MEMORANDUM

To: The East Hampton Town Board

From: Aviation Operations Subcommittee of the Town of East Hampton Airport Planning Committee

Date: February 1, 2015

I. BACKGROUND

We have reviewed the Airport Noise Subcommittee's "Final Report and Recommendations" to the Town Board, dated January 20, 2015. In response to the request for our Subcommittee's comments and recommendations, we submit this Memorandum.

Our Subcommittee recognizes that noise from certain aircraft operations, primarily helicopters, has been an issue for several communities in the flight path of those aircraft. In response, at our initial meeting on March 1, 2014, our Subcommittee adopted a Resolution stating that it favored reasonable regulations.

That is still the position of our Subcommittee. Toward that end, we had urged the Town to enter into high level discussions with the Federal Aviation Administration to ensure that any additional Town noise studies were properly structured to gather the type of noise data needed to develop noise regulations that would (1) be effective in reducing noise impacts, and (2) survive FAA scrutiny and legal challenges by third parties and/or the FAA.

The Town chose instead to embark on a series of very expensive studies without FAA input, and members of the Town Board have suggested that, if discussions are ever opened with the FAA, it will only be after the Town has determined the regulations it wishes to adopt. We think that decision was a mistake, but it is clear that the Town has been moving forward in that manner, which we believe has provoked the Friends of East Hampton Airport to sue the FAA in U.S. District Court for the Eastern District of New York to, among other things, set aside its purported settlement with the Committee To Stop Airport Expansion and compel the FAA to enforce the extant grant assurances.

Accordingly, and in light of that new lawsuit, we will provide our views about the proposals by the Noise Subcommittee.

A. Airport Safety

At the outset, the Aviation Subcommittee wants to stress that, while noise is an important issue to be addressed by the Town Board, Airport safety must always be the Board's first concern.

The heart and soul of any airport are its runways. Without safe, well maintained runways, there is no airport.

In September of 2010, after nearly a decade of engineering studies, environmental impact statements, scores of public meetings and hearings, and the expenditure of hundreds of thousands of dollars on experts by the Town and the participants in the process, the Town Board unanimously adopted a new Airport Master Plan and Airport Layout Plan calling for the repair and maintenance of Runways 4-22 and 10-28, and the discontinuance of Runway 16-34. That Master Plan and Airport Layout Plan has been, and remains, in full force and effect. Since then, the Town Board has done nothing to fulfill those obligations in the Master Plan and Airport Layout Plan.

Our Subcommittee was established by the Town Board to provide the Board with input from the aviation community regarding the Airport. On March 1, 2014, our Subcommittee adopted a Resolution stating that Runway 4-22 "is important for safe landings at the airport by small aircraft, and neither jets nor helicopters use this runway" (emphasis added) and noting that "no work to implement this provision in the Airport Master Plan and Airport Layout Plan has been undertaken in the three and a half years since the adoption of the plans."

For safety reasons, we recommended that the Town Board issue a request for engineering design, specifications, and bid documentation so that the rehabilitation of Runway 4-22 could be completed by the Fall of 2014.

It is now 2015, and nothing has been done to implement this centerpiece provision of the 2010 Airport Master Plan and Airport Layout Plan.

In November of 2014, after the Town Board asked our Subcommittee to review the Capital Improvements and Maintenance Plan for the airport for the next 2 to 3 years,

we again stressed that the rehabilitation of Runway 4-22 and maintenance of Runway 10-28 were the top priorities for safety.

In response, we have been advised that the Town Board is looking for new engineering studies to guide the Board on capital improvements, essentially ignoring its unanimously approved 2010 Airport Master Plan and Airport Layout Plan, which was filed with the FAA, and the Town's safety responsibilities under those plans. In the meantime, Runway 4-22 has just recently been re-designated as a taxiway, illegally and in contravention of the Airport Master Plan and Layout Plan.

In that context, it appears to our Subcommittee that the proposed new engineering studies are a pretext to circumvent or abandon the 2010 Airport Master Plan at the behest of a small constituency in the Town that has relentlessly pursued an anti-airport agenda and unsuccessfully opposed the adoption of the 2010 Master Plan and the rehabilitation of Runway 4-22.

(We note that this failure to maintain the runways in accordance with the Master Plan exposes the Town to contract claims by hangar owners at the airport whose ground leases provide that full use of the runways is part of the hangar owners' leasehold, and to liability claims in the event of any mishap attributable to their condition.)

The repair and maintenance of Runway 10-28 and the rehabilitation of Runway 4-22 have no impact on the Town's ability to reduce noise impacts. While some members of the Town Board have stated that they do not intend to close the airport, the Board's wasteful diversion of enormous sums of airport revenues to other items, while failing to take any steps to repair and maintain the two runways that are the core infrastructure of the airport, has led many individuals and businesses in the aviation community to view those statements as disingenuous.

At the same time, as noted below, the Noise Subcommittee is proposing noise controls that would radically restrict and reduce airport operations and, in turn, reduce revenue badly needed for airport infrastructure, since the Town Board has rejected FAA funding that airports across the country traditionally use for capital improvements and maintenance. (In its 2010 study on the "Economic Impact of Aviation", the New York State Department of Transportation noted that FAA grants typically provide 75% to 95%

of funding for airport improvements and maintenance at airports around the state. It is unfortunate that the Town has needlessly rejected FAA funding.)

In view of the Noise Committee's determination that helicopter noise is the primary source of irritation, the aviation community views the recommendations for broad restrictions on aircraft operations, combined with the failure to repair and maintain the core infrastructure at the airport, including infrastructure which only services piston powered fixed wing aircraft, as a strong indication that there is an agenda by some to push the airport toward closure.

II. THE SCOPE OF THE TOWN'S ABILITY TO REGULATE

Unfortunately, the Final Report of the Noise Subcommittee perpetuates certain myths about regulatory authority that have been used by airport opponents to oppose traditional FAA funding, which in turn has had a significant adverse impact on airport maintenance and safety. Despite the longstanding disagreement among the parties in the debate over the Town's latitude to regulate aircraft noise, our opinion is that the ability to do so is substantially the same under the contractual grant assurances as it is in the absence thereof under applicable statutory law, the differences being primarily procedural.

The fundamental regulatory premise of the Noise Subcommittee's Final Report is defective in three respects.

First, the Report states at page 2 that "while subject to FAA grant assurances, the Town has been without practical authority to regulate the use of its own airport to protect the community from aircraft noise." Later on page 8, the Report states that due to the Town's acceptance of traditional FAA funding in the past, the Town "has been powerless" to do anything about aircraft noise. This is flatly incorrect.

Under federal law, the Town has local control of the airport as the airport "proprietor" and exercises such control through its Airport Master Plan and Airport Layout Plan. As proprietor, it has flexibility in fashioning its noise regulations, and could have done so long before January 1, 2015. Santa Monica Airport Association, et al. v. City of Santa Monica, et al., 659 F.2d 100,105 (9th Cir. 1981). In fact, Naples Florida successfully adopted and defended such noise regulations, despite the existence of grant assurances.

There are no instances in which rejecting FAA funding gave a Town additional control in this regard. Therefore, accepting traditional FAA funding for airport maintenance would not diminish the Town's authority to adopt reasonable restrictions regarding the use of the airport.

Second, the Final Report of the Noise Subcommittee implies that, once liberated of FAA grant assurances, the Town will be able to regulate aircraft noise without federal restrictions. That is not true. In National Helicopter Corp. of America v. City of New York, et al., 137 f.3d 81 (2d Cir. 1998), New York City had taken no FAA funding for its heliport and was not subject to FAA grant assurances. Nevertheless, the federal court rejected three regulations the City had imposed on helicopters as being unreasonable. That case confirmed that, even if a municipality has taken no FAA funding and is not subject to FAA grant assurances, its regulations must still meet the same federal standards for establishing noise restrictions at an airport that has accepted FAA funds.

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

Third, the Noise Subcommittee's contention that the FAA grant assurances for the East Hampton Airport "expired" at the end of 2014 is based entirely on a settlement of a lawsuit by the Committee to Stop Airport Expansion against the U.S. Department of Transportation. However, that "settlement" is not enforceable for several reasons.

1) By the settlement's own terms, the grant assurances in question do not "expire." The FAA merely agreed that after 2014, the FAA would not enforce certain of them. Accordingly, those assurances continue in effect, and the Town is bound by them, whether or not the FAA chooses to enforce them.

2) The Town was a necessary party to the Committee to Stop Airport Expansion lawsuit, but was not named. Nor was the Town a party to the settlement, and as a result, the Town is not bound by it, nor can it benefit from it.

3) Further, the Court did not retain jurisdiction to enforce the settlement, thereby rendering it unenforceable.

4) Finally, as the FAA asserted in the recent Santa Monica case, grant assurances

are congressionally mandated under the Airport Improvement Program, and the FAA does not have the authority to decline its statutory obligation to enforce them or to waive them. Whether or not the FAA seeks to enforce them, an aggrieved airport user adversely affected by any Town action undertaken in violation of the grant assurances could seek injunctive relief in Federal Court, as the Friends of East Hampton have now done in advance of the Town implementing threatened action.

In any event, under the Federal Airport Noise & Capacity Act of 1990 ("ANCA"), the Town, as proprietor of the airport, has authority to adopt noise regulations, which closely parallel the requirements under grant assurances.

The Town should be mindful of all of these points as it drafts noise control regulations affecting the Town Airport.

III. THE DEFECTS IN THE TOWN'S NOISE ANALYSIS

As stated above, our Subcommittee believes that certain noise impacts from airport operations should be reduced, and we would like to see the Town prevail in implementing well-balanced, data-based noise controls. However, the recent noise reports requested by the Town will not serve the Town well in the inevitable legal battles over its noise control measures, which have already begun.

The most recent round of noise studies by the Town have not been designed to measure "noise" so much as "complaints". These complaint-driven studies are vulnerable to manipulation in a) the generation of the data (i.e., filing of complaints), b) drafting of the reports, and c) use of the data. A review of the Town's recent studies of noise complaints shows that:

1. **Ten (10) individuals filed roughly half (1/2) of the 23,954 complaints all of which were generated from only 633 addresses, with one (1) person ("household") complaining 2,800 times and another person complaining 1800 times**. The summarized data does not disclose the identity or location of those 10 households. Therefore, there is no useful correlation to East Hampton traffic or an ability to evaluate their legitimacy.

2. **One individual called, on average, every daylight hour of every day of the year (with breaks for meals).** That individual household is not identified as to location, and the frequency of the complaints suggests the use of an auto-dialer.

3. In contrast, one half (1/2) of all complaining households filed only three (3) or less complaints in a year. About one third (1/3) of all complainers called only once. This is despite Town funded and airport opponent supported solicitation of complaints.

4. Though there are very few night operations, they draw four (4) times as many complaints per operation. The data summary does not separately identify the number of discrete sources of those complaints or the offending aircraft type, though other complaint data points to helicopters.

5. Complaints regarding fixed wing aircraft increase linearly with increased traffic per hour, whereas complaints regarding helicopters increase **exponentially** as traffic increases. This indicates low impacts from fixed wing types with increasing volume, in contrast to helicopter traffic, which generates substantially increased complaints.

6. **The noise footprints show that the daytime standard of 65 dBA is contained entirely within the airport boundary**. The nighttime standard is exceeded at the locations of only about ten (10) nearby households. Almost all those locations are under helicopter approach paths, not fixed wing paths. However, the provided data does not indicate that those noise levels actually occurred at night. Traffic volume distribution data indicates that nighttime noise exceedances are rare.

7. While the allegations of noise presented at Town Hall hearings assert "window rattling" noise at great distances from the airport, the engineering data, which doesn't yet reflect the newest information with respect to improved flight paths, suggests otherwise. Helicopters are flying higher than in the past (2400' on average), and on multiple new routes, as requested by local officials. Though the diversity of routes has exposed more households to airport noise since the noise footprint is wider, the ground level noise volume is considerably lower.

8. Aircraft tracking data indicates good conformity to officially requested flight paths by the noisiest aircraft. However, the most recent noise report uses a half mile route width to create the impression of non-conformity, even though not specifically requested by local procedures. The noise reports suggest route boxes are 1.5 to 2 miles wide, while elsewhere in the report, only a half mile standard is used to gauge conformity.

9. The latest noise report plots noise "exceedances" on a per tax parcel basis, including completely uninhabited parcels. Those calculations are based on single event measurements (not the nationally recognized approach for aviation) that supposedly exceed the Town's noise ordinance. Yet using that "single event" basis, those tax parcels are affected by many other "exceedances", often of much longer duration and higher ground level decibels: motorcycles, commercial trucking, leaf blowers, lawn mowers, railroad trains, mass gatherings and other sources. **To use a legally impermissible single event standard, and such an artificial data base (i.e., tax parcels whether occupied or not), and then to single out aviation, is not only discriminatory, but disingenuous**. It is highly unlikely to survive legal attack and will, therefore, be ineffective in protecting any tax parcel from single event noise exposure.

10. Off season traffic averages only two (2) operations per hour (including all aircraft types) with helicopter traffic declining to one tenth (1/10) of peak season traffic. Accordingly, it would appear that no restrictions are warranted in the off season.

IV. MISINFORMATION ABOUT AIRPORT OPERATIONS

At several points, the Noise Subcommittee's Final Report references the Airport Master Plan adopted in 1989. That Master Plan is not only long out of date but has been superseded by the 2010 Airport Master Plan and cannot be used as a basis for legislation.

The Noise Subcommittee's Final Report also states that the "traditional and intended use of the airport has been to serve local aircraft owners, piloting their own aircraft for recreation or their own transportation." The report again erroneously cites the 1989 Airport Master Plan, but more importantly, the statement is wrong.

The East Hampton Airport was constructed with 3 runways in 1936, not as a recreational plaything, but as a transportation facility. Though more recently, commercial helicopter operations have generated the greatest number of noise complaints, commercial operations have been an essential part of the Airport for decades, with charter services dating back to the 1940's, and operators such as Mel Lamb and Montauk Caribbean serving the Hamptons, similar to commercial services in other resort communities.

In any event, it is untrue that the airport was intended to serve only the recreational interests of a few local pilots. That is not why a 3 runway airport was constructed nearly 80 years ago, and it is not how the airport has historically been used. It is the sense of the Aviation Subcommittee that the majority of usage, whether the aircraft are privately owned or not, is for transportation purposes, not recreation. For at least the last 50 years, every homeowner who purchased a home in close proximity to the airport did so while the airport was in commercial operation. Many of those homeowners acknowledged that operation by taking title to their property subject to avigation easements. Accordingly, the impact on nearby residents who purchased their property near the airport must be weighed equitably against the impact of excessive restrictions on businesses and individuals who derive their livelihoods from the Airport, some of whom have done so for many years.

In 2010, the New York State Department of Transportation issued its report on the "Economic Impact of Aviation" in the state. The study found that the East Hampton Airport was the home for 91 jobs, and generated annual earnings of $5,812,800, and annual economic activity of $12,605,100, as well as providing quick access for medical emergencies and "a critical transportation link for local businesses."

V. DEFECTS IN THE NOISE SUBCOMMITTEE'S PROPOSALS

There are numerous defects in the Noise Subcommittee's analysis and proposals, which are based on incomplete, inconsistent, unscientific and inaccurate data and arbitrary categorizations. The following are just a few examples:

1. Unclassified aircraft (there are many which are, in fact, "Quiet") will need to go through a test by the Town's engineers, at the owner's expense, to determine if they are in the "Noisy" or "Noisiest" category. This is unduly burdensome.

2. Unrated aircraft are by default deemed to be considered "Noisiest", despite the fact that some are plainly not appropriate for that category. A Champion Decathlon BL8, is a light, single engine, quiet piston airplane. Under the Noise Subcommittee's plan it is not rated, and as a result, it would be considered to be in the "Noisiest" category.

3. The small fixed wing Cirrus SR20 and SR 22 aircraft, which use the same power plants as many of the "Quiet" aircraft, are deemed to be among the noisiest, and therefore, subject to all of the restrictions associated with that category.

4. Only a handful of piston aircraft models are considered "Quiet", despite the fact that many other piston aircraft have similar characteristics and noise levels, and lack complaints about their operations. Some classified as "Noisy" may, on a single flight produce only a fraction of a dB more noise than the "Quiet" aircraft.

5. 488 piston aircraft operations would have been considered "Noisiest" in 2014, and therefore, restricted under the proposed rules. They would be banned from 5:00 PM to 9:00 AM <u>all days</u>, and limited to one round-trip per week.

7. 2,982 piston operations from 2014 would have been considered "Noisy" and therefore, they would be banned from 7:00 PM to 8:00 AM, <u>all days</u>.

8. The "Noisiest" aircraft would be allowed only one round trip per week. That would mean that the operator of a simple Cirrus aircraft could fly in and out of its home base only once a week. No locally based aircraft should be restricted to such limitations.

9. There appear to be a number of errors in the classification of aircraft. For example, we are unaware of any "Saratoga Twin" aircraft. The BE33 Debonair and the BE35 are put into different classes, but essentially are similar airplanes. Tail Number N665CA, listed as a "Quiet" Piper Malibu based on a 73.7db reading, is in fact a 2013 Cirrus based on FAA registration, which the Noise Report would classify as "Noisiest" notwithstanding the 73.7db actual reading. Tail Number N802HH is listed as two different models. Clearly, the Vector sampling is an inadequate basis for noise categorizations.

10. The line between a "touch and go" and a landing aborted for safety reasons is often a fine one, especially in smaller aircraft. Pressure to land or to stop an airplane when the safest thing to do is to go-around for another attempt threatens safety. Therefore, an outright ban on touch and go's during any time period would be unwise. Furthermore, touch and goes have not been demonstrated to generate significant complaints.

11. The Report defines a "heavy" aircraft as 12,500 pounds or more, while the FAA defines a Heavy Aircraft as being capable of taking off at a weight of 300,000 pounds or more.

12. The Report's reference to categories of jets (A, B, C, D and E) is out of context because these categories refer solely to approach speeds, not the necessary runway length or width, and have nothing to do with "business jet standards".

13. The Report states that the "Town will publish, by NOTAM, schedules of Noisiest types, as so defined, and Quiet Types, as so defined, and other information for airport users . . . ." The Town cannot unilaterally publish a NOTAM. The FAA will only publish NOTAMs approved by the FAA.

To further demonstrate the problems with the proposed restrictions, one locally based plane is a Phenom 300 light jet used for a local business. This plane is considered one of the newest, quietest jets on the market. However, under the Noise Subcommittee's proposal, that plane would be 1) limited to one round trip per week, 2) subject to an outright ban on use from 5:00 PM to 9:00 AM all days, and 3) subject to a surcharge on weekends and holidays during the summer season. That is an excessive restriction that would send out a message that the Town does not encourage business owners to live in East Hampton or even own a weekend home in the Town.

The Beechcraft Bonanza is another example of overreach in the proposed regulations. This model of single engine piston aircraft has been based at the Airport for decades and is owned by a number of local pilots, and yet it is swept up in the "Noisy"

aircraft category and, therefore, would be subject to very aggressive curfews that undermine the usefulness of such a plane for transportation.

None of these airplanes is a source of the town's noise complaints; helicopters are. Nevertheless, the Noise Subcommittee's proposals would severely affect these aircraft.

VI. THE PROPER DIRECTION FOR THE TOWN

The Noise Subcommittee recognizes that the primary source of noise complaints is helicopters, yet it proposes to place restrictions on 73% of piston operations that are arbitrarily, and in some obvious cases, incorrectly classified as "Noisiest" or "Noisy". If the Town Board were to adopt such sweeping restrictions, that would not be consistent with the Town Board's assertions that the Airport is to be maintained as a viable transportation facility or with its own data as to the correlation between noise complaints and the aircraft purportedly generating them.

Similarly, if the Noise Subcommittee were truly concerned about reducing helicopter noise, while not impeding regular operations at the Airport, then it is surprising that the Subcommittee would propose such sweeping restrictions on <u>all</u> types of aircraft. The Noise Subcommittee could have considered economic disincentives for helicopter usage at peak times, for example, in the form of congestion pricing. Not only would such targeted measures provide economic disincentives for peak time takeoffs, they would also be a source of revenue for the Airport. Lastly, the Noise Subcommittee appears to have rejected negotiations with the FAA and commercial helicopter operators on establishing noise abatement routing, and has instead chosen the path of drastically reducing airport operations and revenue.

Overall, the Subcommittee's approach is not consistent with preserving the Airport as an important transportation facility for the Town.

Carefully drafted restrictions might survive the inevitable judicial review if they are based on real noise impacts that are properly documented. Reasonable curfews on takeoffs might be a useful tool in certain situations. But even then, safety must be of paramount concern.

In view of the impact of nighttime operations of helicopters that are based elsewhere, some form of curfew on takeoffs might be appropriate. However, there should be no curfew on landings, since that can seriously jeopardize safety.

But, since the primary source of noise complaints appear to be helicopter operations, the Town's efforts should be focused on a range of measures that address those impacts, not simply Town legislation that unnecessarily imposes broad restrictions on Airport operations.

Certain noise control measures are solely within the jurisdiction of the FAA. Accordingly, the Town should be working with the FAA to craft a more comprehensive and effective approach to diminish noise that includes non-discriminatory controls over altitudes, routes, approaches and landing patterns.

The FAA has already demonstrated its willingness to address helicopter noise in its successful defense in Federal Court of the "North Shore" route. That case shows that, with the use of a) reasonable data as support (not, for example, purported single event impacts on individual tax parcels), and b) good faith, high level negotiations with the FAA, the Town could succeed in addressing the most offensive noise impacts from helicopter operations and have the FAA as an ally.

Unfortunately, the Noise Subcommittee's proposals rely on faulty noise analyses that were crafted to be complaint driven, instead of true noise analyses. In addition, the Subcommittee's report proposes certain extreme measures that would restrict some small fixed wing aircraft, that are not the real source of noise complaints, to year round curfews, and in some instances, one round trip per week.

Further, if the Town were to go to such extremes in restricting fixed wing aircraft operations, then that step, viewed in conjunction with the Town's failure to repair and maintain the two core runways at the airport as required by the 2010 Airport Master Plan, would lead the aviation community to conclude that the Town is capitulating to a small influential group of people who want to cripple and, ultimately, close the airport.

We have a deep concern that going forward with the Noise Subcommittee's proposed restrictions will hurtle the Town into years of litigation, at the cost of hundreds of thousands of dollars, which the Town will ultimately lose. Years from now, at the end of that battle, genuine noise problems will remain unresolved, and all parties, including

those truly affected by helicopter noise, will have suffered. (In this regard, while the Town appears to be headed toward a "war" with the helicopter industry, the Town has not budgeted for the enormous sums of money it will have to expend defending regulations adopted without FAA support.)

In the meantime, if the Town continues to divert the major portion of airport revenues to ancillary projects, useless noise studies and wasteful litigation, the economic health of the airport will plummet, and due to the lack of repair and maintenance of core infrastructure, the Town will face litigation on yet additional fronts from airport users, hangar owners and leaseholders.

The Town taxpayers will be left with the noise issue unresolved and crumbling infrastructure after being unnecessarily burdened with millions of dollars of expense that could have been avoided by sensible regulation and proper use of FAA funding.

We urge the Town Board to step back and reassess its course of action on noise controls as well as airport maintenance and repair.