

February 24, 2023

VIA EMAIL – paul.mcdougall@hcd.ca.gov
Jamillah.Williams@hcd.ca.gov
sohab.mehmood@hcd.ca.gov

Re: Senate Bill (SB) 330 Compliance

Dear Mr. McDougall, Ms. Williams and Ms. Mehmood:

This office represents the Town of Moraga as Town Attorney. We are responding to the issue of the Town's compliance with Senate Bill (SB) 330, which was raised in the November 10, 2022, findings letter from California Housing and Community Development ("HCD") on the Town's Housing Element, as well as correspondence submitted at the public hearing on adoption of the Town's Housing Element. Specifically, this letter addresses the following three actions raised in HCD's letter related to the Town's compliance with SB 330 and alleged downzoning: (1) the 2018 Hillsides and Ridgelines Regulations; (2) the 2020 MCSP Implementation Ordinance; and (3) the proposed Rezoning of Bollinger Valley currently underway. As noted below, none of those actions constituted or would constitute a downzoning and the Town has been and will remain in compliance with SB 330.

The Hillsides and Ridgelines Regulations Comply with SB 330 and Do Not Constitute a Downzoning

As described below, SB 330 was not in effect when the Hillsides and Ridgelines Regulations ("Regulations") were adopted. Thus, the Regulations could not be in violation of SB 330. Further, the Town has and will continue to comply with the provisions of SB 330 that apply to the processing and consideration of residential development projects when implementing the Regulations.

The Town adopted the Hillsides and Ridgelines Regulations in 2018, well before the January 1, 2020, effective date of SB 330. (See Stats. 2016, ch. 654 (SB 330).) Therefore, SB 330 was not in effect when the Regulations were adopted and the Town could not be in violation of SB 330.

Paul McDougall
Jamillah Williams
Sohab Mehmood
February 24, 2023
Page 2

In addition, the Regulations did not downzone any property in the Town. The intent of the Regulations was to clarify and improve the Town's existing regulations that apply to ridgelines and in hillside areas and to ensure internal consistency with General Plan policies and the Moraga Open Space Ordinance, a voter initiative approved in 1986. Thus, even if SB 330 were in effect, the Town did not "downzone" any property in the Town by adopting the Regulations. Also, it should be noted that the Regulations do not apply to the Moraga Center Specific Plan area.

Lastly, the Town will assure that all future development subject to the Regulations will be subject to the provisions of SB 330 regarding application processing and consideration, which will ensure compliance with SB 330.

The MCSP Implementation Ordinance Complies with SB 330 and Does Not Constitute a Downzoning

The Moraga Center Specific Plan (MCSP) Implementation Ordinance ("Ordinance"), which includes objective development standards, was adopted on November 11, 2020, and was subject to and compliant with SB 330. The Ordinance did not make development more restrictive or downzone any sites. Rather, the Ordinance was adopted to implement the previously adopted Moraga Center Specific Plan ("MCSP"). The MCSP and R-20 zoning consistent with the MCSP were adopted in 2010. In 2015, the Town initiated work to develop and implement the remaining zoning standards in the MCSP, which resulted in the Ordinance.

The Ordinance includes nine zoning districts and an overlay district that correspond with and are consistent with the land use designations set forth in the MCSP. Development standards set forth in the Ordinance, including setbacks, minimum lot area, building height, and floor area ratio, are identical to those development standards that are set forth in the MCSP adopted in 2010. Further, the Ordinance includes additional objective development standards and design requirements consistent with the MCSP to provide for more certainty in the development of these areas and to ensure the future implementation of objective standards in lieu of subjective guidelines.

As noted above with respect to the Regulations, the Town will ensure that all future development subject to the Ordinance will be processed and considered in compliance with the provisions of SB 330.

Paul McDougall
Jamillah Williams
Sohab Mehmood
February 24, 2023
Page 3

Further, it should be noted that the Town has included programs in its adopted Housing Element to address potential concerns about development constraints in the MCSP, as set forth in more detail in correspondence from the Town's Planning Director being submitted concurrently with this letter.

The Proposed Bollinger Valley Rezoning Would Comply with SB 330 and Would Not Constitute a Downzoning

The Bollinger Canyon Special Study Area ("Study Area") covers 423 acres on the eastern edge of Moraga along both sides of Bollinger Canyon Road and is currently designated and zoned as a "Study" area. This area includes the 186-acre Bollinger Valley site, which has been the subject of communications to HCD. The Town's objective is to re-zone the entire 423-acre Study Area. There is no residential use currently permitted in the Study Area, including the Bollinger Valley site. Thus, the Town cannot "downzone" the Bollinger Valley site or adopt regulations that would make development more restrictive in violation of SB 330.

The Town has been analyzing the Study Area since 2022 and is proposing to designate and zone the Study Area with three different zoning districts as follows: (1) Residential – One Dwelling Unit Per Acre; (2) Rural Residential, which would allow one dwelling unit per five acres as a permitted use, which area includes the Bollinger Valley site; and (3) Open Space, which would allow residential as a conditionally permitted use.

Given the current "Study" designation of the overall Study Area, which does not allow residential as either a permitted or conditionally permitted use, the proposal to rezone the Study Area, including the Bollinger Valley site, would add, rather than downzone, residential capacity. Further, the proposal is in compliance with SB 330, as the Town would not be decreasing the density or allowing a less intensive use. Thus, after the Bollinger Valley site is rezoned, e.g., to allow residential as a permitted use under a Rural Residential designation, the site will have been in fact up-zoned rather than downzoned.

In summary, the Regulations, the Ordinance and the proposed Bollinger Valley rezoning comply with SB 330. Further, none of these actions have or would downzone property located with the Town.

Paul McDougall
Jamillah Williams
Sohab Mehmood
February 24, 2023
Page 4

If you have any questions or concerns, please feel free to contact me directly.
Thank you for your review of the Town's Housing Element.

Sincerely,

Burke, Williams & Sorensen, LLP



Karen W. Murphy
Partner

KWM:mdy