

ENDORSED FILED
Clerk of the Superior Court

JAN 21 2009

By D. CALLISON
DEPUTY CLERK

SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF SOLANO
DEPARTMENT ONE

SUISUN ALLIANCE,

NO. FCS031099

Petitioner,

vs.

DECISION REGARDING
WRIT OF MANDATE

CITY OF SUISUN CITY, etc., et al.,

Respondents.

Hearing Date: Nov. 3, 2008

WAL-MART STORES, INC., et al.,

Real Parties in Interest. _____

The Petition for Writ of Mandate filed by petitioner Suisun Alliance came on for hearing on November 3, 2008 before the Honorable Paul L. Beeman, Judge presiding. Bill Yeates, Esq., appeared for Petitioner. James G. Moose, Esq., and Amanda R. Berlin, Esq., appeared as attorneys for Respondent. Arthur J. Friedman, Esq., appeared as attorney for Real Parties in Interest, Wal-Mart Stores, Inc. A tentative ruling was issued by the Court on October 31, 2008, to which argument was requested. At the conclusion of the hearing, the matter was submitted. Having heard oral argument and considered the records and papers on file herein, the Court finds as

1 follows:

2 The petition for writ of mandate is denied.

3 The City proceeded as required by law in making its decision to overrule the
4 ALUC. Public Utilities Code section 21676.5 sets forth the procedure to overrule the
5 ALUC's decision. Where the ALUC makes a finding of consistency with the applicable
6 airport land use plan, that determination may be overruled by the City if it makes
7 certain findings. PUC 21676.5, 21670. PUC 21676.5 does not require the City to re-
8 circulate (or circulate) its final findings resolution once it has complied with the initial
9 45-day notice requirement for the proposed resolution. Here the City's final findings
10 resolution included the comment letters of ALUC and Caltrans, as well as City's
11 response to those comments. The City adopted sufficient findings to overrule the
12 ALUC, including the findings regarding consistency with Public Utilities Code section
13 21670. City complied with the guidelines of the State of California Airport planning
14 handbook regarding such findings, including the 20-year planning horizon.

15 City's decision to overrule the ALUC is based upon findings supported by
16 evidence of ponderable legal significance, reasonable in nature, credible and of solid
17 value, and relevant evidence that a reasonable mind might accept as adequate to
18 support the conclusion. *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th
19 330. The substantial evidence test applies here. *California Aviation Council v. City of*
20 *Ceres* (1992) 9 Cal.App.4th 1384. The TALUP does not include an "Average Vehicle
21 Occupancy" figure. The Solano County Airport Land Use Compatibility Review
22 Procedures do not include an "Average Vehicle Occupancy" figure, but Appendix "C"
23 thereto states a guidance for determining people-per-acre concentrations for a
24 particular project, and further states that data from traffic studies or other sources can
25 be used to estimate the average vehicle occupancy. Therefore, the City was

1 authorized to rely upon its experts to determine the methodology and an AVO. *Sierra*
2 *Club v. City of Orange* (2008) 163 Cal.App.4th 523.

3 City's review and decision regarding the off-site jet fuel pipeline located in the
4 right-of-way of Petersen Road, did not violate CEQA; City responded in the final EIR to
5 comments raised during the public hearing process and is not required to re-circulate.

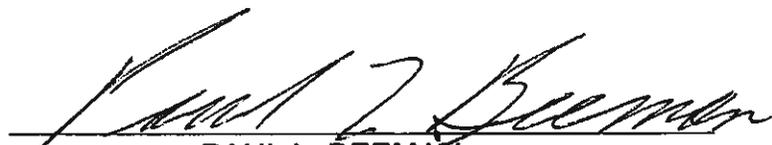
6 *Laurel Heights Improvement Assn v. Regents of the Univ. of California* (1993) 6 Cal.4th
7 1112.

8 City's review and decision regarding the wetlands, water quality and riparian
9 habitat issues did not violate CEQA. Deferred mitigation requirements such as those
10 imposed by City in this matter are permissible under CEQA. *Endangered Habitats*
11 *League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.

12 City's review and decision regarding urban decay did not violate CEQA. The
13 City's EIR did consider the issue of the Project's impact on urban decay, and
14 concluded that the impact was less than significant. The record is reviewed in the light
15 most favorable to that conclusion. Substantial evidence supports the City's decision.
16 *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173; *Bakersfield*
17 *Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

18 IT IS SO ORDERED.

19
20 DATED: January 20, 2009

21
22
23 
24 PAUL L. BEEMAN
25 Judge of the Superior Court

1 SOLANO COUNTY COURTS
STATE OF CALIFORNIA
2 321 Tuolumne Street, Vallejo, CA 94590

3 CERTIFICATE AND AFFIDAVIT OF MAILING NO. FCS31099
4

5 I, Donna Callison, certify under penalty of perjury that I am a Judicial Assistant
6 of the above-entitled Court and not a party to the within action; that I served the
7 attached by causing to be placed a true copy thereof in an envelope which was then
8 sealed and postage fully prepaid on the date shown below; that I am readily familiar
9 with the business practice for collection and processing of correspondence for mailing
with the United States Postal Service; that this document was deposited in the United
States Postal Service on the date indicated. Said envelopes were addressed to the
attorneys/parties and any other interested party as indicated below.

10 Document Served: DECISION REGARDING WRIT OF MANDATE

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19
20 I declare under penalty of perjury that the foregoing is true and correct and that
21 this certificate was executed on January 21, 2009 at Vallejo, California.

22
23 
24 Donna Callison

