

DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S.#40

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January 19, 2007

Mr. James T. Waring
Deputy Chief Operating Officer
Land Use and Economic Development
Office of the Mayor
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Dear Mr. Waring:

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 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 1 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.

In our letter of November 9, 2006, to the Development Services Department, we directly informed the City that any construction of the building above a height of 160 feet Above Ground Level (AGL) was a violation of California Public Utilities Code (PUC) Section 21659, a State law enacted to prohibit hazards near airports. As stated above, the City's December 21, 2006 letter, particularly when reviewed with respect to Sunroad's November 21, 2006, letter to the City requesting many permanent construction features under the pretense of 'weather proofing' the building, makes it difficult to regard the City's actions as anything other than an attempt to undermine State law.

Additionally, while we appreciate that you revised the Notice from halting work in the top 17 feet of the building to the top 20 feet, our review of plans approved by the City show that stopping work in the top 20 feet is still inadequate. The "20 feet" figure was based on data provided by Sunroad to the Federal Aviation Administration for a 180-foot tall building. Twenty feet was the amount the building exceeded the Federal Aviation Administration (and Department) standards, which would have allowed a building that was 160-foot tall. However, the plans approved by the City on February 10, 2006, show that the highest point of the building is approximately 602 feet Above Mean Sea Level, which translates to a true building height of 186 feet AGL. This means that the upper 26 feet of the building constitutes a hazard. As called for by our mission to protect aviation safety, people and property, we are notifying you of this fact, and request that you revise and reissue the Notice so that no work is accomplished in the top 26 feet of the Sunroad Centrum 1 building.

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The City's attempts to pass liability for the illegal construction on to Sunroad entirely miss the point. This issue is not about who has liability for the hazard, but taking action to remove the hazard so that liability is not an issue. 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.

As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as the necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State, and federal interests in Montgomery Field airport for which the City has obligated itself. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565 or e-mail at jeff.brown@dot.ca.gov.

Sincerely,

Original Signed by

JEFF R. BROWN
Aviation Safety Officer

c: Carmen Brock, Deputy City Attorney, City of San Diego
Honorable Mayor Jerry Sanders
Ms. Marcela Escobar-Eck, Director, Development Service Department
San Diego City Council
FAA Western Pacific Region