

April 5, 2000

VIA TELECOPIER AND MESSENGER

Mr. Dennis DeVany, Chief  
Essential Air Service Division  
Office of Aviation Analysis  
DEPARTMENT OF TRANSPORTATION  
400 Seventh Street, S.W., Room 6401  
Washington, D.C. 20590

Re: Kalaupapa, Hawaii Essential Air Service, Docket OST-00-6773

Dear Dennis:

As you know, on April 5, 2000, the President signed the "Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century", also referred to as the "AIR-21 Act", passed by Congress on March 15, 2000.

Among other provisions, Section 208 of the AIR-21 Act has amended Section 41731(a)(1) of the Federal Aviation Statutes (49 U.S.C. § 41731(a)(1)) to add certain additional small communities to the definition of "eligible place" for purposes of the mandated service and subsidy provisions of the Department's Essential Air Service Program. Specifically, any small community which had been determined by the Secretary "to be eligible to receive subsidized small community air service under Section 41736(a)" at any time between October 1, 1988 and April 5, 2000 (the date of enactment of the AIR-21 Act) is now included within the definition of the term "eligible place" under the EAS Program.

On February 24, 2000, the Department issued Order 2000-2-24 which designated Kalaupapa, Hawaii as a community eligible to receive subsidized small community air service under Section 41736(a), and selected Pacific Wings to provide that service for a two-year period at an annual subsidy rate of \$272,807, half of which is required to be borne by the State of Hawaii.

Now that Kalaupapa has been defined to be an "eligible place", effective as of

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April 5, 2000, we believe that two modifications to the provisions of Order 2000-2-24 are appropriate, as follows:

1. The requirement that the State of Hawaii must bear one-half of the subsidy cost of maintaining essential air service at Kalaupapa is no longer applicable, since such subsidy payments are now provided for pursuant to Section 41733(c), rather than Section 41736(d), effective as of April 5, 2000; and

2. The right of Pacific Wings to terminate its mandated essential air service to Kalaupapa unilaterally and without prior authorization by the Department by giving 30 days notice to the Department and the community of its intent to terminate that service is no longer applicable. Since Kalaupapa is now defined as an "eligible place", the continuation and termination of subsidized essential air service at Kalaupapa is now governed by the mandatory notice and authorization requirements of Section 41734, and, in particular, the requirement that such service may not be terminated unless and until another air carrier is providing the mandated level of essential air service at the community "on a continuing basis" (Section 41734(c)).

Although the foregoing amendments are now effective as a matter of law, based on enactment of the AIR-21 Act, the State of Hawaii believes that it is appropriate and desirable for the Department to provide official notice of the revised status of Kalaupapa under the Essential Air Service Program to the community of Kalaupapa, the U.S. National Park Service and Pacific Wings. To accomplish that purpose, Hawaii respectfully requests the Department to issue an Order amending Order 2000-2-24 as soon as possible.

We would welcome an opportunity to discuss any matters arising out of the classification of Kalaupapa as an "eligible place" with you and your staff, if you wish, at your convenience.

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In accordance with the Department's Procedural Regulations, an original and 7 copies of this letter are being filed in the Department's Docket Section and served on all persons listed on the attached Service List for Docket OST-00-6773.

Sincerely,

Nathaniel P. Breed, Jr.  
SHAW PITTMAN  
Attorneys for  
THE STATE OF HAWAII

Attachment

cc: Jerry Matsuda  
Director of Airports  
STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

Myron L. Caplan, Chairman & CEO  
PACIFIC WINGS

All persons named on attached Service List for Docket OST-00-6773.

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