

T|L|G Thomas Law Group

TINA A. THOMAS
AMY R. HIGUERA
CHRISTOPHER J. BUTCHER
Senior Counsel

ANNE L. BAPTISTE
JOHANNAH E. KRAMER

455 CAPITOL MALL, SUITE 801 | ONE KAISER PLAZA, SUITE 875
SACRAMENTO, CA 95814 | OAKLAND, CA 94612

Telephone: (916) 287-9292 Facsimile: (916) 737-5858
www.thomaslaw.com

NICHOLAS S. AVDIS
ERIC E. REYNOLDS
Of Counsel

December 10, 2019

Kim Walesh, Deputy City Manager
City of San Jose
200 E. Santa Clara Street, 3rd Floor Tower
San Jose, CA 95113-1905

RE: North San Jose Area Development Policy Update

Dear Ms. Walesh:

We have reviewed your letter dated November 27, 2019 to Manuel Pineda regarding the North San Jose Area Development Policy Update. We understand that the City of San Jose intends to stop pursuing its consolidation of the phasing of required transportation improvements and is considering how recently passed housing and housing-related land use legislation will affect its obligations under the North San Jose Area Development Policy. Your letter notes that Senate Bill 330 includes limitations on moratoriums or similar restrictions being imposed on housing development, and a prohibition on placing housing unit caps, population limits, or limitations on approval of permits issued for housing development.

We note first that SB 330 applies prospectively to the enactment of new policies. Nothing in the bill prevents San Jose from implementing current obligations to provide transportation infrastructure related to housing, including the existing North San Jose Area Development Policy. Newly enacted Government Code section 66300, subdivision (b), states that an affected city “shall not *enact* a development policy, standard, or condition” that would have any of the effects described in subdivisions (b)(1)(A) through (E). (See also Sen. Bill No. 330 (2019-2020 Reg. Sess.) § 4 “these prohibitions would apply to any zoning ordinance adopted or amended on or after the effective date of these provisions.”)

Further, nothing in SB 330 prevents the City from continuing to require transportation improvements as a condition to the issuance of permits for residential development, which is what the 2006 Settlement Agreement requires. As stated in section 66300 (f)(3), its requirements “shall not be construed as prohibiting the adoption of amendment of a development policy, standard, or condition in a manner that imposes or implements mitigation measures a necessary to comply with the California Environmental Quality Act.” (See also Gov. Code § 65589.5 (e) [“Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with

Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).”].)

Santa Clara is not opposed to the development of new housing in North San Jose. Santa Clara only wants to ensure that San Jose complies with its obligations to provide necessary transportation improvements that the new housing development will require. Requiring transportation improvements necessitated by new housing is not a moratorium. Passage of SB 330 does not relieve San Jose of its obligations to develop new housing in a responsible manner, consistent with the 2006 Settlement Agreement.

Sincerely,



Fa/ Tina A. Thomas

cc: Brian Doyle, Santa Clara City Attorney
Deanna Santana, Santa Clara City Manager
Andrew Crabtree, Santa Clara Director of Community Development
Richard Doyle, San Jose City Attorney
David Sykes, San Jose City Manager
Rosalynn Hughey, San Jose Planning Director