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California Coastal Act Takes Priority Over Housing Density Laws

Court Decision Provides Guidance for Affordable Housing Units within the Coastal Zone



The Second District Court of Appeal recently held that local agencies may be required to grant affordable housing density bonuses unless doing so would violate the Coastal Act, which is designed to ensure that state policies for the coastal zone prevail over local government concerns. While the court recognized the

importance of providing affordable housing in California and was careful to note that housing density statutes still apply in the coastal zone, the Coastal Act prevails over such statutes where a project violates its provisions.

In the published opinion *Kalnel Gardens, LLC v. City of Los Angeles*, the City disapproved a 15-unit residential project in the Venice area allowed to exceed density, height and setback restrictions because it designated two very low income units. The City's planning department issued various approvals for the project, including a coastal development permit under the California Coastal Act, which governs land use planning for the state's entire coastal zone. Ultimately, the project was overturned by the planning commission on appeal by neighboring residents because of its incompatibility with aesthetic policies in the Coastal Act rather than density concerns. The City Council denied the developer's appeal and adopted the commission's findings.

The developer sued the City for violation of state housing density statutes. The Court of Appeal affirmed the trial court's determination that such laws are superseded by the Coastal Act. Specifically, it found clear legislative intent in Government Code section 65915 of the Density Bonus Act, which requires a local land use authority to award a density bonus and certain itemized concessions for the setting aside of a certain percentage of housing units for low or very low income residents, to be subordinate to the Coastal Act.

The court further considered Public Resources Code section 30604 of the Coastal Act stating a density bonus granted under the Density Bonus Act, or the Housing Accountability Act in Government Code section 65589.5, may be denied if the local agency issuing a coastal development permit finds it is

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infeasible to accommodate the project on the site in a manner that is in conformity with the Coastal Act. The Housing Accountability Act prohibits a local agency from rejecting housing developments based on their density without a thorough analysis of the economic, social and environmental effects of the action and findings.

In contrast, the Mello Act, which requires new affordable housing units as part of new developments constructed within the coastal zone unless found infeasible by the local agency under Government Code section 65590, does not state it is superseded by the Coastal Act. The court, however, found an undisputed violation of Coastal Act provisions requiring new development design to protect scenic views and be visually compatible with the character of surrounding areas. Interpreting the Coastal Act in a manner most protective of coastal resources, the court concluded the Mello Act's affordable housing requirements apply so long as a project is consistent with the Coastal Act's overall protective provisions.

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