

April 8, 2022

Raquel Girvin  
US Department of Transportation  
Federal Aviation Administration  
777 South Aviation Boulevard, Suite 150  
El Segundo, California 90245

RE: Tempe Entertainment District

Dear Ms. Girvin,

We understand that the FAA, in a letter to the City of Tempe dated April 1, 2022 (a copy of which is attached hereto) has raised several initial concerns about the Tempe Entertainment District. While we were surprised to first hear of these concerns through a media inquiry, rather than directly, and didn't receive a copy of your letter until almost 5:00 pm yesterday afternoon, we want to immediately address them.

To ensure that accurate and the most current information is available to all stakeholders including the FAA, this letter summarizes aviation considerations that have previously been conveyed to Sky Harbor airport, the Phoenix Aviation Advisory Board, and the City of Tempe. **We are committed to follow all FAA guidelines and seek no exemptions from them in regard to this development.**

#### **1. Residential Construction With Acoustical Treatment Compatibility Within 65 DNL Contour;**

Residential construction *with special acoustical treatment* (or more commonly described as sound insulation) is specifically described as a *compatible* land use within a 65 DNL contour if it is accompanied with local zoning approval. In Sky Harbor's Part 150 Noise Compatibility Study, this issue is directly addressed within the Noise Impact Chapter (Chapter 3 - Page 2):

"The FAA guidelines outlined in Exhibit 3A show that residential development including **standard construction** (residential construction **without** special acoustical treatment), mobile homes and transient lodging are incompatible with noise above 65 DNL. Homes of standard construction and transient lodging may be considered **compatible where local communities have determined these uses are permissible, however sound insulation measures are recommended.**"  
*(Underlined and bolded text added for emphasis)*

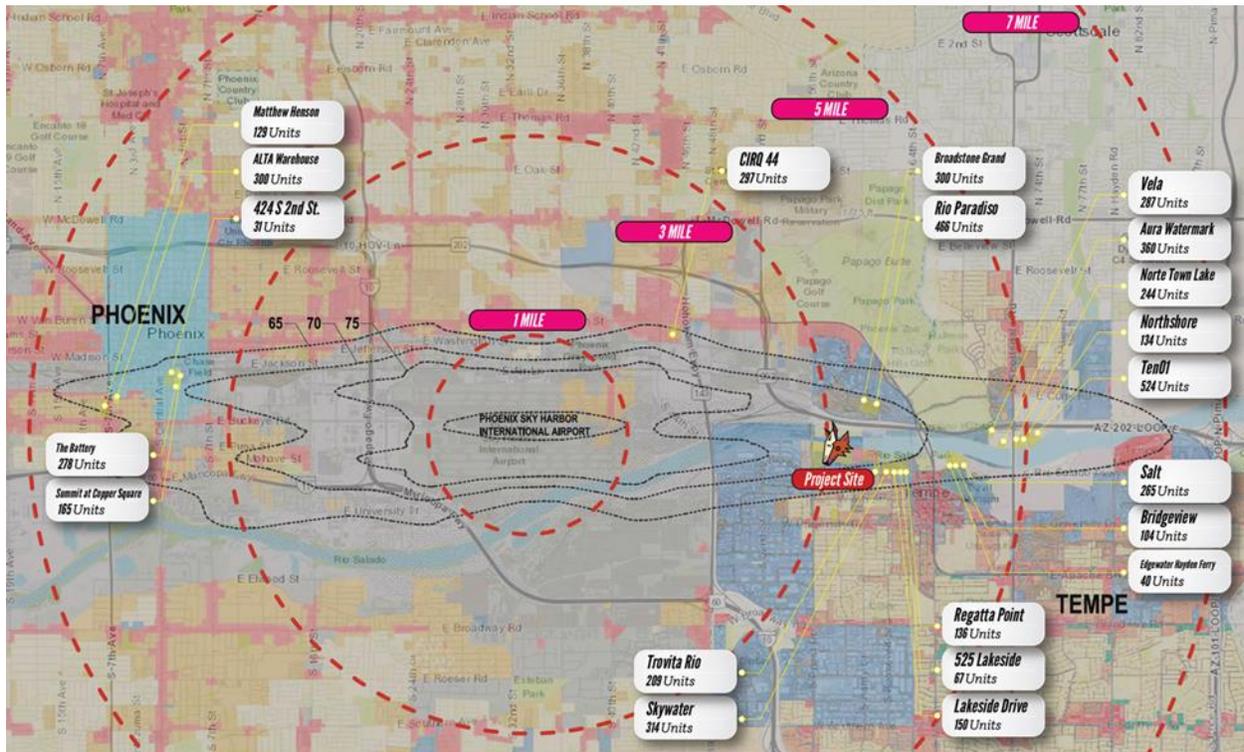
It is clear from the above that standard residential construction is an incompatible use, however residential construction development *with special acoustical treatments / sound insulation*, can be considered as a compatible use by local zoning authorities. The Sky Harbor report refers to

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Exhibit 3A which is Table 1 within the Code of Federal Regulations (CFR) Title 14, Chapter I, Subchapter I, Part 150 chart titled “Land Use Compatibility With Yearly Day-Night Average Sound Levels”. This table reiterates that residential construction within a 65 DNL contour can be addressed by building codes as part of individual approvals, per the following from the Code of Federal Regulations:

“Where the community determines that residential or school uses must be allowed, measures to achieve **outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals.** Normal residential construction can be expected to provide a NLR of 20 dB, thus, **the reduction requirements are often stated as 5, 10 or 15 dB over standard construction** and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.” *(Bolded text added for emphasis)*

As is shown in the below map which overlays the FAA approved Noise Exposure Map submitted as part of Sky Harbor’s Noise Compatibility Study in 1999, the City of Tempe has exercised this discretion **16 times, by granting entitlements to over 3,900 residential units within the 65 DNL noise contour since the last noise compatibility study was issued.**



We believe that all 16 recently developed properties within Tempe implemented sound insulation measures considering their location within the noise contour. Since we will be

investing nearly \$2.0 billion of private capital into the site, we will ensure **and verify through testing** that our residents will live in an enjoyable environment, similar to their neighbors along Tempe Town Lake. We have committed to hiring a noise acoustic specialist as part of the architectural design team for our residential units. Incorporating these sound insulation measures upfront in the development of the project will avoid the need for any funding from Federal grants or Airport Improvement Plan (AIP) programs to address noise mitigation issues.

Additionally, per Sky Harbor's 150 Noise Compatibility Study, the developer will grant i) an aviation agreement to the City of Phoenix, ii) a noise easement and non-suit covenant with the City of Phoenix, and iii) a fair disclosure agreement and covenant. **These three items are additional requirements that Sky Harbor recommended for residential development within a 65 DNL noise contour in their Noise Compatibility Study (Land Use - Chapter 5, page 15).** These measures ensure that all residents are clearly informed about the location of the development and that the City of Phoenix does not have legal exposure for noise complaints from future residents.

## **2. Building Heights Concerns Above 80 Feet;**

We have engaged a well-recognized FAA consultant (Williams Aviation) to analyze the Obstruction Clearance Surfaces (OCS) for both departures and arrivals for Sky Harbor. The results of their analysis were corroborated with the FAA's analysis and approval of a **190-foot** construction crane (**Aeronautical Study No. 2019-AWP-5079-OE**) on an adjacent parcel located on the IDEA office campus. Sky Harbor's Instrument Approach Procedures (IAP) revealed that the approaches for aircraft landing on Runways 25L, 25R, and 26 have the lowest Obstacle Clearance Surfaces (OCS) over the property. The lowest Instrument Approach Procedure OCS over the property is the Localizer IAP to Runway 25L with a maximum height of 1270' AMSL. This AMSL corresponds to a maximum building height for the site of approximately 120 feet. **We have reaffirmed to all parties that once the City of Tempe has provided input on the development's site plan and building locations, we will submit final geographic coordinates and building heights to commence the FAA's study and review process (which is the standard practice for all developments within all airport influence areas).**

## **3. Airport Air Navigation;**

As described above, each building will receive a non-hazard designation via the FAA's study and review process. Additionally, we have engaged a Navigation Aid Specialist to analyze that the proposed buildings will not interfere with airport navigations systems including the VHF Omnidirectional Range (VOR) navigation beacon which is proximate to the site. Initial results are positive and the final report will be submitted to the FAA once building coordinates and heights are finalized as part of the City of Tempe's review process.

#### **4. Aircraft emergency flight profile, specifically One Engine Inoperable (OEI) departure & arrival profiles;**

As part of the OCS analysis, the FAA consultant analyzed OEI surfaces for each of the runways. All of the buildings in our proposed project will be designed to stay below 62.5:1 OEI surfaces off Runways 7L, 7R, and 8.

#### **5. Construction equipment impacting PHX arrivals and departures, specifically construction cranes;**

The project is being designed to account for construction cranes. The 190 foot construction crane on the adjacent site to the east of the property that was approved as a temporary obstruction to air navigation (**Aeronautical Study No. 2019-AWP-5079-OE**), exceeded OEI by 5-15 feet on its site. Similarly, we are proposing that the maximum building heights for the western portion of the property be 110 feet, so a standard 40 foot construction crane above a building would only temporarily exceed OEI by the similar margin of 5-15 feet. Additionally, the construction crane utilized for the arena will only exceed OEI for a cumulative period of 21 days over a 3 month period. The arena construction crane can be lowered below the OEI surface during nights and periods when it is not in use. As the FAA is aware, construction cranes that temporarily exceed obstruction standards surrounding airports are regularly and routinely approved by the FAA.

#### **6. Aircraft performance limitations based on weather conditions, TED construction (interim) and developed (permanent) hazards to air navigation;**

As previously mentioned in #2 above, the most limiting OCS is associated with a Localizer approach associated with Runway 25L. Limiting building heights to a maximum 1270' AMSL, corresponds to a maximum building height of approximately 120 feet. This building height will ensure that an aircraft landing on Runway 25L utilizing a Localizer to land, under bad weather conditions, will have at least a 250 foot margin above the project's buildings and will ensure that the buildings will not be deemed as hazards to air navigation. **To reiterate, all buildings and temporary construction cranes will be submitted as part of the FAA's normal review and approval process.**

#### **7. Lasers, Fireworks, Promotional Spotlights, Drone Flight Operations and area lighting that will negatively impact aircraft performance and visibility associated with PHX.**

We have committed to Sky Harbor on the following points:

- Public Safety – We have committed to prohibit activities that would constitute a safety hazard to air navigation (i.e., laser shows, fireworks, spotlights, etc.).
- Restriction on Hosting Events – We have agreed to decline an event like a presidential debate that would trigger a temporary shutdown of the airport.
- Drone Usage – We will abide by all FAA regulations related to drone usage around the airport.

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We appreciate further FAA input on the project. If we are awarded the RFP from the City of Tempe, we look forward to commence the FAA's formal review and approval process. We will furnish all requisite detailed information on building locations and coordinates as soon as the City of Tempe has had the opportunity to provide design review input of the development. If you have any questions, please feel to reach out to me.

Regards,



Xavier Gutierrez  
President & CEO  
Arizona Coyotes

cc: Chad Makovsky, C.M, Director of Aviation Services, City of Phoenix  
Michael Greene, Tempe Procurement Officer