

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROSA MARIA HARO et al.,

Plaintiffs and Appellants,

v.

CITY OF SOLANA BEACH et al.,

Defendants and Respondents.

D057304

(Super. Ct. No. 37-2009-00059012-  
CU-WM-NC)

ORDER MODIFYING OPINION

**NO CHANGE IN JUDGMENT**

THE COURT:

It is ordered that the opinion filed May 12, 2011 be modified as follows:

1. In the second sentence of the last paragraph of page 2 continuing to page 3 of the opinion, the phrase "at least 13" shall be changed to "14," so the sentence reads:

This proposed development, known as the Cedros Crossing project, included offices, restaurants, retail businesses, parking, and 141 residential units, 14 of which would be affordable to lower income households.

2. After the first complete sentence in the first partial paragraph on page 8 of the opinion, a citation to Government Code section 65583 shall be added, so the citation reads:

(§§ 65302, subd. (c), 65582, subd. (e), 65580, subd. (d), 65582.1, 65583; see *Fonseca, supra*, 148 Cal.App.4th at pp. 1182-1185.)

3. The last paragraph on page 14 of the opinion shall be modified to delete references to an administrative body. Thus, the paragraph now reads:

Our interpretation is consistent with other portions of the statute, which indicate the Legislature established two alternative accrual dates in the event the legislative body takes no formal action on the notice. The preceding sentence in section 65009(d)(2) provides that a party does not state a cause of action under the subdivision "until 60 days have expired following notice" to the legislative body. (§ 65998(d)(2).) By creating this "no-lawsuit" time period, the Legislature intended to provide the public entity the full 60 days to consider the claim before the matter may be prematurely challenged in court. But the Legislature also wanted to provide certainty in the event the legislative body took no formal action in response to a notice during this 60-day period. Thus, the Legislature structured section 65009(d)(2) to provide that the accrual is triggered from the final action, but no later than 60 days from the date notice is given.

**There is no change in the judgment.**

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HUFFMAN, Acting P. J.

Copies to: All counsel