

DECISION TO DENY A ZONING CHANGE SUBJECT TO 90-DAY STATUTE OF LIMITATION

General Development Co., L.P. v. City of Santa Maria, 2d Civil No. B228631
(Super. Ct. No. 1320579) (Cal. Ct. App. 2nd Dist., January 25, 2012)

February 17, 2012 by **Katharine J. Mueller**

An action challenging a legislative body's decision to deny a zone change is subject to a 90-day limitation period set forth in section 65009(c) of the California Planning and Zoning Law (Cal. Gov. Code §§ 65000 *et seq.*). In June, 2009, General Development Co., L.P., filed for a zone change on property in the City of Santa Maria (the City). On February 16, 2010, the City Council denied the application. The developer challenged the City Council's action 97 days after the City Council's denial. The trial court ruled that the developer's challenge was time-barred by section 65009(c)(1)(B) of the Government Code, which requires an action or proceeding "to attack, review, set aside, void, or annul [a] decision . . . to adopt or amend a zoning ordinance" to be filed and served within 90 days of such decision. The Court of Appeal agreed.

General Development argued in its appeal that denial of a rezoning application was not a "decision" because City did not "adopt or amend a zoning ordinance" within the meaning of section 65009. It claimed that the 90-day limitation period applied only to a "decision" granting a zone change, not "decisions" denying a zone change, and asserted that a three-year statute of limitation should apply.

The Court of Appeal disagreed, ruling that the word "decision" is broad and includes grants and denials. To read the wording in the narrow way suggested by General Development, said the court, would be contrary to the stated legislative goal of providing "certainty for property owners and local governments regarding decisions made pursuant to this division." (§ 65009(a)(3).) There should not be a three-year "cloud" hanging over the property that could inhibit the free alienation and use of land; that, said the court, would be poor land use law.