CEQA-Based Facial Challenges To Map Act Ordinances: Relevant Recent Statute of Limitations Developments

By Arthur F. Coon on March 15th, 2012

In an earlier post ("Ten CEQA Litigation Mistakes To Avoid," September 13, 2011), one bullet point discussed the potential pitfall of concurrently-applicable non-CEQA limitations periods barring CEQA claims. Numerous cases have held CEQA claims that are timely-filed and served under CEQA's statute of limitations are nonetheless time-barred for petitioners' failure to also comply with the concurrently-applicable 90-day service-of-summons requirement imposed by the Subdivision Map Act's broadly-applicable statute of limitations, Government Code, § 66499.37. That statute applies whenever an action – including, but not limited to, a CEQA action – seeks to set aside a "subdivision-related" decision.

In a recent non-CEQA action that bears on this significant issue, the First District Court of Appeal confirmed that "subdivision-related" decisions subject to the Map Act's 90-day statute of limitations include local agency *legislative* enactments adopted pursuant to the authority of the Map Act. (*Aiuto v. City and County of San Francisco* (12/15/11) 201 Cal.App.4th 1347.) The Court there rejected, as time-barred under Government Code § 66494.37, plaintiffs' facial challenges (asserting takings, state law preemption and civil rights theories) to the City's adoption of an amendment to its Subdivision Code concerning the applicability of restrictions imposed under its Below-Market-Rate Condominium Conversion Program, a local enactment it had adopted pursuant to the authority of the Map Act.

Focusing on the statute's language describing challenges to decisions "concerning a subdivision," plaintiffs had argued that the Map Act's 90-day limitations period applied only to "temporal" decisions such as those actually approving, rejecting or concerning a subdivision *map* application. The Court read the plain statutory language more broadly and relied on the Supreme Court's decision in *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, and numerous other authorities, in holding the statute applied to Map Act-related *ordinances* as well, and that its 90-day limitations period was triggered by the *adoption* of the ordinance. (*Cf. Hensler, supra,* at 22 [stating that for facial challenges the limitations period would run from "the date the statute becomes effective," which under California Planning and Zoning Law is normally 30 days after adoption for local ordinances].)

Aiuto reaffirmed what many CEQA and land use litigators already understood to be the law under *Hensler* and related authorities, i.e., facial challenges of whatever stripe to Map Act ordinances are subject to Government Code § 66499.37's limitations period and requirements. Further, although both decisions' pronouncements on the "trigger" date are arguably *dicta*, *Aiuto* hews more closely to the express statutory language of § 66499.37 than *Hensler* by holding it runs from the ordinance's *adoption* date, i.e., the "decision" on the enactment.

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