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Appellate Court Affirms Judgment That The City Of Watsonville Violated The State Aeronautics Act In Eliminating And Modifying Handbook Safety Zones

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On March 15, 2010, the Sixth Appellate District in the Court of Appeal of the State of California issued its not-to-be-published decision in the *Watsonville Pilots Association et al. v. City of Watsonville et al.* case. At issue was whether the City's certification of an environmental impact report (EIR) and approval of a general plan in May 2006 violated the State Aeronautics Act (SAA; Pub. Util. Code, §21001 et seq.) and/or the California Environmental Quality Act (CEQA; Pub. Resources Code, §21000 et seq.). (Slip Copy, p. 2.) The trial court, in an opinion rendered in March 2008, found that (i) the City's general plan violated the SAA and (ii) the EIR did not adequately analyze potential environmental impacts to aviation and traffic, and failed to consider a reasonable range of alternatives.[1] (*Id.* at p. 6.) By its March 15 decision, the appellate court affirmed the trial court's decision in full.[2] (*Id.* at p. 3.)

By way of background, the City owns the Watsonville Municipal Airport (Airport), which has two runways -- a main runway ("2-20") and a crosswind runway ("8-26"). (*Id.* at p. 3.) To the north and west of the Airport, just beyond the City's boundaries but within its sphere of influence, is the Buena Vista area. (*Ibid.*) The general plan approved by the City contemplated the development of about 2,250 additional residential units in this area. (*Id.* at p. 4.) Prior to approving the general plan, the City modified the Airport's master plan to: (i) designate the Runway 8 end of 8-26 as a "low activity runway," thereby eliminating Safety Compatibility Zone 3 (Zone 3; Inner Turning Zone), and (ii) amend Safety Compatibility Zone 6 (Zone 6; Traffic Pattern Zone) to permit children's schools, day care centers, hospitals and nursing homes.[3] (*Id.* at p. 3.)

The appellate court first considered whether the City violated the SAA, and specifically Public Utilities Code section 21670.1(e), by failing to adopt the safety and density criteria established in the 2002 edition of Caltrans' Airport Land Use

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[1] The court's CEQA-related holdings are not discussed in detail in this case summary. However, suffice it to say that the court found that the City's EIR (i) failed to adequately analyze impacts associated with the deletion and modification of safety zones, (ii) could not reasonably tier from the Airport's master plan EIR, which expressly relied on the City's general plan to ensure compatible land uses and the avoidance of safety hazards, and (iii) improperly deferred such impact analysis until the development of future specific plans. (*Id.* at pp. 23-29.)

[2] The petitions for writ of mandate alleged that the California Department of Transportation, Division of Aeronautics (Caltrans), was at fault for failing to enforce the SAA. However, the trial court's writ did not grant any relief against Caltrans; therefore, the allegation was not addressed during the appeal. (*Id.* at p. 5, fn. 7.)

[3] Ordinarily, Safety Zone 3 would restrict residential uses to "very low densities" and prohibit children's schools, large day care centers, hospitals and nursing homes. Safety Zone 6 would permit residential uses, but require that children's schools, large day care centers, hospitals and nursing homes be avoided. (*Id.* at pp. 3-4.)

Also of note, the court found that the City's designation of the Runway 8 end as a "low-activity runway" was not supported by the City's factual findings. (*Id.* at pp. 17-19.)

Planning Handbook (Handbook) through its elimination of Zone 3 and modification of Zone 6.[4] (*Id.* at pp. 6-7.) Public Utilities Code section 21670.1(e)(1)(B)(i) requires that the City "adopt the elements in paragraph (2) of subdivision (d), as part of [its] general and specific plans." Correspondingly, section 21670.1(d)(2) requires the incorporation of the "height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the [Handbook] . . . and any applicable federal aviation regulations . . ." in general and specific plans. The City argued that section 21670.1(e) does not require the City to adopt all of the zones and compatibility criteria established in the Handbook, but only the "essential components" of the Handbook. (Slip Copy, p. 7.) The appellate court rejected this statutory construction argument.

The appellate court concluded that "the Legislature provided for the Handbook to play several different roles." (*Id.* at p. 9.) More specifically, the court interpreted the SAA to provide that:

➢ Where a county has established an ALUC (referred to by the court as "ALUC counties"), the ALUC and local agencies "shall be guided by" the information and height, use, noise, safety, and density criteria, respectively, in the Handbook. (Pub. Util. Code, §21674.7(a)-(b).) The statutory language indicates that local agencies in ALUC counties should be "influenced" by the Handbook, "a fairly mild mandate" supporting local discretion. (Slip Copy, pp. 9-11.)

➢ Where no ALUC has been established, but a county has adopted a no issues resolution and established an alternative procedure for airport planning (referred to by the court as "alternative-procedure counties"), the alternative procedure must "rely on" the height, use, noise, safety, and density criteria in the Handbook. (Pub. Util. Code, §21670.1(c)(3)(B).) The statutory language indicates that alternative-procedure counties should be "dependent" on the Handbook, a "stronger mandate" supporting limited local discretion. (Slip Copy, pp. 9-11.)

➢ Where a county has neither established an ALUC nor adopted a no issues resolution and an alternative procedure (referred to by the court as a "no-procedure county"), the county and each affected city must "adopt the elements" that incorporate the Handbook criteria. (Pub. Util. Code, §21670.1(d)-(e).) The statutory language indicates that an affected city in a no-procedure county must "accept" and "put into effect" the Handbook, a "very strong mandate" supporting no local discretion. (Slip Copy, pp. 9-11.)

The appellate court also cited the 2002 edition of the Handbook as supporting its conclusion that local agencies in a no-procedure county have no discretion as the Handbook contains language requiring compatibility plans to be "consistent with" its criteria. (*Id.* at p. 16.) The court dismissed other language in the Handbook, which acknowledges that it is not the intent or expectation of Caltrans that the Handbook presents the only acceptable approaches to safety compatibility planning, as being inconsistent with legislative intent for a no-procedure county. (*Ibid.*) The court concludes that "[a]llowing an affected city in a no-procedure county" to pick and choose among the Handbook's criteria would do nothing to discourage incompatible land uses." (*Ibid.*)

The appellate court also rejected two SAA-related arguments made by the City concerning the appropriate remedy. The court first rejected the City's claim that the sole remedy available to the petitioners was a court order requiring the establishment of an ALUC pursuant to Public Utilities Code section 21670.1(e)(1)(B)(ii). (*Id.* at p. 19.) The court also held that nothing in Public Utilities Code section 21679(a), which authorizes a court to enjoin the effective date of a local land use regulation, precludes a mandate action challenging a local agency's compliance with Public Utilities Code section 21760.1(e). (*Id.* at p. 21.)

If you have any questions or need additional information regarding the above, please do not hesitate to contact any of the Gatzke Dillon & Ballance LLP attorneys identified above at: 760.431.9501. Importantly, the above discussion is only a summary of the opinion. Therefore, the application of this opinion's primary holdings to other matters should be subject to careful and thorough evaluation.

[The information contained in this transmission does not constitute a legal opinion and should not be relied upon as legal advice.]

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[4] It is important to emphasize that Santa Cruz County does *not* have a countywide ALUC and proceeds under the section 21670.1(e) exception for counties in which there is only one public use airport and that airport is owned by a city. (*Id.* at p. 9.)