

July 24, 2018

VIA HAND DELIVERY, EMAIL AND U.S. MAIL

Mr. Uri Feldman
Sunroad HIE Hotel Partners, L.P.
4445 Eastgate Mall #400
San Diego, CA 92121

Dear Mr. Feldman:

This letter is in response to your June 15, 2018 letter to the San Diego Unified Port District (District) addressed to Mr. Anthony Gordon (Sunroad Letter). In the Sunroad Letter, Sunroad alleges that it has an “essentially by-right project[,]” has met all the deadlines and the District has failed to provide “available personnel or actively provid[e] comments to Sunroad’s submittals” (Sunroad Letter). Based on the review of the record, your letter misconstrues the timeframes and facts.

The Exclusive Negotiating Agreement (ENA) was heavily negotiated between Sunroad and the District and both parties were represented by counsel. Section 5.b.i.5 of the ENA states that “[t]he project description for the Proposed Development shall be in conformance with the Sunroad Harbor Island Hotel Project & East Harbor Island Subarea PMPA Revised Environmental Final Impact Report (“EIR”) on file in the Office of the District Clerk bearing Document No. 61775, the Mitigation Monitoring and Reporting Program (“MMRP”) from the EIR on file in the Office of the District Clerk bearing Document No. 61775, and Findings of Fact and Statement of Overriding Considerations (collectively, “Findings”) adopted by the [Board of Port Commissioners (“Board”)] pursuant to Resolution No. 2014-52; provided, however, if the Proposed Development is inconsistent with the EIR, MMRP and/or Findings, the Proposed Development will be presented to the Board for consideration and direction through a preliminary project review or other agendized means.” The EIR, MMRP and Findings (collectively, 2013 EIR) analyzed and addressed up to two hotels with no more than 325 rooms on what is commonly called the Elbow Site, which is the site that is subject to the ENA. Another 175-room hotel was analyzed on Sunroad’s existing Marina leasehold adjacent to the Elbow Site.

Section 4 of the ENA states that Sunroad shall not propose a development that requires a Port Master Plan Amendment (PMPA). As you are aware, for the Elbow Site, the certified Port Master Plan (PMP) states: “The last project, a high quality hotel of approximately 500 rooms, is sited to be responsive to views of San Diego Bay, the airport, and the downtown San Diego skyline. Maximum building heights establish consistency with aircraft approach paths. The hotel complex includes restaurant, cocktail lounge, meeting and conference space, recreational facilities, including piers, and ancillary uses.” The hotel is listed on the appealable project list as “HOTEL COMPLEX: up to 500 rooms, restaurant, cocktail lounge, meeting and conference space; parking; landscape.”

July 24, 2018
Page 2 of 4
Sunroad Correspondence

Sunroad has proposed a two-phased hotel project on the Elbow Site with the first phase comprising of 325 hotel rooms and the second phase comprising of 175 rooms. To date, the District has not received any information on the second-phase 175 hotel rooms. In the Sunroad Letter, Sunroad states that its proposed project is "in line with all requirements of the Port Master Plan, as well as the 1990 Environmental Impact Report." Unfortunately, the ENA does not require conformity with the 1990 EIR. Rather, the proposed project must be consistent with the 2013 EIR. On or around June 20, 2018, District staff informed a Sunroad representative of the requirements of Section 5.b.i.5. That same representative negotiated the ENA. On June 25, 2018, Sunroad submitted an email as to the project's conformity with the 2013 EIR. Additionally, as the District has stated to Sunroad on several occasions, additional analysis would be required for the District to conclude that the proposed project is consistent with the 1990 EIR, as well as whether the 1990 EIR retains some informational value and the proposed changes to the hotel project analyzed in the EIR when compared to Sunroad's proposal does not render the 1990 EIR wholly irrelevant. This task is wholly within the discretion of the District, as the California Environmental Quality Act (CEQA) lead agency. Nonetheless, the ENA requires the proposed project be in conformance with the 2013 EIR, not the 1990 EIR.

CEQA requires a project be analyzed in one CEQA document, even if the project is phased. It is well established that CEQA prohibits concealing environmental impacts or considerations by separately focusing on isolated parts and overlooking the cumulative effects of a project. A CEQA lead agency – like the District here – may not divide a single project into smaller parts, a practice called piecemealing.

It is staff's opinion based on the information given to date, that the second phase of Sunroad's proposal – the addition of 175 hotel rooms proposed by Sunroad – is reasonably foreseeable and is significant in that it will change the scope and nature of the first phase of the project and its environmental impacts. Therefore, both phases of the project must be analyzed in one CEQA document. The 2013 EIR only analyzed 325 hotel rooms on the Elbow Site and at the time, little was known about characteristics of the hotel(s). Accordingly, the 2013 EIR looked at a high-level worst case scenario. However, such an analysis was not intended to foreclose supplemental CEQA review, if required, based on an actual proposal/submittal. Sunroad's proposal for 500 rooms on the Elbow Site does not conform to the 2013 EIR in room count or location alone. Accordingly, it is not in conformance with the 2013 EIR and District staff has informed Sunroad that it plans on agendaizing the matter for the August 2018 open session Board meeting.

Your letter requests District staff bring the project before the Board in August or September for approval of a Coastal Development Permit (CDP). Such an action would be contrary to Section 5.b.i.5 of the ENA and premature. A CDP cannot be considered until adequate CEQA analysis is conducted.

Additionally, Sunroad does not have "essentially" a by-right project under the PMP, the 1990 EIR or otherwise. First, there are several discretionary approvals that Sunroad needs to obtain from the District – a CDP, a lease, concept approval, and even potentially a PMPA (see also

July 24, 2018
 Page 3 of 4
 Sunroad Correspondence

above regarding the discussion of whether the 1990 EIR still has informational value).¹ Additionally, Sunroad does not have vested rights in the property or the project. The ENA did not require the District to approve Sunroad's proposal and does not constitute a Development Agreement or anything close to one.

Consistent with paragraph 2.c. of the ENA, District staff has been negotiating with Sunroad in good faith, has provided available personnel, and has been actively providing comments to Sunroad's submittals and actively responding to Sunroad's inquiries. The District has had at least seven employees assigned to the project, as well as an outside project manager consultant. District staff has also been proactively meeting and communicating with Sunroad throughout this process. Collectively, staff has had five (5) in-person meetings since the March 2018 Board meeting, on April 5, April 12, April 30, May 24, and June 7. Wileen Manaois, Director of Development Services, has also had discussions with you, both in person and over the phone about the process and proposal. There have also been multiple phone and in-person conversations with Wileen on the CEQA and Coastal processing on April 12, April 30, May 21 and June 7. In addition, staff has been responsive to all emails received by Sunroad and provided written feedback to Sunroad on the first submittal in a letter dated February 14.

Staff has also made good faith effort to work with you in completing the "Three Party Agreement" to retain a consultant (Dudek) for the CEQA/Coastal Act processing of your project. Contrary to your claim that District staff said the agreement with Dudek would be completed within a week, District staff told you, via email on April 24, that the agreement with Dudek "...will take a few weeks to complete" and has been working diligently to get Dudek under contract. This is expedited in comparison with other projects. District staff initially planned to retain Dudek to oversee the CEQA/Coastal process *and* prepare the CEQA analysis in order to help expedite the process, as Wileen conveyed to you via phone on June 7. During that call, Wileen confirmed that the District had then agreed with Sunroad's request in its May 31 letter to have a separate consultant (not Dudek) complete the CEQA analysis for the project. Wileen further told you that the District would need to get a revised proposal from Dudek for CEQA oversight (not CEQA preparation) and Coastal processing, which would result in a revised Three Party Agreement, and that the District would have to go through a Request for Proposals (RFP) process to retain a CEQA consultant. Wileen followed up with an email to you after the call on June 7, stating that the District "...will have Dudek be the Project Manager consultant and we'll have a separate consultant prepare the CEQA document. Staff is getting a revised proposal from Dudek for the Project Management work and the Procurement Department will send you the revised Dudek Three Party Agreement. On a parallel track, staff is also working on retaining a CEQA Consultant using our consultant list." District staff did not receive any objection from Sunroad to this process until the June 15 Sunroad Letter. Since the District's call with you on June 7, the District has been working diligently to retain both Dudek as a CEQA/Coastal Project

¹ It is our understanding that Coastal Commission staff is questioning whether a PMPA is required for Sunroad's proposed development. It is also our understanding that Sunroad will be responding to Coastal Commission staff and the District on the issue. Our Board, the decision-maker for the District, has not weighed in on the issue in relation to Sunroad's proposal.

July 24, 2018
 Page 4 of 4
 Sunroad Correspondence

Manager Consultant and a separate CEQA Consultant to prepare the CEQA document. The District's Procurement Department sent the revised Dudek Three Party Agreement to you for signature on July 16. Also, the District recently completed the CEQA consultant solicitation process and has selected a CEQA consultant, and the Three Party Agreement is in process and will be provided to you by the District's Procurement Department.

Furthermore, Sunroad requests District approval to "...initiate the necessary technical reports to support an Addendum as well as to complete an Addendum." First, the District has not agreed that an Addendum is the appropriate level of CEQA review. Additionally, the District's practice is for the District to retain a CEQA consultant (and any associated sub-consultants) to prepare any necessary technical studies and CEQA document at the District's direction through the Three Party Agreement process. We would not be able to base the District's level of environmental review on Sunroad's own consultant(s) as the results of the technical studies need to be objective and impartial in order to determine the appropriate CEQA document for Sunroad's proposed hotel project.

The term sheet and proformas you provided in the first and second submittal have different rent proposed to the District and as such we will assume your proposed rent is based on the latest June 15 second submittal. Nonetheless, the definitive agreement referenced in the ENA is at the District's discretion and a ground lease cannot be granted until we know the outcome of the environmental review under CEQA. Additionally, the terms proposed by Sunroad are not even close to market and as proposed, staff would not recommend them to the Board..

We understand the ENA terminates on September 27, 2018 and hence, your request to have the item heard at the August or September meeting. As stated in our conversation on July 18, 2018, we will go back to the Board in August 2018 with a presentation and request Board direction consistent with Section 5.b.i.5 of the ENA. District staff will not provide comments on Sunroad's proposed economics until after the August Board meeting. In addition, as currently proposed, District staff would not recommend the proposed project to the Board based on the design and economic terms proposed in the Second Submittal.

Sincerely,



Tony Gordon
 Director, Real Estate



Wileen Manaois
 Director, Development Services

CC: R. Coniglio, President, District
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