

**INTERIM REPORT NO. 33
SPECIAL REPORT TO THE ATTORNEY
GENERAL REGARDING SUNROAD
CENTRUM 12**

**REPORT OF THE
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I. BACKGROUND

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

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.¹ Specifically, a plan was approved to construct a series of complexes to include retail stores, office buildings, and industrial or manufacturing centers. The project, called 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.² The project, as approved, also included plans for road, public amenities, the retention of seven acres for Missile Park and 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 changes to the project, which was then named “San Diego Spectrum.” The change to the project opened up the potential for multi-residential housing on the project site. Zoning maps were changed to permit 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 2000.³

As a result of the housing crisis in the City of San Diego,⁴ the City encouraged development of more affordable housing at San Diego Spectrum.

In December 2000, Sunroad Enterprises purchased 40 acres of land from Lennar.⁵ Sunroad Centrum Partners submitted an application in February 2001 to build 570

¹ Minutes of the 2 December 1997 meeting of the San Diego City Council. (Exhibit 1)

² See at *Id.*

³ Minutes of the 3 October 2000 meeting of the San Diego City Council. (Exhibit 2)

⁴ Branscomb, Leslie Wolf; “San Diego lags U.S. in home ownership”; *San Diego Union-Tribune*; 23 May 2001. (Exhibit 3)

⁵ Potter, Matt. “Breaking Stories: Aaron’s Gold.” *San Diego Reader*. 1 February 2007. (Exhibit 4)

additional housing units.⁶ 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 the residential component by another 570 units. The proposal included an item that, if approved by City Council, would require Sunroad to increase the amount of affordable housing units from 10 percent to 20 percent of the 570 units.⁷ Sunroad's proposal to increase the residential component of the overall development was forwarded directly to the Mayor's office in January 2002.⁸ The proposal was approved at the 12 November 2002 meeting of the City Council by a vote of 8-to-0.⁹

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 to buy a helicopter for San Diego's Regional Fire and Rescue Helicopter Program.¹⁰ According to the Sunroad Foundation, a subsidiary of Sunroad Enterprises, "Over the next five years, for every car sold at Toyota Chula Vista, Pacific Honda, 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 Marina and every round of golf sold at Maderas Golf Club, Sunroad will make a donation to the fund."¹¹

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

The City Engineer has examined [sic] and states that he can make the necessary findings to approve the final map 'Sunroad B –

⁶ 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 5)

⁷ 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 6)

⁸ 24 January 2002 and 25 January 2002 letters from Sunroad attorney Paul Robinson to Mayor's office. (Exhibits 7 and 8)

⁹ Minutes of the 12 November 2002 meeting of the San Diego City Council. The meeting minutes reflect what Council member Scott Peters was absent for the vote on the Sunroad proposal. (Exhibit 9)

¹⁰ Minutes of the 10 February 2004 meeting of the San Diego City Council. (Exhibit 10)

¹¹ Sunroad Foundation announcement. Source: www.sunroadfoundation.org/index.htm. (Exhibit 11)

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.¹²

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 2006.¹³

Something, however, went wrong in the planning and development process. The project led to construction of a 180-foot building that has been deemed a hazard by the FAA and 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, and later misled the public about the process.

PART I: SUNROAD CENTRUM BUILT IN VIOLATION OF FEDERAL AND STATE SAFETY CODES

A. CENTRUM 12

Sunroad officials had been made aware of the FAA concerns about the height of the Centrum 12 building in early April 2006. Centrum 12 architect Dan Much forwarded an e-mail to Sunroad officials on 3 April 2006 explaining that FAA Obstruction Evaluator Karen McDonald would be making an “obstruction evaluation” of the Centrum 12 building.¹⁴ The e-mail and related response from a Sunroad official provided as follows:

¹² 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 12)

¹³ Minutes of the 6 February 2006 meeting of the San Diego City Council. (Exhibit 13)

¹⁴ 3 April 2006 e-mail from Dan Much, architect for Sunroad, to Aaron Feldman, owner of Sunroad Enterprises, and Tom Story, Vice President of Development for Sunroad Enterprises. Subject: regarding Centrum, FAA Obstruction Evaluation, (cc’s and e-mail addresses omitted). (Exhibit 14).

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...

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.¹⁵

As anticipated, the FAA issued a Presumed Hazard letter on 24 April 2006 to Sunroad Enterprises because the Centrum 12 building planned to stand 180 feet tall would have "an adverse impact on the published circling instrument flight procedures utilized at Montgomery Field."¹⁶ The FAA letter advised the "maximum acceptable height of the structure at this site is 160 feet above the ground."¹⁷ After receiving notice that the Centrum 12 office building was a presumed hazard, Sunroad executives continued to construct the building to 180 feet.

When City officials found out about the "Presumed Hazard Notice" on 19 June 2006, San Diego City Planning Department Planner Tait Galloway informed senior officials in the City's Development Services Department of the FAA's hazard warning

¹⁵ See at *Id.*

¹⁶ 24 April 2006 FAA Notice of Presumed Hazard. (Exhibit 15). 20 June 2006 e-mail from Karen McDonald, Air Traffic Airspace Specialist for the FAA. (Exhibit 16)

¹⁷ 20 June 2006 e-mail from FAA Hazard Evaluator Karen McDonald to Dan Munch, Sunroad Architect, and Craig Bacchman, Vice President of Construction for Sunroad; Subject: "2006-AWP-1638-OE; Carbon copied: Kelley Broughton, Deputy Director of the City's Development Services Department, and Tait Galloway, Planner for the City of San Diego, Bruce Beard, James Machado, Kevin Haggerty, and Eric Nelson, representative of the County of San Diego. (Exhibit 17).

regarding the Centrum 12 office building: Galloway issued the following e-mail to his senior officials in the City's Development Services Department:

From: Tait Galloway
To: Halbert, Gary; Broughton, Kelly
Date: 6/19/2006 12:30 PM
Subject: FAA Issue w/Sunroads Centrum 12 (PTS 64541)

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 [sic] 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.¹⁸

The FAA, meanwhile, sent Sunroad officials another letter that stated the plan for the Centrum 12 building at 180 feet was a hazard. The second Determination of Hazard was sent to Sunroad on 20 June 2006 by the FAA:

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.¹⁹

¹⁸ 19 June 2006 memorandum from Tait Galloway to Gary Halbert and Kelly Broughton Re: FAA Issue w/Sunroads Centrum 12. (Exhibit 18).

¹⁹ 20 June 2006 e-mail from FAA Hazard Evaluator Karen McDonald to Dan Munch, Sunroad Architect, and Craig Bacchman, Vice President of Construction for Sunroad; Subject: "2006-AWP-1638-OE; Carbon copied: Kelley Broughton, Deputy Director of the City's Development Services Department, and Tait Galloway, Planner for the City of San Diego, Bruce Beard, James Machado, Kevin Haggerty, and Eric Nelson, representative of the County of San Diego. (See Exhibit 17).

B. SUNROAD AGREES TO LOWER BUILDING TO 160 FEET

On the same day that Sunroad officials received this second warning, company officials agreed to the 160-foot height limit in a statement to the FAA. Craig Bachmann, director of construction operations for Sunroad, stated in a letter to the FAA 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.²⁰

Gary Halbert, Director of the City's Development Services Department, also understood the building was going to be limited to the 160-foot height. Halbert said in an interview that a Sunroad attorney stated specifically that the building would be constructed to the lower height. Halbert said that after receiving this information, he then notified his immediate superiors, including Jim Waring. According to the interview report:

The first time that Gary Halbert can recall hearing about a height issue with this project was in late May or June 2006. Tait Galloway had informed him of a phone call he received from the FAA stating that the Sunroad project encroached on the air space buffer zone and this was going to be listed as a 'presumed hazard.' Sunroad had a fully vested agreement with the city of San Diego, which was permitted by the city....

Gary Halbert stated that in June 2006, he attended an Airport Terminal Advisory Group (ATAG) meeting with Barbara Lichman, who is an attorney working for Sunroad on this project. Gary Halbert was informed by Ms. Lichman that 'Sunroad would agree to halt construction on the building at 160 feet.'...Gary Halbert told others in DSD and his boss (Jim Waring) that Sunroad would stop at 160 feet and he assumed that the problem was solved.²¹

According to Jim Waring's schedule, he held a meeting between 11:15 a.m. and 11:30 a.m. with Gary Halbert on 20 June 2006. The notes of the meeting state, "per JS."²²

A few days later, Sunroad filed a new Form 7460-1, an FAA permit application. The document submitted to the FAA by Sunroad stated the Centrum 12 building would have a "maximum height of 160."²³

²⁰ 20 June 2006 letter from Craig Bachmann, Director of Construction Operations for Sunroad, to Federal Aviation Administration Air Traffic Division. (Exhibit 19).

²¹ 31 May 2007, telephonic interview of witness: Gary Halbert; Interview conducted by Vince delaMontaigne; Interview Topic: Sunroad Project. (Exhibit 20).

²² 20 June 2006 meeting calendar of Jim Waring. (Exhibit 21)

²³ 22 June 2006 FAA Form 7460-1 filing by Sunroad. (Exhibit 22).

The FAA issued a Determination of No Hazard to Air Navigation letter to Sunroad on 27 June 2006 for its application for Centrum 12 at 160 feet.²⁴ In other words, the FAA approved the building at the 160-foot level.

Meanwhile, officials from the City's Development Services Department ("DSD") and the City Attorney's Office continued to communicate to ensure the building height would not go above 160 feet. Mr. Galloway expressed this understanding in a 29 June 2006 e-mail to Mr. Halbert and Deputy City Attorney David Miller. Galloway wrote:

Sunroad's attorney Barbara Lichman contacted me this afternoon concerning the outcome of our meeting this afternoon...She commented that the applicant will hold the structure to 160 ft. pending the outcome of a new aeronautical study.²⁵

Mr. Halbert then forwarded this information to high-ranking City officials including Kelly Broughton and Jim Waring, in a carbon copied e-mail. Mr. Galloway sent another e-mail to superiors at the Development Services Department to alert them that Sunroad received approval from the FAA to build to 160 feet.

The Centrum 12 project has been issued a building permit...Barbara Lichman, aviation attorney representing Sunroads [sic] specifically for this issue indicated that the construction crane for Centrum 12 recently received approval from the FAA to exceed 160 ft for construction purposes and that Sunroads [sic] will not exceed the 160 ft pending the outcome of a new FAA evaluation...I will keep you informed as more information is available.²⁶

At this point, City officials were on notice that the Sunroad Centrum building would be constructed at the 160-foot height.

As a result of this understanding, the City's Development Services Department issued a permit for the "Sunroad Centrum – 12 Bldg" on 7 July 2006.²⁷ The permit

²⁴ 27 June 2006 FAA Determination of No Hazard to Air Navigation letter issued to Sunroad. (Exhibit 23).

²⁵ 29 June 2006 e-mail from Tait Galloway, City Planner, to David Miller, Deputy City Attorney; Subject: "Spectrum Sunroad Centrum 12"; Carbon copied: Gary Halbert: Director of the Development Services Department. (Exhibit 24).

²⁶ 6 July 2008 e-mail from Tait Galloway to Mike Tussey; Subject: "Re: ATAG Update / Sunroads Spectrum"; Carbon copied: Gary Halbert, Kelley Broughton, David Miller. (Exhibit 25).

²⁷ 7 July 2007; Building Permit approving construction of Sunroad Centrum 12. (Exhibit 26)

provided for: "Building Permit for the construction of a twelve (12) story, 306,000 sq. ft. commercial office building."²⁸ The permit did not specify a height.

C. SUNROAD CONTINUES PLAN TO BUILD TO 180 FEET

Sunroad also filed a Supplemental Notice, or a subsequent permit application, to the FAA on 26 July 2006 which sought approval to construct the Centrum 12 building to 180 feet.²⁹

Mr. Galloway received a phone call from Sunroad's attorney to notify the City the company had re-applied with the FAA to construct the building to 180 feet.³⁰ Galloway sent an e-mail to his superiors at DSD to notify them of the potential problems with the FAA and the airport if Sunroad built to 180 feet. Galloway wrote:

Having spoken with Barbara Lichman yesterday, it is my understanding that Sunroads [sic] resubmitted the Centrum 12 project to the FAA for an airspace evaluation and that the FAA made the same determination as prior: that building's height at 180 ft would affect the instrument circling procedures at Montgomery Field and the FAA recommended a building height of 160 ft.³¹

Galloway indicated in the e-mail that despite the FAA hazard warning, Sunroad would construct the building to 180 feet, thereby disrupting flight operations at the airport. Galloway wrote:

Barbara indicated that Sunroads [sic] is planning to proceed as permitted and that they are attempting to schedule a meeting with you and David to discuss the issue in more detail. If they proceed as permitted, it is my understanding that the FAA will issue a notice of hazard for the project and will have to amend the circling procedures for Montgomery Field.³²

Mr. Broughton, Deputy Director of DSD, then asked City personnel to begin forwarding information about the Sunroad issue to Mr. Waring.³³ City Planner John Cruz responded

²⁸ See at *Id.*

²⁹ 26 July 2006 Supplemental Notice from George Williams on behalf of Sunroad for the Centrum 12 building, 26 July 2006, 7460-1 for ASN: 2006-AWP-4601-OE. (Exhibit 27).

³⁰ 27 July 2006 e-mail from Tait Galloway to Gary Halbert; Subject: "Sunroads Centrum 12"; Carbon copied: David Miller, Ketih Greer, Kelly Broughton, and Mike Westlake. (Exhibit 28)

³¹ See at *Id.*

³² See at *Id.*

³³ 28 July 2006 e-mail from Kelley Broughton to John Cruz; Subject: "Re: Sunroad Centrum – 14 Substantial Conformance Review". (Exhibit 29).

that Mr. Waring had been involved in the issue and that he had hosted a meeting with Sunroad officials. Mr. Cruz wrote:

Yes, Jim Waring has been involved. In fact, he recently (within the last month or two) led a meeting between Sunroad and SDG&E that was attended by the bigwigs of Sunroad, attorneys for SDG&E, Gary [Halbert], Bob Manis, Jeannette, and myself.³⁴

As illustrated by this communication, high-level planning and development officials at the City were aware of the issues with the Sunroad building.

D. BUILDING AT 180 FEET AGAIN FOUND HAZARDOUS TO SAFETY

The FAA issued a Determination of Hazard letter to Sunroad on 11 August 2006 in response to the application to construct the Centrum 12 building to 180 feet. In the correspondence, the FAA included a separate letter that chided the company for its failure to comply:

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 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.³⁵

³⁴ 28 July 2006 e-mail from John Cruz to Kelly Broughton. (Exhibit 30).

³⁵ 11 August 2006 FAA Determination of Hazard to Air Navigation letter issued to Sunroad. (Exhibit 31).

E. SUNROAD PLANS TO CHANGE CIRCLING PATTERN

City staff met with Sunroad officials on 11 August 2006 to discuss the issue. According to meeting notes taken by Mr. Galloway, Sunroad officials stated that the building was constructed to 180 feet regardless of the FAA hazard letter.³⁶ Tom Story, Vice President of Development for Sunroad, told City staff at the meeting, “Structure is up; floor are poured.”³⁷ Sunroad’s attorney, Barbara Lichman, stated that once the building is complete above the FAA’s hazard level, the FAA can simply lift the hazard level to accommodate the new building. Ms. Lichman stated, “Once there is a hazard, the FAA changes operation procedures then it is no longer a hazard...FAA has no land use authority, so they strongly try to protect the surfaces.”³⁸ According to the meeting notes, Ms. Lichman then explained that the FAA was already considering a height restriction change. Ms. Lichman stated: “FAA is considering modifying the Part 77 regulations...The proposed change to the Part 77 regulation could address this issue.”³⁹ Mr. Galloway also reported what occurred at the 11 August 2006 meeting in an e-mail to DSD and planning department officials. Mr. Galloway wrote:

At Tom Story’s request, Keith Greer, David Miller and I met with Tom Story, Barbara Lichman (aviation attorney), Tom Kamman (airspace expert) to broadly discuss option for the Sunroads [sic] Centrum project. The Centrum 12 project recently topped out at 180 ft. The FAA has issued a notice of hazard for the Centrum 12 building since it affects the instrument procedures for the circling minimums (see attached). Barbara and Tom Kamman agreed to study recently proposed changes to the Part 77 regulations used by the FAA...⁴⁰

This is the first meeting where any discussion occurred about changing the FAA’s Part 77 regulations to allow the Sunroad building to stand at 180 feet.

Another meeting was held between City and Sunroad officials on 5 September 2006, but no resolution was reached on the hazards.

³⁶ 11 August 2006 meeting notes of Tait Galloway, Subject: “Meeting with Sunroad to Discuss the Centrum Project”, Attendees: Keith Greer (City), Tait Galloway (City), David Miller (City Attorney), Tom Story (Sunroad), Barbara Lichman (Sunroad Attorney), Tom Kamman (Sunroad Aviation Consultant). (Exhibit 32).

³⁷ See at *Id.*

³⁸ See at *Id.*

³⁹ See at *Id.*

⁴⁰ 11 August 2006 e-mail from Tait Galloway, Senior Planner for the City, to Kelly Broughton, Deputy Director of the City’s Development Services Department; Subject: “Sunroads [sic] Centrum 12 & 14”; Carbon copied to: David Miller, John Cruz, Keith Greer, Mike Westlake. (Exhibit 33).

At this point, the California Department of Transportation (Caltrans) became involved. Jeff Brown, aviation safety officer for Caltrans, sent a letter to Sunroad on 14 September 2006 to notify the company the height of the 180-foot building violated state permitting and safety codes:⁴¹

It has come to attention of the California Department of Transportation (Department), Division of Aeronautics, that the Sunroad Centrum 1 building is under construction and already at its maximum height of 180 feet above ground level...

As detailed in the FAA Airspace Determination referenced above, the Centrum 1 building penetrates the Horizontal Surface, as defined in Section 77.25(a) of FAR Part 77.

Until you receive a permit from Department, it is unlawful for you to proceed with construction. Section 21019 of the PUC outlines potential punishment for related violations.⁴²

This letter, which was carbon copied to City officials, put both Sunroad and the City on notice that the building under construction was violating state codes.

The next day, Deputy City Attorney David Miller contacted Chris Ferrell, official at the California Department of Transportation, to discuss whether the 180-foot tall Sunroad 12 building was a public nuisance. Mr. Miller wrote:

I would love to schedule a meeting to discuss these buildings. It is my opinion that both proposals, as well as the one that has already reached its maximum height, are 'public nuisances' and a danger to the health and safety of the people on the ground and in the air. My review of the Development Agreement does not indicate that the developer has any vested rights to build a specific height, nor violate the Part 77 horizontal surfaces.⁴³

The public nuisance theory could have allowed the City to order the construction to stop on the part of the building that stood in violation of state and federal codes.

⁴¹ 14 September 2006 letter from Jeff Brown, Aviation Safety Officer for Caltrans, to Craig Bachmann, Vice President of Construction for Sunroad Enterprises; Carbon copied to Mike Tussey, City of San Diego Airports Director, San Diego Airports Advisory Committee, David Miller, Deputy City Attorney, San Diego Regional Airport Authority, FAA, AWP 622. (Exhibit 34)

⁴² See at *Id.*

⁴³ 15 September 2006 e-mail from David Miller, Deputy City Attorney for the City, to Chris Ferrell, representative of the California Department of Transportation, Subject: "Sunroads Spectrum Buildings – Montgomery Field". (Exhibit 35).

Sunroad's attorney, Ms. Lichman, responded with a letter to Caltrans on 18 September 2006 that stated that "Caltrans is Acting In Excess of its Jurisdiction in Attempting" to enforce the FAA codes and that "aviation concerns must be balanced with a recognition of the right of the City of San Diego to make plans for development within its own jurisdiction...."⁴⁴ In other words, Ms. Lichman told Caltrans to mind its own business.

It was not long before Caltrans responded that the construction of the building remained in violation of Public Utilities Codes. Caltrans sent a letter to Sunroad dated 19 September 2006 which stated:

The position stated in our letter of September 14, 2006 to Sunroad Enterprises remains the same. The construction of the Sunroad Centrum 1 Building is a violation of PUC Section 21659(a). Without issuance of a permit by the Department, continued construction of any part of the building that exceeds 160 feet above ground level is unlawful....

If construction in violation of PUC Section 21659 proceeds, you are proceeding at your own risk, as you have been notified of the Department's position. Additionally, if an aircraft accident occurs at the site of the Sunroad Centrum 1 Building because of this PUC violation, you are assuming all liability for the accident.⁴⁵

It is important to note that high ranking officials of the City of San Diego were carbon copied on this letter, including: Mike Tussey, Airports Director, City of San Diego; San Diego Airports Advisory Committee; Bill Anderson, Director, San Diego Planning & Community Investment Department; San Diego Regional Airport Authority.

Sunroad's attorney, Ms. Lichman, responded to Caltrans on 3 October 2006 in a peculiar letter. Ms. Lichman wrote that Sunroad would fill out the permits required by Caltrans:

⁴⁴ 18 September 2006 letter from Barbara Lichman, attorney for Sunroad, to Jeff Brown, Aviation Safety Officer for the Department of Transportation; Subject: "Re: Sunroad Centrum"; Carbon Copied to: San Diego Airports Advisory Committee; Bill Anderson, Director, San Diego Planning & Community Investment Department; Tait Galloway; Mike Tussey, Director, City of San Diego Airports; David Miller, San Diego City Attorney; Tom Story, VP Development, Sunroad Enterprises; Craig Bachmann, Director of Construction, Sunroad Enterprises. (Exhibit 36).

⁴⁵ 29 September 2006 letter from Jeff Brown, aviation safety officer for CalTrans, to Barbara Lichman, attorney representing Sunroad; Carbon copied to: Mike Tussey, Airports Director, City of San Diego; San Diego Airports Advisory Committee; David Miller, Attorney, City of San Diego; Tait Galloway, Senior Planner, City of San Diego; Bill Anderson, Director, San Diego Planning & Community Investment Department; San Diego Regional Airport Authority; Tom Story, Vice President Development, Sunroad Enterprises; Craig Bachmann, Director of Construction, Sunroad Enterprises; FAA, AWP 622. (Exhibit 37).

Sunroad, in an effort to answer Caltrans's [sic] concerns, will agree to apply for the permit specified in *Public Utilities Code* § 21659.⁴⁶

Ms. Lichman also demanded a copy of the permit from Caltrans and stated if Caltrans failed to respond to Sunroad's permit application within 10 days, then Sunroad will consider the building compliant with all codes, consider the building legal and move on with construction. Ms. Lichman wrote:

In order to comply, Sunroad reiterates its request, originally made in its September 18 response to Mr. Brown, for a permit application and a copy of Caltrans' regulations implementing § 21659. Sunroad's goal is achieve consistency with all local, state and Federal regulations. **If Caltrans does not provide the documents required for compliance in response to its second request, within 10 business days, Sunroad must proceed on the assumption that Caltrans' permit requirements have been satisfied...Caltrans immediate cooperation is anticipated.** (Emphasis added).⁴⁷

It did not take long for Caltrans to respond. Mr. Brown, Aviation Safety Officer for Caltrans, wrote a letter to Sunroad on 13 October 2006 which stated the company must comply with the rules, that Sunroad may use a letter format to apply and that Sunroad cannot set the deadline for Caltrans response. Specifically, the letter stated:

Please submit the full permit request within 10 days of receipt of this letter, so that we may continue to expeditiously handle this matter.

Upon receipt of the request for a permit, the Department will review the submitted material. If the Department approves the request, a permit letter authorizing the construction will be issued...

The Department also takes issue with your ultimatum stating Sunroad must proceed if you do not have a response from the Department within 10 business days. There is no part of PUC Section 21659 authorizing self-imposed deadlines regarding the validity and application of the statute,

⁴⁶ 3 October 2006 letter from Barbara Lichman, counsel for Sunroad Enterprises, to Mary Frederick, Director of the California Department of Transportation Division of Aeronautics; Subject: "Re: Sunroad Centrum"; Carbon copied to: Mike Tussey, Airport Director for the City of San Diego; San Diego Airport Advisory Committee; David Miller, Deputy City Attorney for the City; Tait Galloway, Senior Planner for the City; Bill Anderson, Director of San Diego Planning & Community Investment Department; San Diego Regional Airport Authority; Tom Story, Vice President of Development for Sunroad Enterprises; Craig Bachmann, Director of Construction for Sunroad Enterprises; FAA, AWP 622. (Exhibit 38)

⁴⁷ See at *Id.*

and you do not have the authority to dictate arbitrary deadline upon a State agency.⁴⁸

Meanwhile, the San Diego Airports Advisory Committee⁴⁹ (“SDAAC”) discussed the Sunroad building at a meeting and voted to support the FAA’s hazard determination. The SDAAC sent a letter to Mayor Sanders outlining its position on 12 October 2006. The letter stated:

On October 10th, 2006, at the regular meeting of the San Diego Airports Advisory Committee, the following motion was made...

Resolved that the Airports Advisory Committee inform the Mayor’s office with a copy to the Caltrans Division of Aeronautics that the AAC supports Caltrans in withholding of a permit to construct a hazard to air navigation within one-mile of Montgomery Field.’

THE MOTION PASSED 9-1.⁵⁰

It is clear from these letters, e-mails, interviews, and meeting notes that City officials in all levels of the bureaucracy were on notice of the significant problems resulting from Sunroad’s construction of the 180-foot building in violation of state and federal codes.

⁴⁸ 13 October 2006 letter from Jeff R. Brown, Aviation Safety Officer for Caltrans, to Barbara Lichman, Counsel for Sunroad; Carbon copied to: Mike Tussey, Airport Director for the City of San Diego; San Diego Airport Advisory Committee; David Miller, Deputy City Attorney for the City; Carmen Brock, Deputy City Attorney for the City; Tait Galloway, Senior Planner for the City; Bill Anderson, Director of San Diego Planning & Community Investment Department; San Diego Regional Airport Authority; Tom Story, Vice President of Development for Sunroad Enterprises; Craig Bachmann, Director of Construction for Sunroad Enterprises; and FAA, AWP 622. (Exhibit 39).

⁴⁹ The primary purpose of the City of San Diego Airports Advisory Committee is to provide advocacy for San Diego General Aviation as an integral part of the total aviation system. The Advisory Committee is charged with the responsibility of studying major aviation issues, specifically regarding Montgomery and Brown Field Airports, San Diego Airports Division staff, or Advisory Committee members. The Advisory Committee specifically is charged with providing the Airports staff with recommendations regarding Brown and Montgomery Airports. The Airports Advisory Committee shall provide recommendations on matters related to aviation planning, airport development, proposals, and policies. (<http://www.sandiego.gov/airports/aac/description.shtml>)

⁵⁰ 12 October 2006 memorandum from the San Diego Airports Advisory Committee to Mayor Jerry Sanders; Subject: AIRPORT ADVISORY COMMITTEE MEETING RESOLUTIONS”; Carbon copied to: Mike Tussey, Deputy Director of Airports; Caltrans Division of Aeronautics, Jeff Brown; Development Services, John Cruz; AAC Members. (Exhibit 40).

