

## Board of Land and Natural Resources Meeting

Friday, August 27, 2021

### Agenda Issue

#### M-2

Issuance of a Revocable Permit for Aircraft Parking to Flying Mermaid LLC,  
Daniel K. Inouye International Airport Tax Map Key: (1) 1-1- 076: Portion of 23.

#### Recommendations

Testimony Provided by Michelle S. Matson  
O'ahu Tour Helicopter Safety and Noise Inter-Action Group

Aloha Chairperson Case and Board Members:

The "Flying Mermaid" N808A tour helicopter has been observed as a low-flying aircraft over O'ahu's communities. Now comes the State Department of Transportation with a highly questionable submittal on behalf of "Flying Mermaid" operator Ai Yu for use of several aircraft parking spaces at HNL.

Similar to peer private tour helicopter operators, the "Flying Mermaid" operator has demonstrated disregard<sup>1</sup> for the following FAA CFR 14 Part 136 Appendix A regulations specific to Hawaii<sup>2</sup> relating to minimum flight altitude and distance:

***Section 6. Minimum flight altitudes*** . Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

- (a) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii, and,
- (b) Closer than 1,500 feet to any person or property; or,
- (c) Below any altitude prescribed by federal statute or regulation.  
(Emphasis added.)

Because of the "Flying Mermaid" operator's demonstrated disregard of the above regulations and associated impacts to Hawaii's protected natural resources, the revocable permits for the requested "Flying Mermaid" tour helicopter ground facilities should include a stringent condition that "Flying Mermaid" must fly one (1) mile offshore of any State Monument, State Park, Natural Habitat or Reserve.

Hawaii Revised Statutes §171-55:

Notwithstanding any other law to the contrary, the board of land and natural resources may issue permits for the temporary occupancy of state lands or an interest

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<sup>1</sup> See: Screenshot Attachments

<sup>2</sup> See: [https://www.law.cornell.edu/cfr/text/14/appendix-A\\_to\\_part\\_136](https://www.law.cornell.edu/cfr/text/14/appendix-A_to_part_136)

"Special Operating Rules for Air Tour Operators in the State of Hawaii"

therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the board. A permit on a month-to-month basis may continue for a period not to exceed one year from the date of its issuance; provided that the board may allow the permit to continue on a month-to-month basis for additional one year periods. (Emphasis added.)

Hawaii Administrative Rules §11-200.1-10:

Multiple or phased actions. A group of actions shall be treated as a single action when:

- (1) The component actions are phases or increments of a larger total program;
- (2) An individual action is a necessary precedent to a larger action;
- (3) An individual action represents a commitment to a larger action...

In addition, an Environmental Impact Statement should be necessarily required with each tour aircraft ground use permit application. The present permit application remains insufficient and open-ended by simply stating the following:

The environmental impacts of the proposed action to the subject land area is covered by the Honolulu International Airport Master Plan Update and Noise Compatibility Program Environmental Assessment (EA), State Project No. AO1011-033. The EA is a joint State and Federal document, dated September 1989 and published in the October 23, 1989 issue of the OEQC Bulletin. Accordingly, relevant mitigation from the EA and DOT-A environmental best management practice will address minimal impacts from this action.

The referenced Environmental Assessment is 32 years old and grossly outdated. Today, the significant adverse environmental impacts of tour helicopters are clearly beyond the airports where they are docked and doing business,<sup>3</sup> and the clear environmental impacts of these tour helicopters must be immediately addressed within the ground permits, which presently enable their publicly detrimental activities.<sup>4</sup> Therefore prior to applying for any ground use permit for tour aircraft use within State property, a full Environmental Impact Statement must be required to address noise and safety protections in the greater public interest by maintaining offshore distance<sup>5</sup> from any State Monument, State Park, Natural Habitat or Reserve.

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<sup>3</sup> See: Screenshot Attachments

<sup>4</sup> See: Resolution 21-188 <https://hnlidoc.ehawaii.gov/hnlidoc/document-download?id=11702>

<sup>5</sup> See: [https://www.law.cornell.edu/cfr/text/14/appendix-A\\_to\\_part\\_136](https://www.law.cornell.edu/cfr/text/14/appendix-A_to_part_136)

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**Section 3. Helicopter flotation equipment** . No person may conduct an air tour in Hawaii in a single-engine helicopter beyond the shore of any island, regardless of whether the helicopter is within gliding distance of the shore, unless:

- (a) The helicopter is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or
- (b) Each person on board the helicopter is wearing approved flotation gear.

HRS §343-5 applicability and requirements for environmental review relating to proposed construction of new or the expansion or modification of existing helicopter facilities within the State “that by way of their activities, may affect:

- (A) Any land classified as a conservation district by the state land use commission under chapter 205;
- (B) A shoreline area as defined in section 205A-41; or
- (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places;”

(Emphasis added.)

Hawaii Administrative Rules §11-200.1-11(d):

Agencies shall not, without careful examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially relevant to the action being considered.

Incorporating essential and long-overdue conditions for any approval of HNL State land revocable ground use permits will serve as a precedent for protecting the State’s Natural and Recreational Resources that the DOT Airports Division should equally follow for their HNL ground use permits.

Otherwise, those who remain blind to the continuing significant noise impacts and public safety hazards of tour helicopters will continue to be responsible for further compromising the integrity and quality of Hawaii’s natural resources in favor of tour chopper operators “who fly wherever, whenever and however they choose,”<sup>6</sup> disturbing and desecrating the larger public’s rightful peace and quality of life within and around Hawai’i’s Natural Resources, parks and beaches, and established communities.

*To further emphasize the above, we would like to express our emphatic appreciation for BLNR’s letter to the Federal Aviation Administration dated May 28, 2021.*

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<sup>6</sup> Congressman Ed Case

# Ai Vu “Flying Mermaid” Tour Helicopter(s)

<https://hbe.ehawaii.gov/documents/business.html?fileNumber=51523C5>

United States Department of Transportation About DOT Our Activities Areas of Focus

**FAA** Aircraft Inquiry Search Contact

Lookup Aircraft By... Reports N-Numbers Other Aircraft Resources

## FAA REGISTRY

### Name Inquiry Results

Name: Flying Mermaid

Sorted By:

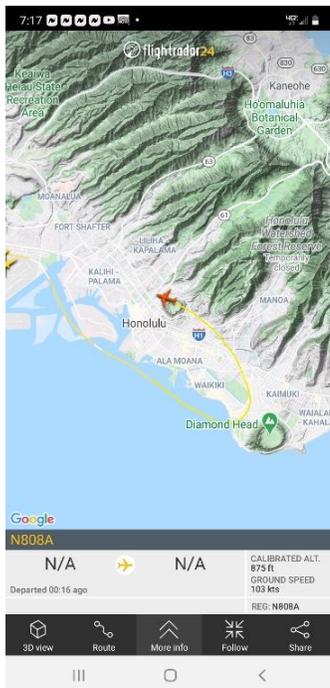
Data Updated Each Federal Working Day At Midnight



Showing 1 - 4 of 4 (Page 1 of 1)

1

NAME ENTERED: FLYING MERMAID			
N-Number	Serial Number	Manufacturer Name Model	Name Address
711AN	34-7570156	PIPER PA-34-200T	FLYING MERMAID LLC
808A	14034	ROBINSON HELICOPTER COMPANY R44 II	FLYING MERMAID LLC
808JT	1298	ROBINSON HELICOPTER R44	FLYING MERMAID LLC
977WB	1125	ROBINSON HELICOPTER R44	FLYING MERMAID LLC



Jan 28, 2021, 7:17 PM



Apr 18, 2021, 12:39 PM

Issuance of a Revocable Permit for Aircraft Parking (Parking Permit) to Flying Mermaid, LLC, situated at Daniel K. Inouye International Airport.

**LEGAL REFERENCE:**

Section 171-55, Hawai'i Revised Statutes.

**APPLICANT:**

Flying Mermaid, whose mailing address is 98-835 Ainanui Loop, Aiea, Hawai'i 96701.

**LOCATION:**

A portion of Daniel K. Inouye International Airport, identified as South Ramp, identified by Tax Map Key: 1<sup>st</sup> Division, 1-1-76: portion of 23.

**AREA:**

Area/Space No. 423-146, containing an area of approximately 990 square feet, Area/Space No. 423-147, containing an area of approximately 990 square feet, Area/Space No. 423-148, containing an area of approximately 990 square feet, and Area/Space No. 423-149, containing an area of approximately 990 square feet, as shown and delineated on the attached Exhibit A.

Slated for expansion at HNL