



# TOWN OF EAST HAMPTON

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Office of the Supervisor

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June 21, 2010

Federal Aviation Administration  
Docket Operations M-30  
1200 New Jersey Avenue, S.E.  
Washington, DC 20591-0001

Re: Comments - NPRM Docket FAA-2010-0302

Dear Docket:

Enclosed please find comments on behalf of the Town of East Hampton on the FAA's proposed rule establishing a mandatory North Short Helicopter Route. Our comments, prepared by the Town with the assistance of counsel, stress that the FAA's proposed rule should be viewed as a first step in a comprehensive effort to address helicopter over flights in eastern Long Island.

The Town is aware the FAA may receive comments from the East End Helicopter Noise Stakeholders Group (multi-town) as well. The Group is comprised of representatives of the five east-end communities on Long Island. While the Town participated in discussions with this Group, and agreed to the Group's comments, the Town of East Hampton is in a unique situation as a great proportion of helicopter traffic arrives into and departs from our airport. For that reason, we believe it to be of paramount importance to comment on the NPRM as an individual municipality.

In order to continue the effort that has just been started by this NPRM, the Town urges the FAA to convene a formal stakeholder group to participate in a study of alternative helicopter routes in eastern Long Island – not only the proposed North Shore route but also a route along the South Shore of Long Island and transition routes between those off-shore routes and destinations inland

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in eastern Long Island. We look forward to having a seat at the table as FAA continues to explore solutions that optimize helicopter routes that achieve the objective of reducing noise impacts.

Sincerely,



William J. Wilkinson

cc:

Senator Charles Schumer  
Senator Kirsten Gillibrand  
Congressman Tim Bishop

Enclosure

**Comments of the  
Town of East Hampton  
Docket FAA-2010-0302  
New York North Shore Helicopter Route**

**Introduction and Summary**

The Town of East Hampton (Town) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) to require helicopter operators to use a route named the "New York North Shore Route" (NYNSR) when operating in the vicinity of Long Island, New York.

The Town of East Hampton believes that the NYNSR is a first step in addressing, in a comprehensive and thoughtful manner, the problem of helicopter overflights and noise throughout the east end of Long Island. The preface to the NPRM asserts that the "intended effect" of the NPRM is to "reduce the noise impact on nearby communities" of helicopter traffic traveling from New York City and nearby areas to the communities in the east end of Long Island. The Town applauds the FAA (and our Congressional delegation) for recognizing that the noise impact of helicopter operations is a critical issue that warrants the unusual step of promulgation of a formal Part 93 rule setting forth mandatory flight patterns. The Town looks forward to working closely with the FAA and other stakeholders to complete the job that the NPRM starts.

In order to complete the effort, the Town urges the FAA to convene a formal stakeholder process. This proposed process would be more inclusive than that proposed by the pending FAA Reauthorization legislation and would ensure that the Town, other airport proprietors and affected communities have a seat at the table in directing a comprehensive study of helicopter noise in the east end of Long Island. The study should examine alternative flight corridors and altitudes and should optimize those corridors and altitudes to achieve the FAA's laudable objective of reducing adverse impacts from helicopter overflights. The Town expects that such study would not be limited to routes off the north shore of Long Island. Instead, the study should include mandatory corridors for helicopter operations off the south shore and on-shore for helicopters transitioning between those off-shore corridors and their ultimate origin/destination in eastern Long Island. The Town requests that the FAA make a commitment, in connection with issuance of the NYNSR, that it will formally initiate a stakeholder process to evaluate and propose new Part 93 rules to implement the recommendations of such a study.

**Background**

The issue of helicopter noise has been a contentious issue in Long Island for years. The Town, which is the proprietor of East Hampton Airport (HTO), has been taking the lead in working aggressively with many stakeholders to address the helicopter problem. The Town has taken leadership on this issue for three reasons:

**First**, HTO is the largest airport in eastern Long Island. It receives the largest proportion of helicopter traffic in the region and is located in close proximity to residential communities whose quiet environment is a key attribute. Residents and visitors to HTO are the predominant clientele for helicopter traffic in eastern Long Island. Finally, because of the Town's geographic location, the Town experiences almost all of the impacts of helicopter traffic.

The FAA, through the unusual action of issuing an NPRM to establish mandatory helicopter routes from the New York metropolitan area to eastern Long Island, has clearly recognized the unique nature of (and almost ubiquitous) problem of helicopter overflights in the east end of Long Island. Not only does eastern Long Island receive an extraordinary amount of helicopter traffic (compared to other regions of the country) but the geography and residential patterns make solutions far more practical than in areas where helicopter traffic is primarily operations for medical, traffic, or public safety functions.

For approximately six years, the Town has been working with stakeholders – including especially the FAA and the Eastern Region Helicopter Council – to develop voluntary procedures to mitigate the adverse effects of overflights within the Town and vicinity. Since 2004, the Town has published a pilot guide that describes and depicts preferred helicopter arrival and departure routes for helicopters using HTO. The Town has worked closely with the Congressional delegation and was instrumental in helping the Senator reach the *Continued Cooperation and Compliance Agreement* with the Eastern Region Helicopter Council in December 2007.

We understand that the NPRM is designed to address two significant defects with the present flight patterns. First, the current procedures, as recognized in the Eastern Region Helicopter Council letter agreement, are voluntary. Despite the Town's efforts, Senator Schumer, former Senator Clinton and Representative Bishop and the FAA, (at least implicitly, through issuance of the NPRM) have all recognized that the voluntary procedures have not worked. Various figures have been offered as to the compliance rate, but everyone involved in the issue would agree that the compliance rate has not been satisfactory.

**Second**, these current voluntary procedures address only a small segment of the problem of helicopter overflights and noise. The Town has long urged adoption of a preferential route off-shore along the south shore of Long Island. A mandatory south shore route would reduce overflights of incompatible land to a far greater degree than any existing voluntary (and proposed mandatory) NYNSR. To be clear, the Town of East Hampton requests that in addition to the proposed mandatory northern route, the FAA also implement a mandatory southern route for those helicopters arriving and departing via East Hampton's southerly noise abatement route. Neither the existing – nor the proposed – procedures address routes and altitudes once helicopters exit the NYNSR. Because of geography, traffic transitioning between the NYNSR and either Francis S. Gabreski

Airport (FOK) or HTO must overfly significant residential areas within the Town. In contrast, helicopter traffic using a south shore route would only minimally overfly residential areas, especially if traffic to and from HTO used the Town's preferred Georgica Pond route from the south.

**Finally**, a consequence of the NPRM would be the preemption of language in the pending FAA Reauthorization Act that would mandate a study of helicopter routes and noise mitigation in eastern Long Island. Largely in response to concerns in eastern Long Island that the present voluntary measures are unsatisfactory, and that a north shore-only route does not effectively minimize helicopter overflight noise, Congressman Tim Bishop inserted language into the pending House version of the FAA Reauthorization Act that would mandate a study of helicopter routes and altitudes and recommend measures to abate the effects of helicopter operations on residential areas of Long Island. *See* H.R. 1586 (111<sup>th</sup> Cong, 2<sup>nd</sup> Sess.) § 818. The Town believes that a thorough study supervised jointly by the FAA, the Town, other airport proprietors, the operators' trade association, and other stakeholders, is a necessary predicate to a thoughtful and thorough resolution to the problem of helicopter noise in eastern Long Island. The Town urges the FAA to make clear that its NPRM is not intended to, and in fact will not, obviate the need for such a study. The final rule should explicitly include an FAA commitment to fund, and to convene the relevant stakeholders to oversee such a study. Most important, each of the stakeholders should have a seat at the table to ensure the study's legitimacy and to ensure that it genuinely and transparently addresses the problem of helicopter overflight noise in eastern Long Island in a comprehensive manner<sup>1</sup>

### **Specific Comments on NPRM**

#### **1. FAA must conduct required the environmental review of the proposal.**

The NPRM erroneously states that the proposed NYNSR is categorically exempt from preparation of environmental documentation under the National Environmental Policy Act and FAA regulations implementing that statute, FAA Order 1050.1E (2004). While the NPRM correctly quotes to the regulations of the Council on Environmental Quality and paragraph 312f of Order 1050.1E, neither that provision of the FAA Order nor the bases upon which the NPRM was issued support the agency's conclusion that a categorical exclusion is appropriate in this instance.

**First**, and most important, the NPRM frankly discloses that the entire purpose of the proposed action is to "reduce noise impact on nearby communities." While the Town has

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<sup>1</sup> The study committee, in which all relevant stakeholders have a meaningful role and a seat at the table in directing the study, has precedent in FAA-funded Part 150 Noise Compatibility Programs. Under Part 150, the FAA directs that airport proprietors convene stakeholder groups to help direct and scrutinize study work product. Since most noise-related flight patterns in the country are the result of Part 150-initiated efforts, these types of stakeholder-driven studies are standard practice. We urge the FAA to adapt the principles underlying the Part 150 process to this effort.

no squabble with that purpose, the agency provides no factual, technical or analytic basis for concluding that the proposed NYNSR actually fulfills that purpose. Without even the most rudimentary noise analysis, it would be arbitrary and capricious for the agency to conclude that the NYNSR in fact achieves the purpose of the proposal to reduce noise impact on nearby communities. In fact, the study that the Town is requesting would be designed for precisely that purpose: to ensure that *all* helicopter routes serving the east end of Long Island optimize the FAA's and the communities' noise abatement objectives. Without data demonstrating that the FAA has struck the appropriate balance, the public does not have the confidence knowing that the NYNSR (or alternatives or additional routes) will reduce helicopter noise.

The statement in the NPRM that the proposal is categorically excluded from NEPA review because it does not significantly affect the human environment contradicts the agency intent in proposing the NYNSR. If the action does not significantly affect the human environment, then there would be no basis upon which the agency could conclude that it will "reduce noise impact on nearby communities" as asserted in the NPRM.

**Second**, the agency mischaracterizes the legal standard for categorical exclusions under both NEPA and Order 1050.1E. The FAA Order, Council on Environmental Quality regulations and all relevant case law provide for categorical exclusions for actions that will not have a "significant effect on the human environment." *See* 40 C.F.R. § 1508.4; Order 1050.1E ¶ 303a. The FAA's list of categorical exclusions similarly uses the term "significantly affecting the human environment." Order 1050.1E ¶ 303a. The NPRM, however, misquotes this authority when concluding that the NYNSR is categorically excluded from NEPA review because "implementation of the proposed rule is not expected to result in significant *adverse* impacts to the human environment." (emphasis added). There is no precedent for the agency declining to conduct environmental review on the basis of the absence of significant *adverse* impacts. In fact, it appears that the very purpose of the NPRM is to produce significant *beneficial* impacts on the human environment; if that is true, environmental documentation is required to document those benefits.

**Finally**, the agency has cited the wrong provision of Order 1050.1E to justify its claim of categorical exclusion from environmental review. While paragraph 312f of Order 1050.1E does refer to "regulations," paragraph 311 of that Order is the appropriate section for procedural actions such as the NYNSR. For example, paragraph 311h categorically excludes "establishment of helicopter routes that channel helicopter activity over major thoroughfares." Order 1050.1E ¶ 311h. Most importantly, paragraph 311i provides a categorical exclusion for establishment of new or revised air traffic control procedures "conducted at 3,000 feet or more above ground level." That paragraph explains that the categorical exclusion *only* applies when such procedures affect air traffic above 3,000 feet above ground level (AGL). There is no exclusion in paragraph 311 that could even arguably apply to the NPRM and since that paragraph is the one that addresses environmental review of flight pattern actions, the agency cannot reasonably

assert that the NPRM is categorically excluded from environmental review. There is nothing in FAA Orders or FAA precedent that contemplates a categorical exclusion for air traffic actions that (a) establish or revise air traffic procedures for aircraft operations *below* 3,000 feet AGL; or (b) establish or revise air helicopter routes where such routes *do not* follow major thoroughfares.<sup>2</sup>

An unnumbered appendix to Order 1050.1E, entitled "*Order 1050.1E 3,000 ft AGL Categorical Exclusion Validation Study*" provides the technical basis for the agency's decision to exclude from environmental review those air traffic procedures affecting only aircraft at that level and higher.

While there does exist a categorical exclusion for publication of *existing* air traffic control procedures that "do not essentially change existing tracks, create new tracks, change altitude, or change concentration" of aircraft activity, Order 1050.1E ¶ 311k, that provision does not apply here since the existing, *voluntary* helicopter route was never issued as a formal regulation and was never formally established as is proposed in the NPRM. See FAA Order 7210.3V § 11-6-1 (2008) (emphasizing that the Helicopter Route Chart program is voluntary).

Even if the FAA could shoehorn the NPRM into an existing categorical exclusion in Chapter 3 of Order 1050.1E, that chapter also defines so-called extraordinary circumstances in which normally categorically excluded actions require additional environmental analysis. Even if the agency disagrees with the Town's legal analysis of the FAA's obligation to conduct environmental review, the Town urges the FAA to exercise its discretion under Order 1050.1E to conduct meaningful environmental review. One of the bases upon which normally categorically excluded actions must be subjected to environmental review is if the action will have an impact on "noise levels on noise-sensitive uses." *Id.* ¶ 304f. It is noteworthy that the Order does not refer to an *increase* in noise levels but merely an "impact," suggesting that either a positive or adverse impact on noise levels in noise sensitive areas is an extraordinary circumstance. Given that the agency has asserted that the "effect" of the NPRM is to "reduce noise" over residential areas of Long Island, there can be no doubt that the NPRM satisfies the provisions of paragraph 304f.

**2. FAA should consider a South Shore route as an alternative or complement to the New York North Shore Route.**

The implication of the NPRM is that the NYNSR will resolve issues and concerns about noise impacts from helicopter operations over Long Island. It is important that the FAA

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<sup>2</sup> As further indication of the inappropriateness of categorically excluding the NPRM from environmental review, Order 1050.1E does provide an exclusion for tests of air traffic procedures conducted *under* 3,000 feet AGL but only if the test duration does not exceed six months. *Id.* ¶ 311n. The NPRM does not propose a test of the NYNSR.

be clear that both the purpose and effect of the proposed NYNSR would be far more modest.

Because the agency has done no environmental review, and apparently has conducted no noise analysis of either the existing conditions or the effect of the proposed NYNSR, there is no information available about whether the proposal will achieve the FAA's objective of addressing helicopter noise concerns in residential areas of Long Island. In particular, there is no comparative analysis of the proposed NYNSR with other possible helicopter routes or permutations of the proposal.

We request that, before issuing a final rule, the FAA convene a stakeholders group to oversee a thorough noise analysis (in a manner consistent with established FAA precedent, using the latest FAA-approved version of the Helicopter Noise Model) of the NYNSR along with the following permutations and alternatives:

1. *Atlantic Route.* The analysis should compare the relative benefits of the NYNSR with a route that would direct helicopter traffic offshore the south shore of Long Island (the "Atlantic Route"). The Atlantic Route could produce meaningful benefits especially for over-land helicopter traffic since many of the eastern Long Island origins/destinations for helicopter traffic (including FOK, HTO, and MTP) are located closer to an off-shore Atlantic Route than to the proposed NYNSR. An Atlantic Route would minimize over-land routes and could, therefore, produce greater benefits than the NYNSR. The analysis must consider not only the noise impacts but, even more important, the mandatory allocation of traffic between a NYNSR and Atlantic Route in light of congestion constraints imposed by JFK terminal airspace. (The fact that some changes might be necessary for traffic within JFK terminal airspace is not a valid basis upon which to reject an Atlantic Route; the complexity and consequences of any necessary changes should be analyzed and disclosed prior to issuance of a final rule.)
2. *Combined Routes.* FAA must also conduct analysis that examines a balance of traffic between the NYNSR and the Atlantic Route. The analysis must include an examination of whether routing aircraft based upon their eastern Long Island origin/destination and their New York metropolitan area origin/destination would result in a better balance of noise impacts. The analysis should propose the optimal balance among alternative routes to achieve the FAA's objective of reducing noise impacts on noise sensitive uses from helicopter operations.
3. *Over-Land Routes.* While the proposed NYNSR has the laudable objective of reducing helicopter noise impacts, the agency has failed to consider the impacts by helicopters departing or entering the NYNSR.

These operations would all be conducted over-land. The agency should prescribe mandatory routes for transition between the NYNSR (and Atlantic Route) and principal origin/destination airports in eastern Long Island, including especially FOK, HTO, and MTP. The transition routes should be designed to optimize overflight of compatible land uses.

4. *Defined Entry and Exit Points.* The noise analysis must examine whether defining specific permissible entry and exit waypoints from the NYNSR would enhance the noise reduction objectives of the NPRM. The NPRM does not state whether pilots will be permitted to exit the NYNSR at any point of the operator's choice or whether only defined entry and exit points (based upon defined over-land routes) will be permitted. The noise analysis should examine the comparative noise impacts of using defined entry/exit points versus allowing operator flexibility.

**3. FAA should consider alternative minimum altitudes as a means of reducing helicopter noise.**

Had the FAA conducted noise analysis of the proposal, as required by NEPA and FAA Order 1050.1E, it would have learned that the altitude of helicopter traffic is a significant determinant of noise levels. The agency's proposed NYNSR retains the existing voluntary route altitude of 2500 feet AGL. The proposal does not address minimum altitudes for helicopters transitioning from the NYNSR to their origin/destination within eastern Long Island. Since most of the impact of helicopter operations come from over-land routes, it is important for the agency to analyze options for alternative altitudes. In particular, the Town recommends that the minimum attitude for helicopters using the NYNSR be 3000 feet AGL and that a comparable over-land minimum altitude be established until a helicopter reaches the immediate proximity of its destination.

Without considering flight altitude and profiles, and without data on the effect of altitude on noise, the FAA proposal is incomplete and it is unclear whether the proposal achieves the objectives of the NPRM. The Town requests that no rule be promulgated until the noise impact of alternative altitudes (both within the NYNSR, along a proposed Atlantic Route, and along transition routes) has been analyzed and compared.

**4. FAA should mandate waypoints and/or routes for helicopters enroute and over land at the eastern end of Long Island.**

The proposed NYNSR would establish a helicopter route with no waypoints and only designations at the eastern (Orient Point) and western (WPLYD) terminus of the route. In order to be effective at keeping helicopter traffic over non-noise sensitive areas and over water, the NPRM should establish waypoints along the entirety of the route.

Additionally, as discussed in other contexts above, in order to be effective, the NYNSR must include transition routes from the principal airport destinations in eastern Long Island. These routes should be defined by precise waypoints as well. Similar waypoints should be established for a south shore (Atlantic) route.

Without waypoints along either the offshore portion of the NYNSR or along transition routes over-land, the FAA will have little way to either measure or enforce compliance with the NYNSR. Even if helicopter operators are vigilant in attempting to comply with the mandatory route, they will be stymied in their efforts if the rule does not include meaningful waypoints.

### **Comments proposed by local noise advisory group**

The Town has requested that its Airport Noise Abatement Advisory Committee (ANAAC) provide the Town with its feedback and advice. In addition to the comments above, the ANAAC offers the following additional comments on the NPRM.

1. That helicopters arriving/departing East Hampton Airport (HTO) or points east of HTO via the North Shore route be required to use Plum Island as a waypoint, to proceed over water to the maximum extent possible to HTO and to comply with local (HTO) rules concerning flight paths and minimum altitudes when operating within 5 miles of HTO.
2. That the FAA establish similar mandatory flight rules for the south shore route and establish procedures to equalize the volume of helicopter traffic using the north and south shore routes. Local management (HTO) of helicopter traffic should be enhanced.
3. That the minimum altitude be increased to 2500 feet to 3000 feet.

The Airport Noise Abatement Advisory Committee also strongly recommends that the FAA to work establish procedures, in cooperation with local airports, to monitor and enforce compliance with the proposed rule(s) once finalized.

### **Conclusions**

The Town of East Hampton congratulates the FAA on its efforts to address noise impacts from helicopter operations over eastern Long Island. The Town also applauds Senator Schumer, Congressman Bishop and former Senator Clinton for their perseverance in working with the FAA to focus on this long-festering issue. The Town further appreciates that the NPRM represents the first step, not the end of a public dialogue on how best to reduce the impacts of helicopter overflights and noise in the east end of Long Island. In particular, the Town recognizes that it is highly unusual for the FAA to be willing to promulgate a Part 93 rule to address helicopter flight patterns and appreciates

the agency's demonstrated willingness to impose mandatory routes for helicopter traffic in the region.

Notwithstanding the Town's recognition of the importance of this first step, the Town believes that the NPRM can be significantly improved in several material respects.

Since the agency has failed to conduct either noise analysis or an alternatives analysis (both of which are required under applicable FAA regulations), neither the Town nor the public can determine whether the NYNSR will achieve the agency's laudable objectives. The Town requests that the agency prepare a meaningful environmental impact analysis before reissuing the NPRM.

Finally, the Town requests that the FAA convene and fund a stakeholder group to oversee a study designed to optimize the noise reduction objectives that are set forth in the preamble to the NPRM. That study should be consistent with the scope set forth in Section 818 of the pending FAA Reauthorization legislation. In order to ensure the credibility of such a study, the study must include the formal participation of a stakeholder group, consisting of the municipalities and airport proprietors in eastern Long Island and operator groups who are most potentially affected by proposed helicopter routes.

For further information about this submission, please contact Jim Brundige, Airport Manager, East Hampton Airport.

Respectfully Submitted,

June 25, 2010



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Town Supervisor  
Town of East Hampton