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October 6, 2021

East Hampton Town Board
c/o Carole Brennan, Town Clerk
159 Pantigo Road
East Hampton, New York 11937

Re: Montauk Airport

Dear East Hampton Town Board:

As requested, I am forwarding a memorandum from Cooley LLP regarding Prior Permission Required ("PPR") at Montauk Airport. Nothing in this memorandum should be construed as a waiver of attorney-client privilege with respect to legal matters for which we have been requested to provide you with advice.

To be clear, the HMMH draft diversion study does not rely on or make assumptions regarding the discretionary exercise of PPR authority by the private airport sponsor at Montauk Airport. In other words, the study assumes that any request for permission to use Montauk Airport will be granted, provided the proposed operation complies with aviation safety and regulatory requirements.

Montauk Airport has considerable discretion and authority to require prior permission to use the airport. To the extent stakeholders are concerned about diversion to Montauk Airport as a result of closure or modification of the East Hampton Airport, those concerns can be addressed directly with the ownership of Montauk Airport, in combination with the Town Board's careful efforts to address diversion more generally on behalf of all Town residents. Additionally, the Town retains considerable land-use, permitting and zoning authority to regulate any proposed development or increase in commercial use at Montauk Airport. Therefore, the Town could exercise its statutory zoning and planning review authority to scrutinize all potential environmental impacts and impose appropriate mitigation, to fully protect the Montauk community.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. O'Connor".

William V. O'Connor

Attachment: Memorandum from Cooley LLP regarding Prior Permission Required ("PPR") at Montauk Airport

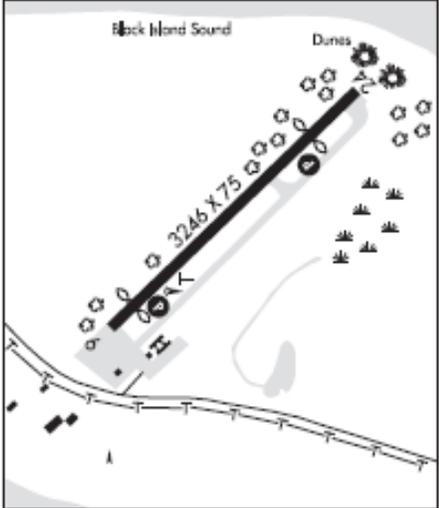
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Memorandum

To: Town of East Hampton; John Jilnicki
From: Cooley LLP
Date: October 6, 2021
Re: Prior Permission Required

Montauk Airport is a privately owned, public use airport. The most current Airport/Facility Directory published by the FAA, under the section entitled “Airport Remarks,” states that the airport is “PPR”—prior permission required—for helicopters and jet aircraft. It also, separately, requires that “helicopters call for prior permission to land on ramp area.” An excerpt of the pertinent FAA publication is set forth below:

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| <p>MONTAUK (MTP)(KMTP) 3 NE UTC-5(-4DT) N41°04.60' W71°55.23'</p> <p>7 NOTAM FILE MTP</p> <p>RWY 06-24: H3246X75 (ASPH) MIRL</p> <p>RWY 06: PAPI(P2R)—GA 3.83° TCH 45'. Thld dspcd 302'. Trees.</p> <p>RWY 24: PAPI(P2L)—GA 4.0° TCH 24'. Thld dspcd 668'. Hill. Rgt tfc.</p> <p>SERVICE: LGT ACTVT MIRL and PAPI Rwy 06-24—121.7. PAPI Rwy 06 temporarily OTS.</p> <p>NOISE: Noise abatement, Rwy 24 dep, right turn ASAP.</p> <p>AIRPORT REMARKS: Attended Apr-Oct dalgst hrs, other times irregularly. Deer on or invof arpt. Arpt clsd to helicopter ops SS-SR; PPR. Helicopters call for prior permission to land on ramp area, Arpt clsd to jet acft exc PPR call arpt manager 631-668-3738, No touch and goes Rwy 06-24. Rwy 06 18' brush along rwy edge 90' left, 30' pole 400' from thld 79' left, 31' pole 216' from rwy thld 233' right. Rwy 06, 26' tree 382' from thld 21' left, 25'-32' trees 180'-255' from thld 60'-90' left, 11'-17' trees 225'-270' from thld 4'-95' right. Rwy 24, 21' brush along rwy edge 87' rgt. Ldg fee.</p> <p>AIRPORT MANAGER: 631-668-3738</p> <p>COMMUNICATIONS: CTAF/UNICOM 122.7</p> <p>Ⓡ NEW YORK APP CON 125,975</p> <p>Ⓡ PROVIDENCE DEP CON 125,75 (Sun-Fri 1030-0530Z†, Sat 1030-0500Z‡) other times ctc</p> <p>Ⓡ BOSTON CENTER DEP CON 124.85</p> <p>CLEARANCE DELIVERY PHONE: For CD ctc Providence Apch at 401-738-8945, when Apch clsd ctc Boston ARTCC at 603-879-6859.</p> | <p>NEW YORK COPTER L-33C IAP</p> |
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According to the FAA, “Prior Permission Required (PPR) means prior permission required to have full operational use of a runway, taxiway, apron, or airport facility/service. Means of communication to the airport can be telephone and/or radio.” Put differently, PPR rules allow an airport to dictate who uses the airport, when that use occurs, and the extent of such use.

The FAA publication excerpted above states that Montauk Airport is PPR for helicopters:

AIRPORT REMARKS: Attended Apr–Oct dalgt hrs, other times irregularly. Deer on or invof arpt, Arpt clsd to helicopter ops SS–SR; PPR, Helicopters call for prior permission to land on ramp area, Arpt clsd to jet acft exc PPR call arpt manager 631–668–3738, No touch and goes Rwy 06–24. Rwy 06 18’ brush along rwy edge 90’ left, 30’ pole 400’ from thld 79’ left, 31’ pole 216’ from rwy thld 233’ right. Rwy 06, 26’ tree 382’ from thld 21’ left, 25’–32’ trees 180’–255’ from thld 60’–90’ left, 11’–17’ trees 225’–270’ from thld 4’–95’ right. Rwy 24, 21’ brush along rwy edge 87’ rgt. Ldg fee.

Similarly, Montauk Airport is PPR for jets:

AIRPORT REMARKS: Attended Apr–Oct dalgt hrs, other times irregularly. Deer on or invof arpt, Arpt clsd to helicopter ops SS–SR; PPR, Helicopters call for prior permission to land on ramp area, Arpt clsd to jet acft exc PPR call arpt manager 631–668–3738, No touch and goes Rwy 06–24. Rwy 06 18’ brush along rwy edge 90’ left, 30’ pole 400’ from thld 79’ left, 31’ pole 216’ from rwy thld 233’ right. Rwy 06, 26’ tree 382’ from thld 21’ left, 25’–32’ trees 180’–255’ from thld 60’–90’ left, 11’–17’ trees 225’–270’ from thld 4’–95’ right. Rwy 24, 21’ brush along rwy edge 87’ rgt. Ldg fee.

Additionally, Montauk Airport is PPR for helicopters wishing to land on the ramp:

AIRPORT REMARKS: Attended Apr–Oct dalgt hrs, other times irregularly. Deer on or invof arpt, Arpt clsd to helicopter ops SS–SR; PPR, Helicopters call for prior permission to land on ramp area, Arpt clsd to jet acft exc PPR call arpt manager 631–668–3738, No touch and goes Rwy 06–24. Rwy 06 18’ brush along rwy edge 90’ left, 30’ pole 400’ from thld 79’ left, 31’ pole 216’ from rwy thld 233’ right. Rwy 06, 26’ tree 382’ from thld 21’ left, 25’–32’ trees 180’–255’ from thld 60’–90’ left, 11’–17’ trees 225’–270’ from thld 4’–95’ right. Rwy 24, 21’ brush along rwy edge 87’ rgt. Ldg fee.

Taken together, this means that, according to the FAA, the airport sponsor has the ability to dictate if, when, and how helicopters use Montauk Airport; if, when, and how jet aircraft use Montauk Airport; and, assuming helicopters are permitted, whether helicopters can land at the ramp area.

We do not know when these PPR rules were put into place, nor do we know if they have ever been enforced or challenged. It is our understanding that Montauk Airport accepted federal grant money in 2008 which would oblige it to follow certain grant assurances set forth by the FAA. The exact terms of that agreement is unknown. There is a possibility that the grant assurances could impact some or all of the PPR rules. Also, to the extent Montauk Airport is required to comply with the Airport Noise and Capacity Act of 1990 (“ANCA”), it is unclear whether ANCA would impact or otherwise affect Montauk Airport’s ability to enforce its PPR rules. ANCA contains exceptions for noise or access restrictions that pre-date the time at which the Airport becomes subject to ANCA. Montauk Airport’s PPR could be grandfathered and thus enforceable, which would be consistent with the most recent FAA publication (set forth above) stating that all helicopter and jet aircraft are subject to PPR at Montauk Airport.

The recent diversion feasibility study prepared by HMMH notes that Montauk Airport operates under PPR rules, but it did not assume any operations would be denied under the PPR rules when determining the feasibility of operations. Therefore, the numbers set forth in the HMMH diversion feasibility study would only go down (*i.e.*, less operations) if Montauk Airport enforces its PPR.