

**INTERIM REPORT NO. 17**

**SPECIAL REPORT TO THE CITY COUNCIL  
REGARDING SUNROAD CENTRUM 12 AND  
SUNROAD RESIDENTIAL DEVELOPMENT**

**REPORT OF THE  
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## I.

### INTRODUCTION

The City Attorney is issuing this 17<sup>th</sup> Interim Report to provide evidence to inform the City Council and interested parties about the details related to the construction of a 180 foot building called Sunroad Centrum 12, which the Federal Aviation Administration has determined is a hazard to air navigation due to its close proximity to Montgomery Field. The Report will also provide information about Sunroad's role in the SDG&E Substation relocation project, which to-date has resulted in the failure to move the facility, posing health and safety issues to the surrounding residential area.<sup>1</sup>

The report will illustrate that during the planning, permitting and construction stages of the Centrum 12 project:

- Sunroad originally applied for the 180-foot building which was rejected by the Federal Aviation Administration (“FAA”);
- Sunroad then applied for a 160-foot project which was approved by the FAA;
- The City of San Diego’s Development Services Department approved a building permit following the FAA’s approval for the 160-foot building;
- After receiving the building permit, Sunroad reapplied for the 180-foot project, which was again rejected by the FAA;
- The FAA and California Department of Transportation (“CalTrans”) issued numerous requests that Sunroad comply with the established 160- height limit;
- The City issued a “Stop Work Notice” to Sunroad;

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<sup>1</sup> This report is based upon public record documents released by the Development Services Department of the City of San Diego and Deputy Chief of Land Use and Economic Development James T. Waring. See 29 January 2007 e-mail from Marcela Escobar-Eck, Exhibit 1.

- The San Diego City Attorney’s Office filed a lawsuit asking the court to order the removal of that portion of the building in violation of the 160-foot height limit;
- The City’s Development Services Department (“DSD”), without the knowledge of the City Attorney’s Office, met with representatives of Sunroad Enterprises and amended the Stop Work Notice to allow construction on the roof of the 180-foot building.

The City Attorney believes that all work on the Sunroad Centrum 12 project above 160-feet should be stopped immediately and the building should be taken down to 160-feet to bring the structure in compliance with applicable federal and state code.

The second section of this report will detail Sunroad’s attempt to relieve its responsibility to relocate a San Diego Gas & Electric (SDG&E) substation. The report will provide evidence to illustrate:

- Sunroad attempted to persuade the City to relieve the company from its obligation to relocate a SDG&E electrical substation from a residential to an area neighboring the Centrum 12 building;
- Sunroad sought to build a parking lot for the Centrum 12 building in the footprint specified for the SDG&E electrical substation;
- This marks a substantial change to the original development agreement;
- The current proximity of the current SDG&E electric substation will be dangerously close to planned residential development, putting both the City and future residents at risk.

This report will address the underlying facts supporting the city’s efforts to meet the concerns of the California Department of Transportation so as not to enable “the developer to violate State law” and so as to avoid a “disregard [of] public safety.”<sup>2</sup>

This report will also demonstrate that no satisfactory explanation has been provided for the finding by the Development Services Department that the Centrum 12 office building was in substantial conformance with the previously issued environmental documents.<sup>3</sup>

This report will also discuss the need for the city to ensure the relocation of the SDG&E substation in order to protect the public safety of those anticipated to reside in the proposed Sunroad residential development.

## **II.**

### **BACKGROUND**

General Dynamics, a military contractor, formerly operated an industrial facility on a 242-acre parcel of land neighboring Montgomery Field airport. The company, which employed as many as 7,000 employees at the Kearny Mesa site, closed the facility and began working on plans to develop the land for commercial, industrial and residential construction.

On 2 December 1997, the San Diego City Council approved a plan submitted by General Dynamics to develop a high-density, mixed-use retail, commercial and industrial business park.<sup>4</sup> Specifically, a plan was approved to construct a series of complexes to

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<sup>2</sup> 19 January 2007 Department of Transportation Letter from Jeff R. Brown to James T. Waring, with copies to Mayor Jerry Sanders and City Attorney Michael J. Aguirre, Exhibit 39.

<sup>3</sup> See 10 October 1997 New Century Center Environmental Impact Report LDR No. 96-0165, SCH No. 96031091, pages 1, 4.6-1 to 4.6-8, and 4.6-12, Exhibit 77.

<sup>4</sup> Minutes of the 2 December 1997 meeting of the San Diego City Council. (Exhibit 2)

include apartments or condominiums, retail stores, office buildings, and industrial or manufacturing centers. The project, called the New Century Center, essentially split the parcel into two parts. The project designated the western 85 acres for up to 1.4 million square feet of retail, entertainment and commercial land uses. The eastern 158 acres of the property was zoned to permit the construction of up to 3 million square feet of industrial and business park land uses.<sup>5</sup> The project, as approved, also included plans for roadways, public amenities, the retention of seven acres for Missile Park and an additional four acres for a vernal pool conservation area.

In 1998, General Dynamics sold the New Century project to LNR Kearny Mesa Inc., a subsidiary of Lennar Partners.

LNR Kearny Mesa proposed a series of changes to the project, which was then titled “San Diego Spectrum.” The change to the project opened up the potential for increased multi-residential housing on the project site. Specifically, the zoning maps were changed to permit the construction of 448 units of multi-residential housing and another 550 units in a separate portion of the project, bringing the total number of residential units to 998. These changes were approved by the City on 3 October 2000.<sup>6</sup>

As a result of the housing crisis in the City of San Diego,<sup>7</sup> the City encouraged the development of more affordable housing at the San Diego Spectrum project.

In December of 2000, Sunroad purchased 40 acres of property from Lennar.<sup>8</sup> Sunroad Centrum Partners submitted an application in February 2001 to build 570

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<sup>5</sup> Minutes of the 2 December 1997 meeting of the San Diego City Council. (Exhibit 2)

<sup>6</sup> Minutes of the 3 October 2000 meeting of the San Diego City Council. (Exhibit 3)

<sup>7</sup> Branscomb, Leslie Wolf; “San Diego lags U.S. in home ownership”; *San Diego Union-Tribune*; 23 May 2001. (Exhibit 4)

additional housing units.<sup>9</sup> According to the proposal, the increased dwelling units required Sunroad to provide 3.42 acres of land for park space and fund its design and construction. The City Council approved the changes on 29 January 2002.

Sunroad submitted another series of proposed changes to what was now called the Sunroad Centrum project late in 2002 to increase residential component by another 570 units. The proposal included a component that would require Sunroad to increase the amount of affordable housing units from 10 percent of 570 units, to 20 percent.<sup>10</sup>

Sunroad's proposal to increase the residential component of the overall development was forwarded directly to the Mayor's office on 24 and 25 January 2002.<sup>11</sup> The proposal was approved at the 12 November 2002 meeting of the City Council by a vote of 8-to-0.<sup>12</sup>

Two years later, at the 10 February 2004 meeting of the San Diego City Council, then Mayor Dick Murphy announced that the leadership of Sunroad Enterprises pledged a donation of \$1 million to the City for the purchase of a helicopter for San Diego's Regional Fire and Rescue Helicopter Program.<sup>13</sup> According to the Sunroad Foundation, "Over the next five years, for every car sold at Toyota Chula Vista, Pacific Honda,

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<sup>8</sup> Potter, Matt. "Breaking Stories: Aaron's Gold." *San Diego Reader*. 1 February 2007. (Exhibit 5)

<sup>9</sup> 23 January 2002. City of San Diego Manager's Report No. 02—19. Subject: "Sunroad at San Diego Spectrum – Initiation of a Development Agreement Amendments. Council District 6. Process Five." (Exhibit 6)

<sup>10</sup> 6 November 2002. City of San Diego Manager's Report No. 02-257. Subject: "Sunroad at San Diego Spectrum – Amendments to the Progress Guide and General Plan; Kearny Mesa Community Plan; new Century Center Master Plan, Development Standards, and Design Manual; Amendments to the General Dynamics Development Agreement; and a Rezone. Council District 6. Process 5." (Exhibit 7)

<sup>11</sup> See 24 January 2002 and 25 January 2002 letters from Sunroad attorney Paul Robinson to Mayor's office, Exhibits 8 and 9.

<sup>12</sup> Minutes of the 12 November 2002 meeting of the San Diego City Council. The meeting minutes reflect that Council member Scott Peters was absent for the vote on the Sunroad proposal. (Exhibit 10)

<sup>13</sup> Minutes of the 10 February 2004 meeting of the San Diego City Council. (Exhibit 11)

Kearny Mesa Ford, Scion Chula Vista, Kearny Mesa Infiniti, Kearny Mesa Subaru, Kearny Mesa Hyundai, Kearny Mesa Kia and Toyota California, every boat slip rented at Sunroad Resort Marin and every round of golf sold at Maderas Golf Club, Sunroad will make a donation to the fund.”<sup>14</sup> A condition of the donation was that the side of the helicopter would have a logo reading “Sunroad Enterprises.”

Meanwhile, the Sunroad Centrum construction project continued to move through the City’s planning process. On 23 January 2006, Deputy City Engineer Lee Hennes sent a memorandum to the City Clerk, Elizabeth Maland, stating that the project had been approved. The memo stated:

The City Engineer has examined and states that he can make the necessary findings to approve the final map ‘Sunroad B – Promenade...Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.<sup>15</sup>

The maps included with the memorandum outline the lot sizes and the easements required for public amenities such as electrical work and lighting. The final zoning map was approved by the San Diego City Council on 6 February 2006.<sup>16</sup>

Something, however, went wrong in the planning and development process that led to construction of a 180-foot building that has been deemed a hazard by the FAA and

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<sup>14</sup> Sunroad Foundation announcement. Source: [www.sunroadfoundation.org/index.htm](http://www.sunroadfoundation.org/index.htm). (Exhibit 12)

<sup>15</sup> 23 January 2006 memorandum from Lee Hennes, deputy city engineer, to Elizabeth Maland, city clerk. Subject “Approval of the final map ‘Sunroad B – Promenade” (Exhibit 13)

<sup>16</sup> Minutes of the 6 February 2006 meeting of the San Diego City Council. (Exhibit 14)

a threat to the safety of pilots. This report will detail how representatives of the City of San Diego repeatedly ignored warnings that the building was too high and did not heed warnings from State and Federal oversight agencies that the building was a “hazard” to the safety of pilots.

### III.

#### CENTRUM 12

Sunroad officials had been made aware of the FAA concerns about the height of the Centrum 12 building directly by the FAA by 3 April 2006. Centrum 12 architect Dan Munch, on 3 April 2006, forwarded an e-mail to Sunroad officials explaining that FAA Obstruction Evaluator Karen McDonald would be making an “obstruction evaluation” of the Centrum 12 building.<sup>17</sup> The 3 April 2006 e-mail and related response from a Sunroad official provided as follows:

From: Dan Munch  
Sent: Monday, April 03, 2006 1:20 PM  
To: Dan Feldman; Tom Story; Craig Bachmann  
Subject: Centrum, FAA Obstruction Evaluation

All-

I spoke with John Cruz this morning and asked him if Centrum was reviewed and approved by the airport authority or FAA. Apparently, no such review took place. In speaking with Jeannette Temple briefly, he stated that if such a review was necessary, they would have caught it soon after we submitted. He didn’t know why the FAA would be getting involved this late in the game, and requested I try to find out what triggered their review.

I then spoke with Karen McDonald with the FAA Obstruction Evaluation Dept. She explained that this process started a couple weeks ago when a letter from a “concerned citizen” crossed her desk, inquiring as to whether the project they read about in the newspaper had been reviewed for its impact on the circling procedures for Montgomery. \*\*\*

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<sup>17</sup> 3 April 2006 Dan Much to Feldman, Story e-mail regarding Centrum, FAA Obstruction Evaluation, (cc’s and e-mail addresses omitted), Exhibit 15.

So even though the building doesn't meet the standard criteria triggering FAA review, they have requested we submit the project so that they can issue an official "airspace determination" in order to appease Joe Citizen.<sup>18</sup>

A Sunroad official responded to Mr. Munch and asked whether there had been a determination made about whether the Centrum 12 building was consistent with the City's comprehensive land use plan:

From: Tom Story  
To: Dan Munch; Dan Feldman  
Sent: Monday April 03, 2006 at 1:36 PM  
Subject: RE: Centrum, FAA Obstruction Evaluation

Dan,  
That isn't the question I wanted you to ask. Did you ask the question I suggested earlier, i.e. a CLUP consistency determination? Pls find out.<sup>19</sup>

On 5 April 2006 Sunroad filed a notice with the FAA requesting approval of the Centrum 12 building at 180 feet.<sup>20</sup>

On 24 April 2006 the FAA issued a Presumed Hazard letter because the 180-foot height of the Centrum 12 building would have "an adverse impact on the published circling instrument flight procedures utilized at Montgomery Field."<sup>21</sup> The 24 April 2006 FAA letter advised that the "maximum acceptable height of the structure at this site is 160 feet above the ground."<sup>22</sup> After the 24 April 2006 FAA notice that the Centrum 12

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<sup>18</sup> 3 April 2006 Dan Much to Feldman, Story e-mail regarding Centrum, FAA Obstruction Evaluation, (cc's and e-mail addresses omitted), Exhibit 15.

<sup>19</sup> 3 April 2006 1:36 PM Tom Story e-mail to Dan Munch, Exhibit 15

<sup>20</sup> 20 June 2006 e-mail from FAA Hazard Evaluator Karen McDonald, Exhibit 16.

<sup>21</sup> 24 April 2006 FAA Notice of Presumed Hazard, Exhibit 17; 20 June 2006 e-mail from FAA Hazard Evaluator Karen McDonald, Exhibit 16

<sup>22</sup> 20 June 2006 e-mail from FAA Hazard Evaluator Karen McDonald, Exhibit 16.

office building was a presumed hazard Sunroad executives continued to construct the building.

On 19 June 2006 San Diego City Planning Department employee Tait Galloway informed senior officials in the City's Development Services Department of the FAA's significant issues regarding the Centrum 12 office building:

From: Tait Galloway  
To: Halbert, Gary; Broughton, Kelly  
Date: 6/19/2006 12:30 PM  
Subject: FAA Issue w/Sunroads Centrum 12 (PTS 64541)  
Halbert, Gary; Broughton, Kelly  
In response to the voicemail that Kelly forwarded to me concerning the FAA, the FAA has a significant issue with Sunroads Centrum 12 project in Kearny Mesa concerning the building's height.

The proposed project is a 12 story (180 ft) 306,000 sq. ft. office building. It appears that the project is currently in SCR (PTS 64541) and a building permit is being inspected (PTS 84081).

The FAA wants the building height reduced to 160 ft as stated in a letter to the project applicant. Also, the FAA has requested to me that the other proposed projects near this project to be submitted to the FAA.

This proposed project would affect flight operations at Montgomery and affect the City's ability to receive future FAA funding for Montgomery.<sup>23</sup>

The FAA again notified a Sunroad representative on 20 June 2006 of the problem and warned that the FAA would be in a position to issue a Determination of Hazard:

Subsequent to the issuance of our letter, it has come to the attention of the FAA that this building is under construction. After the 60 days has elapsed from April 24, 2006, with no resolution of the issue, our office will be in a position to issue a Determination of Hazard to Air Navigation for any height greater than 160 feet above the ground for this aeronautical study 2006-AWP-1638-OE.<sup>24</sup>

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<sup>23</sup> 19 June 2006 memorandum from Tait Galloway to Gary Halbert and Kelly Broughton Re: FAA Issue w/Sunroads Centrum 12, Exhibit 18.

<sup>24</sup> 20 June 2006 e-mail from FAA Hazard Evaluator Karen McDonald, Exhibit 16.

Also on 20 June 2006, Sunroad agreed to the 160 foot height limit. Sunroad, through its Director of Construction Operations, Craig Bachmann, represented to the Federal Aviation Administration that: “[W]e agree to the 160 foot height specified in your letter of April 24, 2006 which stated that we and the FAA needed to reach a resolution not later than 60 days from the date of your letter.”<sup>25</sup> On 22 June 2006 George Williams, Sunroad’s sponsor representative, filed a Form 7460-1 notifying the FAA that the Centrum 12 building would have a “maximum height of 160.”<sup>26</sup> On 27 June 2006 the FAA issued a Determination of No Hazard to Air Navigation letter to Sunroad based upon a maximum height of 160 feet.<sup>27</sup>

Sunroad then filed a Supplemental Notice through Sunroad representative George Williams on 26 July 2006 that the Centrum 12 building structure height was 180 feet.<sup>28</sup>

On 11 August 2006 the FAA issued a Determination of Hazard letter to Sunroad in response to Sunroad’s 26 July 2006 filing and after FAA officials learned that Sunroad had gone above the 160-foot limit:

The FAA attempted to negotiate with the sponsor to reduce the height of the structure. The original first filing by the sponsor at the same location and height was issued a presumed hazard negotiation letter advising the sponsor of the aeronautical instrument procedure impacts. The sponsor responded with a second filing lowering the structure height to the required acceptable height. The second filing was issued a determination of no hazard. This third filing increased the structure height to the original height of the first filing. The sponsor stated the refusal to lower the structure height was dictated by land availability and location. The

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<sup>25</sup> 20 June 2006 letter from Craig Bachmann Director of Construction Operations to Federal Aviation Administration Air Traffic Division, Exhibit 19.

<sup>26</sup> 22 June 2006 FAA Form 7460-1 filing by Sunroad, Exhibit 20.

<sup>27</sup> 27 June 2006 FAA Determination of No Hazard to Air Navigation letter issued to Sunroad, Exhibit 21.

<sup>28</sup> 26 July 2006 Supplemental Notice from George Williams on behalf of Sunroad for the Centrum 12 building, Exhibit 22.

sponsor's representative advised the FAA by submission of FAA 7460-2, that the structure had reached its greatest height on the same day as the third filing.

Therefore, it is determined that the structure has a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft and is a hazard to air navigation.<sup>29</sup>

Sunroad attorneys argued that the Centrum 12 office building at 180 feet was not a public nuisance in correspondence to the City.<sup>30</sup> The California Department of Transportation was not persuaded:

Thank you for your letter of September 18, 2006, regarding the violation of California Public Utilities Code (PUC) section 21659 by the construction of the Sunroad Centrum 1 Building near Montgomery Field airport. Unfortunately, your letter does not answer the concerns of the California Department of Transportation (Department), Division of Aeronautics.

The position stated in our letter of September 14, 2006 to Sunroad Enterprises remains the same. The construction of the Sunroad Centrum Building is a violation of PUC Section 21659(a)<sup>31</sup>

At the direction of the San Diego City Attorney, City officials were advised on 19 October 2006 that the City had a duty to prevent public nuisances involving threats to public safety in and around airports. After non-compliance by Sunroad, the City Attorney's Office issued a letter to James. T. Waring advising that work on the building be stopped. The letter stated:

Under California Government Code section 50485.2, the City has a duty to prevent the creation of any hazard to air navigation using the police powers of the City. California Government Code section 504485.2 reads in relevant part:

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<sup>29</sup> 11 August 2006 FAA Determination of Hazard to Air Navigation letter issued to Sunroad, Exhibit 23.

<sup>30</sup> See letters from Sunroad attorneys of 18 September 2006, 3 October 2006, 26 October 2006 (with e-mail to City officials), 28 November 2006, Exhibits 24, 25, 26 and 27.

<sup>31</sup> 29 September 2006 California Department of Transportation letter to Sunroad attorney Barbara Lichman, Exhibit 28.

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in the vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft ... it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented by appropriate exercise of the police power....<sup>32</sup>

The City's Development Services Department issued a Stop Work Notice eight days after the 19 October 2006 memorandum from the City Attorney to City officials in charge of the Development Services Department.<sup>33</sup> The Stop Work Notice, issued on 27 October 2006, applied to the top 17 feet of the Sunroad Centrum 12 building (Centrum 12 Stop Work Notice)<sup>34</sup> and was based upon the FAA Determination of Hazard:

This is a stop work notice regarding the top seventeen feet of this structure. No work is to be done in this section of the structure until authorized by the department. FAA regulation must be clarified prior to continuing construction of the structure previously mentioned above.<sup>35</sup>

Furthermore on 25 October 2006, the Department of Transportation sent a letter to the City Attorney's Office confirming its "prior position requesting that the City take action regarding the subject construction which violates both State law and federal recommendations."<sup>36</sup> The letter by Gary Cathey, Chief of Airports, stated:

Finally, for informational purposes, please note that on October 3, 2006, Sunroad Enterprises did respond stating that it would be applying for a permit pursuant to Public Utilities Code, Section 21659. Sunroad also requested additional information from the State. On October 13, 2006, the

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<sup>32</sup> 19 October 2006 San Diego City Attorney letter to Jim Waring, Exhibit 29; Government Code §50485.2 Exhibit 30.

<sup>33</sup> 27 October 2006 City of San Diego Development Service Notice to Stop Work, Exhibit 31.

<sup>34</sup> 27 October 2006 City of San Diego Development Service Notice to Stop Work, Exhibit 31.

<sup>35</sup> 27 October 2006 City of San Diego Development Service Notice to Stop Work, Exhibit 31.

<sup>36</sup> 25 October 2006 letter from Gary Cathey, Chief, Office of Airports, Department of Transportation, Exhibit 32.

State supplied the requested information. As of now, the Sunroad Enterprises has failed to apply for a permit pursuant to Public Utilities Code, Section 21659.

On 14 November 2006 Sunroad Vice President for Development Tom Story appeared before the City of San Diego Airports Advisory Committee at the Montgomery Field Airport Lobby. During this meeting, according to the meeting minutes, Mr. Story admitted Sunroad had decided to not amend the building plans for the Centrum 12 building to the 160-foot height, as represented to the FAA, “out of financial consideration:”

Tom Story, Vice President for Development of Sunroad Enterprises, said that when it became known that 180 feet was going to be a hazard, they considered stopping at 160 feet but they would have had to redraw the plans. They decided not to amend the plans out of financial consideration. Sunroad’s rights are fully vested. He believes the hazard is mitigated through the NOTAM and by raising the approach minimums. Mr. Story stated that the project was in full compliance with the City requirements. (emphasis added)<sup>37</sup>

On 21 November 2006, Sunroad Vice President for Development, Tom Story, issued a letter to Ms. Escobar-Eck which requested authorization from Development Services “to complete the roof” in order “to protect the existing and in-progress construction work and materials that are being installed in the lower 60 feet of the building to avoid further delay of our project.”<sup>38</sup>

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<sup>37</sup> 14 November 2006 City of San Diego Airports Advisory Committee Minutes Montgomery Field Airport Lobby, Exhibit 33.

<sup>38</sup> 21 November 2006 letter from Sunroad Vice President, Development. Exhibit 34.

On 1 December 2006 the San Diego City Attorney informed the City official in charge of the Development Services Department that he should “make no change” to the Stop Work order that would in any way weaken it.<sup>39</sup>

On 15 December 2006 the Centrum 12 Stop Work Notice was expanded to include the top 20 feet.<sup>40</sup>

On 15 December 2006 the City Attorney, on behalf of the People of the State of California and the City of San Diego, filed a complaint to abate the public nuisance caused by the Centrum 12 building hazard.<sup>41</sup>

Just days after the City Attorney took legal action against Sunroad; Ms. Escobar-Eck modified the Stop Work Notice to allow work on the top floors to continue. Ms. Escobar-Eck issued a 21 December 2006 letter which purportedly allowed some work on the building to continue “above the level specified in the notice.”<sup>42</sup>

On 19 January 2007, California Department of Transportation Aviation Safety officer Jeff R. Brown notified San Diego City officials that the failure of City officials to enforce a Stop Work Notice directed at the construction of an office building located near a City operated airport, Montgomery Field, was allowing the developer of the building to violate state law and posed a danger to public safety:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the revised Stop Work Notice (Notice) issued by the City of San Diego (City) on December 13, 2006 for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620

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<sup>39</sup> 1 December 2006 City Attorney memorandum to Jim Waring, Exhibit 35.

<sup>40</sup> 13 December 2006 City of San Diego Development Service Notice to Stop Work, Exhibit 36.

<sup>41</sup> 15 December 2006 Complaint to abate nuisance, Exhibit 37.

<sup>42</sup> 21 December 2006 letter from San Diego City Development Services Director Marcela Escobar-Eck, Exhibit 38.

Spectrum Center Boulevard. We have also reviewed a copy of the December 21, 2006 letter from Ms. Marcia Escobar-Eck of your Development Services Department to Sunroad Enterprises (Sunroad) authorizing construction of the Sunroad Centrum I building above the level specified in the Notice. The City's apparent failure to enforce the Notice, which enables the developer to violate State Law and seems to disregard public safety, is of great concern to the Department. (emphasis added)<sup>43</sup>

Brown's 19 January 2007 letter was directed at the 21 December 2006 letter from Ms. Escobar-Eck which purportedly allowed some work on the building to continue "above the level specified in the notice."<sup>44</sup>

Under California Penal Code §373(a) the San Diego City Attorney is charged with the duty of continuously prosecuting all persons guilty of public nuisances until such nuisance is abated and removed:

[I]t is hereby made the duty of the ... city attorney of any city the charter of which imposes the duty upon the city attorney to prosecute state misdemeanors, to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed.<sup>45</sup>

Under Penal Code §373(a) every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, after reasonable notice in writing from a city attorney to remove, discontinue or abate the public nuisance has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly;

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<sup>43</sup> 19 January 2007 Department of Transportation Letter from Jeff R. Brown to James T. Waring, with copies to Mayor Jerry Sanders and City Attorney Michael J. Aguirre, Exhibit 39; see 9 November 2006 Department of Transportation Letter from Jeff R. Brown to Marcela Escobar Eck [stating "construction of this structure is a violation of California Public Utilities Code (PUC) Section 21659)], Exhibit 40; also see 14 September 2006 Department of Transportation Letter from Jeff R. Brown to Craig Bachmann (notifying Sunroad of the need to obtain a permit from the California Department of Transportation in order to go over 160 feet), Exhibit 41 .

<sup>44</sup> 21 December 2006 letter from San Diego City Development Services Director Marcela Escobar-Eck, Exhibit 38.

<sup>45</sup> California Penal Code §373(a), Exhibit 42; San Diego City Charter § 40.1 imposes the duty on the San Diego City Attorney to enforce state misdemeanors.

and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense.<sup>46</sup>

Government Code § 50485.2 provides that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question:

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants off land in its vicinity and also, if of the obstruction type, in effect reduces the maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

- (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and
- (b) that it is therefore necessary in the interest of the public health, public safety and general welfare that the creation or establishment of airport hazards be prevented by appropriate exercise of the police power ....

The 19 January 2007 letter from Safety Officer Brown went on to complain that by failing to remove the hazard City of San Diego officials were failing to protect their citizenry:

When the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continue to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery. (emphasis added)<sup>47</sup>

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<sup>46</sup> California Penal Code §373(a), Exhibit 42.

<sup>47</sup> 19 January 2007 Department of Transportation Letter from Jeff R. Brown to James T. Waring, with copies to Mayor Jerry Sanders and City Attorney Michael J. Aguirre, (p. 2), Exhibit 39.

Public Utilities Code §21659 (a) prohibits any person from constructing a structure higher than permitted under FAA rules without a permit from the California State Department of Transportation:

(a) No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards set forth in the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, Subpart C, unless a permit allowing the construction, alteration, or growth is issued by the department. (emphasis added)<sup>48</sup>

James T. Waring, deputy chief of Land Use and Economic Development for the City of San Diego, responded to Safety Officer Jeff Brown's letter on 23 January 2007. Mr. Waring incorrectly represented that the Centrum 12 building was not in the Airport Influence Area, when in fact it was within this influence area, based upon a 4 October 2004 action of the San Diego County Airport Authority.<sup>49</sup> The Airport Influence Area for Montgomery Field was amended to include any construction requiring FAA airspace hazard review:

The Airport Influence Area is also extended to include review of proposed construction, regardless of its proximity to an airport, when such construction requires FAA airspace hazard review under Part 77 of the Federal Aviation Regulation.<sup>50</sup>

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<sup>48</sup> California Public Utilities Code § 21659, Exhibit 43.

<sup>49</sup> 23 January 2007 letter from James T. Waring San Diego City Deputy Chief, Land Use and Economic Development, Exhibit 44; see Resolution No. 2004-0111 of the Board of the San Diego County Regional Airport Authority and Airport Land Use Compatibility Plan for Montgomery Field p. 7, Exhibit 45.

<sup>50</sup> Resolution No. 2004-0111 of the Board of the San Diego County Regional Airport Authority and Airport Land Use Compatibility Plan for Montgomery Field p. 7, Exhibit 45.

On 31 January 2007 a notice under Penal Code §373(a) was sent by the City of San Diego to Sunroad.<sup>51</sup> On 20 March 2007 a notice directing Sunroad to comply with the Stop Work Notice was sent by the City of San Diego.<sup>52</sup>

#### **IV.**

#### **SDG&E SUBSTATION RELOCATION**

This section of the report will provide evidence illustrating Sunroad's attempts to change a series of approved development agreements to relieve the company of its responsibility to move an electric substation. This section will also illustrate that the failure to move the substation and construct residential homes in the planned substation footprint - which is Sunroad's goal - would add potential risk to the future residents of the area.

The Centrum 12 office building was part of a larger development which included a residential component advanced by the Sunroad companies on the site of the former General Dynamics' properties in the Kearny Mesa Community Planning Area in San Diego. The overall project was described in a 20 April 2007 San Diego Planning Commission Report (Report No. PC-07-058):

There is a Development Agreement for the site and the New Century Center Master Plan . . . . The site is designated for Mixed Use Commercial and Residential development. The original New Century Center project was approved by the City Council on November 18, 1997, allowing General Dynamics (the original owner) to develop a high-density mixed-use retail, commercial and industrial business park on 242-acres centrally located within the Kearny Mesa Community Plan area.<sup>53</sup>

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<sup>51</sup> See 31 January 2007 Notice under Penal Code § 373a to Sunroad, Exhibit 46.

<sup>52</sup> See 20 March 2007 Notice from City of San Diego to Sunroad to comply with the City of San Diego Stop Work Notice, Exhibit 47.

<sup>53</sup> See 30 October 1997 1472 form directing that the New Century Center project be calendared for consideration by the San Diego City Council, Exhibit 48.

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On November 12, 2002, an amendment to the Master Plan was approved to allow 570 additional residential units on the 33 acre commercial/mixed use area (Planning Areas '1A' '1B' and '2B') and an eight acre industrial area (Planning Area '3A') .... This approval brought the total permitted residential units in the Master Plan area to 1,568. Development of the additional 570 units will require the provision of a minimum two-acre park on-site and a shuttle service to serve the uses. Per the City Council's action, implementation of the park and shuttle service requirement will be triggered by the issuance of the 999<sup>th</sup> building permit.<sup>54</sup>

In connection with the 2002 changes in the New Century Center Master Plan a relocation of a San Diego Gas & Electric (SDG&E) substation<sup>55</sup> within the project area was planned. A dispute has arisen between SDG&E and Sunroad over whether the substation should be moved and, if so, where and who should pay for the relocation costs. A 2002 Mitigated Negative Declaration done in conjunction with the 2002 increase in residential units addressed to the substation relocation:

San Diego Gas & Electric Company Electrical Substation Relocation

The relocation of an existing San Diego Gas & Electric Company (SDG&E) electrical substation (General Dynamics Substation) to a planned non-residential portion of the Sunroad Centrum project area is addressed at the project level of analysis in this environmental document. The purpose of the relocation is to implement the proposed development plan, while continuing to provide reliable electrical service to the project and other existing and future customers within SDG&E's service area. (emphasis added)<sup>56</sup>

The dispute over the substation is memorialized in a series of letters and e-mails among and between SDG&E and Sunroad executives and City officials. On 22 December 2004, SDG&E Land Planner Mark Chomyn wrote Bill Tripp, in the City's Development

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<sup>54</sup> 20 April 2007 San Diego Planning Commission Report (Report No. PC-07-058), Exhibit 49.

<sup>55</sup> A substation is defined as a facility that steps up or steps down the voltage in utility power lines. Voltage is stepped up where power is sent through long-distance transmission lines. It is stepped down where the power is to enter local distribution lines, see San Diego Regional Energy Infrastructure Study, (p. C-14), Exhibit 50.

<sup>56</sup> Sunroad Centrum Mitigated Negative Declaration (LDRR NO. 41-0101) 2002, Exhibit 51.

Services Department, complaining that the actions of the two developers “could significantly impact the ongoing operation of the substation and/or the ability to relocate the substation to a more appropriately zoned parcel.” Mr. Chomyn went on to complain that “previous conditions imposed by the City to accommodate the relocation of the substation from the Promenade North project have not resulted in the substation moving.”<sup>57</sup> Mr. Chomyn closed his letter with this plea:

SDG&E recommends that the City strongly considers SDG&E’s concerns if and when the owners of Sunroad B (Promenade North) and Sunroad Spectrum seek new permits or amendments that would affect either the ability to relocate the General Dynamics Substation, or compromise its ongoing operation at the present site.<sup>58</sup>

The 22 December 2004 letter from SDG&E prompted a 14 February 2005 reply from Sunroad’s legal counsel David L. Huard of the Manatt Phelps law firm. Mr. Huard argued in his 14 February 2005 letter to the City of San Diego that SDG&E’s 22 December 2004 letter was “inaccurate and misleading:”

Unfortunately, the SDG&E correspondence is inaccurate and misleading in a variety of aspects, in part due to its brief and selected recitation of the background of this matter. The undersigned was counsel for Sunroad Centrum Partners (‘Sunroad’) in negotiations with SDG&E arising from a dispute concerning the potential relocation and expansion of an electric distribution substation originally designed to serve the General Dynamics facilities that is referenced in the SDG&E letter of December 22. The dispute was amicably resolved by the parties. In a letter dated September 30, 2003, SDG&E concluded that any relocation of the substation to property owned by and to be developed by Sunroad was ‘economically unviable.’ In this letter, counsel for SDG&E stated that ‘SDG&E has decided not to complete the appraisal process and not to seek to acquire

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<sup>57</sup> 22 December 2004 letter from SDG&E Land Planner Mark Chomyn to City of San Diego Development Services, Exhibit 52.

<sup>58</sup> 22 December 2004 letter from SDG&E Land Planner Mark Chomyn to City of San Diego Development Services, Exhibit 52.

your client's property' for the purposes of establishing a new substation site.<sup>59</sup>

Mr. Huard provided additional background information about the project but emphasized that the project did not provide a specific site to which the substation was to be relocated:

As is well known, Sunroad Enterprises is in the process of developing an area variously referred to as the 'New Century Center,' 'Spectrum' or 'Sunroad Centrum' which comprises approximately 40 acres of a 240 acre master plan area. This matter was addressed in a Mitigated Negative Declaration ('MND') dated February 7, 2002. The purpose of the MND was to support amendments to the City of San Diego General Plan and Master Plan for the New Century Center. The plan is to 'increase the maximum amount of residential development permitted within the portion of the Master Plan area.' The proposal included the option to relocate a San Diego Gas & Electric electrical substation to a planned non-residential portion of the project area. However, the Master Plan neither identified nor approves a specific site for the relocated substation and expressly disclaims doing so.<sup>60</sup>

In the 14 February 2005 letter, Mr. Huard urged the City of San Diego to disregard SDG&E's concerns about moving the substation:

Therefore, Sunroad urges the City to either (1) disregard the alleged 'concerns' of SDG&E, (2) require that SDG&E proactively submit a proposal for location of a new substation indicating the need for such substation, the size and extent of the area to be serviced by said substation, copies of any filing or evaluation of said substation, and that any such plans be consistent with the proposals by William Lyons Homes, Inc. now before the City for consideration, and Sunroad's previously approved development plans, and (3) in no event consider relocation of the current substation to Sunroad's property.<sup>61</sup>

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<sup>59</sup> 14 February 2005 letter from David L. Huard to Bill Tripp re: SDG&E General Dynamics Substation, Exhibit 53.

<sup>60</sup> 14 February 2005 letter from David L. Huard to Bill Tripp re: SDG&E General Dynamics Substation, Exhibit 53.

<sup>61</sup> 14 February 2005 letter from David L. Huard to Bill Tripp re: SDG&E General Dynamics Substation (p5), Exhibit 53.

On 29 January 2002 the San Diego City Council had approved Sunroad's proposal to increase residential development on the site. The new proposal would "allow Sunroad "to develop up to an additional 1,120 dwelling units (550 +570) on Subareas 1A, 2B, and 3A."<sup>62</sup>

In a 21 March 2005, e-mail from SDG&E to Development Services Department SDG&E expressed its concern that the substation be relocated as part of the Centrum 12 office building permit process:

SDG&E attended the March 16, 2005 meeting of the Kearny Mesa Community Planning Group. In the meeting we learned that Sunroad Enterprises would be processing a Substantial Conformance review through the Development Services Department for a proposed 12-story office building located at the corner of Spectrum Center Blvd. and Kearny Villa Road.

SDG&E is concerned about Spectrum's substantial conformance request. The request replaces the SDG&E Spectrum Substation site, approved as part of the amendments to the Sunroad Centrum Master Plan (LDR No. 41-0101), and replaces the substation site with a parking area for the proposed 12-story office building. \*\*\*

We don't believe that a site plan that removes the approved substation site can be found in substantial conformance to development plan amendments approved in LDR NO. 41-0101.

The Manatt/Phelps/Phillips letter of February 14, 2005 to Bill Tripp on behalf of Sunroad Enterprises mentions that SDG&E's September 30, 2003 letter to Sunroad acknowledged that SDG&E was no longer interested in the substation site in Sunroad Centrum. That is incorrect; SDG&E's letter of September 30, 2003 should not be taken as an indication that SDG&E is not interested in the substation site approved in LDR. No. 41-0101.<sup>63</sup>

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<sup>62</sup> 29 January 2002 San Diego City Council Minutes (pp 7-10), Exhibit 54.

<sup>63</sup> 21 March 2005 e-mail from Jeannette Temple to Hamid Bagheri, et al, (including e-mail from SDG&E Land Planner Mark Chomyn to Jeannette Temple), Exhibit 55; see also related 28 March 2005 SDG&E letter from Land Planner Mark Chomyn to John Cruz Project San Diego City Development Manager for Sunroad Centrum 12, Exhibit 56.

On 21 April 2005 Sunroad attorney Paul Robinson wrote the City of San Diego's Centrum 12 project manager John Cruz requesting the City of San Diego disregard the concerns raised about the substation by SDG&E Land Planner Mark Chomyn:

For the reasons discussed above, we urge you to disregard Mr. Chomyn's comments as unfounded and unsupported by the express language of the Master Plan. The City should consider staying out of this misunderstanding between Sunroad and SDG&E. Sunroad is becoming increasingly frustrated with SDG&E's continued interference in its proposed development of the Sunroad Centrum project and is prepared to take all necessary actions to settle this matter once and for all.<sup>64</sup>

On 4 May 2005, Sunroad followed up its 21 April 2005 letter to John Cruz with a letter to SDG&E lawyer C. Larry Davis threatening litigation:

Be advised if SDG&E either transmits any further information that is misleading, inaccurate or incomplete, or is designed to interfere with Sunroad's prospective economic advantage in developing the subject property to any other entity, including but not limited to the City of San Diego, or if the City of San Diego, who has purview over the development of the subject property, takes action inconsistent with Sunroad's economic advantage based on previous SDG&E communications, Sunroad will, without any further notice to you, file suit against SDG&E and any individual in relaying such information and pursue its rights to the fullest extent of the law.<sup>65</sup>

On 16 May 2005, Sunroad attorney Paul Robinson again warned the City of San Diego to stay out of the substation relocation dispute between SDG&E and Sunroad, "We strongly encourage the City of San Diego to stay out of what has become an increasingly acrimonious dispute between two private parties."<sup>66</sup> On 19 August 2005, the San Diego City project manager for Sunroad 12 notified Sunroad that the substation relocation was

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<sup>64</sup> 21 April 2005 letter from Sunroad attorney Paul E. Robinson to John Cruz, Exhibit 57.

<sup>65</sup> 4 May 2005 letter from Sunroad attorney Manatt, Phelps attorney David L. Huard to C. Larry Davis, Exhibit 58.

<sup>66</sup> 16 May 2005 letter from Sunroad attorney Paul Robinson to Ms. S. Gail Goldberg San Diego City Planning Director, Exhibit 59.

still a live issue and that Sunroad's proposed Centrum 12 development was not in conformance with the underlying planning document requirements:

As of this writing, the relocation of the SDG&E substation remains an unresolved issue. A meeting between City staff, Sunroad, and Lyon is scheduled for September 5, 2005. After this meeting, City staff will have a recommendation on this project. As a reminder, the proposed project does not conform to the New Century Center Master Plan #96-0165 and the related Volumes 1, 2, &3. In addition, this project is not consistent with Mitigated Negative Declaration (MND) LDR No. 41-0101.<sup>67</sup>

On 4 November 2005, staff at the City's Development Services Department had decided to request Sunroad to provide a complete vision of their entire development (residential and office) with the hope that by "requesting a complete vision of their proposal [it] may be the impetus necessary for Sunroad to submit a solution to the SDG&E substation dilemma."<sup>68</sup> On 6 December 2005, Sunroad lobbyist Steve Laub sent an e-mail to San Diego City Development Services representatives Jeannette Temple and John Cruz memorializing what "we need to submit in order to obtain approval of the SCR (substantial conformance review) for the Sunroad Centrum Office Building in Spectrum."<sup>69</sup> Amongst the items listed was a requirement that "relocation envelope" for the SDG&E substation be identified:

Show 'Alternative Potential Relocation Envelope' for SDGE substation along Lightwave Avenue that is not encumbered by future office buildings or the new driveway. This would not be a commitment by City or Sunroad as to the ultimate resolution of the question of relocating the substation,

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<sup>67</sup> 19 August 2005 letter from San Diego City Centrum 12 project manager John Cruz, Exhibit 60.

<sup>68</sup> 4 November 2005 e-mail from John Cruz to City of San Diego officials working on the Sunroad projects, Exhibit 61.

<sup>69</sup> 6 December 2005 e-mail from Sunroad Lobbyist Steve Laub to Jeannette Temple and John Cruz, Exhibit 62.

but will be included at this time to illustrate that the current project will not preclude the relocation to this area if that is later decided.<sup>70</sup>

By 6 April 2006, San Diego City Deputy Chief for Land Use and Economic Development Jim T. Waring became involved in the substation relocation dispute. On that date Joe Zulauf Project Manager for Electric Transmission Project Management at SDG&E sent an e-mail to San Diego City Development Services official Gary Halbert asking whether Mr. Halbert had “already sent the letter you discussed to Sunroad.”<sup>71</sup> Mr. Halbert responded by e-mail and informed Mr. Zulauf that a “draft of the letter” had been sent to Mr. Waring and that Mr. Waring was “making some edits.” Mr. Halbert promised to send Mr. Zulauf a copy of the City’s letter to Sunroad late the following week.<sup>72</sup>

On 17 April 2006 (3:08 pm) Mr. Waring sent an e-mail to Sunroad principal Aaron Feldman memorializing a “brief conversation” the preceding Friday and expressing a willingness to meet with Mr. Feldman about the “substation issue.” Mr. Waring’s e-mail also postponed the City’s letter to Sunroad that Gary Halbert promised would be sent to SDG&E’s Zulauf:

This is the follow-up to our brief conversation of last Friday. Gary and I will be pleased to meet and discuss the substation issue before sending the letter I mentioned. Since this issue also involves Sempra, I suggest we have someone from Sempra attend. Let’s plan in this meeting to either resolve the issue to everyone’s satisfaction or, failing that, clearly identify the area of disagreement. By having all the interested parties present, we can maximize the chances of a positive outcome.<sup>73</sup>

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<sup>70</sup> 6 December 2005 e-mail from Sunroad Lobbyist Steve Laub to Jeannette Temple and John Cruz, Exhibit 62.

<sup>71</sup> 6 April 2006 e-mail from SDG&E Project Manager for Electric Transmission Project Manager Joe Zulauf to Gary Halbert, Exhibit 63.

<sup>72</sup> 6 April 2006 e-mail from SDG&E Project Manager for Electric Transmission Project Manager Joe Zulauf to Gary Halbert, Exhibit 63.

<sup>73</sup> 17 April 2006 e-mail from City of San Diego Deputy Chief James T. Waring to Aaron Feldman, Exhibit 64.

Also on 17 April 2006 (10:27 am), approximately four hours before Mr. Waring’s e-mail to Sunroad executive Aaron Feldman, SDG&E Joe Zulauf sent an e-mail to Development Service official Gary Halbert asking again whether “the City has now gone on record with its position concerning the permitting of future development on Sunroad Spectrum and the Promenade.”<sup>74</sup> Mr. Waring responded to Mr. Zulauf’s e-mail two days later on 19 April 2006 and represented that he, Jim Waring, had told Aaron Feldman during the Waring-Feldman meeting that “we had serous concern with the substation:”

Joe;

Gary and I will be meeting soon with Aaron Feldman. I saw Aaron last week and told him we had a serious concern with the substation. He indicated that he wants to come meet with us and explain why he thinks he has fulfilled his obligations. My intent is to have someone from Sempra at the meeting so we can put this to bed in a single meeting.<sup>75</sup>

A meeting was held at the City’s Development Services offices and included representatives from Sunroad, SDG&E and City officials to discuss the SDG&E relocation issue.<sup>76</sup> Four pages of hand-written meeting notes, on the stationery of Development Services Project Manager for the Sunroad projects, John Cruz, were reviewed. The participants in the 11 May 2006 meeting were as follows:

<u>NAME</u>	<u>ORGANIZATION</u>
Marcie Lewis	Counsel, SDG&E
Caroline Winn	T&D Planning, SDG&E

<sup>74</sup> 17 April 2006 e-mail from SDG&E representative Joe Zulauf to Development Services official Gary Halbert, Exhibit 65.

<sup>75</sup> 17 April 2006 e-mail from City of San Diego Deputy Chief Land Use and Economic Development Jim Waring to SDG&E official Joe Zulauf, Exhibit 65.

<sup>76</sup> 11 May 2006 e-mail from Lysanda Bostic to Gary Halbert et al regarding Centrum meeting, Exhibit 66.

Tom Story	Sunroad
Aaron Feldman	Sunroad
Paul Robinson	Sunroad
Gary Halbert	City, DSD
Jim Waring	City Mayor's office <sup>77</sup>

The notes indicate that Sunroad officials asked whether SDG&E had explored other locations to move the substation and whether the substation could stay in its current location. SDG&E indicated they had looked for other sites and also that the substation had to be moved. Sunroad officials proposed, according to the notes, that a consultant evaluate a relocation site and that the cost be “assessable to all.” SDG&E and Sunroad agreed they “will attempt to hire a consultant together to evaluate alternatives.” Both Sunroad and SDG&E expressed their intent “to return to the City after addressing: Expanding the existing site, other alternative sites, and moving to a corner lot.”<sup>78</sup>

On 11 May 2006 (5:39 pm) Mr. Waring sent an e-mail to a lobbyist for another developer in the New Century Center development area, Jim Bartell, informing Mr. Bartell of the 11 May 2006 meeting amongst Sunroad, SDG&E and the City of San Diego. In the letter, Mr. Waring confirmed that the “City’s position is that the environmental documents and the development agreement between Sunroad and the City

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<sup>77</sup> 11 May 2006 Sunroad, City of San Diego, SDG&E John Cruz meeting minutes, Exhibit 67.

<sup>78</sup> 11 May 2006 Sunroad, City of San Diego, SDG&E John Cruz meeting minutes, Exhibit 67; see also 11 May 2006 (4:48 pm) e-mail from Paul Robinson to Jim Waring in which Mr. Robinson thanks Mr. Waring for getting the parties together, Exhibit 68.

require the substation to be moved.”<sup>79</sup> On 30 May 2006 the City of San Diego sent a letter to Sunroad executive Tom Story regarding Sunroad’s proposed residential development at the New Century Center site requesting, in part, “information regarding the planned relocation and status of the SDG&E substation for inclusion within the environmental document.”<sup>80</sup>

On 2 June 2006, Development Services official Gary Halbert wrote SDG&E project manager Joe Zulauf stating that Development Services “continues to support the relocation of the SDG&E Substation prior to any additional building permits being issued adjacent to land occupied by the Substation or easements pertaining to that use.”<sup>81</sup> On 11 July 2006 Development Services personnel met with Sunroad representatives Tom Story and Jordan Coopersmith regarding Sunroad’s proposed residential development at the New Century site. Notes kept in reference to the meeting provide “Speak w/JT (presumably Jeannette Temple) (and possibly Gary) about how to proceed as it pertains to the relocation of the SDG&E substation.”<sup>82</sup>

On 14 August 2006, Mr. Waring clarified his earlier position that the City would not issue building permits until the substation was relocated in an e-mail to Jeannette Temple:

This office and DSD has informed Sunroad that no new projects will be approved by the City until the SDG&E substation issue has been resolved. It is my understanding that Sunroad has been working positively with

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<sup>79</sup> 11 May 2006 (5:39 pm) e-mail from Jim Waring to Jim Bartell, Exhibit 69.

<sup>80</sup> 30 May 2006 letter from Development Services to Sunroad executive Tom Story, Exhibit 70.

<sup>81</sup> 2 June 2006 letter from San Diego Development Services Director Gary Halbert to SDGE’s Joe Zulauf, Exhibit 71.

<sup>82</sup> 11 July 2006 Meeting Agenda (with hand written notations) for the Sunroad Centrum residential development, Exhibit 72.

SDG&E on solutions, but as of this time no final resolution has been reached.

Sunroad currently has certain projects for which it has its development rights. (Gary Halbert and Kelly Broughton know better than I do exactly what they are.) The threshold that we've set, therefore, involves projects requiring new discretionary approvals. I do not know where the projects currently working their way to the KPMG fit. Kelly or Gary can provide that information. It is our hope and expectation that Sunroad and SDG&E will work out an appropriate, satisfactory solution.<sup>83</sup>

On 14 December 2006, Development Services project manager for the Sunroad projects, John Cruz sent an e-mail to Sunroad representatives Jordan Coopersmith and Tom Story stating that the Sunroad residential project “will not be taken to a hearing until the successful resolution of the SDG&E relocation issue.”<sup>84</sup> Despite the 14 December 2006 e-mail stating that the Sunroad residential would not be taken to a hearing until the substation relocation issue was resolved Development Services took the project to the San Diego Planning Commission for an approval hearing on 26 April 2007.<sup>85</sup> The matter was continued to 31 May 2007. During the time the Planning Commission considered the matter, Commissioner Gil Ontal asked in reference to the unresolved issue of relocating the substation: “Why is it such a basic infrastructure like this in a major development area was not addressed long before.”<sup>86</sup> On 26 April 2007, SDG&E sent a letter to DSD expressing “serious concerns regarding the ongoing and unresolved issue

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<sup>83</sup> 14 August 2006 e-mail from James T. Waring, Deputy Chief Land Use and Economic Development, Exhibit 73.

<sup>84</sup> 14 December 2006 e-mail from John Cruz to Jordan Coopersmith and Tom Story, Exhibit 74.

<sup>85</sup> 26 April 2007 Minutes San Diego City Planning Commission, Exhibit 75.

<sup>86</sup> 26 April 2007 Minutes San Diego City Planning Commission, Exhibit 75.

surrounding the relation of the Spectrum Substation.”<sup>87</sup> The substation issue remains unresolved.

V.

**CONCLUSION**

This report addresses the underlying facts supporting the city’s efforts to meet the concerns of the California Department of Transportation so as not to enable “the developer to violate State law” and so as to avoid a “disregard [of] public safety.”<sup>88</sup>

Moreover, no satisfactory explanation has been provided for the finding by the Development Services Department that the Centrum 12 office building was in substantial conformance with the previously issued environmental documents.<sup>89</sup>

This report also discusses the need for the city to ensure the relocation of the SDG&E substation in order to protect the public safety of those anticipated to reside in the proposed Sunroad residential development.

By   
Michael Aguirre  
San Diego City Attorney

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<sup>87</sup> 26 April 2007 letter from Joe Zulauf, Project Manager, SDG&E, Exhibit 76.

<sup>88</sup> 19 January 2007 Department of Transportation Letter from Jeff R. Brown to James T. Waring, with copies to Mayor Jerry Sanders and City Attorney Michael J. Aguirre, Exhibit 39.

<sup>89</sup> See 10 October 1997 New Century Center Environmental Impact Report LDR No. 96-0165, SCH No. 96031091, pages 1, 4.6-1 to 4.6-8, and 4.6-12, Exhibit 77.