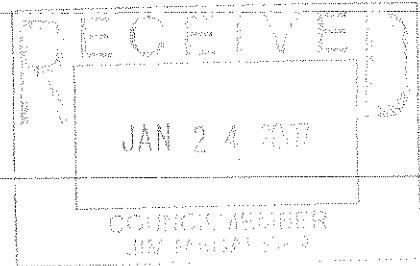




THE CITY OF SAN DIEGO

January 23, 2007

Mr. Jeff R. Brown  
Aviation Safety Officer  
Department of Transportation  
Division of Aeronautics – M.S. #40  
1120 N. Street  
P. O. Box 942873  
Sacramento, CA 94273-0001



Dear Mr. Brown:

Re: Your letter of January 19, 2007

It is clear from reading your letter of January 19, 2007 that I have been remiss in not contacting you sooner. I hope in this letter to set forth certain essential underlying facts and positions.

Most importantly, there is no one in City government, whether in the Mayor's Office, the City Attorney's Office or the City Council that does not take issues of public safety very seriously. The Mayor consistently states that the primary function of City government is public safety. The Mayor's Office early on rejected the idea of negotiating or accepting some form of indemnity from Sunroad. Everyone agreed that issues of lives and public safety are not issues to be dealt with in terms of money.

There seems a lot of confusion about the height of the building relative to the Stop Work Order issued by Development Services in October 2006. The building reached its maximum height of 180 feet (596 feet above sea level) in early August 2006. At 596 feet, the building penetrates the Part 77 space by 19 feet, reducing the FAA 300 foot buffer to 281 feet. Nothing has occurred since August 2006 that has increased the building's height, and therefore the level of penetration or risk, since that time. For some reason there continue to be statements that the building has somehow increased in height since the Stop Work. That is not the case and any statements to the contrary are false. The City is in no way trying to "undermine State law."

The regulatory background of the Spectrum project and the subject building is a complex one. During the entitlement phase of the Spectrum project, the Sunroad Building was not in the Airport Environs Overlay Zone or Airport Influence area. This is probably why when the project EIR was circulated in June 1997, no one, including CalTrans made any mention of the airport or building heights. The first time one could argue that Part 77 applied to Sunroad Building Site wasn't until 2004, when the San Diego Regional Airport Authority modified language in the

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Airport Land Use Compatibility Plan to indicate that "the Airport Influence is also extended to include review of proposed construction, regardless of proximity to an airport." As things stand now, the question of how all these dates and events impact the Sunroad building will be determined by the court. In the interim the Stop Work Order will remain in effect. Nothing will be considered by the City that raises the building's elevation.

Last month, Sunroad approached Development Services for permission to do work that would protect the building from weather. We sent a senior inspector to the site to review the request. He determined that the requested items were appropriate for the security of the building AND that nothing would increase the building's existing height. Based upon that review, we issued a limited waiver for the approved items.

A question was raised today regarding the installation of motors for the internal elevators. The internal elevator is needed to allow the exterior scaffolding to be removed so the building can be wrapped and interior work continued. Enclosed are pictures which show the building with scaffolding and another picture which show the location of the elevator motor below the 180 foot roofline. Converting to an interior elevator is part of the transition of any building, and most importantly for purposes of this issue has no impact on the 180 feet.

We have been asked why the Department of Development Services does not simply order the top 20 feet of the building removed. The Stop Work Order and the subsequent lawsuit have made such a step redundant. Sunroad has made clear to the City before the lawsuit was filed that it disagreed with the city's legal position. This is why there is a court case. To my knowledge, the issuance of an administrative order to remove the top 20 feet would have no impact on the litigation or the points of contention.

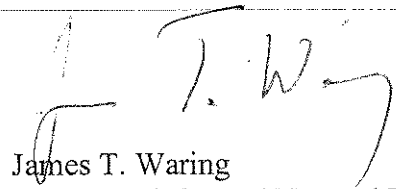
As is so often the case, in hindsight it is hard to understand how a situation like this reached such a point. Certainly, the split regulatory jurisdiction added to the confusion. We have never received a satisfactory answer to the question of why Sunroad agreed with the FAA in the Spring of 2006 to stop at 160 feet and then proceeded to 180 feet. In June of 2006, before the building exceeded 160 feet, the Development Services Department and the City Attorney's Office were in contact with Sunroad's attorney relative to this issue. During that period, before the building exceeded 160 feet, no one advised or suggested to our department that a stop work was needed or appropriate.

Again, the issue here is one of safety. There is disagreement within the flying community as to whether this intrusion is a safety, verses a technical issue. But as a FAA official said to me, on any of these types of matters there is always a difference of opinion among pilots. Regardless, the Airport Director has issued a Notice to Airmen so as to give pilots using Montgomery Field notice of the building location and height while the issue is being resolved.

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As the case proceeds to trial, please feel free to contact me with any questions or concerns. While there may be good faith differences of opinion on how this matter should ultimately be resolved, rest assured that the Mayor's Office will not accept any resolution not either ordered by the courts or sanctioned by the FAA and the Department of Transportation.

Sincerely,



James T. Waring  
Deputy Chief, Land Use and Economic Development

Enclosure(s)

cc: Michael J. Aguirre, City Attorney  
Carmen Brock, Deputy City Attorney  
Marcela Escobar-Eck, Director, Development Service Department  
City Councilmembers  
FAA Western Pacific Region

