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NEW LAW PERMITS ADDITIONAL “STACKING” OF DENSITY

The California Legislature recently passed a bill to amend the State’s Density Bonus Law (Density Bonus Law) to add even greater density than ever before. This could create new opportunities for residential development across California.

The bill, Assembly Bill (AB) 1287 (Alvarez), is part of the Legislature’s continuing efforts to facilitate housing production at a range of income levels. AB 1287 creates a new “stacking” density bonus that permits projects to exceed the 50% density bonus that was previously the maximum allowed under state law.

“Stacking” of Density Bonuses

The Density Bonus Law permits housing development projects to construct additional units over and above the maximum allowable residential density that would otherwise apply to a property under local zoning provisions. An initial density bonus ranging between 5% and 50% could be obtained based on the amount and affordability levels of affordable units constructed as part of a project.

To qualify for an initial 50% density bonus, the Density Bonus Law requires a project to provide 15% Very Low Income units, 24% Low Income units, or (in a for-sale project) 44% Moderate Income units. These percentages are calculated from the base permitted density.

Once a project has provided the required number of restricted affordable units to qualify for 50% density bonus, AB 1287 permits a project to obtain an additional density bonus by providing additional Very Low Income or Moderate Income units. This additional stackable density bonus ranges from 20% (for projects that provide 5% of either Very Low Income or Moderate Income) to up to a 38.75% density bonus (for projects that provide an additional 10% Very Low Income units) or up to a 50% density bonus (for projects that provide an additional 15% Moderate Income units).

These “stacking” density bonus percentages are then added to the 50% initial density bonus. Using these provisions, the total bonus may reach as high as a 100% increase above the base density.

Advantages Over Previous Density Bonus Law

Stacking density bonuses may be obtained by providing additional affordable units in the same income category, but the additional units may also be in a different income category. For example, a project may initially provide 24% Low Income units (initial) and 15% Moderate Income (stacking) for a total density bonus of 100%.

Only for-sale projects may use Moderate Income units to obtain an initial density bonus. However, under AB 1287, Moderate Income rental units may now be used to obtain a “stacking” density bonus for any type of housing project, including both rental and for-sale housing.

Other AB 1287 Changes

The Density Bonus Law permits projects to obtain “concessions or incentives”, which are reductions or modifications in development standards that result in cost reductions to compensate for affordable housing costs. Under the prior law, most projects that were eligible for a 50% density bonus could obtain a maximum of three concessions or incentives. AB 1287 permits some, but not all, projects that are eligible to use stacking density bonuses to obtain up to four concessions or incentives.

In addition to the stacking density bonus program, AB 1287 also makes several clarifying changes to Density Bonus Law. Following the changes enacted by [AB 2334](#) (Wicks) in 2022, AB 1287 clarifies that the base density under Density Bonus Law is the greatest number of units permitted for a property by any of the applicable zoning, specific plan, or land use element of a General Plan. AB 1287 also may prevent local agencies from requesting documentation to establish eligibility for concessions or incentives and waivers of development standards.

Interaction with Local Density Bonus Programs

While Density Bonus Law is generally binding on cities and counties, some jurisdictions that allowed density bonuses in excess of 35% prior to the enactment of [AB 2345](#) (Gonzalez) in 2020 are exempt from the provisions of that law that permitted by-right density bonuses up to 50%. In these jurisdictions, which include the City of Los

Angeles, the maximum allowable density bonus under AB 1287 may differ from that discussed here. Please let us know if you would like to discuss additional details.

Want to Learn More?

If you have questions regarding AB 1287 and the development opportunities that it may create, please contact Dale Goldsmith (dale@agd-landuse.com; 310-209-8800), Dan Reardon (daniel@agd-landuse.com; 310-254-9058), or your existing point of contact at our firm.

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