

October 28, 2014

Memorandum to: Councilwoman Kathee Burke-Gonzalez

From: Airport Planning Committee, Noise Sub-committee

Re: Eighth Preliminary Findings and Recommendations –
Alternatives for Noise Control for Town Board Considerations

At this juncture in the airport planning process, the Town Board is ready to advise the public of the various possible noise control measures that it will be considering as it moves toward the preparation of draft legislation with a late December target date. It is therefore appropriate at this time for the Noise sub-committee to submit to the Town Board a list of measures that it believes should be included among those under consideration.

The measures proposed here do not represent a committee consensus as to the particular path that the Town Board should take. It is our plan to prepare by the end of November a final set of findings that will set forth the Noise sub-committee's specific recommendations as to legislation. Like the Town Board itself, we too would like the benefit of public comment on possible measures, of additional investigation as to the legal and technical matters affecting the choices, and of knowing the concerns of other stakeholders, before making a final recommendation. Consideration of alternatives clarifies and informs the basis for ultimate decision. With that in mind, the measures proposed here for Town Board consideration are in no sense intended to be exclusive. These are proposals that our committee members believe they should be on the list. We

fully expect that other stakeholders and Town Board members themselves will have additional alternatives to propose for consideration.

On the other hand, what we propose here is not merely a list of possible measures, but a framework for thinking about the problem and the trade-offs to be made. The first matter is our consensus on the priority of the noise problems experienced by the public.

A summary of the various measures proposed in the text below is attached as Exhibit A for your convenience.

Priority of Problems.

1. *Helicopters* -- Our highest priority is helicopter noise, either to be eliminated entirely or reduced drastically. Helicopters generate far and away the most complaints and the most complaints per operation, and for good reason. They are first of all in absolute terms among the noisiest types of aircraft operating at East Hampton Airport. They also have specific characteristics, beyond sheer decibel level, that exacerbate the disturbance they cause: (a) they have a unique percussive sound that is especially disturbing; (b) the duration of helicopter noise is longer than with other comparably noisy types because of lower speed and relatively lower and more constant altitude on approach and departure; (c) their aural signature includes a higher proportion of low frequencies that are heard at a much longer distance than with other types, aggravating the disturbance by causing significant periods during which those on the ground anticipate the noise to come and are reminded of the noise they have just endured; (d) as noted by Henry Young, helicopter noise, when it occurs, dominates the aural environment drawing the listener's attention even when not extremely loud:

“Helicopters are so distinctive and intrusive that their presence and frequency of occurrence are objectionable [to those of the community affected] regardless of peak noise level or local ambient.”¹

2. *Time of Day of Operations.* The next highest priority are flights that are especially disturbing because of the time when they occur. Before helicopters were even noteworthy as a local problem, night flights were already considered a serious problem and were the source of many complaints. The 1989 Airport Master Plan called for a jet curfew. It was never implemented due to objections from the FAA regarding compliance with grant assurances. Those are no longer an issue after December 31, 2014. We note the predominance of complaints in the evening and early morning when people are at home and have an expectation of repose.

Also significant are operations during weekends, particularly in the summer, when people are out of doors and especially eager to enjoy the peace and beauty of the environment that are the special attraction of life on the East End. Aircraft noise has robbed many of the quiet enjoyment of their homes and vacation time.

3. *Frequency of Operations.* If aircraft operations were equally spread out in time, they would not be nearly as disturbing as they are. Inevitably, they cluster on summer week-ends because aircraft users are interested in coming to the East End and enjoying vacation and recreation at the very same time that the rest of the East End community is looking to enjoy its vacation and rest time. Thus, aircraft operations peak

¹ Advice, September 14, 2014.

just at the time when the demand for quiet enjoyment is at its highest. Ironically, aircraft commuters want the same peace and quite for themselves and are using aircraft to minimize their travel time to the South Fork and maximize their own quiet enjoyment of our environmental bounty while denying the same to others. We note the high levels of complaints Friday evenings, Sunday evenings, and Monday mornings when commuter operations are at their peak.

A subset of high-frequency operations are touch and gos -- repetitive, low-altitude operations. The 1989 Airport Master Plan required that such operations be prohibited on summer weekends, May into September, from noon Friday to noon Monday. This too was never implemented due to FAA objections under grant assurances, no longer an issue after the end of this year.

4. *Noisy Aircraft Types.* Although helicopters have sound characteristics that make them especially disturbing, comparably noisy types of jet and piston aircraft also generate high levels of complaints. Loud aircraft are not merely intrusive; they are an urban noise that is inconsistent with what is otherwise the quiet, rural sound level in East Hampton and neighboring communities. It is for this reason that the 1989 Airport Master Plan had already concluded, at a time when helicopters were not yet an issue and there were fewer jet operations, that an airport designed for business jets would be “inconsistent with the character of the community.”

Legal Considerations.

Legal analysis is not the job of the Noise sub-committee *per se*. However, our committee includes several lawyers, and we are therefore highly cognizant of the legal environment into which noise measures must fit, notably the airport “proprietor’s exception,” as construed and interpreted by the United States Court of Appeals for the Second Circuit, the highest judicial authority in East Hampton unless the United States Supreme Court should take up these questions. We are fortunate that the opinions of the Second Circuit address the very matters that are of concern to us: noisy aircraft types, day and time of operations, and frequency of operations, with a very favorable view of the scope of the authority of the municipal airport proprietor.

In the seminal case of *National Helicopter Corp. v. City of New York*, the the Second Circuit directly recognized the authority of the City, at its municipally-owned heliport, to exclude aircraft based on day of the week and time of day, permitting both a nighttime curfew and a week-end closure, to limit the number of operations occurring in a given time period, and to exclude aircraft types based on how noisy they are, all with a goal of reducing noise by “47%.” The court rejected the argument that 47% was “arbitrary” on the theory that any numerical goal would be no more nor less arbitrary, but that an objective measure of noise reduction was none-the-less acceptable. The court would not permit regulation of aircraft weight on the grounds that the relationship to the noisiness of the type was too tenuously related to weight and in any case not established by evidence. But direct regulation based on noisiness was permitted.

The court also would not allow any regulation, direct or indirect, of aircraft in flight. This is consistent with our understanding that any regulation of aircraft while

airborne is completely federally pre-empted. Access to the municipal airport can be controlled, but that control cannot be used to require any particular behavior while the aircraft are airborne. Thus, the Town cannot condition access to the airport on compliance with designated noise abatement routes or altitudes. Any such must be voluntary unless imposed by the FAA itself.

In the case of *Sea Air NY Inc. v. City of New York*, the Second Circuit established a second important principle, that, in crafting airport access restrictions, the municipal owner can consider the social value to the community of different classes of aircraft operations. As a result, in order to reduce noise by reducing the total number of operations, the City was permitted to exclude sightseeing seaplane flights from its seaplane port while permitting transportation flights on the grounds that the latter were of greater economic and social importance to the community. What is especially noteworthy is that the City was not required to adduce evidence of any kind as to the relative value of the different classes of aircraft operations. Implicitly, this was regarded as a legislative judgment that the City was empowered to make, not subject to a requirement of proof before a court.

We believe, therefore, that the Town of East Hampton is similarly entitled to make judgments about the value to the community of different classes of aircraft operations.

Social Value of Classes of Aircraft Operations.

It is the consensus of our committee that the value to the community of different classes of operations, in priority order, is as follows:

1. *Recreational Use.* We accord the highest value and priority to local, recreational use, whether by year-round or seasonal residents. East Hampton and its neighboring communities are summer resorts. Although we retain in our communities a modest level of farming and fishing that we are eager to maintain, the local economy in the modern era is based on second-home ownership and, to a lesser extent, short-term tourist visits to hotels, motels, and guest houses. For both year-round and seasonal residents, the Town of East Hampton devotes substantial public resources to the acquisition and maintenance of recreational facilities: beaches, docks, hiking trails, public sports facilities, and open space. We consider recreational flight to be no different. The pleasure of some is a day at the beach, sailing, or hiking. The pleasure of others is flying. Other than the burden that each such activity may impose on others, we see no reason to distinguish one from the other as a part of what makes the East End an especially desirable place to live and visit.

2. *Long-Distance Transportation.* A distant second in priority is long-distance transport, which means chiefly private jet transport. Given the wealth of the community, there is a high level of jet ownership and use for a community of such size. We have residents with multiple homes, not just second homes, who may be commuting to the East End from across the continent, from Canada, or other distant places including Europe. Although in our view the primary purpose of the airport is recreation, it can also accommodate convenient long-distance access. For people with the means traveling long

distance, commercial flight, with all of the required waiting time, then added to commuting time from a commercial airport, would render short visits impracticable.

On the other hand, we are also cognizant that there are other more capable airports not very distant from East Hampton. The alternative to landing in East Hampton for a commuter from Colorado is not to fly commercial to LaGuardia and then take a car or Jitney to the East End. Rather, it is to land at Gabreski Airport in Westhampton Beach and take a car 25 miles (or less if the final destination is in Southampton). It is for this reason that we consider long-distance transportation directly to East Hampton a distant second priority.

3. *Commuter Travel.* We consider commuter air travel from New York City and vicinity to be of little social value to the community. We recognize that it is convenient for, and therefore sought out by, a relatively small number of users, whom we estimate to be less than 1% of annual travelers to East Hampton and the portion of Southampton served by the airport, but it is hardly essential. There are many alternative means of access, including car via a number of routes, LIRR, Jitney and Hampton Luxury Liner, by air to Gabreski or Montauk Airports, by helicopter to the Southampton Village Heliport, maintained by Southampton for this purpose, and by ferry from Connecticut via Orient. For every commuter by air to East Hampton from New York City and vicinity (on the order of 10,000 to 12,000 per annum), there are an estimated 200 who manage to arrive by other means.²

² We estimate that there are at least 600,000 trips by summer residents, their guests, and tourist visitors to East Hampton during 15 weeks of the season and at least 400,000 such trips during the balance of the year (not including arrivals for business purposes). A like number would be traveling to the eastern portion of Southampton potentially served by the East Hampton Airport.

We reject completely the claim that commuting by air has any material benefit to the local economy due to local spending by those who commute by air. The overwhelming likelihood is that the same people would arrive by other means, as they all did until very, very recently and did in huge numbers for decades before commuting by air was a technical possibility. The very few, if any, who consider commuting by air essential to their enjoyment of life in East Hampton or the portion of Southampton served by the airport, and who are unwilling to drive even the 15 miles from the Southampton Heliport to East Hampton Airport (or less for a final destination in Southampton), would perforce sell their homes and be replaced by others content to arrive on the South Fork by the same means employed by the vast majority. Moreover, commuter aircraft operators contract for very little in the way of local services precisely because they are based elsewhere and are merely ferrying passengers, often stopping just long enough to discharge passengers before departing for another load.

We also note that East Hampton has long since rejected the idea that mere convenience of travel to East Hampton should be accorded priority over the value of maintaining East Hampton as a peaceful, semi-rural community. In the 1980s, proposals to extend high-speed road access from Riverhead to East Hampton were rejected by the community on the grounds that this would only induce urbanization. Helicopter noise does not merely induce urbanization, *it is urbanization*. If the community has already rejected mere convenience of access for much larger numbers of travelers lest second-order effects lead to urbanization, direct urbanization for the sake of convenience cannot

Three to four thousand annual helicopter landings account for an estimated 10,000 to 12,000 passenger arrivals. Thus, helicopter arrivals are on the order of only ½ of 1% of arrivals by residents, guests, and tourists.

be accounted as a significant social good for our community. The Town of Shelter Island chose to ban helicopter landings within its borders for that very reason.

If there were no East Hampton Airport, it is possible that one might be allowed to serve purely recreational needs. It is inconceivable that a heliport would today be established in the midst of Wainscott or any other settled part of East Hampton.

Financial Considerations.

In proposing noise reduction access restrictions for consideration by the Town Board, we are also cognizant that financial considerations must be taken into account. Reductions in traffic to reduce noise cannot be such that they compromise the ability of the airport to sustain itself without need of FAA funding, because a non-federally obligated airport is the necessary condition for local, Town Board control of airport access.

We note that the BFAC airport finance sub-committee has previously determined that the airport could sustain itself financially despite a hypothetical ban on helicopters combined with a curfew. This is in part because helicopter traffic imposes significant additional costs on the airport. Without helicopters, the airport would be a small operation not requiring an air traffic control tower to assure adequate separations. Similarly, the AirScene monitoring system would be unnecessary. The net contribution of helicopters to airport revenues is therefore small.

On the other hand, we believe that, given the overall cost of private jet travel, private jets are capable of paying higher fees, if necessary, for the privilege of access to East Hampton Airport. Withal, we are cognizant that the financial impacts of any

reductions in jet traffic need to be weighed in light of their significant contribution to airport revenues.

Noise Reduction Alternatives to be Considered by the Town Board.

At the outset, it needs to be stated explicitly that none of what is proposed here is intended to have any application to emergencies or to official or emergency services aircraft. Any aircraft in distress and all official and emergency services aircraft must have unrestricted access to East Hampton Airport. The legislation should so state.

1. Regulation of Aircraft Types by Noise Level.

As noise is the problem and the Second Circuit has blessed even the complete exclusion of aircraft types based on how noisy we are, regulation based on the noisiness of aircraft types must be a primary tool in the search for a solution. The application of similar rules for similarly noisy aircraft types is a solid defense to any argument that regulations are arbitrary or improperly discriminatory.

We propose that all measures, whether exclusion, management of numbers of operation, or management of days and hours, should be considered against a background of “triage” with respect to aircraft noise levels, grouping them into the “noisiest types,” “noisy types,” and “least noisy” types.

Most aircraft are classified by the FAA based on the noise they produce, either with a dBA rating or an EPNdB rating in decibels. The dBA rating is approximately equivalent to EPNdB less 13 decibels. However, EPNdB has three separate ratings,

approach (AP), take-off (TO), and flyover (FO). For EPNdB, it is proposed that the highest of the three ratings, AP, TO, and FO be used, converted to its dBA equivalent.

Subject to more specific professional advice, the committee preliminarily proposes that aircraft rated at 80 dBA (or EPNdB equivalent) be classified as “most noisy,” (most helicopters and many jets), aircraft rated below 75 dBA be classified as “least noisy,” (most light aircraft and some very quiet jets), and aircraft rated at 75 dBA and above but less than 80 dBA be classified as “noisy” (a few helicopters, some quieter jets, and noisier piston aircraft).

The most noisy aircraft class should be subject to the most stringent regulation or to outright prohibition. Least noisy aircraft should be accorded the greatest freedom and least regulation. Noisy aircraft can either be treated separately, with regulation less stringent than for the noisiest class, or grouped with either least noisy or most noisy aircraft for regulatory purposes, depending on the regulation. Alternatively, a level between 75 dBA and 80 dBA could be established as the dividing line for a given regulation, effectively creating only two noise classes for that purpose.

For example, the most noisy aircraft could be prohibited outright, noisy aircraft subjected to limitations on the number of operations per hour, and the least noisy aircraft not subject to access limitations. Among the concrete objectives is to reduce noise to the maximum extent while imposing the least possible restriction on operations by recreational pilots.

This structure would limit or exclude operations by aircraft types based on their noise level, limiting those that produce the greatest annoyance to the most people while leaving local, recreational aviation relatively undisturbed. It also facilitates the program,

suggested by the Second Circuit's decision in *Sea Air NY*, of favoring those aircraft operations that have the greatest social value for the community. If our prioritization of social value were accepted by the Town Board, noisiness and social value are inversely related: The operations that generate the most complaints are those with the least social value and vice-versa. It is a detailed, nuanced approach that is easy to defend as "reasonable, nonarbitrary, and non-discriminatory," the standard declared by the Second Circuit in *National Helicopter*.

Furthermore, a triage system encourages the adoption of quieter aircraft technology in order to qualify for lower levels of regulation at East Hampton Airport. In the case of jets, there is a considerable range of noise level. Although helicopters are in general noisier, there are quieter types in existence. The use of quieter types, that would therefore continue to afford maximum access while limiting noise, should be encouraged.

While the optimal boundaries between noise classes requires further study, particularly with regard to the effect on the existing fleet that operates to and from East Hampton,

We propose that all noise control measures considered by the Town Board, including those we propose below, be evaluated by application to each of three separate noise classes by aircraft type: noisiest, noisy, and least noisy, to be defined by FAA dBA rating or equivalent maximum EPNdB rating with the aid of professional assistance. We tentatively propose the classes be defined by FAA noise ratings of 80 dBA (or EPNdB equivalent) and above for the noisiest, 75 dBA up to but less than 80 dBA for the noisy, and below 75 dBA for the least noisy.

2. Regulation by Aircraft Type.

Certain aircraft types are much more disturbing and generate a disproportionate share of complaints. Data in the record of the EIS for the 2010 Airport Master Plan suggest that helicopter exceedances of the Town's daytime noise limit, as a percentage of total daytime exceedances, are double the percentage of helicopter operations as a percentage of total operations, whereas Stage 3 jet exceedances are approximately equal to the percentage of jet operations and the exceedances for piston aircraft are fewer as a percentage than their share of operations. Seaplanes are often similarly noisy to helicopters and as or more disturbing.

Outright prohibition of helicopters and seaplanes and similarly noisy aircraft types should be considered.

3. Regulation by Class of Operation:

Commercial, for-hire operations are responsible for most of the noise problems. They are overwhelmingly the major source of helicopter and seaplane flights. They are overwhelmingly the cause of the highest concentrations of flights in the summer, on Friday and Sunday evenings and Monday mornings. They are overwhelmingly the source of the operations that we consider the least socially valuable, commuter travel to and from New York City and vicinity.

As an alternative to other measures, outright prohibition of commercial operations or restriction of the number of such operations permitted to three per hour should be considered.

4. Regulation by Time of Day and Day of the Week.

The Second Circuit has blessed exclusion and regulation by time of day and day of the week based on the community expectation of peace and quiet during periods of rest. Data in the record of the EIS for the 2010 Airport Master Plan suggest that operations during the defined night under the East Hampton noise ordinance constitute 50% of the total exceedances of the Town's noise standard.

With regard to time of day, a nighttime curfew is long overdue. One was called for in the 1989 Airport Master Plan and never implemented due to FAA objections under the grant assurances. These will expire at the end of this year.

There are many possible curfew periods -- night as defined in the Town's noise ordinance, 7 pm to 7 pm, the current voluntary curfew of 11 pm to 7 am, and as many variations of hours as one can think of. From amongst the many possibilities for a nighttime curfew, 7 pm to 8 am, the curfew currently in effect at the Southampton heliport, makes the most sense to the committee. It embraces most of the non-working day and allows people to sleep without interruption and to enjoy quiet with family at dinner and before the workday begins.

We believe that the people of East Hampton and neighboring areas of Southampton, Shelter Island, and Southold deserve the same protection that Southampton

Village has extended to its residents. We also appreciate the value of successful precedent in establishing what is reasonable and nonarbitrary.

A nighttime curfew should be considered. Specifically, the curfew currently in effect at the Southampton Heliport, 7 pm to 8 am, is proposed for consideration at East Hampton Airport.

We incidentally recommend that the definition of night in the East Hampton noise ordinance be amended to conform to this same time period, 7 pm to 8 am. This more accurately reflects the hours most people keep. Southampton Village had likewise previously allowed helicopter operations to commence at 7 am and now no longer does so.

Day of the week also matters. People are least sensitive to aircraft noise during working hours. The Village Preservation Society has therefore recommended that the airport only be allowed to operate during business hours, 9 am to 5 pm.

The Village Preservation Society proposal, that the airport only be allowed to operate from 9 am to 5 pm, should be considered.

The New York City heliport was permitted by the Second Circuit to close on weekends in response to the community expectation of quiet during periods of rest. Particularly during the summer, weekend days are the time when people most want to be

out of doors, enjoying their yards, decks, gardens, and public spaces. This is the bounty of East Hampton.

Prohibiting aircraft operations on Saturdays and Sundays from 10 am to 5 pm during the months of May through September should be considered. Together with the proposed nighttime curfew, this would limit operations to 8 am to 10 am and 5 pm to 7 pm on Saturdays and Sundays during the season.

The 1989 Airport Master Plan called for prohibition of touch and gos from noon Friday to noon Monday, May through September. This was never implemented due to FAA objections under the grant assurances. The assurances are no longer relevant after the end of 2014.

The prohibition of touch and gos from noon Friday to noon Monday, May through September, as called for in the 1989 Airport Master Plan, should now be considered finally for implementation.

5. *Regulation by Number of Operations during Open Hours (“slot” system):*

The Second Circuit also blessed limitation of the number of operations in a given time period.

For aircraft not excluded altogether based on their noise level and/or noise characteristics and not considered quiet enough so as to be allowed to operate without any frequency restriction, e.g. for the latter, aircraft noise-rated below 75 dBA, we recommend that operations by such aircraft be limited to not more than three per hour in any period when the airport is open. Landing rights should be auctioned in some manner so as to maximize airport revenues.

Respectfully submitted,

Airport Planning Committee,
Noise Sub-committee