SUPREME COURT
FILED
DEC - 3 2008
Frederick K. Ohlrich Clerk
Deputy

S156861

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

No. S156861

SUNSET SKY RANCH PILOTS ASSOCIATION, et al.,
Petitioners/Plaintiffs and Appellants

v.

THE COUNTY OF SACRAMENTO, et al.,
Defendants and Respondents,

JOHN TAYLOR, et al.
Real Parties in Interest and Respondents

Review of a decision of the Court of Appeal for the
Third Appellate District (No. C055224)

On Appeal from the Superior Court for the County of Sacramento
(Case No. 06CS00263, the Honorable Jack V. Sapunor, Judge)

ANSWER BRIEF ON THE MERITS OF APPELLANTS

Lanny T. Winberry, SBN 85342
LAW OFFICE OF LANNY T. WINBERRY
8001 Folsom Blvd., Suite 100
Sacramento, CA 95826
Telephone: (916) 386-4423
Facsimile: (916) 386-8952
Email: ltw@winberrylaw.com.

Attorney for Appellants

SUPREME COURT
FILED
DEC - 1 2008
Frederick K. Ohlrich Clerk
Deputy

S165861

SUPREME COURT COPY

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

No. S156861

SUNSET SKY RANCH PILOTS ASSOCIATION, et al,
Petitioners/Plaintiffs and Appellants

v.

THE COUNTY OF SACRAMENTO, et al,
Defendants and Respondents,

JOHN TAYLOR, et al,
Real Parties in Interest and Respondents

Review of a decision of the Court of Appeal for the
Third Appellate District (No. C055224)

On Appeal from the Superior Court for the County of Sacramento
(Case No. 06CS00265, the Honorable Jack V. Sapunor, Judge)

ANSWER BRIEF ON THE MERITS OF APPELLANTS

Lanny T. Winberry, SBN 85342
LAW OFFICE OF LANNY T. WINBERRY
8001 Folsom Blvd., Suite 100
Sacramento, CA 95826
Telephone: (916) 386-4423
Facsimile: (916) 386-8952
Email: ltw@winberrylaw.com,

Attorney for Appellants

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

No. S156861

SUNSET SKY RANCH PILOTS ASSOCIATION, et al,
Petitioners/Plaintiffs and Appellants

v.

THE COUNTY OF SACRAMENTO, et al,
Defendants and Respondents,

JOHN TAYLOR, et al,
Real Parties in Interest and Respondents

Review of a decision of the Court of Appeal for the
Third Appellate District (No. C055224)

On Appeal from the Superior Court for the County of Sacramento
(Case No. 06CS00265, the Honorable Jack V. Sapunor, Judge)

ANSWER BRIEF ON THE MERITS OF APPELLANTS

Lanny T. Winberry, SBN 85342
LAW OFFICE OF LANNY T. WINBERRY
8001 Folsom Blvd., Suite 100
Sacramento, CA 95826
Telephone: (916) 386-4423
Facsimile: (916) 386-8952
Email: ltw@winberrylaw.com,

Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Legislative Acts

Sessions Law

Statutes

State Regulations

County Codes

Published Cases

Unpublished Case

STATEMENT OF ISSUES UNDER REVIEW

The issues presented for review in this case are:

1. Is a County's decision to close a well established airport so as to make way for other development a "project" and , therefore, subject to the requirements of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq., hereinafter "CEQA")?
2. If the decision to close a well established airport so as to make way for other development is a project, is that decision nonetheless exempt from CEQA's requirement for prior analysis?[1]

The Court of Appeal held that the Respondent, County of Sacramento (hereinafter, "County") in denying the renewal of the Sunset Sky Ranch Airport's conditional use permit was not *merely* denying the renewal of a Conditional Use Permit, but was also committing the County to a course of conduct which would result in the closure of an airport the displacement of the aircraft and pilots who use that airport. The airport has been in operation since 1934, has operated as a State-licensed Public Use Airport since 1972, has operated under a Airport Land Use Compatibility Plan whose "noise contours, over-flight zone, and approach and departure zones . . . are reflected on the General Plan" since 1988 and has operated under a Conditional Use Permit since 1999. The course of action to which

---

[1] Respondent County of Sacramento (the "County") and accepted for review by the Supreme Court have been stated as:

> (1) Is a county's denial of an application to renew a conditional use permit a "project" subject to the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.)?
> (2) If the denial of such an application is a project, is it nonetheless exempt from the Act?

However, in order to properly adjudicate those issues, the "whole of the action" taken by the County must be considered.

the County's decision committed it is made plain in the County's finding number 8, in which the County stated:

> Moreover, the Airport Land Use Commission will be requested to invalidate the CLUP to reflect the action taken to deny the use permit requested, following which all references to the invalidated CLUP will be deleted from the General Plan.

(Administrative Record, Volume 1, page 009, hereinafter "AR 1:009.") The invalidation of the CLUP[2] was a necessary step in allowing the potential development of a school near the Airport as well as potentially allowing other development within the Airport's approach and departure zone, which the continued vitality of the CLUP would hinder. (AR 1:008) Regardless of whether the contemplated additional development will ever actually occur, the Court of Appeal stated:

> We conclude the County's plan to enforce its zoning code, by ensuring the Airport closure and transfer of pilots to other airports, are part of 'the whole of [the] action' of the CUP denial, and the whole of the action has the potential for physical change in the environment. [Citation] Accordingly, the County's action constititutes a CEQA 'project' requiring preparation of an initial study.

(Slip Op., p. 45, citing Guidelines § 15378.)

I.

INTRODUCTION

In 2006, Respondents County of Sacramento and its Board of Supervisors (hereafter collectively "the County") denied the renewal of a conditional use permit ("CUP") for Sunset Sky Ranch Airport (hereafter

---

[2] Prior to 2002, Airport Land Use Compatability Plans, ("ALUCP's"), were referred to as "comprehensive land use plans" or "CLUP's." (Stats, 2002, ch. 439, §9, (amending State Aeronautics Act).) The terms are interchangeable.

"the Airport" or "Sky Ranch") in order to force the Airport's closure. The Airport has held a valid state-issued Public-use Airport Permit continuously since 1972. The Division of Aeronautics of the California Department of Transportation (hereafter collectively "Caltrans") fully supported renewal of the Airport's use permit in 2006. The Airport is protected by a state-mandated "airport land use compatibility plan" (hereafter "ALUCP") adopted in 1988 and amended in 1992. The County denied renewal of the Airport's CUP to accommodate perceived development pressures in the nearby City of Elk Grove, and to eliminate a "difficulty" in siting an elementary school. The County adopted "Findings" stating that, once the Airport was closed, the County would have the protective ALUCP revoked and then amend the County of Sacramento General Plan (hereafter "CSGP" or "General Plan") to remove the land-use restrictions imposed by the ALUCP.

Appellants, the owners, operators and primary users of the Airport, sought a Writ of Mandate overturning the County's action alleging: (i) the forced closure of Sky Ranch was diametrically contrary to the State Aeronautics Act (Pub. Util. Code § 21001 *et seq.*); (ii) the action violated the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) (hereafter "CEQA"); and (iii) involuntary closure of the Airport would effect an unconstitutional taking of private property for a public use or purpose without due process and without just compensation.

The Honorable Jack V. Sapunor, of the Superior Court in and for the County of Sacramento, entered a Judgment denying the Petition for Writ of Mandate and the "takings" claim. Appellants appealed from that Judgment.

The Court of Appeal for the Third Judicial District in an opinion certified for partial publication filed July 2, 2008 upheld the trial court as to non-preemption of the County's action by the State Aeronautics Act,

reversed the judgment as to the CEQA issues and found the "takings" action not yet ripe.

On October 1, 2008, this Court, granted the County and the Real Party in Interest's petition for review of the CEQA portion of the Appellate Court ruling and denied Appellants' petition for review of the preemption issues. Respondent County filed its Opening Brief on October 30, 2008. Real Party in Interest's Opening Brief was filed October 31, 2008.

II.

STATEMENT OF THE FACTS[3]

Sunset Sky Ranch Airport is situated on property located near the intersection of Grant Line Road and Bond Road in Sacramento County just south of the City of Elk Grove. (AR 1:143.) The site is zoned AG-80. (Id.; Sacramento County Zoning Code § 201-01(b) (hereafter "Zoning Code"). See Superior Court's Official File or "Trial Court File" or "TCF" at volume II, page 521 hereinafter cited TCF•II:521.) The Airport is an allowable use in zone AG-80 "subject to the issuance of a conditional use permit by the appropriate authority." (TCF•II:521 [Zoning Code § 201-02 [Table 1, at D.34], 201-04(12)].)

The Airport has been in continuous operation since it was established in 1934 as an agricultural landing strip. (AR 3:285.) It has been a public-use airport since 1972 when the Division of Aeronautics issued Sky Ranch a State Airport Permit under the State Aeronautics Act. (Public Util. Code §§ 21662, 21666. See AR 4:434 [Comment letter from Aeronautics Division to County of 10/6/04].) The Airport's state permit is

---

[3] The Slip Opinion of the Court of Appeal sets forth a summary of the Airport's history at pages 11 through 13, followed by the procedural history of this case on pages 14 through 19. The history of the Airport is also set forth in *Fat v. County of Sacramento* (2002) 97 Cal. App. 4th 1270, at p. 1273.

valid and current, with no outstanding safety violations. (AR 4 :434; see also AR 1:117, at Finding 3 [2005 CUP], AR 1:130, at Finding 4 [Staff Report 3/22/05].) Following the issuance of its State Airport Permit in 1972, the Airport operated under a business license, but without a CUP until 1999. (TCF•II:522.)

In December 1988, the Sacramento Area Council of Governments, the designated ALUC for Sacramento County (AR 2:201B; TCF•II:523) prepared and adopted an ALUCP for the Airport (titled "Sunset Sky Ranch Airport Comprehensive Land Use Plan") to "provide for the orderly growth" of the Airport "and the area surrounding" it "during at least the next 20 years." (See AR 2:201-245; TCF•II:524). The ALUCP was amended in 1992. (AR 2:201.) The County's General Plan and the East Elk Grove Specific Plan ("EEGSP") are consistent with the ALUCP. (See, e.g., AR 2:171-200 [CSGP] (incorporating CLUP restrictions), AR 9:1055, ¶¶ 3.3.6(c) & 3.4.2 9 [EEGSP] (same). See also TCF•II:524.)

In 1989, the County denied the owner of the Airport, Appellant Daniel Lang, a renewal of the Airport's business license. (See TCF•II:522 (recapping history of dispute which culminated in *Lang v. Sacramento County Board of Zoning Appeals* (Nov. 4, 1993, C013642) [nonpub. opn.] [hereafter *Lang v. Zoning Appeals*], a copy of which appears at TCF•I:58).) Lang filed a request for a certificate of non-conforming use which was also denied. (TCF•II:522.) Lang then petitioned for a writ of mandate to compel issuance of a certificate of non-conforming use. The petition was denied and appeal taken. (Id.) The Court of Appeal held that, because the Airport had been expanded, it did not qualify as a "legal non-conforming use" predating the zoning ordinance first requiring a CUP. (Id.) Although Sky Ranch has been described in the CSGP as a public-use airport since 1971, the *Lang* Court of Appeal held that "requiring a conditional use permit does not prevent the site from being used as an airport, and, on its

face, we do not see how such a requirement creates an inconsistency [with the CGSP]." (TCF•II:522 (emphasis added) (quoting *Lang v. Zoning Appeals, supra*, C013642, at p. 16). See also TCF•I:73.)

In 1998, the Airport applied for a CUP to operate a privately owned public-use airport with ancillary facilities. (TCF•II:522, (citing AR 1:143).) The County Board of Supervisors adopted a Negative Declaration[4] (AR 3:283) and granted the CUP in October 1999 for an initial term of five years. (TCF•II:522, 523. See also AR 1:143, 1:145, at Condition 16; 1:146 [1999 CUP].) Findings supporting issuance of the 1999 CUP included a finding that the Airport is compatible with adjacent land uses and that the granting of the use permit would not be detrimental to the general welfare. (TCF•II-505 (citing AR 1:145-146).) The 1999 CUP allowed the addition of approximately twenty-four new hangars and imposed eighteen Conditions of Approval, including the five year term. (Id. (citing AR 3:286); AR 1:132, 1:143-146.) One of the conditions required that prospective builders of new hangars be notified of the five-year term of the CUP. (AR 1: 135.)

In setting the five-year term for the 1999 CUP, the County noted that "there may be pressure to urbanize lands east of Grant Line Road which could create a less compatible environment from which to continue airport operations." (AR 1:146.) However, if there were County Supervisors who intended that the 1999 CUP would govern the *last* five years of the Airport's life, such intentions were as contrary to CEQA as was the ultimate denial of a renewal of that CUP in the absence of CEQA study. There is nothing in the Administrative Record to indicate that the potential

---

[4] The Court of Appeal sustained the adequacy of the Negative Declaration in *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1280.

environmental impacts resulting from the forced closure of the Airport five years hence were studied in 1999.

Prior to the expiration of the 1999 CUP, Appellants applied for a renewal or extension. (TFC•II:524 (citing AR 4:415-417).) Approval was recommended by the Cosumnes Community Planning Advisory Council (hereafter "CPAC") (AR 1:170), and was supported by the Aeronautics Division (AR 4:434). The County's Project Planning Commission (hereafter "Planning Commission") held a public hearing on the matter on June 20, 2005, and subsequently granted the CUP on July 25, 2005. (TRC•II:525 (citing AR 4:387-393).) Although CPAC had recommended a five-year term for the CUP, the Planning Commission granted only a two-year term. Planning Commission Findings stated that, although there was difficulty locating a school site, the renewal request was compatible with nearby land uses and the granting of a CUP would not be detrimental to the general welfare. (AR 4:389-390.) The Planning Commission issued the 2005 CUP with twenty-five Conditions of Approval, including the two-year term. (AR 4:387-389.)

Real Parties in Interest — representing "property owners ...developing properties north of [the Airport]"[5] — appealed the Planning Commission's decision granting renewal of the Airport's CUP to the Board on August 2, 2005. (AR 1:101-102.) The appeal was heard by the Board on January 11, 2006. (AR 8:810-936 [Board Hearing 1/11/06].) Evidence presented to the Planning Commission and, on appeal, to the Board included both written and oral comments and statements and oral testimony from number of sources and on various topics relating to rationales for

---

[5] AR 7:751:21-24 (Testimony of Respondent Taylor) [Commission Hearing 6/20/05]. In Real Party in Interest's Certificate of Interested Parties received by the Court of Appeal April 17, 2007, Pappas Investments is identified as the "Client" of Real Party in Interest.

granting or denying renewal of the Airport's CUP. (Salient portions of the evidence are discussed *infra*.) The Board granted the appeal and tentatively denied the Airport's application for renewal, referring the matter to the Board's Staff for preparation of Findings of Fact. (AR 1:004.) On January 25, 2006, after further public hearing and testimony (AR 8:937-972 [Board Hearing 1/25/06]), the Board upheld the appeal, denied renewal of the CUP and adopted the Staff's proposed Findings of Fact (AR 1:006-010 [Board Findings]). (AR 8:971:21-972:5 [Board Hearing 1/25/06].)

The Findings adopted by the Board, were:

1. The renewal request is incompatible with the existence of the many new residential neighborhoods which have been constructed pursuant to the [EEGSP].

2. The Elk Grove Unified School District is experiencing difficulty locating a school site within the [EEGSP] area, south of Elk Grove Boulevard, due to the presence of the Airport. .... renewal of the Airport use permit will hinder the final acquisition of a site and construction of a greatly needed elementary school within the [EEGSP] area.

3. The Board of Supervisors provided an adequate phase-out period with the previous five year use permit and it specifically included in that use permit the fact that renewal might not be forthcoming after the five year expiration date. The pilots have accordingly had adequate warning and time to find other alternatives, including relocation to one of the other airport facilities located within the County of Sacramento and the Lodi area.

4. According to testimony from the Sacramento County Department of Airports, adequate alternative facilities with sufficient holding capacity are available in more appropriate locations throughout the County of Sacramento and in the Lodi area (see Exhibit G).

5. CEQA analysis is not required when a proposed project is denied by a governmental agency.... Denial of a use permit is not a project as defined by CEQA.... [Citations omitted.]

6. Denial of the Airport use permit does not constitute a project consisting of the approval of other land uses for other properties located in the vicinity of the Airport for which environmental review is required by CEQA. The appropriate land use authority will need to analyze the environmental impacts of any future development projects if and when they are proposed and submitted.

7. The decision not to grant the requested use permit does not create an inconsistency with the General Plan since.... the General Plan does not mandate that such a use permit... be granted ....

8. Although the noise contours, over-flight zone, and approach and departure zones associated with the Airport are reflected on the General Plan, those indications of the CLUP's existence do not control the General Plan and do not result in a mandate to be followed when proposed lands (sic) uses impacted by those designations are under consideration. Moreover, the [ALUC] will be requested to invalidate the CLUP to reflect the action taken to deny the use permit requested, following which all references to the invalidated CLUP will be deleted from the General Plan.

(AR 1:008-009 [Board Findings] (emphasis added).)

Airport owner Daniel Lang and the Pilots Association timely filed a Petition for Writ of Mandate to set aside the County's ruling. (TCF•I:4.)

After discussing two zoning amendments in the City of Elk Grove, one of which shifted a potential school site partially within the 60-decibel noise contour and abutting the edge of the Airport's approach/departure zone (TCF-II:525),[6] the trial court ultimately ruled that the County's Finding 1 (i.e., renewal of the CUP was "incompatible with the existence of the many new residential neighborhoods which have been constructed

[6] The trial court failed to note that under the ALUCP, schools are allowed within the 60 decibel noise contour, without restrictions or noise attenuation conditions. (AR 1:151.)

pursuant to the Elk Grove Specific Plan") was **not** supported by any substantial evidence and was, in fact, contrary to the evidence. (TCF•II:532.) However, the trial court ruled that the County's Finding 2 (i.e., the Airport was "hindering" the acquisition and construction of a school in the southern portion of Elk Grove Boulevard) was supported by substantial evidence and that the Finding was tantamount to a finding that the CUP was not consistent with the public welfare. The court upheld County's denial of renewal of the CUP because it was "precisely the type of discretionary judgment contemplated by the County's Zoning Code." (TCF•II:533, 534.)

The County's Findings in support of its decision clearly stated that once the Airport was closed for lack of a CUP, the County would ask the ALUC to "invalidate" the Airport's protective ALUCP following which, the County would delete all references to the invalidated ALUCP from the County's General Plan. (TCF•II:527, 527 (citing AR 1:8-9).) The trial court ruled, and the Court of Appeal affirmed that the County's decision denying renewal of the CUP was neither inimical to, nor preempted by, the State Aeronautics Act. (TCF•II:528.)

The trial court also ruled that the environmental impacts of the County's action did not require prior study under CEQA because the denial of a permit, as compared to the granting of a permit, is not a "project" for purposes of CEQA compliance. (TCF•II:530.) The trial court held that even if viewed as a first and essential step in clearing the way for additional development in the area, the action was not a "project" because the County had not committed to a "definite course of action." (TRF•II:531.) Indeed, the court concluded that the County had not adopted a definite course of action, even with respect to the Airport itself, because the Appellants were free to apply for a CUP at any time and the County was free to grant it. (Id.)

The Court of Appeal for the Third District held that,

> "this case does not involve the mere denial of a project, but denial of a CUP renewal that would indisputably result in closure of an airport, which the County intended to begin to enforce within 180 days, with transfer of pilots to other airports.
> "A CEQA 'project' means 'the whole of an action' having the potential for physical change in the environment."

(Slip Op. 42, 43 citing CEQA Guidelines §15378 subd. (a).) The Court of Appeal then ruled:

> "We conclude the County's plan to enforce its zoning code, by ensuring the Airport closure and transfer of pilots to other airports, are part of 'the whole of [the] action' of the CUP denial, and the whole of the action has the potential for physical change in the environment. [Citation] Accordingly, the County's action consititutes a CEQA 'project' requiring preparation of an initial study."

(Slip Opinion, p. 45, citing Guidelines § 15378.)

III.

THE COUNTY'S ACTION VIOLATED CEQA.

A. The Decision to Close the Airport Was a "Project" under CEQA.

CEQA was intended to be interpreted so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (See Guidelines for the Implementation of CEQA[7] § 15003(f) (hereafter "Guidelines"); *Muzzy Ranch v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372, 381)

The CEQA review process starts with the lead agency's preliminary review to determine whether CEQA applies to the proposed activity. (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112, mod. on den. of rehg. (citing Guidelines §§ 15060, 15061).) CEQA applies to a proposed activity if the activity constitutes a "project" within the meaning

[7] Cal. Code Regs., tit. 14, §15000 et seq.

of CEQA. (Pub. Res. Code §21080(a); Guidelines §15061(a).) CEQA section 21065 provides that an *activity* is a "project" if it is:

> an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and which is . . . an activity directly undertaken by any public agency . . . [or] involves the issuance to a person of a lease, permit, license, certificate or other entitlement . . .

(CEQA §21065(a). CEQA Guidelines § 15378(a) amplifies section 21065. That Guideline states:

> "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change...

(Guidelines § 15378 (emphasis added).) Thus, if the whole of an action taken by a public agency is likely to have any direct or indirect significant adverse affect on the environment, CEQA study is required unless there is an applicable exemption. Whether a particular activity constitutes a project is a question of law. (*Fullerton Joint Union High School Dist. v. State Bd. of Ed.* (1982) 32 Cal.3d 779, 795.)

The County and Real Party in Interest place particular emphasis on their argument that the County did not approve anything and that, therefore, the action of the County is not a "project" for CEQA purposes. That argument ignores the definition of "approval" provided by Guideline § 15352. The term "approval" means a: "decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." In this case, the County expressly committed to a course of action by which its officers would close the airport via an enforcement action if necessary. The Court of Appeal correctly held that the County's commitment to that course of action

constituted a "project" quite different from and contrary to the project proposed by Petitioners. (Slip Op., pp. 42, 43.)

If CEQA applies to the activity in question and there is no applicable exemption, the lead agency must then "conduct an initial study to determine if the project may have a significant effect on the environment." (Guidelines §§ 15060, 15061, 15063; *Davidon Homes*, *supra*, 54 Cal.App.4th at p. 112-113.) If there is no substantial evidence that the project may cause a significant effect, the agency need not prepare an environmental impact report ("EIR"), but *must* prepare a negative declaration briefly describing the reasons supporting its determination. (Guidelines §15063(b)(2); *Davidon Homes, supra*, 54 Cal.App.4th at p. 113.) Failure to comply with CEQA procedure will invalidate the governmental action taken. (*Starbird v. San Benito County* (1981) 122 Cal.App.3d 657, 660 (citing CEQA §21080(a), (c).)

Guidelines §15003(h) adopts the rule laid down in *Citizens Associated for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, that"

> the lead agency must consider the whole of an action , not simply its constituent parts , when determining whether it will have a significant environmental impact.

(Guidelines §15003 (h).)

The County and Real Party in Interest steadfastly refuse to call the County's action what it is – **a decision to close a well established and lawfully operating airport so as to make way for other development in the area.** The County and Real Party in Interest decline to acknowledge the changes and adverse environmental impacts that would necessarily result from the movement of the base of operations of some 60 aircraft and the increase roadway commuting distances that movement would require of the pilots. (See sub-section D. below.) CEQA does not allow such a "pay

no attention to the man behind the curtain" approach to land use decisions. In the "Discussion" provided with respect to Guidelines § 15378, the Office of Planning and Research states:

> "Reading the language of Sections 21065 and 21100 together, the project which is to be analyzed in the EIR is not the approval itself but it that which is being approved."

The County and Real Party in interest ask the Court to focus only on the fact that the County "denied" Petitioner's proposed project – the renewal of the CUP. Contrary to the clear intent of CEQA as explained in the Guidelines and the comments to the Guidelines, the County and Real Party in Interest argue that the County does not intend to carry out a project of its own, but only intends to deny Petitioner's proposed project. The Court of Appeal, relying on sound authority and undisputed facts, found that the action undertaken by the County – the closure of the airport – was a project. The Court of Appeal looked at "that which is being approved" rather than the procedure by which the intended result was to be accomplished.

The County and the Real Party in Interest contend that the opinion of the Appellate Court in this case is unsound because, no action is being taken by the County. (See, e.g. the Opening Brief of Real Party in Interest at page 12 and County Opening Brief at page 5.) But the decision of the Court of Appeal – that action was being taken – rests on the principles set forth in *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356 (decision to close two schools was a project) and *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 638-639 (decision to close shooting range was a project). The County and Real Party ask this Court to engage in semantics and to rule that because the closure of the Airport was accomplished by the *denial* of a

renewal of the CUP, that the Court is powerless to apply CEQA to the closure. A resort to such a purely semantic approach would defeat the purpose of CEQA and is contrary to Guideline §15003 (f) and the holding in *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal 3d 247, 249 that CEQA is to be interpreted so as to provide meaningful protection to the environment.

The County and Real Party in Interest profess concern that the holding of the Court of Appeal would require Lead Agencies to always study the results of denying a project, because the denial of a project could always be viewed as a project separate and apart from the approval of a proposed project. But that is not the holding of the Court of Appeal. The denial of approval of a proposed new housing project or a new shopping center is markedly different from the denial of the renewal of a Conditional Use Permit which has the result of closing an airport which has served the surrounding community for many years – particularly where the stated intent of the closure is to make way for new development in the area which would be incompatible with the continued operation of the Airport.

When the legislative body of a City or County determines not to approve a project that has not been built and that has never been operational, the decision does not change the *status quo*. The denial of a non-existent project does not generate the potential for **changes** to the environment – it prevents them. On the other hand, in circumstances such as those at hand in this case, the decision to deny renewal of a Conditional Use Permit *upsets* the status quo in ways which can be expected to have adverse environmental consequences. CEQA requires study and disclosure to the public of those potential consequences in advance of an action taken by the City or County which is likely to upset the *status quo*, or which alters the "baseline conditions" which exist at the time of the project is proposed. (Guideline § 15125(a).) Closure of the Airport was a project

proposed by, and approved by the County without study of the likely environmental consequences of that action.

B. The Decision to Close the Airport was Not Statutorily Exempt.

The County and Real Party in Interest contend that even if one considers the County's decision a "project" for CEQA purposes, the project is statutorily exempt under the provisions of sub-section (b)(5) of section 21080 of the Public Resources Code, pertaining to "[P]rojects which a public agency rejects or disapproves." (See also Guidelines § 15270 amplifying CEQA § 21080 (b)(5).) That provision might be dispositive if the County had "only" or "merely" disapproved a proposed project that had never been in existence or operation. However, the County did much more than that. The "project" which required CEQA study was the County's project to close the Airport and to change its General Plan so as to allow other development in the area. The County did not reject or disapprove the project the County proposed – it committed itself to a course of action reasonably likely to cause adverse environmental impacts.

The County and Real Party in Interest's reliance on the holding in *Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal. App. 4th 1371 is misplaced. In *Main San Gabriel*, the proposed project was the *expansion* of an existing landfill. Obviously, the denial of the proposed expansion from 80 acres to 302 acres merely preserved the *status quo*. The *Main San Gabriel* court discussed and distinguished two appellate court decisions in which the actions of governmental agencies had been found not to be exempt from the requirements of CEQA because they upset the *status quo* and presented a potential for significant environmental impact. The refusal to approve the expansion of a landfill facility did not upset the *status quo* and did not create the potential for significant environmental impact and was, therefore,

held to be exempt from CEQA compliance. The holding in *Main San Gabriel* is not inconsistent with the holding of the Court of Appeal in this case. Here, the action of the County would change the *status quo* and create the potential for significant adverse environmental impact. Thus, that action is **not** statutorily exempt.

C. The Decision to Close the Airport was Not Categorically Exempt.

Pursuant to CEQA § 21084, Guidelines §§ 153301 – 15332 lists 32 categories or "Classes" of projects which the Secretary of Resources has determined are not likely to have a significant effect on the environment. Although the County and Real Party in Interest argue that the County's action was "categorically exempt," they do not cite to any of the categorical exemptions set forth in the Guidelines in support of that argument. Instead, they cite to Guidelines § 15270, which is simply a reiteration of the statutory exemption set forth in CEQA § 21080 (b)(5) as discussed above and shown to be inapplicable to the facts at hand in this case.

> It should be noted that Guidelines § 15300.2 (c) provides that:
>
> Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(Guidelines § 15300.2 (c).) Thus, if one were to consider Guidelines § 15270 as stating a "categorical" exemption, it would not be effective in this case, because the potential for significant adverse environmental impacts is present and is demonstrated by substantial evidence in the Administrative Record as summarized in sub-section D. below.

There is one categorical exemption which, although not applicable in this case, is relevant to a concern raised by the County. On page 13 of the County's Opening Brief the specter is raised that the decision of the Court

of Appeal will require Counties to engage in CEQA review before revoking use permits for existing businesses that are not in compliance with those permits. As pointed out in Section II above, the County's findings in this case do **not** include findings that the Airport had failed to comply with the conditions imposed upon it in the 1999 CUP or in the proposed terms of the CUP approved by the Planning Commission in 2005. Thus, this was not an enforcement action to revoke a CUP. Had it been such an enforcement action, Categorical exemption Class 21, for "actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use" (Guidelines § 15321) might have been applicable, limited by the provisions of Guidelines § 15300.2 (c). A routine enforcement action is really an effort to restore the legal *status quo*. Such actions need not result in a termination of a particular permit. The decision of the Court of Appeal does not insert CEQA into the enforcement process unless that process will upset the *status quo* and cause significant adverse changes in the environment.

D. The County's Decision to Close the Airport is Likely to Cause Significant Adverse Environmental Impacts.

Appellants presented evidence of several direct and adverse environmental impacts likely to flow from denial of the CUP renewal and closing the Airport. (AR 1:119 [Winberry Letter 6/9/05].) Those included a projected increase of 600,000 to 1,000,000 commuter miles per year (i.e., roughly 30,000 additional gallons of pollution-causing fuel consumption) that would result if the sixty pilots who hangar their aircraft at Sky Ranch were forced to move their aircraft to other airfields. (AR 1:121, at 1 [Winberry Letter 6/9/05].) Appellants provided the Planning Commission with a map showing the pilots' residences clustered near the Airport and in relation to other airports in the Sacramento area. (AR 1:123.)

The Code Enforcement Division of the County's Planning and Community Development Department announced its intention to enforce zoning ordinances and begin phasing out Airport operations within 90 to 180 days if the Airport's CUP is not renewed. (TCF•II:358 (citing AR 8:964:23–8:965:18).) In addition to terminating operations, the County plans to seek removal of all buildings that cannot be converted to agricultural uses. (Id. at AR 8:966:17–8:967:15.) Many of the buildings and hangars on Airport property are permanent, cannot be moved in a cost-efficient manner and would have to be razed. (See, e.g., AR 8:848:1-10.) Such demolition, and the construction of replacement facilities elsewhere would likely impact the environment adversely and significantly.

The Findings adopted by the Board recognize, on their face, that the denial of the Airport's CUP renewal was a necessary step in a chain of events which would culminate in the invalidation of the CLUP and an amendment of the general plan to remove the land-use restrictions of the CLUP. (AR 1:008-009 [Finding 8].) This Court recently held that an amendment to expand an ALUCP does not require CEQA study of growth displacement where the amendment merely adopts land-use designations already contained in existing general plans and does not commit the area to a new and different land-use regime. (*Muzzy Ranch, supra*, 41 Cal.4th at p. 388-389.) But here, the opposite is true. The County's action is a first step towards allowing changes in the General Plan which would free the surrounding area of the constraints imposed by the ALUCP or CLUP.

Although not relied upon by the Court of Appeal, the record in this case also shows that indirect adverse environmental impacts are likely to flow from the elimination of the CLUP. Indeed, the Real Parties in Interest represent landowners seeking to develop properties opposite the Airport on Grant Line Road. (AR 7:751:21-24 (Taylor testimony) [Commission Hearing 6/20/05].) Dr. Michael Preskar testified before the Planning

Commission that those properties total approximately twenty-five acres and are situated below the Airport's approach and departure zone. (AR 7:732:22-733:4. See also AR 7:751:21-23 (Taylor testimony).) Because of ALUCP constraints, those properties are currently zoned Rural Residential (0.1–0.5 dwelling units/acre). (AR 2:245 [Elk Grove General Plan]; AR 9:1062 [EEGSP].) If ALUCP constraints are removed, it is reasonably foreseeable that, given the "increasing pressure...to urbanize lands" in the area,[8] the properties will be rezoned to Low and Medium Density Residential (4–15 dwelling units/acre) — an increase of 88 to 360 potential new residences.

The Board acknowledged openly in its Findings that denial of the Airport's CUP renewal is just the first step, "a necessary precedent," toward the "larger project" and ultimate goal of removing the land-use restrictions and development constraints of the ALUCP before amending the CSGP to open up the area around the Airport to further development and urbanization. Regardless of whether the contemplated new development actually occurs, the environmental impacts of relocating the base of operations of some 60 aircraft are certain to occur unless the CEQA portion of the Court of Appeal's decision is affirmed.

IV.

CONCLUSION

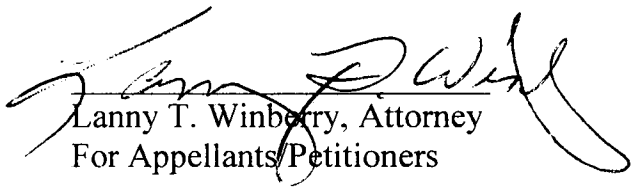
As demonstrated above, the County failed to comply with CEQA in taking action to close the Airport. Thus, the County's action is contrary to the state's environmental protection law. The decision of the Court of Appeal with regard to the CEQA issues in this case should be upheld.

---

[8] AR 1:130, at B.2, 1:131, at B.6a [Staff Report 3/22/05]; see also 1:007, at Finding 8.

WORD COUNT CERTIFICATE

I, Lanny T. Winberry, in reliance on the word count feature of my word processing program, do hereby certify, pursuant to Rule 8.204(c), that the foregoing Brief contains 6,131words, including footnotes, but excluding the Cover, the Table of Contents, the Table of Authorities, this certification, and the Proof of Service.



Lanny T. Winberry, Attorney
For Appellants/Petitioners

Sunset Sky Ranch Pilots Assn., et al
v. County of Sacramento, et al.,

Supreme Court Case No. S156861
[Appellate Case No. C055224]
[Sacramento Superior Court
Case No. 06CS00265]

PROOF OF SERVICE
[C.C.P. §§ 1013a and 2015.5]

I, the undersigned, declare that I am a citizen of the United States and am employed in the County of Sacramento. I am over the age of 18 years and not a party to the within cause. My business address is 8001 Folsom Blvd., Suite 100, Sacramento, California 95826.

On December 1, 2008, I served the within ANSWER BRIEF ON THE MERITS OF APPELLANTS (in the Supreme Court) by placing a copy of same in a receptacle of the U.S. Postal service enclosed in an envelope and with sufficient postage affixed to assure its delivery and addressed as set forth below.

Counsel for Respondent County of Sacramento:

ROBERT A. RYAN, JR., County Counsel
KRISTA C. WHITMAN, Sup. Dep. Cty. Counsel
700 H. Street, Suite 2650
Sacramento, CA 95814

Counsel for Real Parties in Interest:

JOHN M. TAYLOR
TAYLOR & WILEY
2870 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

Appellate Court:

Clerk of the Court of Appeal
For the Third Judicial District of
The State of California
900N Street, Room 400
Sacramento, CA 95814-4869

Superior Court:

Clerk of the Superior Court
(for delivery to the Honorable
Jack V. Sapunor, Judge)
720 Ninth Street
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Sacramento, CA on December 1, 2008.

Deb Jo Wooten