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September 14, 2018

Federal Aviation Administration  
Office of the Chief Counsel  
800 Independence Avenue SW  
Washington, DC 20591  
*Attn: Charles M. Tripp Jr., Chief Counsel*

Dear Mr. Tripp:

This firm represent the Incorporated Village of Centre Island, Nassau County, New York ("the Village"). The Village requests points of interpretation on several aspects of the Federal Aviation Administration guidance and regulation in order that they may determine the feasibility of including certain restrictions in drafting a local law regarding Prior Permission Required (PPR) heliports within the Village.

## Point 1:

FAA determinations under 14 CFR part 150 state that, the responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. The Village's concern is with those areas of responsibility not specifically articulated in FAA guidance and regulation as resting with local authorities. We have not been able to find any reference in FAA statute or guidance that directly states the Village may not limit helicopter takeoff and landing frequency, time of day of landing / takeoff, flight routes, flight levels, and aircraft size. But, there appears to be several legal cases in which the FAA has moved to establish just such restrictions on local authority. Does the FAA consider local regulation which purports to limit any of the following: helicopter takeoff and landing frequency, time of day of landing / takeoff, flight routes, flight levels, and aircraft size, as constituting an attempt to control aviation "service," an area of regulation that is preempted by federal law?

## Point 2:

The FAA has set 65dBA as the threshold of residential land use compatibility under the Aviation Safety and Noise Abatement Act. The references all appear to relate to commercial airports. Does this also apply to PPR heliports? If that is the case would the FAA approve a permit for the establishment of a PPR in the Village which would cause a level at or above 65dBA on a neighboring residential area?

Point 3:

Under FAA VOLUME 8 GENERAL TECHNICAL FUNCTIONS, CHAPTER 3 MISCELLANEOUS TECHNICAL FUNCTIONS, Section 3 Evaluation and Surveillance of Heliports. The FAA provides definitions of three major types of Heliports. The Village has been unable to find any reference in the FAA regulations and guidance about helicopter landings on areas not designated as heliports. Does specific guidance related to non-heliport landings and take-offs exist? If not, how is the lack of such guidance to be interpreted by the Village? Are any and all take-offs and landings permitted regardless of the existence of a heliport? Are there indeed restrictions on non-heliport landings, and if so what are they?

Point 4:

Under FAA Flight Advisories: Flight Advisories: Parks Landing at National Parks, Monuments, Preserves, Wildlife Refuges and at State Refuges, Critical Habitat Areas, and Sanctuaries, Regulations Regarding Flights Over Charted National Park Service Areas, U.S. Fish and Wildlife Service Areas, and U.S. Forest Service Areas, Paragraphs 2 and 3 state:

All aircraft are requested to maintain a minimum altitude of 2,000 feet above the surface of lands and waters administered by the NPS, FWS, or USFS Wilderness areas. FAA Advisory Circular (AC 91-36C), "Visual Flight Rules (VFR) Flight Near Noise Sensitive Areas," defines the surface as: the highest terrain within 2,000 feet laterally of the route of flight, or the uppermost rim of a canyon or valley.

Pilots are warned that it is unlawful at any altitude to use an aircraft to harass any wildlife (16 USC 742j-1; 50 CFR Part 19). Harass is defined to mean disturb, worry, molest, rally, concentrate, harr, chase, drive, herd or torment.

The Village of Centre Island is on a peninsula which is encompassed on 3 sides by the Oyster Bay National Wildlife Refuge. Would the FAA approve permission for a PPR flight path that clearly requires flying through the reserve at an altitude of much lower than 2000 feet?

The Incorporated Village of Centre Island appreciates the opportunity to request clarification on these points critical to making a determination on the composition of the proposed local law.

Should you have any questions, please do not hesitate to contact me at 516-676-4600 or [jritter@humeswagner.com](mailto:jritter@humeswagner.com).

Sincerely,



John Ritter, Jr.

JR:JR:jaz

pc: Mayor and Board of Trustees  
Village Clerk



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

Office of the Chief Counsel

800 Independence Avenue, SW  
Washington, DC 20591

November 28, 2018

John Ritter, Jr., Esq.  
Humes & Wagner, LLP  
147 Forest Avenue  
P.O. Box 546  
Locust Valley, NY 11560

**Re: Prior Permission Required Heliport Interpretation for the Incorporated Village  
of Centre Island, Nassau County, New York**

Dear Mr. Ritter, Jr.:

The Federal Aviation Administration (FAA) is in receipt of your letter dated September 14, 2018 concerning the operation of Prior Permission Required heliports located in the Incorporated Village of Centre Island, New York (Village). In your letter, you pose several questions that relate to aspects of airport and airspace regulation, including restricting operations at heliports via local laws or ordinances, noise impacts resulting from aircraft operations, and conducting off-airport operations. Each point will be addressed individually. Because your inquiry did not contain specific facts to respond to, we are providing general answers to help inform you of our regulations and areas of responsibility.

**1. Restricting Operations at Private Airports (Point #1)**

In your first question, you ask to what extent the FAA considers local laws and ordinances that limit aircraft operations at airports as being preempted by federal law. The degree that an airport is regulated under federal law varies greatly depending on whether that airport is intended for public or private use. A public-use airport is used or intended to be used for public purposes; this can include privately-owned airports intended for public use. (49 U.S.C. §§ 47102(20)-(21)). Public-use airports are regulated by the FAA in terms of access to the public, aircraft operations, design, noise regulations, and in other regards. In contrast, private-use airports are not subject to these same regulations.

Your letter specifically references Prior Permission Required heliports located within the limits of the Village. These heliports are defined in FAA Advisory Circular No. 150/5390-2B as heliports developed for the exclusive use of the owner or persons authorized by the owner. The extent to which a local ordinance regulating Prior Permission Required heliports is preempted by federal law is

dependent on specific facts and circumstances, including the language of the specific local ordinance. FAA declines to provide an advisory opinion on preemption. However, generally the FAA has less interest in local regulation of these types of heliports.

## 2. Noise Analysis, Compatibility, and the 65dBA Threshold (Point #2)

In your second question, you inquire about the applicability of regulations concerning the impact of aircraft noise on certain types of land. The 65 dB Yearly Day-Night Average Sound Level (DNL) threshold referenced in your letter is used by the FAA to determine potentially significant noise impacts from aircraft, as well as to make a determination of land-use compatibility and aircraft noise. This noise analysis is performed pursuant to the FAA's obligations under the National Environmental Protection Act (NEPA) and applies to actions such as permitting, developing noise exposure maps and airport noise compatibility programs, and other approvals by the FAA.

As discussed above, private airfields such as Prior Permission Required heliports are not subject to regulatory or permitting actions by the FAA and do not trigger the FAA's obligations under NEPA. Please note, however, that noise is often the predominant aviation environmental concern of the public. For more information on aircraft and airport noise, please visit - [https://www.faa.gov/about/office org/headquarters offices/apl/noise emissions/airport aircraft noise issues/](https://www.faa.gov/about/office_org/headquarters_offices/apl/noise_emissions/airport_aircraft_noise_issues/).

## 3. Regulations Concerning Off-Airport Operations (Point #3)

Your third question, asks about how the FAA regulates takeoffs and landings off-airport areas. The FAA does not prohibit off-airport operations (takeoffs and landings), however, it is incumbent on the pilot-in-command of the aircraft to adhere to local laws and ordinances and to ensure they have permission from the landowner to operate from the landowner's property. Applicable rules and regulations governing the safe operation of aircraft can be found in 14 C.F.R. part 91.

## 4. Air Traffic Deviations (Point #4)

In your fourth question, you ask if the FAA would approve a Prior Permission Required flight path that requires aircraft transition through a National Wildlife Refuge at below 2,000 feet Above Ground Level. The FAA does not take action to approve or disapprove flight paths for aircraft operating to and from Prior Permission Required heliports and under their own recognizance during Visual Flight Rule conditions.

Please note that FAA Advisory Circular No. 91-36D outlines voluntary practices for aircraft operating in the vicinity of, or through a noise-sensitive area, such as a National Wildlife Refuge. FAA Advisory Circular No. 91-36D states in relevant part that departures from or arrivals to an airport, climb after take-off, and descent for landing should be made so as to avoid prolonged flight at low altitudes near noise-sensitive areas, but does not mandate any particular action.

If I can be of further assistance, please contact Mary McCarthy, at 718-553-3259.

Sincerely,

A handwritten signature in cursive script that reads "Charles M. Trippe, Jr.".

Charles M. Trippe, Jr.  
Chief Counsel