



August 4, 2008

Hon. Edward P. Romaine  
Suffolk County Legislator – First District  
423 Griffing Avenue, Suite 2  
Riverhead, NY 11901

Dear Legislator Romaine:

The Eastern Region Helicopter Council is deeply concerned over your proposed bill (Intro. Res. No. 1673-2008) that would reportedly establish a minimum altitude for helicopters operating in the airspace over Suffolk County. This bill sends the wrong message to your constituents because it gives false hope to those in need of real solutions. ERHC instead offers its assistance to you, your fellow County Legislators and to affected Suffolk County residents to address and resolve the underlying issues.

Regulating the nation's airspace, which includes the skies above Suffolk County, falls under one agency and one agency alone – the Federal Aviation Administration. Upon its establishment in 1958, Congress granted the FAA exclusive jurisdiction and control of the National Airspace System to ensure a uniform set of rules and regulations are consistently applied throughout the country to avoid the very confusion and conflicts that your proposed bill will create if it becomes local law.

Imagine the difficulty helicopter pilots would face in providing efficient transport if they needed to know hundreds of local airspace regulations – each setting forth how and where aircraft could fly. Such a system cannot and will not work.

In short, the FAA Act of 1958 preempts Suffolk County from enforcing the reported provisions in your proposed bill. This is not just our opinion, but also that of the FAA's Office of Regional Counsel. I have taken the liberty of attaching a letter from the FAA in response to last year's attempt by Southold Township to enact similar regulations. We strongly suggest that you contact the FAA directly for further clarification on this matter – a dialogue that we would be pleased to facilitate.

Additionally, we disagree with your characterization that this year's voluntary noise abatement program is a "failure." To the contrary, the facts show that we as an industry are doing what was asked of us: we are flying higher and over Long Island Sound when operational and weather conditions permit. This season's tracking data from East Hampton Airport for its voluntary noise abatement procedures shows that helicopters are achieving 85% - 90% route compliance and altitude compliance is steadily improving, now up to 70%. Our detailed countywide radar review of the July 4<sup>th</sup> weekend found that 84% of all helicopters were adhering to the voluntary procedures. In fact, the average altitude of the observed helicopters over Suffolk County during the holiday weekend was 2,670 feet.

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Hon. Edward P. Romaine  
August 4, 2008  
Page 2

Complainants contacting ERHC through our toll-free hotline are also noticing the improvements, but many are expressing concern that helicopters are still flying over their homes, regardless of altitude. The media and some elected officials have unfortunately perpetuated the misconception that all helicopters would be flying a mile out over the Sound at 2,500 feet. This is not and never was the case. The new North Shore Route was only designed for larger, twin-engine helicopters. Safety and weather conditions may require the smaller, single-engine helicopters to fly closer to shore or over land, but we still recommend that such aircraft maintain a minimum altitude of 2,500 feet (air traffic control permitting).

As noted above, the recommended, voluntary guidelines are generating exemplary pilot support. Significant progress is being made. Complaints are decreasing in many Long Island communities and other affected areas are being accurately identified through ERHC's data collection effort. We are already discussing with the FAA and elected officials certain modifications to the program that would vary the routes as opposed to concentrating the majority of the activity over the North Shore and North Fork – a more equitable solution for all.

As such, the Eastern Region Helicopter Council urges you to abandon Intro. Res. No. 1673-2008 and instead work directly with the local helicopter industry to ensure that your constituents' specific noise concerns are resolved quickly and fairly.

Sincerely,



David Nuss  
Chairman

c. Listed on following page

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Hon. Edward P. Romaine  
August 4, 2008  
Page 3

c. Hon. Jay Schneiderman  
Hon. Brian Beedenbender  
Hon. Daniel P. Losquadro  
Hon. William J. Lindsay  
Hon. Cameron Alden  
Hon. John M. Kennedy, Jr.  
Hon. Wayne R. Horsley  
Hon. Lou D' Amaro  
Manny Weiss – FAA  
Edward Green – LIBAA  
Mathew S. Zuccaro – HAI

Hon. Kate M. Browning  
Hon. Vivian Vilorio-Fisher  
Hon. Jack Eddington  
Hon. Ricardo Montano  
Hon. Thomas F. Barraga  
Hon. Lynne C. Norwick  
Hon. Steven H. Stern  
Hon. Jon Cooper  
Diane Crean – FAA  
William J. McShane – LIBAA  
ERHC Board of Directors

Attachment



U.S. Department  
of Transportation

Eastern Region  
Office of Regional Counsel

1 Aviation Plaza  
Room 561  
Jamaica, New York 11434  
Telephone: 718-553-3285  
Facsimile: 718-995-5699

**Federal Aviation  
Administration**

OCT 23 2007

BY FIRST CLASS MAIL AND FACSIMILE

Hon. Scott A. Russell

Supervisor

Town of Southhold

53095 Route 25

P.O. Box 1179

Southhold, NY 11971

(631) 765-6145

Dear Supervisor Russell:

It has come to the attention of the Federal Aviation Administration (FAA) that the Town of Southhold is considering regulating the use of the airspace above the Town. Such an action would constitute regulation of the airspace, a field that has been preempted by the Federal Aviation Act of 1958.

While there is no express preemption provision with respect to airspace management, the field of airspace management and noise control is preempted, through conflict or field preemption. As the Supreme Court noted in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 637, 93 S.Ct. 1854, 36 L.Ed. 2d 547 (1973), Congress has given the FAA exclusive responsibility for the field of airspace management. Id., at 626-627, see also, 49 U.S.C. § 40103(a) and (b). In holding that with respect to airspace management federal law preempts state law, the Court in Burbank noted the pervasive nature of federal regulation, quoting Justice Jackson, "Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands." City of Burbank, at 633-634. The Court also endorsed the position of the Secretary of Transportation that, "The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft." Id., at 635,

Recently, in 1998, the Second Circuit following City of Burbank found local regulation of airspace preempted. The City of New York attempted to regulate the path of flight for helicopter sightseeing tours. In holding the regulation to be preempted, the Second Circuit stated:

The City claims the invasive nature of helicopter noise justifies ... restricting sightseeing routes ... This argument ... evidences a misunderstanding of aviation law. Congress, the Supreme Court, and we have consistently stated that the law controlling flight paths through navigable airspace is completely preempted. See, e.g., *Concorde I*, 558 F.2d at 83 [*British Airways Bd. v. Port Auth. of N.Y. and N.J.*, 558 F. 2d 75 (2d Cir. 1977)]. *Helicopter Corp. of America v. City of New York*, 137 F. 3d 81, 91-92 (2d Cir. 1998)

The FAA is committed to working with local municipalities and citizens to deal with noise issues, however it is not always possible to decrease or eliminate aircraft noise in any area. Manny Weiss, the Regional Administrator of the FAA's Eastern Region, is available to facilitate meetings on noise issues. You can contact him at 718-553-3000. If you would like to discuss the contents of this opinion, please contact Mary M. McCarthy of my staff at (718) 553-3259.

Sincerely,



Alfred R. Johnson, Jr.  
Deputy Regional Counsel

Cc: M. Weiss  
D. Nuss