S165861

IN THE SUPREME COURT OF CALIFORNIA

California Court of Appeal, Third Appellate District
Civil Case No. C055224

SUNSET SKY RANCH PILOTS ASSOCIATION and DANIEL LANG
Petitioners/Plaintiffs and Appellants

v.

THE COUNTY OF SACRAMENTO and its BOARD OF SUPERVISORS
Defendants and Respondents

JOHN TAYLOR and TAYLOR & WILEY
Real Parties in Interest and Respondents

On Appeal from the Superior Court of the
State of California for the County of Sacramento
Case No. 06CS00265
Honorable Jack V. Sapunor

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Respondents and Real Parties in Interest John M. Taylor and the law firm of Taylor & Wiley respectfully submit this Answer to the Petition for Review filed by Petitioners Sunset Skyranch Pilots' Association (Pilots) on August 11, 2008. The Pilots assert no legitimate basis for this Court to review the Court of Appeal of California, Third Appellate District's (Third Appellate District) decision in this matter. Instead, the Pilots use their Petition as an opportunity to reargue the merits of claims they brought under the State Aeronautics Act (SAA). Because the Pilots fail to meet their burden of presenting this Court with a basis for review under California Rule of Court 8.500(b), and because the Third Appellate District adequately and exhaustively addressed these claims in its opinion, the Pilots' Petition for Review should be denied.

II. STATEMENT OF THE CASE

Real Parties incorporate by reference the Statement of the Case included in their Petition for Review, filed August 11, 2008.

III. LEGAL ARGUMENT

This Court may exercise its discretion to order review of a court of appeal decision "when necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, Rule 8.500(b)(1).) It is a long-established rule that a party is not entitled to appeal to this Court on the merits of a court of appeal's decision; rather, a party may ask this Court to review such a decision for the purpose of settling important legal questions of statewide concern and to ensure that the law is applied uniformly throughout the state. (*People v. Davis* (1905) 147 Cal. 346; 9 Witkin, California Procedure (4th ed. 2006) *Appeal* § 863.) The purpose of this Court's review has been clarified as follows:

> [T]o supervise and control the opinions of the several district courts of appeal, each of which is acting concurrently and independently of the others, and by such supervision to endeavor to secure harmony and uniformity in the decisions, their conformity to the settled rules and principles of law, a uniform rule of decision throughout the

> state, a correct and uniform construction of the constitution, statutes and charters, and, in some instances, a final decision by the court of last resort of some doubtful or disputed question of law. (*People v. Davis*, *supra*, 147 Cal. at 348.)

Despite these clear rules delineating the scope of this Court's review, the Pilots make no meaningful attempt to explain why the Court's input is needed in this case. In fourteen pages of its opinion, the Third Appellate District painstakingly reviewed the Pilots' numerous claims regarding the preemptive scope of the SAA and found that none of the arguments advanced had merit. (Slip Op. at 21-40.)[1] Instead of specifying why this well-reasoned decision should now be disturbed, the Pilots simply state, without offering any factual support, that their Petition involves "important legal questions" that should be addressed by this Court. In reality, though, the Pilots are simply seeking to reargue the merits of their position with respect to statutory preemption. Allowing such would be an improper use of Supreme Court review and should not be allowed.

A. The Pilots' Petition Does Not Present Important Questions of Law Requiring Review By This Court.

As stated above, this Court may order review of a court of appeal decision "when necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, Rule 8.500(b)(1).) The Pilots claim that their Petition should be granted because it presents "important legal questions" requiring resolution by this Court. (Pilots Petn. at 1.) Although the Pilots couch their "issues for review" in various ways throughout their Petition,[2] the core

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[1] The opinion in this matter has been published as *Sunset Skyranch Pilots Assn. v. County of Sacramento* (2008) 164 Cal.App.4th 671.

[2] At various places in their Petition, the Pilots phrase the issue slightly differently. For example:

question they are presenting to this Court for review can be summarized as follows:

> Whether the State Aeronautics Act preempts the ability of a local government to deny a conditional use permit (CUP) to a privately-owned, public-use airport operating within its jurisdiction. (Pilots Petn. at ii, 7.)

Contrary to the Pilots' assertions, this question is not an "important question of law" requiring review by this Court. Clearly, the ability of local governments to regulate the use of land within their jurisdiction, including the location of airports, is well-settled and cannot legitimately be characterized as "doubtful" or "disputed." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151 (*Big Creek Lumber*).)

> Does the State Aeronautics Act (Pub. Util. Code § 21000 *et seq.*) – by granting to a state agency the authority and the duty to weigh benefits and burdens to the public before issuing, denying or revoking airport permits and by providing land use regulation protections for state-permitted airports – preempt the application of a county's zoning ordinance to deny renewal of a conditional use permit to a fully compliant privately-owned, state-licensed, public-use airport where that denial is intended to shut down the airport for the expressed purpose of invalidating the governing airport land use compatibility plan thereby allowing incompatible new development near the airport site. (Pilots Petn. at ii.)
>
> ***
>
> This Petition presents the issue of whether or not the State Aeronautics Act preempts a local governmental entity from shutting down a state-licensed, privately owned, public use airport by denying a CUP renewal for the airport when the Department of Transportation, the designated state licensing authority, supports continued operation of the airport and where the airport has complied fully with the terms and conditions of its prior CUP. (*Id.* at 7.)

1. The Preemptive Scope of the SAA is Not a Matter of Great Statewide Concern Requiring this Court's Input.

Several factors counter the Pilots' assertion that the preemptive scope of the SAA is an important legal issue requiring this Court's review. First, there is very little existing case law which discusses the SAA. A survey of California cases reveals that there are approximately 15 published cases which contain any mention of the SAA and the subjects of these cases vary widely.[3] Indeed, only one of these cases discusses the preemptive effect of the SAA on municipal ordinances, and even then only in the context of airport safety operations. (*See*, *Stagg v. Municipal Ct.* (1969) 2 Cal.App.3d 318 (city ordinance regulating jet takeoffs during nighttime hours was not preempted by the SAA and came within the city's statutory power to regulate use of airport).) In addition, as noted by the Third

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[3] These cases are: *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372 (adopting airport land use plan can be a "project" under CEQA); *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465 (Section 21661.6 of the SAA precludes initiative measures on the subject of airport expansion); *Bethman v. City of Ukiah* (1989) 216 Cal.App.3d 1395 (discussed, in a footnote, the preemptive effect of federal aviation law); *City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277 (setting aside a Thermal Airport Land Use Plan adopted by a local airport land use commission because it did not meet the SAA's requirements for such plans); *In re Valenti* (1986) 178 Cal.App.3d 470 (criminal case brought under SAA); *Andrews v. County of Orange* (1982) 130 Cal.App.3d 944 (dismissal of cause of action under SAA warranted because plaintiff failed to demonstrate that the County's failure to obtain an airport permit was the cause of plaintiff's injuries); *People v. Hovath* (1982) 127 Cal.App.3d 398 (Section 21252(a) of the SAA extends the power of misdemeanor arrest without a warrant beyond that provided by the general law); *Bakman v. Dept. of Transportation* (1979) 99 Cal.App.3d 665 (alleged violation of airport permit because of change in use from propeller planes to jets); *Hawn v. County of Ventura* (1977) 73 Cal.App.3d 1009 (discussing the role of the County Board of Supervisors, under the SAA, as "state agents" in the selection of airport sites within the County): *Stagg v. Municipal Ct.* (1969) 2 Cal.App.3d 318 (city ordinance regulating jet takeoffs during nighttime hours was not preempted by the SAA and came within the city's statutory power to regulate use of airport); *People v. Valenti* (1984) 153 Cal.App.3d Supp. 35 (criminal case brought under SAA).

Appellate District, the Legislature has never seen fit to expressly preempt local authority over the siting of airports, a fact which would appear to indicate that this question is not a matter of great concern to the citizens of this State. (Slip Op. at 26.) Finally, unlike the serious and far-reaching implications that could flow from the Third Appellate District's holding on the Pilots' CEQA cause of action,[4] the Court's decision with respect to the SAA claims will not result in new or more burdensome regulatory requirements for public agencies. Rather, if the Third Appellate District's opinion on the SAA issues is allowed to stand, the status quo will be preserved and local governments will continue to be able to regulate the location of airports within their jurisdictions.

Because the Pilots' Petition fails to demonstrate any important legal issues which require this Court's review, their Petition should be denied.

2. The Authority of Local Governments to Regulate the Siting of Airports Within their Jurisdiction is Well-Established; Thus, this Court's Input is Not Required.

The Pilots argue that a local government's authority to deny a CUP to an airport is preempted by the SAA because such denial is "inimical to the Act." (Pilots Petn. at 7.) The Pilots point to two portions of the SAA to support their preemption argument. First, the Pilots note that the SAA gives the State Department of Transportation (Department) the power to issue and revoke "airport permits" and reason that this permitting "scheme" in the SAA indicates that the Department has exclusive regulatory authority over airport operations. (*Id.* at 8.) The Pilots also point to the sections of the SAA dealing with "Airport Land Use Commissions" (ALUC), arguing that these provisions "trump[] the general land use authority of cities and counties with respect to land use decisions affecting airports." (*Id.*) However, neither of these sections, whether considered individually

[4] Please refer to Real Parties' Petition for Review, filed August 11, 2008, for an in-depth discussion of this issue. (Real Parties' Petn. at 9-12.)

or collectively, clearly evince a legislative intent to preempt a local government's authority to regulate the location of airports within its jurisdiction.

In its opinion, the Third Appellate District began by quoting this Court's most recent jurisprudence with respect to statutory preemption of municipal regulations, as follows:

> The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. [Citation.] [The California Supreme Court] ha[s] been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' [Citations.] 'The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.' [Citations.]
>
> Thus, when local government regulates in an area over which it traditionally has exercised control, *such as the location of particular land uses*, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute. [Citation.] The presumption against preemption accords with our more general understanding that 'it is not to be presumed that the [L]egislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by *necessary implication.*' [Citations.] (Slip Op. at 25-26, citing *Big Creek Lumber, supra,* 38 Cal.4th at 1149-1150, emphasis added.)

The Third Appellate District ultimately held that the Pilots failed to meet their burden of demonstrating preemption. The Pilots did not identify any specific provision of the SAA which was "contrary to" the County's denial of the airport CUP. (Slip Op. at 27.) Moreover, the Court was not persuaded by the Pilots' arguments that "scheme" of the SAA - including the Department's issuance of "airport permits" and the land use powers of ALUCs – necessarily implicates a

legislative intent to preempt local regulation of airports. The Third Appellate District noted that the purpose of the Department-issued "airport permits" is to "assure[] that on-site and off-site safety standards are met" and that, although the state can engage in an analysis of benefits and burdens when issuing or revoking such permits, there was nothing in the SAA itself which protected the airport from closure by a local land-use decision. (*Id.* at 4, 29.) Likewise, the Third Appellate District found nothing in the SAA's description of the power of ALUCs which could legitimately be viewed as preempting the land-use power of local governments with respect to the siting of airports. As the Court reasoned:

> The SAA itself expressly states that the powers of an airport land use commission "shall in no way be construed to give the commission jurisdiction over the operation of any airport." (§ 21674, subd. (e).) Even as to matters where the commissions have jurisdiction, *the SAA expressly recognizes local regulation and acknowledges the continuing role of local governments* by specifying that the local entities' override of certain commission decisions must be made by a two-thirds vote and a finding by the local entity that the proposed action is consistent with the SAA. (E.g., § 21676, fn. 5, ante [prior to amendment of general plan or specific plan, or adoption or approval of a zoning ordinance or building regulation, the local agency shall refer the proposed action to the commission].) (Slip Op. at 26-27, emphasis added.)

Nothing in the Pilots' briefs or Petition counters the Third Appellate District's holding with respect to the preemptive effect of the SAA. The Pilots have failed, once again, to directly address the authorities cited by Respondents and the Court of Appeal, and to clearly explain why the well-established rules regarding the land use authority of local governments should not apply to airports. Because the Third Appellate District followed these clear and unequivocal precedents establishing the power of local governments to regulate the siting of airports within their jurisdiction, and because the Pilots have not explained why

these legal principles are "doubtful" or "disputed," review by this Court is not appropriate in this instance.

B. The Pilots' Petition Does Not Reveal A Lack Of Uniformity Between This Case And Other California Decisions; Therefore, This Court's Review Is Not Required.

In addition to attempting to cast their "preemption" argument as an "important question of law," the Pilots claim that this Court should grant review in order to secure uniformity of decision between this case and three other California decisions: *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372 (*Muzzy Ranch*); *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1060 (*O'Connell*); and *Desert Turf Club v. Bd. of Supervisors* (1956) 141 Cal.App.2d 446 (*Desert Turf Club*). (Pilots Petn. at 10-17.) Again, although the Pilots' Petition contains numerous unsupported statements that conflicts exist between these cases, in reality their "uniformity of decision" argument is nothing more than yet another attempt to reargue the merits of their case. The Third Appellate District's well-reasoned decision fully dealt with these questions and should be allowed to stand.

1. No Conflict Exists Between the Case at Bench and This Court's Decision in *Muzzy Ranch Co. v. Solano County Airport Land Use Commission*.

The Pilots claim that review is required to determine whether this Court's opinion in *Muzzy Ranch* "compel[s] a conclusion that counties are impliedly preempted from closing down an airport so as to evade the consistency requirement of the Act's override provision." (Pilots Petn. at ii.) In their Petition, the Pilots argue that the Third Appellate District's decision is in material conflict with *Muzzy Ranch* which they claim held that "even in the event a local authority invokes the override provision [of the SAA], the State Aeronautics Act still controls." (*Id.* at 10.) The Pilots also claim that a conflict exists between these two cases because, in their view, *Muzzy Ranch* speaks to the "plenary" nature of the

authority of ALUCs with respect to land use issues that may affect the viability of airports, while the Third Appellate District's decision in this case concludes that the powers of ALUCs are not plenary because the counties retain authority over land use matters. (*Id.* at 11.) However, as will be discussed below, these two cases can easily be reconciled and, thus, this Court's review is not required.

As a preliminary matter, it should be noted that *Muzzy Ranch* involved claims brought under CEQA, not the SAA. In that case, a property owner challenged Solano County's determination that an airport land use compatibility plan (ALUCP or CLUP) prepared for Travis Air Force Base did not require CEQA review. (*Muzzy Ranch*, *supra*, 41 Cal.4th at 379.) Although, in *Muzzy Ranch*, this Court peripherally discussed the nature of ALUCPs, such discussion only occurred in the context of whether such plans are validly considered "projects" under CEQA.[5] (*Id.* at 382-386.) Accordingly, the Pilots' statements and inferences that the "holding" of *Muzzy Ranch* concerned the preemptive scope of the SAA are totally misleading.[6]

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[5] This Court concluded that, because of the its potential significant impacts on surrounding land uses, the creation of an ALUCP is a "project" under CEQA. (*Muzzy Ranch*, *supra*, 41 Cal.4th at 385.)

[6] For example, the Pilots state:

> *Muzzy Ranch held* that the override provisions of the Act, by requiring consistency with the purposes of the Act, meant that, even in the event of an override, the "State Aeronautics Act scheme still controls." [Citation omitted.] (Pilots Petn. at 9, emphasis added.)

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> *Muzzy Ranch* makes it clear that the expressly stated and well understood purposes of the Act are sufficient to preempt the exercise of zoning authority by cities and counties where a proposed action might imperil the continued viability of a state-licensed airport....

In their briefs to the Superior Court and the Third Appellate District, Respondents consistently argued that the land use authority of local governments and ALUCs are not mutually exclusive. Specifically, Respondents have noted that the SAA vests power in ALUCs to adopt and implement ALUCPs in order to maintain safe and non-encroaching conditions around airports, but that such power comes into play only after the local government decides whether an airport should be allowed to operate at a given location. (*See generally* Response Brief at 11-12; TCF II:408-409.)[7] As Respondents argued in their Response Brief to the Third Appellate District:

> ...CLUPs, which are adopted by ALUCs, result in the imposition of safety and noise related zones on lands surrounding operating airports. ([Pub. Util. Code] §§ 21670, 21675.) The purpose of these zones is to discourage inconsistent off-site development patterns from emerging which could jeopardize the operations and continued viability of airports, as well as to assure off-site safety. (*Id.* § 21675(a).)
>
> The imposition of such zones is, though, a separate and trailing process to deciding whether or not an airport should, as a land use matter, be allowed to operate or continue to operate. In fact, it is only *after* a decision to operate an airport has been made that the preparation and approval of a CLUP is required. (*Id.* §§ 21670, 21675.) CLUPs accordingly have no relevance when a decision is being rendered as to whether to

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> To the extent the decision of the Court of Appeal is contrary to this Court's *holdings* in *Muzzy Ranch*, *supra*, with respect to the plenary nature of the authority of ALUC's as to land use issues that may adversely affect the continued viability of public-use airports, the doctrine of judicial precedent warrants review of the Appellate Court's decision in this case. (*Id.* at 11, emphasis added.)

[7] The parties stipulated to use the original Superior Court's file instead of a clerk's transcript as the record on appeal. Citations to the Superior Court's file are designated by the acronym "TCF" followed by the volume and page number(s) in the following format: "TCF [volume]:[page(s)]."

> allow an airport to continue to operate since, if an airport ceases to exist, the CLUP can simply be terminated by the ALUC since its protective measures are no longer necessary. As such, ALUCs, and the CLUPs which they approve, in no way impede local land use locational authority over airports. *It is rather the exercise of that authority, either to approve, deny or close the airport, which precedes and determines whether a CLUP is even needed or continues to be needed.* (*See generally, id.* § 21674.7, noting that the Act's compatibility requirements apply to "existing airports.") The provisions of the Act relative to ALUCs and CLUPs are separate and apart from local land use authority and accordingly do not reflect an intent to preempt that authority. (Resp. Brief at 12, emphasis added.)

The Third Appellate District agreed with Respondents. In its decision, the Court of Appeal recognized the distinct land use responsibilities of ALUCs and local governments, while noting that these powers can be exercised concurrently, without conflict. The Third Appellate District states:

> The Airport cites section 21675, which states that in formulating an airport land use compatibility plan, "the commission may develop height restrictions on buildings, *may specify use of land*, and may determine building standards, including soundproofing adjacent to airports, with the airport influence area." (Italics added.) We decline to construe this tiny phrase as stripping the County of its power to deny an Airport's CUP renewal, particularly since other provisions of the SAA expressly authorize counties to override the airport land use commission's determination of what constitutes consistency with the SAA. (§ 21676, fn. 5, ante.) Rather, it appears clear that the SAA's provisions regarding land use contemplate cooperation between an airport land use commission and a municipality concerning the growth and development of airports, *where the municipality wants to keep the airport. The SAA does not require the municipality to keep the airport.* (Slip Op. at 30-31, emphasis added.)

This Court's decision in *Muzzy Ranch* does not alter the legal framework discussed above. The Pilots have not, and indeed cannot, identify any portion of *Muzzy Ranch* which compels a conclusion that, once an ALUC is established for an airport, all land use authority over that airport, including the ability to close the airport, is removed from the local government and vested with the ALUC. Accordingly, there is no conflict between these decisions which requires resolution by this Court.

2. No Conflict Exists Between the Case at Bench and This Court's Decision in *O'Connell v. City of Stockton.*

The Pilots next attempt to argue that the Third Appellate District's ruling in this case conflicts with the standard established in *O'Connell v. City of Stockton* (2007) 41 Cal. 4th 1061, for determining whether a local ordinance is inimical to a state statutory scheme. The Pilots ask that this Court now review the case in order to clarify the appropriate standard that should be used in identifying preemption by implication, insisting that either the standard established in *O'Connell* or the supposedly different standard followed in the case at bar should control. (Pilots Petn. at 12.) In drawing a distinction between these two allegedly disparate rules, Real Parties assume that the Pilots are arguing for review based on the need for "uniformity of decision".[8] However, the Third Appellate District's decision in the case at bar does not conflict with this Court's ruling in *O'Connell,* but rather follows its principles for identifying preemptive intent. (*O'Connell*, *supra*, 41 Cal.4th at 1067-1070; Slip. Op at 24, 32.) Accordingly, this Court's review is not required.

In *O'Connell*, this Court affirmed a Third Appellate District opinion and held that a city ordinance providing for forfeiture to the city of any vehicle used in commission of specific criminal acts was preempted by the California Uniform

[8] Although it could be easily surmised that Petitioners are again rearguing their SAA preemption position.

Controlled Substance Act and the California Vehicle Code.[9] (*O'Connell, supra*, 41 Cal.4th at 1065.) In so doing, this Court identified "principles governing state law preemption of local ordinances," several of which address implied preemption. (*Id.* at 1067.) Among the principles cited by the Court is the proposition that:

> [W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute. [Citation.] (*Id.* at 1069, citing *Big Creek Lumber, supra*, 38 Cal.4th at 1149, emphasis in original.)

The Pilots claim that, in the case at bench, the Third Appellate District adopted a "new and special rule for preemption" that conflicts with the rule stated in *O'Connell*. It is argued that this "new rule" inappropriately establishes "a higher standard for determining implied preemption when land use regulations are the subject of state action." (Pilots' Petn at 14.) Specifically, Pilots argue that the Third Appellate District "considered, seriatim, each element of the Act..." and inappropriately required an express manifestation of implied legislative intent in order to find preemption of local land use authority. (*Id.*) The Pilots contend that the Third Appellate District should have, instead, found implied preemption by examining "the whole purpose and scope of the legislative scheme." (*Id.* at 15.) Thus, the Pilots request that this Court review this case to resolve the purported conflicting rules surrounding the identification of implied preemption with respect to land use matters. However, a comparison of *O'Connell*'s principles regarding

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[9] This Court accepted review in order to resolve a conflict with the First Appellate District, which had held that a similar vehicle forfeiture ordinance was not preempted by state law. (*Horton v. City of Oakland* (2000) 82 Cal.App.4th 580.) In contrast, Pilots' Petition for Review fails to identify another appellate decision holding that the SAA preempts local land use authority: a holding that would be in direct conflict with this decision and which would warrant review by this Court.

preemption and land use, and the Third Appellate District's decision in this matter reveals that no such conflict actually exists.

The principles of preemption from *O'Connell* were discussed in the Third Appellate District's opinion in this matter, including the propositions from *Big Creek Lumber* that pertain to finding preemption over areas traditionally within the purview of local government or specifically given over to local authority. (Slip Op. at 22-32.) The Third Appellate District cites in its opinion another relevant portion of *Big Creek Lumber,* stating:

> The party claiming that general state law preempts a local ordinance has the *burden of demonstrating preemption.* [Citation] [The California Supreme Court] ha[s] been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest... The presumption against preemption accords with our more general understanding that 'it is not to be presumed that the [L]egislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by *necessary implication.*' [Citation] (Slip Op. at 25-26, emphasis added.)

The Third Appellate District applied the appropriate standards for identifying implied preemption to its review of the whole of the SAA, including the legislative history of the Act, in order to identify any portion that may necessarily imply an intent to preempt local land use authority. (Slip Op. at 32-40.) Despite its extensive review of the SAA, the Third Appellate District was unable to find any clear indication, express or implied, that the legislature, in enacting the SAA, intended to prevent local jurisdictions from making any land use decisions that could result in the closure of airports. (Slip Op. at 32)[10] Hence, the Third Appellate

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[10] As the Third Appellate District noted in its opinion: "The Airport says we must look at the SAA as a whole. (*O'Connell v. City of Stockton*, *supra*, 41 Cal. 4th 1061.) However, looking at the SAA as a whole, we do not see protection for airports against closure resulting from local land-use decisions." (Slip Op. at 32.)

District concluded that the Pilots were unable to meet the burden of establishing that the SAA preempts local land use authority. (Slip Op. at 3, 40.)

The Pilots' assertion that this case conflicts with the principles established in *O'Connell*, or that it inappropriately applies the rules of preemption as they pertain to land use regulation, is unfounded. Accordingly, this Court's review is not required to secure "uniformity of decision."

3. No Conflict Exists Between the Case at Bench and the Fourth Appellate District Court's Decision in *Desert Turf Club v. Board of Supervisors.*

At each phase of this litigation, Pilots have put forth the argument that the County Board of Supervisors' action to deny the CUP renewal request conflicts with the holding in *Desert Turf Club, supra*, 141 Cal.App.2nd 446. The Superior Court and the Third Appellate District Court both determined this argument to be unfounded and identified clear distinctions between the two cases. (TCF II:530; Slip Op. at 32-33.) Despite the repeated rejection of this argument, Pilots once again raise this alleged conflict, this time to support their claim that this Court's review is necessary. (Pilots Petn. at 15-17.) Pilots are incorrect in asserting that a conflict exists between this case and *Desert Turf Club* as these cases are factually distinguishable and, thus, this Court's review is not necessary to settle any discrepancy.

Desert Turf Club involved the Riverside County Board of Supervisors' denial, on moral grounds, of a CUP for a horse racing track and associated gambling activities. (*Desert Turf Club*, *supra*, 141 Cal.App.2d at 447-449.) The applicant appealed this denial on the grounds that the moral legitimacy of horse racing had been unequivocally legislatively determined in the California Horse Racing Act and that the county's decision directly conflicted with that Act. (*Id.*) The Fourth Appellate District agreed with the applicant and held that the issue of

the morality of horse racing had been determined by the State Legislature and, as such, the County decision was inimical to the California Horse Racing Act and preempted by state law. (*Id.* at 450-451.) As such, the matter was remanded to the Board of Supervisors with instruction to reopen the hearing on the CUP request. (*Id.* at 457.)

The Pilots generally assert that the decision in the case at bar is in direct conflict with the rationale from *Desert Turf Club*, although they fail to clearly identify why this is so. In order to align this case with *Desert Turf Club*, the Pilots appear to argue that the state has unequivocally acted through the SAA to protect airports from any infringement upon their continued operation, including the potential of closure, and thus, any action by a local jurisdiction preventing continued and unfettered operation of an existing facility is in conflict with this state protection. As stated in the Pilots' Petition:

> The Third District's decision in this case allows the County to overrule a state agency as to the continued operation of a state-permitted airport whereas the court in *Desert Turf Club* found a county preempted from overturning the decision of a state agency as to a matter within the state agency's jurisdiction. (Pilots' Petn. at 16.)

However, the Pilots argument is flawed in that, (1) it is premised on an incorrect assumption that the state fully occupied the field of all matters related to airports, including siting, and (2) it fails to reconcile the inherent conflict between language in the *Desert Turf Club* decision and the Pilots' overall argument that local zoning cannot be used to prevent a state authorized activity at a given location.[11] Each of these issues is discussed in more detail below.

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[11] The language within *Desert Turf Club* that cannot be reconciled with the Pilots' argument states: "The right to zone is by express provision of law a local matter. A board of supervisors, acting of course in good faith, may by properly adopting zoning restrictions exclude on soundly-based grounds the installation of a horse

a. The SAA does not preempt the ability of a local government to regulate the siting of airports within its jurisdiction.

The Pilots' assertion that *Desert Turf Club* stands for the proposition that local governments should be prevented from overturning the decision of a state agency on a matter within the agency's jurisdiction begs the question of the state's occupation of the field of airport siting. (Pilots' Petn. at 16.) This argument requires the presupposition that the SAA has preempted all local control over airport related land use decisions and has delegated complete control over the establishment, siting, and permitting of airports to the Department of Transportation, a state agency. In *Desert Turf Club*, in regards to the morality of horse racing and betting on the sport, the State Legislature's position in the California Horse Racing Act was unequivocal and was in direct conflict with the determination of Riverside County. (*Desert Turf Club*, *supra*, 141 Cal.App.2d at 450-451.) Conversely, on the subject of the state's occupation of the field of airport siting, no such unequivocal showing has ever been made by the Pilots nor was any intent to preempt discovered by the Third Appellate District in its extensive review of the SAA. (Slip Op. at 32; *see also, supra*, Section III.A.)

Having failed to identify any clear indication of the state's intent to preempt local regulation on the issue of airport siting, the Pilots imply that this intent can be evidenced from the state's issuance, under the SAA, of "airport permits." (Pilots' Petn. at 16-17.) The Pilots then assert that the County of Sacramento's denial of its CUP, in effect, overturns its "state-permitted" airport operation. (*Id.* at 16.) This argument implies that the state license has something to do with authorizing the location of the Airport when, in fact, the obtainment of a state operating license is only dependent upon a showing of compliance with minimum

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racing track or any other activity from those portions of the county as to which such exclusion is reasonable..." (*Desert Turf Club*, *supra*, 141 Cal.App.2d at 452.)

safety related standards. [12] (Slip Op. at 4, 28-29.) Respondents and Real Parties, in previous briefs, have expanded on the fallacies of Pilots' argument by noting that a state permit has nothing to do with establishing the appropriate location for an airport, and is entirely distinct from a local jurisdiction's grant or denial of a CUP. (Resp. Brief at 9-11.) Interestingly, the applicants in *Desert Turf Club* unsuccessfully asserted a similar argument. In response to the applicant's assertion that, having been granted a state permit to operate, the local use permit was unnecessary, the Fourth Appellate District responded:

> [T]his court cannot agree with the contentions of the appellant that the board of supervisors is wholly without jurisdiction to pass on the application, and that the permit of the State Racing Board is all that is required. (Citation) (*Desert Turf Club* at 455.)

Here, as in *Desert Turf Club*, the fact that an applicant has obtained a state permit to operate does not, by itself, indicate an intent to preempt the ability of the local land use authority from denying a CUP.

b. *Desert Turf Club* expressly recognizes a local government's power to exclude certain land uses on "soundly based grounds."

Lastly, the Pilots fail to reconcile a key portion of *Desert Turf Club's* discussion providing for a County denial of a CUP based on valid land use considerations with the facts of this case. The Third Appellate District distinguished the case at bar from *Desert Turf Club* by noting that the denial of the CUP on moral grounds, in effect, precluded horse racing in the entire county.

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[12] The Third Appellate District indicated that the Pilots called the state permit a "site" permit in its briefs to the Court of Appeal; an inserted phraseology that could be construed as deceptive. (Slip Op. at 33.) A similar argument is again being forwarded to this Court: that denial of a CUP is somehow in direct conflict with a state approved license that, presumably, must address the same issues in order to be in conflict. (Pilots Petn. at 16-17.)

(Slip Op. at 32.) Conversely, through its denial of Pilots' CUP application, the County of Sacramento prevented the operation of only one airport at a specific location. (*Id.*) The Pilots' Petition for Review treats this distinction as immaterial, but fails to explain why. (Pilots Petn. At 16.)

More importantly, the Pilots fail to reconcile language from *Desert Turf Club* regarding the county's continued ability to use its zoning power to deny the race track's CUP with their argument that Sacramento County could not deny the Airport's CUP based on proper zoning power. *Desert Turf Club* states:

> What does this holding do to the zoning ordinance? Nothing at all. The right to zone is by express provision of law a local matter. A board of supervisiors, acting of course in good faith, may by properly adopting zoning restrictions exclude on soundly-based grounds the installation of a horse racing track or any other activity from those portions of the county as to which such exclusion is reasonable..." (*Desert Turf Club*, *supra*, 141 Cal.App.2d at 452.)

The Third Appellate District identified the inherent conflict between the quoted language from *Desert Turf Club* and the arguments put forth by the Pilots, noting:

> Moreover, *Desert Turf Club* recognizes the county could properly adopt zoning restrictions excluding horse racing tracks from portions of the county where such exclusion was reasonable. (Slip Op. at 32.)

The Pilots, however, seemingly disregard the quoted language from *Desert Turf Club* that runs contrary to their entire proposition by merely stating:

> But, that observation did not change the fact that the court held that the county could not prevent horse racing *at the site in question* on moral grounds because the moral issue had already been decided by state law. (Pilots' Petn. at 16, emphasis in original.)

This statement insufficiently addresses the inherent discrepancy between *Desert Turf Club*'s recognition of a municipality's power to exclude certain land uses by zoning and the Pilots' argument that the rationale of *Desert Turf Club* should prevent a local authority from using its police power to deny a state authorized use at a given location. *Desert Turf Club* makes clear that, absent a clear legislative statement to the contrary, a local government can regulate the use of land for legitimate purposes related to its police power. The Pilots have failed to clearly explain why this rule cannot be reconciled with the case at bench. Accordingly, Pilots have not adequately demonstrated a "conflict" between these cases which requires resolution by this Court.

IV. CONCLUSION

For the foregoing reasons, the Pilots' Petition for Review should be denied.

September 2, 2008

TAYLOR & WILEY

By: 

John M. Taylor
Attorney for Respondents and Real Parties in Interest

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this brief contains 6,551 words, as counted by the Microsoft Word 2003 word-processing program used to generate this brief.

September 2, 2008 TAYLOR & WILEY

By: _____ for
John M. Taylor
Attorney for Respondents and Real Parties in Interest

PROOF OF SERVICE

Sunset Sky Ranch Pilots Assn., et al. v. County of Sacramento, et al.
Supreme Court Case No. S165861
(Court of Appeal Case No. C055224;
Sacramento County Superior Court Case No. 06CS00265)

I, Brandon Lewis, declare:

I am now and at all times mentioned herein have been over the age of eighteen years, employed in Sacramento County, California, and not a party to the within action or cause; that my business address is 2870 Gateway Oaks Drive, Suite 200, Sacramento, California 95833. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal service.

On September 2, 2008, I served a copy of the attached:

Answer to Petition for Review

X___ by placing said copies in an envelope addressed to the parties and/or their attorneys named below, which envelopes were then sealed, with postage fully prepaid thereon, and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at Sacramento, California, on the above-referenced date in the ordinary course of business.

____ by facsimile from facsimile machine telephone number (916) 929-0283, on the parties and/or their attorneys at their facsimile numbers indicated below.

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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 on September 2, 2008, at Sacramento, California.

Brandy Lewis

Brandon Lewis

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Court of Appeal Case No. C055224
(Sacramento County Superior Court Case No. 06CS00265)

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