NBAA

October 19, 2015

BY PERSONAL DELIVERY

Office of the Chief Counsel
Attention: FAA Part 16 (Airport Proceedings Docket)
AGC-610
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, D.C. 20591

Re: Part 16 Complaint: *National Business Aviation Association, Inc., Shoreline Aviation, Inc. (Connecticut); PlaneSense, Inc.; Fly the Whale, Inc.; Eastern Air Express, Inc.; FL Aviation Corporation; Tuckaire, Inc.; Autonomic Controls, Inc.; Shoreline Aviation, Inc. (Massachusetts); Wes Rac Contracting Corporation; Eagle Air, Inc.; and JETAS, Inc.* v. *Town of East Hampton, New York* – no. 16-15-08

Dear Sirs:

The Complainants in the above-captioned proceeding respectfully file this reply, pursuant to 14 C.F.R § 16.23(e), to the answer and the accompanying memorandum of points and authorities ("Memorandum") that was submitted by Respondent, the Town of East Hampton ("Town" or "East Hampton"), in this docket on October 8, 2015.

As a preliminary matter, the issues pending before the FAA in this proceeding are primarily matters of law, not fact, and have significance not just for East Hampton Airport ("HTO") but also for airports nationwide. Contrary to Respondent's allegations, Complainants' allegations are well-grounded in FAA precedent – and arise out of the Town's defiance of obligations that it voluntarily assumed when it accepted AIP grants. Simply put, the Town is not a victim in this case, as Respondent suggests – but HTO and its users are, and remedial compliance action by the agency is urgently required. Accordingly, Complainants urge the FAA, once the briefing process is complete, to render a decision promptly, consistent with the intended purposes and specific deadlines set forth in Part 16. See, e.g., 59 Fed. Reg. at 29881-82 (June 9, 1994).[1]

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[1] An additional preliminary matter is Respondent's citation of data of uncertain reliability. The Town last month conceded that the operational data which it previously made public had been inaccurate since at least the start of this year. See Exhibit A. But the Town also has quietly adjusted its data for 2013 and 2014. See Exhibits B and C (the original and revised reports issued in September 2015). The Town has asserted that the restrictions it has imposed at HTO are justified by "rapid increases in operations" by helicopters in 2013-14. See Respondent's Memorandum, at 6. Putting aside the fact that operational changes at an airport do not empower its sponsor to unilaterally impose restrictions inconsistent with the grant assurances – it is now questionable whether the alleged increases were real, data artifacts, or creative recordkeeping. Notably, Exhibit B previously reported that between January-July 2013 and the same period of 2014, helicopter operations at HTO actually decreased, and there was only a nominal increase between July 2013 and July 2014. Exhibit C now significantly reduces the helicopter operations recorded in 2013 and significantly increases those recorded in 2014. Absent the production of complete *(continued…)*

The Compliance of the Trip Limit with FAA Requirements Is Ripe for Decision

A procedural issue asserted by Respondent is that the trip limit it adopted – in one of the three ordinances which the Town adopted on April 16, 2015 – is not ripe for review by the FAA in this docket, because subsequent to the initiation of this proceeding, the enforcement of the trip limit was preliminarily enjoined by a federal court.[2] See Respondent's Memorandum, at 9. But this reasoning is unsound: (i) the ordinance remains on the Town's books; (ii) the basis for the injunction is distinct from the issues in this proceeding; (iii) the injunction has been appealed by Respondent; and (iv) Respondent has made clear its intent and desire to enforce the trip limit, if any judicial restraint is lifted. See Exhibit D. Thus, the situation before the FAA is entirely unlike that in the Northwest Airlines proceeding, no. 16-07-04, in which the airport sponsor had agreed not to apply a rate-setting methodology until at least a date more than two years in the future. Action by the FAA is both permissible and advisable.[3]

Complainants Have Adequately Alleged a Violation of 49 U.S.C. § 40103(e) and Grant Assurance #23

Certain matters of law appear to be undisputed in this proceeding. Notably, Respondent does not dispute that at least the majority of the grant assurances remain in effect at HTO through the year 2021. Moreover, Respondent does not appear to credibly dispute that the ordinances which the Town adopted on April 16, 2015 would be impermissible if the general prohibition on unjust discrimination in grant assurance #22 was applicable to HTO.[4] Accordingly, the primary matter presented for decision by the

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data and explanations that are in the Town's sole possession and control, it is impossible to determine which dataset is reliable and how operations at HTO actually have evolved in recent years – even assuming that this factual data is relevant to the predominantly legal issues pending in this proceeding.

[2] As the FAA is aware, pending litigation challenges the ordinances on grounds other than the AIP-based grant assurances, including whether they are barred by ANCA. A decision to enjoin the trip limit – based specifically on the scope of the "proprietor's exception" – but not to enjoin the other ordinances or to invoke ANCA – is on cross-appeal (E.D.N.Y. no. 15-CV-2246; 2d Cir. nos. 15-2334 and 15-2465). Additionally, the validity of the FAA's purported waiver of the general prohibition on unjust discrimination in assurance #22 at HTO is the subject of separately-filed litigation (E.D.N.Y. no. 15-CV-441).

[3] Cf. Kalicki v. E*Trade Bank, 2015 WL 5677318, *7 (Cal. Ct. App. September 28, 2015) (affirming that plaintiffs' claim for wrongful foreclosure was ripe even though underlying sale had been rescinded); Weiss v. Feigenbaum, 558 F.Supp. 265, 274 (E.D.N.Y. 1982) (holding that plaintiff's claim for interference with campaign was ripe even though underlying election had been enjoined). Moreover, the FAA is not subject to the ripeness standards applicable in an Article III tribunal – and the Final Agency Decision in Northwest Airlines explained that even if a pending Part 16 claim was not ripe, the FAA not only could and should in the public interest provide policy guidance if the underlying reason was of a temporary nature. See id. at 16 (October 27, 2009). Cf. JetAway Aviation LLC v. Board of Commissioners, Montrose County, Colorado, no. 16-06-01, Director's Determination, at 34 (November 6, 2006); Town of Fairview, Texas v. City of McKinney, Texas, no. 16-99-04, Director's Determination, at 17 (July 26, 2000).

[4] Respondent has made a perfunctory argument that the unjust discrimination prohibition in assurance #22, even if applicable, has not been shown to have been violated. See Respondent's Memorandum at 24. But even Respondent does not seriously appear to believe this claim. The authorities cited therein do not remotely suggest that an airport may impose burdens on – even if it does not outright ban – a certain class of aeronautical activities and not on others, and yet be in compliance with assurance #22. *(continued...)*

FAA is the legal question of whether grant assurance #23 – one of the assurances which unquestionably remains in effect through 2021 (along with 49 U.S.C. § 40103(e), which is in effect so long as HTO is in operation) – bars Respondent from adopting the ordinances that impose an extended curfew and trip limits for "noisy" aircraft at HTO.

As previously briefed (see Complainants' answer dated July 20, 2015, at 2-5, and their surreply dated August 5, 2015, at 1-2), the FAA historically has interpreted the prohibition on exclusive rights at obligated airports to be the mirror image of the prohibition of unjust discrimination at those airports. Based upon that precedent, assurance #23 and Section 40103(e) prohibit the implementation of those ordinances, because they are facially unjust and unreasonable.

In its Memorandum, the Respondent has merely rehashed its prior arguments to the contrary, and sought to inject doubt where none should exist.[5] But the core principles of law at issue are unmoved. The Part 16 decision that the Town critically relies upon is an outlier; does not reflect the weight of FAA decisions and guidance before and since; and does not dictate that the FAA rule in favor of the Town.[6]

Decades of FAA precedent instruct otherwise. See, e.g., AOPA v. City of Pompano Beach, Florida, no. 16-04-01, Director's Determination at 36 (December 15, 2005) (invalidating restrictions on hours during which touch-and-gos, taxi-backs, and run-ups could be conducted – "restrictions [which] limit[ed] access to a particular type, kind, or class of aeronautical activity"); Bombardier Aerospace Corp. v. City of Santa Monica, no. 16-03-11, Director's Determination, at 54 (January 3, 2005) (invalidating landing scheme fee which burdened operators of heavy aircraft with all airfield pavement maintenance costs). In fact, Respondent's counsel previously advised the Town that access restrictions at HTO were permissible only after the FAA's purported waiver had taken effect – the implication being that access restrictions of the type now at issue were impermissible so long as assurance #22 remained effective. See Exhibit E, at 5.

[5] To the extent Respondent raises a statutory construction argument – see its Memorandum, at 15 – the textualist principles now asserted in no way bar assurance #22 and assurance #23 from being read as complementary. For example, in Cohen v. U.S., 650 F.3d 717 (D.C. Cir. 2011), the court observed that:

> A baker who receives an order for "six" donuts and another for "half-a-dozen" does not assume the terms are requests for different quantities of donuts. Similarly, a man does not receive different directions to Dupont Circle if he is told by one person to "take the Metro" and by another to "catch the Red Line." ... By nature, language is simultaneously robust and precise. Different verbal formulations can, and sometimes do, mean the same thing.

Id. at 731. In fact, courts regularly find separate enactments to effect the same requirements. See, e.g., Ellis v. CCA of Tenn., LLC, 2010 WL 2605870, at *6 n.3 (S.D.Ind. June 21, 2010) (noting that two nursing "statutory provisions are simply mirror images of each other"); Boyer v. B & B Custom Homes, Inc., 796 So. 2d 84, 86 (La. App. 2001) (remarking that two worker's compensation "statutes are, in effect, mirror images of one another"). Nor is this a novel issue in the Part 16 context; the FAA previously held that ANCA's requirement for FAA review of Stage 2 access restrictions did not supersede the complementary grant assurance-based requirements also applicable to Stage 2 access restrictions. See In the Matter of Compliance with Federal Obligations by the Naples Airport Authority, no. 16-01-15, Director's Determination, at 23 (March 10, 2003), aff'd Final Agency Decision and Order (August 25, 2003), aff'd 409 F.3d 431 (D.C.Cir. 2005). Cf. FAA Compliance and Enforcement Program, Order 2150.3B, ch. 7, § 6(c) (observing that multiple FAA regulations may "involv[e] the same or similar conduct").

[6] The Town suggests that the delegated decision of the Associate Administrator in that case is binding on the Director of the Office of Airport Safety and Standards as the decisionmaker in this case, even if its reasoning is faulty – see, e.g., Respondent's Memorandum at 14 and 18 n.15 – but that is not the law. *(continued...)*

Indeed, the Town's strategy appears to be to argue that all contrary guidance pre-dating that outlier has been superseded, and that all contrary guidance post-dating it is distinguishable.[7] But Occam's razor advises that the simplest answer – i.e., that the outlier is exactly that, and that the FAA's understanding of the meaning of assurance #23 and Section 40103(e) has not changed – is likely to be the correct answer, rather than the overly complex argument proffered by Respondent.

Additionally, Respondent's claimed distinctions should not be accepted at face value. Notably, in its Memorandum at 10-11, the Town misleadingly quotes statements from the Congressional Record that did not actually pertain to the meaning of Section 40103(e) and thus are of no relevance in this proceeding. See Exhibit F.[8] Likewise, Respondent conflates the allegation in Self Serve Pumps that a particular airport sponsor had constructively granted an exclusive right by protecting certain tenants from competition with a general requirement that harm to competition must be alleged; that is simply not what Self Serve Pumps says. Contrast Respondent's Memorandum, at 16-17 with no. 16-07-02, Director's Determination, at 16 (March 17, 2008) (setting forth the FAA's position on the purposes and requirements of assurance #23). With this concern

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See, e.g., Naples, no. 16-01-15, Director's Determination, at 36-37 (observing that even court rulings on grant compliance issues do not necessarily bind the agency); Santa Fe Pacific Railroad Co. v. U.S., 294 F.3d 1336, 1343 (Fed. Cir. 2002), quoting Good Samaritan Hospital v. Shalala, 508 U.S. 402, 417 (1992) ("[a]n agency may change its position ... if it believes that the previous position was 'grounded upon a mistaken legal interpretation"); Interstate Contract Carrier Corp. v. U.S., 389 F.Supp. 1159 (D.Utah 1974) ("agencies are not required to adhere to the principles of stare decisis, and a difference between holdings in separate cases ... does not in and of itself make a decision arbitrary"). Contrast 14 C.F.R. § 13.233(j)(3) (explicitly providing that final civil penalty decisions of the Administrator are precedential).

[7] Of course, the long-standing "mirror image" precedents previously cited by Complainants were intended to be exemplary and not comprehensive. See, e.g., Compliance Requirements for Airports Developed or Improved with Federal Funds, Order 5190.1, § 32 (April 23, 1963) ("'[e]xclusive right' is considered to be a grant or permission to a single party to the expressed, implied or constructive exclusion of others or a grant or permission to a stated or selected number of parties to the express exclusion of others"); Airports Compliance Requirements, Order 5190.6, § 36(a) (August 24, 1973) ("[a]n exclusive right may be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by implication and construction. A right or privilege conferred on two or more parties but excluding others from enjoying or exercising similar rights would be an exclusive right. The essence of any exclusive right is the enjoyment of a privilege unreasonably denied to others").

[8] At 83 Cong. Rec. 6729 (1938), Senator Pat McCarran was discussing requirements for the approval of air carrier mergers by the then-proposed Civil Aeronautics Agency when he stated that: "The Senator from Missouri and myself have tried to work into this proposed law provisions which would guard against anything savoring of monopoly." Likewise, the quotation from then-Senator Harry Truman has been taken out of context and did not pertain to exclusive rights: "We want to write it so that there will not be monopoly, but we did not want to put the air lines in a strait jacket so that if a weak line, which was of service to the public, was about to blow up a strong one could not take it over and keep it in operation." Id. at 6730. And to the extent that a 75-year old Attorney General opinion relied upon these passages for a proposition about the purposes of the predecessor of Section 40103(e) that they did not actually support, that opinion – and subsequent guidance which perpetuated the error – should be discounted. See also Transportation Institute v. Dole, 603 F.Supp. 888, 901 (D.D.C. 1985), vacated and dismissed on other grounds, 841 F.2d 1132 (D.C.Cir. 1987) (opinions of the Attorney General are not binding).

noted, further elaboration of the parties' positions on prior decisions and guidance does not appear to be necessary, and this matter of law is ready for decision by the FAA.[9]

Respondent also has asserted – as an apparent fallback defense – that even if the Complainants can bring a claim pursuant to 49 U.S.C. § 40103(e) and assurance #23 for conduct that also would violate assurance #22 , they must, but have not, presented factual evidence of an anti-competitive outcome. See its Memorandum, at 20-24. In fact, there is ample evidence that the ordinances at issue have created an anti-competitive result at HTO – and like the other issues in this proceeding, the matter primarily calls for FAA legal analysis, because of the facial nature of the violation.[10]

In regard to the facts, the restrictions on "noisy" aircraft (e.g., the extended curfew and per-trip limits) at HTO only apply to aircraft that have an EPNdB rating assigned by the FAA, irrespective of their actual noise emissions. As a result, certain operators are now utilizing Bell 407 helicopters – which are not EPNdB-rated by FAA Advisory Circular 36-1H, and not necessarily any quieter than aircraft restricted as "noisy" by Respondent – so they can operate at HTO between 7-9am and 8-11pm, the extended curfew hours for noisy aircraft. See, e.g., Exhibit G (a further example of commercial advertising of Bell 407-operated services to HTO) and Exhibit H (declarations from NBAA members in pending litigation testifying to competitive effects).

In regard to the law, by the Town's admission, to the extent that past guidance related to assurance #23 and Section 40103(e) has obliquely referred to competition, those references have been to fair competition. See, e.g., Respondent's Memorandum, at 11-12. The current situation at HTO is inherently unfair, because the Town's restrictions favor Bell 407 operators, without any conceivable justification. See, e.g., Self Serve Pumps, at 29 (airports may not "tilt[] the playing field to the benefit of certain kinds of operators over others"). Indeed, even if there were any merit to the Town's general claim that it can unilaterally override the requirements of the grant assurances in order to serve non-aeronautical interests, there would still be no rationale for

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[9] Additionally, the Town asserts that the Self Serve Pumps actually justifies the Town's adoption of the April 16, 2015 ordinances on public welfare grounds. See Respondent's Memorandum, at 17. That is a fantastical reading of Self Serve Pumps. Although it is well-established that an airport may prohibit on-airport practices that are unsafe, unsightly, etc., consistent with the grant assurances, that standard in no way allows on-airport practices to be prohibited in order to achieve alleged off-airport benefits. See, e.g., FAA Airport Compliance Manual, Order 5190.6B, § 11.2.

[10] The Town also asserts that its curfews have had no effects on competition, relying on 2015 year-to-date operations through August 31 for the proposition that traffic at HTO has declined by only 1%. See id. at 22; see also id. at 9 n.7. But, among other considerations, this datapoint is meaningless for the evaluation of curfews that only entered into effect on July 2, 2015. Based upon the revised data in Exhibit C – the apparent source of the cited figure – the year-to-date decrease for helicopters (the Town's specific bugbear) actually was 9%. And an August 2014-to-August 2015 data comparison shows a 7% decrease in operations overall and a 21% decrease in helicopter operations. Nor does the Town's data show consequences beyond high-level categories of aircraft operations. In any case, the Town should not be allowed to "reserve the right" to continue to tinker with data. See Respondent's Memorandum, at 23 n.7. The FAA should require the Town to submit definitive and accurate information to be utilized in this proceeding, to the extent that such operational data is actually of relevance. See also footnote 1.

operational restrictions that are premised on an aircraft's paperwork status rather than its actual noise emissions, and thus do not achieve consistent results.[11] Likewise, as previously briefed – without any substantive answer from Respondent – it is well-established by the FAA that operators should not be expected to procure new aircraft in order to continue serving an airport. See Complainants' surreply dated August 5, 2015, at, 2.[12] And the Town simply cannot argue that its ordinances are permissible because a class of aeronautical operations is only restricted by them, and not banned altogether. See supra footnote 4.

Complainants Have Adequately Alleged a Violation of Grant Assurance #25

Complainants' argument that the Town is not in compliance with grant assurance #25 likewise is primarily a legal dispute and ripe for decision. Again, Respondent has recycled arguments previously made, and not raised any significant new matters. The Town does not appear to dispute that it has allocated and continues to allocate airport revenue to the defense – in litigation and other venues – of the ordinances it adopted on April 16, 2015, all of which seek to restrict operations at HTO. See, e.g., Exhibit D. See also Exhibit I (new allocation of $100,000 for appellate counsel) and Exhibit J (campaign flyer for three members of the Town Board, stating that the "defense does not cost the taxpayers a dime! It is paid for entirely by airport users"). Instead, Respondent's position appears to be that assurance #25 does not prohibit it from using airport revenue for such legal expenses – or even if it does, the FAA should nevertheless decline to resolve the current complaint, because implementing standards for the payment of only allowable legal expenses by airports would be difficult in practice.

As previously briefed (see Complainants' answer dated July 20, 2015, at 5-6, and their surreply dated August 5, 2015, at 2-3), Complainants respectfully disagree. When the FAA has spoken to this matter previously, the agency has been consistent in its position that airport revenue may be used for legal expenses only if they implicate a purpose that benefits an airport and its users,[13] and may not be used in defense of access restrictions or purposes that merely "relate" to an airport.[14] And in this case,

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[11] Cf. City and County of San Francisco v. FAA, 942 F.2d 1391, 1396-97 (9th Cir. 1991) (obligated airport may not exclude one type of aircraft even while allowing other aircraft as noisy or noisier to operate).

[12] Cf. Pompano Beach, no. 16-04-01, Director's Determination, at 37 ("[t]he presumption that aeronautical users could use other nearby airports to conduct these activities does not relieve the City of its obligation to accommodate these activities").

[13] See also Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. at 7711 (February 16, 1999) (explaining that exception to airport revenue use requirements could not be invoked for purposes alleged to be generally "beneficial to the taxpaying citizens of the sponsoring government").

[14] Indeed, Respondent has conceded that, to the extent a 1998 DOT Inspector General Report concerned a "clearly prohibited use of airport revenue," the FAA concurred that outstanding legal fees expended for that purpose should not be paid. See Respondent's Memorandum, at 30. Respondent also has endeavored to dispute the significance of the 1995 "LAX II" decision (Order 95-12-33) – see id. at 27-28 – but studiously has avoided the actual text thereof, in which the FAA specifically concluded that "legal fees paid for facilitating the diversion of airport funds to the City's general fund cannot be legitimate expenses of the airport." See Complainants' surreply dated August 5, 2015, at 2. That the underlying compliance issue in LAX II was different is not a meaningful distinction – nor does the Town appear to dispute that the *(continued...)*

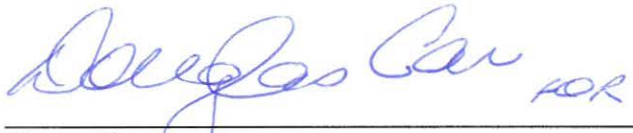
despite Respondent's efforts to frame the purposes of ordinances adopted on April 16, 2015 in neutral terms, their operating requirements clearly are intended to benefit a vocal minority of Town residents opposed to operations at HTO by restricting how and when aeronautical activities can be conducted at the airport. This is self-evidentially a purpose other than support for "airport capital or operating costs" (as set forth in assurance #25) – burdening the airport and its users (rather than the Town's taxpayers) with the cost of their own circumscription.

Nor should the FAA shy away from resolving this matter because doing so could require careful and thorough guidance to be promulgated (as well as information to be produced by Respondent about its legal expenditures). As Complainants previously have acknowledged, the FAA likely will need to address issues such as at what juncture is the invalidity of a legal position sufficiently clear such that further advocacy thereof no longer be supported by airport revenue and/or when must reimbursement be made for such past expenditures. But the required assistance is well within the agency's capabilities – the FAA routinely provides guidance as to how grant assurance-based requirements are to be applied in practice[15] – and necessary to ensure that HTO and airports nationwide are complying with the obligations that they voluntarily assumed.

Conclusion

For the reasons set forth in this reply and Complainants' prior filings, the FAA should promptly render a decision in this docket; find that East Hampton is not in compliance with the obligations of 49 U.S.C. § 40103(e), grant assurance #23, and grant assurance #25; and require corrective action by the Town and such other remedies as may be necessary and proper.

Respectfully submitted,



Steve Brown
Chief Operating Officer, NBAA

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amount of legal fees at issue in this case is not de minimis and thus the waiver allowed in LAX II is not a precedent.

[15] For example, the FAA previously has provided extensive guidance regarding what incentives airports may offer to air carriers – detailed standards which require caution and attention to implement. See Air Carrier Incentive Program Guidebook (September 2010).

Certificate of Service

I hereby certify that I have this day caused the foregoing complaint to be served on the following persons at the following addresses by first class mail, postage prepaid, with courtesy copies by electronic mail:

- Larry Cantwell, Supervisor, 159 Pantigo Road, East Hampton, NY 11937, lcantwell@ehamptonny.gov;
- Elizabeth Vail, Town Attorney, 159 Pantigo Road, East Hampton, NY 11937, evail@ehamptonny.gov;
- Jemille Charlton, Airport Manager, 200 Daniels Hole Road, Wainscott, NY 11975, jcharlton@ehamptonny.gov; and
- W. Eric Pilsk and Catherine van Heuven, Kaplan, Kirsch & Rockwell LLP, 1001 Connecticut Avenue, N.W., Suite 800, Washington, DC, 20036, epilsk@kaplankirsch.com, cvanheuven@kaplankirsch.com.

Dated this 19th day of October 2015.

Steve Brown

Exhibit A

Town of East Hampton Airport
P.O. Box 836
East Hampton, NY 11937
631.537.1130

September 18, 2015

To: East Hampton Town Board

Subject: Reporting Errors

From: Jemille Charlton, Airport Director

Yesterday it came to my attention that there were some inaccuracies in data reported to me for my periodic updates of operations and complaints to the board. There are procedures in place to accurately report statistics which were not followed. The problem has been addressed and I have been assured that it will not happen in the future.

The following Operations & Complaint Reports have been updated with the correct data;

Memorial Day Weekend 2015
July 4th Weekend 2015
July 2015
January – July 31st 2015

In addition to the corrections **January - August 31st 2015** and **August 2015** reports have been added.

I apologize for any inconvenience this may have caused.

Exhibit B

HTO OPERATIONS & COMPLAINTS REPORT

JANUARY-JUL 31(YTD)

Operations

While Jet operations have decreased 8% Seaplanes have increased by 70% over 2014. Total operations were up thru the end of July by 29%.

Operations (July YTD)	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	4004	3675	3715	1%
Jets	1812	2020	1854	(-8%)
Seaplanes	870	907	1538	70%
Other Fixed Wing	4881	6703	10,109	51%
Totals	**11,567**	**13,305**	**17,216**	**29%**

Complaints

Total complaints through the end of July have increased 59% with an increase in households complaining of 7%. The greatest change in type of aircraft complaint is Seaplanes at 149% increase over 2014.

Year-to-date	2014	2015	% Incr./ (decr.)
Helicopters	7524	11110	48%
Jets	1208	1562	29%
Seaplanes	401	1000	149%
Props	1035	2317	124%
Unknown/General	32	226	606%
Totals	**10200**	**16215**	**59%**
Households	**399**	**428**	**7%**
Avg. Complaints/Household	**25**	**35**	**40%**

HTO OPERATIONS & COMPLAINTS REPORT

JULY 2015

Operations

While total operations increased by 14 % the greatest change increase over July 2014 is Seaplanes at 72%.

Operations (July)	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	1484	1569	1878	20%
Jets	770	899	948	5%
Seaplanes	426	490	844	72%
Other Fixed Wing	1642	2311	2356	2%
Totals	**4322**	**5269**	**6026**	**14%**

Complaints

Total complaints have increased 21% with a decrease of 6% in Households complaining for July over 2014 numbers. Note there was a decrease in complaints for Jet operations of 2%.

July	2014	2015	% Incr./ (decr.)
Helicopters	4097	4236	3%
Jets	786	771	(-2%)
Seaplanes	276	581	111%
Props	602	1152	91%
Unknown/General	250	511	104%
Totals	**6011**	**7251**	**21%**
Households	**308**	**288**	**(-6%)**
Avg. Complaints/Household	**19.5**	**25.2**	**29%**

HTO OPERATIONS & COMPLAINT REPORT

JULY 4TH WEEKEND 2015

JULY 2ND- 6TH 2015

While total operations rose by 52% for July 4 weekend, complaints rose by 42% despite a 3% increase in the number of households complaining.

Operations

Despite Jet operations being slightly down by 3% over the weekend, overall operations were up 52%.

July 4th Wknd	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	181	235	277	18%
Jets	161	140	136	(-3%)
Seaplanes	82	77	159	106%
Other Fixed Wing	288	347	645	86%
Totals	**712**	**799**	**1217**	52%

Complaints

Complaints increased 42% above last year for the holiday weekend, with the highest increase for seaplanes, but the highest total for helicopters. The number of distinct households complaining barely rose while the average number of complaints per household rose 40%.

July 4th Wknd Complaints	2014	2015	% Incr./ (decr.)
Helicopters	535	761	42%
Jets	123	122	(-1)%
Seaplanes	44	112	155%
Props	101	152	50%
Unknown/Multiple	30	37	23%
Totals	**833**	**1184**	**42%**
Households	**118**	**121**	**3%**
Avg. Complaints/Household	**7.0**	**9.8**	**40%**

HTO OPERATIONS & COMPLAINTS REPORT
MEMORIAL DAY WEEKEND 2015
MAY 21ST - 26TH 2015

While 2015 holiday flight volumes grew by 28% (compared to 2014), complaints grew by 220%.

Operations

Jet and helicopter flights increased by 1% and 9% respectively for the 2015 Memorial Day weekend when compared to the 2014 holiday period (2013 to 2014 saw a much larger increase year to year). Seaplane and other fixed wing (non-jet) aircraft operations rose dramatically for the 2015 holiday weekend.

Overall operations for the 2015 holiday weekend grew by 28%. Turbine and piston fixed wing showed the largest increase in operations over the weekend. Jet ops were flat.

MD Weekend Ops	2013	2014	2015	2015 % Incr./(Decr.) Over 2014
Helicopters	166	261	284	9%
Jets	87	146	147	< 1%
Seaplanes	50	64	118	84%
Other Fixed Wing	162	334	486	45%
Totals	**465**	**805**	**1,035**	**Up 28%**

Complaints

Complaints increased by 220% above last year with the highest percentage increase and total for helicopters. Distinct households complaining rose nearly 60% while complaints per household nearly doubled.

MD Weekend Complaints	2014	2015	% Incr./(Decr.)
Helicopters	222	889	300%
Jets	31	95	206%
Seaplanes	15	38	153%
Props	42	123	192%
Unknown/General	58	32	(44%)
Totals	**368**	**1177**	**220%**
Households	**77**	**123**	**59%**
Avg. Complaints/Household	**4.8**	**9.5**	**98%**

Exhibit C

EAST HAMPTON AIRPORT

July & August 2015 Operations & Complaint Update
9/22/15

Jemille R Charlton
Airport Director

Exhibit C

HTO OPERATIONS & COMPLAINTS REPORT

JANUARY-AUG 31ST (YTD)

Operations

Total Operations are fairly flat for the year through the end of August with Helicopters decreasing by 9% and Seaplanes increasing by 4%

Operations (August YTD)	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	4650	6574	5952	(-9%)
Jets	2904	3058	3008	(-2%)
Seaplanes	1635	2237	2335	4%
Other Fixed Wing	6727	7871	8266	5%
Totals	**15,916**	**19,740**	**19,561**	**(-1%)**

Complaints (updated Sept. 21, includes manual PlaneNoise entries)

Complaints have risen 30% for the year through the end of August, but households complaining have decrease over 2014 by 7%. The largest increase is Seaplanes at 140%.

Year-to-date	2014	2015	% Incr./ (decr.)
Helicopters	13,431	16,394	22%
Jets	2605	2512	(-4%)
Seaplanes	745	1785	140%
Props	2095	3594	72%
Unknown/Multiple	1254	1989	59%*
Totals	**20,130**	**26,274**	**30%**
Households	**589**	**547**	**(-7%)**
Avg. Complaints/Household	**32.3**	**48.0**	**49%**

* The number of phoned-in complaints that had to be manually entered into the database soared in the summer of 2015, especially in August. Most of them fell into the “unknown” and “multiple” categories.

HTO OPERATIONS & COMPLAINTS REPORT

AUGUST 2015

Operations

While Helicopter and Other Fixed Wing operations decreased by 21% and 12% respectively, Seaplane operations increased by 39% in August.

Operations (August)	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	1484	2226	1766	(-21%)
Jets	1092	1080	1150	6%
Seaplanes	549	565	785	39%
Other Fixed Wing	2249	2665	2357	(-12%)
Totals	**5374**	**6536**	**6057**	**(-7%)**

Complaints (as updated Sept. 21 2015 to include manually added PlaneNoise data)

Total complaints increased slightly by 3% while households complaining decreased by 21%. Seaplane Complaints increased by 128%, while Helicopter and Jet complaints fell.

August	2014	2015	% Incr./ (decr.)
Helicopters	5909	5284	(-11%)
Jets	1397	950	(-32%)
Seaplanes	344	785	128%
Props	1060	1277	20%
Unknown/Multiple	244	957	292%
Totals	**8954**	**9253**	**3%**
Households	**411**	**325**	**(-21%)**
Avg. Complaints/Household	**21.8**	**28.5**	**30%**

Exhibit C

HTO OPERATIONS & COMPLAINTS REPORT

JANUARY-JUL 31ST (YTD)

Operations

While Jet operations have decreased 6% Seaplanes have increased by 7% over 2014. Total operations were up thru the end of July by 2%

Operations (July YTD)	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	3166	4348	4186	(-4%)
Jets	1812	1978	1858	(-6%)
Seaplanes	1086	1452	1550	7%
Other Fixed Wing	4478	5426	5910	9%
Totals	**10,542**	**13,204**	**13,504**	**2%**

Complaints

Total complaints through the end of July have increased 59% with an increase in households complaining of 8%. The greatest change in type of aircraft complaint is Seaplanes at 149% increase over 2014.

Year-to-date	2014	2015	% Incr./ (decr.)
Helicopters	7524	11110	48%
Jets	1208	1562	29%
Seaplanes	401	1000	149%
Props	1035	2317	124%
Unknown/General	1012	1032	2%
Totals	**11180**	**16215**	**59%**
Households	**398**	**428**	**8%**
Avg. Complaints/Household	**28.1**	**37.9**	**35%**

Exhibit C

HTO OPERATIONS & COMPLAINTS REPORT

JULY 2015

Operations

While total operations increased by 11% the largest increase was Other Fixed Wing aircraft at 24% followed by Seaplanes at 13%. Helicopters decreased by 2%.

Operations (July)	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	1316	1908	1878	(-2%)
Jets	770	890	948	7%
Seaplanes	451	750	851	13%
Other Fixed Wing	1617	1894	2349	24%
Totals	**4154**	**5442**	**6026**	**11%**

Complaints

Total complaints have increased 21% with a decrease of 6% in Households complaining over July 2014. Note there was a decrease in complaints of Jet operations of 2% and an increase of Seaplane of 111%.

July	2014	2015	% Incr./ (decr.)
Helicopters	4097	4236	3%
Jets	786	771	(-2%)
Seaplanes	276	581	111%
Props	602	1152	91%
Unknown/General	250	511	104%
Totals	**6011**	**7251**	**21%**
Households	**308**	**288**	**(-6%)**
Avg. Complaints/Household	**19.5**	**25.2**	**29%**

Exhibit C

HTO OPERATIONS & COMPLAINT REPORT

JULY 4TH WEEKEND 2015

JULY 2ND - 6TH 2015

Operations

Despite Jet operations being down by 12% over the weekend, overall operations were up 30% with the largest increase being Seaplanes at 103%.

July 4th Wknd	2013	2014	2015	2015 % Incr./(decr.) over 2014
Helicopters	225	235	297	26%
Jets	187	140	123	(-12%)
Seaplanes	81	76	154	103%
Other Fixed Wing	380	348	462	33%
Totals	**873**	**799**	**1036**	30%

Complaints

Complaints increased 73% above last year for the holiday weekend, with the highest increase for seaplanes at 175%, but the highest total number of complaints was for helicopters which increased by 60%.

July 4th Wknd Complaints	2014	2015	% Incr./ (decr.)
Helicopters	535	855	60%
Jets	123	160	30%
Seaplanes	44	121	175%
Props	101	259	156%
Unknown/Multiple	30	44	47%
Totals	**833**	**1439**	**73%**
Households	**118**	**130**	**10%**
Avg. Complaints/Household	**5.6**	**11.1**	**98%**

Exhibit C

HTO OPERATIONS & COMPLAINTS REPORT
MEMORIAL DAY WEEKEND 2015
MAY 21ST - 26TH 2015

While 2015 holiday flight volumes grew by 17% compared to 2014, complaints grew by 170%.

Operations

Jet operations decreased by 12% while seaplanes increased by 75% for the holiday weekend.

MD Weekend Ops	2013	2014	2015	2015 % Incr./(Decr.) Over 2014
Helicopters	149	246	253	3%
Jets	83	133	117	(-12%)
Seaplanes	42	59	103	75%
Other Fixed Wing	148	310	401	29%
Totals	**422**	**748**	**874**	**Up 17%**

Complaints

Complaints increased by 170% above last year with the highest percentage increase and total for helicopters. Distinct households complaining rose 24% while complaints per household nearly doubled.

MD Weekend Complaints	2014	2015	% Incr./(Decr.)
Helicopters	324	1030	218%
Jets	53	104	96%
Seaplanes	19	44	132%
Props	55	148	169%
Unknown/General	54	37	(-31%)
Totals	**505**	**1363**	**170%**
Households	**95**	**118**	**24%**
Avg. Complaints/Household	**5.2**	**11.5**	**121%**

THE EAST HAMPTON STAR
SHINES FOR ALL

Airport Suits Will Cost Town Nearly $1 Mill

More seaplanes, complaints in 2015, fewer jets

By Joanne Pilgrim | September 17, 2015 - 3:00pm

Durell Godfrey

Six separate legal actions — in federal court, state court, and before the Federal Aviation Administration — challenging the policies and laws adopted by the town this year to reduce the impact on residents across the East End of noise from helico ets, and other planes using East Hampton A will cost close to $1 million, or even more, in legal fees this year.

The town is being "vigorously" defended, East Hampton Town Councilwoman Kathee Burke-Gonzalez said Tuesday. The legal fees are being paid with money from the town's airport fund, with revenues coming from airport landing and other fees.

With a resolution on Tuesday, the town board increased, from $425,000 to $875,000, the amount authorized for legal fees this year for its main aviation attorney, Peter Kirsch. So far, $694,000 has been spent.

In July, the board authorized spending up to $100,000 to hire Kathleen Sullivan of Quinn, Emanuel, Urquhart, & Sullivan, who was described by Ms. Burke-Gonzalez on Tuesday as "one of the nation's pre-eminent appellate advocates," to lead the appeals process in one of the legal cases.

The two cases in federal court were initiated by the Friends of the East Hampton Airport, a coalition of aviation groups, and are before Judge Joanne Seybert in the Eastern District Court.

Friends of the East Hampton Airport sued the town over its adoption last spring of two overnight airport curfews — an 11 p.m. to 7 a.m. restriction for all planes, and an 8 a.m. to 9 a.m. closure to craft deemed "noisy" under F.A.A. standards — and a limit of one round trip per week during the summer season for noisy planes.

The judge barred the once-a-week limit until the case is heard, but let the curfews stand. In July the town appealed that decision, and hired Ms. Sullivan for the case.

Ms. Burke-Gonzalez and Elizabeth Vail, the town attorney, attended a mediation session in New York City yesterday in that case, which was ordered by the Court of Appeals.

Friends of the East Hampton Airport also sued the F.A.A. in federal court to get the agency to enforce certain contractual agreements with the town regarding the airport, called grant assurances, and other federal aviation laws, which would prevent the town from enforcing its airport use restrictions.

The town has asked for permission to intervene in the case, "because the Town of East Hampton relied on the F.A.A.'s legal conclusions in enacting the noise restrictions," Ms. Burke-Gonzalez said Tuesday, and therefore has "a vested interest in the outcome of the lawsuit against the F.A.A."

In addition to the federal court cases, three administrative "Part 16" lawsuits have been filed against the town claiming violations of the airport grant assurance agreements with the F.A.A.

In one, Sound Aircraft, an aviation business based at East Hampton Airport, challenged an increase in fees for

landings and fuel sales. The town has filed a motion for dismissal. Sound Aircraft also filed a parallel Article 78 lawsuit in state court over the fees, which is on hold pending resolution of the related litigation.

A second case was filed by the Friends of East Hampton Airport, raising issues regarding airport maintenance and the fees charged for leases on airport land used for non-aeronautical purposes, as well as the increased fees. The town has already addressed or is addressing those issues, said Ms. Burke-Gonzalez, and "has offered to work cooperative with the F.A.A. on a corrective action plan."

The third Part 16 lawsuit was filed by a group led by the National Business Aviation Association regarding the curfew and once-a-week restrictions on noisy planes. The town has filed a motion to dismiss that case as well.

The cases are being heard by the F.A.A.; decisions are not expected until next year.

The town "was fully prepared for [the] litigation," said Ms. Burke-Gonzalez Tuesday.

Between money in the airport budget allocated for legal fees this year, and larger-than-anticipated revenue from landing fees (a total of $1.8 million or $1.9 million is anticipated), and the use of "a small portion" of an airport fund surplus that stood at over $1 million at the start of this year, the airport budget "will easily cover the litigation costs," said Town Supervisor Larry Cantwell yesterday.

Ms. Burke-Gonzalez said Tuesday that the town is "moving forward to continue to find solutions," even as the court actions progress.

Numerous residents have come to the board recently to urge continued action, saying that the overnight curfews this summer had not adequately allayed aircraft noise.

"The three local laws we enacted were designed to complement each other and work comprehensively to address the noise problem in a balanced, reasonable manner," said Ms. Burke-Gonzalez earlier this week, acknowledging that the two curfews had not solved the problem. "The one-trip-per-week limit is crucial in limiting aircraft noise and ensuring the quality of life of East End residents," she said.

An airport noise consulting firm used by the town, she said, has been enlisted to help the board evaluate the effectiveness of the curfews and analyze data on aircraft operations and noise complaints for the recent season, from May 1 to Sept. 30. The results will be presented to the public, the councilwoman said.

In a short preview presentation on Tuesday, Jemille Charlton, the airport manager, said that, for the period of January through July 2015, takeoffs and landings by all types of aircraft at the airport had increased by 29 percent over last year. There was a decrease in jet flights and a 70-percent increase in seaplane flights, prompting complaints about those craft to increase by 149 percent. The number of helicopter operations remained essentially the same.

The total number of complaints about aircraft noise increased by 63 percent over last year.

About the Author

Joanne Pilgrim
Associate Editor

Town of East Hampton – Airport Obligations

KAPLAN KIRSCH ROCKWELL

Peter J. Kirsch, Partner

October 11, 2011

Kaplan Kirsch & Rockwell, Peter Kirsch, Partner

- Legal practice dedicated to airport law issues
  - Nation's largest legal practice dedicated to airport law (www.airportattorneys.com)
- Practicing in this area for 25 years
- Firm's lawyers involved in most of the major airport operational disputes in the last two decades, including –
  - Naples, FL -- Burbank, CA
  - Santa Monica, CA
- Been advising East Hampton since 2007

Purpose of today's presentation

- How federal requirements impact operation of public airports like East Hampton Airport
- Practical effects of taking federal aviation grants (other than money)
- Practical effects of *not* taking federal money on Town's ability to restrict use of Airport
- Effect of taking federal money on the Town's ability to achieve its objectives for this airport

Introduction

I. Grant Assurances
   - What are Grant Assurances?
   - How long do they last?
   - How do they affect operation of the Airport?

II. Other federal laws that control airport operations

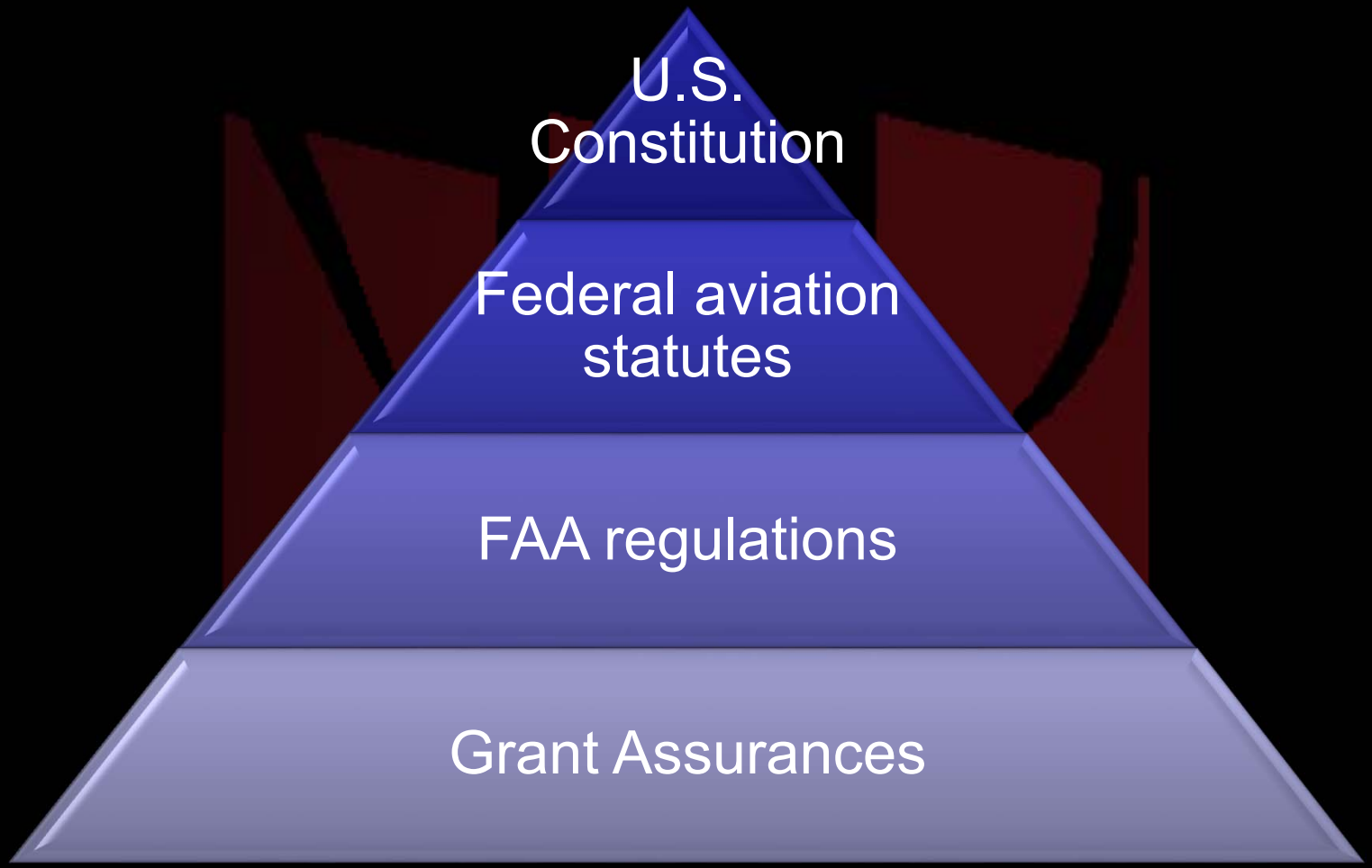
III. Effect on the Town of not taking FAA grant money

IV. Ways the Town can gain greater control over Airport access

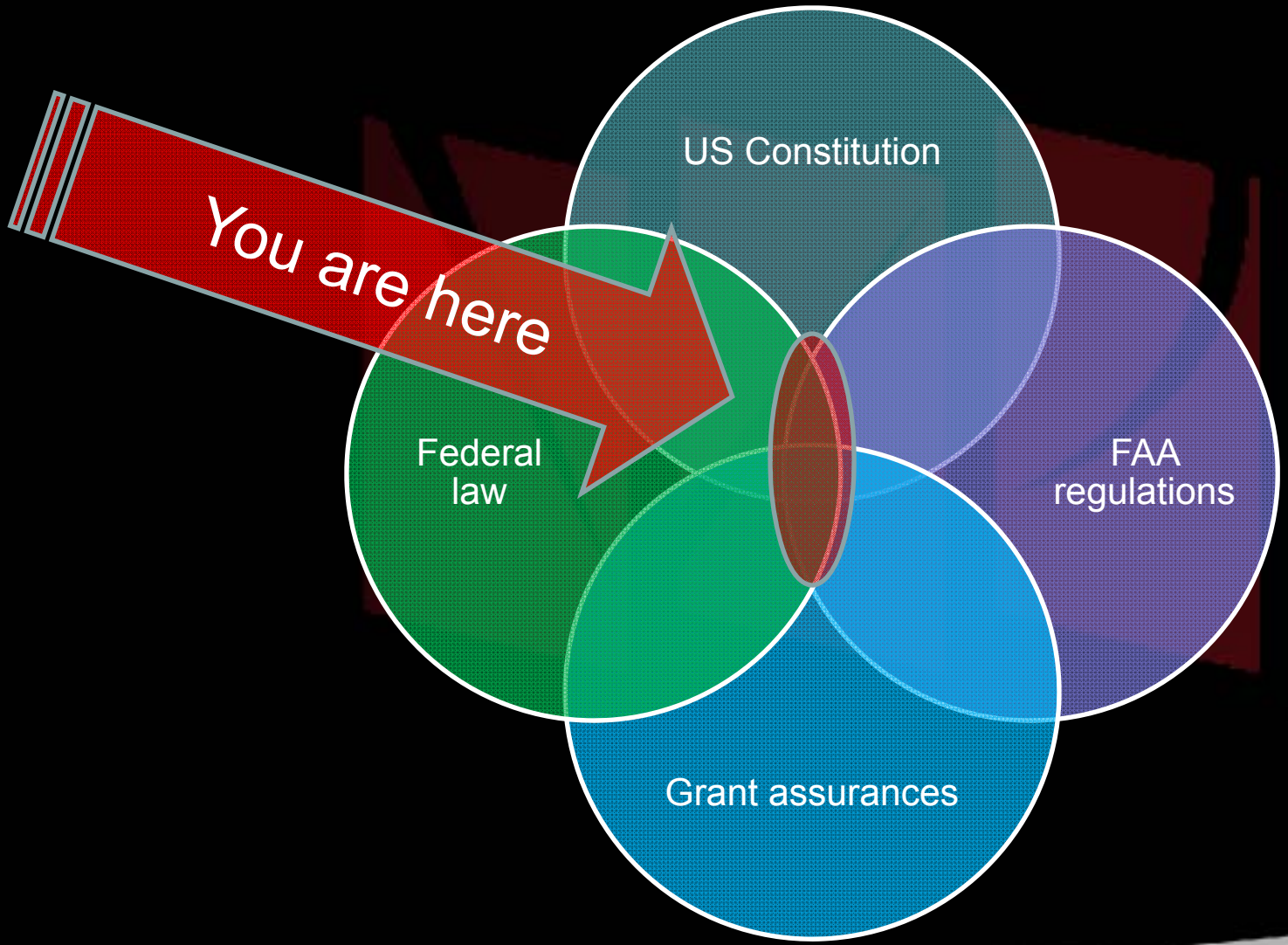
Common misperceptions

- The Town's grant assurances will expire at end of 2014
- Once grant assurances expire, the Town will be free to restrict aviation access to the airport
- Many other airports have successfully imposed restrictions on their airports in recent years
- The Town can regulate helicopter routes

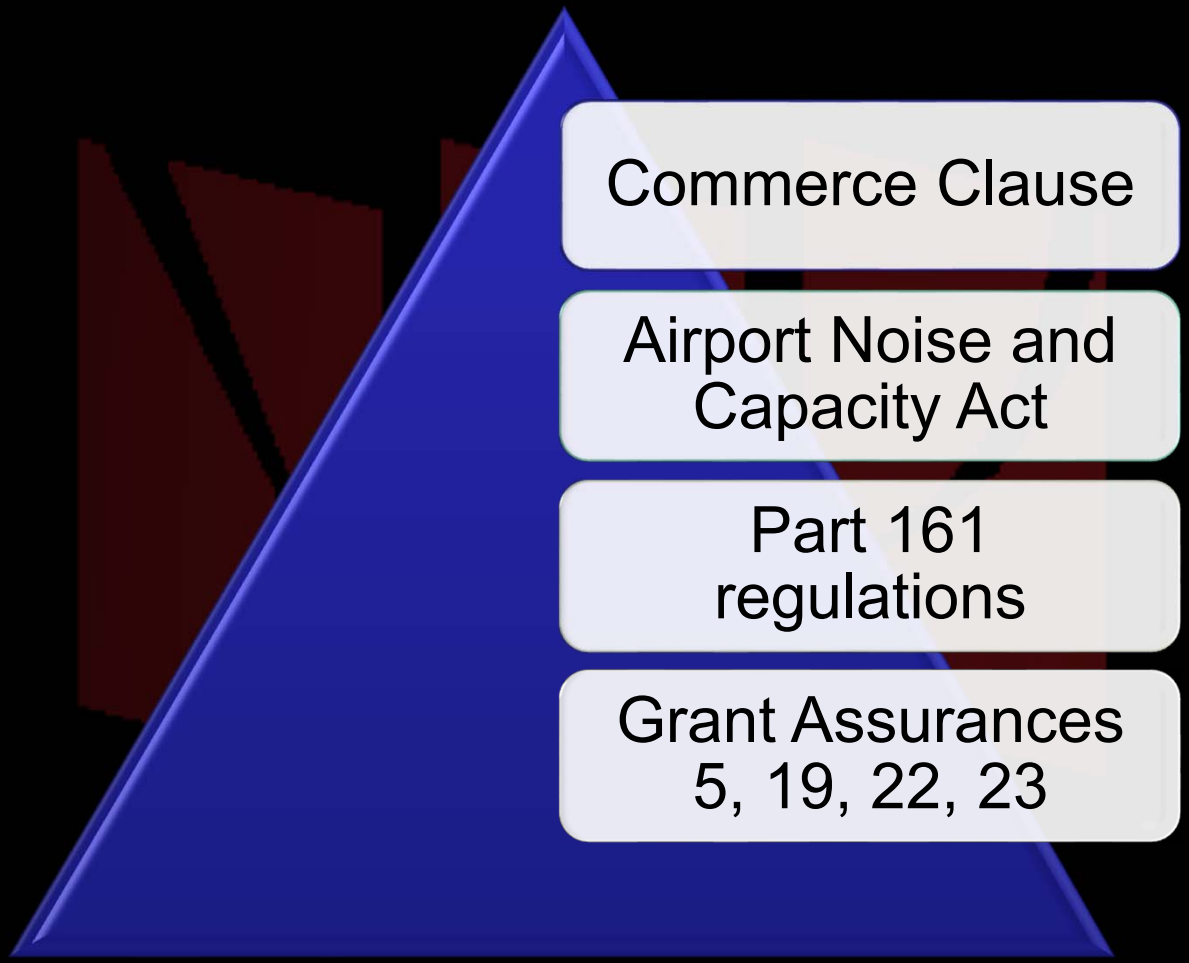
Source of obligations - one view



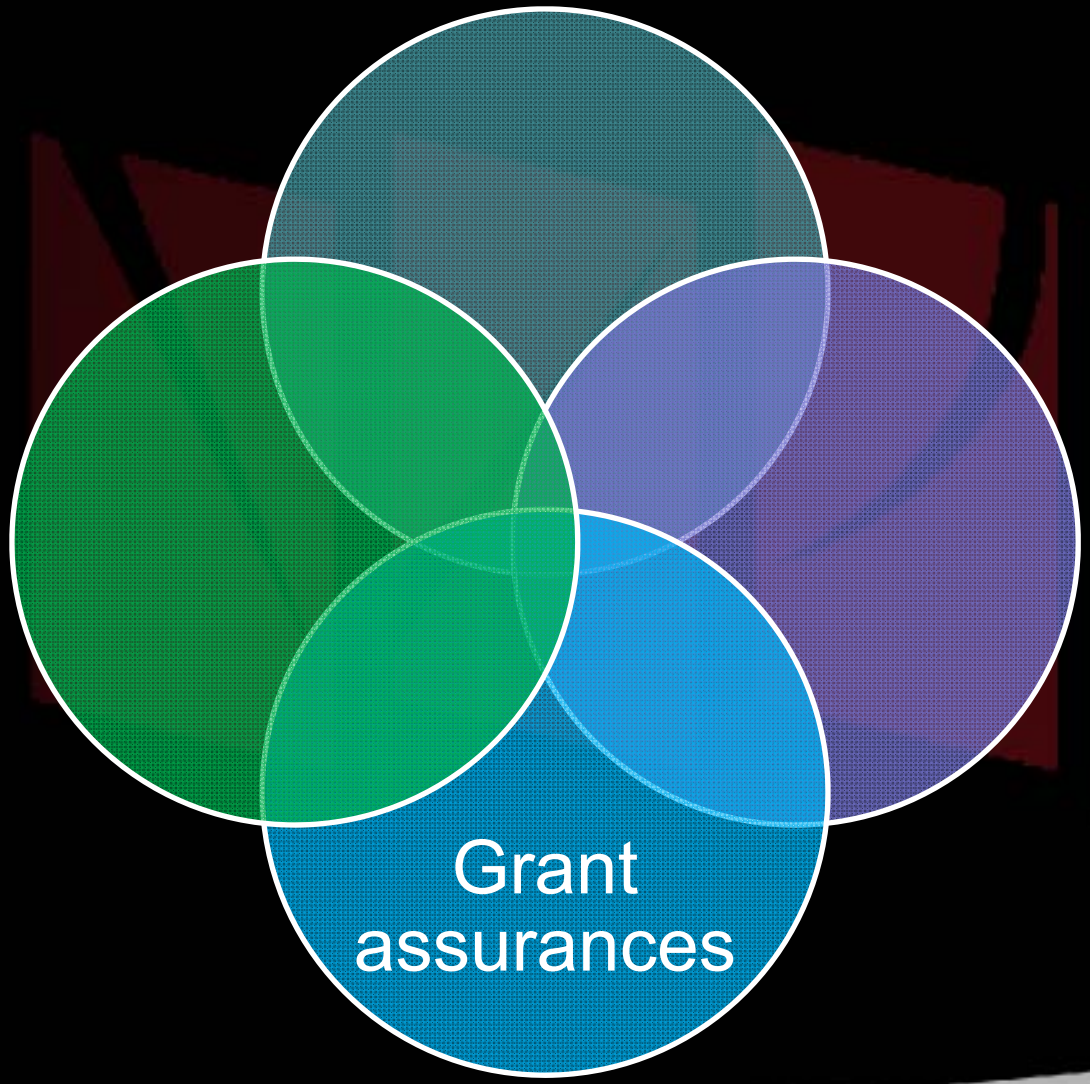
A holistic view of the law



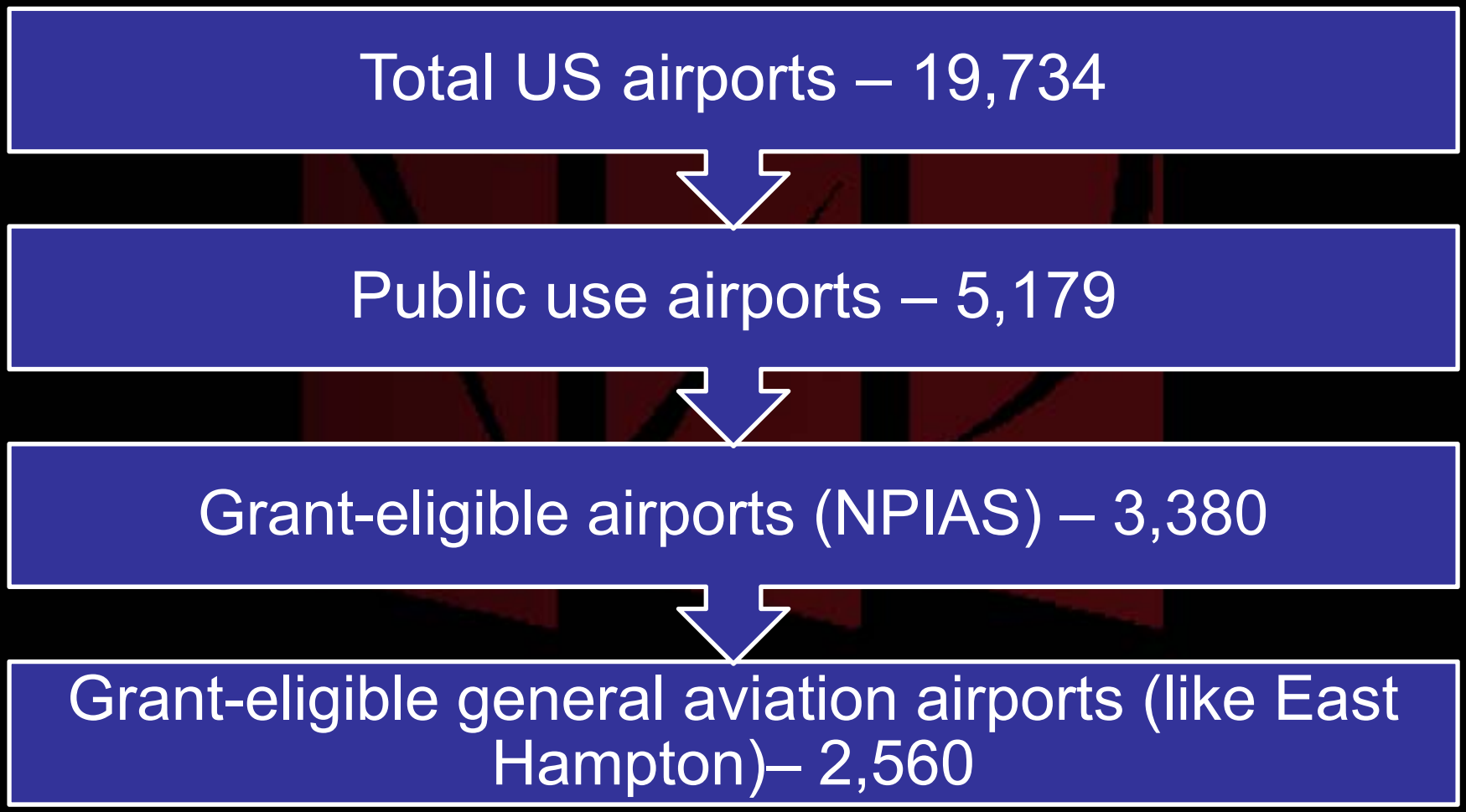
Four key sources



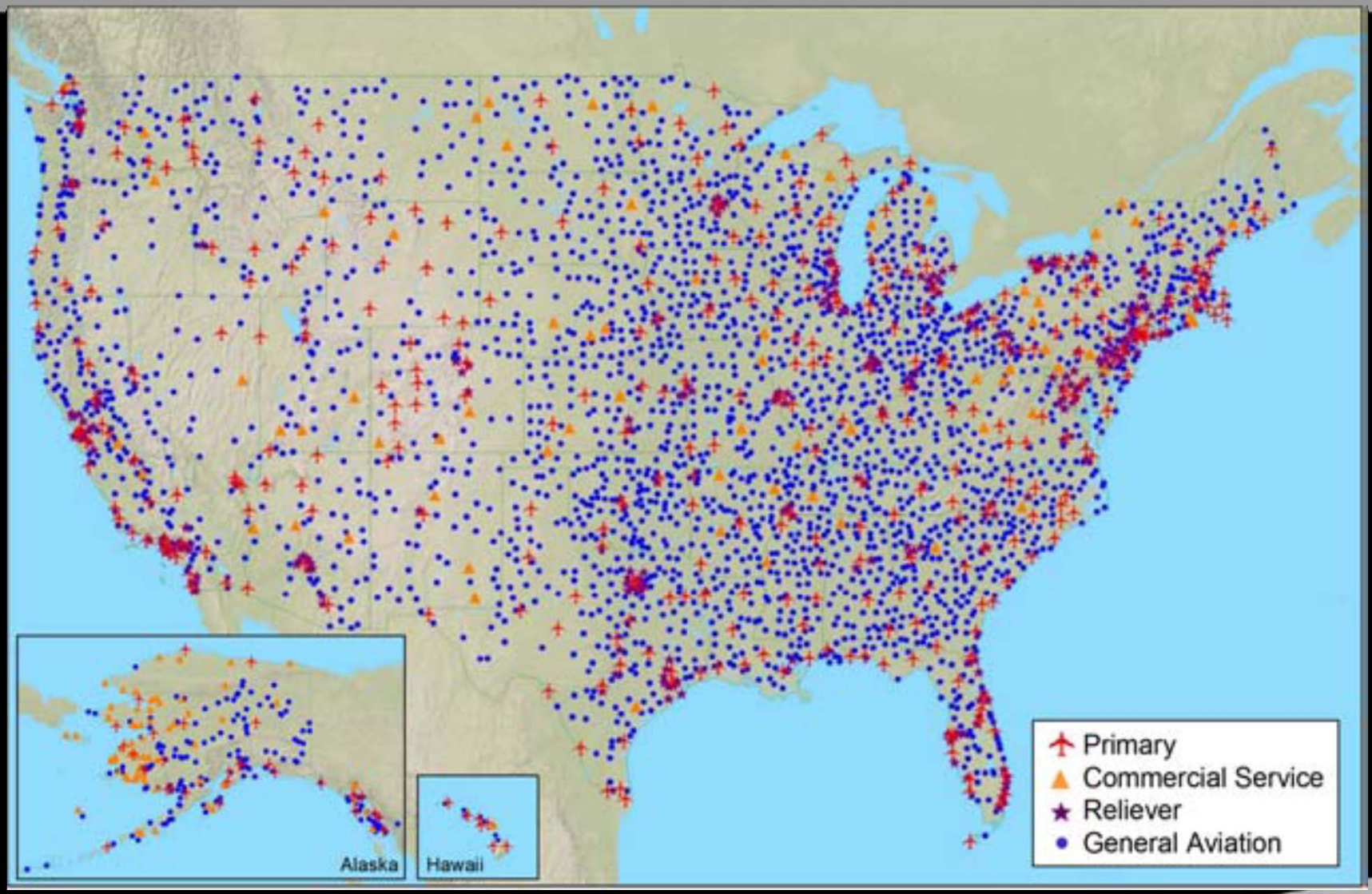
Part I – Grant Assurances



Who is grant obligated



Federally funded airports



NY- area grant obligated airports

What are Grant Assurances?

- Contractual commitment by airport proprietor to the U.S. government in exchange for grant funds
- Basic structure in effect for decades
  - Since Federal Airport Act of 1946
- Required by, and implement, federal law (49 U.S.C. § § 40103, 47107)
- Grant assurances allow FAA to enforce *contractually* many of the obligations of federal law
  - Reduces expense of litigation for FAA
  - Simplifies enforcement for FAA

General Conditions

- Apply to all property and facilities on the Airport Property Map
  - Not just the facilities improved with grants
- Apply for 20 years (except planning grants – 10 years)
- No expiration of assurances for property acquired with federal funds or #23 (exclusive rights)
- Mirror requirements of federal law
  - Also add contracting and financial matters

Uniform Grant Assurances

- 39 contractual commitments, including
  - Preserving rights and powers (No. 5)
  - Operation and maintenance (No. 19)
  - Hazards (No. 20)
  - Preserving compatible land use (No. 21)
  - Economic nondiscrimination (No. 22)
  - Exclusive rights (No. 23)
  - Self-sustaining finances (No. 24)
  - Prohibition on revenue diversion (No. 25)
  - Airport Layout Plan (No. 29)
  - Disposal of land (No. 31)
  - DBE (No. 37)
- Key grant assurances mirror federal law

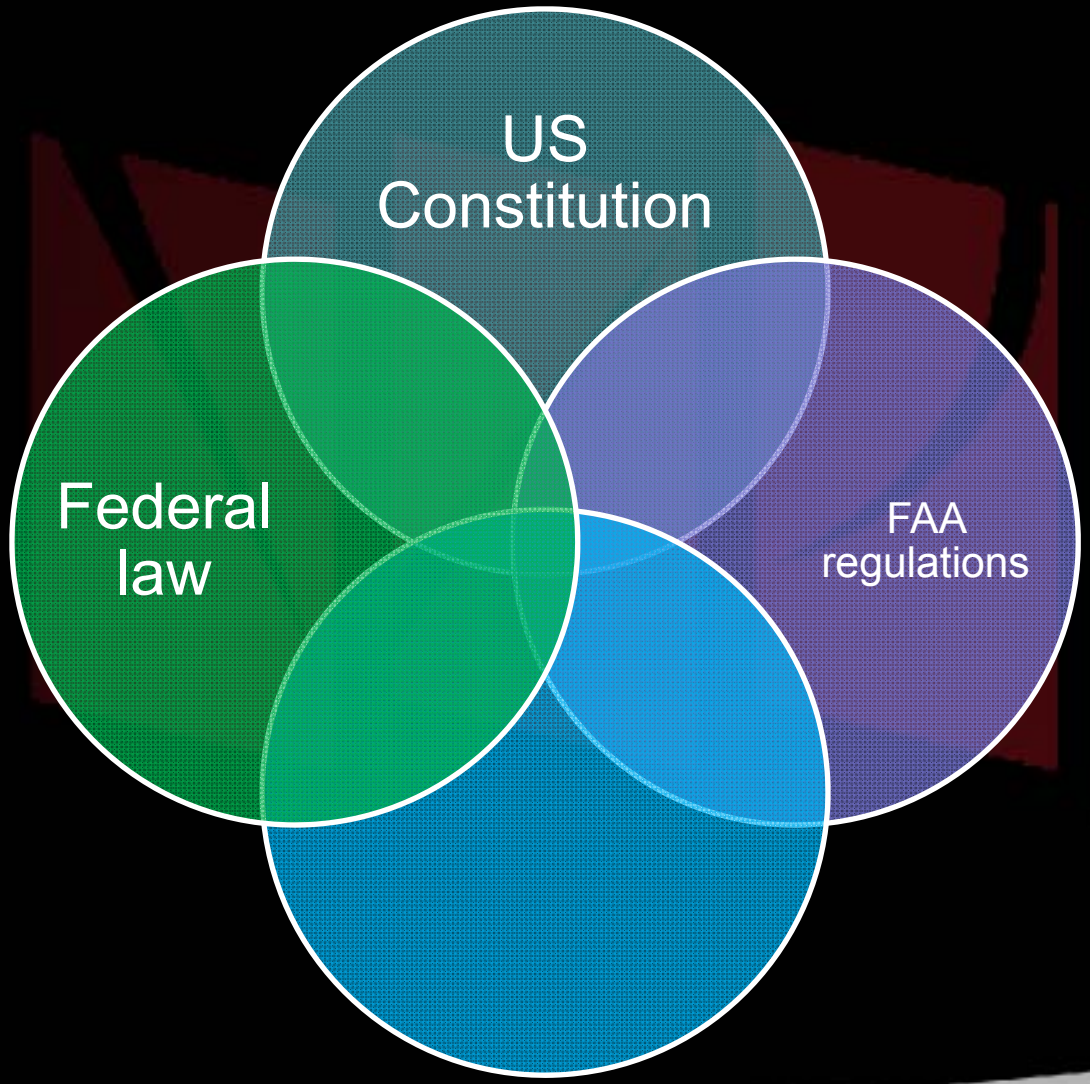
Grant Assurances at East Hampton Airport

- Last federal grant: 2001
  - Normally, grant assurances would expire in 2021
- In settlement of private litigation, FAA agreed that *four* grant assurances would expire at end of 2014:
  - Grant Assurances 22a and 22h
  - Grant Assurance 29a and 29b

Enforcement of obligations

- Violation of grant assurances is enforced *only* by FAA
  - Though administrative adjudication
  - In federal court if necessary
- FAA is aggressive and consistent in enforcing both grant assurances and federal law
  - Santa Monica and Naples litigation

Part II – Other federal laws/regulations



Application of other federal laws

- Federal law applies to all public use airports
- Independent of grant assurances
- Can be enforced in federal court litigation by
  - FAA
  - User
  - Affected landowner
  - Interest group
- Enforced in court through litigation

Constitutional requirements

- Federal law and constitutional requirements apply to every public use airport
  - Public use airports must be available to the public
- Proprietor cannot restrict access unless –
  - Reasonable in the circumstances of the particular airport
  - Carefully tailored to the local needs and community expectations
  - Based upon data which support the need and rationale for the restriction
  - Not unduly restrictive of interstate commerce

Other federal laws

- Laws implement federal control over airports
- Since 1990 – Airport Noise and Capacity Act (ANCA)
  - For restrictions on stage 2 aircraft, airport must complete study and public review procedures (Part 161 regulations)
    - Includes helicopters
  - For restrictions on stage 3 aircraft, airport must complete study *and* secure FAA approval
  - Not clear whether ANCA applies *only* to federally obligated airports

History of airport use restrictions

- **Many** airports have use restrictions (e.g.: curfews, noise limits)
  - *With only one exception, every one of these restrictions was enacted before ANCA became law in 1990*
  - The one exception is Naples Municipal Airport (FL) which prohibits stage 2 (noisier) fixed wing aircraft.
- Since 1990, very, very few airports have *even tried* to adopt use restrictions
  - Only one airport has completed the process needed for FAA approval to restrict current generation of aircraft (Burbank, CA). They were unsuccessful

Uncertainties

- Efforts to impose use restrictions since 1990 often result in litigation
  - By FAA (Naples, Santa Monica)
  - By user groups (Naples, New York City)
- Lessons from Naples, Burbank, Santa Monica and New York City: Hurdles are –
  - Practical (Part 161 study)
  - Legal (litigation exposure)
  - Financial (cost of compliance; litigation costs)

Part III – Effect of not taking grants

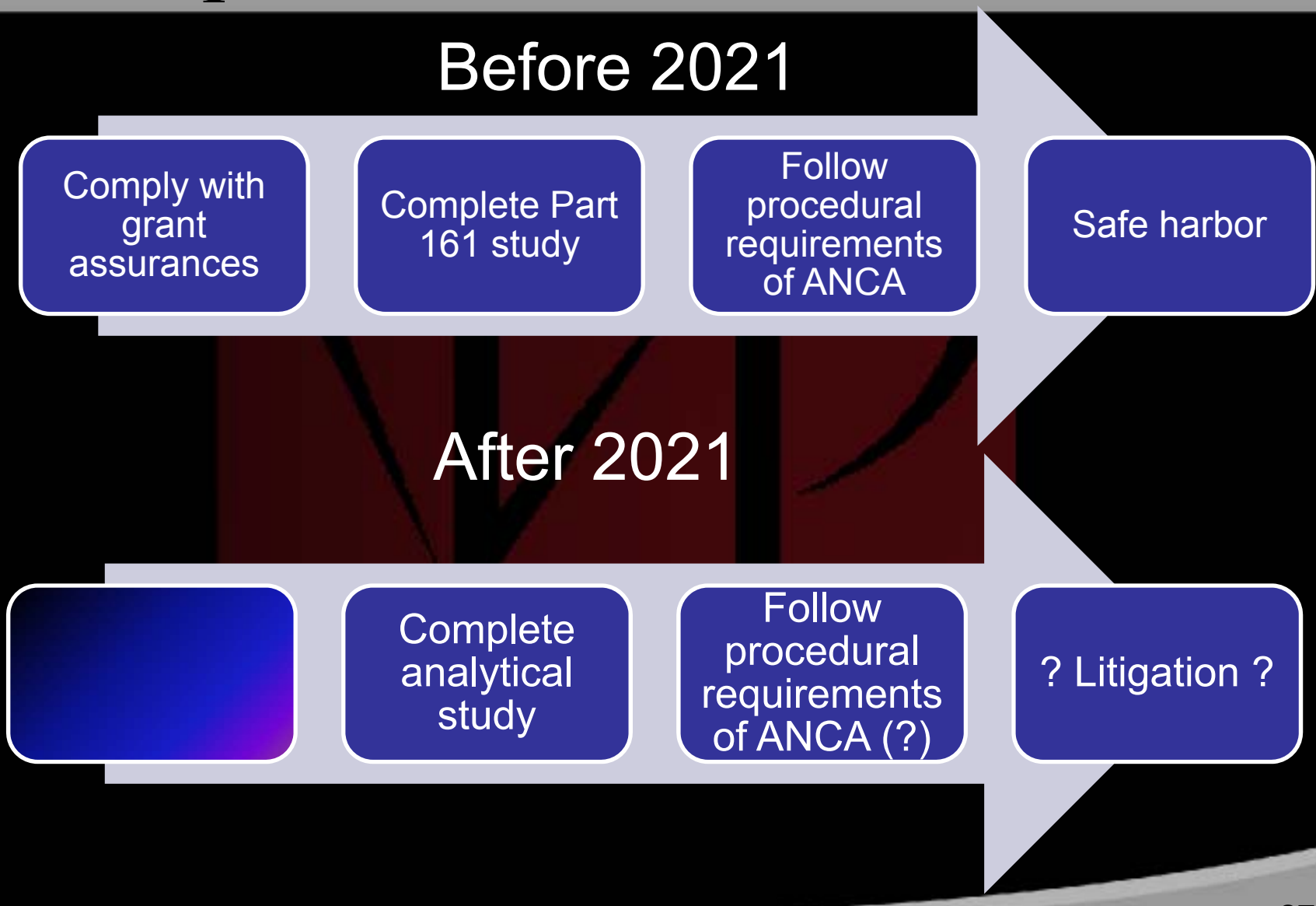
Obligated vs. non-obligated airports

Federally obligated airports	Non-obligated airports
Financial obligations to FAA	No financial obligations to FAA
Eligible to receive grants	No federal money
Use restrictions must comply with grant assurances, Constitution, ANCA	Use restrictions must comply with Constitution and maybe ANCA
Grant assurances for 20 years	No grant assurances
Airport Layout Plan	No ALP required
Most disputes start with FAA administrative process	Litigation starts in trial courts (state or federal)

Restricting airport access

Item	Obligated airport	Non-obligated airport
Technical Study	Required	Required
Must prove need	Required	Required
Public review process	Required	Desirable
Prove benefits outweigh costs	Required	Required
FAA approval	Only for stage 3 (not stage 2 or helicopters)	No
Safe harbor	Yes for stage 3 No for stage 2	No Litigation necessary
Litigation risk	Medium	High
Likely litigants	FAA, users	FAA, users

Helicopter restrictions at E.H.



Part IV – Increasing control over *this* Airport

- Focus on strategic objectives
  - Town Board intent (statements) can be critical
- Close coordination with FAA
- Voluntary measures
  - Better monitoring to improve compliance
- Improved enforcement of existing rules, regulations and procedures
- Improved flight track compliance
- Collaboration with federal elected officials (Sen. Schumer, Cong. Bishop) on helicopter routes

Questions

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all concerns which want to use it in a proper way, will be under the absolute domination and control of one corporation, which will greatly injure the country, and in just as evil a way will ruin the companies themselves.

Those of us who were Members of the Senate during the period from 1928 to 1932 know what happened. It will be recalled that the air companies were combined, and all manner of rottenness and corruption resulted. It was absolutely necessary for the Government to provide against such consolidation by carefully planned and prepared restrictions against combinations. If the pending bill repeals those provisions, I do not know anything which could bring greater harm to the development of the aviation industry, or to the country itself, than to permit such combinations.

I desire to state that I cannot vote for any bill which proposes that a commission shall give air companies the right to combine and confederate into a huge monopoly. I regret very much that I shall have to vote against the bill.

Mr. TRUMAN. I will say to the Senator that I do not think there is any possibility of what he is afraid of taking place. Under the law as it now is, combinations have taken place, as the hearings which we held last year very conclusively prove.

Mr. McKELLAR. If such combinations have taken place, we have a remedy.

Mr. TRUMAN. Those consolidations were carried out under the counsel of the Post Office Department, and they were authorized by the counsel of the Post Office Department.

Mr. McKELLAR. They cannot be authorized by any Department.

Mr. TRUMAN. They were; and the testimony so shows.

Mr. McKELLAR. Consolidations ought not to be authorized by any Department; and under the law they cannot be. The Attorney General is authorized and directed to prosecute any violation of the antitrust laws. If we establish a commission, and give the commission the right to allow the air companies to combine and confederate and become a great monopoly, we shall not only have injured our country but we shall have injured the industry itself to a degree which, in my judgment, cannot be imagined.

Mr. McCARRAN. Mr. President, will the Senator yield?

Mr. TRUMAN. I yield.

Mr. McCARRAN. The able Senator from Tennessee and I have frequently disagreed. From the standpoint of the legislation proposed in my own bill, however, and likewise from the standpoint of the substitute proposed by the Senator from Missouri, to which I am opposed, both measures contain every protection against the very thing which the Senator from Tennessee fears.

Mr. McKELLAR. Mr. President, will the Senator yield again?

Mr. TRUMAN. I yield.

Mr. McKELLAR. On yesterday, as the Senator from Missouri and the Senator from Nevada will recall, I asked the Senator from Nevada what had become of the antitrust provisions of the present air-mail law, as it is called.

The Senator from Nevada said that they had not been repealed. I looked into the list of repeals of laws, and found that there was no specific repeal. I asked the same question of the Senator from Missouri, and I did not understand his answer. I have looked at the RECORD this morning to see what it was. I find that the Senator from Missouri very carefully avoided answering the question. So I have asked him the same question today; and today the Senator from Missouri tells me that the provision which gives the commission the right to permit consolidations and combinations when it desires to do so in effect repeals the antitrust provisions of the present law.

If that be true—and I take it the Senator from Missouri knows his own substitute, concerning which I asked him—I think this body ought never, under any circumstances, to pass a bill which will allow a commission of the Government to permit consolidations and combinations into a trust in restraint of trade, in violation of the present law. I think the Senate ought not to pass any such bill.

Mr. TRUMAN. Let me read the proviso.

Mr. McKELLAR. From what page does the Senator read?

Mr. TRUMAN. From page 67 of the bill.

Mr. McKELLAR. Is the Senator referring to the bill or to his substitute?

Mr. TRUMAN. Page 67 of the bill:

Provided, That no consolidation, merger, purchase, lease, operating contract, or acquisition of control shall be approved if such approval would result in creating a monopoly or monopolies and thereby unduly restrain competition or unreasonably jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control.

Mr. McCARRAN and Mr. COPELAND addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Missouri yield; and if so, to whom?

Mr. TRUMAN. I yield to the Senator from Nevada.

Mr. McCARRAN. The Senator from Tennessee raises a straw man for the purpose of knocking him down. The Senator from Tennessee is indeed an artist at that particular art. He will concede that some agency must have independent and individual judgment.

Mr. McKELLAR. Certainly; but we have such an agency. We have the Department of Justice, whose duty it is to prosecute those who violate our antitrust laws. It is for that reason that I disagree with my friend.

Mr. McCARRAN. I asked the Senator from Missouri to yield to me. I did not ask the Senator from Tennessee to interrupt.

Mr. McKELLAR. I thought I had the Senator's permission.

Mr. McCARRAN. I know the Senator from Tennessee always thinks he has the floor, but sometimes he does not have the floor.

Mr. McKELLAR. I yield it now, at any rate.

Mr. McCARRAN. Mr. President, every precaution has been written into the bill so that the antitrust laws and all laws for the prevention of combinations and monopolies shall be enforced. Such protection has been written into the bill from the standpoint of judicial law as the law has been construed by our courts; it has also been written into the bill from the standpoint of statutory law as the law has been construed by Congress, so as to protect, as far as possible, against combinations and monopolies and yet yield a flexibility of progress. Protection has been written into the bill against combinations and monopolies in restraint of trade, in restraint of commerce, and in restraint of everything which would constitute a monopoly.

A moment ago the Senator from Missouri read an extract from the bill. There can be no stronger language than that provision.

Mr. TRUMAN. I do not see how there could be.

Mr. McCARRAN. Will the Senator yield for just a moment further? I do not wish to interrupt his statement, because I desire that he have all the time necessary to present his views.

Mr. TRUMAN. I yield.

Mr. McCARRAN. I wish to say that the Senator from Missouri, as chairman of the subcommittee, has given extensive and zealous study to this subject. He and I will differ sharply during the afternoon. We shall have differences with regard to policy, but there is no difference in the degree of application and study given by each of us to this subject.

The Senator from Missouri and myself have tried to work into this proposed law provisions which would guard against anything savoring of monopoly. We have tried to work into the bill provision for an independent agency to control one of the greatest avenues and opportunities for commerce we will have 10 years from now.

There is only one difference between the Senator from Missouri and myself, and I am going to use just a sentence or two to describe it, if I may, in the time of the Senator from Missouri. The difference between the Senator from Missouri

and myself is that I want an agency that is really independent—that is not dependent on any political authority for its existence. I do not want an agency that can be destroyed either by the White House under a Republican administration or under a Democratic administration. I want an agency that will have the same outstanding position as has the Supreme Court or any other court. I want an agency that will deal with and control and regulate one of the greatest avenues of commerce the country will have 10 years from now, an agency that will regulate it from the standpoint of experience, that will regulate it without fear and without favor, regardless of any political authority. That is all the difference there is between the Senator from Missouri and myself.

To the Senator from Tennessee [Mr. McKELLAR], who sets up a straw man when he suggests that we are trying to destroy the antitrust laws, let me say that he is not a more ardent advocate of the antitrust laws than am I. I am one of those, as is the Senator from Missouri, who are determined to fight for the enforcement of the antitrust laws. We would go, perhaps, or, at any rate, I would go, perhaps, much further than does the present administration of the Government to enforce the antitrust laws, for the present administration has seen fit in times past to forget the antitrust laws. But I will not go into that in detail.

Mr. COPELAND. Mr. President, will the Senator from Missouri yield to me?

Mr. TRUMAN. I yield to the Senator from New York.

Mr. COPELAND. The subject under discussion received attention not only in the Committee on Interstate Commerce but also in the Committee on Commerce. I call attention to five places in the pending bill where the question of monopoly is dealt with in one way or another with the view to its control and prevention. First, I ask Senators to turn to page 12, lines 16, 17, and 18, where in the declaration of policy, among other things, it is declared to be the policy of Congress—now we come to the language on line 16:

(3) To preserve and encourage competition in such transportation to the extent necessary to assure the sound and safe development thereof.

When the bill came to the Committee on Commerce that committee added this language on page 13, line 2, in the declaration of policy:

(5) To promote competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.

Now, Mr. President, I ask Senators to turn to page 30, where is found another addition made by the Committee on Commerce to the bill. In line 20 on that page, in the section devoted to the expenditure of Federal funds, there is found this provision:

There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.

I turn now to page 37, line 11, and read, under the heading "Certain rights not conferred by certificate," the following language:

No certificate shall confer any proprietary, property, or exclusive right in the use of any air space, civil airway, landing airway, or air navigation facility.

We come now on page 67 to the language read by the Senator from Missouri.

Mr. BORAH. Mr. President, may I interrupt the Senator?

Mr. COPELAND. Yes.

Mr. BORAH. Is it agreeable to the Senator from Missouri to yield?

Mr. TRUMAN. I yield to the Senator.

Mr. BORAH. First, let me say I have no doubt of the intent of the framers of this proposed legislation to inhibit or prohibit monopoly; but the language which is used on page 67, in the hands of a commission or of a court which desired to deal with the question with some degree of liberality, in my opinion, would permit practices which would be undesirable. The provision reads:

Provided, That no consolidation, merger, purchase, lease, operating contract, or acquisition of control shall be approved if such approval would result in creating a monopoly or monopolies and thereby unduly restrain competition or unreasonably jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control.

In other words, the use of the words "unduly" and "unreasonably" accentuates the doctrine laid down in the Standard Oil case. With all respect for that tribunal I do not wish to connive at a still more liberal construction.

Mr. COPELAND. I think the Senator is correct about that, but I wish to point out—the Senator from Missouri has not authorized me to say this but I learned it somewhere else—that I understand Commissioner Eastman, of the Interstate Commerce Commission, suggested this language or wrote this language. Am I correct in that statement?

Mr. TRUMAN. That is correct.

Mr. COPELAND. I wish to say to the Senator from Idaho that, so far as I am concerned, I will be perfectly satisfied to have the two words "unduly" and "unreasonably" stricken from the bill, because it was the purpose certainly of the Commerce Committee, and I have no doubt of the Interstate Commerce Committee, so to write this bill as that there should be no monopoly.

Mr. TRUMAN. That is the point. We want to write it so that there will not be monopoly, but we did not want to put the air lines in a strait jacket so that if a weak line, which was of service to the public, was about to blow up a strong one could not take it over and keep it in operation.

Mr. McCARRAN. Mr. President, if the Senator from Missouri will yield, though I do not wish to interrupt the Senator from New York if he was about to speak further——

Mr. COPELAND. No; I was simply going to say that, running through this bill, in these five specific instances particularly, is evidence of the intent of both committees to do away with monopoly. I repeat, so far as I am concerned, as chairman of the Committee on Commerce, I am perfectly willing to accept the suggestion of the Senator from Idaho regarding the words which he has mentioned on page 67.

Mr. McCARRAN. Mr. President, if the Senator from Missouri will yield——

Mr. TRUMAN. I yield.

Mr. McCARRAN. I should like to say a word in reply to the Senator from Idaho. The Senator from Idaho will recall that the provision to which he has referred is today the judicial law of this country. He will recall that the Railroad Transportation Act of 1920 carried that very language and we have been operating under that language for years.

We have got to do one of two things. No phase of this proposed legislation has been more studiously considered than that which would bring it within the scope of the antitrust laws as they have been carried out. But we have to consider that the quasi-judicial authority which we propose to set up shall have an opportunity and the ability within the law to cope with a situation which if it did not have such ability and opportunity might destroy property and destroy public service.

For instance, let us say there is an air line—and I use now as an illustration an industry with which the bill deals—which is fast dwindling and about to go out of existence. Another line wants to take it over and can take it over and operate it. After all is said and done, what are we legislating for? Are we legislating to give to some designated authority peculiar province and power or are we legislating for the public? If we are legislating for the public, then the public should be served. Service is the thing uppermost. If a constituted authority, acting under the provisions of law and within the powers granted to it by the law, should say under such a condition, "This agency is going out of existence; a particular community cannot be served hereafter unless some other agency takes it over; we find so-and-so; we find that it should be taken over." Then should we say that the authority shall be placed in a strait jacket and the community that should be served will not be served any longer?

First and primarily it is the public in whom we are interested. There must be a flexibility somewhere. There must

Exhibit G

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East Hampton, New York

The Hamptons are one of the most popular vacation spots for residents of Manhattan but the drive out to the scenic beaches of East Hampton can be a trying ordeal. Traffic builds up quick on I-495 and what should usually take no more than two hours can often turn into a five or six hour nightmare. If you're planning a vacation or weekend getaway to the popular East Hampton area save yourself the hassle of traffic by chartering a one-way or round trip flight from Manhattan with Helicopter Flight Services, Inc. There's plenty to enjoy in the Hamptons but not when you're stuck in traffic. Choose the safe and easy travel option and arrive in a good mood with time to take in all that East Hampton has to offer.

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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 (JS) (ARL)

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 23rd and 24th, and many of our customers would ordinarily fly to HTO for that holiday weekend beginning on May 21st – 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

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 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 could 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.

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., 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 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
----------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

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

East Hampton Town Board
159 Pantigo Road
East Hampton, NY 11937

ADOPTED

RESOLUTION 2015-804

Meeting: 07/16/15 06:30 PM
Department: Town Attorney
Category: Approvals
Prepared By: Elizabeth Vail
Initiator: Elizabeth Vail
Sponsors: Councilwoman Kathee Burke-Gonzalez
DOC ID: 15640

Retain Outside Counsel, Kathleen M. Sullivan of Quinn Emanuel Urquhart & Sullivan, LLP

WHEREAS, the United States District Court, Eastern District of New York issued a memorandum and order in the federal action entitled Friends of the East Hampton Airport, Inc. et al. vs. Town of East Hampton, dated June 26, 2015, now therefore be it

RESOLVED, that the Town of East Hampton hereby authorizes and retains Kathleen M. Sullivan of Quinn Emanuel Urquhart & Sullivan, LLP to represent the Town of East Hampton and take all necessary and appropriate action to appeal the order and defend any appeal brought against the Town pursuant to said memorandum and order; and be it further

RESOLVED, said counsel is authorized to take all necessary and appropriate action on behalf of the Town in coordination with the Town's Airport Counsel, Kaplan Kirsch & Rockwell, LLP and the Town Attorney; and be it further

RESOLVED, that the Town Board hereby authorizes an appeal of the memorandum and order in the federal action entitled Friends of the East Hampton Airport, Inc. et al. vs. Town of East Hampton as necessary; and be it further

RESOLVED, that such fees shall be capped at $100,000.00 with any further expenditures to be subject to review and approval of the Town Board; and be it further

RESOLVED, that payment to said counsel (s) shall be paid upon claim vouchers properly submitted, from budget account #SX5610-54520.

RESULT:	**ADOPTED AS AMENDED [UNANIMOUS]**
MOVER:	Kathee Burke-Gonzalez, Councilwoman
SECONDER:	Peter Van Scoyoc, Councilman
AYES:	Kathee Burke-Gonzalez, Peter Van Scoyoc, Fred Overton, Larry Cantwell
ABSENT:	Sylvia Overby

Exhibit J

Do you want your peace and quiet back?

Photo ©Doug Kuntz

Exhibit J

Campaign 2015 | P. O. Box 2013 | East Hampton, NY 11937

A message from Councilwoman Sylvia Overby about airport noise.

When the East Hampton Town Board recovered control of the airport from the FAA last January, the Town Board acted. We adopted the first-ever airport noise restrictions. Now we are defending those restrictions in federal court against legal attack by commercial helicopter and aircraft operators.

We know that these first steps are just a beginning and have pledged to continue forward until the quiet enjoyment of our homes, decks, and gardens is restored to us. **But I am here to tell you that that effort will be stopped dead in its tracks if our Republican opponents are elected to the Town Board this November.**

The Republican candidates oppose the restrictions adopted and even object to our defending ourselves against the aviation legal attack, although that defense does not cost the taxpayers a dime! It is paid for entirely by airport users. Worse, the Republicans are willing to take new FAA money and give up our hard-won local control of the airport forever.

If you are adversely affected by airport noise, or concerned for those who are, and want East Hampton to maintain local control and see the job through, it is of the utmost importance that you get to the polls on Election Day and make your voice heard. If you cannot vote in person, please vote by absentee ballot. We cannot help you unless you help us to do it.

Election Day is Tuesday, November 3. I ask for your vote for all of us — Larry Cantwell, Peter Van Scoyoc, and Sylvia Overby — to continue this important work.

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Larry Cantwell for Supervisor, Sylvia Overby and Peter Van Scoyoc for Town Board.

Peter, Larry, Sylvia

EH DEMOCRATS

GETTING GOOD THINGS DONE

Got questions? Write to us: **larry4eh@optonline.net | sylvia4eh@gmail.com | peter4eh@yahoo.com**