

Snell & Wilmer

ONE ARIZONA CENTER
400 E. VAN BUREN, SUITE 1900
PHOENIX, AZ 85004-2202
602.382.6000 P
602.382.6070 F

Nicholas J. Wood
602-382-6269
nwood@swlaw.com

November 9, 2021

VIA EMAIL

chad.makovsky@phoenix.gov

Chad Makovsky
Director of Aviation Services
City of Phoenix – Aviation Department
2485 E. Buckeye Road
Phoenix, AZ 85034

Dear Mr. Makovsky,

Thank you for taking the time to meet with us on Friday November 5, 2021. We believe that the meeting was very productive.

As we shared with you, the Coyotes have adopted 4 goals in working with you and your staff as we proceed through the process of creating an extraordinary sports and entertainment complex in Tempe Arizona.

First, we will work cooperatively with you and your staff in a good faith attempt to address the concerns that you have raised (AS OUTLINED BELOW). This will be accomplished through a series of meetings, and the sharing of information, between our respective leadership teams, representatives and staffs and directly between our respective FAA engineers and technical experts. Second, we will comply with all applicable FAA regulations affecting our proposed project and its location vis-à-vis the airport. Third, we will not attempt to circumvent FAA regulations. Fourth, we will actively exchange information with you and your staff as we move through the Tempe acquisition and development process.

At the end of our meeting you asked up to respond to the following concerns that you recently expressed to us in writing. For ease of review, I have numbered the concerns and provided corresponding responses immediately after each one.

1. The RFP mentions, and Sky Harbor insists, that the Coyotes and Bluebird strictly comply with 14 CFR Part 77 (requiring notice to FAA of proposed construction) and with 14 CFR Part 150 (noise mitigation standards for sensitive land uses).

Comment: The Coyotes and Bluebird are committed to compliance with 14 CFR Part 77 reporting requirements and to the City of Tempe's ordinances regarding construction within the city. All TED components will comply with 14 CFR Part 150 and Sky Harbor's last published and FAA approved noise study which permits uses including residential subject to noise attenuation, an aviation agreement and appropriate disclosures.

2. Specifically, the Coyotes and Bluebird must ensure that the 7460-1 obstruction evaluation required under Part 77 is properly and carefully conducted and that the development itself does not create an air-navigation hazard, interfere with navigational aids, or constrain the current *or future* capacity of Sky Harbor. Additionally, before the property is further entitled and before construction documents are submitted for plan review, any proposed improvements and all related construction activity (cranes, etc.) that may exceed 100 feet above ground level (AGL) must be reviewed with Sky Harbor and with major operators (e.g., American Airlines, Southwest, Delta, and FedEx) to ensure compatibility with all airspace requirements. This includes each operator's One Engine Inoperable (OEI) departure profiles, which may differ from federal airspace surfaces.

Comment: The Coyotes and Bluebird will follow all FAA guidelines related to adherence with FAR Part 77 reporting requirements and the filing of FAA Form 7460, Notice of Proposed Construction or Alteration. Additionally, when the 7460 is submitted to the FAA for the structure a separate 7460 will be submitted for any crane to be used in conjunction with the construction. This procedure will be followed for each segment of the project. We are aware that each operator at the airport has developed a One Engine Inoperative (OEI) procedure unique to each type of aircraft in their fleet.

3. To avoid future disputes about air navigation on the airport's east side, Sky Harbor urges the Coyotes, Bluebird, and Tempe to execute an aviation easement (in form and content like that used in nearby developments) to Sky Harbor. This easement would protect the public's continued right to fly over (and in proximity to) the proposed development.

Comment: The Coyotes and Bluebird are committed to placing an aviation easement over the entire project. You mentioned that you would provide to us, for our review and consideration, a copy of the form that you would like us to use.

4. The proposed development is within Sky Harbor's formal 65 DNL noise contour, and consequently, the FAA deems residential development as an incompatible land use. Sky Harbor

is obligated to oppose all incompatible land uses, including residential development, for the health and protection of prospective residents and the public in general.

Comment: The Coyotes and Bluebird understand that Sky Harbor may oppose the project based on your interpretation of incompatible land uses involving residential development. We are committed to following the City of Tempe zoning requirements and to comply with all FAA regulations regarding noise attenuation and mitigation design elements in all of our residential and hotel buildings.

5. The Coyotes and Bluebird—together with all other project developers—should include in all residential sales/lease contracts a copy of the statutory airport disclosure map.

Comment: The Coyotes and Bluebird will comply with all regulations related to the distribution and inclusion of the statutory airport's disclosure map in all real estate sales and lease documents. We will share with you the exact form of language that we intend to use.

6. In the Tempe Entertainment District as developed, the Coyotes and Bluebird must prohibit all use of lasers, fireworks, promotional spotlights, or similar activities that would create a hazard to air navigation attributable to brilliant light, glare, smoke, dust, or electromagnetic disturbance.

Comment: The Coyotes and Bluebird are committed to prohibit all activities from the project that would create a hazard to air navigation.

We further request that the Coyotes and Bluebird coordinate with Sky Harbor and FAA to ensure that all TED development and venue lighting (e.g., marquees, dynamic light boards, electronic banners, etc.) does not create a safety hazard to flight.

Comment: The Coyotes and Bluebird are committed to prohibit all activities from our project that would create a hazard to air navigation. Development and lighting data will be provided to the FAA, and to you, for review and comment.

7. At our meeting, the Coyotes and Bluebird agreed to prevent all future TED events and activities that would require implementation of federal Temporary Flight Restrictions (TFR). We appreciate that consideration as we believe implementation of TFRs in such close proximity to Sky Harbor's southern two runways will likely significantly limit, if not altogether suspend, flight operations to the airport for the duration of such an event.

Comment: The FAA is responsible for determining the need for, and implementation of, Temporary Flight Restrictions (TFR). It is not possible for the Coyotes or Bluebird to agree to prevent activities by non-Coyotes entities that might result in a TFR. However, we do not foresee any events that might occur in, or around, the development where we would request

a TFR from the FAA and are willing to commit to declining request for events such as U.S. Presidential debates or related events that would require a TFR.

8. Given the proximity of the TED development to Sky Harbor runways, the Coyotes and Bluebird should prohibit all amateur or recreational drone use (unmanned aerial systems) in and around the development. We also urge the Coyotes and Bluebird to require any professional (institutional or commercial) drone use near the development to receive prior permission from Sky Harbor in addition to all required FAA approvals to ensure public safety and to prevent unintended deployment of law enforcement resources to reports of drone activity.

Comment: FAR Part 107.41 Operations in certain airspace states: "No person may operate a small unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless that person has prior authorization from Air Traffic Control (ATC)." Sky Harbor is in Class B airspace as is the proposed development. FAA regulations require that drone activity must be approved by the FAA. The Coyotes and Bluebird anticipate no requirement for drone activity, but will follow all FAA requirements if ever an occasion arises where such uses become necessary.

9. The Coyotes and Bluebird should submit to Sky Harbor and to the Phoenix Planning and Development Department all applications for Tempe General Plan Amendments and Rezoning requests filed for the site. We request the opportunity to review and comment on any submitted site plans and building elevations and to provide our review and comments to the Tempe Community Development Department. We ask the Coyotes and Bluebird to urge Tempe to formally consider and evaluate Sky Harbor's review and comments.

Comment: The Coyotes and Bluebird will comply with the requirements put forth by the City of Tempe related to General Plan Amendments or Rezoning requests. We will provide you with copies of any General Plan and Rezoning requests and will solicit your comments, which comments will be shared with the City of Tempe.

10. The Coyotes and Bluebird should contract with a wildlife biologist meeting FAA qualification standards to review master and block development plans for compliance with FAA wildlife-hazard mitigation criteria and best practices. Sky Harbor requests that the Coyotes and Bluebird comply with these criteria during the development's construction, operation, and maintenance. This requirement is critical given the Coyotes and Bluebird's desire to expand Tempe Town Lake west to Priest Drive.

Comment: The Coyotes and Bluebird will follow FAA's wildlife mitigation best practices and the directions and requirements set forth by the City of Tempe. While our architect included water adjacent to the arena in its architectural illustrations, such addition was nothing more

than illustrative license. As we shared with you, we are not seeking such extension of the Lake nor is an extension a condition for us to proceed with the development the project.

11. We ask the Coyotes and Bluebird to provide Sky Harbor with a complete copy of their proposal to Tempe, minus any confidential financial documents. When we receive the proposal and the other documents promised at our meeting, Sky Harbor will be able to conduct a more detailed and informed analysis and provide you with more formal comments, and until then, we express no other opinion on the TED development or on the Coyotes and Bluebird's proposal. To emphasize our perspective, Sky Harbor is the region and state's largest economic engine. Based on our conversation yesterday, I am confident that we share the mutual objective of ensuring that Sky Harbor remains protected from incompatible development and uses so it may continue to support the economic vitality of the City of Tempe and the entire region.

Comment: All our submittals to the City of Tempe, as part of our response to its RFP, are confidential pursuant to the State of Arizona procurement code. We are therefore precluded from releasing any part of it to you because you cannot legally protect it from public disclosure. It is not our intention to impair the safety, efficiency, or capacity of the airport. We are confident that the FAA's review and recommendations will identify any issues that may impact Sky Harbor.

12. Please provide us with the digital file of the full site plans shared with us in part (as difficult-to-read paper documents) at the meeting.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our site plans become more refined and specific, we will share them with you.

13. The schedule for completing the final design of the arena's footprint and elevations, which you said are not designed at this time.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our building footprints and elevations become more refined and specific, we will share them with you.

14. The final (or near-final) latitudes and longitudes for each structure to be constructed in TED.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our building footprints and elevations become more refined and specific,

we will then be able to determine the applicable latitudes and longitudes for each building. At that time we will file our Form 7460's with the FAA (of which you will receive copies).

15. The existing and proposed final elevations of the ground throughout TED and the final (or near-final) elevations of each proposed TED structure when substantially complete.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our site plan, building footprints and elevations become more refined and specific, we will share them with you.

16. The final (or near-final) latitudes and longitudes for each construction crane that will be used during each improvement project's enabling work and construction.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our building footprints and elevations become more refined and specific, we will be able to determine the latitudes and longitudes for each construction crane that will be utilized in the project and will also submit that information to the FAA (with copies to you) as part of our Form 7460 submittals.

17. The existing and proposed final elevations of the ground throughout TED and the final (or near-final) elevations of each proposed crane. Also, please indicate whether the crane and other vertical-construction-equipment elevations will include the actual top of cranes/structures—i.e., the highest point of the equipment/assembly, including antennae/mechanicals/signage/flag poles/obstruction lighting, etc.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our building footprints and elevations become more refined and specific, we will be able to determine the latitudes and longitudes for each construction crane (including the actual top of cranes/structures that will be utilized in the project and will also submit that information to the FAA (with copies to you) as part of our Form 7460 submittals.

18. The airlines' specific OEI procedures that TED has considered (specifically, Dibble has analyzed) that will (or may) be affected by the TED development.

Comment: As we shared with you at the meeting last Friday, we propose having our FAA engineers sit down with your engineers to review our engineer's technical analysis.

19. The FAA's flight arrival and departure procedures protected-airspace surfaces that TED has considered (specifically, Dibble has analyzed) and that will (or may) be affected by the TED development.

Comment: As we shared with you at the meeting last Friday, we propose having our FAA engineers sit down with your engineers to review our engineer's technical analysis.

20. The site noise contours that Dibble considered (or developed) to comply with RFP requirements and federal law.

Comment: As we shared with you at the meeting last Friday, we propose having our FAA engineers sit down with your engineers to review our engineer's technical analysis.

21. The conceptual lighting plan and related photometric study for the development and the details of how TED will address the impact of project light and glare on air navigation.

Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our site plans become more refined and specific, we will also create a comprehensive sign plan that we will review with you in detail.

22. The approximate construction schedule's start and substantial-completion dates for each TED improvement.

Comment: As we shared with you at the meeting last Friday, we have not yet landed on an absolute schedule because the RFP process is still pending. However, in the event we are awarded the RFP, we will provide you with an anticipated schedule.

23. The draft 7460s for each improvement project. Of course, if the 7460s have actually been filed for one or more projects, may we have the final document filed in each case?

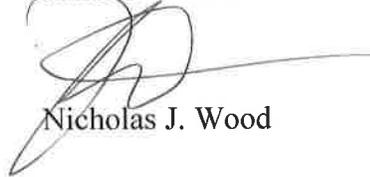
Comment: As we shared with you at the meeting last Friday, we have not yet reduced the project to anything more than building massing's and conceptual locations for buildings and accessory uses. As our building footprints and elevations become more refined and specific, we will be able to determine the latitudes and longitudes for each building and/or construction crane. Therefore, we have not yet filed any form 7640 with the FAA but will provide copies of all filings to you.

24. The details on a qualified biologist's investigation and study of TED development plans for wildlife hazard potential and possible mitigations (when will the investigation occur, who has your client retained and what are his/her qualifications, and how will the biologist proceed).

Comment: As we shared with you at the meeting last Friday, because we are still in the RFP process, we have not yet obtained any biologist reports. However, if we are awarded the RFP from the City of Tempe. We will obtain such reports and share them with you.

Very truly yours,

Snell & Wilmer

A handwritten signature in black ink, appearing to read "N. Wood", with a long horizontal flourish extending to the right.

Nicholas J. Wood