, meaning that as ground elevation increases so does the altitude restriction to maintain at all times a minimum 1,500 feet between operations and ground); (b) operations may deviate below the minimum altitude requirement if operators, flying on visual flight rules, determine it necessary to maintain visual flight for safety purposes (i.e., avoid clouds) and for other purposes as spelled out in the Hawai'i Air Tour Common Procedures Manual, if a letter of authorization to deviate is obtained through the FAA's Honolulu Flight Standards District Office; and (c) virtually all Hawai'i tour operators have obtained authorization to deviate.

There is simply no doubt at this point that tour operators largely do not comply with the conditions of deviation and in fact routinely deviate below the minimum altitude requirement for reasons other than visual flight rules (VFR) safety. This is openly observable on any given day whenever and wherever operations are underway. It is also easily trackable using a simple app such as flightradar24, which shows realtime flights inclusive of calibrated altitude. Both I and others have personally tracked flights over open terrain at altitudes of 500 feet or far less cloudless skies with maximum visibility.

Could you please advise what specific regulatory or technological means exist or are available to accurately track and record altitudes above ground and to ensure that any deviations are strictly limited to VFR safety. In particular, I would appreciate a full update on implementation of the requirement for automated flight following technology in helicopters, which tracks and records operations for compliance confirmation purposes. Could you also please advise on specific efforts or options to strictly enforce deviation conditions.

(3) Hawai'i Air Tour Common Procedures Manual.

This manual, issued in 2008, technically applies only to the safety-related conditions under which operators may deviate below the 1,500 feet above ground minimum altitude. But as a practical matter it is the only document that imposes any specific regulatory requirements on air tour operations in Hawai'i especially as to altitude and time and place of operations.

As discussed, the manual is in the process of being updated. Yet as I understand it the update discussions have been strictly limited to the FAA and the tour operators, and the manual at this point has been turned over to the operators to finalize for FAA review and approval.

It is not acceptable that this manual update which will have far-reaching consequences on the public (a) excludes the public from participation and (b) appears to be effectively controlled by the operators. I request that the draft manual be circulated to the public for comment before any further action is taken.

(4) Mitigation Measures.

I appreciate your commitment in our discussion to community involvement and your recommendation that concerned citizens engage with operators and government in aircraft noise roundtables to address negative impact mitigation measures. We further discussed initial meetings along those lines in Hawai'i sponsored by the FAA and the Hawai'i Department of Transportation (HDOT), the next of which was scheduled for March 28, 2019. I subsequently contacted the HDOT to obtain further details on this effort and meeting but was informed that, after an initial meeting on Hawai'i Island last year that was open to the public, this and subsequent meetings were between the FAA and HDOT only and did not include public participation.

Aircraft noise roundtables or similar efforts with the goal of including and addressing public concerns are ineffective on several levels if the public is excluded. I request that you ensure that any further such meetings between the FAA and HDOT to address concerns and potential mitigation measures be fully publicized and open to the public. I would also appreciate any further recommendations you may have for full engagement of all stakeholders including the impacted public in addressing this very serious concern.

Many thanks again to you and your staff for your prompt consideration and response on these initial items and your further assistance in evaluating legislative and regulatory solutions. We welcome your questions and suggestions and look forward to your response.

With aloha,



Congressman Ed Case
Hawai'i – First District

cc: Hawai'i Department of Transportation

Enclosure: CRS Report