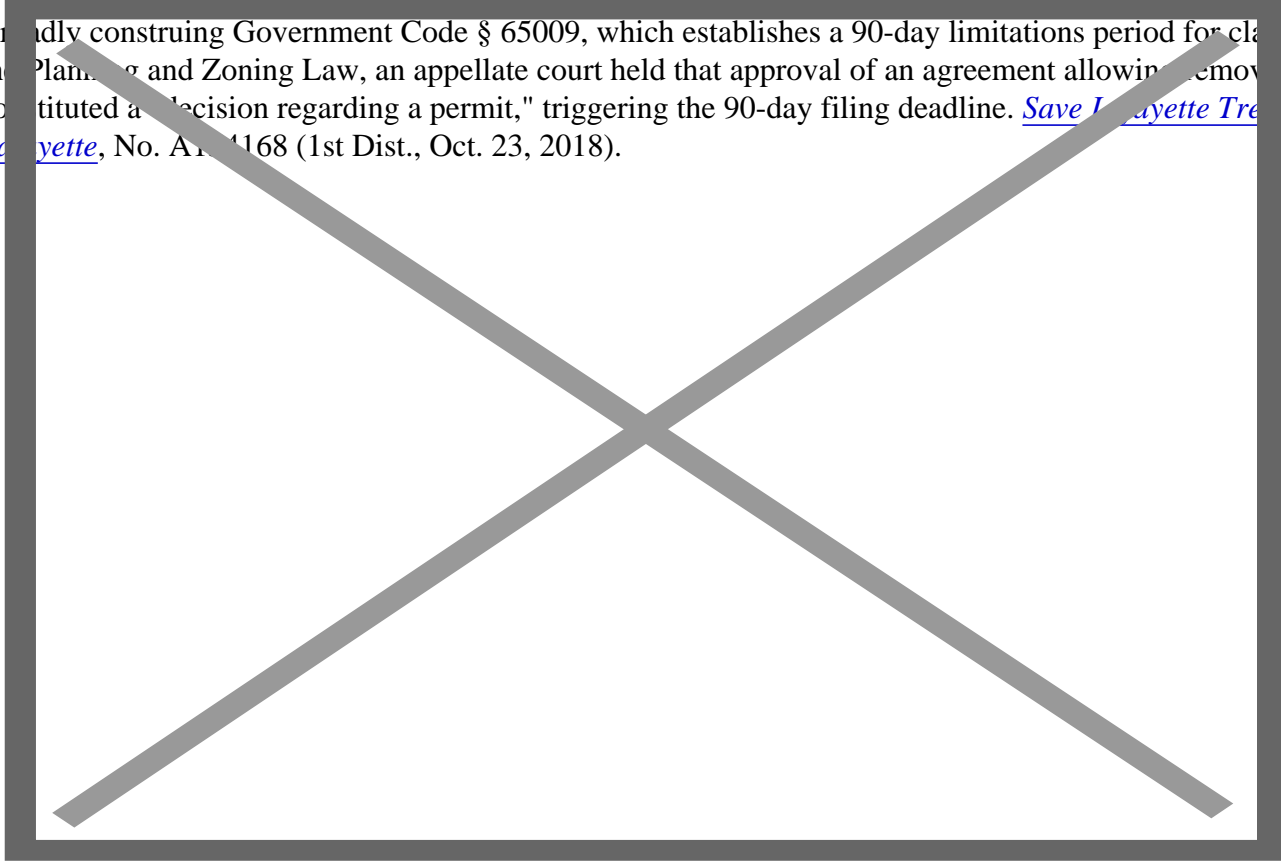


[Blogs](#)

November 07, 2018

City Approval of Agreement for Tree Removal Triggered 90-Day Statute of Limitations Under Planning and Zoning Law

By broadly construing Government Code § 65009, which establishes a 90-day limitations period for claims under the Planning and Zoning Law, an appellate court held that approval of an agreement allowing removal of trees constituted a "decision regarding a permit," triggering the 90-day filing deadline. [Save Lafayette Trees v. City of Lafayette](#), No. A11168 (1st Dist., Oct. 23, 2018).



The

City of Lafayette entered into an agreement with PG&E allowing removal of approximately 270 trees within a natural gas pipeline right-of-way. Petitioners sued contending that the agreement had been approved in violation of the Planning and Zoning Law and CEQA. The trial court dismissed the complaint on the ground that it had not been filed and served within the 90-day limitations period under Section 65009. Government Code § 65009 provides that an action challenging "any decision" regarding "permits, when the zoning ordinance provides therefor" must be filed and served within 90 days of the decision. On appeal, petitioners argued that Section 65009 was inapplicable because the City entered into an agreement allowing tree removal and did not issue any permits. The appellate court disagreed, finding "no meaningful difference between the two in this instance." It noted that the staff report to the City Council regarding the agreement expressly referred to the project as a "major tree removal project" that required a permit under the municipal code. Approval of the agreement allowing removal of the trees, the court said, was properly considered to be a decision regarding a permit subject to Section 65009. Petitioners also argued that its action was subject to a longer, 180-day statute of limitations in the City's municipal code governing challenges to decisions of the City Council. The court concluded this provision was preempted by Section 65009 because it expressly conflicted with the statute's 90-day period. In dicta, the court noted that most local statutes of limitations regarding challenges to planning and Planning and Zoning Law decisions had likely been preempted by the enactment of Section 65009. The court also found, however, that petitioners' CEQA challenge was subject to the 180-day limitations period under Public Resources

Code, not the 90-day period under Section 65009. Concluding that the two statutes could not be reconciled because they established different deadlines, the court held that the CEQA limitations period, as the more specific, controlled.