

## 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](#), No. F069145 (Fifth Dist., June 3, 2015). (*Honchariw III*) This is the third published decision arising from denial of plaintiff Honchariw's nine-lot subdivision. Honchariw won the first case ([Honchariw I](#)), obtaining a ruling invalidating the denial of his map for failure to make certain findings specified in the Housing Accountability Act, Government Code section 65589.5(j). (See our Nov. 18, 2011 [Update](#)). The Board of Supervisors subsequently approved the subdivision. Honchariw (who was self-represented) then sought to recover attorneys' fees against the County under the same statute. In [Honchariw II](#), 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 another lawsuit contending that the 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 the California Supreme Court's 1994 decision in [Hensler v. City of Glendale](#) that 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, as long as the latter case was timely filed under the Map Act. The court of appeal rejected this expansive interpretation of *Hensler*. It pointed out that *Hensler* allowed an inverse condemnation action to be filed after the conclusion of an administrative mandamus action only if it "alleges the existence of a final judgment establishing that there has been a compensable taking of the plaintiff's land." 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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