

City Approval of Density Bonus Project Upheld

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ATTORNEYS

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The City of San Diego properly approved a 20-story, mixed-use project with density bonuses and affordable housing incentives, despite alleged conflicts with local development standards. In a newly published decision, the California Court of Appeal ruled against community groups that challenged the project, finding that they failed to acknowledge San Diego's obligations under state density bonus law.

Housing developments that include a certain number of deed-restricted affordable units are entitled to increased building density, incentives, reduced parking ratios, and the waiver of local development standards that would physically preclude the proposed project. Cities may deny an eligible project's request for incentives and waivers in limited instances.

The project applicants in *Bankers Hill 150 v. City of San Diego* ("Bankers Hill") proposed to designate over 12 percent of the units as affordable to very low income households, entitling the project to a 38.75% density bonus and related incentives. The applicant requested bonus units, increasing the total number of units from 147 to 204, as well as incentives to reduce setbacks, eliminate truck loading spaces, and reduce private storage areas. The applicant did not request waivers under state density bonus law, but did ask for "deviations" from certain zoning regulations under a local provision of the San Diego Municipal Code.

The San Diego City Council approved the project with the requested bonus units, incentives, and "deviations." Despite the Council's finding that there was no evidence to deny the applicant's requests, project opponents argued that the City should have denied the project due to inconsistencies with the development standards and policies in the General Plan and Community Plan. Notably, the court's reasoning in upholding San Diego's action is based in part on a hypothetical scenario: *if* the project as designed *were* inconsistent with the City's standards, the applicant *could* have requested waivers under state density bonus law and the City would have been obligated to approve the requests.

The *Bankers Hill* decision and the recent *Schreiber v. City of Los Angeles* decision provide some insight as to courts' understanding of the narrow scope of local agency discretion when considering incentives and waivers under state density bonus law. However, no appellate court has yet to directly address a

local agency's denial of a requested waiver. While state law clearly limits local agency discretion when considering requested incentives and waivers, the precise nature and extent of that limitation remains unsettled.

If you have any questions about state density bonus law, please contact **Casey Strong** or **Diana Varat**.