

What AOPA is doing for California

A 'nasty' fight develops in San Diego

Local pilots, San Diego city attorneys, state officials, and AOPA are battling Sunroad Enterprises in the Superior Court of California because Sunroad refuses to shorten a new tall building located seven-tenths of a mile from a Montgomery Field runway. The FAA has determined that the height of the building at 180 feet not only would pose a threat to visual aircraft operations but also would affect circling minimums for IFR aircraft, and the agency has asked repeatedly that the building be deconstructed down to 160 feet.

Punitive fines from the city, state, and federal governments are under consideration. The latest amendment to the court case asks for separate penalties of \$2,500 for each violation (unrelated to FAA penalties of \$1,000 a day for every day that regulations are knowingly and willingly violated), and asks for a temporary restraining order stopping construction. The state also has penalties under the Public Utilities Code, and considers each day the structure exceeds the height allowed by state law to be a separate violation. Although it is a safety issue, it has now become highly politicized with city leaders appearing to support the developer while their own city attorneys support the FAA airspace determination that the building is a hazard.

Tom Story, Sunroad vice president of development, was until March 2005 the chief of staff to San Diego Mayor Dick Murphy (who resigned in July 2005), and prior to that was a senior policy advisor to Murphy and responsible for securing state legislation that created both the San Diego Regional Airport Authority and the San Diego River Conservancy, according to a report in a March 2005 edition of *The Daily Transcript*.

After construction continued despite warnings from the city attorney to stop construction at 160 feet agl, city development officials gave approval in December 2005 for a roof allegedly to protect the now 180-foot structure from the weather. The lawsuit has this to say about the roof: "Plaintiffs are informed and believe the acts of Sunroad to 'weatherize' the building are nothing more than a thinly veiled attempt to complete the Sunroad Centrum I building unimpeded."

"This is a nasty, nasty fight," said an FAA official. A second FAA official, FAA spokesman Ian Gregor, said that, nationwide, out of 6,000 buildings found to be hazards in the past, only one developer proceeded without permission: Sunroad. FAA determinations were subsequently revised in only three of the cases. One source said the owner of Sunroad lives in Mexico City, and therefore may be insulated from the pressure applied in the lawsuit by the FAA, state officials, City At-

torney Michael J. Aguirre, the Community Airfields Association of San Diego, and AOPA.

An AOPA spokesman said: "Sunroad Centrum developers should raise a white flag and back away from Montgomery Field." AOPA believes the only solution to this issue is to do away with

Diego, "capped by a great architectural roof element reaching for the sky." Plans call for building, on the same site, two additional buildings of 200 feet and 235 feet, according to the Superior Court amended complaint. The lawsuit addresses the additional buildings, asking for a temporary re-



the top two floors of the building, cutting its height back to the FAA's acceptable 160-foot limit.

"This is a critical safety issue not only to pilots using the airport, but also to workers in the new office complex," said AOPA Vice President of Airports Bill Dunn, who met with the city attorney and reporters in San Diego to get the association's position out to the public. "AOPA is appalled that the developer is blatantly ignoring the FAA's ruling and the city's order to stop working on the building," Dunn said.

The building was marketed, the legal filing says, as the "tallest building" in the Kearny Mesa area of San

Diego, "capped by a great architectural roof element reaching for the sky." Plans call for building, on the same site, two additional buildings of 200 feet and 235 feet, according to the Superior Court amended complaint. The lawsuit addresses the additional buildings, asking for a temporary re-

straining order and a preliminary and permanent injunction, prohibiting Sunroad from constructing "any other building at or near Montgomery Field without first filing notice with the FAA, obtaining a 'No Hazard Determination' from the FAA, and without first obtaining all necessary permits required by the FAA, [state] DOT, or the city."

However, a local Fox television station reported that Story has said he will not redesign the additional two buildings because it would be too expensive. The lawsuit alleges that the FAA was not contacted until construction on Sunroad Centrum I was fully

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under way. It also claims Sunroad finally contacted the FAA only after strenuous objections from pilots, the operators of Montgomery Field, and the city's Airport Advisory Committee. The amended complaint next accuses Sunroad of "falsely" saying to the FAA that plans had been modified to reduce the building height to 160 feet, the complaint states, "This was never the case." The contractor then installed construction cranes that exceeded the 180 feet "without any notification to the FAA whatsoever," the legal document says. Both the city attorney and the state Division of Aeronautics requested a stop-work order that was finally issued last October. The order pertained to the top 20 feet of the building. The Division of Aeronautics has informed the developer on multiple occasions that the height of the structure violates the State Aeronautics Act, and that failure to comply with its provisions will result in enforcement action to the fullest extent provided by the law. The lawsuit urges the state to take further enforcement action to prevent the building from exceeding 160 feet.

Sunroad has proposed ways to mitigate the building's effect on air navigation. Story told *The Daily Transcript* that Sunroad and the city will probably fund a new \$200,000 ILS for another runway to replace the one affected by the 180-foot building. But in a later statement, a Sunroad official said the company would "consider contributing" to the costs

of a new ILS system. It is not clear why Sunroad volunteered city funds for a system that is required because of the Sunroad building. An FAA official criticized the proposal, and said \$200,000 won't cover the cost. The city of San Diego is strapped for funds and can hardly afford additional expenses to help Sunroad pay for an ILS. He said \$200,000 would probably pay for a study, but not for the project. Although Sunroad has suggested a new ILS, an FAA official noted that the addition of such an ILS has not been approved as a solution to mitigate the concerns of the FAA that led to the determination that the building is a hazard.

There are also environmental costs to replacing the ILS system at Montgomery Field by building a new one on another runway. After a rain, the mesa where the airport is located becomes a plateau of vernal pools filled with endangered species, and payments to offset the damage could reach as high as \$200,000. There is also an environmental impact study that must be funded. Finally, there is the cost of the ILS equipment and its installation, plus maintenance and ongoing expenses.

Story also seemed to find support in a temporary FAA notam for a 330-foot high crane on the airport, but an FAA official said the crane is temporary and the building is not. The official also said he is concerned that the developer fails to understand the type of operations at Montgomery Field—specifically practice instrument approaches and approaches by

pilots who don't do them every day. Instrument students may get off the approach path, and that could bring them perilously close to the buildings. If the buildings are built as planned, the ability to adapt to changing weather conditions would be limited, and that would affect the aviation system for the entire San Diego area, a federal official said.

Sunroad officials told *The Daily Transcript* that they have already taken their case to FAA officials in the Washington, D.C., headquarters, and have been assured that an "amicable solution is likely." FAA's Gregor had this to say about the claim of an "amicable solution: The FAA has not in any way suggested that Sunroad's proposals to mitigate the hazard are feasible. It would take months and possibly more than a year of studies to determine whether the proposals would address the serious problem that Sunroad created by failing to follow the proper review process for tall buildings." He added that Sunroad could end up paying for the studies, saying taxpayers do not pay for problems created by a developer.

Although mitigation of instrument operations has been suggested by Sunroad, the company has said nothing about visual operations. Montgomery Field has parallel runways (10 Left and Right and 28 Left and Right) that run basically east-west, with the traffic pattern to 10R/28L to the south of the airport and the traffic pattern to 10L/28R to the north (and over the under-con-

struction Sunroad building). The 10L/28R traffic pattern can't be shifted to the south side of the airport without affecting the traffic pattern to the other runway.

Sunroad, for its part, challenges the jurisdiction of federal, state, and local authorities to control what it does on private land. The company issued a statement saying, "Simply put, the Sunroad Centrum I office building poses no threat to public safety."

Gregor responded, "It is not up to Sunroad to make that determination. Our experts at the FAA determined that it is a hazard to air navigation." Next, the Sunroad statement noted that the FAA has issued a notam about the building, "resolving the issue." Gregor said, "It has resolved nothing. It was the only thing the FAA could do on a short-term basis to mitigate a hazard the developer created by failing to follow the proper approval procedures for the structure."

The Sunroad statement accused the "city attorney and other parties" of "distorting the facts for their own purposes" and "sensationalizing" the issues.

Montgomery Field is home base to 600 aircraft, 550 of which are owned by AOPA members. It has three runways of 3,400 feet each (the one that has an ILS is 4,577 feet but a displaced threshold shortens available length to 3,400 feet) and a control tower.

AOPA has 50,000 members in California, and 17,000 of those are in San Diego.