

If At First You Succeed, Don't Try, Try, Try Again

The Fifth District Court of Appeal has confirmed that the 90-day statute of limitations under the Subdivision Map Act includes takings claims arising out of Map Act decisions. [Honchariw v. County of Stanislaus, 238 Cal.App.4th 1](#) (2015).

This is the third published decision arising from denial of Honchariw's nine-lot subdivision. Honchariw secured a victory in the first case, where the court ruled that the County's denial of his subdivision map was invalid for failing to make findings required under the Housing Accountability Act (Gov. Code § 65589.5(j)). (See our Nov. 18, 2011 [Update](#)). Honchariw (who was self-represented) then sought to recover attorneys' fees against the County under the same statute. The court of appeal rejected his claim, ruling that the statute authorized attorney fees only for denial of a development containing affordable housing, which Honchariw's did not. (See our August 22, 2013 case report: [No Affordable Housing, No Attorney's Fees Under Housing Accountability Act](#)).

Undeterred, Honchariw filed this lawsuit contending that denial of his tentative map resulted in a temporary taking of his property without just compensation. He sought damages of \$2.5 million for the alleged taking. The County successfully demurred on the ground the action -- filed years after the challenged decision -- was barred by the 90-day limitations period for actions under the Subdivision Map Act.

On appeal, Honchariw acknowledged that, under the California Supreme Court's 1994 decision in [Hensler v. City of Glendale](#), an inverse condemnation claim arising from a Map Act decision was subject to that statute's 90-day limitations period. He argued, however, that *Hensler* allowed the inverse condemnation action to be filed after the successful conclusion of a mandamus action challenging the decision, provided the latter case was timely filed. The court of appeal rejected this expansive interpretation of *Hensler*. It pointed out that *Hensler* allows an inverse condemnation action only if the prior mandamus action alleges a compensable taking and results in a final judgment establishing such a taking. In other words, the initial mandamus action must present the unconstitutional takings claim to the court as one basis for invalidation of the Map Act decision. Only if such a claim is timely filed under the 90-day Map Act statute and litigated to a successful conclusion may a plaintiff then seek damages for the unconstitutional taking. Because Honchariw's original mandamus action did not include a takings claim, his subsequent effort to obtain damages for a taking was time-barred.

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