No. S165861

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

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

v.

THE COUNTY OF SACRAMENTO, et al.
Defendants and Respondents

JOHN TAYLOR and TAYLOR & WILEY, et al.
Real Party in Interest and Respondents

After a Decision by the Court of Appeal
Third Appellate District (No. C055224)

Sacramento Superior Court (No. 06CS00265)
Hon. Jack V. Sapunor, Presiding

OPENING BRIEF ON THE MERITS

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ISSUES PRESENTED FOR REVIEW

This case presents the following issues:

(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?

INTRODUCTION

The portion of this case which has been certified for review by this Court stems from a determination by the Court of Appeal, Third Appellate District, that potential environmental impacts associated with not approving an application consisting of a request to renew an expired conditional use permit must, under the California Environmental Quality Act (CEQA), be analyzed before that proposed project may be denied. The implications of such a proposition are, of course, sweeping and would result in time consuming and potentially costly environmental analyses where none was envisioned by the Legislature. Such would especially be the case were the Court of Appeal's ruling to be extended, as it easily and logically could be, beyond its direct facts and rendered applicable to any situation where a proposed project is denied. The result would be that any denial decision, whether it be for a general plan amendment, a rezone or whatever, could only be rendered following environmental review of the impacts stemming from such a denial. The utility of such analysis would, however, be nil for the

simple reason that a denial by its very nature results in the retention of the *status quo*. Hence, what would be mandated would be analysis of that which would have occurred even if the contemplated project had never been proposed. Suffice it to say that Real Parties request that this Court clarify that, when all that is involved is a project application denial, CEQA analysis is not required. Real Parties also request that the Court clarify what constituted the actual proposed project involved in this case since that matter played a significant role in the overall resolution of the case by the Court of Appeal.

STATEMENT OF FACTS

The relevant facts pertinent to this appeal are really quite simple. On October 6, 1999, the Sacramento County Board of Supervisors (Board) approved a conditional use permit (CUP) for the Sunset Sky Ranch Airport (Airport), an existing facility, for a period of five years. [1] (AR 1:007.)[2] On September 22, 2004,

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[1] In granting the 1999 CUP with a specified five-year term limit, the Board evidenced its intent to have all airport activities cease upon the expiration of the term. (AR 1:143-147, see also) The intention not to grant permit renewal after the five-year term was also recalled during the 2005 renewal hearings by Supervisors Collin and Dickinson, two supervisors who had voted on the 1999 CUP. (AR 8:907-915.) This intent is further supported by a condition of approval on the 1999 CUP that requires the airport operator to inform all pilots intending to install improvements of the term of the use permit, "including the expiration date." (AR 1:145.)

[2] Citations to the Administrative Record are designated by the acronym "AR" followed by the volume and page number(s) in the following format: "AR [volume]:[page]." Additionally, 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)]."

Appellants, the Airport Pilots' Association (Appellants), applied for renewal of the 1999 CUP, which subsequently expired by virtue of the five year termination provision on October 6, 2004. (*Id.*) Despite the expiration of the CUP, the County of Sacramento (County) allowed the illegal Airport to remain in operation pending the outcome of the renewal request. A final decision was rendered regarding that request when the Board, by a vote of 4 to 1, chose to deny the Airport's application. (AR 8:931-936, 8:971-972.) The result was that Appellants were left without a valid CUP required to legally operate, which was no different than the already existing situation due to the expired nature of the previously issued permit. The County was then in a position, as it actually had been since the previously issued permit had expired, to commence a zoning code enforcement action to close down the illegally operating airport.[3] To date, no such enforcement action has been commenced, although the County could clearly do so at any time due to the illegal nature of the operation being conducted.

The fact that all that was involved in this case was whether to renew an already expired CUP cannot be overemphasized. This realization is significant because the Court of Appeal mistakenly characterized the Board's decision as an

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[3] See Zoning Code of Sac. County, Title II, Chapter 1 § 201-02 (containing Residential/Open Space Land Use Table which notes that airports are allowed in the AG-80 zone "subject to the issuance of a use permit by the appropriate authority"); *id.*, Chapter 15 § 115-01 (discussing power of zoning administrator to order correction of zoning violations); *id.*, Chapter 15 § 115-08 (discussing power of zoning administrator to commence an abatement action for zoning violations). Copies of these portions of the Zoning Code are attached as Exhibit A pursuant to Rule of Court 8.520(h).

affirmative decision to close the Airport, which clearly was not the action taken. (*Sunset Skyranch Pilots Assn. v. County of Sacramento* (Third Appellate District Case No. C055224, review granted October 1, 2008) at 42-44, hereinafter "Slip Op.")[4] In fact, the record of the proceedings before the Board contains ample supporting documentation that the *sole* issue before them was whether to renew an already expired CUP to operate a private airport, not whether to close that airport. As the record reveals:

- The application, submitted by the Pilots' Association, was for a "special use permit for airport." (AR 3:306.)

- An attachment to the County's Planning Department Application Information Form indicated that "The owner of the Sunset Skyranch Airport (Daniel Lang) and the Sunset Ranch Pilots Association (operator) are attempting to renew their existing use permit ..." (AR 3:308.)

- Airport owner Danny Lang's letter authorizing other pilots to act as his agent(s) indicated that authorization was being granted "to sign as Agent ... with regard to any/all documents needed for Renewal Application for the Use Permit for a Public Use Airport..." (AR 3:309.)

- The Planning Department's staff report and referral to the Project Planning Commission indicated the request was for "A Renewal of the Use Permit to allow the continued operation of a privately owned public-use airport..." (AR 1:128.)

- The Proof of Publication of Notice for the Board's hearing referred to "... a Use Permit to allow the continued operation of a privately owned public-use airport..." (AR 1:096.)

- In its findings in support of its decision, the Board indicated that its decision "...is not a revocation of an existing use permit, but rather

[4] A copy of the slip opinion is attached to Real Parties' Petition for Review, filed August 11, 2008.

merely a decision not to renew a use that has already expired." The action was specifically referred to as "a decision not to re-grant a permit." (AR1:008.)

- The Action Summary reflecting the Board of Supervisors decision made reference only to the fact that it had "granted the appeal and denied the Use Permit." (AR 1:004, 051.)

The Board then was concerned, at its hearing, only with whether to renew the previously expired CUP, not whether to close an airport which was already operating illegally. Instead, that would occur, if at all, through the normal enforcement process arising from the expiration of the previously issued permit containing the five-year termination provision. (See Zoning Code of Sac. County, Title II, Chapter 15 § 115-08 (discussing power of zoning administrator to commence an abatement action for zoning violations), attached as Exhibit A.) No such enforcement action was, however, taken at the time the Board elected to deny the requested use permit renewal since that issue had not yet been, and still has not been, presented for consideration.

STATEMENT OF THE CASE

On February 24, 2006, Appellants, the Airport Pilots' Association, filed a Petition for Writ of Mandate and Complaint for Injunctive Relief in the Sacramento County Superior Court contending, among other things, that the Board violated CEQA when it elected not to renew the CUP for the Airport. (TCF I: 7:19-13:5.) The Superior Court resolved this claim, and all others put forth by the Appellants, in favor of the Respondents. (TCF II:534-535.) Appellants appealed this decision to the Court of Appeal, Third Appellate District. (TCF II:559.)

On July 2, 2008, after briefing by the parties and oral argument, the Court of Appeal issued an opinion affirming the Superior Court's decision on all grounds with the exception of Appellants' CEQA claims. The Court held that the Board's denial of the Airport's CUP renewal request was a "project" requiring CEQA review. Specifically, the Court stated that the Board's decision did not involve "mere denial of a project" but rather "denial of a CUP renewal that would indisputably result in *closure* of an airport." (*Id.*, emphasis added.) The Court found that the denial of the CUP, coupled with the County's stated intent to enforce its zoning code with respect to the property,[5] constituted a "closure" which had the potential to cause physical change to the environment. As such, the Court concluded that the Board should have complied with CEQA by at least preparing

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[5] The Court of Appeal appears to characterize a discussion between the Board and County staff regarding the timeline for cessation of Airport operations as a formal "action" taken by the Board to enforce the County's zoning code. In this regard, the Court of Appeal notes:

> 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. (Slip Op. at 45, emphasis added.)

In reality, the Board did not formally express an "intent to enforce its zoning code." Rather, the referenced discussion between the Board and County staff simply reflects the County's usual course of action for dealing with illegal uses in a certain zone. As Robert Sherry, the County's Planning Director stated:

> Once your action becomes final, the Sunset Skyranch will no longer be a legal use, and Code Enforcement would then be *obligated* to enforce our ordinances. (AR 8:964-965, emphasis added.)

an initial study prior to denying the CUP application. (*Id.* at 44-45.) Accordingly, the Court remanded the matter to the trial court with directions to order the County to undertake such study. (*Id.* at 42.)

ARGUMENT

CEQA is a comprehensive legislative scheme designed to provide long-term protection to the environment. (Pub. Resources Code, § 21001, subd. (d); *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112 (*Mountain Lion Foundation*).) In order to ensure that public agencies inform their actions with environmental considerations at the forefront, CEQA, its implementing administrative regulations (CEQA Guidelines) and the cases of this court establish a three-tier process of review. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th 372, 379-380 (*Muzzy Ranch*); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74 (*No Oil*).) The first tier is jurisdictional, requiring that an agency conduct a preliminary review to determine whether an activity is subject to CEQA. (Cal. Code Regs., tit. 14, § 15060 (CEQA Guidelines).) An activity that does not meet the definition of a "project" falls outside of the jurisdictional scope of the Act and is, thus, not subject to CEQA. (CEQA Guidelines, § 15060, subd. (c)(3); see Pub. Resources Code, § 21065; CEQA Guidelines, § 15378.) If an agency determines an activity to be a "project" subject to CEQA, the agency proceeds to the second tier, which identifies activities that are exempt from CEQA review. Exemptions may be either statutory (Pub. Resources Code, § 21080, subd. (b)(1)-(15)) or categorical (CEQA

Guidelines, § 15300 *et seq.*). "If a public agency properly finds that a project is exempt from CEQA, no further environmental review is necessary." (*Muzzy Ranch*, *supra*, 41 Cal. 4th at 380; *No Oil*, *supra*, 13 Cal.3d at 74.) Finally, if the agency's activity is determined to be jurisdictionally subject to CEQA and is not otherwise exempt from the Act, a third tier of review requires preparation of an initial study and then an EIR if approval of a project may cause a significant effect or effects on the environment. (*Laurel Heights Improvement Assn. v. Regents of the University of Cal.* (1988) 47 Cal.3d 376, 390 (*Laurel Heights I*).)

The issues presented by the Real Parties in this case relate to the Court of Appeal's holdings pursuant to the first and second tiers of the CEQA review process. Under the first tier analysis, Real Parties submit that the denial of a use permit by a public agency is not a "project" within the jurisdictional scope of CEQA. (See *infra* Section A.) With respect to the second tier, Real Parties propose that, even if an agency's denial of a use permit may properly be considered a "project" for CEQA purposes, the denial is, nevertheless, statutorily exempt from CEQA and, thus, no environmental analysis of the disapproval is required under the Act. (Pub. Resources Code, § 21080(b)(5); see also CEQA Guidelines, § 15270; see *infra* Section B.)

A. No CEQA Compliance Was Required Because The Proposed Project Was Denied And Thus Was Not A "Project" For CEQA Purposes.

The conclusion reached by the Court of Appeal was that CEQA analysis, consisting of at least an initial study, was required before the Board decided not to

renew the expired CUP and that the Board failed to undertake such analysis. (Slip Op. at 45.) As a result, the Court of Appeal concluded that the Board acted illegally in denying the requested CUP extension. (*Id.*) It is, however, well established that CEQA applies only to "projects" as defined by the Act and that applications for projects that are denied do not come within that threshold definition. (*Muzzy Ranch, supra*, 41 Cal. 4th 372, 380 (stating that CEQA applies only to activities that meet the definition of "project"); see also *Main San Gabriel Basin Watermaster v. State Water Resources Control Bd.* (1993) 12 Cal.App.4th 1371, 1380 (*Main San Gabriel*) (for the proposition that a proposed activity that is not approved by the agency is not by definition a "project" for purposes of CEQA).) As such, no CEQA analysis was required before the Board acted to deny the requested entitlement and accordingly the contrary conclusion advanced by the Court of Appeal was in error.

A simple review of the definition of "project" employed in CEQA amply and unequivocally illustrates the scope of coverage the Legislature intended when CEQA was enacted.[6] That definition indicates that a project is:

> ". . . an activity which may cause either direct, physical change in the environment, or a reasonably

[6] "[I]f statutory language is "clear and unambiguous there is no need for construction, and courts should not indulge in it." (*Solberg* v. *Superior Court* (1977) 19 Cal.3d 182, 198.) Unless defendants can demonstrate that the natural and customary import of the statute's language is either 'repugnant to the general purview of the act,' or for some other compelling reason, should be disregarded, this court must give effect to the statute's 'plain meaning.' [Citation.]" (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal. 3d 211, 218-219; see also *Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 256.)

> indirect change in the environment and which is any of the following: (a) An activity directly undertaken by any public agency. (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (c) An activity that involves the *issuance* to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (Pub. Resources Code, § 21065, emphasis added.)

Here, we are concerned only with Public Resources Code section 21065, subdivision (c), as this was a private party application requesting that the County issue a CUP renewal.[7] Significantly, in this case, no entitlement was issued for the operation of the Airport since the requested CUP was denied. As a result, the threshold jurisdictional invocation of the Act's requirements was not met, with the byproduct being no environmental analysis was required. Put simply, the Court of Appeal's decision to the contrary flies in the face of the clear and unequivocal language contained in the Act itself and is, therefore, not supportable. Little additional analysis on this question is accordingly required or necessary.

Nonetheless, it is useful to note briefly that the CEQA Guidelines as well as relevant past cases support the proposition that an application's denial is not a

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[7] Public Resources Code § 21065 subdivision (a) applies to situations where the action is an agency initiated project, such as an affirmative decision to approve a County-wide Habitat Conservation Plan; subdivision (b) applies when the agency financially assists in an action, such as a County determination to subsidize the development of affordable housing; subdivision (c) applies to private party activities that require the issuance of at least one or more agency entitlements, such as a County issuance of a use permit.

"project" for which CEQA analysis is required. As CEQA Guidelines § 15378(c) indicates:

> "The term 'project' refers to the activity which is being *approved* and which may be subject to several discretionary approvals by government agencies." (Emphasis added.)

Clearly, where no approval is being granted, as was the situation in this case, the requirements of this definition have not been met and, as a result, environmental analysis is not required. Similarly, past cases indicate that:

- "The CEQA requirements apply to discretionary projects carried out or *approved* by public agencies, including *enacting* and amending zoning ordinances, *issuance* of conditional use permits, and *approving* tentative subdivision maps (cite)..." (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 185; emphasis added.) All of which require some affirmative act by the agency.

- "CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, before it *approves* that project." (*No Oil, supra*, 13 Cal.3d 68, 79; *Village Laguna of Laguna Beach, Inc.* v. *Bd. of Supervisors* (1982) 134 Cal.App.3d 1022, 1026, emphasis added.)

- CEQA requires environmental analysis before an agency *approves* a project. "This requirement is obvious in several sections of CEQA... The Guidelines provide even more explicitly that "*Before granting any approval* of a project subject to CEQA, every lead agency . . . shall consider a final EIR . . . ." (Guidelines, § 15004 subd. (a), italics added.) A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project..." (*Laurel Heights I, supra*, 47 Cal. 3d 376, 394.)

- "[The] provisions of CEQA leave little doubt that the requirement of an EIR is not even triggered unless a public agency *proposes to carry out or approve* a project which may have significant effect on the environment." (*Main San Gabriel,* 12 Cal.App.4th 1371, 1380, emphasis in original.)

- The need for an EIR and the analysis of feasible mitigation measures to avoid or lessen significant effects is only triggered when there is approval of a project. Sections of CEQA requiring environmental analysis do not directly involve situations where the public agency has denied the project. (*Native Sun/Lyon Communities v City of Escondido* (1993)15 Cal.App.4th 892, 906-907.)

Finally, it is worth observing that CEQA analysis for a project denial would serve no useful role in advancing the purposes of the Act. The reality is that CEQA was intended to make sure that decision makers are aware of the potential environmental consequences of their decisions before acting. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 254-256.)[8] Where no action is being taken as would be the situation with the denial of a project application, there will be no environmental consequences about which decision makers need to be informed since a denial will simply result in the retention of the *status quo*. As one court has noted:

> "CEQA requires an environmental evaluation if an action potentially results in a physical change in the environment. The decision *not* to go forward would not cause a significant change in the environment. (*City of National City v. State of Cal.* (1983) 140 Cal.App.3d 598, 602.)

[8] As this Court had noted, "[t]he purpose of CEQA is not to generate paper but to compel government at all levels to make decisions with environmental consequences in mind." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, *quoting Bozung v. Local Agency Formation Com'n* (1975) 13 Cal.3d 263, 283.)

It is accordingly only where an affirmative act is involved that environmental analysis is useful, an understanding which is clearly and wisely reflected in the Act itself, the CEQA Guidelines and the established case law.

B. Even If The Proposed Project Was A "Project" For CEQA Purposes, It Was Nonetheless Statutorily Exempt From CEQA Compliance.

Even if the proposed CUP renewal was a "project" for jurisdictional CEQA purposes, environmental review as mandated by the Act was nonetheless not required because project denials are statutorily exempt from such analysis pursuant to Public Resources Code Section 21080(b)(5). That provision expressly declares that proposed "[p]rojects which a public agency rejects or disapproves" are statutorily exempt from CEQA, meaning that no CEQA compliance is required. (Pub. Resources Code, §21080(b)(5).) This position is further reflected in the CEQA Guidelines at Section 15270(a), wherein it is declared that:

> CEQA does not apply to projects which a public agency rejects or disapproves. (CEQA Guidelines, §15270(a), found within Article 18: Statutory Exemptions.)

Interestingly enough, the Agency Discussion following this Guideline provides that:

> This section identifies and interprets the exemption for disapprovals. This exemption was originally added to CEQA to clarify that a public agency could turn down a permit application without first preparing an EIR or negative declaration. (See "Discussion" following CEQA Guidelines §15270.)

And, as has been observed by the Court of Appeal, Second Appellate District:

> Considered in pari material (*County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526]), these and other provisions of CEQA leave little doubt that the requirement of an EIR is not even triggered unless a public agency *proposes to carry out or approve* a project which may have a significant effect on the environment. Any lingering doubt about the Legislature's intent is expunged by Public Resources Code section 21080, subdivision (b)(5), which expressly declares that CEQA *does not apply* to "[p]rojects which a public agency rejects or diapproves." Section 15270, subdivision (a) of the CEQA Guidelines (Cal Code Regs., tit. 14) echoes subdivision (b)(5) of Public Resources Code section 21080, stating: "CEQA does not apply to projects which a public agency rejects or disapproves."
>
> (*Main San Gabriel, supra,* 12 Cal.App.4th 1371, 1380)

Given these clear statements, there can be no doubt that the Board's action in denying the requested CUP renewal was statutorily exempt from CEQA pursuant to Public Resources Code Section 21080 since it involved a "disapproval."[9] The language of that section and corresponding Guideline leave no room for contesting

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[9] Statutory exemptions do not have to be in harmony with the underlying objectives of CEQA; the Legislature may have had other policy goals in mind in deciding to exempt certain acts. "[T]he statutory exemptions have in common only this: the *Legislature* determined that each promoted an interest important enough to justify foregoing the benefits of environmental review." (*Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 381-382.) This court does not sit in review of the Legislature's wisdom in balancing these policies against the goal of environmental protection because, no matter how important the original purpose, CEQA remains a legislative act, subject to legislative limitations and legislative amendments." (*Id.* at 376.)

this conclusion and, as such, we respectfully request that the Court of Appeals contrary conclusion accordingly be determined to be erroneous.[10]

C. The Court Of Appeal Erroneously Recast The Proposed Project Denied By The Board Of Supervisors So As To Render It An Affirmative Decision To Close The Airport.

The law is abundantly clear that denied proposed projects need not undergo CEQA mandated analysis. (See *infra* Sections A and B.) Despite this fact, the Court of Appeal rendered a decision wherein it concluded that CEQA had been violated due to the County's failure to undertake CEQA mandated environmental analysis prior to denying a request to renew an expired CUP. (Slip Op. at 45.) What explains this strange result? These statements do:

> However, this case does not involve mere denial of a project but denial of a CUP renewal that would

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[10] In its opinion in this case, the Third Appellate District relied upon t cases involving the use of categorical exemptions in CEQA: *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356; *Assn. for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629; and *Muzzy Ranch, supra,* 41 Cal.App.4th 372. It should be noted that the use of statutory exemptions such as the one provided in Public Resources Code § 21080(b)(5) differs from the use of categorical exemptions provided in CEQA Guidelines §§ 15301 – 15333. If a public agency finds that a project is subject to a statutory exemption, then no further analysis is required. (CEQA Guidelines, § 15061(b)(1).) In contrast, if the agency finds that a project falls within a categorical exemption, it may still be required to conduct environmental review to ensure that the project does not have the potential to result in significant environmental impacts. (CEQA Guidelines §§ 15061(b)(2), 15300.2.) Thus, the use of a categorical exemption from CEQA can be rebutted by substantial evidence of the potential for significant environmental effects, whereas a statutory exemption cannot be rebutted. For that reason, the Third Appellate District erroneously relied upon CEQA case law involving the use of categorical exemptions in rendering its decision in this case, which involved the use of a statutory exemption.

> *indisputably result in closure* of an airport.... (*Id.* at 42, emphasis added.)
>
> Here, the County's action in denying the permit has the *undisputed practical effect of closing* the Airport. (*Id.* at 44, emphasis added.)
>
> Here, there has been no CEQA review regarding *closure* of the Airport . . .. (*Id.* at 42, emphasis added.)

As these statements indicate, the Court decided that the Board's action was something other than what actually occurred, i.e., that it involved an affirmative decision to close the Airport as opposed to a decision to deny a CUP extension request. To the Court of Appeal then the proposed project included closure of the Airport, not simply whether to grant renewal of an expired CUP. The record of the Board's proceedings does not though support this "turning of an apple into an orange" by the Court of Appeal and it should not be condoned by this Court.[11] The reality is that all the Board did was deny a proposed project consisting of renewal of an expired CUP, nothing more and nothing less.[12]

D. The "Whole Of The Project" Doctrine Should Not Be Employed, As Was Done By The Court of Appeal, So As To Include "Closure" With The Proposed Project.

Nor should this Court accept the Court of Appeal's notion that closure was part of the proposed project based upon the doctrine that a CEQA project means

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[11] See *supra* at pages 4-5 for citations to the record of the proceedings which document that the *sole* issue before the Board was whether to renew an already expired CUP to operate a private airport, not whether to close that airport.

[12] The question of what constitutes the "project" in this case is a question of law which this Court may review de novo. (*Muzzy Ranch*, *supra*, 41 Cal.4th 372, 381.) Thus, this Court is not bound by the determination of the Court of Appeal.

the "whole of the action." (Slip Op. at 41.) Under that doctrine, courts have quite legitimately concluded that, *when a project is approved or proposed to be carried out by a public agency*, the CEQA analysis must examine the potential environmental impacts stemming from the complete project and not just a segmented portion of the proposal. (See, e.g., *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 270 (*Bozung*) (CEQA review required for approval of annexation ordinance); *Laurel Heights I, supra*, 47 Cal.3d 376, 399; *McQueen v. Bd. of Directors of the Mid-Peninsula Regional Open Space Dist.* (1988) 202 Cal.App.3d 1136, 1147 (CEQA "project" included the agency's purchase of property plus its approval of an "interim use and management plan.") The intent is to ensure that all potential impacts stemming from a project approval are fully described and that no such impacts are overlooked because the full project was not considered. (See *Bozung, supra*, 13 Cal.3d 263, 283-284; *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.)[13] That certainly was the guiding intent behind the two "whole of the project" cases cited by the Court of Appeal, both of which involved project approvals where only a portion of the actual project had been considered. (Slip Op. at 43.)[14] That,

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[13] These cases note that CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung, supra*, 13 Cal.3d at 270; *Burbank-Glendale-Pasadena Airport Authority, supra*, 233 Cal.App.3d at 592.)

[14] Neither case cited by the Court of Appeal is analogous to the case at bench. The first case, *Association for a Cleaner Environment v. Yosemite Community College District (ACE)*, involved a vote by a community college district to close and

however, was not the case in this situation for the simple reason that no approval was ever granted,[15] with the result being that no action was taken. To now conclude, as does the Court of Appeal, that under such circumstances, because of the doctrine of "whole of the project", a proposed project may not be denied absent CEQA compliance involves a marked and unprecedented extension of the

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remove a shooting range at one of its campuses and to transfer classes to a new site. (*ACE*, *supra*, (2004) 116 Cal.App.4th 629, 633-634.) The Fifth Appellate District concluded that these approval activities were part of a "single, coordinated endeavor" which constituted the "whole of the action" to be considered for purposes of determining the existence of a CEQA "project." (*Id.* at 639.) The second case cited by the Court of Appeal, *San Lorenzo Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (*San Lorenzo*), involved a similar situation. (*San Lorenzo*, *supra*, (2006) 139 Cal.App.4th 1356.) In that case, a school district voted to close two of its elementary schools and transfer students from those two schools to other campuses within the district. (*Id.* at 1368.) Like the Fifth Appellate District in *ACE*, the Sixth Appellate District concluded that the "project" at issue involved the entire "consolidation decision" (*i.e.*, both the decision *approving* closure of schools and the decision to transfer students). (*Id.* at 1380.)

[15] Any doubt that the "whole of the project" doctrine applies only to projects which are approved is eliminated by examining the definition of "project" in the CEQA Guidelines. That definition provides, in relevant part:

> (a) "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 change in the environment...
>
> (c) The term "project" refers to the activity *which is being approved* and which may be subject to several discretionary *approvals* by governmental agencies. The term "project" does not mean each separate governmental *approval*.

(CEQA Guidelines, § 15378, subd. (a) and (c), emphasis added.)

law which should be avoided by this Court.[16] Certainly no court has so held before and presumably for good reason.

At its core, the "whole of the project" position contained in the decision rendered by the Court of Appeal is that any impacts which may "result" from a decision to deny a proposed project must be analyzed pursuant to CEQA. (Slip Op. at 45.) Failure to do so, according to the Court of Appeal, results in a violation of the doctrine that "the whole of the project" must be analyzed. As the Court of Appeal noted in a key passage:

> However, this case does not involve mere denial of a project, but denial of a CUP renewal that would indisputably *result in* closure of an airport....(*Id.* at 42, emphasis added.)

The conclusion advanced, and upon which the Court of Appeal's decision hinges, then is that, if a proposed project denial will lead to some result, then the environmental impacts associated with that result must be analyzed in order to avoid violating CEQA.[17] Such is the case even though the actual decision

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[16] The authority of an appellate court to determine the scope of the "project" under review is well-settled. As a recent case notes: "...the question concerning which acts constitute the 'whole of an action' for purposes of Guidelines section 15378 is a question of law that appellate courts independently decide based on the undisputed facts in the record."(*Tuolumne Co. Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1224.)

[17] The Court of Appeal's use of the doctrine of "whole of a project" to overcome the statutory exemption for denials by virtue of a finding that it may have environmental impacts is contrary to the Act. "[I]t defeats the very purpose of the [statutory] exemption to apply it only to projects that will have no significant environmental effects. The determination that "a project may have a significant effect on the environment" is the finding that, absent an exemption, ordinarily

rendered by the public agency, standing by itself, will not lead to that result and even if that result would have occurred had the proposed project never been put forward by the applicant.

Obviously, the ramifications of this rule, if accepted by this Court, are sweeping, especially because attempts will soon be made to extend it beyond the precise facts contained in this case. Critically important, for this Court to consider, is that there is virtually no denial decision which will not lead to some result with potential environmental impacts, all of which the Court of Appeal indicates must be analyzed to comply with CEQA. The possibilities are limitless. As the Real Party in Interest indicated in its Petition for Review:

> It is difficult to imagine any situation in which a public agency's denial of a proposed project would not result in any environmental impacts. For every permit that is not granted, there will be some consequence of that denial. In the case presented for review, the Third Appellate District determined that denial of the CUP renewal may result in the "transfer of pilots to other airports" and, via inference, the addition of air and roadway traffic impacts associated with the transfer to other airports. (Slip Opinion at 43.) In *Main San Gabriel*, it was similarly argued that denial would result in "highway degradation, traffic congestion, fuel consumption and air pollution." (*Main San Gabriel, supra*, 12 Cal.App.4th at 1383.) Likewise it is easy to envision a broad array of other secondary environmental impacts that could be associated with other project denials by State and local agencies. For instance, if the California Coastal Commission denies

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triggers the environmental review process. (Pub. Resources Code, § 21082.2, subd. (a).) It is precisely to avoid that burden for an entire class of projects that the Legislature has enacted the exemption." (*Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 381.)

> a Coastal Permit for an ocean water desalination plant which produces drinking water, more water will be consumed from either surface or groundwater sources, potentially affecting endangered species such as salmon, steelhead, trout, and the Delta Smelt. Taken one step further, the project denial could lead to increased aridity in the watershed thereby increasing the risk of catastrophic fire. If a Regional Air Quality Management District denies an applicant an Authority to Construct or an Operating Permit for the equipment associated with production of concrete or asphalt, the development industry's demand for those products must be met elsewhere. Consequently, the air pollution associated with production of these products will simply be shifted to other supply locations, potentially resulting in further hauling distances. And if the Integrated Waste Management Board denies a landfill operations permit, waste does not cease to be produced but must instead be transported and disposed of at an alternative facility resulting in traffic impacts, air quality impacts, noise impacts, and aesthetic impacts. In each of these situations, and in nearly any example that can be imagined, project denials have potentially significant environmental implications. However, prior to the Third Appellate District Court's decision in the case presented for review, public agencies were not viewed as being required to analyze the potential significant impacts associated with projects that are not approved. (*Main San Gabriel*, *supra*, 12 Cal.App.4th at 1383-1384; Remy, et al., [Guide to CEQA (11th ed. 2007)] p. 75; Kostka and Zischke, [Practice Under the California Environmental Quality Act (2nd ed.)] § 5.12.) Now presumably they are required to do so.
>
> (Real Parties' Petn. for Review at 10-11.)

Clearly, the sweeping implications of the Court of Appeal's position should be avoided, especially since the rule enunciated will be cited in new and extended

fact situations, all of which will result in substantial and costly CEQA compliance never envisioned by the Legislature nor mandated by any other court.

CONCLUSION

The Real Party in Interest respectfully requests that this Court, for the reasons delineated in this Brief. render the following determinations:

1. That the CUP renewal request denied by the Board was not a project for CEQA purposes and hence no environmental review was required before denial occurred;

2. That the CUP renewal request denied by the Board was statutorily exempt from CEQA and hence no environmental review as required before denial occurred;

3. That the proposed project which the Board chose not to approve consisted solely of a request to renew an already expired CUP; and

4. That "the whole of the project" doctrine does not mandate that "closure" be viewed as part of the proposed project denied by the Board.

October 31, 2008 TAYLOR & WILEY

By: Matthew Kearley for
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CERTIFICATE OF WORD COUNT

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

The text of this brief contains 6,542 words, as counted by the Microsoft Word 2003 word-processing program used to generate this brief.

October 31, 2008 TAYLOR & WILEY

By: Matthew Kearney for
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EXHIBIT A:

Sacramento County Zoning Code Sections

CHAPTER 1: RESIDENTIAL-OPEN SPACE LAND USE TABLE

ARTICLE 1: PURPOSE

201-01. Purpose

The purpose of the Residential-Open Space Land Use Table is to designate the uses permitted within each of the following zones, subject to the development standards for such uses set forth in Title III of this Code.

(a) **AG-160 PERMANENT AGRICULTURAL-EXTENSIVE LAND USE ZONE** as further regulated in Chapter 5, Article 1.5 of this Title.

(b) **AG-80 PERMANENT AGRICULTURAL-EXTENSIVE LAND USE ZONE** as further regulated in Chapter 5, Article 2 of this Title.

(c) **AG-40 PERMANENT AGRICULTURAL INTENSIVE LAND USE ZONE** as further regulated in Chapter 5, Article 2.5 of this Title.

(d) **AG-20 PERMANENT AGRICULTURAL INTENSIVE LAND USE ZONE** as further regulated in Chapter 5, Article 3 of this Title.

(e) **UR URBAN RESERVE LAND USE ZONE** as further regulated in Chapter 5, Article 4 of this Title.

(f) **IR INDUSTRIAL RESERVE LAND USE ZONE** as further regulated in Chapter 5, Article 5 of this Title.

(g) **AR-10 AGRICULTURAL-RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 10, Article 2 of this Title.

(h) **AR-5 AGRICULTURAL-RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 10, Article 3 of this Title.

(i) **AR-2 AGRICULTURAL-RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 10, Article 4 of this Title.

(j) **AR-1 AGRICULTURAL-RESIDENTIAL LAND USE ZONE**, as further regulated in Chapter 10, Article 5 of this Title.

(k) **RD-1 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 2 of this Title.

(l) **RD-2 RESIDENTIAL LAND USE ZONE**, as further regulated in Chapter 15, Article 3 of this Title.

(m) **RD-3 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 4 of this Title.

(n) **RD-4 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 5 of this Title.

(o) **RD-5 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 6 of this Title.

(p) **RD-7 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 6.5 of this Title.

(q) **RD-10 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 7 of this Title.

(q.1) **RD-15 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 7.5 of this Title.

(r) **RD-20 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 8 of this Title.

(r.1) **RD-25 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 8.5 of this Title.

(s) **RD-30 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 9 of this Title.

(t) **RD-40 RESIDENTIAL LAND USE ZONE** as further regulated in Chapter 15, Article 10 of this Title.

(u) (DELETED)

(v) **RM-2 MOBILEHOME SUBDIVISION LAND USE ZONE** as further regulated in Chapter 15, Article 12 of this Title.

(w) **RR RECREATION RESERVE LAND USE ZONE** as further regulated in Chapter 20, Article 2 of this Title.

(x) **"O" RECREATION LAND USE ZONE** as further regulated in Chapter 20, Article 3 of this Title.

201-02. Table I

Permitted Uses Within the Buildable Area of Residential-Open Space Lots. A X indicates that the described use is permitted in the zone represented by the symbol appearing at the top of the column. A number indicates that the described use is permitted in that zone upon compliance and maintenance of the special condition referenced by the corresponding number in Section 201-04 of this Article. The special condition requirements shall be in addition to all other requirements of this Code and any other Ordinance governing the described use. (Board adopted February 10, 1988) (Amended 3/24/99) (Revised 4/26/2000) (Amended 2/14/01) (Amended 4/17/02) (Amended 8/10/05).

TABLE I

PERMITTED USES WITHIN THE BUILDABLE AREA OF RESIDENTIAL-OPEN SPACE LOTS

	USES	AG-160	AG-80	AG-40	AG-20	UR	IR	AR-10	AR-5	AR-2	AR-1	RD-1	RD-2	RD-3	RD-4	RD-5	RD-7	RD-10	RD-15/20	RD-25/30	RD-40	(MHP)	RM-2	RR	O	DW
D. Institutional (continued)																										
24	Other Private Schools	13	13	13	13	13		13	13	13	13	12	12	12	12	12	12	12	12	12	12	12	12	12		
30	Buildings and Facilities owned by the Federal and State Governments, and located on grounds owned by the Federal and State Governments **(Reference Section 101-11)**	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
31	Public and Government-Owned Buildings and Facilities, Federal and State **(Reference Section 101-11)**	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	
32	Public and Government Uses, Other Than Federal and State, Within Privately-Owned Buildings, Facilities and Grounds **(Reference Section 101-11)**	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	
32.5	Federal and State Uses Within Privately-Owned Buildings, Facilities and Grounds **(Reference Section 101-11)**	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23	23
33	Privately-Owned Uses Within Public and Government-Owned Buildings, Facilities and Grounds **(Reference Section 101-11)**	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	
34	Airport (See Section 130-09.5)	12	12	12	12	12	12	12	12	12	12													12	12	
35	Private Landing Strip for Sole Use of Landowner	12	12	12	12																					
36	Public Utilities and Public Service Facilities	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	
E. Recreational																										
1	Public Parks and Ancillary Uses	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
2	Recreational Uses Oriented to the Waterways in the Delta as Regulated by Title II, Chapter 35 Article 8																									28
3	Recreation Travel Trailer Parks																					13		12	12	28
4	Hunting Clubs, Gun Clubs, Shooting Clubs	13	13	13	13	13	13																	12	12	
5	Boat Docks Private	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	28
6	Boat Harbors, Marinas and Incidental Accessory Uses																							12	12	28
7	Stadiums and Race Tracks																								12	
8	Other Outdoor Recreation Facilities	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	31	
9	Hobby Repair of Farm Equipment for Personal Use of Resident	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32										
F. Miscellaneous																										
1	Special Permits	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
2	Gas or Oil Well (Section 301-19)	X	X	X	X	13	13	12	12	12	12													12	12	
3	Food Processing Industry	8	8	8	8	8	8																			
4	Surface Mining	37	37	37	37	37	37	37	37																37	37

(Amended 3/24/1999) (Amended 4/17/2002)

(6) Permitted for projects not to exceed three (3) gross acres in size subject to issuance of a conditional use permit by the appropriate authority and the findings required by Sections 110-30 and 110-31. Beauty salon/barbershops are permitted in multi-family projects, regardless of size, where they are clearly incidental to the project, don't advertise off-site, and are only for the convenience of the residents of the project in which they are located.

(7) Special Development Permit: Any use or combination of uses permitted in the basic land use zone in which the proposed project is located may be developed as a Special Development subject to the issuance of a special permit by the appropriate authority in accordance with the provisions of Title I, Chapter 10, Article 6 of this Code.

(8) Permitted provided that an (FP) Food Processing Combining Zone has been established and a conditional use permit has been issued by the Board upon a recommendation by the Planning Commission, subject to the provisions of Sections 235-100 through 235-120.

(9) Permitted on a lot with a minimum net area of 20,000 square feet subject to the provisions of Title III, Chapter 10, Article 2.

(10) Permitted on a lot with a minimum net area of three (3) acres subject to the provisions of Section 310-14.

(11) Home occupations are permitted as regulated in Title III, Chapter 5, Article 8 (Sections 305-200 through 305-204), except the home occupation must be conducted completely within the mobilehome and not within accessory structures or open yard areas. Structural alterations to mobilehomes located in mobilehome parks must be processed through the appropriate State agency and any approval by the County to conduct a home occupation is not to be taken as an approval of any proposed or needed structural or design alteration of the mobilehome. Similarly, approval by the State to remodel a mobilehome for purpose of a home occupation is not to be taken as approval of a home occupation business license. (Amended 11/90)

(12) Permitted subject to the issuance of a conditional use permit by the appropriate authority.

(13) Permitted subject to issuance of a conditional use permit by the Zoning Administrator. Where the application is for churches exceeding 150 person seating capacity, private schools exceeding 100 students, indoor recreation facilities over 500 person maximum occupancy, theatres exceeding a total seating capacity of 500 or containing more than four (4) screens, or day care centers exceeding 36 children or adults the Project Planning Commission shall be the appropriate authority. Residential Care Homes for which a State License is pending for more than six children, but not more than eight children, prior to the effective date of this ordinance, shall be exempt from the requirement for a conditional use permit. (Amended 1993) (Amended 2/14/01)

(14) Permitted not to exceed twenty (20) persons receiving care. Permitted for over twenty (20) persons receiving care subject to issuance of a conditional use permit by the Zoning Administrator.

CHAPTER 15: ADMINISTRATION

ARTICLE 1: ENFORCEMENT

115-01. Administrative Official

This Code shall be administered and enforced by the Director of the Planning and Community Development Department. The Director may be provided with the assistance of such other persons as he may designate. If the Director shall find that any provision of this Code is being violated, the Director shall notify in writing the person responsible for such violation indicating the nature of the violation and ordering the action necessary to correct it.

115-03. Complaints Regarding Violation

Whenever a violation of this Code occurs or is alleged to have occurred, any person may file a written complaint, stating fully the causes and basis thereof, with the Director. The Director shall record such complaint, investigate, and take such action thereon as provided by this Code as he deems appropriate.

115-04. Inspection

The Director and authorized representative may upon the presentation of credentials to the occupant or owner enter any premises, building, or structure at any reasonable time for the purpose of investigating and inspecting said premises, building, or structure to determine if the same are being used in compliance with the provisions of this Code. If admission or entry is refused, the Director may apply to the County Counsel to obtain an inspection warrant.

115-05. Void Permits

Officers and employees of the County vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Code. Any permit or license which would purport to authorize the permittee or licensee to erect, alter, or enlarge any building or structure or to use property in any manner in conflict with the provisions of this Code, intentionally or otherwise, shall be null and void.

115-06. Building Permits

All applicants for building permits or other permits shall meet the filing and processing requirements established in the Uniform Building Code, and other Uniform Codes adopted by the County in addition to meeting the requirements of this Code.

115-07. Misdemeanor

Violation of the provisions of this Code or failure to comply with any of its requirements (including violations of conditions and requirements established in connection with zoning agreements, variances, conditional use permits, special development permits, exceptions or other permits granted pursuant to this Code) shall constitute a misdemeanor. Any person, firm, or corporation whether as principal, agent, employee or otherwise who violates this Code or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $500 or imprisoned for not more than six (6) months in the County Jail, or both. Each day such violation continues shall be considered a separate offense. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. (Amended 11/95)

115-08. Abatement Procedure

Any building, structure, or recreation vehicle, set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this Code or any use of land, building or premises conducted, operated or maintained contrary to the provisions of this Ordinance or contrary to a permit or variance or the terms and conditions imposed therein shall be, and the same is hereby declared to be unlawful and a public nuisance, and the Director shall commence action or proceedings for the abatement and removal and enjoinment thereof in the manner provided by law and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant relief as will abate and remove such building, structure or vehicle and restrain and enjoin any person, firm or corporation from setting up, erecting, building, maintaining, or using any such building, structure, or vehicle or using any property contrary to the provisions of this Code.

115-09. Authority to Arrest

In the performance of his duties, the Director shall have the authority and impunities of a public officer and employee as set forth in Penal Code Section 836.5 to make arrests without a warrant whenever the Director has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his presence which is a violation of this Code.

115-09.1. Alternative Abatement Procedures

In addition to the procedures authorized by Section 115-08, upon a determination by the Director that a violation exists, the notice required by Section 115-01 may include a notice to the owner that costs of abatement, as defined by Section 115-09.2 may be assessed against the owner if the violation is not corrected. If such notice is provided it shall include a provision that the owner may, within fifteen (15) days from the date notice was mailed, request in writing the opportunity to appear before the Board of Supervisors to contest the Director's determination. That request shall be subject to the same fee as charged for a appeal of the Director's determination, unless a different fee is established by the Board of Supervisors, but such request shall be heard by the Board of Supervisors.

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, Robie Matsuura, 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 October 31, 2008, I served a copy of the attached:

Opening Brief on the Merits

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.

____ by placing said copies in an overnight mail envelope addressed to the parties and/or their attorneys named below, which envelope was then sealed, and transmitting said documents via Federal Express, overnight delivery guaranteed.

Please See Attached Proof of Service List

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 October 31, 2008, at Sacramento, California.

Robie Matsuura

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

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