David E Schaffer Assoc LLC
Aviation Law & Government Relations

Mr. Gerard Boleis, President

East Hampton Aviation Association

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July 1, 2013

Re: Restrictions to Address Helicopter Noise at the East Hampton Airport

Dear Mr. Boleis:

I have been retained, through your local counsel, Anthony Pasca, Esq., to provide you with my opinion, based on federal aviation law, as to whether the Town of East Hampton would have the power to adopt restrictions aimed at addressing helicopter noise issues. I have been asked to address whether the acceptance of FAA grants (coupled with the issuance of grant assurances) would limit the Town's powers to restrict helicopter noise.

The following opinion is based on both my experience and knowledge of federal aviation law and on an extensive survey of more than 30 cases spanning 40 years touching on the topic of local powers to impose restrictions. My experience includes serving 20 years as Senior Counsel and Staff Director for the House Aviation Subcommittee, 6 years as Attorney-Advisor for the Civil Aeronautics Board, and the past nine years in private practice representing both governmental and private aviation clients.

It is my professional opinion that the following conclusions are supported by federal law:

1. Currently, the Town has local control of the airport as the airport "proprietor" and exercises such control through its Airport Master & Layout Plans. As the proprietor, it has flexibility in fashioning its noise regulations, Santa Monica Airport Association, et al. v. City of Santa Monica, et al., 659 F.2d 100, 105 (9th Cir. 1981). There are no instances where *rejecting* FAA funding gave a Town additional control in this regard. Accepting FAA funding does not diminish the Town's authority to adopt reasonable and non-discriminatory restrictions regarding the use of the airport.

2. Under federal law, any restriction on helicopter operations (whether FAA assurances have expired or not) must be reasonable and not make unjustified distinctions between operators or types of aircraft, British Airways Board, et al. v. Port Authority of New York and New Jersey, et al., 558 F.2d 75, 84 (2d Cir. 1977).

3. Regardless of whether FAA assurances have expired or are extended, in order to justify restrictions on helicopters, the Town should undertake technical studies to establish that East Hampton is a quiet community and that helicopters are noisier or more bothersome than fixed-wing aircraft, City of Naples Airport Authority v. Federal Aviation

Administration, 409 F.3d 431, 436 (D.C. Cir. 2005). I understand these studies are already under way.

4. If such studies demonstrate a justification for restrictions, curfews and limits on the number of flights could be upheld, even after taking FAA funding and extending grant assurances, Santa Monica Airport Ass'n v. City of Santa Monica, 481 F. Supp. 927, 946 (C.D.Cal. 1979) [curfews do not breach the grant assurances] and Alaska Airlines, Inc., et al. v. City of Long Beach, et al., 951 F.2d 977, 986 (9th Cir. 1991) [numerical restriction on flights is rational].

National Helicopter Corp. of America v. City of New York, et al., 137 F.3d 81 (2d Cir. 1998), has been cited to support the proposition that, by rejecting FAA funds, a municipality can secure the ability to regulate helicopters as it sees fit. Just the opposite is true.

In that case, New York City had taken no FAA funding for the heliport and had not agreed to any grant assurances. Nevertheless, the federal court rejected three regulations the city had imposed on helicopters as being unreasonable. Thus, National Helicopter confirms that, even if a municipality has taken no FAA funding and is not subject to FAA contract assurances, its regulations must still meet the same federal standards for establishing noise restrictions as at an airport that has accepted FAA funds.

In sum, rejecting FAA funding does not enhance the ability of the Town to regulate helicopters arriving at and departing from the East Hampton Airport. Conversely, accepting FAA funding does not prevent the Town from adopting restrictions on helicopters. With or without FAA funding, the regulations must be reasonable and must not treat helicopters and other types of aircraft differently without justification.

I would be pleased to provide you with more information on these topics and to address the Town to explain why I believe it has the power to adopt reasonable, non-discriminatory restrictions and still take FAA funds.

Sincerely,

David Schaffer

David Schaffer

"Mr. Schaffer is retiring after twenty-six years of Federal Service, including the past 20 years with the Committee. His unmatched knowledge in the field of aviation, as well as his engaging personality, will be sorely missed in the halls of Congress. Every single aviation law passed in the last two decades is marked with David's creative ideas and approaches. He has earned an immeasurable amount of respect from everyone with whom he has worked, including Members of Congress, staff, and those in the transportation community." *February 24, 2004*

Honorable Don Young (R - Alaska) Former Chairman, House Committee on Transportation & Infrastructure

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David provided outstanding, professional leadership and service as a member of the House Aviation Subcommittee staff since 1984. He became Majority Counsel and staff director of the Subcommittee in 1995 and was instrumental in passing twenty major aviation bills during his time on Capitol Hill. As Chair of that Subcommittee, I believe the Congress and the American People have benefited not only from his decades of public service, but also from his untiring efforts after the attack on our Nation on September 11, 2001. Indeed, we were privileged to have David's experience and talents as we developed legislation to secure our national aviation and transportation systems. I have been fortunate, along with Full Committee Chairman Don Young, to also have David Schaffer lead our staff efforts as we worked to replace AIR-21 with a new four-year federal aviation authorization bill."
March 2, 2004

Honorable John L. Mica (R – Fla.) Former Chairman, House Committee on Transportation & Infrastructure

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"Your dedication and hard work helped us shape the aviation system in this country, leading to much important and far-reaching legislation. In your career, starting at the Civil Aeronautics Board through your last day at the committee, you have acquired an expertise in all things aviation. And you graciously shared that expertise to shape policy on aviation safety, small community and international air service, consumer protection, competition, airport improvement, and air traffic control modernization." *February 12, 2004*

Honorable Norman Y. Mineta, Former Secretary of Transportation

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"Over the course of his 26 years in the federal government, including 6 years with the Civil Aeronautics Board, his efforts have directly contributed to many of this Committee's significant legislative efforts to enhance the overall safety, efficiency, competitiveness and security of our Nation's aviation system. As the Majority Counsel for the Aviation Subcommittee, David was instrumental in crafting the Aviation Investment and Reform Act for the 21st Century (AIR 21), Federal Aviation Authorization Act of 1996, the Aviation Medical Assistance Act, Pilot Records Improvement Act, Aviation Disaster Family Assistance Act, and the Aviation and Transportation Security Act. His bipartisan, non-confrontational approach to crafting legislation, his painstaking attention to detail, and his mastery of the subject matter has been most impressive and has been greatly appreciated by my staff, and by me. I know that his work has required great personal sacrifice and I commend him for his unwavering commitment to excellence."
February 25, 2004

Honorable James Oberstar, D – Minnesota, Former Chairman, House Committee on Transportation & Infrastructure

¤ David E. Schaffer Associates, LLC

David E. Schaffer Associates, LLC provides legal and policy advice, legislative strategy and prepares regulatory filings for a variety of aviation clients in government and industry.

From 1984 to 2004, Mr. Schaffer was Senior Counsel and Staff Director of the US House of Representatives Aviation Subcommittee.

In that capacity, he

- Advised Chairmen and Members of Congress on legislative and policy issues relating to aviation including aviation safety, security, airports and airport capacity, international aviation, and air traffic control modernization

- Drafted legislation and composed letters, memoranda and speeches

- Organized Congressional Committee hearings

- Negotiated and worked to resolve policy issues with various interest groups, the Administration, House and Senate Leadership, and other Congressional offices

- Wrote and helped enact such legislation as the Pilot Records Improvement Act, Aviation Disaster Family Assistance Act, Aviation Medical Assistance Act, FAA Reauthorization Act of 1996, Airport Security Improvement Act of 2000, Aviation and Transportation Security Act (ATSA), the Aviation Investment and Reform Act for the 21st Century (AIR 21), and Vision 100-Century of Aviation Reauthorization Act.

- Before joining the US House Staff, Mr. Schaffer was Attorney-Advisor to the Civil Aeronautics Board. In that role he prepared memoranda, letters, regulations, legislative proposals, and court briefs dealing with aviation issues including such matters as essential air service, international aviation, smoking, and airline passenger protection. Mr. Schaffer argued cases in Federal Circuit Courts on these issues.

- Current and former clients include:
  Federal Aviation Administration
  National Transportation Safety Board
  Transportation Security Administration

Mr. Schaffer holds a Bachelor of Arts Degree in Political Science from Colgate University (1975), and a Juris Doctor Degree from the Boston University School of Law (1978.)