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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| SUNSET SKY RANCH PILOTS ASSOCIATION, et al.,<br><br>Petitioners/Plaintiffs and Appellants,<br><br>v.<br><br>THE COUNTY OF SACRAMENTO, et al.,<br><br>Defendants and Respondents,<br><br>JOHN TAYLOR, et al.,<br><br>Real Parties in Interest and Respondents. | No. _____<br><br>Court of Appeal No. C055224<br><br>Sacramento Superior Court<br>Case No. 06CS00265 |



Appeal from the Judgment of the Superior Court of the State of California
in and for the County of Sacramento,

Honorable Jack V. Sapunor, Judge

# PETITION FOR REVIEW

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### STATE CASES



### STATE STATUTES

## TREATISES



## MISCELLANEOUS

**Declaration Certifying Word Count**

I declare that the foregoing brief, including footnotes, contains 3,847 words.

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 August 11, 2008, at Sacramento, California.

KRISTA C. WHITMAN
Supervising Deputy

## STATEMENT OF THE ISSUES

The issues presented by this case are whether denial of an application for a use permit renewal is a "project" subject to CEQA, and if so, whether it is statutorily exempt from the California Environmental Quality Act under Public Resources Code section 21080(b)(5) and categorically exempt under 14 California Code of Regulations section 15270.

## REASONS FOR GRANTING REVIEW

In a published decision, the Third District Court of Appeal has held for the first time that a public entity must conduct CEQA review before denying a project application. The opinion flies in the face of express statutory and categorical exemptions provided by the California Environmental Quality Act and its Guidelines, as well as the Second District decision in *Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal.App.4th 1371. The decision will dramatically affect how lead agencies conduct environmental review, particularly in cases of project denials or revocations of existing permits. This Court should accept review under Rule of Court 8.500(b)(1), to secure uniformity of decision and settle an important question of law.

## STATEMENT OF THE CASE

A. Nature of the Action

This is a petition for writ of mandate and complaint for injunctive relief and damages filed by appellants Sunset Sky Ranch Pilots Association and Daniel Lang against respondents County of Sacramento and its Board of Supervisors. Real Parties in Interest John M. Taylor and the law firm of Taylor and Wiley represented the unnamed developer who appealed the decision of the County's Project Planning Commission to the County Board of Supervisors. In their writ petition and complaint, appellants alleged that the County's denial of a conditional use permit renewal was preempted by

the State Aeronautics Act, and that the denial violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA), was unsupported by substantial evidence, and resulted in an unconstitutional taking of private property without just compensation.

B. Summary of Facts Material to the CEQA Claim

On January 25, 2006, the Sacramento County Board of Supervisors ("Board") denied appellants' request to renew an expired conditional use permit ("use permit" or "CUP") for the Sunset Sky Ranch Airport ("Airport"). This decision was the culmination of a long history of entitlement requests and accompanying litigation concerning the Airport. That history began when a use permit for the facility was first issued in 1971 with an expiration date of two years from the date of issuance. (AR 1:171.) [1] When that use permit expired in 1973, no effort was made to renew it. (AR 1:007.) Hence, between 1973 and 1999, the Airport operated illegally without a use permit. (*Id.*) Nor was any effort made to end this illegal status until the County commenced a zoning enforcement action. (AR 1:007.) That enforcement action finally resulted in the Airport filing an application for a use permit in 1999, but only after petitioning the Sacramento County Superior Court alleging that it had a vested grandfathered right to operate the Airport without obtaining a use permit. (TCF I:59.)[2] After the petition was denied by the Superior Court, the owner appealed to the Third District Court of Appeal, which similarly concluded that he was without a vested grandfathered right and that he was required to

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[1] Citations to the Administrative Record are designated by the acronym "AR" followed by the volume and page number in the following format: "AR [volume]:[page]."

2 The parties stipulated to using the original Superior Court's file rather than 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 in the following format: "TCF [volume]:[page(s)]."

obtain a use permit. (TCF I:69-70.) It was only then that the application for the use permit was filed. (AR 1:007.) On October 6, 1999, the Board approved the requested use permit for the Airport for a period of five years. (AR 1:007.) In granting this request, the Board imposed a condition requiring that the Airport operator inform the tenants as to the limited duration of the use permit. (AR 1:143-145.)

On September 22, 2004, the Airport applied for renewal of the 1999 use permit, which was set to expire on October 6, 2004. (AR 1:008.) The County prepared a CEQA categorical exemption appropriate for approval of the project under CEQA Guidelines section 15301, Class 1 (Cal. Code Regs., tit. 14, § 15000 et seq. (Guidelines) (operation, repair, maintenance, or minor alteration of existing structures or facilities.) (AR 1:140.).

On July 25, 2005, the Project Planning Commission approved renewal of the use permit for a two year period, with the understanding that no further extensions would be granted. (AR 7:801-805.) Real parties appealed this decision. (AR 8:810-936.) On January 25, 2006, the Board took final action to deny the requested use permit and adopt findings reflecting that decision. (AR 8:971-972.) The Board found that "the renewal request is incompatible with the existence of the many new residential neighborhoods which have been constructed pursuant to the East Elk Grove Specific Plan." (AR 1:008, Finding 1.) In addition, the Board found that the continued operation of the Airport was jeopardizing efforts by the Elk Grove United School District to locate a much needed school within the East Elk Grove Specific Plan area south of Elk Grove Boulevard. (AR 1:008, Finding 2.) The Board did not take action on the categorical exemption, as the project was denied.

C. Relief Sought

Appellants sought a writ of mandate and complaint for injunctive relief and monetary damages, alleging that the County's decision to deny

the use permit renewal was preempted by the Aeronautics Act and not supported by substantial evidence in the administrative record, and that the decision violated CEQA as the County did not conduct an initial study to analyze the environmental effects of closing the Airport. Appellants also sought damages for an allegedly unconstitutional taking.

D. Trial Court's Decision

The trial court entered a judgment denying the petition for writ of mandate and the complaint in their entirety, and entered a judgment in favor of the County and real parties in interest. (TCF II:519.) The trial court concluded that denial of the use permit renewal was not preempted by or violative of the State Aeronautics Act, and the denial of the renewal request was not a project under CEQA. The trial court further held that there was substantial evidence in the record that the Airport was hindering the acquisition and construction of an elementary school, and that the takings claim was ripe but denial of the use permit renewal did not result in a governmental taking of private property. Appellants appealed to the Third District Court of Appeal.

E. Appellate Court's Decision and Reasoning

In a decision published July 2, 2008 (attached hereto), the Third District Court of Appeal affirmed in part and reversed in part. The Court held that the County's decision to deny the use permit renewal was not preempted by or contrary to the State Aeronautics Act. However, the Court held that the County's action constituted a CEQA project requiring preparation of an initial study. The Court reasoned that this case does not involve a mere denial of a project exempt from CEQA under Guidelines section 15270, but instead was a denial of a use permit renewal that would indisputably result in closure of an airport, which the County intended to enforce within 180 days. (Slip Op., pp. 42-43.)

The Court relied on two cases holding that public agency action resulting in closure of facilities may implicate CEQA – *Association for a Cleaner Environment v. Yosemite Community College District* (2004) 116 Cal.App.4th 629. 637 (*ACE*), involving closure and removal of a community college's shooting range, and *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley United School District* (2006) 139 Cal.App.4th 1356, 1377 (*San Lorenzo*), involving closure of two schools requiring transfer of students to other schools. While acknowledging that the two cases are distinguishable, the Court determined the County's action in denying the permit would lead to the closure of the Airport with possible environmental impacts associated with the pilots who currently use the Airport being required to transfer to other airports. (Slip Op., pp. 44-45.) The Court did not address the statutory exemption for project denials (Public Resources Code section 21080), but held that the categorical exemption for denials (Guidelines section 15270) did not apply because denial of the CUP renewal would result in closure of the Airport. (Slip Op., pp. 42-43.)

Respondents filed a timely petition for rehearing, which was denied on July 24, 2008.

## ARGUMENT

The CEQA process requires the lead agency to conduct preliminary review of the proposed activity to determine first, whether it is a "project"; second, whether it is exempt under the "common sense exemption" because it cannot possibly have a significant effect on the environment; third, whether it is discretionary; fourth, whether it is subject to a statutory exemption; and finally, whether it is subject to a categorical exemption. (Kostka & Zischke, *Practice Under the California Environmental Quality Act* (2d ed. 2008) § 4.1, p. 154.) The second and third steps are not relevant here.

Here, the Third District erred by skipping over the threshold question of whether the denial constituted a project, and instead determined that the denial of the use permit renewal was a project *because* it could have a significant effect on the environment. The Court further erred by ignoring the express language in both the CEQA statutes and the Guidelines that only project approvals are subject to CEQA.

A. Denial of Renewal Was Not a "Project" Under CEQA

The Third District erred in concluding that the denial was a project requiring CEQA review. CEQA compliance is required only where an agency proposes to approve a project. Here, denial of the CUP renewal does not meet the definition of "project" because it is not an approval.

Under Public Resources Code section 21080(a), CEQA applies to "discretionary projects proposed to be carried out or approved by public agencies," unless they are otherwise exempt. The term "project" is defined to include three types of agency actions: *activities* directly undertaken by a public agency (Pub. Resources Code § 21065(a); Guidelines § 15378(a)(1)); *activities* supported in whole or in part by public agencies (Pub. Resources Code § 21065(b); Guidelines §§ 15002(c), 15377); and *activities* involving the issuance of a lease, permit, license, certificate, or other entitlement for use by a public agency (Pub. Resources Code § 21065(c)).

Public Resources Code section 21100 requires that lead agencies "prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any *project which they propose to carry out or approve* that may have a significant effect on the environment." The same language is found in Public Resources Code section 21151, which requires preparation of an environmental impact report for any project that a local agency intends to *carry out or approve* which may have a significant effect on the environment. See also Public Resources Code

section 21108, requiring filing of a notice of determination when a state agency *approves or determines to carry out* a project subject to CEQA.

In *Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal.App.4th 1371 (*Main San Gabriel*), the court held that 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." (*Id.* at p. 1380 (emphasis in original).)

CEQA applies at the time a public agency proposes to approve a project. The term "approval" refers to a public agency decision that commits it to a definite course of action in regard to a project. (Guidelines § 15352(a).) Public agency approval of private projects is deemed to occur upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. (Guidelines § 15352(b); see also Kostka & Zischke, *Practice Under the California Environmental Quality Act, supra*, § 4.15, p. 164.)

Here, of course, there was no approval of a project; there was only a denial of a request to renew a use permit. When there is no project, there is no need to proceed with the remaining CEQA analysis regarding whether the project is discretionary and whether exemptions apply. CEQA cases and authorities recognize that the existence of a "project approval" is a necessary prerequisite to the applicability of CEQA. (*Lexington Hills Assn.*, 200 Cal.App.3d at pp. 430-433; Remy, et al., *Guide to CEQA* (11th ed. 2007) pp. 69-70; Kostka and Zischke, *Practice Under the California*

*Environmental Quality Act, supra,* §§ 4.16, 5.12.)[3]

CEQA simply does not apply here.

B. Denials of Projects are Statutorily Exempt from CEQA

Public Resources Code section 21080(b)(5) plainly states that CEQA does not apply to "projects which a public agency rejects or disapproves." The legislature has exempted many types of projects from CEQA by statute. Because CEQA is a legislative enactment, the legislature is free to create exemptions regardless of their consistency with CEQA's environmental purposes. (Kostka & Zischke, *Practice under the California Environmental Quality Act, supra*, § 5.5, p. 196.)

> [T]he general rule that CEQA provisions must be interpreted to give the fullest possible protection to the environment does not control the interpretation of a statutory exemption. See *Napa Valley Wine Train, Inc. v. PUC* [(1990) 50 Cal.3d 370]. Statutory exemptions are enacted to lift the burden of environmental review from specified classes of projects that may have significant effects; limiting a statutory exemption to projects that will not adversely affect the environment would defeat the purposes of the exemption. (*Id.*)

Yet this is precisely what the Third District did – it noted the exemption for disapproved projects (albeit the categorical rather than the statutory exemption), but then held that the County's denial was nevertheless subject to CEQA because the decision could result in adverse environmental consequences.

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[3] As one of these authorities notes:

> CEQA generally applies to "discretionary *projects* proposed to be carried out or *approved* by public agencies..." Pub. Resources Code § 21080, subd. (a) (italics added). The CEQA Guidelines and case law have interpreted this quoted language to require a threshold, two-part analysis to determine the applicability of CEQA. The relevant inquiry is whether an agency proposes (1) to "approve," (2) a "project." (Remy, et al., *Guide to CEQA* (11th ed. 2007) p. 70.)

Such a holding is in direct conflict with *Main San Gabriel*. In that case, the State Water Resources Control Board (SWRCB) disapproved a proposed landfill expansion without CEQA compliance. The project proponent contended that SWRCB should have complied with CEQA and prepared an EIR before disapproving the application. The Second District rejected this argument, noting that all project disapprovals by a public agency are exempt from CEQA review, regardless of any potential for negative environmental consequences. As the court noted:

> In making its various public policy arguments, ALR generally assumes that disapproval of the landfill expansion project will result in serious adverse environmental consequences, including highway degradation, traffic congestion, fuel consumption and air pollution, due to the rerouting of waste previously disposed of at ALR's landfill. Whether or not true, the same point could be made for many forms of government inaction. Yet the Legislature has determined for reasons of policy to exempt project disapprovals from environmental review under CEQA. Our state legislators evidently concluded that public agencies should not be forced to commit their resources to the costly and time-consuming environmental review process for proposed private development projects slated for rejection, whatever the reason for agency disapproval. This court does not sit in judgment of the Legislature's wisdom in balancing such competing public policies. (*Id.* at pp. 1383-1384, emphasis added.)

*Main San Gabriel* clearly holds that, even if a denial decision will have residual environmental impacts (such as the transfer of pilots to another airport location), such a determination is nevertheless exempt from environmental review under CEQA. Additionally, *Main San Gabriel* establishes that the exemption does not apply only to "initial screenings"; rather, an agency is entitled to make a determination to disapprove a proposal "at any time prior to the initiation of full CEQA review," just as the County did in this instance. (*Main San Gabriel*, 12 Cal.App.4th 1371,

1380.) The Third District's holding that an initial study was required before the Board could deny renewal of the Airport's use permit is directly contrary to the principles enunciated in *Main San Gabriel* and should not stand.

Based on the premise that denial of the use permit renewal was tantamount to closing the Airport, the Court analogized to two cases in which a public agency's decision to close certain facilities implicated CEQA: *ACE* and *San Lorenzo*. The Court concluded that, as in these cases, an initial study should have been prepared before the County denied the Airport's request. (Slip Op. at p. 45.)

However, both of those cases involved an affirmative decision by the public agency to close an existing public facility and therefore are inapplicable here. In *ACE*, a school district voted to close and remove an existing shooting range located at a community college. (*ACE*, 116 Cal.App.4th at p. 635.) Likewise, *San Lorenzo* involved a school district's decision to close two of its existing elementary schools and to transfer the students from those schools to other campuses within the district. (*San Lorenzo*, 139 Cal.App.4th at p. 1369.) Importantly, in both of these cases, the public entity did not deny a private party's application; rather, the entity itself *approved* the closure of an existing public facility. By contrast, in the case at bench, the Board was presented with, considered, and eventually denied a private party's request for renewal of its expired CUP. Neither of those cases stand for the proposition that denial of a private application triggers CEQA. As such, the Court's reliance upon these cases constitutes error and warrants review.

The Court's opinion briefly mentions Respondents' argument that denial of the CUP request was not a project approval requiring compliance with CEQA, but failed to resolve this crucial threshold issue. (Slip Op. at 42.) The Court instead jumped forward in its analysis, analogizing to

inapposite cases involving affirmative decisions to close existing public facilities and discussing the potential environmental impacts of the County's determination to enforce its zoning code to support its conclusion that an initial study was required. (Slip Op. at pp. 43-45.) While the Court notes that there may be some environmental impacts associated with the County's removal of airport facilities and the transfer of pilots to other airports, these activities were not part of the "project" before the Board and, thus, the Board was not required to analyze the potential impacts associated with these activities prior to denying the CUP.

C. Denials of Projects are Categorically Exempt from CEQA

The Guidelines contain many categorical exemptions from CEQA, codifying the classes of projects the Secretary of the Resources Agency has determined do not have a significant effect on the environment. (Pub. Resources Code § 21084(a); Guidelines § 15300.) Public agencies are not required to prepare an environmental document for a project that is categorically exempt unless the activity falls within one of the exceptions to the categorical exemptions. (Pub. Resources Code § 21084; Guidelines § 15300.)

In this case, the CUP denial was statutorily exempt, thus ending the CEQA analysis. The project denial, however, is also categorically exempt pursuant to Guidelines section 15270, which mirrors the statutory exemption in providing that CEQA does not apply to projects which a public agency rejects or disapproves. Thus, the Secretary of the Resources Agency categorically exempted project denials because they do not have a significant effect on the environment, even though the Legislature had already determined that denials are statutorily exempt regardless of their possible environmental consequences. This "belt and suspenders" approach leaves no doubt that *all* project denials are exempt from CEQA.

D. The Appellate Decision Will Greatly Expand the Type of Projects Subject to CEQA Review

The Court's holding with respect to CEQA will have serious consequences for governmental bodies making land use decisions within their jurisdictions. The effect of the Court's decision is to create a new requirement that public agencies must examine the environmental impacts of deciding *not* to take action, in addition to conducting CEQA review of projects which it chooses to approve. For example, in this case, had the Board decided to approve the CUP renewal request, the appropriate environmental document would have been a categorical exemption under Section 15301 of the CEQA Guidelines. (AR 1:140.) No further environmental review would have been required or even authorized. (Pub. Resources Code § 21084; Guidelines § 15300.) Yet the Court's opinion would require a *higher* level of environmental review – an initial study followed by either a negative declaration or EIR – in order to *deny* the project. Thus, the County would have had to prepare two different environmental documents for a single project application, a bizarre and entirely unprecedented result.

Two examples illustrate the serious implications of the Court's decision. With respect to proposed housing projects, the opinion would appear to require a public entity to examine the environmental impacts of *not* approving such a proposal since such a denial could presumably result in environmental impacts where that housing, needed to accommodate population growth, might otherwise be located. EIR preparers would accordingly be required to identify and examine the impacts associated with where that housing might otherwise be located before a public entity could deny a proposed housing project. Failure to conduct this analysis would, moreover, be grounds for the courts to invalidate a public entity's decision not to approve a project.

The Court's opinion would also require public entities to conduct an initial study prior to revoking use permits for existing businesses that are not in compliance with those permits. In those cases, the public entity would be required to study any potential environmental impacts associated with the transfer of patrons to other businesses as well as, potentially, the impacts of other uses that may replace the prior business. Such endless analysis was clearly never intended by the Legislature when it enacted CEQA.[4] Moreover, the practical difficulties of requiring a public entity to conduct two levels of environmental review cannot be overstated.

Perhaps most troubling, the Court's holding raises a host of new, unanswered questions. For example, must CEQA analysis occur when a permit expires by its own terms, as here, but the permittee does *not* seek renewal or extension of that permit? The Court's holding seems to imply that the mere expiration of a use permit, coupled with a public entity's enforcement of its municipal codes following such a lapse, can be viewed as an affirmative "closure" for which environmental analysis is required. Is it now the responsibility of a governmental agency to monitor all permits

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[4] Several CEQA decisions have expressed concern that an overly broad definition of "project" would place too onerous a burden on public agencies. (*Lexington Hills Assn. v. State of California* (1988) 200 Cal.App.3d 415, 435; *City of Agoura Hills v. Local Agency Formation Com.* (1988) 198 Cal.App.3d 480, 494.) For example, the Second District Court of Appeal has recognized:

> CEQA was not intended to make and cannot reasonably be considered to make a project of every activity of a public agency, regardless of the nature and objective of such activity. Such a construction would involve the expensive and time-consuming procedures required to complete at least a negative declaration in respect of virtually every action of a public agency. It is difficult to conceive of any such action which could not have a 'potential for significant environmental effect.' (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 663.)

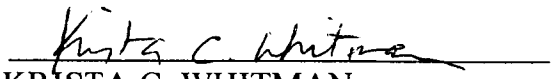
issued by its legislative body and ensure that CEQA analysis occurs prior to the expiration of those permits? The Court's opinion leaves these, and many other important issues, unresolved.

## CONCLUSION

This case presents the first time a published decision has held that a project denial requires preparation of an initial study under CEQA. Yet the Legislature has determined that all project denials are statutorily exempt from CEQA, *regardless* of their possible adverse environmental consequences. The Third District ignored the plain language of the CEQA statutes and Guidelines in determining that a project denial is subject to CEQA if there is an existing use. This Court should accept review in order to clarify that project denials are statutorily and categorically exempt under CEQA even where the practical result of such denial may lead to adverse environmental consequences.

DATED: August 11, 2008 Respectfully submitted,

ROBERT A. RYAN, JR., County Counsel
Sacramento County, California

By: 
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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SUNSET SKYRANCH PILOTS ASSOCIATION, et al.,

Plaintiffs and Appellants,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants and Respondents;

JOHN M. TAYLOR, et al.,

Real Parties in Interest and Respondents.

C055224

(Super. Ct. No. 06CS00265)

APPEAL from a judgment of the Superior Court of Sacramento County, Jack Sapunor, J. Affirmed in part and reversed in part.

Law Office of Lanny T. Winberry and Lanny T. Winberry for Plaintiffs and Appellants.

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* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts IV and V of the Discussion.

Robert A. Ryan, County Counsel, and Krista C. Whitman, Deputy County Counsel, for Defendants and Respondents.

Taylor & Wiley, John M. Taylor, Kate Leary Wheatley and Matthew S. Keasling for Real Parties in Interest and Respondents.

This appeal challenges a county's zoning decision to deny renewal of a conditional use permit (CUP) needed for continued operation of a privately-owned, public-use airport--the Sunset Skyranch Airport. Appellants Sunset Skyranch Pilots Association and Daniel Lang (collectively, the Airport) appeal from a judgment denying their petition for writ of mandate and complaint for injunctive relief and monetary damages, against the County of Sacramento and its Board of Supervisors (collectively, the County). Real parties in interest, John Taylor and Taylor and Wiley, represent property owners developing properties north of the Airport and are aligned with the County as respondents in this appeal.

The Airport contends the County's denial of the CUP renewal (which was upheld by the trial court on the ground the Airport was hindering acquisition of a site for construction of an elementary school) was preempted by the State Aeronautics Act (Pub. Util. Code, § 21001 et seq. (SAA)[1]). The Airport maintains the SAA prevents the County from exercising its zoning powers in

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[1] Undesignated statutory references are to the Public Utilities Code.

a way that will result in closure of a public-use airport, as long as the airport has a state permit under the SAA and complies with conditions of the county's CUP. The Airport also contends the County's decision violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. (CEQA)), was unsupported by substantial evidence (because of the claimed preemption), and results in an unconstitutional regulatory taking of private property without just compensation.

In the published portions of the opinion, we shall address two points. First, we shall conclude the SAA focuses on safety standards and controlled development of airports and, while its stated purpose is to *encourage* aviation, it does not *compel* the County to allow continued operation of the Airport. We shall therefore conclude the County's decision is not preempted by or contrary to the SAA. Second, we shall conclude the denial of CUP renewal, because it will result in closure of the airport, is a CEQA project requiring an initial study under CEQA. In the unpublished portion of the opinion, we reject the Airport's other contentions. We shall reverse the judgment on the CEQA ground alone.

## BASICS OF THE SAA

The SAA defines "aeronautics" as "(a) The science and art of flight, including transportation by aircraft. [¶] (b) The operation, construction, repair, or maintenance of aircraft and aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes. [¶] (c) The design,

establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities." (§ 21011.)

The SAA requires a state permit from the Department of Transportation (the Department) in order to operate an airport. (§§ 21663 [no person shall operate an airport unless the Department has issued a permit], 21006.5). The state permit assures that on-site and off-site safety standards are met. (§ 21666.[2]) The Department has authority to impose conditions on the state permit (§ 21666) or revoke the state permit for specified reasons, such as abandonment of the airport, failure to comply with conditions, or change in physical or legal conditions on or off the airport site such that the site may no longer be safely used by the general public (§ 21668[3]).

The SAA states its purpose is "to further and protect the public interest in aeronautics and aeronautical progress by the following means:

"(a) Encouraging the development of private flying and the general use of air transportation.

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[2] Section 21666 states the Department shall issue the permit if it is satisfied the site meets or exceeds the Department's minimum airport standards; safe air traffic patterns have been established; the advantages to the public in selection of the site of a proposed new airport or a proposed airport expansion outweigh the disadvantages to the environment, etc.

[3] Although the state permit, like the CUP, is also subject to conditions, we use "CUP" in this opinion to refer to the County CUP.

"(b) Fostering and promoting safety in aeronautics.

"(c) Effecting uniformity of the laws and regulations relating to aeronautics consistent with federal aeronautics laws and regulations.

"(d) Granting to a state agency powers, and imposing upon it duties, so that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property, assist in the development of a statewide system of airports, encourage the flow of private capital into aviation facilities, and cooperate with and assist political subdivisions and others engaged in aeronautics in the development and encouragement of aeronautics.

"(e) Establishing only those regulations which are essential and clearly within the scope of authority granted by the Legislature, in order that persons may engage in every phase of aeronautics with the least possible restriction consistent with the safety and rights of others.

"(f) Providing for cooperation with the federal authorities in the development of a national system of civil aviation . . . .

"(g) Assuring that persons residing in the vicinity of airports are protected to the greatest possible extent against intrusions by unreasonable levels of aircraft noise." (§ 21002.)

The SAA also establishes airport land use commissions (commission or ALUC), in section 21670, as follows:

"(a) The Legislature hereby finds and declares that:

"(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

"(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

"(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an [ALUC]. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an [ALUC], except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement." (§ 21670.) Special districts and school districts are among the

local agencies that are subject to airport land use laws and other requirements of the SAA. (§ 21670, subd. (f).)

Each commission is made up of seven members: Two persons representing the cities in the county, appointed by a committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative therefrom; two persons representing the county, appointed by the board of supervisors; two persons with aviation expertise, appointed by a selection committee comprised of the managers of all public airports within that county; and one person representing the general public, appointed by the other six members of the commission. (§ 21670, subd. (b).)

Section 21674[4] gives the commission the authority to "assist" local agencies in ensuring compatible land uses and to review local agency plans, but it also states (1) the commission does *not* have jurisdiction "over the operation of any airport" (§ 21674, subd. (e)), and (2) the commission's powers are subject to section 21676,[5] which specifies that local agencies may "overrule" the commission by a two-thirds vote if they find their plan is consistent with the purposes of the SAA.

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[4] Section 21674 provides: "The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676: [¶] (a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses. [¶] (b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare. [¶] (c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675. [¶] (d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676. [¶] (e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport. [¶] (f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article."

[5] Under section 21676, each local agency whose general plan includes areas covered by an airport land use commission [ALUC] plan had to submit its plan to the airport land use commission by 1983 and continues to be required to submit proposed amendments of its plan to the commission. If the commission determines the plan or proposed change is inconsistent with the ALUC plan, the local agency may, after a public hearing, "overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of [the SAA]." (§ 21676, subds. (a), (b), (c).)

The commission formulates an airport land use compatibility plan (ALUCP) "that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general." (§ 21675.)

The County's general plan, and any specific plan, must be consistent with the ALUCP, but the County may overrule a commission finding of inconsistency by making its own finding of consistency with a two-thirds vote. (§ 21676, fn. 5, *ante*; Gov. Code, § 65302.3.[6])

Each local agency whose general plan includes areas covered by an ALUCP was required to submit its plan to the Commission in 1983, and continues to be required to submit proposed amendments to the Commission. (§ 21676.) The Commission determines whether the plan is consistent with the ALUCP and notifies the local agency of any inconsistency. (§ 21676.) However, the local agency may "overrule" the commission by a two-thirds vote of the local governing body if it makes a specific finding that the plan or amendment is consistent with the purposes of the SAA

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[6] Government Code section 65302.3 provides in part: "(a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450) [Specific Plans], shall be consistent with the plan adopted or amended pursuant to Section 21675 . . . . [¶] . . . [¶] (c) If the legislative body does not concur with any provision of the plan required under Section 21675 . . . , it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 . . . ."

as stated in section 21670. (§ 21676, subds. (a), (b), (c).) In 2003, statutory amendments to section 21676 added provisions that the local agency must advise the commission of its proposed findings and accept comments from the commission, but "[t]he comments by the division or commission are advisory to the local agency governing body." (§ 21676, subds. (a), (b), (c).)

Under the SAA, construction plans for *new* airports and public-entity acquisition of land for expansion of publicly-owned airports (matters not at issue here) must be approved by the city or county before being submitted to the Department for a state permit. (§§ 21661.5, 21661.6.)

The SAA states it "shall not be construed as limiting any power of the state or a political subdivision to regulate airport hazards by zoning." (§ 21005.) We do not read this provision as dispositive of this case, because the term "airport hazards" means "any structure, object of natural growth, or use of land, which obstructs the air space required for flight of aircraft in landing or taking off at an airport or which is otherwise hazardous to the landing or taking off." (§ 21017.) Airport hazards are also addressed in other statutes (§ 21652 et seq. (Hazard Elimination); Gov. Code, § 50485 et seq. (Airport Approaches Zoning Law)), with Government Code section 50485.14 expressly stating the absence of any intent to deny local zoning powers. As we shall see, this case does not involve hazards dangerous to landing and taking off. Thus, the SAA provisions regarding airport hazards do not resolve this case.

With this statutory background in mind, we next set forth the background of this litigation.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal involves the County's denial of the Airport's May 2004 application for renewal of the CUP.

The following facts are taken primarily from the County's administrative findings and our unpublished opinion in a prior case involving this airport, *Lang v. Board of Zoning Appeals* (Nov. 4, 1993, C013642 [nonpub. opn.]).

The Airport has been operating at some level of activity for many years. A prior owner of the land began operating an airstrip in 1934, when there were no zoning regulations.

In 1962, Sacramento County Zoning Ordinance No. 739 permitted in that zone "[a]irports and aircraft landing fields authorized by the State of California Aeronautics Commission provided such uses conform to the General Plan of the County of Sacramento." In 1963, the zoning was changed to AG-20 and AG-20(F). In 1968, Zoning Ordinance No. 799 permitted the operation of airports subject to issuance of a CUP.

In 1971, appellant Lang acquired the property and applied for a CUP for a private use airstrip and a public use airport. The County granted him a two-year CUP to operate a private use airport. At the time the 1971 CUP issued, the main purpose of the Airport was for agricultural flight operations; the surrounding land uses were predominantly agricultural; Elk Grove

had a population of just over 5,000; and the nearest residential neighborhood was miles away from the Airport.

In 1972, the Sacramento County Planning Commission approved a change in the County General Plan to allow a public use airport at that location.

Also in 1972, pursuant to the SAA, Lang obtained from the Department a state airport permit (state permit) for a public use airport. The Airport continues to have a valid state permit.

In 1973, the 1971 CUP expired by its own terms. Lang did not request renewal of the CUP but continued the airport operations. He obtained business licenses authorizing his commercial stable and airstrip. The land was rezoned AG-80, a zone in which airports are permitted with CUPs.

In 1988, pursuant to the SAA, the airport land use commission for the subject area (the Sacramento Area Council of Governments) adopted an airport land use compatibility plan (ALUCP) for the Airport to "provide for the orderly growth" of the Airport and "the area surrounding" it during "at least the next 20 years" (i.e., 2008).

In 1989, the County Treasurer-Tax Collector denied Lang's application for renewal of his business license on the ground of insufficient information to show compliance with the Zoning Code of Sacramento County. Lang appealed the denial of the business license and applied for a certificate of nonconforming use. The County denied the nonconforming use due to "considerable

expansion" of the airstrip, upheld denial of the business license, and recommended that Lang obtain a CUP. The dispute ended up in this court, and in November 1993, we issued the unpublished opinion in *Lang v. Board of Zoning Appeals, supra,* C013642. We concluded the airport's expansion had extinguished its status as a nonconforming use. The original airstrip for crop dusters (with a dirt strip, one hangar, and four or five airplanes), had developed into a public use airport with two runways, 14 hangars, and 65 aircraft. We held the Airport needed a CUP to operate.

The Airport subsequently applied for a CUP in 1999 (after having operated without a CUP between 1973 and 1999).

On October 6, 1999, the County granted a five-year CUP. Although the Airport had requested a 10-year CUP, the County gave only a five-year CUP, anticipating that an East Elk Grove Specific Plan, approved by the County in 1996, might lead to urbanization of the area, rendering the Airport an incompatible use. The CUP expressly imposed a condition that "[t]he airport operator shall inform all airplane owners with tie-downs who intend to install or improve airport hangars on the property of the terms of this use permit, *including the expiration date.*" (Italics added.) The County approved a negative declaration under CEQA, that the CUP would not have a significant effect on the environment--a decision that was upheld in *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270.

Next comes the 2004 CUP renewal application which is the subject of this appeal. On September 22, 2004 (*before* expiration of the 1999 CUP on October 6, 2004), the Pilots Association applied for renewal of the 1999 CUP. The Department's Aeronautics Division submitted a letter stating in part, "We support continued operations at [the Airport]."

The Zoning Code, sections 201-02 and 201-04, allows, as a permitted use, a public-use airport in the zone where the Airport is located, "subject to issuance of a conditional use permit . . . by the appropriate authority." Airports as a permitted use are also subject to the "special condition" as follows: "Permitted if approved in writing by the State of California Aeronautics Department and the Federal Aviation Administration; copies of said approvals to be submitted to the Director of the Planning and Community Development Department." (Zoning Code, §§ 230-11, 230-13.) As indicated, the Airport has a state permit.

Sacramento County Code, section 2.34.020 states the County's zoning administrator "shall hear and decide applications for . . . conditional use permits," and section 2.34.030 states the zoning administrator "shall adopt such rules and procedures which the administrator deems necessary or convenient to perform the duties of the office."

On November 17, 2004 (*after* the October 2004 expiration of the 1999 CUP), a planning advisory council recommended approval of the CUP renewal. Planning Department staff subsequently

recommended denial of the renewal request on the basis that the land uses in the surrounding area were changing, thereby creating a situation where the Airport was no longer a compatible use.

On July 25, 2005, the Project Planning Commission voted to approve renewal of the CUP for a two-year period, with the understanding that no further extensions would be granted. Real parties in interest (representing the neighboring property owners) filed an administrative appeal to the County Board of Supervisors.

After an administrative hearing, the Board of Supervisors, by a vote of four to one, denied renewal of the CUP by voting to uphold the appeal, overturn the Planning Commission decision, and adopt FINDINGS REGARDING THE SUNSET SKYRANCH USE PERMIT DENIAL. The Board's findings summarize: "The action taken by the Board of Supervisors is not a revocation of an existing use permit but, rather, merely a decision not to renew a use that has already expired. It accordingly reflects a decision to not re-grant [*sic*] a permit for a use that has been determined to no longer be compatible with its surroundings. Furthermore, [CEQA] does not require that environmental analysis be conducted before an agency denies a project since a denial does not constitute a project for the purposes of CEQA."

The County found:

"1. The renewal request is incompatible with the existence of the many new residential neighborhoods which have been constructed pursuant to the East Elk Grove Specific Plan.

"2. The Elk Grove Unified School District is experiencing difficulty locating a school site within the East Elk Grove Specific Plan area, south of Elk Grove Boulevard, due to the presence of the Airport. The Elk Grove Unified School District designated and reserved a school site within the Airport overflight zone . . . based upon its expectation that the airport would be closed. Based on Caltrans School Site Evaluation Criteria and a written statement from the Elk Grove Unified School District . . . renewal of the Airport use permit will hinder the final acquisition of a site and construction of a greatly needed elementary school within the East Elk Grove Specific Plan area.

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

"4. According to testimony from the [Chief Operating Officer of the] Sacramento County Department of Airports, adequate alternative facilities with sufficient holding capacity

are available in more appropriate locations throughout the County of Sacramento and in the Lodi area . . . ."

The County also found that denial of the requested CUP did not constitute any action regarding approval of future development projects which might be rendered feasible because of the elimination of the Airport. The County instead stated that any future development projects, which might now become feasible because of the elimination of the restriction on residential development stemming from the Comprehensive Land Use Plan (CLUP) for the Airport, would require their own environmental review before being approved.

The County also found "[a]lthough the noise contours, over-flight zone, and approach and departure zones associated with the Airport are reflected on the General Plan, those indications of the CLUP's existence do not control the General Plan and do not result in a mandate that the requested use permit be granted. Instead, they merely provide guidance to be followed when proposed land[] uses impacted by those designations are under consideration. Moreover, the Airport Land Use Commission will be requested to invalidate the CLUP to reflect the action taken to deny the use permit requested, following which all references to the invalidated CLUP will be deleted from the General Plan."

The Airport filed in the trial court a petition for writ of mandate (Code Civ. Proc., §§ 1085, 1094.5) and complaint for injunctive relief and monetary damages. The first cause of

action alleged the County's decision was contrary to the purposes and express provisions of the SAA. The second count alleged the County violated CEQA by failing to conduct an analysis of the environmental impact of closing the Airport. The third count sought an injunction to prevent closure of the Airport and argued closure would constitute an unconstitutional taking of private property without due process and without just compensation. The pleading's prayer included a request for money to compensate for the taking of the property.

Following a hearing of counsel's oral arguments and consideration of the parties' written submissions, the trial court entered a judgment denying the petition for writ of mandate and the complaint in their entirety and entering judgment in favor of the County and real parties in interest. The judgment incorporated by reference a written ruling, in which the trial court concluded (1) denial of the CUP renewal was not preempted by or violative of the SAA; and (2) denial of the CUP renewal did not constitute a "project" triggering CEQA. Over an objection that the issue was not tendered in the administrative proceedings or the petition/complaint, the trial court entertained the Airport's argument that the administrative findings were unsupported by substantial evidence. The court determined the case did not involve fundamental vested rights and therefore the court should review the administrative findings under the substantial evidence test, not the independent judgment test urged by the Airport. The trial court

found no substantial evidence supported the administrative finding that the renewal request was "incompatible" with existing new residential neighborhoods (Administrative Finding #1). However, the trial court found substantial evidence supported the administrative finding that the Airport was hindering the acquisition and construction of an elementary school (Administrative Finding #2). Even though it was still possible the Department of Education might approve the proposed site, and even though closure of the Airport would not guarantee approval of the school site, those matters went to the wisdom of the County's decision, which was beyond the purview of the court's review. As to the takings claim, the trial court determined the claim was ripe, but denial of the CUP did not result in a governmental taking of private property.

The Airport appeals.

DISCUSSION

I. Standard of Review

Although the Airport's pleading cited the statutes for both traditional mandamus and administrative mandamus (Code Civ. Proc., §§ 1085, 1094.5), it seems clear this is a case of administrative mandamus challenging an administrative decision made as a result of a proceeding in which a hearing with evidence was required, and discretion was vested in the administrative body. (Code Civ. Proc., § 1094.5, subd. (a); Gov. Code, § 65901; Zoning Code, § 110-03.)

Under Code of Civil Procedure, section 1094.5, subdivision (b), the inquiry extends to the questions "whether the respondent has proceeded without or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

When a claim is made that administrative findings are not supported by the evidence, and the case does not involve fundamental vested rights, the court does not apply independent judgment but determines whether the findings are supported by substantial evidence in light of the whole record. (Code Civ. Proc., § 1094.5, subd. (c).) Generally, there is no fundamental vested right to renewal of a CUP.[7] (*Metropolitan Outdoor Advertising Corp. v. City of Santa Ana* (1994) 23 Cal.App.4th 1401 [corporation had no fundamental vested right to continued use of a billboard, where corporation agreed to the conditions of the CUP when it was granted, including removal of billboard after permit's expiration].)

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[7] The trial court found distinguishable a case, cited by the Airport, which departed from the general rule and held a business owner had a fundamental vested right to renewal of a CUP. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519.) Although we see some similarities between this case and *Goat Hill Tavern*, we need not address the matter because the Airport does not mention the case in its appellate briefs and does not develop any argument that the trial court applied the wrong standard.

In cases not involving independent judgment by the trial court, the scope of our review "is identical with that of the superior court. The same substantial evidence applies, and the issue is whether the findings of the County . . . were based on substantial evidence in light of the entire administrative record. [Citations.]" (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335.) We examine the administrative findings rather than limiting ourselves to a review of the trial court's findings. (*Ibid.*)

In review of an administrative mandamus case under Code of Civil Procedure section 1094.5, as in other appeals, we review questions of law de novo. (*Automotive Funding Group, Inc. v. Garamendi* (2003) 114 Cal.App.4th 846, 851.) Thus, to the extent they do not involve factual disputes, we review de novo the questions of SAA preemption and CEQA applicability. We reject the County's argument that de novo review does not apply in this case due to the absence of any fundamental vested right. Vested rights affect only the review of substantial evidence claims and do not affect the general rule of appellate review that we review questions of law de novo.

II. No Preemption by or Violation of SAA

The Airport contends the County's action, denying the CUP renewal that would allow continued operation of the Airport, was contrary to the SAA and preempted by the SAA. The Airport's position is that the County must allow the continued operation of the Airport, as long as (1) the Airport's state-issued permit

remains valid and (2) the Airport abides by the reasonable conditions reflected in the CUP. We disagree.

Preliminarily, we reject the County's view that our prior unpublished *Lang* opinion collaterally estops the Airport from arguing preemption, or that the Airport forfeited the preemption claim by failing to preserve it when they applied for the 1999 CUP, which was granted. We did not address preemption in our prior opinion, and there was no need for the Airport to raise the preemption claim until now.

Also preliminarily, we observe the limited nature of this preemption claim. Preemption addresses conflicts between *legislative* acts by the state and local governments. (Cal. Constitution, art. XI, § 7 ["A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws"].) Although zoning ordinances are legislative acts, local decisions on CUP applications are adjudicatory in nature. (*Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514, 519, 523.) The Airport does not claim that any County *ordinance*, or that any *part* of a County ordinance, conflicts with the SAA. Nor does the Airport dispute that "airports are subject to local zoning ordinances" (*City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465, 479), though the Airport notes *Burbank* referred to a prior case's statement that local agencies created under state law must comply with a city's zoning ordinances (a point

inapplicable to the case before us). The Airport argues the County's *decision* to deny renewal of the Airport's CUP violates the *purposes* of the SAA. The Airport thus hopes to avoid the consequence that the County's action does not violate any specific SAA provision and invoke the preemption principle prohibiting a county from action "inimical" or hostile to state law. (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067-1068 [a conflict between state and local laws exists if the local legislation contradicts state law, i.e., is inimical to or cannot be reconciled with state law].) We treat the Airport's appeal as presenting an argument that the County zoning ordinance--allowing the County the discretion to deny CUP renewal when detrimental to the general welfare--is, *as applied to airports*, preempted by the SAA.

"[T]he 'general principles governing state statutory preemption of local land use regulation are well settled. "The Legislature has specified certain minimum standards for local zoning regulations (Gov. Code, § 65850[8] et seq.)" even though it also "has carefully expressed its intent to retain the

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[8] Government Code section 65850, subdivisions (a) and (c)(4), provide that a county's legislative body may adopt ordinances that "[r]egulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes," and regulate the "intensity of land use."

maximum degree of local control (see, e.g., *id.*, §§ 65800,[9] 65802)." [Citation.]'" (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1150 (*Big Creek Lumber*).)

As indicated, California Constitution, article XI, section 7, states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." This provision reflects an inherent police power, and a county's power to control its own land use decisions "'derives from this inherent police power, not from the delegation of authority by the state.'" (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1151.)

A conflict between state and local laws exists if the local ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. (*O'Connell v. City of Stockton, supra*, 41 Cal.4th at p. 1067.) A local ordinance duplicates state law when it is coextensive with state law. (*Ibid.*) A local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law. (*Id.* at p. 1068.) A local ordinance enters a field fully occupied by state law either when the Legislature expressly manifests its intent to occupy the legal

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[9] Government Code section 65800 provides that the Legislature, in enacting state zoning laws governing local zoning ordinances, has declared its "intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters."

area or when the Legislature impliedly occupies the field. (*Ibid.*)

"There can be no preemption by implication if the Legislature has expressed an intent to permit local regulation or if the statutory scheme recognizes local regulation. [Citation.]" (*Delta Wetlands Properties v. County of San Joaquin* (2004) 121 Cal.App.4th 128, 143.)

"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.]" (*Big Creek Lumber, supra*, 38 Cal.4th at pp. 1149-1150.)

Here, as indicated, the Legislature, in enacting state zoning laws governing local zoning ordinances, has declared its "intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." (Gov. Code, § 65800, fn. 9, *ante*.)

The SAA does not expressly or impliedly occupy the field of airport regulation. 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."[10] (§ 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

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[10] Contrary to the Airport's assertion at oral argument, this limitation on power does not apply only to municipal airports.

regulation, the local agency shall refer the proposed action to the commission].)

The Airport cites *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority, supra,* 113 Cal.App.4th at page 478, which said section 21661.6 (submission of plan for expansion or enlargement of airport) addressed "a matter of statewide concern rather than a purely municipal matter," because the airport was regional in nature, designed for travel between regions. The *Burbank* case held the statute's specific reference to city councils and boards of supervisors as the governing bodies responsible for decisions regarding airport expansion or enlargement, created a strong inference the Legislature intended to preclude action by initiative or referendum. (*Ibid.*) This does not help the Airport in this case.

The Airport argues the basis for preemption is that the County's action in denying the CUP renewal under its zoning ordinances is "inimical" to the SAA. The Airport also argues the County's action is "contrary to" the SAA, and the SAA protects state-permitted airports from involuntary closure by local zoning decisions as long as the airport has a state permit and complies with CUP conditions.

However, the Airport cites no specific SAA provision which is "contrary to" the County's denial of the CUP renewal. As we shall explain, the County's action is not inimical to or contrary to the SAA. Some aspects of the SAA arguably support the Airport's view that there should be some restriction on the

County's ability to cause closure of an airport by denying a CUP renewal for continued operation. However, we shall conclude the SAA, as it stands, does *not* prevent the County from denying the CUP renewal, even if it results in closure of the Airport. If the Legislature wants to impose such a restriction on a county's constitutional police powers, the Legislature must do so by clear legislation, not by circuitous implication.

"[A]irports are subject to local zoning ordinances." (*City of Burbank v. Burbank-Glendale-Pasadena Airport Authority, supra*, 113 Cal.App.4th at p. 479.) "Local agencies created under state law [such as airport authorities] must comply with [local] building and zoning ordinances." (*City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 375.)

Although a CUP creates a property right that may not be revoked without constitutional due process (*Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359 (*Malibu Mountains Recreation*); 1 Longtin's California Land Use (2008 supp.) § 3.71, p. 332), denial of an application for renewal of a CUP is not the same as revocation of a CUP. (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 85; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1530.)

The Airport argues the purpose of the SAA is to protect airports from closures unless and until, in the state's assessment, the airport site no longer conforms to minimum

airport standards or can no longer be safely used by the public. However, the Airport fails to support its position.

The Airport (mis)cites section 21668, which states the grounds upon which the Department may revoke the *state-issued* permit, i.e., if there has been an abandonment of the airport or failure to comply with conditions set forth in the permit or Department regulations, or the airport no longer conforms to minimum airport standards, or the site may no longer be safely used by the general public because of a change in physical or legal conditions on or off the site. This statute says nothing about requiring counties to keep privately-owned, public-use airports open. The Airport argues it qualifies for state protection because, in granting the state permit, the Department weighed the advantages to the public against the burden on the surrounding area. (§ 21666.) We see nothing protecting the Airport from closure by a local land-use zoning decision. We reject the Airport's reliance on a reference in *Big Creek Lumber, supra*, 38 Cal.4th 1139, to a provision of the state Timberland Productivity Act which *expressly* preempted local control of parcels located in timberland production zones. (*Id.* at p. 1155.)

The Airport also cites the provisions of the SAA, stating the purpose to encourage aviation and to protect airports from incompatible uses in the land surrounding the airports. (§ 21002, 21670.) However, "encouraging" something is not the same as mandating it. Moreover, those statutes appear to assume the

local government wants an airport and are tempered by the SAA's express references to local powers (though placing some restrictions, such as requiring a two-thirds vote and a finding of consistency with the SAA in order for the local entity to override an airport land use commission).

Thus, section 21002 states the purposes of the SAA include "[e]ncouraging the development of private flying and the general use of air transportation. [¶] . . . [¶] [and] Granting to a state agency powers . . . to cooperate with and assist political subdivisions . . . in the development and encouragement of aeronautics." And section 21674 gives the commission the power "to assist local agencies in ensuring compatible land uses . . . in the vicinity of existing airports . . . ." Neither provision requires a county to keep renewing an airport's CUP.

That the SAA has the purpose to encourage the development of private flying (§ 21002) is not enough to conclude the SAA prevents a county from denying a CUP renewal that will result in closure of a privately-owned airport. "When the Legislature wishes expressly to preempt all regulation of an activity, it knows how to do so." (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1155.)

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.

The Airport cites the SAA provisions stating the Department has the power to adopt noise standards for airports operating under a state permit "to an extent not prohibited by federal law" (§ 21669), and statewide uniformity is not required and "the maximum amount of local control and enforcement shall be permitted" (§ 21669.2), and "[i]t shall be the function of the county wherein an airport is situated to enforce the noise regulations established by the department" (§ 21669.4). None of this suggests the SAA is meant to protect airports from closure.

The Airport distinguishes *Stagg v. Municipal Court* (1969) 2 Cal.App.3d 318, which held the SAA did not preempt a city ordinance prohibiting jet aircraft takeoffs from a city-owned airport during certain nighttime hours. *Stagg* said: "[T]here is no specific state legislation on the subject of noise abatement; the ordinance does not conflict with existing

legislation in the general field of aviation; there has been no express declaration of legislative intent which would preclude local regulations in the field, or any general plan or scheme which is so comprehensive that an intent to occupy the field may be implied. [Citation.]" (*Id.* at p. 323.) The Airport notes *Stagg* dealt with a city-owned airport, not a privately-owned airport. The Airport says *Stagg* predated the SAA provisions on noise abatement and the statutory amendments addressing noise effectively invalidated *Stagg*'s preemption analysis. We do not consider *Stagg* critical to our disposition, but it supports our conclusion that the SAA does not restrict the County's constitutional police powers unless it does so with some reasonable measure of specificity.

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 zoning decisions.

The Airport cites *Desert Turf Club v. Board of Supervisors* (1956) 141 Cal.App.2d 446, which held the state had occupied the entire field of horse racing, precluding a county from banning horse racing in the entire county on moral grounds. However, the County in this case is not banning airports from the entire county. Moreover, *Desert Turf Club* recognized the county could properly adopt zoning restrictions excluding horse racing tracks from portions of the county where such exclusion was reasonable.

(*Id.* at p. 452.) The Airport's assertion that closure of airports would not be a "proper" zoning restriction begs the question and does not afford a basis for reversal of the judgment.

The Airport says the state permit is a "site" permit (*Bakman v. Dept. of Transportation* (1979) 99 Cal.App.3d 665, citing Cal. Code Regs., tit. 21, §§ 3525-3541), which the County has no authority to revoke. However, the County has not purported to revoke the state permit.

The Airport presents us with an extensive discussion of legislative history of the SAA. We consider legislative history only if an ambiguity exists in the statutes. (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227.) We see no ambiguity in the SAA. We recognize the SAA's express provisions about local powers could arguably be interpreted to exclude any powers not expressly listed. Thus, for example, the SAA states it "shall not be construed as limiting any power of the state or a political subdivision to regulate airport hazards by zoning." (§ 21005.) The Airport argues this provision would not have been necessary had the SAA not preempted regulation of airports by local entities. Additionally, the SAA allows counties (with a two-thirds vote) to override airport commissions on questions whether local plans and airport land use plans are consistent. (§ 21676, fn. 5, *ante*.) We do not view these statutes as implying the SAA restricts any local powers not expressly stated. Airport hazards (unlike local land use zoning) are

within the express jurisdiction of the Department under the SAA, and therefore it makes sense for the SAA to specify it does not limit local power. Inclusion of the override power in the SAA was necessary in order to specify the requirement of the two-thirds vote. Thus, the provisions expressing local power do not support a conclusion that unexpressed powers have been obliterated. The Airport fails to show any ambiguity in the SAA.

Though not cited by the Airport, we note section 21674.7, which tells commissions to use an Airport Land Use Planning Handbook in formulating plans, states in a recently-added subdivision (b): "It is the intent of the Legislature to discourage incompatible land uses near existing airports. Therefore, prior to granting permits for the renovation or remodeling of an existing building, [etc.] . . . local agencies shall be guided by the height, use, noise, safety, and density criteria that are compatible with airport operations . . . [However, t]his subdivision does not limit the authority of local agencies to overrule commission actions or recommendations pursuant to Sections 21676, 21676.5, or 21677." While this provision reflects an intent to discourage incompatible land uses near existing airports, it does not require existing airports to keep existing.

The Airport talks about the SAA's requirements that county general plans be consistent with airport land use compatibility plans (ALUCP). However, the Airport fails to show any

inconsistency between the County's general plan and the ALUCP. Indeed, the Airport acknowledges the County's General Plan and the East Elk Grove Specific Plan are consistent with the ALUCP. The record shows the County plans to change its general plan and request a commensurate change in the ALUCP to delete reference to the Airport. However, that has not yet been done, and that action is not before us. We reject any implication that the presence of the Airport on the current county and commission plans compels the County to allow continued operation of the Airport.

The Airport argues that, before 1982, the SAA simply allowed local agencies to overrule commission decisions by a supermajority vote (§ 21676.[11]), but the Legislature "took that last vestige of power away from local agencies" by adding the requirement in 1982 that the local agency must find its action is consistent with the SAA's purposes. This argument is unconvincing, because the 1982 amendment retained local power.

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[11] As indicated (fn. 5, *ante*), under section 21676, each local agency with a general plan that includes areas covered by an airport land use commission (ALUC) plan had to submit its plan to the airport land use commission by 1983 and continues to be required to submit proposed amendments of its plan to the commission. If the commission determines the plan or proposed change is inconsistent with the ALUC plan, the local agency may, after a public hearing, "overrule the commission by a two-thirds vote of its governing body if it makes the specific findings that the proposed action is consistent with the purposes of [the SAA]." (§ 21676, subds. (a), (b), (c).)

We do see some indications that perhaps the SAA might be viewed as having an intent to impose some restriction on a county's authority to deny a CUP renewal for continuing operation of an airport. Thus, section 21675.1, subdivision (b), says that, until a commission adopts an ALUCP, "a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall give public notice in the same manner as the city or county is required to give . . . ." However, if the commission disapproves an action, regulation, or permit, the county can overrule the commission by a two-thirds vote if the county finds the action, regulation, or permit is consistent with the purposes of the land use compatibility plan (§ 21675.1, subd. (d)), which are "to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public [use] airports to the extent that these areas are not already devoted to incompatible uses." (§ 21670, subd. (a)(2).) Once the commission adopts an ALUCP, the general plan and any specific plan must be consistent with the ALUCP. (Gov. Code, § 65302.3.)

Thus, these provisions show the County does not have unfettered discretion over its permits. It is arguable whether

the "permits" contemplated by these provisions refer to permits other than a county permit for airport operation, which may be assumed as a given. The SAA does not expressly address CUP denials which might lead to closure of airports. However, the SAA may be viewed as restricting development around airports, which may imply an intent to restrict local action that would lead to closure of airports. The California Supreme Court recently said in dictum that airport land use compatibility plans may "make it more difficult for local agencies to change their policies in the future to permit increased development within [a compatibility zone]. (See Gov. Code, § 65[302].3, subd. (a) [fn. 6, *ante*])." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 389 (*Muzzy Ranch*) [ALUCP was a project under CEQA but CEQA review was not necessary because ALUCP was consistent with general plan and zoning which had already undergone CEQA review].) The California Supreme Court also said that, under the SAA, "an airport land use compatibility plan can operate like a multijurisdictional general plan to trump the land use planning authority that affected jurisdictions might otherwise exercise through general and specific plans or zoning." (*Muzzy Ranch, supra*, 41 Cal.4th at pp. 384-385.)

However, if the Legislature wants to strip counties of their powers to deny CUP renewals, the Legislature must do so in a clear way, so that such a conclusion can be reached by reference to the SAA itself, rather than a circuitous

exploration of underlying legislative history and interpretation of the SAA's purposes.

The Airport quotes from *Muzzy Ranch, supra*, 41 Cal.4th at page 384, that even if a local government invokes the override provision, the SAA still controls (because the local entity must find its plan is consistent with the SAA). According to the Airport, it is thus indisputable that land-use decisions in areas falling under an airport land use compatibility plan must be consistent with the SAA's clearly stated purpose to protect the orderly expansion of airports rather than their involuntary closure. However, we have explained the SAA does not protect airports against closure.

Even if we were to conclude that an ambiguity in the SAA justifies resort to legislative history, the Airport fails to show grounds for reversal. The Airport cites comments from a Joint Interim Committee on Aviation in 1947, *proposing* the Legislature should protect not only property owners around airports but also operation of airports themselves. However, the Airport fails to show this "proposal" made its way into the SAA. The Airport cites comments from the Director of the State Department of Aeronautics, presented to the Assembly, Commerce and Public Utilities Committee in 1969, which proposed that airport land use commissions be given the power to regulate land use in the airport environment. However, the concern expressed in that document was unchecked expansion of airports, i.e., the development of "airport cities" permitted to grow without

benefit of comprehensive planning. The document also noted that airports had been encouraged to expand "perhaps much more than originally anticipated."

The Airport suggests the resulting amendment to the SAA in 1970 deleted the prior provision that airport land use commissions could "make recommendations for the use of the land surrounding airports" (former § 21674; Stats. 1967, ch. 852, § 1, p. 2290). However, the 1970 amendment did not alter this language. (Stats. 1970, ch. 1182, § 4, p. 2089.) The 1970 amendment did add section 21675, stating each airport land use commission "shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport . . . and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. . . . In formulating a land use plan, the commission may . . . specify use of land . . . within the planning area." (§ 21675; Stats. 1970, ch. 1182, § 5, p. 2090.) The 1970 amendment also gave local entities the power to overrule the commission by a four-fifths vote (later amended to two-thirds). (§ 21676; Stats. 1970, ch. 1182, § 6, p. 2090.)

However, although the Legislature gave airport land use commissions overlapping authority with local entities over protection of the general public in the orderly growth of airports, still nothing in the SAA protected airports from closure.

The Airport contends subsequent amendments to the SAA added provisions evincing a legislative intent to protect airports from closure. We have already explained that none of the SAA provisions warrants a conclusion that the SAA prevents the County from denying a CUP renewal that will result in closure of the Airport. It is not enough, as suggested by the Airport, that the SAA does not expressly authorize local entities to deny CUPs for airports; that authority is conferred by the California Constitution.

The Airport argues the Education Code recognizes the need to protect airports, because Education Code section 17215 says the Department must make a recommendation as to suitability of any school site selection within two miles of an airport, and no state funds can be expended if the Department does not approve the site. The Education Code does not protect airports from closure, nor does it compel a conclusion that the SAA protects airports from closure.

We conclude the County's decision to deny the Airport's CUP renewal was not preempted by or contrary to the SAA. We need not discuss other arguments, e.g., the Airport's challenge to other reasons given by the trial court for its decision that there was no preemption.

III. CEQA

The Airport next contends the County's action violated CEQA because (1) the closure of the airport was a "project" under CEQA and not exempt from environmental consideration, and (2)

the airport closure is likely to cause significant environmental impacts. We agree with the first point, that this case involves a CEQA project, and the County violated CEQA by failing to conduct an initial study. We therefore need not address the second point.

CEQA requires environmental analysis of "projects" that may have environmental impacts. (Pub. Resources Code, § 21080.) A "project" is "*an activity* which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and which is . . . an activity directly undertaken by any public agency" or "[a]n activity that involves the issuance to a person of a . . . permit . . . by one or more public agencies." (Pub. Resources Code, § 21065, italics added.) Under the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq. (Guidelines)), "project" means "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, [and involves issuance of a permit]." (Guidelines § 15378, subd. (a).)

If the activity constitutes a CEQA "project," the public agency "shall conduct an initial study to determine if the project may have a significant effect on the environment." (Guidelines § 15063, subd. (a).) If the agency determines there is no substantial evidence of a significant effect on the environment, the agency may issue a negative declaration.

(Guidelines § 15063, subd. (b)(2).) Otherwise, further environmental review is required. (Guidelines § 15063, subd. (b)(1).)

"Where the facts in the record are undisputed, the court decides as a matter of law whether the challenged activity falls with CEQA's definition of a project. [Citations.]" (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1377 (*San Lorenzo*).) Our review is de novo. (*Muzzy Ranch, supra*, 41 Cal.4th at p. 382; *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637 (*ACE*).)

*Muzzy Ranch, supra,* 41 Cal.4th at pages 388 to 389, held adoption of an airport land use compatibility plan was a project under CEQA but was exempt from CEQA review under the "commonsense" exemption, because the plan was consistent with the General Plan and zoning, which had already undergone CEQA review. Here, there has been no CEQA review regarding closure of the Airport, and the County does not invoke *Muzzy Ranch.*

The County maintains there was no CEQA "project" because the Board of Supervisors merely denied a CUP renewal, and Guidelines section 15270 states, "CEQA does not apply to projects which a public agency rejects or disapproves."

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, which the County intended to

begin to enforce within 180 days, with transfer of pilots to other airports.

A CEQA "project" means "the whole of an action" having the potential for physical change in the environment. (Guidelines § 15378, subd. (a).)

Public agency action resulting in closure of facilities may implicate CEQA. For example, *ACE, supra*, 116 Cal.App.4th 629, held that closure and removal of a community college's shooting range, and the attendant cleanup activity and transfer of classes to another range, were all part of a single, coordinated endeavor constituting a CEQA project requiring an initial study. The college district and its board argued there was no CEQA project because the board had not yet taken action to demolish the range but merely decided to close the range and clean up lead contamination. (*Id.* at pp. 638-639.) The appellate court rejected the argument, noting evidence of the board's intent to remove the shooting range and develop nearby land. (*Ibid.*)

Similarly, closure of two schools requiring transfer of students to other schools has been held to constitute a CEQA "project" (though exempt on other grounds). (*San Lorenzo, supra*, 139 Cal.App.4th 1356, 1376, 1380.) The possibility that a school closure may have an environmental impact cannot be rejected categorically, and the transfer of students may pose some possibility of increased traffic congestion and attendant environmental effects. (*Id.* at pp. 1379-1380.)

We recognize these cases are distinguishable because they involved publicly-owned schools, and here we deal with a privately-owned airport. Nevertheless, a CEQA "project" is an activity which may cause a physical change in the environment and which is "an activity directly undertaken by any public agency" *or* "[a]n activity that involves the issuance to a person of a . . . permit . . . by one or more public agencies." (Pub. Resources Code, § 21065.)

Here, the County's action in denying the permit has the undisputed practical effect of closing the Airport. At the Board of Supervisors hearing, the County expressed its intent to enforce its zoning code and begin phasing out airport operations within 180 days. At this point, it is not known whether the buildings on the Airport property can be adapted to other uses (though we do see indications in the record of an expectation that buildings might have to be removed). Even if it is not yet known what will happen to the airport facilities (hangars, paved runway, etc.), it is known and intended by the County that the pilots who currently use the Airport will have to transfer to other airports. There was a discussion at the Board of Supervisors hearing about where the 60 or so pilots would go.[12] The Chief Operating Officer of the Sacramento County Airport System discussed accommodations available at nearby airports,

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[12] The Airport says 60 pilots hangar their aircraft at the Airport, though we see some indication in the record that there may be 71 aircraft.

many of which would fall within operational limits that had already been subjected to environmental review. The Airport argued the transfer would result in increased road traffic on an ongoing basis.

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. (Guidelines § 15378, subd. (a).) Accordingly, the County's action constitutes a CEQA "project" requiring preparation of an initial study.

We do not suggest the Airport closure will have significant adverse environmental impacts, nor do we suggest that an environmental impact report (EIR) must be prepared. We merely hold the County has skipped an essential step in the implementation of its decision to close the Airport and transfer its operations to other facilities. Before proceeding, the County must conduct an initial study under CEQA. The result of the initial study is not our concern. Neither is the wisdom of the decision to close the Airport. We require only that the County comply with the mandates of CEQA. We need not address the parties' other CEQA arguments, e.g., whether closure of the Airport will have significant adverse environmental impacts.

IV. Substantial Evidence

The Airport contends substantial evidence does not support the County's administrative finding that the presence of the

airport was hindering the school district's efforts to acquire a site for an elementary school. However, the Airport's only reason for this contention is an insistence that the County's action was preempted by and contrary to the SAA. We have already rejected this argument and therefore need not further address the matter of substantial evidence.

We nevertheless note that the Airport does not, on appeal, claim a "vested right" to continuation of the CUP. A local agency's power to deny renewal of a CUP may be affected if the grant of a CUP plus subsequent reliance by the permittee creates a vested right. (*Malibu Mountains Recreation, supra*, 67 Cal.App.4th 359; *Goat Hill Tavern, supra*, 6 Cal.App.4th 1519; 1 Longtin's California Land Use (2008 supp.) § 3.71, p. 335.) The Airport did present this issue (without success) in the trial court, citing *Goat Hill Tavern, supra*, 6 Cal.App.4th 1519, which prohibited a city from denying renewal of a CUP for a tavern's game room, where (1) the property owner acquired a vested right by investing substantial amounts of money in the business in reliance on the CUP, and (2) under the independent judgment standard, the city's evidence of neighbors' complaints about noise (etc.), was insufficient because other nearby bars and businesses could have been the source of the noise and related problems, and the tavern owner was not allowed to cross-examine complaining witnesses as to why they believed Goat Hill Tavern was responsible. (*Id.* at pp. 1523-1524.) We see some similarities between *Goat Hill Tavern* and this case, where the

Airport and airplane owners have invested in the expansion and development of the airport. On the other hand, unlike *Goat Hill Tavern* where there was clear reliance by the property owner who invested substantial amounts of money in reliance on the CUP, here the Airport makes no showing of such investment *in reliance on the CUP*. Instead, the Airport argues (in its discussion of the Takings Clause) that it made substantial investment "based on the reasonable expectations their *state-issued* permit and their years of uninterrupted operation could well be expected to foster." (Italics added.) Clearly, the Airport did expand over the years, but during at least some of those years (1973 to 1999) the Airport was operating without a CUP and therefore could not have acted in reliance on a CUP. In any event, we have no need to address vested rights or *Goat Hill Tavern*, because the Airport has not argued these matters and has therefore forfeited them. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [reviewing court need not address points not argued or developed by appellant].)

We conclude the Airport fails to show grounds for reversal based on its claim of insufficiency of the evidence.

V. Taking of Property

The Airport argues the County's action denying the CUP renewal has the effect of closing the Airport and therefore constitutes an unlawful (regulatory) taking of private property without just compensation. (U.S. Const., 5th Amend.; Cal. Const., art. I, § 19.)

We shall conclude the issue is not ripe. Although the trial court did not dispose of the contention on this ground, we may affirm for reasons other than those given by the trial court. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329-330.)

"Where a regulation places limitations on land that fall short of eliminating all beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. [Citation.]" (*Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 618 [150 L.Ed.2d 592, 607] (*Palazzolo*).)

A takings claim is ripe when the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. (*Palazzolo, supra*, 533 U.S. at p. 618 [150 L.Ed.2d 592, 607].) However, the final decision requirement is not satisfied when a land-use authority denies a specific use of the property, "leaving open the possibility that lesser uses of the property might be permitted." (*Id.* at p. 619.) The question of regulatory taking "cannot be resolved in definitive terms until a court knows 'the extent of permitted development' on the land in question. [Citation.]" (*Id.* 533 U.S. at p. 618; accord, *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1038.)

Here, we know only that the land will not be able to be used as an airport. There is a possibility that the land could be used for other purposes consistent with its agricultural zoning. The Airport says no. The Airport says, "Appellant Pilots Association will be denied all use of their real property (hangars, runways, lights, etc.) and Appellant Lang, owner of the Site, will be left with no economically viable use for the land in light of the presence of the improvements which he is forbidden to use--all without any showing that the closure of the Airport will serve any legitimate and lawful goal of the County."

However, the Airport develops no analysis and cites no authority that the pilots who built hangars, etc., are owners of "real property," and the Airport fails to show any *evidence* that Lang will be left with no economically viable use of the land. He is not forbidden to use the land or any improvements on the land for other uses. He has not shown they cannot be adapted to other uses.

Accordingly, the takings claim is not ripe.

We conclude the Airport fails to show grounds for reversal of the judgment, except for the County's failure to conduct an initial study under CEQA.

DISPOSITION

Insofar as the judgment denies appellants' claims under the State Aeronautics Act, the judgment is affirmed. Insofar as the judgment denies appellants' claim under California Environmental

Quality Act, the judgment is reversed, and the matter is remanded to the trial court with directions to grant appellants' petition for a writ of mandate directing the respondents to undertake an initial environmental study of the project. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

SIMS, Acting P.J.

We concur:

NICHOLSON, J.

CANTIL-SAKAUYE, J.

## PROOF OF SERVICE

I, Shailini Garcia, declare:

I am over the age of 18 years, and not a party to the above-entitled action. I am employed in the County of Sacramento and my business address is 700 H Street, Suite 2650, Sacramento, California 95814.

On August 11, 2008, I served a copy of the following document:

**PETITION FOR REVIEW**

on interested parties in this action by:

X **personal delivery** of a true copy thereof to the following parties at the addresses set forth below.

| | |
|---|---|
| Court Clerk,<br>Court of Appeal, 3rd District<br>900 N Street, Room 400<br>Sacramento, CA 95814<br>(1 copy) | Superior Court of California<br>Sacramento County<br>720 Ninth Street<br>Sacramento, CA 95814<br>(1 copy) |

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 11, 2008, at Sacramento, California.

Shailini Garcia

## PROOF OF SERVICE

I, NANCY GRAHAM, declare:

I am over the age of 18 years, and not a party to the above-entitled action. I am employed in the County of Sacramento and my business address is 700 H Street, Suite 2650, Sacramento, California 95814.

On August 11, 2008, I served a copy of the following document:

**PETITION FOR REVIEW**

on interested parties in this action by:

X **mail** by enclosing a true copy in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with the business practices of the Office of the Sacramento County Counsel for collection and processing of correspondence for mailing with the United States Postal Service, and correspondence so collected and processed is deposited with the United States Postal Service on the same date in the ordinary course of business.

| | |
|---|---|
| The Law Office of<br>Lanny T. Winberry<br>8001 Folsom Boulevard, Ste 100<br>Sacramento, CA 95826 | Taylor and Wiley<br>John Michael Taylor<br>2870 Gateway Oaks Drive, Ste. 200<br>Sacramento, CA 95833 |

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 11, 2008, at Sacramento, California.

Nancy Graham

NANCY GRAHAM