

RESOLUTION: 2022-190
CATEGORY: Public Notice
SPONSORED BY: Supervisor Peter Van Scoyoc
DEPARTMENT: Town Attorney

SEQRA Negative Declaration to Deactivate EH Airport

SEQRA Negative Declaration to Deactivate East Hampton Airport and Open New Private Use Airport and Related FAA Required Action

WHEREAS, the expiration of Federal Aviation Administration (FAA) grant assurances for the East Hampton Airport (the "Airport") on September 25, 2021 provides the opportunity for the Town Board of the Town of East Hampton (the "Town") to re-examine the future use and operation of the Airport, including by closing the Airport and opening a New Airport at which the Town can study the impact of operational restrictions designed to minimize and/or avoid longstanding noise, environmental, safety, and other impacts;

WHEREAS, in a November 6, 2020, letter, the FAA has suggested that the Town pursue one of the following options concerning the future use of the Airport: "(1) Negotiation of an agreement for mandatory restrictions on aircraft operators per Part 161; (2) Closure of the airport after the grant assurances expires and the reopening of the airport as a private use airport; (3) Complete closure of the airport after the grant assurances expires (September 2021); or (4) Continue to operate the airport as a public use airport";

WHEREAS, since receiving that November 2020 letter from the FAA, the Town has on several occasions discussed the future of the Airport with the FAA, including with members of the FAA's Office of Regional Administrator, Office of Airport Planning and Programming, Air Traffic Organization, Office of Airports (headquarters and regional), Office of the Chief Counsel, Flight Standards District Office, and the Office of Airport Compliance and Management Analysis, to ensure the Town works in collaboration with the FAA and consistent with the processes outlined in the November 2020 letter and applicable law;

WHEREAS, in the course of these discussions, the FAA and Town identified a fifth option concerning the Airport's continued operation which includes transitioning the Airport from public use to private use without closing the Airport per 14 C.F.R. Part 157;

WHEREAS, after receiving the FAA's suggested paths forward and in reliance on the November 2020 letter, in 2021 the Town undertook a year-long Airport re-examination public engagement project (the "Project") with the goals of gathering and disseminating information to the public so that there would be a shared and accepted understanding of the essential facts related to the conditions at the Airport; facilitating discussion and consensus building on future plans for the Airport; soliciting and compiling public input on key issues surrounding the Airport and preference for the future; and developing alternatives for the future to assist the Town Board decision-making;

WHEREAS, as part of the Project, the Town conducted eight public work session meetings with presentations by professional consultants and four public community engagement sessions involving over 300 participants. It also established a dedicated email address for written public comments and a Town weblink for access to all documents and presentations related to the Project (<https://ehamptonny.gov/748/Documents-and-Presentations>) where 617 written comments were received;

WHEREAS, the reports commissioned by the Town Board included: Overview and description of future alternatives by William O'Connor, Cooley LLP, May 11, 2021; Analysis of operations and noise complaint data by HMMH Consultants, May 11, 2021, "HMMH Review of Operations and Complaints; HMMH HTO Shoulder 2019 2020 Results"; Analysis of Jet Traffic by HMMH Consultants, May 13, 2021, "Addendum 2020 Summer Jet Traffic"; Evaluation of economic impacts by HRA Consultants, May 11, 2021, "HTO Economic Impact Analysis Summary Presentation 5.11.21" "HTO Economic Impact Analysis Full Presentation 5.11.21"; Update on PFC sampling and remediation by Nick Rigano, May 11, 2021; Update on Airport Operating Procedures by William O'Connor, July 6, 2021, "Operating Procedures Memo"; Carbon and Air Quality Emissions Assessment by Dr. Don Wuebbles, July 6, 2021, "Air Quality Presentation Dr. Don J. Wuebbles," "Air Quality Report Dr. Don J. Wuebbles"; Airport Environmental Conditions, Planning and Zoning Considerations By Lisa Liquori and Peter Flinker, August 3, 2021, "East Hampton Airport Draft Environmental Conditions, Planning & Zoning"; Draft Public Engagement Plan By Lisa Liquori, Fine Arts & Sciences and Peter Flinker, Dodson & Flinker, August 17, 2021; Airport Diversion Study HMMH Report September 6th, 2021 - Feasibility Study for the Diversion of Aircraft Operations at East Hampton Airport; HTO Legal Update Post Grant Assurances presentation by William O'Connor, Cooley LLP, October 19, 2021; Draft Public Engagement Process Summary 10.12.2021 By Fine Arts & Sciences, Dodson & Flinker; Review of the Draft Public Engagement Report By Lisa Liquori and Peter Flinker, December 21, 2021; and East Hampton Town Study of Airport Passengers by ARA - August 2021;

WHEREAS, members of the public provided the Town with additional studies responsive to the Town's consultant reports, including, GEI Data Air Quality Analysis Report, August 25, 2021; Review of Report Titled "Carbon and Air Quality Emissions for East Hampton NY and Its Airport"; Contribution of the East Hampton Airport to the East Hampton/Southampton Economy prepared by EBP US, December 14, 2020; and East Hampton Airport Diversion Study prepared by Garvett & Associates LLC, September 14, 2021; all of which have been reviewed and considered by members of the Town Board;

WHEREAS, the Town believes that the community is best served by obtaining maximum local control over the Airport such that the Town will have the utmost flexibility to address community concerns moving forward;

WHEREAS, from among the options suggested by the FAA as available to the Town, the Town believes, based on thorough review of public comment and consultant reports, that closing (or "deactivating") the Airport and opening it as a new private use facility ("New Airport")-Option 2 suggested by the FAA-achieves the Town's goals of obtaining maximum local control, retaining flexibility to control aeronautical activities in East Hampton in the future, and protecting the community in the most comprehensive and effective manner, while also preserving a continuation of aviation services;

WHEREAS, the Option 2 approach allows the Town to have maximum flexibility at the New Airport because, among other reasons including those set forth in the November 2020 letter sent to the Town from the FAA, this process allows the Town to "use the remaining funds in the airport account as it desires" because all "remaining FAA obligations, such as Exclusive Rights, Revenue Use, Civil Rights, are extinguished upon closure";

WHEREAS, once the New Airport is operating, the Town will utilize a “prior permission required” framework, as suggested in the November 2020 letter from the FAA, that enables the Town to consider restrictions and limitations at the New Airport based on inter alia time of day, type of aircraft, type of operation, noise impacts, and/or environmental impacts; this prior permission required framework would be subject to adjustment by the Town as needed to ensure that the community’s needs are being met and that advances in aviation technology, if any, are appropriately considered by future Town Boards and that such Town Boards have the flexibility needed to continue striking the right balance between the community and aviation stakeholders. The SEQRA GEIS process outlined below will help inform the Town how best to implement these decisions in the future;

WHEREAS, based on thorough review of public comment and consultant reports, the Town believes that the first option suggested by the FAA in the November 2020 letter was not desirable because, among other reasons, the Town is not a Part 139 airport and thus it does not receive regularly scheduled operators, meaning that identifying all operators who use the Airport is not feasible; moreover, even if a voluntary agreement could be reached with currently known operators, it would be ineffective against any new commercial operator entrants at the Airport as explained in the November 2020 FAA letter; and seeking voluntary agreements does not achieve the Town’s goal of obtaining maximum local control and utmost flexibility moving forward;

WHEREAS, based on thorough review of public comment and consultant reports, the Town believes that the third option suggested by the FAA in the November 2020 letter is, at this time, unnecessary because public comments and professional studies suggest that a balance can be struck between aviation stakeholders and the community such that implementing restrictions or other limitations on operations can address much of the community’s concern without foreclosing the ability of certain operators to continue operating out of the New Airport;

WHEREAS, based on thorough review of public comment and consultant reports, the Town believes that the fourth option suggested by the FAA in the November 2020 letter is not reflective of the community’s interests regarding the Airport and that change at the Airport is necessary to respond to the community’s valid concerns regarding noise, the environment, safety, and other issues;

WHEREAS, based on thorough review of public comment and consultant reports, the Town believes that the subsequently identified fifth option suggested by the FAA in discussions following receipt of the November 2020 letter is not suitable as it does not achieve the Town’s goal of obtaining maximum local control and utmost flexibility moving forward at the New Airport, namely, because it would require the Town to remain subject to certain federal oversight that is not present under the Option 2 approach that the Town believes is preferable;

WHEREAS, to effectuate this change in status under applicable FAA rules, and based on continuing discussions with FAA representatives, the Town has determined that it is in the public interest to temporarily close (or “deactivate”) the Airport for a period of three days at the beginning of March 2022 (March 1, 2, and 3) and then open a New Airport as a private use airport, thereby giving the Town the maximum flexibility possible in determining how to proceed with future airport operations. Such temporary closure and opening of a New Airport does not commit the Town to any specific future operational change that may impact the environment;

WHEREAS, the timing considerations regarding the closure of the Airport and opening of the New Airport were discussed with the FAA and the FAA confirmed that such timing was within the discretion of the Town Board;

WHEREAS, the Town's judgment to close the Airport for three days in early March (March 1, 2, and 3) before opening a New Airport will ensure all remaining federal statutory obligations are "extinguished," but also ensures that aviation would be disrupted as little as possible given that historical operations during this off-season Tuesday - Thursday time period show an average of 22 operations per day, 66 % of which are small, piston-driven aircraft;

WHEREAS, the Town Board chose this time period and duration for closure, after reviewing historical flight data and in part, to ensure that any flight operations to the East End of Long Island would not cause a significant adverse environmental impact to other airports or communities in the East End due to the low likelihood of a material amount of flight diversions;

WHEREAS, the New York State Environmental Quality Review Act (ECL Article 8 and its implementing regulations in 6 NYCRR Part 617) (collectively, "SEQRA") is applicable to discretionary decisions of a local agency such as the Town Board unless exempted by the SEQRA regulations. After exercising due diligence, the East Hampton Town Board determined it is the only State or local agency with a discretionary decision concerning the long term operation of the Airport and thus, is the SEQRA lead agency. The FAA as a federal agency, is not subject to SEQRA. When an agency has before it a complex set of decisions affecting management of public resources some of which may pose the potential for one or more significant adverse environmental effects, SEQRA offers the option of the use of a Generic Environmental Impact Statement to evaluate the potential environmental effects of alternative management options. Based on the numerous Airport related studies undertaken by the Town to date and the extensive public comments the Town Board has received from a wide spectrum of interested residents and business interests, the Town Board believes the preparation and review of a Generic Environmental Impact Statement ("GEIS") is warranted. The SEQRA process envisions several steps in development and public review of a GEIS: (1) the preparation of a Draft Scoping Outline for the Draft GEIS and public review and comment thereon leading to a Final Scoping Outline; (2) preparation of the Draft GEIS itself, including all needed studies identified in the Final Scope; (3) public review and comment on the published Draft GEIS; (4) the preparation of a Final GEIS responding to public comments received on the Draft GEIS and containing any revisions determined necessary by the Town Board; and (5) adoption of a SEQRA Findings Statement considering the Final GEIS prior to adopting any changes to long term Airport operations;

WHEREAS, in contemplation of the preparation of a DGEIS, the Town Board has directed its consultants to prepare a Full EAF, SEQRA Positive Declaration and Draft Scoping Outline related to the consideration of long term operational changes at the New Airport that is reflective of the concerns in the extensive public comments received to date. The Draft Scoping outline will be the subject of public meetings and public comment period to be scheduled by the Town Board on or about February, 2022. The Draft Scoping outline will identify the Town Board's preliminary thoughts on alternatives and the studies and investigations it believes will be necessary to fully evaluate potential changes in operation to reduce or eliminate direct significant environmental impacts from operation of the New Airport and any indirect significant consequential environmental impacts that may occur elsewhere. These include: continuation of the same operations that were permissible at the Airport (no action under SEQRA), limitations on aircraft type, operation type, or hours to

avoid or mitigate noise, environmental, safety, or other impacts, to closure of the New Airport and repurposing of the airport lands for non-aeronautical use;

WHEREAS, while a decision to close the public use Airport and open a private use New Airport under FAA rules is a discretionary action of the Town and therefore requires consideration of potential impacts under SEQRA, it does not commit the Town to a future course of actions that will affect the environment, but instead provides greater autonomy for the Town's operational authority. The Town Board will utilize the Final Generic Environmental Impact Statement and SEQRA Findings Statement to guide its decisions on final future operational changes at the New Airport. The Town Board believes that opening a private use New Airport will not in and of itself have any significant adverse environmental effects and can be permissibly segmented from the consideration of any long-term operational changes which will be evaluated in the DGEIS as set forth in 6 NYCRR §617.3(g)(1). A Full Environmental Assessment Form and Negative Declaration have been prepared that carefully consider whether closing the Airport and opening a New Airport as outlined in the FAA's November 2020 letter would potentially have a significant adverse impact on the environment (see Appendix A to this Resolution). Coupled with the prospective adoption of a Positive Declaration to examine the environmental, economic and social effects of potential changes to future operation of the New Airport, such permissible segmentation under SEQRA is no less protective of the environment.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board declares itself the SEQRA lead agency for review of any changes to the status of the Airport and any future changes in operations at the New Airport; and be it

FURTHER RESOLVED, that the Town Board, after careful review and consideration, hereby adopts the attached SEQRA Negative Declaration (Appendix A) in relation to following FAA procedures for pursuing Option 2 set forth in the FAA's November 2020 letter, and be it

FURTHER RESOLVED, that in respect to the long term operation of the New Airport, the Town's Airport consultants are directed to prepare a Full EAF, Positive Declaration and Draft Scoping Outline for review and approval by the Town Board and scheduling of a public comment period and public meeting thereon in or about February, 2022; and be it,

FURTHER RESOLVED, that the Town will file the appropriate Form 7480-1 with the FAA to initiate the deactivation of the Airport and opening of a private use New Airport and work in conjunction with the FAA to complete the status change; and be it,

FURTHER RESOLVED, that the Town Attorney and the Town's Airport consultants assist the Town Clerk in drafting, publishing and circulating required SEQRA and other notices as applicable