

Building Industry Seeks U.S. Supreme Court Review of San Jose Affordable Housing Case

The California Building Industry Association has filed a [petition for certiorari](#) in the United States Supreme Court seeking review of the California Supreme Court's recent decision in [California Building Industry Association v. City of San Jose](#), 61 Cal. 4th 435 (2015). In that decision, the California high court upheld San Jose's affordable housing ordinance, rejecting the building industry's argument that requirements imposed on new development to provide affordable housing bore no reasonable relationship to the impact of the development. (Our report on the California Supreme Court decision is available [here](#)). San Jose's affordable housing ordinance requires developers to set aside 15% of project units for low-income buyers or, alternatively, to pay an in-lieu fee (estimated to exceed \$120,000 per unit) or substitute equivalent property. The California Supreme Court ruled it was irrelevant whether the affordable housing requirements were reasonably related to the impact of new development because the requirements did not constitute an "exaction" of property. Accordingly, it held, the constitutional limitations on a public agency's ability to exact property for public use as a condition of development were inapplicable. Instead, the court found, the ordinance operated like zoning and other land use measures that restrict the use developers may make of their property by regulating matters such as permitted uses, unit size, maximum heights, and development density. In its petition for *certiorari*, CBIA contends that the California court's holding conflicts with the U.S. Supreme Court's *Nollan/Dolan* line of cases and, if left in place, will effectively allow the government to circumvent the nexus and proportionality analysis set out in those cases whenever the permit condition is required by legislation. If the Supreme Court accepts the case, it will likely issue a decision by June of 2016.

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