

MAP ACT 90-DAY STATUTE OF LIMITATIONS APPLIES TO ORDINANCES ADOPTED UNDER AUTHORITY OF THE ACT

Victor Aiuto v. City and County of San Francisco, No. A131279 (Cal. Ct. App. 1st Dist., December 15, 2011.)

City and County of San Francisco v. Superior Court, No. A132908 (Cal. Ct. App. 1st Dist., December 15, 2011.)

January 6, 2012 by **Michael Hansen**

Plaintiffs were owners of condominium units designated "Below Market Rate" ("BMR") under the BMR Condominium Conversion Program created by the City and County of San Francisco ("City") under the authority of the Subdivision Map Act ("SMA"). Plaintiffs filed a challenge against a City ordinance adopted as part of the BMR Program, claiming that the Ordinance, which amended existing ordinances governing the BMR Program and added new provisions, constituted a regulatory taking, was preempted by state law, and violated their civil rights under 42 U.S.C. section 1983.

The City claimed that the trial court erred in issuing a preliminary injunction because there was no likelihood that plaintiffs could prevail at trial. The City contended that plaintiffs' claims were all barred by the 90-day statute of limitations period provided by SMA section 66499.37 (actions challenging the decision of a legislative body "concerning a subdivision") and section 65009, subdivision (c)(1) (actions challenging either the adoption or amendment of a zoning ordinance or the validity of conditions attached to variances, conditional use permits, or other permits). The court agreed with the City because the claim was not filed within the 90 day timeframe provided for under section 66499.37.

SMA Statute of Limitations Section 66499.37

Plaintiffs argued that both sections 66499.37 and 65009 were inapplicable because plaintiffs' claims could not fit into the statutory rules set up for development decisions. Instead, plaintiffs claimed that their challenge was to the City's adoption of an ordinance that unilaterally changed the terms of a low income housing program. Plaintiffs did not dispute that they failed to file suit

within the 90-day period, but asserted that their claims were governed by the five-year statute of limitations for inverse condemnation claims, including regulatory takings (Code Civ. Proc., §§ 318, 319); the three-year statute of limitations for preemption claims (Code Civ. Proc., § 338, subd. (a)); and the two-year personal injury statute of limitations for 42 U.S.C. section 1983 claims (Code Civ. Proc., § 335.1).

The court held that the SMA establishes "a strict 90-day limitations period for any action or proceeding to attack a governmental decision 'concerning a subdivision ... or to determine the reasonableness, legality, or validity of any condition attached thereto...' (§ 66499.37.)" The court reasoned that the language used in section 66499.37 "contains no limitation whatsoever on the type of decision that is being challenged, but instead broadly encompasses any decision of a local legislative or advisory body 'concerning a subdivision.' " In addition, the court looked into the intent of the Legislature, and determined that "it is evident that the Legislature ... intended to apply the 90-day statute of limitations in a more expansive manner to actions seeking to attack or review any decision 'concerning a subdivision,' and not just to 'subdivision decisions and ordinances directly affecting current subdivision approvals' as plaintiffs claim." The court also noted that applying the 90-day statute of limitations to plaintiffs' challenge is consistent with the need for expeditious resolution of subdivision-related challenges.

Given its conclusion with regard to section 66499.37, the court determined that there was no need to address the City's claim that the 90-day statute of limitations provided by section 65009 precluded plaintiffs' claims.