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ARTICLE

Does the Density Bonus Law (Gov. Code § 65915) Require Local Government to Approve Mixed Use and Housing Projects Where Local Zoning Does Not Allow Housing at All?

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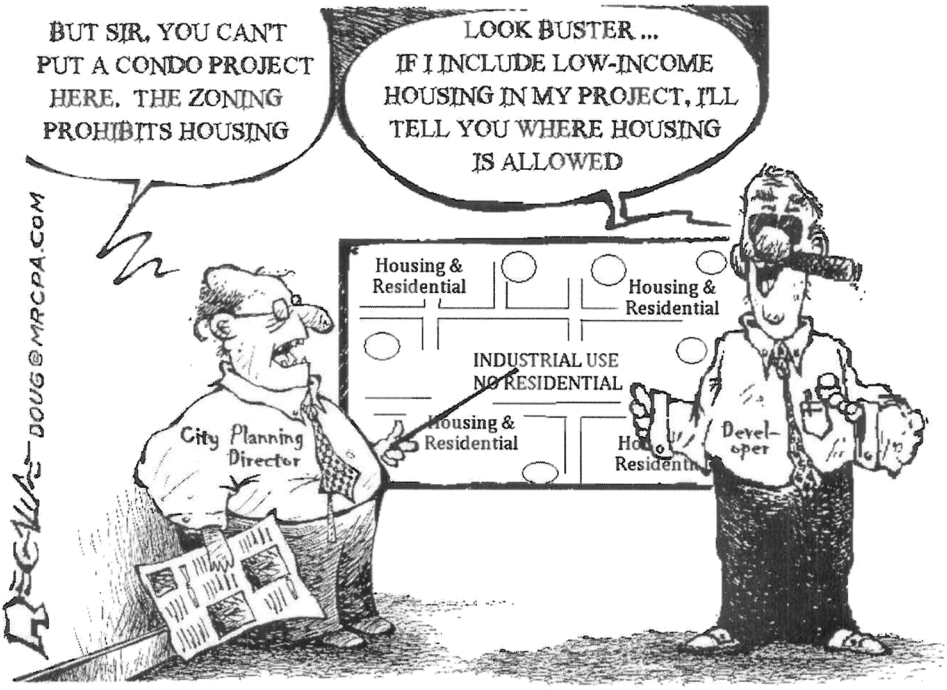

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I. INTRODUCTION.

In the March, 2008 edition of this Newsalert, the lead article suggested that in the face of the global warming phenomenon, local control over land use decision making may be forced to give way to regional or statewide regulation.[1] This article explores whether the legislature, by enacting and amending the Density Bonus Law,[2] intended to advance the public policy in favor of low income housing and housing for the elderly by forcing local governments to approve housing or mixed use projects in industrial, commercial, and other areas where local zoning does not allow housing.

The rising price of gasoline and the collapse of single family financing may drive developers in the direction of infill projects. Those developers may find that the mandatory incentives and concessions imposed on local government by the Density Bonus Law improve the pro forma financial performance of such projects significantly. Add to this the power to force local government to approve a housing or mixed-use project in an area where housing would otherwise be prohibited, and where site acquisition cost may be less than elsewhere, and the benefits of invoking the Density Bonus Law could prove irresistible. The question is, does the Density Bonus Law actually confer upon the developer the power to force local government to approve a project that includes low income or elderly housing where housing is otherwise entirely prohibited?

Having encountered one trial court that answered this question in the affirmative, the author suggests that although statutory analysis tends to support the opposite result, the Density Bonus Law constitutes a significant "hammer" that may be used by developers to force approval of projects otherwise barred by zoning, especially in light of the statute's unilateral pro-developer attorney's fee provision.

II. PRESENT STRUCTURE OF THE DENSITY BONUS LAW.

The basic concept behind Government Code § 65915 is not complicated. The Legislature has declared that means must be found to encourage and facilitate the construction of low-income and very-low-income housing stock.[3] To do this, the state has mandated that local government (city or county) must grant to the developer of a "housing development" specified percentage increases from what would otherwise be the maximum allowable residential density under the applicable zoning ordinance and the land use element of the general plan.[4] In conjunction with such density bonuses, the local government is required to afford the developer certain "incentives or concessions." (If there is a distinction between these terms, it is not elaborated by the statute.) The number of concessions is directly related to the number of below market

rate ("BMR") residential units or elderly residential units as a percentage of total pre-bonus residential units in the project. The mandatory concessions may include a reduction in site development standards, or "[a]pproval of mixed use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located."[5]

Once a project qualifies for concessions, local government must grant the concessions requested in the developer's proposal, unless it makes one of two specific findings – either that the concession is not required in order to provide affordable housing units, or that the concession would have a specific adverse impact upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-and moderate-income households.[6] Not only are such factual findings a practical barrier to the denial of requested concessions, but should the developer successfully challenge such a denial in court, the statute makes mandatory an award of attorney fees to the developer.[7] There is no reciprocal provision under which local government can recover fees if it successfully defends such a challenge.

If the concessions earned by adding BMR units include a right to force a city or county to allow housing in an area where applicable zoning *prohibits* any housing use, developers may insist that the local land use authority has no discretion to deny a qualifying application, unless it has an evidentiary basis for making one of the findings specified in the statute.[8]

III. RULES OF STATUTORY CONSTRUCTION GOVERN THE INTERPRETATION OF SECTION 65915.

The fundamental purpose of statutory construction is to ascertain legislative intent.[9] The rules of statutory construction are guides used by the courts to determine that intent.[10]

Statutory interpretation requires a three-step analysis.[11] First, the court examines the language of the statute, which is generally considered the best indicator of legislative intent.[12] The words of the statute must be given their usual, ordinary, commonsense import, according significance to every word used, and construed in context, keeping in mind the statutory purpose. The courts respect statutory definitions of the terms used.[13] All statutes relating to the same subject must be harmonized, both inter-

nally and with each other, to the extent possible.[14] Every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect.[15]

Second, if the statutory language read in proper context remains unclear or ambiguous, the court employs the various rules of interpretation that have been developed to determine the meaning of statutory language, and looks to extrinsic sources to aid in interpretation, including legislative history, public policy considerations and the like.[16]

Third, if the first two steps fail to reveal the statute's meaning, the court applies reason, practicality, logic and common sense to divine the legislature's intent. A statute should be interpreted to produce a reasonable result. The consequences of any particular interpretation must be considered,[17] and absurd results are to be avoided.[18]

IV. CAN A PROJECT BE A "HOUSING DEVELOPMENT" WHERE ZONING PROHIBITS HOUSING?

The Density Bonus Law begins by stating:[19]

> (a) When an applicant seeks a density bonus *for a housing development* within,…the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section….
>
> (b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), *and* incentives or concessions, as described in subdivision (d), *when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section*, that will contain at least any one of the following: [percentages of BMR units listed].

Thus, the mandate to provide incentives or concessions for the production of housing units, as prescribed in the statute, is triggered "[w]hen an applicant seeks a density bonus *for a housing development*" within a city or county. The statute defines "housing development" to mean projects including residential units "constructed in the planned development of a city, county, or city and county."[20]

The subsection mandating the granting of a density bonus and concessions states that the proposed project must be a housing development, "excluding any units permitted by the density bonus awarded pursuant to this section."[21] A city, or a project opponent, could argue that to be a "housing development" eligible to benefit under the Density Bonus Law, a proposed project must therefore, *in the absence of any density bonus or concessions*, include residential units "constructed in the planned de-

velopment of a city," and that to satisfy that condition, the existing zoning must allow at least some residential development in the area including the proposed project site. This argument rests upon the language of the statute itself.

The statute goes on to state that, "[t]he granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change or other discretionary approval. This provision is declaratory of existing law."[22] A developer would argue that the phrase "shall not be interpreted… to require" means that a qualifying project must be approved even if in the absence of the statute a plan amendment or zoning change would have been required. However, the same language might be read as saying that just because a project qualifies for a concession, that fact does *not* mean that local government must also enact a general plan amendment or zoning change if one is needed to accommodate the project. In other words, the legislature has said that Density Bonus Law does not trump the basic structure of local control over land use planning. No cases have interpreted this provision.

V. WOULD IMPOSING MANDATORY APPROVAL WHERE ZONING PROHIBITS HOUSING MAKE THE STATUTE INTERNALLY INCONSISTENT AND ABSURD?

"'[D]ensity bonus' means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application...."[23] "'Maximum allowable residential density' means the density allowed under the zoning ordinance...."[24] The computation of the density bonus to be allowed is charted in the subsections just following the definition of density bonus, in which *all* density bonuses to be awarded under section 65915 are computed *as a percentage of "the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan* as of the date of application…."[25]

Where the existing zoning designation allows residential use up to some prescribed maximum density, the mandated computation is straightforward. For simplicity's sake, assume zoning allowing a maximum of ten (10) housing units per acre. An applicant owning a one-acre parcel proposes to develop a building including one (1) low-income unit. That amounts to 10% of a ten-unit building (*i.e.,* one allowed by "the otherwise maximum allowable residential density" excluding any units permitted by the density bonus). The applicable bonus computation chart reveals that the applicant is entitled to a 20% density bonus, or 2 units per acre over the otherwise allowable 10, for a total of twelve (12) units.[26]

Now assume that "the otherwise maximum allowable residential density under the applicable zoning ordinance" is zero. Assume that the developer proposes to build a project of 10 residential units, one of which is for low income tenants. Under the applicable chart, ten percent (10%) of the total units proposed are to be low income units, entitling the developer to a density bonus of 20% of "the otherwise maximum allowable residential density under the applicable zoning ordinance." Twenty percent (20%) of zero is zero. This is added to the pre-existing maximum allowable residential density, for a total of zero plus zero equals zero. The same result would be obtained if a developer proposed to include very low income units in a project where existing zoning allowed no residential use, or if a developer proposed senior housing where no residential use was allowed under the pre-existing zoning. Because *any* density bonus is by definition a fraction of "otherwise maximum allowable residential density under the applicable zoning ordinance," a "housing development" proposed in an area whose zoning precludes residential use (already an oxymoron), can never qualify for a density bonus. Zero times anything is zero. Nothing plus nothing is nothing.

The applicant's counterargument would be that under the statute, a developer who qualifies for a bonus and concessions may opt to use only part, or no part, of the density bonus prescribed by the statute, and will nonetheless be entitled to concessions.[27] Therefore, the statute may be employed to achieve an exemption from zoning, even if no density bonus is requested, and even if, under a literal reading of the statute, no density bonus can be computed. A city or project opponent may respond that such a reading makes nonsense of some of the statute's principal provisions, which strongly suggest that a project must first *qualify* for a density bonus, whether or not the developer chooses to employ the bonus, before it can be eligible for any concessions. (E.g., "When an applicant seeks a density bonus for a housing development…;[28] [a] city…shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions…"[29].) To say that a project can qualify for a density bonus where the otherwise allowable maximum residential density is zero at least borders on absurdity.

VI. CALIFORNIA'S HISTORICAL DEFERENCE TO LOCAL LAND USE CONTROL.

A statute should be construed in the context of the entire statutory system of which it is a part in order to achieve harmony among the parts.[30] The titles of acts, headnotes, and chapter and section headings may properly be considered in determining legislative intent.[31] Government Code section 65915 is part of Chapter 4.3, "Density Bonuses and Other Incentives"[32] of Division 1, "Planning and Zoning"[33] of Title 7 of the Govern-

ment Code, "Planning and Land Use." As such, the density bonus law is a part of the planning and zoning law, and must be construed if possible in a manner consistent with that entire body of law. When the legislature enacted the planning and land use sections, it expressly stated its intention "to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters."[34] To implement its express intention to maximize local control over local zoning matters, the legislature has stated that no provision of any statute outside Chapter 4 of the Planning and Zoning law ("Zoning Regulations") will operate to limit local enactment and administration of zoning law.[35] The Density Bonus Law, being part of Chapter 4.3, is therefore not supposed to limit local administration of zoning law. This is consistent with the public policy that has traditionally maintained that local government should control land use decisions, including adoption of general plans and zoning ordinances.

VII. DOES "MODIFICATION OF ZONING CODE REQUIREMENTS" INCLUDE ALLOWING HOUSING WHERE IT IS PROHIBITED?

The statute's definition of concession or incentive includes "[a] reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed…minimum building standards."[36] "Development standard" is defined to include "site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation."[37]

A developer can argue that under these provisions the approval of *any* modification of zoning requirements or restrictions necessary to facilitate a qualifying project is mandated by the statute. A county or project opponent would respond that while a modification of *site development standards*, or of zoning requirements that exceed building code minimums, may be demanded as a "concession," the Density Bonus Law does not require local government to ignore land use restrictions imposed by zoning. To the extent that the legislature has decided to restrict the authority of local government to exercise discretion in the area of adopting and enforcing zoning ordinances, it has identified the parameters of those limitations quite specifically.[38] Within the zoning law, the function of regulating the *use* of buildings, structures and land, as among commercial use, residential use and other uses,[39] is segregated from the function of regulatory development and design standards affecting *construction* of structures.[40] Both kinds of zoning regulation are delegated to the cities and counties. In general, the state has not manifested an intention to preempt local control over all zoning and land use regulation, and in

this particular context it is fair to read the Density Bonus Law narrowly, as requiring modification only of zoning ordinances that impose development standards in excess of those in the Uniform Building Code, but not of zoning ordinances that restrict use.

VIII. DOES THE PROVISION FOR MANDATORY APPROVAL OF MIXED USE PROJECTS INCLUDE ALLOWING HOUSING WHERE ZONING PROHIBITS IT?

Besides reduction in development standards, the statutory definition of "concession or incentive" includes: "Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located."[41]

A developer proposing a "live-work" project in an industrial zone will argue that unless the city or county can demonstrate incompatibility with surrounding uses, approval of mixed use zoning is mandatory. Once again, a literal reading of the statutory language, in context, suggests to the contrary. Note that the quoted language requires approval of mixed use zoning only if "the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located." There is no mention of the housing portion of the proposed mixed use project being compatible with existing or planned commercial or industrial uses in the area. This strongly suggests that the concession for mixed use zoning is intended to facilitate adding non-housing uses where existing zoning allows housing, and does not require local government to approve housing in industrial areas.

IX. DOES THE "CATCHALL" CONCESSION GIVE DEVELOPERS A WILD CARD?

The third and final category of concessions reads: "Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions."[42]

A developer might read this provision to state that *any* regulatory concession that demonstrably lowers his or her costs, and thereby makes the proposed project feasible, must be granted. In this instance, literal reading of the statute appears to favor the developer. This brings one back to the question whether the Density Bonus Law can be read to require any concessions where housing is prohibited by zoning, and no density bonus may logically be calculated.

X. AMENDMENTS TO THE LAW HAVE MADE CONCESSIONS MANDATORY, BUT HAVE NOT ALTERED THE CONCEPT THAT DENSITY BONUS IS A PERCENTAGE OF "OTHERWISE ALLOWABLE" MAXIMUM DENSITY.

As noted above, where ambiguity in a statute cannot be resolved by interpretation of current statutory language, legislative history may be consulted.

The mechanism by which the Density Bonus Law encourages construction of low income and elderly housing has remained essentially the same since its inception. If a developer is willing to become legally obligated to construct a minimum percentage of units for low or moderate income residents or seniors, the developer can require local government to approve his or her project at a density greater than that allowed under local planning and zoning regulations, and to grant "concessions" or "incentives" by which other restrictions on development are relaxed.

The Density Bonus Law was enacted in 1979, and amended in 1982, 1983, 1984, 1989, 1990, 1991, 1998, 1999, 2000, 2002, 2003, 2004, and 2005. Some amendments were substantive, some were not. This article will not attempt a survey of the entire legislative history, but it is worth observing that at all times the density bonus has been computed as a percentage of otherwise allowable maximum residential density.[43] Thus, it has never been possible to compute a density bonus for a project situated in an area zoned to preclude residential use.

XI. REPORTED DECISIONS DO NOT ADDRESS THIS QUESTION.

Less than a handful of reported cases even mention the Density Bonus Law. None of them directly addresses whether a developer may force local government to approve a qualifying project where local zoning prohibits housing use.

In a 2003 case,[44] developers challenged an initiative approved by a county's voters, which revised the urban growth boundary in the eastern area of the county. The initiative removed land from previous urban development use designations, including industrial, major commercial, and residential with allowed density of one or more units per acre, and reserved more land for agriculture and open space. New housing, including that satisfying the County's affordable housing obligations, would have to be located inside the urban growth boundary "unless otherwise required by state law."[45] Among other things,[46] the developers alleged that the initiative violated state housing laws.

The trial court denied the developers' petitions for writ of mandate, and granted judgment on the pleadings to the county and interveners

who supported the initiative. In affirming, the Court of Appeal rejected the developers' contention that by eliminating uses in a specified portion of the county the initiative conflicted with several provisions of the State Planning and Zoning Law.[47]

The court held that the initiative did not violate section 65913.1, which requires local governments to "designate and zone sufficient vacant land for residential use with appropriate standards, in relation to zoning for non-residential use, and in relation to growth projections of the general plan to meet housing needs as identified in the general plan." The County's general plan did not identify the area where the initiative eliminated residential development as land to be used to meet the county's housing needs, so the initiative did not violate the requirements that sufficient land be zoned for that use.[48]

The initiative did not violate Gov. Code § 65008, which prohibits any planning or zoning ordinance that discriminates against residential developments intended for low and moderate income families.[49] The court pointed out that if the act of zoning any area in such a way that developments dense enough to be affordable were held to violate the statute, it would be impossible for local governments to reserve any land for open space or agriculture.[50]

Most important for present purposes, the court held that initiative was not inconsistent with the Density Bonus Law, because imposing low density in one specific area of the county did not preclude accommodating low income housing in other regions of the county.[51] By the same logic, existing zoning that designates areas of a city or county for exclusively industrial, manufacturing, or commercial activity, thereby precluding housing development, should not conflict with section 65915, so long as housing is allowed in other areas of the polity. The purposes of the Density Bonus Law can be served without requiring the local land use authority to ignore completely applicable zoning and planning designations. Moreover, if the Density Bonus Law required, as a form of mandatory concession, that housing be allowed where zoning or plan designation forbids it, then there would have been no need for the court to have addressed whether the initiative conflicted with the Density Bonus Law. The answer to the developer's challenge that the initiative violated Gov. Code § 65915 would have been that under the statute, a qualifying project must be approved, even where local land use regulation prohibits housing development, so that the relocation of the urban boundary could never prohibit a project that qualified for density bonus concessions.

In another case,[52] the Court of Appeal affirmed the denial of a petition for writ of mandate, where one of the grounds urged by opponents of

a large mixed use project was that the approving city had violated the Density Bonus Law by allowing a density bonus of over 40%, since the highest bonus required under the statute is 35% of otherwise applicable maximum residential density. The court relied on language in the statute stating that, "[n]othing in this section shall be construed to prohibit a city, county or city and county from granting a density bonus greater than what is described in this section [for a qualifying project]."[53]

Since this case involved a challenge by project opponents to a city's very favorable response to a development proposal, and because it focused upon the computation of a maximum allowable density bonus, and did not mention concessions, the case is not directly relevant to the subject of this article. However, in describing the basic function of the Density Bonus Law, the court relied upon the sections of the statute that compute the entitlement to increased density as a function of otherwise allowable maximum residential density under existing zoning and planning restrictions. If qualifying for a density bonus is a precondition to entitlement to concessions or incentives, this case reinforces the argument that where existing zoning allows no housing neither a density bonus nor concessions is possible.

XII. CONCLUSION.

As noted in the introduction of this article, interpreting the Density Bonus Law to require local government to approve housing or mixed use projects that include low income or elderly housing, even where local zoning or plan designation would *prohibit* housing, implies a shift away from local control over land use decisions. However, this is an area where political friction may lead to fundamental change. The legislature or the courts may eventually have to decide whether the Density Bonus Law amounts to a "Get Out of Jail Free" card for developers who are willing to incorporate low income units into their projects in order to obtain as a concession the right to build housing where housing is otherwise prohibited.

NOTES

1. "When Inconvenient Truths Displace Popular Fictions: What Proposed SB 375 And The California Legislation Addressing Climate Change Reveal About Local Land Use Planning and Control," Miller & Starr Real Estate Newsalert, March 2008, Vol. 18, No.4.
2. Gov. Code, §65915.
3. *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 823-824, 65 Cal. Rptr. 3d 251 (1st Dist. 2007), review denied, (Nov. 14, 2007); *Building Industry Assn. v. City of Oceanside*, 27 Cal. App. 4th 744, 770, 33 Cal. Rptr. 2d 137 (4th Dist. 1994); *Hansen v. Department of Social Services*, 193 Cal. App. 3d 283, 296-297, 238 Cal. Rptr. 232 (2d Dist. 1987).
4. Gov. Code, §65915 subd. (g).
5. Gov. Code, §65915, subd. (l)(1) and (2).
6. Gov. Code, §65915, subd. (d)(1)(A) and (B).

7. Gov. Code, §65915, subd. (d)(3).
8. Gov. Code, §65915, subd. (d)(3).
9. Code Civ. Proc., §1859; *People v. Cruz*, 13 Cal. 4th 764, 774-775, 55 Cal. Rptr. 2d 117, 919 P.2d 731 (1996); *Marina Green Homeowners Assn. v. State Farm Fire & Casualty Co.*, 25 Cal. App. 4th 200, 204, 30 Cal. Rptr. 2d 364 (1st Dist. 1994); *Tyrone v. Kelley*, 9 Cal. 3d 1, 10-11, 106 Cal. Rptr. 761, 507 P.2d 65 (1973).
10. *Kinder v. Pacific Public Carriers Co-Op, Inc.*, 105 Cal. App. 3d 657, 664, 164 Cal. Rptr. 567 (1st Dist. 1980).
11. *Herman v. Los Angeles County Metropolitan Transportation Authority*, 71 Cal. App. 4th 819, 825-826, 84 Cal. Rptr. 2d 144 (2d Dist. 1999); *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1238-1240, 8 Cal. Rptr. 2d 298 (4th Dist. 1992); *In re Marriage of Campbell*, 136 Cal. App. 4th 502, 506, 38 Cal. Rptr. 3d 908 (6th Dist. 2006), review denied, (Apr. 26, 2006); *MacIsaac v. Waste Management Collection and Recycling, Inc.*, 134 Cal. App. 4th 1076, 1082-1084, 36 Cal. Rptr. 3d 650, 23 I.E.R. Cas. (BNA) 1440, 151 Lab. Cas. (CCH) P 60106 (1st Dist. 2005); *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, 117 Cal. App. 4th 47, 54-55, 11 Cal. Rptr. 3d 546, 186 Ed. Law Rep. 916 (6th Dist. 2004).
12. *Rhiner v. Workers' Comp. Appeals Bd.*, 4 Cal. 4th 1213, 1217, 18 Cal. Rptr. 2d 129, 848 P.2d 244, 58 Cal. Comp. Cas. (MB) 172 (1993); *Hoyme v. Board of Education*, 107 Cal. App. 3d 449, 452, 165 Cal. Rptr. 737 (2d Dist. 1980); *Adoption of Kelsey S.*, 1 Cal. 4th 816, 826, 4 Cal. Rptr. 2d 615, 823 P.2d 1216 (1992).
13. *Great Lakes Properties, Inc. v. City of El Segundo*, 19 Cal. 3d 152, 156, 137 Cal. Rptr. 154, 561 P.2d 244 (1977); *County of Fresno v. Shelton*, 66 Cal. App. 4th 996, 1010-1011, 78 Cal. Rptr. 2d 272 (5th Dist. 1998), as modified, (Sept. 22, 1998).
14. *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, 43 Cal. 3d 1379, 1387, 241 Cal. Rptr. 67, 743 P.2d 1323, 46 Fair Empl. Prac. Cas. (BNA) 1143, 44 Empl. Prac. Dec. (CCH) P 37503 (1987); *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, 117 Cal. App. 4th 47, 54, 11 Cal. Rptr. 3d 546, 186 Ed. Law Rep. 916 (6th Dist. 2004).
15. *Moore v. Panish*, 32 Cal. 3d 535, 541, 186 Cal. Rptr. 475, 652 P.2d 32 (1982); see also *Mejia v. Reed*, 31 Cal. 4th 657, 663, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003); *City of Huntington Beach v. Board of Administration*, 4 Cal. 4th 462, 468, 14 Cal. Rptr. 2d 514, 841 P.2d 1034 (1992).
16. *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, 117 Cal. App. 4th 47, 55, 11 Cal. Rptr. 3d 546, 186 Ed. Law Rep. 916 (6th Dist. 2004); *Mejia v. Reed*, 31 Cal. 4th 657, 663, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003); *Hoechst Celanese Corp. v. Franchise Tax Bd.*, 25 Cal. 4th 508, 519, 106 Cal. Rptr. 2d 548, 22 P.3d 324 (2001); *Day v. City of Fontana*, 25 Cal. 4th 268, 272, 105 Cal. Rptr. 2d 457, 19 P.3d 1196 (2001).
17. *Anderson Union High Sch. Dist. v. Schreder*, 56 Cal. App. 3d 453, 460, 128 Cal. Rptr. 529 (3d Dist. 1976).
18. *Day v. City of Fontana*, 25 Cal. 4th 268, 272, 105 Cal. Rptr. 2d 457, 19 P.3d 1196 (2001); see also Civ. Code, §3542; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, 117 Cal. App. 4th 47, 55, 11 Cal. Rptr. 3d 546, 186 Ed. Law Rep. 916 (6th Dist. 2004); *Clavell v. North Coast Business Park*, 232 Cal. App. 3d 328, 331-332, 283 Cal. Rptr. 419 (4th Dist. 1991).
19. Gov. Code, §65915, subds. (a) and (b). Emphasis added.
20. Gov. Code, §69515, subd. (j).
21. Gov. Code, §65915, subd. (b)(1).
22. Gov. Code, §65915, subd. (k).
23. Gov. Code, §65915, subd. (g).
24. Gov. Code, §65915, subd. (o)(2).
25. Gov. Code, §65915, subd. (g)(1)-(4).
26. Gov. Code, §65915, subd. (g)(1).
27. Gov. Code, §65915, subd. (g).
28. Gov. Code, §65915, subd. (a).
29. Gov. Code, §65915, subd. (b)(1).
30. *Nickelsberg v. Workers' Comp. Appeals Bd.*, 54 Cal. 3d 288, 298, 285 Cal. Rptr. 86, 814 P.2d 1328, 56 Cal. Comp. Cas. (MB) 476 (1991); *Droeger v. Friedman, Sloan & Ross*, 54 Cal. 3d 26, 43, 283 Cal. Rptr. 584, 812 P.2d 931 (1991) (dicta); *Ohio Farmers Ins. Co. v. Quin*, 198

Cal. App. 3d 1338, 1348, 244 Cal. Rptr. 359 (4th Dist. 1988); see also *Sonoma County Bd. of Education v. Public Employment Relations Bd.*, 102 Cal. App. 3d 689, 163 Cal. Rptr. 464, 109 L.R.R.M. (BNA) 2667 (1st Dist. 1980) (statutes in pari materia (on same subject) may be construed together).

31. *Bowland v. Municipal Court*, 18 Cal. 3d 479, 489, 134 Cal. Rptr. 630, 556 P.2d 1081 (1976); *American Federation of Teachers v. Board of Education*, 107 Cal. App. 3d 829, 836, 166 Cal. Rptr. 89 (2d Dist. 1980).
32. Gov. Code, §§65915 et seq.
33. Gov. Code, §§65000 et seq.
34. Gov. Code, §65800.
35. Gov. Code, §65802.
36. Gov. Code, §65915, subd. (l)(1).
37. Gov. Code, §65915, subd. (o)(1).
38. Gov. Code, §65850.
39. Gov. Code, §65850, subd. (a).
40. Gov. Code, §65850, subds. (c), (d) and (e).
41. Gov. Code, §65915, subd. (l)(2).
42. Gov. Code, §65915, subd. (l)(3).
43. When the statute was enacted in 1979, the relevant language was straightforward: "When a developer of housing agrees to construct at least 25 percent of the total units of a housing development for persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, a city, county, or city and county shall enter into an agreement with the developer to *either* grant a density bonus *or* provide not less than two other bonus incentives for the project." "Density bonus" was defined as "a density increase of *25 percent over the otherwise allowable residential density under the applicable zoning ordinance,"* and, "The density bonus shall not be included when determining the otherwise allowable density." [Emphasis added.]
44. *Shea Homes Ltd. Partnership v. County of Alameda*, 110 Cal. App. 4th 1246, 2 Cal. Rptr. 3d 739 (1st Dist. 2003).
45. *Ibid*.
46. *Id.* at p. 1252.
47. Gov. Code, §§365000 et seq.
48. *Id*. at p. 1261.
49. *Id*. at pp. 1259-1260, include. fn. 7-8.
50. *Id*. at p. 1262.
51. *Id*. at p. 1263.
52. *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 823-830, 65 Cal. Rptr. 3d 251 (1st Dist. 2007), review denied, (Nov. 14, 2007).
53. *Id*. at pp. 825, 826; Gov. Code §65915, subd. (n).

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