

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: August 13, 2007
TO: Mayor Jerry Sanders
FROM: City Attorney
SUBJECT: City of San Diego v. Sunroad Enterprises et al.

It has come to the attention of the City Attorney's office that the City's Deputy Chief Operating Officer for Land Use and Economic Development ("Deputy Chief"), Jim Waring, has been actively lobbying City Council members to procure support for a proposal to the Federal Aviation Administration ("FAA") to permit the Sunroad Centrum I Tower ("Tower") to remain at a height of 166 feet above ground level ("AGL") and, at that height, be declared not a hazard to air navigation at Montgomery Field Airport.

As you are fully aware, any attempt by the City to revisit this highly controversial proposal in light of the FAA's and California Department of Transportation, Aeronautics Division ("Caltrans") consistent rejection of this concept, flies in the face of numerous public statements made by your office that the Tower must be decreased to a height of 160 feet AGL as directed by the FAA and Caltrans. Additionally, and most importantly, such an action would contradict and undermine the provisions of the Restoration and Mitigation Order issued by your office requiring Sunroad to deconstruct the Tower to 160 feet AGL.

Specifically, the Restoration and Mitigation Order expressly directs Sunroad to "proceed immediately" to demolish any part of the Tower exceeding 160 feet AGL. A very detailed timeline has been established through the efforts of Development Services staff, design professionals and experts to accomplish this goal. At this point, a request for a hazard study for a building not exceeding 160 feet AGL has been submitted to the FAA. Similarly, a request for a construction crane to both deconstruct and reconstruct the Tower to 160 feet AGL has also been submitted to the FAA. Any attempt to disrupt this process runs the risk of slowing any real and measurable progress to protect the public and creates the appearance of a weakening resolve of the Mayor's Office to abate this critical nuisance.

Finally, the actions of the Deputy Chief will result in a direct and measurable effect on this office's ongoing attempts to procure a final, cost effective settlement of this matter with Sunroad that will permanently ensure public safety. Any setback will most certainly have the effect of

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prolonging litigation, increasing the associated costs, and reopening an issue of public safety that was on the path to resolution. We encourage you to take action to curtail further interference by the Deputy Chief in this very critical process.



MICHAEL J. AGUIRRE, City Attorney

cc: Honorable Council Members