



July 31, 2014

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Re: Request for Meeting

Hon. Sir, Hon. Madam, and Mr. Brundige:

We are aviation specialty counsel to the Friends of East Hampton Airport, Inc., a non-profit corporation organized to ensure that the East Hampton Airport (the "Airport") remains open to the flying public, continues to comply with all of its Grant Assurances, does not unjustly discriminate against any aeronautical users or class of users, and most importantly, maintains a safe and efficient environment for fixed wing and rotorcraft pilots, aircraft owners, lessors and operators, as well as the general and flying public.

The Town of East Hampton (the “Town”) has been and is continuing to publicly pursue an approach that it believes will relieve it of federal oversight in order to limit the use of the Airport. However, we believe, among other things, that this approach will ultimately lead to unjustly discriminatory conduct against certain aeronautical users. We do not wish to question the intentions or good will of any Town Board member or any employee of the Airport, and recognize that the issues at hand are controversial and that many residents simply disagree about these issues. Our client is composed of reasonable entities and people and believes that there are solutions that can be devised that can receive the support of Town residents. To this end, we request a meeting to discuss the contents of this letter.

Safety First

The below mentioned safety concerns have been discussed publicly, studied by experts retained for this specific purpose, and remedies priced. However we are concerned that the current Town Board has failed to commit the necessary funds to proceed with these important capital improvements. Addressing these existing safety concerns requires prompt attention, and as discussed below, a failure to remedy these concerns on a reasonable timetable may be a material breach of the Town’s Grant Assurances with the Federal Aviation Administration (“FAA”). A failure to bring airport conditions up to FAA safety standards also has the potential to be cited as evidence of negligence in tort litigation, should there be a serious or catastrophic accident in the future.

Tree Obstruction Removal

In 2013, the FAA notified the Town of trees that are obstructing the landing approaches to the Airport, and it advised the Town that the trees must be removed or reduced in size. Since this situation has not been remedied, the FAA has cancelled the use of most of the Airport’s instrument approaches to the Airport at night. The only remaining instrument approach available at night is the RNAV approach to Runway 28. Unfortunately, during instrument weather conditions, the prevailing winds are usually from the east, making the RNAV 28 approach impractical or impossible for actual use. This means that practical instrument approaches are only available during daytime. Aircraft operators, whether large or small aircraft, and rotorcraft, must divert to other Airports, such as Francis S. Gabreski Westhampton Beach Airport, if the weather is below visual minimum conditions at night. If the Town does not remedy the tree obstruction soon, it is quite possible that the FAA will cancel instrument approaches entirely.

Whether in a normal or emergency operating situation, instrument landing systems protect lives and property.

Due to the Town’s failure to remove the obstructions, the safety, utility, and efficiency of the Airport have been reduced. Furthermore, this situation is imperiling the life and property of not only the flying public but the adjoining and neighboring residents and businesses to the Airport. It is our hope that the Town will in fact designate the funds necessary, engage a contractor and commence

removing the tree obstructions as soon as reasonably possible so that all aircraft can utilize instrument approaches if warranted.

Runway Deterioration

The safety, function and utility of the Airport have been further reduced by the loss of Runway 4-22, which was closed due to pavement deterioration. It is important to maintain three operating runways at the Airport for reasons of safety. The pilot's selection of a runway is based in part on wind direction. With Runway 4-22 closed, the smaller aircraft that are Runway 4-22's primary users must use alternative runways regardless of the fact that the wind direction may not be favorable. Three usable runways at the Airport are necessary therefore for reasons of safety.

As shown on Bond Resolution 2014-835, the Town has already begun to refer to 4-22 as a taxiway and not a runway. By failing to re-asphalt the whole width of Runway 4-22, the Town is effectively converting Runway 4-22 into a taxiway and this is a misguided waste of money. There is more involved than simply adding some asphalt to the top of the existing decayed runway. If the Town uses the wrong asphalt, or does not re-asphalt the whole width of the Runway, and thus changes Runway 4-22 from a runway to a taxiway, the Town will be required to change the signage, pavement markings, lighting, and must remove the existing top layer of concrete and repave it, resulting in changes so great (and expensive) as to preclude returning to use as a runway ever again. Converting Runway 4-22 to a taxiway is a permanent step that further reduces the safety, utility, and function of the Airport; a step that cannot ever be easily reversed without significant expense.

Runway 16-34 is also in terrible condition. The Town's consultant, DY Consultants, recommends that Runway 16-34 requires "rehabilitation." The deteriorated condition of Runway 16-34 was recognized by the Town in the November 21, 2013 Airport Capital Improvement Plan ("ACIP") PowerPoint used for the Public Hearing (copy annexed as Attachment A), where two of the three runways (4-22 and 16-34) are rated "Failed/poor." While Runway 10-28 is in better shape, DY Consultants stated that it also requires at least preventive maintenance. The Town should immediately ensure that the runways are rehabilitated and should create a realistic plan and budgeting process for maintaining all three runways in a safe condition going forward. Once again, we note that FAA funds are available to return Runway 4-22 to operating condition and to make the important and necessary repairs to the other two runways.

Ramp Deterioration

The maintenance of the ramps has been inadequate to either prevent further deterioration or to maintain them in safe condition. The ramps are at various stages of disrepair, and in several locations, there is evidence of disintegration that is generating loose material. This loose material could cause propeller damage, be ingested into and cause engine damage, and could result in injuries to pilots and passengers from thrown rocks. The Airport ramps are also cracked with grass growing through. As the condition of the ramps continues to worsen, there is a worsening safety risk to planes and passengers. Any aircraft, from a small general aviation aircraft to large corporate aircraft

could be damaged while trying to use the Airport facilities; such damage causally related to the condition of these ramps could result in significant claims against the Town.

Perimeter Fence

The broken and spotty deer fence is not an effective perimeter fence. The existing wood and wire contraption is not able to keep deer from trespassing onto Airport property, one of the existing gates has remained unrepaired (and therefore open) for months, and holes in the fence create potential security and safety threats and that a failure to deal with these threats may result in liability on the part of the Town. The FAA does not require a perimeter fence at the Airport. However, the fact that the Airport has had instances of deer and vehicular intrusions demonstrates that a failure to erect a perimeter fence is a violation of good safety and security practices.

In August 2011, a corporate business aircraft hit a deer upon landing at East Hampton and sustained over \$60,000 in damage.¹ (See FAA Wildlife Strike Database which demonstrates that the Town has actual knowledge of the deer problem.) Deer are ranked as the number one species with the greatest potential to cause aircraft damage when struck.² The FAA recommends installing 8- to 12-foot chain-link fencing with 3-strand barbed wire outriggers and a 4-foot skirt to keep deer away from airports. Such a fence if properly planned could be both a deer fence and a perimeter fence.

The FAA encourages general aviation airports such as East Hampton to conduct Wildlife Hazard Assessments to determine what, if any, wildlife mitigation is needed. The FAA will support the Airport by making Airport Improvement Program grants available to conduct an assessment. The Town should be taking advantage of these federal funds in order to keep wildlife out of the Airport property, prevent aircraft damage and potential injuries to pilots and passengers.

In addition to keeping out wildlife, an effective fence is an important security component. As you may be aware, the FAA has become very concerned about vehicular intrusions onto airport ramps and runways. Recently a delivery truck that became lost entered the Airport through an open gate and drove down the runway. This is further proof why the Airport must soon erect a contiguous perimeter fence around Airport ramp and runways to prevent all intrusions that could result in accidental collisions, or worse, intentional damage by someone with ill-intent.

¹ The accident report provided details of the deer strike, “[d]uring landing roll, 3 deer entered the runway at a fast pace moving toward the centerline. A few seconds later 1 deer was struck and the nose gear collapsed. The aircraft exited the runway and was evacuated. The runway was closed for over 3 hours. The right leading edge and the underside of the wing were covered in blood along with the right engine spinner and right landing gear. The deer was cut in half with body parts scattered along the runway. Time out of service was 33 days. Costs totaled \$60,000.”

² EDWARD C. CLEARY & ARCHIE DICKEY, *GUIDEBOOK FOR ADDRESSING AIRCRAFT/WILDLIFE HAZARDS AT GENERAL AVIATION AIRPORTS*, 10 (ACRP Report 32, Transportation Research Board 2010).

Airport Weather Observing System ("AWOS") Replacement

The unreliable AWOS system has not yet been replaced. Currently, the only reliable weather data is provided by one of the FBOs at the Airport. At night and when the FBO is not operating, there is no reliable weather reporting. Again, federal funding exists for this type of system replacement. Failure to provide current weather conditions at the Airport forces aircraft operators to rely on weather reports from other airports, resulting in pilots being forced to land at the Airport without the local weather information. Safe operations require the best possible weather information.

Signage

Signage is critical for safety. Proper signage ensures that aircraft operators know where to bring their aircraft before taking off and after landing. Improper signage can cause personal injury or death and significant property damage.

Lighting

Lighting is equally critical for safety. The FAA's compliance order interprets the grant assurances to require the availability of installed lighting. "The airport must operate field lights whenever needed. This means that the lights must be on during the hours of darkness (dusk to dawn) every night or be available for use upon demand."³ The lighting system on Taxiway A is not reliable and the equipment has outlived its useful life. Obviously the failure of the lighting system should have been foreseen as the system is now over 20 years old. Failure of the taxiway lighting could result in runway incursion and other operating mishaps. Current plans to improve lighting on Taxiway A are insufficient.

Present Situation

We are concerned that unless the Town Board accepts federal funding the necessary repairs will not take place and eventually the Airport will not be able to permit commuter traffic, leaving the Airport open only to small fixed-wing aircraft. We believe East Hampton residents support an airport capable of handling commuters by jet and helicopter, who add to the economic vitality of the Hamptons.

As you will recall, after inundating the FAA and U.S. Justice Department with litigation in Washington D.C. and in the Federal Second Circuit Court and the District Court for the Eastern District of New York, the "Committee to Stop Airport Expansion" (the "Committee") and certain individual residents launched a series of lawsuits against the federal government opposing actions the federal government took to approve Airport documents that are necessary in order to fund the upkeep and expansion of the Airport. This resulted in the "2005 Settlement Agreement" between the Committee and the FAA, in which the FAA agreed not to enforce certain key Grant Assurances

³ FAA Airport Compliance Manual, FAA Order 5190.6B, at ¶ 7.12.

against the Town after December 31, 2014. The Town was not a party to the 2005 Settlement Agreement. (A summary of the litigation is attached to this letter as an Addendum.)

As you are aware the Settlement Agreement was not entered into by the Airport Sponsor (the Town), but by an outside group that had no standing. We strongly believe that the assurances are by federal statute mandatory and not discretionary, and are essentially terms of a contract between the Town and the FAA, which can be enforced by third parties such as my client and other interested parties who can show they will suffer injury if the Grant Assurances are not strictly enforced.

The Town has delayed the funding of necessary repairs and maintenance, thereby letting the Airport fall into deeper disrepair. We are concerned that the current Town Board fails to comprehend the necessity of safe and serviceable conditions by cancelling the 2013 funds that were authorized for maintenance. Instead, the Town plans to finance a minimal level of Airport maintenance solely through the use of bonds which will be paid through the projected operating revenues of the Airport. In order to have sufficient funds to carry out minimal maintenance, the Airport is significantly increasing fees. Its own financial estimates show that it will continue to have to raise fees. By renouncing the use of federal funds, the Town is trading the safety of the flying public and those who live and work in the Airport vicinity for a misguided plan to reduce Airport function and utility.

In a meeting with the Town, we will discuss our position that the Town need not be guided by this so-called 2005 Settlement Agreement, and that the Town should agree to enforce all of the assurances, including making necessary repairs and seeking FAA funding, and of course commit itself to keep the Airport operating safely for the benefit of both the flying public and the neighboring residents and businesses.

We trust that the Town will give due consideration to our request for a meeting, to treat these issues with the seriousness they require and seek resolution in good faith. Failing that, my client may consider initiating a Part 16 Complaint with the FAA seeking, among other things, the enforcement of all of the Grant Assurances and a finding that the Airport's failure to make immediate repairs is a breach of other assurances (discussed below) which were not addressed in the 2005 Settlement Agreement, and for other relief. However, as I mentioned, we do not wish to engage in litigation and strongly prefer a negotiated solution.

FAA Grant Assurances Affecting Safety

The Town received federal grant funds in the amount of \$1,410,000 in 2001 for rehabilitation of the terminal apron.⁴ The receipt of federal funds in 2001 obligates the Town and Airport to comply with Grant Assurances until 2021.

Grant Assurance 19 directly requires the Airport Sponsor to ensure that facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition maintain and operate safe Airport operating conditions.

19. Operation and Maintenance.

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, **shall be operated 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.** It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
- 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended. (emphasis added).

The Town has failed to live up to its obligations under Grant Assurance 19 in a number of ways as outlined above. The FAA's standard for compliance states that the airport sponsor shall be considered in compliance when it:

- a. Fully understands that airport facilities must be kept in a safe and serviceable condition.
- b. Makes available the equipment, personnel, funds, and other resources, including contract arrangements, to implement an effective maintenance program.

⁴ See 2001 FAA Grant Report, available at http://www.faa.gov/airports/aip/grant_histories/media/grants_2001.xls.

c. Adopts and implements a detailed program of cyclical preventive maintenance adequate to carry out this commitment.

FAA Airport Compliance Manual, Order 5190.6B, at ¶ 7.5.

Acceptable standards and good practice for maintenance programs and safe airfield operation are provided by FAA Advisory Circulars. If the Town were interested in keeping the Airport in safe condition, it would adhere to the guidance in the Advisory Circulars, such as AC 150/5380-6B, *Guidelines and Procedures for Maintenance of Airport Pavements*, AC 150/5320-6D, *Pavement Design and Evaluation*, AC 150/5380-7, *Airport Pavement Management Program*, and AC 150/5200-18C, *Airport Safety Self-Inspection*.

Grant Assurance 20 requires the Airport Sponsor to protect terminal airspace. Accordingly, the Sponsor must protect instrument and visual flight operations, including, where necessary, the removal of hazards, such as overly tall trees, that are obstructions to the airspace.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

The FAA also publishes guidance for ensuring safe airspace near the Airport. The Sponsor could show its compliance with Grant Assurance 20 by adhering to the advice in AC 150/5190-4A, *A Model Zoning Ordinance to Limit Height of Objects Around Airports*.

The Town should be aware that the FAA has found Airport Sponsors to be in violation of Grant Assurance 20 for failure to address safety hazards. (*See City of Fairview v. City of McKinney*, FAA Docket 16-99-04.)

Grant Assurance #11 requires that pavement must be maintained according to an effective maintenance program and to FAA standards. This implicitly involves safety standards.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

Airport Layout Plan (“ALP”)

An extensive analysis of the actions of a few individuals and their association, demonstrates that these parties seek to limit the size and utility of the Airport and restrict the type of users of the Airport by ensuring that an effective, sound and current Airport Layout Plan does not exist. Grant Assurance 29 Airport Layout Plan is in force even though the current Town Board appears to believe that allowing the Airport to be guided by a twenty-five year old (1989) ALP is a viable and appropriate way to manage the Airport. There are two problems with this belief: safety is compromised and the 2005 Settlement Agreement at the heart of the approach is not valid or enforceable.

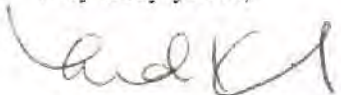
A current Airport Layout Plan is required in order for the Airport to receive federal funds. The Airport cannot be maintained and operated safely based on Airport revenues alone. The pressing safety issues outlined above require federal funding. Attempting to proceed without federal funding will only lead to continued deterioration and an increase in safety-related problems. Even if the Grant Assurance pertaining to the Airport Layout Plan were not in effect, the Town would still be found in violation of the safety-related Grant Assurances outlined above, if it continues on this path. The Grant Assurance requiring an Airport Layout Plan will however be found enforceable and continuing in effect, despite the 2005 Settlement Agreement.

The proposed conversion of Runway 4-22 to a taxiway is a significant change to the Airport that decreases the safety, utility, and efficiency. This change must be reflected on the ALP and must be approved by the FAA. Failure to do so will require the Town to bear the cost of rectifying the situation.⁵ The Airport may not suspend maintenance on any operational facility (or runway) depicted on the currently-approved ALP. The failure to maintain Runway 4-22 already represents a violation of Grant Assurance 29.

Conclusion

In conclusion, acting in good faith, we request a meeting to discuss our concerns and perhaps commence a process of negotiations leading to a resolution of all issues.

Very truly yours,



Leonard D. Kirsch, Esq.

Cc: Friends of East Hampton Airport, Inc.

⁵ FAA Airport Compliance Manual, at ¶ 7.18(a) and (b) states, (“[t]he conversion of any area of airport land to a substantially different use from that shown in an approved ALP could adversely affect the safety, utility, or efficiency of the airport and constitute a violation of the federal obligation assumed.”)

ADDENDUM A

SUMMARY OF THE RECENT LITIGATION

A. Chronology of Lawsuits by the Committee

- April 20, 2001 – The FAA approves “new” Airport Layout Plan (“ALP”) for HTO, which was identical to the 1989 ALP, the 1994 ALP having been invalidated by the FAA (after the Committee argued that the Town Board had failed to approve the 1994 ALP in the proper manner).
- October 23, 2001 – *Second Circuit Case* – Petitioners (the Committee and individual residents) file a petition in the Second Circuit to review the FAA’s order approving the 2001 ALP.
- April 2, 2002 – *DC District Case* – Plaintiffs (the Committee and individual residents) file a complaint in the United States District Court for the District of Columbia challenging the decision to award the Town of East Hampton \$1.5 million under the Airport Improvement Program (“AIP”) for the reconstruction and rehabilitation of the aircraft apron at HTO.
- July 29, 2002 – *Part 16 Complaint* – The FAA dismisses the Part 16 complaint (but later agrees to vacate the dismissal as part of the 2005 Settlement Agreement, the Committee and individuals agreed to withdraw the Part 16 complaint).
- July 29, 2002 – *DC District Case* – Defendants make a motion to dismiss the Committee’s DC District Court case.
- February 11, 2003 – *Second Circuit Case* – Second Circuit dismisses the Petitioners’ petition for lack of jurisdiction under 49 U.S.C. § 46110.
- May 27, 2003 – *EDNY Case* – Plaintiffs (the Committee and individual residents) file a complaint in the Eastern District of New York challenging the 2001 approval of the ALP as a violation of the National Environmental Policy Act (“NEPA”), the Airport and Airways Improvement Act (“AIAA”), and 14 CFR Parts 151 and 152 relating to the administration of the Airport Improvement Program (“AIP”).
- April 5, 2005 – *DC District Case* – the DC District Court dismisses the case *sua sponte* after the parties repeatedly represented that they were settling or had settled the matter, but failed to file a stipulation of settlement and dismissal by March 19, 2005. Instead, on March 15, 2005, counsel filed a report stating that settlement documents were about to be filed in the Eastern District of New York, and that the DC action would then be dismissed. Since that had not happened, the DC District Court dismissed the case.
- May 5, 2005 – *EDNY Case* – The Court dismissed the EDNY case pursuant to the parties’ 2005 Settlement Agreement. (The 2005 Settlement agreement copy we have is not fully executed, but of those who signed, the last signature date is 4/29/05, which is the same date Plaintiffs’ attorney signed the Stipulation of Dismissal.)
- September 2, 2010 – *Suffolk County Case* – Petitioners (the Committee and individual residents) file an Article 78 proceeding in Suffolk County Supreme Court to reverse, annul, and set aside the Town Board’s resolution regarding the Airport Master Plan Update and the Airport Layout Plan.
- July 18, 2012 – *Suffolk County Case* – The Court denies the petition.

B. Second Circuit Case: ALP, Committee to Stop Airport Expansion v. FAA, 320 F.3d 285 (2d Cir. 2003)

- The Committee and several individuals who reside near the airport (the “Petitioners”) filed a petition to review the FAA’s approval of the 2001 ALP for HTO pursuant to 49 USC 46110, which grants the circuit courts exclusive jurisdiction to review certain FAA orders.
- The 2001 ALP
 - In 1989, the FAA approved a new ALP for HTO. Pursuant to the 1989 ALP, the Town carried out various construction projects with some federal funding.
 - In 1994, the FAA approved a new ALP. More construction took place with some federal funding.

- From 1994 to 2001, the Committee argued in state court and later to the FAA that the Town Board had failed to approve the 1994 AIP in the proper manner. The FAA invalidated the 1994 AIP in July 2001.
- In 2001, the Town was working on a new AIP. Rather than properly approve the 1994 AIP and resubmit it to the FAA, they sent a copy of the 1989 AIP to the FAA for approval, the FAA having lost the 1989 AIP.
 - It is our understanding that the 1989 AIP did not reflect construction that had been performed between 1989 and 2001.
- On August 20, 2001, the FAA approved the “new” AIP, which the Town asserted was identical to the 1989 AIP, but on the condition that no federal funds would be awarded until after satisfactory environmental review.
- Petitioners challenged the FAA’s approval of the 2001 AIP arguing: (1) it violated the National Environmental Policy Act (“NEPA”) because no environmental review preceded the approval, and (2) the FAA’s regulations do not permit reinstatement of the 1989 AIP and therefore its reinstatement violated the Administrative Procedures Act (“APA”).
- The FAA questioned the suit’s ripeness and petitioner’s standing and addressed the merits of Petitioners’ claims.
- **Dismissal:** The Court dismissed the case for lack of jurisdiction under 49 USC 46110, which applies to orders under Title 49 Subpart A. The AIP approval was made under Title 49 Subpart B.
 - The Court did note that “[i]f some substantial part of a petitioner’s claim concerns an order under Part A, then the circuit courts have exclusive jurisdiction over the entire claim to avoid bifurcation of litigation.” 320 F.3d at 290.
 - The Court declined to transfer the petitions to the district court, as the Ninth Circuit had done in two similar cases, because the Petitioners failed to timely disclose the Ninth Circuit cases and their knowledge that the circuit court likely lacked jurisdiction.

C. DC District Court Case: NEPA Challenge of AIP Grant, *Committee to Stop Airport Expansion v. Department of Transportation*, 1:02-cv-00619

- The Committee and certain residents of East Hampton (the “Plaintiffs”) challenged the decision of the Defendants (the DOT, Secretary of Transportation Norman Y. Mineta, the FAA, and FAA Administrator Jane Garvey) to award approximately \$1.5 million under the Airport Improvement Program (AIP) to the Town of East Hampton for the reconstruction and rehabilitation of the aircraft apron at HTO.
 - Federal agencies may categorically exclude types of activities from the case-by-case environmental assessment review under 40 CFR 1500.4(p), 1507.3(b)(2)(ii), and 1508.4. The FAA has issued guidance for compliance with the National Environmental Policy Act (“NEPA”) in the Airport Environmental Handbook, FAA order 5050.4A.
 - On April 6, 2001, the Town Board authorized the Town Supervisor to apply for an AIP grant to fund apron repaving and marking at HTO.
 - The Town adopted a Master Plan Update in 1988 and a new AIP in 1989. An Environmental Impact Statement was performed, which evaluated proposed projects grouped into two categories, Phase I and Phase II. Both Phase I and Phase II contained projects proposing improvements to the apron area at the Airport, the runways, and the terminal.
 - In January 2001, C&S Engineers, the engineering consulting firm hired by the Town Board, prepared a “Federal Aviation Administration Environmental Evaluation Form ‘A’ (Basic Categorical Exclusion) for Airport Development Projects” in connection with Apron Reconstruction – Phase II. C&S represented that the Apron Reconstruction – Phase II project met the requirements of a categorical exclusion and no further environmental review under NEPA was required, and stated that the proposed apron project was consistent with the 1994 AIP.
 - On February 1, 2001, the FAA notified the Town that it agreed with the categorical exclusion determination.

- Count I: Defendants' categorical exclusion determination was based on the invalid 1994 ALP. Defendants therefore lacked accurate and complete information concerning the existing and proposed layout of HTO.
- Count II: The project was approved for a categorical exclusion because the Defendants improperly failed to consider the project as part of a larger, three-phase improvement scheme that would expand the aircraft parking and could have significant environmental impacts. If so, one or more of the exceptions to the categorical exclusion would apply.
 - Plaintiffs claimed that the 1988 Master Plan Update contemplated an airport serving utility aircraft and jets aren't utility aircraft.
- Count III: Defendants failed to consider the "cumulative impacts" of the three-phase improvement scheme. If a project will have cumulative impacts, the FAA may not grant a categorical exclusion.
- Count IV: Defendants should not have approved the AIP grant when they knew or should have known that the 1989/2001 ALP did not accurately depict the existing and planned improvements at HTO.
- Relief Sought:
 - (1) Vacate Defendants' determination that project is entitled to a categorical exclusion and remand the case to FAA for preparation of an environmental assessment;
 - (2) Enjoin Defendants from disbursing funds to Town in connection with Apron Reconstruction – Phase II project, pending full compliance with NEPA;
 - (3) Enjoin Defendants from disbursing any funds to Town in connection with the August 2001 approval of the grant application for the construction of the Apron Reconstruction – Phase II project, pending submission by the Town of a grant application that complies with AIP regulations, including requirement that an approved ALP be included in the application package.
- Defendants' Motion to Dismiss
 - Rule 12(b)(1) – Court lacks subject matter jurisdiction because Plaintiffs are statutorily required to file a petition for review in the U.S. Court of Appeals in order to challenge an administrative order by the FAA.
 - This goes back to the Second Circuit, wherein the Second Circuit found that they lacked jurisdiction because the ALP decision was rendered under Title 49 Subpart B, not Subpart A, rendering 49 USC 46110 inapplicable.
 - Rule 12(b)(6) – Plaintiffs lack standing because they allege no concrete and particularized injury.
 - Plaintiffs allege that if the noise levels increase due to overflight activity, they will be affected. They do not allege that repaving the apron will cause the overflight noise level to increase. In fact, apron repaving cannot increase overflight noise because aprons are used for airplane parking, not for takeoff or landing. Repaving an apron merely repairs existing pavement, it does not create a new facility. Therefore, Plaintiffs lack standing because they cannot demonstrate that they have or will suffer an "injury-in-fact."

D. EDNY Case: Challenge of ALP Approval, *Committee to Stop Airport Expansion v. Department of Transportation*, 2:03-cv-02634

- The Committee and certain residents of East Hampton (the "Plaintiffs") filed a complaint in the Eastern District of New York challenging the 2001 approval of the ALP as a violation of the National Environmental Policy Act ("NEPA"), the Airport and Airways Improvement Act ("AIAA"), and 14 CFR Parts 151 and 152 relating to the administration of the Airport Improvement Program ("AIP").
 - Count I: The FAA approved the 1989/2001 ALP knowing that the ALP was not current and that several projects had been completed at HTO since 1989 because the FAA provided project funding.
 - Count II: The FAA approved the 1989/2001 ALP without performing NEPA-mandated review to determine if an environmental assessment or environmental impact statement was required.
 - Relief Sought

- (1) Declare FAA's approval of the 2001 ALP constitutes a federal action for purposes of NEPA.
- (2) Declare that the FAA's failure to undertake a review pursuant to NEPA in connection with approval of the 2001 ALP constitutes a violation of NEPA.
- (3) Declare that the FAA's approval of the 2001 ALP violated AIA and its implementing regulations.
- (4) Vacate Defendants' approval of the 2001 ALP.
- (5) Enjoin Defendants from approving any projects and/or awarding any AIP funds based on the 2001 ALP.
- Settlement Agreement (April 2005)
 - The FAA will not enforce the following Grant Assurances beyond December 31, 2014:
 - "It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport (grant assurance 22.a)."
 - "The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport (grant assurance 22.h)."
 - "It will keep up to date at all times an airport layout plan of the airport..." (grant assurance 29.a)
 - Prohibiting alterations that adversely affect safety, utility, or efficiency and that are not in conformity with the ALP (grant assurance 29.b).
 - Notwithstanding the foregoing, the FAA retained the right to take action as provided in grant assurance 29 if the Town took or proposed an action that would adversely affect safety.
 - The FAA conceded several points related to the Master Plan and the ALP.
 - The FAA will not consider anything other than the 1989 Master Plan in subsequent proceedings, unless the Town Board properly adopts a new Master Plan. Further, the FAA will not consider anything other than the 1989 ALP in reviewing requests for federal funding, unless the Town Board properly adopts a new ALP. Further, the 1989 ALP will not be considered "current," and as such isn't a legally acceptable basis for any federal financial assistance.
 - The FAA will not award federal financial assistance unless the application is based on an ALP properly adopted by the Town Board.
 - Through December 31, 2009, the FAA will require that applications for federal financial assistance from the Town include a copy of the Town Board resolution approving the ALP and a certified copy of the Town Board approving submission of the application (unless it's an application to fund development of an ALP).
 - Plaintiffs would withdraw the lawsuits against the government and the Part 16 complaint. The FAA would withdraw the dismissal of the Part 16 complaint.
 - Plaintiff would make and FAA would respond to a FOIA action.
 - The effective date was the date the document was signed by the last party to sign it; however, our copy has several blank signatures.

E. State Case, Article 78 Action: *The Committee to Stop Airport Expansion v. Wilkinson*, 10-CV-41928

- In 2010, the Committee, David Gruber, Barbara Miller, Frank Dalene, Robert Wolfram, Barbara Wofram, and Stephen Levine filed an Article 78 proceeding against William Wilkinson, Theresa Quigley, Dominick Stanzione, Peter Hammerle, and Julia Prince (together constituting the Town Board of the Town of East Hampton). Save East Hampton, Inc. intervened, siding with the Town.
- The petitioners sought a judgment reversing, annulling, and setting aside the resolution of the Town Board adopting the Final Generic Environmental Impact Statement ("FGEIS") and the Findings Statement regarding the East Hampton Airport Master Plan Update ("MPU") and Airport Layout Plan ("ALP") reviewed therein. The petitioners alleged that the Town's resolution should be rendered null and void

because its adoption violated the New York State Environmental Quality Review Act (“SEQRA”) and its implementing regulations 6 NYCRR 617. Specifically, petitioners’ contended that:

- The Town failed to properly consider noise impacts of the proposed actions;
 - The Town did not comply with 6 NYCRR 617.9(b)(5);
 - The Town improperly “segmented” its review by failing to consider the possibility of asserting its proprietary rights as owner of the Airport; and
 - The Town failed to take a “hard look” at the environmental and socio-economic factors involved in the adoption of the MPU.
- The Court denied the petition in its entirety.

East Hampton Airport

Airport Capital Improvement Plan (ACIP)

Public Hearing



*Town Of East Hampton Airport
& DY Consultants*

November 21, 2013



*Town of
East Hampton
Long Island, NY*



Previous Airport Projects

	Project Development	Year	FAA Funded	
30 Years	Rehabilitate Runway 16--34	1983	Yes	
	Apron Lighting	1990	Yes	
	Construct Taxiway Taxiways A, B and C	1990	Yes	
	Improve Runway Safety Areas	1992	Yes	
	Install Guidance Signs	1992	Yes	
	Construct Apron	1992	Yes	
	Construct Taxiway D	1992	Yes	
	Install Vertical Visual Guidance System	1993	Yes	
	20 Years	Expand Apron near Runway 28	1993	Yes
		Improve Access Road	1993	Yes
Install Guidance Signs		1994	Yes	
Install Perimeter Fencing		1994	Yes	
Acquire Security Equipment		1995	Yes	
Install Guidance Signs		1995	Yes	
Improve Service Road		1996	Yes	
Construct Apron		1996	Yes	
Install Apron Lighting		1996	Yes	
Improve Airport Drainage		1996	Yes	
16Years	Rehabilitate Runway 4-22	1996	Yes	
	Construct Apron	1997	Yes	
	Install Guidance Signs	1997	Yes	
	Rehabilitate Runway lighting	1997	Yes	
	Rehabilitate Apron - Terminal	2001	Yes	
	Runway 10-28 and Taxiway A Rehabilitation	2007	No	



Town of
East Hampton
 Long Island, NY

Sources: Grant History Report - FAA Office of Airports 11/18/2011;
 Airport Management

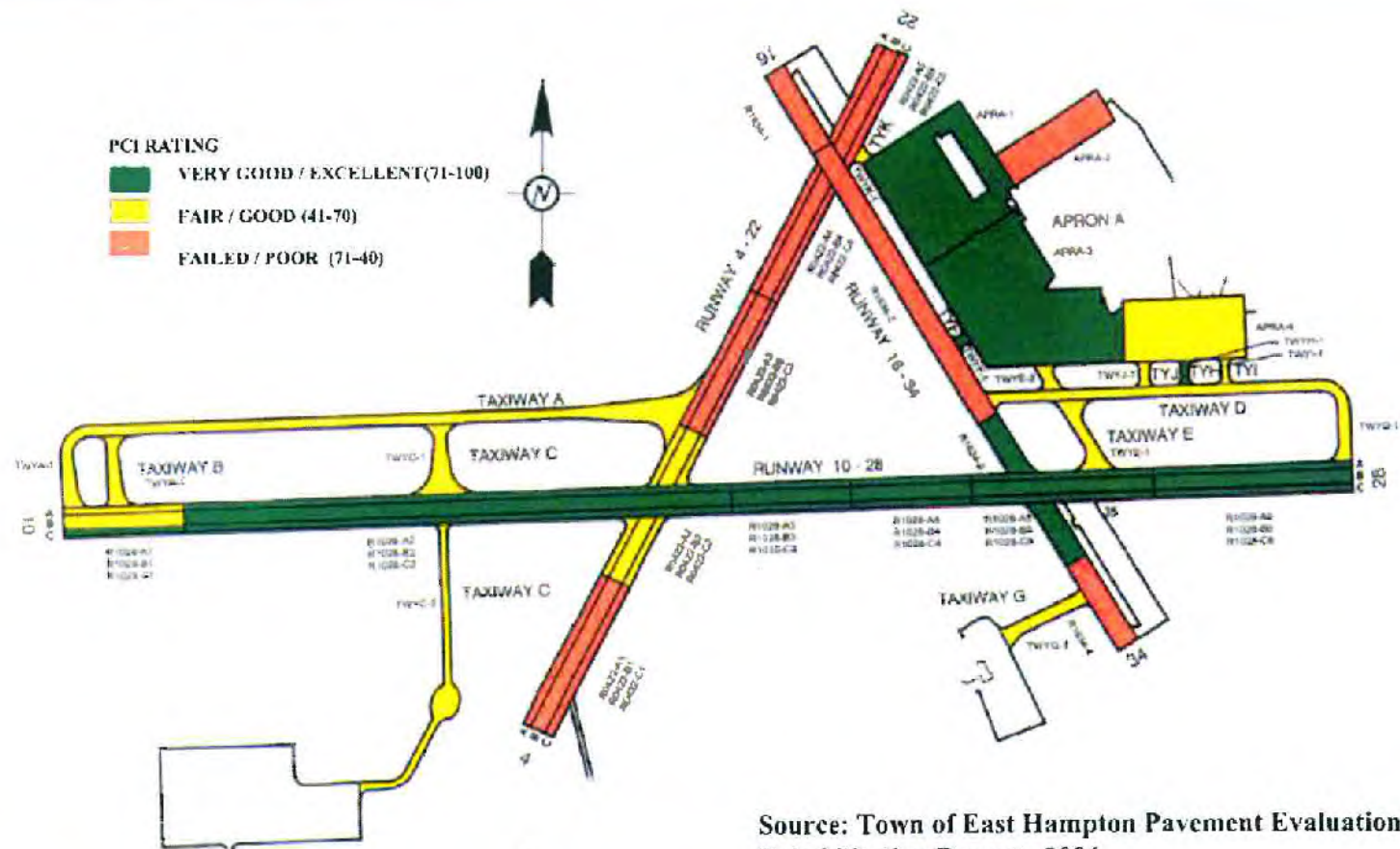
Pavement Condition

- Some pavement areas have not been rehabilitated in 30 years.



Town of
East Hampton
Long Island, NY

Pavement Condition Index (PCI)

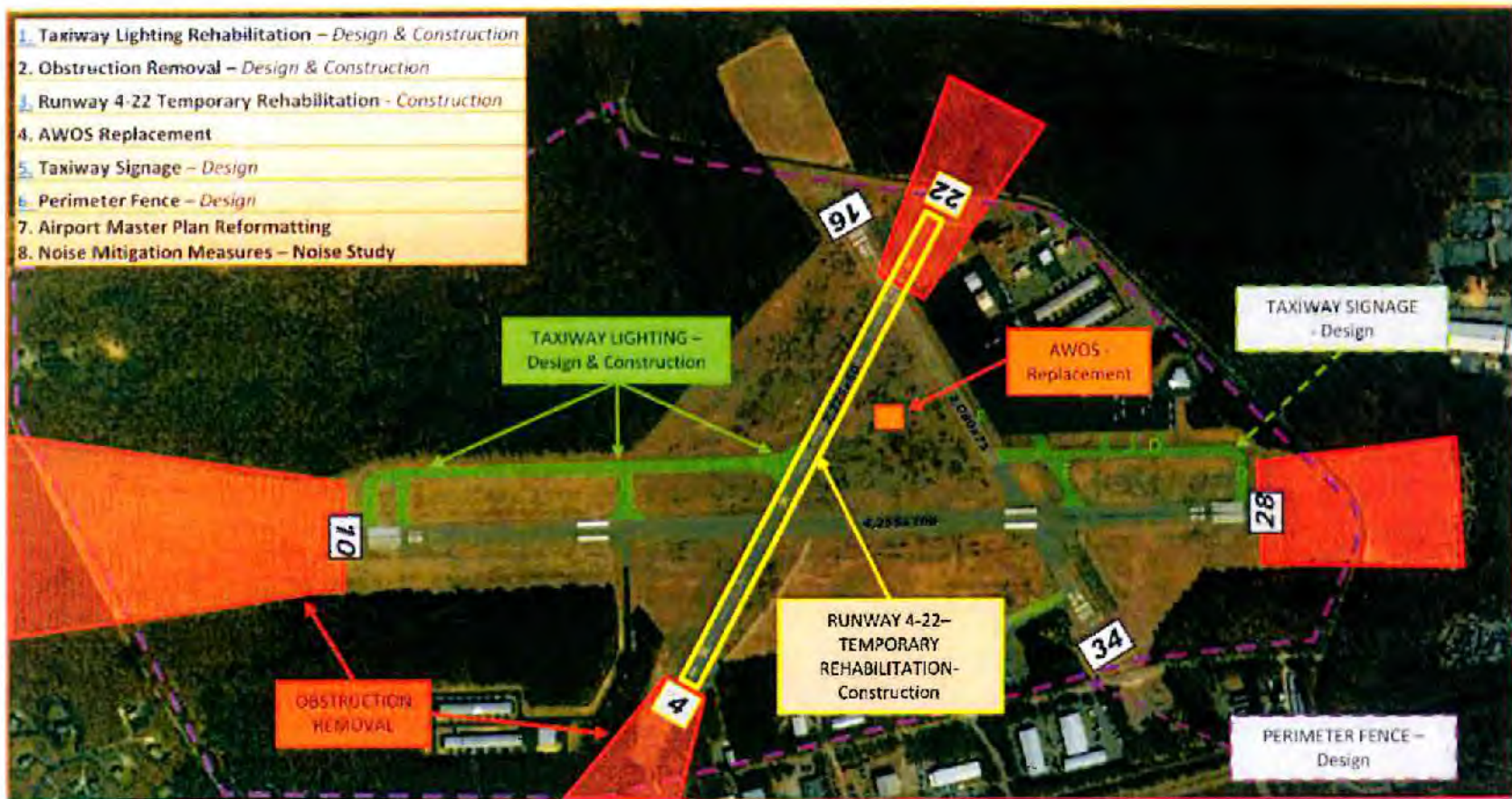


Source: Town of East Hampton Pavement Evaluation and Rehabilitation Report - 2006

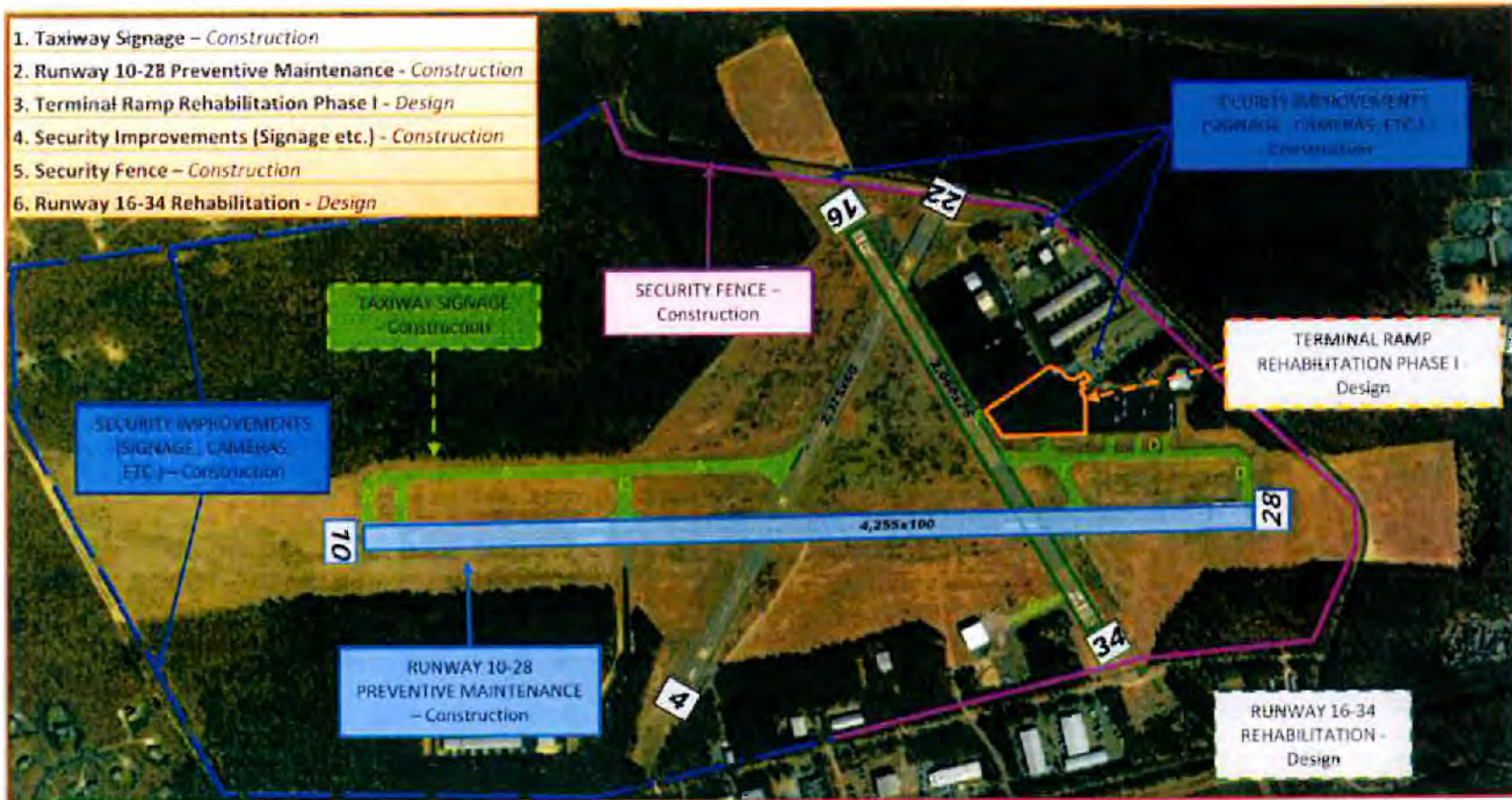


Town of
East Hampton
Long Island, NY

Airport Capital Improvement Plan 2014 - \$2,161,332.00

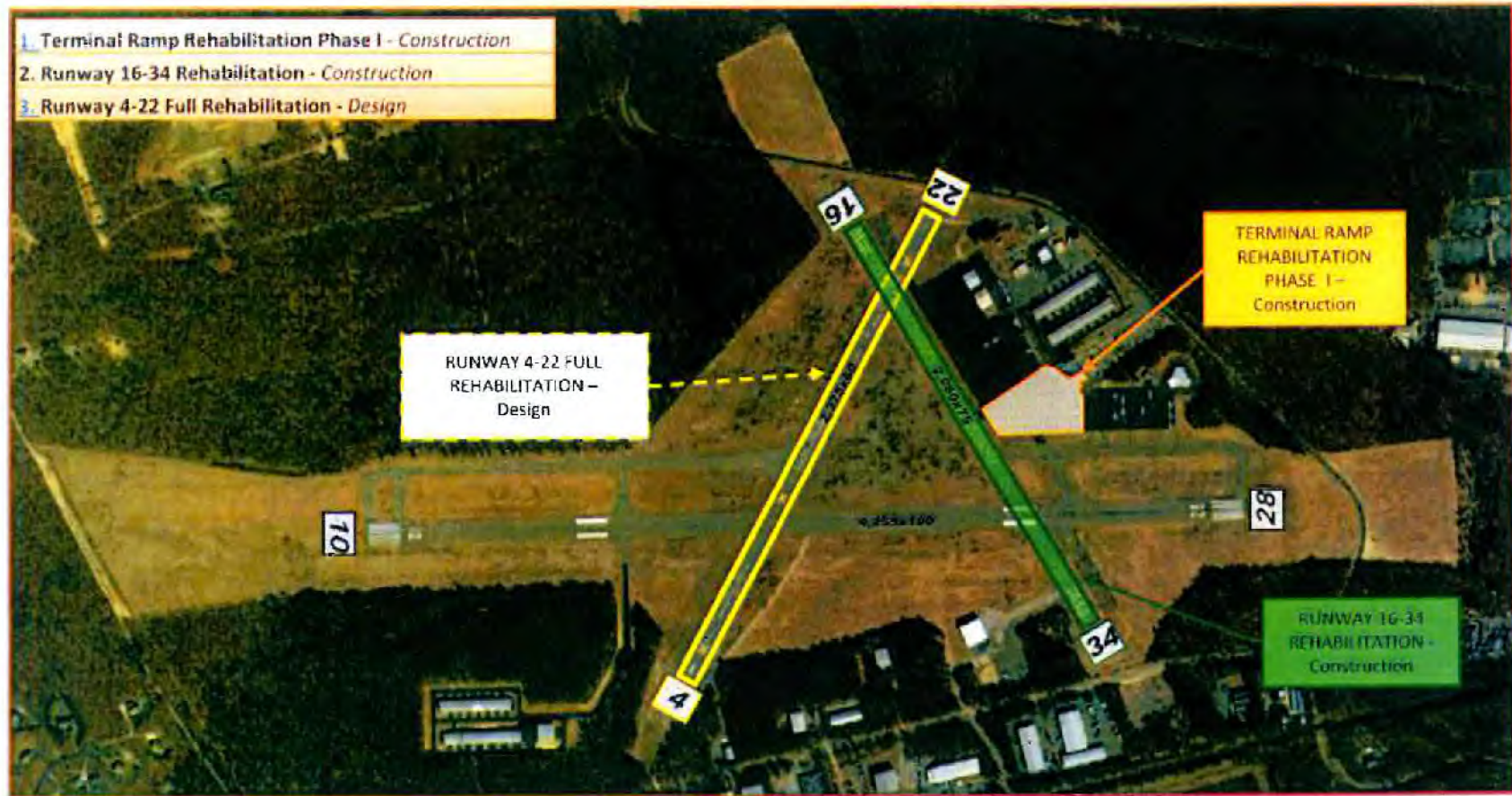


4. Airport Capital Improvement Plan 2015 – \$1,872,980.00

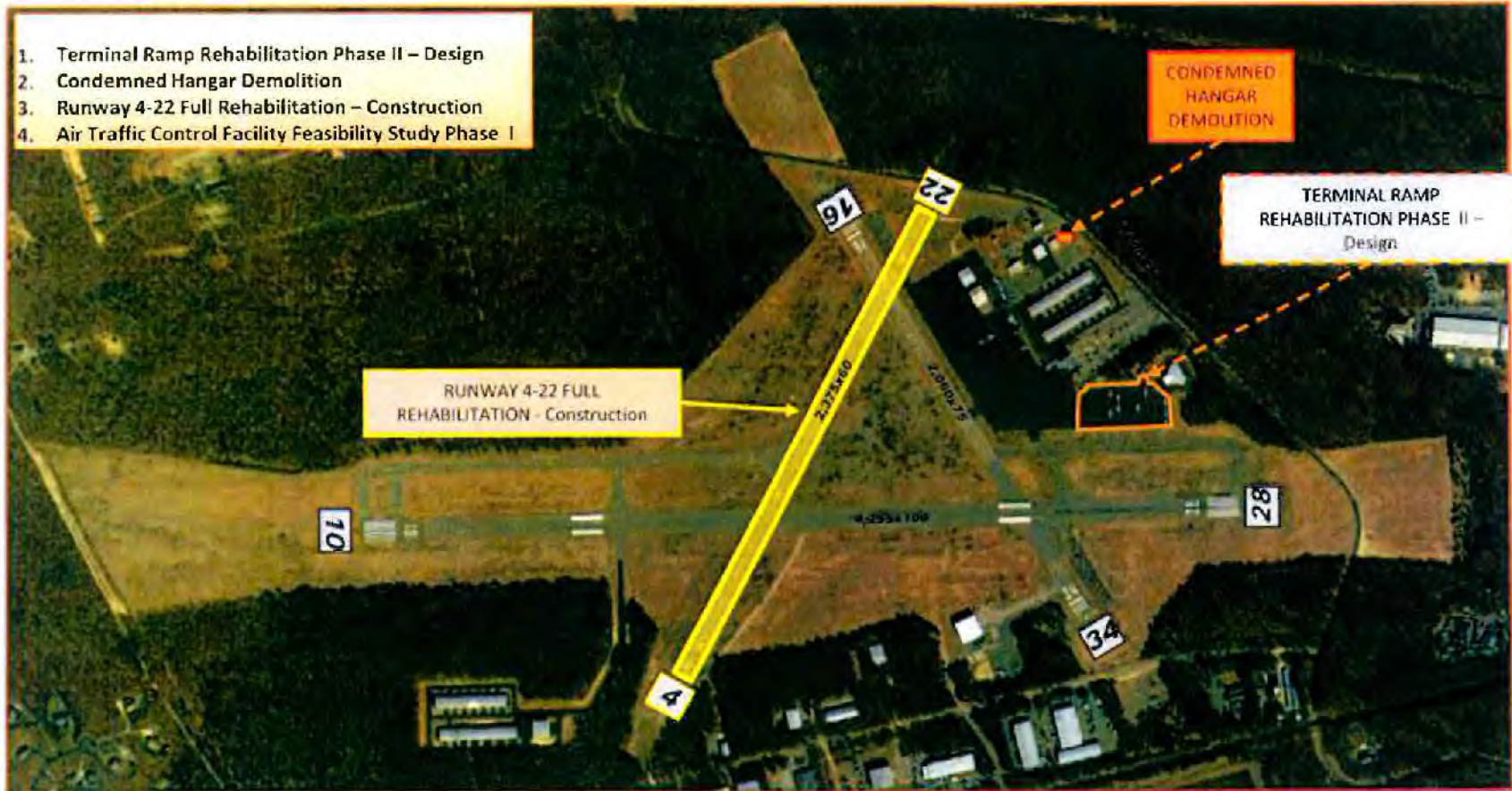


Town of
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Long Island, NY

5. Airport Capital Improvement Plan 2016 - \$1,881,000.00

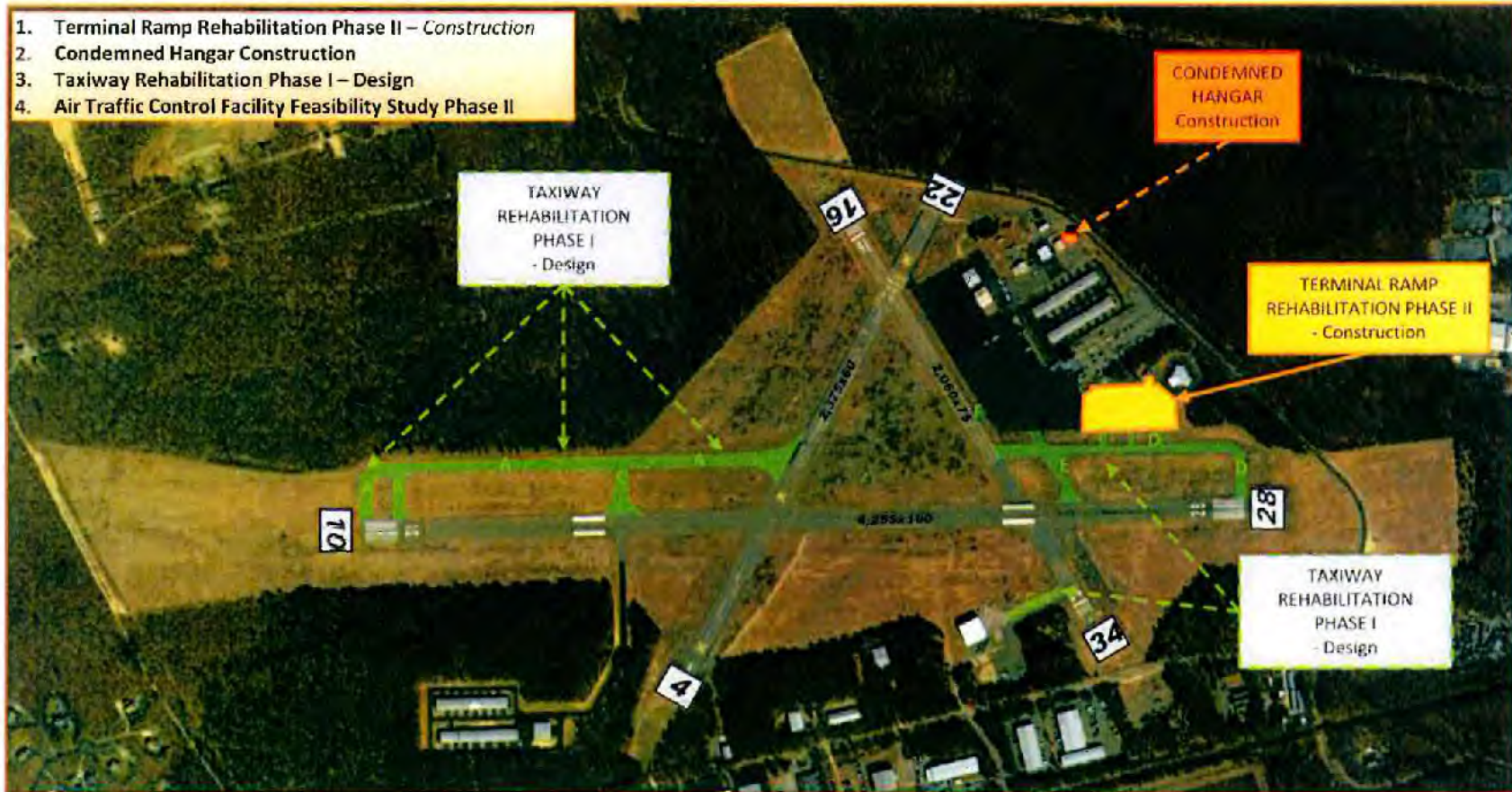


6. Airport Capital Improvement Plan 2017 – \$2,427,127.00



Town of
East Hampton
Long Island, NY

7. Airport Capital Improvement Plan 2018 — \$ 2,110,084.00



Town of
East Hampton
Long Island, NY