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December 13, 2023

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: The Board of Directors of Cameron Park Airport District
Attention: Terry Bohlen, Board President at tabohlen@gmail.com

From: David W. McMurchie at dcmurchie@mcmurchie.com

Re: Airport Districts and Land Use Planning Authority

Dear Mr. Bohlen.

On behalf of your Board of Directors you have asked me to research and provide a written opinion on the following issue:

With respect to real property located within the jurisdictional boundaries of the Cameron Park Airport District (“the District”), is the District or El Dorado County (“the County”) responsible for land use planning, zoning, development approval, and building permit regulations and enforcement of such provisions?

CONCLUSION

The State Aeronautics Act establishes state-wide guidelines for airport land use compatible planning implemented by Airport Land Use Commissions (“ALUC’s”) which are required to be established in each county in which an airport is located, to be formed by the Board of Supervisors of each such county. The purpose of ALUC’s is to protect the public health, safety and welfare by encouraging orderly expansion of airports and the adoption of land use measures which minimize exposure to excessive noise and safety hazards within areas around public airports, which is generally defined as an area two

miles around an airport. The law requires each county's ALUC to prepare an Airport Land Use Compatibility Plan ("ALUCP") with a twenty-year planning horizon, updated every 5-10 years to ensure consistency with county adopted General Plans, Specific Plans and associated zoning regulations. The Airport District Act at Public Utilities Code sections 22001-22975 does not list land use planning, zoning and project approval as an express power provided to airport districts. However, the Planning and Zoning Law at Government Code section 65000 et seq does specifically provide land use planning, zoning, project approval and development fee authority exclusively to cities and counties. The County of El Dorado has taken action to appoint the El Dorado County Transportation Commission as its county ALUC. Therefore, the County is solely responsible for regulating land use planning, zoning, land use project approval and development fees for real property within the boundaries of the District, and the District has no such power.

ANALYSIS

In 1987 the County formed the District pursuant to the provisions of the California Airport District Act at Public Utilities Code section 22001-22975 ("the Act") to operate and maintain the airport. By quitclaim deed the County conveyed to the District its interest in various properties within the boundaries of the District on condition that the properties so conveyed "shall remain open for public use". These properties included all airport facilities, landing strips, taxiways and hangars as well as the residential streets within the District upon which aircraft are permitted to taxi. The County transferred revenue to the District to cover some of the costs of road maintenance and the District assumed responsibility for maintaining and repairing the streets of the subdivision.

The District formation process involved three steps: (1) an initial resolution adopted by the County Board of Supervisors; (2) an election in the portion of the County included within the proposed airport to determine whether the District shall be formed and, if so, to elect an initial governing Board of Directors composed of five (5) members; and (3) a second resolution of the Board of Supervisors certifying that the majority of votes in the election were cast in favor of formation and declaring that the District is formed.

The Act at Public Utilities Code section 22553 specifies the general powers of an airport district as follows: (1) to provide and maintain public airports, spaceports, and landing places for aerial and space reentry traffic; (2) to acquire by purchase, condemnation, donation, lease, or otherwise, real or personal property necessary to the full or convenient exercise of any of its powers or purposes; and (3) to improve, construct or reconstruct, lease, furnish or refurnish, use, repair, maintain, control, sell, or dispose of property of the district, including any buildings, structures, lighting equipment, and all other equipment and facilities necessary for those purposes.

The Act specifies at Public Utility Code section 22004 that an airport district is authorized by statute to exercise those powers "expressly granted or necessarily implied". Section 22555 of the Act adds that district Board of Directors "shall make all rules governing the use of the airports, landing places for aerial traffic, and other aerial facilities of the district that the board determines to be necessary".

The Act is silent and does not expressly list land use planning, zoning and development approval powers as powers of an airport district over real property within its boundaries. Since such powers are not expressly stated in the Act, rules of statutory construction provide that such powers do not exist for an airport district. Neither are such land use planning, zoning and development approval powers “necessarily implied” because such powers are not necessary for the District to exercise its express powers, which express powers are maintenance and operation of airports, the acquisition of real and personal property necessary to perform such operations and maintenance, and construction and improvement of new airport facilities.

State law other than the Act, the State Aeronautics Act, does expressly provide for airport land use planning by establishing state-wide guidelines for airport land use compatible planning to be performed by an ALUC in each county, established by the Board of Supervisors in each county with an airport. The task of each county ALUC is to adopt a Compatibility Plan with a planning horizon of 20 years to guide land use planning and development within an area of approximately 2 miles around each airport. The primary focus of each Compatibility Plan is on noise and safety impacts of land use planning and development, and the making of compatibility determinations for compliance of all proposed development around an airport.

A fundamental concern of such compatibility determinations involves safety in the air and within the vicinity of the airport. The objective of safety compatibility is to minimize risks associated with potential aircraft accidents by focusing on safety of people and property on the ground and protection of navigable airspace from hazardous obstructions. Primary ground strategies are to limit intensity of use by minimizing residential and non-residential densities and activities that attract people to locations most susceptible to an off-airport accident. Such compatibility determinations by an ALUC include eliminating risk sensitive uses such as schools, hospitals, and aboveground storage of flammable or hazardous materials.

With respect to aircraft noise issues, the basic compatibility strategy is to limit development of land uses that are particularly sensitive to noise. The most acceptable land uses for areas exposed to significant amounts of aircraft noise are uses that involve few people or generate significant noise levels themselves such as industrial uses.

For much more information on ALUC’s and their work please visit the CalTrans website and download its California Airport Land Use Planning Handbook (“the Handbook”) which runs 455 pages.

In addition, there is a separate state statute, the Airport Zoning Law at Government Code section 50485 et seq. which entrusts cities and counties only with the power to adopt zoning regulations for both the prevention and the creation of airport hazards, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards.

This grant of statutory airport land use planning, zoning, and development approval powers to cities and counties through the creation of county-wide ALCU’s is consistent with the state-wide statutory scheme set forth in the Planning and Zoning Law at Government Code section 65000- 66499.58 which grants exclusively to cities and counties the power to do land use planning through the development and implementation of General Plans, Specific Plans, zoning regulations, subdivision maps and development impact fee programs. Section 65100 specifically states that each city and county shall establish a planning agency to carry out the provisions of the Planning and Zoning Law.

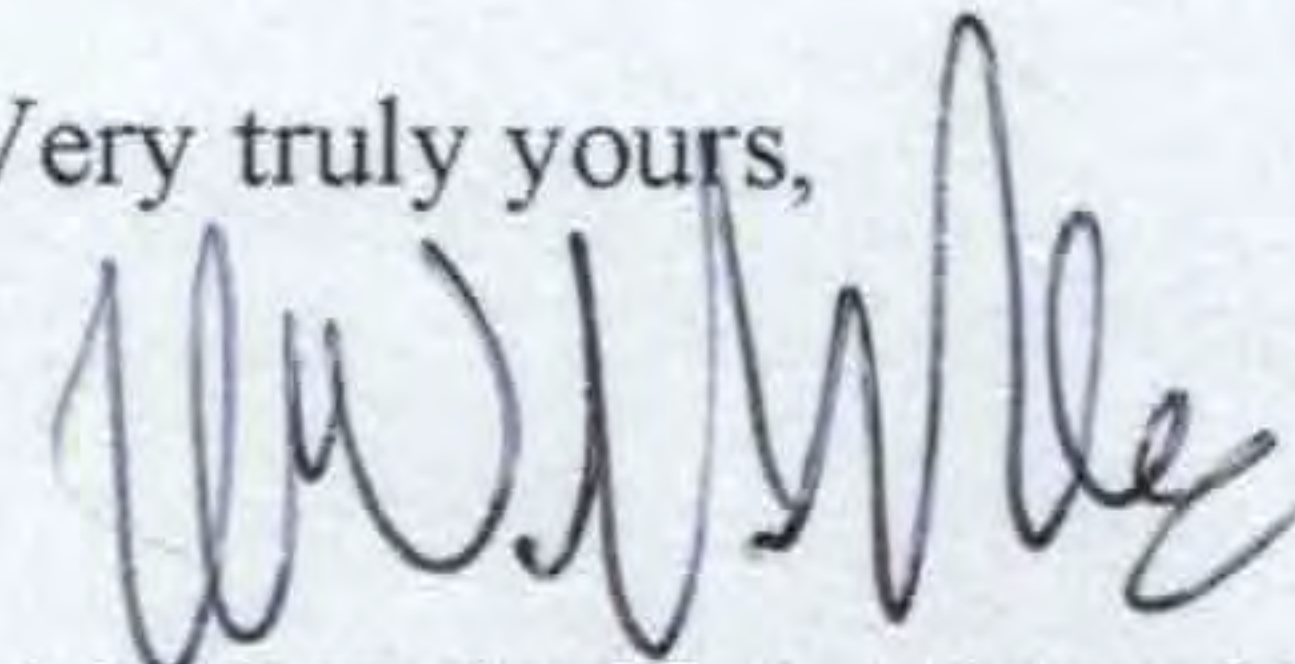
Those provisions include but are not limited to preparing and revising the General Plan, implementing the General Plan through the administration of specific plans, zoning and subdivision ordinances, and reviewing capital improvement plans of counties and cities and other public works projects to assure consistency with the adopted General Plan.

Read together, the State Aeronautics Act and its provisions for county-wide ALUC's, the Airport Zoning Act, and the provisions of the Planning and Zoning Act delegating land use planning and development approval powers exclusively to cities and counties compel the conclusion that El Dorado County possesses the exclusive power to determine appropriate and airport compatible uses for all real property within the boundaries of the district as well as properties which may lay outside those boundaries but within airport risk zones in an ALUCP; to adopt zoning regulations under the Airport Zoning Act to prevent, remove or mitigate airport risks on such property; and to implement the General Plan, Specific Plans, zoning, development approval and development fee programs of the County pursuant to the provisions of the Planning and Zoning Act. There is no such expressly granted authority contained within the Airport District Act which governs the operations of the District, and such land use planning and approval powers cannot be reasonably implied as having been granted to the District since such powers are not "necessary" for it to carry out its primary powers of operating and maintaining a public airport.

If you are not already doing so, I would encourage you to periodically review the proceedings and decisions of your local ALUC to ensure that your District's perspectives on airport compatibility developments and safety and noise prevention and mitigation are taken into account when your local ALUCP is revised or updated.

Should you have additional questions about this analysis, please don't hesitate to contact me.

Very truly yours,



MCMURCHIE LAW FIRM