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8 Attorneys for Respondents, State of California  
9 acting by and through the Department of Transportation,  
10 Division of Aeronautics

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN DIEGO-CENTRAL DIVISION

13 THE PEOPLE OF THE STATE OF )  
14 CALIFORNIA and THE CITY OF SAN )  
15 DIEGO, a municipal corporation )

16 Petitioners and Plaintiffs,

17 v.

18 SUNROAD CENTRUM, L.P. , a California )  
19 Limited Partnership, SUNROAD ASSET )  
20 MANAGEMENT, INC., a California )  
21 corporation, SUNROAD ENTERPRISES, )  
22 CALIFORNIA DEPARTMENT OF )  
23 TRANSPORTATION, AERONAUTICS )  
24 DIVISION, and DOES 1 through 50, )  
25 inclusive, )

26 Respondents and Defendants.

27 AIRCRAFT OWNERS AND PILOTS )  
28 ASSOCIATION, INC., a New Jersey )  
non-profit corporation, and COMMUNITY )  
AIRFIELDS ASSOCIATION OF SAN )  
DIEGO, INC., a California non-profit )  
corporation, )

Real Parties In Interest

Case No.: GIC 877054

STATE OF CALIFORNIA, DEPARTMENT  
OF TRANSPORTATION'S ANSWER TO  
THE FIRST AMENDED COMPLAINT FOR  
ABATEMENT OF PUBLIC NUSIANCE;  
PETITION FOR WRIT OF MANDATE;  
VIOLATION OF UNFAIR PRACTICES;  
INJUNCTION AND OTHER EQUITABLE  
RELIEF

Judge: Honorable John S. Meyer

Dept: 61

Trial Date: Not Yet Set

Complaint Filed: 12/15/06

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1 Respondent and Defendant, the State of California, acting by and through the Department of  
2 Transportation, Division of Aeronautics (hereinafter the "Department"), hereby responds to the first  
3 amended complaint for abatement of public nuisance; petition for writ of mandate; violation of unfair  
4 practices; injunction and other equitable relief as follows:

5 **JURISDICTION AND VENUE**

6 1. Admits as to Co-Respondent and Co-Defendant Sunroad (hereinafter "Sunroad"). Department  
7 further admits and contends that it does have a duty to protect the public from the violations of the State  
8 Aeronautics Act, in particular, Public Utilities Code section 21659, and has attempted to enforce  
9 Sunroad to comply. (Also see Government Code section 14007, Public Utilities Code sections 21006.5,  
10 21008.5.)

11 2. Admits.

12 3. Admits and the Department further contends that it has requested that the Sunroad Centrum I  
13 Building be lowered to a height of 160 feet above ground level.

14 4. Admits as to Sunroad.

15 **BACKGROUND**

16 5. Admits in part and the Department contends that Runway 10L/28R, the "3400 foot lighted  
17 runway served by an Instrument Landing System" is approximately 4577 foot long, but only 3401 feet is  
18 available for landing because of a displaced threshold. The Department further agrees that Montgomery  
19 Field does operate 24 hours a day, however, the daily operations from 6:00 a.m. to 9:00 p.m. are those  
20 hours the control tower is open and monitoring, managing and controlling the operations.

21 6. Does not have enough information to admit or deny.

22 7. Does not have enough information to admit or deny.

23 8. Does not have enough information to admit or deny.

24 9. Admits. (See Public Utilities Code sections 21005, 21242)

25 10. Does not have enough information to admit or deny.

26 11. Does not have enough information to admit or deny.

27 12. Admits in part as to the purpose and involvement of Aircraft Owners and Pilots Association but  
28

1 does not have sufficient information to admit or deny the remainder of the allegations.

2 13. Does not have enough information to admit or deny.

3 14. Admits.

4 15. Admits.

5 16. Admit.

6 17. Admits in part but contends that it does not have sufficient information to admit or deny  
7 regarding the approximate number of paying members.

8 18. Admits.

9 19. Admits in part but does not have sufficient information as to the approximate square footage to  
10 admit or deny.

11 20. Admits.

12 21. Admits in part and denies in part. The Department contends that based on information and  
13 belief, the subject buildings exceed the standards established by the FAA for determining obstructions to  
14 air navigation and also violates Public Utilities Code section 21659, for prohibiting hazards near  
15 airports. The Department further alleges that Sunroad plans to construct a structure at a greater height of  
16 275 feet AGL, per data submitted by Sunroad and received by the FAA.  
17

18 22. Admits in part regarding the dates of the substantial conformance review and construction  
19 commencement, but does not have sufficient information to as to admit or deny regarding the Plaintiff's  
20 land development permit process.

21 23. Admits.

22 24. Admits.

23 25. Admits and the Department further contends that Sunroad failed to meet either reporting criteria  
24 pursuant to FAR Part 77.17.

25 26. Admits in part and the Department contends the relevant FAA Aeronautical Study number is  
26 2006-AWP-1638-OE. The Department further contends that based on information and belief, the FAA  
27 Determination, and the resultant airspace exceedance computations, are incorrectly based on a building  
28 height of 180 feet AGL as submitted by Sunroad.

1 27. Admits

2 28. Admits.

3 29. Admits.

4 30. Admits.

5 31. Admits and the Department further contends that the third FAA Determination specifically found  
6 the building exceeds the "VFR traffic pattern airspace criteria required to conduct normal operations".

7 32. Admits and the Department further contends that the FAA determined the building was a hazard  
8 to air navigation.

9 33. Admits.

10 34. Admits in part and the Department further states that that the standards set forth in Part 77 were  
11 exceeded.

12 35. Admits in part and the Department further contends that Sunroad has violated Public Utilities  
13 Code section 21659 as the building is a hazard to air navigation.

14 36. Admits as to receipt of the correspondence, but Department contends that the allegations raised  
15 by Sunroad as contained in its correspondence lack merit as the FAA's temporary raising of circling  
16 minimums is to protect the pilots, the public, and property because of the Sunroad Centrum 1 Building.  
17 The temporary raising of the circling minimums does not justify the illegal construction of the Sunroad  
18 Centrum 1 Building. The FAA continues to maintain the position that the building is a hazard to air  
19 navigation.  
20 navigation.

21 37. Admits and the Department further contends that Sunroad has violated Public Utilities Code  
22 section 21659 as the building is an obstruction and a hazard to air navigation.

23 38. Admits and the Department further contends that Sunroad failed to apply for a permit.

24 39. Admits and the Department further contends that the construction of Sunroad Centrum 1  
25 Building is in violation of Public Utilities Code section 21659. The Department had requested Sunroad  
26 to file a permit for the Department's consideration to maintain the Sunroad Centrum 1 Building.

27 40. Admits and the Department further contends that the construction of the subject building for its  
28 proposed height is in violation of Public Utilities Code section 21659. The Department also contends

1 that it required Sunroad to file a permit pursuant to section 21659, if it were to continue construction of  
2 the building, which has been to determined to be hazardous to air navigation.

3 41. Admits.

4 42. Admits.

5 43. Admits and further the Department contends that the subject Work Order must be enforced until  
6 violations pursuant Public Utilities Code section 21659 are resolved.

7 44. Admits and the Department further contends that the subject Work Order must be enforced until  
8 violations pursuant Public Utilities Code section 21659 are resolved.

9 45. Admits

10 46. Admits.

11 47. Admits.

12 48. Admits.

13  
14 **FIRST CAUSE OF ACTION**  
15 **(ABATEMENT OF PUBLIC NUISANCE)**

16 49. Does not have enough information to admit or deny.

17 50. Admits.

18 51. Admits.

19 52. Admits.

20 53. Admits.

21 54. Admits.

22 55. Admits and the Department further contends that Sunroad has been advised of the violation of  
23 Public Utilities Code section 21659 and has refused to comply with the statute.

24 56. Admits.

25 **SECOND CAUSE OF ACTION**  
26 **(WRIT OF MANDATE)**

27 57. Does not have enough information to admit or deny.

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1 58. Admits in part and the Department further contends that it has a duty to protect the public and to  
2 compel compliance with the obstruction standards set forth in Part 77, and these standards set forth in  
3 Part 77 are incorporated in Public Utilities Code section 21659.

4 59. Admits in part and denies in part, as the Department contends that letters dated September 14,  
5 2006, September 29, 2006, October 13, 2006, and November 27, 2006 were actions to attempt  
6 compliance of Public Utilities Code section 21659.

7 60. Denies as to the Department's lack of taking action, as it has attempted to take action against  
8 Sunroad demanding that the Sunroad Centrum I Building be reduced to a height that is not defined as an  
9 Airport Hazard and Hazard Near Airports as defined in Public Utilities Code sections 21017 and 21659.

10 61. Admits in part and denies in part as the Department contends that it has a duty to protect the  
11 public and to compel compliance with the obstruction standards set forth in Part 77, and that the  
12 standards set forth in Part 77 are what is incorporated in Public Utilities Code section 21659.

13 62. Admits in part and denies in part and the Department contends that it has attempted to enforce  
14 Public Utilities Code section 21659 as to the Sunroad Centrum I Building mandating that it be reduced  
15 to a height that is not defined as an Airport Hazard and Hazard Near Airports as defined in Public  
16 Utilities Code sections 21017 and 21659.

17  
18 **THIRD CAUSE OF ACTION**

19 **(VIOLATION OF UNFAIR PRACTICES ACT)**

20 63. Does not have enough information to admit or deny.

21 64. Admits.

22 65. Admits.

23 66. Admits.

24 67. Admits.

25 68. Admits.

26 **FOURTH CAUSE OF ACTION**

27 **(INJUNCTION)**

28 69. Does not have enough information to admit or deny.

1 70. Admits

2 71. Admits.

3 72. Admits.

4 73. Admits and the Department further contends that it had notified Sunroad that the construction of  
5 the Sunroad Centrum 1 Building itself was a violation Public Utilities Code section 21659.

6 **FIRST CAUSE OF ACTION**  
7 **(PUBLIC NUISANCE)**

8 1. Admits and the Department further contends that any part of the Sunroad Centrum 1 Building  
9 over 160 feet AGL be declared a public nuisance.

10 2. Admits.

11 3. Admits and the Department further contends Sunroad be required to deconstruct and remove any  
12 portion of the Sunroad Centrum 1 Building found to be a violation of Public Utilities Code section  
13 21659.

14 4. Admits.

15 5. Admits.

16 6. Admits.

17 **SECOND CAUSE OF ACTION**  
18 **(WRIT OF MANDATE)**

19 1. Denies as to the Department as it has attempted to take action against Sunroad but does further  
20 contend that the Sunroad Centrum I Building be reduced to a height that is not defined as an Airport  
21 Hazard and Hazard Near Airports as defined in Public Utilities Code sections 21017 and 21659.

22 2. Denies as to the Department and further contends that per Public Utilities Code section 21019,  
23 punishment of Sunroad and its agents, be assessed of one-thousand dollars (\$1,000) or imprisonment of  
24 six months, or both, based on each violation of Public Utilities Code section 21659.

25 3. Denies.

26 4. Denies.

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**WHEREFORE**, respondent prays judgment against defendants as follows:

1. Respondent to be awarded their costs of suit.
2. For such other and further relief as the Court deems proper.

Dated: February 15, 2007

BRUCE A. BEHRENS, Chief Counsel  
JEFFREY BENOWITZ, Deputy Chief Counsel  
RAIYN BAIN, JULIE A. JORDAN

By   
\_\_\_\_\_  
JULIE A. JORDAN

1 **PROOF OF SERVICE**

2 **The People of the State of California, et al.v. Sunroad Centrum, L.P., et al.**  
3 **San Diego County Superior Court, Case No. GIC 877054**

4 Declarant says: I am employed in the County of San Diego; I am over the age of eighteen years  
5 and am not a party to the within entitled action. My business address is Legal Division, 4050  
6 Taylor Street, MS-130, San Diego, CA 92110.


7 On February 16, 2007, I served the within **STATE OF CALIFORNIA, DEPARTMENT OF**  
8 **TRANSPORTATION'S ANSWER TO THE FIRST AMENDED COMPLAINT FOR**  
9 **ABATEMENT OF PUBLIC NUSIANCE; PETITION FOR WRIT OF MANDATE;**  
**VIOLATION OF UNFAIR PRACTICES; INJUNCTION AND OTHER EQUITABLE**  
**RELIEF**, as follows

- 10  By personal service on:
- 11  By facsimile transmission from this office prior to 5:00 p.m., and with  
12 transmission confirmation, to the following facsimile number:
- 13  By **UPS Next Day Air** or other means of overnight delivery by depositing in a  
14 box or other facility regularly maintained by the express service carrier or  
15 delivered to an authorized courier or driver authorized by the express service  
16 carrier to receive documents, in a n envelope or package designated by the express  
17 service carrier with delivery fees paid or provided for, addressed to the person on  
whom it is to be served, at the office address as last given by that person on any  
document filed in the cause otherwise at the party's place of residence as noted on  
the attached Service List.

18 **X** By mail by placing a true copy thereof enclosed in a sealed envelope with postage  
19 thereon fully prepaid addressed on the attached Service List. I am "readily  
20 familiar" with the firm's practice of collection and processing correspondence for  
21 mailing. Under that practice it is given by me to the mail clerk and is then  
22 deposited with the U.S. Postal Service on that same day with postage thereon fully  
23 prepaid at San Diego, California in the ordinary course of business. I am aware  
that on motion of the party served, service is presumed invalid if postal  
cancellation date or postage meter date is more than one day after date of deposit  
for mailing contained in this declaration.

24 I am employed in the offices of a member of the Bar of this Court, at whose direction service was  
25 made.

26 I declare under penalty of perjury the above is true and correct. Executed on **February 16,**  
27 **2007**, at San Diego, California

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\_\_\_\_\_  
Lucille A. Olson, Declarant

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SERVICE LIST

The People of the State of California, et al.v. Sunroad Centrum, L.P., et al.  
San Diego County Superior Court, Case No. GIC 877054

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02 1P  
0002380808  
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