

December 2, 2014

Memorandum to: Councilwoman Kathee Burke-Gonzalez

From: Airport Planning Committee, Noise Sub-committee

Re: Tenth Preliminary Findings and Recommendations –
Proposed Noise Control Measures

At its meeting on December 1, 2014, the Noise Sub-committee approved, by unanimous vote (with three of ten members not in attendance), for submission to the Town Board the proposed noise control measures attached as Appendix A hereto.

We believe that these proposed measures are consistent with and wholly justified, indeed necessitated, by the analysis of exceedances by aircraft of the standards in the Town's own noise ordinance, by the analysis of the large number of aircraft noise complaints, supported by the opinion of the D.C. Circuit Court of Appeals in *Helicopter Ass'n Int'l, Inc. v. FAA*, 722 F.3d 430 (D.C. Cir. 2013), by the analysis of relevant factors contained in the Noise Sub-committee's Eighth Findings on measures to be considered, by the Ninth Findings on definition of the airport noise problem, and by the authority of the Town under the judicially and congressionally recognized "airport proprietor's exception," as construed and interpreted by the Second Circuit Court of Appeals in *National Helicopter Corp. v. City of New York*, 137 F.3d 81 (2d Cir. 1998) and *SeaAir NY, Inc. v. City of New York*, 250 F.3d 183 (2d Cir. 2001).

The proposal is not submitted as a menu of alternatives. For technical, financial, and legal reasons, all its elements are necessary and together form an integrated whole. The various elements support each other so that the total outcome is one in which the community succeeds in recovering its essential semi-rural character, its peace, quiet, and repose, while the airport is able to continue in operation for its traditional and intended uses on a financially stable basis without any need of further FAA airport grants.

A final report of the Noise sub-committee supporting and explaining the reasons for each aspect of our proposal, drawing upon our previous findings, the exceedances analysis, the complaint analysis, and the applicable law, will be submitted shortly. At this time, we request that these findings be provided to the Town's aviation counsel and to its airport noise consultants so that they, in consultation with the Town, can consider how the record of decision can best be concluded in order to support a decision of the Town Board to adopt our proposal.

With such technical changes as to form as may be required to conform to the requirements of incorporation into the Town Code, we respectfully propose and urge the Town Board to notice for public hearing and adopt the attached proposal as its airport noise control ordinance.

Respectfully submitted,

Airport Planning Committee,
Noise Sub-committee

**Airport Planning Committee, Noise Sub-committee
Proposed Noise Control Measures**

A. General Provisions:

1. Anything that follows to the contrary notwithstanding, restrictions below shall not apply to: (i) government aircraft operations, including police, fire, and emergency services, (ii) any emergency services or evacuation operations, whether public or private, or (iii) any operation by aircraft in an emergency. The airport will be open to all such operations at all times without limitation, charge, surcharge, or penalty.

2. If any of the provisions below shall be unenforceable, whether temporarily or permanently, due to an order or judgment of a court of law or administrative agency, the other provisions shall continue to apply as written. If at any time more than one provision below applies to the same aircraft operation, the most restrictive shall be deemed to be applicable and control.

3.

(a) Certain definitions:

(i) "Operations" means take-off and landing operations, but does not include repositioning of aircraft within the airport.

(ii) “Quiet types” are defined as aircraft of whatever type and propulsion, jet, turbo-prop, or piston engined, fixed wing or rotary, having a published FAA dbA rating below 75.

(iii) “Noisy types” are defined as aircraft of whatever type and propulsion, jet, turbo-prop, or piston engined, fixed wing or rotary, that are not affirmatively classified as “quiet types.” “Noisy types” includes “noisiest types.”

(iv) “Noisiest types” are defined as aircraft of whatever type and propulsion, jet, turbo-prop, piston or engined, fixed wing or rotary, having a published FAA EPNdB rating of 91 or above (on any of the three measures, AP, TO, FO) or a published FAA dbA rating of 80 or above.

(b) The Town will publish, by NOTAM, lists of noisiest types, as so defined, and quiet types, as so defined and other information for airport regarding the provisions hereof including applicable noise pollution surcharges.

(c) Types not noise-rated by the FAA shall be presumed to be in the “noisiest type” category, but may apply for a permit that determines whether they are noisiest types or not or quiet types or not based on the Town’s designated sound and aviation engineers’s opinion, costs to be reimbursed by the applicant. The Town may, in its discretion, initiate determinations by the Town’s designated sound and aviation engineers

of the proper classification of types not noise-rated by the FAA. In each case, the published lists will be adjusted according to the results.

B. Noise Restrictions:

4. Operations at East Hampton Airport by aircraft classified as noisiest types shall be prohibited from 5 pm to 9 am all days.

5. Operations at East Hampton Airport by aircraft classified as noisy types shall be prohibited from 7 pm to 8 am all days.

6. Seasonally, from May 1 through September 30, touch and go operations at East Hampton Airport shall be prohibited from noon each Thursday until noon the following Monday, on all Federal holidays, and on the day preceding and the day immediately following any Federal holiday. All touch and go operations shall be subject to landing fees during the period May 1 through September 30.

7. Operations at East Hampton Airport by helicopters classified as noisiest types shall be prohibited at all times on all days.

8. Seasonally, from May 1 through September 30, operations at East Hampton Airport by helicopters classified as noisy types shall be prohibited from noon each Thursday until noon the following Monday, on all Federal holidays, and on the day preceding and the day immediately following any Federal holiday.

9. Noise pollution surcharge:

(a) Seasonally, from May 1 through September 30, each landing and each departure operation at East Hampton Airport by an aircraft classified as a noisiest type occurring between noon each Thursday and noon the following Monday, on any Federal holiday, or on the day preceding or immediately following any Federal holiday shall be subject to a noise pollution surcharge to be calculated as provided in (b) and (c) below.

(b) The amount of the noise pollution surcharge shall be determined based on the number of aircraft landings, as registered or logged by the Vector system and/or by the AirScene/Excelis system and or by the airport office, in the calendar year 2013 to which the noise pollution surcharge would have applied after giving effect to all operative provisions hereof, excluding any such provisions that are unenforceable, whether temporarily or permanently, due to an order or judgment of a court of law or administrative agency (as so defined, "baseline landings"), according to the following schedule:

(i) if the number of baseline landings is less than 1,000, \$2,500 per landing or takeoff operation;

(ii) if the number of baseline landings is greater than or equal to 1,000 but less than 1,500, \$3,750 per landing or takeoff operation;

(iii) if the number of baseline landings is greater than or equal to 1,500, \$5,000 per landing or takeoff operation.

(c) Subject to compliance with SEQRA, the noise pollution surcharge may be adjusted upward, upon 30 days published notice, or downward at any time by resolution of the Town Board in its discretion to reflect aviation demand, the financial needs of the airport, and the requirements of law, as determined by the Town Board in its discretion.