

DEPARTMENT OF TRANSPORTATION

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November 27, 2006

Barbara E. Lichman, Ph.D
Chevalier, Allen & Lichman LLP
695 Town Center Drive, Suite 700
Costa Mesa, California 92626

Re: Sunroad Centrum –Compliance With *Public Utilities Code* § 21659

Dear Ms. Lichman:

I wanted to follow up after our telephonic conversation, and further address some of the issues that you raised in your letter of October 24, 2006.

The Department stands firm in its position that the proposed construction of the Sunroad Centrum project violates Public Utilities Code, Section 21659, as the height of the building is not only an obstruction, but has been determined to be hazardous to navigable airspace as well.

Sunroad Centrum's frivolous arguments that regulation must be passed in order to give Sunroad Centrum notice of the permit requirement lacks merit. As you are aware, section 21659 is a state statute, and not a "regulation, criterion, bulletin, manual, instruction..."

Furthermore, Sunroad Centrum's arguments are weak as it is obvious that Sunroad Centrum is attempting to deflect its own willful misconduct as it failed to comply with both state statutes and federal regulations. The subject project was "piece-mealed" for many years, intentionally staying under the radar of both state and federal jurisdiction. Thus, it defies logic as to why FAA Form 7460-1, the Notice of Proposed Construction was only recently filed in April of 2006, after construction started.

The Department is assured and confident that there is a high probability that a Court of law will not support Sunroad Centrum's arguments, when the history of how this project gained fruition and the processes that Sunroad Centrum took to conceal and divert its actions are revealed.

As of now, the Department and the FAA's goals are to reduce the height of the proposed construction based on safety concerns. Thus, Sunroad Centrum has the following options:

- (1) Lower the height of the building to a level not considered "hazardous" by the FAA.
- (2) Appeal the FAA finding that determined the subject structure to be hazardous. If unsuccessful, compliance with either option 1 or 3 must be achieved.

(3) Apply for a permit from the Department *and* obtain approval from the Department for the construction of a building to a height that exceeds FAR 77 imaginary surfaces. Since the FAA has already determined that the height of this building is considered hazardous, it would be Sunroad Centrum's responsibility to present convincing evidence to the Department that the issuance of a permit would not be detrimental to aviation safety, in spite of the FAA's determination. Also, please note, it is not the Department's responsibility to validate or critique the FAA's airspace evaluation process.

Thus, Sunroad Centrum's current position, which is simply to take no action is not acceptable, nor a viable option.

Finally, if Form 7460-1 were presented to the FAA a timely manner, or if Sunroad Centrum complied with state statutes, Sunroad Centrum would not find itself in its present situation. This goes to the very heart of the arguments raised by City Attorney David when Mr. Miller correctly stated that Sunroad Centrum's lack of appealing the FAA determination is a blatant acknowledgement by Sunroad Centrum that the subject proposed project is a hazard and an obstruction to navigable airspace, Mr. Miller also correctly argued that the Sunroad Centrum must apply for a permit requiring compliance with the State Aeronautics Act.

The purpose of the State Aeronautics Act is to further, protect, encourage and promote the safety to the public by:

(c) Effecting uniformity of the laws and regulations relating to aeronautics consistent with federal aeronautics laws and regulations.


(d) Granting to a state agency powers, and imposing upon it duties, so that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property, assist in the development of a statewide system of airports...

(e) **Establishing only those regulations which are essential** and clearly within the scope of the authority granted by the Legislature, in order that persons may engage in every phase of aeronautics with the least possible restriction consistent with the safety of the rights of others... (See Public Utilities Code, Section 21002. Also see Section 21243)

Thus, the effect of the State Aeronautics Act is that it does not limit the power of the State to regulate airport hazards or local zoning. (See Public Utilities Code, Section 21005)

Several weeks ago, you had indicated that Sunroad Centrum was attempting to cooperate in good faith with the City, and requested that the Department withhold from taking further action until Sunroad had an opportunity to do so. Please indicate the status of your negotiations by December 15, 2006.

Sincerely,



RAIYN BAIN
Attorney