COPY

MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 10

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In the Matter of the Application of

THE COMMITTEE TO STOP AIRPORT EXPANSION, DAVID GRUBER, BARBARA MILLER, FRANK DALENE, ROBERT WOLFRAM, BARBARA WOLFRAM and STEPHEN LEVINE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law & Rules,

- against -

WILLIAM WILKINSON, THERESA QUIGLEY, DOMINICK STANZIONE, PETER HAMMERLE and JULIA PRINCE, together constituting the TOWN BOARD OF THE TOWN OF EAST HAMPTON,

Respondents,

SAVE EAST HAMPTON AIRPORT, INC.,

Intervenor.

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By: JOHN J.J. JONES, JR., J.S.C.
Dated: July 5, 2012

Index No. 10-41928
Mot. Seq. # 001- MD; CDISPSUBJ
002 - MD
003 - MD
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JEFFREY L. BRAGMAN, P.C.
Attorney for Petitioners
15 Railroad Avenue, Suite #1
East Hampton, New York 11937

GILMARTIN & BREGMAN
Attorney for Respondents
320 Hampton Road
Southampton, New York 11968

ESSEKS, HEFTER & ANGEL, LLP
Attorney for Intervenor Save East Hampton Airport
108 East Main Street, P.O. Box 279
Riverhead, New York 11901

In this CPLR Article 78 proceeding the petitioners seek a judgment reversing, annulling and setting aside the resolution of the Town Board of the Town of East Hampton (Town) dated September 2, 2010, which adopted the Final Generic Environmental Impact Statement (FGEIS) and the Findings Statement regarding the East Hampton Airport Master Plan Update (MPU) and Airport Layout Plan (ALP) reviewed therein. The petitioners allege that the Town's resolution should be rendered null and void because its adoption violated the New York State Environmental Quality Review Act ("SEQRA") and its implementing regulations at 6 NYCRR 617.

The individual petitioners are residents of the Town, or the adjacent Town of Southampton, who live near the East Hampton Airport (Airport). The petitioner The Committee to Stop Airport Expansion (Stop) is an unincorporated association which has made its mission to monitor, challenge and publicize the activities of the Airport. The Airport, owned and operated by the Town, is located in an environmentally sensitive special groundwater protection area. Since the time of its construction in 1936, it has had three runways: Runway 10-28, the primary runway oriented in an east-west direction at 100 degrees and 280 degrees; Runway 4-22, oriented at 040 and 220 degrees, and Runway 16-34, oriented at 160 degrees and 340 degrees. Runway 10-28 is used as the primary runway due to its length of 4,255 feet, its increased navigational aids, and because it is the only runway at the Airport with a Federal Aviation Administration approved instrument approach. Runway 4-22 and Runway 16-34, 2,223 feet and 2,501 feet respectively, are considerably shorter than Runway 10-28, and are used primarily by smaller aircraft. The most demanding type of aircraft expected to land at the Airport, also known as the "design standard aircraft," are in the general aviation category.

Because the last officially recognized versions of the MPU and ALP were adopted in 1989, the Town began preparation of an updated Airport Master Plan and an updated Airport Layout Plan in 2004, and retained Savik & Murray, LLP, consulting engineers, for that purpose. A planning study was conducted between 2004 and 2007, and on April 24, 2007, the consulting engineers issued a Draft Airport Master Plan Report evaluating the various alternatives for a master plan update. On July 19, 2007, the Town held a public hearing to obtain and consider the comments of the public with regard to the four alternatives set forth in the report. Alternative 1, intended to reduce the uses and capabilities of the Airport, selected the Beech Baron as the design standard aircraft, which requires conformance with ARC B-I design standards issued by the Federal Aviation Administration (FAA). The Draft Airport Master Plan Report notes that the existing runways meet or exceed those standards. Alternative 2, intended to slightly increase the uses and capabilities of the Airport, utilizes the Cessna Citation V as the design standard aircraft for Runway 10-28 which meets the applicable ARC B-II design standards, and the Beech Baron as the design standard aircraft for Runway 4-22 which meets the applicable ARC B-I design standards. Alternative 3, intended to greatly increase the uses and capabilities of the Airport, selected the Challenger 600 as the design standard aircraft, requiring ARC C-II design standards, which would require expansion of the existing runways. The fourth proposed alternative was a" no action" alternative which would maintain the Twin Otter as the design standard aircraft, and ARC A-II Airport design standards would apply. The Draft Airport Master Plan Report notes that the current runways exceed those standards, and that the Twin Otter is generally no longer in use at the Airport. After approximately a twelve month period of review, the Town selected Alternative 2 for further review and refinement as its preferred alternative.

After the completion of the Draft Airport Master Plan Report (DAMPR) and public hearings, a Draft Generic Environmental Impact Statement (DGEIS) was adopted on August 20, 2009. On September 17, 2009, a public hearing was held regarding the DGEIS. The Town retained two engineering firms to assist the Town in addressing the public comments collected at that hearing. On March 18, 2010, the Town essentially accepted the DGEIS and directed that a Final Generic Environmental Impact Statement (FGEIS) be completed. By resolution dated August 5, 2010, the Town found the FGEIS to be complete and ready for filing pursuant to SEQRA, directed the Town Clerk to so file, and fixed the ten day period for public comments. On September 2, 2010, the Town adopted a Findings Statement for the FGEIS regarding the MPU and ALP, and adopted Resolution # RES-2010-803 which purports to issue a negative declaration pursuant to SEQRA and Chapter 128 of the Town Code, and adopts the MPU together with an errata sheet. The petitioners then timely commenced this special proceeding alleging that the Town violated various provisions of SEQRA.

As to the petitioners' claim that the respondent Town failed to comply with the mandates of SEQRA, the Court must first dispose of seven affirmative defenses [objections in point of law], asserted by the respondents.[1] First, the respondents maintain that the GEIS process followed by the Town was voluntary because it originally issued a "negative declaration" for the development of the MPU, rendering all of the petitioners' contentions regarding violation of SEQRA academic as no environmental impact statement was required under the law. A lead agency may determine either that the proposed action will not have any adverse environmental impacts or that the identified adverse environmental impacts will not be significant (*see* 6 NYCRR 617.7 [a] [2]), or that the action "may include the potential for at least one significant adverse environmental impact"(*see* 6 NYCRR 617.7 [a] [1]). A written determination by the lead agency that the proposed action will not have a significant adverse impact on the environment, known as a "negative declaration," ends the SEQRA process (*see* 6 NYCRR 617.1 [y], 617.7 [a] [2]). Conversely, if a determination is made that the proposed action may have a significant environmental impact, the lead agency must issue a "positive declaration" and direct the preparation of an EIS (*see* 6 NYCRR 617.1 [ac], 617.7 [a] [1]). Here, the record does not indicate when or how the Town made its determination that a negative declaration for the development of the MPU was warranted, and it appears that the Town did not issue a written determination of its findings regarding said determination. In fact, the Town's Resolution # RES-2009-923 specifically indicates that no determination of environmental impacts has been made, and that the Town Board will consider the DGEIS for the purpose of determining significance. 6 NYCRR § 617.7, entitled "Determining Significance," provides in pertinent part:

> a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.
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> * * *
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> (b) For all Type I and Unlisted actions the lead agency making a determination of significance must:
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> * * *

[1] In its answer, the intervenor includes the same seven affirmative defenses (objections in point of law) as those contained in the respondents' answer. Thus, the Court disposes of the issues raised by the intervenor in its determination of the respondents' assertions.

> (4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

Initially, the Court notes that the adoption of the MPU and ALP are Type I actions pursuant to the East Hampton Town Code 128-3-20 (B) (9) and (10) (hereinafter Town Code).[2] There is a relatively low threshold for the preparation of an EIS, as the statute mandates that agencies prepare an impact statement or cause such statement to be prepared when a proposed action "may" have a significant impact on the environment (*see* ECL 8-0109 [2]; ***Matter of Munash v Town Bd. of Town of E. Hampton***, 297 AD2d 345, 748 NYS2d 160; ***Matter of S.P.A.C.E. v Hurley***, 291 AD2d 563, 739 NYS2d 164 [2d Dept], *lv denied* 98 NY2d 615, 752 NYS2d 1 [2002]; ***Matter of Omni Partners v County of Nassau***, 237 AD2d 440, 654 NYS2d 824 [2d Dept 1997]). The adduced evidence establishes that the alleged negative declaration was never issued, or that it's adoption was arbitrary and capricious. Regardless, the respondents' contention that the GEIS process was voluntary is without merit. However, the Court notes that the SEQRA process was continued.

The respondents' second and sixth affirmative defenses (objections in point of law) respectively contend that the petitioners' claims regarding the failure of the Town 1) to coordinate with other involved agencies pursuant to 6 NYCRR 617.6 [b], and 2) to consider the impacts of the proposed action on, and its consistency with, the Suffolk County comprehensive management plan for the special groundwater protection area program pursuant to 6 NYCRR 617.9 (b) (iii) (h), must be dismissed because they were not raised during the administrative hearings held during the GEIS process. It is well settled that the doctrine of exhaustion of administrative remedies does not foreclose judicial review of SEQRA issues (***Matter of Jackson v New York State Urban Dev. Corp.***, 67 NY2d 400, 503 NYS2d 298 [1986]). Instead, a petitioner's failure to raise issues at the administrative level is merely a factor to be considered in determining whether the lead agency acted reasonably in failing to consider the issues in its environmental review of the proposed action (***Matter of Jackson v New York State Urban Dev. Corp.***, *id.*). Accordingly, the Court will consider the issues raised by the respondents' in the context of its determination of the allegations set forth in the petition.

The respondents' third, fourth and seventh affirmative defenses (objections in point of law) respectively contend that 1) the Town's consideration of "DNL" noise data was lawful and appropriate, 2) the FGEIS did not violate any SEQRA requirement to consider a reasonable range of alternatives, and 3) that there is no basis for the award of injunctive relief to the petitioners' herein. Said contentions go to the ultimate findings of the Court in this special proceeding, and do not establish the respondents' entitlement as a matter of law to a determination in their favor regarding of any of the claims raised in the petition.

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[2] §128-3-20 Additional requirements for certain East Hampton Airport actions

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B. In addition to the above, the following actions shall also be Type I actions in the Town of East Hampton:

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(9) Any adoption of an East Hampton Airport master plan or master plan update, East Hampton Airport layout plan or plan update or East Hampton Airport FAA five-year capital improvement plan or plan update.

(10) Any project to implement any kind of relocation of Daniels Hole Road adjacent to the East Hampton Airport.

Finally, the respondents' fifth affirmative defense (objection in point of law) contends, among other things, that a GEIS is specifically authorized by SEQRA regulations to "be broader, and more general than site or project specific EISs (6 NYCRR 617.10 [a]). The respondents argue that, for example, the proposal for a "Fuel Farm" within the MPU does not amount to "segmentation,"[3] and only requires additional SEQRA review upon a determination to implement the project. However, the general proposition does not settle the question whether the FGEIS complies with the procedural requirements under SEQRA. Accordingly, the respondents contention that it did not unlawfully "segment" SEQRA review is subject to review herein, and it does not establish the respondents' entitlement as a matter of law to a determination in their favor regarding the claims raised in the petition.

1) SEQRA

"The law is well settled that judicial review of a SEQRA determination is limited to determining whether the challenged determination was affected by an error of law or was arbitrary and capricious, an abuse of discretion, or was the product of a violation of lawful procedure" (***Village of Tarrytown v Planning Board of Vil. of Sleepy Hollow***, 292 AD2d 617, 619, 741 NYS2d 44 [2d Dept 2002], *lv denied* 98 NY2d 609, 746 NYS2d 693 [2002]). In addition, there must be a literal compliance, not substantial compliance, with SEQRA environmental review procedures and regulations (***Aldrich v Pattison,*** 107 AD2d 258, 486 NYS2d 23 [2d Dept 1985]). Courts initially review the agency procedures to determine whether they were lawful. Second, courts may review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination (***Matter of Jackson v New York State Urban Dev. Corp.***, *supra*).

In adopting the MPU, the Town has committed itself to Alternative 2, which provides for the closing of Runway 16-34 and the renovation and re-opening of Runway 4-22. Runway 4-22 has not been used for the landing of aircraft for some time, it has fallen into disrepair, and its use has been as a taxiway for aircraft leaving from or returning to the airport apron. Alternative 2 also includes, among other things, the following proposed actions: installation of an All Weather Observation Station (AWOS), installation of a Seasonal Control Tower, creation of a second Fuel Farm with capacity to hold 12,000 gallons of Jet A fuel, the relocation of Daniel Hole Road which abuts the Airport, and various improvements to the taxiway system serving the Airport.

Petitioners' contentions regarding the alleged violations of SEQRA include claims, *inter alia*, that the Town: a) failed to properly consider the noise impacts of the proposed actions; b) did not comply with 6 NYCRR 617.9 [b] [5]; c) improperly "segmented" its review by failing to consider the possibility of asserting its proprietary rights as owner of the Airport; and d) failed to take a "hard look" at the environmental and socio-economic factors involved in the adoption of the MPU.

a) Failed to Properly Consider Noise Impacts

Federal regulation of aircraft noise is generally governed by the Aviation Safety and Noise

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[3] The issue of segmentation, prohibited under SEQRA, is defined and discussed below.

Abatement Act (ASNAA) of 1979 (49 USC § 47501 - 47510) and the Airport Noise and Capacity Act (ANCA) of 1990 (49 USC § 47521 - 47533). In summary, the petitioners contend that the Town has irrationally applied the FAA standard for determining acceptable noise levels at airports in its FGEIS. The FAA utilizes the Yearly Day Night Average Sound Level (DNL) to measure the exposure of individuals to noise from the operation of an airport (14 CFR 150.9 [b]). The strength of a noise measured at its source is recorded in decibels (dB) which a logarithmic ratio of the pressure level of a sound to a reference point set approximately at the range of normal human hearing. The DNL measurement is a noise averaging standard which measures noise events in decibels and then takes into account the length of time that the noise persists. A recording of DNL 65 indicates an average of 65 dB over a period of one year.

The Town has a local noise ordinance based on a single noise event (SNE) standard which prohibits any person from emitting a noise which exceeds 65 dB from 7:00 a.m. to 7:00 p.m., or 50 dB from 7:00 p.m. to 7:00 a.m. (Town Code 185-3). However, the Town Code specifically exempts aircraft from this prohibition, providing in pertinent part:

> § 185-4 Exceptions
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> The provisions of § 185-3 shall apply to the use or occupancy of any lot or structure thereon and to noise produced thereby except the following:
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> ***
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> L. All noises coming from the normal operations of properly equipped aircraft, not including scale model aircraft.

Nonetheless, the Town Code provides that certain environmental impact statements must consider single noise event impacts. Town Code 128-2-40, entitled "Additional requirements for certain East Hampton Airport actions," provides in pertinent part:

> C. If the Town Board as lead agency determines that a proposed action listed in § 128-3-20B(9) or (10) may be environmentally significant and that an EIS must be prepared, the lead agency shall, in addition to the requirements set forth in § 128-2-30 above, require the DEIS to include:
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> (1) A cost/benefit analysis of the proposed action; and
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> (2) A study of actual and projected noise impacts using methodology that takes into account single-event noise and seasonal and weekend concentration of noise impacts.

The petitioners contend that the FGEIS is fatally flawed in that its analysis of noise impacts is based on the DNL standard, which ignores the numerous noise complaints of the residents in the Towns of East Hampton and Southampton. The petitioners further contend, among other things, that the re-opening of Runway 4-22 will result in a net increase in noise compared to the continued use of Runway 16-34.

It is clear that the FGEIS has adequately considered the issue of noise impacts, and the issue of runway choice. An extensive review of the record, and specifically the FGEIS and the documents

incorporated therein, reveals that the Town has adequately reviewed and analyzed the impact of noise considering the DNL standard while taking into account single event noise data. By way of example only, the court notes the following: that an analysis of existing Airport noise and noise complaints is set forth (DAMPR, pages 205-225; DGEIS, pages 20-34); that single noise event data was collected at seven sites (DAMPR, Appendix C, consisting of 79 pages); that an analysis of the noise impact of the proposed plan is set forth (DGEIS, pages 62-67; FGEIS, pages 98-108); and that a discussion of noise mitigation issues is set forth (DGEIS, page 34, pages 77-79; FGEIS, page 59, pages 119-125).

In addition, the Court finds that the use of the DNL standard was not irrational. In that light, a discussion of the Town's use of the DNL standard in analyzing noise impacts at the Airport is warranted. As discussed above, the standard is set forth in the regulations issued pursuant to ASNAA and ANCA. It is obvious that a standard based on an averaging of noise, rather than a loud single event, will permit significantly more noise that people will find annoying. ASNAA is implemented through regulations found at title 14 of the Code of Federal Regulations, section 150 (Part 150) (14 CFR § 150). Part 150 establishes a single system of measuring airport noise and a single system for determining the exposure of individuals to airport noise (14 CFR § 150.9), and Appendix A to Part 150 establishes a uniform methodology for developing and preparing airport noise exposure maps. ANCA imposes limitations on the ability of airport operators to impose noise restrictions and limitations on access for Stage 2 and Stage 3 aircraft. FAA regulations classify aircraft based on their noise characteristics, designating each as "Stage 1," "Stage 2," or "Stage 3." (14 CFR § 36.1 [(f]). Stage 1 aircraft are the noisiest and Stage 3 aircraft are the quietest of the three types of aircraft. At present, the majority of noise complaints regarding the Airport concern helicopter traffic to and from the Airport. It is generally accepted that all helicopters, designated as Stage 2 aircraft, are subject to ANCA. Congress enacted ANCA for the purpose of establishing a national noise policy (49 USC §§ 47521-47533). In light of that fact, and the FAA's vigorous oversight regarding noise impacts, the Town's use of the DNL standard was not irrational.

b) Failed to Comply with 6 NYCRR 617.9 (b) (5)

The petitioners next contention relating to SEQRA involves alleged violations of 6 NYCRR 617.9 (b) (5). That section sets forth the elements that should be contained in an environmental impact statement. A review of the petition and its supporting papers reveals that petitioners have alleged violations of three separate requirements of Section 617.9 (b) (5) in their allegations. The first, is that the Town failed to consider the cumulative, short-term and long-term impacts of the MPU (6 NYCRR 617.9 (b) (5) (iii) (a). The second, is that the Town failed to describe mitigation measures regarding the adoption of the MPU (6 NYCRR 617.9 (b) (5) (iv). The third, is that the Town failed to describe and evaluate the range of reasonable alternatives to the actions taken in the MPU (6 NYCRR 617.9 (b) (5) (v).

The record reveals that through its studies and reviews the Town adequately considered project alternatives and reasonably related long term, short term and cumulative effects, including other simultaneous or subsequent actions contained in the Town's MPU. When evaluating the substantive sufficiency of an agency's EIS it is not necessary that every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before it will satisfy the substantive requirements of SEQRA (***Horn v International Business Machines Corp.***, 110 AD2d 87, 493 NYS2d 184 [1985] *app denied* 67 NY2d 602, 499 NYS2d 1027 [1986]). The substantive sufficiency of an EIS will be upheld if it

contains consideration and analysis of project alternatives and reasonably related long term, short term and cumulative effects, including other simultaneous or subsequent actions contained in its long term project (***Matter of Farrington Close Condominium Bd. of Mgrs. v Village of Southampton***, 205 AD2d 623, 613 NYS2d 257 [2d Dept 1994]; ***Bronfman v Flacke***, 127 AD2d 833, 512 NYS2d 225 [2d Dept 1987] *app denied* 70 NY2d 601, 518 NYS2d 1023 [1987]).

An extensive review of the record, and specifically the FSGEIS and the documents incorporated therein, reveals that the Town has adequately reviewed and analyzed the issues and items listed in 6 NYCRR 617.9 (b) (5) (iii) through (v). By way of example only, the court notes the following: that the significant adverse environmental impacts are addressed (DGEIS, pages 62 to 74; FGEIS, pages 98 to 116); that mitigation is addressed (DGEIS, pages 77 to 80; FGEIS, pages 119 to 126); and reasonable alternatives are addressed (DAMPR, pages 234 to 257; DGEIS, pages 52 to 60; FSGEIS, pages 84 to 97). The court finds that the Town has complied with the requirements of SEQRA relative to the issues raised by the petitioners.

c) Segmentation

The petitioners also contend that, in reviewing the MPU and ALP in the DSGEIS and FSGEIS, the Town improperly "segmented" its review which is proscribed by SEQRA and its implementing regulations at 6 NYCRR Part 617. Segmentation is defined as "the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance (6 NYCRR § 617.2 [ag]).

Segmentation can be found in two contexts: 1) where a proposed action has significant environmental impact requiring the preparation of an EIS but the agency attempts to divide it into smaller projects that do not require an EIS; and 2) where a proposed action entails different projects at different times and the agency excludes one project in order to evade SEQRA review and the preparation of a separate EIS (*see* Gerrard, Ruzow &Weinberg, *Environmental Impact Review in New York*; § 5.02 [1], Matthew Bender & Company [1993]; *see also* ***Matter of Long Is. Pine Barrens Socy. v Planning Bd. Of Town of Brookhaven,*** 204 AD2d 548, 611 NYS2d 917 [2d Dept 1994]). Here, the petitioners claim that segmentation has occurred because the Town failed 1) to submit DAMPR to environmental review, effectively segmenting that study from that of the MPU and ALP, and 2) to review the issue of FAA grants and the possibility of establishing the Town's proprietary rights in the Airport.

The petitioners place a great deal of importance on the issue of FAA grants. Part of the reason for the preparation of an ALP is that, once filed with the FAA, it enables an airport to obtain subsidies known as FAA improvement grants. As a condition to receiving a grant, federal law requires the recipient to enter into a grant agreement with the FAA which is binding for 20 years. The agreement contains standard covenants, known as "grant assurances," under which a municipal owner cedes to the FAA proprietary powers that it would otherwise have to regulate airport access for the purpose of limiting noise. It has been held that a municipal airport owner that is not subject to FAA grant assurances retains the proprietary power to limit the days and hours of airport operation, to limit the number of aircraft using the airport, and to exclude types of aircraft based on the amount of noise they generate (***National***

Helicopter Corp. of America v The City of New York, 137 F2d 81 [2d Cir 1998]). The current grant assurances for the Airport expire on December 31, 2014.

Segmentation is prohibited based on two perceived dangers neither of which is present here. The first is that, in considering related actions separately, a determination based on the review of the prior action will be determinative of the latter. The second is that a project that would have a significant effect on the environment is split up into parts that, individually, would not have as significant an environmental impact as the entire project, or would eliminate the need for environmental review (***Matter of Forman v Trustees of State Univ. of N.Y.***, 303 AD2d 1019, 757 NYS2d 180 [4th Dept 2003]). The record reveals that DAMPR was a planning and study document which was used by the Town to establish the types of action to be considered. Such planning studies do not require a review under SEQRA (617.5 [c] [21]). In addition, the decision whether to accept FAA grants does not require a review under SEQRA, as such a determination is not an "action" as defined by 6 NYCRR 617.2 [b] [2] (***Matter of Committee to Stop Airport Expansion v Town Bd. of Town of E. Hampton***, 2 AD3d 850, 769 NYS2d 400 [2d Dept 2003]). It is important to note that the adoption of the MPU and filing of the ALP do not require the Town to accept FAA grants, and the current grant assurances limit the Town's present options regarding control of the Airport. The Court finds that the Town did not improperly segment its review of the proposed action.

d) Failure to take a "Hard Look"

The petitioners' next contention is that the Town failed to take a "hard look" at the potential adverse environmental impact in adopting the MPU and ALP. Although directed at the issue of noise impacts, a good deal of the petition is a challenge to the procedures which encompassed adoption of the MPU. Both of those issues are resolved by the Court's decision herein. However, in addition to those claims, the petitioners urge that the Town's environmental impact statements are substantively deficient because they do not consider other environmental issues as well as the socio-economic impact of the proposed actions under the MPU and ALP. In summary, the petitioners allege that the Town failed to take the requisite "hard look," in that it 1) did not consider an alternative master plan that the petitioners had proposed during the update process, 2) did not consider undertaking a Part 161 noise study, and 3) approved construction of a second fuel farm and the clearing of approximately ten acres of wooded lands in the special groundwater protection area without sufficient analysis of the environmental impact.

The decisions an agency makes pursuant to SEQRA may not be second-guessed by the courts, and "can be annulled only if arbitrary, capricious or unsupported by substantial evidence" (***Matter of Jackson v New York State Urban Dev. Corp.***, 67 NY2d 400, 417, 503 NYS2d 298 [1986]; ***Aldrich v Pattison***, *supra*). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts (***Matter of County of Monroe v Kalajian***, 83 NY2d 185, 608 NYS2d 942 [1994]). Substantial evidence has been defined as "being such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact or the kind of evidence on which responsible persons are accustomed to rely in serious affairs" (***Matter of WEOK Broadcasting Corp. v Planning Bd. of the Town of Lloyd***, 79 NY2d 373, 383, 583 NYS2d 170 [1992]).

In assessing an agency's compliance with the substantive mandates of SEQRA, the courts review the final EIS to determine whether the agency identified the relevant areas of environmental concern, took

a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination (***Akpan v Koch***, 75 NY2d 561, 570, 555 NYS2d 16 [1990]; ***Aldrich v Pattison***, *supra* at 265). To satisfy the "hard look" test, the discussion of alternatives must be "at a level of detail sufficient to permit a comparative assessment of the alternatives discussed" (***Aldrich v Pattison***, *supra* at 275).

Here, it is clear that the Town adequately analyzed and addressed the environmental impacts of constructing a second fuel farm within the special groundwater protection area. The SEQRA regulations at 6 NYCRR 617.9 (b) (5) (iii) (h), provide that an EIS must contain an evaluation of the environmental impact at a level that reflects their severity and probability of occurrence "if the proposed action is in or involves resources in Nassau or Suffolk Counties, impacts of the proposed action on, and its consistency with, the comprehensive management plan for the special groundwater protection area program as implemented pursuant to article 55 or any plan subsequently ratified and adopted pursuant to article 57 of the Environmental Conservation Law for Nassau and Suffolk counties."

The Town's environmental impact statements acknowledge that "[g]roundwater protection is a significant issue for the East Hampton community ... the Airport [is] within a Priority Groundwater Protection Area ... within the 5-foot glacial aquifer contour ... it is important that the quality of this water is maintained and that the aquifer is adequately recharged to maintain water supply" (FGEIS, pages 71 to 73). The DAMPR contains a section regarding the Fuel Farm at page 185, which states that "The primary compliance issues ... would be to meet environmental standards for this type of system. The major issues would involve proper detection systems and the necessary secondary containment in the case of spills." The DGEIS and FGEIS include an evaluation of the impact of the enumerated actions upon the special groundwater protection area, noting that a second fuel farm "reduces fuel consumption by trucks, and speeds fueling operations" (DGEIS, page 59; FGEIS page 95). An evaluation of the water related impacts of the action contains the statement that "As necessary, drainage systems will incorporate oil/water separators to prevent petroleum products from entering the groundwater" (DGEIS, page 69; FGEIS page 111). Most importantly, the FGEIS contains the express statement that the design, development and operation of the proposed Fuel Farm will be subject to review by Town, County and State regulators (DGEIS, page 62; FGEIS, page 97).

In reviewing the content of a FEIS, SEQRA is to be construed in light of the rule of reason (*see* ***Matter of Town of Henrietta v Department of Envtl. Conservation***, 76 AD2d 215, 430 NYS2d 440 [4th Dept 1980). The Court takes note that this action involves the challenge to a municipal airport plan. By its nature the proposed action herein is intended to be general and to guide future proposed actions or requested actions after careful review of the subject individual project (6 NYCRR 617.15 [d]). The Finding Statement adopting the FGEIS dated September 2, 2010 at page 8 indicates that the Town will rely on "Improved fueling equipment as well as containment structures which would be required to prevent spillage in the event of a fuel leak [to] substantially reduce the risk of installing an additional fueling facility on airport property ..." In addition, considering the petitioners' failure to raise this issue at the administrative level, the lead agency acted reasonably in not considering the issue in more detail in its environmental review of the proposed action (***Matter of Jackson v New York State Urban Dev. Corp.***, *supra*). The court finds that the FGEIS adequately addressed this issue in a degree of detail which is "appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts" (ECL 8-0109 [2]). Moreover, the Town has not violated its obligation to coordinate its

review of the relevant actions within the special groundwater protection area with the relevant state and/or local agencies (6 NYCRR 617.6 [b] [3]).

The Court finds that the petitioners' remaining allegations including, but not limited to, the allegations that the Town failed to take a hard look at the clearing of trees, noise impacts, or the change in use of the Airport, are without merit. In addition, there is no requirement that a FGEIS consider every potential alternative, including outside recommendations regarding the airport layout or the possible benefits of a Part 161 noise study. Although petitioners may not be satisfied with those determinations, they have not produced any competent evidence to controvert the analyses prepared by the Town, and thus, have not established that the Town failed to take a "hard look" at the impacts or lacked "reasoned elaboration" for its analyses and findings (*see* ***Matter of Eadie v Town Bd. of the Town of N. Greenbush***, 7 NY3d 306, 318, 821 NYS2d 142 [2006]; ***Matter of Jackson v New York State Urban Dev. Corp.***, *supra* at 417).

Accordingly, the Court denies the petition in its entirety.

The Court next turns to the petitioners' motions (# 002 and # 003), both of which were brought on by order to show cause. The earlier motion (# 002) sought a preliminary injunction and temporary restraining order enjoining the Town from signing or entering into any grant agreement with the FAA, or accepting any grant or funding from the FAA, prior to a decision in this special proceeding. By order dated December 11, 2011, this Court (Jones, J.) declined to grant a temporary restraining order in this matter, and the issuance of a preliminary injunction is now before the Court. The latter motion (# 003) seeks leave to renew the petitioners' prior motion for a temporary restraining order on the grounds that a subsequent application by the Town for grant funding regarding an airport fence project will render judicial review and the relief sought in the petitioners' special proceeding "moot and/or ineffectual." In light of the Court's decision in this special proceeding, the relief sought in the subject motions is rendered academic, and the motions are denied.

Submit order and judgment on notice.

J.S.C.