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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

NOV 1 3 2007

Steven M. Taber
Taber Law Group, P.C.
P.O. Box 60036
Irvine, CA 92602

Dear Mr. Taber:

This is in response to your February 23 request for a legal opinion concerning the New York Helicopter Sightseeing Plan, Letter of Agreement and the regulations codified in Title 14 of the Code of Federal Regulations (14 CFR) Part 93, Subpart W. Specifically, you contend that the provisions in the Letter of Agreement conflict with the regulations in Subpart W that govern aircraft operations within the New York Hudson River Exclusion Special Flight Rules Area (SFRA).

As you are aware, the SFRA overlies the Hudson River and is below the Class B airspace area. The Letter of Agreement that you reference addresses operations that are in the Class B airspace, not operations that are outside the Class B airspace and within the SFRA. Pilots operating within the SFRA may transition into the Class B airspace and conversely may transition from the Class B airspace into the SFRA if they choose. Neither the Letter of Agreement nor the provisions of Subpart W restrict or limit a pilot's ability to fly in the Class B or SFRA airspace, provided that the pilot follows the established rules appropriate for either airspace area. The purpose of the Letter of Agreement was to establish procedures for affected operators that would facilitate the transition through the SFRA to Class B airspace. Having operators within the Class B airspace puts them at a higher altitude, which is preferable for noise abatement and which you indicate is of interest to you.

You state that the Letter of Agreement allows "local operations in the Special Flight Rules Area up to and including an altitude of 2,000 feet in what appears to be a clear violation of 14 CFR part 93, Subpart W." Please be advised that aircraft operating in accordance with the terms of the Agreement and at 2,000 above ground level (AGL) are operating within the Class B airspace and not within the SFRA, as designated by Subpart W.

You also state that that the requirement under 14 CFR § 93.352(a) for pilots to self-announce at the charted mandatory reporting points on the Common Traffic Advisory Frequency depicted on the New York Terminal Area Chart or the New York Helicopter Route Chart conflicts with the provision in the Letter of Agreement that pilots must obtain a clearance from air traffic control (ATC) prior to entering, departing or transitioning the LaGuardia and Newark Class B airspace areas.

The Letter of Agreement indicates that in making such requests, pilots would have to use two radios to self-announce and request clearance to enter the Class B airspace. Operators that have agreed to the use of these procedures have two radios and the pilots communicate on both.

You further argue that § 93.352(b) requires northbound flights over the Hudson River to fly along the shoreline but that the Letter of Agreement requires northbound flights to fly along the center of the Hudson River. Again, please be advised that § 93.352(b) only applies to aircraft operating within the SFRA. For aircraft operating above the ceiling of the SFRA and within the Class B airspace, operators are to fly along the center of the river. These operators are operating within Class B airspace and are under the control of LaGuardia or Newark ATC. It is significant to note that helicopter tour operators that conduct operations pursuant to the terms in the Letter of Agreement undergo training and are adequately familiar with the separate requirements depicted in the Letter of Agreement and Subpart W.

Lastly, you contend that the Letter of Agreement conflicts with Advisory Circular (AC) No. 91.36D, "Visual Flight Rules (VFR) Flight Near Noise-Sensitive Areas." The purpose of this AC is to "encourage[] pilots making VFR flights near noise-sensitive areas to fly at altitudes higher than the minimum permitted by regulation and on flight paths that will reduce aircraft noise in such areas." AC, ¶ 1. You state that the AC indicates that "excessive aircraft noise" is "particularly undesirable in areas where it interferes with normal activities ... including residential, educational, health, and religious structures and sites, and parks, recreational areas...." You further cite that AC as stating, "Pilots operating noise producing aircraft ... over noise sensitive areas should make every effort to fly not less than 2,000 feet above ground level (AGL), weather permitting...." You argue that the routes indicated in the Letter of Agreement allow air tour operators to fly over residential, educational, health, and religious structure and sites, and parks and recreational areas at less than 2,000 feet AGL. While acknowledging that AC is advisory only, you allege that because the city of New York's Downtown Manhattan/Wall St. Heliport is a federally-obligated airport, the city of New York (as airport owner and operator) and the FAA are required to enforce compliance with the AC.

We do not agree with your assessment. As indicated in the Letter of Agreement, the Tour Alpha and Alpha 1 routes are entirely over water. The Tour Bravo and Bravo 1 routes are largely over water and only go over land to circle Yankee Stadium before returning back over the Hudson River. The above tour routes depict an altitude of 2,000 feet AGL, except for departure and landing. There is a limited period of time that aircraft circling Yankee Stadium on Tour Bravo and Bravo 1 may need to descend to 700 feet, as noted on the chart. If aircraft are departing Runway 31 at LaGuardia, helicopters on the Tour Bravo and Bravo 1 route need to descend to 700 feet AGL in this area to remain clear of and accommodate those departures.

The AC, which applies to pilots and not airports, states that "[t]his advisory does not apply where it would conflict with Federal Aviation Regulations, air traffic control clearances or instructions, or where an altitude of less than 2,000 feet AGL is considered necessary by a pilot to operate safely." Helicopter sightseeing operations conducted pursuant to the Letter of Agreement are not inconsistent with the AC.

The FAA has a history of working with the affected operators, communities and the City of New York to ensure the safe operation of aircraft while addressing the environmental impacts associated with those operations in this complex airspace. I trust that the above clarifies your questions concerning the rules applicable to the SFRA and the Letter of Agreement.

This response was prepared by Lorelei Peter and has been coordinated with the Air Traffic Organization, the Flight Standards Service, and the Airports and Environmental Law Branch.

Sincerely,

Rebecca MacPherson
Assistant Chief Counsel for International Law,
Legislation, and Regulations Division, AGC-200