



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION

DUE DILIGENCE MEMORANDUM,
WRITTEN REQUEST FOR RELEASE AND
TRANSFER OF GRANT OBLIGATIONS,
AND
CLOSURE PLAN

for
KAWAIHAPAI / DILLINGHAM AIRFIELD
Mokuleia, Hawaii

December 2020

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LIST OF EXHIBITS

LAWS AND REGULATIONS

- Exhibit 1: National Defense Authorization Act of Fiscal Year 1991, Pub. L. 101-510, Section 2831 (104 Stat.1795)
- Exhibit 2: 2001 Haw. Sess. Laws 276 (codified at Hawaii Rev. Stat. § 261-72)
- Exhibit 3: Hawaii Rev. Stat. § 29-15.5
- Exhibit 4: Hawaii Administrative Rules, Ch. 19-13
- Exhibit 5: Hawaii Administrative Rules, Ch. 19-17.1
- Exhibit 6: Hawaii Administrative Rules, Ch. 19-20.1
- Exhibit 7: Comprehensive Exemption List for the State of Hawaii Department of Transportation (2000)

HDH DOCUMENTS

Planning/Regulatory Documents

- Exhibit 8: 1993 Master Plan Update (1993)
- Exhibit 9: Airport Layout Plan (1993)
- Exhibit 10: DOTA, Procedure No. 4.9, Airport Minimum Standards for Commercial Aeronautical Activities at Public Airports (2003)
- Exhibit 11: FAA AIP Grant 3-15-0018-002-2003 (2003)
- Exhibit 12: FAA AIP Grant 3-15-0018-003-2005 (2005)
- Exhibit 13: Oahu Airports District, Hawaii Department of Transportation, Airports Division, *Development Plan, Dillingham Airfield, Oahu, Hawaii* (Oct. 2007)
- Exhibit 14: 2002 Inventory of HDH Aeronautical Facilities (Exhibit D to 2009 Lease)
- Exhibit 15: DOTA, PWS 338 Dillingham Airfield History and Background (2012)
- Exhibit 16: DRAFT Record of Environmental Consideration (2018)
- Exhibit 17: FAA, *Revenue Use Compliance Review, State of Hawaii DOTA For the Six Year Period of July 1, 2007 – June 30, 2013* (2019)
- Exhibit 18: DOTA / HDH Financial Records
 - 18A: Summary of DOTA Audited Financial Statements (FY 2015 – FY 2019)
 - 18B: Summary of Expenses to Vendor (Doonwood Engineering) for Maintenance of Dillingham Public Water System (2014 – 2020)
- Exhibit 19: FAA Form 5010, Airport Master Record for HDH (2020)
- Exhibit 20: HDH Exhibit “A” Property Map (2020)
- Exhibit 21: HDH Property Space Maps (2020)

Leases with United States Army

- Exhibit 22: Memorandum for the Secretary of the Army re: Transfer of the Dillingham Air Force Base, Hawaii, to Department of the Army (Dec. 5, 1974)
- Exhibit 23: Department of the Army Lease No. DACA84-1-76-153 (Jan. 3, 1976)
- Exhibit 24: Department of the Army, Lease No. DACA84-1-81-27 (May 11, 1983)
- Exhibit 25: Department of the Army Lease No. DACA84-1-09-135 (July 6, 2009)

- Exhibit 26: Supplemental Agreement No. 1 to Department of the Army Lease No. DACA84-1-09-135 (Nov. 28, 2012)
- Exhibit 27: Supplemental Agreement No. 2 to Department of the Army Lease No. DACA84-1-09-135 (Aug. 15, 2014)
- Exhibit 28: Supplemental Agreement No. 3 to Department of the Army Lease No. DACA84-1-09-135 (July 19, 2017)
- Exhibit 29: Supplemental Agreement No. 4 to Department of the Army Lease No. DACA84-1-09-135 (April 23, 2019)

Permits

- Exhibit 30: Current Permits (provided in alphabetical order, by permit holder; *see also* Table 7 in Section 3.3 for alphabetical list)

CORRESPONDENCE AND COMMUNICATIONS

- Exhibit 31: FAA Memorandum to the Administrator (Sept. 25, 2012)
- Exhibit 32: Letter from F. Fuchigami to M. Sakai (Mar. 17, 2014)
- Exhibit 33: Letter from G. Okimoto to H. Purifoy (April 24, 2014)
- Exhibit 34: Letter from F. Fuchigami to H. Purifoy (Sept. 24, 2015)
- Exhibit 35: E-mail from M. Auerbach to D. Gilliam (April 8, 2016)
- Exhibit 36: E-mail from M. Auerbach to D. Gilliam (May 13, 2016)
- Exhibit 37: E-mail from M. Auerbach to H. Purifoy (July 12, 2016)
- Exhibit 38: Letter from R. Higashi to H. Purifoy (Sept. 5, 2017)
- Exhibit 39: E-mail from M. Stone to M. Auerbach (Oct. 5, 2017)
- Exhibit 40: E-mail from M. Stone to M. Auerbach (Dec. 11, 2017)
- Exhibit 41: E-mail from M. Auerbach to M. Stone (Jan. 31, 2018)
- Exhibit 42: E-mail from D. Crowley to J. Blalock (Jan. 11, 2019)
- Exhibit 43: E-mail from J. Blalock to H. Purifoy (Jan. 16, 2019)
- Exhibit 44: E-mail from J. Blalock to H. Purifoy (March 28, 2019)
- Exhibit 45: E-mail from N. Perry to J. Blalock (March 29, 2019)
- Exhibit 46: E-mail from M. Auerbach to F. Fuchigami (July 5, 2019)
- Exhibit 47: E-mail from M. Auerbach to R. Arne (Oct. 30, 2019)
- Exhibit 48: Letter from R. Higashi to G. Wong (Dec. 5, 2019)
- Exhibit 49: Letter from J. Butay to Col. T. Barrett (Jan. 6, 2020)
- Exhibit 50: Letter from G. Wong to R. Higashi (Jan. 24, 2020)
- Exhibit 51: Letter from R. Higashi to G. Wong (Feb. 7, 2020)
- Exhibit 52: Letters from J. Butay to HDH Permittees (Feb. 10, 2020)
- Exhibit 53: E-mail from G. Leonard to M. Auerbach (March 19, 2020)
- Exhibit 54: Letter from G. Wong to R. Higashi (March 31, 2020)
- Exhibit 55: Letter from R. Higashi to G. Wong (April 3, 2020)
- Exhibit 56: Letter from J. Butay to J. Nelson (April 6, 2020)
- Exhibit 57: Letter from J. Butay to Col. T. Barrett (April 6, 2020)
- Exhibit 58: Letters from J. Butay to HDH Permittees (April 8, 2020)
- Exhibit 59: Letter from R. Higashi to G. Wong (May 14, 2020)
- Exhibit 60: Letters from J. Butay to HDH Permittees (Sept. 8, 2020)

Supporting Documentation Provided by DOTA

Exhibit 61: Documented Categorical Exclusion, *Termination of Short-Term Lease with U.S. Army and Release and Transfer of Grant Assurances* (Dec. 9, 2020)

Related Documents to be Provided Following Additional Coordination with FAA / U.S. Army

- Phase I Site Assessment / Environmental Baseline Study (to be completed in early 2021)
- Inventory and Condition Report of All Personal Property and Improvements of the United States (Per ¶ 7(b) of the U.S. Army Lease)
- NOTAM advising pilots of closure to public uses
- DOTA/U.S. Army Memorandum to Congress re: Inability to Satisfy Conditions Precedent to Conveyance of HDH Lands Pursuant to Section 2831 of Pub. L. 101-510
- DOTA Memorandum to FAA re: Reinvestment of Federal Share of HDH Grants

LIST OF ACRONYMS

1976 Lease	Department of the Army Lease No. DACA84-1-76-153 (Jan. 3, 1976)
1983 Lease	Department of the Army, Lease No. DACA84-1-81-27 (May 11, 1983)
2009 Lease	Department of the Army Lease No. DACA84-1-09-135 (July 6, 2009)
ACH	Airlines Committee of Hawaii, Inc.
ADM	Airport District Manager (Hawaii Department of Transportation, Airports Division, appoints an ADM to operate the State airports in each county)
ADO	Federal Aviation Administration Airports District Office
AIP	Federal Aviation Administration Airport Improvements Program
Airfield	Kawaihapai Airfield (formerly known as Dillingham Airfield)
Air Force	United States Air Force
Army	United States Army
Current Lease	The 2009 Lease between the State of Hawaii and the United States Army, as modified by Supplemental Agreement No. 4.
DOD	United States Department of Defense
DOTA	State of Hawaii, Department of Transportation, Airports Division
DLNR	State of Hawaii, Department of Land and Natural Resources
FAA	Federal Aviation Administration
Hawaii DOT	State of Hawaii, Department of Transportation
HDH	Kawaihapai Airfield (Oahu) (formerly known as Dillingham Airfield)
HNL	Daniel K. Inouye International Airport (Oahu)
HNM	Hana Airport (Maui)
ITO	Hilo International Airport (Hawaii)
JHM	Kapalua Airport (Maui)
JRF	Kalaeloa Airport (Oahu) (formerly known as John Rodgers Field)
KOA	Ellison Onizuka Kona International Airport at Keahole (Hawaii)
LIH	Lihue Airport (Kauai)
LNK	Lanai Airport (Lanai)
Minimum Standards	DOTA, Procedure No. 4.9, Airport Minimum Standards for Commercial Aeronautical Activities at Public Airports (2003)
MKK	Molokai Airport (Molokai)
MUE	Waimea-Kohala Airport (Hawaii)
NOTAM	Notice to Airmen
NPIAS	National Plan of Integrated Airport Systems
OGG	Kahului Airport (Maui)

PAK	Port Allen Airport (Kauai)
Plan	State of Hawaii, DOTA, Due Diligence Memorandum and Closure Plan for Kawaihapai Airfield / Dillingham Airfield
PP	State of Hawaii DOTA Parking Permit
PWS No. 338	State of Hawaii, Public Water System No. 338 (Dillingham Water System)
RP	State of Hawaii, DOTA Revocable Permit
Secretary	Secretary of the United States Army
Supplemental Agreement No. 1	Supplemental Agreement No. 1 to Department of the Army Lease No. DACA84-1-09-135 (Nov. 28, 2012)
Supplemental Agreement No. 2	Supplemental Agreement No. 2 to Department of the Army Lease No. DACA84-1-09-135 (Aug. 15, 2014)
Supplemental Agreement No. 3	Supplemental Agreement No. 3 to Department of the Army Lease No. DACA84-1-09-135 (July 19, 2017)
Supplemental Agreement No. 4	Supplemental Agreement No. 4 to Department of the Army Lease No. DACA84-1-09-135 (April 23, 2019)
UPP	Upolu Airport (Hawaii)
USACE	United States Army Corps of Engineers

INTRODUCTION

The State of Hawaii, Department of Transportation Airports Division (DOTA) operates the Kawaihapai Airfield, formerly known as Dillingham Airfield (HDH or the Airfield), which is located on the North Shore of Oahu, Hawaii, as one of the State's fifteen airports. DOTA currently operates HDH as a public use airfield under a five-year lease with the United States Army (Army), which lease expires no later than July 5, 2024. DOTA desires to terminate its lease and discontinue its operation of HDH as a public use airport effective June 30, 2021.

As described in detail in this document, the lease with the Army can be terminated at will but requires notice and certain site remediation obligations. In addition, DOTA has issued a series of revocable permits at HDH, all of which can be terminated with 30-days' advance notice.

In its March 31, 2020 letter to DOTA, the Federal Aviation Administration (FAA) acknowledged that "the existing, unconventional joint-use agreement [with the Army] may not be sufficient for [DOTA] to continue operating HDH." Nevertheless, FAA reminded DOTA that it must still comply with its federal Grant Assurance obligations in order to terminate the lease early. To that end, FAA requested that DOTA provide a comprehensive plan that clearly articulates DOTA's proposal to discontinue sponsorship and public use of HDH and to provide reasonable accommodation for all civil aeronautical users of HDH elsewhere within the State's airport system.

In response to FAA's March 31 letter, DOTA now provides this two-part memorandum (the Plan).

Part A: (1) summarizes the relevant background information regarding DOTA's operation of HDH; and (2) explains DOTA's justifications and rationale for closure of HDH to public use.

Part B includes: (1) DOTA's plan for providing reasonable accommodations to current HDH users and permittees; (2) DOTA's formal written request for release and transfer of grant obligations; (3) DOTA's explanation of additional obligations and legal compliance matters related to the closure of HDH for public use; and (4) a timeline detailing the practical steps that DOTA will take to effectuate the termination of its lease with the Army and to comply with all of its obligations with regard to the closure of HDH to public use.

The exhibits to this document are an integral part of the closure plan and due diligence memorandum. This entire package of materials is designed to provide FAA with the information it needs to provide relevant regulatory and contractual approvals for DOTA to terminate its sponsorship of HDH.

As noted herein, there are related documents not directly pertinent to the closure plan requested by FAA in its March 31, 2020, letter. Those documents (*e.g.*, the Phase I Environmental Site Assessment; the Inventory required to be provided to the Army; and a memorandum to FAA regarding revenue issues) are referenced in this Plan, but will be provided to FAA following additional coordination with the FAA and Army as appropriate. DOTA stands ready to provide any additional documentation that may assist the agency in its review of the DOTA request.

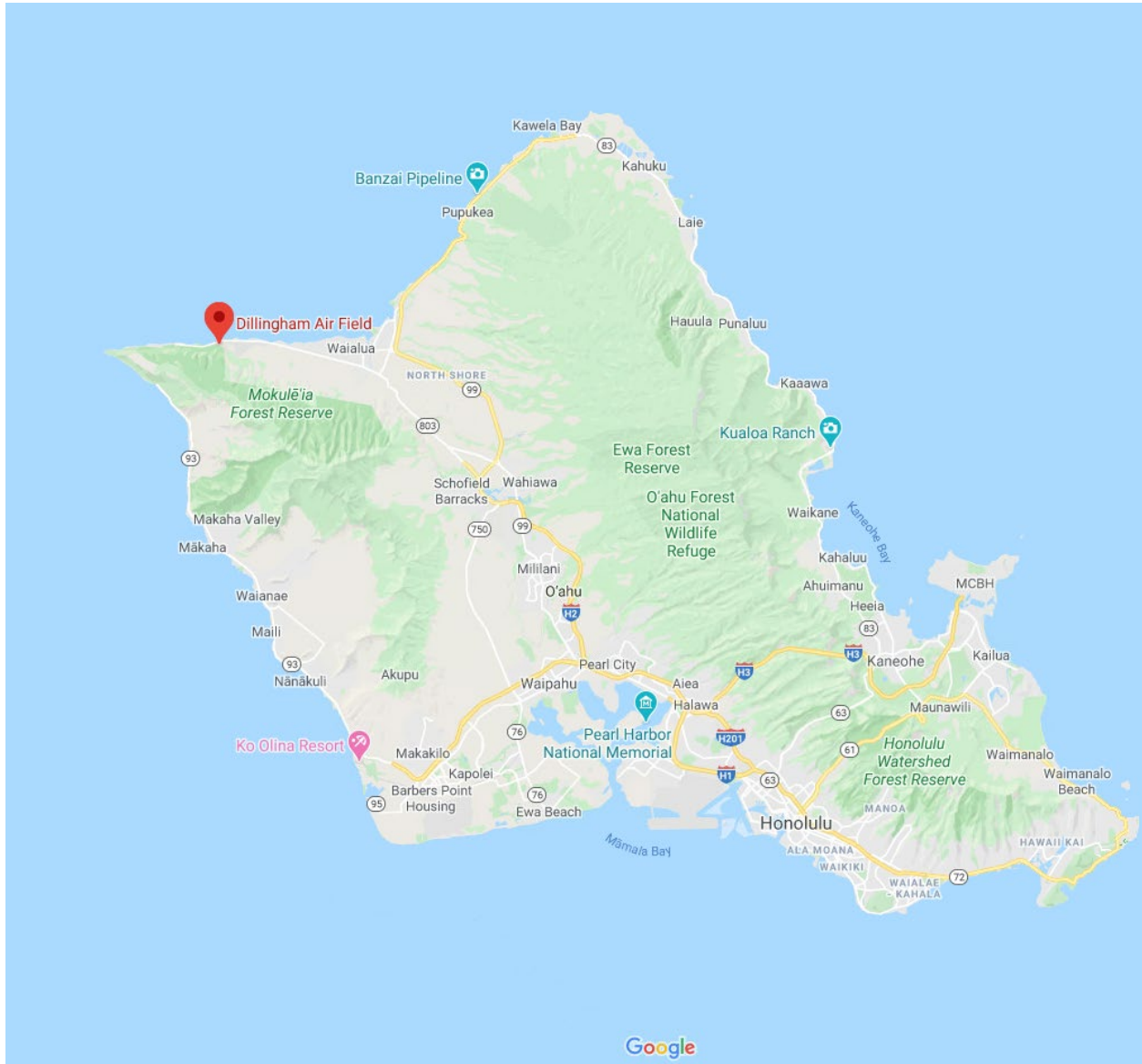
PART A: DUE DILIGENCE SUMMARY

1 Background

1.1 Overview of HDH and Its Role in the DOTA Airport System

Kawaihapai Airfield, formerly known as Dillingham Airfield or Mokuleia Airfield is a joint use (public and military) airport located just west of the community of Mokuleia and approximately 35 miles northwest of Honolulu on the North Shore of Oahu. See **Figure 1**.

Figure 1: Airfield Location



Source: Google maps

The Airfield itself is a part of the larger Dillingham Military Reservation. It is owned by the Army but is operated by DOTA as part of the statewide airports system, which is comprised of fifteen airports and operated as a single system for management and financial purposes. HDH is managed

The 1976 Lease. In 1974, the Air Force transferred the base to the Army³ and the Army issued its first lease to the State in 1976 (Contract No. DACA84-1-76-153, the 1976 Lease).⁴ The 1976 Lease authorized the lease of an area of 133.98 acres (“more or less”) to the Hawaii Board of Land and Natural Resources (now the Department of Land and Natural Resources (DLNR)) for the use and under the control and management of DOTA. The 1976 Lease extended for five years (January 3, 1976 – January 2, 1981) and authorized use for “light aircraft and airfield support purposes.”⁵

The 1983 Lease. DOTA and the Army began negotiating a second lease in 1981 and executed it in 1983 (DACA84-1-81-27, the 1983 Lease).⁶ The 1983 Lease authorized the lease of “a portion of Dillingham Military Reservation” to DLNR for the use by DOTA for a period of twenty-five years “for use as a joint Department of Defense/Civil Airport.”⁷

The 2009 Lease. In 2009, DOTA and the Army entered into a new lease (DACA84-1-09-135, the 2009 Lease). The 2009 Lease authorized the lease of 210.853 acres to DOTA for twenty-five years (2009 – 2034) for the purpose of “operating an airfield, parallel runways, taxiways, parking areas and various building and improvements for use as a joint Department of Defense/Civil Airport.”⁸

Supplemental Agreement 1 (2012). In 2012, the Army realized that it did not have authority to execute a 25-year lease in 2009.⁹ The Department of Defense has statutory authority to lease non-excess property, but leases may not exceed five years unless the Secretary of the Army (Secretary) determines that a lease for a longer period will promote the national defense or be in the public interest.¹⁰ As a result, in 2012, the Army issued a Supplemental Agreement (Supplemental Agreement No. 1 to Lease, Contract No. DACA84-1-09-135) to the 2009 Lease, which reduced the length of the leasehold to the legally-permissible, maximum length of five years. Supplemental Agreement 1 modified the term of the 2009 Lease to five years (July 6, 2009 – July 5, 2014).¹¹

Supplemental Agreement 2 (2014). In 2014, DOTA requested an additional one-year extension.¹² In the same time frame, DOTA noted that it was also interested in exploring whether the Army would agree to convey all of HDH to the State.¹³ Ultimately, the parties executed a second supplemental agreement (Supplemental Agreement No. 2 to Lease, Contract No. DACA84-1-09-135). Supplemental Agreement 2 extended the 2009 Lease for an additional one-year term (*i.e.*, through July 5, 2015).¹⁴

³ Memorandum for the Secretary of the Army re: Transfer of Dillingham Air Force Base, Hawaii, to Department of the Army (Dec. 5, 1974) (**Exhibit 22**).

⁴ Army Lease, Contract No. DACA84-1-76-153 (Jan 3, 1976) (hereinafter, “1976 Lease”) (**Exhibit 23**); E-mail from G. Leonard to M. Auerbach (Mar. 19, 2020) (**Exhibit 53**).

⁵ 1976 Lease (**Exhibit 23**).

⁶ Army Lease, Contract No. DACA84-1-81-27 (May 11, 1983) (hereinafter, “1983 Lease”) (**Exhibit 24**).

⁷ 1983 Lease (**Exhibit 24**).

⁸ Army Lease, Contract No. DACA84-1-09-135 (July 6, 2009) (hereinafter, “2009 Lease”) (**Exhibit 25**).

⁹ E-mail from M. Auerbach to F. Fuchigami (July 5, 2019) (**Exhibit 46**).

¹⁰ 10 U.S.C. 2667 (b)(1); *see also* Army Regulation 405-80, *Management of Title and Granting Use of Real Property* (1997) at ¶ 3-2(a)(1)(a), available at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r405_80.pdf.

¹¹ Supplemental Agreement No. 1 to Lease, Contract No. DACA84-1-09-135 (Nov. 28, 2012) (hereinafter, “Supplemental Agreement 1”) (**Exhibit 26**).

¹² Letter from F. Fuchigami to M. Sakai (March 17, 2014) (**Exhibit 32**).

¹³ Letter from G. Okimoto to H. Purifoy (April 24, 2014) (**Exhibit 33**).

¹⁴ Supplemental Agreement No. 2 to Lease, Contract No. DACA84-1-09-135 (Aug. 15, 2014) (hereinafter, “Supplemental Agreement 2”) (**Exhibit 27**).

Ongoing Negotiations (2014-2016). Upon execution of Supplemental Agreement 2, DOTA began a concerted effort to renegotiate the 2009 Lease for a term of fifty years, stating that DOTA “cannot continue to maintain the airfield and its public facilities under a short-term lease agreement.”¹⁵ DOTA repeatedly pressed this point over the years.¹⁶ In response, the Army continually indicated that it needed Secretarial approval to pursue the longer term lease and was waiting for related funding and directives.¹⁷ When it became clear that the parties would have to extend the 2009 Lease via a third supplemental agreement, DOTA specifically requested additional language in Supplemental Agreement 3 indicating the intent of the parties to seek a fifty-year lease, under the theory that this would help DOTA’s efforts to secure federal funding.¹⁸

New Army Regulations (2016). In 2016, the Army updated its regulations governing joint-use airfields. Among other issues, the new regulations also provided that the civilian user (in this case, DOTA) must agree to hold the Army harmless.¹⁹ The regulations are strict on this point and lessees may only use the DOD-approved form of hold harmless agreement.²⁰

These new regulations further complicated lease negotiations. In particular, Hawaii law provides that a State agency may indemnify a federal agency (in order to receive federal aid, assistance, support, benefits, services and interests in or rights to use federal property) – but *only* if all of the following conditions are satisfied: (1) federal law expressly or by clear implication requires the indemnity provision; (2) the Governor, following a favorable review by the department of the attorney general, approves the State's proposed indemnification; and (3) the comptroller has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision or has determined that it is not in the best interest of the State to obtain insurance.²¹

Supplemental Agreement 3 (2017). In August 2017, DOTA and the Army agreed to a third supplemental agreement (Supplemental Agreement No. 3 to Lease, Contract No. DACA84-1-09-135). Supplemental Agreement 3 created a holdover tenancy (dating back to the expiration of Supplemental Agreement 2) and extended the 2009 Lease for an additional four-year term (*i.e.*, through July 5, 2019).²²

Ongoing Negotiations (2017-2019). In September 2017, DOTA revised its prior request for a fifty-year lease to a new request for a twenty-five-year lease with an option to renew every five years, consistent with the new Army regulations.²³ In response, the Army indicated that DOTA

¹⁵ Letter from F. Fuchigami to H. Purifoy (Sept. 24, 2015) (**Exhibit 34**).

¹⁶ *E.g.*, E-mail from M. Auerbach to D. Gilliam (April 8, 2016) (**Exhibit 35**) (DOTA is “still very interested in pursuing the long-term 50-Year lease” but that in order for DOTA to make much-needed infrastructure improvements and repairs and to expend the necessary funding, DOTA needed a long-term lease in place.”).

¹⁷ *E.g.*, E-mail from M. Auerbach to H. Purifoy (July 12, 2016) (**Exhibit 37**).

¹⁸ E-mail from M. Auerbach to D. Gilliam (May 13, 2016) (**Exhibit 36**).

¹⁹ Army Regulation 95-2 at ¶ 9-10(b)(3)(a).

²⁰ Army Regulation 95-2 at ¶ 9-11(d).

²¹ Hawaii Rev. Stat. § 29-15.5 (**Exhibit 3**).

²² Supplemental Agreement No. 3 to Lease, Contract No. DACA84-1-09-135 (July 19, 2017) (hereinafter, “Supplemental Agreement 3”) (**Exhibit 28**).

²³ Letter from R. Higashi to H. Purifoy (Sept. 5, 2017) (**Exhibit 38**); Army Regulation 95-2, Air Traffic Control, Airfield/Heliport and Airspace Operations (March 31, 2016) at ¶ 9-5(b)(3) (hereinafter, “Army Regulation 95-2”), available at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r95_2.pdf

would have to file a Report of Availability, which would start action for a long-term lease,²⁴ as well as a Record of Environmental Consideration.²⁵ In January 2018, DOTA revised its request from twenty-five-year lease to a thirty-five-year lease²⁶ and filed a draft Record of Environmental Consideration.²⁷

Supplemental Agreement 4 (2019). In 2019, as the parties were still working toward a long-term lease, DOTA revised its request to once more seek a fifty-year lease.²⁸ The Army requested a fourth supplemental agreement to provide the time needed to prepare the longer term approval package.²⁹ In April 2019, the parties executed the new supplemental agreement (Supplemental Agreement 4, Contract No. DACA84-1-09-135). Supplemental Agreement 4 extended the 2009 Lease for an additional five-year term (*i.e.*, through July 5, 2024). This agreement states that: “It is the intent of both parties in the future to negotiate and enter into a new longer-term lease, which would supersede the Lease. Notwithstanding, neither party is obligated under the terms of the Lease beyond July 5, 2024.”³⁰

1.2.2 Rights and Obligations Under the Current Lease

DOTA currently operates HDH pursuant to Supplemental Agreement 4 to the 2009 Lease which is set to expire in 2024.³¹ For clarity, throughout the remainder of this report, the 2009 Lease as amended through Supplemental Agreement 4 is referred to as the Current Lease.

Under the Current Lease, DOTA leases approximately 272 acres of the 650-acre Dillingham Military Reservation. The Airfield is a joint-use airfield with the Army having first priority for air-land operations and helicopter night-vision training. The key terms of the Current Lease are as follows:

1. The Current Lease terminates on July 5, 2024 but is revocable by will by the United States during a national emergency or if the Lessee violates any terms or conditions.³²
2. The Current Lease includes lands for the purposes of operating the Airfield, “together with other pertinent aviation facilities located thereon, including the entire water system ...”³³

²⁴ E-mail from M. Stone to M. Auerbach (Oct. 5, 2017) (**Exhibit 39**).

²⁵ E-mail from M. Stone to M. Auerbach (Dec. 11, 2017) (**Exhibit 40**).

²⁶ E-mail from M. Auerbach to M. Stone (Jan. 31, 2018) (**Exhibit 41**).

²⁷ DRAFT Record of Environmental Consideration (2018) (**Exhibit 16**).

²⁸ E-mail from J. Blalock to H. Purifoy (January 16, 2019) (**Exhibit 43**); E-mail from J. Blalock to H. Purifoy (March 28, 2019) (reverting request to 50 years) (**Exhibit 44**).

²⁹ *E.g.*, E-mail from N. Perry to J. Blalock (March 29, 2019) (**Exhibit 45**).

³⁰ Supplemental Agreement 4 to Lease, Contract No. DACA84-1-09-135 (April 23, 2019) (hereinafter, “Supplemental Agreement 4”) at ¶ 1 (**Exhibit 29**).

³¹ Supplemental Agreement 4 (**Exhibit 29**).

³² Supplemental Agreement 4 at ¶ 1 (**Exhibit 29**). Although the Army has not sought to exercise its authority under a national emergency, the provision means that the Current Lease could be terminated at any time by the Army. The Army’s authority to terminate the Current Lease is not tied to any particular type of national emergency and the pandemic has resulted in a Presidential Proclamation of a national emergency that remains in effect. Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), available at the link below *See*, [https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/#:~:text=The%20spread%20of%20COVID%2D19,strain%20our%20Nation's%20healthcare%20systems.&text=1320b%2D5\)%2C%20do%20hereby,Section%201.](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/#:~:text=The%20spread%20of%20COVID%2D19,strain%20our%20Nation's%20healthcare%20systems.&text=1320b%2D5)%2C%20do%20hereby,Section%201.)

³³ 2009 Lease at p. 1 (**Exhibit 25**).

3. The Current Lease includes an inventory and condition report on all property and improvements by the United States.³⁴ Upon expiration, revocation or termination of the Lease, another inventory and condition report must be prepared, which report shall constitute the basis for settlement for any property damaged or destroyed.³⁵
4. DOTA is obligated to pay the cost of producing and/or supplying “any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee’s proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied.”³⁶
5. On or before the expiration or termination of the Current Lease, DOTA must remove its property and restore the premises to a condition satisfactory to the United States.³⁷
6. The Current Lease is subject to easements and all outstanding mineral interests.³⁸
7. Upon expiration of the Current Lease, DOTA shall prepare an environmental baseline study and the United States shall compare it to the prior (2002) environmental baseline study to determine whether there are any environmental restoration requirements.³⁹
8. DOTA’s use of the Airfield is subject to operational restrictions including:
 - a. The priorities for use of the Airfield are: (1) military flight operations; (2) civil aviation and sport parachute operations; and (3) military ground maneuvers. Nevertheless, military ground units will be permitted access to the leased area when engaged in air mobile/aviation missions.⁴⁰
 - b. The Airfield is subject to military flight operations and ground maneuvers for limited periods. These operations may be inconsistent with or create a hazard to civil aircraft operations.⁴¹

The combined effect of the Current Lease provisions is that the State has no certainty that HDH will continue to be available for public use through 2024 or even tomorrow – since the Army has the authority to terminate the State’s right to operate HDH for public use *at any time*. The State is therefore unable to make any responsible or prudent investment decisions necessary to maintain

³⁴ 2009 Lease at Appx. D (Exhibit 25).

³⁵ 2009 Lease at ¶ 7(b) (Exhibit 25).

³⁶ 2009 Lease at ¶ 9 (Exhibit 25).

³⁷ 2009 Lease at ¶ 5 (Exhibit 25).

³⁸ 2009 Lease at ¶ 17 (Exhibit 25).

³⁹ 2009 Lease at ¶ 24 (Exhibit 25).

⁴⁰ 2009 Lease at ¶ 32(c)(ii) (Exhibit 25).

⁴¹ 2009 Lease at ¶ 32(c)(vii) (Exhibit 25).

the safety of the airfield (or even longer-term operational decisions) in the face of this constant uncertainty.

1.3 Federal Legislation Directing the Conveyance of HDH Lands to the State

1.3.1 The National Defense Authorization Act for Fiscal Year 1991

In the National Defense Authorization Act for Fiscal Year 1991, Congress directed the Secretary of the Army to convey to the State of Hawaii approximately 87 acres of the Dillingham Military Reservation that had been previously ceded to the United States by the State of Hawaii for use by the Armed Forces. Congress conditioned the conveyance on the execution of an agreement acceptable to the Secretary of the Army providing for joint civilian and military use of the property as an airfield by the State and the United States Army. Congress also stipulated that exact acreage shall be determined by a survey satisfactory to the Secretary, with costs borne by the State and that the Secretary may require additional terms and conditions as appropriate.⁴² The lands identified for potential conveyance are listed in **Table 1** and depicted in **Figure 3**. It is crucial to understand that the proposed 87-acre transfer *does not encompass all, or even a substantial portion of the HDH airfield*. As a result, even were this transfer to occur, the State would remain subject to Army policies concerning long-term leases and, as explained above, would remain subject to the Army's ability to prioritize the use HDH for military purposes.

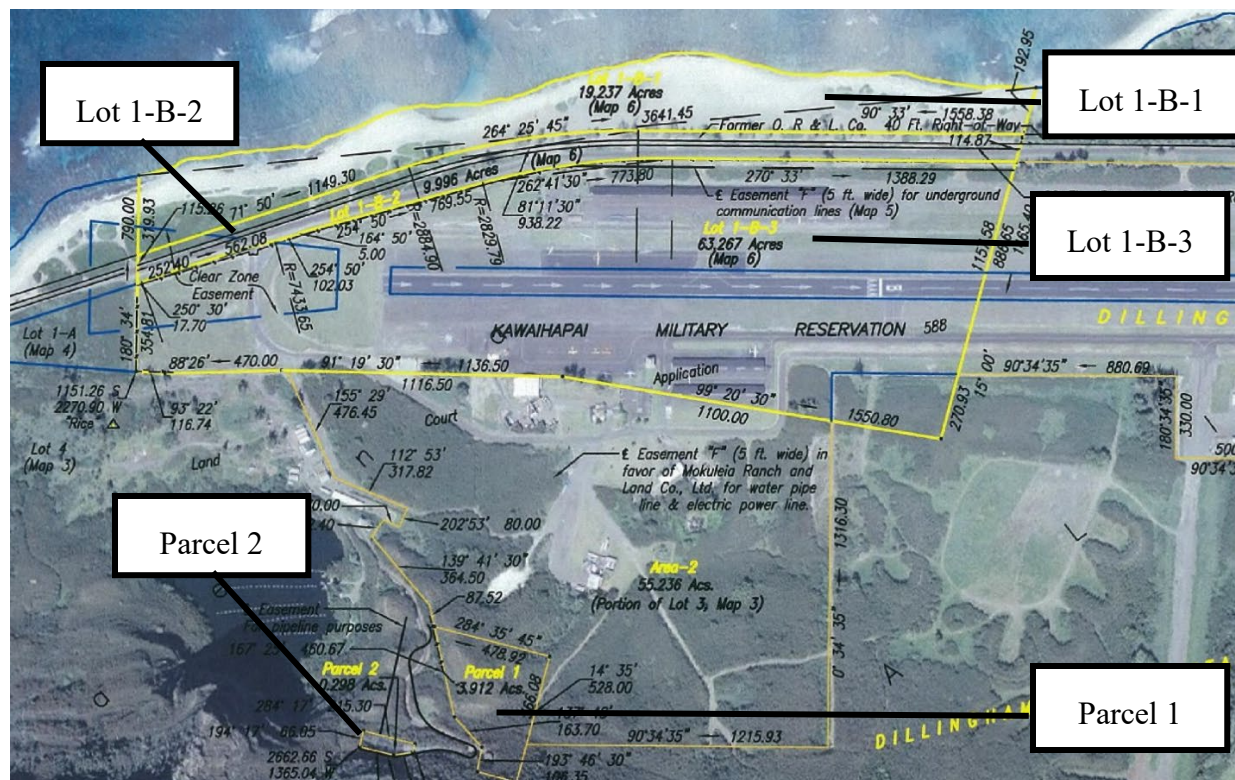
Table 1: Lands Proposed to Be Conveyed Under Public Law 101-510

Parcel	Acreage	Description	Disposition
Lot 1-B-1	19.237 Acres	Beach Area	To be transferred to DOT-Airports
Lot 1-B-2	9.996 Acres	Highway	To be transferred to DOT-Highways
Lot 1-B-3	63.267 Acres	Airfield	To be transferred to DOT-Airports
Parcel 1	3.912 Acres	Water Tank Site	To be transferred to DOT-Airports
Parcel 2	0.298 Acres	Underground Storage Tank Site	To remain with Department of Land and Natural Resources.

Source: DOTA (2020)

⁴² Pub. L. 101-510, Section 2831 (104 Stat. 1795) (**Exhibit 1**).

Figure 3: Detailed View of Parcels Proposed to be Conveyed Under Public Law 101-510



Source: DOTA (2020)

1.3.2 2001 Haw. Sess. Laws 276

In 2001, Hawaii adopted Act 276, which directed that, upon completion of the transfer of the Airfield to the State, the name be changed to Kawaihapai Airfield.⁴³

1.3.3 Current Status

The Army and DLNR have been working for over a decade on drafting the documents for the congressionally authorized land conveyance. The delays are attributable to staff turnover; the difficulties of surveying, mapping and resolving ownership complications; and, most importantly, the inability to agree on final terms for joint use. For example, to accompany the land conveyance, the Army and the State would have to enter into some type of lease arrangement to allow the Army to continue to use the ceded land for its military training.⁴⁴ Since the property subject to congressional direction bisects the actual runway, the Army and the State also would need to enter into an entirely separate lease agreement to provide for continued public use of the runway – an agreement which would face the same challenges that makes the current arrangement untenable. To date, no agreement has been reached.

1.4 The Dillingham Airfield Water System

The Dillingham Water System is a public water system identified as PWS No. 338 by the Hawaii Department of Health Safe Drinking Water Branch. The Dillingham Water System is located on

⁴³ 2001 Haw. Sess. Laws 276, codified at Hawaii Rev. Stat. § 261-27 (**Exhibit 2**).

⁴⁴ E-mail from M. Auerbach to F. Fuchigami (July 5, 2019) (**Exhibit 46**).

Army property, within the boundary of HDH leasehold. The early history of water arrangements between the Army and off-base users is not well documented. However, it is clear that private users began using the Dillingham Water System long before the State's first lease for HDH.

Beginning with the 1983 Lease and continuing to today, DOTA became contractually responsible for operating the entire Dillingham Water System.⁴⁵ As a result, DOTA is the purveyor of water through this system, and is responsible for maintaining the buildings and related infrastructure (e.g., water pump, water supply treatment/chlorinator facility), and for pumping, treating, and distribution of potable water for the full suite of users. This utility system is the sole water supply not only for HDH but also for the surrounding civilian/public community of about a dozen residents, plus a commercial bed and breakfast operator, a City and County of Honolulu beach park, an Army beach parcel, an Air Force radar installation, and a YMCA camp capable of supporting groups of up to 300 persons.⁴⁶ The precise extent of the Dillingham Water System has been the subject of debate, but it is clear that it extends not only beyond DOTA's leased property, but also outside Army property as well.

The obligation to manage the Water System is legally and practically problematic for DOTA. First, DOTA has neither the expertise nor the authority to be a water system operator or purveyor. Second, the system needs significant, costly repairs.⁴⁷ Corrosion is common throughout the water main stretch and the potential for failure is high because of the spike in pressure needed for periodic line boosting. Several miles of lines likely need to be replaced.⁴⁸ In 2012, DOTA estimated that the on-airport replacement costs alone were between \$7 and \$10 million.⁴⁹ It is doubtful that such costs would be considered to be permissible operating and capital costs of HDH; DOTA would, therefore, have to identify non-airport revenue sources for such expenses. There are also significant practical impediments to making these repairs. For example, portions of the line extend onto private and Army property which is fenced and inaccessible to the DOTA. Complicating these access problems is the additional fact that there is a known Native Hawaiian burial plot and the soils in the area are the type that are likely to contain cultural artifacts and/or human remains.⁵⁰ Therefore even obtaining necessary approvals for repair work would be challenging and uncertain.

Third, as the operator of the system, DOTA can be liable for water quality and permit requirements, and also potential violations. For example, the Dillingham Water System has been pumping in excess of its water use permit since 2005. DOTA's 2012 Report on the Dillingham Water System documents that the permissible well pump rate is 55,000 gallons per day for well number 3412-02, but DOTA is pumping at a rate of 225,000 gallons per day – likely because of increased use by the YMCA camp, the Air Force Kaena Point Tracking Station, private users, *and* the suspected presence of significant leaks in the distribution line.⁵¹ These increased uses also compromise DOTA's ability to ensure adequate pressure and flow in the entire system.⁵²

⁴⁵ 1983 Lease at p. 1 (**Exhibit 24**); 2009 Lease at p. 1 (**Exhibit 25**).

⁴⁶ Letter from R. Higashi to G. Wong (Dec. 5, 2019) (**Exhibit 48**).

⁴⁷ E.g., FAA Memorandum to the Administrator (2012) at 2 (**Exhibit 48**) (“The capital cost to replace the system and bring it up to standard is enormous.”)

⁴⁸ DOTA, *PWS 338 Dillingham Airfield History and Background* (2012) at 22 (**Exhibit 15**).

⁴⁹ DOTA, *PWS 338 Dillingham Airfield History and Background* (2012) at 23 (**Exhibit 15**).

⁵⁰ E-mail from D. Crowley to J. Blalock (Jan 11, 2019) (**Exhibit 42**).

⁵¹ DOTA, *PWS 338 Dillingham Airfield History and Background* (2012) at 17 (**Exhibit 15**).

⁵² DOTA, *PWS 338 Dillingham Airfield History and Background* (2012) at 22 (**Exhibit 15**).

1.5 Existing Facilities

HDH is comprised of a single runway (Runway 8/26) that is 9,000 feet long and 75 feet wide at an altitude of 15 feet above mean sea level. At each end of the runway there is a 2,000-foot displaced threshold, which can be used for sailplane (glider) operations only, leaving a usable runway length of 5,000 feet for powered aircraft. The Airfield is open (with no prior permission required) for civil general aviation aircraft of 12,500 pounds maximum gross takeoff weight for daytime visual flight rule operations. Larger aircraft require prior permission.⁵³ There are no navigational facilities or lighting at the Airfield. There is a 40-foot-wide taxiway running parallel and south of the 5,000-foot section of the runway and extending west to the powered aircraft hangars and apron. All operations are conducted under visual flight rules and aircraft must contact the Dillingham UNICOM when flying within the HDH airspace.

There is a primary parachute drop zone that lies within the Runway Protection Zone for Runway 26. It is usable only under Tradewind conditions. A drop zone for Kona wind conditions has also been established within the Runway Protection Zone for Runway 8 and is used approximately seven percent (7%) of the year.

There are no passenger terminal facilities at HDH. There is a sailplane operations area that consists of a kiosk (20 feet by 50 feet) for sailplane ride sales located on the north side of the runway. The sailplane area also includes a paved automobile parking area, the sailplane hangar and sailplane tie-down area. The sailplane hangar area accommodates 15 sailplanes in sixty-five-foot-wide bays that have no dividing partitions or hangar doors. The paved apron fronting the sailplane facility is 7,200 feet by 105 feet and accommodates fourteen sailplane tie-downs. The sailplane area is connected to the runway with a short stub taxiway.

There is a three-story UNICOM tower located to the south of the runway. The UNICOM tower is a three-story wooden structure which has an open conference area and restrooms on the second floor, and the control cab on the third floor. There are two rows of hangars (365 feet by 30 feet) located to the east of the UNICOM Tower and south of the runway that accommodate 20 powered aircraft. These hangars are constructed of concrete and include restroom facilities. These hangars have no doors but some permittees have installed their own doors. To the west of the UNICOM tower is a paved apron (120 feet by 520 feet) containing 21 tie-downs. At the west end of this apron there is an automated self-fueling facility with a tank capacity of 12,000 gallons.

Additional facilities located on the south side of the runway include an automobile parking area and a metal maintenance building.

Two skydiving operators have 30-day Revocable Permits (RPs) for space on the south east end of the runway. The facilities include several club houses that are used mainly as rest and meeting places for parachute clubs.

DOTA's leasehold also includes the Dillingham Airfield Water System, including the water pump building and the water supply treatment/chlorinator facility which are located off a service road between the maintenance building P250 and the concrete revetments.

⁵³ FAA Form 5010, Airport Master Record for HDH (as of December 2020) (**Exhibit 19**).

1.6 Current HDH Users

DOTA operates HDH primarily for general aviation uses, including commercial sailplane and skydiving operations. FAA’s official records (Form 5010, Airport Master Record) indicate that there currently are 18 based aircraft and 20 based gliders and over 36,000 civilian aircraft operations (and about 1,500 military operations) annually at HDH.⁵⁴

Under the Current Lease, DOTA is authorized to sublease portions of the Airfield for hangar uses, parking and storage of aircraft, retail sales, and service facilities associated with public aviation activities.⁵⁵ DOTA currently has issued approximately 50 revocable permits to 24 separate permittees. (Some permittees have multiple businesses and multiple permits, and some permits cover multiple spaces⁵⁶ available at HDH). Each permit is revocable with 30 days’ notice. As shown in **Table 2**, the HDH permits fall into several categories, only some of which support aeronautical activities.⁵⁷ The type of use (*i.e.*, aeronautical or nonaeronautical) is relevant because federal law and policy on reasonableness of fees, exclusive rights, and terms of airport access apply only to aeronautical uses.⁵⁸

Table 2: Current HDH Permittees

Type of Permit	Number of Permits	Type of Use
Aircraft Maintenance Areas	2 (2 permittees total)	Aeronautical
Aircraft Tie-downs	21	Aeronautical
Airport Communications Equipment	4 (1 permittee total)	Aeronautical
Building Storage Space	1	Non-Aeronautical
Fuel Operations	4 (3 permittees total)	Aeronautical
Land for Bus/Trailer	1	Non-Aeronautical
Land for Skydiving Facilities	8 (2 permittees total)	Nonaeronautical*
Sailplane Hangars	7 (6 permittees total)	Aeronautical
T-hangars	13 (7 permittees total)	Aeronautical
Ticket Counters	2	Non-Aeronautical

Source: DOTA (2020)

***Note:** The *aeronautical* uses of the skydiving operators are accommodated in other permits (*e.g.*, T-hangars, Tie-downs, Fueling Activities).

⁵⁴ FAA Form 5010, Airport Master Record for HDH (as of December 2020) (**Exhibit 19**).

⁵⁵ 2009 Lease at ¶ 32(c)(iii) (**Exhibit 25**).

⁵⁶ Maps of the HDH property spaces available to permittees are provided as **Exhibit 20**.

⁵⁷ Aeronautical activity is “[a]ny activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations.” FAA, AC 150/5190-6, *Exclusive Rights at Federally Obligated Airports* (2007) at Appendix 1 (Definitions).

⁵⁸ FAA, Order 5190.6B at ¶ 18.3(c) (“Aviation-related uses that do not need to be located on an airport, such as flight kitchens and airline reservation centers, are considered nonaeronautical uses. Nonaeronautical uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops.”)

1.7 Available Accommodations at Other DOTA Facilities

DOTA owns and operates fourteen other public use facilities across the State where civil aviation activities can be accommodated, including the following, which, for different reasons, might be especially appropriate sites for relocated HDH users:

- **Daniel K. Inouye International Airport (HNL)** is the largest airport in the State of Hawaii and is located in Honolulu on the Island of Oahu. HNL has available tie-down and T-hangar spots, but no additional land is available for development.
- **Hana Airport (HNM)** on the Island of Maui supports commuter, unscheduled air taxi and general aviation activities on a 144-acre site on the east shore of Maui, about three miles northwest of the town of Hana. The single runway serves the passenger terminal and general aviation and airport support facilities south of the runways. Hana Airport accommodates glider traffic and skydiving operations and has tie-down spaces for small aircraft.
- **Hilo International Airport (ITO)** is located on the east side of the Island of Hawaii. The airport's primary runway (8-26) is 9,800 feet long and is used principally for air carrier operations. Crosswind Runway 3-21 is 5,600 feet long and is used mainly for general aviation operations. The airport has a general aviation area that includes tie-down spaces and T-hangars available for lease. ITO also has additional land available for development.
- **Kalaeloa Airport (JRF)** is general aviation reliever airport for HNL. It has air traffic control functions from 0600 to 2200 daily, but the airfield is available 24/7/365. Primary JRF users include the United States Coast Guard, the Hawaii National Guard (Army and Air) and the general aviation community. JRF has tie-downs and T-hangars available for lease. There is limited land available for further development.
- **Kapalua Airport (JHM)** is located on the west side of the Island of Maui and is served by commercial propeller air carriers and commuter/air taxi aircraft. There are no T-hangars or tie-down spaces available at JHM. In addition, no helicopter operations or jet-powered aircraft are allowed and JHM is only open a half hour before sunrise and closes at 6:30 p.m. daily.⁵⁹ There is no land available for future development at JHM.
- **Lihue Airport (LIH)** is the primary airport on the Island of Kauai. The airport provides passenger and aircraft facilities for domestic, overseas and interisland carriers, commuter/air taxi, air cargo, heliport (for tour operators) and general aviation.
- **Lanai Airport (LNY)** is located three miles southwest of Lanai City on the Island of Lanai. The airport has a single runway and primarily serves scheduled interisland and commuter/air taxi traffic, with some unscheduled charter and general aviation activity. There are tie-down spaces available at LNY.

⁵⁹ Hawaii Administrative Rules, § 19-13-8-1 (Exhibit 4).

- **Waimea-Kohala Airport (MUE)** is a general aviation on the Island of Hawaii. There are tie-down spaces available at MUE.
- **Kahului Airport (OGG)** is the primary airport on the Island of Maui and receives both overseas and interisland flights. The airport has T-hangars and tie-down spaces available.
- **Port Allen Airport (PAK)** is located one mile southwest of Hanapepe, Kauai. It is a general aviation airport currently used for scenic helicopter tours, ultralight aircraft traffic and skydiving. There are tie-down spaces available at PAK
- **Upolu Airport (UPP)** is a small general aviation airport on the Island of Hawaii, located 3 miles northwest of Hawi. UPP provides tie-down spaces.

1.8 Status of AIP Grants

HDH has received a total of three Airport Improvement Program (AIP) grants amounting to \$1,326,380, which were awarded in 1988, 2003 and 2005.⁶⁰ Each of these three grants was awarded while DOTA operated under the twenty-five-year 1983 Lease:

- **Grant 3-15-0018-002-2003:** On August 26, 2003, DOTA accepted a grant of \$450,000 for Extension of Taxiway "A" of which \$299,275.00 was spent. The remaining funds were returned to FAA.⁶¹
- **Grant 3-15-0018-003-2005:** On August 29, 2005, DOTA accepted a grant of \$735,810 for Phase II of the Extension of Taxiway "A" of which \$714,387.00 was spent. The remaining funds were returned to FAA.⁶²

Grant Assurances obligations typically last for twenty years (*i.e.*, the assumed useful life of an AIP-funded capital project).⁶³ The State has not prepared a site-specific report on the condition of the AIP-funded improvements at HDH so it is assumed for purposes of this Plan that the standard presumption of a twenty-year life for AIP-funded projects applies here. As depicted in **Table 3**, based on a straight-line depreciation schedule and assuming a standard twenty-year life for each project, the remaining value of the two prior HDH AIP grants when DOTA proposes to terminate the lease in 2021, would be \$29,927.50 for the 2003 Grant and \$142,877.40 for the 2005 Grant (for a total of \$172,804.90).

⁶⁰ FAA Memorandum to the Administrator, Proposed Termination of Dillingham Airfield Lease Agreement with U.S. Army by HDOT (2012) (**Exhibit 31**).

⁶¹ FAA AIP Grant 3-15-0018-092-2003 (Aug. 26, 2003) (**Exhibit 11**).

⁶² FAA AIP Grant 3-15-0018-003-2005 (Aug. 29, 2005) (**Exhibit 12**).

⁶³ FAA Order 5100.38D, Change 1, *Airport Improvement Program Handbook* (2014) at Table 2-5.

Table 3: Depreciation Schedule for AIP Grants at HDH

Year	2003 Grant: \$299,275	2005 Grant: \$714,387
	Annual Depreciation: \$14,963.75	Annual Depreciation: \$35,719.35
2003	\$299,275.00	-
2004	\$284,311.25	-
2005	\$269,347.50	\$714,387.00
2006	\$254,383.75	\$678,667.65
2007	\$239,420.00	\$642,948.30
2008	\$224,456.25	\$607,228.95
2009	\$209,492.50	\$571,509.60
2010	\$194,528.75	\$535,790.25
2011	\$179,565.00	\$500,070.90
2012	\$164,601.25	\$464,351.55
2013	\$149,637.50	\$428,632.20
2014	\$134,673.75	\$392,912.85
2015	\$119,710.00	\$357,193.50
2016	\$104,746.25	\$321,474.15
2017	\$89,782.50	\$285,754.80
2018	\$74,818.75	\$250,035.45
2019	\$59,855.00	\$214,316.10
2020	\$44,891.25	\$178,596.75
2021	\$29,927.50	\$142,877.40
2022	\$14,963.75	\$107,158.05
2023	0	\$71,438.70
2024	-	\$35,719.35
2025	-	0

Source: DOTA (2020)

2 Decision to Terminate the HDH Lease

In October 2019, following internal discussions, DOTA informally notified the Army that DOTA was preparing to terminate its lease.⁶⁴ In January 2020, DOTA formally notified the Army of its intent to exercise its right to terminate the Current Lease, effective June 30, 2020.⁶⁵ In April 2020, DOTA notified the Army of its intent to extend the termination date until June 30, 2021.⁶⁶

This Section 2 provides DOTA's reasoning and justification for the request to FAA to allow DOTA to terminate its sponsorship of HDH and to release DOTA from its grant obligations at HDH. It also explains the net benefit to civil aviation from the closure of the facility to public use.

It is important to note that DOTA has not proposed, and does not have the authority to propose, the complete closure of the Airfield because HDH remains an active Army facility. Whether the Airfield will remain open to public use traffic will be a decision entirely within the discretion of the Army, but DOTA presumes for the purpose of this submittal that its withdrawal of sponsorship will result in termination of public use of this facility and that this will have the effect of closing the airport to public use and thereby requiring that HDH be removed from the National Plan of Integrated Airport Systems (NPIAS). How the Army continues to use the airfield is outside the scope of this Plan and not within the jurisdiction of either DOTA or the FAA in this instance.

2.1 Relevant Law / Legal Obligations

2.1.1 Termination Provisions in Current Lease

There is no contractual impediment to the termination of the Current Lease with the Army on June 30, 2021. The Current Lease is revocable at will so long as DOTA provides 30 days' notice.⁶⁷ As described above, DOTA provided initial notice on January 6, 2020⁶⁸ and formally notified the Army on April 6, 2020, of the plan to defer termination until June 30, 2021.⁶⁹

2.1.2 Relevant Federal Grant Assurances

After over a decade of efforts to find acceptable compromises with the Army, DOTA has concluded that it cannot operate HDH under the terms of the Current Lease in a manner that is consistent with its Grant Assurances, including, but not limited to the following:

- **Grant Assurance 4 - Good Title:** Under Grant Assurance 4, an airport sponsor certifies that it holds "good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired."
- **Grant Assurance 5 - Preserving Rights and Powers:** Under Grant Assurance 5, an airport sponsor agrees that it will "not take or permit any action which would operate to

⁶⁴ E-mail from M. Auerbach to R. Arne (October 30, 2019) (**Exhibit 47**).

⁶⁵ Letter from J. Butay to Col. T. Barrett (Jan. 6, 2020) (**Exhibit 49**).

⁶⁶ Letter from J. Butay to J. Nelson (April 6, 2020) (**Exhibit 56**); Letter from J. Butay to Col. T. Barrett (April 6, 2020) (**Exhibit 57**).

⁶⁷ 2009 Lease at ¶ 18 (**Exhibit 25**).

⁶⁸ Letter from J. Butay to Col. T. Barrett (Jan. 6, 2020) (**Exhibit 49**); E-mail from G. Leonard to M. Auerbach (Mar. 19, 2020) (**Exhibit 53**).

⁶⁹ Letter from J. Butay to J. Nelson (April 6, 2020) (**Exhibit 56**); Letter from J. Butay to Col. T. Barrett (April 6, 2020) (**Exhibit 57**).

deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary” and that it “will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property ... for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary.”

- **Grant Assurance 19 - Operations and Maintenance.** Under Grant Assurance 19, an airport sponsor agrees to operate the airport and aeronautical facilities at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operation.
- **Grant Assurance 24 - Fee and Rental Structure.** Under Grant Assurance 24, an airport sponsor agrees that it will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the airport.
- **Grant Assurance 25 - Airport Revenues.** Under Grant Assurance 25, an airport sponsor agrees that all revenues generated by the airport and any local taxes on aviation fuel will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property.

As the FAA has recognized, the rights and powers conveyed by the Current Lease with the Army may be insufficient to enable DOTA to continue operating HDH as a public use facility consistent with its Grant Assurance obligations.⁷⁰ As described in detail below, DOTA has therefore determined that the only option for maintaining compliance is to terminate the Current Lease and cease public operations at HDH.

2.2 Rationale for Termination of Lease

DOTA is unable to secure a long-term lease from the Army and therefore cannot secure necessary funding to maintain safe and efficient operations at HDH.

Under the terms of the Current Lease, DOTA cannot commit to operating HDH for at least twenty years, as would be required for DOTA to be in compliance with the applicable Grant Assurances. In fact, DOTA has not been able to make such a commitment since 2012, when the Army determined that it did not have the authority to enter into a long-term lease for HDH. Therefore, DOTA is currently, and will remain, ineligible for FAA AIP grants for HDH because it appears unlikely that DOTA can satisfy Grant Assurance 4 (Good Title), which requires a sponsor to hold good title to the airport satisfactory to the FAA to ensure that the sponsor will have appropriate control over the facility over the life of the improvements (*i.e.*, for at least twenty years).

⁷⁰ Letter from G. Wong to R. Higashi (March 31, 2020) (**Exhibit 54**).

By way of background, the United States Department of Defense (DOD) has statutory authority to lease non-excess property, but leases may not exceed five years unless the Secretary of the Army determines that a lease for a longer period will promote the national defense or be in the public interest.⁷¹ Despite over a decade of effort, the Army and DOTA have been unable to secure such approval.⁷² Without a long-term lease, DOTA cannot obtain grants (and it would be imprudent for DOTA to expend State capital funds) for necessary improvements and repairs in order to maintain and operate a safe airport.⁷³ Nor can it hope to proactively develop facilities at the Airfield to support aeronautical uses. Without the ability to guarantee that it can operate HDH for the foreseeable future and that it will have sufficient financing to ensure safe and serviceable conditions, DOTA may be unable to satisfy its obligations under Grant Assurance 19.

The limited authority that DOTA has under the Current Lease has far more than just financial consequences. The five-year terminable lease makes it both impossible to secure AIP grants and imprudent to make substantial locally funded capital improvements. These improvements have proved to be increasingly essential at HDH. In particular, DOTA's financial straitjacket has made it practically impossible to address safety challenges at this airport. Highly publicized recent aeronautical incidents at HDH, while not attributed to specific capital deficiencies or blamed on DOTA actions (or inactions), have only reinforced the need for increased focus to improve safety oversight at HDH. Such initiatives are financially and practically infeasible given the short term of the Current Lease. To be clear, DOTA does not assert that HDH is unsafe or suffers from endemic safety defects. Nevertheless, the nature of operations at HDH, with the predominance of ultralight, parachute and glider operations, makes improved safety oversight imperative. DOTA is not able to commit the resources necessary to make such enhancements, even assuming that the Army would approve such actions. DOTA must also consider that many of the permittees' structures at HDH may not meet current building code requirements and should be improved to accord with current building standards.

2.2.1 DOTA will never have sufficient control over HDH.

HDH is a joint-use airport, subject to the rights and powers of the Army. Per the Current Lease, all military flight operations and ground maneuvers will take precedence over civilian aircraft operations.⁷⁴ In addition, all airport improvements (by either DOTA or any permittees) and all contractual commitments regarding use of HDH property (including subleases or revocable permits) must be submitted for prior review and approval by the Army.⁷⁵

Moreover, even if the land conveyance contemplated by the National Defense Authorization Act for Fiscal Year 1991 were consummated, DOTA would still only own a small portion of the active airfield – and would still lack the ability to exercise sufficient rights and powers at HDH. And, as described above, the combined effect of the Current Lease provisions is that the State has no certainty that HDH will continue to be available for public use through 2024 or even tomorrow –

⁷¹ 10 U.S.C. 2667 (b)(1).

⁷² Letter from R. Higashi to H. Purifoy (Sept. 24, 2015) (**Exhibit 34**).

⁷³ Letter from R. Higashi to G. Wong (Dec. 5, 2019) (**Exhibit 48**).

⁷⁴ 2009 Lease at ¶ 32 (**Exhibit 25**).

⁷⁵ Letter from R. Higashi to G. Wong (Dec. 5, 2019) (**Exhibit 48**).

since the Army has the authority to terminate the State’s right to operate HDH for civilian use at any time.

While joint military-civilian use facilities are not unusual and a civilian lease does not contravene Grant Assurance 5 requirements *per se*,⁷⁶ the unique structure of the Current Lease at HDH makes it increasingly unlikely that DOTA can continue to satisfy Grant Assurance 5.

2.2.2 The costs of operating HDH are excessive and drain important resources from DOTA’s other aeronautical facilities.

In FY 2019, HDH operated at a deficit of almost \$1 million – a deficit that is more than double the amount of the total revenue for the year. And, as depicted in **Table 4**, in each year of the last five years, DOTA has seen comparable losses.

Table 4: Revenues and Expenditures (FY 2015 – FY 2019)

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Total Revenues	\$624,485.32	\$391,211.78	\$393,988.24	\$474,929.33	\$457,751.92
Total Expenditures	\$944,343.67	1,178,629.47	\$961,630.97	\$1,519,836.46	1,443,761.91
Net Gain / Loss	(\$319,858.35)	(\$787,417.69)	(\$567,642.73)	(\$1,044,907.13)	(\$986,009.99)

Source: Summary of DOTA Audited Financial Statements (FY 2015 – FY 2019) (**Exhibit 18A**)

DOTA cannot raise airport rates and charges to a level that can reasonably be expected to cover the operating and capital costs of HDH (particularly given the extraordinary costs driven by the obligation to operate the water system and the need to make capital investments to address deferred capital and maintenance needs). In addition, as discussed above, it has not been possible for DOTA to secure AIP grants for HDH since 2012 because of the Army’s inability since then to secure a long-term lease that would allow DOTA to make the required Grant Assurance representations concerning good title. There have been a total of only three AIP grants issued to HDH, and the last time FAA issued a grant was when DOTA was operating under the 1983 Lease, which was the last lease that afforded DOTA more than a five-year term.

Both before and during the pandemic, the financial reality of operating HDH has been exacerbated by the many permittees who are in arrears in their regular financial obligations to DOTA. The operators have consistently and repeatedly had difficulties making regular payments. While user payment delays are not uncommon at many airports, the problem at HDH is that many permittees are individuals or small enterprises that struggle to meet their financial obligations to DOTA. Unlike other airports with a diversity of users and permittees, cash flow deficits at HDH cannot be softened by payments received by other, more viable, users. The effect is that DOTA is placed not only in an annual deficit position but also in a regular cash flow deficiency. Those deficiencies and deficits result in a subsidy by other DOTA aeronautical users at the other 14 DOTA airports.

Finally, the Airlines Committee of Hawaii (ACH) (the organization of signatory airlines at DOTA’s commercial service airports) has been critical of financial outlays committed to HDH and at the expense of other facilities in the DOTA system. ACH reviews and has influence over DOTA’s capital expenditure proposals, which affects capital decision-making related to HDH.⁷⁷

⁷⁶ FAA Order 5190.6B at ¶¶ 3.20 & 8.12.

⁷⁷ FAA Memorandum to the Administrator, Proposed Termination of Dillingham Airfield Lease Agreement with U.S. Army by HDOT (2012) at 3 (**Exhibit 31**).

As a result, DOTA is not able to operate HDH in a self-sufficient manner as required under Grant Assurance 24.

The result of the deficits at HDH and the inability to secure capital grants is that the users of other airports in the State airport system will continue to subsidize users at HDH. Inevitably, the amount of that subsidy will increase over time. It is not in the best interest of the State airport system, of other users of State airports, or of fiscal responsibility, to continue to operate HDH at what amounts to a sizeable (and growing) deficit. On top of that known deficit, unknown and unplanned capital needs will undoubtedly exacerbate the problem. This is consistent with prior FAA precedent, affirming that while the operator of a single airport cannot justify an access restriction based on economic harm to another airport, the operator of a multi-airport system may be able to realign its facilities to improve financial efficiency without violating grant assurances.⁷⁸

2.2.3 DOTA's obligation to operate the public water system creates a potential diversion of airport revenue that can only be resolved by terminating the Lease.

DOTA and FAA agree that the Current Lease with the Army, under which DOTA is obligated to operate the Dillingham Water System is, at best, “unconventional.”⁷⁹ Both parties also agree that this obligation creates an impermissible diversion of revenue. As FAA Airports District Office (ADO) Manager Gordon Wong concluded: “the maintenance and operation of a water well and associated distribution system for off-airport users is not an appropriate use of airport revenue, and any such costs and liabilities *cannot be borne by airport users*.”⁸⁰

DOTA operates the State airports as a single system for management and financial purposes. As such, *all* of DOTA's airport revenue is subject to the FAA regulations and federal law concerning permissible use of airport revenue.⁸¹ Thus, DOTA has *no* permissible resources that it could use to fund the cost of operating the Dillingham Water System. That places DOTA in the untenable position of either violating the terms of the Current Lease with the Army or violating federal requirements on airport revenue use. DOTA's efforts to renegotiate the terms of the Current Lease concerning operation of the water system have been unsuccessful. Thus, the only practical solution to the predicament in which DOTA could face potential legal liability from either the FAA or the Army is for DOTA to exercise its contractual option to terminate the problematic Current Lease.

DOTA has determined that, for the last six years, it has spent an average of \$123,000 per year on the maintenance and operation of the Dillingham Water System.⁸² As indicated in the DOTA letter to FAA dated February 7, 2020, DOTA has concluded, and self-reported to the FAA, that

⁷⁸ *Centennial Express Airlines v. Arapahoe Cnty. Pub. Airport Auth.*; *Kehmeier v. Arapahoe Cnty. Pub. Airport Auth.*; *Centennial Express Airlines v. Arapahoe Cnty. Pub. Airport Auth.*, FAA Docket Nos. 16-98-05; 13-94-25; 13-95-03, Director's Determination (Aug. 21, 1998) at p. 25 (Potential economic harm to another airport would never justify an access restriction under the grant assurance that requires the airport to be accessible to all categories of aeronautical users on reasonable terms, except, possibly, in the limited circumstances of a single operator of a multiple airport system.)

⁷⁹ Letter from G. Wong to R. Higashi (Mar. 31, 2020) (**Exhibit 54**); Letter from G. Wong to R. Higashi (Jan. 24, 2020) (**Exhibit 50**); Letter from R. Higashi to G. Wong (Dec. 5, 2019) (**Exhibit 48**).

⁸⁰ Letter from G. Wong to R. Higashi (Jan. 24, 2020) (emphasis added) (**Exhibit 50**).

⁸¹ *E.g.*, FAA Office of Airports Compliance and Management Analysis, *Revenue Use Compliance Review: State of Hawaii Department of Transportation Airports Division, for the Six Year Period of July 1, 2007 to June 30, 2013* (2019) (**Exhibit 17**).

⁸² Summary of Expenses to Vendor (Doonwood Engineering) for Maintenance of Dillingham Public Water System (2014 – 2020) (**Exhibit 18B**).

these past expenditures may constitute a diversion of airport funds.⁸³ DOTA is still analyzing expenses to ascertain the exact amount of such expenses that are not properly attributable to operation of HDH. Upon completion of that analysis, and as part of the termination of sponsorship of HDH, DOTA commits to invest the amount of any diversion for the last six years' expenditures on the water system using non-airport funds that will be deposited into the DOTA operating accounts.

In light of the DOTA conclusions concerning expenditures for the water system, waiting until the Current Lease expires under its own terms will prolong DOTA's potential legal exposure and increase its losses in maintaining and operating the Airfield.

2.3 Benefits to Civil Aviation

The termination of the Current Lease (and the resulting closure of HDH to public use) will provide demonstrable benefits to civil aviation. First, the termination of the Current Lease will stop the drain of airport revenue that must be paid from other State airports toward operation and maintenance of the Airfield. The funds currently spent to operate HDH (at a loss) would be freed up for use at the fourteen other DOTA facilities across the State, thus benefiting both a larger number and a broader range of airport users and permittees.⁸⁴ Transferring these funds to facilities where DOTA enjoys the full array of rights and powers over the entire airport provides far greater benefits to civil aviation as a whole. Moreover, the cost of terminating the lease in 2021 instead of 2024 would save the State airport system at least \$3 million in subsidies – and that total does not even include unforeseen maintenance costs that could drive this figure much higher.

Second, termination of the Current Lease will help resolve the thorny and legally complex situation with DOTA's obligation to maintain the Dillingham Water System, an obligation which has little or no benefit to civil aviation, regardless of its legality under federal revenue use requirements. (However, as noted above, for purposes of this Plan, DOTA is assuming that it will need to reinvest the amount of any diversion for the last six years' expenditures on the water system using non-airport funds that will be deposited into the DOTA operating accounts.)

⁸³ Letter from R. Higashi to G. Wong (Feb. 7, 2020) (**Exhibit 51**).

⁸⁴ *E.g.*, FAA Order 5190.6B at ¶ 22.20(b) (Replacement Airport) (recognizing that the availability of a new or better airport is the basis for determining that an old airport is no longer needed and that its useful life has expired).

PART B: CLOSURE PLAN

As noted above, in its March 31, 2020, letter to DOTA, the FAA acknowledged that “the existing, unconventional joint-use agreement [with the Army] may not be sufficient for [DOTA] to continue operating HDH.”⁸⁵ As a result, FAA requested that DOTA prepare a Plan for closure, including: (1) DOTA’s reasoning and justification for requesting FAA to release DOTA from grant obligations and the net benefit to civil aviation from closure of HDH to civilian aircraft; (2) a relocation plan showing how and where DOTA proposes to accommodate all existing civil aviation permittees and users of HDH; and (3) a timeline for implementation, including communication of the plan to civil aviation permittees.⁸⁶

Part A, above, described the relevant background facts and outlined the basis for the State’s decision to seek termination of the Current Lease with the Army. This **Part B** provides the additional required information including: the State’s plan for accommodating the existing civil aviation permittees and users of HDH (detailed in Section 3); DOTA’s formal Written Request for Release and Transfer of Grant Obligations, as required per FAA’s Airport Compliance Manual (detailed in Section 4); a description of DOTA’s additional legal obligations and the practical steps that DOTA must take to effectuate the termination of the Current Lease and its permits with HDH users (detailed in Section 5); and finally, a timeline for implementation of the Plan (provided in Section 6).

3 Plan for Accommodating HDH Users

3.1 Relevant Law / Legal Obligations

3.1.1 Permit Conditions

DOTA has issued a series of revocable permits for users at HDH. None of the permits creates a contractual obligation by DOTA to provide replacement accommodations upon termination of the permit.⁸⁷

3.1.2 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Grant Assurance 35

DOTA has no obligation to provide relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), which prescribes obligations to provide relocation assistance for certain property owners and permittees when real property is acquired for federal and federally assisted projects.⁸⁸ The HDH permittees are not “displaced persons” subject to protections under the Uniform Act because DOTA is not seeking to use federal

⁸⁵ Letter from G. Wong to R. Higashi (March 31, 2020) (**Exhibit 54**).

⁸⁶ Letter from G. Wong to R. Higashi (March 31, 2020) (**Exhibit 54**).

⁸⁷ DOTA Standard Permit Terms and Conditions at ¶ 17 (“The Department is not required to furnish replacement facilities or relocation assistance to the Permittee.”) (**Exhibit 30**). Note that Exhibit 30 contains all active permits at HDH. A review of the first permit provided in this Exhibit (Parking Permit 19-001, issued to Michael Charlston) shows that the “Permit Term and Conditions” are provided as page 2-3 of Mr. Charlston’s permit package.

⁸⁸ 42 U.S.C. §§ 4601 *et seq.*

funds to *acquire* the underlying property.⁸⁹ To the contrary, DOTA is seeking to terminate its Current Lease of the property at issue.

The purpose of Grant Assurance 35, *Relocation and Real Property Acquisition*, is to implement the Uniform Act, but in order to establish a violation of Grant Assurance 35, complainants must demonstrate that the airport sponsor has displaced them *as a result of acquiring real property with federal funds*.⁹⁰ Since no property is being acquired at HDH, neither the Uniform Act nor Grant Assurance 35 is implicated by the termination of the Current Lease.

3.1.3 Grant Assurance 22 – Economic Nondiscrimination

Under Grant Assurance 22, *Economic Nondiscrimination*, airport sponsors must accommodate aeronautical users on a nondiscriminatory basis. Specifically, Grant Assurance 22 requires the owner of any airport developed with federal grant assistance to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. As described below, there are several principles that are relevant to DOTA's proposal to terminate its Current Lease at HDH.

3.1.3.1 A condition is not unjustly discriminatory if it applies to all users.

A sponsor may establish fair, equal, and not unjustly discriminatory conditions to be met by *all* users of the airport.⁹¹ The State of Hawaii meets this obligation in two ways.

First, FAA has expressly found that minimum standards, though not required, are a critical tool in preventing unjust discrimination.⁹² DOTA has published Minimum Standards for Commercial Aeronautical Activities at Public Airports (Minimum Standards) that set forth the terms for operators desiring to provide commercial aeronautical services at any of the State-operated airports.⁹³ The Minimum Standards apply to operators that provide line services, flight instruction and training, general aircraft maintenance, sales and rentals, and specialized flying services.⁹⁴ In addition, the State also has regulations that apply to providers of aircraft ground handling services, baggage pickup and delivery services, commercial photography, greeting services for hire, in-flight catering services, merchandise delivery, porter services, and prearranged ground transportation services.⁹⁵

⁸⁹ *Orange County Soaring Ass'n, Inc.*, FAA Docket No. 16-09-13 at 29 (rejecting claim under Grant Assurance 35 because record contained no evidence that the complainants leased property on the airport or held good title to any property that airport sponsor sought to acquire).

⁹⁰ *Orange County Soaring Ass'n, Inc.*, FAA Docket No. 16-09-13 (Feb. 11, 2011) at 29.

⁹¹ Grant Assurance 22(h).

⁹² FAA AC 150/5190-7, Minimum Standards for Commercial Aeronautical Activities (2006) at ¶ 1.2(d) ("When the airport sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations through the use of reasonable minimum standards, the FAA generally will not find the airport sponsor in violation of the Federal obligations.")

⁹³ DOTA Procedure No. 4.9, *Minimum Standards for Commercial Aeronautical Activities at Public Airports* (1990) (**Exhibit 10**).

⁹⁴ DOTA Procedure No. 4.9, *Minimum Standards for Commercial Aeronautical Activities at Public Airports* (1990) (**Exhibit 10**).

⁹⁵ Hawaii Administrative Rules, Ch. 19-20.1 ("Commercial Services at Public Airports") (**Exhibit 6**); *see also* <https://hidot.hawaii.gov/airports/doing-business/permittees/>. Of note, these rules are not relevant to the inquiry at hand as there are no current providers of such services at HDH.

Second, the State has adopted regulations that set forth the clear terms for *any* person desiring to lease space to park any small aircraft at a DOTA facility. Under these rules, any person desiring a small plane hangar, tie-down space, or any other small aircraft space at a public airport must file a written application with the Airport District Manager (ADM) of the appropriate airport and pay a filing fee for each specific aircraft. Applications are date stamped upon receipt. This stamp establishes an applicant's position on any waiting list. Waiting lists are available for public inspection at each facility. Applications expire after one year of filing date but may be continued for another year without any fees upon written request prior to its expiration. When vacancies for aircraft spaces occur, the ADM notifies the applicant with the earliest filing date. Applicants must provide a written response within 14 days, or the ADM shall contact the next eligible applicant.⁹⁶

Together, the Minimum Standards and State regulations establish fair, equal, and not unjustly discriminatory conditions to ensure that all prospective airport users in the State of Hawaii have equal opportunity to use the State's available aviation facilities. DOTA will be applying and adhering to these requirements throughout the closure process.

3.1.3.2 Sponsors must make suitable space available to aeronautical users.

The second prong of Grant Assurance 22 is the obligation to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public (*e.g.*, air carrier, air taxi, charter, flight training, or crop dusting services) or support services to aircraft operators (*e.g.*, fuel, storage, tie-down, or flight line maintenance services). This means that the sponsor has a duty to negotiate in good faith for the lease of premises available to conduct aeronautical activities.⁹⁷ However, two things are clear. First, while sponsor must provide *reasonable* accommodations to a prospective aeronautical user, there are limits to what accommodations are required under the Grant Assurances and what accommodations FAA can demand under its statutory authority. Thus, if there is available space at a grant-obligated airport, the sponsor must make it available on reasonable and not unjustly discriminatory terms. However, FAA cannot demand a sponsor to acquire *more* land to expand an airport beyond its existing boundaries.⁹⁸ Second, FAA recognizes that operators of airport systems are in a unique position and have some ability to accommodate operations at its other airports if those operations are restricted at one airport in the system.⁹⁹

Consistent with these principles, upon receipt of a request from a prospective aeronautical user, DOTA first identifies whether suitable space is available at the requested facility. If the request is for a parking space and no space is available at that time, DOTA will place the prospective permittee on the relevant waiting list, consistent with the State regulations. If the request is for space to provide aeronautical services, DOTA will process the request consistent with the Minimum Standards. If the relevant airport has no available space, DOTA has no obligation to

⁹⁶ Hawaii Administrative Rules, Ch. 19-17.1-3 (**Exhibit 5**).

⁹⁷ FAA Order 5190.6B, *FAA Airport Compliance Manual* (2009) at ¶ 9-7.

⁹⁸ FAA Opinion Letter from Fuller, Daphne A., Assistant Chief Counsel to Wicks, Glenn P., Almond, Roncevert D., The Wicks Group PLLC (August 22, 2009) at 13 (“notwithstanding [the agency’s] extensive role in public airport development, the [Airport and Airway Improvement Act of 1982] *does not direct the federal government to decide where to build airports, or whether and where an existing airport should acquire additional property onto which it can expand*”) (emphasis added); *see also*, *Hoagland v. Town of Clark Lake*, 415 F.3d 693 (7th Cir. 2005), and *Gustafson v. City of Lake Angelus*, 76 F.3d 778 (6th Cir. 1996).

⁹⁹ FAA Order 5190.6B at ¶ 14.4(b).

acquire additional property in order to accommodate the request.¹⁰⁰ However, DOTA may reasonably offer to accommodate the prospective user at another facility in the State system.¹⁰¹

3.1.3.3 It is possible to limit or regulate certain types of aeronautical uses without running afoul of Grant Assurance 22.

As already noted, DOTA operates a system of airports across the State. Not all of DOTA's facilities serve all aeronautical users. DOTA's suite of facilities includes major commercial airports such as Daniel K. Inouye International Airport (HNL), joint civil-military use facilities such as Kalaeloa Airport (JRF) and also much smaller sport/general aviation airports that serve unique aviation users such as Hana Airport (HNM) on the Island of Maui, which supports general aviation traffic including sailplane and skydiving operations. It is self-evident that not all aviation uses can (or should) be accommodated at each airport. Indeed, FAA has made clear that a sponsor with a multiple airport system may designate different roles for the airports within its system.¹⁰²

While Grant Assurance 22 is not strictly applicable to the closure of a facility when, as here, the sponsor already maintains other facilities that can accommodate all activity at the to-be-closed airport, it is important that, to the extent that the termination of the sponsorship of HDH is considered to be a restriction on aeronautical activities, the closure to public use will comply with applicable Grant Assurance obligations.

It is well-established that a sponsor may limit any given type, kind, or class of aeronautical use of an airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.¹⁰³ This circumstance typically presents when there is a conflict between fixed-wing operations and another class of operator that results in a loss of airport capacity for fixed-wing aircraft.¹⁰⁴ For example, FAA has approved airport rules that prohibit, limit, or regulate aeronautical operations including: (1) limiting skydiving, soaring, and banner towing operations to certain times of the day and week to avoid the times of highest operation by fixed-wing aircraft; (2) banning skydiving, soaring, ultralights, or banner towing when the volume of fixed-wing traffic at the airport would not allow those activities without significant delays in fixed-wing operations; and (3) limiting skydiving, soaring, and ultralight operations to certain areas of the airfield and certain traffic patterns to avoid conflict with fixed-wing patterns.¹⁰⁵ To the contrary, FAA has disallowed a total ban on skydiving, when skydiving could be accommodated safely at certain times of the week with no significant effect on fixed-wing traffic.¹⁰⁶

As a result, DOTA may make reasonable determinations about where it can reasonably and safely accommodate unique users such as sailplane and skydiving operators. To be clear, any restriction

¹⁰⁰ FAA Opinion Letter from Fuller, Daphne A., Assistant Chief Counsel to Wicks, Glenn P. Almond, Roncevert D., The Wicks Group PLLC (August 22, 2009) at 13.

¹⁰¹ FAA Order 5190.6B at ¶ 14.4(b).

¹⁰² FAA Order 5190.6B at ¶ 13.6.

¹⁰³ Grant Assurance 22(i).

¹⁰⁴ FAA Order 5190.6B at ¶ 14.3

¹⁰⁵ *E.g., Isaac W. Jones, Jr., and Alabama Hang Gliding Ass'n v. Lawrence County Commission, Alabama*, Director's Determination, FAA Docket No. 16-11-07 (Sept. 19, 2013) at 18 (finding no violation where airport proposed to accommodate ultralight operations at a location different from the Complainant's preference, but consistent with the type of location the FAA recommends (*i.e.*, away from active runways)."

¹⁰⁶ FAA Order 5190.6B at ¶ 14.4(d).

based upon safety and efficiency must be adequately justified and supported and it is FAA – not DOTA – that will be the final arbiter regarding aviation safety.¹⁰⁷ To that end, if DOTA receives a request to accommodate a sailplane or skydiving operation at another DOTA facility where such activities do not yet occur, it will comply with its federal obligations by first undertaking an assessment – in coordination with FAA – to determine whether such activity can be safely accommodated at that facility. The assessment will take into account whether the operations can be accommodated without restriction, must be banned, or can be regulated or restricted in ways to accommodate the activity while maintaining appropriate safety and efficiency of the facility.¹⁰⁸ In making these assessment, DOTA will consult all appropriate guidance and consider all relevant factors, including, but not limited to, federal regulations and guidance regarding skydiving operations¹⁰⁹ and State regulations regarding glider operations.¹¹⁰

Ultimately, all aeronautical activity at HDH can safely be accommodated at one or more other DOTA airports within the State of Hawaii. In addition, as explained in more detail below, all based users who currently have permits, can likewise be accommodated at another DOTA airport. Therefore, the net effect of the closure of HDH will not be to impose any restriction on aeronautical activity within the State airport system.

3.2 Proposed Plan for HDH Permittees and Users

Upon termination of the Current Lease at HDH, DOTA will not be able to accommodate *any* users at HDH and DOTA will be able to accommodate *all* users at other DOTA airports. As a result, there will be no unjust discrimination issues with respect to any particular user because all users will be treated identically, *i.e.*, no users will be accommodated at HDH. However, DOTA remains obligated under Grant Assurance 22 to make its remaining facilities available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. All HDH users can be accommodated within the DOTA system. With respect to the subgroup of users who are permittees, DOTA meets its obligation through the first-come-first-served system provided under the State law for Parking Permits and through application of its Minimum Standards and other regulations governing commercial services at public airports.

Of note, DOTA has considered the option of allowing former HDH permittees to have priority status for available spaces at other DOTA facilities. However, DOTA rejected that approach on the grounds that it might provide the basis for a claim for discrimination under Grant Assurance 23 (Exclusive Rights). Instead, DOTA concludes that the most equitable option is early notice and continued communication to afford current HDH permittees sufficient time to apply for and secure alternate accommodations in the system. In fact, DOTA has already provided in excess of sixteen

¹⁰⁷ FAA Order 5190.6B at ¶ 14.3

¹⁰⁸ FAA Order 5190.6B at ¶ 14.7 (“A complete prohibition on all aeronautical operations of one type, such as ultralights, gliders, parachute jumping, balloon and airship operations, acrobatic flying, or banner towing “should be approved only if the FAA concludes that such operations cannot be mixed with other traffic without an unacceptable impact on safety or the efficiency and utility of the airport.”)

¹⁰⁹ 14 C.F.R. Part 105; FAA Advisory Circular 1054-2E, *Sport Parachuting* (2013); FAA, *Development of Criteria for Parachute Landing Areas on Airports* (2015) available at: <https://www.airporttech.tc.faa.gov/Products/Airport-Safety-Papers-Publications/Airport-Safety-Detail/ArtMID/3682/ArticleID/59/Development-of-Criteria-for-Parachute-Landing-Areas-on-Airports>.

¹¹⁰ Hawaii Administrative Rules, § 19-13-8 (motorless aircraft such as gliders and sailplanes may not land or takeoff at a public airport without first obtaining permission from the director) (**Exhibit 4**).

months’ notice to all HDH permittees, giving them ample opportunity to relocate their aircraft or operations to another DOTA airport. DOTA provided initial advance notice of its intent to terminate to all permittees on February 10, 2020.¹¹¹ On April 8, 2020, DOTA provided subsequent notice to all permittees, advising that DOTA’s goal was to terminate the Current Lease by June 30, 2021.¹¹² And, on September 8, 2020, DOTA sent a third reminder to permittees. The September 8, 2020, letters provided information regarding relocation options within the State airport system, as well as the name and contact information for DOTA staff who could answer questions regarding the planned lease termination.¹¹³ As a result, HDH permittees will have had almost 17 months of notice that their month-to-month leases will terminate by June 30, 2021. Indeed, its April letters, DOTA expressly recommended that permittees “use this additional time to make alternative arrangements.”¹¹⁴ And DOTA is pleased to report that permittees are taking advantage of this advance notice: the leases for six parcels have been terminated since September 2020.

To be clear, notwithstanding the absence of a contractual obligation or State regulatory mandate, DOTA intends to work closely with all permittees to accommodate their operations at another DOTA airport if desired under State rules. DOTA will be far exceeding its legal or contractual obligations in this respect to help make the transition for HDH users as convenient and painless as practical.

Based on these general principles, DOTA proposes the following plan for each category of HDH permittee and user upon termination of civilian operations at HDH:¹¹⁵

3.2.1 Aircraft Maintenance Operations

There are two active permits for aircraft maintenance areas. North Shore Aviation Services Corp. occupies a 3,750.01 square-foot hangar for maintenance¹¹⁶ and Honolulu Soaring Club, Inc. occupies a 6,875 square-foot parcel which it uses for maintenance purposes.¹¹⁷

Under State rules governing availability of space at DOTA airports, North Shore Aviation Services Corp. and Honolulu Soaring Club may apply to operate at any other of DOTA’s facilities to provide comparable services, in a manner consistent with the DOTA Minimum Standards. For example, both Kalaeloa Airport (JRF) and Daniel K. Inouye International Airport (HNL) have limited hangar/building space that can be used for these purposes. DOTA will work with these users to negotiate new space to accommodate their businesses at these or another appropriate DOTA facility.

3.2.2 Aircraft Tie-downs

DOTA has issued 21 tie-down permits at HDH to various users. As depicted in **Table 5**, many of DOTA’s facilities – including Kalaeloa Airport (JRF) and Daniel K. Inouye International Airport (HNL) on the Island of Oahu – provide tie-down spaces for public use. Former HDH permittees

¹¹¹ *E.g.*, Letters from J. Butay to Permittees (Feb. 10, 2020) (**Exhibit 52**).

¹¹² *E.g.*, Letters from J. Butay to Permittees (April 8, 2020) (**Exhibit 58**).

¹¹³ *E.g.*, Letters from J. Butay to Permittees (September 8, 2020) (**Exhibit 60**).

¹¹⁴ *E.g.*, Letters from J. Butay to Permittees (April 8, 2020) (**Exhibit 58**).

¹¹⁵ Since all users can be accommodated at one of the DOTA airports, we limit the discussion here to permittees and business enterprises and the State’s manner of accommodating their enterprises or facilities.

¹¹⁶ HDH Permit RP-6592 (**Exhibit 30**).

¹¹⁷ HDH PP-84-0592 (**Exhibit 30**).

can apply under the State rules to secure tie-downs in any of these facilities. DOTA has informed tie-down permittees of their options for suitable relocation space at other DOTA airports¹¹⁸ and will continue to work with the users to accommodate their needs.

Table 5: Available Tie-Down Spaces at Other DOTA Facilities (as of December 2020)

DOTA Facility	Number of Tie-Down Spaces	Number of Vacancies	Number on Waiting List
Daniel K. Inouye International Airport (HNL)	115	52	0
Hana Airport (HNM)	6	2	0
Hilo International Airport (ITO)	36	24	0
Kapalua Airport (JHM)	None	N/A	N/A
Kalaheo Airport (JRF)	53	24	0
Ellison Onizuka Kona International Airport at Keahole (KOA)	43	15	0
Lanai Airport (LNY)	11	10	0
Lanai Airport (LNY)	11	10	0
Kalaupapa Airport (LUP)	None	N/A	N/A
Molokai Airport (MKK)	9	9	0
Waimea-Kohala Airport (MUE)	12	4	0
Kahului Airport (OGG)	42	0	3
Port Allen Airport (PAK)	6	1	0
Upolu Airport (UPP)	2	0	1

Source: DOTA (2020)

3.2.3 Airport Communications Equipment

DOTA has issued a permit to the Harris Corporation to use four separate areas (totaling 131 square feet) in the HDH Air Traffic Control Tower in order to provide ADS-B Radio Equipment to support the tower operations.¹¹⁹ These functions are necessarily tied to operation of HDH itself so relocation of this permittee is neither necessary nor appropriate. Moreover, the Harris Corporation has informed DOTA that it desires to continue providing this support at HDH and has been in contact with the Army to negotiate new permits from the Army upon expiration of the Current Lease.

3.2.4 Building Storage Space

DOTA has issued a permit to Donald Rohrbach (D/B/A SGR Soaring Enterprises) to use 1,656.08 square feet of space in Building 800 for “storage of containers.”¹²⁰ This is a nonaeronautical use; as a result, DOTA has no obligation to provide a reasonable accommodation. DOTA will nevertheless work with this permittee, if he so requests and applies under State rules, to determine if suitable space is available for this non-aeronautical use at another DOTA airport.

3.2.5 Fuel Operations

DOT has issued permits to three permittees for the use of five parcels for fueling operations: Honolulu Soaring Club Inc. has one permit authorizing its use of two parcels, totaling 940 square

¹¹⁸ Letters from J. Butay to HDH Permittees (Sept. 8, 2020) (Exhibit 60).

¹¹⁹ HDH Permit RP-8828 (Exhibit 30).

¹²⁰ HDH Permit RP-6968 (Exhibit 30).

feet, for fueling operations.¹²¹ North Shore Aviation Services Corp holds one permit for fueling operations on 6,369.96 square feet of space.¹²² Sky-Med. Inc. holds two permits which it uses for storing Jet A fuel for self-fueling only¹²³ and parking a mobile fuel truck,¹²⁴ respectively.

All three operators can apply to provide fuel operations at any of DOTA's other facilities in a manner consistent with DOTA's Minimum Standards (which dictate minimum requirements for fueling services). DOTA will work with these three entities, if they so desire, to identify suitable relocation space at another DOTA airport.

3.2.6 Land for Bus/Trailer

DOTA issued a permit in 2010 to the North Shore Aircraft Leasing Company, LLC for 1,440 square feet of land for the “[p]lacement of a bus and trailer to be used as an office (sales and services) for the Boy Scouts of America, Post 2013 Aviation Explorers.”¹²⁵ The space appears to be currently used as a sales office for North Shore Aircraft Leasing Company. This is a nonaeronautical use; as a result, DOTA has no obligation to provide a reasonable accommodation. Nevertheless, DOTA is committed to working with North Shore Aircraft Leasing Company, LLC, if it so desires and applies under State rules, to find a suitable relocation space at another DOTA airport.

3.2.7 Land for Skydiving Facilities

DOTA has issued permits to two skydiving operators for a total of eight parcels at HDH.¹²⁶ Skydive Academy of Hawaii, Corp. currently leases a total of 23,575.14 square feet over three separate airport parcels to support its skydiving operation.¹²⁷ Sky-Med Inc. (D/B/A Pacific International Skydiving Center) leases a total of 89,246.7 square feet over several different airport parcels to support its operations.¹²⁸ All eight of these permits provide unimproved, unpaved land for “skydiving activities.” All of the relevant parcels, however, are physically separated from the active airfield by an access road and therefore do not fit the accepted definition of *aeronautical* parcels.¹²⁹ See **Figure 4**. While DOTA has an obligation to provide reasonable accommodations for the *aeronautical* activities for these users, the land-use permits do not appear to cover aeronautical activities. Nevertheless, since these permits support aeronautical functions of the skydiving enterprises, DOTA is committed to working with the two skydiving companies to find suitable replacement property to support their aeronautical functions, if these permittees so desire and they apply under State rules.

¹²¹ HDH Permit RP-5651 (**Exhibit 30**).

¹²² HDH Permit RP 6592 (**Exhibit 30**).

¹²³ HDH Permit RP-7065 (**Exhibit 30**).

¹²⁴ HDH Permit RP 8178 (**Exhibit 30**).

¹²⁵ HDH Permit 6926 (**Exhibit 30**).

¹²⁶ Note that both skydiving operators also hold separate leases for T-hangars and tie-downs. As discussed separately, DOTA is obligated to provide accommodations for those T-hangar and tie-down permits.

¹²⁷ HDH Permit RP 8441 (**Exhibit 30**).

¹²⁸ HDH Permit RP-8234 (**Exhibit 30**).

¹²⁹ Aeronautical activity is “[a]ny activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations.” FAA, AC 150/5190-6, *Exclusive Rights at Federally Obligated Airports* (2007) at Appendix 1 (Definitions).

Figure 4: Aerial View of Lands Permitted For Skydiving Facilities at HDH



Source: HDH Permit RP 8441 (Exhibit 30); HDH Permit RP-8234 (Exhibit 30)

Note: Since September 2020, Sky-Med has terminated its use of several of the parcels authorized under HDH Permit RP-8234, including Land Space 001-01 09, Land Space 800 01 04C, Land Space 820-01-08; and Land Space 820 01 10E.

3.2.8 Skydiving Operations

While DOTA has no regulatory or contractual obligation to provide *facilities* for nonaeronautical use by skydiving operators, skydiving *operations* themselves are a recognized aeronautical activity and, if requested, DOTA must provide reasonable accommodations for these activities unless the FAA determines that such operations are incompatible with operations at a particular airport.¹³⁰

Federal regulations require approval from airport management prior to skydiving onto any airport.¹³¹ DOTA currently accommodates skydiving at Hana Airport (HNM) and Port Allen Airport (PAK). DOTA may also be able to accommodate skydiving at Upolu Airport (UPP) or Waimea-Kohala Airport (MUE), subject to approvals. If any prospective operator – including current permittees at HDH – desires to initiate skydiving operations at one of these substitute airports, that operator must first file an application as directed by the Minimum Standards. If DOTA receives an application for new skydiving operations at a DOTA facility that does not already support such operations, it will first coordinate with FAA to conduct a study that will analyze appropriate factors including:

- (1) Will this activity present or create a safety hazard to the normal operations of aircraft arriving or departing from the airport?
- (2) Can skydiving operations be safely accommodated at the airport?
- (3) Can a drop zone be safely established within the boundaries of the airport?
- (4) What reasonable time periods can be designated for jumping in a manner consistent with Part 105?
- (5) What is a reasonable fee that the jumpers and/or their organizations can pay for the privilege of using airport property?

¹³⁰ FAA Advisory Circular 1054-2E, *Sport Parachuting* (2013) at ¶ 4(a).

¹³¹ 14 C.F.R. § 105.23.

- (6) Has the relevant air traffic control facility been advised of the proposed parachute operation?
- (7) Does the air traffic control facility have concerns about the efficiency and utility of the airport and its related instrument procedures?¹³²

Upon FAA concurrence that relocated operations can be safely accommodated at a DOTA-facility, DOTA will adopt appropriate operating procedures, and take steps to ensure that these procedures are kept current, for example, by scheduling regularly meetings with all airport user groups.¹³³ DOTA is committed to working with the two skydiving operators to facilitate their relocation to an appropriate airport within the State airport system.

3.2.9 Sailplane Hangars

DOTA has issued seven permits at HDH for sailplane hangars. Only two other DOTA facilities currently accommodate sailplane operations: Hana Airport (HNM) and Port Allen Airport (PAK). In addition, while it does not currently have such operations, the Molokai Airport (MKK) may also be able to accommodate sailplanes, subject to appropriate safety reviews. While no hangars currently exist at HNM, PAK or MKK, each of these facilities currently has vacant tie-down spaces that could accommodate the displaced HDH users. (As depicted in **Table 5** above, HNM has 2 currently vacant tie-downs; PAK has 1 currently vacant tie-down; and MKK has 9 currently vacant tie-downs.)

State regulations provide that motorless aircraft such as sailplanes may not land or take off at a public airport without first obtaining permission from the director.¹³⁴ When considering requests from prospective permittees – including existing HDH permittees – to accommodate sailplane operations at DOTA facilities that do not already accommodate such operations, DOTA will use a procedure similar to that for relocating skydiving operations. DOTA will first coordinate with FAA to conduct a study to determine whether sailplane operations can be safely conducted at that facility. If FAA concurs that sailplane operations can occur safely, DOTA will implement appropriate terms including, for example: requiring that tow and sailplane aircraft make and monitor traffic calls on the appropriate frequency; requiring that winch launches are provided an appropriate window clear of any other runway traffic; and requiring that sectional and visual flight rule terminal area charts are updated to depict sailplane operations.¹³⁵ As with skydiving operators, DOTA is committed to working with sailplane operators to find a suitable DOTA airport to accommodate their operations and to negotiate an appropriate permit or lease for their continued operations.

3.2.10 T-hangars

DOTA has issued thirteen T-hangar permits at HDH to various users. As depicted in **Table 6**, many of DOTA's facilities, including Kalaeloa Airport (JRF) and Daniel K. Inouye International Airport (HNL) on the Island of Oahu, have T-hangars currently available for public use. Former

¹³² FAA Advisory Circular 5190-7, *Minimum Standards for Commercial Aeronautical Activities* (2006) at ¶ 2.1(f) (identifying these and additional questions as reasonable inquiries when considering the safety of skydiving operations).

¹³³ FAA Advisory Circular 1054-2E, *Sport Parachuting* (2013) at ¶ 6.

¹³⁴ Hawaii Administrative Rules, § 19-13-8 (**Exhibit 4**).

¹³⁵ *E.g., Orange County Soaring Ass'n, Inc. v. County of Riverside, CA*, Director's Determination, FAA Docket No. 16-09-13 (Feb. 11, 2011) at 23-24.

HDH permittees can apply under the State rules to secure T-hangars in any of these facilities. DOTA will work with existing HDH T-hangar users to identify an appropriate relocation airport within the DOTA airport system.

Table 6: Available T-hangar Spaces at Other DOTA Facilities (as of December 2020)

DOTA Facility	Number of T-hangars	Number of Vacancies	Number on Waiting List
Daniel K. Inouye International Airport (HNL)	81	23	0
Hana Airport (HNM)	None	N/A	N/A
Hilo International Airport (ITO)	16	3 (Under Repair)	7
Kapalua Airport (JHM)	None	N/A	N/A
Kalaeloa Airport (JRF)	10(Old)	3	0
Kalaeloa Airport (JRF)	18(New)	3	0
Ellison Onizuka Kona International Airport at Keahole (KOA)	N/A	N/A	*T-hangars are being relocated, occupancy expected in 2021.
Lihue Airport (LIH)	14	2	0
Lanai Airport (LNY)	None	N/A	N/A
Kalaupapa Airport (LUP)	None	N/A	N/A
Molokai Airport (MKK)	None	N/A	N/A
Waimea-Kohala Airport (MUE)	None	N/A	N/A
Kahului Airport (OGG)	30	0	12
Port Allen Airport (PAK)	None	N/A	N/A
Upolu Airport (UPP)	None	N/A	N/A

Source: DOTA (2020)

3.2.11 Ticket Counters

DOTA has issued two permits for ticket counter space for glider operations: Honolulu Soaring Club holds a permit for 85.78 square feet of space;¹³⁶ and Donald Rohrbach (D/B/A SGR Soaring Enterprises) holds a permit for 85.77 square feet of space.¹³⁷ Per FAA policy, aviation-related uses that do not need to be located on an airport are considered nonaeronautical uses and are not subject to the requirements regarding terms of airport access.¹³⁸ Therefore DOTA has no legal obligation to provide reasonable accommodations for ticket counter space for glider operators. Nevertheless, DOTA is committed to working with these users to find suitable support space, upon application under State rules, including ticket counters, at the DOTA airport to which they relocate their operations.

¹³⁶ HDH Permit RP-4281 (**Exhibit 30**).

¹³⁷ HDH Permit RP-6956 (**Exhibit 30**).

¹³⁸ FAA, Order 5190.6B, *FAA Airport Compliance Manual* (2009) at 18.3(c). The Compliance Manual states: “Aviation-related uses that do not need to be located on an airport, such as flight kitchens and airline reservation centers, are considered nonaeronautical uses. Nonaeronautical uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops.” *Id.*

3.3 Summary Table

Table 7: Proposed Accommodations for Existing Permittees

Current HDH Permittees						Relocation Option(s)
Bldg.	Flr.	Space	Space Type	Square Footage	Contract No.	
1. Michael Charlston						
404	01	15	TIE-DOWN	1349.99	PP-19-0010	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
2. Civil Air Patrol						
403	01	04	SAILPLANE HANGAR	1878	RP-7083	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.
405	01	11	TIE-DOWN	1890	PP-88-0813	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
405	01	10	TIE-DOWN	1890	PP-85-0666	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
3. Richard B. & Tamy D. DeLeon						
405	01	06	TIE-DOWN	1890	PP-10-0008	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
4. Foss Air Inc.						
401	01	06	T-HANGAR	1202.42	RP-5137	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
5. Ana Z. Gromacki & Steven D. Lowry						
403	01	13	SAILPLANE HANGAR	1878.26	RP-6365	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.
6. Hale O’Lele Corporation						
404	01	01	TIE-DOWN	1350	PP-05-0009	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP

Current HDH Permittees						Relocation Option(s)
Bldg.	Flr.	Space	Space Type	Square Footage	Contract No.	
404	01	02	TIE-DOWN	1350	PP-05-0009	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
7. Harris Corp. D/B/A Harris Communication Systems						
301	01	04	ADSB-Radio Equipment to support Tower	40.5	RP-8828	N/A Permittee desires to stay at HDH and seek contract with Army
301	01	05		80	RP-8828	
301	01	06		6.25	RP-8828	
301	03	02		4	RP-8828	
8. Hawaii Glider and Sailplane Academy, LLC						
403	01	09	SAILPLANE HANGAR	1880.75	RP-8656	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.
405	01	07	TIE-DOWN	1890	PP-17-0013	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
9. Hawaiian Historical Aviation						
402	01	10	T-HANGAR	1201.11	RP-5468	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
10. Mark S. Hewitt						
402	01	09	T-HANGAR	1107.12	RP-8722	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
11. Honolulu Soaring Club Inc.						
403	01	01	SAILPLANE HANGAR	1862.15	RP-3815	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.
403	01	02	SAILPLANE HANGAR	1879.5	RP-4590	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.

404	01	07	TIE-DOWN	1350	PP-07-0006	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
630	01	03	LAND-IP (Aircraft Maintenance)	6875.65	PP-84-O592	DOTA to assist permittee in identifying available land at same airport facility as hangers/tie-downs
201	01	01	GLIDER BOOTH (Ticket Counter)	85.78	RP-4821	DOTA to assist permittee in identifying available land at same airport facility as hangers/tie-downs
405	01	02	TIE-DOWN	1890	PP-86-O730	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
405	01	03	TIE-DOWN	1890	PP-85-O678	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
405	01	04	TIE-DOWN	1890	PP-84-O609	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
405	01	05	TIE-DOWN	1890	PP-84-O609	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
406	01	01	LAND-IU (Fueling Operation)	100	RP-5651	DOTA to assist permittee in identifying available land at same airport facility as hangers/tie-downs
406	01	02	LAND-IU (Fueling Operation)	840	RP-5651	DOTA to assist permittee in identifying available land at same airport facility as hangers/tie-downs
404	01	13	TIE-DOWN	1349.99	PP-92-1035	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
404	01	14	TIE-DOWN	1349.99	PP-92-1035	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
12. Nam Ko						
405	01	08	TIE-DOWN	1890	PP-14-0018	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
13. Howard F. McPheeters						
403	01	05	SAILPLANE HANGAR	1879.5	RP-5183	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.

14. North Shore Aircraft Leasing Company, LLC						
405	01	09	TIE-DOWN	1890	PP-06-0004	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
800	01	04B	LAND-IU (Trailer for Sales Office)	1440	RP-6926	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as tie-down.
15. North Shore Aviation Services Corp.						
91A	01	02	HANGAR (Aircraft Maintenance)	3750.01	RP-6592	DOTA to assist permittee in identifying options for maintenance hangars at other DOTA facilities.
001	01	02B	LAND-IU (Fueling Operation)	6369.68	RP-6592	DOTA to assist permittee in identifying options for fueling operations at other DOTA facilities.
16. Randy Pacheco and Reno Soverns						
402	01	02	T-HANGAR	1107.13	RP-8802	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
17. Paradise Air Hawaii, Inc.						
402	01	03	T-HANGAR	1107.16	RP-8432	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
402	01	05	T-HANGAR	1202.47	RP-8432	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
18. Pofolk Aviation Hawaii Inc.						
404	01	12	TIE-DOWN	1350	PP-05-0010	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
19. Donald Rohrbach D/B/A SGR Soaring Enterprises						
201	01	03	GLIDER BOOTH (Ticket Counter)	85.77	RP-6956	DOTA to assist permittee in identifying availability land for nonaeronautical purposes at same airport facility as sailplane hangar.
800	01	07C	LAND-UU (Container Storage)	1656.08	RP-6968	DOTA to assist permittee in identifying available alternative
20. Raja Segaran						
404	01	17	TIE-DOWN	1350	PP-18-0022	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP

21. Silent Flying, Inc.						
403	01	10	SAILPLANE HANGAR	1878.26	RP-5506	Sailplane activity currently occurs at HNM and PAK and may also be able to be accommodated at MKK. While no hangars are provided at those facilities, tie down spaces are currently available at all of these facilities.
22. Anthony P. Skinner						
401	01	10	T-HANGAR	1201.11	RP-6934	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
23. Skydive Academy of Hawaii, Corp.						
001	01	03	LAND-IU (Skydiving Activities)	15835.66	RP-8441	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)
401	01	01	T-HANGAR	1129.59	RP-8437	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
401	01	02	T-HANGAR	1107.13	RP-8437	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
401	01	03	T-HANGAR	1107.16	RP-8437	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
402	01	01	T-HANGAR	1129.59	RP-8437	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
820	01	07C	LAND-IU (Skydiving Activities)	2100.92	RP-8441	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)
820	01	10F	LAND-IU (Skydiving Activities)	5638.56	RP-8441	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)
24. Sky-Med Inc.						
001	01	01	LAND-IU (Skydiving Activities)	8026.94	RP-8234	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)/tie-downs.
001	01	06	LAND-IU (Skydiving Activities)	13,446	RP-8234	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)/tie-downs.

401	01	05	T-HANGAR	1202.47	RP-6039	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
401	01	08	T-HANGAR	1107.12	RP-5595	Vacant T-hangars are currently available at HNL, JRF and LIH and relocated T-hangars will become available at KOA in 2021. Permittee may also apply for waitlist at OGG or ITO.
404	01	04	TIE-DOWN	1350	PP-97-1277	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
404	01	05	TIE-DOWN	1350	PP-97-1277	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
404	01	06	TIE-DOWN	1350	PP-18-0011	Vacant tie-downs are currently available at HNL, JRF, LNY, MKK, HNM, KOA, MUE, ITO, LIH and PAK. Permittee may also apply for waitlist at OGG and UPP
406	01	03	LAND-IP (Fueling Activities)	247.5	RP-7065	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)/tie-downs.
800	01	07F	LAND-IU	425	RP-8178	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)/tie-downs.
820	01	10C	LAND-IU (Skydiving Activities)	23,881	RP-8234	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)/tie-downs.
820	01	10D	LAND-IU (Skydiving Activities)	23,881	RP-8234	DOTA to assist permittee in identifying available land for nonaeronautical purposes at same airport facility as T-hangar(s)/tie-downs.

Source: HDH Permits (**Exhibit 30**)

4 Written Request for Release and Transfer of Grant Assurances at HDH

In compliance with Chapter 22 of FAA Order 5190.6B, *FAA Airport Compliance Manual*, Paragraphs 22.24 through 22.26, and with FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 (Feb. 16, 1999) (Revenue Use Policy), DOTA provides the following information and materials to support its request for approval and release¹³⁹ from all Grant Assurance obligations with respect to HDH.

4.1 ORDER 5190.6B, PARAGRAPH 22.24 - Content of Written Requests for Release

4.1.1 All obligating agreement(s) with the United States.

As described in detail in Section 1.8 of this Plan, HDH is a grant-obligated facility. To reiterate, HDH has received a total of three AIP grants amounting to \$1,326,380, which were awarded in 1988, 2003 and 2005.¹⁴⁰ All three of these grants were awarded at a time when the State had a twenty-five-year lease. The following two grants were issued within the past twenty years. Therefore, DOTA remains obligated under many of the Grant Assurances¹⁴¹ that accompanied these two grants:

- **Grant 3-15-0018-002-2003:** On August 26, 2003, DOTA accepted a grant of \$450,000 for Extension of Taxiway "A" of which \$299,275.00 was spent. The remaining funds were returned to FAA.¹⁴²
- **Grant 3-15-0018-003-2005:** On August 29, 2005, DOTA accepted a grant of \$735,810 for Phase II of the Extension of Taxiway "A" of which \$714,387.00 was spent. The remaining funds were returned to FAA.¹⁴³

4.1.2 Type of release requested

DOTA requests FAA approval of the termination of sponsorship, closure of HDH to public use, and a full release and transfer of all grant obligations at HDH.

The only other agreement with the United States at issue is the Current Lease which will expire on June 30, 2021, pursuant to notice already provided to the Army.

¹³⁹ While this is a request for both FAA approvals and releases, the term "release" is used here because that is the term used in the *Compliance Manual*.

¹⁴⁰ FAA Memorandum to the Administrator, Proposed Termination of Dillingham Airfield Lease Agreement with U.S. Army by HDOT (2012) (**Exhibit 31**).

¹⁴¹ For purposes of this Plan, DOTA has not made an assessment of which Grant Assurances will remain applicable as of the sponsorship termination date of June 30, 2021. Instead, DOTA has assumed that any HDH-specific Grant Assurance obligations will cease to apply upon the termination of DOTA's sponsorship of the Airfield. DOTA has furthermore made the most financially conservative assumption in this Plan that its outstanding obligations represent the undepreciated value of the FAA's grant investment assuming a 20-year straight-line depreciation. This represents the maximum financial obligation to the AIP program as a result of the sponsorship termination. The amount of the undepreciated value of the AIP grants will be invested in facilities at other DOTA airports. Because DOTA is, and will remain, a federally obligated airport sponsor, any Grant Assurances that are not site-specific to HDH will remain in effect for DOTA and its other facilities.

¹⁴² FAA Grant 3-15-0018-092-2003 (Aug. 26, 2003) (**Exhibit 11**).

¹⁴³ FAA Grant 3-15-0018-003-2005 (Aug. 29, 2005) (**Exhibit 12**).

4.1.3 Expected use or disposition of the property or facilities

As also described above, DOTA does not own the real property on which HDH is located or the improvements thereon, so has no control over the site after termination of its lease with the Army. DOTA seeks a release for the purpose of permitting termination of the Current Lease with the Army. While DOTA does not know how the Army will use the property after termination of the lease, DOTA assumes that the termination of the Current Lease will result in the closure of HDH to public use, but that the Army will maintain military operations at the site.

DOTA's lease with the Army requires that DOTA must remove its property and restore the premises to a condition satisfactory to the United States. DOTA is not aware of any plans by the Army to construct any new facilities within the terminated leasehold.

4.1.4 Facts and circumstances that justify the request

As described in detail in Section 2.2 and 2.3 of this Plan, DOTA has identified the following principal reasons for this release request:

4.1.4.1 DOTA will never have sufficient control over HDH to satisfy its Grant Assurance 5 obligations.

DOTA currently operates HDH under a short-term lease with terms that are not only disadvantageous to the State but also do not meet FAA's legal requirements. All airport improvements (by either DOTA or any permittees) and all contractual commitments regarding use of HDH property (including subleases or revocable permits) must be submitted for review and approval by the Army.¹⁴⁴ The Army can (and does) withhold approval, including on projects as important as construction of a secure perimeter fence. Further, HDH is a joint-use airport, and all military flight operations and ground maneuvers will take precedence over civilian aircraft operations.¹⁴⁵ Finally, since the Army has the authority to terminate the State's right to operate HDH for civilian use at any time, the State has no certainty that HDH will continue to be available for public use through 2024 or even tomorrow. To that end, even FAA has recognized that DOTA may not have sufficient rights and powers needed for compliance with Grant Assurance 5.¹⁴⁶

4.1.4.2 DOTA is unable to secure a long-term lease from the Army.

DOTA cannot satisfy Grant Assurance 4 (Good Title) because it cannot secure a sufficiently long-term lease from the Army. While the Army has statutory authority to lease non-excess property, its leases may not exceed five years absent express approval from the Secretary of the Army, which approval is discretionary and must be based on a determination that a lease for a longer period will promote the national defense or be in the public interest. DOTA has been trying unsuccessfully to secure this Secretarial approval for years – but to no avail. As a result, DOTA remains perpetually ineligible for FAA AIP grants to fund airport improvements to ensure that it can maintain and operate a safe airport.¹⁴⁷ Without the ability to guarantee that it can operate HDH at all times in a safe and serviceable condition, DOTA does not have a continuing ability to meet obligations mandated by Grant Assurance 19.

¹⁴⁴ Letter from R. Higashi to G. Wong (Dec. 5, 2019) (Exhibit 48).

¹⁴⁵ 2009 Lease at ¶ 32 (Exhibit 25).

¹⁴⁶ Letter from G. Wong to R. Higashi (Mar. 31, 2020) (Exhibit 54).

¹⁴⁷ Letter from R. Higashi to G. Wong (Dec. 5, 2019) (Exhibit 48).

4.1.4.3 The costs of operating HDH are excessive and drain important resources from DOTA's other aeronautical facilities.

As depicted in **Table 4** above, HDH operates at a significant loss. Most recently, in FY 2019, HDH operated at a deficit of almost \$1 million – *a deficit that is more than double the amount of the total revenue for the year*. As explained above, DOTA cannot secure grants for HDH because of its inability to secure a long-term lease that would allow DOTA to make the required Grant Assurance representations concerning good title. And DOTA cannot raise airport rates and charges to a level that can reasonably be expected to cover the operating and capital costs of HDH.

The result of the deficits at HDH and the inability to secure capital grants is that the users of other airports in the State airport system will continue to subsidize users at HDH, and the amount of that subsidy will increase over time. DOTA has concluded that it is not in the best interest of the State airport system, of other users of State airports, or of fiscal responsibility, to continue to operate HDH at what amounts to a sizeable (and growing) deficit. To the extent that closure of HDH to public use traffic is considered to be an access restriction, DOTA's approach is consistent with prior FAA precedent. FAA has opined that while the operator of a single airport cannot justify an access restriction based on economic harm to another airport, the operator of a multi-airport system may be able to do so without violating grant assurances.¹⁴⁸ All aeronautical functions at HDH can be accommodated at another DOTA airport.

4.1.4.4 DOTA's obligation to operate the public water system creates a potential diversion of airport revenue that can only be resolved by terminating the Lease.

DOTA and FAA agree that the Current Lease with the Army, under which DOTA is obligated to operate the Dillingham Water System is, at best, "unconventional."¹⁴⁹ Both parties also agree that the Current Lease has the potential to result in impermissible revenue diversion. If funding for the Water System is considered to be an impermissible use of airport revenue, DOTA would have *no* permissible resources from which it could use to fund those costs. That would place DOTA in the untenable position of either violating the terms of the Current Lease with the Army or potentially violating federal requirements on airport revenue use. DOTA's efforts to renegotiate the terms of the Current Lease concerning operation of the water system have been unsuccessful. Thus, the only way to end the predicament in which DOTA could face potential legal liability from either the FAA or the Army is for DOTA to exercise its lawful option to terminate the problematic Current Lease. Waiting until the Current Lease expires under its own terms will prolong DOTA's potential legal exposure and increase its losses in maintaining and operating the Airfield.

¹⁴⁸ *Centennial Express Airlines v. Arapahoe Cnty. Pub. Airport Auth.*; *Kehmeier v. Arapahoe Cnty. Pub. Airport Auth.*; *Centennial Express Airlines v. Arapahoe Cnty. Pub. Airport Auth.*, FAA Docket Nos. 16-98-05; 13-94-25; 13-95-03, Director's Determination (Aug. 21, 1998) at p. 25 (Potential economic harm to another airport would never justify an access restriction under the grant assurance that requires the airport to be accessible to all categories of aeronautical users on reasonable terms, except, possibly, in the limited circumstances of a single operator of a multiple airport system.)

¹⁴⁹ Letter from G. Wong to R. Higashi (Mar. 31, 2020) (**Exhibit 54**); Letter from G. Wong to R. Higashi (Jan. 24, 2020) (**Exhibit 50**); Letter from R. Higashi to G. Wong (Dec. 5, 2019) (**Exhibit 48**).

4.1.4.5 Sublease or assignment to a private management company is not a viable alternative.

First and foremost, it is important to understand that DOTA does not have unilateral authority to sublease or assign its lease. The Current Lease expressly prohibits the transfer or assignment without the consent of the Army and failure to comply with this condition provides the Army grounds to immediately terminate the lease.¹⁵⁰

Second, the U.S. Army has informed us that it may only lease the Airfield to a government entity. Therefore, even if the Army authorized a sublease to management company, DOTA would have to remain the lessee of the Airfield and, from the Army's perspective, have to remain the entity responsible for the Airfield. In that regard, a management company would neither eliminate nor would it even reduce the operational complexities and liabilities that DOTA currently faces. While DOTA is liable under its current position as lessee, DOTA at least retains control over Airfield operations, which permits it to manage liabilities. Relinquishing the control to a management company while retaining the liability is unacceptable.

Third, even if the Army authorized a sublease, there are intractable obstacles to the effective and efficient operation of HDH that apply regardless of the managing entity, be it DOTA or a private entity. We reiterate these issues below:

- The costs of operating the Airfield has for years, and will continue to, far exceed the Airfield's revenue. In fiscal year 2019, HDH operated at a deficit of almost \$1 million – *a deficit that is more than double the amount of the total revenue for the year*. To cover even these operating costs, DOTA (or any management entity) would have to triple its revenues. That is patently unachievable – particularly during the COVID pandemic when users and tenants are already struggling financially. On top of the Airfield operating costs, deferred capital needs (which must be funded as current year costs given the short-term lease and the absence of FAA capital grants) loom as another potential cost for which user fees are simply insufficient. The result is that the users of other airports in the State airport system have had to significantly subsidize users at the Airfield – and that subsidy will only increase over time. Those annual losses are one of the principal reasons that DOTA needs to terminate the lease. Hiring a management company would not solve the problem; it would only increase, not decrease the costs of operating the Airfield. If DOTA were to raise fees and charges at the Airfield sufficient to cover both these annual losses plus the cost of a management company, those fees would become prohibitively expensive for users. It is therefore not reasonable to assume that private management would in any manner eliminate, or even reduce the annual operating deficit.
- A related financial burden is the obligation under the U.S. Army lease to operate the Dillingham Water System. Not only does the water system benefit primarily off-airport and nonaeronautical users, but also costs for the system cannot lawfully be recovered from Airfield users, necessitating an outside revenue source that the State has, to date, been unable to secure. This would be yet another burden for a private management company and poses another hurdle that makes private management impractical.

¹⁵⁰ 2009 Lease at ¶ 8 (Exhibit 25).

- The inability to secure more than sequential five-year leases has prevented DOTA from qualifying for FAA grants for capital needs and from expending state capital funds on Airfield capital improvements and repairs with a lifespan of more than several years. Added to this uncertainty is the fact that (as also required by the U.S. Army procedures) the U.S. Army not only has priority for use of the Airfield, but also that it retains the authority to terminate civilian use of HDH *at any time*.
- In addition, each and every improvement (by either DOTA or any permittees) and each and every contract (including subleases or revocable permits) at HDH must be reviewed and approved by the U.S. Army. Importantly, that approval is discretionary. The Army can (and does) withhold approval, including on projects as important as construction of a secure perimeter fence. Without unilateral authority to enter into contracts, permits and subleases necessary for Airfield operations, the State cannot comply with FAA requirements and regulations and cannot operate this Airfield in accord with best industry practices.

In the end, the recurring deficits, the inability to secure capital funding, and the need to operate the water system all conspire to make the Airfield financially unsustainable, even for the most innovative private sector operator. As a result, DOTA has come to the difficult, but inescapable, conclusion that it is neither practical nor legally prudent to continue to lease HDH from the U.S. Army. This holds true no matter who oversees the day-to-day management.

4.1.4.6 Early termination of the Current Lease will have a net benefit to civil aviation.

Early termination of the Current Lease (and the resulting closure of HDH to civilian aeronautical activity) will provide a net benefit to civil aviation. Funds currently spent to operate HDH (at a loss) would be freed up for use at the fourteen other DOTA facilities across the State, thus benefiting both a larger number and a broader range of airport users and permittees.¹⁵¹ Transferring these funds to facilities where DOTA enjoys the full array of rights and powers over the entire airport provides far greater benefits to civil aviation as a whole. Moreover, the cost of terminating the lease in 2021 instead of 2024 would save the State airport system at least \$3 million in subsidies – and that total does not even include unforeseen maintenance costs that could drive this figure much higher. Further, termination of the Current Lease will help resolve the thorny and legally complex situation with DOTA’s obligation to maintain the Dillingham Water System, an obligation which has little or no benefit to civil aviation, regardless of its legality under federal revenue use requirements.

4.1.5 Requirements of state or local law (if any) which the ADO or regional office will include in the language of the approval document if it consents to, or grants the request

DOTA has identified no State or local law that must be disclosed in the language of the FAA approval document. In particular, based on its preliminary review, DOTA notes that its obligations under the Current Lease to restore and remediate the leasehold premises upon termination should

¹⁵¹ E.g., FAA Order 5190.6B at ¶ 22.20(b) (Replacement Airport) (recognizing that the availability of a new or better airport is the basis for determining that an old airport is no longer needed and that its useful life has expired).

not trigger any obligations under the Hawaii Environmental Policy Act¹⁵² because the types of activities contemplated (repairs and modifications to existing structures; repairs and modifications to sewage and water pumping stations; demolition of existing structures under Hawaii Department of Transportation jurisdiction) are expressly exempted by the State law.¹⁵³

4.1.6 Involved property or facilities

DOTA currently leases approximately 272-acres of the 650-acre Dillingham Military Reservation. A full copy of the current Airport Layout Plan and a copy of the current Exhibit “A” Property Map for HDH are provided as **Exhibits 9** and **20**, respectively. DOTA is proposing to terminate the entire lease.

4.1.7 Description of how the sponsor acquired or obtained the property

As described in detail above, DOTA does not own any of the property at HDH but has operated the Airfield pursuant to a series of Leases with the Air Force and the Army since 1962.¹⁵⁴ DOTA currently operates HDH pursuant to Supplemental Agreement 4 to the 2009 Lease which is set to expire in 2024.¹⁵⁵

4.1.8 Present condition and present use of any property or facilities involved

As described above in Section 1.5 of this Plan, HDH is a joint-use airfield comprised of a single runway. The conditions of structures at the onset of the 2009 Lease are described in Exhibit D to the 2009 Lease (provided separately as **Exhibit 14** to this Plan). In compliance with the terms of the Current Lease with the Army, DOTA will be preparing an updated Inventory and Condition Report of current conditions.

4.2 Order 5190.6B, PARAGRAPH 22.25 - Content of Request for Written Release for Disposal

Paragraph 22.25 of FAA’s Compliance Manual requires sponsors to include specific information in a written request for release where the request involves the disposal of capital items. While DOTA’s request practically will effectuate a “disposal” insofar as the Airfield will no longer be available for civilian uses, it is not a disposal of real or personal property in that DOTA does not own and is not, therefore, selling the property or any part thereof. As such, there is no need in this instance to document the fair market value of the underlying parcel or to reimburse the airport account upon the sale of the airport. Upon termination of the Current Lease, the underlying fee interest reverts to the Army.

That said, should DOTA sell any personal property, structures, or facilities, the sale proceeds would be reinvested in DOTA’s general airport fund that supports the entire statewide airport system. Further, as discussed in Section 4.4 below, DOTA will reinvest the unamortized value of

¹⁵² Hawaii Rev. Stat. Ch. 343 (available at <https://law.justia.com/codes/hawaii/2009/volume-06/title-19/chapter-343/>); Hawaii Administrative Rules, Ch. 11-200.1 (available at <https://casetext.com/regulation/hawaii-administrative-rules/title-11-department-of-health/subtitle-1-general-departmental-provisions/chapter-2001-environmental-impact-statement-rules>).

¹⁵³ Comprehensive Exemption List for the State of Hawaii Department of Transportation (2000) (**Exhibit 7**).

¹⁵⁴ See generally, **Exhibit 23 – Exhibit 29**; see also, discussion, *infra*, at Section 1.2, regarding DOTA leases.

¹⁵⁵ Supplemental Agreement 4 (**Exhibit 29**).

the remaining useful life of AIP-funded improvements at HDH consistent with its revenue use obligations.

4.3 ORDER 5190.6B, PARAGRAPH 22.26 - Exhibits to the Written Request for Disposal

4.3.1 Drawings

A full copy of the current Airport Layout Plan and a copy of the current Exhibit “A” Property Map for HDH are provided as **Exhibits 9** and **20**, respectively.

4.3.2 Height and data computations

DOTA’s request contemplates a change from joint-use to military-only use of the Airfield. At the direction of the Army, DOTA may also be *removing* improvements from the Airfield. However, there will be no new additions that could compromise the safety of air navigation. As such, no height computations of existing structures are necessary to support this Written Request for Release.

4.4 ORDER 5190.6B, PARAGRAPH 2.15(D) – Reinvestment of Federal Share

FAA’s *Airport Compliance Manual* makes clear that when FAA receives a request to dispose of an entire airport, it must treat the proposal as a trade-in of the land and facilities developed with federal aid at the old airport for the development of better facilities at a new or replacement airport.¹⁵⁶ Thus, in such circumstances, FAA’s release of the old airport contingent upon the transfer of the federal grant obligations to the new or replacement airport.¹⁵⁷ Applying this guidance, DOTA’s remaining grant obligations from HDH must be transferred to a replacement airport – in this case, any of DOTA’s other existing facilities – in order for FAA to grant the request to dispose of HDH.

The last two grants issued for HDH provided funding for improvements to Taxiway “A”. These grants were issued in 2003 and 2005, and therefore, DOTA assumes that the grant obligations associated therewith may remain in effect through 2023 and 2025 respectively. Because DOTA intends to terminate the Current Lease prior to the assumed useful life of these improvements, DOTA also formally requests that FAA abandon the remaining unamortized value of the taxiway improvements because DOTA will no longer have any rights and powers at HDH.¹⁵⁸

As a condition of the release, DOTA will commit to reinvest, from non-airport funds, the amount representing the unamortized value of the remaining useful life of the AIP-funded Taxiway “A” improvements in its airport fund (or, if requested, DOTA will identify for FAA a specific project or projects and a timeline for completion for reinvestment in a new AIP eligible project).¹⁵⁹ As depicted in **Table 3** above, based on a straight-line depreciation schedule and assuming a standard twenty-year life for each project, the remaining value of the two prior HDH AIP grants when

¹⁵⁶ FAA Order 5190.6B at ¶ 22.20(b).

¹⁵⁷ FAA Order 5190.6B at ¶ 22.20(b).

¹⁵⁸ FAA Order 5190.6B at ¶ 22.15(b) (FAA may grant a release to abandon grant funded improvements where the facility will no longer be needed for the purpose for which it was developed).

¹⁵⁹ FAA Order 5190.6B at ¶ 22.15(d) (“The amount to be reimbursed or reinvested is an amount representing the unamortized portion of the useful life of the federal grant remaining at the time the facility will be removed from aeronautical use.”)

DOTA proposes to terminate the lease in 2021, would be \$29,927.50 for the 2003 Grant and \$142,877.40 for the 2005 Grant (a total of \$172,804.90).

Upon FAA approval of the Closure Plan, DOTA will prepare a detailed memorandum documenting this reinvestment for FAA.

5 Additional Obligations and Legal Considerations

5.1 FAA Issues

5.1.1 Airport Revenue Obligations

In addition to the reinvestment of the unamortized remaining federal share of the prior grants, discussed immediately above, DOTA will reimburse its airport fund with any revenue received as a result of the termination of the Current Lease.¹⁶⁰ As this disposal involves termination of a lease and not a sale, the only expected proceeds may come if DOTA is able to sell any personal property or improvements that it is obligated to remove from HDH upon termination of the Current Lease. As explained above, DOTA also commits to invest the amount of any diversion for the last six years' expenditures on the water system using non-airport funds that will be deposited into the DOTA operating accounts. DOTA has not yet determined the exact amount of such reimbursement but will report the amount to FAA prior to the termination of the lease.

5.1.2 NEPA Compliance

FAA's release of the DOTA grant obligations at HDH is a federal action that triggers review under the National Environmental Policy Act (NEPA).¹⁶¹ FAA has determined that this type of action is categorically excluded under NEPA.¹⁶² Therefore, DOTA has provided a completed Documented Categorical Exclusion Form with this Plan. *See Exhibit 61.*

5.1.3 Notices to Airmen (NOTAMs)

DOTA will coordinate the issuance of Notices to Airmen (NOTAMs) with relevant FAA Air Traffic and Army personnel.¹⁶³ It is important to note that the NOTAMs normally associated with the closure of an airport will need to be modified for this action because HDH is not being closed but rather its access to public use is being terminated. Therefore, the runways and taxiways will not be marked as closed. DOTA will coordinate with the FAA and the Army on appropriate text for a NOTAM. For purposes of this closure plan, DOTA assumes that the Army will, in fact, close the Airfield to public use and that the Army will not find an eligible sponsor to assume control over public operations at HDH. DOTA has no reason to believe that either the Army or any qualified sponsor is prepared to assume control over public use operations at HDH and therefore, this closure plan is premised upon the closure of the facility to public use traffic upon termination of the Current Lease.

¹⁶⁰ FAA Order 5190.6B at ¶ 22.25(d).

¹⁶¹ 42 U.S.C. § 4321 *et seq.*

¹⁶² FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures* (2015) at ¶ 5-6.1(b) (list of categorically-excluded actions includes release of an airport sponsor from Federal obligations incurred when the sponsor accepted: (1) an Airport Improvement Grant; or (2) Federal surplus property for airport purposes); *see also* FAA Order 5190.6B at ¶ 22.33 (Environmental Implications of Releases).

¹⁶³ *E.g.*, FAA AC 150/5200-28F, *Notices to Airmen (NOTAMs) for Airport Operators* (2016) at ¶ 1.6.1.

5.1.4 FAA Obligations

Upon approval of the release request, FAA will initiate a series of parallel actions to amend all related FAA documents, *e.g.*, the NPIAS and FAA Form 5010, Airport Master Record.¹⁶⁴ DOTA will provide the ADO or regional airports division with acknowledgement or copies of executed instruments or documents as may be required for FAA record keeping purposes.¹⁶⁵

In addition, FAA will publish a notice in the Federal Register of the intent to release aeronautical property.¹⁶⁶ This must occur at least 30 days prior to FAA's final approval of DOTA's release request.

5.2 **Permittees**

5.2.1 Notice and Ongoing Communication

DOTA sent Letters of Termination and Notices to Vacate to permittees on February 10, 2020, in which DOTA notified all permittees at HDH that the permits would be terminated effective June 30, 2020.¹⁶⁷ DOTA subsequently rescinded those notices, notifying permittees that: (1) the termination date was delayed and would likely be June 30, 2021; (2) all permits would be terminated by that date at the latest; and (3) permittees should use the intervening time to make arrangements for relocation of their enterprises.¹⁶⁸ As a result, the HDH permittees will have had almost 17 months of notice that their month-to-month leases will terminate by June 30, 2021.

DOTA provided further written notice to permittees of the key Plan elements on September 8, 2020, including reminders of permittees' obligations upon permit termination and opportunities for accommodation within the DOTA system.¹⁶⁹

In its notice letters, DOTA informed each permittee of DOTA's plan to begin the process of identifying each permittee's termination obligations. DOTA will schedule site visits with each permittee (currently expected to occur in January 2021), develop a checklist of termination obligations for each permit, and discuss other relevant issues (including, but not limited to, environmental remediation obligations, and resolving outstanding rent payments) with each individual permittee. This process will also involve identifying a precise termination date on or before June 30, 2021, for each permittee. Once the final termination date for each permit is identified through this process, DOTA will also provide formal written confirmation for each permit.

5.2.2 Permittees' Restoration and Remediation Obligations

Permittees are obligated to keep their premises "neat, safe, orderly, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse from its activities on the Premises"¹⁷⁰ and to maintain their premises in a condition

¹⁶⁴ FAA Order 5190.6B at ¶ 22.29(a).

¹⁶⁵ FAA Order 5190.6B at ¶ 22.29(a).

¹⁶⁶ FAA Order 5190.6B at ¶ 22.31(d) (As a matter of policy, FAA will provide public notice of a proposed release of a sponsor from its federal obligations regarding any land, facilities, and improvements used or depicted on an ALP for aeronautical use where the release would affect the aeronautical use of the property.)

¹⁶⁷ Letters from J. Butay to Permittees (Letters of Termination and Notice to Vacate) (Feb. 10, 2020) (**Exhibit 52**).

¹⁶⁸ Letters from J. Butay to Permittees (April 8, 2020) (**Exhibit 58**).

¹⁶⁹ Letters from J. Butay to Permittees (September 8, 2020) (**Exhibit 60**).

¹⁷⁰ HDH Permit Terms and Conditions at ¶ 11 (**Exhibit 30**).

similar to that which existed on the effective date of the permit.¹⁷¹ Moreover, prior to termination or revocation of a permit, the permittee is obligated to restore the premises to the original condition.¹⁷² In its February 10, 2020, Letter of Termination and Notice to Vacate (sent to each HDH permittee), DOTA reminded all permittees of their contractual obligations to surrender and restore the premises, and to remove improvements, additions, alterations, fixtures, and equipment.¹⁷³ DOTA reminded permittees of these obligations in its September 8, 2020, letters as well.¹⁷⁴

Some, but not all, permittees are also subject to Special Terms and Conditions, under which each permittee is contractually obligated, at its “sole expense and cost” to comply with all environmental laws (defined broadly to include all federal, state and local laws) that apply during the term of the permit – including obligations that survive the expiration or termination of the permit.¹⁷⁵ This includes removing hazardous wastes for disposal¹⁷⁶ and also conducting investigations and assessments of the premises to determine the presence of any hazardous substances.¹⁷⁷ In the event that hazardous substances are used, stored, treated, disposed, handled, discharged, released or determined to be present, or determined to have migrated from the premises, permittees bear the duty of remediation, including the removal and disposal in compliance with all applicable laws.¹⁷⁸

As noted above, DOTA is obligated to prepare a Phase I Environmental Site Assessment for purposes of establishing its obligations to the Army.¹⁷⁹ If the Phase I report identifies potential hazardous spills or environmental issues, DOTA will exercise its rights under the respective permit(s) to require the permittees to conduct additional (*e.g.*, Phase II) site investigations, and/or to remediate their premises.

In the event that permittees are unwilling or unable to comply with their restoration and remediation obligations, DOTA has several options. As a first step, DOTA has the right to accomplish same using its own employees or independent contractor and assess the permittee and total costs thereof.¹⁸⁰ In addition, each permittee maintains a security deposit with DOTA, and DOTA may be entitled to retain the security deposits to pay for site restoration costs for which the permittee is liable. As a last resort, DOTA may also need to file suit to recover costs that are not

¹⁷¹ HDH Permit Terms and Conditions at ¶ 10 (**Exhibit 30**).

¹⁷² HDH Permit Terms and Conditions at ¶ 17 (**Exhibit 30**); *see also*, HDH Revocable Permit Special Terms and Conditions at ¶ 1(B)(9) (**Exhibit 30**) (Note that some, but not all, HDH permits include “Revocable Permit Special Terms and Conditions” in addition to the Standard HDH Permit Terms and Conditions. An example is Revocable Permit 8828, issued to the Harris Corporation).

¹⁷³ Letters from J. Butay to Permittees (Letters of Termination and Notice to Vacate) (Feb. 10, 2020) (**Exhibit 52**).

¹⁷⁴ Letters from J. Butay to Permittees (April 8, 2020) (**Exhibit 58**).

¹⁷⁵ Letters from J. Butay to Permittees (April 8, 2020) (**Exhibit 58**).

¹⁷⁶ HDH Revocable Permit Special Terms and Conditions at ¶ 1(B)(1) (**Exhibit 30**).

¹⁷⁷ HDH Revocable Permit Special Terms and Conditions at ¶ 1(B)(5) (**Exhibit 30**).

¹⁷⁸ HDH Revocable Permit Special Terms and Conditions at ¶ 1(B)(6) (**Exhibit 30**).

¹⁷⁹ HDH Revocable Permit Special Terms and Conditions at ¶ 1(B)(7) (**Exhibit 30**).

¹⁸⁰ 2009 Lease at ¶ 24 (**Exhibit 25**).

¹⁸¹ HDH Permit Terms and Conditions at ¶ 17 (**Exhibit 30**); HDH Revocable Permit Special Terms and Conditions at ¶ 1(B)(9) (**Exhibit 30**).

compensated through retention of the security deposit,¹⁸¹ including, for example, securing compensation for the costs of removing permittees' improvements.¹⁸²

The permits also state that DOTA is not required to furnish replacement facilities or relocation assistance to each permittee upon termination or revocation of their permit.¹⁸³ While DOTA will not compensate HDH permittees, or prioritize their accommodation elsewhere in the State aviation system in order to avoid any potential claim of impermissible or preferential treatment under Grant Assurance 23, DOTA is committed to working with all HDH users to find suitable relocation sites within the DOTA system. However, in the event that a permittee is unwilling or unable to comply with its obligations to restore and remediate the premises, DOTA would consider the permittee to be in breach of its contractual obligations and would not provide any assistance to any such permittee with regard to finding alternate accommodations until the permittee has satisfied its obligations under its permit.¹⁸⁴

5.3 Army

5.3.1 Notice and Communications

DOTA has already satisfied its contractual obligation¹⁸⁵ to give at least thirty days' notice in writing to the Army. DOTA provided formal written notice on January 6, 2020, in which DOTA indicated its intent to terminate the lease as early as June 30, 2020.¹⁸⁶ In April 2020, DOTA notified the Army of its intent to extend the termination date until June 30, 2021.¹⁸⁷ DOTA is in constant communication and is actively coordinating with the Army and will continue to do so until the Current Lease termination is complete.

5.3.2 DOTA's Restoration and Remediation Obligations

On or before the termination of the Current Lease with the Army, DOTA must vacate the premises, remove any of its property and restore the premises to a condition satisfactory to the Army.¹⁸⁸ This means that DOTA must ensure not only that its own improvements are removed, but also those of any permittees. As noted above, DOTA will exercise its rights under all of its permits to require permittees to restore, at their own cost and risk, the premises to a condition similar to that which existed prior to the effective date of the Permit.

DOTA will also prepare an updated inventory and condition report that will be compared to the comparable report prepared upon initial execution of the 2009 Lease.¹⁸⁹ The new inventory report shall constitute the basis for settlement with the Army for any property damaged or destroyed.¹⁹⁰

¹⁸¹ HDH Permit Terms and Conditions at ¶ 7 (**Exhibit 30**).

¹⁸² HDH Permit Terms and Conditions at ¶ 8 (**Exhibit 30**).

¹⁸³ HDH Permit Terms and Conditions at ¶ 17 (**Exhibit 30**).

¹⁸⁴ *E.g., Wayne R. Messinger v. Clover Acquisition Corporation d/b/a Pearland Regional Airport, Texas*, FAA Docket No. 16-15-01 (Director's Determination) (May 26, 2016) at 11 (finding no grant assurance violation where sponsor had barred complainant for legitimate business reasons, in this case, "the maintenance of a workplace safe from harassment and the efficient operation of the airport by competent employees").

¹⁸⁵ 2009 Lease at ¶ 18 (**Exhibit 25**).

¹⁸⁶ Letter from J. Butay to Col. T. Barrett (Jan. 6, 2020) (**Exhibit 49**).

¹⁸⁷ Letter from J. Butay to J. Nelson (April 6, 2020) (**Exhibit 56**); Letter from J. Butay to Col. T. Barrett (April 6, 2020) (**Exhibit 57**).

¹⁸⁸ 2009 Lease at ¶ 14 (**Exhibit 25**).

¹⁸⁹ 2009 Lease at Appx. D (**Exhibit 25**).

¹⁹⁰ 2009 Lease at ¶ 7(b) (**Exhibit 25**).

A copy of the updated inventory and condition report will be provided to FAA once it has been reviewed and accepted by the Army.

In addition, DOTA will prepare a Phase I Environmental Baseline Study documenting the environmental condition of the property at the time of the termination of the Current Lease.¹⁹¹ A copy of the Phase I Environmental Baseline Study will be provided to FAA upon its completion (currently expected to occur by end of February 2021). The Army will compare this new report to the prior (2002) environmental baseline study to determine the extent of any environmental restoration requirements.¹⁹²

5.3.3 Transfer of Utilities

Under the Current Lease, DOTA is obligated to operate the entire Dillingham Airfield Water System.¹⁹³ The Current Lease also specifies that DOTA is responsible for producing and/or supplying “any utilities” or for payment of its proportionate share of the cost of operation and maintenance of government-owned facilities by which utilities or services are supplied.¹⁹⁴ Upon termination of the Current Lease, DOTA will transfer all relevant utilities back to the United States Army. These utilities may include fuel storage facilities; water system facilities (including the water pump building and the water supply treatment/chlorinator facility); wastewater facilities (including septic tanks); stormwater facilities (including underground injection control drainage wells/structures). Based on ongoing communications with the Army, DOTA will transfer all relevant permits held in the name of the State / DOTA, and will abandon other utility improvements (*e.g.*, fuel storage facilities) that DOTA itself installed and the Army does not want.

5.3.4 Resolve Congressional Directive on Land Conveyance

The congressional directive to the Army to convey portions of HDH to the State is still outstanding, pending “the execution of an agreement acceptable to the Secretary of the Army providing for joint civilian and military use of the property as an airfield by the State and the United States Army.”¹⁹⁵ For several reasons, the congressional directive does not resolve the issues that have led DOTA to determine that termination of the Current Lease is the most appropriate course of action.

First, even with the proposed land conveyance contained in the National Defense Authorization Act of Fiscal Year 1991, the airfield would continue to be operated as a joint-use facility, leaving DOTA in the tenuous position of not being able to exercise the full suite of rights and powers required under Grant Assurance 5.

Second, as discussed in further detail in Section 1.3 above and as depicted in Figure 3 above, the roughly 87 acres proposed for conveyance does not include the entire airfield (and indeed, bisects the runway). Therefore, even if the proposed land conveyance were carried out, DOTA would be in no better position than it currently sits today, with the need to share control over the airfield with the Army under a short-term lease.

¹⁹¹ 2009 Lease) at ¶ 24 (**Exhibit 25**).

¹⁹² 2009 Lease at ¶ 24 (**Exhibit 25**).

¹⁹³ 2009 Lease at p. 1 (**Exhibit 25**).

¹⁹⁴ 2009 Lease at ¶ 8 (**Exhibit 25**).

¹⁹⁵ Pub. L. 101-510, Section 2831 (104 Stat.1795) (**Exhibit 1**).

Third, and related, the congressional directive does not address the fundamental defect in the Current Lease that has led DOTA to its present course of action: the Army has not been able to enter into a lease of sufficient length that DOTA could qualify for AIP grants or could reasonably finance capital investments necessary for the continued safe operation and maintenance of the airfield. Even if the conveyance occurred, DOTA would still need to secure a lease for the remainder of the Airfield, and it would be in no better position to obtain a lease of sufficient duration to support grant applications.

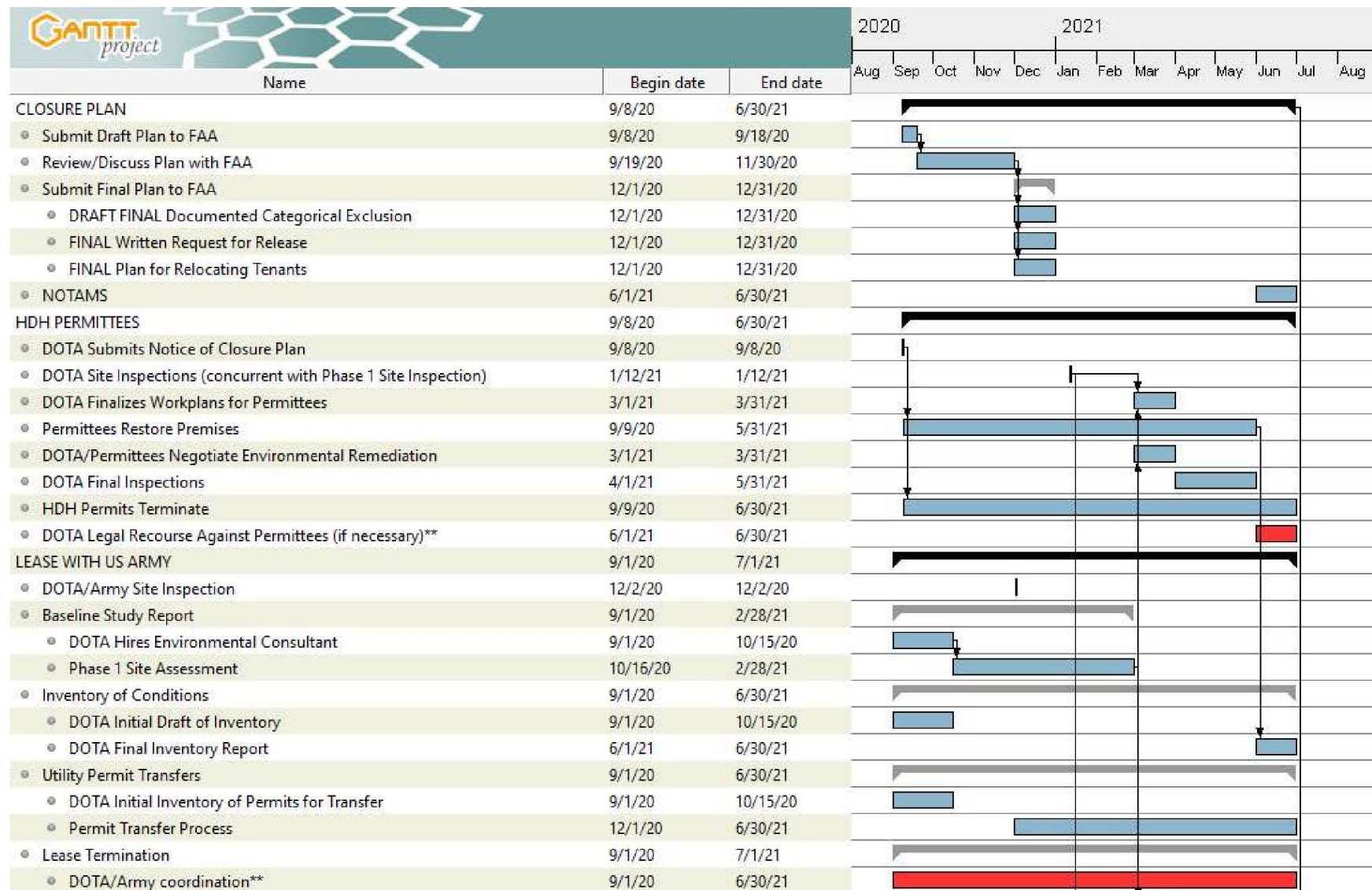
To that end, upon termination of the Current Lease, DOTA will work with the Army on a formal memorandum notifying the relevant congressional committees of the mutual inability to satisfy the legislative conditions precedent to conveyance. A copy of the memorandum will be provided to FAA upon its completion.

6 Proposed Timeline

An integral element of this closure plan is the DOTA's proposed schedule for completion of the tasks necessary to terminate the Current Lease, to relocate existing users and permittees, and to notify appropriate agencies that HDH is no longer available for civilian use. The following proposed timeline reflects both actions to date and also DOTA's current best information about the forthcoming process but, since this timeline is dependent upon actions by a number of third parties, some shift in the schedule is almost inevitable. DOTA is committed to working with all stakeholders in a collaborative and transparent manner throughout the closure process both to ensure that users and stakeholders are fully informed and to maximize cooperation in this timeline.

DOTA proposes to enter into a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with the Army to govern the period beyond the June 30, 2021 lease termination date, which MOU/MOA will address the terms of DOTA's ongoing compliance obligations. DOTA's work to restore and remediate the airfield back to the Army according to its obligations under the Lease will almost certainly exceed the Current Lease termination date.

Figure 5: Proposed Timeline



** Red bars indicate tasks that may extend past the Lease Termination Date of June 30, 2021.