

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUNSET SKY RANCH PILOTS
ASSOCIATION, et al.,

Petitioners/Plaintiffs and
Appellants,

v.

THE COUNTY OF
SACRAMENTO, et al.,

Defendants and
Respondents,

JOHN TAYLOR, et al.,

Real Parties in Interest and
Respondents.

No. S165861

Court of Appeal No. C055224

Sacramento Superior Court
Case No. 06CS00265

SUPREME COURT
FILED

DEC 22 2008

Frederick K. Onkrich Clerk

Deputy

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

REPLY BRIEF

ROBERT A. RYAN, JR., County Counsel
KRISTA C. WHITMAN, Supervising
Deputy [State Bar No. 135881]
COUNTY OF SACRAMENTO
700 H Street, Suite 2650
Sacramento, CA 95814
Telephone: (916) 874-5100
Facsimile: (916) 874-8207
E-mail: whitmank@saccounty.net

Attorneys for Defendants and
Respondents County of Sacramento

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

CERTIFICATE OF WORD COUNT iv

INTRODUCTION1

DISCUSSION1

 A. There Was No County-Initiated Project to
 Close the Airport.....1

 B. CEQA Does Not Require Review Whenever the Status Quo
 Will be Upset4

CONCLUSION5

TABLE OF AUTHORITIES

STATE CASES

<i>Association for a Cleaner Environment v. Yosemite Community College District</i> (2004) 116 Cal.App.4 th 629	3
<i>Main San Gabriel Basin Watermaster v. State Water Resources Control Board</i> (1993) 12 Cal.App.4 th 1371	3
<i>Muzzy Ranch v. Solano County Airport Land Use Commission</i> (2007) 41 Cal.4 th 372	4
<i>San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley United School District</i> (2006) 139 Cal.App.4 th 1356	3

STATE STATUTES

Public Resources Code,	
Section 21065(a)	4
Section 21065(b)	4
Section 21065(c)	4
Section 21080(a)	4
Section 21100	3
Section 21151	3
Section 21108	3
Section 21080(b)(5)	4

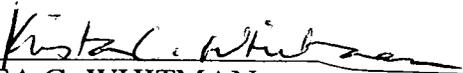
MISCELLANEOUS

CEQA Guidelines	
Section 15002(c)	4
Section 15270	4
Section 15352(b)	4
Section 15378 (a)	2
Section 15377	4
Section 15378 (a)(1)	4
Section 21065(c)	4

Declaration Certifying Word Count

I declare that the foregoing brief, including footnotes, contains 1,438 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 December 22, 2008, at Sacramento, California.



KRISTA C. WHITMAN
Supervising Deputy

INTRODUCTION

In their Answer Brief, petitioners and appellants Sunset Sky Ranch Pilots Association (“appellants”) for the first time contend that the project which allegedly required CEQA review was actually *the County’s* project to close the Airport. Presumably appellants have chosen to so argue because the only reported decisions which require CEQA review for closing existing facilities are those where the public entities affirmatively sought to close their own existing public facilities. However, this use permit renewal request was clearly a private application to renew the use permit for an existing airport, not a County-initiated activity undertaken to close one of its own facilities. Since project denials are not subject to CEQA, there was no need to conduct an initial study.

Further, appellants have attempted to create a new standard for CEQA review, by contending that all actions which “upset the status quo” are subject to CEQA. Appellants have not cited to any CEQA statute or case which supports this supposed standard, because no such authority exists. The fact remains that only projects are subject to CEQA, and denials of private applications are not projects and in any event are statutorily and categorically exempt.

DISCUSSION

A. There Was No County-Initiated Project to Close the Airport
Appellants characterize the decision of the Court of Appeal as holding that “the action undertaken by the County – the closure of the airport – was a project.” (Answer Brief, p. 14.) Appellants then argue that the project which allegedly required CEQA study was “the County’s project to close the Airport.” (Answer Brief, p. 16.)

The Court of Appeal held that the County’s action in denying the use permit renewal would have the “practical effect” of closing the Airport. (Slip Op., p. 44.) The Court then concluded that “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).)” (Slip Op., p. 45.) Thus, the Court determined that the two actions, denial of the use permit renewal and zoning code enforcement, should be considered together as they are two parts of one whole action and thus subject to CEQA.

Including zoning code enforcement as part of the action was a critical error of the Court of Appeal. The only action before the County was the use permit renewal. While one possible eventual result of denial of the renewal request could be a zoning enforcement matter, zoning enforcement was not part of the action before the County and was not the only course of action which might result from a denial. Obviously appellants could have voluntarily closed their operations upon denial of the renewal request, which means that the County would have had no need to initiate a code enforcement matter. Appellants also could have filed another application for a renewal, perhaps limiting the scope or term of the request to improve their chances of an approval. However, neither one of these fact situations were before the County when it considered the project. All that was before the County was a private party’s application to renew a limited term use permit which had expired. The County took no affirmative action (and indeed has still taken no action) to close the Airport. Zoning enforcement therefore cannot be considered part of the “whole of the action” under CEQA.

The fact that this was a private application to renew the term for a private facility, not a public project to close an existing facility, is critical.

A public entity's affirmative action to close an existing facility may be subject to CEQA, as discussed in the County's Opening Brief.¹ Such activity would be a project under Public Resources Code § 21065(a) for activities directly undertaken by an agency. However, a decision to deny a private project is not subject to CEQA, even if the result is to close an existing operation. This is because the CEQA statutes and regulations provide that only "projects" are subject to CEQA and the definition of "project" requires affirmative action. Public Resources Code § 21065(c) requires an agency "issuance" of a permit to meet the definition of a private project. (See also Guidelines § 15352(b).)

CEQA only requires that lead agencies prepare an environmental impact report for projects which they propose to carry out or approve that may have a significant effect on the environment. (Pub. Resources Code §§ 21100, 21151, 21108.) Project denials do not trigger CEQA. (*Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal.App.4th 1371, 1380.) Here, denial of the CUP renewal does not meet the definition of "project" because it is not an approval.

Finally, appellants attempt to avoid the express exemptions for project denials by claiming that the project which required CEQA study was the County's project to close the Airport and to change its General Plan so as to allow other development in the area. (Answer Brief, p. 16.) Thus, appellants conclude, there was no project denial; rather, there was an approval of a project the County itself proposed. (*Id.*) This is a gross mischaracterization of the nature of the application the County considered. As discussed above, the only project before the County was a private

¹ *Association for a Cleaner Environment v. Yosemite Community College District* (2004) 116 Cal.App.4th 629, 637; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley United School District* (2006) 139 Cal.App.4th 1356, 1377.

application to renew an existing use permit. The County most certainly did not have before it a code enforcement action or an application to amend the General Plan, which would of course require its own environmental review.

The fact remains that this was simply denial of a use permit renewal. Even if this Court concludes that the denial is a project subject to CEQA, environmental review would still not be required because project denials are subject to specific statutory and categorical exemptions. (Pub. Resources Code § 21080(b)(5); Guidelines § 15270.)

B. CEQA Does Not Require Review Whenever the Status Quo Will be Upset

Appellants assert that CEQA applies whenever denial of a permit upsets the status quo, as if this were a matter long settled. (Answer Brief, pp. 15, 18.) Yet appellants fail to cite any statutory or case authority to support this proclamation, and none exists. As discussed above, the question of whether an action may result in adverse environmental consequences does not even arise until a determination is made that the action constitutes a project and that the project is not statutorily or categorically exempt. (*Muzzy Ranch v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 380-381.)

CEQA applies to “discretionary projects proposed to be carried out or approved by public agencies,” unless they are otherwise exempt. (Pub. Resources Code § 21080(a).) 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)). Nothing in the

statutes or Guidelines suggests that CEQA is also triggered where an activity not meeting the statutory requirements upsets the status quo.

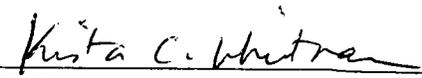
Further, this Court's adoption of appellants' suggested rule would wreak havoc for public entities, highlighting the practical concerns raised by the County and Real Parties in their Opening Briefs. If the test is now that CEQA applies whenever the status quo will be upset, then the County may have been required to conduct an initial study if appellants had chosen to let their use permit lapse without applying for a renewal, since the result there would also have been a closure of the operation and transfer of pilots to other locations. Appellants may argue that CEQA would not apply in such a situation because no application would be before the County and therefore no "activity" would trigger CEQA; however, in the case of denial of an application there is also no activity triggering CEQA since there is no issuance of a permit.

CONCLUSION

Since CEQA was adopted thirty years ago, public entities have relied upon one of the few reliable maxims contained in the statutes and Guidelines, that project denials are not subject to CEQA. The Supreme Court should take this opportunity to reinforce those legislative mandates, and reverse the decision of the Third District Court of Appeals.

DATED: December 22, 2008 Respectfully submitted,

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

By: 
KRISTA C. WHITMAN
Supervising Deputy County Counsel

PROOF OF SERVICE

I, ELISIA DE BORD, 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 December 22, 2008, I served a copy of the following document:

REPLY BRIEF

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 Lanny T. Winberry 8001 Folsom Boulevard, Ste. 100 Sacramento, CA 95826	Taylor and Wiley John Michael Taylor 2870 Gateway Oaks Drive, Ste. 200 Sacramento, CA 95833
Court Clerk, Court of Appeal, 3 rd District 900 N Street, Room 400 Sacramento, CA 95814 (1 copy)	Superior Court of California Sacramento County 720 Ninth Street Sacramento, CA 95814 (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 December 22, 2008, at Sacramento, California.


ELISIA DE BORD