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 D. KIRK SHAFFER

I, D. KIRK SHAFFER, make the following declaration pursuant to 28 U.S.C. § 1746:

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

EDUCATION AND EXPERIENCE

2. In 1973, I received a Bachelor of Science degree from the United States Military Academy at West Point, New York. Thereafter, I served as an Infantry rifle platoon leader, weapons platoon leader, and heavy mortar platoon leader in the 82d Airborne Division. In 1976, I was selected as one of 25 Army officers worldwide to attend law school on full scholarship, pay, and allowances. I received a Juris Doctor degree from The University of Texas School of Law in 1979. Following law school, I attended the yearlong Judge Advocate Officers' Advanced

Course and graduated with the equivalent of a Master of Laws degree (LL.M) from The Judge Advocate General's School of the U.S. Army.

3. I have been practicing law for the past 36 years, the last 29 of which have been devoted almost exclusively to the U.S. commercial aviation industry, with particular focus on federal policies and practices relating to airport noise and access restrictions. I have been a Certified Member of the American Association of Airport Executives since 1993. I have been a member of the Airports Council International-North America's Legal Affairs Committee for almost 30 years. I was Vice Chairman and then Chairman of that Committee from 1997 through 1999, and I served as a member of the Committee's Steering Group for several years.

4. From 1986 to 2004, I served as outside general counsel of the Metropolitan Nashville (Tennessee) Airport Authority (the "Authority"), which at the time owned and operated as many as four airports in the Middle Tennessee region. I simultaneously served in executive management of the Authority and was at various times the Director of Properties and Executive Assistant to the President on the Authority's staff. As general counsel of the Authority, I was directly involved, from both a legal and management perspective, in several major, multi-year construction projects, including the construction of two air carrier runways and a major extension of a third. The construction of runway 2R/20L led to my drafting the nation's first Letter of Intent under the Federal Aviation Administration's ("FAA") Airport Improvement Program ("AIP") to provide long-term federal financing for allowable costs. During the same period, I co-authored the Airport Noise Reduction Reimbursement Act of 1989 (Public Law 101-71), permitting the FAA for the first time to issue AIP grants to reimburse airport sponsors who advance funded noise mitigation projects under 14 C.F.R. Part 150 ("Part 150"). Thereafter, I was intimately involved in the design and implementation of a Part 150 noise mitigation program

totaling over $100 million in the communities around Nashville International Airport, including property acquisition, avigation easement acquisition, sound insulation, and other FAA-approved measures. I also was responsible for reviewing all of the Authority's federal grants to provide an independent certification to the FAA that the Authority was in compliance with applicable grant assurances, and to defend any assurance compliance issues which arose.

5. In January 2007, I was appointed by the President of the United States to serve as Associate Administrator for Airports at the FAA, a position that I held until January 2009. In that role, I was the federal official primarily responsible for overseeing policy matters that affected the nation's system of airports, including general aviation airports, and the oversight of all airport noise compatibility planning pursuant to Part 150 and airport noise and access restrictions pursuant to 14 C.F.R. Part 161 ("Part 161") system-wide. I was also the final agency decision-maker for airport compliance issues, including airport obligations under federal grant assurances.

6. As Associate Administrator for Airports, I reported directly to the FAA Administrator and the U.S. Secretary of Transportation, and I routinely briefed and testified before the U.S. Congress, its professional staff, state and local elected officials, aviation industry groups, and other Cabinet departments on a wide variety of aviation policy matters. I also was responsible for publishing the 2009–2013 National Plan of Integrated Airport Systems ("NPIAS"), a bi-annual report that identifies the public-use airports in the United States that are important to national air transportation and therefore eligible to receive grants under the FAA's Airport Improvement Program.

7. I have been a licensed fixed-wing pilot for 15 years.

8. I have been retained to provide expert testimony in approximately seven cases related to airport noise abatement and other aviation issues, including approximately three cases pending in the U.S. District Courts. I can provide a list of those matters upon request.

9. I am being paid at a rate of $650 per hour for my time spent working on this matter.

ASSIGNMENT

10. I have been requested to render an opinion concerning the Town of East Hampton's (the "Town") enactment of Local Law Nos. 3, 4 and 5 of 2015 (the "Restrictions") and the process leading thereto. The Restrictions include a full mandatory curfew prohibiting use of East Hampton Airport (the "Airport" or "HTO") by any aircraft between 11:00 p.m. and 7:00 a.m. every day (the "Mandatory Curfew"); (2) an extended curfew banning use of the Airport by so-called "Noisy Aircraft" from 8:00 p.m. to 9:00 a.m. every day ("the "Extended Curfew"); and (3) a one-trip limit prohibiting "Noisy Aircraft" from flying more than one trip—defined as one arrival and one departure—per calendar week from May through September (the "One-Trip Limit"). The Restrictions define "Noisy Aircraft" as aircraft for which the FAA has published an Effective Perceived Noise in Decibels ("EPNdB") approach level of 91.0 or greater.

11. Lankler Siffert & Wohl LLP has provided me with materials to review as I developed my opinion. I have also reviewed certain other authoritative literature in my field that is relevant to the issues presented by this assignment. The materials that I have reviewed include the items listed in Exhibit A attached hereto.

OPINIONS

12. Upon reviewing the above materials, and based on my years of experience in the aviation industry and in government, I have concluded that: (1) the Restrictions, including the

procedure by which they were enacted, are wholly unprecedented in this country and represent an extreme departure from well-established, federally mandated methods of defining and addressing airport noise problems; (2) the Restrictions, if permitted to take effect, would have immediate adverse consequences for the federal policy goals of uniformity, safety, efficiency and predictability in the country's national system of airports; and (3) a 2005 settlement agreement between the FAA and the Committee to Stop Airport Expansion (a private advocacy group), upon which the Town appears to rely in justifying its enactment of the Restrictions, is inconsistent with established FAA policy and practice.

13. I will set forth some relevant background information before explaining the above opinions in more detail.

A. Background

1. East Hampton Airport Has Been Designated By the U.S. Government as an Important Regional Airport

14. The National Plan of Integrated Airport Systems is a planning document that is required by 49 U.S.C. § 47103 to be published by the FAA's Office of Airports every two years covering the following five-year period. NPIAS identifies certain airports across the country that are significant to national air transportation. It categorizes those airports based upon their particular role in our national airport system and estimates the amount of funding which will be required at each of those airports. Airports designated in the NPIAS are eligible for AIP grant funding, in recognition of the national importance of developing and improving those airports as part of the national airport system.

15. The FAA has determined that "[t]he national airport system is critical to the national transportation system and helps air transportation contribute to a productive national economy and international competitiveness." FAA, *National Plan of Integrated Airport Systems*

2015–2019 (Sept. 30, 2014), at 2, available at http://www.faa.gov/airports/planning_capacity/npias/reports/media/npias-2015-2019-report-narrative.pdf (hereinafter, the "NPIAS Report"). In the NPIAS Report, the FAA sets forth certain "guiding principles" for the national airport system, including the following:

a. Airports should be safe and efficient, located where people will use them, and developed and maintained to appropriate standards;

b. Airports should be flexible and expandable, able to meet increased demand, and to accommodate new aircraft types;

c. Airports should be permanent, with assurance that they will remain open for aeronautical use over the long term;

d. Airports should be compatible with surrounding communities, maintaining a balance between the needs of aviation, the environment, and the requirements of residents;

e. The airport system should support a variety of critical national objectives, such as defense, emergency readiness, law enforcement, and postal delivery; and

f. The airport system should be extensive, providing as many people as possible with convenient access to air transportation, typically by having most of the population within 20 miles of a NPIAS airport. *Id.*

16. According to the NPIAS, of the 19,000 aviation facilities throughout the U.S., 5,148 are public-use facilities, and only 3,331 are deemed "significant" within the national system of airports and thus eligible for federal funding under the AIP. *See id.* at 1. In order for an airport to be eligible for AIP grant funding, it must be among those airports designated as significant in the NPIAS.

17. According to the NPIAS, HTO is deemed to be a significant airport. Moreover, in the most recent NPIAS, HTO was designated as one of 467 regional general aviation airports in the nation. *See* FAA, *General Aviation Airports: A National Asset* (May 2012), at B59, available at http://www.faa.gov/airports/planning_capacity/ga_study/; NPIAS Report at B40, available at http://www.faa.gov/airports/planning_capacity/npias/reports/media/npias-2015-2019-report-appendix-b-part-4.pdf. HTO is located near a major metropolitan area and serves a relatively large population. Operations from HTO cross state lines, and jet and turboprop aircraft are prominent. HTO hosts two fixed-base operators who provide numerous aeronautical goods and services, including sale of aviation fuels, flight lessons, airplane rentals, major aircraft repair, aircraft hangarage, rental cars, plane catering, and aircraft lavatory services. The Airport has a seasonal air traffic control tower to enhance the safety of operations on and around the airfield and in adjacent airspace. While the Airport does not have any precision instrument landing systems on its runways (and typically would not be expected to), it does have multiple area navigation (RNAV)/global positioning system (GPS) approaches, which now outnumber the age-old ground-based instrument landing systems at U.S. airports by a margin of two to one and provide an enhanced level of accuracy and safety to aircraft approaching the airport for landing.

18. For all of these reasons, HTO is an important regional component of this country's national airport system.

2. Noise Mitigation Under the Federal Regulatory Scheme

19. Based on my years of experience in the airport industry and at the FAA, I have gained a detailed understanding of the practical context in which federal policies and procedures governing aviation and airport noise mitigation operate.

20. The Airport Noise and Capacity Act of 1990 ("ANCA") was enacted, in part, in response to a growing patchwork of inconsistent local airport rules and restrictions across the country and the resulting need for national uniformity. Congress and the FAA envisioned an integrated, national system of airports, in which flight crews could move aircraft seamlessly from one airport to another with the knowledge that each facility would be designed and operated in a safe, uniform fashion. Conflicting local rules and regulations—including those pertaining to aircraft noise and access—ran counter to that vision and threatened to impede the flow of aircraft and commerce. Thus, a national aviation policy, including noise regulation, was established at the federal level.

21. Airport noise mitigation and mandatory access restrictions are also governed by 14 C.F.R. Part 161, which was promulgated by the FAA under ANCA and which I administered while serving at the FAA. In practice, Part 161 provides the framework by which an airport may apply to the FAA for approval of the implementation of noise and access restrictions affecting aircraft classified by the FAA as "Stage 2," "Stage 3" or "Stage 4" aircraft. The FAA classifies aircraft based on their noise characteristics—Stage 2 being the loudest and Stage 4 being the quietest. In July 2005, the FAA adopted more stringent Stage 4 standards for certification of aircraft, effective January 1, 2006. Any aircraft that meets Stage 4 standards will meet Stage 3 standards. Accordingly, policies for review of noise restrictions affecting Stage 3 aircraft may be applied to Stage 4 aircraft as well. *See* Airport Compliance Manual, FAA Order 5190.6b ¶ 13.4.

22. Part 161 dictates that noise analyses and contour maps used to evaluate possible noise and access restrictions under that program must be developed in accordance with numerous requirements under 14 C.F.R. Part 150. The regulations contained in Part 150 (the "Part 150 Program") were promulgated in response to 49 U.S.C. § 47101(c), amongst other authorities. I

implemented Part 150 Programs while an airport executive, and I administered the Part 150 Program while serving as Associate Administrator for Airports at the FAA.

23. The Part 150 Program applies to all public-use airports and, among other things, provides a single system for measuring aircraft noise and determining noise exposure to people in the vicinity of an airport which results from airport operations. Under the Part 150 Program, noise must be measured in A-weighted decibels ("dbA"), and noise exposure in areas surrounding the airport must be determined using annual day-night averages ("Ldn" or "DNL"), with nighttime noise incurring a 10-decibel penalty. (An increase in noise of 10 decibels is generally perceived by humans as being twice as loud.) The Part 150 Program further provides that the first step in any noise mitigation program for airport noise is the creation of a noise exposure map using the FAA's Integrated Noise Model to plot noise contours on or around the airport, demarking which areas are exposed to DNL levels of 65, 70, and 75. Part 150 provides guidance as to which land uses are compatible or incompatible with the various noise levels in surrounding areas and steps that may be taken by local airport proprietors to mitigate the effects of airport noise. Under Part 150, noise levels below DNL 65 are generally considered to be compatible with residential land use.

24. Permissible noise mitigation steps under the Part 150 Program can include land acquisition in fee or in part (such as an avigation or noise easement); sound insulation of structures; acoustical barriers and shielding; modification of flight procedures or flight tracks (arrival or departure) to minimize the exposure of people to airport noise; preferential runway use; denial of use to aircraft which do not meet federal noise standards; capacity restrictions based on relative noisiness; landing fees; and partial or complete voluntary curfews.

25. Participation by an airport and airport users in a Part 150 Program is entirely voluntary. However, if the airport (through its proprietor) wants to impose mandatory noise and access restrictions on Stage 2, Stage 3 or Stage 4 aircraft, then determining noise impact in accordance with Part 150's standards is mandatory under ANCA and the FAA's regulations.

26. Under ANCA, airport proprietors proposing to impose restrictions on Stage 2 aircraft must, at least 180 days prior to the proposed effective date of the restriction, publish the proposed restriction and prepare and make available for public comment: "(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed restriction; (2) a description of alternative restrictions; (3) a description of the alternative measures considered that do not involve aircraft restrictions; and (4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction." 49 U.S.C. § 47524(b). Under Part 161, this analysis must include a noise study conducted in accordance with Parts 161 and 150. 14 C.F.R. § 161.205(b).

27. Imposing noise and access restrictions on Stage 3 and Stage 4 aircraft is even more stringent, as Stage 3 and Stage 4 aircraft are significantly quieter than Stage 2 aircraft. To do so, the airport proprietor must either (1) obtain agreement to the restriction by all aircraft operators at the airport or (2) submit the restriction for, and obtain, approval by the Secretary of Transportation under the procedures provided by ANCA, Part 150, and Part 161. 49 U.S.C. § 47524(c). The Secretary of Transportation may approve a restriction on Stage 3 or Stage 4 aircraft only if the Secretary finds, on the basis of substantial evidence, that: (1) the restriction is reasonable, non-arbitrary, and nondiscriminatory; (2) the restriction does not create an unreasonable burden on interstate or foreign commerce; (3) the restriction is not inconsistent with maintaining the safe and efficient use of navigable airspace; (4) the restriction does not

conflict with a law or regulation of the United States; (5) an adequate opportunity has been provided for public comment on the restriction; and (6) the restriction does not create an unreasonable burden on the national aviation system. 49 U.S.C. § 47524(c)(2). In my experience, internal FAA review of proposed Stage 3 and Stage 4 noise and access restrictions includes extensive vetting by various offices within the FAA, including the Airports Organization, the Aviation Safety Organization, the Office of Policy and Environment, and the Air Traffic Organization.

28. Absent FAA approval, local airport proprietors are extremely limited in their powers to curb noise by Stage 3 and Stage 4 aircraft. Embodied in ANCA and relevant FAA regulations is the considered federal policy decision that, with limited exception, aircraft classified as Stage 3 or Stage 4 by the FAA (*i.e.*, quieter than Stage 2 aircraft) must be permitted to operate freely at all public-use airports in the United States, without interference by varying and uncertain local noise and access restrictions. Airport proprietors can obtain voluntary agreements by the airport's users to observe curfews and noise-mitigating flight procedures (*e.g.,* avoiding noise-sensitive areas). In addition, federally obligated airports have a responsibility to prevent incompatible land uses near the airport, so they can advocate for land use restrictions surrounding the airport.

29. Apart from ANCA, airports that receive AIP grants must provide the FAA with written assurances—known as "grant assurances"—that are binding contractual obligations between the airport and the federal government. Grant Assurance 22.a, for example, provides that the airport's proprietor "will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the

airport." FAA, Airport Sponsors Assurances (Mar. 2014), ¶22.a, available at http://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf. In practice, a federally obligated airport must seek FAA review prior to imposing access restrictions, so the FAA can scrutinize and determine whether the restrictions are reasonable and non-discriminatory, in compliance with Grant Assurance 22.a. The FAA is the federal government's subject matter expert in performing this evaluation.

30. Grant assurances are generally binding for the life of the improvement for which the relevant federal grant provided funding. Under established FAA policy, the term of such improvements is generally deemed to be at least 20 years. Certain grant assurances, such as Grant Assurance 23 (Exclusive Rights), are given in perpetuity.

31. It is my understanding that, in September 2001, the Town received $1,410,000 in federal airport funds for HTO, through an AIP grant. In my experience, in these circumstances, the Town and HTO would be obligated under the FAA's grant assurances for at least 20 years (until September 2021).

B. Opinions

32. Based on my review of materials in this matter, and on my experience in the aviation industry and in government, I have reached the following opinions concerning the Restrictions and the process that led to their enactment.

1. The Restrictions Are Unprecedented

33. In my experience, the Restrictions are unprecedented for a public-use airport. In enacting them, the Town has made no apparent attempt to comply with ANCA, the Part 150 Program, or Part 161, and the traditional analyses that evaluate such factors as noise, safety, costs and economic effects, alternative measures, airfield and airspace capacity, and efficient use

of available aeronautical assets—all of which are normally provided when an airport proprietor proposes noise and access restrictions—are missing in this case. Based on my experience as an airport executive and in the FAA, it is my opinion that because the Town did not comply with Part 161 and Part 150, the FAA's established policy and practice would require rejection of the Restrictions.

34. The Mandatory Curfew, for example, is unsupported by any noise analysis that would be required to justify any curfew. Moreover, even if the Town had completed a traditional Part 161 study, to my knowledge the FAA has yet to approve any mandatory curfew enacted in the post-ANCA period (*i.e.*, after 1990).

35. During my tenure as Associate Administrator for Airports at the FAA, I was involved in the FAA's decision to deny an application by Bob Hope Airport ("BUR") in Burbank, CA, for FAA approval of a mandatory curfew between 10:00 p.m. and 7:00 a.m. In that case, BUR undertook an extensive 9-year, $7 million Part 161 study. However, the FAA rejected the proposed curfew on the ground that BUR had complied with only two of ANCA's six statutory requirements for imposing noise and access restrictions and that the mandatory curfew proposed by the airport was unjustified under the circumstances. As the foregoing indicates, the FAA could not approve HTO's mandatory curfew—which is significantly more restrictive than BUR's proposed curfew, and which was enacted without any Part 161 or Part 150 study whatsoever—without ignoring both the requirements of ANCA and the FAA's own established policies and practices in enforcing that statute.

36. The Extended Curfew and One-Trip Limit are likewise unprecedented and represent a significant departure from current federal policy. In my years as an airport executive and as Associate Administrator for Airports at the FAA, I never encountered, or even heard of, a

local curfew that closed an airport entirely to certain Stage 3 and Stage 4 aircraft for 13 hours of each day, or that allowed any particular aircraft to use the airport for only one trip per calendar week. In my opinion, such severe restrictions could not be approved without a radical departure from established FAA policy and procedures.

2. The Restrictions, if Implemented, Will Have an Immediate and Adverse Impact on the National System of Airports

37. If permitted to take effect, the Restrictions at HTO will immediately and adversely affect the federal policy goals of uniformity, safety, efficiency and predictability within the national system of airports. As noted, HTO has been designated by the FAA as one of a small number of important regional public-use airports within the United States. It is located within the busiest, most complex airspace in the nation—the corridor including New York, New Jersey, and Philadelphia. Any access restriction as severe as the Restrictions would upset the balance and uniformity that the FAA and Congress have created after years of legislation and regulation affecting this region.

38. I have reviewed a traffic diversion study created by one of the Town's consultants (the "Traffic Study"), which estimates that approximately 581 aircraft operations (takeoffs and landings, fixed wing and rotary wing) will be affected by the Mandatory Curfew, over 1,800 aircraft operations will be affected by the Extended Curfew, and over 5,800 operations will be affected by the One-Trip Limit.

39. The Traffic Study goes on to project that many of those aircraft will divert to Francis S. Gabreski Airport in Westhampton, the Southampton Heliport, and Montauk Airport. None of these suggested diversion destinations appears workable. In fact, two of them are clearly less safe based on the Traffic Study's own analysis. Gabreski Airport is over 25 miles from HTO and has its own voluntary nighttime curfew of 11:00 p.m. to 7:00 a.m. An airport

beyond 20 miles from the traveler's destination is inconsistent with the NPIAS, which generally requires that most of the United States population reside within 20 miles of an NPIAS airport. The Southampton Heliport does not have an air traffic control tower, offers no fueling services, and is subject to foggy conditions. Montauk Airport likewise is largely unattended and has no air traffic control tower, no fueling services, and no communications in an area where rapid weather changes are common. Thus, the Town is proposing to divert aircraft during the busiest season of the year from a controlled, full-service airport to one airport that has a voluntary curfew and is over 25 miles from HTO, and two that are uncontrolled and offer virtually no services. This would be unsafe.

40. The Restrictions will also likely create an arrival and departure "push" at HTO and Gabreski, as pilots try to get into or out of these airports before curfew time. It is unlikely that pilots will elect to use the Southampton Heliport or Montauk for nighttime operations given the lack of air traffic control and fuel at those facilities, so the "pushes" at HTO and Gabreski will likely be significant. This will create inefficiency in the air traffic control system, in the most complex airspace in the nation, as controllers try to accommodate the "push" and pilots make last-minute decisions in order to avoid curfew penalties.

41. The Town's Traffic Study does not address whether local airspace has the capacity to handle the diversions of potentially 8,000 aircraft. Further, aircraft operating under instrument flight rules must navigate through an "arrival fix"—or gate—in the air when approaching an airport. Such arrival fixes have capacity limits, and the air traffic controllers using them must maintain required spacing between approaching aircraft at all times. Thus, the Restrictions may not only shift aircraft but will also burden air traffic controllers as they try to

accommodate the increased air traffic at Gabreski. There is also no guarantee that all diverted aircraft can be accommodated at the other airports.

3. The FAA's 2005 Settlement Agreement with the Committee to Stop Airport Expansion Is Inconsistent with FAA Policy and Practice

42. I understand that in 2005, the FAA entered into a settlement agreement (the "2005 Settlement") with an organization called the Committee to Stop Airport Expansion in *Committee to Stop Airport Expansion, et. al., v. Department of Transportation, et. al.*, No. 03 Civ. 2643 (E.D.N.Y.), and that neither the Town nor HTO was a party to that action. I further understand that, as part of the 2005 Settlement, the FAA purported to agree not to enforce grant assurances 22.a and 22.h (Economic Nondiscrimination) and 29.a and 29.b (Airport Layout Plan) (collectively, the "Grant Assurances") against HTO after December 31, 2014.

43. Prior to my involvement in the instant matter, I was unaware of the 2005 Settlement Agreement. I had never seen or heard of it during my time as Associate Administrator for Airports at the FAA.

44. In my experience, compliance with federal grant assurances are subject to strict enforcement by the FAA.

45. For the past 29 years as an airport executive and counsel and as the chief federal airport regulator in the United States during my time at the FAA, I have personally executed billions of dollars of AIP grants. In doing so, I have never heard any discussion, request or suggestion that any of those grants would involve anything other than the fullest enforcement of each and every grant assurance (there are 39 such assurances in their present form) contained in the grant agreements. Indeed, every airport accepting an AIP grant is required to have its counsel provide an independent certification that the airport is in full compliance with all grant assurances as a condition precedent to receiving the grant proceeds.

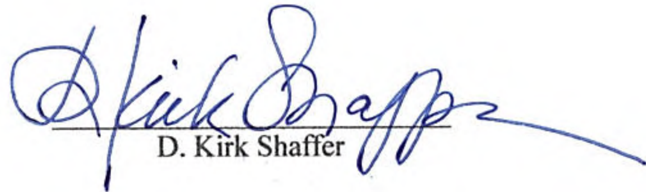
46. In my opinion, it was at odds with the FAA's established policies and procedures regarding the fulfillment of its statutory obligations for the FAA to enter into an agreement with a private partisan advocacy group purporting to affect in any manner the contractual and statutory obligations of a nonparty airport or airport proprietor. The AAIA permits the FAA to modify a grant recipient's obligation to comply with grant assurances in certain limited circumstances, but only if the FAA first provides public notice and an opportunity for comment. *See* 49 U.S.C. § 47107(h). Based on this statutory requirement, the FAA's internal procedures provide that the FAA cannot and will not consider modifying or releasing an airport sponsor from any federal obligation unless, among other things: (1) the FAA determines that granting such a release or modification is authorized by law, FAA Order 5190.6B §§ 22.4, 22.28 (Sept. 30, 2009); (2) the airport sponsor has formally applied for release or modification in writing and the FAA has fully documented its consideration of the application (including the public notice and comments), *id.* §§ 22.14, 22.22, 22.23; and (3) granting the release or modification would "protect, advance, or benefit the public interest in civil aviation," *id.* § 22.4.

47. By purporting to waive FAA enforcement of certain key grant assurances, the 2005 Settlement appears to arbitrarily treat HTO differently than other airports, where the FAA has consistently made clear that it can neither waive the airport's grant assurances nor waive its own enforcement obligations. For example, in the Final Agency Decision issued in *Platinum Aviation & Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, Illinois* (a matter in which I participated while at the FAA), the FAA stated that the "FAA can neither bargain away the rights of access to [airport facilities] nor waive the grant assurances of the Respondent [airport]." FAA 106-06-09 (2007), 2007 WL 4854321, at *15 (Nov. 28, 2007). The same view was echoed by the FAA in the Santa Monica case, *In re Compliance with Federal Obligations by*

the City of Santa Monica, California, FAA 16-02-08 (2008), 2008 WL 6895776 (May 27, 2008). In that case, the FAA again reiterated that it "cannot agree to waive its statutory enforcement jurisdiction" nor "agree to a waiver by a Federally obligated airport of its statutory obligations under the grant assurances." *Id.* at *27. In connection with my expert retention in this case, I have surveyed all of the more than 140 decisions issued by the FAA pursuant to 14 C.F.R. Part 16 through the end of calendar year 2012 (which was the last time a compendium of decisions was published), and I have not found any decision to the contrary.

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

Executed on: April 29, 2015
Morristown, TN



D. Kirk Shaffer

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.

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

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.

Les Blomberg, Documentation of the Elevation Selected to Model Helicopter Noise at HTO, October 1, 2014.

Town of East Hampton, Request for Proposal EH2014-105: Noise Study at the East Hampton Airport, April 17, 2014.

Savik & Murray, LLP, Dennis Yap ("DY") Consultants, Young Environmental Sciences, Inc., East Hampton Airport Master Plan Report, April 24, 2007.

East Hampton Airport, Draft Master Plan, Chapters I - IV and Appendices.

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

Proposed and Final Legislation and Resolutions Regarding Use Restrictions At East Hampton Airport

Town of East Hampton, Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Clarifying Penalties Provisions and Definitions in the Law and Providing for Evaluation of the Effectiveness of Restrictions, (Updated), April 17, 2015.

Town of East Hampton, Adopt Local Law - Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime Operation of Aircraft at East Hampton Airport, (Updated), April 17, 2015.

Town of East Hampton, Adopt Local Law - Amending Chapter 75 (Airport) of the Town Code Regulating Evening, Nighttime and Early Morning Operation of Noisy Aircraft at East Hampton Airport, (Updated), April 17, 2015.

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