

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MT. HOLYOKE HOMES, LP, et al.,

Plaintiffs and Respondents,

v.

CALIFORNIA COASTAL
COMMISSION,

Defendant and Appellant;

BARBARA SCHELBERT,

Real Party in Interest and
Appellant.

B201517

(Los Angeles County
Super. Ct. No. BS084800)

ORDER MODIFYING OPINION
AND DENYING REHEARING
(NO CHANGE IN JUDGMENT)

THE COURT:

It is ordered that the opinion filed herein on October 21, 2008 be modified as follows:

1. On page 12, at the end of the first full paragraph, after the sentence ending “Commission acted in excess of jurisdiction.” add the following citations and new footnote 7.

(See *Edwards v. Steele* (1979) 25 Cal.3d 406, 412 [“seemingly mandatory language need not be construed as jurisdictional where to do so might defeat the very purpose of the enactment or destroy the rights of innocent aggrieved parties”]; *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147 [“[w]hen the Legislature has specified a time within which an administrative board is to render a decision, that time limit may be mandatory in the obligatory sense, but this ‘does not necessarily mean that a failure to comply with its provisions causes a loss of jurisdiction’”]; cf. *People v. Allen* (2007) 42 Cal.4th 91, 101-105 [time provision held mandatory but its

violation did not deprive court of fundamental jurisdiction]; see generally 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 103, pp. 676-678 [explaining whether statutes of limitations and other time provisions are “mandatory” or “directory”].⁷

[Fn. 7] Our conclusion the Commission’s failure to act within the prescribed statutory period constitutes only an act in excess of its jurisdiction, rather than divesting it of jurisdiction in the fundamental sense, is reinforced by the Legislature’s express authorization for a waiver of the time limit by the applicant. (§ 30625, subd. (a); see *Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1008 [“[s]ubject matter jurisdiction cannot be conferred by consent, waiver or estoppel”].)

2. On page 13, at the end of the first full paragraph, after the sentence ending “. . . regarded as a consent to a continuance.”.]” add as footnote 8 the following:

To the extent *Klitgaard & Jones, Inc. v. San Diego Coastal Regional Com.* (1975) 48 Cal.App.3d 99, 110 -- a case cited by Schelbert to support her estoppel argument -- suggests in dicta that conduct after the expiration of a statutory time period demonstrating consent or acquiescence in the exercise of jurisdiction cannot be the basis for a finding of estoppel, we respectfully disagree.

3. The remaining footnote will require renumbering.

Plaintiffs’ petition for rehearing is denied. There is no change in the judgment.

PERLUSS, P. J.

WOODS, J.

ZELON, J.