

DEPARTMENT OF TRANSPORTATION  
DIVISION OF AERONAUTICS – M.S.#40  
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October 13, 2006

Via Overnight Mail and Facsimile to (714) 384-6521

Ms. Barbara E. Lichman  
Chevalier, Allen & Lichman, LLP  
695 Town Center Drive, Suite 700  
Costa Mesa, CA 92626-7187

Dear Ms. Lichman:

Thank you for your letter of October 3, 2006. The California Department of Transportation (Department), Division of Aeronautics, supports Sunroad's stated goal to achieve consistency with all local, State and federal regulations, and in particular with Public Utilities Code (PUC) Section 21659. This section regulates airport hazards and obstructions, and stipulates the requirement whereby a permit must be requested for the Sunroad Centrum 1 building near Montgomery Field Airport. Ms. Mary Frederick, Chief, Division of Aeronautics, requested that I respond to your letter, as I am the appropriate point of contact.

Sunroad's contention that the Department must have a formal, pre-written application for a permit under PUC Section 21659 lacks merit. It is unclear why Sunroad would argue such a position, as the Department has well defined conditions and criteria, which the Department would require all parties to supply, if one were to request a permit under PUC Section 21659. You may use a letter format to request the permit required to comply with PUC Section 21659.

The Department's minimum requirements for PUC 21659 permit requests necessitate the following information. Please include a detailed explanation of why the Department should issue a permit to allow the construction of the Sunroad Centrum 1 building to a height that exceeds Federal Aviation Regulation (FAR) Part 77 obstruction standards. The explanation must, at a minimum, address the basis for issuing the permit, in light of the Federal Aviation Administration (FAA) finding that the building, at the planned height of 180 feet above ground level (AGL), is a Hazard to Air Navigation, per FAA Aeronautical Study No. 2006-AWP-4601-OE, and associated FAA Aeronautical Studies 2006-AWP-3876-OE and 2006-AWP-1638-OE. Additionally, please provide the following documentation and information for our permit evaluation purposes:

- The latitude and longitude (and datum system used, NAD 83 is preferred) and elevation (AGL and above mean sea level (AMSL)) for each of the corner points of the building or structure. Additionally, please include the site elevation (AMSL), maximum structure height including any antennas or other additions to the top of the structure (AGL and AMSL); the distance and direction from the Airport Reference Point (ARP) to the part of the structure closest to the airport; and plans and location of any proposed obstruction lighting.

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- A copy of all material submitted to the FAA for the required FAA Form 7460-1, Notice of Proposed Construction or Alteration, application, and the date each FAA Form 7460-1 associated with the project was submitted.
- A copy of any petitions for review filed with the FAA regarding the determination of hazard to air navigation made in Aeronautical Study No. 2006-AWP-4601-OE.
- A discussion of what steps are being taken by the structure's sponsor to mitigate the hazardous impact the building will have on air navigation, as determined by the FAA in Aeronautical Study No. 2006-AWP-4601-OE.
- A copy of the building permit for the project and a copy of any additional local permits or agreements, such as encroachment permits, development agreements, etc. for the project.
  - The date the building permit was submitted and the date the building permit was approved.
  - The dates any and all additional local permits or agreements, such as encroachment permits or development agreements, were submitted and the date these permits or agreements were approved.
- A copy of documentation showing compliance with the California Environmental Quality Act, including the Notice of Proposal, Environmental Impact Review, and/or Categorical Exemption, as appropriate.
- PUC Section 21659 states in part, no person shall construct or alter any structure or permit any natural growth which exceeds FAR Part 77 obstruction standards, and determined by the FAA to be a hazard to air navigation, unless a permit has been issued by the Department. However, if construction has started, provide the date construction began. If construction has taken place above the height determined to be a Hazard to Air Navigation by the FAA, provide the date construction began beyond that level.

Any other information that you feel would be beneficial to your client's permit request should be provided as well. 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. Please note that the granting of the subject permit will still require Sunroad to follow all other applicable statutes, rules and regulations. If the request for a permit is denied, an aggrieved individual may request a hearing as stated per PUC Section 21660.

Finally, Sunroad's position that the Department must pass regulation in order to make PUC Section 21659 applicable lacks merit. Nothing in the State Aeronautics Act requires mandatory

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regulation in order to implement this section. We draw your attention to PUC Sections 21242 and 21243, which give the Department discretion to pass regulations, if needed. 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, and you do not have the authority to dictate an arbitrary deadline upon a State agency.

If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565, or via e-mail at: [jeff.brown@dot.ca.gov](mailto:jeff.brown@dot.ca.gov).

Sincerely,

JEFF R. BROWN

Aviation Safety Officer

c: Mike Tussey, Airports Director, City of San Diego  
San Diego Airports Advisory Committee  
David Miller, Attorney, City of San Diego  
Carmen Brock, Deputy City 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 Storey, Vice President Development, Sunroad Enterprises  
Craig Bachmann, Director of Construction, Sunroad Enterprises  
FAA, AWP 622