



U.S. Department
of Transportation

**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

March 30, 2007

Patrick P. Gunn, Esq.
Cooley Godward Kronish, LLP
101 California Street, Fifth Floor
San Francisco, CA 94111-5800

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

Dear Mr. Gunn:

I have reviewed your letter dated March 15, 2007, addressed to Monroe P. Balton, the Regional Counsel for the Federal Aviation Administration (FAA) in the Western Pacific Region, and to me, requesting the deposition of four FAA employees in connection with the above-referenced matter. I understand that this request was submitted on behalf of Sunroad Centrum, L.P., Sunroad Asset Management, Inc., and Sunroad Enterprises (collectively "Sunroad"). In considering this request, I reviewed the exhibits attached to your letter and discussed the matter with Mr. Balton. Please consider this letter as our joint response.

As an initial matter, I would note that the United States has not waived its sovereign immunity and, thereby, subjected itself and its agencies to proceedings in the state courts. Consequently, the requested depositions are committed to agency discretion and are not subject to compulsory process. See *United States, ex rel., Touhy v. Ragen*, 340 U.S. 462 (1951); *State of Louisiana v. Gsell, U.S. Probation Officer*, 978 F.2d 226 (5th Cir. 1992); *Houston Business Journal v. Department of the Treasury*, 86 F.3d 1208 (D.C. Cir. 1996).

With respect to any inquiry regarding the FAA's decisions concerning Sunroad's development of the office building that is the subject of this litigation, the agency's actions are reflected in the documents that Sunroad should have in its possession, which set forth the final agency determinations. Depositions concerning those actions would intrude on the agency's deliberative process and, in my view, would constitute a collateral attack on those decisions. Review of such final FAA action rests exclusively in the various United States circuit courts of appeals. 49 U.S.C. § 46110. It is my understanding that Sunroad did not file a petition for review concerning the FAA's determinations. Other areas of proposed testimony appear to concern peripheral matters as to which other witnesses, including Sunroad employees and agents, may have pertinent information.

Given that the underlying complaint and cross-complaint are based on causes of action arising under state law and that the FAA's final determinations are documented, and upon consideration of all of the facts and circumstances, the FAA declines to authorize the requested depositions. Please provide a copy of this letter to the other parties to the referenced litigation.

Sincerely,

Richard H. Saltsman
Assistant Chief Counsel for Litigation