

## California Coastal Act Trumps Statutes Awarding Density and Height Increase Bonuses

Statutes awarding housing density and height increase bonuses do not take precedence over the California Coastal Act, according to a decision of the Second Circuit Court of Appeal. [Kalnel Gardens, LLC v. City of Los Angeles](#), No. B264434 (2nd Dist. Sept. 29, 2016). Kalnel Gardens, LLC, proposed to build a 15-unit housing complex in Venice. Two of the units were designated for very-low-income households. Based on the inclusion of the very-low-income units, City of Los Angeles planning officials approved the project with density bonuses under the Housing Accountability Act, the Density Bonus Act, and the Mello Act, which together with other zoning concessions allowed the project to exceed local density, height, and setback restrictions. In addition to these concessions, City planning officials adopted a mitigated negative declaration under CEQA. The City's advisory agency approved the project's vesting tentative tract map, and the City zoning administrator approved a coastal development permit under Coastal Act. Sun setting over Highway 1, California Neighbors appealed the planning approvals to the West Los Angeles Area Planning Commission, claiming, among other things, that the project violated the Coastal Act because its height, density, setbacks, and other physical and visual characteristics were out of character with the existing neighborhood. The Commission declined to consider issues related to the density bonus (which found to be outside its purview), and focused instead on the City's discretionary power to issue coastal development permits under the Coastal Act. The Commission found that the project did not conform to the Coastal Act because its size, height, bulk, mass and scale were incompatible with, and harmful to, the surrounding neighborhood, and because the setbacks were too small. Kalnel appealed the Commission's decision to the City Council, which denied the appeal and adopted the Commission's findings. Kalnel then brought an administrative mandate action against the City alleging that it had violated the Housing Accountability Act, the Density Bonus Act, and the Mello Act. The court of appeal upheld the City Council's action, holding that density bonus statutes are subordinate to the Coastal Act. Citing the Density Bonus Act, which is designed to address the shortage of affordable housing in California, but expressly provides that "[n]othing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the [Coastal Act]," the court held that "it could not be clearer that the Density Bonus Act does not supersede the Coastal Act or in any way alter or lessen its effect." The Mello Act, which establishes minimum requirements for affordable housing within the coastal zone, does not include a similarly clear statement, but the appellate court noted that if the legislature had intended the Mello Act to supersede the Coastal Act, it would have said so. Further, the court explained, the Coastal Act is a comprehensive scheme to govern land use planning for the state's entire coastal zone which requires the design of new developments to protect scenic views and to be "visually compatible with the character of the surrounding areas," and provides that it shall be "liberally construed to accomplish its purposes and objectives." In addition, interpretive guidance provided by the Legislature under the Public Resources Code states that conflicts should be resolved in a manner which, on balance, is the most protective of significant coastal resources. These provisions, the court said, make it clear that the Coastal Act must take precedence over the Mello Act. A contrary interpretation, it reasoned, would permit Mello Act housing even if it blocked coastal access, intruded into environmentally sensitive areas, or was visually incompatible with existing uses. The Mello Act's affordable housing requirements, the court held, apply to a project within the coastal zone only so long as the project conforms to the Coastal Act's overall protective provisions.

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