

January 31, 2022

via TRUE FILING

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Terry B. O'Rourke, Associate Justice
Patricia Guerrero, Associate Justice
California Court of Appeal, Fourth Appellate
District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, CA 92101

Re: *Bankers Hill 150 v. City of San Diego*
Case No. D077963

Dear Justices Haller, O'Rourke, and Guerrero,

On behalf of our client the City of Encinitas (Encinitas), we respectfully join with the City of San Diego and oppose the Building Industry Association (BIA)'s and Greystar GP II, LLC (Greystar)'s requests to publish Part (B) of the Court's opinion in *Bankers Hill 150 v. City of San Diego*, Case No. D077963.

Encinitas, like many cities in the State of California, is working very hard to address the State's housing crisis by encouraging the production of more housing within the boundaries of the City. A crucial tool in that effort is the Density Bonus Law, Government Code section 65915 et seq. Encinitas has approved at least 37 density bonus projects containing over 1100 units. The issues arising under the Density Bonus Law are numerous, complicated, and highly technical, including the issue presented by this case: whether and under what circumstances density bonus waivers, or modifications of development standards, may be granted.

In order to thoroughly address and resolve those issues, the Courts will greatly benefit from extensive briefing and analysis from counsel for the parties, as well as, in many cases, amicus briefs from entities such as the League of California Cities and the BIA. As mentioned by Respondent the City of San Diego in its opposition to the *Bankers Hill* publication requests, that thorough briefing and analysis simply did not occur in this case. Indeed, in the Opinion, this Court refers extensively to the Appellants' repeated failure, at both the trial and appellate levels, to even address the Density Bonus issues. (*See Slip Opinion at 2*: "In making its arguments, the Association sidesteps a critical factor in the City's decision-making process: the application of a state law known as the Density Bonus Law."; *Id.* at 9: "In its opening brief in the trial court, the Association did not discuss the Density Bonus Law..."; *Id.* at 10: the trial court noted that Petitioners' failure

to address the Density Bonus Law is “fatal to Petitioners”; *Id.* at 11: in this Court, Appellants did not address the Density Bonus Law in its opening brief and addressed it only in a single paragraph with no citation to authority in its reply brief.)

Because the Density Bonus issues were, at a minimum, not central to the briefing in this case, Encinitas respectfully requests that publication of a density bonus decision that addresses unresolved issues, such as the availability of waivers, should wait for another day. Publication is appropriate in a case, unlike this one, in which counsel for all parties have thoroughly and adequately assisted the Court in analyzing these complex issues, and the Court has received substantive input from entities such as the Building Industry Association and the League of California Cities, whose members have an important stake in resolution of these questions.

There is another, critical point. In its letter requesting publication, counsel for Greystar improperly refers repeatedly and in a derogatory fashion to our client, the City of Encinitas (without serving Encinitas or its counsel with a copy of its letter.) Greystar’s counsel has even attached to its publication request a letter to Encinitas from the Department of Housing and Community Development (HCD), about a proposed development having nothing whatsoever to do with the instant action. Counsel for Greystar, however, has failed to inform this Court that it: (1) is also representing the developer involved in the Encinitas dispute referred to in the letter; (2) was about to file, and, as of the date of this letter, has now filed a lawsuit in a trial court in the Fourth District regarding the development referred to in the letter; and (3) thinks that it will gain a tactical litigation advantage for its other client if the decision in this case is published. There is also the very real chance that the Encinitas dispute referred to in Greystar’s letter could end up in this Court. Encinitas strongly objects to counsel’s apparent attempt to poison the well by accusing Encinitas of bad behavior in a request for publication in an entirely unrelated case—to an appellate panel that may hear and decide issues in the other dispute.

For all of these reasons, Encinitas respectfully requests that this Court refuse the requests for publication of Part (B) of the *Bankers Hill* Opinion.

Thank you.

Very truly yours,



DOLORES BASTIAN DALTON

DBD:ll

cc: All counsel of record via True Filing (proof of service attached)

PROOF OF SERVICE

Bankers Hill 150, et al. v. City of San Diego, et al.

Court of Appeal Case No. D077963

Superior Court Case No. 37-2019-00020725-CU-WM-CTL

I, Laura L. Luz, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 1300 Clay Street, Eleventh Floor, City Center Plaza, Oakland, California 94612. My business email address is lluz@goldfarbblipman.com. On January 31, 2022, I served the document described as:

LETTER IN OPPOSITION TO REQUEST FOR PUBLICATION

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST


BY ELECTRONIC SERVICE: I caused the above-listed document to be served electronically by:

Sending it electronically to the above-named parties using the email addresses listed in this Proof of Service, via electronic filing and service provider TRUEFILING, which has been approved by the court to file and transmit the documents to opposing parties.

[State] I certify and declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 31, 2022, at Kentfield, California.



Laura L. Luz

SERVICE LIST

Bankers Hill 150, et al. v. City of San Diego, et al.
Court of Appeal Case No. D077963
Superior Court Case No. 37-2019-00020725-CU-WM-CTL

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