

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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**DECLARATION W. ERIC PILSK**

I, W. ERIC PILSK, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm of Kaplan Kirsch & Rockwell LLP, counsel to the Defendant Town of East Hampton in this action. I am an attorney admitted to practice *pro hac vice* before this Court in this matter and admitted to practice law in the Commonwealth of Virginia and the District of Columbia.

2. I submit this declaration in support of the Town of East Hampton's Opposition to Plaintiffs' Motion for a Temporary Restraining Order.

3. Attached as **Exhibit 1** is a true and correct copy of an email from Daphne Fuller, Assistant Chief Counsel, Airports and Environmental Law Division, FAA Office of Chief Counsel, to Peter Kirsch, Outside Counsel to the Town of East Hampton, dated February 29, 2012, transmitting the FAA's responses to questions posed by Congressman Bishop.

4. Attached as **Exhibit 2** is a true and correct copy of a letter from Congressman Tim Bishop to Michael Huerta, Acting Administrator, FAA, dated December 14, 2011, posing certain questions to the FAA.

5. Attached as **Exhibit 3** is a true and correct copy of a Settlement Agreement between the United States and the Committee to Stop Airport Expansion, dated January 27, 2005, together with the Stipulation of Dismissal and Docket Entry in *Committee to Stop Airport Expansion v. Dep't of Transportation*, Case No 03-Civ.-2634, entered on May 5, 2005.

6. Attached as **Exhibit 4** is a true and correct copy of a Memorandum from Lynne Pickard, Manager, Community and Environmental Needs Division, APP-600, FAA, to Rusty Chapman, ASO-600, FAA, dated July 15, 1994.

7. Attached as **Exhibit 5** is a true and correct copy of pages from the Congressional Record, E3693-94 (Nov. 2, 1990), setting forth the comments of House of Representatives Aviation Subcommittee Chairman James Oberstar.

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

  
W. Eric Pilsk

Executed this 7<sup>th</sup> day of May, 2015, in Washington, D.C.

**EXHIBIT 1**

**W. Eric Pilsk**

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**From:** daphne.fuller@faa.gov  
**Sent:** Wednesday, February 29, 2012 5:50 PM  
**To:** Peter Kirsch  
**Cc:** catherine.m.lang@faa.gov  
**Subject:** Re: East Hampton - Opponents' statements  
**Attachments:** EH Press - 2-29-12 QSC re FAA statements on noise restrictions.PDF; Response to Rep. Tim Bishop re East Hampton Airport.pdf

**Importance:** High

Hi Peter:

Here's our response to questions that we received from Representative Bishop's office. This is likely being misunderstood in the news article that you sent. I will give you a call now to discuss. If I miss you then let's try to talk tomorrow.

Daphne A. Fuller  
Assistant Chief Counsel  
Airports & Environmental Law Division  
FAA Office of Chief Counsel  
(202) 267-3195

From: "Peter Kirsch" <[pkirsch@kaplankirsch.com](mailto:pkirsch@kaplankirsch.com)>  
To: Daphne Fuller/AWA/FAA@FAA, Catherine M Lang/AWA/FAA@FAA  
Date: 02/29/2012 11:42 AM  
Subject: East Hampton - Opponents' statements

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Daphne and Kate:

The attached article from today's paper quotes the opposition group in East Hampton as saying that the FAA has concurred with their statements that the Town can impose a limitation on access to the airport after 2014 without complying with ANCA. This certainly comes as a surprise – do you have any idea what FAA statement they refer to?

P.S: Kate: welcome to Denver; I hope to stop by and say hello this afternoon.

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**[Peter J Kirsch](#)**  
**[Kaplan Kirsch & Rockwell LLP](#)** [click for website]

✉ 1675 Broadway, Suite 2300, Denver, CO 80202

☎ (303) 825 7000 (202) 596 1112

[www.kaplankirsch.com](http://www.kaplankirsch.com) [www.airportattorneys.com](http://www.airportattorneys.com)

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# Official Offers Olive Branch

BY ROHMA ABBAS

East Hampton Town Councilman Dominick Stanzione on Tuesday offered a resolution to a tricky situation between veterans and artists in Montauk after both groups planned events on the hamlet's green on Memorial Day weekend.

Mr. Stanzione said after spending time with representatives of the Montauk Memorial Committee and the Montauk Artists' Association last weekend, both groups agreed to share the green on Sunday, May 27. That would allow the veterans to hold a parade, which would begin at Second House, make its way around the Circle and end up at the memorial on the green. It would also keep intact the association's ability to use the green to sell artwork at their annual art show.

"It's not a perfect solution, but I think it's a solution that provides the community with a demonstration of cooperation," said Mr. Stanzione, the liaison to Montauk. "It allows both our artists to benefit from the location of the green and it provides our veterans with the benefit of expressing Memorial Day sentiments on the green at the monument."

But the plan didn't appear to make all the veterans happy. Ken Wallis, a member of the veterans group, said while the compromise was acceptable and he'd support it, he'd have to talk it over with the rest of his 12-member committee.

"I don't like to use the word concessions when it comes to the veterans or when it comes to the military, but this is basically the leftovers," said Mr. Wallis of Mr. Stanzione's plan.

Meanwhile, Tom Bodgen, another member of the group, proposed an alternative that board members didn't support, which was to move all the Memorial Day events to Second House and use the green on Monday, after the artists have cleared out. In exchange, they requested the green be reserved for their exclusive use during next year's Memorial Day holiday.

## Quiet Skies Coalition

The Quiet Skies Coalition has long maintained that East Hampton Town can regulate noise from its airport if it lets current grant obligations with the Federal Aviation Administration expire. According to a statement from the coalition this week, it

appears the FAA agrees.

On Tuesday, Kathleen Cunningham, the chairwoman of the coalition, issued a statement claiming that the FAA confirmed her group's stance, which has been that the town can control access to its airport when current grant assurances with the federal agency expire in 2014.

Ms. Cunningham said the development was "thrilling" because it disproves town officials' claims that the FAA will not allow the town to control the airport once the grant assurances expire.

This means the town will be able to look at a number of options in addressing the noise complaints after 2014, including limiting the number of flights and establishing hours of operations and curfews.

## Penny's Replacement

Mr. Stanzione told Town Board members he planned to introduce a resolution on Thursday to appoint someone to fill former Natural Resources Director Larry Penny's shoes. Board members didn't disclose the name of the candidate.

Mr. Penny plans to officially retire at the end of March.

**FAA Responses to Questions from Rep. Tim Bishop  
East Hampton Airport**

Question 1: In the absence of FAA Grant Assurances, are municipal restrictions to mitigate or reduce noise impacts on the surrounding community permissible? If not, under what basis in law does the FAA assert the Town of East Hampton's proprietary powers are restricted in the absence of specific Grant Assurances?

FAA Response: The FAA's role is to advise sponsors subject to Grant Assurance obligations concerning proposed actions to facilitate their compliance with applicable Federal laws (see FAA Order 5190.6B, Airport Compliance Manual). Particularly absent such obligations, the FAA does not typically provide advisory opinions about hypothetical situations. Rather, the FAA provides an opinion when requested by a Federal court and determines on a case-by-case basis whether and to what extent to participate when requested by private parties. See title 49 Code of Federal Regulations, part 9, generally. As a rule, nonfederally obligated airport operators obtain advice from private counsel concerning the scope of their proprietary authority.

The issue presented here relating to the "absence of FAA Grant Assurances" is a novel one, of first impression, because the FAA is a party to a settlement agreement under which two of the nine provisions comprising the economic nondiscrimination Grant Assurance and Grant Assurance 29, with one exception not relevant here, will expire at HTO after December 31, 2014. The FAA further agreed not to enforce the expiring provisions after December 31, 2014. The town of East Hampton will generally otherwise remain grant obligated until 2021. Under the settlement agreement, all grants awarded to HTO after 2005 will include Grant Assurances 22a, 22h, and 29. For purposes of answering this question, it is assumed that no new grants have been awarded and that the town is proposing to restrict access after December 31, 2014.

The FAA's agreement not to enforce means that as of December 31, 2014, unless and until the FAA awards a new grant to the town, the FAA will not initiate or commence an administrative grant enforcement proceeding in response to a complaint from aircraft operators under title 14 CFR, part 16, or seek specific performance of Grant Assurances 22a, 22h, and 29.

The FAA's agreement not to enforce also means that unless the town wishes to remain eligible to receive future grants of Federal funding, it is not required to comply with the requirements under the Airport Noise and Capacity Act of 1990 (ANCA), as implemented by title 14 CFR, part 161, in proposing new airport noise and access restrictions. See title 49 United States Code (U.S.C.), § 47524(e). ANCA applies to restrictions affecting operations by any Stage 2 or Stage 3 aircraft (including helicopters) if the restriction was not in effect on October 1, 1990<sup>1</sup> (title 49 U.S.C., § 47524(b), (c)).

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<sup>1</sup> Restrictions on operations of Stage 3 aircraft in effect on October 1, 1990, are "grandfathered" and are not subject to the requirements of ANCA (see title 49 U.S.C., § 47524(c)). Amendments to "grandfathered" restrictions that further reduce or limit Stage 3 aircraft operations or affect aircraft safety are subject to part 161 (title 49 U.S.C., § 47524(d)(4)).

Under ANCA, prior to implementing a restriction on Stage 3 aircraft, an airport operator must provide notice to the public. This includes a clear, concise description of the proposed restriction, an opportunity to comment, and an adequate environmental assessment. The airport operator's analysis must provide substantial evidence supporting the following six statutory conditions:

- (1) The restriction is reasonable, nonarbitrary, and nondiscriminatory;
- (2) the restriction does not create an undue burden on interstate or foreign commerce;
- (3) the restriction is not inconsistent with maintaining the safe and efficient use of the 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 undue burden on the national aviation system.

Title 49 U.S.C., § 47524(c)(2)(A)-(F).

Although FAA approval is not required for an airport operator to implement a Stage 2 restriction, an airport operator must provide an analysis of the proposed restriction, as well as a public notice and opportunity to comment, at least 180 days prior to the effective date of the restriction. The analysis must include a benefit-cost analysis; a description of alternative measures considered that do not involve aircraft restrictions (including a benefit-cost analysis of such alternatives).

We are responding to the balance of your question because the town is partially grant obligated and it raises an unusual issue. It is well settled that airport operators have limited proprietary authority to restrict access to control noise. Whether or not they have accepted grants from the FAA, they are vested only with the power to promulgate reasonable, nonarbitrary, and nondiscriminatory regulations that establish acceptable noise levels for the airport and its immediate environs. Any other conduct by an airport proprietor would frustrate the statutory scheme and unconstitutionally burden the commerce Congress sought to foster. *British Airways Board v. Port Authority of New York and New Jersey*, 558 F.2d 75, 84 (2d Cir. 1977), *aff'd, as modified*, 564 F.2d 1002 (2d Cir. 1977) (*British Airways I and II*) (see § 3, Authorities and Responsibilities—Legal Framework, Aviation Noise Abatement Policy 2000, 65 Fed. Reg. 43,802-01 (July 14, 2000)).

In the opinion of the FAA, should the town of East Hampton propose any restriction that denies access on fair and reasonable grounds or is unjustly discriminatory at HTO, the aforementioned Federal and constitutional law would provide a basis for aircraft operators to prevail in seeking a declaratory judgment and injunction. This basis is independent of Grant Assurances 22a, 22h, and 29. In such circumstances, the United States would have to determine whether affirmative litigation could and should be initiated on that same basis consistent with the terms of the settlement agreement.

Question 2: Barring emergency situations, in the absence of FAA Grant Assurances, is it correct that a municipal owner of a general aviation airport may do the following things for the specific purpose of protecting the community from noise? If not, please clarify.

- Limit hours of operation, including imposing curfews or closing on weekends;
- Limit the number of airport operations per day;
- Exclude particular aircraft types based on associate noise levels.

FAA Response: See response to Question 1. Any restriction must, consistent with Federal and constitutional law, be reasonable, nonarbitrary, and nondiscriminatory, establishing acceptable noise levels for the airport and its immediate environs. Any other conduct by an airport proprietor would frustrate the statutory scheme and unconstitutionally burden the commerce Congress sought to foster.

Question 3: According to local organizations, 37 out of 39 Grant Assurance at East Hampton Airport will remain in effect until 2021; however, Grant Assurance 22a and 22h and 29a and 29b – the assurances that allow the FAA to substitute its view of the need for noise restrictions for that of the Town as airport proprietor – will become unenforceable, by agreement, on December 31, 2014. Is this correct. If not, please clarify.

FAA Response: According to the settlement agreement, two of the nine subsections comprising of Grant Assurance 22 (Economic Nondiscrimination) will expire after December 31, 2014, as would Grant Assurance 29 (Airport Layout Plan) with one exception. The two subsections that expire are 22a and 22h. These subsections address access restrictions. The settlement agreement states that the FAA agrees to take no action to enforce Grant Assurances 22a, 22h, 29a, and 29b (except where the town takes an action or proposes to take an action that will adversely affect the safety of the airport) after December 31, 2014. As discussed in detail in response to Questions 1 and 2, the Grant Assurances relating to airport noise and access parallel existing requirements under current Federal and constitutional law. From a legal perspective, airport operators have limited proprietary authority to restrict access as a means of reducing aircraft noise impacts in order to improve compatibility with the local community. This limitation applies to the same degree whether or not the airport operator has accepted grants of Federal funding from the FAA. Should the town and the FAA have a difference of opinion concerning whether proposed restrictions exceed this limitation, it is an open question whether the United States could and would initiate affirmative litigation after Grant Assurances 22a, 22h, and 29 expire in December 2014. The issue in any court proceeding, whether brought by private parties or the United States, would be the same: whether the noise restriction adopted by the town is reasonable, nondiscriminatory, and justified. The assurances, which reflect limitations in applicable Federal and constitutional law, do not “allow the FAA to substitute its view of the need for noise restrictions for that of the town as proprietor.”

Question 4: Should the town of East Hampton apply for and receive additional AIP funds, would the town be [by] restricted by a new set of Grant Assurances that would prevent them [that] from implementing noise reduction policies, such as those that are currently in effect.

FAA Response: The settlement agreement specifically states that all grants awarded to HTO after the effective date of the settlement agreement (April 2005) would include Grant



Assurances 22a, 22h, and 29a. By law, any future grant executed by the town must include all Grant Assurances in effect at the time of the grant. The town currently has voluntary noise abatement helicopter routes in effect. We see no reason that a new set of Grant Assurances would prevent continued use of these routes. Nor would new assurances impede any reasonable restriction that complies with other applicable Federal and constitutional law.

The FAA has continuously, consistently, and actively encouraged a balanced approach to address noise problems and to discourage unreasonable and unwarranted airport use restrictions. It is a longstanding FAA policy that all possible measures to reduce noise should be considered before airport noise restrictions are proposed to provide noise relief. An airport operator's efforts at land use control are factors to be considered in determining whether there are nonaircraft restrictions that could achieve noise benefits more effectively than a restriction. The ability of an airport operator to attain the benefits of an access restriction through the exercise of land use control powers may be a factor to be considered in determining the reasonableness of a restriction. Voluntary measures, such as asking flight crews to expedite climbs (safely) or apply airport specific noise procedures, are inherently reasonable elements of a balanced approach. The FAA would encourage HTO to continue to work with aircraft operators to ensure voluntary measures are communicated and implemented, as well as educate users on the importance of participating in such voluntary abatement programs for the mutual benefit of the airport and the community.

Question 5: According to *National Helicopter Corp. of America v. The City of New York*, 137 F. 2d 81 (2d Circuit, 1998), any restriction properly adopted in the exercise of its powers as a proprietor cannot violate the Commerce Clause of the U.S. Constitution and that the proprietor's exception is an exception to federal control of airspace management. Does the FAA agree that use restrictions that are reasonably related [to] the legitimate local interest in limiting noise are not an unconstitutional interference with either interstate commerce or federal control of the airways?

FAA Response: The cited case, to which the United States was not a party, raises issues of Federal authority under the dormant Commerce Clause and implied preemption. Cases invoking these legal doctrines are very fact-specific and the legal issues raised can be complex. Under these circumstances, it would not be appropriate for the FAA to opine hypothetically.

Question 6: In the absence of specific Grant Assurances, on what basis could the FAA bring suit on the town of East Hampton for enacting noise reduction policies at the East Hampton Airport, such as limits on hours of operation and imposing curfews or closing on weekends?

FAA Response: See response to Question 1.

Question 7: Does the Town of East Hampton have an FAA approved Airport Layout Plan (ALP)? If so, when was it most recently approved by the FAA?

FAA Response: Yes, the FAA's New York Airports District Office received a revised ALP and conditionally approved it on September 6, 2011.

Question 8: The 65 DNL decibel contour in East Hampton is within the boundaries of the East Hampton Airport itself. Given this fact, are there any conditions under which the FAA would consent to use restrictions in order to reduce noise in the community?

FAA Response: See responses to Questions 1 and 4. The FAA consents to reasonable, nonarbitrary, and nondiscriminatory restrictions that establish acceptable noise levels for the airport and its immediate environs. Title 14 CFR, part 161, provides detailed information about how the FAA evaluates potential noise benefits in reviewing proposed airport noise and access restrictions. In proposing restrictions, just as it does in proposing measures to increase airport noise compatibility under title 14 CFR, part 150, the town would have the flexibility to supplement day/night average sound level with other noise analyses. As discussed in response to Question 4, the Town should consider measures to reduce noise in the community other than use restrictions. The Town may apply for and receive grants of federal funding to sound insulate homes subject to noise levels below 65 DNL dB. To qualify the Town would have to conduct an airport noise compatibility planning study under Part 150 to explore a range of alternative noise abatement measures and adopt a standard for local land use compatibility lower than 65 DNL dB.

**EXHIBIT 2**

TIMOTHY H. BISHOP  
1ST DISTRICT, NEW YORK

COMMITTEE ON EDUCATION  
AND THE WORKFORCE

COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-3201

306 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3826  
FAX: (202) 225-3143

31 OAK STREET, SUITE 20  
PATCHOGUE, NY 11772  
(631) 289-6500  
FAX: (631) 289-3180

[www.house.gov/timbishop](http://www.house.gov/timbishop)

December 14, 2011

The Honorable Michael P. Huerta  
Acting-Administrator  
U.S. Department of Transportation  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington, D.C. 20591

Dear Acting-Administrator Huerta,

In response to requests from local organizations and constituents in my district who are concerned with excessive noise from air traffic over Long Island communities, I ask that your office respond to the attached list of questions related to the East Hampton Airport in my congressional district.

If you require additional information regarding the included questions, please feel free to contact Mark Copeland in my Washington, D.C. office at (202) 225-3826.

Sincerely,



Tim Bishop  
Member of Congress

Enclosure

CC: Catherine Lang, Deputy Associate Administrator for Airports  
Daphne Fuller, Assistant Chief Counsel for Airports & Environmental Law  
Randall Fiertz, Director of Airport Compliance, Office of Airports



1. In the absence of FAA grant assurances, are municipal restrictions to mitigate or reduce noise impacts on the surrounding community permissible? If not, under what basis in law does the FAA assert that the Town of East Hampton's proprietary powers are restricted in the absence of specific grant assurances?
2. Barring emergency situations, in the absence of FAA grant assurances, is it correct that a municipal owner of a general aviation airport may do the following things for the specific purpose of protecting the community from noise? If not, please clarify.
  - Limit hours of operation, including imposing curfews or closing on weekends
  - Limit the number of airport operations per day
  - Exclude particular aircraft types based on associate noise levels
3. According to local organizations, 37 out of 39 grant assurances at East Hampton Airport will remain in effect until 2021; however, grant assurances 22a and 22h and 29a and 29b – the assurances that allow the FAA to substitute its view of the need for noise restrictions for that of the Town as airport proprietor – will become unenforceable, by agreement, on December 31, 2014. Is this correct? If not, please clarify.
4. Should the Town of East Hampton apply for and receive additional AIP funds, would the Town be restricted by a new set of grant assurances that would prevent that them from implementing noise reduction policies, such as those that are currently in effect.
5. According to *National Helicopter Corp. of America v. The City of New York*, 137 F. 2d 81 (2d Circuit, 1998), any restriction properly adopted in the exercise of its powers as a proprietor cannot violate the Commerce Clause of the U.S. Constitution and that the proprietor's exception is an exception to federal control of airspace management. Does the FAA agree that use restrictions that are reasonably related to the legitimate local interest in limiting noise are not an unconstitutional interference with either interstate commerce or federal control of the airways?
6. In the absence of specific grant assurances, on what basis could the FAA bring suit on the Town of East Hampton for enacting noise reduction policies at the East Hampton Airport, such as limits on hours of operation and imposing curfews or closing on weekends.
7. Does the Town of East Hampton have an FAA approved Airport Layout Plan (ALP)? If so, when was it most recently approved by the FAA?
8. The 65 DNL decibel contour in East Hampton is within the boundaries of the East Hampton Airport itself. Given this fact, are there any conditions under which the FAA would consent to use restrictions in order to reduce noise in the community?

**EXHIBIT 3**

**Jones, Sheila D.**

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**From:** ecf\_bounces@nyed.uscourts.gov  
**Sent:** Saturday, May 07, 2005 12:04 AM  
**To:** nobody@nyed.uscourts.gov  
**Subject:** Summary of ECF Activity

**Activity has occurred in the following cases:**

**2:03-cv-02634-JS-MLO Committee To Stop Airport Expansion et al v. Trunzo et al**  
**Order 38**

**Docket Text:**

ENDORSED ORDER on copy of [36] Stipulation of Dismissal - Pursuant to FRCP, Rule 41(a)(1) the parties move to dismiss this action, with prejudice, in accordance with the terms of the Settlement Agreement. Ordered by Judge Joanna Seybert on 5/5/05. C/ECF(Valle, Christine)



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

COMMITTEE TO STOP AIRPORT  
EXPANSION, et al.,

Plaintiffs,

v.

DEPARTMENT OF TRANSPORTATION, et al.

Defendants.

STIPULATION OF DISMISSAL

Civil Action  
No. CV-03-2634

(Seybert, J.)  
(M. Orenstein, M.J.)

-----X

STIPULATION OF DISMISSAL

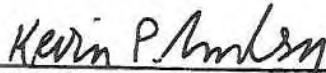
1. The parties have agreed, pursuant to the attached settlement agreement, to settle this action. Accordingly, the parties have authorized their respective counsel to execute this Stipulation of Dismissal.
2. Pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1) the parties move to dismiss this action, with prejudice, in accordance with the terms of the attached Settlement Agreement.

Respectfully submitted,



Sheila D. Jones, Esquire  
(Admitted Pro Hac Vice)  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
202.887.4000

Attorney for the Plaintiffs



Kevin P. Mulry, (KM 3752)  
Assistant U.S. Attorney  
Office of the U.S. Attorney  
Eastern District of New York  
610 Federal Plaza  
Central Islip, New York 11722  
631.715.7865

Attorney for the Defendants

Date: April 29, 2005

Date: April 25, 2005

SO ORDERED:

15/ JOANNA SEYBERT

Joanna Seybert, USDJ  
Dated: May 5, 2005  
Central Islip, NY



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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COMMITTEE TO STOP AIRPORT  
EXPANSION, et al.,

Plaintiffs,

v.

DEPARTMENT OF TRANSPORTATION,  
et al.,

Defendants.

SETTLEMENT  
AGREEMENT

Civil Action  
No. CV-03-2634

(Seybert, J.)  
(M. Orenstein, M.J.)

-----X

**SETTLEMENT AGREEMENT**

WHEREAS, on January 10, 1989, the East Hampton Town Board passed Resolution No. 145, wherein it adopted the Master Plan Update for East Hampton Airport ("the 1989 Master Plan") with certain amendments that are set forth in the Resolution No. 145 (a copy of the Master Plan Update as adopted and Resolution No. 145 are attached hereto as Exhibit A); and

WHEREAS, on December 15, 1989, the East Hampton Town Board passed Resolution No. 2020 wherein it approved an Airport Layout Plan (the "1989 ALP") for the East Hampton Airport and authorized Pat Trunzo, III, the then Deputy Supervisor, to sign the 1989 ALP; and

WHEREAS, on December 19, 1989, Pat J. Trunzo, III signed the 1989 ALP on behalf of the East Hampton Town Board (a copy of the Airport Layout Plan, as adopted and signed, is attached hereto as Exhibit B); and

WHEREAS, by letter dated September 5, 1990 from Mr. Phillip Brito to Mr.

Tony Bullock, the Federal Aviation Administration ("FAA") conditionally approved the 1989 ALP (a copy of which letter is attached hereto as Exhibit C); and

WHEREAS, in 2001 the FAA did not have in its possession a signed copy of the 1989 ALP and the FAA asked the Town to furnish a signed copy thereof; and

WHEREAS, the East Hampton Town Board, on August 3, 2001, adopted Resolution No. 1023, wherein it authorized the re-signing of the ALP adopted in 1989 and the submission of the re-signed ALP (the "2001 ALP") to the FAA; and

WHEREAS, in August 2001, the Town of East Hampton submitted the 2001 ALP to the FAA (a copy of which is attached hereto as Exhibit D) and represented that the 2001 ALP was a true copy of the 1989 ALP; and

WHEREAS, according to published reports, in December of 2002 or January of 2003 in response to a federal subpoena, the Town of East Hampton produced a copy of the 1989 ALP that included the signature of Pat J. Trunzo, III; and

WHEREAS, Plaintiffs allege that a comparison of the airport layout plan produced by the Town in response to the subpoena and the 2001 ALP demonstrates that the 2001 ALP is not in fact a true copy of the 1989 ALP; and

WHEREAS, to the best of the knowledge, information, and belief of the FAA, the approval of an ALP by the East Hampton Town Board may only be affected by resolution of the Town Board; and

WHEREAS, to the best of the knowledge, information and belief of the FAA, since December 15, 1989 there has been no resolution of the East Hampton Town Board approving an ALP for the East Hampton Airport other than the 1989 ALP; and

WHEREAS, in this action Plaintiffs seek review of the determination by the FAA

in 2001 to approve the 2001 ALP; and

WHEREAS, the Plaintiffs submitted several Freedom of Information Act requests to the FAA concerning the East Hampton Airport prior to the initiation of the above-captioned action; and

WHEREAS, the parties desire to resolve this action and the issues between them without further litigation;

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and Defendants ("the parties"), that the above-captioned action shall be settled and compromised on the following terms and conditions:

1. Plaintiffs will file a Rule 41(a) stipulation of dismissal whereby the above-captioned action would be dismissed with prejudice, and without costs and fees to any party, provided that Plaintiffs' obligation to file such a stipulation shall not arise until the Defendants or their counsel sign this Agreement. Plaintiffs agree to file such stipulation within ten business days of receipt of Defendants' executed signature page.

2. Plaintiffs will submit to the United States District Court for the District of Columbia a Rule 41(a) stipulation of dismissal, with prejudice and without costs and fees to any party, of the action entitled *Committee to Stop Airport Expansion, et al. v. United States Department of Transportation, et al.*, Civil Action No. 02-0619 (JR) following receipt of the Court's order dismissing Civil Action No. CV-03-2634 (Seybert, J.) and execution by the parties of a stipulation of dismissal of Civil Action No. 02-0619 (JR).

3. Plaintiffs will submit a request seeking dismissal, with prejudice and without costs and fees to any party, of the proceeding entitled *Committee to Stop Airport Expansion v. Town of East Hampton*, FAA Docket No. 16-02-04 to Defendant FAA within ten

in 2001 to approve the 2001 ALP; and

WHEREAS, the Plaintiffs submitted several Freedom of Information Act requests to the FAA concerning the East Hampton Airport prior to the initiation of the above-captioned action; and

WHEREAS, the parties desire to resolve this action and the issues between them without further litigation;

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2. Plaintiffs will submit to the United States District Court for the District of Columbia a Rule 41(a) stipulation of dismissal, with prejudice and without costs and fees to any party, of the action entitled *Committee to Stop Airport Expansion, et al. v. United States Department of Transportation, et al.*, Civil Action No. 02-0619 (JR) following receipt of the Court's order dismissing Civil Action No. CV-03-2634 (Seybert, J.) and execution by the parties of a stipulation of dismissal of Civil Action No. 02-0619 (JR).

3. Plaintiffs will submit a request seeking dismissal, with prejudice and without costs and fees to any party, of the proceeding entitled *Committee to Stop Airport Expansion v. Town of East Hampton*, FAA Docket No. 16-02-04 to Defendant FAA within ten

days of receipt by Plaintiffs' counsel of an order dismissing Civil Action No. 03-2634.

Defendant FAA agrees that upon receipt of such request, it will withdraw the order of dismissal dated June 24, 2002 in FAA Docket No. 16-02-04.

4. Defendant FAA agrees that it will not assert, agree or conclude in any subsequent proceeding, including during its consideration of a request for federal financial assistance, that any master plan concerning the East Hampton Airport other than the 1989 Master Plan as modified by the Town Board in Town Resolution No. 145, which plan and resolution are attached as Exhibit A, is a master plan approved by the Town of East Hampton unless Defendant FAA obtains or is presented with a certified copy of the resolution of the Town Board adopted subsequent to the effective date of this Agreement approving such master plan. Defendant FAA also agrees that it will not assert, agree or conclude in any subsequent proceeding, including during its consideration of a request for federal financial assistance, that any airport layout plan concerning the East Hampton Airport, other than the 1989 ALP which is attached as Exhibit B, is an airport layout plan approved by the Town of East Hampton unless Defendant FAA obtains or is presented with a certified copy of the resolution of the Town Board adopted subsequent to the effective date of this Agreement approving such airport layout plan. Defendant FAA agrees that the 1989 ALP does not, as of the date hereof, constitute a "current" airport layout plan within the meaning of applicable federal law and; therefore, is not a legally acceptable basis for any federal financial assistance, including airport improvement grants, issued subsequent to the effective date of this Agreement.

5. Defendant FAA will not award federal financial assistance, including grants, to the Town of East Hampton for the East Hampton Airport unless the application for federal financial assistance is based upon an airport layout plan for the East Hampton Airport

that was adopted by resolution of the East Hampton Town Board and in a manner consistent with applicable law.

6. Through and including December 31, 2009, Defendant FAA will require that applications for federal financial assistance, including grants, from the Town of East Hampton for the East Hampton Airport include a copy of the Town Board Resolution approving the airport layout plan that is submitted to the FAA and a certified copy of the Town Board Resolution approving the submission of the application itself, except that the requirement to submit a copy of the Town Board resolution approving the extant airport layout plan shall not apply to a request for funding to develop a new or revised airport layout plan.

7. Defendant FAA agrees, with respect to East Hampton Airport grants issued prior to the effective date of this Agreement, that the following grant assurances will not be enforced beyond December 31, 2014:

- It 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 (grant assurance 22.a.).
- The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport (grant assurance 22.h).
- It will keep up to date at all times an airport layout plan of the airport showing; (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the

opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport (grant assurance 29.a.).

- If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary; (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities (grant assurance 29.b.).

Notwithstanding the foregoing, Defendant FAA reserves its right to take action as provided in grant assurance 29 if the Town of East Hampton takes an action or proposes to take an action that will adversely affect the safety of the East Hampton Airport. All other grant assurances with respect to any grant awarded to the East Hampton Airport, and all grant assurances with respect to any grant awarded after the effective date of this Agreement, including grant assurances 22.a and 22.h and grant assurance 29, shall be enforced in full.

8. a) Plaintiffs will file a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, 49 C.F.R. Part 7, in the form attached as Exhibit E (the "FOIA request"), within ten (10) business days of the execution of this Settlement Agreement.

(b) Defendant FAA will respond to the FOIA request within seventy-five (75) days of receipt by the FAA of the FOIA request and will send the response to the undersigned counsel for Plaintiffs. Defendant FAA agrees that any record within the scope of the FOIA request that is withheld by Defendant FAA on the grounds that it is exempt from disclosure will be identified on a list or log and that list or log will be provided to Plaintiffs' counsel within 105 days of receipt of the FOIA request. Defendant FAA also agrees that the FAA Regional Counsel's Office ("FAA counsel") will review any record so withheld and listed and will provide Plaintiffs' counsel with a written statement informing Plaintiffs as to whether

FAA counsel agrees that such record is properly withheld. The parties agree that the records on the list or log shall be identified by providing the name of the author(s), the name of the intended and actual recipients, the date of the record, the type of record and the reason why the record was withheld.

(c) The parties agree that Plaintiffs may appeal the determination of Defendant FAA by: (1) submitting a written appeal to the Assistant Administrator for Regions and Center Operations, FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C., 20591; (2) submitting the appeal within thirty (30) days of receipt by Plaintiffs' counsel of the response of Defendant FAA to the FOIA request or the FAA counsel's written statement, whichever occurs last in time, (3) referencing the FOIA Control Number, and including all information and arguments relied upon in support of the appeal in the submission to the Assistant Administrator for Regions and Center Operations; (4) indicating that it is an appeal from a denial of a request under the Freedom of Information Act; and (5) prominently marking the envelope in which the appeal is sent as "FOIA Appeal." Defendant FAA agrees that any determination of the Assistant Administrator concerning such appeal will be sent to the undersigned counsel for Plaintiffs.

(d) The parties agree that within forty-five (45) days of receipt by Plaintiffs' counsel of a determination by the Assistant Administrator, Plaintiffs may request that this Court determine whether there has been a failure by Defendant FAA to comply with the Freedom of Information Act with respect to the FOIA request. The parties agree that the Court shall retain jurisdiction to determine any issues raised by the FAA response to the FOIA request, if such request is filed with the Court within forty-five (45) days of receipt of the Assistant Administrator's determination by Plaintiffs' counsel. The parties also agree that the Court's



review of the Assistant Administrator's determination and the nature of the relief available shall be governed by the Freedom of Information Act.

(e) The parties agree that this Paragraph 8 shall not be construed to afford Plaintiffs any rights beyond those provided in the Freedom of Information Act.

9. Nothing herein, or in the settlement hereof, shall in any way be deemed an admission or evidence of wrongdoing or liability on the part of the Defendants, including agents, officers, assigns, employees and representatives, past and present.

10. Plaintiffs and Defendants understand and agree that this Agreement contains the entire agreement between the parties, and no statements, representations, promises, agreements or negotiations, oral or otherwise, between the parties or their counsel which are not included herein shall be of any force or effect.

11. The effective date of this Agreement shall be the date that the document is signed by the party who signs it last in time.

COMMITTEE TO STOP AIRPORT EXPANSION

By: Edward Gorman  
Edward Gorman

Dated: January 27, 2005

EDWARD GORMAN

By: Edward Gorman  
Edward Gorman  
68 Huckleberry Lane  
East Hampton, NY 11937

Dated: January 27, 2005

PAT TRUNZO, JR.

By: Pat Trunzo, Jr.  
Pat Trunzo, Jr.  
148 Buckskill Road  
East Hampton, NY 11937

Dated: January 27<sup>th</sup>, 2005

PAT J. TRUNZO, III

By: Pat J. Trunzo, III  
Pat J. Trunzo, III  
10 Cedar Trail  
East Hampton, NY 11937

Dated: January 27<sup>th</sup>, 2005

COUNSEL FOR PLAINTIFFS

Sheila D. Jones  
Sheila D. Jones, Esquire  
(Admitted Pro Hac Vice)  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036-1564

Dated: April 29, 2005  
~~January~~, 2005

UNITED STATES OF AMERICA

Roslynn R. Mauskopf  
United States Attorney  
Eastern District of New York  
Attorney for Defendants  
610 Federal Plaza  
Central Islip, New York 11722-4454

Dated: January \_\_\_\_, 2005

By: \_\_\_\_\_  
Kevin P. Mulry (KM 3752)  
Assistant U.S. Attorney

PAT TRUNZO, JR.

By: \_\_\_\_\_  
Pat Trunzo, Jr.  
148 Buckskill Road  
East Hampton, NY 11937

Dated: January \_\_\_\_, 2005

PAT J. TRUNZO, III

By: \_\_\_\_\_  
Pat J. Trunzo, III  
10 Cedar Trail  
East Hampton, NY 11937

Dated: January \_\_\_\_, 2005

COUNSEL FOR PLAINTIFFS

\_\_\_\_\_  
Sheila D. Jones, Esquire  
(Admitted Pro Hac Vice)  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036-1564

Dated: January \_\_\_\_, 2005

UNITED STATES OF AMERICA

Roslynn R. Mauskopf  
United States Attorney  
Eastern District of New York  
Attorney for Defendants  
610 Federal Plaza  
Central Islip, New York 11722-4454

Dated: April 11, ~~January~~ 2005

By: Kevin P. Mulry  
Kevin P. Mulry (KM 3752)  
Assistant U.S. Attorney

**EXHIBIT 4**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Memorandum

**Subject:** **ACTION:** Contents of Proposed  
Response to Pompano Beach April 29,  
1994, Letter to Orlando ADO

**Date:** JUL 15 1994

**From:** Manager, Community and Environmental  
Needs Division, APP-600

**Reply to**  
**Attn. of:** VCatlett:  
(202) 267-8770  
FAX:(202) 267-5257

**To:** ASO-600  
ATTN: Rusty Chapman

The HQ Part 161 Review Team recommends that the FAA's response to the City of Pompano Beach's April 29, 1994, letter clarify the applicability of the Airport Noise and Capacity Act of 1990 (ANCA) and implementing regulations 14 CFR Part 161, Notice and Approval of Airport Noise and Access Restrictions.

In addition to specific comments you may have regarding the proposed restriction measures themselves, the response should clarify the applicability of the ANCA and Part 161 to proposals that would limit the total numbers or hours of operations of either Stage 2 or Stage 3 aircraft.

Absent specific information on the local airport situation (air traffic management and efficiency issues), the HQ Part 161 Review Team assumes that the first two measures address operational efficiency. Unless they would limit numbers or hours of operations as stated above, the ANCA would not apply. Of the second set of three proposals described in the April 29, 1994, letter from Pompano Beach, the same conclusion may be applicable to proposal number 2, full stop landings only on all runways.

The other three measures appear to be subject to ANCA and Part 161. For restrictions affecting Stage 3 aircraft operations, the ANCA states that "no airport noise or access restriction...shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary...." For restrictions affecting Stage 2 aircraft, the ANCA further states that "No airport noise or access restriction shall include a restriction on

operations of Stage 2 aircraft, unless the airport operator publishes the proposed...restriction and prepares and makes available for public comment at least 180 days before the effective date of the restriction--...an analysis...."

The first item in the second set of proposed restrictions, to restrict all Stage 2 aircraft from operating at the airport, would be subject to the Notice Requirements for Stage 2 Restrictions, Subpart C of 14 CFR Part 161.

The third items under both sets of proposed restrictions would limit training to daytime hours. As worded, the proposals would affect both Stage 2 and Stage 3 aircraft operations. The FAA would have concerns about pilot safety when nighttime training operations are prohibited, and one of the conditions for approval of a restriction affecting Stage 3 aircraft is that the restriction must maintain safe and efficient use of the navigable airspace (approval condition 3, section 161.305). The airport operator should address what other means are available for nighttime training operations.

The ANCA applies to airports eligible to receive Federal funds and passenger facility charges. The ANCA (section 9304(e)) states that "Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first became effective after October 1, 1990, shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982...unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions...or the restrictions have been rescinded."

We recommend advising the airport operator that imposition of restrictions subject to ANCA without complying with Part 161 would affect the airport's eligibility to receive Federal funds and passenger facility charges indefinitely, unless restrictions imposed in violation of ANCA are rescinded.

In addition to the ANCA issue, we understand that the surplus property deed contains provisions requiring access on fair and reasonable terms, without unjust discrimination. The airport operator should be warned that imposition of any unfair, unreasonable, or unjustly discriminatory use restrictions would violate the terms and conditions of the surplus property deed.

This response has been coordinated with the Office of Airport Safety and Standards, the Office of Environment and Energy, the Office of Aviation Policy, Plans and Management Analysis, and the Office of the Chief Counsel.

*Lynne Sparks Pickard*  
Lynne S. Pickard

This document has been distributed with the Office of Airport Safety and Standards, the Office of Environment and Energy, the Office of Aviation Policy, Plans and Management, Analysis, and the Office of the Chief Counsel.

*James B. ...*  
James B. ...



**EXHIBIT 5**

November 2, 1990

## CONGRESSIONAL RECORD — Extensions of Remarks

E 3693

Olsen, who represented western Montana for 10 years, passed away recently at the age of 73.

A native of Butte, MT, Judge Olsen was widely renowned as one of Montana's most hardworking Democratic leaders. He was an outstanding and dedicated Congressman, with a zeal to serve and represent his community. Indeed, he strived throughout his tenure in the House to defend and promote the interests of his constituents.

In addition to his work in the Congress, Judge Olsen served, at the age of 32, as the youngest attorney general in this history of Montana. During his tenure as attorney general he became widely acclaimed for bringing a virtual end to the gambling industry of Montana. During his second term as attorney general he won the Democratic nomination for the position of Governor of Montana. In 1975, he was appointed to the Montana First Judicial District bench and served in that office until this very month.

Mr. Speaker, with Arnold Olsen's passing, we have lost an impressive individual and a true leader. He championed the interests of his district and environmental issues. Arnold Olsen was a caring and compassionate man and a tremendous political leader and public servant. I extend my deepest sympathy to Judge Olsen's family.

## ARNOLD OLSEN

## HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. UDALL. Mr. Speaker, I was saddened to learn of the death of our former colleague, Arnold Olsen of Montana.

As a five-term Member of this House, Arnold Olsen served with vigor, candor, and a conscientious attention to his district and to his State. He was a solid spokesman for his point of view, and a credit to the people who sent him to Washington.

Arnold and I shared common ground in some typically western battles on the floor. He was as good as his word and a good man to have on your side.

He began his career as the youngest attorney general in Montana history, and capped it after leaving this House with a 15-year career as a district judge in Butte.

Arnold Olsen was a good and a decent man, and a friend. My deepest sympathy goes to his family.

## TRIBUTE TO ARNOLD OLSEN

## HON. PAT WILLIAMS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. WILLIAMS. Mr. Speaker, it is with sadness and a sense of loss that I share with the House the passing of a former colleague, Congressman and later Judge Arnold Olsen.

Congressman Olsen represented the western district in Montana, the district I now represent, in the halcyon days of the New Frontier, from 1960 until 1970. He was later appointed to a district judgeship in Montana. His

court was in Butte, MT, which was his home and where he passed away.

Mr. Speaker, we will all miss Arnold Olsen. It has been said before, but it was never surer, this country is a better place because of Arnold Olsen.

## HONORING JOSEPH F. ROMA

## HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. ENGEL. Mr. Speaker, I rise today to join the Westchester County American Legion in honoring its immediate past commander, Joseph F. Roma, an honored veteran and community leader.

A life-long resident of Yonkers, Joseph Roma is well known as a man who cares deeply about his community and his country. He has organized many patriotic programs in his role as county commander and in his present post of commander of the St. Mary's Catholic War Veterans Post. He has won awards for his volunteer work in the American Association of Retired People. He has held a number of leadership positions in his 41 years as a member of the American Legion.

During World War II, Joseph Roma was awarded the American Theatre and European Theatre of Operation Medal. He participated in the Rhineland Campaign and received the Soldiers Medal for Valor. His military record is surpassed only by his record of community service.

We are proud to have a man like Joseph Roma in the Yonkers community. We thank him for all his efforts on behalf of his neighbors and his country, and we hope he can continue these activities for many years to come.

## AVIATION NOISE PROVISIONS

## HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 27, 1990

Mr. OBERSTAR. Mr. Speaker, the House on October 27 passed a comprehensive Aviation Noise Policy as part of H.R. 5835, The Fiscal Year 1991 Budget Reconciliation Act. It is a good, strong bill that will reduce airport noise by accelerated phase-out of the noisiest airplanes, and will also assure the flying public a truly national aviation system.

Airport noise is one of the most complex, bitterly contested aspects of aviation today. Local citizens are demanding that their airports control airport noise through noise or access restrictions, at a time when more and more Americans are taking to the airways. Airlines are willing to invest in more new, quieter airplanes, but do not want to be confronted with a "patchwork" of local restrictions on aircraft operations that could disrupt the national aviation system. Airports are caught in the middle. Their efforts to expand capacity to reduce delays and accommodate the flying public more and more frequently meet with determined opposition from residents near airports.

The new passenger facility charges [PFC's], also included in the aviation provisions of rec-

onciliation, will help provide the capital needed to expand our national airport capacity, but that expansion must also accommodate the needs of those residents living near airports, who will be impacted by increased flights.

The House Aviation Subcommittee which I Chair held 4 days of hearings on airport noise, lasting 50 hours, preparatory to taking up the issue in great detail next year. However, the Senate presented us with a very unbalanced proindustry aviation noise bill within the reconciliation package, and insisted that the House accept it without change as the price for all other aviation provisions, including the PRC's badly needed by airports.

This left us with the alternatives of either striking all the aviation-related provisions, or writing a balanced noise policy, one that takes into account the very real concerns of the people living near airports—who had been left out of the Senate negotiations with the industry and the administration. We chose the latter alternative and, I believe, succeeded.

Under the bill as passed, the Secretary of Transportation must issue regulations establishing a national noise policy by July 1, 1991.

## PHASE-OUT OF STAGE 2 AIRPLANES

The bill requires that stage 2 aircraft, the oldest and noisiest aircraft, must be phased out by December 31, 1999. However, an airline may seek a waiver from this deadline if 85 percent of its fleet is stage 3 by July 1, 1999. In order to receive the waiver, the carrier must have a plan with firm orders for making all its aircraft stage 3 by December 31, 2003. The House conferees expect the airlines and DOT to make every effort to achieve the 1999 deadline to seeking or granting a waiver.

Mr. Speaker, these dates and percentages are important.

With no noise restrictions whatsoever, the Department of Transportation projects a national fleet of 1,011 stage 2 airplanes by the year 2000, or roughly 22 percent of the total 4,807-airplane fleet. With no mandated phase-out, numerous stage 2 aircraft will still be operating in 2010.

Even the industry concedes, however, that restrictions will have to be imposed prior to 2010. The Aviation System Capacity Task Force, representing the aviation industry, proposed at our hearing a total phase-out of stage 2 aircraft by 2003, and that individual airports be permitted to exclude all stage 2 aircraft after December 31, 1999.

The agreement struck between the House and the Senate will mean that the stage 2 fleet will be approximately 600 instead of 1,100 by the year 2000 and that it will be zero by 2003.

I ask the General Accounting Office to compute for me the cost to the airlines of phasing out stage 2 aircraft for the years 1999 and 2003. GAO responded:

Assuming that the airlines would either replace their aircraft or retrofit them using hush kits or re-engining (whichever costs less), the costs for the years 1999 and 2003 would be \$2,286 million and \$1,534 million, respectively. The difference between these two costs would be \$731 million.

GAO assumes that the airlines would spread this \$731 million over the 5-year period from 1995 to 2000, meaning \$150 million in additional annual costs industry-wide during this period, in an industry whose annual oper-

ating expenses are \$65 to \$70 billion, or a 0.2 percent increase in operating expenses. This did not seem, to me, an exorbitant cost for bringing quite to communities 4 years earlier than what the industry and the Senate were proposing.

To assure that the airlines achieve the deadline, the House insisted that DOT establish a firm schedule for phase-out of stage 2, including interim compliance dates, taking into account the impact on competition, on small community air service, on new entrants to the airline industry, and the impact of aircraft noise on persons residing near airports.

Finally, no stage 2 aircraft imported to the contiguous United States after enactment can be flown unless it is hushkitted or re-engined to stage 3. This means that the stage 2 fleet will not be permitted to grow any larger than it is today.

**LOCAL AIRPORT RESTRICTIONS ON STAGE 2**

Any local noise restrictions which airports have put in place on or before October 1, 1990 are unaffected by this bill. Airports wishing to apply new restrictions after October 1, 1990, must publish an analysis of the costs and benefits of the restriction, a description of alternative restrictions, and a comparison of costs and benefits of restrictions and alternatives. The restriction would go into effect in 180 days. It needs no review or approval by DOT.

**LOCAL AIRPORT RESTRICTIONS ON STAGE 3**

Restrictions on stage 3 aircraft in place as of October 1, 1990, are unaffected by this bill. Restrictions on stage 3 aircraft proposed after October 1, 1990, must either be agreed to by the airport and air carrier or be approved by DOT. In approving a proposed restriction, DOT must find that it first, is reasonable, non-arbitrary, and nondiscriminatory; second, it does not create an undue burden on interstate or foreign commerce; third, it is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace; fourth, it does not conflict with any existing Federal statute or regulation; fifth, there has been an adequate opportunity for public comment with respect to the restriction; and sixth, it does not create an undue burden on the national aviation system.

Airports which impose unapproved restrictions after October 1, 1990 would become ineligible for funds from the Airport Improvement Program, and may not impose Passenger Facility Charges.

**GENERAL AVIATION**

Separate provisions govern stage 2 General Aviation aircraft of under 75,000 pounds.

**LIABILITY**

The Federal government would be liable for noise damages to the extent the damage was caused by its disapproval of a restriction.

**SLOTS**

DOT is required by July 1, 1991, to initiate a rulemaking to consider more efficient methods of allocating existing capacity at the four high-density airports—La Guardia, Kennedy, Washington National and O'Hare—in order to provide improved opportunities for operations by new entrant air carriers. This provision would not permit any increased flights into or out of these airports.

Mr. Speaker, the Airport Noise and Capacity Act has gone to the President to be signed into law as part of the budget reconciliation. I want to thank my House colleagues for their

support in pressing for a balanced noise policy, and the 80 witnesses at our 4 days of noise hearings, for their invaluable help in fashioning a fair, balanced aviation noise policy.

**HONORING OFFICER JOE  
CANATA OF HOLYOKE, MA**

**HON. SILVIO O. CONTE**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Saturday, October 27, 1990*

Mr. CONTE. Mr. Speaker, it is with great pleasure that I pay tribute today to a very special constituent of mine, Officer Joe Canata of the Holyoke Police Department. Mr. Canata, better known as Officer Joe, has been the leading force behind the Drug Awareness Rehabilitation Program [DARE] in Holyoke and the surrounding towns since he volunteered for and was assigned to DARE school in August 1987.

Officer Joe was appointed to the Holyoke Police Force in November 1970. For 9 years he walked the beat in Holyoke's toughest section, and during those years he came into prominence when he received the police department's highest honor, the Medal of Merit for saving a young boy's life when he accidentally hung himself. A short time later Officer Joe came to national attention when the people of that section of the city began a "Bring Back Joe" crusade when his supervisors assigned him to another section of the city. This happened at a time when racial tension was high and when policemen were looked down upon. Officer Joe had gained such respect and affection of the people of that ward that their petition drive put Officer Joe back on the beat.

Since that time, Officer Joe's popularity has continued to grow because of his selfless dedication to the DARE Program. To attest to this fact he turned down a promotion to the rank of sergeant which would have meant a \$13,000 raise which he certainly could have used since he had his three children in college.

Officer Joe is doing all the same things that all other DARE officers are doing—teaching, fund raising for t-shirts, pencils, buttons, et cetera, with DARE logos. He gives each student a binder notebook so they can hold all of their materials dealing with substance abuse. He continually gets press time for the program and he has a DARE graduation twice a year.

What makes Officer Joe stand out from the rest is that he is on call 24 hours a day, 7 days week, anyone can call him at his home or his office. He has office hours every day of the week, and he has an answering machine so he does not miss anybody. He has a DARE student of the month and hires a limousine to pick up the student at school and take him or her to lunch.

Schools are continually throwing him welcoming parties and hardly a month passes when he isn't asked to speak to parents groups and civic organizations, in and out of Holyoke. All of the DARE officers in Massachusetts are good; however Officer Joe has a natural ability to relate to young people. The students cannot wait to see him, to hug him and tell him they love him and also to present

him with posters, photos, and cards of admiration.

It is certainly evident that Officer Joe enjoys both the affection and the respect of the entire community, through the many awards that adorn his office walls. Kind and caring, he is tireless in his efforts to serve the entire community. From the beginning of his career in public service, he chose to help, educate and in every way, assist people. His attitude has made him a positive force in this area. Another tribute to Officer Joe's success is that he is a people-oriented person who is easily approachable. His door is always open and he gives very generously of his time and talents to anyone in need. It comes as no surprise to those who know Officer Joe that he was recently honored by the State of Massachusetts by being chosen as the first recipient of the Massachusetts DARE Officer of the Year Award.

Besides being Holyoke's DARE officer, he has served as a mentor officer and trained over 140 DARE officers. Joe is a Vietnam Veteran, the president of the Save Our Students Organization [SOS], and he is the band leader for one of western Massachusetts most popular oldies bands, the Memories. Officer Joe is also a family man, he has been married for 23 years to his wife Connie, and he has three children, Karen, Joey, and Tony.

Mr. Speaker, the world could use a few more men like Joe Canata. I am proud that he is a member of my district and I thank him for his continued efforts against substance abuse to preserve this country's most valuable resource, its youth.

**CONFERENCE REPORT ON S.  
1630—THE CLEAN AIR ACT  
AMENDMENTS**

SPEECH OF

**HON. NORMAN F. LENT**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, October 26, 1990*

Mr. LENT. Mr. Speaker, with this legislation, Congress will have put in place a new structure for achieving significant progress in cleaning our country's air. This legislation is tough and will require major new expenditures on air pollution control. But at the same time, we have tried to ensure that the new regulatory programs will be flexible and cost-effective and will utilize market-based incentives to improve the environment. These are the hallmarks of President Bush's approach and should be foremost in mind in the implementation of this act.

In brief, in title I—nonattainment—the conferees adopted, almost in its entirety, the House bill, which reflected the House's careful balancing of lower thresholds and tighter offset ratios with flexible implementation concepts, such as de minimis levels. In title III, we adopted a mix of House and Senate provisions, reflecting our judgment that MACT controls should be tough but should not mandate LAER retrofits and that the residual risk standard should not be based on any bright line risk number. The conferees also adopted a new set of provisions on modifications that will be more flexible and workable than the provisions in either the House or Senate bills, and