

**QUESTIONS AND ANSWERS**

**EAST HAMPTON AIRPORT NOISE ISSUES**

**September 2014**

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**Process for Adopting Restrictions**

**at East Hampton Airport**

1. **Why can’t the Town of East Hampton just pass an ordinance limiting the number of helicopters using the Airport?**

It is not that easy. The U.S. Constitution, federal statutes, as well as case law over the last 40 years have put limits on the authority of the owner of any public airport to restrict access to its airport. These limits require that the owner of an airport act carefully, deliberately and transparently before it can limit access. The basic principle of law is that any restriction must be carefully tailored to a defined local problem and that the restriction can be no more stringent than is necessary to address that particular problem. The courts have consistently held that an airport owner needs facts and data – not just public perceptions – to justify its decision.

A court could find it is arbitrary for an airport owner to adopt a restriction without a good record that justifies the restriction. Therefore, if the Town is to adopt a restriction which will hold up in court, it must engage in a deliberate, thoughtful process. That takes time.

1. **Why won’t the Town Board tell the public what restriction it will adopt?**

The Town Board has not made a decision. In order for any restriction to be legally valid, it is important for the Town Board to remain open minded about possible solutions. That is the purpose of the public hearing and outreach process. That process began with the public hearing on August 27. Until the Town Board has given all interested parties the opportunity to provide input, it would not be appropriate to make a decision. The Town Board plans to publish a list of options it is considering very early in this process.

1. **How long will the process take?**

Many airports have engaged in years of studies, public hearings and outreach before adopting a restriction. The Town Board, after consulting with its staff and experts, believes that it can complete the required process in less than a year. That is a very aggressive schedule but, with cooperation of the stakeholders, it is achievable. The Town Board will shortly publish a schedule which will include reports from the Town’s noise experts, public hearings, outreach to all affected stakeholders, and then debate over a proposed restriction. The Town Board’s objective is to complete the whole process by late spring 2015.

1. **Does taking federal grants affect the Town's ability to restrict helicopters?**

Yes. There are two ways in which being “grant obligated” affects the Town’s ability to limit helicopter operations.

Until March of this year, an airport could adopt a restriction on helicopters with no approval by the FAA. But new regulations were adopted in March 2014 which now require that grant-obligated airports get FAA approval before restricting helicopters. So while it used to be the case that grant obligations did not affect the process for restricting helicopters, that is no longer the case.

Second, the FAA is allowed to bring an administrative action to enforce grant obligations. When the FAA brings an enforcement action, it gets to be both the prosecutor and the jury. That gives the FAA tremendous influence over an airport owner who wants to take action that the FAA opposes. Since FAA policy is to oppose *any* restrictions on use of airports, it is reasonable to assume that it would try to use its administrative authority to prevent a grant-obligated airport from adopting a restriction.

1. **What kinds of restrictions is the Town considering for East Hampton Airport?**

While it is premature to define the actual restriction that will be proposed, there are some types of restrictions which certainly will be evaluated:

* Time-of-day restrictions (i.e., limiting use of the airport at certain times)
* Prohibitions on only certain types of aircraft (e.g., helicopters only)
* Restrictions on the number of operations by certain types of aircraft at certain times of day

There are certain restrictions which the Town will *not* consider because the Town has no authority to adopt them. For example, the Town will not consider mandating certain flight tracks, nor will it consider requiring aircraft to maintain a specific altitude. Both of those measures are exclusively within the FAA’s control.

If any stakeholders want to propose voluntary measures, the Town will also consider those measures as well.

1. **What is the process for restricting the use of the Airport by helicopters?**

The Town is going to follow 7 steps in order to comply with federal law, regulations and case law. The Town Board plans to have this process completed by April 2015.

1. Formally begin process for considering restrictions at the airport (Sept. 2014)
2. Collect information on noise impacts, complaints, location of impacts and severity of impacts [almost completed]
3. Analyze data to define the noise problem with specificity (Summer, Autumn 2014)
4. Recommend alternatives to be considered to address the defined problem (October 2014)
5. Solicit public comment and stakeholder input on the alternative approaches (October 2014 – March 2015)
6. Prepare environmental documentation (Winter 2014-2015)
7. Adopt restriction (April 2015)

**Helicopter Flight Tracks**

1. **Who establishes flight tracks for helicopters? How are they established?**

Helicopter flight tracks fall under three primary categories: (1) mandatory, (2) voluntary-informal, and (3) voluntary-formal.

Only the FAA can establish ***mandatory*** flight tracks. The FAA establishes very few mandatory helicopter flight tracks anywhere in the country. The principal criteria for establishing mandatory flight tracks are safety of operations, public welfare of people on the ground, and operating efficiency. There are only a small handful of mandatory flight tracks in the United States.

There are ***voluntary*** flight tracks in the vicinity of many airports. As the term implies, voluntary tracks are followed at the pilot’s discretion on a flight-by-flight basis. They may be developed to address a variety of local objectives, such as operating efficiency or noise abatement. They are not developed to address safety; if the FAA identifies any need to route helicopters for safety-related reasons, the routes must be mandatory.

Voluntary tracks are generally developed in a collaborative process involving some or all of the following groups: the airport, aircraft operators, pilots’ organizations, the FAA, air traffic controllers, etc. There are two types of voluntary flight tracks:

***Voluntary-informal*** flight tracks are voluntary tracks that are implemented through informal communication mechanisms, such as pilot handouts, websites, signage and the like. These mechanisms are designed to alert pilots to the issue(s) of concern, the voluntary procedures that have been developed to address them, and to request that pilots follow the procedures to the extent it is safe and practical to do so. Direct instructions from FAA air traffic control personnel always preempt voluntary-informal procedures.[[1]](#footnote-1)

***Voluntary-formal*** flight tracks are voluntary tracks implemented through a formal written agreement among the FAA, air traffic control personnel, the airport, and aircraft operators. This mechanism is generally used where the parties agree it is most efficient to define the procedures in advance and to require all involved parties to acknowledge that they are familiar with them. The primary advantage of this approach is that it reduces flight-to-flight communication between pilots and air traffic control personnel because pilots can be assigned the route, with the understanding that the pilots and controllers will know exactly where the aircraft will fly. Even when there is an agreement, however, these flight tracks are still voluntary.

1. **How was the new North Shore Route for helicopters from New York City to eastern Long Island established? Did Senator Schumer set that route? Who asked him to do so? What role did the Town have in creation of that route?**

The North Shore Route was established in 2008 as a voluntary-informal route and was formally designated by the FAA as a mandatory helicopter route in July 2012 (implemented in August 2012). This is one of only a small handful of formal, mandatory helicopter flight tracks in the United States. The FAA created the North Shore Route in response to intense pressure from communities throughout Long Island and from Senator Charles Schumer.

Senator Schumer had proposed legislation in 2006-2008 to mandate that helicopters flying from New York City to eastern Long Island fly largely over the Long Island Sound. That legislation was not enacted but, in a compromise to defeat the proposed legislation, the FAA promised Senator Schumer instead that it would issue formal regulations to require helicopters in certain circumstances to use a new North Shore Route off the coast of Long Island. The FAA established the route by issuing a formal rule.

1. **Is the North Shore Route permanent?**

The North Shore Route, while mandatory, is temporary. The FAA originally stated that it will reevaluate the route after two years (through August 2014). However, in July 2014, FAA extended the route for another two years until August 2016. The North Shore Route is unique because it is the only formal helicopter route in the nation that was established principally to address noise concerns and not primarily for safety or efficiency. The FAA has not stated whether it will make the rule permanent.

1. **What area does the North Shore Route cover? Does it dictate where helicopters fly when approaching the East Hampton Airport?**

The mandatory portion of the North Shore Route begins about 20 miles northeast of LaGuardia Airport, near Huntington, New York, and remains approximately one mile offshore and extends to Orient Point, near the eastern end of Long Island. Helicopters on this route are required to remain at least 2,500 feet above sea level.

The route does *not* have waypoints, meaning that there are not defined points along the route that operators are required to pass. In addition, there is no mandatory route for helicopters when transitioning to or from the North Shore Route. So, for example, the mandatory North Shore Route does not direct where helicopters fly when arriving at, or departing from, the East Hampton Airport.

1. **If the FAA’s North Shore Route does not mandate a flight track all the way into any airport, who decides what route helicopters take between the North Shore Route and the East Hampton Airport?**

The FAA’s regulations set forth in technical detail what types of operations, and under what circumstances, helicopters are required to use the North Shore Route. These regulations are applied in practice by air traffic control personnel who have the responsibility of directing helicopter operators to use that route (subject to a series of exceptions that are set forth in the rule). Where an aircraft enters and exits the North Shore Route depends upon its origin and destination.

when the seasonal air traffic control tower at east hampton airport is in operation:

The responsibility for selecting the appropriate helicopter route is shared by air traffic control personnel and the pilot. As a practical matter, air traffic control personnel will give explicit instructions to a pilot to follow a designated route once the aircraft is within 4.8 nautical miles of East Hampton Airport. While a pilot can (and occasionally will) request permission not to follow a route, in the congested New York-area airspace, pilots must follow instructions from air traffic control personnel and must get permission to deviate from those instructions.

when the seasonal control tower is not in operation:

Once a pilot exits the North Shore Route, the flight track that he follows all the way to East Hampton Airport is up to the discretion of the pilot.

1. **Who is responsible for the decisions made by personnel at the Air Traffic Control Tower at East Hampton Airport?**

All air traffic control personnel operate under the authority of federal law and FAA regulations. Air traffic control personnel have the authority under federal law and FAA regulations to direct air traffic. All air traffic control personnel, whether FAA employees or contractors, are required to follow precisely the same detailed technical requirements. No airport owner (such as the Town of East Hampton) has the authority to give instructions to air traffic personnel. Even if the salaries of air traffic personnel are paid by a town (as is the case for East Hampton), air traffic control personnel do not and cannot take instructions from the Town concerning the operation of air traffic.

1. **As the proprietor of the East Hampton Airport, what authority or control does the Town of East Hampton have over flight patterns and tracks for arriving and departing helicopters?**

The Town of East Hampton has *no formal control whatsoever* over flight tracks – regardless of where those flight tracks exist.

1. **Even if the Town cannot *control* flights, what influence can the Town exercise over the selection of helicopter routes?**

While the Town has no legal obligation to do so, the Town can participate or collaborate in the development of voluntary routes; it can collaborate in requesting use of voluntary-informal routes; and it can request that other parties enter into a formal agreement to implement voluntary-formal routes.

1. **Can the Town of East Hampton, working cooperatively with the Towns of Southampton, Southold, Riverhead and Shelter Island do anything more than it can do acting alone, regarding helicopter flight patterns?**

Yes. The Town can request that other towns (including, for example, the Towns of Southampton, Southold, Riverhead and Shelter Island) participate in the development of voluntary routes, in the promotion of voluntary-informal routes, and in requesting that other parties enter into a formal agreement to implement voluntary-formal routes.

**FAA Regulation of East Hampton Airport**

1. **Is the East Hampton Airport currently subject to federal regulation?**

Yes. The Town is subject to obligations known as “grant assurances” which are contractual commitments to the Federal Aviation Administration (FAA). Most grant assurances last for twenty (20) years, meaning that the airport owner is contractually obligated to the FAA for 20 years from the date of its last grant. The Town last took an FAA grant in 2001, which means that it is contractually obligated until 2021. (But see question below about some grant obligations that expire at the end of 2014.) There is no legally acceptable way for the owner of an airport to pay back grants and thereby speed up that timetable.

The grant assurances contain many obligations, including requirements relating to non-discrimination, to protecting nearby land uses from encroaching onto the airport, to preventing erection of hazards to air navigation. There are also obligations related to operating the airport, such as an obligation not to grant an exclusive right to anyone to operate at the airport, a requirement to make the airport available to the public on reasonable terms and conditions, an obligation to allow fixed base operators to run businesses at the airport, and many more.

1. **Do all the Town’s grant assurances expire in 2021?**

No. The Town is subject to a total of 39 grant assurances. Four of those grant assurances expire on December 31, 2014 but the remainder do not expire until 2021.

In 2005, the FAA signed a Settlement Agreement in litigation brought by several Town residents and a community group. In that Agreement, the FAA agreed not to enforce four of the 39 grant assurances after December 31, 2014. The Town is not a party to the Settlement Agreement.

1. **Is the operation of the airport subject to US Constitution, federal and state law?**

Yes. Whether or not the airport is subject to grant assurances, the Town must still comply with federal and state law and ultimately the U.S. Constitution. Aviation-related laws impose comprehensive requirements on how airports operate, and whether the Town can restrict use or access to the airport. These laws and the U.S. Constitution are often enforced by the FAA in court but can also be enforced through litigation brought by any person who would be adversely affected.

1. **Once the grant assurances no longer apply to the Airport, will the Town acquire complete control over the Airport?**

No. There is a common misperception that, when grant assurance obligations no longer exist, an airport is free to operate as it wishes. That is not true. If the grant assurances expire, however, the Town would gain greater control over the Airport than it has today.

All public airports are subject to the requirements of federal law, state law and the U.S. Constitution. These laws and the Constitution limit the ability of an airport owner to restrict access to its airport unless it can meet a standard of demonstrating that it has acted reasonably, that the restrictions are necessary to achieve legitimate local needs and that its restrictions are no more stringent than necessary.

1. **So long as the Town is grant obligated, can it impose a curfew or restriction on aircraft or helicopters?**

No, not without substantial legal expense, litigation exposure, and costly technical analysis. If an airport is federally obligated, before its owner can restrict the use of the airport, it must comply both with the grant assurances and with the Part 161 requirements (named after the section of the Federal Aviation Regulations where these requirements appear). The Part 161 requirements are extensive, time consuming and costly.

The Town cannot restrict operations by the current generation of aircraft (known as stage 3 or 4 aircraft) without FAA approval. If the Town wanted to restrict only the older generation of aircraft or any helicopters (known as stage 1 or 2 aircraft), it could do so without FAA approval but it would first have to satisfy the exhaustive Part 161 study requirements. Most of the current generation of helicopters are stage 3.

1. **Once the Town is *no longer* federally obligated, can the Town automatically impose a mandatory curfew or similar restriction on aircraft using the airport?**

No. The East Hampton Airport must remain accessible to the public. Over the course of the last half-century, courts have consistently concluded that the U.S. Constitution imposes limitations on the ability of an airport owner to restrict access to its airport. The next set of questions address the process for imposing restrictions.

1. Advisory materials for these types of procedures generally include a disclaimer similar to the following: “These procedures are not intended to preempt the responsibilities of the pilot-in-command for safe aircraft operation. Recommended procedures are not intended to conflict with instructions from FAA Air Traffic Control or that are otherwise under the exclusive authority of the FAA.” [↑](#footnote-ref-1)