

Page 967

DISCUSSION

We begin by setting forth the principles of statutory construction that guide our analysis. Next, we examine each of the four statutory schemes that relate to these proceedings. Then, employing the principles of statutory interpretation, we discuss the interplay among the statutes. Finally, we turn to the question of preemption.

I. Statutory Construction

At the threshold, we "note that the rules applying to the construction of statutes apply equally to ordinances. [Citation.]" (*County of Madera v. Superior Court, supra*, 39 Cal.App.3d at p. 668.)

A. Primary Rules

"The rules governing statutory construction are well established. Our objective is to ascertain and effectuate legislative intent. [Citations.]" (*City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462, 468 [4 Cal.Rptr.2d 514].)

In determining legislative intent, we first look to the statutory language itself. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386 [241 Cal.Rptr. 67].) "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.]" (*Id.* at p. 1387.) Thus, "every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect." (*Moore v. Panish* (1982) 32 Cal.3d 535, 541 [186 Cal.Rptr. 475]. See also, *City of Huntington Beach v. Board of Administration, supra*, 4 Cal.4th at p. 468.)

"In construing a statute, all acts relating to the same subject matter should be read together as if one law and harmonized if possible, even though they may have been passed at different times, and regardless of the fact that one of them may deal specifically and in greater detail with a particular subject while the other may not. [Citations.]" (*In re Marriage of Williams* (1989) 213 Cal.App.3d 1239, 1245 [262 Cal.Rptr. 317].)

Where, as here, several codes are to be construed, "they 'must be regarded as blending into each other and forming a single statute.' [Citation.] Accordingly, they 'must be read together and so construed as to give effect, when possible, to all the provisions thereof.' [Citation.]" (*Tripp v. Swoap* (1976) 17 Cal.3d 671, 679 [131 Cal.Rptr. 789] overruled on another point

Page 968

in *Frink v. Prod* (1982) 31 Cal.3d 166, 180 [181 Cal.Rptr. 893]. See also, *Mejia v. Reed* (2003) 31 Cal.4th 657, 663 [3 Cal.Rptr.3d 390]; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 778-779 [38 Cal.Rptr.2d 699].)

B. Secondary Rules

Where the primary principles of statutory construction fail to resolve an ambiguity, courts turn to secondary rules of interpretation, with resort to extrinsic aids such as legislative history and to intrinsic aids such as maxims where appropriate. (See, *Mejia v. Reed, supra*, 31 Cal.4th at p. 663. See generally, 2A Singer, Sutherland Statutes and Statutory Construction (6th ed. 2000) Criteria of Interpretation, § 45:14, pp. 109-110.) When the language of an enactment is ambiguous, its legislative history is a proper extrinsic aid to its interpretation. (See, e.g., *Mejia v. Reed, supra*, 31 Cal.4th at p. 663; *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1239 [8 Cal.Rptr.2d 298]. See generally, 2A Singer, Sutherland Statutes and Statutory Construction, *supra*, Extrinsic Aids—Legislative History, ch. 48, pp. 407-489.) "Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra*, 43 Cal.3d at p. 1387.)

Maxims also may serve as legitimate intrinsic aids to statutory interpretation in a proper case. (See,

e.g., *Mejia v. Reed*, *supra*, 31 Cal.4th at p. 663. See generally, 2A Singer, Sutherland Statutes and Statutory Construction, *supra*, Intrinsic Aids, ch. 47, pp. 207-405.) One such maxim is *expressio unis est exclusio alterius*: "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 [25 Cal.Rptr.2d 500], citing *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, *supra*, 43 Cal.3d at p. 1391, fn. 13. See generally, *In re Christopher T.*

(1998) 60 Cal.App.4th 1282, 1290 [71 Cal.Rptr.2d 116]; 2A Singer, Sutherland Statutes and Statutory Construction, *supra*, 115 Cal.App.4th 952, H023778, *Big Creek Lumber Co. v. County of Santa...* <http://www.jurisearch.com/newroot/case.asp?DocId=13392&Index=D...6> of 21 8/21/2009 4:43 PM Intrinsic Aids, §§ 47:23 - 47:25, pp. 304-333.) With the foregoing principles of statutory interpretation in mind, we turn to the enactments at issue here.

II. The Relevant Statutes

A. The Timberland Productivity Act

The Timberland Productivity Act "is intended to protect properly conducted timber operations from being prohibited or restricted due to conflict or

Page 969

apparent conflict with surrounding land uses." (*Big Creek v. San Mateo*, *supra*, 31 Cal.App.4th at p. 422, citing Gov. Code, §§ 51101, subd. (b); 51102, subd. (b), fn. omitted.)

Page 976

III. Interplay Among the Statutes

In order to determine the statutes' proper relationship to each other, we apply the rules of statutory interpretation set forth above. We begin by examining the language of the statutes within the context of the whole system of law of which each is a part, harmonizing the statutes where possible. If necessary, we resort to the acts' legislative history and to maxims as appropriate.

A. The Forestry Statutes

Before considering the impact of the Timberland Productivity Act and the Forest Practice Act on other legislation, it is important to understand how the two forestry statutes relate to each other.

1. Purposes

The stated purposes of the TPA and the FPA are not identical, but they are similar. Both statutes are designed to protect timberland and timber production. The TPA declares the state's policy to maintain "the optimum amount of the limited supply of timberland to ensure its current and continued availability for the growing and harvesting of timber and compatible uses." (Gov. Code, § 51102, subd. (a)(2).) The FPA seeks to achieve the "maximum sustained production of high-quality timber products . . . while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment." (Pub. Resources Code, § 4513, subd. (b).)

2. Operation

Comparing the two forestry statutes, *Big Creek* correctly observes that the TPA is not a regulatory statute: "It does not provide for any forest practice rules, or THP requirements or licensing requirements or any other similar regulation of timber harvesting. The TPA simply creates a mechanism for restricting property to timber uses so as to comply with the constitutional mandate and qualify the property for alternative tax treatment. The regulatory statute for all timberland is the FPA. . . ."

Despite their differences in focus, the two forestry statutes operate in harmony. For one thing, they express a common expectation that timber operations will occur on timberlands. By explicit statutory provision, the zoning of a parcel pursuant to the TPA raises a presumption that the parcel will be used for timber operations, as defined in the FPA. (Gov. Code, § 51115.1, subd. (a).) By the same token, however, that provision explicitly

Page 977

does not alter "any substantive or procedural requirement of [the FPA] or of any rule or regulation adopted pursuant thereto." (*Id.*, subd. (b).) For another thing, both statutes consistently address those situations where timberland rezoning requires the approval of the State Forestry Board. (Pub. Resources Code, § 4621; Gov. Code, §§ 51133, 51134.)

Page 983

IV. Preemption

A. General Principles

Where a conflict exists between state and local law on a matter of statewide concern, the local law is void and cannot be enforced. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 894 [16 Cal.Rptr.2d 215].) A conflict exists where local law duplicates or contradicts state law. Local law duplicates state law when it is coextensive with it. (*Id.* at pp. 897-898.)

Local law contradicts state law when it is inimical to it. (*Id.* at p. 898.) A conflict also exists when local law invades an area that the state has fully occupied, either expressly or implicitly. (*Id.* at p. 897.) "If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a 'municipal affair.' [Citations.]" (*Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 808

[100 Cal.Rptr. 609].)

Under the principles of express preemption, local legislation is invalid if it "enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area" (*Sherwin-Williams Co. v. City of Los Angeles*, *supra*, 4 Cal.4th at p. 898.) In such cases, the question of express preemption turns on whether the state-occupied field encompasses the ordinances. (*Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th at p. 748.)

Implied preemption occurs when the Legislature has implicitly demonstrated its intent to fully occupy an area of law. "In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law,

Page 984

and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.' [Citations.]" (*People ex rel.*

Deukmejian v. County of Mendocino (1984) 36 Cal.3d 476, 485 [204 Cal.Rptr. 897]. Accord, *IT Corp. v. Solano County Bd. of Supervisors*, *supra*, 1 Cal.4th at pp. 90-91; *Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th at p. 751.)

In order to assess whether local legislation has entered an area fully occupied by state law, either expressly or by implication, courts first must define the relevant field of law being regulated. (*In re Hubbard* (1964) 62 Cal.2d 119, 125 [41 Cal.Rptr. 393] overruled in part on another point in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63, fn. 6 [81 Cal.Rptr. 465]; *San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 793-794 [75 Cal.Rptr.2d 534]; 45 Cal.Jur.3d

(Rev) (2000) Part 1, § 247, p. 391.) "If the definition is narrow, preemption is circumscribed; if it is broad, the sweep of preemption is expanded." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 27-28 [61 Cal.Rptr. 618].) "Where local legislation clearly serves local purposes, and state legislation that appears to be in conflict actually serves different, statewide purposes, preemption will not be found. [Citation.]" (*San Diego Gas & Electric Co. v. City of Carlsbad*, *supra*, 64 Cal.App.4th at p. 793.)

The preemption doctrine is constitutionally based. It derives from article XI, section 7 of the California Constitution, which provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." This constitutional provision "is not only a delegation of power by the people to the local body, but it is also a limitation upon the local body [citations] . . ." (*Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 681 [3 Cal.Rptr. 158] criticized on another point in *Bishop v. City of San Jose, supra*, 1 Cal.3d at p. 63, fn. 6.)

The preemption doctrine serves to ensure uniformity of law. "The denial of power to a local body when the state has preempted the field is not based solely upon the superior authority of the state. It is a rule of necessity, based upon the need to prevent dual regulations which could result in uncertainty and confusion." (*Abbott v. City of Los Angeles, supra*, 53 Cal.2d at p. 115 Cal.App.4th 952, The preemption doctrine thus is critical to the orderly administration of justice on matters of statewide concern. Determining whether a matter is of local or statewide concern may defy easy resolution. (See, *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 [283 Cal.Rptr. 569] ["determining whether a given activity is a 'municipal affair' or one of statewide

Page 985

concern is an ad hoc inquiry"]; Hagman et al., *Cal. Zoning Practice, supra*, § 4.6, p. 108, [the cases determining the question "are not easy to rationalize"].) "Zoning is usually held to be a municipal affair, but it may not be." (Hagman et al., *Cal. Zoning Practice, supra*, § 4.5, p. 108.) "To the extent difficult choices between competing claims of municipal and state governments can be forestalled in this sensitive area of constitutional law, they ought to be; courts can avoid making such unnecessary choices by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." (*California Fed. Savings & Loan Assn. v. City of Los Angeles, supra*, 54 Cal.3d at pp. 16-17. See also, e.g., *Conway v. City of Imperial Beach, supra*, 52 Cal.App.4th at pp. 84-85.) Nevertheless, courts may be called upon to "allocate political supremacy" between state and local governments. (*California Fed. Savings & Loan Assn. v. City of Los Angeles, supra*, 54 Cal.3d at p. 25. See also, e.g., *San Diego Gas & Electric Co. v. City of Carlsbad, supra*, 64 Cal.App.4th at p. 802.) And if "there is a doubt as to whether an attempted regulation relates to a municipal or to a state matter, or if it be the mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state [citations]." (*Abbott v. City of Los Angeles, supra*, 53 Cal.2d at p. 681.)

But the mere "fact that a matter is of statewide concern does not oust municipal governments of police power. 'Even in matters of state-wide concern . . ., the city or county has police power equal to that of the state so long as the local regulations do not conflict with general laws.' (*Chavez v. Sargent* (1959) 52 Cal.2d 162, 176, citations omitted.)" (*Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 175 [36 Cal.Rptr.2d 886], fn. omitted.)

B. Application

To determine whether the challenged local measures conflict with state law in this case, we apply well-established principles of preemption analysis. We thus consider whether the subject local measures duplicate or contradict state law, or whether they invade a field that the state has fully occupied, either expressly or implicitly. (*Sherwin-Williams Co. v. City of Los Angeles, supra*, 4 Cal.4th at p. 897.)

In undertaking that analysis here, we examine the County's measures—category by category—to determine whether state law expressly or impliedly preempts any of the local measures. Categorized by subject matter, the local legislation regulates zone districts, riparian corridors, and helicopter operations.[12]

Page 988

completely circumvent the FPA by the simple expedient of enacting zoning measures that prevent logging altogether. Such a result would be contrary to the clear intent of the Legislature, which eliminated local authority over timber operations with its 1982 amendment to the FPA. (Stats. 1982,

ch. 1561, § 3, pp. 6164-6165, adding Pub. Resources Code, § 4516.5.) Given both the language and the intent of the statute, we construe the statutory phrase "conduct of timber operations" to encompass the location of those activities as well as the manner of carrying them out. To sum up, we conclude that the zone district regulations contradict the FPA because they purport to regulate the conduct of timber operations, which is forbidden by the statute. The FPA thus expressly preempts those regulations.^[13]

b. Preemption under the Timber Productivity Act

Plaintiffs make no contention that the Timber Productivity Act preempts the zone district regulations. For that reason, and because of our determination of preemption under the FPA, we need not and do not consider preemption under the TPA.

2. Riparian Regulations

The riparian regulations are contained in Ordinance 4571, which prohibits timber harvesting within 50 feet of a perennial stream or within 30 feet of an intermittent stream. The ordinance applies in all areas of the County where timber harvesting is permitted, including within timber production zones.

Citing *Big Creek v. San Mateo*, the trial court concluded that state law does not expressly preempt the riparian corridor ordinance, because that ordinance regulates the "location" rather than the "conduct" of timber operations. But the court found the ordinance "is impliedly preempted to the extent that it applies to land within Timber Production Zones (TPZs)." Based on its further determination that the invalid portions of the measure are not severable, the court found the local legislation "preempted in its entirety."

Page 989

The County challenges only certain aspects of the trial court's preemption determination. The County agrees with the court's analysis under the FPA. It defends the court's determination that the riparian ordinance regulates only the location and not the conduct of timber operations and thus is not preempted by the FPA. But the County disagrees with the court's analysis under the TPA. The County thus attacks the court's determination the riparian regulations are invalid to the extent they operate within timber production zones. As to that point, the County contends that the regulations constitute an allowable "compatible use" under the TPA. Plaintiffs take the contrary view. They argue that both the Forest Practice Act and the Timber Productivity Act preempt the riparian ordinance, and that the ordinance is invalid both outside and inside the timber production zones.

a. Preemption under the Forest Practice Act

We agree with plaintiffs that the riparian ordinance conflicts with the Forest Practice Act and that the statute therefore expressly preempts the ordinance. In the first place, the riparian ordinance invades the area occupied by the Forest Practice Act—the conduct of timber operations. For purposes of the FPA provision that limits the authority of local government, "timber operations" is defined to include the "protection of stream character and water quality . . ." (Pub. Resources Code, § 4516.5, subd. (a).)

In the second place, the local measure contradicts regulations promulgated under the Forest Practice Act. Under the FPA, authority for watercourse protection is reposed in the State Forestry Board. (Pub. Resources Code, § 4551.) The statute requires the Board to "adopt district forest practice rules and regulations . . . to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries." (*Ibid.*) Pursuant to that directive, the State Forestry Board has promulgated regulations for watercourse and lake protection. (Cal. Code Regs., tit. 14, § 916 et seq.) Among other things, those regulations address riparian buffers by establishing watercourse and lake protection zones (WLPZs). (*Id.*, §§ 916.4, 916.5.) The width of those zones is determined by a specialized formula set forth in the regulations, with some discretion accorded the registered professional forester to alter the width of the buffer. (*Ibid.*) The standard width of the WLPZ ranges from 50 feet to 150 feet but depends on a number of specified factors. (See *Id.*, § 916.5, Table 1, p. 250.) The County's riparian ordinance establishes a different buffer width than the state law regulations.

Preemption based on contradictory legislation generally is found only when the state and local acts "are irreconcilable, clearly repugnant, and

Page 990

so inconsistent that the two cannot have concurrent operation. [Citation.]" (*Water Quality Assn. v. City of Escondido* (1997) 53 Cal.App.4th 755 [61 Cal.Rptr.2d 878], citing *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 419-420 [261 Cal.Rptr. 384].) That is the situation presented here. The local and state riparian protection regulations are at odds with each other; they cannot operate concurrently. Timber harvesting near streams allowable under the state law regulations could be banned under the local ordinance. (*Ibid.* [ordinance preempted where it prohibited water softening units that would be permitted under state law].) The riparian ordinance therefore contradicts the general law and is expressly preempted. (*Sherwin-Williams Co. v. City of Los Angeles, supra*, 4 Cal.4th at p. 902.)

Furthermore, because the ordinance operates identically both inside and outside timber production zones, it is preempted in its entirety under the Forest Practice Act. Based on the foregoing conclusions, we affirm the result reached by the trial court on this point, albeit on different grounds.

b. Preemption under the Timber Productivity Act

Given our determination that the Forest Practice Act preempts the County's riparian regulations, we need not and do not consider the parties' contentions concerning preemption under the Timber Productivity Act.

p. 991

a. Preemption under the Forest Practice Act

We agree with the trial court's determination that the helicopter ordinance represents an attempt to regulate timber operations in contravention of the FPA. As we explained above, the FPA expressly preempts the conduct of timber operations.

The removal of timber is an integral part of timber operations. Thus, for example, the FPA provision that limits local authority defines "timber operations" to include "haul routes . . ." (Pub. Resources Code, § 4516.5, subd. (a).) More importantly, the statute generally defines timber operations as "the cutting or removal . . . of timber or other solid wood forest products . . . together with all the work incidental thereto . . . but excluding preparatory work such as treemarking, surveying, or roadflagging." (Pub. Resources Code, § 4527, italics added.) The "construction and maintenance of . . . landings" is among "the work incidental" to timber cutting and removal. (*Ibid.*) When timber is removed from the point of felling to a landing, the process is called "yarding." (See Cal. Code Regs., tit. 14, § 895.1, p. 217.) By setting limits on helicopter yarding, the ordinance regulates the removal of timber. It thereby invades the field of "timber operations," which is the exclusive province of state law. Further evidence that the state has fully occupied the field is found in State Forestry Board regulations that explicitly address the removal of timber by helicopter. (See, e.g., *Id.*, § 926.3, subds. (a)(2), (b), (c), (h).) The Board has even promulgated rules applicable solely to Santa Cruz County, which impose special notice requirements on proposed helicopter yarding operations. (*Ibid.*)

For all of these reasons, we conclude that the general law has occupied the field of the conduct of timber operations—particularly including the removal of timber by helicopter—leaving no room for regulation by the County. The County's helicopter ordinance thus is expressly preempted by the FPA.

Page 992

As with its riparian regulations, the County's helicopter ordinance operates identically both inside and outside timber production zones. Thus, it is preempted in its entirety by the FPA as a local effort to regulate the conduct of timber operations.

b. Preemption under the Timber Productivity Act

As before, in light of our determination that the Forest Practice Act preempts the helicopter ordinance, we do not reach the issue of preemption under the Timber Productivity Act.

c. Police Power

Having determined that the FPA preempts the helicopter ordinance, we necessarily reject the County's assertion that that measure is a valid exercise of its police power. As appellant CCFA points out: "This begs the issue." The exercise of local government police power is valid only to the extent that it is "not in conflict with general laws." (Cal. Const., art. XI, § 7.) As we have explained above, this particular exercise conflicts with state law.

We likewise reject the County's contention that the helicopter ordinance is a valid exercise of its local authority over aircraft-related land uses. Whatever authority local government may have to regulate aircraft in other contexts, with respect to the use of helicopters in timber operations, the FPA leaves no room for local regulation. The helicopter ordinance is invalid.

SUMMARY OF CONCLUSIONS

I. Statutory Interplay

Reading the Coastal Act and the Timber Productivity Act together, and harmonizing the two statutes, we reach two conclusions regarding the County's regulation of timberland production zoning (Resolution 493-99 and Ordinance 4577). First, we conclude that the Coastal Commission lacks authority to require the County to mandate additional criteria for TP zoning within the coastal zone. Second, we reject the treatment of coastal zone timber production rezoning applications as LCP amendments necessitating Coastal Commission certification. Given our determination that timber production zoning does not constitute a change in the use of timberland, we conclude that the Coastal Act does not require those rezoning applications to be certified as LCP amendments. We further conclude that treating TP rezoning requests as LCP amendments constitutes the imposition of additional criteria for timber production zoning in violation of the Timber Productivity Act.

Page 993

II. Preemption

A. Zone District Regulations (Resolution 493-99 and Ordinance 4577)

We reject the reasoning of *Big Creek v. San Mateo* to the extent that it distinguishes between how timber operations will occur and where they will occur. We conclude that the County's zone district regulations impermissibly regulate the conduct of timber operations, thereby contradicting the FPA. For that reason, they are expressly preempted.

B. Riparian Regulations (Ordinance 4571)

We find that the County ordinance establishing riparian buffers conflicts with the Forest Practice Act in two ways. First, the ordinance invades an area occupied by the statute, the conduct of timber operations. In addition, the ordinance contradicts regulations promulgated under the statute. For those reasons, the riparian ordinance is expressly preempted by the FPA.

C. Helicopter Regulations (Ordinance 4572)

We conclude that the helicopter ordinance is an impermissible attempt to locally regulate the removal of timber. Because the removal of timber falls within the definition of timber operations under the Forest Practice Act, that statute expressly preempts the helicopter ordinance.

D. Other Regulations (Resolution 494-99 and Ordinance 4578)

Ordinance 4578 and Resolution 494-99 never became effective. For that reason, any controversy concerning those measures —whether at the trial or the appellate level—is not justiciable.

DISPOSITION

We reverse the judgment, and we remand the matter to the trial court with instructions to enter a new and different judgment invalidating Ordinances 4571, 4572, and 4577, and Resolution 493-99. Plaintiffs shall have costs on appeal.

WE CONCUR: Elia, Acting P.J., Mihara, J.

Notes:

[1] Government Code section 51100 et seq.

[2] Public Resources Code section 4511 et seq.

115 Cal.App.4th 952, H023778, Big Creek Lumber Co. v. County of Santa...

<http://www.jurisearch.com/newroot/case.asp?DocId=13392&Index=D...>

19 of 21 8/21/2009 4:43 PM

[3] Public Resources Code section 30000 et seq.

[4] Government Code section 65000 et seq.

[5] In finding that certain zoning aspects of some of the challenged local measures are expressly preempted by the Forest Practice Act, we respectfully disagree with *Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418 [37 Cal.Rptr.2d 159] (*Big Creek v. San Mateo*). In *Big Creek v. San Mateo*, the First District Court of Appeal rejected a similar preemption argument, based on its interpretation of the FPA and the TPA. (*Id.* at pp.

424-427.) As we explain below, we have a different view of the proper construction of the relevant statutory provisions.

[6] See Public Resources Code section 4516.5, subdivision (a).

[7] The coastal zone is statutorily defined as that area of land and water "extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea." (Pub. Resources Code, § 30103, subd. (a).) In some areas, the inland boundary of the coastal zone may vary from the 1,000-yard standard. (*Id.*, subd. (b).)

[8] The County's measures included both resolutions and ordinances. "Strictly speaking, there is a difference between the two." (45 Cal.Jur.3d (Rev.) (2000) Part 2, Municipalities, § 309, p. 11, fn. omitted.) "An ordinance is the equivalent of a municipal statute. . . ." (*Ibid.*) " 'Resolution' denotes something less formal." (*Id.* at p. 12.)

By both statute and regulation, local governments must submit proposed local coastal plans to the Coastal Commission by resolution. (Pub. Resources Code, § 30510, subd. (a); Cal. Code Regs., tit. 14, § 13518, subd. (a).)

[9] The TPA's predecessor statute was titled the Z'berg-Warren-Keene-Collier Forest Taxation Reform Act (FTRA). (Stats. 1977, ch. 853, § 31, p. 2580.) It was enacted after California voters approved a constitutional amendment in 1974 that exempted forest trees and timber from property taxation. (Cal. Const., art. XIII, § 3, subd. (j). See generally, *Clinton v. County of Santa Cruz* (1981) 119 Cal.App.3d 927, 931-932 [174 Cal.Rptr. 296]; *State of California v. County of Santa Clara* (1983) 142 Cal.App.3d 608, 611-612 [191 Cal.Rptr. 204].) The FTRA became effective in September 1977. (Stats. 1977, ch. 853, § 34, p. 2580.)

[10] That section reads in full as follows:

"(a) Individual counties may recommend that the board adopt additional rules and regulations for the content of timber harvesting plans and the conduct of timber operations to take account of local needs. For purposes of this section, "timber operations" includes, but is not limited to, soil erosion control, protection of stream character and water quality, water distribution systems, flood control, stand density control, reforestation methods, mass soil movements, location and grade of roads and skid trails, excavation and fill requirements, slash and debris disposal, haul routes and schedules, hours and dates of logging, and performance bond or other reasonable surety requirements for on site timber operations and for protection of publicly and privately owned roads that are part of the haul route. Where a bond or other surety has been required, the director shall not issue a work completion report without first ascertaining whether the county in which the timber operations were conducted has knowledge of any claims intended to be made on the bond or surety.

"(b) The board shall, in conformance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and within 180 days after receiving recommended rules and regulations from a county, adopt rules and regulations for the content of timber harvesting plans and the conduct of timber operations consistent with the recommended rules and regulations, subject to Section 4551.5, if the board finds the recommended rules and regulations are both of the following:

"(1) Consistent with the intent and purposes of this chapter.

"(2) Necessary to protect needs and conditions of the county recommending them.

"(c) The rules and regulations, if adopted by the board, shall apply only to the conduct of timber operations within the recommending county and shall be enforced and implemented by the department in the same manner as other rules and regulations adopted by the board.

"(d) Except as provided in subdivision (e), individual counties shall not otherwise regulate the conduct of timber operations, as defined by this chapter, or require the issuance of any permit or license for those operations.

"(e) The board may delegate to individual counties its authority to require performance bonds or other surety for the protection of roads, in which case, the procedures and forms shall be the same as those used in similar circumstances in the county. The board may establish reasonable limits on the amount of performance bonds or other surety which may be required for any timber operation and criteria for the requirement, payment, and release of those bonds or other surety. If the county fails to inform the director of the claims within 30 days after the completion report has been filed, the bond or surety shall be released.

"(f) This section does not apply to timber operations on any land area of less than three acres and which is not zoned timberland production." (Pub. Resources Code, § 4516.5.)

[11] The express purpose of those regulations is "to protect the natural and scenic qualities as reflected in the criteria and objectives for each of the Coastal Commission Special Treatment Areas designated and adopted by the California Coastal Commission on July 5, 1977, while at the same time allowing management and orderly harvesting of timber resources within these areas." (Cal. Code Regs., tit. 14, § 921.) The regulations, which apply in designated special treatment areas, are in addition to the statutes and other regulations governing timber operation. (*Ibid.*)

[12] The local legislation also addresses at least two other subjects that were litigated below, timber production zoning and road design.

We have already discussed TP zoning in connection with our analysis of the interplay between the Coastal Act and the forestry statutes. The road design regulations were part of Resolution 494-99 and Ordinance 4578, which never became effective and thus are not at issue here. [13] Given our analytic departure from *Big Creek v. San Mateo*, we need not resolve the parties' dispute over a related point—whether the "how versus where" distinction elucidated in *Big Creek v. San Mateo* has been undermined by subsequent case law. (See *Westhaven Community Development Council v. County of Humboldt*, *supra*, 61 Cal.App.4th 365.)

Similarly, in view of our conclusion that the zone district regulations fail the second test for express preemption, we need not address the third test: whether state law fully and explicitly occupies the field being regulated. (*Sherwin-Williams Co. v. City of Los Angeles*, *supra*, 4 Cal.4th at p. 897.)

Likewise, in light of our determination of express preemption under the FPA, we need not consider the question of implied preemption under that statute.

115 Cal.App.4th 952, H023778, *Big Creek Lumber Co. v. County of Santa...*

<http://www.jurisearch.com/newroot/case.asp?DocId=13392&Index=D...>

21