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November 8, 2019

VIA EMAIL AND U.S. MAIL

Robert B. Hodil
Coblentz Patch Duffy & Bass LLP
1 Montgomery Street, Suite 3000
San Francisco, CA 94104
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Re: Applicability of Senate Bill 330 to the Terraces of Lafayette

Dear Rob:

On behalf of our client, O'Brien Land Company, LLC, we write to address the applicability of Senate Bill 330 (Skinner, D-Berkeley), known as the "Housing Crisis Act of 2019,"¹ to the 315-unit Terraces of Lafayette housing development project. Senate Bill 330 is one of 18 bills from the 2019 legislative session Governor Gavin Newsom signed on October 9, 2019 to "boost housing production" statewide.²

SB 330 will take effect on January 1, 2020, a year that promises to include several other noteworthy bills to further remove local barriers and increase housing production.

As Lafayette officials are surely aware, Governor Newsom specifically encouraged the legislature to pass SB 330. In doing so, the legislature expressly declared a "statewide housing emergency" based on a variety of factors, including the "[l]engthy permitting process and approval times . . . that exacerbate the cost of residential construction."³

SB 330 is lengthy and complicated, as you know. In short, however, the bill strengthens the protections of the Planning and Zoning Law generally as well as the Housing Accountability Act and Permit Streamlining Act in particular. Among other things, SB 330 creates a new type of vested right that is applicant rather than city controlled; restricts local land use processing procedures that have been used to improperly delay or avoid final local decisions on applications for "housing development

¹ Stats. 2019, Ch. 654 (S.B. 330), available at https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200SB330.

² See Governor Gavin Newsom Signs 18 Bills to Boost Housing Production, October 9, 2019, available at <https://www.gov.ca.gov/2019/10/09/governor-gavin-newsom-signs-18-bills-to-boost-housing-production/>.

³ See *id.* at §§ 2(a)(10) and 2(b).

projects”; limits the adoption of new regulations that obstruct new housing, including “downzonings” that would reduce the land use intensity below what was allowed in a community’s the general plan or zoning ordinance in effect on January 1, 2018; and provides additional legal remedies for proponents of new housing.

As the City completes the addendum required by CEQA⁴ and the last public process for the Project finally begins, we wish to focus only on a few of the “good government” procedural provisions of SB 330. In particular, as explained in more detail below, once SB 330 takes effect there can be a maximum of five public hearings for the Project. In addition, the City will be required to conduct any such hearings, and approve or disapprove the Project, within 90 days. Thus, the City has until March 31, 2020, at the latest, to conduct any of the hearings it desires to conduct—but no more than five—before it takes final discretionary action on the Project.

Please note, however, that the City cannot make the stringent findings mandated by the HAA, as we have explained in detail before,⁵ and thus cannot lawfully disapprove the Project. Nevertheless, because the opposition to the Project from anti-development groups like “Save Lafayette” is unabated, we remind the City that it must broadly construe the HAA in favor of the Project. As amended by SB 330:

“It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.”⁶

Five Public Hearing Limitation

SB 330 adds a new section to the Planning and Zoning Law—Government Code section 65905.5—that prohibits cities and counties from conducting more than five hearings (including continued hearings) if a proposed “housing development project” complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.⁷ The term “hearing” is broadly defined to include “any public hearing, workshop, or similar meeting” conducted by the legislative body of the city, the planning agency, or any other agency, department, board, commission, or any other designated hearing officer or body of the city, or any committee or subcommittee thereof.⁸ Thus, any hearing the City may conduct, including but not limited to any hearing of the Design Review Commission, Transportation & Circulation Commission, and Planning Commission, counts towards the five-hearing maximum established in SB 330.

⁴ See, e.g., Pub. Res. Code § 21166 and 14 Cal. Code Regs. § 15162.

⁵ See, e.g., letters from Miller Starr Regalia to City of Lafayette dated December 18, 2018, available at <https://www.lovelafayette.org/Home/ShowDocument?id=5668>, and dated July 9, 2019, available at <https://www.lovelafayette.org/Home/ShowDocument?id=5920>.

⁶ Gov’t Code § 65589.5(a)(1)(L).

⁷ Gov’t Code § 65905.5(a).

⁸ *Id.* at § 65905.5(b)(2).

Moreover, SB 330 requires that a housing development project be deemed consistent with an applicable objective general plan and zoning standards if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent.⁹ SB 330 also amends the HAA to explain that the term “objective” means “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”

When the Project application was deemed complete on July 5, 2011 the general plan land use designation and zoning for the site was Administrative/Professional Office/Multifamily Residential. Under the HAA, the APO land use designation and zoning are thus the controlling general plan and zoning for the Project.¹⁰

The objective standards of the APO general plan land use designation allow a maximum building intensity of up to 35 dwelling units per acre and a floor area ratio of up to 0.4.¹¹ The APO zoning contains various objective development standards relating to height, setbacks, and similar issues, and it allows multi-family buildings with the issuance of a land use permit.¹²

As set forth in the certified EIR, the Project is consistent with the APO general plan land use designation given that development of 315 units on the 22.27-acre site would result in a residential density of approximately 14 du/acre and that the total area of the proposed buildings is 332,395 gross square feet (gsf), which is equivalent to an FAR of 0.34.¹³ While the EIR concludes the Project would be inconsistent with various other general plan land use policies, such as Policy LU-2.1, Policy LU 2.2, and LU 2.3, those policies are classically subjective and no reasonable person could conclude they satisfy the stringent “objective standards” requirement of SB 330.

The EIR also correctly determined that the Project is consistent with the objective zoning standards applicable to the APO district.¹⁴

The Project thus satisfies the requirements established in new Government Code section 65905.5, and once SB 330 takes effect on January 1 the City may conduct no more than five public hearings before taking final action on the Project application.

⁹ *Id.* at § 65905.5(c)(1).

¹⁰ *See, e.g.*, § 65589.5(d)(2).

¹¹ *See* Lafayette General Plan, Chapter I (Land Use), at p. 1-16, *available at* <https://www.lovelafayette.org/Home/ShowDocument?id=1933>.

¹² *See* Lafayette Municipal Code, Chapter 6-10 (Office Districts), *available at* https://library.municode.com/ca/lafayette/codes/code_of_ordinances?nodid=TIT6PLLAUS_PT3LAUSDI_CH6-10OFDI.

¹³ *See* The Terraces of Lafayette Environmental Impact Report for the City of Lafayette (SCH # 2011072055), Chapter 4.9 (Land Use and Planning), at pp. 4.9-16 to 4.9-17, *available at* <https://www.lovelafayette.org/home/showdocument?id=1549>.

¹⁴ *See* Terraces EIR, Chapter 4.9 (Land Use and Planning) at pp. 4.9-21 to 4.9-24, *available at* <https://www.lovelafayette.org/home/showdocument?id=1549>.

Decision Within 90 Days

SB 330 also reduces the time period in which a lead agency must approve or disapprove a "housing development project" under the Permit Streamlining Act from 120 days from the certification of an environmental impact report to 90 days, and from 90 days to 60 days for a development project that complies with affordable housing requirements pursuant to Section 65950(a)(3)(A) of the Government Code.¹⁵ The City certified the EIR for the Project in 2013 and is now processing an addendum that will demonstrate only minor technical changes or additions to the EIR are necessary and none of the circumstances allowing for subsequent environmental review have occurred. We understand that the City will finally complete the addendum sometime in the middle of December of 2019. As a result, the City will have 90 days from the effective date of SB 330 to approve or disapprove the Project.

In closing, while we would encourage the City to move the Project promptly through the land use permit process, particularly because it has already been the subject of some 20 public hearings to date, we understand that local anti-development forces still may think the process can be extended indefinitely and that the Project can ultimately be disapproved. They are incorrect, however, and their efforts have only prolonged the inevitable. In any event, my client remains committed to working productively with the City to process this important Project and hopes to eventually help the City demonstrate to the legislature and the governor that the City is complying with its ongoing obligations under the HAA and its new obligations under SB 330.

We look forward to obtaining a final approval by the Planning Commission no later than the end of next March.

Thank you for your prompt attention to this important matter, and please feel free to contact me with any questions you may have.

Sincerely,

MILLER STARR REGALIA



Bryan W. Wenter, AICP

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¹⁵ See Gov't Code § 65950(a)(2).

Robert B. Hodil
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cc: Honorable Mayor Mike Anderson
City Councilmember Steve Bliss
City Councilmember Cameron Burks
City Councilmember Teresa Gerring
Planning Commission
Niroop Srivatsa, City Manager
Greg Wolff, Planning Director
Joanne Robbins, City Clerk
Dennis O'Brien
Caryn Kali
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Allan Moore, Esq.