

# 15-2334-CV(L), 15-2465-CV(XAP)

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**United States Court of Appeals**  
*for the*  
**Second Circuit**

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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.,  
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,  
*Plaintiffs-Appellees-Cross-Appellants,*  
– v. –  
TOWN OF EAST HAMPTON,  
*Defendant-Appellant-Cross-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK IN CASE NO. 2:15-CV-2246-JS-ARL  
JOANNA SEYBERT, UNITED STATES DISTRICT JUDGE

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**JOINT APPENDIX**  
**Volume 2 of 2 (Pages A-290 to A-513)**

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LISA R. ZORNBERG  
JONATHAN D. LAMBERTI  
LANKLER SIFFERT & WOHL LLP  
500 5<sup>th</sup> Avenue, 34<sup>th</sup> Floor  
New York, New York 10010  
(212) 921-8399  
*Attorneys for Plaintiffs-Appellees-  
Cross-Appellants*

KATHLEEN M. SULLIVAN  
DAVID M. COOPER  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010  
(212) 849-7000

– and –

W. ERIC PILSK  
KAPLAN, KIRSCH & ROCKWELL, LLP  
1001 Connecticut Avenue, NW, Suite 800  
Washington, DC 20036  
(202) 955-5600

*Attorneys for Defendant-Appellant-  
Cross-Appellee*

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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 OF LARRY CANTWELL**

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

1. I am the Supervisor of the Town of East Hampton, New York (the "Town"), a position I have held since January 2014.

2. I make this declaration, based upon personal knowledge, in support of Defendants' response to Plaintiff's motion for a temporary restraining order.

**Background on the Town of East Hampton and the East Hampton Airport**

3. East Hampton Town is the easternmost town on Long Island, approximately 100 miles east of New York City. The Town encompasses an area of 70 square miles, stretching nearly 25 miles from Wainscott in the west to Montauk Point on the eastern-most tip of Long

Island. The Town is bordered by the Town of Southampton to the west, the Atlantic Ocean to the east and south, and Gardiner's Bay to the north. It has almost 70 miles of waterfront on three sides.

4. The Town's year-round population as measured in the 2010 census was 21,457. However, East Hampton is a popular summer resort community. During the busy summer season, which is roughly May through September, the population almost quadruples. For example, the 2000 Census counted a year-round population of 19,719, and the Town's 2005 Comprehensive Plan<sup>1</sup> estimated an additional seasonal population of 71,906 during the same time frame.

5. The Town owns and operates the East Hampton Airport ("Airport"). The Airport is a public-use, General Aviation airport. There is no commercial service to the Airport. There are approximately 160 Aircraft that are based at the Airport. Last year, there were 25,714 recorded operations at the Airport. (An operation is either a landing or a departure. Therefore, there were approximately 12,857 round trips at the Airport last year).

6. Residents and tourists can access the Town through myriad means: by road, by bus, by the Long Island Railroad, by ferry, and also by air, through personal or chartered aircraft. The majority come by car, not aircraft. The New York Department of Transportation Data Services Bureau reports an average of 8,891 weekday trips on Montauk Highway (the main access road to East Hampton) during June 2009. To put this into perspective, during June 2014, there were only 3,302 aircraft operations during the entire month.

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<sup>1</sup> The 2005 Comprehensive Plan is available at [http://www.htoplanning.com/docs/Town%20Documents/050506%20Town%20of%20East%20Hampton%20Comprehensive%20Plan%20\(2005\).PDF](http://www.htoplanning.com/docs/Town%20Documents/050506%20Town%20of%20East%20Hampton%20Comprehensive%20Plan%20(2005).PDF).

### Airport Noise

7. East Hampton as an extremely desirable place to live and visit and the peace and quiet is the critical basis for the local economy. This is reflected in the Town's Vision Statement, which recognized that: "The seasonal economy of second homeowners and visitors, based largely on the pristine natural and rich cultural resources, helps support a vibrant, diverse year-round community and should be encouraged to continue."<sup>2</sup> It was also reiterated in the Environmental Assessment prepared by the Town in connection with the adoption of the airport use restrictions, which reported that: "East Hampton Town is an established resort community whose entire economy is intrinsically tied to the use and enjoyment of its natural and scenic environment, including its world renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets."<sup>3</sup>

8. There has been considerable local concern over the past three decades regarding the disturbance from noise and related impacts from aviation operations at the Airport. That concern has spiked in the past several years due to the increase in the frequency of operations.

9. The community has expressed its frustration with increasing level of noise from loud aircraft and demanded that the Town take action to address the problem. This collective call for action has been expressed in numerous ways. We have received petitions signed by hundreds of residents demanding that the Town act to address the noise problem.<sup>4</sup> We also have received thousands of informal complaints from angry and frustrated residents, via email,

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<sup>2</sup> The Vision Statement is in the Town's 2005 Comprehensive Plan, *see supra*, n. 1.

<sup>3</sup> See Environmental Assessment Form, available at:  
<http://www.htoplanning.com/docs/Town%20Documents/150410%20DRAFT%20Environmental%20Assessment%20Form.PDF>

<sup>4</sup> See, <https://www.change.org/p/north-fork-ban-helicopters-to-stop-noise> and <http://petitions.moveon.org/sign/east-hampton-town-board-1>.

telephone-calls, public testimony at Town Board meetings, in letters to the local papers, and through our on-line site [HTOcomments@EHamptonNy.gov](mailto:HTOcomments@EHamptonNy.gov). During the last election, the issue of Airport noise was an important issue for voters.

10. We have received resolutions from the Town of Southampton, the Town of Southold, the Village of North Haven, the Village of East Hampton and the Village of Sag Harbor, all asking the Town of East Hampton to exercise its proprietary power to minimize the excessive noise.

11. The problem is continuing to get worse. Helicopter traffic alone jumped almost fifty (50) percent last year. On the busiest day last year (Friday, July 25, 2015) there were 353 operations in a single day. There were 44 operations between 2:00 and 3:00 in the afternoon that day. The earliest operation was at 3:04 AM. The latest operation was at 11:08 PM.

12. The Town Board has heard testimony that it is impossible to talk outside; it is impossible to talk on the telephone; it is impossible to hold a simple conversation over the dinner table.<sup>5</sup> I have even heard from one resident that the noise is now so unbearable during Friday peak periods that they have to leave their house to get relief.

#### **Development of the Local Laws**

13. In September 2014, this Town Board announced that we were committed to finding a solution to the disturbance resulting from Airport noise. Since then, we have diligently worked to identify the most serious disturbances, the causes of the disturbances, and to craft reasonable and practical solutions that are narrowly tailored to address the specific problem.

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<sup>5</sup> See, e.g., Testimony at December 2, 2014 Town Work Session. Video available at: <http://easthamptontown.iqm2.com/Citizens/calendar.aspx?From=1/1/2014&To=12/31/2014>.

14. I have reviewed the report entitled “Development of Proposed Access Restrictions at East Hampton Airport” that was compiled by staff for the Town Board (the “Staff Report”) prior to enactment of the Local Laws. The Staff Report (attached hereto as **Exhibit 1**) accurately summarizes the information reviewed by the Town Board and relevant deliberations leading to the enactment of the Local Laws.

15. As part of its deliberations, the Town also considered the formal complaints submitted through the Airport’s formal complaint log that is made available through the Town’s website (*see* <http://ehamptonny.gov/HtmlPages/AirportInterimNoiseAnalysis.html>). This system, which is managed by a company called Plane Noise, permits people to register complaints in one of three ways: by submitting an online form, by leaving a voice mail, or by sending an email to a specific address. All of the different complaints are logged in the Plane Noise system. The Town contracted with Plane Noise in 2012 to implement this technology in order to supplement the Town’s informal complaint logging system. The Plane Noise technology assists the Town in identifying and collecting data on aircraft related to noise complaints and in reviewing compliance with the Town’s noise abatement procedures.

16. The Town has made no effort to encourage any particular use of the Plane Noise technology. It has merely invested in this technology in order to create a more formal system of registering complaints.

17. The Town is aware that there are certain households that log multiple complaints through the Plane Noise system. At the December 2, 2014, Town Work Session, the Town’s noise consultant, Ted Baldwin presented information on the complaints filed during the preceding year and acknowledged that there were outliers, *i.e.*, homes that had registered multiple complaints. He also noted that there were homes that registered only 1 complaint a

year. He stated that this is representative of normal human behavior, and that it is what he would expect as a normal distribution of noise complaints. Mr. Baldwin also noted that the sheer number of complaints filed at the Airport over the preceding year (approximately 24,000) was “extraordinary” and represents resounding evidence of a noise problem.

18. Consistent with Mr. Baldwin’s testimony, the Town often hears from citizens who are consistently disturbed by aircraft noise but who have stopped making complaints due to fatigue.

19. The Town did not rely exclusively on complaint data to either define the scope of the noise problem or develop solutions to the noise problem. Complaints were simply one set of data points, among others, that informed the Town’s decisionmaking.

20. The Town ultimately examined four proposed laws: (1) a nighttime curfew; (2) an extended curfew for “noisy” helicopters; (3) a weekend ban during the summer season on helicopters; and (4) a one-trip-per week limit on “noisy” aircraft. The four laws were designed to address the suite of problems identified by the consultant, namely that:

Noise from aircraft operating at East Hampton Airport disturbs many residents of the East End of Long Island. Residents find helicopters more disturbing than any category of fixed-wing aircraft. Disturbance caused by all types of aircraft is most significant when operations are (1) most frequent and (2) in evening, night, and early morning hours.

21. On February 27, 2015, Councilwoman Kathee Burke-Gonzalez and I and our lawyer met with senior FAA officials to discuss our proposed use restrictions. Attending our meeting was: (1) Associate Administrator for Airports Eduardo Angeles; (2) Assistant Chief Counsel, Airports & Environmental Law Daphne Fuller; (3) Scott Mitchell, Attorney Adviser in



the Office of the Chief Counsel; (4) Director, Office of Airport Compliance and Field Operations Randall Fiertz; and (5) Deputy Director, Airport Planning & Programming Victoria Wei.

22. At the meeting, we briefed the agency on the range of noise control measures the Town was considering. The Town made clear that we were relying on the FAA's repeated commitments that Grant Assurances 22(a) and 22(h) would expire after December 31, 2014, and that the Town did not have to comply with ANCA if it were willing to forego future eligibility for federal grant funds, as expressed in the 2005 Settlement Agreement and the 2012 letter to Congressman Bishop. We had an extended discussion about all of these issues and FAA officials did not indicate that the agency positions on those issues had changed.

23. As part of the required analysis under the New York State Environmental Quality Review Act, the Town commissioned a study entitled "Potential Traffic Diversion from Proposed Restrictions at HTO" ("Diversion Study").<sup>6</sup> The purpose of the Diversion Study was to assess the ability of aircraft and helicopter operators to adapt to the three new Local Laws by operating with compliant aircraft, shifting schedules, and/or using alternative airports. The Diversion Study concluded that a great many of the operations affected by the Local Laws would shift the time of the operation to avoid regulation under the Curfew Law or Extended Curfew Law, or will use alternative airports to avoid regulation under the Noisy Aircraft Law. Over time, the Diversion Study estimates that operators will acquire compliant aircraft in order to operate at East Hampton Airport without regulation under the Extended Curfew Law or the Noisy Aircraft Law.

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<sup>6</sup> The Diversion Study is available at: <http://www.htoplanning.com/docs/Town%20Documents/1504010%20Airport%20Traffic%20Diversion%20Study.PDF>.

24. The Town heard significant concerns that the helicopter ban would cause helicopters to divert to other airports. However, the data presented to the Town indicate that even without the helicopter ban, the three remaining proposed laws would provide meaningful relief without the risk of simply shifting the noise problem to another community. Therefore, the Town eliminated the helicopter ban from consideration at this time, and simply enacted just the nighttime curfew and the two restrictions on “noisy” aircraft.

25. On April 16, 2015, the Town enacted three Local Laws affecting the East Hampton Airport (collectively, the “Local Laws”) to provide long-awaited relief to residents on the East End of Long Island:

- a. Local Law No. 3 of 2015 imposing a mandatory curfew on all operations at East Hampton Airport (“Airport”) between the hours of 11:00 p.m. and 7:00 a.m. (the “Curfew”);
- b. Local Law No. 4 of 2015, imposing an extended curfew for aircraft classified as noisy by the Town from the hours of 8:00 p.m. – 11:00 p.m. and 7:00 a.m. and 9:00 a.m. (the “Extended Curfew”); and
- c. Local Law No. 5 of 2015, imposing a limitation on aircraft classified as noisy by the Town between May 1 and September 30 limiting such aircraft to two operations (one takeoff and one landing) per week the (“One-Trip Limit”).

26. The Whereas Clauses in the three Local Laws accurately state the bases of the Town Board’s decision to enact the Local Laws.

27. The Local Laws apply equally to fixed-wing and rotorcraft. And, as noted above, the Town did not adopt the proposed ban on helicopters. The Local Laws are tailored to address operations at night (when people are most sensitive to aircraft noise) and to reduce the frequency of particularly loud aircraft of all types that are the most disruptive.

**Impact on the Community**

28. The Town cannot wait one more season to implement meaningful noise relief. If East Hampton were to lose its reputation as place of peace and quiet, a place where people can

enjoy the natural beauty of the area uninterrupted by urban and industrial noises, the loss would be irreparable.

29. The Town's Environmental Assessment finds that: "Annoyance and disturbance from aircraft noise threatens the economic vitality of the Town and its 'brand' as a place where people can escape the noise and stresses of urban life in favor of tranquility and rural quiet. This disturbance could result in lower rates of visitation, reduction in property values, and, more generally, a loss in the attractiveness of the Town."<sup>7</sup>

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



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Larry Cantwell

Executed this 7<sup>th</sup> day of May, 2015 in East Hampton, New York.

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<sup>7</sup> See Environmental Assessment, *supra* n. 3.

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## **EXHIBIT 1**

# **DEVELOPMENT OF PROPOSED ACCESS RESTRICTIONS AT EAST HAMPTON AIRPORT**

## **A Staff Compilation for the Town Board**

April 2015

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### **OVERVIEW**

Over the past two decades, the East Hampton Town Board has devoted extensive time and resources to develop solutions to the problem of noise from aircraft flying to and from East Hampton Airport (“HTO” or “Airport”). During the course of that work, the Town Board has received and reviewed a great number of documents addressing different aspects of the aircraft noise issue. Many of those documents were generated by the Town itself, committees and task forces appointed by the Town Board, and consultants and experts retained by the Town. Other documents were presented by third parties, primarily federal, state, and local governments and agencies, concerned citizens, community organizations, airport users and their industry associations, and other stakeholders. The Town recently established a website to collect, and make available to the public, the most important non-confidential documents related to the Town’s consideration of aircraft noise legislation (<http://www.htoplanning.com>).

On April 16, 2015, the Town Board is scheduled to consider proposed local laws intended to address different elements of the aircraft noise problem. The purpose of this Staff Report is to summarize the history of the Town’s consideration of noise control measures and to compile the key documents related to that effort in order assist the Town Board in its consideration of the proposed local laws. It is important to note that the documents identified here do not represent all of the documents or other information the Town Board members considered in connection with their deliberations over the proposed Town Laws. The Town and individual Town Board members have received thousands of letters and comments from residents about aircraft noise issues. (Because of confidentiality concerns, most of these have not been posted on the public website.) In addition, Town Board members have had innumerable conversations with stakeholders, at both public hearings and in private, regarding these issues. Given the sheer volume of data and information made available to the Town Board, this Staff Report does not seek to discuss all of the materials available to the Town Board; instead, it simply seeks to summarize the most salient materials.

## **HISTORY OF NOISE AND ABATEMENT MEASURES** **AT EAST HAMPTON AIRPORT**

The Town of East Hampton is an established resort community that is renowned for its peaceful, quiet beaches and outdoor areas. The area surrounding the East Hampton Airport is uncommonly quiet, because of the lack of industrial noises, relatively low population density, and rural roadway network.<sup>1</sup> Residents and visitors alike are attracted to the Town and the East End of Long Island to enjoy the area's unique scenic beauty, its outdoor spaces, and the peaceful and restful atmosphere they provide.

Increasing noise from aircraft overflights has disrupted outdoor activities and diminished the quality of life in the Town and the entire East End. This problem has been a topic of controversy and public debate in East Hampton for many years.<sup>2</sup> Helicopter operations in particular have been particularly disruptive and the focus of much controversy. In addition to formal noise complaints, residents and visitors have expressed their anger and frustration about aircraft noise at numerous public meetings, Town Board meetings, in letters to local papers, in petitions, and in communications with Town officials and other elected officials from throughout the region.<sup>3</sup> Concern about aircraft noise also has spawned lawsuits aimed, directly or indirectly, at reducing aircraft noise.<sup>4</sup> The problem of aircraft noise has become one of the most important and controversial political topics for the Town for at least the last several years. And, just as importantly, the significance of the noise problem has not respected the boundaries of towns in the East End: the Town Board has been petitioned by residents and elected officials from many other towns whose residents experience serious deleterious effects from noise from aircraft using the East Hampton Airport.<sup>5</sup>

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<sup>1</sup> Young Environmental Sciences, Inc. et al, *East Hampton Airport Final Generic Environmental Impact Statement* (2010) at 30.

<sup>2</sup> E.g., Jeffrey Bragman, Guestwords: Some Simple Airport Talk (March 28, 2012), available at [http://www.quietskiescoalition.org/files/GUESTWORDS-3-28-12-Jeff\\_Bragman.pdf](http://www.quietskiescoalition.org/files/GUESTWORDS-3-28-12-Jeff_Bragman.pdf) ("Airport noise affects thousands of residents in and near East Hampton, across a large geographic area. The town has logged more than 8,000 complaints in a single year, ..."); Barry Raebeck, Letter to the Editor, *East Hampton Star* (Sept. 3, 2011) ("...17 years ago my family built our current house almost two miles from the airport — and nowhere near any flight paths. There were no helicopters or sea planes anywhere near us or our neighbors. And no jet ever screamed 200 feet overhead. Now we have all of these awful things, and often at 30-second intervals."); Airport Noise Still "Canker" for People, *Sag Harbor Express* (Sept. 28, 2009).

<sup>3</sup> E.g., Town Meeting Minutes (Aug. 27, 2014); Town Meeting Minutes (Oct. 30, 2014); Town Meeting Minutes (Dec. 2, 2014); <http://petitions.moveon.org/sign/east-hampton-town-board-1>; <https://www.change.org/p/north-fork-ban-helicopters-to-stop-noise>.

<sup>4</sup> E.g., *In re the Committee to Stop Airport Expansion v. Wilkinson*, 2012 WL 3058626 (N.Y. Sup.Ct. 2012), *aff'd* 2015 WL 1035643 (N.Y. App. Div. Mar. 11, 2015); *Gorman v. Town Bd. of East Hampton*, 1998 N.Y. Misc. LEXIS 712 (N.Y. Sup. Ct. 1998), *appeal dismissed at* 273 A.D.2d 235 (N.Y. App. 2000).

<sup>5</sup> E.g., Town of Southold Resolution 2013-422 (May 21, 2013); Town of Southampton Resolution 2014-897 (Aug. 14, 2014); North Haven Village Memorializing Resolution re: East Hampton Airport (August 26, 2014); Village of East Hampton Resolution 32-2014 (Sept. 4, 2014); Village of Sag Harbor Meeting Minutes (Sept. 9, 2014); Letter to L. Cantwell forwarding Shelter Island Resolutions from August and December 2014 (Dec. 5, 2014).

The proposed laws represent the latest step in a many-year, multiple-step effort. The Town has taken numerous steps over the past 15 years to address the growing problem. First, the Town identified and promoted voluntary abatement measures,<sup>6</sup> including:

- A minimum recommended helicopter cruise altitude of 2,500 feet above mean sea level (MSL), and recommended minimum altitudes at specific geographic reference locations;
- Discouragement of repetitive training operations during the busy summer season;
- A minimum recommended jet pattern altitude of 1,500 feet MSL (which is 500 feet above the federal standard);
- A voluntary nighttime curfew; and
- A variety of voluntary arrival and departure routes for helicopters.

Second, the Town commissioned several studies to analyze and understand the scope of the problem, beginning with a comprehensive noise measurement program instituted in 2003 to identify various characteristics of the noise caused by aircraft and helicopter operations at East Hampton Airport.<sup>7</sup> The 2005 update to the Town Comprehensive Plan recognized the need to update the Airport Master Plan with an emphasis on noise abatement.<sup>8</sup> In turn, the Town completed an updated Airport Master Plan in 2007<sup>9</sup> and the related Final Generic Environmental Impact Statement in 2010,<sup>10</sup> both of which examined and addressed noise issues. The Town also conducted additional noise analyses as part of Environmental Assessments in both 2000<sup>11</sup> and 2013.<sup>12</sup>

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<sup>6</sup> See, e.g., East Hampton Helicopter Noise Abatement Procedures (2009 – 2014); Questions and Answers: East Hampton Airport Noise Issues (September 2014) at 5-8; HMMH, Potential Noise Abatement Benefits of the East Hampton Air Traffic Control Tower (July 16, 2012); Savik & Murray et al, East Hampton Airport Master Plan Report (April 24, 2007) at I-46; J. Brundige, History of Helicopter Noise Abatement Program (May, 2013); VHB Engineering, Surveying and Landscape Architecture, P.C., East Hampton Airport Seasonal Air Traffic Control Tower Final Environmental Assessment (June 2013) at 1-4 & G-13 (HMMH Noise Analysis); HMMH PowerPoint Presentation to Eastern Region Helicopter Council, Summary of East Hampton Airport's New Noise Abatement Program (May 5, 2004).

<sup>7</sup> E.g., HMMH, East Hampton Airport Noise Mitigation Program, Preliminary Results, Phase I, June 25 – July 8 (Sept. 5, 2003); HMMH, East Hampton Airport Noise Mitigation Program, Preliminary Results, Phase II, August 21 - Sept. 2 2003 (Oct. 29, 2003); HMMH Powerpoint Presentation to East Hampton Noise Advisory Group, October 29, 2003; Kaplan Kirsch & Rockwell Powerpoint Presentation, Comprehensive Airport Management Plan for East Hampton Airport – Safety, Noise and Operations (December 1, 2011); Councilman Stanzone, Update on Comprehensive Management Plan for East Hampton Airport (March 6, 2012).

<sup>8</sup> Town of East Hampton, Comprehensive Plan (May 6, 2005) at 98.

<sup>9</sup> Savik & Murray et al, East Hampton Airport Master Plan Report (April 24, 2007).

<sup>10</sup> Young Environmental Sciences, Inc. et al, East Hampton Airport Final Generic Environmental Impact Statement (2010).

<sup>11</sup> TriState Planning and Engineering, P.C., in association with Freudenthal & Elkowitz Consulting Group, Inc. Environmental Assessment for East Hampton Airport (November 2000).

<sup>12</sup> VHB Engineering, Surveying and Landscape Architecture, P.C., East Hampton Airport Seasonal Air Traffic Control Tower Final Environmental Assessment (June 2013).

The Town has not been alone in these efforts. Throughout these years, the Town met frequently with airport stakeholders to keep them apprised of the Town's continuing efforts.<sup>13</sup> The Town also has engaged federal officials regarding federal measures that could affect the disruption experienced by East End residents from aircraft – particularly helicopter – traffic.<sup>14</sup> The Town has secured support for its efforts from the Congressional delegation and state legislators, in addition to many local elected officials. While this support has been important and, in some instances, has resulted in meaningful actions which have reduced the impact of aircraft noise, those actions have not been enough to provide the relief from aircraft noise the residents of the Town and surrounding areas demand.

By 2012, the Town recognized that the efforts to date had not resolved the “considerable community concern” and adopted a Resolution to obtain better data to support meaningful noise control measures.<sup>15</sup> The Town had already been using a state-of-the-art aircraft monitoring and tracking system known as AirScene to assist airport management in collecting tie-down, landing, and fuel flowage fees.<sup>16</sup> In August 2012, the Town concluded that it needed to collect better data regarding aircraft operations to better understand how visitors use the Airport and to help correlate specific aircraft operations to complaints and community concern.<sup>17</sup> To that end, the Town added a Vector camera system, which photographs the movement of aircraft and identifies them by aircraft type, runway used, and time of operation.<sup>18</sup> This technology improves the data integrity of AirScene's system, thus providing the Town with a substantial source of operations

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<sup>13</sup> *E.g.*, HMMH Powerpoint Presentation to East Hampton Noise Advisory Group, October 29, 2003; HMMH PowerPoint Presentation to Eastern Region Helicopter Council, Summary of East Hampton Airport's New Noise Abatement Program (May 5, 2004); Town Resolution 2007-302 (March 2, 2007) (authorizing Airport Director Brundige to attend a meeting with the Eastern Region Helicopter Council); Letter to Eastern Region Helicopter Council re: midseason progress report on voluntary helicopter routes (August 27, 2007); Town Resolution 2011-116 (February 3, 2011) (regarding creation of a multi-town helicopter advisory committee).

<sup>14</sup> *E.g.* Letter from J. Brundige to U.S. Senator Schumer (March 17, 2010); Town of East Hampton comments on proposed North Shore Helicopter Route (June 21, 2010); Letter from U.S. Representative Bishop to FAA Administrator Babbitt re: North Shore Helicopter Route (June 24, 2010); Town of East Hampton comments on proposed rule establishing Class D and E airspace at East Hampton (April 2, 2012); 77 Fed. Reg. 39,911 (July 6, 2012) (Final Rule, New York North Shore Helicopter Route); U.S. Senator Schumer and U.S. Representative Bishop Press Release: Recent Federal Court Ruling Confirms FAA Authority to Regulate Over-The Water Routes that Curbs Low-Flying Helicopter Noise on Long Island – Call for FAA to Immediately Move Forward with South Shore & Expanded North Fork Routes (July 24, 2013); 79 Fed. Reg. 35,488 (June 23, 2014) (Final Rule, Extension of Expiration Date of New York North Shore Helicopter Route); Letter from U.S. Senator Schumer and U.S. Representative Bishop to FAA and DOT (July 15, 2014); FAA Powerpoint Presentation to Town of East Hampton, Process to Address Community Noise Impacts (August 27, 2014); Questions and Answers: East Hampton Airport Noise Issues (September 2014) at 5-8.

<sup>15</sup> *E.g.*, Town of East Hampton Resolution 2012-832 (Aug. 2, 2012).

<sup>16</sup> Savik & Murray et al, East Hampton Airport Master Plan Report (April 24, 2007) at I-68; *see also* Town Resolution 2012-278 (March 15, 2012).

<sup>17</sup> *E.g.*, Town of East Hampton Resolution 2012-832 (Aug. 2, 2012); *see also* HMMH, First Phase of HTO Use Restriction Justification Analysis – Identify General Scope of Available Data (Sept. 26, 2012); HMMH, Proposal for Second Phase of HTO Use Restriction Justification and Analysis (March 16, 2013).

<sup>18</sup> Town of East Hampton, Resolution 2012-279 (March 15, 2012).



information not typically available to general aviation airports.<sup>19</sup> In addition, to supplement its informal complaint logging system, the Town contracted with PlaneNoise to install and operate a noise complaint management service to better collect data related to aircraft noise complaints.<sup>20</sup> That system was installed in 2012 and has logged thousands of complaints. The combination of these systems gave the Town the technical ability to record aircraft operations and noise complaints in a manner comparable to that employed at the largest and most sophisticated airports in the world. The Town made the substantial investment in this technology because the Town recognized that it needed technically defensible data before it could say that it fully understood the local problem and could implement measures that are tailored to the Town's particular problem.<sup>21</sup>

The refined data shows that the noise problem is only increasing. Just five years ago, based on FAA forecasts, the Town anticipated that it would take more than 20 years for helicopter traffic to double.<sup>22</sup> However, between 2013 and 2014, helicopter traffic increased by 47 percent.<sup>23</sup> In addition, overall traffic increased during the same time period by 23 percent. Hundreds of East End residents have voiced their concern in informal comments, letters, or in verbal comments at Town Board meetings.<sup>24</sup> Thousands more have signed petitions to the same effect.<sup>25</sup> And the surrounding Towns and Villages have adopted resolutions requesting for the Town Board of the Town of East Hampton to "adopt a comprehensive aircraft noise limitation policy."<sup>26</sup>

In early 2014, the Town announced a renewed commitment to the Airport and to address noise concerns while also ensuring the ongoing safety at the Airport.<sup>27</sup> From the start, the Town has been committed to a professional and objective analysis of the relevant issues. The Town:

- Tasked the existing Budget and Financial Advisory Committee ("BFAC") with undertaking a financial analysis of the Airport including airport income and expenses, as

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<sup>19</sup> VHB Engineering, Surveying and Landscape Architecture, P.C., East Hampton Airport Seasonal Air Traffic Control Tower Final Environmental Assessment (June 2013) at G-11.

<sup>20</sup> Town of East Hampton, Resolution 2012-276.

<sup>21</sup> *E.g.*, Resolution 2012-276 (March 15, 2015); Resolution 2012-278 (March 15, 2015); Resolution 2012-279 (March 15, 2015); Resolution 2012-832 (Aug. 2, 2012).

<sup>22</sup> Young Environmental Sciences, Inc. et al, East Hampton Airport Final Generic Environmental Impact Statement (2010) at viii.

<sup>23</sup> *Compare* Town of East Hampton Airport 2013 Annual Ops *with* Town of East Hampton Airport 2014 Annual Ops.

<sup>24</sup> *E.g.*, Town Meeting Minutes (Aug. 27, 2014); Town Meeting Minutes (Oct. 30, 2014); Town Meeting Minutes (Dec. 2, 2014).

<sup>25</sup> *See, e.g.*, <http://petitions.moveon.org/sign/east-hampton-town-board-1> and <https://www.change.org/p/north-fork-ban-helicopters-to-stop-noise>.

<sup>26</sup> *E.g.*, Southampton Town Board Resolution 2014-897 (Aug. 14, 2014); *see also* Town of Southold Resolution 2013-422 (May 21, 2013); Shelter Island Resolution 360 (August 19, 2014); Town of Southold Resolution 2014-731 (Aug. 26, 2014); Village of North Haven Resolution (August 26, 2014); Village of East Hampton Resolution 32-2014 (Sept. 4, 2014); Village of Sag Harbor Resolution (September 9, 2014).

<sup>27</sup> Statement of Councilwoman Burke-Gonzalez (Feb. 4, 2014).

well as new revenue streams, which can serve as a baseline of agreed upon data for further discussions and policy decisions by the Board;<sup>28</sup>

- Created a new Airport Planning Committee with two subcommittees: the Noise Subcommittee, which was designed to address noise abatement, and the Aviation Subcommittee, which was designed to address airport operations, infrastructure, and capital financing, respectively;<sup>29</sup>
- Renewed contracts for data collection; and<sup>30</sup>
- Updated the voluntary helicopter abatement procedures.<sup>31</sup>

At the same time, the Town also issued a Request for Proposals (“RFP”) for Phase I of a series of refined noise analyses, designed to: (1) quantify the current noise in a way that effectively captures the adverse effects experienced by residents and (2) quantify the reductions in noise that could plausibly be achieved by various airport access restrictions.<sup>32</sup> The Town has an existing noise ordinance containing standards for excessively intrusive noise. The RFP instructed the successful bidder to evaluate airport-related noise by application of the Town’s noise standards and also by evaluating potential scenarios through application of the standard FAA DNL metric at the 65, 55, and 45 dB DNL levels.<sup>33</sup> The contract for Phase I was awarded to Henry Young of Young Environmental Sciences, in coordination with Les Blomberg of the Noise Pollution Clearinghouse.<sup>34</sup> Young and Blomberg conducted their analyses during the summer of 2014, using the prior season’s (2013) data as the 2014 data were not yet available.

On August 27, 2014, the Town held a special meeting to discuss concerns about aircraft noise,<sup>35</sup> and on September 18, 2014, the Town announced its intent to conduct a formal, transparent process, involving data collection and analysis, as well as public meetings and opportunity for

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<sup>28</sup> Resolution 2014-147 (February 6, 2014).

<sup>29</sup> Resolution 2014-144 (February 6, 2014); Resolution 2014-213 (Feb. 20, 2014).

<sup>30</sup> *E.g.*, Resolution 2014-151 (February 6, 2014); Resolution 2014-264 (March 6, 2014).

<sup>31</sup> 2014 Helicopter Abatement Procedures (April 30, 2014); 2014 Helicopter Abatement Procedures, Revision 1 (June 2, 2014); *see also* Town Powerpoint Presentation to Eastern Region Helicopter Council (April 30, 2014); Town Meeting Minutes (May 5, 2014).

<sup>32</sup> Request for Proposals, Noise Studies for Helicopter and Fixed-Wing Restrictions at East Hampton Airport (April 17, 2014) at 6; *see also* Resolution 2014-477 (April 17, 2014).

<sup>33</sup> Request for Proposals, Noise Studies for Helicopter and Fixed-Wing Restrictions at East Hampton Airport (April 17, 2014) at 6-7.

<sup>34</sup> Resolution 2014-842 (July 3, 2014); Professional Services Contract with Young Environmental Services re: Noise Study at East Hampton Airport (July 17, 2014).

<sup>35</sup> Town Board Special Meeting Minutes (Aug. 27, 2014); Special Meeting Register (Aug. 27, 2014); *see also* Councilwoman Burke-Gonzalez Opening Statement (Aug. 27, 2014).

public comment, in order to identify and adopt regulations to address noise and disturbance from operations at the Airport.<sup>36</sup>

On October 30, 2014, the Town devoted a substantial portion of its public meeting to the noise problems at the Airport,<sup>37</sup> including a presentation of the Phase I Noise Analysis by Messrs. Young and Blomberg.<sup>38</sup> In brief, they reported the following:<sup>39</sup>

- Helicopter noise is more annoying and generates heightened negative community response because of its unique characteristics (*e.g.*, low-frequency, noise-induced building vibration and rattle, impulsive characteristics, duration, low-altitude, and other non-acoustical factors);
- Compliance with the 2013 voluntary helicopter procedures was quite low (15.3%), when calculated assuming only a half-mile wide band (*i.e.*, a quarter-mile on either side of the precise track);<sup>40</sup>
- Flight data from 2013 depicted a broad array of altitudes for helicopters at a distance of four nautical miles from the Airport;
- Every 2013 operation at East Hampton Airport generates a maximum noise level (Lmax) that, at some point, exceeds the Town's noise standards at one or more properties within a ten-mile radius of the Airport;<sup>41</sup>
- Application of the FAA's traditional day/night average sound level (DNL) noise metric<sup>42</sup> proved to be an unhelpful basis for decision making by the Town because the DNL

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<sup>36</sup> Resolution 2014-1180 (Sept. 18, 2014); see also Questions and Answers: East Hampton Airport Noise Issues (September 2014); Letter from Supervisor Cantwell to Federal and Local Officials (Sept. 19, 2014).

<sup>37</sup> Town Meeting Minutes (Oct 30, 2014).

<sup>38</sup> Young & Blomberg Powerpoint Presentation, East Hampton Airport Phase I Noise Analysis Interim Report (Oct. 30, 2014); *see also* Town Meeting Minutes (Oct. 30, 2014); see also H. Young, INM Case Echo Reports: Annual Average 2013, Annual Average Helicopter Only 2013, Busy Day 2013, & Busy Day Helicopters Only 2013; *see also*, L. Blomberg, Documentation of Elevation Selected to Model Helicopter Noise at HTO (October, 2014); H. Young, Technical Memorandum: INM Noise Contour Development for 2013 Input Data (January 5, 2015).

<sup>39</sup> *Id.*

<sup>40</sup> This analysis generated strong concerns. Two common themes were: (1) the fact that voluntary procedures had changed in 2014; and (2) the observation that the method of determining "compliance" used by Mr. Blomberg was imprecise.. In part in response to these concerns, the Town directed HMMH to analyze 2014 data in Phase II.

<sup>41</sup> The analysis of exceedances per tax parcel was prepared at the recommendation of the Noise Subcommittee in order to determine whether the noise problems were isolated geographically or by certain operations. The analysis generated significant concerns (*see, e.g.*, Memorandum to Town Board from Aviation Operations Subcommittee of the Town of East Hampton Airport Planning Committee (Feb. 1, 2015)). It proved to be far too crude a tool for analyzing noise impacts because, as comments revealed, the analysis did not account for vacant parcels, different land uses, and other characteristics that would affect the severity of the impact. By focusing rigidly on whether an overflight generated noise energy in excess of the Town's noise ordinance, the analysis did not ultimately prove helpful for the crafting of reasonable use restrictions.

metric averages noise data over 24 hours and does not reflect the peak noise events and specific times of day when East Hampton residents are more disturbed by noise;<sup>43</sup> and

- There are many ways to measure noise and impacts – including complaint data<sup>44</sup> – and the Town should evaluate which metrics might best capture the Town’s noise problem.

Peter Wadsworth also presented a report on 2014 year-to-date complaint data at HTO that was collected through the PlaneNoise system.<sup>45</sup> He reported that the data showed that helicopters generated the majority of complaints and that complaints had distinct peaks during the summer (May through September), on the weekends (starting as early as Thursdays and ending on Mondays), and in response to nighttime operations.<sup>46</sup> At the same meeting, the Town’s aviation counsel outlined the next steps in the Town’s process for identifying reasonable and meaningful measures to address the recognized community disturbance from aircraft noise, including defining the “problem,” identifying reasonable and practical alternatives tailored to address the problem, and next steps (*e.g.*, holding additional public hearings, thoroughly analyzing benefits and impacts of each alternative, etc.).<sup>47</sup>

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<sup>42</sup> The noise metric used in almost any significant environmental document produced for the FAA is the yearly Day/Night Average Sound Level (DNL). The DNL is an accumulation of the noise exposure that takes into account all of the aircraft operations that occur during an “average” 24-hour day, except that events occurring after 10:00 p.m. at night and before 7:00 a.m. the next morning are penalized as if they were louder than they actually are. The penalty, or weighting, on each nighttime operation is 10 decibels (dB), equivalent in terms of its effect on noise exposure to having 10 daytime operations of the same aircraft. *See*, VHB Engineering, Surveying and Landscape Architecture, P.C., East Hampton Airport Seasonal Air Traffic Control Tower Final Environmental Assessment (June 2013) at G-2 – G-3 (HMMH Noise Analysis); *see also* Young Environmental Sciences, Inc. et al, *East Hampton Airport Final Generic Environmental Impact Statement* (2010) at 30-32 & Appendix C.

<sup>43</sup> Although the FAA’s regulatory standard assumes that residential uses are compatible up to a DNL level of 65 dB, adverse effects can occur far below that level. And because it is based on an average of daily noise events, the FAA’s DNL metric and 65 dB DNL standard are insensitive to ambient noise levels in communities such as East Hampton, which are low (as low as 30- 40dB), resulting in aircraft noise having a much greater effect than in urban areas with higher ambient sound levels. *See, e.g.*, Young Environmental Sciences, Inc. et al, *East Hampton Airport Final Generic Environmental Impact Statement* (2010) at 32.

<sup>44</sup> Complaint data is an accepted way to determine community response to aircraft noise and to craft appropriate solutions. For example, a federal court of appeals, recently affirmed the appropriateness of relying primarily on complaint data to justify FAA-imposed flight paths for helicopters flying above Long Island. *Helicopter Ass’n Int’l v. Federal Aviation Admin.*, 722 F.3d 430 (DC Cir. 2013). As the FAA did in deciding to impose flight tracks for helicopters, the Town has received and analyzed many different sources of data: noise energy data (using the FAA’s INM model and the DNL metric as well as other metrics such as SEL and L(max)), complaint data, informal community comment data, and self-reported data from aircraft users. The Town staff and consultants have not relied upon any single data package or metric.

<sup>45</sup> P. Wadsworth Powerpoint Presentation, Analysis of 2014 YTD Noise Complaints for East Hampton Airport (Oct. 30, 2014).

<sup>46</sup> Wadsworth, Powerpoint Presentation to the Town, Analysis of 2014 YTD Noise Complaints for East Hampton Airport (Oct. 30, 2014).

<sup>47</sup> Kaplan Kirsch & Rockwell, Powerpoint Presentation to the Town, Update on Disturbance From Operations at East Hampton Airport: Phase I Noise Analysis Interim Report (Oct 30, 2014); *see also* Town Handout, Preliminary draft Problem Definition (Oct. 30, 2014).

Following the October 30, 2014, Town Meeting, the Town heard concerns about several key issues: (1) the Phase I Noise Analysis, which had begun in July 2014, was based only on 2013 data, while the complaint analysis looked at 2014 data; (2) the analysis of “compliance” with 2013 voluntary helicopter procedures was misleading because the procedures were changed in 2014; (3) the analysis of individual “exceedances” of the Town’s noise ordinance was inappropriate; and (4) complaint data should also include information about the number of times individuals filed complaints.<sup>48</sup>

### **REFINED NOISE ANALYSIS AND DEVELOPMENT OF REFINED ALTERNATIVES**

Following receipt of the Phase I analysis and review of public comments on that analysis, the Town Board decided that more refined noise analysis was warranted before it could make a decision on whether to impose restrictions at the Airport and, if so, upon what basis to do so. The Town Board decided to commission a Phase II study and retained HMMH to analyze 2014 data, to identify a refined problem statement, and to prepare a tailored list of alternatives that offer the best promise for addressing the problem.<sup>49</sup> On December 2, 2014, HMMH presented a detailed breakdown of complaint data, including information about households that filed multiple complaints, as well as up-to-date operations data (November 1, 2013 - October 31, 2014) at HTO.<sup>50</sup> HMMH reported on key findings, including: (1) helicopter operations are “highly seasonal” and generate the most complaints; and (2) HTO is not a typical general aviation airport where users (other than pilots conducting training operations) typically conduct only one or two operations on a given day.<sup>51</sup>

Based on the Phase I noise analysis and its own findings, HMMH proposed the following problem definition for the Town Board’s consideration:

Noise from aircraft operating at East Hampton Airport disturbs many residents of the East End of Long Island. Residents find helicopters more disturbing than any category of fixed-wing aircraft. Disturbance caused by all types of aircraft is most significant when operations are (1) most frequent and (2) in evening and night hours and early morning hours.<sup>52</sup>

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<sup>48</sup> E.g., L. Kirsch, Letter to L. Cantwell and K. Burke-Gonzalez re: Town of East Hampton’s Noise Study (Nov. 5, 2014).

<sup>49</sup> Resolution 2014-1375 (Nov. 12, 2014); *see also*, HMMH Memorandum to Town, Assistance with Phase II of the East Hampton Airport Noise Study (Nov. 10, 2014); Town Press Release, HMMH Hired To Conduct Second Phase Noise Study (Nov. 12, 2014).

<sup>50</sup> HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, East Hampton Airport Phase II Noise Analysis (Dec. 2, 2014).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at Slide 26; *see also* HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, Regulations to Address Noise and Disturbance From Operations at East Hampton Airport (Feb. 4, 2015) (correcting the problem statement by adding the missing reference to “early morning hours.”).

HMMH and the Town's aviation counsel also presented a full array of potential alternatives, ranging from a full ban on specific aircraft types, to measures outside the Town's control, such as flight procedures that only the FAA can impose.<sup>53</sup> The consultants recommended that the Town Board reject the following three alternatives:

- **No action.** By taking no action, the Town would not be addressing the known disturbance from operations at East Hampton Airport.
- **Noise mitigation.** In some communities, noise mitigation measures, such as sound insulation or home buy-out programs, can be a viable option to address community disturbance. Those options are not an appropriate solution for this community where residents frequently keep windows open in the summer evenings and mornings and where land values are so high.
- **Fee-based restrictions.** Federal law limits rates and charges on aeronautical users of an airport to those that are reasonable and not unjustly discriminatory. To address the problem at East Hampton Airport, the fee would have to be high enough to change behavior, and such a high fee could be challenged as unreasonable under federal law. Further, fee-based alternatives run a high risk of unintended consequences, *e.g.*, practical limits on who can use the airport, including users of light aircraft.

HMMH and Kaplan Kirsch & Rockwell recommended further study of the following alternatives:

- **Ban on "Noisy" Aircraft.** An oft-stated goal among residents and Town officials is to eliminate "noisy" aircraft. This is a difficult goal to achieve, however. For example, although (as documented by the complaint data) people perceive helicopters to be the noisiest aircraft, metrics of noise energy using the decibel metric actually rate jets as louder than helicopters on a single event basis. It is thus apparent that, in the East End, community disturbance and annoyance is based upon factors other than noise energy as measured with the decibel metric. It has become clear, as reflected in the complaint data (and comments that the Town Board considered at its various public meetings) that residents and visitors respond to frequency and timing of operations as much or more than decibel level, aircraft type, or type of operation. Thus, any proposal for a ban would need to be carefully crafted based on a more detailed analysis of noise impacts using a basket of metrics to reflect the unique noise environment in and around East Hampton.
- **Voluntary Measures.** The data about compliance with voluntary helicopter procedures that was presented in October 2014 related to 2013 operations. Users had, however, significantly adjusted voluntary procedures for 2014 in cooperation with the Town. Therefore, the consultants recommended that the Town analyze the 2014 data and

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<sup>53</sup> HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, East Hampton Airport Phase II Noise Analysis (Dec. 2, 2014) at Slides 27 -34.



coordinate with the operators to see if meaningful relief could be achieved with voluntary measures.<sup>54</sup>

- **Required routes or altitudes.** Required routes or altitudes might address the problem, but the Town has no authority to regulate aircraft in flight. However, the Town could encourage FAA to define and enforce optimal flight paths.

Finally, HMMH and Kaplan Kirsch & Rockwell recommended that it would be worthwhile to analyze, and for the Town Board to consider, the time of day/week/year restrictions and an air traffic flow management option that limited concentrated operations for any given time or day.

In the same timeframe, the Airport Noise Subcommittee presented its analysis on the scope of the problem, as well as viable alternatives.<sup>55</sup> The Noise Subcommittee reached many conclusions similar to those of the consultant team. The Noise Subcommittee concluded that:

*The ultimate airport noise policy objective of the Town should be to eliminate this noisiest traffic entirely, by inducing airport users to employ existing quieter types, so that that all aircraft types using the Airport are similar in their noise impact to the aircraft flown by local pilot-owners for their own pleasure and transportation.*<sup>56</sup>

It also provided the following problem statement:<sup>57</sup>

Aircraft noise events are disturbing and disruptive for 19 reasons:

- (i) The frequency with which they occur, especially during peak periods;
- (ii) The duration of individual events;
- (iii) The absolute loudness of events;
- (iv) The relative loudness of events against the low background noise level;
- (v) The acoustic properties of the noise, especially impulsive and low frequency noise;
- (vi) The startling effect of low altitude events;
- (vii) The instinctive perception of approaching aircraft as looming or threatening;

<sup>54</sup> On January 21, 2015, the Town and HMMH met with helicopter operator representatives to discuss voluntary noise abatement routes and altitudes.

<sup>55</sup> See, Airport Planning Committee, Noise Subcommittee, Eighth Findings – Alternatives for Noise Control (Oct. 28, 2014); Airport Planning Committee, Noise Subcommittee, Ninth Findings – Aircraft Noise Problem Definition (Nov. 23, 2014); Airport Planning Committee, Noise Subcommittee, Tenth Findings – Proposed Noise Measures (Dec. 2, 2014).

<sup>56</sup> Airport Planning Committee, Noise Subcommittee, Twelfth Findings – Final Proposed Noise Measures (Dec. 20, 2014).

<sup>57</sup> Airport Planning Committee, Noise Subcommittee, Ninth Findings – Aircraft Noise Problem Definition (Nov. 23, 2014); see also Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015) at 1-4 & 18-34.

- (viii) The resonant rattling of windows and other household objects;
- (ix) The interruption of conversation;
- (x) The disruption of sleep and the deleterious effects on health;
- (xi) The perception of aircraft noise events as unwarranted and unwelcome intrusions upon, and interruptions of, privacy and home life, both indoors and outdoors;
- (xii) The incompatibility of aircraft noise with what is otherwise a pastoral environment;
- (xiii) The increase in noise, caused by aircraft, occurs at exactly those times of year, summer generally and especially summer weekends, when residents, both year-round and seasonal, most want to enjoy the peace and beauty of the unique environment that is the special bounty of the East End;
- (xiv) Acute noise exposure activates the autonomic and hormonal systems, leading to temporary changes such as increased blood pressure, increased heart rate, and vasoconstriction;
- (xv) Adverse effects of environmental noise on mental health include anxiety, emotional stress, nervous complaints, nausea, headaches, instability, argumentativeness, changes in mood, increase in social conflicts;
- (xvi) Adverse social and behavioral effects of environmental noise include negative changes in overt everyday behavior patterns (e.g., closing windows, not using balconies, decks, and outdoor space, turning TV and radio to louder levels), adverse changes in social behavior (e.g., increased aggression, reduced helping behavior, unfriendliness, disengagement, non-participation), and negative changes in mood (e.g., less happy, more depressed);
- (xvii) The designation of routes in order to reduce the number of affected homes grossly magnifies the adverse impact on homes under and along the designated routes;
- (xviii) The designation of routes over the reflective surface of inland waters in order to reduce the number of affected homes amplifies the adverse impact on homes along the water and ruins the peaceful enjoyment of those who value their time spent on the water, fishing, boating, swimming, surfing, paddling, and observing nature in what should be a serene setting; and
- (xix) Despite the Town's commitment to environmental preservation, the direction of aircraft preferentially over nature preserve areas, in order to spare residents from noise, disturbs the feeding, predation, predatory defenses, mating, nesting, reproduction, rearing, and migration of many species of wildlife and defeats one of the main purposes of the purchase of our open space, the ability of those who live and visit here to connect with nature and escape the urban environment.

The Noise Subcommittee conducted additional complaint analysis, concluding that helicopter noise is in fact nearly four times as objectionable to the community as jet aircraft noise, noise is not less of a problem off-season, and “noisy aircraft types” are a problem at all times.<sup>58</sup>

<sup>58</sup> Airport Planning Committee, Noise Subcommittee, Eleventh Findings – Complaint Analysis (Dec. 15, 2014).



Ultimately, the Noise Subcommittee recommended that the Town Board adopt a package of measures: (1) classification of operations into noise-based categories (*i.e.*, quiet, noisy and noisiest); (2) 5PM – 9AM curfew for “noisiest” aircraft and 7PM – 8AM curfew for “noisy” aircraft; (3) ban on noisiest helicopters; (4) “Noisiest” aircraft are limited to two operations per week; (5) seasonal weekend and holiday ban on “noisy” helicopters; (6) seasonal weekend and holiday noise pollution surcharge for “noisy” aircraft; and (7) seasonal weekend ban on touch-and-go operations.<sup>59</sup>

The Aviation Subcommittee disagreed with the Noise Subcommittee in several respects. It expressed concerns about various issues, including: (1) the use of complaint-driven studies and the potential for manipulation of complaint data; (2) the manner of tracking compliance with voluntary helicopter routes; (3) the examination (in Phase I of the noise analysis) of noise exceedances on a per tax parcel basis; (4) the Noise Subcommittee’s three-tier noise ranking system for aircraft.<sup>60</sup> As noted above,<sup>61</sup> the Town heard similar complaints from other stakeholders and took appropriate steps, including, abandoning the review of exceedances on a per tax parcel basis;<sup>62</sup> directing its consultant to coordinate with Eastern Region Helicopter Council regarding voluntary measures;<sup>63</sup> and revising the noise ranking metric.<sup>64</sup>

In December 2014, the Town commissioned Phase III of the Noise Study to analyze the alternatives, or package of measures, identified by the consultant team as the most reasonable solution(s) to the problem.<sup>65</sup> On February 4, 2015, the Town’s consultants presented findings on four proposed restrictions, each of which reflected policy recommendations integrating the findings of HMMH’s operations and complaint analysis, data from Phase I of the Noise Study, the findings of the Noise Subcommittee, and input by affected stakeholders.<sup>66</sup>

### **1. Prohibit all aircraft operations year-round from 11 pm – 7 am.**

The first proposed restriction was a full curfew on all nighttime operations between 11 PM and 7 AM.<sup>67</sup> This restriction is designed to address the problem of nighttime noise from aircraft at

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<sup>59</sup> See Airport Planning Committee, Noise Subcommittee, Tenth Findings – Proposed Noise Measures (Dec. 2, 2014); Airport Planning Committee, Noise Subcommittee, Twelfth Findings – Final Proposed Noise Measures (Dec. 20, 2014); Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015).

<sup>60</sup> *E.g.*, Memorandum to Town Board from Aviation Operations Subcommittee of the Town of East Hampton Airport Planning Committee (Feb. 1, 2015).

<sup>61</sup> See *supra*, pp. 7-9.

<sup>62</sup> See *supra*, n. 41.

<sup>63</sup> See *supra* at p. 10 and n. 54.

<sup>64</sup> See *supra*, pp. 14-15 & 16-17.

<sup>65</sup> Resolution 2014-1471 (Dec. 18, 2014).

<sup>66</sup> Town Press Release: Town of East Hampton Proposed Four Restrictions on Use of Airport (Feb. 4, 2014); see also HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, Regulations to Address Noise and Disturbance From Operations at East Hampton Airport (Feb. 4, 2015).

<sup>67</sup> Draft Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime Operation of Aircraft at East Hampton Airport (Feb. 4, 2015).

HTO. The Town's voluntary curfew has not proven to be sufficiently effective at eliminating nighttime noise from aircraft; nighttime operations still generate a significant number of complaints.<sup>68</sup> Moreover, it is well-documented that nighttime aircraft noise is highly disturbing, that it can disrupt normal sleep patterns, and that it has a particularly serious adverse effect on people's lives.<sup>69</sup> The proposed curfew would adopt as mandatory the existing voluntary nighttime curfew.<sup>70</sup>

**2. Prohibit "noisy" aircraft year-round during 8 pm – 9 am evening, night, and early morning hours (extending the curfew into the "shoulder hours").**

The second proposed restriction was an extended curfew for "noisy" aircraft.<sup>71</sup> The professional literature recognizes that disturbance by all types of aircraft is most significant in the evening and early morning hours, as well as the nighttime hours.<sup>72</sup> The data at HTO demonstrate that noise complaints are overwhelmingly attributable to helicopters and jets – the noisiest types of aircraft.<sup>73</sup> This restriction was designed to eliminate the noisiest aircraft during the "shoulder" times of the evening and early morning hours, when residents and visitors typically engage in quiet outdoor activities and therefore, are highly sensitive to disruption by loud aircraft.

The Town examined the effects of extending the curfew as early as 8 PM and as late as 10 AM, and elected to use the hours of 8 PM – 9 AM, as those hours correlate best with the times of day when residents have a heightened expectation of quiet.

Identifying the proper threshold and metric for defining "noisy" aircraft proved to be a complex problem requiring complex and detailed analysis by the consultant team and several expert members of the Noise Subcommittee. Among the challenges is that different aircraft are regulated using different metrics.<sup>74</sup> The initial proposal followed the Noise Subcommittee's

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<sup>68</sup> *E.g.*, Wadsworth, Powerpoint Presentation to the Town, Analysis of 2014 YTD Noise Complaints for East Hampton Airport (Oct. 30, 2014).

<sup>69</sup> *See, e.g.*, HMMH Memorandum, Review of Studies that Address Effects of Helicopter Noise, at Sec. 8 (References).

<sup>70</sup> HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, Regulations to Address Noise and Disturbance From Operations at East Hampton Airport (Feb. 4, 2015) at Slide 11.

<sup>71</sup> Draft Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Evening, Nighttime and Early Morning Operation of Noisy Aircraft at East Hampton Airport (Feb. 4, 2015).

<sup>72</sup> *See, e.g.*, HMMH Memorandum, Review of Studies that Address Effects of Helicopter Noise, (Feb. 3, 2015) at Sec. 8 (References).

<sup>73</sup> *E.g.*, Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015) at 3.

<sup>74</sup> Some background on how federal and international regulators classify "noisy" aircraft is necessary for understanding this issue. The Federal Aviation Administration (FAA) and international regulators use various metrics for rating the noisiness of individual aircraft. For turbojet and large transport category aircraft, FAA uses Effective Perceived Noise Level in decibels (EPNdB). EPNdB is a single number evaluator of the subjective effects of aircraft noise on human beings. EPNdB takes into account various factors beyond the sound level, such as duration of the event and pure tones, in order to quantify the relative annoyance of the sound. For the vast majority of other aircraft, *i.e.*, the lighter, propeller-driven aircraft, FAA uses a different metric, the so-called "Lmax" metric, which measures the maximum instantaneous sound levels using an A-weighted decibel scale. For a very small

recommendation for defining “noisy” using three different noise metrics (EPNdB, SEL, and Lmax) for different aircraft types.<sup>75</sup>

### **3. Prohibit helicopter operations on weekends and holidays during the summer season (May 1 – September 30).**

The third proposed restriction was a ban on helicopter operations on weekends and federal holidays during the summer season.<sup>76</sup> The professional literature,<sup>77</sup> and the specific data at HTO,<sup>78</sup> make clear that helicopters cause extreme disturbance and are particularly disturbing and annoying to residents and visitors in the East End. The data also demonstrate that the problem peaks during weekends and holidays in the summer season, when there are high traffic volumes, as people come to the Town and environs for the weekends.<sup>79</sup>

While the FAA implemented mandatory flight tracks in 2012,<sup>80</sup> data collected since imposition of the so-called North Shore Route have demonstrated that this mandatory route has not resolved the problem in East Hampton and in nearby communities.<sup>81</sup> The principal reason is that, while the North Shore Route designates a mandatory route off the north shore of Long Island, it does not mandate any route for helicopters as they transition from off-shore to their destination. As a result, operators are free to use any route they choose: some of those routes overfly heavily populated and noise sensitive areas and others do not. Data suggests that relatively few operators have elected to remain off-shore all the way to Orient Point and to remain overwater as long as possible.<sup>82</sup>

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number of aircraft, the FAA uses a third metric, Single Event Level or “SEL,” that takes into account the sound level and duration (but not pure tones). See HMMH Memorandum, Review of Studies that Address Effects of Helicopter Noise, (Feb. 3, 2015); see also HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, Regulations to Address Noise and Disturbance From Operations at East Hampton Airport (Feb. 4, 2015) at Slide 10.

<sup>75</sup> Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015) at 36-42; see also HMMH and Kaplan Kirsch & Rockwell Powerpoint Presentation to the Town, Regulations to Address Noise and Disturbance From Operations at East Hampton Airport (Feb. 4, 2015) at Slide 10.

<sup>76</sup> Draft Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Helicopters at East Hampton Airport (Feb. 4, 2015).

<sup>77</sup> HMMH Memorandum, Review of Studies that Address Effects of Helicopter Noise, (Feb. 3, 2015).

<sup>78</sup> E.g., Wadsworth, Powerpoint Presentation to the Town, Analysis of 2014 YTD Noise Complaints for East Hampton Airport (Oct. 30, 2014); Airport Planning Committee, Noise Subcommittee, Eleventh Findings – Complaint Analysis (Dec. 15, 2014); HMMH and KKR Presentation to the Town, Regulations to Address Noise and Disturbance From Operations at East Hampton Airport (Feb. 4, 2015) at Slide 16; see also <https://www.change.org/p/north-fork-ban-helicopters-to-stop-noise> and <http://petitions.moveon.org/sign/east-hampton-town-board-1>.

<sup>79</sup> E.g., Wadsworth, Powerpoint Presentation to the Town, Analysis of 2014 YTD Noise Complaints for East Hampton Airport (Oct. 30, 2014).

<sup>80</sup> 77 Fed. Reg. 39,911 (July 6, 2012) (New York North Shore Helicopter Route, Final Rule).

<sup>81</sup> E.g., Letter from U.S. Representative Zeldin to FAA Administrator Huerta (March 2, 2015).

<sup>82</sup> *Id.*

Voluntary transition routes have similarly proved ineffective because East Hampton is both the source and destination of the traffic. In addition, designated voluntary routes – even if operators do respect those routes – simply transfer and concentrate the noise on certain neighborhoods, or, alternatively, over preserved natural areas.<sup>83</sup>

This restriction was designed to address residents’ and visitors’ heightened desire for, and expectation of, quiet during the extended summer weekends. One of the common themes from community comment (reinforced by historical planning data) is that the East Hampton community is known for, and visitors select East Hampton for, the area’s reputation for an unusually quiet and serene environment. A quiet environment is, furthermore, more than just a luxury for area residents and visitors: that environment is the brand that sells East Hampton as a place to live and visit. A loss of that reputation could have seriously deleterious effects not only on existing residents and visitors, but on the Town’s ability to attract economic activity in the future. If potential visitors and prospective residents were to perceive that East Hampton has lost its unique appeal, the attractiveness of the Town would be lost. Therefore, preservation of the Town’s reputation for quiet has importance far beyond the protection of the environment for the existing population. While the potential economic impacts of losing its reputation have not been quantified, the Town Board and civic leaders have been clear that the Town Board has an obligation to protect the Town’s reputation for peace and quiet.

The Town considered a number of different variations on the definition of the “Season” and settled on the five month period (May – September). Most important to the Town was the fact that the data show that the clear “peak” for operations at HTO occurs in these five months.<sup>84</sup> The timeframe also coincides with the traditional concept of summer being between Memorial Day and Labor Day.

The Town also reviewed the daily peaking trends and concluded that the weekend is best defined as noon Thursday through noon Monday. Operations data show that there is a demonstrable peaking of operations beginning on Thursday afternoon and again on Monday mornings; complaint data matches these peaks. The Thursday to Monday definition also ensures that the “weekend” is defined broadly enough to avoid merely shifting peak times, resulting in extreme congestion and noise peaks immediately before the “weekend” commenced or immediately after it ended.

#### **4. Prohibit noisy aircraft from conducting more than one take-off and one landing in any calendar week during the summer season.**

The final proposed restriction was a limit on the number of operations by “noisy” aircraft.<sup>85</sup> The data indicate that the noisiest aircraft are a serious problem: jets operations generate complaints at nearly 2.5 times the rate of propeller-driven operations, and helicopters generate complaints at

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<sup>83</sup> Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015) at 28-29.

<sup>84</sup> *E.g.*, HTO Operations data (2012, 2013, 2014).

<sup>85</sup> Draft Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Noisy Aircraft at East Hampton Airport (Feb. 4, 2015).

2.3 times the rate of jets, or 5.75 times the rate for propeller-driven operations.<sup>86</sup> This proposed restriction is designed to limit the noisiest aircraft during the summer season when residents and visitors have a heightened expectation that they can enjoy the outdoor environment in peace.

The Town considered, but rejected, an outright ban on all “noisy” aircraft. While the data demonstrate that “noisy” aircraft generate disproportionate amounts of complaints, the Town recognized that determining the appropriate restriction called for balancing and judgment calls. It would not be possible to address 100 percent of all of the noise-related complaints without closing the Airport and defeats the Town’s goal of finding a balanced means of operating the Airport – which is an important Town asset – while still providing meaningful noise relief. A slightly-less draconian step would be to ban just “noisy” aircraft. A ban on “noisy” aircraft would undoubtedly reduce the number of complaints dramatically, but it also would have a similar reduction in the number of operations and the related revenue, which could put the financial viability of the Airport at risk. Ultimately, the Town determined that an outright ban on “noisy” aircraft would tip the scales too strongly against airport users. Thus, the Town elected to impose a stringent limit, rather than an outright ban, on these aircraft.

## **REFINING THE PROPOSED ACCESS RESTRICTIONS**

### **1. Revised definition of “noisy”**

On February 10, 2015, the Town noticed public hearings on all four proposed restrictions, with one change.<sup>87</sup> The change related to the definition of “noisy.” The initial definition of “noisy” relied on three different noise metrics (EPNdB, Lmax, and SEL<sup>88</sup>) to classify different aircraft types as “noisy” or not. However, it became clear that this definition was too complicated to apply fairly and consistently.

As the Noise Subcommittee recognized, there is no precise correlation between the different metrics because they do not measure exactly the same things.<sup>89</sup> In addition, the published EPNdB values are established for a different location and mode of flight than the published values in terms of Lmax or SEL. For consistent measurement locations and modes of flight, an EPNdB measurement would *generally* be on the order of 10 to 15 decibels higher than Lmax, and slightly higher than SEL. Because of the absence of a consistent conversion from EPNdB to Lmax or SEL, however, any effort to set comparable noise thresholds in terms of all three metrics would necessarily create anomalies, such as situations where EPNdB-rated aircraft that would be exempt from the restrictions on “noisy” aircraft are actually noisier than aircraft considered “noisy” under the L-max or SEL ratings.<sup>90</sup>

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<sup>86</sup> Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015) at 22.

<sup>87</sup> See Resolution 2015-215, Resolution 2015-12, Resolution 2015-13, Resolution 2015-14 & Resolution 2015-15 (Feb. 10, 2015).

<sup>88</sup> See *infra*, n. 68.

<sup>89</sup> Airport Planning Committee, Noise Subcommittee, Final Report and Recommendations (Jan. 20, 2015) at 36-39.

<sup>90</sup> This precise problem is made clearer by reviewing FAA’s Advisory Circular 36-3H (“Estimated Airplane Noise Levels in A-Weighted Decibels”). This Advisory Circular presents Lmax levels for aircraft that the FAA normally

The second problem identified by the consultant team and Town Board is a practical one. In order to ensure fairness and adequate advanced notice to potential operators, the Town Board wanted to have a single source of data upon which operators could rely to determine if their aircraft would be restricted at the Airport. Using three separate metrics from three separate governmental sources seemed to be too complicated to apply equitably in practice. The Town Board was concerned that that complexity would result in confusion, misunderstandings, and frustration by aircraft operators. In addition to being unfair, such complexity could also result in a lower compliance rate as users, notwithstanding their good faith, might not be certain as to whether the restrictions apply to their particular aircraft.

To avoid those issues, the Town revised the definition of “noisy” aircraft to rely solely on the EPNdB metric to define “noisy” aircraft.<sup>91</sup> It is the single metric used by federal and international regulators for certificating the aircraft that are expected to be noisier and it is a metric that, standing alone, can be applied fairly and consistently. A single metric also avoids the confusion caused by having multiple sources for noise data: with the EPNdB metric, users can look to a single (or at most two) sources to determine whether their aircraft is considered to be noisy.<sup>92</sup> Aircraft registered in the United States are required to provide that figure in the airplane or rotorcraft manual provided by the manufacturer. Therefore, even if users do not have access to published government databases showing EPNdB levels, owners and operators could always retrieve such data from their own manuals.

Ultimately, the Town elected to define “noisy” as “any airplane or rotorcraft for which there is a published EPNdB approach (AP) level of 91.0 or greater.”<sup>93</sup> The choice of this threshold was based on several factors. First, the Town reviewed comparable restrictions at other airports such as Mineta San Jose International Airport (threshold of 89 EPNdB<sup>94</sup>) and Sacramento Executive Airport (threshold of 84 EPNdB<sup>95</sup>). Second, it also examined the particular fleet at HTO, and discussed the actual noise disturbance caused by actual aircraft operating out of HTO. Third, the

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certificates using EPNdB. These Lmax levels are for the same locations and flight modes as the EPNdB ratings, which permits direct comparisons between the two metrics. A quick review identifies the type of anomalies that would result by using the initially-proposed multi-metric definition of “noisy.” For example, the Cessna 650 Citation III has an FAA-published EPNdB approach level of 90.8 (*i.e.*, not noisy) but an FAA-published Lmax approach level of 84.8 (*i.e.*, noisy). Similarly, a Dassault Falcon 20 has an FAA-published EPNdB approach level of 90.0 (*i.e.*, not noisy) but an FAA-published Lmax approach level of 90.3 (*i.e.*, noisy).

<sup>91</sup> See, How Do I Tell If My Aircraft Is Considered “Noisy”? (Feb. 24, 2015); List of Noisy Aircraft Types (March 3, 2015); HMMH, Memorandum re: Noisy Aircraft List (March 3, 2015).

<sup>92</sup> See, *e.g.*, How Do I Tell If My Aircraft Is Considered “Noisy”? (Feb. 24, 2015).

<sup>93</sup> *E.g.*, Resolution 2015-213; Resolution 2015-215; see also How Do I Tell If My Aircraft Is Considered “Noisy”? (Feb. 24, 2015); List of Noisy Aircraft Types (March 3, 2015); HMMH, Memorandum re: Noisy Aircraft List (March 3, 2015).

<sup>94</sup> City of San Jose Municipal Code § 24.03.300 (“If a jet aircraft is not listed on the schedule of authorized aircraft, then the aircraft will be allowed to operate during curfew hours only if the operator demonstrates in writing to the director that the FAA Part 36 manufacturer certificated noise level of such aircraft (using the arithmetic average of the takeoff, sideline, and approach noise levels) is equal to or less than 89.0 EPNdB.”) See also: <http://www.flysanjose.com/fl/environmental.php?page=curfew&subtitle=Noise+Abatement++Curfew>.

<sup>95</sup> Sacramento City Code § 12.88.520. (“It is unlawful and a misdemeanor for a person to take off or land an aircraft at the airport if the noise level for the model of aircraft exceeds 84.0 EPNdB as said noise level is set forth in the advisory circular in the columns entitled “Meas EPNdB” or “M/Est EPNdB” as measured at take-off.”).



Town's consultants determined that there is not just one single threshold that is generally accepted in the industry, and that, unless the Town intended to impose a de facto ban on certain aircraft, it should select a threshold which allows at least some helicopters, fixed-wing jets, and fixed-wing propeller aircraft to operate without the restriction.

The selected threshold allows many aircraft types to operate at the Airport without being subject to "noisy" aircraft restrictions, including:

- the most modern and some older, smaller helicopters;
- some of the latest generation corporate jet aircraft; and
- most of the small sport aviation aircraft used at the Airport.

Allowing these operations to be unaffected by the restrictions on "noisy" aircraft is consistent with trends in complaints and comments that the Town Board has received, *i.e.*, that operations by these types of aircraft are comparatively less intrusive than their noisier counterparts. The threshold also ensures that at least some operations by each broad category of operators (*e.g.*, helicopters, corporate jets, turbo prop aircraft, and small piston aircraft) can operate without restriction. The Town Board concluded that it was important to strike a delicate balance between the needs and desires of aircraft users and the community and that the 91 EPNdB threshold strikes the appropriate balance.

At the same time, the Town Board recognized, and the consultant team reiterated, that there is no perfect balance and there is no industry standard for that balance. The consultant team recommended that the Town consider the 2015 summer season to be a test of whether the Town has struck the correct balance. To that end, the consultant team recommended that the Town collect as much data as possible during the 2015 season to determine whether the restrictions achieve the Town's objectives and are only as restrictive as necessary to solve the problem. The data from actual user data and actual complaints in 2015 could help the Town Board determine whether modifications to the threshold are warranted.

## 2. Outreach and Public Comment

On March 12, 2015, the Town held a hearing on all four proposed restrictions.<sup>96</sup> At the hearing, the Town announced that it would accept comments until March 20, 2015.<sup>97</sup> As might be expected, the legislative proposals were subjected to intense public scrutiny by residents and visitors from throughout the East End; from industry associations and individual aircraft operators; from elected officials from throughout the East End; and from the FAA. The Town specifically reached out to senior FAA officials in Washington, DC. and to members of the New York Congressional Delegation for their comment to ensure that the Town received feedback from all affected components of the community. Town Board members also reviewed written comments submitted by mail and email.

The Town Board made a deliberate decision to engage with industry groups – both to ensure that they were fully apprised of the proposals and to receive comments on the effect of the proposals

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<sup>96</sup> Town Meeting Minutes (Mar. 12, 2015).

<sup>97</sup> *Id.* at 8.

on their members. Town Board members traveled to Washington DC to meet with senior staff of the National Business Aviation Association, the Aircraft Owners and Pilots Association and the General Aviation Manufacturers Association. Town Board members also met with senior representatives of the Eastern Region Helicopter Council, which has, for years, been actively involved in the public debate about restrictions at the Airport. These meetings generated a productive dialogue and proved most instructive as they helped the Town Board understand the real world effects of the proposed restrictions on airport users.

After reviewing the comments from residents, elected officials and affected stakeholders, the Town Board determined that some modifications to the proposed restrictions were warranted. Specifically, the Town Board concluded that:

- Curfews on nighttime, evening and early morning operations are essential;
- The one-trip-per-week proposal, which limits the volume and frequency of airport use by noisy aircraft types during the summer season is also essential, as it limits the number of disruptions from the noisiest aircraft; and
- The proposed helicopter ban merits additional review before the Town Board should consider its enactment.<sup>98</sup>

The Town Board also wanted to reassure the public of its commitment to keep the Airport open and to operate it in a financial self-sustainable manner.

### **3. Deferring Consideration of Helicopter Ban**

With regard to the seasonal weekend helicopter ban, the Town Board recognized that residents who are impacted by loud and disturbing helicopter noise deserve meaningful relief. However, the data suggest that the combination of the curfews and the one-trip-per-week limitation on noisy aircraft (including noisy helicopters) is well tailored to address the known problem without creating any risk of unintended diversion of helicopters.

The Town also received a number of comments expressing concern that a total ban could result in helicopters diverting to other airports in the vicinity.<sup>99</sup> In order to address that concern, the Town commissioned a study of helicopter diversions which was incorporated into the SEQRA analysis of the proposals. Preliminary analysis of potential diversions reinforced the concern that a total seasonal weekend ban might result in significant increases in helicopter activity at Montauk, Southampton and/or Grabeski. The Town Board's policy has always been that it will not adopt a 'beggar thy neighbor' restriction which could shift the noise problem from the East Hampton Airport to another regional facility. While the diversion study was only based upon predictions of people's behavior in response to a ban, the Town Board decided that the risk of significant diversions to other airports was unacceptable. In light of the benefits that could be

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<sup>98</sup> Statement by K. Burke-Gonzalez (April 07, 2015).

<sup>99</sup> *E.g.*, Letter to Town Board from J. Samuelson, Exec. Director, Concerned Citizens of Montauk (Feb. 9, 2015); Letter to Town Board from J. Giglio, Councilperson, Town of Riverhead (March 18, 2015); E-mail to Town Board from M. Epley, Mayor, Village of Southampton (March 20, 2015).



derived from the other three restrictions, the Town Board decided that it was not necessary, as a policy matter, to expose other communities to that risk. Therefore, the Town Board decided to defer consideration of the proposed helicopter ban.

The data from HMMH suggests that the one trip limit for noisy aircraft, in conjunction with the two curfews, will affect 75% of helicopter operations and 73% of associated complaints on weekends and holidays during the summer season; it will also affect only 23% of all aircraft operations while addressing 60% of complaints on an annual basis. This will not resolve every comment and every concern, but it is a balanced approach and it will provide meaningful relief in the first season.

#### **4. Commitment to revisit the use restrictions**

The Town will also convene a public meeting after the 2015 season to review the effect on noise and complaints, the diversion of traffic to other airports, the effects of the restrictions on aircraft operators, and the financial impacts of the three restrictions. Data from operations during the 2015 season will be enormously helpful in terms of understanding people's reactions and changes in behavior as a result of the other three restrictions. If it becomes apparent that additional restrictions are warranted after analyzing data from the 2015 season, the Town Board will consider changes – including possibly reconsidering the helicopter ban – at that time.<sup>100</sup>

### **TECHNICAL DOCUMENTATION**

HMMH has documented its role in the process that led to proposed legislation. The documentation includes four major elements: (1) summary documentation; (2) complaint and operations data files; (3) aircraft certification data files; and (4) analysis spreadsheets. Much of this information is highly technical and was reviewed verbally with Town Board members to ensure that they understood the information.

HMMH has prepared a technical memorandum for the Town Board that summarizes the data sources, data analyses, analytical assumptions, alternatives analyses, data file structures, analysis spreadsheet structures, work products, and other inputs and steps the firm took in assisting the Town Board to prepare the legislative proposals. The memorandum also identifies the background information that the firm considered at the outset of its assistance. The relevant information was discussed in Town Board presentations (both in public and, where appropriate because of litigation, in closed session), presented in data files; most of the underlying data was posted on either the Town's website<sup>101</sup> or on a project-specific website.<sup>102</sup> In a few instances, because of confidentiality of data containing personal identifying information, the data was redacted before presentation. The HMMH assumptions, conclusions, recommendations, and analyses were discussed with the Town Board, with individual Town Board members, and, in

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<sup>100</sup> *Id.*

<sup>101</sup> See [www.town.east-hampton.ny.us/htmlpages/airportinterimnoiseanalysis.html](http://www.town.east-hampton.ny.us/htmlpages/airportinterimnoiseanalysis.html).

<sup>102</sup> See [www.htoplanning.com](http://www.htoplanning.com).

some instances, with various Town advisory committees and appropriate Town staff and consultants.<sup>103</sup>

Before enacting any restrictions, the Town will complete the documentation and complete the process required under the New York State Environmental Quality Review (“SEQR”) Act. One component of the SEQR analysis was the preparation of a study on potential diversion of air traffic to other airports. Peter Stumpp, an international expert on the subject, prepared this report for the Town Board.<sup>104</sup>

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<sup>103</sup> HMMH based its detailed technical analyses of complaints and operations on data presented in two data files:

(a) Complaint data from the HTO PlaneNoise system for the November 1, 2013 – October 31, 2014 analysis period. Each row of the data file contains a single complaint record. HMMH enhanced the data file to incorporate the latitude and longitude of each complainant’s address, using processes described in the Summary Documentation. HMMH also added summary annotation describing the contents of each column.

(b) Aircraft operations data from the HTO Vector system for the November 1, 2013 – October 31, 2014 analysis period. Each row of the data file contains a single operations record. HMMH enhanced the data file by identifying which Cessna 208 aircraft operating at the airport were seaplanes, using online research processes described in the Summary Documentation. HMMH also added summary annotation describing the contents of each column.

HMMH identified aircraft classified as “noisy” types in the legislation using data from 12 online Federal Aviation Administration (FAA) and European Aviation Safety Agency (EASA) data files (the Summary Documentation describes the processes that were applied to these files to identify the noisy aircraft types): FAA Advisory Circular 36-1H (Change 1), *Noise Levels for U.S. Certificated and Foreign Aircraft* 05/25/2012 data files, downloaded February 23, 2015; and EASA *Noise Type Certificates - Approved noise levels* data files, downloaded February 18, 2015.

HMMH undertook detailed analyses through processes embodied in six spreadsheets. The spreadsheets include summary annotation to summarize their structure and have been made available to the Town Board.

<sup>104</sup> Memorandum to Town Board from P. Stumpp, Potential Traffic Diversion from Proposed Restrictions at HTO (April 2015).

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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 TED BALDWIN**

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

1. I was retained by Defendant Town of East Hampton to conduct analyses to define noise problems related to operations at East Hampton Airport (“HTO” or “Airport”), identify potential approaches to address those problems, estimate the operations that would be affected by restrictive alternatives, estimate the noise complaints associated with the restricted operations, report on the results, and prepare implementation-related materials for the restrictions that the Town Board selected for adoption.

2. I have been retained by Defendant’s counsel to provide expert testimony in support of Defendants’ response to Plaintiff’s motion for a temporary restraining order.

### **EDUCATION AND EXPERIENCE**

3. I received a Bachelor of Science in Engineering degree from Cornell University in 1975 and a Master of City and Regional Planning degree from Harvard University in 1977.

4. I currently am a Senior Vice President and Supervisory Consultant with Harris Miller Miller & Hanson Inc. d/b/a HMMH. I joined the firm in April 1984. I specialize in aviation noise projects.

5. From 1981 to 1984, I was employed by Bolt Beranek and Newman Inc. (“BBN”) as an environmental noise consultant, specializing in aviation-related noise assessment, abatement analyses, and compatible land use planning.

6. From 1977 to 1981, I was employed the Massachusetts Port Authority (“Massport”), including a number of positions in the Noise Abatement Office and culminating in the position of “Airport Planner” in the Massport Aviation Division. My primary responsibilities at Massport related to aviation-related noise assessment; implementation of Massport’s extensive noise abatement program; and identification, analysis, recommendation, and implementation of potential program enhancements.

7. Over the course of my career, I have assisted over 75 airports on a diverse range of aviation noise assignments, including 14 Code of Federal Regulations (“CFR”) Part 150 noise compatibility planning studies, 14 CFR Part 161 use restriction studies, state and federal environmental impact studies and assessments, noise elements of airport master plans, aircraft noise abatement and compatible land use planning and implementation, noise and operations monitoring system design and implementation, noise measurement, noise modeling, aviation noise stakeholder outreach programs, professional training, and expert testimony.

**ASSIGNMENT**

8. In an October 30, 2014 Special Meeting, the East Hampton Town Board heard a joint citizen and consultant presentation on disturbance from operations at East Hampton Airport. The presentation proposed a “preliminary draft problem definition” and a “list of potential alternatives to address that definition.” HMMH was not involved in preparing or making that presentation. At that meeting, the Town Board reached consensus to proceed with development of: (1) a final problem definition and (2) a refined list of alternatives that offer the best promise for addressing that problem.

9. I was retained by Defendant in November 2014 to lead HMMH assistance in: (1) development of the final problem definition, (2) identification and refinement of potential restrictions to address that problem definition, (3) refining activity categories that fall under the problem definition, including aircraft type, operation type, and temporal aspects, (4) conducting research into helicopter noise characteristics and effects, (5) estimation of the operations affected by potential use restrictions, (6) estimation of the noise complaints associated with those affected operations, (7) coordinating with airport operators to assess voluntary approaches to addressing the problem definition, (8) making public presentations on study results, (9) developing a definition of “noisy aircraft” and identifying the aircraft types that would fall under it, (10) documenting HMMH’s data collection and analyses, and (11) preparation of implementation-related materials for restrictions that the Town Board selected for adoption. HMMH’s analyses were based on complaint and operations data for the 12 months from November 1, 2013 through October 30, 2014, in order to evaluate the most current feedback on aircraft operations and compare that feedback to the varying levels of activity at the airport over the same time period.

The complaint data were obtained from the HTO PlaneNoise complaint system. The operations data were obtained from the HTO Vector operations-monitoring system.

10. The April 10, 2015 memorandum that I coauthored with my colleague Sean Doyle, titled “Documentation of HMMH Noise Analyses,” (attached as **Exhibit 1**) presents a detailed description of the data sources, assumptions, citations, analytical processes, etc., that HMMH used in preparing information the Town Board took into account in making decisions that led to the use restrictions implemented by the Town on April 16, 2015. That memorandum and other HMMH-prepared materials to which it refers are posted on the Town’s website or on a project-specific website (www.htoplanning.com) that presents the administrative record for the legislative process.

11. Based on the data I analyzed (operations and complaint data from November 1, 2013 to October 31, 2014), I concluded that if the three use restrictions enacted by the Town (the curfew, extended curfew and two operations per week limit in Season) had been in place over that 12-month period, they would have affected under 23% of total operations, while addressing the cause of over 60% of the complaints, with individual effects on operations as follow:

Proposed Restriction(s)	Estimated Operations Affected November 1, 2013 – October 31, 2014		
	Helicopter	Fixed- Wing	All Aircraft
1) 11 pm – 7 am curfew on all operations	199	382	581
2) 8 pm – 9 am curfew on all noisy operations	973	270	1,243
3) Noisy aircraft limited to two operations per week in season	3,715	283	3,998
TOTAL OUTCOME OF RESTRICTIONS 1 - 3	4,887	935	5,822

To put this into perspective for the pending motion seeking a temporary restraining order, I reviewed the data from just May 2014. In May alone, the restrictions would have affected far fewer operations:

Proposed Restriction(s)	Estimated Operations Affected in May 2014		
	Helicopter	Fixed- Wing	All Aircraft
1) 11 pm – 7 am curfew on all operations	11	26	37
2) 8 pm – 9 am curfew on all noisy operations	66	12	78
3) Noisy aircraft limited to two operations per week in season	285	15	300
TOTAL OUTCOME OF RESTRICTIONS 1 - 3	295	51	346

12. I have been requested to review and comment on the Plaintiffs’ motion for a temporary restraining order and the expert declarations of Mr. Andrew S. Harris and Mr. D. Kirk Shaffer, which were filed in support of the motion, and to provide opinions regarding the reasonableness of the Town’s approach and appropriateness of the data on which it relied.

#### **Comments on Expert Declaration of Mr. Andrew S. Harris**

13. Mr. Harris states in ¶15 of his declaration that the Town relied on “solicited, self-reported complaints to a Town website or a telephone hotline.” He repeats that assertion in ¶19, where he states: “It is my understanding that the complaints called in to the hotline were solicited.” The term “solicited” is inaccurate. Similar to airports across the county, the Town *accepts*, not solicits, noise complaints submitted via webform, telephone, and email, to use in obtaining community input on general issues of concern, and on specific operations that citizens consider unusually low, loud or otherwise worthy of feedback or about which they request further information. The Town has contracted with PlaneNoise to provide an efficient, easily accessible, user-friendly means for any affected party to file noise complaints with the Town, for the Town to compile information on community concerns, and to identify individual operations or categories of operations meriting investigation. As appropriate, the Airport staff members communicate with individual pilots, aircraft operators, the Airport Traffic Control Tower staff, or other entities to alert them to the operations of concern, to obtain information about those

operations, and to identify corrective actions. As appropriate and requested, the Airport staff also provides responses to complainants on information the Town is able to obtain regarding the operations of concern and any actions taken. The acceptance of complaints for investigation and response, and the assembly of complaint data into a database for long-term trend analyses is standard operating procedure for a responsive airport noise abatement program. Many airports use third-party services to improve the efficiency of complaint processing. PlaneNoise is applied at airports on a stand-alone basis or integrated into a monitoring system. The acceptance of PlaneNoise as a state-of-the-art tool is reflected by its application at a broad range of airports other than HTO, including the five operated by the Port Authority of New York and New Jersey, Massport's Boston-Logan International (Massachusetts), Naples Municipal (Florida), Charlotte-Douglas International (North Carolina), Destin-Ft. Walton Beach (Florida), and others. PlaneNoise is just one such type of tool; most modern airport noise and operations monitoring systems include similar capabilities; *e.g.* the Brüel and Kjær ANOMS™ and the Exelis EnvironmentalVue™ products. Complaint data collection using these tools or manual data collection processes is a generally accepted practice for a broad range of airport noise abatement and community liaison purposes, including studies of restrictive and non-restrictive noise abatement approaches.

14. Mr. Harris states in ¶15 of his declaration that “FAA regulations mandate that airport noise studies be conducted under different procedures that were not followed [at East Hampton].” That is not correct. First, airport noise studies are only mandated under specific circumstances that apply only to the FAA itself; *i.e.*, noise studies conducted by the FAA to ensure agency compliance with the requirements set forth in the Council on Environmental Quality (“CEQ”) regulations for implementing the provisions of the National Environmental



Policy Act of 1969 (“NEPA”), 40 CFR Parts 1500-1508; Department of Transportation Order DOT 5610.1C, “Procedures for Considering Environmental Impacts;” and other related statutes and directives. While mandatory procedures apply to those studies, the study requirements apply to the FAA, not to individual airports.

15. Second, airport proprietors may *voluntarily* opt to conduct noise studies under 14 CFR Part 150, “Airport Noise Compatibility Planning,” or under 14 CFR Part 161, “Notice and Approval of Airport Noise and Access Restrictions,” which does include mandatory procedures. Airport proprietors also may opt to conduct independent noise studies outside of 14 C.F.R Parts 150 or 161 for a variety of locally relevant purposes, as in this instance. In those situations, airport proprietors may choose the techniques that they determine are most applicable to local needs; mandatory Part 150 and 161 procedures do not apply.

16. Mr. Harris further states in ¶15 of his declaration that “past studies conducted by the Town in accordance with the procedures mandated by the FAA have confirmed that noise generated by aircraft using HTO is below acceptable thresholds defined in the FAA’s regulations.” The only FAA regulation that defines “acceptable thresholds” of aircraft-generated noise is 14 CFR Part 36, “Noise Standards: Aircraft Type and Airworthiness Certification.” That regulation only applies to FAA certification of aircraft designs to receive new or revised “type certificates” for production or modification of aircraft to operate in the U.S. Those thresholds do not apply to airport noise abatement or land use compatibility studies of the type that the Town has conducted in the past or as part of the process leading to its recent adoption of three use restrictions

17. The FAA has explicitly delegated to local authorities the responsibility for determining acceptable thresholds of noise exposure for land use compatibility purposes when

conducting noise abatement studies under federal regulations. 14 CFR Part 150 §A150.101, “Noise contours and land usages,” includes a table (Table 1) titled, “Land Use Compatibility With Yearly Day-Night Average Sound Levels.” Footnote 1 to that table states: “The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.” 14 CFR Part 161 §161.11 states that “[f]or purposes of this part, uses of land that are compatible or noncompatible with various noise-exposure levels to individuals around airports must be identified in accordance with criteria described under appendix A of 14 CFR part 150.” Even for purposes of 14 C.F.R Part 150 or 161 studies, there are no FAA-defined “acceptable thresholds” of noise exposure.

18. In ¶23 of his declaration, Mr. Harris states that “the Town’s methodology of using a telephone hotline to solicit complaints from residents is not a valid or generally accepted industry method for determining overall community attitudes about residential noise exposure, let alone for imposing airport access restrictions. As discussed in ¶17 of this declaration, the FAA clearly states that airport proprietors should consider “locally determined needs and values” when considering restrictive or non-restrictive abatement alternatives, under 14 CFR Part 150 or 161. Clearly the same local determination applies to studies conducted outside of federal processes. In this instance, the Town chose to consider unsolicited noise complaint statistics in developing a problem definition and assessing the potential effect of alternative restrictions.

19. Noise complaints are a valid basis for cataloguing noise concerns, developing noise problem statements, identifying noise abatement alternatives for consideration, and assessing the effectiveness of implemented measures. In my professional experience, use of noise complaints for these purposes is an industry-standard practice in all types of noise studies, including Part 150 and 161 studies, and studies that are more explicitly tailored to specific local needs and conditions.

20. In my professional experience, noise complaints reflect concerns and reactions of larger numbers of stakeholders with similar exposure to aircraft operations and noise, and actions taken to address complaints will address the concerns those larger numbers of individuals.

21. In ¶23 – 24 of his declaration, Mr. Harris raises the concepts of “annoyance” with noise, “response” to noise, and “impact” of noise. He quotes from page 13 of the April 10, 2014 HMMH memorandum titled “Review of Studies that Address Effects of Helicopter Noise,” where it states: “Surveyed reaction is a formal measure that is collected through mail, telephone, or in-person surveys which are carefully designed to produce unbiased responses.” That quote must be considered in its original context, including the two preceding sentences: “However, in considering the studies, the distinction between complaints and annoyance should be kept in mind. Complaints are reactions to annoyance, while annoyance, as defined by legislation for the FAA, is a surveyed reaction to noise.” The Town’s express purpose in using complaint statistics was to gauge community reaction to aircraft operations; *i.e.*, actual behavioral response induced by the operations and associated annoyance.

22. In ¶25 – 34 of his declaration, Mr. Harris further elaborates on application of the 14 C.F.R Part 150 and 161 regulations and their specific requirements, including the use of the “Day-Night Average Sound Level” (“DNL”) metric, which he cites as “the standard mandated

by the FAA in determining the existence of airport noise problems under Part 150.” However, those requirements regarding the use of DNL are not relevant in this instance, because the Town was not conducting either of these types of studies.

23. It should be noted that the Town did consider DNL at several stages in the process that led to the restrictions it selected for implementation, including work conducted by HMMH itself in 2003, the 2010 Generic Environmental Impact Statement, and the “Phase 1” noise analyses presented at the October 30, 2014 Special Meeting of the Town Board. The Town Board reached the appropriate conclusion that DNL was insensitive to local issues of concern and was not an appropriate metric to use in assessing noise abatement options. This conclusion was an appropriate basis for the Town to design and follow a locally sensitive noise analysis process other than Part 150 or 161, which rely on the DNL metric.

24. In ¶35 – 38 of his declaration, Mr. Harris asserts that “the complaints relied upon by the Town are unreliable.” He goes on to cite complaint statistics that the Town Board used in arriving at a noise problem definition. The statistics he cites are facts. At no point does he provide actual evidence that the complaints are unreliable. The Town Board carefully considered these same factual complaint statistics in arriving at their conclusions about the existence and nature of a noise problem, and the appropriate approach to take in addressing that problem. That process is the responsibility of the Town Board and no other party.

25. In ¶39 – 50 of his declaration, Mr. Harris asserts that the restrictions’ reliance on EPNdB approach levels to classify “noisy” aircraft is inappropriate. That statement conflicts with FAA regulation of aircraft noise emissions under 14 CFR Part 36, “Noise Standards: Aircraft Type and Airworthiness Certification.” Since 1969, FAA has employed EPNdB to classify the noisiest and largest aircraft under that regulation.

26. Specifically, the Aircraft Noise Abatement Act of 1968 (Public Law 90-411) directed the FAA Administrator to “prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards, rules, and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title.” The FAA created Part 36 to address this requirement, by setting standards for FAA approval of aircraft designs to receive new or revised “type certificates” for production or modification to operate in the U.S. When first promulgated in 1969, Part 36 only applied to transport-category large and turbojet-powered airplanes, the loudest aircraft types operating at that time. The transport category includes jets with takeoff weights over 12,500 pounds, and propeller-driven airplanes over 19,000 pounds. The rule set separate measurement requirements and limits for takeoff, sideline, and approach locations, in terms of “Effective Perceived Noise Level” (“EPNL”), a metric that takes noise level, duration, and pure tones into account. Amendments to Part 36 have increased the stringency of EPNdB standards for these aircraft categories and extended it to apply to a broader range of aircraft, including propeller-driven small aircraft, propeller-driven commuter category aircraft, civil-supersonic jets, helicopters, and tiltrotor aircraft. The amendments prescribe or allow use of metrics other than EPNdB for some aircraft types. However, EPNdB continues to be the prescribed standard for noise-certification of all jets, all transport-category large aircraft, and helicopters with maximum gross takeoff weights of 7,000 pounds or more. Only light-weight propeller-driven aircraft and light-weight helicopters must or may be certified using other metrics.

27. In ¶51 – 54 of his declaration, Mr. Harris addresses voluntary noise abatement efforts at HTO. ¶51 – 52 summarize background. In ¶53 Mr. Harris states his opinion that the Town failed to undertake “robust analysis of less restrictive measures, including voluntary noise abatement procedures.” In fact, the Town has pursued voluntary, non-restrictive noise abatement efforts for well over a decade. HMMH has been involved with such voluntary, non-restrictive efforts since 2003, as documented in the April 2015 East Hampton staff report titled “Development of Proposed Access Restrictions at East Hampton Airport, A Staff Compilation for the Town Board” (see pages 3 and 4). (I understand that this document is provided as Exhibit 1 to Supervisor Cantwell’s Declaration). Since at least 2003, the Town has worked continuously and cooperatively with airport pilots and operators to develop voluntary procedures, share feedback on their effectiveness, and refine them accordingly.

28. Mr. Harris notes in ¶53 that the Town amended the voluntary helicopter abatement procedures in 2014, including original publication on April 30, 2014 and revision on June 2, 2014. However, despite even those adjustments in the early part of the season, the Town received a record number of noise complaints in 2014. The Town Board reached the legitimate conclusion that voluntary, non-restrictive noise abatement measures were insufficiently effective.

29. To ensure that airport users had every opportunity to propose new non-restrictive alternatives, HMMH, Town Board, and airport staff representatives consulted and met with representatives of major helicopter and fixed-wing operator constituencies, and fixed-base operator, fuel provider, ground-support businesses on January 21, 2015. The meeting addressed the Town’s interest in feedback on voluntary abatement procedures pursued in the 2014 summer season, as amended; approaches taken to monitor, assess, and report on compliance; special circumstances meriting consideration in assessing compliance, such as weather, traffic levels,

etc.; the most effective means for communicating with operators and pilots to promote compliance; the most valuable feedback to provide operators and pilots to enhance compliance; and ideas for building on “lessons learned” in the 2014 season. At the conclusion of the meeting and in a follow-up email, the Town representatives followed up with a request for feedback on these topics. The Town did not receive any response.

#### **Comments on Expert Declaration of Mr. D. Kirk Shaffer**

30. In Section A.2 of his declaration, “Noise Mitigation Under the Federal Regulatory Scheme,” Mr. Shaffer summarizes steps and requirements of the Part 150 and Part 161 regulations. However, as noted in the preceding response to Mr. Harris’s declaration, those steps and requirements do not apply to noise studies that an airport proprietor chooses to take outside of those regulations.

31. In Section B.1 of his declaration, “The Restrictions are Unprecedented,” Mr. Shaffer states his opinion that “because the Town did not comply with Part 150 and Part 161, the FAA’s established policy and practice would require rejection of the Restrictions.” FAA policy and practice do not govern airport noise abatement efforts conducted outside of Part 150 and Part 161. Many airports with comprehensive noise abatement programs developed those programs outside of Part 150 and Part 161, and have continued to refine them after the FAA promulgation of those regulations.

32. My first professional positions in the Massport Noise Abatement Office are a highly relevant example of formal, mandatory noise abatement measures developed outside of any federal program. I was initially hired to assist in the implementation of a number of voluntary and restrictive noise abatement measures at Boston-Logan International Airport, which

were effective on January 1, 1977. Those measures included a formal restriction of the percentage of operations that any operator could conduct in aircraft that did not meet the FAA's most stringent Part 36 certification standards in effect at the time. This rule applied only to jet or turboprop aircraft with maximum certificated gross takeoff weights of 75,000 pounds or greater. The measures also included a mandatory ban on maintenance runups between midnight and 6 a.m., a mandatory ban on flight training operations between 11 p.m. and 7 a.m., a mandatory 24-hour ban on intersection takeoffs, and a mandatory 24-hour ban on operations on and off one sensitive runway end that applied to all jets and all propeller-driven aircraft with maximum certificated gross takeoff weights over 12,500 pounds.

33. Between 1977 and 1981, I assisted in the development of a late-night aircraft restriction that became effective on January 1, 1981. That restriction was a mandatory ban on operations between 10:30 p.m. and 7:00 a.m. in jet or turboprop aircraft that did not meet at least the minimum Part 36 certification standards in effect at that time.

### **Opinions Regarding the Town's Actions**

34. Based on my professional experience in the field of aircraft noise, my personal involvement in the Town's processes to address noise issues arising from operations at HTO, and my review of analyses and input provided by other consultants and citizens, I have reached the following conclusions regarding the reasonableness of the Town's approach, the appropriateness of the data on which it relied, and the reasonableness of actions it has taken.

35. The Town followed an appropriately comprehensive, methodical, and meticulous approach to defining noise problems associated with aircraft operations at HTO.



36. The Town made unusually extensive efforts to ensure that its approach was open, transparent, and well-documented.

37. The Town offered unusually extensive opportunity for all stakeholders to provide input to the definition of the noise problem, to identify potential actions to take to address the problem, to review other stakeholder input, to review analyses conducted by citizen and consultant advisors, and to comment on every step in the process.

38. The Town turned to consideration of use restrictions only after spending more than a decade conducting an exhaustive effort to identify and implement non-restrictive options, and providing ample attention to all input received.

39. The Town Board reached the reasonable conclusion that non-restrictive options were insufficient to address the noise problems in a manner that addressed local needs and values.

40. The Town invested significant time, effort, and expense in identifying the data it required for its analyses and deliberations, in identifying the best means of collecting those data, and in implementing appropriate data-collection mechanisms, to ensure the data were sufficiently comprehensive and reliable.

41. The Town undertook data collection and analyses that reflect best industry practices tailored to the local East Hampton situation, needs, and values, with respect to both aviation and community interests.

42. The Town Board selected and implemented restrictions that address the noise problem in a manner that is appropriately tailored to local needs and values.

43. Published EPNdB approach levels are an appropriate basis for categorizing “noisy” aircraft for the Town’s specific purposes. The FAA itself, and its international noise-certification equivalent, the International Civil Aviation Organization (ICAO), both use EPNdB to regulate allowable noise levels for the aircraft types operating at HTO that are of primary concern; *i.e.*, jets, larger propeller-driven aircraft, and heavier helicopters. Similar to the Town’s classification of aircraft as “noisy” or “not noisy,” FAA and ICAO use EPNdB to define noisiness categories; *i.e.*, FAA’s Part 36 “Stages” and ICAO’s Annex 16 “Chapters.” FAA and ICAO use a consistent altitude – 394’ – for setting approach noise limits for jets, larger propeller-driven aircraft, and heavier helicopters, which provides a consistent distance reference.

44. The use of FAA Part 36 Stages or ICAO Chapters would be an *inappropriate* basis for addressing the Town’s problem definition. The FAA and ICAO categories take aircraft weight into account. Heavier aircraft are permitted to produce more noise. The Town’s purpose in the two restrictions that apply the 91.0 EPNdB cutoff is to apply more restrictive limits on operations in noisier aircraft, based on a locally tailored criterion. That purpose is different than the FAA’s and the ICAO’s, which are to certify broad classes of aircraft for operation on national and international bases.

45. The declaration of Eric Jungck, the Director of Operations of Eleventh Street Aviation LLC, stated that one of the primary reasons the firm had purchased a Falcon 7x is because it is a Stage 4 aircraft. He also states that the Falcon 7x is “one of the quietest jets in operation.” He is correct that the FAA has certified the Falcon 7x as a Stage 4 aircraft. FAA Advisory Circular (“AC”) 36-1H (Change 1), “Noise Levels for U.S. Certificated and Foreign Aircraft,” lists an approach level of 92.6 EPNdB for this aircraft type, with a maximum certificated takeoff weight of 69,000 to 70,000 pounds and a maximum certificated landing

weight of 62,400 pounds. However, the Stage 4 classification takes into account the aircraft's weight, which allows heavier aircraft to make more noise. The Falcon 7x is quiet *relative to its weight*; but it is *not* quiet on an *absolute basis relative to other aircraft operating at HTO*, even in some cases relative to other, heavier Stage 4 jets. For example, the significantly heavier Gulfstream V, with a maximum certificated takeoff weight of 90,500 pounds and a maximum certificated landing weight of 75,300 pounds – both well above the Falcon 7x – has a published approach level of only 90.8 EPNdB, 1.8 EPNdB less than the Falcon 7x.

46. The Boeing 747-8F freighter provides an extreme example of how the Part 36 weight-based certification process can lead to a very noisy aircraft – relative to those operating at HTO – being classified as Stage 4. The heaviest 747-8F model listed in AC 36-1H (Change 1) has a maximum certificated takeoff weight of 975,000 pounds and a maximum certificated landing weight of 761,000 pounds, more than ten times the weight of the Falcon 7x, and a published approach level of 100.9 EPNdB, 8.3 EPNdB more than the Falcon 7x and 10.1 EPNdB more than the GV, yet it is still certificated as a Stage 4 aircraft.

47. The Town Board selected the 91.0 EPNdB cutoff based on extensive deliberations and analyses undertaken by the HTO Airport Planning Committee, Noise Subcommittee. The selection of a noisiness definition based on local needs and values is the appropriate approach for an airport proprietor to take.

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



Ted Baldwin

Executed this 8<sup>th</sup> day of May, 2015 in Burlington, Massachusetts

A-339

# **EXHIBIT 1**

**HMMH**

77 South Bedford Street  
 Burlington, MA 01803  
 Tel. (781) 229-0707  
 Fax (781) 229-7939  
 W www.hmmh.com

**MEMORANDUM**


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**To:** Councilwoman Kathee Burke-Gonzalez, East Hampton Town Board  
**Copy:** E. Vail, East Hampton Town Attorney  
 P. Kirsch, C. Van Heuven, and W. E. Pilsch, Kaplan Kirsch & Rockwell  
**From:** Ted Baldwin and Sean Doyle  
**Date:** April 10, 2015  
**Subject:** Documentation of HMMH Noise Analyses  
**Reference:** HMMH Project 307162.002

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In response to the East Hampton Town Board's request, HMMH is pleased to provide this memorandum that documents HMMH roles in the process that led to proposed legislation (and associated implementation-related materials) to address disturbance from operations at East Hampton Airport (HTO).

**1. BACKGROUND**

The study process included three noise-analysis "phases." HMMH assisted on the second and third phases, and provided follow-up assistance related to implementation of the proposed legislation, in a "fourth" step.

- 1) In an October 30, 2014 Special Meeting, the Town Board heard a joint citizen and consultant presentation of a "Phase 1 Noise Analysis Interim Report," which proposed a "preliminary draft problem definition" and a "list of potential alternatives to address that definition." *HMMH was not involved in this phase.* The Town Board reached consensus to proceed with the next study phase, to recommend: (1) a final problem definition and (2) a refined list of alternatives that offer the best promise for addressing that problem. The Town subsequently retained HMMH to assist with the "Phase 2" effort.
- 2) On December 2, 2014, Ms. van Heuven of Kaplan Kirsch & Rockwell LLP (KKR) and I presented the "Phase 2 Noise Analysis" results, which culminated in recommendation of: (1) a final problem definition, and (2) a short list of the most promising alternatives for addressing that problem. The Town Board subsequently directed HMMH and KKR to undertake a third study phase to evaluate those alternatives.
- 3) On February 4, 2014, I assisted Ms. van Heuven and Mr. Kirsch of KKR in presenting the Phase 3 results, titled "Regulations to Address Noise and Disturbance from Operations at East Hampton Airport." The results included estimates of the affected operations and associated noise complaints for a four-element solution to the problem definition, based on a November 1, 2013 – October 31, 2014 analysis year.

The Town Board considered verbal public input made at the February 4 meeting, a subsequent March 3 work session, and a March 12 public hearing; and written input received via mail, and via email through a link on the Town's website. Based on this input, the Board requested that HMMH assist in assessing additional restriction alternatives, again in terms of estimates of the affected operations and associated noise complaints. Those analyses led the Town Board to propose legislation for a revised three-element solution to the problem definition.

- 4) The Town Board then requested that HMMH provide implementation-related materials.

This memorandum responds to a final request by the Town that we document our technical assistance, including data sources, assumptions, citations, analytical process, etc., to describe the steps we undertook in preparing information the Board took into account in making decisions regarding the proposed legislation. We understand this documentation will be posted on the Town's website<sup>1</sup> or on a project-specific website ("htoplanning.com")<sup>2</sup> that the Town and KKR have established to present the "administrative record" for the legislative process.

The following three sections address HMMH's assistance related to the Phase 2 analyses (Section 2), the Phase 3 analyses (Section 3), and preparation of implementation materials (Section 4). Supporting materials are either incorporated into this document, provided electronically for posting on the Town or project website (with hypertext links in this document), or already are posted on one of the websites (again, with hypertext links). The relevant location is noted in each case.

<sup>1</sup> <http://ehamptonny.gov/HtmlPages/AirportInterimNoiseAnalysis.html>

<sup>2</sup> <http://www.htoplanning.com/>



Memorandum to: Councilwoman Kathee Burke-Gonzalez, East Hampton Town Board  
Documentation of HMMH Noise Analyses

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## 2. HMMH ASSISTANCE WITH PHASE 2

HMMH assistance with Phase 2 addressed four task areas:

- Task 1 – Review Phase 1 Interim Report and Analysis
- Task 2 – Collect and Analyze Most Recent 12 Months of Complaint and Operations Data
- Task 3 – Refine Problem Definition and Identify Most Relevant Alternative(s)
- Task 4 – Prepare for and Participate in December 2, 2014 Town Board Presentation

### 2.1 Task 1 – Review Phase 1 Interim Report and Analysis

Under this task, HMMH reviewed the summary Phase 1 documentation presented at the October 30, 2014 meeting and related technical background.

#### 2.1.1 Work Product(s)

There is no product for this task; its purpose was assisting HMMH to come up to speed on issues, prior work completed, and other background.

#### 2.1.2 Specific HMMH Activities

HMMH reviewed the summary Phase 1 documentation provided on the Town website under the heading “OCTOBER 30, 2014 PRESENTATIONS,” including:

- Phase I Noise Analysis Interim Report  
(<http://ehamptonny.gov/DocumentsPDF/Airport/AirportNoiseInterim/PhaseINoiseAnalysisInterimReportFINAL.pdf>)
- Analysis of 2014 YTD Noise Complaints  
(<http://ehamptonny.gov/DocumentsPDF/Airport/AirportNoiseInterim/Analysis2014YTDNoiseComplaintsFINAL.pdf>)
- Update on Disturbance from Operations  
(<http://ehamptonny.gov/DocumentsPDF/Airport/AirportNoiseInterim/UpdateDisturbanceOperationsFINAL.pdf>)
- October 30, 2014 Handout  
(<http://ehamptonny.gov/DocumentsPDF/Airport/AirportNoiseInterim/October30Handout.pdf>)

Ted Baldwin viewed the online video of the October 30<sup>th</sup> presentations, via the East Hampton LTV website, <http://www.ltveh.org/>.

HMMH reviewed technical material used in preparing the interim reports. The material is provided on the “<http://www.htoplanning.com/>” website, including:

- <http://www.htoplanning.com/.docs/Town Documents/141105 INM Case Echo Report Annual Average Helicopters 2013.PDF>
- <http://www.htoplanning.com/.docs/Town Documents/141105 INM Case Echo Report Busy Day Fixed Wing Plus Helicopters.PDF>
- <http://www.htoplanning.com/.docs/Town Documents/141105 INM Case Echo Report Busy Day Helicopters 2013.PDF>
- <http://www.htoplanning.com/.docs/Town Documents/141105 INM Case Echo Reports Annual Average 2013.PDF>
- <http://www.htoplanning.com/docs/Town Documents/150105 Young Environmental Sciences Technical Memorandum, INM Noise Contour Development for 2013 Input Data.PDF>

HMMH provided guidance to the Town Board and staff regarding the sufficiency of this documentation.

HMMH reviewed other background materials that were available prior to December 2014. Those materials currently are provided on the “[htoplanning.com](http://www.htoplanning.com/)” website. HMMH did not fully review all of these materials. We focused on the following, and briefly reviewed others:

- Town “Noise Subcommittee” meeting minutes and findings currently presented under the “[Town - Appointed Committee Documents](#)” heading.
- Documentation of noise abatement procedures and aircraft operations, presented under the “[Other](#)” heading.
- Documentation of the “New York North Shore Helicopter Route” under the “[FAA Documents](#)” heading.

**HMMH**

Memorandum to: Councilwoman Kathee Burke-Gonzalez, East Hampton Town Board  
Documentation of HMMH Noise Analyses

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## 2.2 Task 2 – Collect, Analyze, and Compare Most Recent 12 Months of Complaint and Operations Data

Under this task, HMMH obtained and analyzed complaint and operations data for the 12 months from November 1, 2013 through October 30, 2014, in order to evaluate the most current feedback on aircraft operations and compare that feedback to the varying levels of activity at the airport over the same time period.

The complaint data were obtained from the HTO PlaneNoise complaint system. The operations data were obtained from the HTO Vector operations-monitoring system. The information from these two sources provided valuable bases for refining the problem definition in Phase 2 and for estimating the numbers of operations that would have been affected by alternative restrictions considered in Phase 3 (if those restrictions had been in place over that period), and also for estimating the associated numbers of complaints.

The PlaneNoise system is a web-based aircraft noise-complaint-management application that automates and simplifies the labor- and cost-intensive tasks of noise complaint collection, response, database-management, and reporting. The HTO installation accepts complaints submitted via webform, telephone, and email.

The PlaneNoise complaint database has many advantages, including:

- It is highly statistically significant, since it represents a complete set of the noise complaints registered with the Town over the time period of interest, in this case covering an 12 months of airport operations.
- It contains a broad range of data regarding complaint time, location, source, etc.
- It was current, in that it covered the most recent 12 months of information at the start of HMMH's assistance.

The Town installed the Vector operations-monitoring system to serve the primary purpose of automatically collecting the most accurate and complete information feasible on aircraft landings, in order to assess landing fees. In practice it has been determined that the installation also captures a majority of departures.

The system uses cameras placed at strategic locations on the airfield to detect and photograph aircraft operations. The system then "reads" aircraft registration numbers and Vector uses that information to identify the aircraft, owner/operator, aircraft type, etc., as feasible. Since any automatic data-collection system has limitations compared to human observers, Vector staff manually review difficult images to improve accuracy. When possible, HTO staff members also monitor operations visually and manually log them. Those manual logs are provided to Vector for cross-referencing with the automatically collected data in order to fill in manually logged operations that the automatic system may have missed.

The Vector operations database has many advantages, including:

- It represents the best available source of information on actual operations at the airport.
- It contains a broad range of data regarding operation type, time, aircraft type, powerplant type, etc.
- It was current, in that it covered the most recent 12 months of information at the start of HMMH's assistance.
- It represents a large, statistically significant data sample.

### 2.2.1 Work Products

Under this task, HMMH analyzed complaint data to seek out patterns that reveal issues of greatest concern to the greatest numbers of residents. We looked for patterns related to combinations of factors (such as geographic distribution, season, day of week, time of day, aircraft-type category, etc.) that elicited the greatest community reaction. We used the citizen-provided information on the operations of concern; i.e., the aircraft-type category about which they were registering a complaint. The PlaneNoise options include: jet, helicopter, prop, seaplane, unknown, and multiple.

The primary work products of this task were:

- Elements of the December 2, 2014 PowerPoint presentation titled "East Hampton Airport Phase II Noise Analysis." That presentation is available on the "htoplanning.com" website, at <http://www.htoplanning.com/docs/Town Documents\141202 Phase II Noise Analysis Presentation, HMMH.PPTX>. Sections 2.2.2 through 2.2.7 discuss the development of the specific elements of that presentation related to this task.
- The PlaneNoise data file used in preparing elements of the December 2, 2014 presentation, with HMMH addition of geographic information. Section 2.2.2 discusses the development of the file. It is available at: <http://www.htoplanning.com/docs/TownDocuments\150410 PLANE NOISE COMPLAINTS DATA names and addresses redacted.xlsx>.

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- The Vector operations data file used in elements of the December 2, 2014 presentation, with HMMH addition of geographic information. Section 2.2.3 discusses the development of the file. It is available at: [http://www.htoplanning.com/docs/TownDocuments\150410 VECTOR\\_OPERATIONS\\_data\\_reg\\_num\\_redacted.xlsx](http://www.htoplanning.com/docs/TownDocuments\150410 VECTOR_OPERATIONS_data_reg_num_redacted.xlsx)
- A spreadsheet used to prepare to prepare the fifth page of the December 2, 2014 PowerPoint presentation cited above, at: [http://www.htoplanning.com/docs/Town Documents\150410 1\\_HTO\\_complaint\\_distribution.xlsx](http://www.htoplanning.com/docs/Town Documents\150410 1_HTO_complaint_distribution.xlsx). Section 2.2.4 discusses the file.
- A spreadsheet used to prepare the 14<sup>th</sup> – 18<sup>th</sup> pages of the December 2, 2014 PowerPoint presentation, at: [http://www.htoplanning.com/docs/Town Documents\150410 2\\_HTO\\_daily\\_operations\\_statistics.xlsx](http://www.htoplanning.com/docs/Town Documents\150410 2_HTO_daily_operations_statistics.xlsx). Section 2.2.6 discusses the file.
- A spreadsheet used to prepare the 20<sup>th</sup>, 21<sup>st</sup>, and 24<sup>th</sup> pages of the December 2, 2014 PowerPoint presentation, at: [http://www.htoplanning.com/docs/TownDocuments\150410 3\\_HTO\\_operations\\_complaints\\_comparison.xlsx](http://www.htoplanning.com/docs/TownDocuments\150410 3_HTO_operations_complaints_comparison.xlsx). Section 2.2.7 discusses the file.



### 2.2.2 Specific HMMH Activities – PlaneNoise Complaints Data File

With HTO staff assistance, HMMH downloaded the 12 months of PlaneNoise records in “CSV” (comma- or character-separated variable) data-file format.

HMMH edited this file in three ways:

- It was saved in Microsoft Excel “.xlsx” format.
- The PlaneNoise data included complainant address information. To plot those locations on a map and look for geographic patterns, HMMH “geocoded” each address to obtain its latitude and longitude, through the use of the “GPS Visualizer’s Address Locator” utility available at <http://www.gpsvisualizer.com/geocoder/>. The PlaneNoise CSV file was opened in the utility and the data were processed using the option of Bing Maps to be the source of latitude and longitude data.<sup>3</sup>
- Annotation was added at the top of the file (to the right of the first rows of data) to describe the contents of each column. That annotation is reproduced below:

PLANE_NOISE_COMPLAINTS_data.xlsx Column Descriptions	
ID:	Discrete complaint identification number assigned by PlaneNoise.
Address:	Complainant-reported street address.
Aircraft_Type:	Complainant-chosen aircraft-type description (of aircraft responsible for complaint).
City:	Complainant-reported jurisdiction.
Email_Body:	Complainant-provided comments. PlaneNoise automatic voice-to-text transcription from voicemails. "NULL" if none provided.
Filing_Method:	Method via which complainant entered submitted complaint. “Hotline” & “Webform” submitted automatically; “Email” & “Manual” entered by PlaneNoise.
First_Name:	Complainant-provided first name.
Hamlet:	Complainant’s hamlet; identified from address by PlaneNoise.
Last_Name:	Complainant-provided last name.
State:	Complainant’s state; identified from address by PlaneNoise.
Town:	Complainant’s town; identified from address by PlaneNoise.
ZipCode:	Complainant-identified zip code
EVENTDATETIME:	Date and time complaint received via Hotline; Complainant-identified on Webform.
Latitude:	Complainant address’s latitude derived through geocoding by HMMH
Longitude:	Complainant address’s longitude derived through geocoding by HMMH

As noted previously, a redacted version of this file, with complainants’ first and last names, street addresses, and latitude/longitude removed for privacy purposes, is posted on the “htoplanning.com” website, at:

[http://www.htoplanning.com/docs/TownDocuments\150410 PLANE\\_NOISE\\_COMPLAINTS\\_DATA\\_names\\_and\\_addresses\\_redacted.xlsx](http://www.htoplanning.com/docs/TownDocuments\150410 PLANE_NOISE_COMPLAINTS_DATA_names_and_addresses_redacted.xlsx).

<sup>3</sup> Other choices were Google Maps and MapQuest. Address geocoding processes of this type are a readily available commodity-type service at this time. There is no reason to believe any of the three data sources is more or less accurate.



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### 2.2.3 Specific HMMH Activities – Vector Operations Data File

With HTO staff assistance, HMMH downloaded the 12 months of Vector operations records, also in CSV data file format. HMMH edited this file in four ways:

- It was saved in Microsoft Excel “.xlsx” format.
- Seaplane-configured Cessna 208 aircraft operating at the airport were identified through online research into their registration numbers.
- Twelve operations were removed. Nine of these were aircraft identified as large airline-type aircraft that do not operate at the airport, and in several cases further research indicated the aircraft type was inconsistent with the registration number. Three were identified as helicopters, without models identified, so no noise classification was possible. This small number of removed operations was statistically insignificant, given that it represents less than 0.05% of the remaining 25,823 operations.
- Annotation was added at the top of the file (to the right of the first rows of data) to describe the contents of each column. That annotation is reproduced below:



VECTOR_OPERATIONS_data.xlsx Column Descriptions	
Airport	Airport Code For associated operations
DateTime	Date and Time of the aircraft operation
Registration	Aircraft registration number of
CallSign	Flight number call sign for scheduled operations
Activity_Type	Notes whether the operation was an Arrival (A) or Departure (D)
ModelType	ICAO aircraft type identified by system
MaxLandingWeight	Maximum registered landing weight for the identified model type in lbs
Runway	Recorded runway the aircraft is operating from
AcftType	Aircraft Category Jet (J), Turboprop (T), Turboprop Seaplane* <sup>4</sup> (TS), Piston Prop (P), Helicopter (H)
EngType	Aircraft Engine Type Jet, Turboprop, Piston
EngNum	Count of the number of engines on identified aircraft.

A redacted version of this file is posted on the “htoplanning.com” website under “Town Documents,” at: [http://www.htoplanning.com/docs/TownDocuments\150410 VECTOR\\_OPERATIONS\\_data\\_registration\\_redacted.xlsx](http://www.htoplanning.com/docs/TownDocuments\150410 VECTOR_OPERATIONS_data_registration_redacted.xlsx). The redactions remove the aircraft registration numbers (and occasionally reported any call signs), for privacy purposes.

### 2.2.4 Specific HMMH Activities – Complaint Statistics

HMMH used the data from the PlaneNoise complaints data file to prepare the fifth page of the December 2, 2014 PowerPoint presentation cited above. That slide is labelled “Some overall complaint statistics (11/1/13 – 10/31/14).” In order to prepare that slide, HMMH imported data from the PlaneNoise data file into a spreadsheet posted on the “htoplanning.com” website, at:

<http://www.htoplanning.com/docs/Town Documents\150410 1 HTO complaint distribution.xlsx>.

The spreadsheet contains the data extracted from the PlaneNoise data file and the figure that was imported into the PowerPoint.

### 2.2.5 Specific HMMH Activities – Complaint Density Plots

HMMH’s geographic information system specialist imported the location data from the PlaneNoise complaints data file into ESRI ArcGIS Version 10.1 to produce plots of “complaint density,” in terms of complaints per square mile, as presented in pages 6-11 of the December 2, 2014 PowerPoint presentation cited above, titled:

- Complaint Density - Helicopters (11/1/13 – 10/31/14)
- Complaint Density – Jets
- Complaint Density – Seaplanes
- Complaint Density - Non-Seaplane Propeller
- Complaint Density - Multiple Aircraft
- Complaint Density - Unknown Aircraft

<sup>4</sup> TS designation made by HMMH from additional evaluation of through online research into C208 registration numbers.



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## 2.2.6 Specific HMMH Activities – Daily Operations Statistics

HMMH used the data from the PlaneNoise complaints data file to prepare pages 14-18 of the December 2, 2014 PowerPoint presentation cited above, titled:

- When do operations occur? All Aircraft Operations by Day, 11/1/2013 - 10/31/2014
- When do operations occur? Helicopter Operations by Day, 11/1/2013 - 10/31/2014
- When do operations occur? Jet Operations by Day, 11/1/2013 - 10/31/2014
- When do operations occur? Turbopropeller Operations by Day, 11/1/2013 - 10/31/2014
- When do operations occur? Piston Prop Operations by Day, 11/1/2013 - 10/31/2014

In order to prepare those slides, HMMH imported data from the PlaneNoise data file into a spreadsheet posted on the “htoplanning.com” website, at:

<http://www.htoplanning.com/.docs/Town Documents\150410 2 HTO daily operations statistics.xlsx>.



The spreadsheet contains the data extracted from the PlaneNoise data file and the figures that were imported into the PowerPoint.

## 2.2.7 Specific HMMH Activities – Complaints versus Operations Plots

HMMH used the data from the PlaneNoise complaints data file to prepare the 20<sup>th</sup>, 21<sup>st</sup>, and 24<sup>th</sup> pages of the December 2, 2014 PowerPoint presentation cited above, titled:

- Annual complaints versus operations 11/1/13 - 10/31/14
- Seasonal complaints versus operations 5/1 - 10/31/14
- Complaints per operation (all aircraft types) versus activity across the average annual week, 11/1/13-10/31/14

In order to prepare those slides, HMMH imported data from the PlaneNoise data file into a spreadsheet posted on the “htoplanning.com” website, at:

<http://www.htoplanning.com/.docs/Town Documents\150410 3 HTO operations complaints comparison.xlsx>.

The spreadsheet contains the data extracted from the PlaneNoise complaint data file the Vector and the figures that were imported into the PowerPoint.

## 2.3 Task 3 – Refine Problem Definition and Identify Most Relevant Alternative(s)

Under this task, HMMH collaborated with KKR in preparing:

- The refined problem definition presented on page 26 of the December 2, 2014 PowerPoint presentation.
- The list of possible alternatives presented on page 27 of the December 2, 2014 PowerPoint presentation, and further reviewed on pages 28-34.
- The conclusion and recommendation presented on page 35 of the December 2, 2014 PowerPoint presentation.

## 2.4 Task 4 – Prepare for and Participate in December 2, 2014 Town Board Presentation

Under this task, HMMH collaborated with KKR in finalizing and making the December 2 PowerPoint presentation.

## 3. HMMH ASSISTANCE WITH PHASE 3

HMMH assistance with Phase 3 addressed six task areas:

- Task 1 – Summarize Research into Helicopter Noise Characteristics and Effects
- Task 2 – Research Whether Other Categories Elicit Strong Complaint Response
- Task 3 – Further Refine Temporal Dimensions of the Problem Definition
- Task 4 – Estimate Reductions in Noise Complaints from Abatement Alternatives
- Task 5 – Coordinate with Helicopter Operators to Assess Voluntary Approaches
- Task 6 – Prepare for and Participate in February 3, 2015 Town Board Presentation

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Documentation of HMMH Noise AnalysesPage 7  
April 10, 2015**3.1 Task 1 – Summarize Research into Helicopter Noise Characteristics and Effects**

The Phase 2 analysis of HTO complaint and operations data revealed that helicopters elicit much stronger response from residents than fixed-wing aircraft types. To assist the Town in understanding this response, HMMH identified and summarized research that has been conducted into: (1) the extent to which response to helicopter noise differs from that due to fixed-wing aircraft, (2) the aspects of helicopter noise that make it more disturbing, (3) possible means for quantifying the differences, and (4) other available results that might assist the Town in understanding the issue and crafting the most appropriate noise-abatement approach.

The HMMH report titled “Review of Studies that Address Effects of Helicopter Noise” describes the research conducted under this task and the associated results and conclusions. The report is provided on the “www.htoplanning.com” website at: [docs/Town Documents/150203 HMMH Memorandum re Review of Studies that Address Effects of Helicopter Noise.PDF](#).

These results were summarized and presented on page 16 of the February 4 and 10, 2015 PowerPoint presentations, discussed in Sections 3.4.1 and 3.4.2.

**3.2 Task 2 – Research Whether Other Categories Elicit Strong Complaint Response**

Under this task, HMMH undertook two primary activities.

- Refine Activity Categories that Fall under Problem Definition
- Review and Comment on Proposed Noisy Aircraft Definitions

Sections 3.2.1 and 3.2.2 discuss these two activities.

**3.2.1 Refine Activity Categories that Fall under Problem Definition**

HMMH conducted additional research into the available HTO complaint and operations data to identify specific categories of aircraft that fit within the problem definition of “frequent” and “disturbing” operations. The primary focus was on seaplane models. HMMH used the online research discussed in Section 2.2.3 to distinguish which operations were undertaken in seaplane-configured Cessna 208 aircraft. The research did not reveal a stronger response to seaplane-configured aircraft compared to aircraft with conventional landing gear.

The Vector data indicate that the Cessna 208 Caravan with floats was the only recognizable seaplane model operating at HTO in the analysis year in any substantial numbers. For example, page 13 of the December 2, 2014 “Phase II Noise Analysis” presentation referenced in Section 2.2.1 notes that approximately 25% of all annual operations were conducted by 25 specific aircraft, of which five were turbopropeller seaplanes. All five of those seaplanes were Cessna 208s. Review of aircraft certification data presented in the European Aviation Safety Agency (EASA) “Noise Type Certificates - Approved Noise Levels” data files discussed in Section 4.2.1, show that Cessna 208 variants with floats can be quieter than variants with conventional landing gear.

To supplement this information, HMMH analyzed FAA noise-modeling estimates of the noise levels produced by land and seaplane (“float”) variants of the Cessna 182 (the only such land and seaplane comparison available in the model) to assess differences in noise level. The analysis was conducted using the FAA’s Integrated Noise Model (INM) version 7.0d. HMMH calculated the average arrival and departure noise levels for straight-in and out arrivals and departures of each aircraft type, at two locations. The locations were one runway length off of each end of Runway 10/28, on centerline, as shown on the following figure:

**Analysis Locations for Comparing INM-Based Estimates of Relative Aircraft Noisiness**

Source: HMMH



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The following table presents the average arrival and departure levels for each aircraft at the two locations, and also the overall arrival/departure average. The float-equipped aircraft is quieter on departure and overall, although noisier on arrival.<sup>5</sup>

**Comparison of INM-Based SEL Values for Cessna 182 Conventional and Float-Equipped Variants**  
Source: HMMH

Operation / Aircraft Type	Average SEL Calculated at the Two Analysis Locations for Each Aircraft Type:		Difference (Negative means Float Plane is Quieter)
	CNA182 Land	CNA182FLT Sea	
Arrival	79.5	89.7	10.2
Departure	94.6	90.6	-4.0
Arrival / Departure Average	91.7	90.2	-1.5



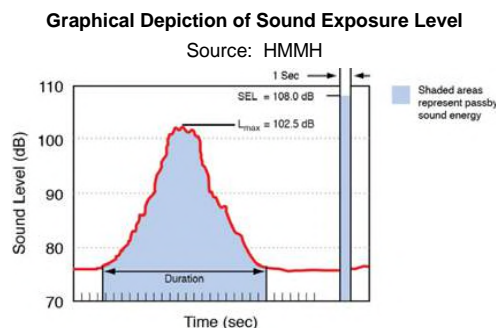
### 3.2.2 Review and Comment on Proposed Noisy Aircraft Definitions

HMMH reviewed the draft aircraft noise-rating approach proposed by the HTO Airport Planning Committee, Noise Subcommittee in its October 28, 2014 memorandum to Councilwoman Kathee Burke-Gonzalez titled “Eighth Preliminary Findings and Recommendations – Alternatives for Noise Control for Town Board Considerations.” That report is available at: <http://www.htoplanning.com/docs/Town - Appointed Committee Documents/141028 Noise sub-committee 8th Findings - Alternatives for Noise Control.PDF>.

That report recommended establishing noise ratings based on FAA-published “Part 36” aircraft noise-certification levels. Appendix A of this report provides an introduction to Part 36. That appendix notes that noise limits and metrics, and measurement locations and procedures vary according to aircraft classifications. Specifically, some Part 36 ratings are in terms of SEL and some are Lmax, both of which are in terms of the A-weighted decibel.<sup>6</sup> Others are in terms of Effective Perceived Noise Level (“EPNL” or “EPNdB”).<sup>7</sup>

In somewhat more detailed terms, noise metrics used in certification are as follow:

<sup>5</sup> HMMH undertook this analysis in terms of Sound Exposure Level (“SEL”), the metric the INM uses to take into account the total noise energy over the course of an entire noise event. By summing the sound energy over the entire event, SEL generally matches our impression of the relative overall “noisiness” of individual events, including the effects of both duration and level. In simple terms, SEL “compresses” the energy for the noise event into a single second. The following figure depicts this compression, for a hypothetical noise event.



The compression of energy into one second means that a given noise event’s SEL will almost always will be a higher value than its Lmax, as shown on the figure. For most aircraft flyovers, SEL is roughly five to 12 dB higher than Lmax. Adjustment for duration means that relatively slow and quiet helicopter or propeller aircraft can have the same or higher SEL than faster, louder jets, which produce shorter-duration events.

<sup>6</sup> An important characteristic of sound is its frequency, or “pitch.” Most people respond to sound most readily when the predominant frequency is in the range of normal conversation. The acoustical community has defined “filters” to approximate our response to sounds made up of many different frequencies. The “A weighting” filter generally does the best job of matching human response to environmental noise sources, including common transportation sources. “A-weighted decibels” are abbreviated “dBA.” The U. S. Environmental Protection Agency (EPA) and nearly every other federal, state, and international agency have adopted A-weighting for use in describing environmental and transportation noise.

<sup>7</sup> EPNL is a measure of noise dose similar to SEL. It includes a frequency weighting correction similar to – but not exactly the same as – dBA. It also includes a correction for distinct “pure tones,” which are most often significant in aircraft noise sources in the form of high-pitched “whines.”

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- Light propeller-driven aircraft (12,500 pounds or less maximum gross takeoff weight, MGTOW) are certificated in terms of overflight maximum A-weighted decibels (i.e., Lmax dBA).
- Heavy propeller-driven aircraft (over 12,500 lbs. MGTOW) and all jets are certificated in terms of approach, departure, and sideline EPNdB measurements.
- Heavy helicopters (7,000 lbs. or less MGTOW) are certificated in terms of approach, departure, and overflight (not sideline) EPNdB measurements.
- Light helicopters (under 7,000 lbs. MGTOW) may be certificated the same as heavy helicopters or in terms of overflight SEL measurements alone.

On pages 11 and 12 of their report, the Noise Subcommittee recommended using FAA-published EPNdB and dBA (including both SEL and Lmax) levels to identify multiple aircraft noise classifications:

Most aircraft are classified by the FAA based on the noise they produce, either with a dBA rating or an EPNdB rating in decibels. The dBA rating is approximately equivalent to EPNdB less 13 decibels. However, EPNdB has three separate ratings, approach (AP), take-off (TO), and flyover (FO). For EPNdB, it is proposed that the highest of the three ratings, AP, TO, and FO be used, converted to its dBA equivalent.

Subject to more specific professional advice, the committee preliminarily proposes that aircraft rated at 80 dBA (or EPNdB equivalent) be classified as “most noisy,” (most helicopters and many jets), aircraft rated below 75 dBA be classified as “least noisy,” (most light aircraft and some very quiet jets), and aircraft rated at 75 dBA and above but less than 80 dBA be classified as “noisy” (a few helicopters, some quieter jets, and noisier piston aircraft). The most noisy aircraft class should be subject to the most stringent regulation or to outright prohibition. Least noisy aircraft should be accorded the greatest freedom and least regulation. Noisy aircraft can either be treated separately, with regulation less stringent than for the noisiest class, or grouped with either least noisy or most noisy aircraft for regulatory purposes, depending on the regulation. Alternatively, a level between 75 dBA and 80 dBA could be established as the dividing line for a given regulation, effectively creating only two noise classes for that purpose.

The Noise Subcommittee provided the following summary proposal on page 13 of their report:

We propose that all noise control measures considered by the Town Board ... be evaluated by application to each of three separate noise classes by aircraft type: noisiest, noisy, and least noisy, to be defined by FAA dBA rating or equivalent maximum EPNdB rating with the aid of professional assistance. We tentatively propose the classes be defined by FAA noise ratings of 80 dBA (or EPNdB equivalent) and above for the noisiest, 75 dBA up to but less than 80 dBA for the noisy, and below 75 dBA for the least noisy.

This proposal raised several concerns:

- Multiple noise classifications would require regulations that would be difficult to evaluate, explain, and administer.
- Using the same decibel-level cutoff for aircraft certified using Lmax, SEL, and EPNL could lead to inconsistent ratings, since the same Lmax, SEL, and EPNL decibel levels would reflect different perceived noisiness, and the relative order of the noisiness could vary from operation to operation.
- There is no precise method of translating or equating Lmax, SEL, and EPNL values, nor even any industry-recognized “rules of thumb” for making rough approximations.
- FAA publishes Lmax, SEL, and EPNL certification values for a variety of locations relative to distance from start-of-takeoff roll, distance from landing threshold, and perpendicular offset from the runway sideline. In addition, some data are for level flyover, rather than approach, departure or sideline.

After reviewing the Noise Subcommittee recommendation in light of the Phase 2 noise analysis results and the final problem definition, HMMH recommended that the Town consider ranking aircraft based on published EPNL approach data, which the FAA and the International Civil Aviation Organization (ICAO) use to regulate the allowable noise levels of the aircraft types of primary concern at HTO; i.e., jets, larger propeller-driven aircraft, and heavier helicopters. In addition, FAA and ICAO use a consistent altitude – 394’ – for setting approach noise limits for these three aircraft categories, providing a consistent distance reference.<sup>8</sup>

<sup>8</sup> ICAO noise certification standards are set forth in Annex 16 to the Convention on International Civil Aviation, “Environmental Protection,” Volume II, “Aircraft Engine Emissions.” FAA regularly amends Part 36 to “harmonize” U.S. regulations with any revisions made to ICAO Annex 16.

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The Noise Subcommittee's January 20, 2015 memorandum to the Town Board titled "Final Report and Recommendations," recommended a three-part definition of "noisiest" aircraft:<sup>9</sup>

- For aircraft with published EPNL values, "noisiest" would be those with published levels of 91 EPNdB or greater.
- For aircraft without published EPNL values, but with published SEL values, "noisiest" would be those with published SEL values of 84 dBA or greater.
- For aircraft with only published Lmax values, "noisiest" would be those with published levels of 80 dBA Lmax or greater.

After considering this input, the Town Board requested that HMMH evaluate alternatives that considered two categories of "noisy" aircraft:

- If EPNL ratings are published by U.S. or international regulatory bodies, noisy aircraft are those with approach levels  $\geq 91.0$  EPNdB (consistent with the subcommittee's proposal).
- For aircraft with no published EPNL rating, noisy aircraft are those with published flyover levels  $\geq 81.0$  SEL or Lmax (a simplification of the subcommittee's proposal for separate 84 dB SEL and 80 dB Lmax cutoffs).

Section 3.4 presents analysis results for alternatives that applied: (1) both of these definitions and (2) only the EPNL definition.

### 3.3 Task 3 – Further Refine Temporal Dimensions of the Problem Definition

Under this task, HMMH and Town representatives reviewed the temporal distributions and relationships of noise and complaints prepared in the Phase 2 analyses, as discussed in Section 2.2 (in particular the Section 2.2.7 plots of complaints versus operations).

To assist in their deliberations related to definition of nighttime restrictions, the Town Board requested that HMMH provide additional detail on operations and noise complaints in the October 1, 2014 – September 30, 2015 analysis period that occurred under a number of specific time intervals, as shown in the following table:

#### Operations and Noise Complaints October 1, 2014 – September 30, 2015 for Various Time Intervals

Source: HMMH

Time Interval	Affected Operations			Associated Complaints		
	All Helos	All Fixed	All Aircraft	All Helos	All Fixed	All Aircraft
8 - 9 pm	257	452	709	703	167	870
9 - 10 pm	134	260	394	433	93	526
10 - 11 pm	90	145	235	289	52	341
Existing voluntary curfew (11 pm – 7 am)	199	382	581	747	141	888
7 - 8 am	241	579	820	867	217	1,084
8 - 9 am	330	856	1,186	946	294	1,240
9- 10 am	316	1,173	1,489	809	386	1,195
8 pm – 8 am	1,567	3,847	5,414	4,794	1,350	6,144
24-Hour Total	7,047	18,670	25,717	16,152	6,316	22,468

Based on the review of the Phase 2 results and this supplemental information, the Town Board made the following policy determinations associated to time-related definitions for consideration in the evaluation of potential access restrictions:

- Season: *May 1 – September 30*
- Weekend: *Thursday noon – Monday noon*
- Holidays: *Memorial Day, Independence Day and Labor Day, also including the days before and after*
- Basic curfew hours: *11 p.m. – 7 a.m.*
- Extended curfew hours: *8 – 11 p.m. and 7 – 9 a.m.*

<sup>9</sup> That report is available at: <http://www.htoplanning.com/docs/Town - Appointed Committee Documents/150120 Final Report and Recommendations of the Noise Subcommittee.PDF>. Pages 40-41 present these three "noisy aircraft" definitions.





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### 3.4 Task 4 – Estimate Reductions in Noise Complaints from Abatement Alternatives

Under this task, HMMH evaluated the numbers of operations that would have been affected and the associated noise complaints in the October 1, 2014 – September 30, 2015 analysis period for a range of potential use restrictions, including:

1. Prohibit all aircraft operations year-round from 11 pm – 7 am
2. Prohibit noisy aircraft year-round during 8 pm – 9 am evening, night, and early morning hours (extends curfew into “shoulder hours”)
3. Prohibit all helicopter operations on weekends and holidays in the summer season (May 1 – September 30)
4. Prohibit all noisy aircraft from conducting more than one take-off and one landing in any calendar week in the summer season
- 5a. Prohibit noisy helicopters from conducting more than two take-offs and two landings in any calendar week in the summer season
- 5b. Prohibit noisy helicopters from conducting more than one take-off and one landing in any calendar week in the summer season



HMMH analyses addressed various combinations of these alternatives and “noisy aircraft” definitions, as discussed in Section 3.2.2. The following five overall combinations were considered:

#### 3.4.1 Evaluation of Alternative Restrictions 1 – 4, including EPNL, Lmax, and SEL Definitions of “Noisy Aircraft”

This assessment evaluated alternatives 1 – 4 listed above, with a noisy aircraft definition that generally followed the Noise Subcommittee’s recommendation (discussed in Section 3.2.2) for considering noisy aircraft cutoffs based on EPNL, Lmax, and SEL, using the following cutoffs:

- If EPNL ratings are published by U.S. or international regulatory bodies, noisy aircraft are those with approach levels  $\geq 91.0$  EPNdB.
- For aircraft with no published EPNdB rating, noisy aircraft are those with published flyover levels  $\geq 81.0$  SEL or Lmax (a simplification of the subcommittee’s proposal for separate 84 dB SEL and 80 dB Lmax cutoffs).

The results are presented in the February 4, 2015 PowerPoint titled “Regulations to Address Noise and Disturbance from Operations at East Hampton Airport,” which is available on the “htoplanning.com” website, at <http://www.htoplanning.com/docs/Town Documents/150204 HMMH and KKR presentation on Regulations to Address Noise and Disturbance from Operations at East Hampton Airport.PDF>.

#### 3.4.2 Evaluation of Alternative Restrictions 1 – 4, including only an EPNL Definition of “Noisy Aircraft”

This assessment evaluated alternatives 1 – 4 listed above, with a noisy aircraft definition based solely on EPNL:

- If EPNL ratings are published by U.S. or international regulatory bodies, noisy aircraft are those with approach levels  $\geq 91.0$  EPNdB

The results are presented in the February 10, 2015 PowerPoint titled “Regulations to Address Noise and Disturbance from Operations at East Hampton Airport,” which is available on the “htoplanning.com” website, at [http://www.htoplanning.com/docs/Town Documents/150210 Regulations to Address Noise and Disturbance from Operations at East Hampton Airport \(Updated PowerPoint\).PDF](http://www.htoplanning.com/docs/Town Documents/150210 Regulations to Address Noise and Disturbance from Operations at East Hampton Airport (Updated PowerPoint).PDF).

#### 3.4.3 Evaluation of Alternative Restrictions 1, 2, and 4, including only an EPNL Definition of “Noisy Aircraft”

This assessment evaluated alternatives 1, 2, and 4 listed above, with a noisy aircraft definition based solely on EPNL; i.e., if EPNL ratings are published by U.S. or international regulatory bodies, noisy aircraft are those with approach levels  $\geq 91.0$  EPNdB. The results are presented in the April 7, 2015 PowerPoint titled “Regulations to Address Noise and Disturbance from Operations at East Hampton Airport,” which is available on the “htoplanning.com” website, at <http://www.htoplanning.com/docs/Town Documents/150407 HMMH Powerpoint Presentation, Regulations to Address Noise and Disturbance from Operations at East Hampton Airport.PDF>.

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### 3.4.4 Evaluation of Alternative Restrictions 1, 2, and 5a, including only an EPNL Definition of "Noisy Aircraft"

This assessment evaluated alternatives 1, 2, and 5a listed above, with a noisy aircraft definition based solely on the EPNL; i.e., if EPNL ratings are published by U.S. or international regulatory bodies, noisy aircraft are those with approach levels  $\geq 91.0$  EPNdB. No PowerPoint presentation was prepared for this combination of alternatives. The results were shared with the Town Board for internal deliberative purposes. The following table summarizes the cumulative results.

**Combined Outcomes of Restrictions 1 (Prohibit all aircraft operations year-round from 11 pm – 7 am), 2 (Prohibit noisy aircraft year-round during 8 pm – 9 am), and 3 (Prohibit noisy helicopters from conducting more than two take-offs and two landings in any calendar week in the summer season)**

Source: HMMH

	May 1 – September 30, 2015			October 1, 2014 – September 30, 2015		
	Helicopters	Fixed-Wing	All Aircraft	Helicopters	Fixed-Wing	All Aircraft
Estimated Number of Operations Affected	3,597	552	4,149	3,756	652	4,408
Total Existing Operations in Category	5,855	14,004	19,859	7,044	18,670	25,714
% Total Operations Affected by Restrictions 1, 2, and 5a	61.4%	3.9%	20.9%	53.3%	3.5%	17.1%
Estimated Associated Complaints	9,588	704	10,291	9,782	740	10,523
Total Existing Complaints in Category	14,935	5,999	20,934	16,152	6,316	22,468
% Total Complaints Associated with Restrictions 1, 2, and 5a	64.2%	11.7%	49.2%	60.6%	11.7%	46.8%

### 3.4.5 Evaluation of Alternative Restrictions 1, 2, and 5b, including only an EPNL Definition of "Noisy Aircraft"

This assessment evaluated alternatives 1, 2, and 5b listed above, listed above, with a noisy aircraft definition based solely on the EPNL; i.e., if EPNL ratings are published by U.S. or international regulatory bodies, noisy aircraft are those with approach levels  $\geq 91.0$  EPNdB. No PowerPoint presentation was prepared for this combination of alternatives. The results were shared with the Town Board for internal deliberative purposes. The following table summarizes the cumulative results.

**Combined Outcomes of Restrictions 1 (Prohibit all aircraft operations year-round from 11 pm – 7 am), 2 (Prohibit noisy aircraft year-round during 8 pm – 9 am), and 3 (Prohibit noisy helicopters from conducting more than one take-off and one landing in any calendar week in the summer season)**

Source: HMMH

	May 1 – September 30, 2015			October 1, 2014 – September 30, 2015		
	Helicopters	Fixed-Wing	All Aircraft	Helicopters	Fixed-Wing	All Aircraft
Estimated Number of Operations Affected	4,728	552	5,280	4,887	652	5,539
Total Existing Operations in Category	5,855	14,004	19,859	7,044	18,670	25,714
% Total Operations Affected by Restrictions 1, 2, and 5b	80.8%	3.9%	26.6%	69.4%	3.5%	21.5%
Estimated Associated Complaints	12,230	704	12,934	12,425	740	13,166
Total Existing Complaints in Category	14,935	5,999	20,934	16,152	6,316	22,468
% Total Complaints Associated with Restrictions 1, 2, and 5b	81.9%	11.7%	61.8%	76.9%	11.7%	58.6%

### 3.5 Details of Analyses

The HMMH analyses of affected operations and associated noise complaints were performed using Excel spreadsheets that incorporated operations and complaint data assembled, analyzed, and enhanced through the steps discussed in Section 2.2.

The HMMH analyses are embodied in three spreadsheets:





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- **4\_HTO\_preliminary\_restriction\_analyses.xlsx:** This spreadsheet provided the results discussed in Section 3.3. It is available at [http://www.htoplanning.com/#Town\\_Documents/150410\\_4\\_HTO\\_preliminary\\_restriction\\_analyses.xlsx](http://www.htoplanning.com/#Town_Documents/150410_4_HTO_preliminary_restriction_analyses.xlsx).
- **5\_HTO\_feb04\_restriction\_analyses.xlsx:** This spreadsheet provided the results discussed in Section 3.4.1. It is available at [http://www.htoplanning.com/#Town\\_Documents/150410\\_5\\_HTO\\_feb04\\_restriction\\_analyses.xlsx](http://www.htoplanning.com/#Town_Documents/150410_5_HTO_feb04_restriction_analyses.xlsx).
- **6\_HTO\_post\_feb04\_restriction\_analyses.xlsx:** This spreadsheet provided the results discussed in Sections 3.4.2, 3.4.3, 3.4.4, and 3.4.5. It is available at [http://www.htoplanning.com/#Town\\_Documents/150410\\_6\\_HTO\\_post\\_feb04\\_restriction\\_analyses.xlsx](http://www.htoplanning.com/#Town_Documents/150410_6_HTO_post_feb04_restriction_analyses.xlsx).

### 3.6 Task 5 – Coordinate with Helicopter Operators to Assess Voluntary Approaches

Under this task, HMMH, Town Board, and airport staff representatives consulted and met with representatives of major helicopter and fixed-wing operator constituencies, and fixed-base operator, fuel provider, ground-support businesses. The group met on January 21, 2015. The meeting addressed the Town’s interest in feedback on:

- Voluntary abatement procedures pursued in the 2014 summer season, including mid-season adjustments.
- Approaches taken to monitor, assess, and report on compliance.
- Special circumstances meriting consideration in assessing compliance, such as weather, traffic levels, etc.
- The most effective means for communicating with operators and pilots to promote compliance.
- The most valuable feedback to provide operators and pilots to enhance compliance.
- Ideas for building on “lessons learned” in the 2014 season.

At the conclusion of the meeting and in a follow-up email, the Town representatives followed up with a request for feedback on these topics.

### 3.7 Task 6 – Prepare for and Participate in February 3, 2015 Town Board Presentation

Under this task, HMMH prepared the presentations discussed in Sections 3.4.1, 3.4.2, and 3.4.3, and participated in making the Section 3.4.1 presentation (delayed due to weather until February 4, 2015).

## 4. DOCUMENTATION ASSISTANCE

At the conclusion of Phase 3, the Town Board requested HMMH assistance in two additional tasks:

- Documentation of the assistance we provided Phases 2 and 3, to recount the data sources, analytical steps, and other actions HMMH undertook in preparing information the Board took into account in making decisions regarding the proposed legislation.
- Preparation of information for aircraft owners/operators and other interested parties to use to determine the status of specific aircraft vis-à-vis the defined criterion for being categorized as a “noisy.”

### 4.1 Complete Documentation of Phase 2 and 3 Noise-Related Elements

This memorandum and the referenced material posted on the Town and “htoplanning” websites represent the product of this task.

### 4.2 Guidance and Information on Noisy Aircraft Identification

HMMH prepared information for aircraft owners/operators and other interested parties to use to determine the status of specific aircraft vis-à-vis the defined criterion for being categorized as a “noisy” aircraft under two of the proposed laws. The information includes:

#### 4.2.1 Expanded list of potentially noisy aircraft

HMMH identified aircraft classified as “noisy” types in the legislation, using the final 91.0 and higher EPNdB definition, using data from twelve (12) online FAA and European Aviation Safety Agency (EASA) data files, all of which are available at [http://www.htoplanning.com/#Town\\_Documents](http://www.htoplanning.com/#Town_Documents):

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- Eight (8) FAA Advisory Circular 36-1H (Change 1), “Noise Levels for U.S. Certificated and Foreign Aircraft,” 05/25/2012 data files, downloaded February 23, 2015:
  1. [http://www.htoplanning.com/#Town\\_Documents/150410\\_uscert\\_appendix\\_01\\_20120424.xls](http://www.htoplanning.com/#Town_Documents/150410_uscert_appendix_01_20120424.xls)
  2. [http://www.htoplanning.com/#Town\\_Documents/150410\\_nonuscert\\_appendix\\_02.xls](http://www.htoplanning.com/#Town_Documents/150410_nonuscert_appendix_02.xls)
  3. [http://www.htoplanning.com/#Town\\_Documents/150410\\_uscert\\_appendix\\_06.xls](http://www.htoplanning.com/#Town_Documents/150410_uscert_appendix_06.xls)
  4. [http://www.htoplanning.com/#Town\\_Documents/150410\\_uscert\\_appendix\\_07.xls](http://www.htoplanning.com/#Town_Documents/150410_uscert_appendix_07.xls)
  5. [http://www.htoplanning.com/#Town\\_Documents/150410\\_uscert\\_appendix\\_08\\_20120424.xls](http://www.htoplanning.com/#Town_Documents/150410_uscert_appendix_08_20120424.xls)
  6. [http://www.htoplanning.com/#Town\\_Documents/150410\\_nonuscert\\_appendix\\_09.xls](http://www.htoplanning.com/#Town_Documents/150410_nonuscert_appendix_09.xls)
  7. [http://www.htoplanning.com/#Town\\_Documents/150410\\_helicopter\\_appendix\\_10.xls](http://www.htoplanning.com/#Town_Documents/150410_helicopter_appendix_10.xls)
  8. [http://www.htoplanning.com/#Town\\_Documents/150410\\_helicopter\\_appendix\\_11.xls](http://www.htoplanning.com/#Town_Documents/150410_helicopter_appendix_11.xls)
- Four (4) EASA “Noise Type Certificates - Approved noise levels” data files, downloaded February 18, 2015:
  9. [http://www.htoplanning.com/#Town\\_Documents/150410\\_TCDSN\\_Jets\\_\(141203\).xlsx](http://www.htoplanning.com/#Town_Documents/150410_TCDSN_Jets_(141203).xlsx)
  10. [http://www.htoplanning.com/#Town\\_Documents/150410\\_TCDSN\\_Heavy\\_Props\\_\(141203\).xlsx](http://www.htoplanning.com/#Town_Documents/150410_TCDSN_Heavy_Props_(141203).xlsx)
  11. [http://www.htoplanning.com/#Town\\_Documents/150410\\_TCDSN\\_Light\\_Props\\_\(141203\).xlsx](http://www.htoplanning.com/#Town_Documents/150410_TCDSN_Light_Props_(141203).xlsx)
  12. [http://www.htoplanning.com/#Town\\_Documents/150410\\_TCDSN\\_Helicopters\\_\(141203\).xlsx](http://www.htoplanning.com/#Town_Documents/150410_TCDSN_Helicopters_(141203).xlsx)



HMMH provided a list of “noisy aircraft types” that is available at: [http://www.htoplanning.com/docs/Town Documents/150303 List of Noisy Aircraft Types.PDF](http://www.htoplanning.com/docs/Town_Documents/150303_List_of_Noisy_Aircraft_Types.PDF).

#### 4.2.2 Summary of steps that individual aircraft owners/operators can use to investigate their specific aircraft

HMMH prepared concise guidance of the steps that individual owners/operators, the Town, or other interested parties can use to conduct further research into the status of a specific aircraft vis-à-vis the definition of a “noisy” aircraft. It is available at: [http://www.htoplanning.com/docs/Town Documents/150224 How Do I Tell if an Aircraft is Noisy.PDF](http://www.htoplanning.com/docs/Town_Documents/150224_How_Do_I_Tell_if_an_Aircraft_is_Noisy.PDF).



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#### APPENDIX A: OVERVIEW OF PART 36 AIRCRAFT CERTIFICATION

The Federal Aviation Administration (FAA) has set limits on allowable aircraft noise levels under Title 14, Part 36, of the Code of Federal Regulations, “Noise Standards: Aircraft Type and Airworthiness Certification.” Aircraft designs must meet these standards to receive new or revised “type certificates” for production of aircraft to operate in the U.S. (The final section of this overview summarizes a separate regulation related to the phaseout of older, noisier types.)

Part 36 noise limits, noise metrics, measurement locations, and measurement procedures vary according to aircraft classifications established under other FAA regulations, including, but not limited to:

- Subsonic versus supersonic speed capabilities
- Type of propulsion (e.g. turbojet- or propeller-driven)
- Type of lifting mechanism (e.g., fixed-wing, helicopter, and tilt-rotor)
- Weight (e.g., different criteria for “small” versus “large” fixed-wing aircraft with maximum gross takeoff weights less than 12,500 pounds versus 12,500 pounds or more; and different criteria for helicopters up to and equal to 7,000 pounds versus over 7,000 pounds.
- Operating category (e.g., “acrobatic,” “agricultural,” “commuter,” “normal,” “restricted,” “transport,” and “utility”) and use (e.g., “firefighting” or “carrying external loads”)
- Date of initial flight or of application for type certificate
- Engine manufacturer and model

Because Part 36 “stage classifications” (e.g., “Stage 1” or “Stage 2”) vary with these characteristics, references to a specific stage should be used with care. This ambiguity largely relates to the manner in which Part 36 (and the term “stage”) evolved and became more complex over time, as summarized in the following timeline:

##### Initial Rule: 1969 - Establishment of Initial Noise Certification Standards

When first promulgated in 1969, Part 36 only applied to transport-category large and turbojet-powered airplanes. The transport category includes jets with takeoff weights over 12,500 pounds, and propeller-driven airplanes over 19,000 pounds. The rule sets separate measurement requirements and limits for takeoff, sideline, and approach locations, in terms of “Effective Perceived Noise Level” (“EPNL”), which is a metric that takes noise level, duration, and pure tones into account. The original regulation simply categorized aircraft as “certificated” or “uncertificated,” with no reference to the term stage.

##### 1974 Amendment: Part 36 Application to Propeller-Driven Small Aircraft

The FAA added noise standards for “propeller-driven small aircraft” and “propeller-driven commuter category aircraft” in 1974, prior to the creation of the stage terminology. They continue to be termed certificated or uncertificated, with no reference to stage. The noise standards for these aircraft are in terms of “A-weighted decibel” (“dBA”) limits for level flyovers 1,000’ above ground level.

##### 1977 Amendment: Introduction of Stage Classifications

In 1977, the FAA amended Part 36 to define more stringent noise limits for transport-category large and turbojet-powered aircraft, and introduced the concept of certification stages, to differentiate between the original and revised standards. For these categories, the amendment created three stages:

- “Stage 1” aircraft have never been shown to meet any noise standards, either because they have never been tested, or because they have been tested and failed.
- “Stage 2” aircraft meet original noise limits, set in 1969.
- “Stage 3” aircraft meet more stringent limits, established in 1977.

##### 1978 Amendment: Extension of Part 36 to Civil Supersonic Aircraft

The FAA amended Part 36 to apply the same noise standards to civil supersonic jets as to civil subsonic jets. Concorde with flight time before 1980 were exempted – 16 aircraft in 1978; these aircraft comprised the entire fleet, since no further aircraft were produced.

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April 10, 2015**1988 Amendment: Addition of Stage 1 and 2 Standards for Helicopters**

The FAA amended Part 36 to incorporate helicopter standards after the creation of stage terminology. As a result, helicopter noise standards are similar in some aspects to those for propeller-driven small aircraft and in other aspects to those for transport-category large and turbojet-powered airplanes. The helicopter standards involve a particularly complex array of noise certification characteristics, including multiple noise metrics, measurement locations, weight classes, aircraft operating categories, etc.

The 1988 amendment established two helicopter certification classes. Stage 1 helicopters are uncertificated. Stage 2 helicopters are certificated under the original noise standards, which were the most stringent until 2014, when a Stage 3 helicopter class was added (see 2014 amendment discussion).

Helicopter measurement locations and other testing requirements differ significantly from fixed-wing airplane categories. Most helicopter noise standards are in terms of EPNL for three measurement locations, which include takeoff and approach, like transport-category large and turbojet airplanes (but not sideline as for those types), and level-flyover, like propeller-driven small airplanes.

For some helicopter categories with maximum gross takeoff weights not over 7,000 pounds, alternate certification standards may be used that are based on the "Sound Exposure Level" ("SEL"), which is a noise metric based on the A-weighted decibel that takes level and duration into account, but does not include a tone correction as in EPNL. These alternate standards only consider the level-flyover measurement location

**2005 Amendment: Addition of Stage 4 Fixed-Wing Certification Standards**

In 2005, FAA amended Part 36 to adopt a Stage 4 classification. The Stage 4 noise limits are a cumulative 10 EPNL less than those for Stage 3. All subsonic turbojet-powered and transport-category airplanes with maximum gross takeoff weights of 12,500 pounds or more for which application of a new type design is submitted on or after January 1, 2006, must meet new noise certification levels.

It should be noted that the Stage 4 standard applies only to application for type certification on and after January 1, 2006.

**2013 Amendment: Addition of Tiltrotor Certification Standards**

In 2013, FAA amended Part 36 to set tiltrotor standards in EPNL for takeoff, approach, and flyover measurement locations, like the basic helicopter standards. Tiltrotors are either certificated or uncertificated; the term "stage" is not used.

**2014 Amendment: Addition of Stage 3 Helicopter Certification Standards**

In 2014, FAA amended Part 36 to adopt a Stage 3 helicopter classification, which established more stringent noise limits for helicopters for type certification in the U.S., so as to "harmonize" the U.S. regulations with international standards.

**Other Amendments to Part 36**

The preceding timeline focuses only on evolution of noise classifications and use of the term stage. It should be noted that the regulation has been amended over 20 times to address a broad range of certification-related matters, such as revisions to noise limits, measurement procedures, measurement locations, meteorological reference conditions, data corrections, flight procedures, applicability to specific aircraft, and more.

**Phaseout of Older, Noisier Aircraft Classes**

Another federal regulation – "Part 91" (Subpart I) – prohibits regular operation of Stage 1 and 2 civil subsonic jet airplanes over 75,000 pounds, and extends that prohibition to all Stage 1 and 2 civil subsonic jets on January 1, 2016. It should be noted that most, if not all, jet airplanes in production today meet Stage 4 standards. Part 91 does not set phaseout dates for non-jet airplanes or Stage 3 jets.

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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 PETER STUMPP**

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

1. I was retained by Defendant Town of East Hampton to prepare a report on potential aircraft traffic diversion that might result from three aircraft operating restrictions at East Hampton Airport (HTO).

2. I have been retained by Defendant’s counsel to provide expert testimony in support of Defendants’ response to Plaintiff’s motion for a Temporary Restraining Order.

**EDUCATION AND EXPERIENCE**

3. I received a Bachelor of Arts (1967) and a Masters in City and Regional Planning (1979) from Harvard University.

4. I have been a transportation consultant since 1979 and have specialized in aviation economics and forecasting since 1988. My experience includes preparing forecasts and

cost-benefit analyses for Part 161 noise studies at US airports including San Jose International (SJC), San Francisco International (SFO), Naples, FL (APF), Burbank-Glendale-Pasadena (BUR), Van Nuys (VNY), and Los Angeles International (LAX).

### **ASSIGNMENT**

5. I was retained by Defendant to render an opinion concerning the use restrictions implemented by the Town on April 16, 2015 and certain statements made by the Plaintiffs in this proceeding.

6. In delivering my opinion I have reviewed Plaintiff's Motion for a Temporary Restraining Order as well as the declarations of Analar Corporation, Associated Aircraft Group Inc., Eleventh Street Aviation LLC, HeliFlite Shares LLC, Liberty Helicopters Inc., Sound Aircraft Services Inc., and Friends of the East Hampton Airport Inc. which were filed in support of Plaintiffs' motion.

7. In addition to reviewing these documents, I have reviewed authoritative literature in my field that is relevant to my testimony here. The materials I have reviewed are listed in Exhibit 1 attached hereto.

### **OPINIONS**

#### **Background**

8. In 2014 East Hampton Airport experienced unprecedented growth in helicopter activity. Airport records show that helicopter landings and take-offs grew from 5,728 in 2013 to 8,396 in 2014, a 47% increase. Growth was even more rapid during the peak season from May through September, increasing 54%.

9. The analysis I performed for the Airport Traffic Diversion Study (April 10, 2015) is based on operations that took place during the 12 month study period from November 2013 through October 2014. This study is attached as Exhibit 2. In this study, I estimate that if the use restrictions had been in effect during that period, from 2,197 to 2,846 helicopter operations would have been diverted from East Hampton Airport to other nearby airports. The growth in helicopter operations (2,668) recorded from 2013 to 2014 is comparable to the number of potential diversions due to the use restrictions, indicating that the use restrictions would not cause a fundamental change in airport business conditions but simply return helicopter operations to a level closer to the one that existed before the explosive growth in 2014.

#### **Potential Diversion Airports**

10. Four of the Plaintiffs – Analar Corporation, Associated Aircraft Group, Inc., HeliFlite Shares LLC, and Liberty Helicopters, Inc., provide helicopter charter services as a major portion of their business. In their declarations they state that the three potential diversion airports identified in the Airport Traffic Diversion Study – Francis S. Gabreski in Westhampton (FOK), the Southampton Heliport (87N), and Montauk Airport (MTP) are “inadequate”. Nonetheless, Analar Corporation and Liberty Helicopters both advertise service to all three potential diversion airports.

11. Analar Corporation, Associated Aircraft Group, Inc., HeliFlite Shares LLC, and Liberty Helicopters, Inc. all use the same language to discount Gabreski as a potential diversion airport:

*Gabreski is more than 25 miles west of HTO. ...clients who land at Gabreski would then have to drive via Route 27 - which is heavily congested during the summer - to get to East Hampton. My clients have informed me that they will likely forego the expense of flying into Gabreski if they will still face heavy traffic en route to East Hampton.*

In my opinion, congestion on Route 27 does not preclude Gabreski from serving as an effective alternative to East Hampton Airport. Most major roads on the East End of Long Island can be heavily congested during the summer, and travelers using East Hampton Airport may face heavy congestion between that airport and their final destinations. Highway congestion is a fact of life during summer on the East End, and travelers must contend with it regardless of their choice of airport. Flying to Gabreski gives travelers many of the benefits of flying to East Hampton, allowing them to avoid most of the traffic between Manhattan and the East End of Long Island including 65 miles of the Long Island Expressway which is often very heavily congested.

12. Despite criticizing their suitability, both Analar Corporation and Liberty Helicopters websites list Gabreski, Southampton Heliport and Montauk as destinations they serve.

13. Although Montauk Airport does not provide fueling, it represents a feasible diversion airport because it is located at the eastern tip of the East End of Long Island. This allows travelers whose ultimate destination is further west towards Amagansett and East Hampton to drive against the predominant traffic flows, reducing the amount of highway congestion they are likely to face.

14. Several of the Plaintiff declarations question whether Gabreski Airport, Southampton Heliport, and Montauk Airport offer sufficient capacity to handle flights that have been restricted at East Hampton Airport. In the Airport Traffic Diversion Study I estimate that the use restrictions would cause 26% to 34% of East Hampton helicopter operations to divert to nearby airports. During the November 1, 2013 to October 31, 2014 study period, there were an average of 25.6 helicopter arrivals per day at East Hampton with a peak day of 65 arrivals. This indicates that on an average day 7 to 9 helicopter flights would divert to the three alternative



airports, and on a peak day 17 to 22 flights would divert. With diverted flights spread out over the course of the day among three alternative airports, there is no indication that the use restrictions would lead to airspace or airfield congestion at the potential diversion airports.

**Revenue Losses are Overstated**

15. Helicopter and fixed-wing operators affected by the use restrictions at East Hampton Airport have options including acquiring aircraft that meet the noise limits and shifting part or all of their flights to nearby airports. Gabreski Airport, Southampton Heliport, and Montauk Airport all represent feasible alternatives for flights that are restricted at East Hampton Airport. Because aircraft that are restricted at East Hampton can continue to operate at one or more of these alternatives, the revenue losses and other negative economic impacts from the use restrictions specified in the Plaintiff declarations represent substantial over-estimates.

16. Demand for helicopter travel to the East End of Long Island is expected to remain strong and grow. Any reduction in flights to East Hampton Airport is likely to be offset by increased flights to alternative nearby airports. The declarations by Analar Corporation, Associated Aircraft Group, HeliFlite, and Liberty Helicopters all describe the loss in revenue from flights restricted at East Hampton Airport without attempting to estimate the revenue from increased flights to Gabreski Airport, Southampton Heliport, and Montauk Airport. Based on pricing published by Analar and Liberty, there would be a loss in revenue for flights to Gabreski and Southampton that substitute for flights to East Hampton, but the revenue loss would be offset by lower operating costs associated with shorter flying time. The price to Montauk is higher than the price to East Hampton, so each flight to Montauk that substitutes for a flight to East Hampton would contribute to increased revenue.

17. In my opinion the Sound Aviation Services declaration overstates its potential loss in revenue from the use restrictions. Sound Aviation cites an estimate in the Town press release dated April 7, 2015 that the use restrictions will affect 75% of helicopter operations at East Hampton Airport, but Sound Aviation then assumes that this equates to a 75% reduction in helicopter operations. Analysis outlined in the Airport Traffic Diversion Study indicates that between 42% and 55% of the affected helicopter operations and 60% to 64% of the affected fixed-wing operations will not divert to other airports, but instead will comply with the use restrictions by either re-scheduling operations or switching to aircraft that meet the Town noise limits. By overestimating the potential decrease in aircraft operations, Sound Aviation also overstates the potential loss in revenue. Aircraft operators who reschedule flights to meet curfew restrictions or switch to aircraft that meet Town noise limits will continue to operate at East Hampton and remain potential customers for Sound Aviation. For that reason, any Sound Aviation revenue losses associated with the use restrictions are likely to be substantially lower than the company estimates.

Market Volatility

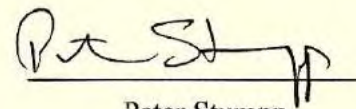
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18. The aviation market at East Hampton Airport is highly volatile. As the table below shows, annual helicopter operations decreased 15% in 2011, increased 13% in 2012, and almost doubled in 2014. Jet aircraft operations moved in parallel with helicopter operations in 2011 and 2012, grew much more rapidly than helicopters in 2013, but grew much more slowly in 2014.

	Helicopters		Jets	
2010	5,920		3,124	
2011	5,021	-15%	2,646	-15%
2012	5,688	13%	3,027	14%
2013	5,728	1%	3,601	19%
2014	8,396	47%	3,772	5%

Volatility is a challenge for all businesses that need to decide what equipment to acquire and how many employees to hire. The helicopter charter companies and fixed-base operators who serve East Hampton have survived volatile and uncertain market conditions in the recent past. While the use restrictions will introduce some new uncertainty, there is no reason to anticipate that the use restrictions will threaten the ability of these companies to continue operating successfully in the future.

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



Peter Stumpp

Executed this 8<sup>th</sup> day of May, 2015, in Cambridge, MA.

# Exhibit 1

## **Documents available at [www.htoplanning.com](http://www.htoplanning.com)**

150410 Airport Traffic Diversion Study.PDF

100000 Town of East Hampton Airport Total Ops (2010).XLSX

1110000 Town of East Hampton Airport Total Ops (2011).XLSX

120000 Town of East Hampton 2012 Annual Ops.PDF

130000 Town of East Hampton Airport 2013 Annual Ops.PDF

140000 Town of East Hampton Airport 2014 Annual Ops.PDF

070424 East Hampton Airport Master Plan Report.PDF

100801 Airport Master Plan GEIS Aug 2010.PDF

150407 HMMH Powerpoint Presentation, Regulations to Address Noise and Disturbance from Operations at East Hampton Airport.PDF

150407 Airport Statement at Town Board Work Session.PDF

## **Additional Documents and Websites**

<http://www.suffolkcountyny.gov/Departments/EconomicDevelopmentandPlanning/FrancisSGabreskiAirport.aspx>

FOK HelicopterBriefingANG2013APRIL18.pdf

FOK JetBriefing2013August.pdf

<http://www.airnav.com>

Village of Southampton, NY, Suffolk County, Chapter 39: Boats and Airplanes,  
Use of Village heliport

Airport Officials Not Overly Concerned With Possible Change In Air Traffic, Shaye Weaver,  
Feb 17, 2015, <http://www.27east.com>

<http://analarcorp.com>

<http://www.flyaag.com/>

<http://heliflite.com/>

<http://www.heliny.com/>

<http://www.libertyhelicopterscharter.com>

Manhattan company says its quieter helicopters can fly under East Hampton noise rules,  
May 3, 2015, [will.james@newsday.com](mailto:will.james@newsday.com)

For \$600, join celebs and the nouveau riche in a unique mile-high club, August 15, 2014,  
Dana Schuster, [nypost.com](http://nypost.com)

A-365

## Exhibit 2



### Potential Responses

Aircraft operators and their passengers have a variety of potential responses to the proposed restrictions. They can change the timing of flights to comply with the curfew restrictions, use another airport instead of HTO, utilize quieter aircraft, use highway or rail instead of flying, and reduce the number of trips to the region. Changing flight timing appears to be a likely response for most flights affected by Restriction 1 and a number of the additional flights affected by Restriction 2.

Some diversion to other nearby airports is likely to occur under all restrictions. Gabreski Airport (FOK) in Westhampton Beach offers ample aircraft and auto parking capacity, aircraft fueling, and services for flight crews and passengers, but diversion would be constrained by its 11:00 PM to 7:00 AM voluntary curfew. Southampton Heliport (87N) would be constrained by its limited operating hours, road access, restrictions on auto parking, and lack of aircraft fueling and other services.

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#### Exhibit 1 – Southampton Heliport Mandatory Operating Hours and Landing Fees

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Dates		Operating Hours
May 1-Sep 15		8:00AM - 7:00PM
Sep 15-Oct 31		8:00AM - 6:00PM
Nov 1-Dec 31		7:00AM - 4:00PM
Jan 1-Feb (end)		7:00AM - 5:00PM
Mar 1-Apr 30		7:00AM - 6:00PM
Landing fee	< 5,000 lbs	\$150
	5,000 to 15,000 lbs	\$200

Source: Village of Southampton General Legislation, Chapter 39, <http://www.airnav.com/airport/87N>

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Although Montauk Airport (MTP) has been for sale for several years and its long term future is uncertain, the airport has received FAA grant money and is obligated to remain open as an airport until at least



December 31, 2019.<sup>2</sup> Diversion to Montauk would be constrained by its limited runway length, road access, lack of aircraft fueling and services, and exposure to rapid changes in weather conditions. Since Montauk airport is only staffed during daylight hours, pilots flying to Montauk at other times have no communication from the ground regarding weather and must risk flying to an airport where conditions may preclude landing.

Operators may meet proposed Restriction 2 by switching operations to quieter aircraft, including using quieter models of fixed wing aircraft or helicopters, or by switching operations from helicopters to fixed wing aircraft that meet the town's proposed noise limits. Many types of fixed wing aircraft and seven types of helicopters that operated at HTO from November 2013 to October 2014 meet the town noise limits.

Given the congestion and delays on Long Island highways particularly on summer weekends, it seems unlikely that many travelers who choose air travel to avoid the roads would switch to limousine or jitney service if proposed restrictions prohibit their flights to and from HTO. Similarly, it would be difficult to convince travelers to switch from air to rail unless the Long Island Railroad introduces new service that offers higher levels of comfort and luxury to offset the longer travel time.

Given the attractiveness of the South Fork as a vacation destination, its proximity to New York City, and the number of options for traveling to the region, it appears unlikely that the proposed restrictions would substantially reduce the demand for travel to the region, particularly during the summer season. The growth of ride-sharing services like Uber has made it much simpler to travel within the South Fork region, making it easy to fly to alternative airports and obtain ground transport to one's final destination with very little advanced planning. The substantial prices that travelers are willing to pay to fly from New York City to the South Fork indicate a strong demand to avoid driving there.

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<sup>2</sup> <http://www.27east.com/news/article.cfm/East-End/96721/Airport-Officials-Not-Overly-Concerned-With-Possible-Change-In-Air-Traffic>

**Proposed Restriction 1 – Mandatory 11PM to 7AM Curfew**

Exhibit 2 presents the estimate of operations that would be affected by Restriction 1 based on the full year of HTO operations that occurred from November 2013 through October 2014. During the summer season there were 175 helicopter operations and 323 fixed wing operations that would be affected by the mandatory curfew. There were 83 potentially affected operations during the off-season and a total of 581 operations for the full year.<sup>3</sup>

**Exhibit 2 – Estimate of Operations Affected by Restriction 1**

	Landings	Take-Offs	Total
<b>May 1-Sep 30</b>			
Helicopter	109	66	175
Fixed Wing	155	168	323
<b>Total</b>	<b>264</b>	<b>234</b>	<b>498</b>
<b>Oct 1-April 30</b>			
Helicopter	17	7	24
Fixed Wing	31	28	59
<b>Total</b>	<b>48</b>	<b>35</b>	<b>83</b>
<b>Full Year</b>			
Helicopter	126	73	199
Fixed Wing	186	196	382
<b>Total</b>	<b>312</b>	<b>269</b>	<b>581</b>

Source: HMMH analysis

Estimating how operators will react to the proposed restrictions involves a high degree of uncertainty. The initial estimates are based on experience from other noise-impacted general aviation airports but do not reflect survey data or other direct information from HTO operators. Surveys are unlikely to provide reliable information about potential responses because of competition among carriers providing air service and privacy concerns among their passengers. As a result, the estimates are subject to change in the future as additional data becomes available.

Of the 581 operations potentially affected by Restriction 1, 288 operations or approximately 50% took place between 6AM and 7AM. These flights would require a delay of 60 minutes or less to comply with

<sup>3</sup> More landings (312) than take-offs (269) occur during the 11PM to 7AM curfew hours and would be affected by making the curfew mandatory.

the proposed restriction. For this reason these operators are expected to respond to the curfew by incurring a short delay. An additional 115 flights or approximately 20% took place between 11PM and midnight, including 44 departures and 71 arrivals. All the departing flights are expected to re-schedule and depart by 11PM to meet curfew requirements. As an initial estimate, 50% of the 11PM to midnight arrivals are expected to re-schedule to meet curfew requirements, and 50% that are unable to reschedule are expected to use alternative airports. The same 50/50 estimate is used for the 178 flights between midnight and 6AM, half re-scheduling to meet curfew requirements and half diverting to alternative airports.

Under these conclusions, enacting Restriction 1 would cause 457 operations to be re-scheduled and 125 operations including 43 helicopter operations to be diverted to other airports. Because operations are banned at Southampton Heliport during the HTO curfew hours, operations diverted as a result of Restriction 1 would probably shift to Montauk Airport and Gabreski Airport, even though Gabreski has a voluntary curfew during the same hours as the proposed HTO mandatory curfew. Diversions to Montauk would be limited because it is not staffed at night and pilots are unable to communicate with the airport. Exhibit 3 shows the estimated responses to Restriction 1.

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**Exhibit 3 – Estimate of Changes in Operations in Response to Restriction 1**

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	Re-schedule	Divert	Total
<b>Full Year</b>			
<b>Helicopter</b>	<b>156</b>	<b>43</b>	<b>199</b>
<b>Fixed Wing</b>	<b>301</b>	<b>82</b>	<b>382</b>
<b>Total</b>	<b>457</b>	<b>125</b>	<b>581</b>

Note: Rows may not total due to rounding

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**Proposed Restriction 2 – Adding Extended Curfew for Noisy Aircraft**

Exhibit 4 presents an estimate of operations that would be affected by Restriction 2. Adding an extended curfew for noisy aircraft to the proposed mandatory 11PM-7AM curfew would affect a total of 1,824 operations, including 1,013 helicopter operations from May through September.

**Exhibit 4 – Estimate of Operations Affected by Restriction 2**

	Landings	Take-Offs	Total
<b>May 1-Sep 30</b>			
Helicopter	570	443	1,013
Fixed Wing	268	284	552
<b>Total</b>	<b>838</b>	<b>727</b>	<b>1,565</b>
<b>Oct 1 -April 30</b>			
Helicopter	85	74	159
Fixed Wing	55	45	100
<b>Total</b>	<b>140</b>	<b>119</b>	<b>259</b>
<b>Full Year</b>			
Helicopter	655	517	1,172
Fixed Wing	323	329	652
<b>Total</b>	<b>978</b>	<b>846</b>	<b>1,824</b>

Source: HMMH analysis

Since the extended curfew applies only to aircraft defined by town ordinance as noisy, aircraft operators at HTO will have three ways to comply with Restriction 2: re-schedule flights, use alternate airports, or switch to aircraft that meet town noise standards. Switching aircraft can involve substituting quieter helicopter or fixed wing aircraft for noisier helicopter or fixed wing aircraft, or replacing noisy helicopters with fixed wing aircraft that meet town noise limits. Operators who have both noisy and quiet aircraft in their fleets could choose to substitute quieter aircraft for most or all of their HTO operations. Switching from helicopter to fixed wing service may involve increased service by fixed wing operators offsetting a decline in service by helicopter operators. Aircraft operators are not likely to acquire new aircraft specifically to meet the proposed town noise limits until they are confident that those limits will not be changed during the economic life of the aircraft.

Exhibit 5 shows an estimate of the responses to Restriction 2. It reflects the conclusion that AM arrivals and departures and PM departures that require a delay of an hour or less to comply with the curfews will choose to re-schedule. Operators of all other flights divide their responses evenly between re-scheduling, diverting to other airports, and switching to quieter aircraft. Under these conclusions 1,102 flights re-schedule, 361 including 246 helicopters divert to alternate airports, and an equal number choose to operate quieter aircraft that meet town noise limits.

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**Exhibit 5 – Estimate of Changes in Operations in Response to Restriction 2**

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	Re-schedule	Divert	Use Quiet Aircraft	Total
<b>Full Year</b>				
<b>Helicopter</b>	679	246	246	1,172
<b>Fixed Wing</b>	423	115	115	652
<b>Total</b>	1,102	361	361	1,824

Note: Rows may not total due to rounding

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Operators of AM helicopter flights can choose among Southampton Heliport (after 8AM in-season and 7AM off-season), Montauk Airport, and Gabreski Airport for diversion. Operators of PM helicopter flights and fixed wing aircraft can choose between Montauk and Gabreski.

#### **Proposed Restriction 4 – Limiting Noisy Aircraft to One Take-off and One Landing per Week from May through September**

Like Restriction 2, proposed Restriction 4 is designed to reduce the impacts from noisy aircraft operations at HTO. Exhibit 6 shows the number of fixed wing and helicopter operations at HTO from May through September 2014.

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#### **Exhibit 6 – Fixed Wing and Helicopter Operations at HTO May through September**

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<b>Aircraft Type</b>	<b>Operations May-Sept</b>
<b>Fixed Wing Total</b>	<b>14,004</b>
<b>Fixed Wing Noisy</b>	<b>1,663</b>
<b>Percent Noisy</b>	<b>11.9%</b>
<b>Helicopter Total</b>	<b>5,855</b>
<b>Helicopter Noisy</b>	<b>5,384</b>
<b>Percent Noisy</b>	<b>92.0%</b>
<b>Helicopter Share of Total Noisy Operations</b>	<b>76.4%</b>

Source: HTO records, HMMH analysis

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During the summer season there were 14,004 fixed wing operations at HTO, with 11.9% by aircraft defined as noisy. During the same period there were 5,855 helicopter operations, including 5,384 or 92.0% by aircraft defined as noisy. From May through September helicopters accounted for over three quarters of the noisy aircraft operations at HTO.

Exhibit 7 shows the four largest noisy helicopter operators at HTO during the May-September season. During this period Associated Aircraft Group had 1,346 noisy helicopter operations, 25% of all noisy HTO helicopter operations. HeliFlite, Liberty Helicopters, and Analar also performed large numbers of noisy helicopter operations. Together these four operators accounted for almost three quarters of all noisy helicopter operations at HTO during the summer season. None of these carriers operated any flights by quiet helicopters at HTO.

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**Exhibit 7 – Noisy Helicopter Operators at HTO May-Sept**

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Noisy Helicopter Operators	Operations May-Sept	Share of Total
<b>Associated Aircraft Group</b>	<b>1,346</b>	<b>25.0%</b>
<b>HeliFlite Shares</b>	<b>1,075</b>	<b>20.0%</b>
<b>Liberty Helicopters</b>	<b>1,007</b>	<b>18.7%</b>
<b>Analar Corporation</b>	<b>540</b>	<b>10.0%</b>
<b>Subtotal</b>	<b>3,968</b>	<b>73.7%</b>
<b>All Other Noisy Operations</b>	<b>1,416</b>	<b>26.3%</b>
<b>Total</b>	<b>5,384</b>	<b>100.0%</b>

Source: HTO records

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Exhibit 8 presents an estimate of operations that would be affected by Restriction 4. Adding a summer limit of two operations per week on noisy aircraft to the mandatory 11PM-7AM curfew for all aircraft and the extended curfew hours for noisy aircraft would affect a full year total of 5,822 operations, including 4,728 helicopter operations from May through September.

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**Exhibit 8 – Estimate of Operations Affected by Restriction 4**

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	Operations Affected
<b>May 1-Sep 30</b>	
Helicopter	4,728
Fixed Wing	835
<b>Total</b>	<b>5,563</b>
<b>Oct 1 -April 30</b>	
Helicopter	159
Fixed Wing	100
<b>Total</b>	<b>259</b>
<b>Full Year</b>	
Helicopter	4,887
Fixed Wing	935
<b>Total</b>	<b>5,822</b>

Source: HMMH analysis

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Exhibit 9 shows an estimate of the responses to Restriction 4. Adding a summer limit on operations by individual noisy aircraft to the curfew restrictions would lead to a total of 2,538 to 3,216 diversions to other airports, primarily by helicopters. At the same time it would also increase the use of quiet aircraft by 1,504 to 2,182 operations, including some shifting from noisy helicopters to fixed wing aircraft that meet town noise limits.

The largest helicopter operators at HTO currently operate only noisy aircraft at HTO and are not expected in the short run to add new helicopter types that meet the town noise limits. As a result, the rate at which operations switch to quieter aircraft will depend largely on how rapidly operators of quieter helicopters at HTO can strengthen their market presence and provide service that substitutes for current service using noisy aircraft.

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**Exhibit 9 – Estimate of Changes in Operations in Response to Restriction 4**

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	Re-schedule	Divert	Switch to Quiet Aircraft	Total
<b>Full Year</b>				
<b>Helicopter</b>	679	2,197-2,846	1,361-2,010	4,887
<b>Fixed Wing</b>	423	341-369	143-171	935
<b>Total</b>	1,102	2,538-3,216	1,504-2,182	5,822

Note: Rows or columns may not total due to rounding

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### Traffic Diversion Summary

Exhibit 10 summarizes the estimated decrease in landings by proposed restriction.

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#### Exhibit 10 – Annual Decrease in HTO Landings by Restriction

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	Restriction 1	Restriction 2	Restriction 4
<b>Full Year</b>			
<b>Helicopter</b>	<b>22</b>	<b>123</b>	<b>1,099-1,423</b>
<b>Fixed Wing</b>	<b>41</b>	<b>57</b>	<b>171-185</b>
<b>Total</b>	<b>62</b>	<b>181</b>	<b>1,269-1,608</b>
<b>Share of HTO Operations</b>	<b>0.5%</b>	<b>1.4%</b>	<b>9.9%-12.5%</b>

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Restrictions 1 and 2 are expected to cause only a small share of HTO traffic to divert to other airports, namely Gabreski Airport (FOK), Southampton Heliport (87N), and Montauk Airport (MTP). Restriction 4, limiting noisy aircraft to two operations per week at HTO, would cause from 1,269 to 1,608 landings per year to shift from HTO to alternative airports.

A large number of factors will determine which alternative airport each flight will choose, including distance and driving time to the ultimate destination. Exhibit 11 compares the highway mileage from the three airports to seven representative destinations.

**Exhibit 11 – Distance from Alternative Airports to Selected Destinations**

	Gabreski Airport	Montauk Airport	Southampton Heliport
<b>Driving Distance in Miles</b>			
<b>Amagansett</b>	31.5	16.0	20.9
<b>Bridgehampton</b>	22.2	25.1	12.3
<b>East Hampton Village</b>	28.9	18.4	18.3
<b>Sagaponack</b>	23.6	25.0	12.9
<b>Shelter Island</b>	30.6	31.5	22.8
<b>Southampton Village</b>	17.7	31.3	5.5
<b>Water Mill</b>	19.5	28.0	8.8
<b>Closest</b>			
<b>Middle</b>			
<b>Furthest</b>			

Driving distances from Google Maps

Southampton Heliport is closest to six of the seven, while Montauk Airport is closest to one but furthest from five. Driving time is generally more critical than distance alone, but variation in highway congestion by time of day and day of the week during the peak season make it impossible to measure driving time consistently.

Location, constraints, and availability of services will all affect the decisions to use each of the alternative airports. Southampton Heliport is the most centrally located, but is constrained by operating hours, restrictions on parking, poor highway access, and lack of services.

Gabreski is a full service airport with very good access to the Sunrise Highway, but road traffic from Gabreski to South Fork destinations is likely to encounter traffic congestion, particularly on weekends. Of the three airports only Gabreski offers aircraft refueling.

Autos traveling to and from Montauk Airport on weekends have the advantage of traveling against the heaviest traffic flow, but must funnel through the congested hamlet centers of Montauk, Amagansett and East Hampton Village to reach destinations to the west along the Montauk Highway. Montauk Airport offers no services, and the weather at Montauk often changes more rapidly than at the other alternative airports. Communication with airport staff regarding weather conditions is only available during daylight hours.

Because the aircraft operating restrictions proposed for HTO are unprecedented, it is not possible at this point to make a definite estimate of the number of flights diverted to each of the three potential diversion airports. Given the pros and cons of each potential diversion airport, it appears likely that all three will attract shares of the diverted traffic, with no single airport receiving the lion's share. All of the potential airports appear to have the capacity to handle diverted traffic. FAA records indicate that during the early 1990s Gabreski had over 100,000 annual operations and Montauk Airport over 40,000, well over current traffic levels.<sup>4</sup> The FAA does not keep comparable records for Southampton Heliport, but given typical drop-off or pick-up and go helicopter operations, its airfield capacity does not appear to be an issue.

Two of the potential diversion airports – Montauk Airport and Southampton Heliport – are reached by narrow, two-lane roads, raising the issue that flights diverted from HTO could possibly lead to highway congestion near these airports. This appears unlikely because of the limited number of flights diverted. Most flight diversions as a result of the curfew restrictions will occur at night when highway traffic tends to be light. The Restriction 4 limits on noisy aircraft during the summer are expected to increase the number of diverted helicopter flights by 976 to 1,300 arrivals and diverted fixed wing flights by 113 to 128 arrivals for the season. With the summer season having 153 days, limiting noisy aircraft at HTO to one flight (one landing and one take-off) per week would lead to an average of 6.4 to 8.5 helicopter arrivals diverted per day, and less than one fixed wing arrival per day.

The peak day for helicopter activity at HTO had a total of 65 arrivals, or 1.9% of total May to September helicopter arrivals. If the peak day for helicopter diversions follows the same pattern as arrivals at HTO, between 18.5 and 24.7 helicopter flights could be diverted from HTO. The first helicopter on the peak day at HTO arrived at 7:41 AM and the last arrived at 9:11 PM, so diversions would most likely be spread over a similar period. Peak day helicopter arrivals averaged 4.3 per hour with a maximum of 10 per hour. With diverted flights spread over a period of time and three alternative airports, it appears unlikely that Restriction 4 would add more than a handful of vehicles per hour to the current traffic on the Montauk Airport and Southampton Heliport access roads.

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<sup>4</sup> <https://aspm.faa.gov/>, FAA Terminal Area Forecasts,

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

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.

-----x

**DECLARATION OF THOMAS MACNIVEN**

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

1. I am a licensed agent, broker and former Managing Director of Sales employed and active full time in the real estate market in East Hampton and Southampton towns since 1986.

2. I make this declaration, based upon personal knowledge, in support of Defendants' response to Plaintiff's motion for a temporary restraining order.

3. I grew up in the Hamptons, started and raised a family here, and have bought and sold my own real estate here. I've been a homeowner, a landlord, and an investor. In the past twenty years I have lived at three different locations all in different directions from the East Hampton Airport.

4. I was appointed to the Town's Airport Noise Abatement Committee in January 2014.

5. Because of my role on the Airport Noise Abatement Committee, I am often consulted by local real estate agents with questions about the East Hampton airport and impacts to residential properties. I am frequently asked how and to what extent a particular property is affected. I have been asked about homes in Amagansett, Springs, East Hampton, Sag Harbor, Northaven, Shelter Island, Noyack, Sagaponack, Bridgehampton, Watermill and Southampton. If the questions relate to jet traffic, they are easier to answer, because the approach and departure paths are well known. The runways they take off and land on and the altitudes they fly at are fixed. But with regard to helicopter operations I cannot provide any level of comfort for any property within approximately 10-15 miles of the Airport. The helicopter altitudes, routes and approaches are voluntary and can change at a moment's notice because of any number of factors including the whim of the pilot.

6. Real estate agents in this market all recognize, as I do, that aircraft noise caused by use of East Hampton Airport is a critical consideration when purchasing or renting property in East Hampton. Prospective purchasers ask about these impacts. Is this house in the flight path? Is it affected by noise from airport traffic to and from East Hampton airport? Will I have helicopters flying over my house all summer long? Will I hear the noise? Do they come and go 24 hours a day, seven days a week?

7. It is widely recognized that noise from aircraft coming and going from East Hampton Airport is a negative aspect of living in many areas of Eastern Long Island. Prospective purchasers and renters are often concerned about noise from aircraft and helicopters, especially when looking at houses in areas affected by noise from air traffic coming and going to



and from East Hampton Airport. Potential buyers and renters are reluctant to rent or buy homes when they learn about aircraft noise impacts. Large areas of many towns and hamlets are often avoided by potential buyers and renters simply because of the fear of constant disruption and disturbance caused by aircraft coming and going to East Hampton Airport.

8. I own three properties in East Hampton. One in particular is quite affected by airport noise. This was not the case as recently as ten years ago. Many prospective renters are familiar with this problem. My frustration is that I cannot give them any level of comfort or accurate information when it comes to the quiet enjoyment of the home. This is true with homes all over the eastern end of Long Island.

9. I support the use restrictions that the Town of East Hampton enacted on May 16, 2015. I believe they will bring much needed relief to this community.

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

  
\_\_\_\_\_  
Thomas MacNiven

Executed this 7<sup>th</sup> day of May, 2015 in East Hampton, New York.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
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.  
-----X

**DECLARATION OF MUNIR SALTOUN**

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

1. I make this declaration, based upon personal knowledge, in support of Defendants' response to Plaintiff's motion for a temporary restraining order.

2. I am a resident in the Village of East Hampton. I own a home at 273 Georgica Road, in East Hampton, New York. I have owned my home since 2001.

3. I also own a home in Manhattan.

4. I currently spend approximately twenty percent of my time in East Hampton, predominantly on the weekends and during the summer season, but I consider East Hampton my residence. I vote in Suffolk County, New York.

5. I drive by car to get to East Hampton when I am commuting between Manhattan and my home in East Hampton.



6. I have been coming to East Hampton for decades, even before owning a home. I rented a house every year from 1970 to 2001, when we bought our house.

7. The house I now own is a mile and a half from the Airport.

8. When we purchased the house, just 14 years ago, we were not worried about the airport noise. It was not prevalent then. Aircraft operations were only occasional. There was some, sporadic noise, but it did not dominate the environment as it does now.

9. For the past several years, the noise is of an entirely different magnitude. The sheer frequency is overwhelming – even startling. The noise is in your face. There are flights over my house every ten minutes. The noise disrupts my ability to enjoy my house. It's not sporadic anymore. It is constant, especially during the weekends and during the summer.

10. You come to East Hampton and you think you're in an isolated calm place but now, every ten minutes some noisy intrusion occurs. Each noise event infringes on the peace and quiet you should be entitled to enjoy.

11. I am now particularly aware of the noise because I have two grandchildren. Last summer, my grandson (who was a year and a half at the time) was often disturbed during his naptime.

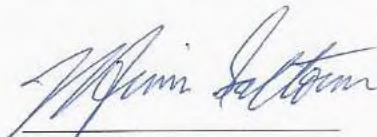
12. I am aware that there is a system for filing noise complaints, either by telephone or by filing on-line comments. I am not aware of any effort by the Town to boost or artificially inflate the number of noise complaints. I have never been solicited to do so.

13. I have never bothered to call or file an individual complaint. I did not think that my filing one or more complaints would have any specific influence on the noise levels.

14. I have served on the Budget and Finance Committee for the Town since 2011. I was appointed as a non-partisan participant to the Airport Subcommittee in January 2014 based on my background in accounting and finance.

15. I support the use restrictions that the Town has enacted. I see the need for the restrictions and I believe that the Town has acted responsibly.

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



Munir Saltoun

Executed this 5<sup>th</sup> day of May, 2015 in New York, New York.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
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.  
-----x

**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.



A-388

# EXHIBIT 1

**W. Eric Pilsk**

---

**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>  
**To:** Daphne Fuller/AWA/FAA@FAA, Catherine M Lang/AWA/FAA@FAA  
**Date:** 02/29/2012 11:42 AM  
**Subject:** East Hampton - Opponents' statements

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.

---

**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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FEBRUARY 29, 2012 | THE EAST HAMPTON PRESS

# 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 Walles, 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. Walles 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)).

---

<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.

A-396

## **EXHIBIT 2**

A-397

Case 2:15-cv-02246-SJF-ARL Document 38-6 Filed 05/08/15 Page 12 of 35 PageID #: 648

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

December 14, 2011

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)

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



Case 2:15-cv-02246-SJF-ARL Document 38-6 Filed 05/08/15 Page 13 of 35 PageID #: 649

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 associated 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 22b 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 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?

A-399

## **EXHIBIT 3**



A-400

Case 2:15-cv-02246-SJF-ARL Document 38-6 Filed 05/08/15 Page 15 of 35 PageID #: 651 Page 1 of 1

**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)

A-401

Case 2:15-cv-02246-SJF-ARL Document 38-6 Filed 05/08/15 Page 16 of 35 PageID #: 652

Case 2:03-cv-02634-JS-MLO Document 38 Filed 05/04/2005 Page 1 of 1

Case 2:03-cv-02634-JS-MLO Document 36-1 Filed 04/29/2005 Page 1 of 1

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.

----- X

STIPULATION OF DISMISSAL

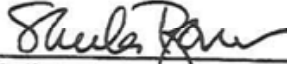
Civil Action  
No. CV-03-2634

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

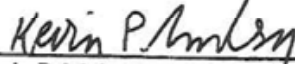
STIPULATION OF DISMISSAL

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

-----X

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;

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

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

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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

Dated: January 27, 2005

By: Edward Gorman  
Edward Gorman

EDWARD GORMAN

Dated: January 27, 2005

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

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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

A-412

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: ~~January~~ <sup>April 11,</sup> \_\_\_\_, 2005

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

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## **EXHIBIT 4**



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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.

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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

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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.

*James G. Richard*  
James G. Richard

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## **EXHIBIT 5**



November 3, 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 2000. 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-



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E 3694 CONGRESSIONAL RECORD — Extensions of Remarks November 2, 1990

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 60 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



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 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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**SUPPLEMENTAL DECLARATION OF MICHAEL RENZ**

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

1. I am the President of Analar Corporation (“Analar”), one of the Plaintiffs in this action. I make this supplemental declaration, based upon personal knowledge, in further support of Plaintiffs’ motion for a temporary restraining order.

2. The Town’s suggestion that there is no commercial service at HTO is wrong. Analar provides commercial helicopter service to HTO. It has done so for years. Other Plaintiffs in this case also provide such commercial services to HTO.

**Analar’s Damages are Tangible and Already Occurring**

3. The Town’s suggestion that Analar’s harm from the Restrictions is “speculative” could not be further from the truth. The Restrictions are already causing real economic and operational harm to Analar, and that harm will continue and become more severe if the Court does not issue a TRO and permits the Restrictions to take effect.

4. One form of harm that is already occurring is our customers' delay of Block Time purchases due to uncertainty caused by the impending Restrictions. As I discussed in my first declaration, Analar's Block Time purchase program allows customers to pre-pay for flight time. These purchases are typically made in May for the upcoming year. Our usual Block Time customers have already delayed purchasing Block Time and will forego purchasing it altogether if the Restrictions are enforced. To date, this has deprived Analar of approximately \$200,000 to date as a direct result of the Restrictions' pendency.

5. If the Court were to deny Plaintiffs' TRO motion on May 14, Analar will be further harmed during the remainder of May and into June. Based on last year's figures, from mid-May through June, Analar averaged 18-25 flights to or from HTO each week. This equates to approximately \$135,000 in lost revenue for that period if the TRO does not issue.

6. Based on careful examination of our operational and business records, we determined that the One-Trip Limit alone will prohibit the majority of Analar's operations, resulting in an estimated 65% decrease in Analar's operations to and from HTO. Analar's primary source of revenue is charter flights to and from HTO. As a result, Analar will lose significant revenue and market share, and its business will be devastated. We will have no incoming revenue to finance the purchase of additional helicopters. We may not yet know if the Restrictions will put us completely out of business, but that too is a possibility, along with forced restructuring, downsizing, employee layoffs and loss of equipment. To have any hope of remaining a functioning entity, Analar would be forced to lay off pilots, maintenance personnel, and office staff.

7. The Town's suggestion that Analar can avoid harm from the Restrictions by simply replacing its fleet of helicopters is not true.

8. Analar has operated its aircraft since the early 1980s. All of its pilots and maintenance personnel are trained to operate and maintain Analar's fleet. Analar's spare parts inventory contains more than \$1 million worth of equipment. Replacing Analar's fleet and spare parts inventory is unrealistic for several reasons. First, most of Analar's fleet is owned not by Analar but by our customers and simply managed by Analar. Analar is therefore not in a position to sell these aircraft. Second, even if Analar could purchase new helicopters, it would be a time-intensive process. Analar would have to purchase used aircraft, which requires travel time – possibly overseas – to perform pre-purchase inspections. Third, even if Analar could quickly purchase new “compliant” aircraft, it would take between 6 months and one year to satisfy federal regulatory requirements before Analar could use that aircraft for charter services. Among other requirements, Analar would have to register the new helicopters with the FAA under Analar's licenses; all of Analar's pilots would have to be certified to operate the aircraft; and all of Analar's mechanics would need to be either trained or retrained to service the aircraft. It would be impossible to accomplish all of this before the end of the 2015 summer season. In the interim, Analar's business would be destroyed.

9. Even if Analar could sell its helicopters and replace them with ones that are not deemed “Noisy Aircraft,” there is no guarantee that the Town will not ban helicopters in the future – as was initially proposed by the Town. In this climate of uncertainty, no business of Analar's size could invest the millions of dollars required in a fleet of new helicopters that may be prohibited next season.

#### **Safety Issues**

10. The Restrictions also raise serious safety issues that further raise the likelihood of harm to Analar's business. Analar's business model is based on the operation of twin-engine

helicopters, which are generally considered to be the safest helicopters in operation. While Analar has one single-engine helicopter in its fleet – the Bell 206B3 – that aircraft is not typically used in Analar’s charter service but is used primarily for filming and aerial photography. Analar’s clients prefer to travel in the safety of a twin-engine helicopter operated by two pilots. To my knowledge, the Restrictions classify all twin-engine helicopters as “Noisy Aircraft,” with the limited exception of a few models that are either unavailable in the current market or unsuitable for passenger transport.

11. Accordingly, even if Analar could acquire single-engine helicopters that are exempt from the “Noisy Aircraft” standard, it is entirely unclear that our clients would travel in them, causing additional damage to Analar’s entire business model. This is not speculation, but based on Analar’s own experience, as our only single-engine helicopter made less than 3% of Analar’s flights to or from HTO last year.

12. It is deeply troubling that the Restrictions bar the helicopters considered by Analar and its customers (and many in the industry) to be the safest, while exempting from the “Noisy Aircraft” definition certain single-engine helicopters that are considered to be less safe.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: May 12, 2015  
Princeton, New Jersey



Michael Renz

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, No. 15 Civ. 2246 (JS) (ARL)  
INC., SOUND AIRCRAFT SERVICES, INC., and  
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----x

**SUPPLEMENTAL DECLARATION OF KURT CARLSON**

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

1. I am the Chief Executive Officer of HeliFlite Shares LLC (“HeliFlite”), one of the Plaintiffs in this action. I make this supplemental declaration, based upon personal knowledge, to respond to certain inaccurate assertions in the Town of East Hampton’s memorandum and declarations opposing Plaintiffs’ motion for a temporary restraining order.

2. First, it is flatly wrong for the Town to claim that the East Hampton Airport (“HTO”) offers no commercial service. HeliFlite is a commercial service provider and we have been offering our services at the Airport for over 15 years. Other commercial service providers also service HTO.

**HeliFlite’s Damages are Tangible and Already Occurring**

3. It is incorrect for the Town to suggest that HeliFlite will not be harmed by the Restrictions because HeliFlite can simply replace its fleet with aircraft not subject to the Town’s

“Noisy Aircraft” definition. That suggestion shows a serious lack of understanding of how a charter business operates.

4. It would be impossible for HeliFlite to sell four of the seven helicopters it operates because those aircraft are owned by our clients as part of HeliFlite’s fractional ownership program and managed fleet operations. Moreover, even if HeliFlite could sell the remaining three helicopters that it does own, those sales could not take place before the end of the summer season, as sales typically take a long time due to the need to locate a suitable buyer, to have the buyer inspect the aircraft, and to negotiate the sale.

5. Replacing aircraft for a Part 135 operator is not like trading in a car at a local car dealership for a newer model; it is an expensive and time-consuming process. It could take months to obtain a different helicopter that is not deemed to be a “Noisy Aircraft” under the Town’s arbitrary definition. Helicopters cost as much as \$15 million and considerable lead time is typically required in purchasing a helicopter from a manufacturer. Even if HeliFlite could quickly purchase an aircraft that was compliant with the Restrictions, it would take between 6 months and one year to satisfy federal regulatory requirements before HeliFlite could use that aircraft for charter services. Among other requirements: (i) HeliFlite would have to register the helicopter with the FAA under HeliFlite’s licenses; (ii) all of HeliFlite’s pilots would have to be trained and certified to operate the helicopter; and (iii) all of HeliFlite’s mechanics would need to be trained to service the aircraft. It would be impossible to accomplish all of the foregoing before the end of the 2015 summer season. The Restrictions contain no grace period or lead time that would allow us to accomplish these steps before the Restrictions take effect and begin to cause us serious harm.



6. Even if HeliFlite could liquidate its fleet and replace it with a fleet of compliant helicopters, there is no guarantee that the Town will not again amend the Local Laws to ban helicopters. The initial restrictions proposed by the Town in February 2015 included a total ban on helicopters for five months of each year (May through September). It is my understanding that this proposed total ban has been temporarily tabled, and that the Town expects to revisit that potential restriction, perhaps as soon as September 2015. *See* Declaration of Larry Cantwell ¶ 24. In this uncertain climate, HeliFlite cannot reasonably be expected to make multi-million dollar investments in different helicopters.

7. As I previously advised the Court, HeliFlite's damages from the Restrictions will be severe and are not speculative. I and other HeliFlite personnel have carefully examined HeliFlite's operational and business records. Based on that review we have determined that the One-Trip Limit alone will prohibit most of HeliFlite's operations, resulting in an estimated 80–90% decrease in operations to and from HTO. HeliFlite will lose significant revenue and market share as a result of the Restrictions. We do not yet know if the Restrictions will put us completely out of business, but that is a real possibility, along with forced restructuring, downsizing, employee layoffs and loss of equipment.

8. HeliFlite is already being damaged by the Restrictions. Already, we are seeing competitors try to capitalize on the Restrictions. Operators of sea planes and single-engine helicopters – aircraft that are arbitrarily deemed exempt from the “Noisy Aircraft” standard simply because they have no published EPNdB noise level, regardless of the actual noise those aircraft generate – are vying for our market share.

9. Bookings for the Memorial Day weekend are almost non-existent at this time. That four-day period is usually one of the busiest of the year and is vital to the cash flow and sustainability of the company.

10. Because of the threat of the Restrictions, we also have deferred hiring necessary, seasonal personnel, thus harming our ability to deliver the services that we are contractually obligated to provide to our clients. We have been unable to sell summer trip packages this spring – vital to our sustainability – due to the uncertainty caused by the Restrictions. We will also be required to refund significant funds to certain clients if the Restrictions take effect.

11. HeliFlite is suffering real, irreparable harm already, and the Restrictions have not even taken effect.

#### **Safety Issues**

12. The Restrictions will further severely harm HeliFlite because our business model caters to individuals who want to or are required to travel in twin-engine helicopters with two pilots – the safest helicopters available. For example, a Fortune 100 company that HeliFlite serves requires that its employees be transported in twin-engine helicopters for safety reasons. All of HeliFlite’s aircraft are twin-engine helicopters with two pilots, and are equipped with enhanced safety features that are only available in twin-engine helicopters. To my knowledge, the Restrictions classify all twin-engine helicopters as “Noisy Aircraft,” with the limited exception of a few aircraft models that are either unavailable or unsuitable for passenger transport. The only helicopter model that could realistically be used for passenger transport that would not be subject to the “Noisy Aircraft” standard is the Bell 407, a single-engine helicopter.

13. Accordingly, even if HeliFlite could acquire a fleet of Bell 407 single-engine helicopters that are exempt from the “Noisy Aircraft” standard, it is entirely unclear that our clients would travel in them. HeliFlite’s entire business model is threatened by the Restrictions.

14. It is very concerning that the Restrictions bar the helicopters considered by HeliFlite, its customers, and many in the industry to be the safest, while exempting from the “Noisy Aircraft” definition certain single-engine helicopters that are considered to be less safe. In my view, the Town drew this dividing line between single-engine and twin-engine helicopters without considering public safety and without ever attempting to measure the actual noise impact of either single or twin engine helicopters.

15. Moreover, twin-engine helicopters have greater passenger capacity than single-engine helicopters, so in order to service the same number of clients in single-engine “compliant” helicopters, operations to and from HTO would greatly increase (casting doubt on whether the Restrictions will reduce noise even if implemented).

**The Immediate Harm to HeliFlite in May and June of This Year**

16. The Town claims that if the Court declines to issue a TRO, the operators will not be irreparably harmed because there were only 346 operations at HTO in May 2014, which was “1%” of annual operations at the Airport. (Town Br. at 24–25). This is misleading and inaccurate. Twelve percent of HeliFlite’s summer landings at HTO in 2014 occurred in May and were highly concentrated during the Memorial Day weekend. The “1%” figure cited by the Town includes all aircraft, including all recreational aircraft. It is not an accurate indicator of the harm the Restrictions will cause to HeliFlite.

17. If the Court were to deny Plaintiffs’ TRO motion on May 14, HeliFlite will be immediately harmed during the month of May, and all months going forward. Memorial Day

Weekend is May 23<sup>rd</sup> and 24<sup>th</sup>, and many of our customers would ordinarily fly to HTO for that holiday weekend beginning on May 21<sup>st</sup> – just seven days after the TRO hearing. If the TRO motion is denied on May 14, HeliFlite will be tangibly and immediately harmed throughout May. Clients will immediately cancel bookings and find alternative transportation primarily with competitors, which will lead to severe revenue and market share losses. In 2014, 43% of our flight revenues for the month of May were generated in the last seven days of the month which included Memorial Day weekend.

18. Similarly, June travel will be curtailed severely.

19. Last year, 30% of our annual HTO landings occurred in May and June. With the disruption caused by a denial of our TRO request, chaos will ensue amongst our client and employee base as service opportunities and revenues evaporate, seasonal hiring efforts are abandoned, and existing employee headcount is necessarily reduced.

20. May is typically the month in which HeliFlite acquires new customers for the upcoming season. However, the uncertainty caused by the Restrictions has led to a near halt in the acquisition of new customers. The financial impact from this harm cannot be measured because HeliFlite does not know how active these customers could have been.

21. Accordingly, if this Court were to deny the TRO on May 14, even if this Court were to schedule a preliminary injunction hearing for late May or early June, HeliFlite will have been seriously harmed in the interim.

22. Based on last year's records, HeliFlite estimates that the Restrictions will bar HeliFlite from conducting 140 operations to or from HTO between May 21 (the Thursday before Memorial Day weekend) through June 30, with a corresponding loss of revenue to HeliFlite of at least \$1 million. The anticipated impact of the Restrictions in May alone would affect 50 flight

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operations, causing lost revenue of \$350,000 – all concentrated around the Memorial Day weekend, which begins seven days after the TRO hearing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: May 12, 2015  
Newark, New Jersey

  
Kurt Carlson

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 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----x

**SUPPLEMENTAL DECLARATION OF ERIC JUNGCK**

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

1. I am the Director of Operations of Eleventh Street Aviation LLC (“Eleventh Street”), one of the Plaintiffs in this action. I make this supplemental declaration, based upon personal knowledge, to respond to certain inaccurate assertions in the Town of East Hampton’s opposition memorandum and declarations opposing Plaintiffs’ motion for a temporary restraining order.

2. If the Restrictions take effect, they will force Eleventh Street to cancel approximately 75% of Eleventh Street’s operations for the month of May – effectively grounding \$60 million worth of assets.

3. The Town suggests that Eleventh Street can avoid irreparable harm simply by replacing its two aircraft – a Stage 4 Falcon 7x jet and a Sikorsky S-76C+ twin-engine helicopter



– with “compliant” aircraft not subject to the Town’s “Noisy Aircraft” definition. This is patently untrue.

4. As set forth in my initial declaration, Eleventh Street operates a Stage 4 Falcon 7x, one of the quietest jets in production. It is a state-of-the-art aircraft that was delivered to Eleventh Street in 2011 at a cost of approximately \$52 million. The lead time it would take to acquire a “compliant” aircraft similar to that of the Falcon 7x – a Gulfstream G550 or G650 – is approximately *three to five* years. Because the Restrictions take effect immediately with no grace period, spending three to five years acquiring a new jet aircraft is no solution and could not avoid the harm that Eleventh Street will suffer during those years.

5. Moreover, even if Eleventh Street sold its Falcon 7x and acquired a Gulfstream, there is no guarantee that the Town will not institute another arbitrary noise definition that will prohibit the use of the Gulfstream.

6. With respect to the Sikorsky S-76C+, that is the only helicopter model that meets Eleventh Street’s safety, operational, and reliability requirements. There is no suitable replacement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: May 12, 2015  
Wainscott, New York

s/ Eric Jungck  
Eric Jungck

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, No. 15 Civ. 2246 (JS) (ARL)  
INC., SOUND AIRCRAFT SERVICES, INC., and  
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----x

**SUPPLEMENTAL DECLARATION OF CHRIS VELLIOS**

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

1. I am the Chief Operating Officer and Chief Financial Officer of Liberty Helicopters, Inc. (“Liberty”), one of the Plaintiffs in this action. I make this supplemental declaration, based upon personal knowledge, to respond to the Town’s opposition to our motion for a temporary restraining order.

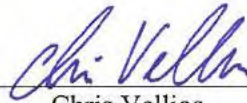
2. The Town’s claim that Liberty will not be irreparably harmed by the Restrictions is untrue. Each week that the Restrictions are enforced translates to significant revenue for Liberty. Last year, from the Thursday before Memorial Day weekend through the Sunday after Memorial Day, flights to and from HTO accounted for nearly \$102,200 in revenue to Liberty. As the summer goes on, Liberty’s operations to and from HTO increase each week. If the Restrictions are not prevented, and assuming that Liberty is able to utilize all of its aircraft to make one trip per week to and from HTO, Liberty would suffer approximately \$400,000 in lost

revenue through the end of June. This is significant revenue for Liberty. Without it, Liberty may well have to lay off employees, including pilots, to cope with the losses.

3. In addition, if the Restrictions are enforced, Liberty will lose market share to a competitor, Gotham Air, which is already advertising that its fleet of Bell 407 helicopters is unaffected by the Restrictions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: May 12, 2015  
Kearny, New Jersey



Chris Vellios

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 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----x

**SUPPLEMENTAL DECLARATION OF SCOTT E. ASHTON**

I, Scott E. Ashton, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the President of Associated Aircraft Group, Inc. (“AAG”), one of the Plaintiffs in this action. I make this supplemental declaration, based upon personal knowledge, to respond to certain inaccurate assertions in the Town of East Hampton’s opposition memorandum and declarations opposing Plaintiffs’ motion for a temporary restraining order.

**AAG Cannot Switch Its Fleet**

2. AAG is a commercial air carrier service wholly owned by Sikorsky Aircraft Company. AAG’s reason for existence is to fly Sikorsky helicopters and to promote the Sikorsky brand. All of AAG’s published marketing materials and website (www.flyaag.com) content promote our operation of Sikorsky helicopters – in particular, the S-76®. AAG also operates a Sikorsky-authorized Part 145 maintenance center, because we are specially trained to service Sikorsky helicopters.

3. AAG cannot avoid irreparable harm by changing the composition of our helicopter fleet, and it is wrong for the Town to suggest otherwise. *All* of Sikorsky's helicopters are deemed "Noisy Aircraft" by the Restrictions, with the lone exception of the Sikorsky S-61, a *1950s vintage aircraft* no longer in production. The S-61 is wholly unacceptable for use in AAG's charter operations. The aircraft was developed by the Navy in the late 1950s as an anti-submarine aircraft. It is far larger than the currently-used S-76 and in some configurations can seat up to 30 passengers. AAG's charter license, however, only allows it to transport 9 passengers at a time by regulation. The S-61 is also more than 5,000 pounds heavier than the S-76 that AAG currently operates, it is much louder, it has a larger footprint, it uses more fuel, and it is more expensive to operate.

4. Significantly, the only reason the S-61 is not deemed a "Noisy Aircraft" is because it does not have a published EPNdB AP level – highlighting the absurdity of the Restrictions' "Noisy Aircraft" classification system. The S-61 is far louder than the S-76, yet the S-76 is deemed a "Noisy Aircraft" by the Restrictions and the S-61 is not.

5. Finding suitable used S-61 helicopters on the market would be virtually impossible. Finding an entire fleet of used S-61's would be impossible. And even if a suitable S-61 could be located, it would require extensive re-working and upgrading to put it into service as a charter aircraft. AAG would also have to seek new FAA certifications, the approval of which would take many months – if the FAA would even approve the aircraft for commercial passenger operations. Because of the age of the S-61 aircraft, finding pilots who are current in the aircraft and have the extensive flying experience that AAG's client require will also be nearly impossible. Moreover, because of its much larger size, the S-61 aircraft would not fit in any of AAG's existing hangar facilities, rendering those investments useless. It is also not clear if the

S-61 would fit on any of the New York City helipads, making the helicopter useless to AAG for our service.

6. I do not foresee Sikorsky continuing to own AAG if the only way AAG could survive would be by purchasing non-Sikorsky helicopters manufactured by Sikorsky's market competitors.

7. Replacing AAG's fleet of S-76 Sikorsky aircraft would not be feasible for the additional reason that AAG does not own most of the aircraft in its fleet, but simply manages them. As a management company, AAG only owns and has direct control over one of the S-76 helicopters in its fleet. The rest are managed either for individual or corporate owners, or managed under our Sikorsky Shares fractional program. Therefore, switching to smaller, single-engine helicopters that are not subject to the Restrictions would require extensive coordination with many clients, some of whom have indicated that they would not switch and would strongly consider selling their helicopters entirely.

**AAG Is Already Being Harmed by the Restrictions**

8. AAG is already being damaged by the Restrictions even though they are not yet being enforced. We are starting to see clients make alternative arrangements for summer travel and defer purchasing decisions for future travel with us. One client has deferred purchasing \$144,000 of prepaid charter time, and another has deferred \$128,000 of prepaid charter time, both *directly citing* the uncertainty of having access to East Hampton Airport ("HTO") this summer. Pending the outcome of the Courts decision on Wednesday, we have also deferred hiring three additional pilots for the summer season.

9. If the Court does not stop the Restrictions from taking effect this Wednesday, the harm to AAG will continue and immediately will become severe. Based on extensive



examination of AAG's records by myself and others, we predict that the One-Trip Limit alone will prohibit the majority of AAG's operations, resulting in an estimated 90% decrease in AAG's operations to and from East Hampton Airport. Based on last year's figures, of all of AAG's flights between May 12 and June 8, 31% of those flights were to or from HTO. Thus, if the TRO does not issue, nearly one-third of AAG's flights within the first month of implementation will be impacted. This will have an immediate and substantial negative impact on AAG's revenue and market share. Flights to and from HTO generate a higher percentage of revenue because they are longer legs than AAG normally conducts. Because flights to and from HTO comprise a significant portion of AAG's revenues, if the Restrictions are enforced, Sikorsky will consider whether AAG will continue to be a going concern.

10. Finally, AAG conducts third-party audits of its operations to ensure that we meet the highest industry standards, including audits from Wyvern Ltd.; Aviation Research Group, US; International Standards for Business Aviation Operations; and Air Charter Safety Foundation. Many of our clients conduct business with us because we maintain those standards, and we invest hundreds of thousands of dollars a year in our safety programs. AAG has long maintained and advertised that it only flies Instrument Flight Rules (IFR)-capable, twin-engine helicopters equipped with the most advanced safety equipment, flown by two highly trained pilots. Downgrading to aircraft that meet an arbitrary "less noisy" standard, but are only single engine, Visual Flight Rules (VFR)-only helicopters flown by one pilot is an unacceptable alternative for AAG and for our clients.

A-440

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: May 12, 2015  
Wappingers Falls, New York



Scott E. Ashton

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., No. 15 Civ. 2246 (JS) (ARL)  
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,  
INC., SOUND AIRCRAFT SERVICES, INC., and  
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----X

**DECLARATION OF MICHAEL NORBECK**

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

1. I am an employee of Sound Aircraft Services, Inc. (“Sound”), one of the Plaintiffs in this action.

2. I make this declaration, based on personal knowledge, in support of the Plaintiffs’ application for a temporary restraining order enjoining the enforcement of Town of East Hampton’s recently-enacted restrictions on the use of the East Hampton Airport.

3. On Saturday, May 9, 2015, I retrieved from the East Hampton Public Library several issues of The East Hampton Star newspaper in which advertisements encouraging residents to call the Town’s noise complaint hotline appeared. For each issue, I photocopied the front page and the page on which the advertisement appeared.

4. Attached hereto as Exhibit A is a true and correct copy of the front page of the May 22, 2014 edition of The East Hampton Star together with a true and correct copy of page B7.

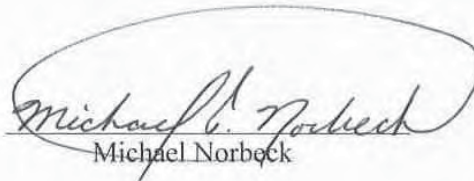
5. Attached hereto as Exhibit B is a true and correct copy of the front page of the June 19, 2014 edition of The East Hampton Star together with a true and correct copy of page A7.

6. Attached hereto as Exhibit C is a true and correct copy of the front page of the June 26, 2014 edition of The East Hampton Star together with a true and correct copy of page A12.

7. Attached hereto as Exhibit D is a true and correct copy of the front page of the July 3, 2014 edition of The East Hampton Star together with a true and correct copy of page B8.

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

Executed: May 11, 2015  
Wainscott, NY



Michael Norbeck

A-443

# EXHIBIT A



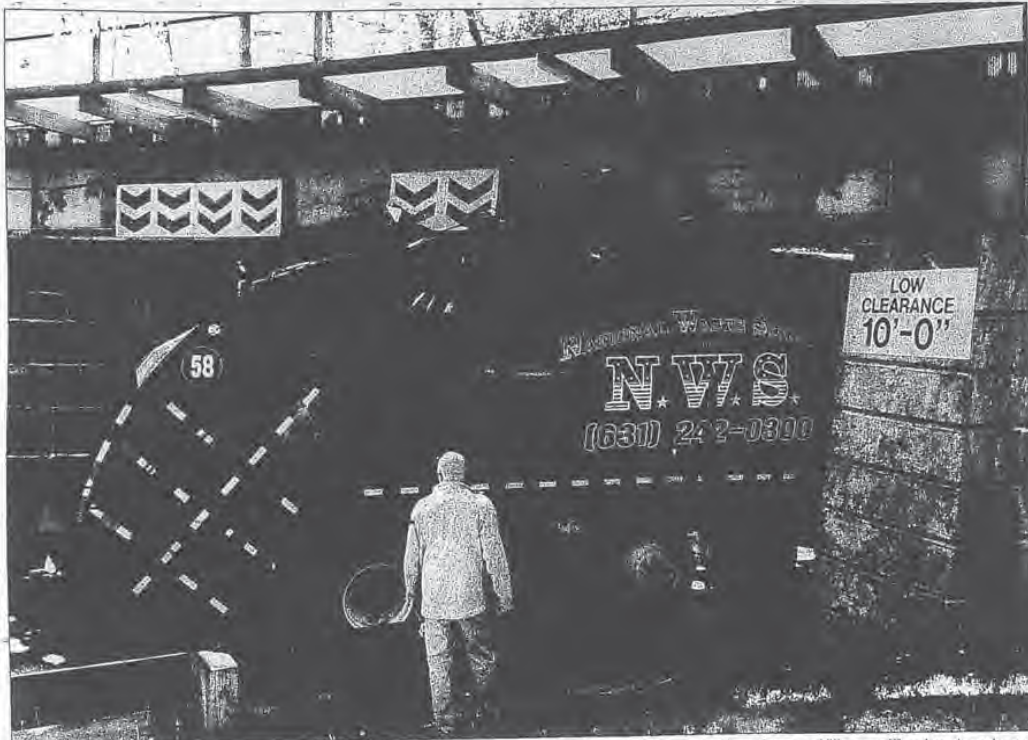
NEWSPAPER OF RECORD  
SINCE 1885

# THE EAST HAMPTON STAR

SHINES FOR ALL

VOL. CXXIX NO. 44

THURSDAY, MAY 22, 2014



A garbage truck did not quite make it under the Long Island Rail Road overpass on North Main Street in East Hampton Village on Tuesday, abruptly stopping train service to the east. *Dan Meeks*

## Arsonist Said to Start To Star

Cops still investigating

By T.E. McMORROW

The Sagaponack man charged setting fire to a \$34 million Dune F house in Bridgehampton on April 15 been found mentally incompetent stand trial by several doctors, his attorney, Brian DeSesa of Edward Burk and Associates, said in Southampton Town Justice Court last Thursday.

However, Jacob De Lauter, an assistant district attorney, insisted that L Osiecki, 54, be examined by another of physicians. "They are entitled independent examination," Southampton Town Justice Andrea H. Schi said about the request, ordering a week adjournment.

Mr. Osiecki has been held \$500,000 bail since he was arraigned on two arson charges, one a felony, on 21. "We don't know if you understand what is happening," the justice said to Mr. Osiecki during the arraignment and she ordered a psychological examination.

"He really needs help. He is not totally sane," Mr. DeSesa said outside courtroom. He questioned the possibility of a second mental exam. If it results in the same finding as the first, Mr. DeSesa said, Mr. Osiecki is likely to be turned over to the New York State Department of Mental Health.

## State Rules for PSEG

Report on cost of burying transmission lines to come

By JOANNE PILGRIM

New electric transmission lines in East Hampton are needed to "ensure reliability of the electric system," the State Department of Public Service has concluded following its review of projects here and in North Hempstead, where residents have called for the lines to be installed below rather than above ground.

Because demand for electricity increases in summer, "both projects should be completed prior to the summer of 2014," Michael Warden, a deputy director in the department, wrote to Audrey Zibelman, the department's chief executive officer, in a memo.

East Hampton and North Hempstead officials enlisted review by the department, which oversees the Long Island Power Authority and its local electric provider, PSEG Long Island, after the installation of high-voltage lines on poles up to twice as tall as those they are replacing, prompted an outcry about aesthetics and safety and questions about the need for the upgrades.

The memo did not address requests by many residents for each of the power lines to be buried, but the department was to complete an analysis of the costs for doing so last week and is to issue a report to the towns.

In a letter to East Hampton Town Supervisor Larry Caniwell, Ms. Zibelman said that although the upgrade was

needed, "it is apparent that the outreach process that was used did not sufficiently inform the communities of the plans and viable alternatives, if alternatives existed." She said that a plan dug from PSEG Long Island on July 1 (the Utility 2.0 Plan) "is designed to be the first step toward creating a blueprint" for the Long Island electric grid which would address future needs and alternatives, such as energy from renewable energy sources.

Ms. Zibelman said that PSEG is expected to develop a plan for including local communities in discussions of its plans, and that when new lines are required "the opportunity for undergrounding should be presented, along with appropriate cost information so the community can make an informed decision."

Also this week, state and local officials announced that they have written to the Long Island Power Authority and PSEG Long Island to urge that Federal Emergency Management Agency funds, if available, be used to cover the cost of putting the 6.2-mile transmission line in East Hampton underground.

In a May 13 letter, Representative Tim Bishop, New York State Senator Kenneth P. LaValle, Assemblyman Fred W. Thiele Jr., East Hampton Village Mayor Paul F. Rickenbach Jr., and Supervisor Caniwell noted that a grant to *Continued on A10*



Space At A Premium  
In East Hampton Village even memorial bench spots coveted

A4



Innovative, Sustainable  
After two storms, rebuilding on North Haven with a purpose

Aa1

## Say F.A.A. Money Is

East Hampton airport finance committee believes

By JOANNE PILGRIM

The East Hampton Airport could be self-sustaining without Federal Aviation Administration funds, with enough income over the next five years to take on additional debt enabling needed capital repairs, an airport finance subcommittee reported to the East Hampton Town Board on Tuesday.

Acceptance of federal funds has been a key issue in discussions of the airport, as has the impact of the town's contractual agreement with the F.A.A. upon taking the money, and its effect on the ability to institute local regulations aimed at minimizing airport noise.

"People have said the airport would fall apart if we don't take F.A.A. funds," said Supervisor Larry Caniwell after hearing the report. "This report shows that that is not true. It shows that we can finance the airport, we can keep it safe and we can do that for some period of time without taking F.A.A. funds."

Until now, the debate had pitted those urging the town to seek more autonomy from the F.A.A. against pilots and others arguing that without federal funds the airport would fall into disrepair and perhaps be forced to close.

Representatives of both sides were appointed to the airport finance subcommittee.

After three months of extensive research and analysis of airport income and expenses, including examination of various operating scenarios to determine if capital would be available to repay bonds issued for improvement projects,



The airport could produce enough revenue this year and more next year.

Based on continued growth in revenue and expense at rates approximately equal to the last five years — and if revenues from landing fees will decrease because of a curfew or reduction in helicopter traffic — the committee concluded that there would be enough income to borrow at least \$4.35 million this year, and up to at least \$5.1 million within the coming five years.



The East Hampton Star, May 22, 2014

B7



Dumping Ground

Continued from B6 because that loss always defined the Springs.

I have heard comments that the Springs is a "working-class" community. My wife and I had grandparents or great-grandparents who were immigrants. These people were very proud to be considered part of the working class and aspired one day to own homes that they would meticulously maintain.

Today, however, the term working class is being used by some to imply that working-class families have no pride of ownership and don't mind living in a neighborhood that is becoming increasingly blighted and squalid. To the contrary, we are all working-class people unless we are the mayor born, and most of us want the Springs to remain an unspoiled environment, revealed of a commercial dumping ground.

The members of the town board have an obligation to do what is best for all of the Springs, including the summer residents who also own a home in the Springs and who expect to support the schools and other public services. We must all work together to promote the highest quality of life in the Springs. There should be no place for personal interests or preferences in the board's decision-making process that prejudices its members to make decisions based on the types of vehicles that they themselves own or park on their own properties. I urge any member of the town board who feels that they cannot make a decision on the merits of this issue without personal bias to recuse themselves from voting.

SANDRA CAMILLO

Formula Stores

Amagansett May 19, 2014 To the Editor, Ever since the topic of maintaining the look, the feel, the character of our home town by prohibiting the intrusion of so-called formula, chain stores has been put up for discussion, I have been trying to better define what I think chain stores, Amagansett, for example, would look like. In a recent issue taken, it has been difficult but I agree with Supreme Court Justice Potter Stewart when asked to define hard-core pornography in a film under review. He said that he couldn't, but "I will know it when I see it."

The closest I can get to the effect of a lack of any control is the sad, unfeeling, transient collection of stores in East Hampton where nobody I know has ever bought a handkerchief. The almost total disappearance of local stores, particularly on Main Street, with the obvious transfer of profits somewhere far away, and even in some cases the use of imported labor, begin to paint the picture.

However, when one gets down to the details of laying out what law is fair to the public, the landlady, the formula stores, the local economy, and the environment, I begin to see how difficult it is to define. Beginning with even the definition of what a formula store is, presents a problem, not in monetary terms such as appearance, signage, and size.

As every responsible journalist knows, you have to get the public to get a reading beyond your view. So I conducted a brief survey into the Amagansett landlady-landlord, and found they were strongly opposed to the resolution. They both felt that "if done right," my worries were unjustified. I was disappointed in their response but I had no choice.

Based on the press, the best I can gather about the near future of this resolution is that it will be watered down to essentially convert the prohibition scores must apply for a "special permit" from the town planning board. Each request for such a special permit will be the subject of a public hearing. The participation of the public and its comments will be an important factor in the final decision.

While you do understand the difficulty of getting a law to have things as they are, I have come to realize that is not realistic. But if we stay vigilant, follow the proceedings carefully, and make our voices heard we may yet head off the worst.

IRVING HIRSCHBERG

SilverLeaf Landscaping Design and Maintenance. Lighting, Mowing, Pruning, Deck, Water Features, Property Management. www.easthamptonstar.com

Most Solicitous

Amagansett May 16, 2014 Dear Editor, I was deeply disturbed by a letter sent to and printed in The Star some time ago. It concerned the demolition of the Showtime television group that was here in Amagansett last summer, filming a pilot piece for possible future use. The letter noted all of the drastic problems that had been encountered and endorsed by our community as a result of the filming — general noise, street blockage, poor parking, misdirection of night lighting, garbage, etc.

As an inhabitant of this neighborhood and living almost directly across the street from the "damned" location, my experience was totally different. I found everyone involved to be most solicitous in every way. Massive efforts were made to keep the noise level very low, streets to be totally and constantly passable, and trash to be attended to painstakingly. The administrative personnel were professional, friendly, and really concerned and understanding about limiting any disturbances.

I understand that additional filming here will be done in the near future and that once again, there are those who object to the project. I find that totally ridiculous and undecorous and only wish Showtime a rousing success. I might also mention in closing that while attention has been given to the benefits that the whole community and town have enjoyed as a result of Showtime's presence here, i.e., the use of our restaurants, use of our hotels, local store purchases, in name just a few.

JANE K. WEILLER

Night Lighting

Amagansett May 19, 2014 Dear David, A hearing will be held at Town Hall on June 5 at 7 p.m. in an effort to discuss outdoor lighting code. While we are lucky that the town board was unsuccessful in demonstrating this code, the amount of being proposed will extend the period of time for reinforcement beyond the 2006 law by nine years. As well, there is a provision being proposed that could open the door to increased sky glow by allowing more "blue light" into the atmosphere. Light bulbs that are more blue create more glare and more sky glow, and cause adaptation problems. Think of the bluish headlights given by allowing more "blue light" to be seen after passing them. This is especially true for older eyes.

If any of your readers are interested in leaving the town board with thoughtful thoughts about misdirection, unshielded, or excessive night lighting, I hope they will come and speak at this hearing. Town Hall, June 5, 7 p.m.

SUNAN HARDER, DarkSky Association

Increase Flow

Wainwright May 19, 2014 Dear David, As we all know, the traffic gets worse each year, especially on Route 27, and every more so on other roads as drivers seek alternatives. Now, with the long overdue repaving of 27, we will see fresh asphalt, but no diminishing of congestion.

Generally speaking, the local means of dealing with highway congestion is adding another traffic light and, although this may increase safety, it invariably decreases flow. There were once the addition of a single light has led to a seemingly endless backup for miles and hours every day, as at the Water Mill light and Wainwright light, among others.

I offer the following suggestions: 1. Expand mail delivery in any villages or hamlets not offering it. We should stop forcing people into crowded areas every day to pick up mail that could easily be delivered. If this were done in Wainwright alone there would be even less need for a traffic light there. (See number 4, right turn only idea, below.)

2. Shorten light times. Virtually every one that I stop at, which is every red one on 27 from Southampton to Amagansett, allows too much time for the motorist to stop, thereby clogging up the highway needlessly. Every early morning in Water Mill thousands of people are stopped dead by a light at an intersection for closed stores that nobody is going in or out of at that time of day.

3. Widen the highway. It has always



Summer view. Darrell Godfrey

worked in East Hampton Village. Now it works much of the time since it was done in Southampton. There have to be over lanes in each direction and, yes, through the village of Water Mill and Bridgehampton and Amagansett simultaneously. The space is there, with elimination of some on-street parking on one side and/or under parking of sidewalks. No buildings, windmills, historical sites, etc. need to be torn down. The wide middle turning lanes already in existence would be unnecessary with a four-lane road. The beauty of the village would be improved by having better traffic flow (again, see East Hampton).

4. In several places lights should be eliminated (thinking yellow "may" and those intersections should become right-turn-only ones. No vehicle could ever cross both lanes. At least in this along both ways. People would quickly adapt to this, so many of us already have. Signal candidates for elimination or modification on 27 would be Water Mill, Wainwright, Bridgehampton, Charter Lane, and East Hampton (I believe having Hollow Lanes, among others).

5. Variable lane allocation. If widening to four lanes is not considered in some areas, then at least set up a three-lane system with alternating sidewalks allowing for two lanes into the Hampton in the am and out in the pm. A computerized electronic system would simplify becoming manageable for travelers and greatly increase flow. This was proven during the U.S. Open golf tournament at Shinnecock Hills in 2014. With the same law, apply to that locale.

trouble as a young writer finding an agent, she became her own publishing books under pseudonyms in four different genres. Most notably, she published 20 mystery and crime novels as Vin Packer, pioneered gray-themed novels as Ann Aldrich, and became well-known as M.E. Kerr for her 25 young-adult novels. She has been honored with multiple awards.

In 1983, she decided she wanted to help other writers get published, and so she has, year after year. Our ranks include Vincent Lardo, who wrote his first published book in the workshop. He's since had six bestsellers. One year, three of our members, Betty Wresce, Boris (Bob) Fishkin, and the late Jess Gregg, had books published the same season. We've had over 20 novels and memoirs published and over 25 others completed.

The community of writers Marjane has created is remarkable. In addition to our 14 current members, there are scores of past ones. With the weekly format, we get to metaphorically share regularly and are deeply involved in each other's work. Some of our best friends are writers, including lasting friendships with past members.

There is no way to adequately give a sense of the scope and depth of Marjane's insight and knowledge. Her ability to synthesize a dizzying range of factors into a digestible point is breathtaking. "Use what you can," she'll say when she's bombarded with dozens of competing notes. And she's quick to remind the overzealous, "You can't tell someone what to write." Her style can be brusque, yet the atmosphere she creates is warm, safe, and respectful. Her contributions to writers over the years are incalculable.

We'll still be meeting on Thursday nights, beginning in September. The class started me, a 47-year veteran of the group, to carry on. Like all great leaders, Marjane built a foundation that will stand. The workshop, however, will never be the same.

Sincerely, LAURA STEIN On behalf of the Ashwagh-Hill Writers Workshop

Story in the Making

Amagansett May 19, 2014 Dear Mr. Barry: This is a companion letter to one written this week by Laura Stein on behalf of the Ashwagh-Hill Writers Workshop. Specifically, these two letters are in recognition of the 30-year leadership given the workshop by Marjane Meakier.

Ms. Meakier placed an article in The East Hampton Star on Sept. 15, 1983, calling writers to form a workshop to begin meeting the following Thursday at Ashwagh Hill. I was among those who responded and I have been with the workshop these 30 years. Since the beginning, men and women have come in to the workshop, many also leaving after longer or shorter periods of time. There have always been new members, who have provided fresh points of view and styles of writing. Through it all, Marjane has provided consistent, pointed, sometimes sharp comments in critique, joined by fellow members, all with the goal to help writers improve their writing and to help advance their work into publication. It has also been necessary to keep with the vagaries of

publishing, and in this effort Marjane has kept up with the changing landscape. My concern here is also most personal since I have known Marjane for these 30 years. She and the workshop have provided invaluable assistance to me in my own writing. Additionally, Marjane and I are friends. When I was in the process of coming out as a gay man I spoke with Marjane. She listened attentively. She also, when judged to be appropriate and helpful, invited me to social events of the East End Gay Organization. I met my good friend recently deceased, Ron Fleming, at an E.E.G.O. Thanksgiving dinner, 1987. Mutual friends, Chuck Hitchcock and David Witt, were also supportive. Marjane and Chuck were charter members of E.E.G.O. from 1978.

Marjane and I became volunteer "ambassadors" for the Lotus Island Association for AIDS Care, and I subsequently became a pastoral volunteer for LIAAC. Marjane and others from E.E.G.O., such as Sandy Rapp were equally active in support of gay rights as a sympathetic supporter of those who were sick and dying in those devastating years. Before LIAAC was even established on the East End, Marjane and a few others of us met at Southampton College to see what could be done to set up a structure of support.

A writer's work and life is a solitary business. It's you and the typewriter, then the word processor, then the computer, but you and the witless word and the interior creative process banging out novels. For Marjane, it's 50 books under various many fine plumes, of which M.E. Kerr is very much known in young-adult fiction. Marjane has said she started the Ashwagh Hill Writers Workshop to create a place for writers to interact with their work and one another, also to keep herself in relationship with writers.

For many of these years, when I was also the minister of the Amagansett Presbyterian Church, members of the workshop came to one of my worship services on a January Sunday. I was to preach on something having to do with writing. Marjane was always there. I succeeded in the assignment, but it was all in good spirit, and the congregation welcomed the annual gathering. Afterward, workshop members and spouses had a covered dish brunch at the manse across Meeting House Lane from the church. Words flowed and mingled in conversation, a story in the making, of the makings of a story to be set down. Then into the cold January air again and back to work.

It has been a long and successful run for Marjane, and all of us committed to our work. The workshop has blessed Laura Stein, Montreal, to succeed her. In the ensuing years we will continue in the strength Marjane built into the workshop.

ROBERT STUART

More Than a Book

East Hampton May 19, 2014 Dear David: Two weeks ago, Book Hampton lent out our small to friends and neighbors. I alerted everyone in the perilous state of our bookstore. The winter was harsh, the spring soaked, and we have seen with sad forbidding the reality that for

Continued on B8

SUFFERING FROM AIRPORT NOISE? LOG YOUR COMPLAINTS! CALL THE AIRCRAFT NOISE COMPLAINT LINE AT: 1-800-376-4817 OR LOG YOUR COMPLAINT ONLINE AT: www.planenoise.com/khto/ The summer season is upon us and with it increasing unacceptable noise generated by aircraft traveling to and from East Hampton Airport. The Town Board plans to reduce noise by imposing meaningful curfews, limiting hours and banning the noisiest aircraft. These plans must be supported by noise complaint data. Help make this our last summer of aircraft noise. If you suffer from aircraft noise, pledge to call the hotline, even if only once a day. To end the noise, we need to make some noise! Register your aircraft noise complaints! THE VILLAGE PRESERVATION SOCIETY OF EAST HAMPTON 324-2324 VillagePreservationSociety.org

A-446

# EXHIBIT B



NEWSPAPER OF RECORD  
SINCE 1885

# THE EAST HAMPTON STAR

VOL. CXXIX NO. 48

THURSDAY, JUNE 19, 2014

ARF

## Casey Needs A Home

### Puppy given new lease on life at shelter

BY BELLA LEWIS

Casey, a 10-month-old female husky mix with an unusual medical condition, has gotten a new lease on life in the care of the Animal Rescue Fund of the Hamptons and now needs a new home. Her condition is megasophagus, which makes it impossible to eat while standing up in a normal position without vomiting.

Enter Bill Petrie, a Southampton carpenter, who, working with his daughter Anna, made the pup a customized chair that allows her not only to eat while sitting in an upright position but standing on her hind legs, which she prefers.

Sarah Alward, ARF's veterinarian, explained the origin of the chair, which was invented by a couple whose surname is Bailey for their own dog. A DVD is available that shows how it can be built easily with a little handiwork.

Until the Petries built a Bailey chair for Casey, she had been using one made for another dog at the shelter with megasophagus. That chair, however, was designed only for sitting while eating. "She tolerated the feedings in the old chair, but needed her own so that she could stand up," Dr. Alward said.

Continued on A3



The flags of all 32 countries playing in the World Cup flew in the courtyard by Rowdy Hall in East Hampton Monday as fans watched Germany best Portugal and waited for the United States to play Ghana that night. *Carissa Katz*

## Spielberg, Setbacks, Secret Serv

### Was it a 'builder's error' or a 'c

BY CHRISTOPHER WALSH

The matter of Steven Spielberg's garage and storage structure on Apauogue Road, which needs an area variance to permit its continued existence, came before the East Hampton Village Zoning Board of Appeals at its meeting on Friday.

The structure is 38.3 feet from the front property line. At the time of its construction, the required setback was 50 feet. In August 2002, a few months after a building permit was issued, the setback was increased to 80 feet.

The noted film director is also appealing an earlier determination requiring a special permit for the already-built addition of two bedrooms to a second residence on the 5.5-acre property. The village's head building inspector, Ken Collum, had found that the bedrooms were added without Suffolk County Health Department approval.

Linda Riley, the village attorney, told the board that no part of the garage complies with the current 80-foot front and side-yard setbacks. True, said Richard Whalen, an attorney representing the applicant, but more than three-quarters of it conformed to the standard at the time the building permit was issued.

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## Budget Wins the Day

### Bridgehampton voters approve increase by 62 percent

BY AMANDA M. FAIRBANKS

On Tuesday night, by a vote of 240 to 145, Bridgehampton voters finally pierced the state-imposed tax cap on a \$12.3 million budget for the 2014-15 school year. The budget was before voters for the second time, and it passed by a supermajority of 62 percent, just over the 60 percent required. The same budget had been put before voters in May, when only 54 percent of voters were willing to pierce the cap.

Laura Spillane, the district treasurer, announced the results in the school's gymnasium shortly after the polls closed at 8 p.m. The mood quickly turned celebratory, with relief audible. About a dozen residents of different ages had filtered into the gym to cast their ballots before the polls closed. Lois Favre, the district superintendent, stood watching, saying she remained "hopeful" in the minutes leading up the count. All told, 385 voters turned out.

On May 20, when only 247 turned out for the first vote, the result was 134 to 113. Had the budget gone down a second time, Bridgehampton would have been forced to adopt a budget based on this year's figures — with cuts amounting to nearly \$800,000 according to Ron White, the school board president. He blamed complacency and low voter turnout for the initial defeat.

Douglas DeGroot, who has served on the school board for the past four years,

said Tuesday's revote left him feeling vindicated. "A lot of people thought we were arrogant to go out with the same budget, but we cut as much as we could," said Mr. DeGroot. "It's great to finally get this community support."

"I'm very happy," said Tamara George, whose son is in the first grade. Since relocating from Virginia, she said her son has received unparalleled individual attention, helping him catch up to his peers. "This is a wonderful school."

Dorothy White, who has worked as a custodian for the past 20 years, cheered. "This is awesome," she said. A graduate of the school, Ms. White's four children also are graduates and her son is school board president. In addition, she has two grandchildren who are enrolled now. "As a hard worker, I just didn't want to see anyone lose their job."

The Bridgehampton School enrolls around 170 students. It asked voters to okay a \$1.1 million, or 9.93-percent, increase over the current year's \$11.2 million spending plan. The 2014-15 budget translates to a \$10.6 million tax levy — or an increase of 8.8 percent. Under a state law that went into effect in 2012, the cap on property tax increases is either 2 percent or the Consumer Price Index — whichever is lower. This year, school districts across Long Island that put forth

Bridgehampton was among four districts across Long Island that put forth

Continued on A8



### Mapping History

Peering through time at a Sag Harbor cemetery

A6



### Springs In Bloom

Five gardens open during Saturday benefit tour

C1

## Lake Montauk Pollution S

### Buying vacant land and incentives for septic upgrades in v

BY JOANNE PILGRIM

A study of Lake Montauk and its 2,760-acre watershed has identified the threats to water quality in the lake and set out a list of recommendations for East Hampton Town to follow. Water quality is good in the lake's center but poor in areas where the tide does not reach and pollution runs into the lake, the study says.

One approach to water quality protection, preserving vacant land around the lake, is already moving forward. East Hampton's Department of Land Acquisition contacted the owners of 200 undeveloped properties totaling 150 acres within the lake watershed about possible purchase of their land with the town's preservation fund. Forty-one responded, and several purchases are in the works.

Carrie O'Farrell of Nelson, Pope, and Voorhis, a consulting firm that worked with members of a town-appointed Lake Montauk technical advisory group to develop the watershed management plan, reviewed the plan's findings and suggestions at a town board meeting on June 10.

With funding from a New York State Department of State grant, the study group looked at the watershed's topography, depth to groundwater in the areas surrounding the lake, land ownership, including an inventory of land owned by the public or nonprofit organizations, drainage infrastructure, and surface water impairment in the entire watershed, including the 20 freshwater wetlands around the lake.



A watershed management plan has been drafted for Lake Montauk and its surroundings.

those wetlands contribute to poor water quality, Ms. O'Farrell said, as does the removal of trees and vegetated buffers, over-fertilization of lawns, and the discharge of stormwater and sanitary waste to surface and groundwater without adequate filtration.

Problems are particularly evident in the southern part of the lake, the report says. High levels of pathogens there are attributed to conditions in the Dutch

draining water, at high-density Water-Country, York State tal Cons have led beaches, Drives, shellfish



The East Hampton Star, June 19, 2014



**Amagansett**

Christopher Walsh  
324-0002

**Tennis Anyone?**

With the start of summer, the Amagansett Village Improvement Society is again offering free tennis lessons to children ages 10 to 12. Peter Hoopes, the society's tennis pro, will return as instructor. Lessons will be held on Tuesdays from 4 to 6 p.m. at the John Day Jackson Memorial courts at Atlantic Avenue and Montauk Highway.

Registration and lessons begin July 1. Children should bring appropriate tennis attire. For more information, contact John Hoopes at 324-0002.

Tom Peters, editor of the Morning Star, will present a workshop on building one's investment portfolio. On Sunday at the library, Francis Moore, who was born in Germany in 1917, will discuss her memoir "Finding Home: My Journey From Paris-War Germany to America." A German passport for war, the unfortunate middle-class life of Ms. Moore and her family were impacted and they were displaced shortly after the 21st birthday and she spent multiple weeks in the young refugee camps, in the United States. Ms. Moore will speak at 2 p.m.

East End Climate Action Network will meet on Wednesday from 6 to 7:45 p.m. in the Community Room. The group is planning a sustainability fair, scheduled for Aug. 16 in the grounds of the Amagansett Historical Association.

**Another Fine Day**

Dan and Maria King, who relocated from East Hampton to North Carolina in 2004, will return to the East Hampton Town Marine Museum on Saturday, where "A Fine Day for Fishing," Mr. King's fictionalized pieces of the end of the boating way of life, will be available for sale and signing. The event, from 10 a.m. to 6 p.m., will also feature archival photos of several of Cynthia Lowman's illustrations for the book. They too will be on sale.

"A Fine Day for Fishing," a self-pub-

lished novel financed through a Kickstarter campaign, draws from Cape King's experiences and the East Hampton Historical Society archives. Mr. King served for 20 years as president of the East Hampton Baymen's Association. His "Big" story, which he fished from until New York State prohibited commercial hushpuppy, now stands in front of the Marine Museum, which is on Bluff Road.

**Stony Hill**

The annual benefit cocktail party for the Stony Hill Stables Foundation happens on Saturdays from 6 to 8 p.m. on site on Town Lane. The evening will include a showcase exhibition with narration, a party, and a team presentation performed by young Stony Hill riders, and a dressage performance by grand prize riders. Tickets are \$125 or \$200 for a couple.

The foundation is a not-for-profit organization that promotes excellence in equine sports through riding education and cooperative opportunities for children and young adults. Residents of Mattitohock, Amagansett, East Hampton, Sag Harbor, Southampton, and West Hampton are eligible to apply for a scholarship for the 2014 season at semi-finalist level.

**Centennial Celebration**

The Amagansett Fire Department's centennial celebration is fast approaching. The July 12 event will start at 10 a.m. with a lineup for the parade at the American Legion. The parade will start at 11 and proceed to the firehouse for a celebration and presentation of awards, starting at noon.

Children's games, music, antique fire vehicles, pumping, and bucket brigades are planned for the event, which will happen rain or shine. Hamburgers and hot dogs, food for kids, and water will be on the menu.

Looking still further ahead, the A.V.S. board of directors has made plans for the society's traditional summer party, Sunday Night Fever in Amagansett, is scheduled for Aug. 2 at the South Fork Country Club. Food, drinks, silent auction, and dancing to music. Tickets are \$80, and Ms. Tilly can be contacted for more information.



As a crowd looked on, Samantha Ruddock, Evan Thomas, and Ted Hahn re-enacted the 'Navy Saboteur' June 13, 1942, landing at Adiratic Avenue Beach on Friday evening. Inset: Sonny Siroc portrayed a coast guardman and Carl Trace a boatman's mate second class at the Amagansett Life-Saving and Coast Guard Station. David Geoffrey Photos

**Bridgehampton**

324-7827

A free lecture about low-maintenance native plants will be given on Sunday at 10 a.m. at Marjorie Noyes on Snake Hollow Road. And the Sills Vander Galtley's Film on the Haystack begins on Friday, June 27, at 8 p.m. when Alfred Hitchcock's "Rear Window" will be shown outdoors on an inflatable screen.

At Midsummer Night Fever on Sunday, attendees can dance to music by D.J. MK1, participate in silent live auctions, and enjoy an open bar and award-winning Swedish cuisine by Jonas Dahlbom. The event, this year's Ariva Against Abuse benefit for the Roman's domestic violence services, will take place at the Row School's Iovest Campus Road house on Hutter Lane. It will honor Representative Tim Bishop, as well. Cocktail hour begins at 6:30 p.m., and the evening will last until 10:30.

Fitness enthusiasts have been invited to take a walk on Saturday with Rick Bogawski, the general manager at Bridgehampton on Mitchell Lane. Participants can meet Mr. Bogawski and the winner of a walk for a glass of wine before he moves through the garden to discuss the varieties of roses, their care, and their cultivation from 4 to 6:30 p.m. The Peconic Land Trust in Southampton can be called to reserve a space. The cost is \$10, or \$5 for Bridge Garden members.

**"Lord of the Arts"**

David Dupuy's film "Lord of the Arts" on the life and work of the notable E.O. Wilson, will be screened on Saturday at 7 p.m. at the South Fork Natural History Museum. The 2008 documentary was a "NOVA" production for PBS and mixes chronology, by through Mr. Wilson's life as a natural entomologist and biodiversity advocate. It features footage of him at work.

**Southampton**

324-7827

Mexico, a furniture, furnishings, and antiques store, is celebrating the 2014 Hampton Designer Showhouse and its participating designers with Cocktails & Conversation on Saturday from 5 to 7 p.m. The event is a benefit for Southampton Hospital. Mexico is at 257 County Road 39A. Emails can be sent to [info@downingsdesign.com](mailto:info@downingsdesign.com) or R.S.V.P.

Southampton Hospital has launched a pet therapy program and is seeking volunteers. Dogs and handlers can be trained by Pat Barnes, a nonprofit organization that provides certification in pet therapy. At present, Jane May will implement the program, and her golden retriever, Digby Doodle, visits patients at the hospital once a week. Interested volunteers can email Greg Griffith at [green@getalread.org](mailto:green@getalread.org).

**On Bike Maintenance**

Eric Bernard-Luech will lead a program on bike maintenance at the Hampton Library on Saturday from 1 to 3 p.m. Participants will learn why wearing a bike helmet is important, how to choose the correct size of bicycle, how to change a flat tire, and how to keep bikes in good working order.

On Thursday at 7 p.m., the Hampton Take 2 Film Festival documentary series will begin at the library with a screening of "Under Our Skin: A Health Care Nightmare," by Andy Abraham. The film focuses on Lyme disease, problems in the current medical research, and controversies surrounding it. Stories of patients suffering from the disease are told as well.

The free Sunday at Two gatherings will continue at the Long Point Greenbelt Nature Center this Sunday with "The Quintessence of Long Island," featuring Dennis Trimble-Rich and Jan Poronchik talking about their artwork. Refreshments will be served. The nature center is at 1061 Bridgehampton Sag Harbor Turnpike.

**Spings**

324-7827

The Springs Presbyterian Church will stage its annual chicken barbecue on Saturday from 4 to 7 p.m. Dinner is for \$20 per person, will include chicken, cole slaw, baked beans, rolls, a beverage, and dessert. It may be eaten at the church or packaged for takeout.

Tickets may be ordered by calling the church or by email to [spingschurch@openline.net](mailto:spingschurch@openline.net).

**Open Studio**

David Fram, a ceramicist, will have a studio sale on Sunday from noon to 4 p.m. at his studio at 3 Ingalls Road, across from Pig Pen Produce on Thos. Mile Harbor Road.

Mr. Fram will have serving bowls and dishes on display, along with a number of smaller items that could be given as gifts. A half-price shelf will hold items from past shows. Beaded jewelry designs by Etienne Schaller also will be displayed. Refreshments will be served.

New to the Springs Library are the books "China Doll" by Lisa See, "Field of Prey" by John Sandford, "The Matchmaker" by Elm Hilderbrand, "The Harlequin Sisters" by Deborah Frank, and "Mr. Mercedes" by Stephen King.

Tom M. Talmage, a daughter of Rick and Liz Talmage of Fireplace Road, has earned a place on the dean's list for the spring semester at the University of Vermont's College of Agriculture and Life Sciences, where she just finished her freshman year.

Test, a Springs School and 2013 East Hampton High School graduate, is studying animal science.

The Springs Farmers Market will be set up on Saturday from 9 a.m. to 1 p.m. at Ashwagh Hall.



**Wed at the Legion in Amagansett**

Kaitlin A. Ganga and Jeremiah L. Overton were married in the field behind the American Legion Hall in Amagansett on May 17, a date that marks both of their birthdays. East Hampton Town Justice Steven Tekulsky officiated.

The bride is the daughter of Megan Ganga of Glade Road and Anthony J. Ganga of Neck Path, both in Springs. Mr. Overton's parents are Leo and Suzanne Overton of Three Mile Harbor Road, East Hampton.

Attending the bride were Danielle Tim of New Port Richey, Fla., as maid of honor, Lucy Besoyev, and Hong Duong of East Hampton, Sherry Grenard of Bethpage, Victoria Ganga of East Hampton, her cousin, and the groom's niece Rachel Overton of East Hampton. The bride's daughter, Jana Lee Slyter of East Hampton, and another of Mr. Overton's nieces, Gabrielle Miller, were the flower girls.

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[www.planenoise.com/khft/](http://www.planenoise.com/khft/)

The summer season is upon us and with it increasing, unacceptable noise generated by aircraft traveling to and from East Hampton Airport.

The Town Board plans to reduce noise by imposing meaningful curfews, limiting hours and banning the noisiest aircraft. These plans must be supported by noise complaint data.

Help make this our last summer of aircraft noise. If you suffer from aircraft noise, pledge to call the hotline, even if only once a day.

**To end the noise, we need to make some noise!**

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THE VILLAGE PRESERVATION SOCIETY OF EAST HAMPTON 324-3234  
[thevillagepreservationsociety.org](http://thevillagepreservationsociety.org)

A-449

# EXHIBIT C



NEWSPAPER OF RECORD  
SINCE 1885

# THE EAST HAMPTON STAR

VOL. CXXXIX NO. 49

THURSDAY, JUNE 26, 2014

## WATERWAYS

### Woes Over What Gets Flushed

Conservancy report sounds nitrogen alarm

BY CHRISTOPHER WALSH

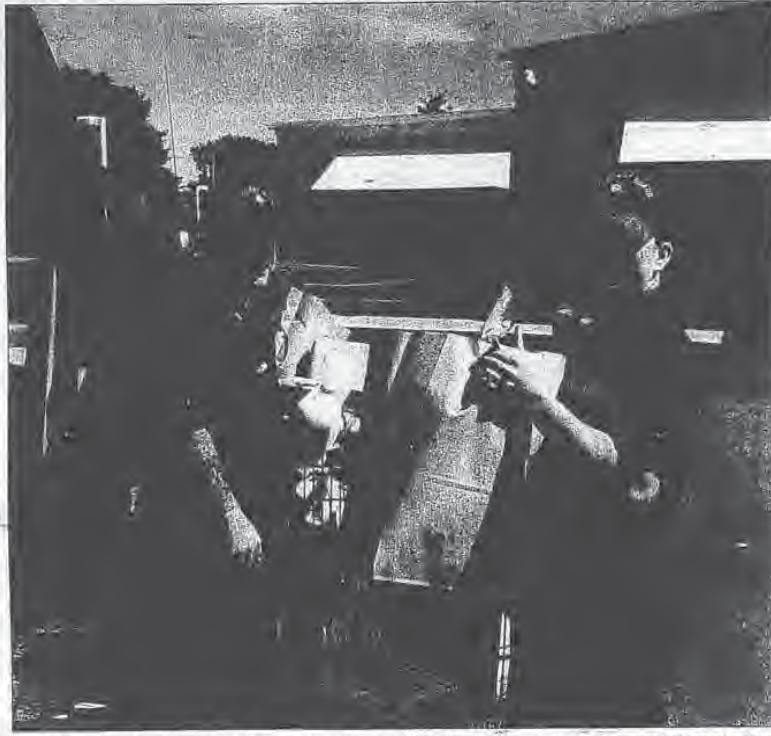
The Nature Conservancy, a conservation organization that works to protect ecologically important lands and waterways, issued a report last week asserting that wastewater from residential septic systems and sewage treatment plants contributes approximately half of the nitrogen pollution found in 25 of 43 areas surveyed within the Peconic Estuary.

Large quantities of nitrogen are leaching from onsite disposal systems into waterways on the South Fork, the report stated, an overabundance of which is blamed for oxygen-depleted water, algal blooms, fin and shellfish kills, and the loss of seagrass and marsh habitat. The areas studied are within the towns of East Hampton, Southampton, Shelter Island, Southold, Brookhaven, and Riverhead.

Fertilizer and atmospheric deposition — the natural accumulation of nitrogen — each account for roughly one-quarter of the nitrogen pollution, the report said. Nitrogen from these sources reaches water bodies through both ground and surface water flow.

"There is no denying that excess nitrogen is the largest threat to Long Is-

Continued on A6



Petty Officer Charles Gasaway and Seaman Aliza Angus of Coast Guard Station Montauk pounce \$800 worth of pills at the Amagansett I.G.A. Tuesday for a crew of 12 that will be on the water for a week.

Irene Silverman

### 'Pollocks' Not Pollock Says F.B.I

John Re charged in a \$1.9 m

By T.E. McMORROW

An East Hampton man stands accused this week of selling over 60 forged paintings, which he claimed to be by Jackson Pollock, to private collectors and on eBay, netting him nearly \$1.9 million.

A special agent of the Federal Bureau of Investigation, in seeking a warrant for the arrest of John D. Re, 54, said he had engaged in the scheme since March 2005 and at least until this past January. According to the complaint by the agent, Meredith Savona of the bureau's art theft and art fraud division, Mr. Re falsely told collectors he had come across a trove of Pollock paintings in 1999, when he was hired to clean out the basement of an East Hampton woman, Barbara Schulte, three years after the death of her husband, George Schulte, a woodworker and antiques restorer.

Mrs. Schulte, who later moved to Marblehead, Mass., died last year. Members of the family have not returned calls for comment.

East Hampton Village police arrested Mr. Re on Friday morning for driving with a suspended license, and turned him over to the F.B.I. Arraigned on one count of wire fraud later that day in Federal District Court in Manhattan, he was

released, significant signers "bond" a Richard, eral div Southern

Mr. Re he was a tereft r fake \$2 press. H criminal ment in two and

His b include, the scer charges.

Accor peatedly create a nance, I told o "basem riques, ed over-

The i national told om member

## 24/7 Regional E.M.S.?

Mixed reaction to ambulance coalition's plan

By Taylor K. McEsey

With an average of 4,500 emergency medical calls to answer each year in the Town of East Hampton and ongoing struggles with volunteer recruitment, retention, and response times, the emergency medical service community is getting creative about how to ensure help gets to patients faster.

The East End Ambulance Coalition, made up of representatives from all six agencies that serve the town, is proposing an East End Responder Program that would be spread over all six districts as a single territory. Under the program, which has gotten mixed response from the various agencies — advanced life support providers would respond to the scene of emergencies 24 hours a day, seven days a week, in what are known as "fly cars." An ambulance and volunteer emergency medical technicians would also need to respond, but medical attention could already be started on scene.

Advanced life support providers offer an increased level of care, particularly during major trauma or heart attacks. In contrast to basic emergency medical technicians, they can intubate a patient, start intravenous therapy, and administer narcotics, such as pain medication

committee that has been working on the proposal for the past 15 months, said that the program would be a shared resource instead of a proprietary one. Paid providers who work in one-person shifts in Montauk, Amagansett, and East Hampton — all of which have instituted their own paid programs over the past year — cannot leave their districts if a neighboring one needs help, unless a patient is in cardiac arrest. But, under a longstanding mutual aid program, volunteers can.

Leaders of the districts that oversee ambulance services are not convinced that a regional approach to immediate medical service is necessary.

The proposal calls for three first responders on duty during the off season and six during the peak season. Each first responder would have a primary area at which to answer calls as they are dispatched. When one is tied up on a call, the others would shift over to help cover the other areas, similar to how police set up sector cars.

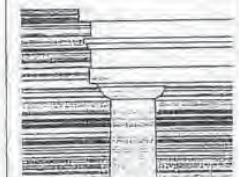
In order to set up a program that runs across district lines, the committee wants to form a new tax district that would also be set up as a union-free, not-for-profit agency serving from Montauk to the western edges of the Bridge-



### Friday Crash

Motorcyclist hurt by alleged drunken driver

A13



### Nation's Best

A close look at art destined for U.S. embassies

## Children's Wing Is Welco

A \$6.5 million library addition opened with speeches, s

By Christopher Walsh

Under a brilliant blue sky, the East Hampton Library's new 6,800-square-foot children's addition was unveiled on Saturday morning. Hundreds of residents attended a ribbon-cutting ceremony before viewing the fruits of several years of planning, fund-raising, and construction.

"The children are going to be absolutely delighted," said Tom Twomey, chairman of the library's board of managers. Libraries, he said, are both "a place where knowledge, learning, and research take place" and "an essential element of democracy."

Mr. Twomey praised the board of managers, including Donald Hunting, Sheila Rogers, Ann Chapman, Maureen Egan, Charles Soriano, Sara Davison, Deborah Walter, and Gail Parker. He singled out Mr. Hunting for recognition, noting that he has served the library in one or another capacity since 1964.

In a quote he attributed to Andrew Carnegie, Dennis Fabiszak, the library's director, said teamwork was "the fact that allows common people to attain uncommon results." He recognized the entire staff of the library, citing the group effort that allowed the addition's creation while the institution continued to serve the community.



A 16-foot-tall windmill forms the easy reader area library's new children's addition.

Thiele cited the persistence needed to accomplish the expansion and renovation. "The journey was long," agreed Mr. Laville. "But it was worth waiting for."

"The people who live here really do meet the needs of the community," said

put into sealed at Mr. B. the library the tour helped to Baldwin



A12

GOVERNMENT

The East Hampton Star, June 26, 2014

TRUSTEES

Tempers Flare as Baymen Demand Answers

By CHRISTOPHER WALSH
Frustration boiled over as a group of commercial shellfishermen confronted the East Hampton Town Trustees Tuesday about the efficacy of the town shellfish hatchery's annual seeding program, which the trustees help fund. The meeting was marked by multiple angry exchanges and those in the small rooms in the town's Lamb Building on Bluff Road, Amagasset, talking over one another. When the shouting subsided, all agreed that a survey after the seeding was completed would be in everyone's interest.

The hatchery, on the shore of Fort Pond Bay in Montauk, was established in 1989, four years after illegal blowers began sweeping through local watersways and decimating shellfish. Its staff of five, two of whom work part time, oversee the spawning of millions of clams, oysters and scallops, which are then put in Northwest, Three Mile, Amagasset and Napeague Harbors as well as Hine Creek and Lake Montauk.

"There was large amounts of clam that are being put out in these places, millions of seeds," Greg Verity, one of the angry baymen, said. "They're simply not there, they haven't been there for five years." He added that the results clam that we found look noticeably different from those that grow naturally.

Deborah Klugherz, a trustee, said there were many reasons why the seeded clams would be hard to find, such as recreational clambers, those harvesting without a license, illegal oiler oil, predators, and the spraying of insecticides to reduce mosquitoes. "Our aquaculture program is, I'd say, the finest on Long Island," she said.

The finest on Long Island? Mr. Verity responded angrily: "Where are all our clams? Where are all our com-

mercial shellfishermen?" He said he had asked John Dunne, the hatchery's director, if a survey had been done, but the answer was no. "Millions of clam seeds, all this money spent. Where is it? Because I can't find it. . . . It should be a top priority to find out whether this stuff is living or not before they continue to put the stuff in the same places."

Anthony Seiffold, another fisherman among the half-dozen who sat in the room or crowded into its entryway, agreed that a survey was needed. "It's not that we're trying, but it's getting less and less and worse and worse," he said.

Stephanie Forberg, a trustee who has a doctorate in marine science, began the reason for the decline of shellfish. "I've worked specifically on climate change and how that was affecting our local bay scallops, oysters, and clam populations. . . . I've written several papers on this and hope to say it's sorry, what we as society are doing, not just locally but globally. It has to do with ocean acidification, with pollution, with overfishing. . . ."

Dr. Forberg detailed the various quality monitoring implemented at Sea Brook University. "The thought is, if you can get this data, we can go back and work with our constituents, our stakeholders, and higher ups in the county, go in the state, and start being part of the solution I fear you, but you can't just point at the hatchery." But she was frequently interrupted, prompting the trustee to ask the hatchery's director, Dianne McNally, to step in.

"Don't interrupt the clerk when she's speaking," Mr. Forberg later told Mr. Verity, who spoke over Ms. McNally. "What would you like us to do?" Ms. McNally asked. "Ask the town to remove the support of the aquaculture fa-

cility?" Mr. Verity repeated that, at the least, he wanted a survey.

Ordy, designated as others spoke over one another. "Hey! Ms. McNally yelled, banging a gavel hard on the table. "Enough! What I am going to ask is if you have a concern, put it in writing so I know specifically what your concern is, how you'd like us to address it."

Mr. Dunne said the hatchery distributes maps that indicate the quantity of shellfish seeded in particular watersways. "I'm not sure what other proof you need other than a survey and field full of clams, numbers in our annual report, on our maps," he said. "I have no incentive to make this stuff up."

Because his staff is minimal, Mr. Dunne said the hatchery must rely on anecdotal information from commercial and recreational fishermen. He had recently heard positive reports, he said, "but it also concerns me that there's six, seven of you here that are having problems finding clams. . . . I'd be more than happy to do surveys, but honestly, the time to do surveys is the fall when everything is seeded."

Mr. Verity continued to interrupt until Brian Byrnes, a trustee, told him, "This can't continue like this. Otherwise, we will have to ask you to leave. I don't want to do that, but I will." Mr. Verity said he didn't want the aquaculture program to be abandoned, but "I would like to be somebody to allow me that this stuff is here."

"We will all try to work together," Ms. McNally said. "We can at least modify our policies and procedures, but you have to realize, the number of recreational shellfishers are increasing exponentially. The trustees are concerned, Mr. Byrnes said, "and frankly a little alarmed, and will get to the bottom of it one way or another, because that's what we do."



East Hampton Town Trustee Deborah Klugherz, left, said that improper behavior on Amagasset ocean beaches is largely a weekend problem, which could be dealt with by increased law enforcement. Sue Avedon, center, supports a drinking ban at Indian Wells and Atlantic Avenue. Some of the complaints about crowds are not necessarily about illegal activity under current laws, East Hampton Town Police Chief Mike Sarlo said.



Mr. Cancell reminded the audience that he had attended a trustee meeting to tell them about the proposed alcohol ban when discussions of it first started. "The town board changed this law in part in response to the town trustees," he said. "You may feel like it's not enough of a compromise, but it's a compromise."

Debate Alcohol Ban at Beaches; Trustees Continue to Object

Continued from A1
since been a haven for kids, including his 10-year-old daughter. Now, he said, "I do not want her seeing what goes on. I've seen fights there. That's what happens when people drink."

Elaine Jones detailed her multi-generational family in Amagasset and how her family has always enjoyed Indian Wells Beach. "I went to that beach, my daughter went to that beach, and now my grandchild can't go to that beach because my daughter will not allow them to witness that behavior."

"The behavior exhibited only occurs on the weekends, it seems," said Deborah Klugherz, a town trustee. "So why are we punishing the residents, for the most part, if people who aren't the problem? She said posting those who want to drink on the beach 1,500 feet from the Indians and culture cans would be so far away, instead of a bar, she said, "Keep going forward with the speed enforcement."

Marc Scholter called the ban a "reasonable compromise" that would help increase the new "party-beachy" season at Indian Wells. Bill Jones, a town trustee who supports the ban and described himself as a "moderate" within the group, said, "I think it's time we sent a message to the people who are despoiling our beaches. I think over the last four years the beaches in our town have gotten out of hand, and I think it's time we're not going to take it any more."

"This is a matter of public safety, for a matter of public access," he said, adding that as such it lies up to the town board and not the town trustees.

Diana Walker of Amagasset said that while she believes the trustees support reasonable behavior on the beaches, they "are conditioned to be defensive about their jurisdiction."

Stuart Vornhill, a former trustee and a longtime proponent of trustees' historical rights, said the town board had "put off on the wrong foot" by initially scheduling a public hearing on the drinking ban without consulting the town body. The trustees' authority as a "state within a state" has been upheld by the courts, he said, but has "been ignored time after time" by town government.

and the drinking ban was shipping up to be another example of that attitude, "raising its headful head."

"I get the feeling that our authority is being challenged once again," said Brian Byrnes, a trustee, "and if we're going down, we're going down swinging."

The 500-foot boundary that the trustees suggested for the area where alcohol might be banned, is the length of one and a half football fields, he said, and "would be adequate."

Ms. McNally noted that the proposed law would amend Chapter 82, a "peace and good order" section that addresses public drinking, but not Chapter 92, which covers beaches and parks. Changing the beach regulations in that chapter required the approval of the majority of town trustees — so, Ms. McNally said, there "remained a question" about what would happen if the town attempted to enforce a beach regulation without trustee cooperation.

"We would always prefer to react in concert with the trustees," Town Supervisor Larry Cancell said.

"I know," said Ms. McNally. "But every time you say that, the words are there, but the actions are not."

Stephanie Forberg, the trustees' assistant clerk, said the group would like to see a compromise.

"The first time we are having a dialogue in at a public hearing," she told the town board. "Yes, we are members of the public, but we are your elected officials." But, she said, "this is where I want to bring up, as two elected boards,

back together."

Mr. Cancell reminded the audience that he had attended a trustee meeting to tell them about the proposed alcohol ban when discussions of it first started. "The town board changed this law in part in response to the town trustees," he said. "You may feel like it's not enough of a compromise, but it's a compromise."

"I expect the town trustees very, very well," said Joan Tulp of Amagasset, who supports the proposed ban. "I do this very, very, but times have changed." Just the day before, she said, "on a beautiful, peaceful day at Indian Wells, we were surrounded, and our peace was shattered, by the protestors and the Karadashians."

"That got a rise from Ms. McNally, who got up to comment again, this time, she said, as an individual, not as a representative of the trustees. "We have allowed this to happen," she said, "these people who take advantage of our resources and are just crashing the town on an every level. It's time to stop allowing this to happen in our community."

For example, she said, people who are being rude in such places as the grocery store should be told, "We don't act like that in our town."

"And also," Ms. McNally said, "who gave the Karadashians permission to film on Indian Wells Beach? Because the trustees didn't, and if you see them on the beach, call the police. Get them out of here."

New Trustee Proposal

The East Hampton Town Trustees own and manage the town's watersways on behalf of the public as set forth in the Dogan Patent of 1696. They have debated the proposal to ban alcohol in several of their meetings, and have split on whether to support any ban with a trustee proposed.

At the trustees' meeting on Tuesday, Dianne McNally, the trustees' clerk, proposed a further compromise, alcohol her colleagues agree. "We're looking at 1,000 feet east or west of the road end at Indian Wells, weekly events and holidays only, during lifeguarded hours only," she said. In addition, "We'll verbalize the fact that it's going to be difficult to enforce a new law without enforcement on site."

She also said the trustees would insist on a provision that the idea expires upon the summer season's conclusion. Six trustees voted in favor, with two, Stephen Lasser and Tom Beck, opposed. With a majority vote, Ms. McNally said, "We'll send a letter to the town board."

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To learn more about the Peconic Land Trust, please call us at 631.283.3195 or visit our website at www.PeconicLandTrust.org. 296 Hampton Road / PO Box 1776 Southampton, NY 11969

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The summer season is upon us and with it increasing unacceptable noise generated by aircraft traveling to and from East Hampton Airport. The Town Board plans to reduce noise by imposing meaningful curfews, limiting hours and banning the noisiest aircraft. These plans must be supported by noise complaint data.

Help make this our last summer of aircraft noise. If you suffer from aircraft noise, pledge to call the hotline, even if only once a day.

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A-452

# EXHIBIT D



NEWSPAPER OF RECORD  
SINCE 1885

# THE EAST HAMPTON STAR

SHINES FOR ALL

VOL. CXXIX NO. 50

THURSDAY, JULY 3, 2014

## CEDAR ISLAND County Approves Restoration

### Lighthouse to be used as a bed and breakfast

BY LUCIA AKARD

An agreement between the Suffolk County Parks Department and the Long Island Chapter of the United States Lighthouse Society will allow the long hoped for restoration of the Cedar Island Lighthouse, which guards the passage between Gardiner's Bay and Shelter Island Sound, to go forward and its eventual use as a bed and breakfast to become a reality. The agreement was sponsored by Legislator Jay Schneiderman and approved by the County Legislature on June 17.

"I've always been interested in historic preservation because of growing up in Montauk," Mr. Schneiderman said. "The B and B component is the way to continue to upkeep it and to generate revenue," he said. Michael Leahy, president of the Long Island chapter of the national organization, will oversee the project.

The lighthouse was built in 1868 as an aid for mariners going to and from the busy part of Sag Harbor. It is on a narrow sand peninsula that is part of Cedar Point County Park, but it was on an island until the 1938 Hurricane filed a gap and attached it to the mainland.

Continued on A8



Watch out, bivalves. Mitch Fulcher, wading in at Louse Point in Springs on Sunday, has "clam power," at least that's what the shirt says. *Durrell Goffrey*

## Short-Term Rentals Near Cottage I

### Nearly 600 listings but few

BY TAYLOR K. VECSEY

Nearly 600 mostly short-term rentals in Montauk are listed on Airbnb, one of many competing services on the Internet — and there do not appear to be any vacancies for the Fourth of July weekend. Homeaway lists about 340 houses available in East Hampton. And on VacationRentals by Owner, another website, just over 200 properties recently had dates open for this summer in Sag Harbor.

Many landlords who post their houses and rooms on these sites — which have gained notoriety after stories like one about a rented apartment in Manhattan that was used for a for-profit orgy — seem to rent by the night. This is a violation in the Town of East Hampton (which includes Montauk and parts of Sag Harbor), where rentals for less than two-week periods are limited to two every six months.

Guest rooms are another story. They can be rented in houses that are owner-occupied in East Hampton Town, although no more than two rooms can be rented at the same time. Guest rooms also are regulated by the New York State building code based on square footage. These sometimes de facto hotels have come under scrutiny by the state and

## C.P.F. Purchases Brisk

### Flush fund has 8 deals done, 29 more in the pipe

BY JOANNE PILGRIM

East Hampton Town's community preservation fund, which receives the 2-percent tax on most real estate transfers, is flush and being well managed, according to a report given to the town board on Tuesday.

Purchases of land with the fund, which was established in 1999 in the five East End towns for open space, farmland, and historic preservation, have been brisk this year, with 8 completed and almost 30 more pending.

Income to the preservation fund "has been trending upwards over the last four years," Len Bernard, the town budget officer, said at a board work session earlier this week.

Mr. Bernard said that, by a conservative estimate, factoring in the revenue that is expected during 2014 and the purchases that are planned, the town would likely end the year with a cash balance of over \$40 million in its C.P.F. account.

"Over all, C.P.F. is in very sound shape, financially," he said. "It's being managed properly."

So far this year, Scott Wilson, the town's director of land acquisition and management, told the board, the town has made 8 purchases, of 15 parcels of land totaling 39 acres, at a cost of \$14.6 million. Of that, he said, \$365,000 was contributed by neighboring property owners.

Thirteen more purchases, of 55 acres in all, for a cost of \$13.9 million, are in contract. The town's offers to purchase 16 more parcels, totaling 30 acres at a cost of \$18.2 million, have been accepted. The lands are in all of the hamlets of the town.

Since the inception in 1999 of the Peconic Bay Region Community Preservation Fund, Mr. Wilson said, East Hampton has acquired 1,877 acres with the fund, at a total of \$303 million.

According to a recent audit, between 1999 and 2013 the preservation fund received \$260 million in revenues, between the 2-percent transfer tax, interest, and donations.

The town spent \$221 million on property purchases, and \$36 million on debt service, after borrowing against future expected tax income in order to make purchases before lands were developed.

At the end of 2013, there was \$55.7 million available for purchases. Income to the fund so far this year has been \$12 million.

There are more than 40 properties on a list of sites targeted for acquisition. After a hearing tonight, the town board has proposed adding 166 more, all in the Lake Montauk watershed area, where all vacant sites have been targeted for preservation.

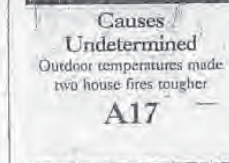
Properties are selected, Mr. Wilson said, by an advisory committee through

Continued on A13

## Causes Undetermined

### Outdoor temperatures made two house fires tougher

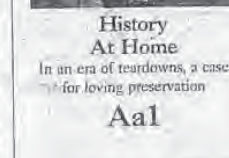
A17



### History At Home

### In an era of teardowns, a case for loving preservation

Aa1



## Just One Cab Left After

### New town taxi laws ensnare Afghanistan war veteran

BY T.E. McMORROW

A Montauk veteran of the war in Afghanistan was arrested on June 25 as part of the town's crackdown on taxi drivers and charged with possession of a forged government-issued document, a felony.

"I just thought I was going to get a ticket," Jorge Jerome, 25, said last week. "I didn't know it was going to be a big deal."

Mr. Jerome's cab company, Airborne Taxi, now in its second year, owns two minivans and a big 2008 Ford Econoline 350. He was driving the Econoline when East Hampton Town detectives pulled him over on Davis Drive, minutes from the house in Hither Hills where he lives with his wife, Jordi, and their two sons. The license plate number on a town-issued taxi permit, the detectives said, had been changed.

It was true, said Mr. Jerome, who named his cab company in honor of the 82nd Airborne Division combat team he was part of, patrolling the Arghandab River Valley in Kandahar Province for one year. He explained on Friday that he had had a wedding party reservation for June 14, and that the two minivans were not large enough to hold all the guests. "I needed the big van."

He had bought it in February, he said, and obtained New York State livery plates and the required insurance policy to operate it as a taxi, which cost \$11,000. All that was missing was an East Hampton Town permit.

"I put in for a permit on June 3," said Mr. Jerome, paying the town the re-



Jorge Jerome, 25, a Montauk resident and was arrested last week by East Hampton having a forged permit on his taxi.

getting a town taxi permit was a matter of two days, so there should have been plenty of time before the wedding. But a week went by with no word. He called the town clerk's office and was told it could be months before the permit was issued.

"This is the time of year where you have to make money. I have to provide for my family," he said. A few more days went by, and now the wedding, a job



BUSINESS & REAL ESTATE

The East Hampton Star, July 3, 2014

Recorded Deeds

The prices below have been calculated from the county transfer tax. Unless otherwise noted, the parcels contain structures.

BRIDGEHAMPTON
Butter Lane Farm L.L.C. to Coppell Rose Farmland, 9 Cody Way, 1.26 acres (vacant), April 24, \$1,000,000.
HDE Properties Inc. to M. Shuler, 49 Sunrise Avenue, .15 acre, April 28, \$1,035,000.
77 SCH Street L.L.C. to D. and A. Abrams, 77 School Street, .51 acre, April 24, \$2,700,000.

EAST HAMPTON
S. Lezer (by devise) to Hampton Dream Properties, 15 Tub-Cumman's Road, .09 acre, April 7, \$15,000.
Hampton Dream Properties to S. Jones, 128 Queen's Lane, .28 acre, April 10, \$160,000.
D. Garlein to V. Sampathkumar, 14 Dunmyr Court, 1.01 acre, April 30, \$300,000.

NOYAC
M. Sypher to J. and J. Todaro, 86 Old Noyack Park, 1.9 acre, April 10, \$2,465,000.
J. and P. Coby to C. Tagliacozzi, 35 Rosewood Drive, .42 acre, April 30, \$500,000.
P. and E. Kehoe to A. Rostrom and N. Lane, 122 Wildwood Road, .52 acre, April 24, \$999,000.

SAG HARBOR
S. and N. Antonakos to R. Vela and M. Julian, 60 Hempstead Street, April 18, \$875,000.

SAGAPONACK
I. and S. Savits to K. and A. Cuyler, 37 Sagaponack Main Street, 1.47 acres, April 24, \$4,300,000.
M. Murray to G. Farnsworth Drive Realty, 62 Farnsworth Drive, 1.59 acres, April 24, \$5,550,000.

EAST HAMPTON VILLAGE
J. Zhiukovsky and Benedict to 40 Fifteen L.L.C., 40 Fifteen Lane, .52 acre, April 29, \$2,375,000.

MONTAUK
M. Sullivan and M. Behan to J. and J. Strong, 89 Pinerose Drive, .17 acre, April 30, \$550,000.
P. Duryea III to Sunrise Tisbury II, 1.2 acres (bay bottom), March 31, \$40,720.
P. Duryea III to Sunrise Tisbury II, 3.3 acres (bay bottom), March 31, \$105,920.

P. Duryea III and W. Duryea to Sunrise Tisbury II, 66 Tisbury Road, 1.3 acres, March 31, \$2,500,000.
P. Duryea III to Sunrise Tisbury II, 65 and 61 Tisbury Road, 4.29 acres, March 31, \$3,700,000.

Data provided by Suffolk Research Service of Southampton



Tina the Store sells a mix of home goods and clothing, including leather sofas, hand-woven rugs, and fashions from Tokyo.

TIINA THE STORE Quality and Timeless Appeal

By LUCIA ARABO
In a room where it sometimes seems that every new store is a one-summer pop-up, Tina Laakkonen, owner of Tina the Store in Amagansett, is not interested in "fast food" or fast fashions. She just wants to sell clothes. Not fashion, just clothes.

"Fashion is fickle," she said recently, "and it ages very fast. I like things that are more permanent." She chooses her merchandise for its quality and timeless appeal. Many garments are handmade, including pricey cashmere sweaters from the luxury brand The Elder Statesman and hand-knit rugs.

Ms. Laakkonen believed that high-quality clothing "becomes more beautiful the more you wear it, the more you use it." She herself owns and wears clothes for 10 or more years, and wants her customers to "buy and wear the things they can use for the rest of their lives."

Ms. Laakkonen believes her motto is "permanent clothing but also in permanent locale. Staying open year-round has helped her build a loyal customer base, she said. "I feel like once our customers discover us and once they start shopping here, I feel like I love it to them to be open and be here." She does not respect pop-up stores, which she called "opportunistic."

Unlike many of the pop-ups, "Tina the Store" has no branch in New York City. Its fast pace, however, shop online at tinastore.com.

Ms. Laakkonen started out as a model and fashion-designer student in Paris, went on to work for Chanel and Lanvin, and then was listed as a stylist at British Vogue. Continuing to work as a



The modest houses on Huntington Crisway in Bridgehampton stand in stark contrast to much of the hamlet, where the average house price is \$2.3 million, according to the real estate website Trulia.

Portrait of a Bridgehampton Neighborhood

Continued from A1
former residences, which is cut off from its disheveled neighbors by hedges. Lawns are overgrown and appear to be mowed irregularly. A truck or two sits on lawns. One car has been raised above the gully to be worked on in a front yard. Hedges and scraggy bushes form the only attempt at privatization.

But when, about halfway down the Crisway, Mr. Burnside turned west onto Calliswell Road, we suddenly entered a different world. This could be a street in upscale suburban. Anywhere, U.S.A. Houses are beautifully landscaped with a variety of shade trees, attractive fencing, and the ubiquitous seaside birdhouses. They are two-story, gabled, and clad in cedar shingle.

Two nearly identical cold-sea ranches built out from Calliswell Houses in this neighborhood, many of them abutting the backyards of the Crisway's houses, are valued in the high ones \$1.8 to \$1.9 million.

One of these sites, Birchwood Lane, leads to a wooded six-acre area. Well, it won't be wooded for long. Dr. Naudus, Greg Kenner of Kenner Development, which is developing 7 of the 11 lots, was overruled by his crew as a backhoe carved out a deep trench.

"We're digging the five holes," he said, clearly excited at the prospect. When finished, his seven houses will sit \$1.9 million each.

His company has been instrumental in gentrifying other parts of Bridgehampton. After building houses on Nor-

man and Narrow Lanes, he said, those neighborhoods rose in value.

"The selling price is solid, according to Mr. Burnside. They're getting close to what it used to be to build."

If you were to drive through this new development you would end up at another subdivision by progress, Barn and Vine. Instead, we visit another mile to this 50-acre parcel, which will contain 37 houses, bordering Channing Daughters Winery on the west and the houses of the leafy suburban grid on the east — by riding Meadows Farm, a new road just to the west of the Crisway off Scenic-hole, to Barn Lane, between 3,800 and 7,200 square feet, these future abodes mark another rung up the price ladder. All are asking over \$1 million.

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OR LOG YOUR COMPLAINT ONLINE AT: www.planenoise.com/khto/

The summer season is upon us and with it increasing unacceptable noise generated by aircraft traveling to and from East Hampton Airport.

The Town Board plans to reduce noise by imposing meaningful curfews, limiting hours and banning the noisiest aircraft. These plans must be supported by noise complaint data.

Help make this our last summer of aircraft noise. If you suffer from aircraft noise, pledge to call the hotline, even if only once a day.

To end the noise, we need to make some noise!

Register your aircraft noise complaints!

THE VILLAGE PRESERVATION SOCIETY OF EAST HAMPTON 324-3524

the Village Preservation Society of East Hampton

Connections

Continued from B1
district also has an elementary and a middle school-high school principal. And in Amagansett, where an interim principal is being paid \$300 a day, the superintendent, Eleanor Tins, is to receive \$188,000 next year. If we were going to do any calculations according to the logic applied by the New York Post, any other monetary benefits each of these administrators receives would have to be added.

One supposes that these salaries are governed-by-all sorts of variables, including educational degrees, training and experience, but there has to be more to the story. Because the money schools spend comes primarily from property taxes, and because communities here contain some of the most expensive real estate in the country, our districts are rich and residents are quiet. There have been no taxpayer revolts in recent years, but you never know.

Helen S. Ransby

Relay

Continued from B1
could get along.

Will my puffball be able to wear my glasses so I can recognize others? If not, the spirit puffs will have to come some of me so I'll know who they are. But will our spirits even have a nose? And will all our earthly ailments disappear? God that would be nice.

You may think this is crazy thinking, but with popular books on the best-seller list and movies being made about people who died and followed the light and then returned to earth, heaven really exists.

If it's as perfect a place as religious leaders lead us to believe, I probably wouldn't even need my glasses or medication. I would no longer need glasses to see people puffs, and my cell phone

would disappear. Unless my spirit puff is dimpled with those annoying blisters of fat that most women sport on their thighs.

I wonder at what age our spirits will appear to be. If we look too young, our spirit puffs will not recognize our older selves. If I could choose the age I'd like my spirit to be, I'd like it to be 17.

My three children had been born and I was in pretty good shape, considering I had expelled those three children from my earthly self. Of course, it's been all downhill since then.

Recently, while talking to my husband, the body of all knowledge, he mentioned that a person who supposedly died and went to heaven might not be an old friend and was said to be on a higher level in heaven and unreachable.

Wow, now that sounds great. I'd love to be in a place where no one could bother me, especially in my business as a newspaper reporter who often gets called to ask for other writers' names or editors' mistakes. (Yes, they do make them too!)

I wonder if I would have a space to call my own, like a private cloud. It must be awfully crowded up there, and I've always been a bit of a loner, which makes some of my loved ones uncomfortable — they hate to think of me being by myself when my husband goes out night-fishing. But I love it. As long as my cloud has magazines and a few good books I'd be a happy spirit.

If heaven is as grand as they say, whoever they are, I imagine we can also choose the name we'd like to be called. I've always hated my name, so I would no longer wish to be called that spirit. If we're allowed by the Great One to choose our own names, I'm thinking Mother Moonlight Mostak.

And as nice as it's supposed to be up there, I plan on staying close to home on Westhampton heaven.

Jana Hewitt is a senior writer for The Star.

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Court Reporter: Dominick M. Tursi, CM, CSR  
US District Courthouse  
1180 Federal Plaza  
Central Islip, New York 11722  
(631) 712-6108 Fax: 712-6124  
DomTursi@email.com

Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

o0o

9 (Call to Order of the Court. Appearances stated  
10 as indicated above.)

11 THE COURT: Please, when you can, speak into the  
12 microphone so we have a clear record and I can actually  
13 hear you.

14 If at any time you don't hear me, hold up your  
15 hand and say: *Judge, I don't hear you.* It makes sense to  
16 do it that way rather than guess what I said.

17 MS. ZORNBERG: Thank you.

18 MR. COVELLO: Your Honor, we had sent a letter.  
19 We represent Air Pegasus. We are a proposed intervenor.

20 We are more than happy to make a motion, unless  
21 of course your Honor wishes to grant the application right  
22 now.

23 THE COURT: Is there any opposition to this  
24 application of Air Pegasus?

25 MR. PILSK: We haven't seen, other than that

1 letter I really don't know what their interest is. So at  
2 the moment I guess I would prefer to see a motion.

3 THE COURT: All right.

4 Can you put together a motion? I will allow you  
5 to stay for the balance of the proceeding. Obviously, it  
6 is a public proceeding.

7 It doesn't have to be a very lengthy motion.  
8 Perhaps after this hearing you can speak to counsel for  
9 the town and arrive at some understanding of what is  
10 involved.

11 Air Pegasus is what type of company?

12 MR. COVELLO: We fly in and out approximately  
13 100 times a day.

14 They own two of the three heliports in New York  
15 City. It is a substantial business.

16 THE COURT: How many flights?

17 MR. COVELLO: Helicopter.

18 THE COURT: How many, helicopter or otherwise,  
19 does it have into East Hampton Airport?

20 MR. COVELLO: In and out, approximately 100 a  
21 day, your Honor.

22 THE COURT: 100 a day. Just into East Hampton?

23 MR. SCHUMACHER: Maybe it is a little less. It  
24 is substantial, your Honor.

25 THE COURT: Thank you.

1           Let me ask the town. How many helicopter  
2 flights are there into East Hampton during the busy  
3 season?

4           MR. PILSK: Your Honor, during the busy season,  
5 on the busiest days, 350 and upwards. Well over 300 on  
6 the busiest days. I don't have exact information on what  
7 the exact daily averages are. But it is over 100, I  
8 believe.

9           THE COURT: You indicate in your papers that it  
10 has increased 50 percent in the last year?

11          MR. PILSK: 47 percent, your Honor.

12          THE COURT: Close enough.

13          MR. PILSK: We will take 50. But 47 percent.

14          THE COURT: All right. Is there any particular  
15 reason that you noticed this increase? Is it just demand?

16          MR. PILSK: Reasons for the increase?

17           I mean, I can't speak to why people are flying.  
18 I assume that it is demand and the appeal of taking a  
19 helicopter for personal convenience.

20           The town obviously notices it because of the  
21 extreme noise and disturbances that those operations cause  
22 to its residents.

23          THE COURT: Thank you.

24          MS. ZORNBERG: Your Honor?

25          THE COURT: Yes.

1 MS. ZORNBERG: If I may briefly just be heard on  
2 the 50 percent increase figure that the court mentioned.

3 The plaintiff's position is that even that 50  
4 percent figure, or 47 percent figure cited by the town, is  
5 unreliable. The town's own records are inconsistent on  
6 this issue. Its air traffic control tower records do not  
7 match its vector system records. Those are issues later  
8 on for discovery.

9 And in 2003 the weather was notoriously bad so  
10 there were very much -- far fewer flights by helicopter in  
11 2003 because of weather. And it is our view, as to that  
12 47 percent figure, that the town only looked at 2003  
13 versus -- 2013 versus 2014 in an attempt to maximize a  
14 statistic which we do not think is reliable.

15 THE COURT: That is down the road. I just want  
16 to get a general idea as to the urgency on both sides.

17 Let me direct my questions to the town for a  
18 moment. The primary issue before the court is whether or  
19 not the federal laws preempt the imposition of the  
20 restriction. In other words, can the town pass laws that  
21 restrict flights coming in and out, essentially.

22 The town has put itself in the position of a  
23 proprietor of the airport. And this is proprietor  
24 exception.

25 In terms of the proprietor exception, there is

1 very little law since the Antinoise and Capacity Act was  
2 passed in 1990. There is only one case out of the Second  
3 Circuit -- but that really didn't deal with it -- that you  
4 cite in your papers.

5 That is the National Helicopter?

6 MR. PILSK: Yes, your Honor.

7 THE COURT: Whether it was raised by the parties  
8 or not raised by the parties, it is pretty clear there was  
9 no direct conflict there. And the case eventually did  
10 allow for the imposition of curfews and it didn't mention  
11 ANCA.

12 However, there is one case that counsel  
13 represented on this issue, and that was *Trump v Palm Beach*  
14 *County*.

15 MR. PILSK: Yes.

16 THE COURT: And that indicated that, at least in  
17 the brief the position that was taken by defense counsel  
18 was that one had to comply with the ANCA.

19 And the case, as I said, was settled, but in  
20 that case your position was quite inconsistent with what  
21 the position is this case. Fair to say?

22 MR. PILSK: Well, fair to say in one sense, your  
23 Honor. But the context was completely different.

24 In that case the client was, first of all, a  
25 different client. Different case. Different content. It



1 was 2010, before we got the benefit of the FAA's position  
2 as articulated in the response of Congressman Bishop.

3 The main thing was in that case the airport very  
4 much wanted to remain eligible for their federal grant  
5 funding. So in that sense, ANCA was a very real  
6 limitation on the airport's ability to act unilaterally.

7 And in the case of East Hampton, that is not the  
8 case. The town is no longer accepting, currently, federal  
9 grant funds and is willing to accept the lack of  
10 eligibility going forward in order to exercise its  
11 proprietary powers without having to go through the ANCA  
12 process. That is the position that the FAA has now  
13 articulated and that we have, the town has, followed.

14 THE COURT: When you say they have articulated:  
15 back in 2005 they signed off on some type of settlement.  
16 And there were responses from then Congressman Bishop  
17 laying out what he believed was the airport's position in  
18 terms of being able to have this ANCA no longer complied  
19 with.

20 The FAA was saying it wouldn't enforce ANCA.

21 MR. PILSK: Well, two things.

22 THE COURT: At least, that is your position.

23 MR. PILSK: Two things.

24 The 2005 settlement agreement. The FAA agreed  
25 that it would not enforce several grant assurances

1 including, critically, 22A and 22H. And because they  
2 would effectively terminate -- they would terminate as of  
3 December 31, 2014. So those were the issues at hand on  
4 December 31, 2014.

5 THE COURT: But don't the assurances run until  
6 2021?

7 MR. PILSK: Absent a modification, they would  
8 have. Absent that agreement they would have.

9 And that was the way that the FAA and the DOJ  
10 decided to settle that case, which challenged the  
11 underlying validity of the 2001, I believe it was, grant  
12 by agreeing to limit the duration of several specific  
13 grant assurances. And that is perfectly within their  
14 discretion. We can talk about that.

15 There is nothing in the statute that in any way  
16 addresses or limits the FAA's discretion to limit the  
17 duration of any agreement or obligation. It is completely  
18 silent on that.

19 As a consequence of that, and in response to the  
20 question from Congressman Bishop, the FAA responded in  
21 2012 to the responses of Congressman Bishop and made it  
22 clear, one, that the FAA was going to abide by the terms  
23 of the 2005 settlement agreement; and, secondly, when  
24 applied to the specific context of an airport that is no  
25 longer seeking grant obligations, and the grant obligation

1 for 2022 will expire as of a certain time, the airport did  
2 not have to go through the ANCA process unless it wanted  
3 to retain eligibility for future grant funding.

4 That is the FAA's stated position. And they  
5 stuck to it. The town met with them, with the FAA, with  
6 senior officials, both legal and policy.

7 THE COURT: That is recently.

8 MR. PILSK: This was winter.

9 Briefed them in detail on what the town was  
10 proposing to do. Explained to them that the town was  
11 relying on the Bishop responses and the FAA's stated  
12 position.

13 And the FAA has not said anything to the  
14 contrary. It has not indicated that it was changing its  
15 position, that it disagreed. And it hasn't taken any  
16 enforcement action.

17 And I think maybe the best proof of the  
18 importance and effect of those Bishop responses is what  
19 plaintiff has said in their lawsuit against the FAA when  
20 they say, in paragraph 66, and this is the case  
21 15-Civil-441:

22 *"The Bishop responses have legal consequences to*  
23 *the rights and/or obligation of the FAA, East Hampton, and*  
24 *the users of East Hampton Airport, including but not*  
25 *limited to aircraft operators."*

1           The town has followed the FAA's guidance and  
2 instructions on what their compliance obligations were.

3           THE COURT: All right.

4           MR. PILSK: And just to finish the thought.

5           That is really not a question of preemption at  
6 this point. It is a question of compliance. And the  
7 question of compliance is an issue that plaintiffs need  
8 the raise with the FAA; that they have already done in  
9 their own lawsuit when they invoked the court's  
10 jurisdiction on the basis of the finality of that  
11 decision, the impact of that decision, and the lack of a  
12 remedy against the town in any other way.

13           THE COURT: I think it is pretty much conceded  
14 they have a lack of a remedy, whether they go against the  
15 FAA or they go against the town, because they lay out a  
16 pretty significant case in their papers, the Friends. We  
17 will refer to the plaintiffs as the Friends. They lay out  
18 a pretty significant evidentiary burden, if you will, as  
19 their only relief is equitable.

20           Money damages are not going to be available to  
21 them at the end of the day in terms of, it is more than  
22 economic loss. It is loss of relationships. They can't  
23 get the type of aircraft, if they even exist, the 1950s  
24 aircraft, to run into and comply with the restrictions  
25 that the town has imposed on the airport.

1           So I think that pretty much has to be conceded,  
2           that their only relief, if they are entitled to any  
3           relief, would be equitable.

4           MR. PILSK: Well, as we have said in our papers,  
5           we believe that they do have or may have a legal remedy  
6           under the commerce clause.

7           And furthermore, of course, as we briefed, the  
8           economic impact doesn't rise to the same level as the  
9           cases finding irreparable injury in an economic harm  
10          situation because they are not restricted from operating  
11          at any other airport, including airports relatively close  
12          to the Hamptons. They can continue to conduct every other  
13          aspect of their business, as courts have found, as we have  
14          cited in our papers.

15          THE COURT: Yes.

16          MR. PILSK: So the only point is, they do have  
17          other legal remedies. They can continue to pursue their  
18          lawsuit against the FAA, and they can ask the FAA to  
19          either seek an injunction or they can seek an injunction  
20          in that case. There are administrative remedies which  
21          they have chosen not to pursue with the FAA.

22          And, furthermore, the issue of the Bishop letter  
23          only goes to the claim under ANCA and the AIA. The other  
24          claims under the supremacy clause and the commerce clause  
25          are separate. And although we don't think there is any



1 merit to them, they can continue to pursue those claims  
2 independent of the Bishop response.

3 So the Bishop response narrows their claims that  
4 they can pursue in this case because there are claims  
5 against the decision by the FAA that need to be pursued  
6 against the FAA. But there are other avenues to seek the  
7 relief that they want here, although at the end of the day  
8 we don't believe that they are entitled to that.

9 THE COURT: All right. Miss Zornberg.

10 MS. ZORNBERG: Thank you, your Honor.

11 First, your Honor is exactly correct to point  
12 out the absence of case law addressing ANCA's application  
13 since Congress enacted the statute in 1990.

14 That is really not an accident. It is a  
15 reflexion of the fact that ANCA speaks in very plain,  
16 mandatory terms and established a national noise policy  
17 for aviation that all airports must comply with.

18 And so, since 1990, when Congress enacted ANCA,  
19 no federally funded airport in the United States has been  
20 permitted to impose access restrictions without complying  
21 with ANCA.

22 No court has ever stated that an airport need  
23 not comply with ANCA. We are aware of not a single  
24 instance since 1990 where an airport has been allowed to  
25 impose mandatory curfews. There were a few instances

1 where airports followed ANCA to try to impose mandatory  
2 curfews, and the FAA said that to allow those curfews  
3 would be unsafe.

4 And there is certainly no example of an airport  
5 imposing severe restrictions like we are dealing with here  
6 without the FAA even being given an opportunity to  
7 determine whether the restrictions are safe.

8 I would note for your Honor that USA Robert  
9 Schumacher, who represents the FAA, is in the courtroom  
10 today.

11 THE COURT: I know.

12 MS. ZORNBERG: And I understand he is available  
13 to address any questions on this.

14 Your Honor, no court in the United States has  
15 ever permitted a local government that has knowingly  
16 entered grant assurance obligations with the federal  
17 government to pass laws that directly conflict with those  
18 grant assurances.

19 The issues imposed by these restrictions are of  
20 national significance. They represent a very serious  
21 departure from federal law. And the FAA recognizes this.  
22 And that is why we believe the FAA fully supports this  
23 court's entry of a TRO and a preliminary injunction until  
24 the merits have been decided.

25 That is not a small thing. That is not

1 something to disregard, as the town tries to do. That is  
2 significant; I mean, even the basic fact that we don't  
3 know if the restrictions are safe.

4 Our clients clearly think they are not. Others  
5 in the town have spoken up who are not even affiliated  
6 with plaintiffs, small recreational pilots. There is one  
7 woman who recently, a few weeks ago, stood up at a hearing  
8 and said to the town board these restrictions are not  
9 safe. They will cause pilots to make bad decisions.

10 And so, your Honor, we really are dealing here  
11 with an extraordinary, unprecedented situation of the town  
12 in a way that represents opportunism more than reliance,  
13 trying to seize on a mistake in an informal letter issued  
14 by the FAA that, under Supreme Court precedent, is not  
15 binding.

16 And the FAA has approached this court among  
17 other things to say: Your Honor, you should enter a stay  
18 so that the FAA has time to get this right. In our view,  
19 we respectfully submit, that is enormously persuasive in  
20 addition to the overwhelming evidence of irreparable harm;  
21 the strong compelling substantial showing of likelihood on  
22 the merits. The fact that the FAA is here supporting us  
23 really underscores the point more than ever.

24 THE COURT: Thank you.

25 Mr. Schumacher? Come up. Tell us who you are

1 supporting in this instance.

2 MR. SCHUMACHER: Thank you for the kind  
3 invitation.

4 For the record, Robert Schumacher, from the US  
5 Attorney's Office, representing the FAA.

6 Obviously, we are not party to this action, but  
7 we are party to an affiliated action and we have filed a  
8 letter in support of the plaintiff's application for a  
9 stay.

10 As we made clear in that letter, we are not in a  
11 position to express any position on the merits of either  
12 lawsuit. But that being said, the FAA is concerned about  
13 the situation in East Hampton.

14 The issues, and they are complex legal issues,  
15 are being reviewed at the highest levels of both the FAA  
16 and the Department of Transportation, and the FAA simply  
17 needs more time to evaluate whether or not these adopted  
18 restrictions comply with the FAA's regulations. And we  
19 think that an injunction with enforcement of these is the  
20 prudent approach under these circumstances, your Honor.

21 THE COURT: That is more supportive than the  
22 defendants have indicated.

23 Have you spoken with them lately?

24 MR. SCHUMACHER: The defendant just briefly,  
25 your Honor. They know our position. They have read our

1 letter.

2 THE COURT: All right.

3 MR. SCHUMACHER: I would like to say also, just  
4 for the record, your Honor.

5 One position the FAA is prepared to take today  
6 is -- and I have heard counsel's argument with regard to  
7 the Bishop responses -- the FAA disagrees with the  
8 representations that are being made about the import and  
9 the legal effect of those responses.

10 THE COURT: So you are not in agreement what the  
11 defendants have proffered as to the effectiveness of the  
12 Bishop responses.

13 MR. SCHUMACHER: Correct, your Honor. We don't  
14 think those Bishop responses in any way waive the FAA's  
15 ability to seek an injunction or to enforce anything under  
16 the appropriate regulation. It is simply a response to a  
17 hypothetical posed by Congressman Bishop.

18 And I think, if you look at actually the record,  
19 in Mr. Pilsk's affidavit there is a cover email where  
20 counsel for the town specifically says: *I understand that*  
21 *we don't have to comply with ANCA if we don't want federal*  
22 *grant. And counsel says: This is a surprise.*

23 And the response that FAA counsel gives him is:  
24 *Well, this is likely being misunderstood. Let's talk.*

25 So this idea that they are in any way relying on



1 to the FAA's, quote-unquote, "*legal interpretation*" and  
2 that this is definitive, I think that is disingenuous at  
3 best.

4 THE COURT: Do you want to respond to that,  
5 Mr. Pilsk?

6 MR. PILSK: I do.

7 First of all, the response back from the FAA's  
8 chief counsel in that email was regarding the statements  
9 that were made in the press about what the Bishop letter  
10 meant; not a question of what it meant from my colleague  
11 who wrote the email. Number one.

12 Number two. As Mr. Cantwell explains in his  
13 declaration, the town has met with the FAA, briefed them  
14 on what we were doing, and explained that we are relying  
15 the Bishop responses going forward. And we have been  
16 completely public about that in town meeting after town  
17 meeting after town meeting.

18 And the FAA has not taken any action and has not  
19 told us not to move forward. What are we supposed to do  
20 with that? And I think the big problem that we have with  
21 the FAA's position is that it is a sort of: *Waiting for*  
22 *an injunction. We are thinking about it. We are*  
23 *considering it. We are mulling it over.* And we just have  
24 to sit and wait.

25 The town laws that we have been working on for

1 months to address a problem that has been festering for  
2 years, we have to wait until the FAA figures it out.

3 And, frankly, how much longer do they really  
4 need? We had a brief on it, I think it was in February.  
5 They have known about it. The issues might be of some  
6 complexity, but really, if there is a safety problem, the  
7 FAA knows how to address a safety problem and they can  
8 take action to do so. ANCA doesn't preclude them and the  
9 Bishop responses don't preclude them from doing that.

10 There is no safety problem. There are curfews  
11 in place and similar restrictions in airports all across  
12 the country. There is not a safety issue with that. That  
13 is really just a red herring issue.

14 And, as the Ninth Circuit has made clear, the  
15 fact that some people may react to a rule in a way that is  
16 unsafe does not make the rule, itself, a safety problem.  
17 I mean, frankly, every rule creates an incentive to beat  
18 it. If that were the case, then every rule, even rules  
19 enacted for safety, would be deemed unsafe.

20 And I think the bigger point here is that one  
21 reason why few airports that even try to adopt access  
22 restrictions since ANCA was adopted is that most airports,  
23 and certainly most large airports, want to keep their  
24 federal funds and don't want to go through both the  
25 expense of the process and risk losing their federal

1 funding. That is a powerful tool. That is the tool that  
2 Congress gave the FAA to enforce ANCA, and the only tool.  
3 That is one thing.

4 The second point is, this case does not have  
5 national implications because of the very particular  
6 circumstances at East Hampton, stemming primarily from the  
7 2005 settlement agreement. That is different. No other  
8 airport has an agreement like that in place that limits  
9 the duration of grant assurances 22A and limits the FAA's  
10 enforcement authority under the grant assurances, which is  
11 broader than its enforcement under ANCA.

12 THE COURT: I was rather shocked that that was  
13 your position in terms of the agreement, if you will. But  
14 you are basically telling the court that East Hampton  
15 Airport doesn't want federal funds?

16 What happens if there is a hurricane or, you  
17 know, some need for funding? Do they go back and say:  
18 Well, on these assures --

19 MR. PILSK: I should be more precise. There are  
20 two aspects.

21 First of all, it is federal aviation grant  
22 funding.

23 THE COURT: Right.

24 MR. PILSK: It wouldn't be FEMA funding or other  
25 kind of funding if something truly disastrous happened.

1 Number one.

2 Number two, if I understand the FAA's position,  
3 if the town subsequently were to rescind the restrictions,  
4 it could restore its eligibility. That is not something  
5 we are contemplating. But it isn't one way. I mean,  
6 there is always that option, I suppose.

7 The main point is, that is the decision the town  
8 has made now. And based on the FAA's instructions, the  
9 guidance to date, that is permissible and means that we do  
10 not have to go through the ANCA process in order to adopt  
11 the access restrictions.

12 And I just want to touch briefly on National  
13 Helicopter. And there is another case, the Sierra case,  
14 the Southern District case, which, in a sense, counsel is  
15 talking both ways, because they say ANCA applies across  
16 the board and yet they distinguish those cases because  
17 they weren't grant eligible. That seems to be their  
18 position. ANCA applies whether or not you are grant  
19 obligated or not.

20 The point here is that, as a result -- and that  
21 is not how the FAA has articulated it, either. The FAA's  
22 position, and the position the town has relied on, is that  
23 ANCA applies if you want to retain and continue to get  
24 federal aviation grant funding. The town does not.

25 And when you look at those cases, you have two

1 cases in district court that were litigated. One case  
2 went up to the Second Circuit.

3 I'm not saying that is binding on anybody, but  
4 it certainly is indicative that there are circumstances  
5 when ANCA doesn't apply, and the FAA knows how to make  
6 those decisions, as they have in this case.

7 THE COURT: All right.

8 Miss Zornberg, briefly.

9 MS. ZORNBERG: Thank you, your Honor. A few  
10 things require response here.

11 First, it is clear that the town is relying on  
12 one sentence in a letter that wasn't even signed in  
13 response to Congressman Bishop. That is the total premise  
14 for their argument for asking this court to create a sea  
15 change in the law on ANCA and to become the first court  
16 ever to say an airport doesn't have to comply.

17 East Hampton Airport was built with federal  
18 funds. It has been funded through the years with federal  
19 funds. There is no dispute that it is federally obligated  
20 until 2021. There is no scenario. You look at the plain  
21 words of Congress. There is no scenario under which this  
22 airport need not comply. To reduce it to four words or  
23 less, they must comply *because Congress said so*.

24 And they can try to rely on this one Bishop  
25 sentence to upend Congress' clear dictate, but that



1 doesn't work. That is black letter law.

2           Your Honor, they also continue to rely heavily  
3 on a meeting in February when they apparently sat down  
4 with the FAA. The town requested that meeting when the  
5 FAA was in the middle of active litigation, and they are  
6 trying to now say, because the FAA was silent at that  
7 meeting, it was fine for us to proceed.

8           The reality is, first of all, the town elected  
9 to enact these restrictions after many of the same  
10 plaintiffs in this suit had already filed the suit against  
11 the FAA calling the FAA's attention to its error in that  
12 Bishop sentence.

13           And the town did not prudently wait for that  
14 legal issue to be decided. It did not prudently wait for  
15 the FAA to even respond as to whether it would acknowledge  
16 it had made an error. The town rushed forward, enacted  
17 these local laws with no grace period for implementation.  
18 That is not reliance.

19           If the town had complied with ANCA, as it is  
20 required to do, just for restrictions on stage two  
21 aircraft -- it proposed its restrictions on February 10,  
22 under ANCA for stage two -- there would have been a  
23 mandatory minimum wait period of 180 days, until  
24 mid-August. Yet, the town, having not complied even with  
25 square one of ANCA's requirements, is saying these have to

1 take effect right away, without giving the time to the FAA  
2 to say if it is safe. Without complying with ANCA, in  
3 violation of their grant assurances. No way.

4 Your Honor, the last thing I will briefly  
5 address is, to the extent the town keeps referring to the  
6 2005 settlement agreement, the town was not even a party  
7 to that agreement.

8 THE COURT: I'm aware of that.

9 MS. ZORNBERG: Okay.

10 THE COURT: I understand.

11 MS. ZORNBERG: Okay. And, your Honor, in terms  
12 of whether or not the town wants to seek federal  
13 eligibility, federal airport funds in the future, which  
14 your Honor posed, I would point out that, like many  
15 communities near airports, there is nothing unique going  
16 on here.

17 There are political winds in East Hampton.  
18 Through 2011 many, including those in the town board,  
19 wanted to seek federal funding. There is political  
20 upset --

21 THE COURT: Federal funding for the airport.

22 MS. ZORNBERG: Yes, for the airport.

23 So, like politics that occur throughout the  
24 country in various communities, there was a power shift.  
25 And after 2012 there was a decision: We are not seeing

1 funding. We are disregarding the town counsel's advice  
2 that we have to comply with ANCA. We are going forward at  
3 all costs.

4 Your Honor, those political events that occur in  
5 a community are precisely why Congress enacted ANCA. It  
6 made findings that we cannot have a national airport  
7 transportation system left up to the political winds of  
8 local communities that are enacting patch-work  
9 legislation.

10 And, your Honor, finally, to the extent that the  
11 town is now again trying to rely on National Helicopter  
12 and Sea Air, those cases did not address ANCA. And town  
13 counsel, themselves, have previously said in the Trump  
14 case, those are irrelevant to the analysis presently  
15 before this court.

16 MR. PILSK: Just briefly, your Honor.

17 The town has been working on healing the noise  
18 restriction for four years, and most intently over the  
19 past year and a half.

20 This isn't a rush to judgment. We very  
21 deliberately asked for a meeting with the FAA to brief  
22 them on what we are doing, to get a read on their  
23 position.

24 THE COURT: But they are in the middle of  
25 litigation with plaintiffs in this case.

1 MR. PILSK: They met with us.

2 THE COURT: Yes.

3 MR. PILSK: And they didn't tell us there was a  
4 compliance problem because at the moment they don't have a  
5 compliance problem with what were doing. We had to rely  
6 on that.

7 What the alternative for us is to, because the  
8 plaintiff sued the FAA saying we disagree with something  
9 that you did, we have to stop?

10 THE COURT: No. I'm not suggesting that.

11 MR. PILSK: I understand you are not, but that  
12 is what they are suggesting.

13 And I think that put us in completely,  
14 essentially usurps the authority of a town board to take  
15 the action it deems necessary to protect its residents.

16 The fact that there are political changes, that  
17 is what happens in this country. And the new town board  
18 made a decision about what it thinks is in the best  
19 interests of the community, with broad community support,  
20 as it should. The fact that it may change, that it has  
21 changed, is really completely irrelevant to the issues  
22 here.

23 I think their biggest point here is that you  
24 hear the plaintiffs mouthing what the FAA might do, could  
25 do, and what they think the FAA should do. And all that

1 is really by the board because the FAA hasn't done  
2 anything. To date the stated position of the FAA is that  
3 the town does not have to comply, go through the ANCA  
4 process, and is not bound by the restrictions in 22 and  
5 22A.

6 That is how the town proceeded and that is its  
7 position. And frankly, unless and until the FAA takes a  
8 different position, I don't think anybody has the full  
9 authority or the interest to say to the town it is  
10 improper to do anything.

11 THE COURT: Let me ask Mr. Schumacher.

12 Is that your position?

13 MR. SCHUMACHER: No, your Honor.

14 Like I said -- let me -- we're --

15 THE COURT: Let me hear it again: No, that is  
16 not your position.

17 MR. SCHUMACHER: And let me just say that, you  
18 know, with regards to this February meeting, the FAA did  
19 have a meeting with the town, and prior to that meeting  
20 the town was specifically told this would be a  
21 listening-only meeting and that the FAA would not give  
22 either any legal opinion, would not communicate any  
23 advice, that the FAA was looking at the issue.

24 And realize, your Honor, that the universe of  
25 things that the FAA is looking into is greater than maybe



1 some of the regulations and statutes and issues in this  
2 case. We have certainly the grant assurances, and we are  
3 certainly aware of the settlement agreement, but the  
4 settlement agreement potentially waived a handful of grant  
5 assurances.

6 And the FAA is trying to evaluate, and is taking  
7 its time to carefully evaluate, whether or not these  
8 proposed or past restrictions violate any of those grant  
9 assurances, in addition to looking at ANCA, in addition to  
10 looking at their other regulations that maybe aren't a  
11 part of this lawsuit and other federal laws.

12 But the FAA simply needs time to do that, your  
13 Honor.

14 THE COURT: What period of time are we looking  
15 at? This has been brewing since 2001, when the town first  
16 took federal funding.

17 MR. SCHUMACHER: Understood.

18 But prior to April, when these regulations were  
19 actually adopted by the town, this was all talk. There  
20 were multiple additional proposals that weren't even  
21 passed by the town. So had they even done anything prior  
22 to April, I have a feeling that today the argument would  
23 be: Well, this wasn't right. Why is the FAA trying to  
24 bother us? Nothing has happened. We're just talking.  
25 We're just considering.

1           So really, while it has, quote-unquote, been  
2 brewing for a period of time, the FAA did tell them  
3 exactly what we were doing, and we are not in a position  
4 of taking past restrictions and get them through the town,  
5 the federal regulations and federal laws. And we have  
6 only been in a position of doing that over the last 30  
7 days or so.

8           THE COURT: And you have an answer that is due  
9 in the litigation?

10          MR. SCHUMACHER: We do, your Honor. June 8.

11          THE COURT: All right.

12          MS. ZORNBERG: Your Honor, if I may, I would  
13 like to correct one thing Mr. Pilsk said.

14                He represented that the plaintiff's position is  
15 tied to what position the FAA takes. That is not  
16 accurate.

17                The plaintiff's position is based upon what  
18 Congress has said. And if the FAA made a mistake at some  
19 point in entering the 2005 settlement, as we contend, that  
20 would have been the date the FAA, itself, twice said we  
21 have no authority to do what happened in that settlement  
22 agreement.

23                The FAA made a mistake in the Bishop sentence.  
24 As we contend, there was no factual or legal support for  
25 that sentence. The FAA's mistake does not govern this

1 court. It doesn't even govern the FAA. Our position is  
2 that what rules at the end of the day are the clear  
3 dictates of Congress.

4 MR. SCHUMACHER: And, your Honor, I would just  
5 say I know we are in support of the plaintiffs here, but  
6 what the FAA is doing is evaluating these restrictions.  
7 Ultimately, we may wind up and say: You know what? We  
8 don't see a violation here.

9 THE COURT: You may wind up saying they are  
10 reasonable. There are not arbitrary. They are not  
11 discriminatory.

12 MR. SCHUMACHER: Absolutely, your Honor.

13 So I want to make that clear. But we need time  
14 to make that determination.

15 THE COURT: But right now we have two sides that  
16 need an answer relatively soon based on the fact that this  
17 is going into the height of the summer season in the  
18 Hamptons.

19 MR. SCHUMACHER: Understood, your Honor.

20 And as I said, it is a serious question and the  
21 FAA is taking it very seriously.

22 As I said before, it is being considered at the  
23 highest level of both FAA and the DOJ.

24 MR. PILSK: The only closing point on that is  
25 what your Honor I think put her fingers on, which is, what

1 kind of likelihood of success on the merits is there if  
2 the FAA doesn't know what it is going to do, and they  
3 could go either way.

4 That is the problem. They are asking  
5 essentially for an injunction while the FAA makes up its  
6 mind, which could go either way. On the basis of that,  
7 there is no sense of urgency, from FAA's point of view.  
8 And there is no likelihood of success on the merits  
9 because no one knows, the FAA has not articulated any  
10 basis to believe that the law is unlawful. They are still  
11 thinking about it. I think that is the main point.

12 What I meant by the plaintiff taking the FAA's  
13 position here is that they are really challenging the  
14 FAA's earlier statement, which is all we have to go on at  
15 the moment, and are challenging against the FAA, not  
16 against the town.

17 THE COURT: Yes?

18 MR. BREGMAN: Eric Bregman. I am local counsel  
19 for the town and I was also the town attorney in 2001.

20 THE COURT: That is a nice coincidence, isn't  
21 it?

22 MR. BREGMAN: I just want to speak about the  
23 timing and the FAA's response or, frankly, failure to  
24 respond.

25 I can tell that you since 2001, when I was there

1 and they were first looking at this issue of noise as part  
2 of the master plan update that they started back then,  
3 they spent seven years doing it, the FAA knew exactly  
4 where the town was going. It knew exactly what the issues  
5 were. Not that the town was going to do restrictions, but  
6 they knew that it was a possibility.

7 And that is what the political debate was about,  
8 whether or not to give up future FAA funding in order to,  
9 quote, take control of the airport.

10 And there was a lot of political back and forth.

11 THE COURT: No one can control an airport. We  
12 live in a country that has a national system; an  
13 international system, if you will.

14 MR. BREGMAN: Of course. But control in the  
15 sense of imposing restrictions on operations for noise,  
16 and only noise issues. And that is what the debate was  
17 about. It was going back to.

18 And I can tell you, there were many meetings  
19 from 2001 through the three years I was the town attorney.  
20 I was at two meetings with the FAA, at all of which these  
21 underlying issues were discussed. The town couldn't get  
22 responses. Couldn't get responses saying this is okay or  
23 that is not okay. It was only when there was a separate  
24 lawsuit with the town, that I did not participate in.

25 THE COURT: It was the citizens to stop



1 expansion of the airport.

2 MR. BREGMAN: Yes. The town didn't even know  
3 about that, frankly, at the time it was started. And it  
4 was only when that was settled, with the settlement as we  
5 know truncating some of the grant assurances, and the  
6 other lawsuit that was just resolved in state court about  
7 these issues, when the Bishop letter was written. All of  
8 this.

9 So it is not as though the FAA didn't know that  
10 these noise issues and the issued restrictions were in the  
11 works from 2001. Now, the specifics obviously of the  
12 restrictions are only recently.

13 THE COURT: Right. And you just passed the laws  
14 in terms of what those restrictions would be, so now the  
15 FAA wants time to render its decision.

16 However, the court doesn't necessarily have to  
17 wait for the FAA to render its decision.

18 MR. BREGMAN: That is what I was focusing on.

19 The town has been waiting for the FAA for a very  
20 long time for guidance about this, and it hasn't gotten it  
21 except in the settlement of that other lawsuit and the  
22 FAA's response to the Bishop questions.

23 So the town, my bottom line point is, has been  
24 perfectly reasonable in relying upon it and has not been  
25 avoiding it.

1 THE COURT: Thank you.

2 MS. ZORNBERG: Your Honor, if I may, just three  
3 points in response.

4 First, to the extent that Mr. Bregman is  
5 testifying here as a witness, we object and we think that  
6 is improper.

7 Second, to the extent that the town keeps  
8 repeating this claim that plaintiff's likelihood of  
9 success depends on the FAA's decision, again, we are not  
10 relying on the FAA. We are relying on Congress, which has  
11 spoken clearly. We think it a good thing and a right  
12 thing for the FAA to be involved and to take a holistic  
13 look at these restrictions.

14 Frankly, on safety issues, at a minimum that is  
15 critical. The New York Eastern Seaboard airspace is the  
16 most dense, complicated airspace in the nation. And the  
17 FAA, in the less complex airspace, has refused to approve  
18 mandatory curfews on safety grounds.

19 And so, for a whole host of reasons but safety  
20 has to be forefront among them, of course the FAA needs  
21 time to get it right and to make its determination.

22 On safety, Congress has preempted, totally,  
23 control over aviation safety, and the FAA is the final  
24 arbiter on whether restrictions are safe. For town  
25 counsel to stand up here and say it is not true these

1 things are safe, just highlights the ridiculousness.

2 THE COURT: I don't think he has said anything  
3 that they are safe, necessarily.

4 MS. ZORNBERG: All right. Fine.

5 So, your Honor, when the town says the only  
6 thing we have go on is the Bishop sentence, that is not  
7 the only thing they have to go on. Their own counsel  
8 advised them, based the express terms of Congress, that  
9 the town had to abide by ANCA.

10 The FAA regulations, formally promulgated, say  
11 ANCA applies to all airports. That is the quote. I can't  
12 imagine clearer language.

13 So of course there is a lot for the court to go  
14 on in finding that the town has to comply with ANCA. It  
15 is Congress' plain terms, supported by the regulations  
16 promulgated by the FAA.

17 THE COURT: Thank you.

18 If there is nothing else, I'm going to adjourn.  
19 But let me first ask, before I do that, is the town  
20 willing to continue not enforcing these laws?

21 MR. PILSK: For what period of time, your Honor?

22 THE COURT: Three weeks.

23 MR. PILSK: I would have to consult with my  
24 client before I can answer that.

25 THE COURT: Why don't you do that. We will take

1 a short break and then you can get back to me with that  
2 answer.

3 MR. PILSK: Thank you, your Honor.

4 (Recess taken from 10:45 am until 11 am.)

5 THE COURT: Were you able to contact your  
6 client?

7 MR. PILSK: I was, your Honor. Thank you.

8 I want to say, first, we have obviously given a  
9 lot of thought to your Honor's request and respect your  
10 request for additional time to evaluate the issues and get  
11 it right.

12 I do want to say that, from the town's point of  
13 view, with Memorial Day weekend coming up, further delay  
14 in implementation imposes an enormous burden and -- cost  
15 is not the right word -- negative impact on the residents  
16 of the community in terms of the hundreds of aircraft that  
17 will be coming starting this weekend. I want to be clear  
18 that this is a big ask for the town.

19 That said, the town appreciates your request.  
20 The main question we have is, what happens after three  
21 weeks?

22 THE COURT: I will render a decision.

23 MR. PILSK: Okay. That is what I want to get  
24 at.

25 Maybe I'm reading the tea leaves too intensely

1 because my impression was you might be waiting for the  
2 FAA's response.

3 THE COURT: No. I'm not waiting. I can say on  
4 the record right now I don't need the FAA's response.

5 I see Mr. Schumacher smiling. He seems somewhat  
6 relieved.

7 I certainly have the authority to determine this  
8 dispute and I don't need their input. I appreciate it.

9 Obviously, if I get the decision wrong they will  
10 be first to try to intervene and correct whatever I did in  
11 error.

12 In any event, I will put it over for three  
13 weeks. I appreciate the town's compliance or offering to  
14 allow the court this time to decide the issue.

15 What is our three-week date? I will give you a  
16 Monday return date and I will render the decision on that  
17 date. I will have the time.

18 June 8 you should expect a decision from the  
19 court.

20 MR. PILSK: I'm sorry. Do you want us to be  
21 here?

22 THE COURT: No. I will issue the decision. You  
23 do not have to come in.

24 MS. ZORNBERG: Your Honor, just for further  
25 clarification of our own position.

1           Our order to show cause was styled as a motion  
2 for a TRO. But clearly here --

3           THE COURT: It is a preliminary injunction, you  
4 were seeking.

5           MS. ZORNBERG: Yes.

6           There are dispositive legal issues that apply,  
7 and those dispositive legal issues, particularly under  
8 ANCA and under the grant assurances under the AAIA, we do  
9 not seek any fact discovery. And we think it would be  
10 appropriate for the court to treat our argument on those  
11 issues as one for a preliminary injunction as well as for  
12 a TRO.

13           THE COURT: That is what I intend to do.  
14 And I assume that defense counsel agrees with  
15 that.

16           MR. PILSK: On the legal issues, yes, your  
17 Honor.

18           THE COURT: Thank you. Have a good day, folks.  
19 (Proceedings adjourned at 11:05 am.)

20

21

CERTIFICATE OF COURT REPORTER

22

I certify that the foregoing is a correct transcript from  
23 the record of proceedings in the above-entitled matter.

24

25

\_\_\_\_\_  
Dominick M. Tursi, CM, CSR



A-492

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
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 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----X

**DEFENDANT’S ANSWER TO THE AMENDED COMPLAINT**

FARRELL FRITZ, P.C.  
Eric Bregman  
50 Station Road Building 1  
Water Mill, NY 11976  
Tel: (631) 357-3100

KAPLAN KIRSCH & ROCKWELL LLP  
W. Eric Pilsk  
Peter J. Kirsch  
1001 Connecticut Ave., NW  
Suite 800  
Washington, DC 20036  
Tel: (202) 955-5600

Attorneys for Defendant, the Town of East Hampton

The Town of East Hampton, New York (the “Town”), by and through counsel, pursuant to F.R. Civ. P. Rules 7, 8, and 12, responds to the allegations of the Complaint as amended (“Complaint”) filed by 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. (collectively “Plaintiffs”) as set forth in the numbered paragraphs below. The Town denies all allegations contained in the Complaint except to the extent such allegations are specifically admitted in this Answer.

#### **Introduction**

1. In response to the allegations in Paragraph 1 of the Complaint, the Town admits only that Plaintiffs have filed suit in the U.S. District Court for the Eastern District of New York and that the terms of that action speak for themselves. The Town otherwise denies the allegations in Paragraph 1.

2. The Town admits only that East Hampton Airport is a public-use, general aviation airport that has been used by commercial and recreational aeronautic users and that the Airport is currently on FAA’s plan for the development of public-use airports in the United States, named the “national plan of integrated airport systems” or NPIAS and has therefore been eligible to receive federal funds. The Town otherwise denies the allegations of Paragraph 2 of the Complaint.

3. The Town admits that it owns and operates the East Hampton Airport as a local proprietor, admits that the scope of its powers as proprietor of the Airport is limited by certain federal law and otherwise denies the allegations of Paragraph 3 of the Complaint.

4. The Town denies the allegations in Paragraph 4 of the Complaint.

5. The Town denies the allegations in Paragraph 5 of the Complaint.

6. The Town denies the allegations in Paragraph 6 of the Complaint.

7. In response to the allegations of Paragraph 7 of the Complaint, the Town admits only that the three airport laws adopted on April 16, 2015, (the “Local Laws”) restrict operations by certain aircraft under certain conditions as specified in the Local Laws, but otherwise denies the allegations of Paragraph 7.

8. The Town denies the allegations in Paragraph 8 of the Complaint.

9. The Town denies the allegations in Paragraph 9 of the Complaint.

10. The Town denies the allegations in Paragraph 10 of the Complaint.

11. In response to the allegations in Paragraph 11 of the Complaint, the Town admits only that Plaintiffs have filed the pending suit and the terms of Plaintiffs’ prayer for relief speak for themselves. The Town specifically denies that Plaintiffs are entitled to any relief.

**The Parties**

12. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of the Friends of the East Hampton Airport, but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 12 of the Complaint.

13. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of Anlar Corporation, but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 13 of the Complaint.

14. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of Associated Aircraft Group,

Inc., but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 14 of the Complaint.

15. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of Eleventh Street Aviation LLC, but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 15 of the Complaint.

16. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of Helicopter Association International, Inc., but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 16 of the Complaint.

17. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of HeliFlite Shares LLC, but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 17 of the Complaint.

18. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of Liberty Helicopters, Inc., but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 18 of the Complaint.

19. The Town admits that Sound Aircraft Services is a fixed-base operator that leases airport property from the Town. The Town otherwise denies the allegations in Paragraph 19 of the Complaint.

20. The Town is without sufficient information to admit or deny the allegations regarding the nature of the organization, purpose, and membership of the National Business

Aviation Association, Inc., but states that it does not contest these allegations. The Town otherwise denies the allegations in Paragraph 20 of the Complaint.

21. The Town admits the allegations in Paragraph 21 of the Complaint.

**Jurisdiction and Venue**

22. The Town admits the allegations of Paragraph 22 of the Complaint.

23. The Town admits the allegations of Paragraph 23 of the Complaint.

**Pertinent Law**

24. In response to the allegations of Paragraph 24 of the Complaint, the Town states that the federal aviation laws speak for themselves and that the scope of preemption is a question of law for the Court to decide. The Town otherwise denies all allegations in Paragraph 24 inconsistent with the terms of the federal aviation laws.

25. In response to the allegations of Paragraph 25 of the Complaint, the Town states that the federal aviation laws speak for themselves and denies all allegations in Paragraph 25 inconsistent with the terms of those laws.

26. In response to the allegations of Paragraph 26 of the Complaint, the Town states that the federal aviation laws and FAA regulations speak for themselves. The Town denies all allegations in Paragraph 26 inconsistent with the terms of those laws.

27. In response to the allegations of Paragraph 27 of the Complaint, the Town admits only that local governments are preempted from regulating or controlling aircraft in flight and that local governments must comply with applicable federal law. The Town otherwise denies the allegations of Paragraph 27.

28. In response to the allegations of Paragraph 28 of the Complaint, the Town states that terms of 49 U.S.C. § 41713(b) speak for themselves as a matter of law and denies all allegations of Paragraph 28 inconsistent with the terms of that statute.

29. In response to the allegations of Paragraph 29 of the Complaint, the Town admits only that it may adopt local rules affecting access to the Airport to the extent the local laws comply with applicable federal law and are otherwise reasonable, non-arbitrary, and non-discriminatory. The Town otherwise denies the allegations of Paragraph 29.

30. The Town denies the allegations of Paragraph 30 of the Complaint.

31. The Town denies the allegations of Paragraph 31 of the Complaint.

32. The Town denies the allegations of Paragraph 32 of the Complaint.

**A. Noise Control – The Airport Noise and Capacity Act**

33. In response to the allegations of Paragraph 33 of the Complaint, the Town states that the terms of the Airport Noise and Capacity Act (“ANCA”) speak for themselves. The Town denies all allegations in Paragraph 33 inconsistent with the terms of the statute.

34. In response to the allegations of Paragraph 34 of the Complaint, the Town admits only that prior to ANCA’s enactment in 1990, federal laws addressed the topics identified in Paragraph 34 and that the terms of those laws speak for themselves. The Town otherwise denies all allegations of Paragraph 34 inconsistent with those laws.

35. In response to the allegations of Paragraph 35 of the Complaint, the Town admits that FAA has classified most aircraft into “Stages” based on their ability to operate beneath specified noise levels. The “Stage” classification for any given aircraft is a function of a number of factors, including aircraft weight and noise levels. Generally, for stage-rated aircraft of similar weights, Stage 1 aircraft emit the most noise, and Stage 2, 3, and 4 aircraft emit less noise



than aircraft with lower Stage ratings. The Town otherwise denies the allegations of Paragraph 35.

36. In response to the allegations of Paragraph 36 of the Complaint, the Town admits that Congress enacted ANCA in 1990 and that the terms of ANCA speak for themselves. The Town otherwise denies all allegations in Paragraph 36 inconsistent with the terms of ANCA. The Town specifically denies that ANCA applies to all airports in the United States.

37. In response to the allegations of Paragraph 37 of the Complaint, the Town admits only that the terms of ANCA speak for themselves and otherwise denies all allegations in Paragraph 37 inconsistent with the terms of ANCA.

38. The Town denies the allegations of Paragraph 38 of the Complaint.

**ANCA Requirements for Stage 2 Aircraft**

39. In response to the allegations of Paragraph 39 of the Complaint, the Town admits only that a local restriction on Stage 2 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 39.

40. In response to the allegations of Paragraph 40 of the Complaint, the Town admits only that a local restriction on Stage 2 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 40.

41. In response to the allegations of Paragraph 41 of the Complaint, the Town admits only that a local restriction on Stage 2 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 41.

**ANCA Requirements for Stage 3 and Stage 4 Aircraft**

42. In response to the allegations of Paragraph 42 of the Complaint, the Town admits only that a local restriction on Stage 3 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 42.

43. In response to the allegations of Paragraph 43 of the Complaint, the Town admits only that a local restriction on Stage 3 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 43.

44. In response to the allegations of Paragraph 44 of the Complaint, the Town admits only that a local restriction on Stage 4 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 44.

45. In response to the allegations of Paragraph 45 of the Complaint, the Town admits only that a local restriction on Stage 3 or Stage 4 aircraft must comply with ANCA's procedures to the extent the airport proprietor wants to continue to receive or remain eligible for federal aviation grants. The Town otherwise denies the allegations of Paragraph 45.

**B. Federal Funding – The Airport and Airway Improvement Act of 1982**

46. The Town admits the allegations of Paragraph 46 of the Complaint.

47. In response to the allegations of Paragraph 47 of the Complaint, the Town admits only that the terms of the Airport and Airway Improvement Act of 1982 ("AAIA") speak for themselves and otherwise denies all allegations in Paragraph 47 inconsistent with the terms of the AAIA.

48. In response to the allegations of Paragraph 48 of the Complaint, the Town admits that the terms of the AAIA speak for themselves and otherwise denies all allegations in Paragraph 48 inconsistent with the terms of the AAIA.

49. The Town admits the allegations in Paragraph 49 of the Complaint.

50. In response to the allegations of Paragraph 50 of the Complaint, the Town admits only that Paragraph 50 contains a correct restatement of Grant Assurance 22.a and otherwise denies all allegations in Paragraph 50 inconsistent with the terms of the Grant Assurances.

51. In response to the allegations of Paragraph 51 of the Complaint, the Town admits only that Paragraph 51 contains a correct restatement of Grant Assurance 19.a and otherwise denies all allegations in Paragraph 51 inconsistent with the terms of the Grant Assurances.

52. In response to the allegations of Paragraph 52 of the Complaint, the Town admits only that Paragraph 52 contains a correct restatement of Grant Assurance 23 and otherwise denies all allegations in Paragraph 52 inconsistent with the terms of the Grant Assurances.

53. The Town denies the allegations of Paragraph 53 of the Complaint.

54. The Town denies the allegations of Paragraph 54 of the Complaint.

### **Pertinent Facts**

#### **A. East Hampton Airport**

55. The Town is without sufficient information to admit or deny the allegations in Paragraph 55 of the Complaint because Town planning documents contain differing and conflicting information. For example, a 2002 Environmental Assessment prepared for the Town states that “The East Hampton Airport has been in existence since 1942, when the East Hampton Town Board entered into an agreement with the United States relative to the operation and maintenance of the airport. This agreement was aimed at increasing the national defense during

World War II.”<sup>1</sup> By contrast, a Master Plan Report from the 1980’s states: “East Hampton Airport was built in 1936. Suffolk County acquired the property through tax sale and shortly thereafter turned the airport over to the Town of East Hampton.”<sup>2</sup>

56. The Town is without sufficient information to respond to the allegations in the first two sentences of Paragraph 56 of the Complaint because it does not have deed and easement information for each residential property near the Airport. However, the Town states that it has acquired the majority of real estate in the vicinity of the Airport for open space and aquifer protection. The Town further states that the only significant amount of residential development in the immediate area of the Airport is on the south and southwest side of the Airport, where there are residential properties located close to the Airport. The Town admits the allegations in the final sentence of Paragraph 56, but notes that the Town of Southhampton immediately abuts the western edge of the Airport property, such that some nearby residences are not subject to the Code of the Town of East Hampton.

57. The Town admits that the Airport has been a public-use airport since its construction; that it has served a variety of charter and recreational users; and, that in the past, commercial airlines (such as East Hampton Aire) have provided scheduled airline services to East Hampton Airport, but no such service has been provided in recent years. The Town otherwise denies the allegations in Paragraph 57 of the Complaint.

58. In response to the allegations of Paragraph 58 of the Complaint, the Town admits the allegations of the first, second, third, and fourth sentences of Paragraph 58. The Town is

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<sup>1</sup> Available at: <http://www.htoplanning.com/docs/Town Documents/021100 SEQRA Environmental Assessment Form and Report, Proposed Adoption of the Updated Airport Layout Plan.PDF>.

<sup>2</sup> Available at: <http://www.htoplanning.com/docs/Town Documents/890000 1989 Master Plan Update for East Hampton Airport.PDF>.

without sufficient information to admit or deny the allegations of the fifth sentence of Paragraph 58. The Town admits the allegations of the sixth sentence of Paragraph 58.

59. The Town admits the allegations in Paragraph 59 of the Complaint. The Town further states that almost 65 percent (3,331 of the 5,148) public-use airports are included in the NPIAS. The other 1,817 existing public-use airports generally are not included in the NPIAS because they do not meet the minimum entry criteria,<sup>3</sup> are located at inadequate sites, cannot be expanded and improved to provide a safe and efficient airport, or are located within 20 miles of another NPIAS airport.<sup>4</sup>

60. The Town admits the allegations of Paragraph 60 of the Complaint.

**B. The Town's Grant Assurances to the Federal Government**

61. The Town admits the allegations in Paragraph 61 of the Complaint.

62. In response to the allegations of Paragraph 62 of the Complaint, the Town admits only that it accepted a federal grant from the Airport Improvement Program fund in 2001 in the amount of \$1,410,000 for rehabilitation of the terminal apron, including drainage and markings, subject to standard FAA grant assurances and otherwise denies the allegations of Paragraph 62.

63. The Town denies the allegations of Paragraph 63 of the Complaint.

**C. The Local Laws Adopted on April 16, 2015**

64. The Town admits that it adopted three Local Laws on April 16, 2015, regulating access to the Airport by certain aircraft and states that the Local Laws speak for themselves with

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<sup>3</sup> See, FAA Order 5090.3C, Field Formulation of the NPIAS (2000) at Chapter 2; available at [http://www.faa.gov/airports/resources/publications/orders/media/planning\\_5090\\_3C.pdf](http://www.faa.gov/airports/resources/publications/orders/media/planning_5090_3C.pdf)

<sup>4</sup> See, FAA, Report to Congress: NPIAS (2015-2019) at 1; available at [http://www.faa.gov/airports/planning\\_capacity/npis/reports/media/npis-2015-2019-report-narrative.pdf](http://www.faa.gov/airports/planning_capacity/npis/reports/media/npis-2015-2019-report-narrative.pdf).

regard to the basis for adoption. The Town otherwise denies the allegations in Paragraph 64 of the Complaint.

65. The Town admits that it properly noticed the Local Laws on February 10, 2015, that the Local Laws have been duly filed with the Secretary of State, and that the Town has agreed to defer enforcement of the Local Laws until this Court acts on the pending motion for a temporary restraining order, but otherwise denies the allegations in Paragraph 65 of the Complaint.

66. The Town admits that it adopted three Local Laws, states that the Local Laws speak for themselves, and denies all allegations of Paragraph 66 inconsistent with the terms of the Local Laws. With regard to the One-Trip-Limit Restriction, the Town notes that, since the filing of the Complaint, the Town has adopted an additional local law formally defining “Season” as the “months of May, June, July, August and September” and modifying the enforcement provisions of the Local Laws<sup>5</sup> and that law has been filed with the Secretary of State.<sup>6</sup> The Town otherwise denies the allegations in Paragraph 66 of the Complaint.

67. The Town admits the allegations of Paragraph 67 of the Complaint.

68. The Town admits that the Local Laws include a sliding scale of fines, additional discretionary fines, and additional mandatory fines for repeat offenders. The Town also clarifies that, following the adoption of Local Law Number 7,<sup>[5]</sup> violations of the Local Laws are deemed to be unclassified violations. Under New York Law, unclassified violations are not crimes. The Town otherwise denies all allegations in Paragraph 68 of the Complaint inconsistent with the terms of the Local Laws.

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<sup>5</sup> Available at: [http://www.htoplanning.com/docs/Town Documents/150507 Resolution 2015-569 \(Amendments to Chapter 75\).PDF](http://www.htoplanning.com/docs/Town Documents/150507 Resolution 2015-569 (Amendments to Chapter 75).PDF)

<sup>6</sup> Available at: <http://www.htoplanning.com/docs/Town Documents/150520 Notice of filing of Local Law No. 7 with Secretary of State.PDF>



69. The Town states that the enforcement terms of the Local Laws – as modified by Local Law Number 7<sup>[5]</sup> – speak for themselves and otherwise denies all allegations in Paragraph 69 of the Complaint inconsistent with the terms of the Local Laws.

70. The Town admits the allegations of Paragraph 70 of the Complaint, but specifically denies that it had any obligation to seek or obtain FAA approval.

71. The Town admits that on April 7, 2015, Councilwoman Burke-Gonzalez issued a statement estimating that the proposed Local Laws would affect:

- “- 75% of helicopter operations and 73% of associated complaints on weekends and holidays during the summer season, and
- 23% of all aircraft operations while addressing 60% of complaints on an annual basis.”<sup>7</sup>

72. The Town admits that in February 2015, while it was still developing the proposed Local Laws, the Town asked the Town’s Budget and Finance Advisory Committee (“BFAC”) to report on whether the Airport would be financially self-sufficient over the long term if the Town Board decided to: (1) implement all four noise Local Laws initially proposed on February 10; (2) finance \$7 million of capital costs over the next five years; and (3) prepare for up to \$3 million of litigation costs. The Town further admits that the Committee was unable to reach a consensus in February 2015 because the variables were “too great and/or further data, research and perspectives from industry experts ... is needed.”<sup>8</sup> The Town also states that it subsequently adopted only three of the four Local Laws that were under consideration in February 2015. The Town otherwise denies the allegations in Paragraph 72 of the Complaint.

<sup>7</sup> A full copy of the statement is available at: <http://www.htoplanning.com/docs/Town Documents/150407 Airport Statement at Town Board Work Session.PDF>.

<sup>8</sup> A full copy of the BFAC’s report to the Town is available at: <http://www.htoplanning.com/docs/Town - Appointed Committee Documents/150302 Email from A. Malman re BFAC Airport Finance Subcommittee unable to reach consensus.PDF>.

**D. The Local Laws Violate and Conflict with Federal Law and Policy.**

- 73. The Town denies the allegations in Paragraph 73 of the Complaint.
- 74. The Town denies the allegations in Paragraph 74 of the Complaint.
- 75. The Town denies the allegations in Paragraph 75 of the Complaint.
- 76. The Town denies the allegations in Paragraph 76 of the Complaint.
- 77. The Town denies the allegations in Paragraph 77 of the Complaint.
- 78. The Town denies the allegations in Paragraph 78 of the Complaint.
- 79. The Town denies the allegations in Paragraph 79 of the Complaint.
- 80. The Town denies the allegations in Paragraph 80 of the Complaint.
- 81. The Town denies the allegations in Paragraph 81 of the Complaint.
- 82. The Town denies the allegations in Paragraph 82 of the Complaint.
- 83. The Town denies the allegations in Paragraph 83 of the Complaint.
- 84. The Town denies the allegations in Paragraph 84 of the Complaint, and specifically denies that Plaintiffs can seek to enforce Grant Assurance 22.a in this action.
- 85. The Town denies the allegations in Paragraph 85 of the Complaint, and specifically denies that Plaintiffs can seek to enforce Grant Assurance 19.a in this action.
- 86. The Town denies the allegations in Paragraph 86 of the Complaint, and specifically denies that Plaintiffs can seek to enforce Grant Assurance 23 in this action.

**E. The Town's Attempt to Avoid Compliance with Federal Law by Relying on a 2005 Settlement Agreement to which the Town was not a Party.**

- 87. The Town denies the allegations in Paragraph 87 of the Complaint.
- 88. In response to the allegations of Paragraph 88 of the Complaint, the Town admits that the Committee to Stop Airport Expansion initiated litigation in federal court and also before FAA, and that the litigation initiated by the Committee to Stop Airport Expansion resulted in a

2005 Settlement Agreement between FAA and the Committee and the dismissal of the litigation, that the terms of those legal actions litigation speak for themselves and otherwise denies the allegations in Paragraph 88.

89. The Town admits the allegations of Paragraph 89 of the Complaint.

90. The Town admits the allegations of Paragraph 90 of the Complaint.

91. In response to the allegations of Paragraph 91 of the Complaint, the Town admits that Paragraph 91 correctly quotes portions of the 2005 Settlement Agreement, but otherwise denies all allegations of Paragraph 91 that are inconsistent with the terms of the 2005 Settlement Agreement.

92. The Town admits that it was not a party to the *Committee to Stop Airport Expansion v. Department of Transportation* action and otherwise denies the allegations of Paragraph 92 of the Complaint.

93. The Town admits that the 2005 Settlement Agreement does not mention ANCA and otherwise denies the allegations in Paragraph 93 of the Complaint that are inconsistent with the terms of the 2005 Settlement Agreement.

94. The Town was not a party to the action and is without sufficient information to admit or deny the allegations in Paragraph 94 of the Complaint.

95. The Town denies the allegations of Paragraph 95 of the Complaint

96. The Town states that the terms of Plaintiff's prayer for relief speak for themselves. The Town otherwise denies the allegations in Paragraph 96 of the Complaint.

97. The Town denies the allegations in Paragraph 97 of the Complaint.

98. The Town denies the allegations in Paragraph 98 of the Complaint.

99. The Town denies the allegations in Paragraph 99 of the Complaint.

**F. The Local Laws Will Irreparably Harm Plaintiffs and Other Airport Users**

100. The Town denies the allegations in Paragraph 100 of the Complaint.

101. The Town denies the allegations in Paragraph 101 of the Complaint.

102. The Town denies the allegations in Paragraph 102 of the Complaint.

103. The Town denies the allegations in Paragraph 103 of the Complaint.

**FIRST CLAIM FOR RELIEF**

104. The Town repeats and reiterates its answers to Paragraphs 1 – 103 of the Complaint.

105. The Town states that the Supremacy Clause of the United States Constitution speaks for itself and otherwise denies the allegations in Paragraph 105 of the Complaint.

106. The Town states that the Supremacy Clause of the United States Constitution speaks for itself and otherwise denies the allegations in Paragraph 106 of the Complaint.

107. The Town denies the allegations in Paragraph 107 of the Complaint.

108. The Town denies the allegations in Paragraph 108 of the Complaint.

109. The Town denies the allegations in Paragraph 109 of the Complaint.

110. The Town denies the allegations in Paragraph 110 of the Complaint.

111. The Town denies the allegations in Paragraph 111 of the Complaint.

112. The Town denies the allegations in Paragraph 112 of the Complaint.

113. The Town denies the allegations in Paragraph 113 of the Complaint.

114. The Town denies the allegations in Paragraph 114 of the Complaint.

115. The Town denies the allegations in Paragraph 115 of the Complaint.

**SECOND CLAIM FOR RELIEF**

116. The Town repeats and reiterates its answers to Paragraphs 1 – 115 of the Complaint.

117. The Town states that the Commerce Clause of the United States Constitution speaks for itself. The Town otherwise denies the allegations in Paragraph 117 of the Complaint.

118. The Town admits the allegations of Paragraph 118 of the Complaint.

119. The Town admits the allegations of Paragraph 119 of the Complaint.

120. The Town admits that operations at East Hampton Airport include interstate operations. The Town is without sufficient information to admit or deny the allegations of Paragraph 120 with regard to the allegations about Plaintiffs' passengers, but states that it does not contest the Plaintiffs' statements of the origination and departure points of their respective passengers.

121. The Town denies the allegations in Paragraph 121 of the Complaint.

122. The Town denies the allegations in Paragraph 122 of the Complaint.

123. The Town denies the allegations in Paragraph 123 of the Complaint.

124. The Town denies the allegations in Paragraph 124 of the Complaint.

125. The Town denies the allegations in Paragraph 125 of the Complaint.

126. The Town denies the allegations in Paragraph 126 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

First Affirmative Defense: The Complaint should be dismissed for failure to state a claim upon which relief can be granted.

Second Affirmative Defense: To the extent Plaintiffs seek to enforce any purported obligation of the Town under the Grant Assurances, the Complaint must be dismissed for lack of a private right of action.

Third Affirmative Defense: To the extent Plaintiffs seek to enforce any purported obligation of the Town under the Airport Noise and Capacity Act, the Complaint must be dismissed for lack of a private right of action.

WHEREFORE, the Town respectfully requests that the Court deny Plaintiffs any relief and grant such other and further relief as the Court may deem just and equitable.

Dated: June 19, 2015

Respectfully Submitted,

FARRELL FRITZ, P.C.

KAPLAN KIRSCH & ROCKWELL LLP

/S/

Eric Bregman  
50 Station Road Building 1  
Water Mill, NY 11976  
Tel: (631) 357-3100  
ebregman@farrellfritz.com

/S/

W. Eric Pilsk  
Peter J. Kirsch  
1001 Connecticut Ave., NW  
Suite 800  
Washington, DC 20036  
Tel: (202) 955-5600  
epilsk@kaplankirsch.com  
pkirsch@kaplankirsch.com

Attorneys for the Town of East Hampton



**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he has caused true and correct copies of Defendant's Answer to the Complaint to be served on June 19, 2015, via the Court's electronic filing system upon all counsel of record.

Dated: June 19, 2015

KAPLAN KIRSCH & ROCKWELL LLP

\_\_\_\_\_  
/S/

W. Eric Pilsk  
1001 Connecticut Ave., NW  
Suite 800  
Washington, DC 20036  
Tel: (202) 955-5600  
epilsk@kaplankirsch.com

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
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 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----X

**NOTICE OF APPEAL BY THE TOWN OF EAST HAMPTON**

Notice is hereby given that the Town of East Hampton, Defendant in the above named case, hereby appeals to the United States Court of Appeals for the Second Circuit from the Court's June 26, 2015 Memorandum and Order (ECF Document 64) granting in part and denying in part Plaintiff's motion for a preliminary injunction. The Town appeals each and every part of the Memorandum and Order insofar as it is adverse to the Town.

Dated: July 22, 2015.

Respectfully Submitted,

FARRELL FRITZ, P.C.

KAPLAN KIRSCH & ROCKWELL LLP

\_\_\_\_\_/S/  
Eric Bregman  
50 Station Road Building 1  
Water Mill, NY 11976  
Tel: (631) 357-3100  
ebregman@farrellfritz.com

\_\_\_\_\_/S/  
W. Eric Pilsk  
Peter J. Kirsch  
1001 Connecticut Ave., NW, Suite 800  
Washington, DC 20036  
Tel: (202) 955-5600  
epilsk@kaplankirsch.com  
pkirsch@kaplankirsch.com

Attorneys for the Town of East Hampton

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he has caused true and correct copies of the Notice of Appeal of the Town of East Hampton to be served on July 22, 2015, via the Court's electronic filing system upon all counsel of record.

Dated: July 22, 2015

KAPLAN KIRSCH & ROCKWELL LLP

\_\_\_\_\_  
/S/

W. Eric Pilsk  
1001 Connecticut Ave., NW  
Suite 800  
Washington, DC 20036  
Tel: (202) 955-5600  
epilsk@kaplankirsch.com

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
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 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

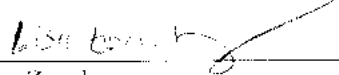
Defendant.

-----x  
**PLAINTIFFS' NOTICE OF CROSS-APPEAL**

Notice is hereby given that all Plaintiffs in the above-referenced case hereby cross-appeal to the United States Court of Appeals for the Second Circuit from this Court's Memorandum and Order (ECF Document 64) denying in part and granting in part Plaintiffs' motion for a preliminary injunction entered in this action on June 26, 2015.

Dated: August 4, 2015

LANKLER SIFFERT & WOHL LLP

By: 

Lisa Zornberg  
Jonathan Lamberti  
500 Fifth Avenue, 34th Floor  
New York, NY 10110  
(212) 921-8399  
lzornberg@lswlaw.com

*Attorneys for Plaintiffs*