UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FRIENDS OF THE EAST HAMPTON AIRPORT, INC., ANALAR CORPORATION, ASSOCIATED AIRCRAFT GROUP, INC., ELEVENTH STREET AVIATION LLC, HELICOPTER ASSOCIATION INTERNATIONAL, INC., HELIFLITE SHARES LLC, LIBERTY HELICOPTERS, INC., SOUND AIRCRAFT SERVICES, INC., and NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

No. 15 Civ. 2246 (SJF) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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EXPERT DECLARATION OF ANDREW S. HARRIS

I, ANDREW S. HARRIS, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I have been retained by Plaintiffs in this matter to provide expert testimony on the subject of aviation noise. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order.

EDUCATION AND EXPERIENCE

2. I received a Bachelor of Arts from Harvard University (1961), a Bachelor of Architecture from the Massachusetts Institute of Technology (1965), a Master of Business Administration from Northeastern University (1976), a Master of Arts in Theological Studies from Episcopal Divinity School (1996), and a Doctor of Ministry from Episcopal Divinity School (2003).

3. I currently serve as President of Andrew S. Harris, Inc., a consulting firm specializing in airport noise assessment and control, which I co-founded in 2000. I am active in management and technical analysis in a wide variety of airport noise projects, including airport master plan studies, Federal Aviation Regulation ("FAR") Part 150 noise and land use compatibility studies, environmental assessments, environmental impact statements, development of noise rules, sound insulation of buildings, design of aircraft noise and operations monitoring systems, development of noise-related land-use ordinances, and management of noise compatibility programs.

4. From 1981 until 2000, I served as President and then Chairman of Harris Miller Miller & Hanson, Inc., ("HMMH") an airport consulting firm that I co-founded in 1981. At HMMH, I was responsible for administration and business development as well as project management for a broad range of airport projects. Over the course of my time at HMMH, the firm increased tenfold in size and scope of services, from four people in one location consulting on airport noise issues, to between 40 and 50 employees in several locations consulting on a broad range of services. I left HMMH in 2000, several years before the Town of East Hampton retained HMMH in connection with proposed noise restrictions at East Hampton Airport.

5. From 1963 until 1981, I worked at Bolt Beranek and Newman Inc. ("BBN"), then an acoustics, noise control and computer system consulting company based in Cambridge, MA. From 1963 until 1965, I worked in BBN's Cambridge architectural acoustics and noise control division. In 1965, I moved to BBN's New York office, where I was the Office Manager and consulted on a range of architectural acoustics and noise control projects in the U.S., Canada and the Philippines. In 1970, I returned to BBN's Cambridge office, where my consulting included architectural acoustics, noise control and airport noise. From 1972 to 1981, I headed the Airport

Noise Group in BBN's Cambridge offices. In that role, I helped to develop a full-service airport noise consulting business.

6. Over the course of my career, I have handled projects for the U.S. Department of Transportation, the Federal Aviation Administration ("FAA"), the Environmental Protection Agency, the U.S. Department of Justice, the U.S. Navy and Air Force, and various state and local agencies and authorities. I have worked on projects at more than 60 civil and military airports in the United States, Canada, China and Israel. These airports range from the largest and busiest commercial airports in the world to small municipal and private airports. My projects have addressed all facets of airport-related noise, with a focus on assessment of community impacts and development of noise abatement methods. Nearly all of my work at airports in the United States has included on-site measurements, correlation of noise measurements with aircraft operations, and assessment of community exposure to aircraft noise environments.

7. I have also authored various reference documents in my field, including a guidance document for airport noise control (Report No. FAA-EE-80-37, "A Guidance Document on Airport Noise Control," Andrew S. Harris, Robert L. Miller, Joan M. Mahoney (Final Report, August 1980)), regulations for airport noise control (*e.g.*, Md. Code Regs. 11.03.03), and a memorandum describing a screening metric for potential noise exposure from airports that was adopted by the Civil Aeronautics Board.

8. In addition, I have taught courses in acoustics and noise control for agencies such as the FAA, the Maryland Aviation Administration and the Civil Aviation Administration of the People's Republic of China.

9. I have also provided expert testimony and support in litigation, deliberations of administrative bodies and deliberations of legislative bodies. I have been retained to provide expert testimony in more than 25 cases related to airport noise.

10. I am being paid at a rate of $225 per hour for my time spent working on this matter.

ASSIGNMENT

11. I have been requested to render an opinion concerning certain noise studies published by the Town of East Hampton (the "Town") that I understand have been offered as a basis for the Town's enactment of Local Law Nos. 3, 4, and 5 of 2015 (the "Restrictions"), which were passed by the Town Board of East Hampton on April 16, 2015, restricting access to the East Hampton Airport (the "Airport" or "HTO").

12. In developing my opinion, I have reviewed certain materials provided to me by Lankler Siffert & Wohl LLP, including the materials listed in Exhibit A attached to this declaration. Those materials include, among other things:

- a document entitled "Development of Proposed Access Restrictions at East Hampton Airport: A Staff Compilation for the Town Board," dated April 2015 (the "Staff Compilation"), which purports to detail the basis upon which the Town enacted the Restrictions;
- a memorandum from HMMH to the Town Board, dated April 10, 2015, which purports to explain HMMH's "roles in the process that led to" the Restrictions;
- various studies and memoranda prepared by the Town's consultants, including HMMH, Young Environmental Sciences, and Noise Pollution Clearinghouse, including studies and memoranda cited in the Staff Compilation;
- transcripts of meetings of the Town's Board;

- proposed and final legislation regarding use restrictions at East Hampton Airport;
- statements from Town Board members regarding the proposed legislation;
- FAA Advisory Circulars on noise levels of certain aircraft;
- fleet information on aircraft that use East Hampton Airport;
- U.S. Census data regarding the Town of East Hampton, Town of Southampton, Town of Shelter Island, Town of Riverhead, Town of Southold;
- noise abatement procedures and compliance reports issued by East Hampton Airport; and
- materials related to San Jose and Sacramento airports.

13. In addition to reviewing these documents, I have reviewed certain authoritative sources in my field related to airport noise, helicopter noise, and community noise problems, including those sources listed in Exhibit A.

OPINIONS

14. Based on my review and analysis of the above materials and others, and on my years of experience in the acoustics field, I have reached two primary conclusions regarding the Restrictions:

a. *First*, for several reasons (explained below), the methodology reflected in various noise studies upon which the Town relied in enacting the Restrictions is flawed and is not generally accepted in the acoustics community. In fact, several earlier studies conducted by the Town that conform to generally accepted methodologies confirm that airport noise in the residential areas surrounding HTO is well within federally accepted guidelines.

b. *Second*, the Restrictions rely on an inappropriate metric—Effective Perceived Noise in Decibels ("EPNdB")—to define which aircraft are "noisy" and therefore subject to the Restrictions.

A. The Town's Noise Studies Are Flawed in Their Methodology

15. The methodology used in the noise studies upon which the Town has primarily relied in enacting the Restrictions is flawed for at least two reasons. *First*, those studies rely on solicited, self-reported complaints to a Town website or a telephone hotline, which is not a generally accepted method in the acoustics field for airports to conduct noise studies for purposes of imposing access restrictions. Indeed, FAA regulations mandate that airport noise studies be conducted under different procedures that were not followed here. *Second*, even if such complaints were a valid basis of determining community exposure to airport noise (which, in my experience, they are not), the complaints upon which the Town relied in this case are insufficient to support the existence of an airport noise problem under generally accepted criteria. To the contrary, past studies conducted by the Town in accordance with the procedures mandated by the FAA have confirmed that noise generated by aircraft using HTO is below acceptable thresholds defined in the FAA's regulations.

16. I will explain these conclusions in further detail below. Before doing so, a brief explanation of the methodology used in conducting the Town's noise studies is warranted.

1. The Noise Studies' Methodology

17. It is my understanding that, in enacting the Restrictions, the Town hired a number of consultants to analyze certain data collected by the Town, primarily in 2013 and 2014, and to present their findings as a series of "noise studies," styled as PowerPoint slide presentations, to

the Town Board at public meetings on October 30, 2014; December 2, 2014; February 4, 2015; February 10, 2015; and April 7, 2015.

18. In addition, I understand that the Town claims that it relied on various prior analyses, including: (i) a 2003 comprehensive noise measurement program; (ii) a 2005 update to the Town Comprehensive Plan; (iii) a 2007 updated Airport Master Plan; (iv) a 2010 Final Generic Environmental Impact Statement; and (v) various noise analyses conducted as part of environmental assessments in 2000 and 2013.

19. According to the consultants' presentations to the Town Board in 2014 and 2015, the data that the Town tasked them with analyzing and presenting consisted of 23,954 self-reported complaints collected by the Town from 633 households in the vicinity of the eastern end of Long Island from November 1, 2013 to October 31, 2014, as well as operational data from an aircraft monitoring system installed at the Airport. HMMH & KKR, East Hampton Airport Phase II Noise Analysis, Slide 5, December 2, 2014 ("Phase II Presentation"). It is my understanding that the complaints called in to the hotline were solicited.

20. The consultants' presentations contain an overview of the complaint data and certain operational data regarding flights to and from the Airport. *See, e.g.*, Phase II Presentation at Slides 5-11; Peter A. Wadsworth, Analysis of 2014 YTD Noise Complaints for East Hampton Airport, Slides 1-15, October 30, 2014 ("Wadsworth Presentation"). They conclude that the majority of the hotline complaints relate to the operation of helicopters at HTO. Wadsworth Presentation at Slide 2. They further conclude that noise from HTO "disturbs many residents of the East End of Long Island" and that "[d]isturbance caused by all types of aircraft is most significant when operations are (1) most frequent and (2) in the evening, night, and early

morning hours." HMMH & KKR, Regulations to Address Noise and Disturbance from Operations at East Hampton Airport, Slide 5, Feb. 4, 2015 ("Phase III Presentation").

21. The Town's consultants recommended that the Town Board consider passing four access restrictions to combat the perceived noise "disturbance":

a. "[p]rohibit[ing] all aircraft operations year-round from 11 pm – 7 am";

b. "[p]rohibit[ing] noisy aircraft year-round during 8 pm – 9 am evening, night, and early morning hours";

c. "[p]rohibit[ing] helicopter operations on weekends and holidays during the summer season (May 1 – September 30)"; and

d. "[p]rohibit[ing] noisy aircraft from conducting more than one take-off and one landing in any calendar week during the summer season." Phase III Presentation at Slide 6.

22. It is my understanding that, on April 16, 2015, the Town passed all of the above restrictions except the helicopter ban (subparagraph (c)), on which the Town Board has deferred consideration.

2. Reliance on Solicited Complaints from Local Residents Is Not a Generally Accepted Method of Identifying the Need for an Airport Access Restriction

23. In my experience, the Town's methodology of using a telephone hotline to solicit complaints from residents about noise exposure is not a valid or generally accepted industry method for determining overall community attitudes about residential noise exposure, let alone for imposing airport access restrictions. By definition, complaints called in to such a hotline are not representative of a community's sentiments regarding airport noise, in part because they do *not account* for the reasons that many people do *not* call in to the hotline. A complaint

represents an individual's response to annoyance, the causes of which can vary greatly based on the particular individual complaining. A person's annoyance with certain noise is not necessarily based on the loudness of the sound itself but can depend on other non-acoustical factors, such as the sense of potential danger from the noise source and subjective beliefs about the importance of the noise source. Moreover, voluntary complaints can come from a small but highly vocal fraction of households in a residential area.

24. To eliminate biased responses, a proper survey of individuals in a community to gauge community-wide attitudes must be deliberately crafted and collected through a combination of mail, telephone, and in-person surveys. At least one of the Town's consultants in this case has authored a memorandum confirming that "[s]urveyed reaction is a formal measure that is collected through mail, telephone, or in-person surveys which are carefully designed to produce unbiased responses." HMMH, Review of Studies that Address Effects of Helicopter Noise, dated Feb. 3, 2015, at 13. Survey complaints thus collected may be used as a tool to identify how some people *respond* to aircraft noise, but even properly conducted surveys are not considered by the industry to be an acceptable method for evaluating the *impact* of noise on a community-wide basis.

25. As a general matter, the accepted method for airport proprietors to evaluate community-wide impact of airport noise is the method that is required by the Federal Aviation Administration under Parts 150 and 161 of its regulations. Part 161.9 of the FAR requires that "[t]he sound level at an airport and surrounding areas, and the exposure of individuals to noise resulting from operations at an airport, must be established in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150." 14 C.F.R. § 161.9. Appendix A of Part 150, in turn, prescribes specific parameters for conducting such a noise study (commonly

known in the industry as a "Part 150 study"). A Part 150 study must follow the requirements enumerated in published FAA checklists and typically includes the following:

a. The study must use the FAA's Integrated Noise Model (the "INM") (or an approved equivalent), which is a computer program developed for the FAA and frequently modified based on scientific data and available acoustics technology.

b. The study must determine the cumulative dose of aircraft noise caused by aircraft in the vicinity of the subject airport using a metric referred to as the yearly day-night average sound level (DNL). The information leading to determination of noise exposure is derived from data on the operations at the airport, including the frequency of operations, arrival and departure paths, and types of aircraft that use the airport.

c. Using these data, the study must produce "contour maps" showing which areas surrounding the airport are exposed to what dose of noise for several scenarios. For example, if the noise contours show that a certain area surrounding an airport has a DNL of 65 dB, that means that the average daily noise to which the area is exposed is 65 dB. Part 150 states that yearly DNL levels below 65 dB are generally considered compatible with residential land use.

26. In my experience, a Part 150 Study using the DNL metric is the appropriate way to analyze community-wide exposure to noise. It eliminates the potential biases and non-acoustical responses to noise that are present when annoyance based on complaints is calculated.

27. Based on the materials I have reviewed, I understand that the Town has conducted several studies over the past 12 years that have followed the methods prescribed by the FAA's regulations. I have reviewed these studies, and none suggests that the residential areas surrounding HTO are exposed to noise levels greater than what are traditionally considered

compatible with residential land use under federal guidelines (*i.e.*, below 65 yearly DNL). In fact, some of the studies confirm the opposite—that all residential areas surrounding the Airport are within federally accepted limits.

28. For example, as noted above, the Town's studies include a 2003 "comprehensive noise measurement program," which culminated in a presentation to the East Hampton Town Board at a meeting on October 29, 2003 by Robert L. Miller of HMMH (the "R. Miller Report") and another study entitled "East Hampton Airport Final Generic Environmental Impact Study" (the "GEIS"), which was presented in August 2010 by Young Environmental Sciences ("Young"). Young also prepared a memorandum (the "2014 Young Memorandum") detailing other contour maps prepared in 2014 (based on 2013 data). Unlike the Town's recently commissioned noise studies based on solicited, self-reported complaint data, the R. Miller Report, the GEIS, and the 2014 Young Memorandum applied generally accepted methods for evaluating noise impact on a community-wide basis. The Young Memorandum and GEIS confirm that the yearly DNL levels for residential communities surrounding HTO were all below 65 at the time of the studies.

29. In its preamble to Local Law No. 5 (the Restriction barring more than one flight per week by any aircraft that the Town categorizes as "noisy"), the Town asserts that the DNL metric, uniformly required by the FAA for Part 150 studies, "proved, after considerable study, not to be a useful tool for measuring the impact of noise from operations at East Hampton Airport because it averages noise data over 24 hours, and does not capture the demonstrated community annoyance and disruption from individual aircraft noise events (especially noise events associated with helicopters)." I understand that the Town also has expressed concern that the DNL metric does not reflect the peak noise events and specific times of day when East

Hampton residents are more disturbed by noise. These statements appear to have been made without input from the FAA, and were not based on accepted noise evaluation practices.

30. In fact, the DNL metric has for decades proven to be meaningful and helpful when evaluating noise at airports throughout the U.S., and it is the standard mandated by the FAA in determining the existence of airport noise problems under Part 150. The DNL metric considers noise from all aircraft operations, 24 hours per day, including the peak noise events and the lower noise operations. It also applies a 10-decibel penalty for all nighttime flights when residents are more disturbed.

31. The Town's contention that the DNL metric does not account for isolated loud events is incorrect. Using a concrete example from the Town's studies of HTO, the Town's 2010 GEIS states (at page 37) that a busy day in 2008 saw approximately four times as many operations as the average day. Due to the logarithmic properties of DNL, each doubling of aircraft operations at an airport will generate an increase in daily DNL of 3 dB (and two doublings will increase DNL by 6 dB). Consistent with this, a comparison of the contour maps presented in the GEIS for a busy day in 2008 and the annual average day in 2008, respectively, shows that the busy day's DNL value was approximately 6 dB larger than the annual average day's DNL value. The GEIS also confirms that both the busy-day and yearly DNL levels in residential areas outside the Airport were below the federally accepted guideline of 65 when the study was conducted.

32. DNL values are dominated by the loudest events because DNL is a logarithm-based metric and does not employ arithmetic averages (in which, for example, the arithmetic average of 60 and 50 is 55). Instead, the average of DNL 60 and DNL 50 is approximately DNL 57.

33. The notion that average annual DNL is "not a useful tool" because East Hampton is a unique seasonal environment, in which residents enjoy spending time outdoors and with the windows of their houses open, is also incorrect. Other municipally-owned airport proprietors in similar locales have developed noise abatement programs consistent with FAR Part 150 using yearly DNL.

34. Particularly relevant are the airports in Nantucket, Martha's Vineyard and Hyannis, Massachusetts. Each of these locations, like East Hampton, is a summer-resort community where: (i) residents enjoy outdoor living; (ii) there are large swaths of quiet areas in the community; (iii) conservation lands are situated along roads to and from the airport; and (iv) aircraft operations are significantly higher during the summer season than at other times during the year. Neither Martha's Vineyard nor Nantucket has any highways (making them quieter than East Hampton), and Nantucket has no major airports nearby. Yet Nantucket, Martha's Vineyard and Hyannis airports all have noise abatement programs in place that have been developed in a manner consistent with FAR Part 150. Nantucket has an approved FAR Part 150 program in place, which includes noises analyses based on DNL, including a comparison of "busy day" DNL to yearly DNL.

3. The Complaints Relied on by the Town Are Unreliable

35. Even if solicited complaint data were an accepted measure of the impact of airport noise on surrounding communities, the data that the Town has collected in this case are unreliable and do not support the conclusion that there is excessive residential noise exposure, for several reasons.

36. *First*, all of the complaints about aircraft noise relied upon by the Town were generated by 1.2% of households in the covered area. As noted, the Town's complaint data

cover the entire East End of Long Island—an area that, according to census data, includes at least 52,811 occupied households. Of those households, complaints were received from only 633 (1.2%). In my experience, this cannot be evidence of a widespread, excessive aircraft noise problem caused by traffic to and from HTO. To the contrary, that approximately 99% of households did not complain suggests the opposite.

37. *Second*, the complaint data indicate that approximately 50% of the 23,954 complaints received by the Town were generated by 10 households. One household submitted approximately 2,800 complaints in a 12-month period. Another submitted approximately 1,800. This further suggests that the complaints called in to the hotline came from a small but vocal minority of residents in the community.

38. *Third*, the complaints received by the Town came from locations as far as 23 miles away from HTO. I have seen no basis in the available data to conclude that complaints from such a distance related to air traffic that was associated with HTO. To the extent that there was aircraft noise in such locations, it could well have been generated from aircraft flying over the area to or from a different airport. Restrictions at HTO would not be expected to reduce these complaints. On the other hand, restrictions at East Hampton might well divert traffic to other nearby airports and increase aircraft operations in such locations.

B. The Restrictions' Reliance on EPNdB Approach Levels to Classify "Noisy" Aircraft Is Inappropriate

39. The Restrictions define "Noisy Aircraft" as those with an FAA-certified EPNdB approach level greater than or equal to 91.0. Using that definition, the Restrictions (i) limit "Noisy Aircraft" to one landing and takeoff per calendar week during the summer season and (ii) prohibit all "Noisy Aircraft" from using the Airport between 8 p.m. and 9 a.m. year round.

40. The Town's use of an aircraft's certified EPNdB approach level to determine whether the aircraft is "Noisy" and thus subject to the Restrictions is inappropriate.

41. Certified EPNdB levels are published by the FAA. Many, but not all, aircraft have them. They are used during an aircraft's manufacturing process, to determine if the aircraft can be certified for use within the United States.

42. Certified EPNdB levels are based on measurements taken in very specific flight conditions, in which the aircraft is operating in maximum-performance mode, for testing purposes. The conditions under which EPNdB levels are tested bear little resemblance to the conditions under which any particular aircraft would normally operate in flight. To measure the EPNdB levels of a particular aircraft, the FAA provides a detailed list of requirements that specify, among other things, how much weight the aircraft must carry, the angle at which it must fly, and the air temperature and humidity level at which noise should be measured. Once those conditions are met, EPNdB levels are measured by a meter placed at specific locations and elevations above the ground that measure the noise emitted from the aircraft. Three EPNdB certification measurements are taken for each aircraft that is certified, including during takeoff and landing. The FAA publishes EPNdB levels for each certified aircraft in FAR Part 36.

43. The EPNdB levels issued by the FAA do not represent the actual noise from an aircraft during typical operations at an airport and heard by neighbors. There are many factors that influence the noise heard by a person on the ground. These factors include the altitude of the aircraft, approach and departure procedures, flight path, an aircraft's weight, and modifications to the aircraft that are not permitted during EPNdB certification testing.

44. As noted, the Town uses EPNdB approach levels to define "Noisy Aircraft." The EPNdB approach level, which measures the maximum noise level when a plane is on approach

to landing, is not an appropriate metric. Among other reasons, the complaints in the Town's hotline database came from as far away as 23 miles from the Airport, indicating fly-over operations, not approach-to-landing operations.

45. The Town's stated goal of reducing complaints also cannot be assured by using FAR Part 36 EPNdB approach levels to limit access to the Airport. In addition to the fact that some aircraft with EPNdB approach certification levels below 91.0 may be objectively noisier than those with EPNdB levels greater than 91.0, many types of aircraft simply do not have published EPNdB levels. Some such aircraft are objectively noisier than aircraft with certified EPNdB levels greater than 91.0. Yet under the Town's Restrictions, these aircraft can continue to use the Airport without restriction. Because these aircraft may be as loud or louder than aircraft that are deemed "Noisy," the individual households that are complaining may continue to complain.

46. I note that, in its published justification for the Restrictions, the Town has referred to access restrictions adopted at Mineta San Jose International Airport ("SJC") and Sacramento Executive Airport ("SAC"), both of which involved the use of certified EPNdB levels to determine which aircraft were subject to the restrictions. I have reviewed these restrictions, including their regulatory history. In my view, they do not support the use of EPNdB levels as a basis for the Restrictions at HTO.

47. SJC had a weight-based curfew in place since 1983. The curfew had been developed according to the then-current California and FAA noise abatement procedures as part of an airport master plan. When the federal Airport Noise and Capacity Act ("ANCA") was passed in 1990, SJC's weight-based curfew was "grandfathered" as permissible under ANCA without further review. In 2003, San Jose sought to change the weight-based curfew to a noise-

based curfew, using EPNdB levels as a metric. A letter dated October 2, 2003 from the FAA to the Director of Aviation for the City of San Jose describes the benefits of the original curfew in terms of the reduction in people exposed to DNL greater than 65.0. The FAA letter also describes in detail the review that was undertaken by SJC and the steps taken to meet the requirements of ANCA. The letter also notes that SJC had proposed to use as a basis of its restriction the arithmetic average of each aircraft's arrival, sideline and departure EPNdB values, rather than approach levels only (as HTO proposes to use). SJC established that using such average EPNdB levels would not, in fact, result in a restriction of access to the airport and therefore was not required to meet the requirements of ANCA or Part 161.

48. By contrast, the Town of East Hampton has not complied with ANCA's requirements and has not completed any study showing that its proposed use of EPNdB levels would decrease the number of people exposed to yearly DNL levels greater than or equal to 65.0. To the contrary, DNL studies completed by the Town have consistently shown that nobody residing outside Airport property is exposed to such DNL levels. In addition, there is no grandfathered weight-based restriction in place at HTO that would justify the use of EPNdB as a replacement metric, as there was at SJC. The circumstances under which EPNdB levels were used at SJC were markedly different from those present in East Hampton.

49. In the case of Sacramento, SAC had a noise-based curfew in place since 1983—again, pre-dating ANCA. The curfew used a certified EPNdB level of 80.0 as a cut-off and applied only to jet aircraft. Like SJC's pre-ANCA weight-based curfew, SAC's EPNdB-based curfew was grandfathered under ANCA and thus did not have to be justified by a Part 150 study or put through the FAA's rigorous review process. Initially, the curfew applied to aircraft with FAR Part 36 certification take-off levels greater than or equal to 80.0 EPNdB. According to a

March 2010 draft final report on the SAC noise ordinance, this value was increased to 84.0 EPNdB in 1994, making the curfew *less* restrictive to allow larger, more technologically advanced aircraft with higher EPNdB certification levels to use the airport. *See* Sacramento Executive Airport, Executive Airport Master Plan, Draft Final Report, dated March 2010, at F.1-F.3, available at http://www.sacramento.aero/download.php?f=/sac_mp_ch6.pdf. A full environmental review, including review with the surrounding community and airport users, was completed. Again, these circumstances are far different from those present in East Hampton, where no DNL analysis shows unacceptable aircraft noise and no grandfathered restriction is currently in place.

50. In addition, the March 2010 report on SAC's website notes that the "FAA expressed concern" to SAC's governing agency that the use of an EPNdB-based noise ordinance "may be discriminatory as the Ordinance's base metric, EPNdB, applied to the certification of jet aircraft only" and that the "FAA requested [the governing agency] to undertake analysis of the SAC noise ordinance to explore what alternatives might be available to replace the EPNdB-based ordinance." *Id.* at F.1.

C. The Town's Claim that Voluntary Noise Abatement Procedures Have Not Worked

51. The Airport has published and strongly recommends Helicopter Noise Abatement Procedures developed in collaboration with the FAA's East Hampton Control Tower, the Eastern Region Helicopter Council, and East Hampton Airport Operations. They have been reviewed by the Noise Abatement Advocates and Aviation Users Airport Subcommittees of the East Hampton Airport Planning Committee. The noise abatement procedures define "fly neighborly" operations along specific flight tracks and altitudes during arrivals and departures.

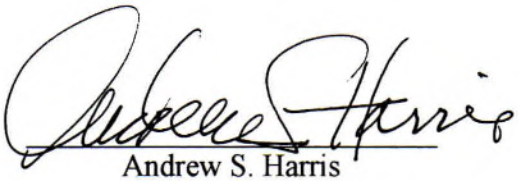
52. Town consultants Young and Les Blomberg claim and reported during a Town meeting on 30 October 2014 that only 15.3% of the helicopter operations in and out of HTO during 2013 complied with the Noise Abatement Procedures. They also reported that during 2013 the altitudes of helicopter flights at four nautical miles from the Airport ranged from about 300 feet to more than 4,100 feet.

53. According to information I have reviewed, including the Town's Staff Compilation report, the Town has acknowledged that the claim of 15.3% compliance with voluntary abatement procedures is based on 2013 data and has further acknowledged that the report of low compliance was criticized for using an imprecise method to calculate compliance. Staff Compilation at 7 & n.40. The Town's abatement procedures were changed in 2014, so the 15.3% compliance rate is not representative of current conduct. In my experience, it is essential that any access restriction be preceded by a robust analysis of less restrictive measures, including voluntary noise abatement procedures, to determine whether the access restriction is indeed necessary. Here, that was not done.

54. Importantly, twelve voluntary abatement route "Compliance Reports" have been prepared by HTO officials based on operations during the 2014 summer season. These reports document that compliance with Helicopter Noise Abatement Procedures has increased significantly in 2014. Compliance is still not 100%; however, it is my opinion that compliance with voluntary abatement procedures can further improve and reduce noise in nearby residential areas.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 29, 2015
Naples, FL



Andrew S. Harris

EXHIBIT A

Studies, Presentations, and Memoranda Prepared by the Town's Consultants

Staff Compilation, Development of Proposed Access Restrictions at East Hampton Airport, April 2015.

Peter Stumpp, Proposed Airport Noise Regulations, SEQRA & Traffic Diversion Study, April 14, 2015.

Harris Miller Miller & Hanson Inc. ("HMMH"), Memorandum to Kathee Burke-Gonzalez re Documentation of HMMH Noise Analyses In Reference To HMMH Project 307162.002, April 10, 2015.

Peter Stumpp, Memorandum to the Town of East Hampton re Potential Traffic Diversion at East Hampton Airport, April 10, 2015.

HMMH & Kaplan Kirsch & Rockwell LLP ("KKR"), Regulations To Address Noise and Disturbance from Operations at East Hampton Airport, April 7, 2015.

Peter Stumpp, (Draft) Preliminary Airport Traffic Diversion Study, March 3, 2015.

HMMH, Memorandum to Kathee Burke-Gonzalez re Noisy Aircraft List In Reference To HMMH Project 3007162.002, March 3, 2015.

HMMH & KKR, Regulations To Address Noise and Disturbance from Operations at East Hampton Airport, (Updated), February 10, 2015.

HMMH & KKR, Regulations to Address Noise and Disturbance from Operations at East Hampton Airport, February 4, 2015.

HMMH, Memorandum re Review of Studies that Address Effects of Helicopter Noise In Reference To HTO Phase 3, Noise Study, HMMH Project 307161.000 Task 1, February 3, 2015.

HMMH & KKR, East Hampton Airport Phase II Noise Analysis, December 2, 2014.

Peter A. Wadsworth, Analysis of 2014 YTD Noise Complaints for East Hampton Airport, October 30, 2014.

Noise Pollution Clearinghouse & Young Environmental Sciences, East Hampton Airport Phase I Noise Analysis Interim Report, October 30, 2014.

Les Blomberg, KKR, Peter A. Wadsworth, & Young Environmental Sciences, Update on Disturbance from Operations at East Hampton Airport: Phase I Noise Analysis Interim Report, October 30, 2014.

Young Environmental Sciences, Technical Memorandum re Integrated Noise Model (INM) Noise Contour Development for 2013 Input Data.

Vanasse Hangen Brustlin ("VHB") Engineering, Surveying and Landscape Architecture, P.C., East Hampton Airport Seasonal Airport Traffic Control Tower Final Environmental Assessment, June 7, 2013.

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