



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

Western-Pacific Region
Office of the Regional Administrator

777 S. Aviation Blvd., Ste.150
El Segundo, CA 90245

June 1, 2022

Mr. Andrew Ching
City Manager, Tempe
31 East Fifth Street
Tempe, AZ 85281

Dear Mr. Ching:

RE: Tempe Entertainment District (TED) – Supplemental Information

The Federal Aviation Administration (FAA) is in receipt of the April 8, 2022, correspondence from Mr. Gutierrez regarding the proposed Tempe Entertainment District (TED). A copy of this correspondence is included as Attachment 1. We are providing this additional information to ensure the City of Tempe understands the concerns of the FAA. As the City of Tempe has authority and jurisdiction over this matter, we are providing this in advance of the Tempe City Council meeting scheduled for June 2, 2022.

In correspondence dated April 1, 2022, we also outlined numerous concerns with the proposed development, including, but not limited to airspace impacts, both permanent and temporary conditions, flight impacts to aircraft using Phoenix Sky Harbor International Airport (PHX), along with noncompatible land use. A copy of this correspondence is included as Attachment 2.

Regarding compatible land use planning, the FAA encourages and can support an airport sponsor's coordination with land use planning authorities to undertake efforts to secure compatible land use development around public use airports. Since the City of Tempe has authority over the proposed TED project, the FAA strongly encourages the City of Tempe to ensure compatible land use for its citizens and interested stakeholders, as well as those of neighboring jurisdictions.

It is also important to understand the FAA does not support residential development within areas experiencing aviation related noise levels of Day-Night Average Sound Level (DNL) 65 decibel(dB) or greater. The proposed TED development would be located within the DNL 65 dB noise contour as depicted in the airport's Noise Exposure Maps (NEMs). As established in Title 14, Code of Federal Regulations (CFR) Part 150, Table A-1, FAA considers areas exposed to aviation noise levels of DNL 65 dB or above to be noncompatible with residential land use. Also note, that noncompatible land use determinations outlined in 14 CFR Part 150, Table A-1 "*...do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. 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.*" Thus, Federal agencies, including the FAA, do not have jurisdiction or the authority to control local land use planning, zoning or

regulation. Furthermore, as noted in the Arizona Coyote's letter to the FAA (April 8, 2022), 14 CFR Part 150 indicates that, "[w]here 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. [...] However, the use of NLR criteria will not eliminate outdoor noise problems." That is, while sound insulation treatment may be incorporated into residential structures, the residents living within the proposed TED will continue to experience aviation noise levels at or above DNL 65 dB while enjoying outdoor activities and open windows.

As noted in FAA's letter to the City of Tempe (April 1, 2022), it is FAA policy¹ that FAA's approval of remedial noise mitigation measures (including land acquisition and residential sound insulation treatment) are limited to existing non-compatible development. Thus, the City of Phoenix as the airport sponsor, would not be eligible to receive FAA Airport Improvement Program (AIP) funding for remedial noise mitigation of residential properties associated with TED. The City of Tempe would also not be eligible to receive AIP funding for remedial noise mitigation of residential properties associated with TED.

FAA would also like to ensure the City of Tempe recognizes the results of the FAA's Neighborhood Environmental Survey (NES)². These results indicate that when compared with the Schultz Curve (i.e., a tool developed in 1992 to predict community response to transportation noise), a substantially higher percentage of people were highly annoyed over the entire range of aircraft noise levels (i.e., from DNL 50 to 75 dB). Specifically, the NES results show that at a noise exposure level of DNL 65 dB 60.1-70.09 percent of people were highly annoyed³.

If you have any questions regarding this letter, please call my office at (424) 405-7000.

Sincerely,

Tamara A. Swann

Tamara A. Swann
Regional Administrator (A)

Enclosures:

Attachment 1 Arizona Coyote's letter to the FAA dated April 8, 2022

Attachment 2 FAA letter to the City of Tempe dated April 1, 2022

cc: Mr. Chad Makovsky, City of Phoenix
Mr. Xavier Gutierrez, Arizona Coyotes

¹ Federal Register Vol 63. No. 64. Department of Transportation, Federal Aviation Administration. Final Policy on Part 150 Approval of Noise Mitigation Measures: Effect on the Use of Federal Grants for Noise Mitigation Projects. April 3, 1998.

² Federal Register Vol. 86, No. 8. Department of Transportation, Federal Aviation Administration. Overview of FAA Aircraft Noise Policy and Research Efforts: Request for Input on Research Activities to Inform Aircraft Noise Policy. January 8, 2021.

³ Data represents a 95% confidence limit from the NES.