



DELANO & DELANO

February 1, 2022

Acting Presiding Justice Judith L. Haller
Associate Justice Terry O'Rourke
Associate Justice Patricia Guerrero
Court of Appeal of the State of California
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

Re: **Opposition to Request for Publication: *Bankers Hill 150 v. City of San Diego***
Court of Appeal, Fourth Appellate District, Division One
Case No.: D077963

Dear Honorable Justices:

Appellants, Bankers Hill 150, et al. (collectively "Appellants") respectfully oppose the publication of this Court's January 7, 2022 Opinion in the above-referenced case ("Opinion") as requested by the California Building Industry Association ("CBIA") and the Building Industry Association – Bay Area ("BIABA") (collectively, "Building Industry") and Greystar GP II, LLC, Real Parties in Interest and Respondents.

As Respondent City of San Diego's Opposition to Request for Publication notes, the Density Bonus Law issue discussed at length in the Opinion was not briefed in this appeal. The potential for a published opinion to have broad implications regarding an issue not briefed by the parties further supports the Court's original decision to not certify this Opinion for publication, as well as Appellants' and Respondents' opposition thereto.

Additionally, the Opinion does not support the reasons for publication as provided in Rule 8.1105(c) of the California Rules of Court, and the two requests for publication do not show otherwise. The facts of this case do not differ significantly from those in other published opinions; rather, the Opinion merely applies an existing rule of law to a set of facts similar to facts in other cases.

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For the reasons stated above, Appellants respectfully request that the Court deny the two requests for publication of the Opinion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Everett L. DeLano III', with a long horizontal flourish extending to the right.

Everett L. DeLano III
Attorney for Appellants

ELD/cm

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.

I, the undersigned, declare:

I am over the age of 18 years and not a party to this action. I am employed in the County of San Diego, California, in which county the within mentioned service occurred. My business address is 104 W. Grand Avenue, Suite A, Escondido CA 92025.

On February 1, 2022, I served a copy of **Appellants' Opposition to Request for Publication** to the following parties by the means listed below:

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Service via U.S. Mail

[X] (BY MAIL CCP § 1013) I served the individual named by placing the documents in a sealed envelope. I then placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices.

[X] (BY ELECTRONIC SERVICE [CCP § 1010.6]) I caused to be served by electronically mailing a true and correct copy through electronic mail system to the e-mail addressee(s) set forth above, or as stated per agreement in accordance with Code of Civil Procedure section 1010.6.

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[X] (BY ELECTRONIC SERVICE) By submitting an electronic version of the document(s) to TrueFiling, LLC through the user interface at <https://www.tf3.truefiling.com/>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this February 1, 2022, at Escondido, California,

/Cindy Millican

Cindy Millican