TOWN OF EAST HAMPTON

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FOR IMMEDIATE RELEASE

Statement of the Town of East Hampton Regarding the Decision of the United States Second Circuit Court of Appeals in *Friends of East Hampton Airport, Inc. v. Town of East Hampton*

November 4, 2016- The Town of East Hampton is deeply disappointed in the Second Circuit Court of Appeal's decision to enjoin the Town's three local laws regarding access restrictions at East Hampton Airport. The Court's opinion undermines local control of operations at the Town-owned airport property and establishes that the federal bureaucracy controls regulations in the area of aviation noise abatement and control. A summary of the Court's decision is attached.

In its capacity as proprietor of the East Hampton Airport, the Town Board has always held the belief that it had a public policy responsibility to protect local residents from the loud and disturbing effects of aircraft noise. The Town Board has sought to provide residents who are impacted by aircraft noise meaningful and deserved relief. In April 2015, the Town adopted three local laws imposing use restrictions on certain operations at the Airport after historic efforts to engage public comment, study aviation noise issues and find balanced solutions.

In doing so, the Town relied upon written statements made by the Federal Aviation Authority to then Congressman Bishop stating that the Town was not required to engage in the lengthy FAA bureaucratic review and approval process under the Airport Noise and Capacity Act (ANCA) but could instead, as proprietor of the airport, adopt reasonable noise restrictions. Unfortunately, the Second Circuit Court of Appeals decision has usurped the Town's local authority, contrary to the assurances of the FAA written statement to Congressman Bishop, therefore making

burdensome ANCA review and FAA approval mandatory for any aviation noise regulations adopted by an airport proprietor.

A group of opponents sued in federal court to enjoin these local laws in 2015 and in late June of that year, Federal District Court Judge Joanna Seybert enjoined one of the laws that restricted noisy aircraft to one round trip per week. The other two curfew laws have been in effect and enforced since July 2, 2015.

The Town Board vigorously defended its enactment of these three reasonable local laws at both the District and Circuit Court of Appeals levels in attempt to effectuate the solutions arrived at through the deliberative process of the Town Board. In two summer seasons of implementation, the Town saw over 99% compliance with the curfew regulations. Although today's court decision places the solution to aviation noise problem firmly at the feet of Congress and the FAA, the Town will continue to explore every available option so that the residents of the East End won't continue to be inflicted by an unrelenting din from the skies above.

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SUMMARY OF DECISION

Judge Raggi wrote the decision for the panel, holding that all three Local Laws are preempted by ANCA and remanding the case for the district court to enter a preliminary injunction barring enforcement of all three laws.

First, the court holds that ANCA does not limit a federal court's equity jurisdiction to provide an injunction against enforcement of a state or local law that violates federal law. The court states that there is no textual basis to conclude that the loss of federal funding is the only consequence for violating ANCA. In particular, the court relies on 49 U.S.C. § 47533(3), which states: "Except as provided by section 47524 of this title, this subchapter does not affect . . . the authority of the Secretary of Transportation to seek and obtain legal remedies the Secretary considers appropriate, including injunctive relief." According to the court, section 47524 is unavailing to the Town because it prohibits suit only if its procedural requirements are satisfied. The court further states that the FAA's authority extends to private parties where, as here, those parties are not simply seeking to enforce federal law but rather to preclude the Town from subjecting them to local laws enacted in violation of federal requirements. The court also relies on the AAIA grant assurances to support its opinion. According to the court, if loss of funding eligibility were the sole remedy, then an airport proprietor could simply obtain an AIP grant on one day and on the next day promulgate non-ANCA-compliant laws.

Second, the court holds that ANCA preempts the Local Laws. The court focuses on the language in section 47524 that a noise restriction is allowed "only if" it meets the procedural requirements, and holds that this language is mandatory for any public airport regardless of federal funding. The court also explains that the remedy in section 47526 to withhold federal funding does not state that this remedy is exclusive. The court further holds that the statutory findings and

legislative history support its interpretation because they speak about consistent noisy policy at the national level. Finally, the court also relies on the FAA's regulations, which state that "notice, review, and approval requirements set forth in this part apply to *all airports* imposing noise or access restrictions," 14 C.F.R. §§ 161.3(c), 161.5 (emphasis added), and that "the procedures to terminate eligibility for airport grant funds . . . may be used *with or in addition to* any judicial proceedings initiated by the FAA to protect the national aviation system and related Federal interests." *Id.* § 161.501(a) (emphasis added).

Third, the court holds that National Helicopter is inapposite because it did not directly address the ANCA issue. The court also notes that, given its reading of National Helicopter, it circulated the opinion to all active judges prior to filing the opinion (and presumably none of the other Second Circuit judges objected).

Fourth, the court holds that its opinion does not transform federal aviation law. The court states that ANCA's procedural requirements are properly understood to refine what can constitute a "reasonable" exercise of the proprietary authority reserved by the ADA. The court also states that the lack of FAA approvals in the past does not mean the FAA would not approve restrictions in the future, and that if the process is burdensome, that was Congress's choice.