

## **Court Upholds Use of Small Facilities Exemption for Microcell DAS Project**

In [\*Aptos Residents Association v. County of Santa Cruz\*](#), the court of appeal upheld Santa Cruz County's use of a CEQA exemption to approve a distributed antenna system (often referred to as a DAS) for the provision of cell service. (6th Dist., No. H042854, Feb. 27, 2018.) The court found that the project fit squarely within the intended scope of CEQA's Class 3 categorical exemption for small facilities and structures. The court also rejected petitioners' arguments that there was an applicable exception that would have precluded the use of the exemption.

### **Background**

The project involved 10 microcell transmitters that would be used as part of Crown Castle's distributed antenna system. Each microcell consisted of a two-foot by one-foot antenna mounted on an extender pole that would be attached to an existing utility pole. Crown Castle submitted a separate permit application for each microcell. Raising concerns about health and aesthetics, residents began mounting opposition to the project. The county jointly considered the applications for the microcells and determined that they fell within the Class 3 exemption for small structures. After conducting site visits and reviewing photo simulations, the county concluded that the microcells would not result in any visual or other environmental impacts. Residents filed suit, contending that the county's approval of the project violated CEQA.

### **The Court's Decision**

The residents' petition claimed the county violated CEQA in several ways: by improperly segmenting the project; by finding the project fell within the Class 3 exemption; and by using an exemption where an exception barred an exemption. The court of appeal found these claims unavailing.

#### **Improper segmentation**

The court rejected petitioners' contention that because Crown Castle applied for a separate permit for each microcell, the project was improperly segmented. The county expressly considered the project to be the entire group of microcells and found that the Class 3 exemption was applicable to all of the microcells. The fact that Crown Castle filed a separate permit for each microcell unit was irrelevant. Applicability of exemption. The Class 3 categorical exemption applies to "limited numbers of new, small facilities or structures" including "electrical, gas, and other utility extensions." The court found the project to fall squarely within the class of projects intended to be covered by this exemption, recognizing that the exemption extends to multiple small structures in scattered locations.

#### **Exceptions to the use of the exemption**

Petitioners urged the court to find applicable several exceptions that would have precluded the use of the Class 3 exemption. The court declined, finding that that petitioners failed to meet their burden to identify evidence supporting an exception. *Cumulative impact exception.* The cumulative impact exception bars an

exemption where the cumulative impact of "successive projects of the same type in the same place, over time is significant." Petitioners claimed that this exception should apply because AT&T intended to implement its own distributed antenna system in the area at some time in the future. The court rejected this argument as amounting to "mere speculation" as petitioners provided no evidence that AT&T was actually pursuing a project or any evidence of the location of AT&Ts would-be facilities. *Location exception.* The CEQA Guidelines prohibit use of the Class 3 exemption if the activity may have an impact on an environmental resource of "hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies." The county's zoning of the project area as "Residential Agricultural" did not meet this requirement as nothing in the zoning ordinance specifically designated the zone as "an environmental resource of hazardous or critical concern." *Unusual circumstance exception.* Under the CEQA Guidelines, an exemption cannot be used where there is "a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." The court found nothing unusual in microcells being built in rural areas, as such areas "clearly need utilities, including cell coverage."

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