



March 15, 2007

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**Re: Request for Oral Deposition of FAA
Employees Kevin Haggerty, Karen
McDonald, Michael Cirillo and Ian Gregor
Pursuant to 49 CFR § 9.15(a)**

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

Gentlemen:

We write on behalf of our clients Sunroad Centrum, L.P., Sunroad Asset Management, Inc., and Sunroad Enterprises (collectively, "Sunroad"), defendants and cross-complainants in the above referenced action, to request the depositions of four FAA employees. These depositions will cover only facts, will not seek expert testimony or opinion, and will be limited to items within the deponents' official duties and personal knowledge. The following information is provided pursuant to 49 CFR § 9.15(a) and addresses the requirements of that section.

FAA Employees Whose Depositions are Requested

Sunroad requests the depositions of FAA employees Kevin Haggerty, Karen McDonald, Michael Cirillo and Ian Gregor. Mr. Haggerty is Manager of Air Traffic Obstruction Evaluation. Ms. McDonald is a Specialist in the Obstruction Evaluation Office. Mr. Cirillo is Vice President of Systems Operations. Both Mr. Cirillo and Mr. Haggerty work in the FAA's Washington



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headquarters office; the remaining employees work in the FAA's Western Regional office in Hawthorne, California.¹

Nature of litigation

We request these depositions in connection with private litigation to which the United States is not a party. The litigation was commenced by the San Diego City Attorney, purporting to act on behalf of the plaintiffs, on December 15, 2006, and is captioned *The People of the State of California and The City of San Diego v. Sunroad Centrum, L.P., Sunroad Asset Management, Inc., Sunroad Enterprises, and California Department of Transportation, Aeronautics Division*, San Diego Superior Court Case No. GIC 877054. A copy of the First Amended Complaint ("FAC") filed by the plaintiffs (the operative pleading) is attached as Exhibit A. On February 9, 2007, Sunroad filed a cross-complaint for Equitable Estoppel, Inverse Condemnation, and Petition for Writ of Mandate against the City of San Diego. A copy of that Cross-Complaint is attached as Exhibit B.

49 CFR § 9.15(a)(2) and (3) – Factual Context and Summary of Issues in Dispute

This lawsuit concerns Sunroad's development of commercial office complex, including a 12-story, 180' office building (the "Building"), located approximately .7 nautical miles from Montgomery Field airport in San Diego. Plaintiffs allege that the Building, which is now framed to its full planned height of 180 feet above ground level, is a hazard to air navigation and a threat to public health and safety. In addition to other relief, Plaintiffs seek to declare the Building a public nuisance and pray for a mandatory injunction requiring the top 20 feet of the Building be razed.

Plaintiffs base their public nuisance claim on the FAA's evaluation of the Building reflected in Aeronautical Study No. 2006-AWP-1638-OE and an associated Notice of Presumed Hazard (both dated 4/24/06, and signed by Karen McDonald on behalf of the FAA), and Aeronautical Study No. 2006-AWP-46010-OE and associated Determination of Hazard to Air Navigation (both issued on 8/11/06, and signed by Kevin Haggerty on behalf of the FAA). See FAC, ¶¶26-32.

Plaintiffs further contend that Sunroad acted deceptively in its dealings with the FAA (presumably, this means Ms. McDonald, Mr. Haggerty, and their ultimate supervisor, Mr. Cirillo) concerning the Building by submitting false statements to the FAA claiming that the Building's height had been reduced to 160 feet, and then proceeding with constructing the Building to 180' without advising the FAA. See FAC, ¶¶28, 29.

¹ As Mr. Cirillo and Mr. Haggerty work in Washington, we are addressing this letter both to Mr. Balton of the Western Regional Office and to Mr. Saltsman at the FAA's Headquarters Office.



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Sunroad disputes Plaintiffs' claim that the Building's height poses any threat to public health or safety, and contends, among other things, that NOTAMs first issued by the FAA on June 11, 2006 (FDC 6/1393 and FDC 6/1394) eliminated any potential threat to safety by notifying pilots to raise minimum descent altitudes around the Building to accommodate a 330' construction crane. Sunroad further contends that while these NOTAMs have since been supplanted, subsequent NOTAMs have maintained the increased circling minimums.

Sunroad further disputes that it has acted deceptively in its communications and dealings with the FAA, and contends that it has in good faith continued to work with the FAA, the City of San Diego and the California Department of Transportation to identify and resolve any issues concerning the Building. Sunroad contends that these efforts have included, among others, meeting with Kevin Haggerty and FAA staff in Washington on November 29, 2006 to discuss the possible installation of a new "straight in" approach system.

Sunroad further contends that the City repeatedly permitted and approved the Building at its full height of 180', that it has vested development rights in the Building, that it proceeded in good faith reliance on those permits, and that it has and will incur millions in damages should construction be further delayed and it be required to deconstruct the Building.

49 CFR § 9.15(a)(4) – Summary of Testimony Sought

Karen McDonald

Karen McDonald authored the Notice of Presumed Hazard and associated Aeronautical study at issue in this litigation. She was also involved in communicating with Sunroad, the City of San Diego, and the California Department of Transportation concerning the Notice of Presumed Hazard. Ms. McDonald also participated in conversations with the same parties in January, February and March of 2007, the result of which was that Sunroad's ability to mitigate its damages was undermined because it was effectively prohibited from using a crane or helicopter to undertake certain construction work. Sunroad seeks testimony from Ms. McDonald concerning, *inter alia*: (1) the scope of her duties at the FAA, including the standard procedures pursuant to which those duties are discharged; (2) the persons she contacted concerning her work in connection with the Building; (3) the process pursuant to which the Notice of Presumed Hazard and associated Aeronautical study were generated; (4) the FAA's receipt of and response to Sunroad's initial Notice of Proposed Alteration to begin construction of the Building; (5) Sunroad's subsequent communications with the FAA concerning construction; (6) the factual bases for the conclusions in the Notice of Presumed Hazard; (7) the factual basis for the issuance of the initial NOTAMs and subsequently issued NOTAMS raising circling minimums at Montgomery Field; and (8) statements made by Ms. McDonald to persons at the City of San Diego, the California Department of Transportation, and others concerning the Notice of Presumed Hazard, Sunroad, and the Building, including the factual basis for the FAA's denial of Sunroad's requests in February and March of 2007 to employ a helicopter or crane to undertake certain work at the Building.



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Kevin Haggerty

Mr. Haggerty authored the Hazard Determination and associated Aeronautical study at issue in this litigation. In addition, Mr. Haggerty was directly involved in communicating with Sunroad concerning issuance and interpretation of the NOTAMs, and met with Sunroad's representatives in Washington in November 2006 to discuss alternatives to address the FAA's concerns with respect to the Building. Mr. Haggerty also participated in conversations with the same parties in January, February and March of 2007, the result of which was that Sunroad's ability to mitigate its damages was undermined because it was effectively prohibited from using a crane or helicopter to undertake certain construction work.

Sunroad seeks testimony from Ms. McDonald concerning, *inter alia*: (1) the scope of his duties at the FAA, including the standard procedures pursuant to which those duties are discharged; (2) the persons he contacted concerning his work in connection with the Building; (3) the process pursuant to which the Aeronautical Study and Hazard Determination were generated; (4) the FAA's receipt of and response to Sunroad's initial Notice of Proposed Alteration to begin construction of the Building; (5) Sunroad's subsequent communications with the FAA concerning construction; (6) the factual bases for the conclusions in the Aeronautical Study and Hazard Determination; (7) the factual basis for the issuance of the initial NOTAMs and subsequently issued NOTAMS raising circling minimums at Montgomery Field; (8) statements made by Mr. Haggerty to persons at the City of San Diego, the California Department of Transportation, and others concerning the Notice of Presumed Hazard, the Aeronautical Study, the Hazard Determination, Sunroad, and the Building, including the factual basis for the FAA's denial of Sunroad's requests in February and March of 2007 to employ a helicopter or crane to undertake certain work at the Building; and (9) Mr. Haggerty's participation in a meeting with Sunroad's representatives in Washington in November 2006 to discuss alternatives to address the FAA's concerns with respect to the Building.

Michael Cirillo

Ms. McDonald and Mr. Haggerty ultimately report to Michael Cirillo. Sunroad believes that Mr. Cirillo was consulted on and had involvement in preparing or approving the Notice of Presumed Hazard, Aeronautical Studies, and Hazard Determination, as likely also participated in discussions involving persons outside the FAA concerning the FAA's determination in February and March of 2007 not to allow Sunroad to employ a crane or helicopter to undertake certain work at the Building.

Sunroad seeks testimony from Mr. Cirillo concerning, *inter alia*: (1) the scope of his duties at the FAA, including the standard procedures pursuant to which those duties are discharged; (2) the persons he contacted concerning his work in connection with the Building; (3) the process pursuant to which the Notice of Presumed Hazard, Aeronautical Study and Hazard Determination were generated; (4) the FAA's receipt of and response to Sunroad's initial Notice of Proposed Alteration to begin construction of the Building; (5) Sunroad's subsequent



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communications with the FAA concerning construction; (6) the factual bases for the conclusions in the Notice of Presumed Hazard, Aeronautical Study and Hazard Determination; (7) the factual basis for the issuance of the initial NOTAMs and subsequently issued NOTAMs raising circling minimums at Montgomery Field; (8) statements made to the City of San Diego, the California Department of Transportation, and others concerning the Notice of Presumed Hazard, the Aeronautical Study, the Hazard Determination, and the Building, including the factual basis for the FAA's denial of Sunroad's requests in February and March of 2007 to employ a helicopter or crane to undertake certain work at the Building; and (9) the FAA's participation in a meeting with Sunroad's representatives in Washington in November 2006 to discuss alternatives to address the FAA's concerns with respect to the Building.

Ian Gregor

In newspaper articles published in December of 2006 and January of 2007, Mr. Gregor, speaking on behalf of the FAA, has been quoted concerning the FAA's position with respect to: (1) whether Sunroad acted deceptively in its communications with the FAA concerning the Building; (2) the meaning of the 8/11/06 Determination of Hazard to Air Navigation; (3) whether the Building poses an actual threat to air navigation at Montgomery Field in light of the NOTAMs; (4) the meaning of and proper interpretation of the NOTAMs; (5) the status of Sunroad's efforts to address concerns raised by the FAA so as to resolve potential concerns about safety; and (6) whether the FAA will modify or lift the 8/11/06 Hazard Determination.

By way of illustration, a 12/3/06 article appearing in the San Diego Union-Tribune attributed the following statements to Mr. Gregor:

- "'The project is a hazard to air navigation, period,' FAA spokesman Ian Gregor said. 'Simply put, there is no short-term way of removing the hazard determination.'"
- "The only reason that everyone's in this position is that a developer decided to ignore the mandatory review process and build a tower that is a hazard to air navigation."
- "The FAA is considering asking the U.S. Justice Department to investigate whether Sunroad violated federal law by failing to properly notify the agency about the building."

Similar statements were attributed to Mr. Gregor in a 12/5/06 article appearing in the San Diego Daily Transcript:

- "'There was a complete thumbing of the nose [by Sunroad] of an important process,' Gregor said, before adding 'This is a clear violation of federal law.'"



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- "We're exploring our legal options [against Sunroad] that could include criminal prosecution.'[...] Gregor said he wasn't sure what the criminal penalties might be, but said the developer could be fined \$1,000 every day since the building was topped off in August. 'And they created this problem themselves,' he added."

Sunroad seeks testimony from Mr. Gregor concerning, *inter alia*: (1) the scope of his duties at the FAA, including the standard procedures pursuant to which those duties are discharged; (2) the persons he contacted concerning his work in connection with the Building; (3) the factual accuracy of the statements in the press attributed to him; (4) the procedures he followed to obtain information to support statements he made to the press concerning the Building; and (5) the persons with whom he consulted to obtain information to support statements he made to the press concerning the Building.

49 CFR § 9.15(a)(5) – Certification that Testimony Not Available from Other Sources

We certify that the testimony sought is not reasonably available from other sources, including from FAA documentation. For example, with respect to the meeting of November 29, 2006, Sunroad believes (based on the FAA's responses to previously served FOIA requests) that no minutes or transcriptions are available to substitute for personal testimony.

49 CFR § 9.15(a)(6) – Certification re Interested Parties

Plaintiffs in this action are represented by the San Diego City Attorneys' Office and Christopher Garrett of Latham & Watkins. This letter has been copied to San Diego Deputy City Attorney Carmen Brock, and Christopher Garrett, Plaintiffs' counsel of record. This letter is also being copied to Julie Jordan, counsel to the California Department of Transportation, Jim Pokorny, counsel to Real Party in interest Aircraft Owners and Pilots Association, and Gerald Blank, counsel to Real Party in Interest Community Airfields Association of San Diego. There are no other parties to this action.

49 CFR § 9.15(a)(7) -- Certification re Expert/Trial Testimony

Sunroad will not seek expert or opinion testimony from the witness or seek testimony of the witness at a hearing or trial in this proceeding.

49 CFR § 9.15(a)(b) -- Prior Requests for Testimony

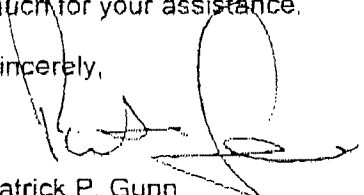
Sunroad has made no prior requests for testimony or records to the FAA or in connection with this litigation.



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We would like to schedule the depositions of these witnesses for late April or early May, 2007, at any location that is convenient for the witnesses. We anticipate that Sunroad's questioning will take one day for each witness. I will contact you in the next day or so to follow up on this letter. In the meantime, if you have any questions please feel free to call me. Thank you very much for your assistance.

Sincerely,



Patrick P. Gunn

Enclosure

cc: Carmen Brock, Esq. (w/o encl.)
Christopher Garrett, Esq. (w/o encl.)
Julie A. Jordan, Esq. (w/o encl.)
James Pokorny, Esq. (w/o encl.)
Gerald Blank, Esq. (w/o encl.)

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RE: The People of the State of California and the City of San Diego v.
Sunroad Centrum, L.P.

COMMENTS:

Please see attached letter dated March 15, 2007.

If you do not receive all of the pages or find that they are illegible, please call Maita Narvaez at (415) 693-2350.

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