June 16, 2017
Court of Appeal Rejects CEQA Piecemealing Challenge to County's "Zoning Modernization" Ordinances

The court in *Aptos Council v. County of Santa Cruz* (6*th* District, No. H042976, April 25, 2017) rejected a lawsuit claiming that three pro-development zoning ordinances the county adopted constituted a single project that that should have been reviewed together in an environmental impact report. The court of appeal found that the zoning ordinances could be implemented separately and operated independently, and were not a reasonably foreseeable "consequence" of one another. The ordinances therefore did not constitute a single project and completion of separate environmental assessments did not amount to improper piecemeal CEQA review.
Background. The three zoning ordinances related to minor zoning exceptions, exceptions from sign standards, and height, density and parking requirements for hotels. The county adopted the ordinances as part of a broader effort to reform its land use regulations. The zoning exception ordinance authorized administrative approval of "minor exceptions" to zoning standards, such as a 5% height increase. The county found no significant impacts and adopted a negative declaration. The sign ordinance allowed administrative approval of sign exceptions with public notice. The county found the ordinance qualified for various CEQA exemptions. Finally, the hotel ordinance removed a requirement that hotels have 1,100 square feet of developable area per room, removed a three-story height limit, and reduced required parking from 1.1 spaces per room to 1.0 space per room. The county adopted a negative declaration.
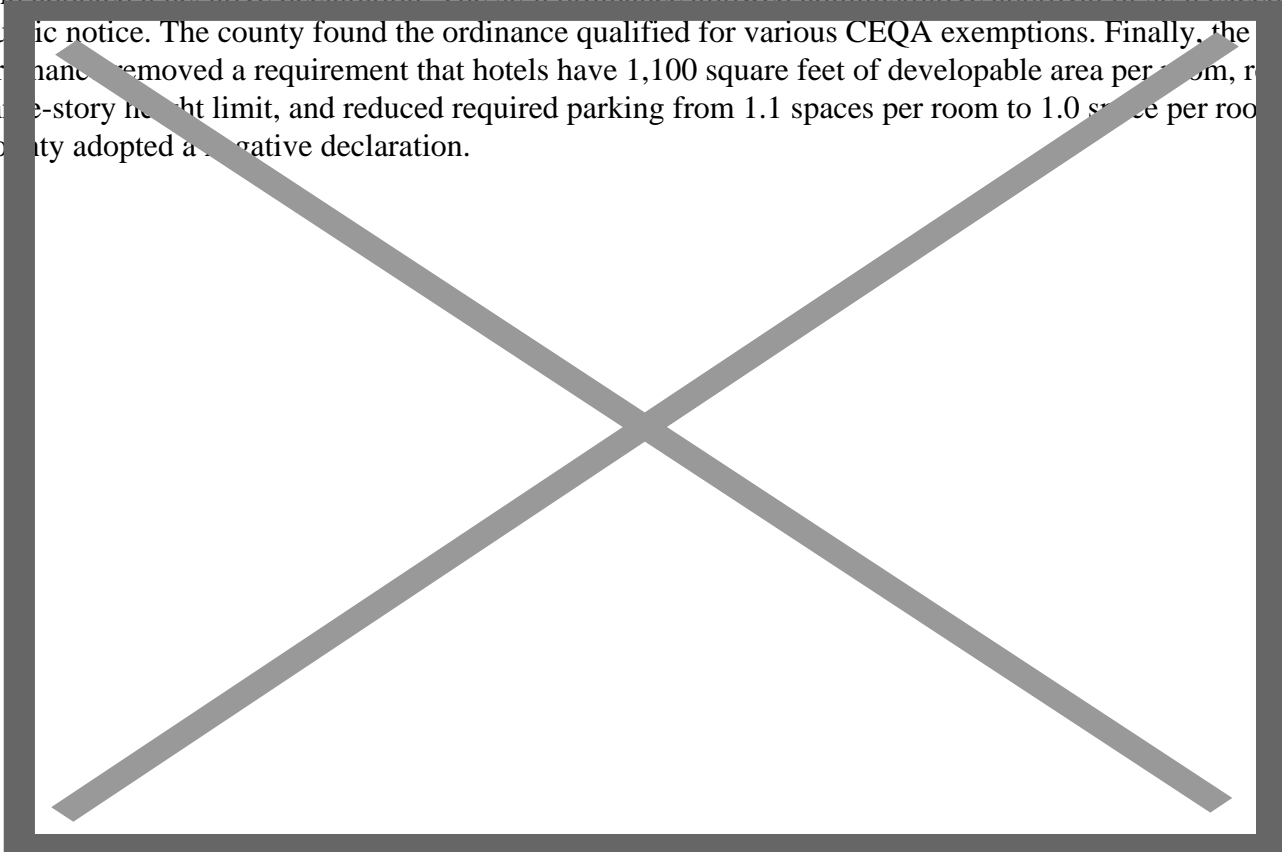
Aptos

Council, a community group, filed suit to challenge the county's approval of the ordinances. It asserted that the negative declaration for the minor exceptions ordinance was invalid and the sign ordinance was not exempt. It also claimed that the county improperly engaged in piecemeal CEQA review of the three ordinances and that environmental review of the hotel ordinance should have considered the impacts of potential future hotel projects. The trial court rejected these claims and denied the petition. On appeal, Aptos Council dropped its CEQA challenges to the minor exceptions ordinance and the sign ordinance. The court's analysis therefore focused on two issues: (1) whether the three ordinances taken together constituted a single project and the county

engaged in improper piecemeal environmental review by evaluating them separately and (2) whether the county erred by adopting a negative declaration for the hotel ordinance rather than preparing an EIR. **Pro-Development Zoning Ordinances that Can Be Separately Implemented and Operated Independently, and That Are Not a Reasonably Foreseeable Consequence of One Another, Do Not Constitute a Single Project for Purposes of CEQA.** On the issue of piecemealing, the court rejected Aptos Council's claim that the three ordinances, adopted as part of a county-wide land use reform effort, constituted a single project and should have been reviewed in a single environmental document. As one court of appeal recently ruled, no improper piecemealing occurs when "projects have different proponents, serve different purposes, or can be implemented independently." On the other hand, under the long-standing rule adopted by the California Supreme Court, an EIR must include an analysis of the environmental effects of a future action if, at a minimum, the future action is "a reasonably foreseeable consequence of the initial project" being considered for approval. The court of appeal emphasized that whether different proposed activities must be treated as a single project that must be reviewed in a single environmental document depends on whether a causal relationship among them can be shown– that one or more of the proposed activities is a "reasonably foreseeable *consequence*" of another proposed activity. The county's decision to change certain zoning regulations—such as changing the number of parking spaces per hotel room—was not a reasonably foreseeable consequence of other regulatory changes such as authorizing administrative approval of minor zoning exceptions. Instead, the court found that the "regulatory reforms operate independently of each other and can be implemented separately." Significantly, the court also rejected Aptos Council's claim that regulatory reform to update county zoning ordinances constituted a single purpose. Although a group of reforms could constitute a single project in some cases, here the court found that "modernizing the County Code is vague" and "was not the type of tangible 'objective' that had been found to be the basis of a CEQA project." **Evidence that the Purpose of an Ordinance Was to Promote Growth Was Insufficient to Show New Development Was Reasonably Foreseeable** The court rejected the contention that an EIR was required for the hotel ordinance because its stated purpose—to facilitate growth—made future development which would have adverse environmental impacts "reasonably foreseeable." Aptos Council offered arguments the ordinance would lead to new development, but did not identify any evidence that the ordinance might actually induce growth or that there were any hotel projects on the horizon. The court found the evidence in the record showed that no hotel developments had been proposed, only a handful of parcels were available for hotels, and the owners of the two most prominent undeveloped parcels did not currently plan to sell or develop the land. While there was evidence that the county was seeking to increase development, including a planning department letter indicating that regulations were too restrictive, that did not make hotel development "reasonably foreseeable;" it showed only the county's "hope" for growth. Finally the court explained that it was not possible to forecast the specific environmental impacts that might result from unknown future development. At this point in time "environmental review of potential future developments would be an impossible task, because it is unclear what form future developments will take."