

County Could Not Make Density Bonus Conditional Upon Compliance With Local Affordable Housing Requirements

A local agency may not condition the availability of a density bonus upon provision of more affordable housing than the minimum required under the State Density Bonus Law. [*Latinos Unidos Del Valle De Napa Y Solano v. County of Napa*](#), No. A135094 (First District, July 11, 2013).

California's Density Bonus Law, Government Code § 65915, allows a developer who provides a certain percentage of affordable housing units within a project to increase the density of the project above the maximum number of units allowed under local zoning law. Local agencies are required to adopt density bonus ordinances establishing procedures to implement the state law.

Plaintiffs – a group advocating on behalf of affordable housing for low-income residents of Napa County – challenged the County of Napa's 2009 Housing Element and zoning code on the ground that these measures operated to deter and discriminate against affordable housing and low-income people in violation of state and federal law. Plaintiffs also contended that the County's density bonus law conflicted with state law because it required more affordable housing than the minimum established by state law to qualify for a density bonus.

The appellate court rejected plaintiffs' housing element and discrimination claims. It concluded that although plaintiffs were correct that no affordable housing at all had been developed in the unincorporated portions of the county since 2004, a failing that was "unquestionably a matter of serious concern," they had not shown that this had resulted from the county's discriminatory policies or practices.

As to the County's density bonus ordinance, however, the court found a direct conflict with state law. The local ordinance stated that a density bonus would be provided when the applicant provided affordable units "in addition to" the affordable units required under County's inclusionary zoning ordinance. The latter ordinance required up to 20% of the units within a residential project to be made available at prices affordable to moderate-income households.

The effect, the court found, was to fail to credit low-cost units required to be counted under state law in determining the project's eligibility for a density bonus. To the extent the ordinance required a developer to dedicate a larger percentage of its units to affordable housing to obtain a density bonus than the minimum required under state law, the ordinance conflicted with state law and was void.

The court rejected the County's argument that the ordinance was "saved" by a clause providing that the state density bonus law superseded any conflicting provisions of the ordinance. This clause, the court found, "does no more than state a truism that state law prevails over conflicting local law." Someone reading the ordinance "without benefit of a legal opinion as to the extent of its validity would understand that units satisfying the inclusionary requirement do not count towards the number of units necessary to qualify for the density bonus." That requirement violated the statute and rendered the ordinance void.

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