



June 22, 2024

Oisín Heneghan
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Electronic Mail Delivery Only

RE: 80 Willow Road (PLN2023-00049) – AB 2011 Determination

Dear Oisín Heneghan,

On May 24, 2024, your representatives submitted a formal development application to develop three new mixed-use buildings ranging in height from approximately 301 feet to 446 feet tall, including 665 residential units of which 133 units (20 percent) would be designated below market rate housing, approximately 336,000 square feet of office, approximately 39,000 square feet of retail space, and a hotel with 130 rooms (the “Project”) located at 80 Willow Road (the “Project Site”). The cover letter to the application submittal invoked AB 2011 and informed the City that the cover letter “and supporting materials submitted [t]herewith shall serve as the project’s application for streamlined, ministerial approvals under Government Code section 65912.120 *et seq.*”

The City has evaluated the application material and determined that the Project Site does not satisfy the criteria specified under Government Code Section 65912.121. Moreover, the Project itself does not meet the objective development standards defined in Government Code Section 65912.123. Therefore, the Project is not eligible for the streamlined, ministerial review process described in Government Code Section 65912.124. Accordingly, the City will continue to review the formal development application pursuant to the requirements of the Permit Streamlining Act, the Housing Accountability Act, and its standard development review procedures consistent with SB 330.¹

¹ The City has evaluated the formal development application for completeness pursuant to Government Code Section 65943, and its determination is provided under separate cover.

PROJECT SITE CRITERIA

Government Code Section 65912.121² provides that a “development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.124 unless the development project is on a site that satisfies **all** of the following criteria” identified in subdivisions (a) through (j) of Section 65912.121. (emphasis added). The Project Site fails to satisfy the criteria of subdivisions (e) and (g).

Subdivision (e) of Section 65912.121 requires that “At least 75 percent of the perimeter of the site adjoins parcels that are **developed with urban uses**. For purposes of this subdivision, parcels that are only separated by a street or highway shall be considered to be adjoined.” For purposes of AB 2011, subdivision (p) of Section 65912.101 defines “urban uses” to mean “any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.” Notably, parks, open space, and natural areas are omitted from AB 2011’s definition of “urban uses.” Here, the Project Site adjoins the San Francisquito Creek, Palo Alto’s Timothy Hopkins Creekside Park, and City of Palo Alto designated preserve land (the “Non-Urban Uses”). Based on the dimensions of the plans provided, the Project Site’s perimeter equals approximately 2,488 linear feet, 1,530 of which (more than 61%) adjoin the Non-Urban Uses. Because less than 40% of the Project Site’s perimeter adjoins parcels that are developed with urban uses, the criterion in subdivision (e) of Section 65912.121 is not satisfied.

Subdivision (g) of Section 65912.121 requires that the Project Site “[satisfy] the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4,” which are the environmental criteria necessary to qualify for the streamlined, ministerial review process created by SB 35. These provisions prohibit development on a site that is “Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).” (§ 65913.4(a)(6)(C).) The Project Site includes jurisdictional wetlands that meet this definition, and therefore, it is ineligible for streamlining.

These provisions also prohibit development on a site that is “[h]abitat 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).” (§ 65913.4(a)(6)(K).) Previous environmental studies have identified the Project Site as habitat for California red-legged frog and central California coast steelhead (*Oncorhynchus mykiss*), both of which are protected under the federal Endangered Species Act.³ In addition, the Project Site is habitat for Western pond turtle, hoary bat, pallid bat, snowy egret, and saltmarsh common yellowthroat (state-listed as species of special concern) and California red-legged frog (state-listed as threatened) under the California Endangered Species Act.⁴ Because the Project Site includes habitat for protected species, it is ineligible for streamlining.

² All subsequent references are to the California Government Code unless otherwise noted.

³ See https://www.cityofpaloalto.org/files/assets/public/v/1/public-works/engineering-services/webpages/pe-12011-newell-road-san-francisquito-creek-bridge/draft-environmental-impact-report/caltrans_2017_nes.pdf

⁴ *Ibid.*

OBJECTIVE DEVELOPMENT STANDARDS

Section 65912.123 provides that a “development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.124 unless the development project meets **all of the following objective development standards**” defined in subdivisions (a) through (j) of Section 65912.123. (emphasis added.)

Subdivision (b) of Section 65912.123 says that the residential density for a project in a metropolitan jurisdiction such as Menlo Park shall be the greater of the residential density allowed on the parcel by the local government, or for sites of one acre in size or greater located on a commercial corridor of less than 100 feet in width, 40 units per acre. The Project Site’s C-1 (Administrative and Professional District, Restrictive) zoning currently allows a lesser maximum density of 30 units per acre, so the greater 40 units per acre standard applies.⁵ At 665 dwelling units proposed on the 6.68 acre site, the Project proposes a density of 99.6 dwelling units per acre, far in excess of the density allowed under AB 2011.

Subdivision (c) of Section 65912.123 defines the height limit applicable to the housing development as the greater of the height allowed on the parcel by the local government of, on sites along a commercial corridor of less than 100 feet in width, 35 feet. The Project Site’s C-1 zoning allows a height of 40 feet for mixed nonresidential and residential structures; however, the Project proposed a maximum height of 446 feet, far in excess of the height allowed under AB 2011.

Subdivision (f) of Section 65912.123 requires the development proponent to complete a phase I environmental assessment, as defined in Section 78090 of the Health and Safety Code. No such assessment has been provided.

Subdivision (j) of Section 65912.123 requires projects to conform with objective standards “for the closest zone in the city, county, or city and county that allows multifamily residential use at the residential density determined pursuant to subdivision (b).” As discussed above, AB 2011 would allow a maximum density of 40 dwelling units per acre, which corresponds to areas within the City’s El Camino Real/Downtown Specific Plan. On its face, the Project conflicts with the objective standards included in the Specific Plan that otherwise allow 40 dwelling units per acre.

For the reasons presented above, the City has determined that AB 2011 is inapplicable to the Project’s formal development application, and the Project is not eligible for streamlined, ministerial review pursuant to Government Code Section 65912.120 *et seq.* Should you have any questions, please contact me at cchan@menlopark.gov or (650) 330-6763.

Thank you,
Calvin Chan
Senior Planner

⁵ Willow Road has a right-of-way width of 70 feet, and the Project Site is not within one-half mile of a major transit stop. Therefore, the provisions of Section 65912.123(b)(1)(D) and (E) are not applicable.