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June 25, 2020

Susy Kalkin  
ALUC Staff  
City/County Association of Governments of San Mateo County  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063

Re: **Response to San Francisco International Airport's Objection to Proposed Multifamily Housing Project at 410 Noor Avenue in South San Francisco**

Dear Ms. Kalkin:

This letter is in response to the San Francisco International Airport's ("Airport") objection letter to the proposed multifamily housing project at 410 Noor Avenue in the City of South San Francisco ("Project"). As stated in the Project's application for an Airport Land Use Compatibility Plan ("ALUCP") consistency determination, the proposed Project consists of a 338 unit mixed-use rental housing development ¼ mile northeast of the San Bruno Bart station at the site of the vacant Century Plaza movie theater. The Airport raises two issues in its letter objecting to the Project: (1) compatibility with ALUCP Noise Policies; and (2) obligations in prior agreements to which the City is a party. Each of these issues is addressed separately below.

**I. Compatibility with ALUCP Noise Policies**

In accordance with the requirements of the Public Utilities Code and the ALUCP, the City has submitted the Project to C/CAG for an Airport Land Use Consistency Determination.

As stated in the City's application, the City recognizes that per ALUCP Exhibit IV-6 "Noise Compatibility Zones – Detail," the Project site is located within the CNEL 70dB contour. However, two site specific noise studies have been conducted for the Project, the most recent is the Salter Noise Study (Attachment 2-H to the City's application). As discussed in the Salter Noise Study, on-site noise monitoring and SFO noise monitoring data from

2017 to the present indicate that airport noise on the Project site is within the 65-70 dB CNEL. While the Project is located within the CNEL 70dB contour as shown in the ALUCP, recent site-specific data shows that the airport noise patterns are changing over time, and that the Project site is less impacted by noise than at the time the ALUCP was adopted. The Salter Noise Study also confirms that the Project interiors can be reduced to less than 45 dB, consistent with the ALUCP noise policy and the City's General Plan policies and State Building Code standards.

The City acknowledges that a small portion of the Project site is located within Safety Zone 4: Outer Approach/Departure Zone. As stated in the Airport's letter and the ALUCP, this Safety Zone prohibits the following types of uses: biosafety facilities, schools, child day care centers, hospitals, nursing homes, stadiums, and arenas. As the Project consists of residential and commercial uses and does not propose any of these prohibited uses, and the only proposed uses within Safety Zone 4 would be open space amenities, it is consistent with the ALUCP Safety Zone requirements.

If the ALUC finds the Project inconsistent with the ALUCP, the City has the authority pursuant to Public Utilities Code Section 21676.5 to override this determination upon the making of specific findings and approve the Project. In the event that the City utilizes the override process, then consistent with the City's General Plan policies and the ALUCP noise policies for projects located in the 65-70 dB CNEL, the City will require enforceable Conditions of Approval to mitigate noise including:

- Construction and design features to meet acoustic performance standards recommended in the noise study, to reduce interior noise to 45 dB;
- Granting an aviation easement to the City and County of San Francisco, in accordance with ALUCP Policy NP-3, prior to issuance of building permits;
- Requirement of an indemnification agreement with the City prior to issuance of building permits, ensuring that liability related to noise is assumed by the Project; and
- Requirement to include real estate disclosures in leases disclosing the presence of an airport within two miles of the property, per Section 11010 of the Business and Professions Code.

## **II. Prior Agreements**

The Airport also contends that if the City approves the Project, then doing so would potentially violate conditions of the City's acceptance of grant money through the FAA's Airport Improvement Program. Specifically, the airport cites Federal Assurance No. 21.

The City entered into a grant agreement with the FAA in 1998 to receive funding for residential noise insulation projects to mitigate the impact of airport noise. This grant agreement incorporated Assurance No.21 as Assurance No. 15 attached to the agreement. However, per the terms of the grant agreement, the assurances expired twenty (20) years after grant acceptance. As more than twenty years have elapsed, the assurances are no longer operative. A thorough review of the City's records has not revealed any more recent grant agreements with the FAA pertaining to this subject matter, and the Airport's letter does not identify any more recent agreements.

However, even if the assurances were still operative, the City's approval of the Project would not run afoul of Assurance No. 15. Assurance No. 15 states:

"[City] will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended."

First, the requirement stated above is only imposed "to the extent reasonable". California law defines what constitutes "reasonable" restrictions with respect to land use around airports. (See "State Aeronautics Act," California Public Utilities Code Section 21670 et.seq.) The section of the State Aeronautics Act pertaining to "noise sensitive uses" contemplates that even where a proposed project involves "noise sensitive uses," such uses may be permissible with the grant of an aviation easement. (See Public Utilities Code Section 21669.5 (b)<sup>1</sup>). "Noise sensitive uses" are defined as residential uses, including detached single-family dwellings, multifamily dwellings, highrise apartments or condominiums, mobilehomes, public and private educational facilities, hospitals, convalescent homes, churches, synagogues, temples, and other places of worship. (See Public Utilities Code Section 21669.5(a)(3). In other words, the requirement for Compatible Land Use pursuant to Assurance No. 15 (No. 21) is not an immutable prohibition on all "noise sensitive" uses, but instead imposes conditions upon the circumstances for when such noise-sensitive uses may be permissible. Specifically, these uses may be permissible when an aviation easement is required to be dedicated in accordance with the appropriate statutory procedure, as set forth in Public Utilities Code Section 21669.5. Such an easement will be required as a condition of approval for the Project.

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<sup>1</sup> California Public Utilities Code Section 21669.5 (b): " If a political subdivision conditions approval of a noise sensitive project upon the grant of an aviation easement to the owner or operator of an airport, the aviation easement shall be required to be granted to the owner or operator of the airport prior to the issuance of a building permit..."

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Second, approval of the Project would not reduce the compatibility program measures upon which Federal funds have been expended because the Project, as proposed, would be compatible with the intent of those measures. On-site noise monitoring and SFO noise monitoring data from 2017 to the present indicate that airport noise within the Project site is within the 65-70 dB CNEL, airport noise patterns have changed over time which have diminished the impact to the Project site, and the Project will incorporate measures to ensure that all interior noise is reduced to less than 45 dB. Further, as a mixed use residential Project, the Project would not generate or intensify any noise impacts, which would decrease the effectiveness of the program measures.

Please feel free to contact me at (650) 877-8535 or at sailesh.mehra@ssf.net or Adena Friedman at adena.friedman@ssf.net if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'SM', written in a cursive style.

Sailesh Mehra,  
Chief Planner  
City of South San Francisco

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