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

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

AUG 29 2002

Mr. Roy K. Sakata
Acting Airports Administrator
Department of Transportation
Airports Division
Honolulu International Airport
400 Rodgers Boulevard, Suite 700
Honolulu, HI 96819

Dear Mr. Sakata:

Thank you for your submittal of the State of Hawaii Department of Transportation Airports Division's (Airports Division) FY 2002 Competition Plan update for Kahului Airport (OGG). We have reviewed your Competition Plan update for the Airport and have determined that your plan update is in accordance with the requirements of section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181, April 5, 2000. However, we have identified some issues that should be addressed in your next Plan update.

As we indicated in our review letters of March 19, 2001 and June 15, 2001 annual Competition updates are required for a covered airport applying for a new passenger facility charge (PFC) or a grant to be issued under the Airport Improvement Program (AIP) in FY 2002. In Program Guidance Letter (PGL) 00-3 (May 8, 2001), the FAA addressed the information needed to be provided in Competition Plan updates on each of the eight areas specified in section 155. On August 16, 2001, we issued guidance reminding covered airports of the requirement to have a Competition Plan update accepted by the FAA before new AIP grants or PFC approvals could be issued in FY 2002. We also reminded covered airports of the need to address the issues raised in our review letters for their FY 2001 submittals.

The September 11 terrorist attacks necessitated an immediate response to security requirements. Therefore, on October 1, 2001, we modified the August 16, 2001, guidance to indicate that we would make AIP and PFC funding decisions before May 1, 2002, regardless of the status of the Competition Plan update. Additionally, we requested that Competition Plans be filed by March 1, 2002 in order to meet the statutory requirement and to provide

sufficient time for our review. The Aviation and Transportation Security Act, Pub. L. 107-71 (November 16, 2001) exempted a covered airport from filing a Competition Plan or update for a PFC approved or grant made in FY 2002 if the fee or grant is to be used to improve security at a covered airport. We interpret this provision to apply only in cases where a PFC approval or AIP grant issued in FY 2002 will be used exclusively for improved security. Since OGG has not indicated that PFC and AIP requests in FY 2002 will be limited exclusively to security projects, it is necessary to review your update for compliance with section 155 of AIR-21.

Your plan indicates the Airport is taking under consideration the following competitive actions:

- Adjusting the review criteria used in considering gate forfeiture by non-signatory carriers to provide that a non-signatory carrier would not be displaced to accommodate a signatory carrier proposing to operate fewer flights;
- Adopting a less burdensome financial documentation requirement for signatory status than the current requirement of three years of either audited financial statements or Federal tax returns, as suggested by the FAA; and
- Revising the current capital improvement concurrence process when airport-airline lease negotiations resume, in accordance with concerns expressed in the 1999 FAA/OST Task Force Study, Airport Business Practices and Their Impact on Airline Competition (Airport Practices report) over the impact of majority-in-interest (MII) clauses on competitive opportunities at airports.

In your next plan update please provide a status report on your consideration and implementation of these issues.

As noted, we have determined that your Plan update is in accordance with the Competition Plan statute. However, your update has raised some additional issues that require further elaboration for our complete understanding of the competitive situation at OGG. We request that you provide the information in your next Plan update. We have categorized the following concerns and issues according to the applicable features specified in PGL 00-3.

Gate availability

Thank you for providing information regarding the changes in service and gate availability. Your update indicates a 25 percent increase in overseas departures. Is this increase due to expansion of service by existing carriers or are new entrants providing additional service to OGG?

Gate assignment policies

Our March 19, 2001 and June 15, 2001 review letters encouraged the Airports Division to develop policies and procedures for informing prospective new entrants of gate availability. The FAA continues to be concerned that potential new entrants may not be informed when gates become available for lease or assignment on the same basis as incumbent carriers. Our Airport Practices report indicated that airport officials who ensure that entrants have timely information about, and access on reasonable terms to, necessary gates, facilities, and services promote competitive access at their airport. We encourage the Airport to consider developing policies or procedures for routinely informing prospective new entrants of gate availability and the terms and conditions for access to these gates. Please provide information on any further consideration of this issue by the Airports Division and the status of any efforts to implement this suggestion.

Thank you for your discussion of our comments concerning the evaluation of signatory/nonsignatory requests for additional gates and forfeiture of gates. In line with our previous comments, the FAA would like to recommend the Airports Division develop a formal gate assignment policy for evaluation of signatory/nonsignatory gate requests at OGG. In your next update please provide a status report on your consideration of this recommendation.

Also, the Airports Division committed to undertake consideration of changes in the signatory status requirements. Please provide a discussion concerning policy changes on this issue.

Leasing and subleasing

Your FY 2001 Competition Plan indicated that the Maui District Office would resolve disputes among carriers regarding use of airport facilities that could not be resolved by the parties themselves. We understand that the informal processes you have described may settle some concerns or disputes that arise and has been effective in the past. However, an airport that has adopted fair and transparent procedures for a variety of circumstances would be better positioned to facilitate entry and promote competition at its airport than one that relies on an ad hoc approach.

We therefore recommend that the Airports Division develop a formal process to resolve disputes regarding denial of reasonable access, sublease fees or terms, or ground-handling services. Such a process should provide for: (1) the resolution of disputes between air carriers or air carriers and ground-handlers regarding air carrier requests for reasonable accommodation; and (2) the

resolution of disputes between air carriers and the Airports Division staff when an air carrier believes that airport staff have not provided enough assistance in their quest for reasonable access. We further recommend that the process include: (1) specific procedures for filing written complaints, including designation of a specific contact name and address for the filing of disputes; (2) designation of an airport official who would have the authority to mediate disputes; (3) establishment of a specific time-frame for completion of initial action on complaints; and (4) establishment of process to appeal initial determinations to either senior airport management or the airport governing body. Please address these recommendations in your next update.

Airport controls over ground-side and airside capacity

Our Airport Practices report found that competitive access was facilitated when airports ensured that Majority in Interest (MII) agreements do not prevent or delay projects that could be beneficial to new entrants or smaller airlines serving their airports. Our June 15 letter encouraged the Airports Division to reconsider the language in the Lease extension agreement to remove the capital improvement provision. Please advise us of any further consideration given to this issue and the status of any negotiations with air carriers.

Although the Plan update indicates the Airports Division is in the process of posting a copy of the Competition Plan and the FAA response letter on the airport web site, we were unable to locate your FY 2001 Plan. Within 30 days, please indicate whether the FY 2001 Plan and FY 2002 Plan update (along with FAA's review correspondence) are accessible on your web-site. If so, identify its precise web address. If not, please indicate when the Plan and related documents will be posted on the web-site.

We look forward to reviewing the future updates to your Competition Plan. We have revised the schedule for submittal of future Competition Plan updates, effective for FY 2003. Under this new schedule, your next update shall be due 18 months after the date of approval of your FY 2002 update. i.e., the date of this letter.

As you may know, the Secretary is required to review the implementation of the Competition Plans from time-to-time to make sure each covered airport successfully implements its Plan. In connection with our review, we may determine that further contacts with, or site visits to one or more locations would be useful. We will notify you should we decide to visit OGG in connection with its Competition Plan.

If you have any questions regarding this letter or the FAA's review of your Plan, please contact Mr. Barry Molar, Manager, Airports Financial Assistance Division at (202) 267-3831.

Sincerely,

Catherine M. Lang
Director, Office of Airport
Planning and Programming