

1 James F. Pokorny, Esq. (California State Bar No.: 75407)
2 **LAW OFFICES OF JAMES F. POKORNY**
3 110 West "C" Street, Suite 1504
4 San Diego, CA 92101
5 619-239-8142

6 Kathleen A. Yodice, Esq. (District of Columbia Bar No. 460279)
7 **YODICE ASSOCIATES**
8 601 Pennsylvania Ave., N.W., Suite 875
9 Washington, DC 20004
10 Telephone: 202-737-3030
11 *Pending admission pro hac vice*

12 Attorneys for Real Party in Interest
13 AIRCRAFT OWNERS AND PILOTS ASSOCIATION, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

16 THE PEOPLE OF THE STATE OF)
17 CALIFORNIA and THE CITY OF SAN DIEGO,)
18 a municipal corporation,)

19 Petitioners and Plaintiffs,)

20 vs.)

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

28 Respondents and Defendants.)

29 AIRCRAFT OWNERS AND PILOTS)
30 ASSOCIATION, INC., a New Jersey non-profit)
31 corporation, and COMMUNITY AIRFIELDS)
32 ASSOCIATION OF SAN DIEGO, INC., a)
33 California non-profit corporation,)

34 Real Parties In Interest.)

Case No. GIC 877054

**ANSWER TO CITY OF
SAN DIEGO'S FIRST AMENDED
COMPLAINT BY REAL PARTY IN
INTEREST AIRCRAFT OWNERS
AND PILOTS ASSOCIATION**

Judge: Hon. John S. Meyer
Dept.: 61
Trial Date: None Set
Complaint Filed: 12/15/06

1 Real Party In Interest, AIRCRAFT OWNERS AND PILOTS ASSOCIATION, INC.
2 (hereinafter "AOPA"), a New Jersey non-profit corporation, responds to the First
3 Amended Complaint on file herein as follows:

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5 **I**
BACKGROUND

6 1. AOPA is a nationwide, non-profit membership organization dedicated to
7 issues involving general aviation, which refers to aviation operations other than
8 scheduled air service or military aviation. In terms of hours flown, general aviation
9 accounts for more than half of civil flying in the United States airspace. General aviation
10 is present at all of the almost 20,000 landing facilities in the United States, including
11 Montgomery Field (hereinafter "MYF") in San Diego, California, which is one of 968
12 landing facilities in California, of which 261 are available for public use.

13 2. AOPA formed in 1939 and now represents more than 409,000 aircraft owners
14 and pilots from every state, including approximately 50,000 of the 100,000 pilots and
15 aircraft owners in the state of California. The members of AOPA comprise the bulk of
16 our nation's active pilots.

17 3. AOPA is organized for the benefit of all persons whose interests relate to the
18 preservation and promotion of all aspects of general aviation. AOPA, its membership,
19 its history, its mission, and its activities, are described in detail on the internet at
20 www.aopa.org. AOPA's main offices are located at 421 Aviation Way, Frederick, MD
21 21701.

22 4. AOPA is active on all levels of both federal and local governments in
23 participating in proceedings related to general aviation. Issues in such proceedings
24 include access to airports and the air transportation network, as well as the safe and
25 efficient procedures for accessing airports and operating within the network. A central
26 element of AOPA's activities is the preservation of existing airports in communities
27 throughout the United States and preservation of the aviation infrastructure that
28 supports the air transportation network throughout the United States.

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1 5. Over the past several years, public access to airports has become increasingly
2 restricted with a resulting detrimental effect on the public interest. AOPA believes that
3 this trend towards a dwindling air transportation infrastructure is largely the result of a
4 lack of public understanding about general aviation and the nationwide system that
5 exists to support the air transportation infrastructure to allow the public to enjoy the
6 benefit of air travel. Of particular concern to the advancement of general aviation is the
7 unreasonable restrictions imposed at airports for reasons unrelated to the proper
8 consideration of aviation interests and without due consideration to applicable laws and
9 policies.

10 6. Therefore, AOPA works hard to educate the public about the benefits and
11 importance of general aviation in the United States, including participating in litigation
12 affecting general aviation interests. AOPA also works to help its members understand
13 how to meaningfully and favorably respond to, and assist in the resolution of, concerns
14 that others may express about the airport in their community.

15 7. In the case at bar, access to MYF and the navigable airspace surrounding the
16 airport is being adversely, and unnecessarily, affected. There are over 245,000
17 operations at MYF annually, and the airport has received \$7.35 million in Federal grants
18 since 1990 to help preserve and maintain the airport for public use. There are over 550
19 aircraft (single engine aircraft, multiengine aircraft, jet aircraft, and helicopters) based at
20 MYF. There are over 17,000 AOPA members in the San Diego County area who may
21 regularly use MYF.

22 8. MYF is included in the National Plan of Integrated Airport Systems, which is a
23 program created by Federal statute directing the Federal Aviation Administration (FAA)
24 to maintain a plan for developing public-use airports in the United States to provide a
25 safe, efficient, and integrated system of public-use airports that includes consideration
26 of the needs of each segment of civil aviation and the relationship of each airport to the
27 rest of the transportation system, currently and in the future. The plan is made up of a
28 group of more than 3,400 airports identified as being particularly significant to national
air transportation. MYF is also designated a reliever airport, one of only 274 airports in

1 the United States with such status. A reliever airport is a specialized airport that the
2 FAA encourages to be developed in order to provide pilots with attractive alternatives to
3 using congested hub airports, while providing general aviation sufficient and similar
4 access to the surrounding areas. Accordingly, the preservation of such airports in
5 general, and MYF in particular, is important to all AOPA members as each plays a
6 significant role in the achievement of a safe, efficient, and integrated national and local
7 transportation network.

8 9. MYF has two parallel runways that run basically east-west. Under certain wind
9 conditions, the traffic pattern to approach one of the runways circles to the north of the
10 airport, and around the site of the Sunroad Centrum I building and the site of the
11 planned Sunroad Centrum II and III buildings. Furthermore, changes in weather
12 conditions frequently require that pilots make instrument approaches and departures,
13 which are operations conducted when weather conditions are such that visual reference
14 to the ground is obscured by clouds, so the pilot is flying the aircraft by reference to the
15 instruments in the aircraft only. It is imperative that the airspace needed to execute
16 approaches and departures from the airport, under unfavorable and changing weather
17 conditions, remain free and clear with appropriate margins for safety ensured.

18 10. After extensive review and evaluation by the Federal agency charged with
19 such responsibility, the FAA has formally determined that the Sunroad Centrum I
20 building, built to 180 feet above the ground, constitutes a hazard to air navigation,
21 placing pilots, residents, and building occupants in jeopardy. The FAA's determination
22 is based, in part, on the consideration of objective and standard distances that it has
23 identified as minimally safe margins for flight operations in the vicinity of an airport.

24 11. During the construction process involving the subject building, the FAA
25 issued a Notice to Airmen ("NOTAM") pertaining to the hazards posed by such
26 construction. A NOTAM is a notice containing information not known in advance to
27 publicize by other means concerning the establishment, condition, or change in any
28 facility, service, procedure of, or hazard in, the National Airspace System, the timely
knowledge of which is essential to personnel concerned with flight operations. In this

1 particular instance, such NOTAM was issued by the FAA to notify and warn airmen of
2 the temporary existence of a construction crane. The fact that such NOTAM was issued
3 does not eliminate or negate the FAA's earlier determination that the permanently
4 constructed building, at 180 above ground level, poses a hazard to air navigation under
5 the circumstances and operating procedures at MYF.

6 12. Based on the foregoing, AOPA has an interest in the outcome of the present
7 litigation as it relates to the safety of its members, and its detrimental impact on general
8 aviation.

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10 **II**
GENERAL ADMISSION

11 13 AOPA admits, on information and belief, each material allegation contained
12 within the Complaint.

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14 **III**
FIRST AFFIRMATIVE DEFENSE

15 14. As a separate and affirmative defense to the Complaint filed herein, AOPA
16 alleges that the damages complained of were proximately contributed to or caused by
17 the carelessness, negligence, fault or defects created by the defendants in this action,
18 or by persons, corporations or business entities, unknown to AOPA at this time, and
19 were not caused in any way by AOPA, or by persons for whom AOPA is legally liable.

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21 **IV**
PRAYER FOR RELIEF

22 Wherefore, Defendant AOPA prays for relief as follows:

- 23 (1) That neither relief nor judgment be awarded as against this answering defendant;
24 (2) That plaintiffs, and each of them, be awarded such relief as prayed for in the First
25 Amended Complaint on file herein;
26 (3) That this answering defendant be awarded attorney fees and costs; and
27 (4) That this answering defendant be awarded such other and further relief as may be
28 just and proper under the circumstances.

1 Dated: February _____, 2007

Law Offices of James F. Pokorny

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5 JAMES F. POKORNY
6 Attorney for Real Party In Interest
7 AIRCRAFT OWNERS AND PILOTS
8 ASSOCIATION
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