

comments on M-2, M-3, and M-4
for Board of Land and Natural Resources, 9 AM Friday, August 27, 2021
from Cory Harden, Sierra Club, Hawai'i Island Group

DOT is being asked to revoke helicopter permits until noise concerns are addressed.

See the attached resolution, which is going before Honolulu City Council.

HRS 171-55 states that BLNR can impose restrictions on permits.

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 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. *[capitals added]*

M-2, M-3, and M-4 may be in violation of:

HRS 343-5: EA required for

...construction of new or the expansion or modification of existing helicopter facilities...that by way of their activities, may affect...a conservation district...[or] a shoreline area..

HAR 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...

HAR 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.

Comments on M – 2 Flying Mermaid, Honolulu

The 1989 EIS cited is not current—it's 31 years old.

Will any towing rules be enforced? When a permit for Flying Mermaid came up at the July 23, 2021 BLNR meeting, and DOT staff were asked about towing, the reply was "...I'm not going to say that all the time that I see them towing. I do see them doing things that they probably shouldn't be doing... It's not supposed to be flying helicopters from that location."

Comments on M – 3 Schuman (Magnum) Helicopters, Honolulu

The 1989 EIS cited is not current—it's 31 years old.

Comments on M-4 K & S (Paradise) Helicopters, Kahului

The 1997 EIS cited is not current—it's 23 years old, is based on a 1993 Master Plan, and only analyzes actions up through 2010.

“In 1993, a new Kahului Airport Master Plan was published which updated guidelines for the proposed development at Kahului Airport through the year 2010...This plan....provides the basis for...the analyses provided in this EIS.”

http://oeqc2.doh.hawaii.gov/EA_EIS_Library/1997-09-DD-MA-FEIS-Kahului-Airport-Improvements-Vol-1-of-5.pdf, p. 1-5, PDF p. 60

Has the safety of helicopter operations been evaluated since 1997?

“In recent years, the increase in helicopter operations has generated concern about the safety of flight operations at Kahului Airport. However, at this time there is no identifiable degradation of airport safety as a result of the relatively large mix of helicopter operations.”

http://oeqc2.doh.hawaii.gov/EA_EIS_Library/1997-09-DD-MA-FEIS-Kahului-Airport-Improvements-Vol-1-of-5.pdf, p. 3-172, PDF p. 446

K & S (Paradise) crashes

April 16, 2019 crash in Sacred Falls Park, O'ahu

February 21, 2019 crash in Waipio Valley, Hawai'i Island; pilot seriously injured

July 25, 2013 crash landing near Hilo Airport, Hawai'i Island

“There were six crashes [of tour helicopters] in 2018 and four crashes in 2019....

...38 accidents and 45 fatalities since 2000...

...Ten crashes involved a single tour operator, Paradise Helicopters, also known as K&S Helicopters Inc., based in Kailua-Kona with operations on Hawaii Island and Oahu. Four people died in a single Paradise crash in 2003...”

Tour Helicopter Crashes — And Flights — Have Escalated In Recent Years, by Allan Parachini, Civil Beat, January 23, 2020, <https://www.civilbeat.org/2020/01/tour-helicopter-crashes-and-flights-have-escalated-in-recent-years>



RESOLUTION

REQUESTING THE STATE DEPARTMENT OF TRANSPORTATION TO REVOKE THE USE PRIVILEGE PERMITS OF COMMERCIAL TOUR HELICOPTERS TO LAND AT STATE AIRPORTS UNTIL NOISE CONCERNS ARE ADDRESSED.

WHEREAS, for decades, low-flying commercial tour helicopters have disrupted the lives of Oahu residents, particularly those who live near popular attractions such as the Diamond Head State Monument and Hanauma Bay; and

WHEREAS, over the years, the noise from these helicopters has resulted in resident complaints and prompted various neighborhood boards (including Hawaii Kai Neighborhood Board No. 1, 2019; Waiialae-Kahala Neighborhood Board No. 3, 2018; and Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board No. 5, 2018) to adopt resolutions regarding the need for more stringent regulation of these commercial tour helicopters; and

WHEREAS, several attempts to address the issue through legislative action have been made on both the state and federal level; and

WHEREAS, for example, in 2019, Congressman Ed Case introduced H.R. 4547, which would have set decibel limits for helicopter and other tour flights and given states and local governments more control over the industry, but the bill never received a hearing; and

WHEREAS, in 2021, State Senator Stanley Chang introduced SB 17, which would have prohibited tour aircraft permit holders from allowing the noise "footprint" of their aircraft to enter any occupied property, but SB 17 was deferred in committee; and

WHEREAS, the federal government has exclusive jurisdiction over all U.S. airspace, and Congress has placed exclusive authority for regulating such airspace with the Federal Aviation Administration ("FAA") (49 U.S.C. Section 40103(a)(1)); and

WHEREAS, federal law requires that the FAA prescribe regulations "on the flight of aircraft . . . for navigating, protecting, and identifying aircraft" and "protecting individuals and property on the ground" (49 U.S.C. Section 40103(b)(2)); and

WHEREAS, in exercising its authority, the FAA has promulgated regulations governing commercial tour helicopters, including those that:

- Establish specific procedural, operational, and equipment safety requirements for air tour helicopter and fixed-wing aircraft operators in Hawaii, (14 C.F.R. Part 136, Appendix A); and



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- Provide that air tour operators may not operate below an altitude of 1,500 feet above ground level, but also allow tour operations to deviate from this standard and fly below the minimum altitude requirement when operating in compliance with an air traffic control clearance or as otherwise authorized by the FAA (14 C.F.R. Part 136, Appendix A); and

WHEREAS, while the FAA has maintained that although state and local governments are preempted from regulating aircraft operations, such as flight paths, flight altitudes, and the navigable airspace, they may generally determine the location of aircraft landing sites through their land use powers; and

WHEREAS, State of Hawaii ("State") law currently provides the State Director of Transportation with the authority to:

- Enter into contracts, leases, licenses, and other arrangements with any person: (1) Granting the privilege of using . . . the airport . . . for commercial purposes; and (2) Conferring the privilege of supplying . . . services . . . at the airport (HRS Section 261-7(a)(1)(2));
- Enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports in setting airport rates and charges, including landing fees, containing such terms, conditions, and provisions as the director deems advisable (HRS Section 261-7(e)); and
- Adopt rules to require permits of all tour aircraft operations in any airport under the State's control (HRS Section 261-12(b)); and

WHEREAS, State law requires that the State Director of Transportation adopt rules to regulate tour aircraft operations by permit, including provisions for the revocation of a permit and the establishment of penalties allowing the revocation and suspension of a permit for violation of permit conditions (HRS Section 261-12(b)(6) and (7)); and

WHEREAS, State law provides that no permit shall be authorized unless accompanied by a Hawaii sectional aeronautical chart marked to indicate routes and altitudes to be used in conducting aerial tours and noise abatement procedures to be employed in the vicinity of identified noise sensitive areas (HRS Section 261-12(b)); and

WHEREAS, as of August 2019, some 15 tour companies operated helicopter flights out of nine state airports; and



RESOLUTION

WHEREAS, the City Council believes that the State must take action to preserve the peace and serenity of Hawaii's residential neighborhoods, as federal regulations of commercial tour helicopters that address the ongoing residential neighborhood disruption are unlikely in the near future; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it requests the State Department of Transportation to revoke the use privilege permits of commercial tour helicopters to land at State airports until noise concerns are addressed; and

BE IT FURTHER RESOLVED that the Council requests State elected and administrative government officials to assess and improve State laws and regulations governing commercial tour helicopters on Oahu insofar as any changes are within the State's jurisdiction as noted by the Federal Aviation Administration; and

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Governor, the Lieutenant Governor, the President of the Hawaii State Senate, the Speaker of the Hawaii State House of Representatives, and the State Director of Transportation.

INTRODUCED BY:

Tony Waters

DATE OF INTRODUCTION:

AUG 18 2021
Honolulu, Hawaii

Councilmembers