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September 23, 2025

Palo Alto Planning Department
285 Hamilton Avenue - 5th Floor
Palo Alto, CA 94301

Re: **AB 1633 Notice, 156 N. California Avenue - App. 24PLN-00100**

Dear All:

We represent Midar Investment Co. LLC (the “Applicant”) in connection with its housing development application for 382 multifamily residential units under Application 24PLN-00100 (the “Project”) at 156 N. California Avenue (the “Project Site”) in Palo Alto (the “City”), California. The Project is proposed on an infill, transit-adjacent location that is ideal for the type of high-density development that California desperately lacks, and the Project will contribute substantially to the City meeting its state-mandated affordable housing goals. As documented in previous communications, the Project (1) is a “housing development project” that is subject to the protections of the Housing Accountability Act (the “HAA”), inclusive of the “Builder’s Remedy,” and (2) is eligible for the California Environmental Quality Act (“CEQA”) exemption enacted with the June 30, 2025 adoption of Assembly Bill (“AB”) 130 (the “AB 130 CEQA Exemption”).

The purpose of this letter is to provide “timely written notice,”¹ pursuant to Government Code Section 65589.5.1 (“AB 1633”), that the City improperly failed “to make a determination [that the Project] is exempt from” CEQA pursuant to the AB 130 CEQA Exemption, which constitutes an “abuse of discretion” as defined by AB 1633. As documented in both our August 6, 2025 and September 3, 2025 letters (together provided as Exhibit A, enclosed) and further explained in Section II of this letter, the Applicant has entered “substantial evidence in[to] the record before the local agency”² that the Project qualifies for the AB 130 CEQA exemption, and the City’s contrary interpretation – and the City’s unlawful refusal to proceed to begin the tribal consultation process mandated by AB 130 – is unsupported by the statutory text and applicable precedential case law.

¹ CA Govt. Code Section 65589.5.1.(a)(5).

² CA Govt. Code Section 65589.5.1(a)(4)(B).

I. THE PROJECT’S QUALIFICATION FOR AB 1633.

The Project and the Project Site meet the qualifying criteria to access the AB 1633 procedures. Namely:

- As set forth in Table 2 of the Applicant’s August 6, 2025 correspondence to the City, the Project is not located “on a site specified in subparagraphs (A) to (C), inclusive, or subparagraphs (E) to (K), inclusive, of paragraph (6) of subdivision (a) of [Government Code] Section 65913.4.”³
- As set forth in Table 2 of the Applicant’s August 6, 2025 correspondence to the City, the Project Site is not “within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to [Government Code] Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.”⁴
- The Project Site is a legal parcel and Palo Alto is an urbanized area, and the Project meets multiple of AB 1633’s “infill” criteria, any one of which is sufficient to establish eligibility.⁵ Namely, at a minimum, the Project Site is “proximal to six or more amenities” as defined by AB 1633,⁶ the Project Site is adjoined by “urban uses” on at least 75 percent of its perimeter,⁷ and the Project Site is within one-half mile of a major transit stop.⁸
- The density of the Project “meets or exceeds 15 dwelling units per acre.”⁹

Moreover, “there is substantial evidence in the record before the local agency that the housing development project is eligible for an exemption sought by the applicant.”¹⁰ Substantial evidence supporting the Project’s eligibility for the AB 130 CEQA Exemption is set forth in the Applicant’s August 6, 2025 and September 3, 2025 correspondence to the City.

³ Gov. Code § 65589.5.1(a)(1)(A).

⁴ Gov. Code § 65589.5.1(a)(1)(B).

⁵ Gov. Code § 65589.5.1(a)(2).

⁶ Gov. Code § 65589.5.1(a)(2)(C). The Project Site is “proximal to” at least the following amenities: Mollie Stone’s Markets at 164 California Ave., Country Sun Natural Foods at 440 California Ave., Jerry Bowden Park at 2380 High St., Peers Park at 1899 Park Blvd., College Terrace Library at 2300 Wellesley St., and Real Produce International Market at 501 Oxford Ave. See Gov. Code § 65589.5.1(b)(4).

⁷ Gov. Code § 65589.5.1(a)(2)(D). In fact, 100 percent of the Project Site is adjoined by “parcels that are developed with urban uses.”

⁸ Gov. Code § 65589.5.1(a)(2)(A). The Project Site is within one-half mile of the California Avenue Caltrain stop. See Gov. Code § 65589.5(b)(3); Pub. Res. Code § 21064.3 (“‘Major transit stop’ means a site containing any of the following: (a) An existing rail or bus rapid transit station.”).

⁹ Gov. Code § 65589.5.1(a)(3).

¹⁰ Gov. Code § 65589.5.1(a)(4)(A).

II. THE APPLICANT'S WRITTEN NOTICE PURSUANT TO AB 1633.

This letter serves as the Applicant's timely written notice that the City has failed to make a determination, and/or abused its discretion in failing to determine, that the Project is exempt from CEQA pursuant to the AB 130 CEQA Exemption. As required by law, this notice is being provided within 35 days of the City's August 20, 2025 determination that the Project does not qualify for the AB 130 CEQA Exemption.

Pursuant to AB 1633, the Applicant specifically provides the information required to be included in this written notice¹¹ as follows:

- A brief description of the Project: The Project proposes 382 multifamily residential units and 18,719 square feet of commercial space.
- The location of the project by street address and cross street: The Project is located at 156 N. California Ave., at the corner of N. California Ave. and Park Blvd., in the City of Palo Alto, CA, 94301.
- The Applicant's name: The Applicant is Midar Investment Co. LLC.
- If different from the applicant, the identity of the person undertaking the project which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies: *This is not applicable.*
- A citation to the section of Title 14 of the California Code of Regulations or the statute under which the applicant asserts that the project is exempt: The Project is exempt from CEQA pursuant to the AB 130 CEQA Exemption, Pub. Res. Code 21080.66.
- A brief statement of reasons supporting the assertion that the project is exempt: The reasons supporting the Project's eligibility for the AB 130 CEQA Exemption are set forth in the Applicant's August 6, 2025 and September 3, 2025 correspondence to the City, which is incorporated herein by reference and reproduced in Exhibit A to this letter.
- A copy of the excerpts from the record constituting substantial evidence that the qualifying criteria for AB 1633 are satisfied: Please see Section I of this letter, above.

Upon receipt of this written notice, the City must follow the procedures set forth in Government Code Section 65589.5.1, subdivision 5, paragraphs B-D.

¹¹ Gov. Code § 65589.5.1(a)(5)(A).

III. CONCLUSION

As explained above and in our previous communication, the Project qualifies for the AB 130 CEQA Exemption. The Project also qualifies for the statutory protections set forth in AB 1633, and the Applicant hereby invokes those protections. The City must now follow the procedures set forth in AB 1633.¹² In doing so, we urge the City to reconsider its position that the Project does not qualify for the AB 130 CEQA Exemption.

To the extent it proves necessary to litigate this question, any such litigation will be resolved under a standard of review that is highly favorable to the approval of housing. If the City does not reverse course, it will be subject to the substantial liability imposed by the HAA – including mandamus relief, awards of attorney’s fees, and potential fines – and it could endanger its own compliance with Housing Element Law. We urge the City to avoid this course and to instead work with us on processing the development of this Project. The Applicant team remains, as before, committed and willing to work with City officials and stakeholders collaboratively on a Project that can be feasibly developed in a manner consistent with regional needs and local priorities.

Sincerely yours,

HOLLAND & KNIGHT LLP



Daniel R. Golub
Genna Yarkin
Will Sterling

cc: Caio Arellano, Albert Yang - City Attorney’s Office

¹² Gov. Code § 65589.5.1(a)(5)(B)-(D).

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August 6, 2025

Palo Alto Planning Department
285 Hamilton Avenue - 5th Floor
Palo Alto, CA 94301

Re: **Response to the City's June 27, 2025 Letter and Invocation of AB 130 CEQA Exemption for 156 N. California Avenue - App. 24PLN-00100**

Dear All:

As you know, we represent Midar Investment Co. LLC (the "Applicant") in connection with its housing development application for 382 multifamily residential units under Application 24PLN-00100 (the "Project") at 156 N. California Avenue (the "Project Site") in Palo Alto (the "City"), California. As documented in previous communications, the Project is a "housing development project" that is subject to the protections of the Housing Accountability Act (the "HAA"), inclusive of the "Builder's Remedy." This letter:

- 1) Provides the Applicant's response to the City's June 27, 2025 letter "Re: 156 N. California Venue – 24PLN-00100" ("Letter"); and
- 2) Documents the Project's eligibility for the California Environmental Quality Act ("CEQA") exemption enacted with the June 30, 2025 adoption of Assembly Bill ("AB") 130, and serves as the Applicant's request that the City proceed under such exemption and begin the consultation and review process required by that law.

The City is required to initiate the AB 130 tribal consultation process within 14 days of this letter.

Response to the City's June 27, 2025 Letter

We first note that the Applicant elects to proceed under the provisions of the HAA in effect at the time of the Application's preliminary application, as the Legislature gave the Applicant the right to do in last year's "Builder's Remedy" reforms. See Gov. Code § 65589.5(f)(7)(A); see also Stats. 2024, Ch. 268, § 1(i) (AB 1893's provisions "should not be interpreted as constraints on or impediments to processing current 'builder's remedy' project applications deemed complete").

With respect to the remainder of the Letter, the Applicant continues to dispute several of the City's characterizations. The City's review process by several departments continues to be piecemeal, with "interim reports" being provided instead of a full range of comments for the Applicant team to address. Entirely new comments have continued to be provided long after the first exhaustive round of "inconsistency" comments were resolved (for example with respect to a new comment regarding the Project's proposed transformers). Communication with staff has been, and continues to be, spotty.

Most recently, City staff have provided an updated EIR schedule in which a *Draft* EIR would not even be circulated until February 2026 – a year and a half after the application was complete, which will result in EIR certification *long* after the one-year statutory deadline from completeness.¹ In light of this, we assume it is not surprising that the Applicant is now invoking its rights to proceed with a CEQA-exempt review process.

As the City suggests, the Applicant would very much like to move forward cooperatively in good faith. To that end, the Applicant continues to make itself available for bi-weekly meetings to resolve any outstanding issues. The Applicant hopes and expects that the review remaining for the Project in light of its exemption from CEQA will be conducted in an efficient fashion, consistent with applicable laws.,

Request to Proceed Using AB 130 CEQA Exemption and Initial Consultation

Pursuant to PRC § 21080.66(b)(1)(A)(ii), the Project is exempt from CEQA and the City is required to commence formal tribal notification and consultation to process the Application under the. Specifically, the City is now required to:

- Notify California Native American tribes traditionally affiliated with the area within 14 days, using certified mail and email.
- Include required project information (site maps, description, studies, contact info, etc.)
- Conclude consultation in accordance with the timelines and procedures specified in the statute.

Since we understand that the City already reached out to tribes to conduct the tribal consultation currently underway for the current EIR process, we expect it should be relatively straightforward to again contact tribes affiliated with the area with the more specific consultation notice required by AB 130. For ease of use, below is form language the City can use to initial consultation:

This letter serves as notification from the City of Palo Alto (the "City") pursuant to Public Resources Code Section 21080.66(b)(1)(A), that a development proponent has notified the City that its project is eligible for an exemption from the California Environmental Quality

¹ Pub. Res. Code § 21151.5(a)(1)(A); Cal. Code Regs. Tit. 14, § 15108.

Act (“CEQA”) pursuant to Public Resources Code Section 21080.66. This notification is an “invitation to consult” regarding the development project’s potential effects on tribal cultural resources.

The project is a housing development application by Midar Investment Co. LLC (the “Applicant”) for 382 multifamily residential units under City Application 24PLN-00100 (the “Project”) at 156 N. California Avenue (the “Project Site”). This is the same Project for which the City previously solicited consultation on [DATE].

Within 60 days of this notification, you must notify the City regarding your acceptance of this invitation to consult. If you choose not to accept the invitation to consult, or do not notify the City of your decision within 60 days, the consultation shall be considered to have concluded.

Contact information for the Applicant and the City are as follows:

- *[Insert desired City contact]*
- *Midar Investment Co. LLC
150 Shoreline Hwy, Bldg D Suite 5
Mill Valley, CA 94941
Phone: (415) 942-7902*

Enclosed please find further Project details, including site maps, proposed project scope, and any known cultural resource studies.

Eligibility For AB 130 CEQA Exemption

The Project and the Project Site meet all conditions required under PRC Section 21080.66 for CEQA exemption, as follows:

Table 1 - General Requirements

Requirement	Analysis
<u>21080.66(a)(1) – Lot Size</u> A. Except as provided in subparagraph (B), the project site is not more than 20 acres. B. The project site or the parcel size for a builder’s remedy project, as defined in paragraph (11) of subdivision (h) of Section 65589.5 of the Government Code, or the project site or the parcel size for a project that applied pursuant to paragraph (5) of	This builder’s remedy Project Site is approx. 1.4 acres (Lot A: 1.144 acre and Lot B: 0.292) – this is fewer than the five acres allowed pursuant to subparagraph (B). Therefore, the Project is consistent with subparagraph (B).

subdivision (d) of Section 65589.5 of the Government Code as it read before January 1, 2025, is not more than five acres.	
<u>21080.66(a)(2) – Project Location</u> The project site meets either of the following criteria: A. Is located within the boundaries of an incorporated municipality. B. Is located within an urban area, as defined by the United States Census Bureau.	The Project Site is located within Palo Alto, which is an incorporated municipality and an urban area, as defined by the United States Census Bureau]. Therefore, the Project is consistent with subparagraph (A) and (B).
<u>21080.66(a)(3) – Infill Development Status</u> The project site meets any of the following criteria: A. Has been previously developed with an urban use.² B. At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. C. At least 75 percent of the area within one-quarter mile radius of the site is developed with urban uses. D. For sites with four sides, at least three out of four 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.	Here, the Project Site is located on two lots in the City of Palo Alto. Lot A currently contains a grocery store and surface parking lot; Lot B contains a surface parking lot. Therefore, the Project is consistent with subparagraph A. Although not required to qualify, the Project is also consistent with B and D, and likely C as well.
<u>21080.66(a)(4) – GP/ZC Consistency</u> A. The project is consistent with the applicable general plan and zoning ordinance, as well as any applicable local coastal program as defined in Section 30108.6.	Government Code Section 65589.5(f)(6)(D)(iii) states that a builder’s remedy project “... shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated

² An “urban use” is defined by Pub. Res. Code section 21080.66(f)(3) to mean “any current or previous residential or commercial development, public institution, or public park that is surrounded by other urban uses, parking lot or structure, transit or transportation passenger facility, or retail use, or any combination of those uses.”

For purposes of this section, a housing development project shall be deemed consistent with the applicable general plan and zoning ordinance, and any applicable local coastal program, if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent. B. If the zoning and general plan are not consistent with one another, a project shall be deemed consistent with both if the project is consistent with one. C. The approval of a density bonus, incentives or concessions, waivers or reductions of development standards, and reduced parking ratios pursuant to Section 65915 of the Government Code shall not be grounds for determining that the project is inconsistent with the applicable general plan, zoning ordinance, or local coastal program.	as a nonconforming lot, use, or structure for any purpose.” As such, by operation of law, the Project is consistent with the applicable general plan and zoning ordinance, therefore qualifying under PRC § 21080.66(a)(4). Moreover, AB 130 expressly provides that Builder’s Remedy projects can be subject to AB 130 if the project site is 5 acres or less.
<u>21080.66(a)(5) – Minimum Density Requirement</u> The project will be at least one-half of the applicable density specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.	See Default Density Standard Option – 2020 Census Update to determine the applicable density specified in Government Code section 65583.2(c)(3)(B). This is also known as the “Mullin density.” The applicable density specified in Government Code section 65583.2(c)(3)(B) is 30 du/ac. One-half of the applicable density specified in Government Code section 65583.2(c)(3)(B) is an applicable minimum of 15 du/ac. This Project complies with Section 21080.66(a)(5).
<u>21080.66(a)(6) – SB 35 Environmental Criteria</u> The project satisfies the requirements specified in paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code. See Table 2.	See Table 2 regarding “Environmental Site Criteria.” The Project satisfies these criteria.

<u>21080.66(a)(7) – Historic Resources</u> 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 was submitted for the project pursuant to Section 65941.1 of the Government Code.	The Project does not require demolition of a historic structure that was placed on a national, state, or local register before the date a preliminary application was submitted for the project. Therefore, the Project complies with Section 21080.66(a)(7).
<u>21080.66(a)(8) – Hotels Prohibited</u> For a project that was deemed complete pursuant to paragraph (5) of subdivision (h) of Section 65589.5 of the Government Code on or after January 1, 2025, no portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging. For purposes of this section, “other transient lodging” does not include either of the following: A. A residential hotel, as defined in Section 50519 of the Health and Safety Code. B. After the issuance of a certificate of occupancy, a resident’s use or marketing of a unit as short-term lodging, as defined in Section 17568.8 of the Business and Professions Code, in a manner consistent with local law.	The Project is consistent with Section 21080.66(a)(8) because it does not propose a hotel, motel, bed and breakfast inn, or other transient lodging.
<u>21080.66(b) – Tribal Consultation Required</u> The local government shall engage in formal notification and consultation with each California Native American tribe that is traditionally and culturally affiliated with the Project Site, pursuant to the various requirements of Government Code section 21080.66(b).	The City must comply.
<u>21080.66(c)(1) – Phase I ESA Required</u> A. The local government shall, as a condition of approval for the development, require the development proponent to complete a Phase I Environmental Assessment, as defined in Section 78090 of the Health and Safety Code.	The Applicant will comply as required.

B. If a recognized environmental condition is found, the development proponent shall complete a preliminary endangerment assessment, as defined in Section 78095 of the Health and Safety Code, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. C. If a release of a hazardous substance is found to exist on the site, the release shall be removed or any effects of the release shall be mitigated to levels required by current federal and state statutory and regulatory standards before the local government issues a certificate of occupancy. D. If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to levels required by current federal and state statutory and regulatory standards before the local government issues a certificate of occupancy.	
<u>21080.66(c)(2) – Units Near Freeways</u> For any house on the site located within 500 feet of a freeway, all of the following shall apply: A. The building shall have a centralized heating, ventilation, and air-conditioning system. B. The outdoor air intakes for the heating, ventilation, and air-conditioning system shall face away from the freeway. C. The building shall provide air filtration media for outside and return air that provides a minimum efficiency reporting value of 16. D. The air filtration media shall be replaced at the manufacturer’s designated interval.	No portion of the Project Site is within 500 feet of a freeway. Although a portion of the Project Site appears to be within 500 feet of the Oregon Expressway on-ramp, an “expressway” is different than a “freeway.” See for example CA St & Hwy Code Section 257. If for some reason it is determined that any housing units are within 500 feet of a freeway, the Project would be designed to meet the specifications in the statute.

E. The building shall not have any balconies facing the freeway.	
<u>21080.66(d) – Labor Requirements</u>	The Project will comply with these requirements as applicable.

Table 2 – Environmental Site Criteria:

Requirement	Analysis
(A. – Coastal Zone)	<u>See California Coastal Commission Coastal Zone Boundary map.</u>
i. An area of the coastal zone subject to paragraph (1) or (2) of subdivision (a) of Section 30603 of the Public Resources Code.	Pursuant to California Government Code Section 65913.4(6)(A), the Project site is not located in a coastal zone
ii. An area of the coastal zone that is not subject to a certified local coastal program or a certified land use plan.	
iii. An area of the coastal zone that is vulnerable to five feet of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment.	
iv. In a parcel within the coastal zone that is not zoned for multifamily housing.	
v. In a parcel in the coastal zone and located on either of the following:	
I. On, or within a 100-foot radius of, a wetland, as defined in Section 30121 of the Public Resources Code.	
II. On prime agricultural land, as defined in Section 30113 and 30241 of the Public Resources Code.	
(B. – Prime Farmland)	<u>See California Department of Conservation Important Farmland Finder map.</u>

Either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.	Pursuant to California Government Code Section 65913.4(6)(B), the Project site is not located on Prime Farmland or Farmland of Statewide Importance. The Project site and surrounding area are designated Urban and Built-Up Land.
(C. – Wetlands) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).	<u>See National Wetlands Inventory, Surface Waters and Wetlands.</u> Pursuant to California Government Code Section 65913.4(6)(C), the Project site is not located on a wetland.
(D. – Very High Fire Hazard Severity Zone) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within the state responsibility area, as defined in Section 4102 of the Public Resources Code. This subparagraph does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development, including, but not limited to, standards established under all of the following or their successor provisions: i. Section 4291 of the Public Resources Code or Section 51182, as applicable. ii. Section 4290 of the Public Resources Code. iii. Chapter 7A of the California Building Code (Title 24 of the California Code of Regulations).	<u>See California Department of Forestry and Fire Protection's Fire and Resource Assessment Program FHSZ Viewer.</u> <u>See California Board of Forestry and Fire Protection, State Responsibility Area Viewer</u> Pursuant to California Government Code Section 65913.4(6)(D), the Project site is not located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within the state responsibility area, as defined in Section 4102 of the Public Resources Code
(E. – Hazardous Waste) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control	<u>See CalEPA's Cortese List Data Resources.</u> Pursuant to California Government Code Section 65913.4(6)(E), the Project site is not a hazardous waste site that is listed pursuant to

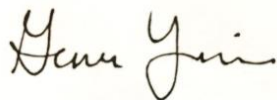
pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply: i. The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5. ii. The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.	Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control (DTSC) pursuant to Section 25356 of the Health and Safety Code.
(F. – Earthquake Fault Zones) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.	<u>See California Department of Conservation's EQZapp: California Earthquake Hazards Zone Application</u> Pursuant to California Government Code Section 65913.4(6)(F), the Project site is not located within a delineated earthquake fault zone.
(G. – Special Flood Hazard Area) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is	<u>See FEMA Flood Map Service Center: Search By Address tool</u> Pursuant to California Government Code Section 65913.4(6)(G), the Project site is not located in a special flood hazard area subject to inundation by the one percent annual chance flood (100-year flood) as determined by the

able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met: i. The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction. ii. The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.	Federal Emergency Management Agency (“FEMA”). The Project site is located in Zone X, which is not considered a special flood hazard area.
(H. – Regulatory Floodway) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.	<u>See FEMA Flood Map Service Center: Search By Address tool.</u> Pursuant to California Government Code Section 65913.4(6)(H), the Project site is not located within a regulatory floodway as determined by FEMA. The Project site is located in Zone X, which is defined as an area of minimal flood hazard.

(I. Natural Community Conservation Plan/Habitat Conservation Plan) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.	<u>See California Natural Community Conservation Plans.</u> The project site is located in Santa Clara County, where the Santa Clara Valley Habitat Plan (an NCCP/HCP) is in effect. However, according to the <u>Santa Clara Valley Habitat Agency Viewer</u>, the site is located outside the boundaries of the Habitat Plan area. Therefore, it is not identified for conservation pursuant to California Government Code Section 65913.4(6)(I).
(J. – Habitat for Protected Species) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).	<u>See, e.g., USFWS Critical Habitat Portal</u> Pursuant to California Government Code Section 65913.4(6)(J), the Project site does not contain habitat for protected species identified as candidate, sensitive, or species of special status by State or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act.
(K. Conservation Easement) Lands under conservation easement.	Pursuant to California Government Code Section 65913.4(6)(K), the Project site is not land under conservation easement.

Sincerely,

HOLLAND & KNIGHT LLP



Genna Yarkin
Daniel R. Golub

cc: Caio Arellano, Albert Yang - City Attorney's Office

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September 3, 2025

Palo Alto Planning Department
285 Hamilton Avenue - 5th Floor
Palo Alto, CA 94301

Re: **Response to August 20, 2025 Correspondence, 156 N. California Avenue - App. 24PLN-00100**

Dear All:

As you know, we represent Midar Investment Co. LLC (the “Applicant”) in connection with its housing development application for 382 multifamily residential units under Application 24PLN-00100 (the “Project”) at 156 N. California Avenue (the “Project Site”) in Palo Alto (the “City”), California. The Project is proposed on an infill, transit-adjacent location that is ideal for the type of high-density development that California desperately needs, and the Project will contribute substantially to the City meeting its state-mandated affordable housing goals. As documented in previous communications, the Project (1) is a “housing development project” that is subject to the protections of the Housing Accountability Act (the “HAA”), inclusive of the “Builder’s Remedy,” and (2) is eligible for the California Environmental Quality Act (“CEQA”) exemption enacted with the June 30, 2025 adoption of Assembly Bill (“AB”) 130 (the “AB 130 CEQA Exemption”).

The purpose of this letter is to respond to the City’s August 20, 2025 correspondence regarding the Project. As explained in the following Section, the Project does qualify for the AB 130 CEQA exemption, and the contrary interpretation set forth in the August 20, 2025 correspondence – and the City’s unlawful refusal to begin the tribal consultation process mandated by AB 130 – is unsupported by the statutory text and applicable precedential case law. In particular, the City’s contentions that AB 130 does not apply to “Builder’s Remedy 1.0” projects fails to recognize that in AB 130 the Legislature expressly provided that its exemption does in fact apply to both types of Builder’s Remedy Projects: 1.0 and 2.0 (as long as such projects are proposed on a site of less than five acres). It is for this reason that the Governor who signed AB 130, and the author of the bill, both understand AB 130 to provide a CEQA exemption for Builder’s Remedy 1.0 Projects.

To that end, as detailed in Section II below, the Applicant will invoke the protections of Government Code Section 65589.5.1 (“AB 1633”) if the City maintains its present position. To

the extent it proves necessary to litigate this question, any such litigation will be resolved under a standard of review that is highly favorable to the approval of housing. If the City does not reverse course, it will be subject to the substantial liability imposed by the HAA – including mandamus relief, awards of attorney’s fees, and potential fines – and could endanger its own compliance with Housing Element Law. We urge the City to avoid this course and to instead work with us on processing the development of this Project. The Applicant team remains, as before, committed and willing to work with City officials and stakeholders collaboratively on a Project that can be feasibly developed in a manner consistent with regional needs and local priorities.

I. THE PROJECT QUALIFIES FOR THE AB 130 CEQA EXEMPTION.

The City’s August 20, 2025 correspondence implicitly acknowledges that the Project meets all AB 130 criteria except one, and sets forth the City’s position that the Project is not eligible for the AB 130 CEQA Exemption because it does not satisfy AB 130’s requirement regarding consistency with applicable general plan and zoning standards. That consistency requirement states in full:

The project is consistent with the applicable general plan and zoning ordinance, as well as any applicable local coastal program as defined in Section 30108.6. For purposes of this section, a housing development project shall be deemed consistent with the applicable general plan and zoning ordinance, and any applicable local coastal program, if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent.

As explained in the Applicant’s August 6, 2025 correspondence to the City, and further developed through email correspondence, because the Project is a Builder’s Remedy project, it may not lawfully be required to comply with the City’s general plan and zoning standards, and any such standards are not “applicable” for purposes of AB 130’s consistency requirement. Thus, the Project satisfies this requirement.

In its August 20, 2025 correspondence, the City posits that only Builder’s Remedy projects that meet the statutory definition set forth in HAA subdivision (h)(11) (i.e., those commonly known as “Builder’s Remedy 2.0” projects) can access AB 130. The City bases this position on its interpretation that HAA subdivision (f)(6)(D)(iii) – AB 1893’s “deemed consistent” provision for Builder’s Remedy projects – is only available for Builder’s Remedy 2.0 projects. In the City’s view, a Builder’s Remedy project can only satisfy AB 130’s consistency requirements by relying on HAA subdivision (f)(6)(D)(iii)’s “deemed consistent” language. And, because the City views this “deemed consistent” language as unavailable for “grandfathered” “Builder’s Remedy 1.0” projects, the City concludes that grandfathered Builder’s Remedy projects are categorically barred from accessing AB 130.

Putting aside any arguments about what AB 1893 provides, the City is incorrect because subdivision (f)(6)(D)(iii)’s “deemed consistent” provisions are not required to access AB 130. This fact is apparent from the text and structure of AB 130 itself. Specifically, AB 130 refers separately and specifically to both pre-AB 1893, grandfathered Builder’s Remedy projects, and

subsequent projects that meet AB 1893's statutory definition of a "Builder's Remedy project" when it provides that both types of projects can be eligible for the AB 130 CEQA exemption (as long as they are proposed on project sites of less than five acres):

The project site or the parcel size for a builder's remedy project, as defined in paragraph (11) of subdivision (h) of Section 65589.5 of the Government Code, or the project site or the parcel size for a project that **applied pursuant to paragraph (5) of subdivision (d) of Section 65589.5 of the Government Code as it read before January 1, 2025**, is not more than five acres.¹

Grandfathered Builder's Remedy projects such as the Project – i.e., those that "applied pursuant to paragraph (5) of subdivision (d) of Section 65589.5 of the Government Code as it read before January 1, 2025" – are expressly described as eligible for the AB 130 exemption. But of course, Builder's Remedy projects are not designed to comply with otherwise-applicable local standards. Thus, under the City's read of AB 130's consistency requirements, such projects could never qualify for AB 130. If that were the case, however, then the Legislature would not have taken pains to specifically reference grandfathered Builder's Remedy projects as eligible for AB 130 if located on a site of five acres or less. The fact that the Legislature did reference such projects indicates its understanding that those projects are eligible for AB 130. A contrary reading would render AB 130's distinct reference to projects that "applied pursuant to paragraph (5) of subdivision (d) of Section 65589.5 of the Government Code as it read before January 1, 2025" a nullity, in violation of basic principles of statutory interpretation.² AB 130's consistency requirements must be read in a manner that gives harmony to the other statutory provisions.

To that end, please be advised that Governor Newsom's office has confirmed that the Governor and the author of the law share this understanding, as shown in the attached **Exhibit A**.

The foregoing is fully dispositive, but we note further that this interpretation is also supported by legal precedent more than a decade old. Specifically, in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1348, dealing with essentially the same language, the Court of Appeal held that general plan and zoning standards displaced by State Density Bonus Law were not "applicable" within the meaning of CEQA Guidelines Section 15332(a):

The City properly applied the plain meaning of Guidelines section 15332, subdivision (a) to its own codes in a manner that was in harmony with the state's density bonus law, and so applied, properly found that the project was exempt from CEQA. On its face the exemption only requires consistency with applicable general plan designations and policies and applicable zoning designations and regulations. (Guidelines, § 15332, subd. (a).) The density bonus statute in turn requires a waiver of development standards that physically preclude construction of a density-bonus

¹ Pub. Res. Code § 21080.66(a)(1)(B) (emphasis added).

² "An interpretation that renders statutory language a nullity is obviously to be avoided." *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357.

qualifying project. (§ 65915, subd. (e)(1).) And the City’s own zoning ordinance generally requires the grant of a density bonus upon a complete application. (Berkeley Mun. Code, § 23C.12.050.A.) Taking these laws together as they operate in the context of a density bonus project, it is clear that the waived zoning standards are not ‘applicable’ and that the requirements of Guidelines section 15332, subdivision (a) were met.³

So too here. Considering AB 130’s consistency requirement language in the larger statutory context, it is plain that the City’s “general plan and zoning ordinance” standards are not “applicable” to Builder’s Remedy projects in a manner that would preclude those projects from accessing AB 130.

The City’s August 20, 2025 correspondence purports to distinguish *Wollmer* on two bases. First, the City states that “*Wollmer* dealt with the affirmative waiver of development standards by the City of Berkeley pursuant to density bonus law and the city’s own municipal code. ... By contrast, Palo Alto has not taken analogous action here.” The City’s reference to the “affirmative waiver of development standards” at issue in *Wollmer* seems to suggest that the City of Berkeley’s waiver of development standards was voluntary. Not so. State Density Bonus Law forbids local governments from applying development standards that would physically preclude construction of density bonus projects.⁴ Thus, the waiver granted by the City of Berkeley in *Wollmer* was compelled by law. Nor is it true that the City took no action to render its local standards inapplicable to builder’s remedy projects in this instance; the City affirmatively chose not to produce and adopt a legally-compliant housing element by the certification deadline.

The City also purports to distinguish *Wollmer* with the argument that “the builder’s remedy has never purported to completely displace the City’s general plan and zoning code.” But nor were the development standards waived pursuant to State Density Bonus Law in *Wollmer* “completely displaced.” Rather, they were not “applicable” as to the *Wollmer* project because the *Wollmer* project could not be required to comply with those standards, even though those standards remained applicable to other projects. The same is true here.

Further, the August 20, 2025 correspondence misconstrues the governing evidentiary framework. AB 130 states that, on the question of consistency with local standards, “a housing development project shall be deemed consistent with the applicable general plan and zoning ordinance, and any applicable local coastal program, if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent.”⁵ Thus, it is immaterial that the City disagrees about the applicability of certain standards to the Project. A reasonable

³ *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1348-49.

⁴ Gov. Code § 65915(e)(1) (“In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development...”).

⁵ Pub. Res. Code § 21080.66(a)(4)(A). The Legislature’s choice to impose a “reasonable person” on this question suggests a legislative intent to preclude highly-technical and uncharitable arguments (such as the City’s) about why a given project does not comply with applicable local standards.

person could certainly reach a contrary conclusion, and the City cannot show otherwise. As such, the Project is deemed consistent with applicable general plan and zoning standards, and this qualifying criterion is satisfied.

II. THE APPLICANT IS PREPARED TO INVOKE THE PROTECTIONS OF AB 1633 IF THE CITY DOES NOT RECOGNIZE THE AB 130 CEQA EXEMPTION.

AB 1633 provides that local governments are subject to the substantial liability imposed by the HAA for refusing to recognize a housing project's entitlement to access a CEQA exemption, where substantial evidence indicates that the project qualifies for that exemption.⁶ To effectuate these protections, AB 1633 provides a statutory process for adjudicating disputes regarding the applicability of a CEQA exemption. That statutory process begins with an applicant's provision of written notice to the relevant agency.⁷ The time to provide such written notice is "35 days of the date that the local agency gave the applicant notice of the local agency's determination" that a project does not qualify for a CEQA exemption.⁸

Unless informed otherwise, the Applicant will proceed on the assumption that the City's August 20, 2025 correspondence represents its "notice of the local agency's determination" that the Project does not qualify for the AB 130 CEQA Exemption. Thus, unless the City promptly informs the Applicant that it has withdrawn its position regarding the AB 130 CEQA Exemption, the Applicant will provide its AB 1633 notice to the City no later than September 24, 2025. We urge the City to take prompt action to avoid this outcome.

Sincerely,

HOLLAND & KNIGHT LLP



Genna Yarkin
Daniel R. Golub
Will Sterling

cc: Caio Arellano, Albert Yang - City Attorney's Office

⁶ See generally Gov. Code § 65589.5.1. The Project satisfies the qualifying criteria for accessing AB 1633.

⁷ Gov. Code § 65589.5.1(a)(5).

⁸ Gov. Code § 65589.5.1(a)(5)(E).

EXHIBIT A

From: Myles White <Myles.White@gov.ca.gov>

Date: August 25, 2025 at 2:03:27 PM PDT

To: mike.mollie@gmail.com

Subject: AB 130

Hi Mike,

Thanks for reaching out on this. After discussing with my colleague in the author's office who worked with me on this bill (now statute), I can confirm our understanding is that the CEQA infill exemption applies to both Builder Remedy 1.0 projects and 2.0 projects, so long as the site is no more than 5 acres (the specific requirement for Builder Remedy projects utilizing this authority) and the project meets the other criteria in the bill. This provision is codified in Public Resources Code §21080.66 (see highlighted provision below).

Myles

SEC. 59.

Section 21080.66 is added to the Public Resources Code, to read:

21080.66.

(a) Without limiting any other statutory or categorical exemption, this division does not apply to any aspect of a housing development project, as defined in subdivision (b) of Section 65905.5 of the Government Code, including any permits, approvals, or public improvements required for the housing development project, as may be required by this division, if the housing development project meets all of the following conditions:

(1) (A) Except as provided in subparagraph (B), the project site is not more than 20 acres.

(B) The project site or the parcel size for a builder's remedy project, as defined in paragraph (11) of subdivision (h) of Section 65589.5 of the Government Code, or the project site or the parcel size for a project that

applied pursuant to paragraph (5) of subdivision (d) of Section 65589.5 of the Government Code as it read before January 1, 2025, is not more than five acres.

(2) The project site meets either of the following criteria:

(A) Is located within the boundaries of an incorporated municipality.

(B) Is located within an urban area, as defined by the United States Census Bureau.

(3) The project site meets any of the following criteria:

(A) Has been previously developed with an urban use.

(B) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.

(C) At least 75 percent of the area within a one-quarter mile radius of the site is developed with urban uses.

(D) For sites with four sides, at least three out of four 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.

(4) (A) The project is consistent with the applicable general plan and zoning ordinance, as well as any applicable local coastal program as defined in Section 30108.6. For purposes of this section, a housing development project shall be deemed consistent with the applicable general plan and zoning ordinance, and any applicable local coastal program, if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent.

(B) If the zoning and general plan are not consistent with one another, a project shall be deemed consistent with both if the project is consistent with one.

(C) The approval of a density bonus, incentives or concessions, waivers or reductions of development standards, and reduced parking ratios pursuant to Section 65915 of the Government Code shall not be grounds for determining that the project is inconsistent with the applicable general plan, zoning ordinance, or local coastal program.

(5) The project will be at least one-half of the applicable density specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.

(6) The project satisfies the requirements specified in paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code.

(7) 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 was submitted for the project pursuant to Section 65941.1 of the Government Code.

(8) For a project that was deemed complete pursuant to paragraph (5) of subdivision (h) of Section 65589.5 of the Government Code on or after January 1, 2025, no portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging. For the purposes of this section, “other transient lodging” does not include either of the following:

(A) A residential hotel, as defined in Section 50519 of the Health and Safety Code.

(B) After the issuance of a certificate of occupancy, a resident’s use or marketing of a unit as short-term lodging, as defined in Section 17568.8 of the Business and Professions Code, in a manner consistent with local law.