



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

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

December 1, 2023

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Town of East Hampton
159 Pantigo Road
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W. Eric Pilsk
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1001 Connecticut Ave., NW, Suite 800
Washington, DC 20036

Re: *Friends of East Hampton Airport, et al. v. Town of East Hampton*,
FAA Docket No. 16-15-02

Dear Mses. Ewalt, Vail, and Van Heuven and Messrs. Kirsch and Pilsk:

Enclosed is the Federal Aviation Administration's (FAA) determination with respect to *Friends of East Hampton Airport, et al. v. Town of East Hampton with Regards to Contested Claims*, FAA Docket No. 16-15-02. The Director finds the Respondent, Town of East Hampton, is not in violation of its Federal obligations at issue in this matter, as set forth in the enclosed Director's Determination.

This Director's Determination does not constitute a Final Agency Decision subject to judicial review [14 CFR § 16.247(b)(2)]. A party adversely affected by the Director's Determination may

appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(c) within 30 days after the service of the Director's Determination.

Sincerely,

**KEVIN
WILLIS**

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Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

**FRIENDS OF EAST HAMPTON
AIRPORT, INC., et al.,**

COMPLAINANTS,

v.

TOWN of EAST HAMPTON, NY

RESPONDENT.



FAA Docket No. 16-15-02

DIRECTOR'S DETERMINATION
WITH REGARD TO CONTESTED CLAIMS

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a complaint filed on January 29, 2015, under 14 CFR Part 16 (Part 16) by the Friends of the East Hampton Airport, Inc.; Analar Corporation, Associated Aircraft Group, Inc., Helicopter Association International, Inc., HeliFlite Shares LLC; and Shoreline Aviation, Inc. (Friends or Complainants) against the Town of East Hampton, New York (Town or Respondent), sponsor of the East Hampton Town Airport, formerly known as the East Hampton Airport (FAA Exhibit 1, Item 1). The Town filed an Answer (FAA Exhibit 1, Item 7) and a Motion to Dismiss Parts of the Complaint (Motion) (FAA Exhibit 1, Item 8), both dated May 1, 2015. The Town did not contest its noncompliance with regard to certain issues (FAA Exhibit 1, Item 8, p. 2). Accordingly, the Director issued an order on January 31, 2017, bifurcating the case into "Contested Claims" and "Uncontested Claims" (FAA Exhibit 1, Item 23).

On January 31, 2017, the Director issued a Director's Determination with Regard to Uncontested Claims requiring the Town to submit a Corrective Action Plan (CAP) concerning nonaeronautical revenues and the preparation and implementation of a formal Pavement Maintenance Management Program (FAA Exhibit 1, Item 23). In its CAP dated April 3, 2017, the Town stated that "to the extent that this clarification causes the FAA to reconsider the scope of its Determination on any issue, the Town respectfully requests that such issues be transferred to the contested portion of the case and addressed in the final Director's Determination in the case" (FAA Exhibit 1, Item 24) (FAA Exhibit 1, Item 9, p. 4).

Upon review, the Director declines the Town's request to transfer issues to this Director's Determination because they have been previously and sufficiently adjudicated in the January 2017 Director's Determination. Further, neither party appealed the January 2017 Determination under 14 CFR § 16.33. Therefore, the January 2017 Determination became a final decision and order under 14 CFR § 16.33(h). Under these circumstances, the Town's April 2017 CAP remains

separate from the findings in this Determination, and consideration of the CAP will be addressed in a separate communication with the Town.

Regarding the Contested Claims, the Director dismisses the allegations that the Town is in violation of its Federal obligations involving Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 20, *Hazard Removal and Mitigation*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 29, *Airport Layout Plan*. The FAA's role in a Part 16 Complaint is to determine whether the Respondent is in current compliance with its Federal obligations. (See *Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority*, FAA Docket No. 16-06-09, Final Agency Decision and Order, p. 25 (November 28, 2007).) Consequently, even if the Director made a determination that the airport sponsor was in noncompliance with these grant assurances prior to September 25, 2021, the 20-year useful life of the grants statutorily expired on that date, and the allegations regarding these specific grant assurances now are moot. The Record shows that Friends acknowledges this very point when it stated "...that Respondent is obligated to comply with the terms of Federal Aviation Administration ("FAA") grant agreements, including the sponsor assurances ("grant assurances" or "assurances") and related Federal law, 49 U.S.C. § 47101 et seq., **until September 25, 2021...**" (FAA Exhibit 1, Item 1, p. 4) (emphasis added).

With respect to the only remaining assurance at issue here, Grant Assurance 25, *Airport Revenues*, applies in perpetuity as long as the airport is operated as an airport and thus is not expired, as discussed further below (FAA Exhibit 1, Item 1, p. 4). However, the Director finds that the allegations concerning Grant Assurance 25 were addressed in the Town's CAP in 2017. Moreover, a separate ongoing FAA Part 16 investigation, *Doupe Service, LLC d/b/a Curtis Air Taxi, et al. v. Town of East Hampton New York*, FAA Docket No. 16-22-05, will address the Town's compliance with Grant Assurances 25, among others.

II. PARTIES

A. Town of East Hampton

The Town is the owner and sponsor of East Hampton Town Airport (JPX), formerly known as East Hampton Airport (HTO). At the time the Complaint was filed, the airport was operating under the identifier HTO and was classified as a public-use airport situated in the Town of East Hampton, Long Island, New York. As such, this decision will refer to the airport as HTO or simply "the Airport." The airport has historically served private aviation, charter flights, and other types of operations, including single-engine aircraft, twin turbo-prop aircraft, jets of varying sizes, and helicopters. HTO has served as a base for 96 aircraft and has over 25,000 operations annually (FAA Exhibit 1, Item 32). The FAA previously designated HTO as a "regional" facility "significant" to the national aviation system (FAA Exhibit 1, Item 17, p. 6). The development of HTO was financed with the FAA Airport and Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended, 49 U.S.C. § 47101, et seq. Under the provisions of this Act, the Town is obligated to comply with FAA sponsor grant assurances and related Federal law, 49 U.S.C. § 47107. Between 1983 and 2001, HTO has received a total of \$10.3 million in AIP funding. The most recent grant, received in 2001, was for \$1.4 million (FAA Exhibit 1, Item 33). HTO's grant assurances statutorily expired on September 25, 2021, the 20-year expiration of its last grant received in 2001, with the exception of three assurances which exist in perpetuity for so long as the airport is operated as an airport—Grant Assurance 23, *Exclusive Rights*; Grant Assurance 25, *Airport Revenues*; and Grant Assurance 30, *Civil Rights*. (FAA Exhibit 1, Item 1, p. 4)

B. Friends of East Hampton, et al.

Friends of the East Hampton Airport, Inc. is a nonprofit corporation organized and existing under the laws of the State of New York. It represents the interests of local and regional fixed-wing aircraft and helicopter owners, operators, lessors, pilots, and their passengers and customers, as well as local businesses that seek to keep East Hampton Airport open to all types, kinds, and classes of aircraft activities and flying services, including propeller aircraft, turbine aircraft, and helicopters, including those for hire (FAA Exhibit 1, Item 1, pp. 1-2). The remaining co-Complainants are all companies that operated at HTO at the time the complaint was filed (FAA Exhibit 1, Item 1, pp. 2-3). Collectively, all of the Complainants will be referred to simply as “Friends” or “Complainants.”

III. PROCEDURAL HISTORY

1. Friends’ filed its *Complaint* on January 29, 2015 (FAA Exhibit 1, Item 1).
2. FAA issued a *Notice of Docketing* on February 27, 2015 (FAA Exhibit 1, Item 2).
3. Town filed its *Answer to the Complaint* on May 1, 2015 (FAA Exhibit 1, Item 7).
4. Town filed its *Motion to Dismiss Parts of the Complaint* on May 1, 2015 (FAA Exhibit 1, Item 8).
5. Town filed a *Brief in Support of its Motion to Dismiss and Answer* on May 1, 2015 (FAA Exhibit 1, Item 8).
6. Friends filed a *Opposition to Motion to Dismiss and Memorandum* filed on June 8, 2015 (FAA Exhibit 1, Item 13).
7. Friends filed its *Reply* on June 8, 2015 (FAA Exhibit 1, Item 14).
8. Town filed a *Rebuttal in Support of Its Motion to Dismiss and Answer* on July 8, 2015 (FAA Exhibit 1, Item 18).
9. FAA issued its *Director’s Determination with Regard to Uncontested Claims* on January 31, 2017 (FAA Exhibit 1, Item 23).
10. FAA issued an *Order Bifurcating Case and Extending Date to Issue Determinations* on January 31, 2017 (FAA Exhibit 1, Item 24).
11. Town filed a *Corrective Action Plan* on April 3, 2017 (FAA Exhibit 1, Item 25) and Exhibits 1-17 (FAA Exhibit 1, Item 26).
12. Town filed a *Correction of Corrective Action Plan* for Exhibit 6 on April 19, 2017 (FAA Exhibit 1, Item 27).

IV. BACKGROUND

A. Pre-Complaint Resolution

The Town asserts that Friends failed to attempt any pre-complaint resolution of some of their claims (FAA Exhibit 1, Item 17, p. 6). The Town takes the position that “the pre-Complaint discussions were limited to maintenance issues, grant funding, and access restrictions; they failed entirely to raise concerns about landing and fuel flowage fees or non-aeronautical revenues” (FAA Exhibit 1, Item 17, p. 9). In response, Friends states that it engaged in substantial and reasonable good faith efforts to resolve the issues through an exchange of correspondence and emails with the Town’s counsel and a meeting with the Town on September 4, 2014 (FAA Exhibit 1, Item 1, p. 12). Friends adds that the Town failed to engage in any serious discussion or offer any information of substance or importance about any of the issues presented in the Complaint (FAA Exhibit 1, Item 13, p. 7, ¶14). In its Reply, Friends argues that because the FAA docketed the case, the conclusion is that Friends’ complaint was legally sufficient under 14 CFR § 16.21 (FAA Exhibit 1, Item 14, p. 8, ¶16).

Here, and through docketing the case for investigation, the Director finds that the pre-complaint meeting with the Town constitutes an attempt to resolve the matters described in the Complaint, and therefore is sufficient to meet the requirements of 14 CFR § 16.21(a).

B. Preliminary Issues

Expired Grant Assurances

On September 25, 2021, the 20-year presumed duration of 36 of the 39 the Town’s Federal grant assurances statutorily expired and are no longer enforceable under 49 U.S.C. §§ 47107(a), 40101, 47122, or 14 CFR Part 16. Three (3) Federal grant assurances do not expire for as long as the airport is operated as an airport: Grant Assurance 23, *Exclusive Rights*; Grant Assurance 25, *Airport Revenues*; and Grant Assurance 30, *Civil Rights*. However, the only one of the perpetual assurances at issue in this matter is Grant Assurance 25. Aside from the contractual basis for the revenue use obligation, it is also separately rooted in statute where it is codified at 49 U.S.C. § 47133. The FAA has interpreted the revenue use obligation in 49 U.S.C. § 47133 (Section 47133) to be perpetual. The FAA’s *Policies and Procedures Regarding the Use of Airport Revenue* states that “by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.” 64 Fed. Reg. 7696, 7698 (Feb. 16, 1999). Thus, the effect of Section 47133 “is to extend the duration of the requirement indefinitely.” *Id.* at 7699. Also, the current Airport Improvement Program (AIP) grant assurances similarly provide “there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.” *See Grant Assurances, Paragraph B.1.*

V. CONTESTED CLAIMS

Prior to the issuance of the Director’s Determination with regard to the Uncontested Claims, Friends opposed the Town’s Motion to Dismiss by arguing:

“Respondent admits that it never created or abided by a Pavement Maintenance Plan, has in the past and continues to charge below market rent to non-aeronautical tenants, and has

and continues to divert Airport revenue off-airport. It excuses its failures with vague promises that it will remedy these failures in the future.” (FAA Exhibit 1, Item 13, pp. 2-5).

Friends also argued that because of the Town’s history of refusal to provide current documents to Friends, the Town cannot be trusted with the offer to enter into a Corrective Action Plan (FAA Exhibit 1, Item 14, pp. 27-29). Friends further contend that the Director may terminate the Part 16 only “when the Director concludes that the respondent has fully complied with the Corrective Action Plan and/or when the Director determines that the respondent has corrected the areas of noncompliance.” (14 CFR § 16.109(f)).

Friends argues that the Town is still violating Grant Assurance 11, *Pavement Preventive Maintenance-Management*; Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 20, *Hazard Removal and Mitigation*; Grant Assurance 29, *Airport Layout Plan*; and Grant Assurance 24, *Fee and Rental Structure* (FAA Exhibit 1, Item 14). However, on September 25, 2021, during this investigation, the 20-year presumed duration of 36 of the 39 Federal grant assurances applicable to the Town statutorily expired. Consequently, these alleged violations are no longer enforceable under 49 U.S.C. §§ 47107(a), 40101, 47122, or 14 CFR Part 16. Thus, Friends’ allegations that the Town is violating these grant assurances are moot and will not be considered.

However, Friends also alleges that the Town is in violation of Grant Assurance 25, *Airport Revenues*, because the Town leased and/or permitted the use of aeronautical property to nonaeronautical users without charging fair market value (FMV). Friends argues that the lease rates of nonaeronautical users located on HTO are below FMV and thus are subsidized by airport users. Friends states that the Town recently acknowledged that a lease of 95 acres of aeronautical land to a local gun club for \$100.00 per year is likely improper and undervalued, but the Town still has not taken any steps to correct it (FAA Exhibit 1, Item 1, p. 30, and FAA Exhibit 1, Exhibit 14, pp. 27-28).

Friends further add that fire department and police department facilities are located on Airport property, and the Town may not be properly reimbursing the Airport for the use of the Airport property. Friends further state that the Town’s own Budget Sub-Committee has questioned whether the appropriate reimbursements are being made (FAA Exhibit 1, Item 14, pp. 25-26). Friends conclude that the above-listed mismanagement resulted in aeronautical users’ payments subsidizing the Town’s municipal services and the nonaeronautical users of aeronautical property, and that airport revenue has been inappropriately diverted in violation of Federal law and FAA guidance (FAA Exhibit 1, Item 1, p. 31).

As a result, Friends continues to ask the FAA to find the Town in violation of its grant assurances and to issue an order requiring corrective actions to all of the above-mentioned allegations (FAA Exhibit 1, Item 14, p. 30).

VI. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Certain sponsorship requirements to

which an airport sponsor receiving Federal financial assistance must agree are set forth in 49 U.S.C. § 47107(a). The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See the *Index of Administrative Record* for a list of all the FAA grant assurances (FAA Exhibit 1, Item 34).

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA is authorized to take actions necessary to assure that airport owners comply with their Federal grant assurances.

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ISSUES AND ANALYSIS

Under the circumstances, the Director is limited to making compliance determinations only for allegations that pertain to the one perpetual grant assurance at issue in this case. In this specific case, Grant Assurance 25, *Airport Revenues*, is perpetual; remains enforceable; and the allegations are further evaluated by the Director. All other allegations are dismissed as follows.

ISSUE 1: Whether the Town violated Grant Assurance 19, *Operation and Maintenance*, by failing to operate the Airport in a safe and serviceable condition as required by the FAA; and Grant Assurance 20, *Hazard Removal and Mitigation*, by failing to protect the terminal airspace from current and future hazards.

The Director dismisses the allegations that the Town is in violation of its Federal obligations involving Grant Assurance 19, *Operation and Maintenance*, and Grant Assurance 20, *Hazard Removal and Mitigation*, because: 1) the 20-year duration of the grant assurances statutorily expired on September 25, 2021; 2) the Director has no enforcement authority; and 3) therefore, the allegations are moot.

ISSUE 2: Whether the Town violated Grant Assurance 19, *Operation and Maintenance*, by failing to keep Runway 4-22 in a safe operating condition and failing to maintain an effective perimeter fence; and Grant Assurance 29, *Airport Layout Plan*, by converting Runway 4-22 to a taxiway, thereby constituting a change adversely affecting the safety, utility and efficiency of the Airport.

The Director dismisses the allegations that the Town is in violation of its Federal obligations involving Grant Assurance 19, *Operation and Maintenance*, and Grant Assurance 29, *Airport Layout Plan*, because: 1) the 20-year duration of the grant assurances statutorily expired on September 25, 2021; 2) the Director has no enforcement authority; and 3) therefore, the allegations are moot.

ISSUE 3: Whether the Town violated Grant Assurance 24, *Fee and Rental Structure* by substantially increasing fees, rates and charges on aeronautical users without conducting an analysis balancing expected revenues against the Airport's operating expenses.

The Director dismisses the allegations that the Town is in violation of its federal obligations involving Grant Assurance 24, *Fee and Rental Structure*, because: 1) the 20-year duration of the grant assurances statutorily expired on September 25, 2021; 2) the Director has no enforcement authority; and 3) therefore, the allegations are moot.

ISSUE 4: Whether the Town violated Grant Assurance 25, *Airport Revenues*, failing to reimburse the Airport for aeronautical property used for non-aeronautical purposes.

Friends alleges that the Town is in violation of Grant Assurance 25, *Airport Revenues*. The Town allegedly leased and/or permitted the use of aeronautical property to nonaeronautical users without charging FMV. Friends argue that the lease rates of nonaeronautical users located on HTO are below FMV and thus are subsidized by airport users. Friends state that the Town recently acknowledged that a lease of 95 acres of aeronautical land to a local gun club for \$100.00 per year is likely improper and undervalued, but the Town still has not taken any steps to correct it (FAA Exhibit 1, Item 1, p. 30, and FAA Exhibit 1, Exhibit 14).

However, the Director issued the Director's Determination with Regard to Uncontested Claims on January 31, 2017, including Grant Assurance 25, *Airport Revenues*. The Director required the Town to submit a CAP (FAA Exhibit 1, Items 23, and FAA Exhibit 1, Item 24).

The Town submitted its CAP on April 3, 2017 (FAA Exhibit 1, Item 25). The Town also resubmitted a corrected airport tenant map to the CAP (FAA Exhibit 1, Item 26). In the CAP, the Town also requested that if "the FAA believes that the Town's commitment to reduce the size and duration of any future lease with the Gun Club are not adequate corrective measures, the Town respectfully requests that the FAA transfer those issues [in the CAP] to the contested portion of this matter to be addressed in a future Director's Determination" (FAA Exhibit 1, Item 25, p. 10).

However, on July 8, 2017, the Town subsequently stated:

"Dismissal on these issues is warranted for the simple reason that there is nothing further for FAA to investigate. The Town has agreed to enter into a corrective action plan – which is the very relief that Complainants seek. The Town acknowledges, of course, that

final compliance depends on FAA approval of a corrective action plan and the Town's completion of the obligations set forth in that corrective action plan. (FAA Exhibit 1, Item 18, pp. 4-5).

The Town further asserts that "further litigation on these points is unnecessary and a waste of FAA resources" (FAA Exhibit 1, Item 18, p. 5).

As noted earlier in this Determination, the Director determined that neither the Town nor Friends filed a timely appeal of the Uncontested Findings in accordance with 14 CFR § 16.33(c) and as set forth in that Director's Determination (FAA Exhibit 1, Item 23, p. 6). Additionally, the parties did not provide evidence of good cause for the Director to consider a request for rehearing, reargument, reconsideration, or modification of a Director's Determination under 14 CFR § 16.31(e). At the current time, the Town's CAP remains actionable and enforceable, and the Director will take any appropriate action necessary with regards to the CAP separately from this Director's Determination.

Finally, Friends also argues that the Director may terminate the Part 16 only "when the Director concludes that the respondent has fully complied with the Corrective Action Plan and/or when the Director determines that the respondent has corrected the areas of noncompliance (FAA Exhibit 1, Item 13, p. 5).

However, the Director made a determination of noncompliance concerning Grant Assurance 25 in the Director's Determination with Regard to Uncontested Claims (FAA Exhibit 1, Item 23), which is now a final decision. A complainant's standing terminates upon the issuance of a Director's Determination that finds a respondent in noncompliance on all identified issues 14 CFR § 16.109(g). Thus, since the Director determines that: 1) the remaining issues for Grant Assurance 25 violations are not moot; 2) the Town submitted a CAP for the Director to consider to resolve the Grant Assurance 25 issues; 3) the Director is in the process of considering the CAP; and 4) the Director's Determination with Regard to Uncontested Claims is a final decision and order; the Director dismisses the complainants' claims under Grant Assurance 25 as being appropriately addressed in the final Director's Determination with regard to Uncontested Claims.

VIII. CONCLUSIONS

After considering the evidence and pleadings in this matter, the FAA issues this Director's Determination and finds as follows:

1. The Director's Determination with Regard to the Uncontested Claims, dated January 31, 2017, pertaining to allegations of violations of Grant Assurance 11, *Pavement Preventive Maintenance-Management*, Grant Assurance 24, *Fee and Rental Structure*, and Grant Assurance 25, *Airport Revenues*, was not formally appealed and became a final decision and order on April 1, 2017. The Town's Corrective Action Plan, filed on April 3, 2017, is currently under consideration by the Director and will be addressed separately from this Director's Determination.
2. The Town is not in violation of Grant Assurance 11, *Pavement Preventive Maintenance Management*; Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 20, *Hazard Removal and Mitigation*; Grant Assurance 24, *Fee and Rental Structure*; and

Grant Assurance 29, *Airport Layout Plan*, because these grant assurances expired on September 25, 2021, and are therefore moot.

ORDER

Accordingly, it is ordered that:

1. The Town's Motion to Dismiss Parts of the Complaint dated May 1, 2015, is denied.
2. The violations of Grant Assurance 11, *Pavement Preventive Maintenance*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25; *Airport Revenues*, were findings set forth in the Director's Determination with Regard to Uncontested Claims dated January 31, 2017, and are NOT new findings, and are NOT subject to appeal.
3. The Director finds that Grant Assurance 11, *Pavement Preventive Maintenance-Management*; Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 20, *Hazard Removal and Mitigation*; Grant Assurance 24, *Fee and Rental Structure*; and *Grant Assurance 29, Airport Layout Plan*, expired on September 25, 2021, and the allegations regarding these assurances are therefore moot. Therefore, these allegations are dismissed.
4. All motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-15-02 with Regards to Contested Claims is an initial agency determination and does not constitute a final agency decision and order subject to judicial review under 49 U.S.C. § 46110 [See 14 CFR § 16.247(b)(2)]. A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there was no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

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Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Date

The Friends of the East Hampton Airport, Inc., et al., Complainants,
v.
Town of East Hampton, NY, Respondent.

FAA Docket No. 16-15-02

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA EXHIBIT 1

Item 1 - Friends filed Complaint, dated January 30, 2015.

- Exhibit 1 2005 Settlement Agreement, dated January 27, 2005.
- Exhibit 2 East Hampton Town Board Meeting Minutes, Section III - Topics, item C, Airport Maintenance Projects – Jim Brundige, dated April 15, 2014.
- Exhibit 3 April 15, 2010, East Hampton Town Board Resolution 2010-349, Authorize Town Highway Department to Perform Taxiway Clean-Up, former Runway 4-22.
- Exhibit 4 April 17, 2014, East Hampton Town Board Resolution 2014-484, “Pave Section of Runway 4-22 for Taxiing Aircraft.”
- Exhibit 5 July 3, 2014, East Hampton Town Board Resolution 2014-838, “BOND - \$270,000 -Reconstruction of Taxiway 4-22.”
- Exhibit 6 July 24, 2014 – September 18, 2014, FAA Airport Facility Directory, Airport Remarks as of 7/24/2013.
- Exhibit 7 February 24, 2014, Respondent's consultant's recommendations to prioritize airport repairs including Obstruction Removal, Taxiway A edge Lights, and Runway 4-22 Pavement Repair.
- Exhibit 8 FAA Airport Facility Directory for HTO, dated July 24, 2014, to September 18, 2014, and FAA Database of Deer Strikes at HTO between 1992-2011.
- Exhibit 9 Town of East Hampton Acceptance by FAA Grant Agreement Acceptance, dated September 25, 2001.
- Exhibit 10 Town’s Appeal Response on FOILs, dated November 7, 2014.
- Exhibit 11 East Hampton Town Board Tabled Resolution 2014-673, Fuel Flowage Fee increase from 15 to 30 cents per gallon, dated June 5, 2014.
- Exhibit 12 East Hampton Town Board Resolution 2014-672, “Amend Landing Fees” fee increase in 10%, dated June 5, 2014.
- Exhibit 13 HTO Airport Landing Fees, dated June 6, 2014.

- Exhibit 14 Schedule of Air Terminal Charges, John F. Kennedy International Airport, revised December 2014.
- Exhibit 15 Comparison with East Hampton Landing Fees as of 2009.
- Exhibit 16 Budget Sub-Committee meeting notes on March 8, 2014.
- Exhibit 17 Budget Sub-Committee meeting notes on June 2, 2014.
- Exhibit 18 Chronology of Lawsuits by the Committee to Stop Airport expansion.
- Exhibit 19 The New York Times Article “As Din Aircraft grows, East Hampton reclaims Power to Regulate Airport.”
- Exhibit 20 Recommendations of the Respondent's Noise Committee regarding Respondent's legal rights to restrict use of the Airport.
- Exhibit 21 2011 ALP Approval Letter 2011 and ALP showing Part 77 airspace, which identifies the location of trees obstructing the approach paths.
- Exhibit 22 November 21, 2013 Airport Capital Improvement Plan (ACIP) PowerPoint used for a Public Hearing, where two of the three runways (4-22 and 16-34) are rated “Failed/poor.”
- Exhibit 23 2011 Town Resolution 2011-993, adopted the Airport Master Plan and ALP, including the Public Notice to consider a FAA Grant Application to install a perimeter fence.
- Exhibit 24 East Hampton Board Resolution 2012-833, directs airport Manger to present a report about a perimeter fence improvements and public and tenants access control.
- Exhibit 25 2007 Draft East Hampton Airport Master Plan, page I-1 & 2, indicated Runway 4-22 with an original capacity of 60,000 lbs. had failed and the portion used as taxiway G is restricted 12,000 lbs.
- Exhibit 26 2007 Draft East Hampton Airport Master Plan, page I-59, Runways Wind Coverage Charts.
- Exhibit 27 Authorized by Resolution 2010-716, 2010 Generic Environmental Impact Statement (GEIS), pages Cover, vii, 1, 6, and 119; Recommended that Runway 4-22 be rehabilitated and reactivated.
- Exhibit 28 Schedule of East Hampton Airport leases, dated December 27, 2012.

Item 2 – FAA Notice of Docketing Part 16-15-02, dated February 27, 2015.

Item 3 - Town’s Unopposed Motion for Extension of Time to Respond to Complaint, dated March 18, 2015.

Item 4 – FAA Order Grants Time for Answer, dated March 27, 2015.

Item 5 - Declaration of Arthur B Malman in Support of the Answer of the Town, dated March 27, 2015.

- Exhibit 1 February 4, 2014, Town Work Session Minutes.
- Exhibit 2 Councilwoman Burke-Gonzalez’s remarks.

- Exhibit 3 February 6, 2014, the Town passed Resolution 2014-147.
- Exhibit 4 Resolution 2013-1216, adopting 2014 Budget.
- Exhibit 5 Approved 2014 Budget.
- Exhibit 6 December 3, 2013, the 2014-2018 Airport Capital Improvement Plan (ACIP).
- Exhibit 7 December 3, 2013, Town Work Session Minutes, ACIP and AMP.
- Exhibit 8 April 26, 2014, the Airport Finance Subcommittee produced a Preliminary Debt Capacity Analysis and an initial Progress Report.
- Exhibit 9 Subcommittee transmitted its Progress Report and the Preliminary Debt Capacity Analysis to the Town Board on May 5, 2014.
- Exhibit 10 May 20, 2014, Subcommittee Presentation.
- Exhibit 11 Town Work Session Transcript, dated May 20, 2014.
- Exhibit 12 Town Work Session Minutes (2002 Economic Analysis), Exhibit 1 – February 4, 2014.
- Exhibit 13 BFAC Subcommittee Minutes, May 17, 2014.
- Exhibit 14 May 17, 2014, Draft Debt Capacity Analysis.
- Exhibit 15 June 2, 2014, BFAC Subcommittee Minutes.
- Exhibit 16 June 3, 2014, Work Session Minutes.
- Exhibit 17 Transcript of June 5, 2014, Town Board Meeting.
- Exhibit 18 June 17, 2014 Subcommittee's presentation.
- Exhibit 19 Transcript of June 17, 2014, Town Work Session.
- Exhibit 20 June 19, 2014, Resolution 2014-673 increased fuel flowage fee to 30 cents effective on July 1, 2014.
- Exhibit 21 June 19, 2014, full transcript of the meeting.
- Exhibit 22 HTO Landing Fees, 2006, 2008, 2013.
- Exhibit 23 Email exchanges with A. Ceglie.
- Exhibit 24 DY Consultants future landing fee forecasts.
- Exhibit 25 June 5, 2014 Resolution 2014-672.

Item 6 - Declaration of Jemille R Charlton in Support of the Answer of the Town, dated April 29, 2015.

- Exhibit 1 ALP Excerpts (Showing Runway 4-22 as closed on existing layout plan).
- Exhibit 2 2010-2014 Operations data.
- Exhibit 3 2013 Final environmental Assessment for a Seasonal Air Traffic Control Tower.

- Exhibit 4 2007 Airport Master Plan.
- Exhibit 5 2010 Master Plan.
- Exhibit 6 FAA Conditional Approval for the ALP update.
- Exhibit 7 Consultant presentation, dated December 1, 2011.
- Exhibit 8 ACIP and Airport Maintenance Plan “Emergency Repair for temporary use of a taxiway before converting to a runway.”
- Exhibit 9 Bond Resolutions.
- Exhibit 10 Runway 16-34 rehabilitation documents.
- Exhibit 11 Runway 4-22 repaving documents.
- Exhibit 12 Daily Logs.
- Exhibit 13 Aviation Resources Inc. Lease.
- Exhibit 14 Town Board Meeting adopted Taxiway “A” Lighting Documents.
- Exhibit 15 Town Board, dated December 19, 2013, weather reporting expenditure documents.
- Exhibit 16 FAA Letters, dated May 30, 2013 and Town Response, dated July 5, 2013, concerning removal of runway obstructions.
- Exhibit 17 Town Board Approve Design Work - Airport Perimeter Fence, dated October 17, 2013.
- Exhibit 18 Excerpts from FBO leases.
- Exhibit 19 Friends written letter request for meeting with Town, dated July 31, 2014, and Town thank you letter for meeting, dated September 8, 2014.

Item 7 - Town’s Answer, dated May 1, 2015.

Item 8 - Town’s Motion to Dismiss Parts of the Complaint, dated May 1, 2015.

Item 9 - Town’s Brief in Support of its Motion to Dismiss and Answer to the Complaint, dated May 1, 2015.

Item 10 - Friends’ Unopposed Motion to Extend Deadline to Reply, dated May 6, 2015.

Item 11 - Friends’ Affidavits of Evan P Catarelli, dated May 18, 2015, and S. A. Ewalt, dated June 5, 2015.

Exhibit 1 Affidavits of Evan P Catarelli.

Exhibit 2 Affidavits of Shelley A. Ewalt.

Item 12 – FAA Order Grants Time to File a Reply, dated May 21, 2015.

- Item 13** - Friends' Opposition to Motion to Dismiss and Memorandum, dated June 8, 2015.
- Item 14** - Friends' Reply, dated June 8, 2015.¹
- Item 15** - Kaplan Kirsch Rockwell LLP, email from Katie Van Heuven to Shelley A. Ewalt, dated June 8, 2015.
- Item 16** - Town's Unopposed Motion for Extension of Time to File Rebuttal, dated June 10, 2015.
- Item 17** - Declaration of Michael J Waibel in Support of the Rebuttal of the Town, dated July 7, 2015.
- Item 18** - Town's Rebuttal Support of Its Motion to Dismiss and Answer to the Complaint, dated July 8, 2015.
- Item 19** – FAA Notice of Extension of Time to Issue Director's Determination, dated November 12, 2015.
- Item 20** – FAA Notice of Extension of Time to Issue Director's Determination, dated February 22, 2016.
- Item 21** – FAA Notice of Extension of Time to Issue Director's Determination, dated October 26, 2016.
- Item 22** – FAA Notice of Extension of Time to Issue Director's Determination, dated December 12, 2016.
- Item 23** - Director's Determination with Regard to Uncontested Claims dated January 31, 2017. Exhibit 1 includes:
- Attachment 1. FAA Regional Site Inspection Report on July 6, 2016.
- Exhibit 1 FAA's Eastern Flight Procedures Team letter to HTO, dated May 30, 2013.
 - Exhibit 2 HTO – RNAV (GPS) X RWY 10.
 - Exhibit 3 HTO - RNAV (GPS) Z RWY 10.
 - Exhibit 4 HTO - RNAV (GPS) Y RWY 28.
 - Exhibit 5 HTO - RNAV (GPS) Z RWY 28.
 - Exhibit 6 HTO - VOR-A.
 - Exhibit 7 HTO - RNAV (GPS) Y RWY 10.
 - Exhibit 8 Letter. Michael Baker International. 20:1 TERPS Surface Obstruction Analysis-Runway 10-28 at East Hampton Airport, New York (REVISED).

¹ Friends' Motion to Dismiss and Friends' Reply are filed as one document in www.regulations.gov.

- Exhibit 9 HTO CIP Projects status, June 28, 2016, Letter Michael Baker International.
- Exhibit 10 AWOS Initial Commissioning Documentation and Maintenance Log.
- Exhibit 11 HTO - Airfield Pavement Maintenance Program.
- Exhibit 12 HTO - Daily Chores.
- Exhibit 13 HTO - Draft Comprehensive Airfield Pavement Evaluation (DCAPE), dated January 31, 2016.
- Exhibit 14 HTO - SOAR Grant Records.
- Exhibit 15 Grant Agreement, dated September 10, 2001.
- Exhibit 16 Inappropriate Taxiway Marking - taxiway A intersection.
- Exhibit 17 East Hampton Town Board resolutions, adoption of budget references and Airport Revenues and Expenditures.

Attachment 2. Town's Response, dated October 26, 2016.

- Exhibit 1 2010 Airport Master Plan GEIS (Excerpts).
- Exhibit 2 Work Authorization, Wind Analysis, dated October 20, 2016.
- Exhibit 3 Bid Documents for Obstruction Removal, dated October 3, 2016.
- Exhibit 4 Paid Parking resolutions, press release, and grant history.
- Exhibit 5 Tennis Club easement documents.
- Exhibit 6 Animal Rescue Fund easement documents.
- Exhibit 7 FAA and HTO Correspondence 2003 through 2008.
- Exhibit 8 Appraisal, dated January 27, 2005.
- Exhibit 9 Lease agreements for Parcels 14-16, 18-26, and 30-31.

Attachment 3. FAA Regional Letter, Site Inspection Follow-up, dated November 18, 2016.

Item 24 – FAA Order for Bifurcating Case and Extending Date to Issue Determinations, dated January 31, 2017.

Item 25 - Town's Corrective Action Plan, dated April 3, 2017.

Item 26 - Town's Corrective Action Plan Exhibits 1-17, dated April 3, 2017.

- Exhibit 1 Nonaeronautical Lease, East Hampton Town Industrial Park.
- Exhibit 2 Airfield Pavement Management Program, HTO, 2017.
- Exhibit 3 East Hampton Town Board Meeting Minutes of March 2, 2017.
- Exhibit 4 Comprehensive Airfield Pavement Evaluation Draft Final, dated January 20, 2017.
- Exhibit 5 Hertz Corporation for a License to the East Hampton Airport, dated August 11, 2016.
- Exhibit 6 Town of Hampton Airport Leased Properties, dated March 30, 2017.
- Exhibit 7 FAA letters and documents on Town of East Hampton concerning East Hampton Airport Part 13 Informal Complaint, dated February 5, 2003.
- Exhibit 8 Town of East Hampton Use (Zoning) Map, dated September 16, 1994.

- Exhibit 9 Town of East Hampton Chapter 255, Land Use Established Districts, dated March 24, 2017.
- Exhibit 10 Town of East Hampton Comprehensive Plan dated May 6, 2005.
- Exhibit 11 Town of East Hampton Chapter 255, Land Use Established Districts, dated March 24, 2017.
- Exhibit 12 Maiden Gun Club Lease with Town of East Hampton, dated May 2, 1983.
- Exhibit 13 Clark & Marshall Appraisers Report of 57 Industrial Road, Wainscott, NY, a fire districts training facility and parking lot, dated May 1, 2015.
- Exhibit 14 News story about plane crash, dated August 26, 2012.
- Exhibit 15 Clark & Marshall Appraisers Report of 131 Industrial Road, Wainscott, NY, a town police station and a training facility for the fire districts, dated May 1, 2015.
- Exhibit 16 Town of East Hampton 2017 Adopted Budget, dated November 16, 2016.
- Exhibit 17 Town of East Hampton General Ledger Account, dated March 24, 2017.
- Item 27** - Town's Correction of Corrective Action Plan, Corrected Exhibit 6, dated April 19, 2017.
- Item 28** – FAA Notice of Extension of Time to Issue Director's Determination, dated July 20, 2017.
- Item 29** – FAA Notice of Extension of Time to Issue Director's Determination dated October 27, 2017.
- Item 30** – FAA Notice of Extension of Time to Issue Director's Determination, dated January 31, 2018.
- Item 31** – FAA Notice of Extension of Time to Issue Director's Determination, dated December 13, 2018.
- Item 32** – HTO FAA Form 5010, dated July 5, 2016.
- Item 33** – FAA Grant History, dated May 11, 2022.
- Item 34** - Link to FAA Airport Improvement Program Grant Assurances (2/20)
https://www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances-airport-sponsors-2022-05.pdf, dated January 10, 2022.
- Item 35** - FAA issues Notice for Extension of Time, dated March 5, 2019.
- Item 36** - FAA issues Order for Extension of Time, dated February 19, 2021.
- Item 37** – FAA issues Order for Extension of Time, dated May 10, 2021.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 4, 2023, I caused to be emailed and/or to be placed in the Federal Express a true copy of this Director's Determination for FAA Docket 16-15-02, addressed to:

For the Complainant

Leonard D. Kirsch
Shelley A. Ewalt
McBreen & Kopko
500 N. Broadway, Suite 129
Jericho, NY 11753
lkirsch@mklawny.com
sewalt@mklawny.com

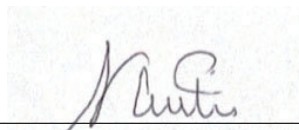
For the Respondent

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Copy to:

FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Office of Airport Compliance and Management Analysis (ACO-100)
FAA Eastern Regional Office (AEA-600)



Natalie Curtis
Office of Airport Compliance
and Management Analysis