Allen Matkins

Memorandum

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
www.allenmatkins.com

To: **Nick Browne**
Perform Properties
Brian Griggs
Griggs Resource Group

From: **Nicholas DuBroff**
Zachary D. Rego

Date September 23, 2025

Telephone: 415.273.7433
E-mail: ndubroff@allenmatkins.com
zrego@allenmatkins.com
File Number: 395008.00001/4915-8264-5626.1

Subject: **Applicability of AB 130 CEQA Exemption to the 515 Whisman Townhouse Project**

A new statutory CEQA exemption for infill housing development projects was enacted on June 30, 2025 pursuant to AB 130 and became effective immediately. (Pub. Res. Code § 21080.66.) The new AB 130 statutory CEQA exemption is similar to the existing categorical Class 32 exemption under the CEQA Guidelines, except that AB 130: 1) accommodates larger residential projects; 2) reduces legal risks by limiting opportunity for third party challenges (no "unusual circumstances" challenges are permitted); and 3) creates a strict project approval timeline starting with application completeness.

This memorandum reviews the application materials for Perform Properties' proposed townhouse development project ("Project") at 515 and 545 Whisman ("Property") in Mountain View ("City") to determine the applicability of the new AB 130 CEQA exemption to the Project. Additionally, this memorandum briefly outlines how the streamlined approval timeline will impact the Project. We note that unlike the Class 32 Exemption, an analysis of potential impacts related to traffic, noise, air quality, and water quality will not be required to support the exemption. Instead, the project site must meet all of the SB 35 siting criteria (see below). Therefore, qualifying housing development projects should be processed much more quickly since technical studies should not be required.

As we explain below, the Project qualifies for the AB 130 CEQA exemption. To this end, AB 130 requires the City to approve or disapprove the Project within approximately 104-178 days of the date that Perform Properties notifies the City that the Project qualifies for AB 130 (because Perform Properties previously submitted a complete SB 330 application on March 11, 2025, which the City confirmed on April 8, 2025).

1. New CEQA Exemption Eligibility Requirements

To qualify for the AB 130 CEQA exemption, a project must satisfy specific site and project requirements. Unlike other housing streamlining laws enacted in recent years, AB 130 does not contain any affordability requirements, and labor requirements are limited to only a narrow class of projects, none of which fit the description for the Project. As described below, the Project fits each of the AB 130 qualifying criteria.

a. Housing project. The project must be a housing development project, which is defined to include: (1) projects consisting of residential uses only; (2) mixed-use projects where at least two-thirds of the new or converted square footage is designated for residential use; (3) mixed-use projects with greater than 500 units where at least half of the new or converted square footage is designated for residential use and other specific requirements are met; (4) transitional housing or supportive housing; and (5) farmworker housing. (Gov. Code §§ 65589.5(h)(2), 65905.5(b); Pub. Res. Code § 21080.66(a).)

The Project meets this requirement because, as described in the SB 330 Preliminary Application, it will be developed with 100% residential uses.

b. Acreage. The project site must be 20 acres or less, except Builder's Remedy project sites must be 5 acres or less. (Pub. Res. Code § 21080.66(a)(1).)

The Project meets this requirement because it is not a Builder's Remedy project and, as shown on the SB 330 Preliminary Application, the Property is approximately 10 acres.

c. Urban area. The project site must be within the boundaries of an incorporated municipality or in an urban area, as defined by the U.S. Census Bureau. (Pub. Res. Code § 21080.66(a)(2).)

The Project meets this requirement because it is within the City of Mountain View, an incorporated municipality.

d. Infill location. The project site must be an urban infill site, meaning that: (i) the site was previously developed with an urban use; (ii) at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses; (iii) at least 75% of the area within a one-quarter mile radius of the site is developed with urban uses; or (iv) for sites with four sides, at least three sides are developed with urban uses and at least two-thirds of the perimeter of the site adjoins parcels that are developed with urban uses. "Urban uses" include current or previous residential or commercial developments (including office),

public institutions, or public parks surrounded by other urban uses, parking lots or structures, transit or transportation passenger facilities, or retail uses, or any combination of those uses. (Pub. Res. Code §§ 21080.66(a)(3), (f)(3).)

The Project meets this requirement because the Property is currently developed with office buildings and parking, which qualify as "urban uses." The Property also likely qualifies under the other definitions of urban infill site, though survey data may be needed to be certain.

e. Environmental siting criteria. The project must meet environmental siting criteria set forth in SB 35/423. To qualify, a site must not be located in any of the following: 1) certain areas of the coastal zone; 2) prime farmland, farmland of statewide importance, or land designated for agricultural protection or preservation; 3) wetlands; 4) a very high fire hazard severity zone (unless certain mitigation measures are adopted); 5) a hazardous waste site; 6) a delineated earthquake fault zone; 7) a 100-year flood hazard area or regulatory floodway; 8) lands identified for conservation or under a conservation easement; or 9) habitat for protected species. (Pub. Res. Code § 21080.66(a)(6); Gov. Code § 65913.4(a)(6).)

The Project meets this requirement because the Property does not fall within any of the prohibited categories. Specifically:

i. The Property is not within the coastal zone;

ii. The Property is not on land used or designated for agriculture;

iii. The Property is not on a wetland, per the SB 330 Preliminary Application;

iv. The Property is not within a very high fire hazard severity zone, per our review of the Office of the State Fire Marshal's Fire Hazard Severity Zone maps and as indicated in the SB 330 Preliminary Application;

v. The Property is not on a hazardous waste site, per our review of the Cortese List of hazardous waste sites and that of Elevate (Perform Properties' Environmental Consultant).[1]

[1] See Attachment A (matrix summarizing the results of a comprehensive records search across every sub-list identified in California Government Code § 65962.5 (commonly referred to as the "Cortese List"), showing that none of the nine statutory categories applies to the 10-acre site, and thereby demonstrating that the Property is not included on, or subject to, any portion of the Cortese List).

vi. The Property is not within a delineated earthquake fault zone, as indicated in the SB 330 Preliminary Application and our review of the California Department of Conservation Earthquake Hazards Zone map;

vii. The Property is not within a 100-year flood hazard area nor a regulatory floodway, per our review of FEMA's National Flood Hazard Layer Viewer and the SB 330 Preliminary Application;

viii. The Property is not within a 100-year flood hazard area nor a regulatory floodway, per our review of FEMA's National Flood Hazard Layer Viewer and the SB 330 Preliminary Application;

ix. The Property is not on lands identified for conservation or subject to a conservation easement, per our review of the plotted easement map of the Preliminary Title Report for the Property dated August 16, 2024;

x. The Property is not habitat for protected species, per the SB 330 Preliminary Application.

f. Land use regulations. The project must be consistent with the applicable general plan and zoning ordinance, as well as any applicable local coastal program. If the general plan and zoning ordinance are inconsistent, the project need only be consistent with one. Use of any State Density Bonus Law ("SDBL") density bonus, incentive or concession, waiver, or reduced parking ratio shall not be grounds to determine the project is inconsistent with the zoning, general plan, or local coastal program. The housing development shall be deemed consistent if there is substantial evidence that would allow a reasonable person to conclude as such. (Pub. Res. Code § 21080.66(a)(4).)

The Project meets this requirement because it is consistent with the land use regulations for the Property, as indicated in the SB 330 Preliminary Application. The Property is within the "East Whisman Mixed Use" General Plan designation and the "Mixed-Use—Low Intensity Character Area" of the EWPP, which establish the allowable uses and development standards. Together, these land use regulations permit the Project as designed and with the density proposed (incorporating the Project's density bonus.)

Further, because the Project qualifies for a SDBL density bonus, it may use commensurate incentives/concessions to achieve a reduction in development standards or modification of a regulatory requirement to provide for affordable

housing costs, and unlimited waivers to eliminate or reduce development standards that would otherwise preclude development of the Project as designed.

g. Minimum density. The proposed residential density must be at least 50% of the minimum residential density deemed appropriate to accommodate housing for the jurisdiction. Depending on the type of jurisdiction (nonmetropolitan, suburban, or metropolitan), the 50% of the applicable density ranges from a minimum of 5 to 15 units per acre. (Gov. Code § 65583.2(c)(3)(B); Pub. Res. Code § 21080.66(a)(5).)

The Project meets this requirement because Mountain View is in a metropolitan county, which has an applicable density of 30 unit per acre, half of which is 15 units per acre.[2] The proposed density of 19.2 dwelling units per acre, as shown on the Project's SB 330 Preliminary Application, exceeds the minimum required density of 15 dwelling units per acre for jurisdictions in metropolitan counties.

h. Historic structures. The project does not require the demolition of a historic structure that was placed on a national, state, or local historic register before the date a preliminary application (as defined) was submitted. (Pub. Res. Code § 21080.66(a)(7).)

The Project meets this requirement because none of the existing structures to be demolished are on a national, state, or local historic register, as indicated on the SB 330 Preliminary Application.

i. Freeway proximity. For any housing within 500 feet of a freeway, the building: (i) must have a centralized heating, ventilation, and air-conditioning system and the outdoor intakes for that system cannot face the freeway; (ii) must provide air filtration media for outside and return air that provide a minimum efficiency reporting value of 16, which must be replaced as specified; and (iii) must not have any balconies facing the freeway. (Pub. Res. Code § 21080.66(c)(2).)

No portions of the Property are within 500 feet of Highway 101. The Project will therefore not be required to implement the above measures.

---

[2] Relying on US Census Bureau data from the recent 2023-2024 American Community Survey, rather than the decennial census from 2020, an applicant could argue that Mountain View qualifies as a "suburban" jurisdiction with a lower applicable density of 20 units per acre and thus a lower required 10 units per acre density to qualify for the new CEQA exemption. (Gov. Code § 65583.2(c)(3)(B), (d), (e), (f).) Regardless, the Project's density of roughly 19 units per acre would still exceed the minimum required density.

j. Tribal notice. The City must notify all California Native American tribes that are traditionally and culturally affiliated with the project site, and consult with any tribe that elects to be involved, as specified in the statute. Related conditions of project approval may be imposed. (Pub. Res. Code § 21080.66(b).)

During preparation of the EIR for the EWPP, the City identified and invited six Native American individuals/organizations with potential knowledge of the plan area to comment on the draft EWPP. None responded to this request. Neither have any tribes culturally affiliated with the EWPP area requested notification of proposed projects in the plan area under AB 52. While it is possible that one or more tribes may elect to be involved in the consultation for the Project, the lack of participation in the EWPP development process suggests the probability is low.

k. Phase I environmental site assessment. A Phase I Environmental Site Assessment ("ESA") must be performed for the project site as a condition of approval for the development. If a recognized environmental condition is found, certain steps and mitigation must be implemented to ensure there is no threat to human health or safety, as specified in the statute, and subject to applicable state and federal standards. Any of the said steps and/or mitigation must be implemented before the local government issues a certificate of occupancy. (Pub. Res. Code § 21080.66(c)(1)(A)-(D).)

Our understanding is that Perform Properties performed a Phase I ESA of the Property, and as a condition of Project approval, will implement any required measures outlined in that Phase I ESA.

Moreover, our understanding is that Perform Properties has met with the EPA and the EPA provided specific requirements for Perform Properties to implement to receive a certificate of occupancy for the Project. As with other nearby projects in the Middlefield-Ellis-Whisman Superfund Study Area, the City will also impose standard Conditions of Approval ("COAs"), which require implementation of the EPA's prescribed remediation measures and require the necessary oversight agency to complete its final inspections and approve required remediation work before a certificate of occupancy may be issued. The standard City COAs are footnoted below.[3]

[3] **OTHER REVIEW AGENCIES:** This project requires review and approval by outside agencies. Proof of approval from these oversight agencies (e.g., the U.S. Environmental Protection Agency, the State Department of Toxic Substances Control, State Regional Water Quality Control Board, County of Santa Clara Department of Environmental Health Voluntary Cleanup Program, etc.) is required to building permit issuance, inspections or Certificate of Occupancy

l. Transient lodging. For new projects "deemed complete" on or after January 1, 2025, no portion of the project may be designated for use as transient lodging (as defined). "Deemed complete" means that an SB 330 preliminary application or a complete application (pursuant to Gov. Code § 65943) has been submitted for the project. (Pub. Res. Code § 21080.66(a)(8).)

The Project meets this requirement because none of the proposed components will be used for transient lodging.

m. Labor requirements. Any building over 85 feet in height (from grade) is subject to the SB 35 labor standards, including prevailing wage requirements, recordkeeping requirements, additional labor standards for developments over 50 units, and additional skilled and trained workforce requirements. (Pub. Res. Code § 21080.66(d)(2); see Gov. Code § 65913.4(a)(8).) All construction workers employed in the execution of public or private housing development projects where 100% of units will be dedicated to lower income households shall be paid prevailing wages; registered apprentices may be paid the applicable apprentice prevailing rate. (Pub. Res. Code § 21080.66(d)(1).)

The Project will not be required to comply with the above labor provisions because it will not be over 85 feet in height, nor will 100% of the units be dedicated to lower income households.

2. New Project Approval Timeline

AB 130 also amended the Permit Streamlining Act ("PSA") to create a new approval timeline for agencies with approval authority over projects that qualify for the AB 130 CEQA exemption. (Gov. Code § 65950(a)(7).) The amended PSA states that an agency must approve or disapprove the

---

issuance.

REMEDIATION IMPROVEMENTS: The applicant shall work with City staff, the necessary oversight agency (e.g., the U.S. Environmental Protection Agency, the State Department of Toxic Substances Control, State Regional Water Quality Control Board, County of Santa Clara Department of Environmental Health Voluntary Cleanup Program, etc.), and responsible parties, if necessary to address any site remediation or building design/construction requirements to ensure appropriate on-site improvements in accordance with the oversight agency standard practice, local, State, and Federal regulations, and City Code requirements. Design of remediation equipment, equipment placement, or remediation activities will need to be reviewed and may require approval by all parties. Prior to issuance of any building or fire permits, the applicants shall either: (a) submit proof of an approval from the oversight agency of remediation activity and/or building and site design as deemed consistent with the remediation activity; or (b) provide the work is not subject to approval from an oversight agency. A Certificate of Occupancy cannot be issued until final inspections have been completed by the oversight agency, if required, and the City.

project "[t]hirty days from the conclusion of [the tribal consultation process]" for projects invoking the new CEQA exemption. (*Id.*)

Additionally, the tribal consultation process itself contains statutory approval timelines that, when combined with the new PSA provisions, establish a single approval timeline for an AB 130 project starting with application completeness, or for applications already deemed complete, when the applicant notifies the City that the project qualifies for AB 130. Because the tribal consultation process can conclude in multiple ways, the exact timing cannot be determined from the outset. At a minimum, if no tribes elect to participate in the consultation, a project must be approved no later than **104 days** from the date of application completeness/AB 130 notification. If a tribe elects to participate in the consultation, a project must be approved no later than **178 days** from the date of application completeness/AB 130 notification, but may be approved earlier.

At this time, we understand the Project's application is under review with the City Planning Department. Under AB 130, the approval timeline begins either when the application is deemed complete, or for projects with already completed applications, when the applicant notifies the City that the project qualifies for AB 130. (Gov. Code § 21080.66(b)(1)(A)(i)-(ii); § 65589.5(h)(5).) For the purposes of AB 130, "deemed complete" means the applicant has submitted an SB 330 preliminary application. (*Id.*) Therefore, because a preliminary application was previously submitted for the Project on March 11, 2025 (and confirmed by the City on April 8, 2025), Perform Properties can start the approval timeline immediately by notifying the City that the Project qualifies for AB 130. Note that the City only has 14 days from the date of application completeness/AB 130 notification to provide formal notification to tribes. Therefore, we recommend informing the City as soon as possible that the Project will utilize the AB 130 CEQA exemption to ensure that there are no delays once the application is deemed complete or Perform Properties makes an AB 130 notification.