CITY OF MENLO PARK

December 18, 2025

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Electronic Mail Delivery Only

RE: 80 Willow Road (PLN2023-00049) – AB 2011 Determination in Response to November 19, 2025 Resubmittal

Dear Oisín Heneghan,

On May 24, 2024, Willow Project LLC ("Applicant") submitted a formal development application for a mixed-use project located at 80 Willow Road (the "Project"). The cover letter to the application invoked Government Code section 65912.100 *et seq*. ("AB 2011") and asserted that the Project qualified for streamlined ministerial review. On June 22, 2024, the City timely issued a letter ("City's First Response") that explained that the Project did not meet all the criteria required to qualify for processing under AB 2011.

Subsequently, the State Legislature amended state housing laws, including through the enactment of AB 2243 (amending AB 2011) and AB 1893 (amending the Housing Accountability Act ("HAA")). On October 10, 2025, Applicant resubmitted the Project proposal by means of a revised development application and a reply[1] ("Applicant's First Reply") to the City's First Response. Applicant's First Reply asserted that the resubmitted, revised Project is eligible to be processed under AB 2011, in part due to the legislative changes enacted after the City's First Response. On November 7, 2025, the City timely issued a letter ("City's Second Response") that explained the Project continued not to meet the criteria required to qualify for processing under AB 2011. On November 19, 2025, Applicant resubmitted the Project proposal, including a reply to the City's Second Response ("Applicant's Second Reply"). The reply purported to respond to each item identified in the City's Second Response and disputed the City's determination that the proposed Project does not satisfy the AB 2011 eligibility criteria prescribed by statute. The reply included additional analysis from Applicant's consultant, WRA, regarding sensitive species habitats.[2]

[1] Although the Applicant's First Reply is dated August 29, 2025, it was not submitted to the City until October 10, 2025. The Applicant's Second Reply acknowledges that the Applicant's First Reply was not submitted to the City until October 10, 2025.

[2] The Applicant's Second Reply also alleged that the City's determination effectively disapproves the proposed housing development without taking final administrative action pursuant to Government Code section 65589.5(h)(6)(D). The City has not disapproved the proposed housing development. Rather, the City is complying with the procedures specified in Government Code section 65589.5(h)(6)(D)(ii) and (iii) and will separately provide a written statement

This letter provides a timely determination in response to the November 19 resubmittal, per Government Code section 65912.124(a)(1)(C), that the Project continues to be inconsistent with the enumerated criteria and objective planning standards specified in AB 2011.

With respect to the Applicant's Second Reply contentions that the City's Second Response improperly raised new items not identified in the City's First Response, the City notes three critical points: (1) despite suggestions to the contrary, the City's Second Response is neither a completeness determination under the Permit Streamlining Act ("PSA") nor a consistency determination under the Housing Accountability Act; (2) the requirement in the current version of AB 2011 that a local agency provide "an exhaustive list" of inconsistencies with AB 2011 was not in effect when the City issued the City's First Response in June 2024, so the City was permitted to identify additional inconsistencies in the City's Second Response in October 2025; and (3) pursuant to Government Code section 65912.124, subdivisions (a)(1)(C) and (a)(2)(A), the City has timely determined, within 30 days, that the Project is in conflict with objective planning standards.

I. THE CITY HAS COMPLIED WITH THE PSA AND HAA, WHICH ARE DISTINCT FROM OBLIGATIONS UNDER AB 2011 TO ISSUE CONSISTENCY DETERMINATIONS PURSUANT TO GOVERNMENT CODE SECTION 65912.124

The Applicant's Second Reply incorrectly conflates the processing requirements of the PSA and the HAA with the processing requirements of AB 2011, as set forth in Government Code section 65912.124, which impose distinct requirements at different phases of development application processing. In addition, the Applicant incorrectly asserts the City has not satisfied its obligations under the PSA and HAA.

The PSA requires a public agency to determine whether a development application is complete within 30 days of receipt of the application. (Gov. Code § 65943.) In reviewing for completeness, a public agency analyzes whether the application contains all items in the agency's submittal requirement checklist. If a development application is determined to be incomplete, the agency shall provide the applicant with "an exhaustive list of items that were not complete." (Gov. Code § 65943(a).) The PSA expressly provides that "[i]n any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." (Gov. Code § 65943(a).)

Once an application is deemed complete, the HAA requires a local agency to review the application for consistency with any local agency plans, programs, policies, ordinances, standards, and requirements within 60 days of the date that the application was deemed complete, for projects that contain more than 150 units. (Gov. Code § 65589.5(j)(2)(A)(ii).)

Here, the City timely complied with the PSA and HAA. As you know, the City timely issued a determination that the development application was complete on November 14, 2024. Subsequently, the City reviewed the development application for consistency with local standards as required by the HAA, and issued timely determinations that the proposed Project was inconsistent with City standards on January 13, 2025, May 6,

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and/or make findings as required by Government Code Section s5589.5(h)(6)(D)(iv) within 90 days of receipt of the Applicant's Second Reply.

2025, and November 7, 2025.

The City's November 7, 2025 correspondence does not request the applicant provide any new information for the application to be deemed complete, nor does the correspondence impermissibly identify any new or additional local plans, programs, policies, ordinances, standards or requirements with which the Project is inconsistent that were not previously identified in the City's January 13, 2025 and May 6, 2025 consistency determinations. Since the October 10, 2025 resubmission included a revised Vesting Tentative Map proposal that created new inconsistencies, the City properly identified such inconsistencies in its November 7, 2025 review. Therefore, Applicant's suggestion that the City's November 7, 2025 correspondence improperly requests additional new information, in violation of the PSA, and improperly identifies additional inconsistencies with local standards, in violation of the HAA, is misguided.

As discussed in the following section, the City has also timely and properly issued AB 2011 determinations pursuant to Government Code section 65912.124.

II. THE CITY TIMELY AND PROPERLY ISSUED ITS AB 2011 INCONSISTENCY DETERMINATIONS PURSUANT TO GOVERNMENT CODE SECTION 65912.124, IN ACCORDANCE WITH THE VERSION OF THE STATUTE IN EFFECT AT THE TIME EACH DETERMINATION WAS MADE

The version of Government Code section 65912.124(a) in effect in 2024 provided that "[if] a local government determines that a development submitted pursuant to this article is in conflict with any of the objective planning standards specified in this article, it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards," within 90 days for a project of more than 150 units. (Gov. Code § 65912.124(a)(2) (effective January 1, 2024, through December 31, 2024).) Section 65912.124 also stated, in what was then subdivision (b): "If the local government fails to provide the required documentation pursuant to subdivision (a), the development shall be deemed to satisfy the required objective planning standards."

Section 65912.124, as it was in effect in 2024, did not provide a deadline for responding to resubmittals, nor did it further address the scope or content of determinations by local governments that "a development submitted pursuant to this article is in conflict with any of the objective planning standards specified in this article."

AB 2234 amended Section 65912.124 (effective January 1, 2025) by adding to subdivision (a)(1) a requirement that local agencies provide an additional AB 2011 consistency analysis "[w]ithin 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government" in response to a prior AB 2011 submission. AB 2234 also amended the consistency determination obligations by revising subdivision (a)(2)(A) to state that a local government shall, if it "determines that a development submitted pursuant to this article is in conflict with any of the objective planning standards specified in this article, … provide the development proponent, in writing, with an exhaustive list of the standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframes

specified in paragraph (1)."

The foregoing addition and amendment work together to provide that local governments must, in their consistency determination, provide an "exhaustive list," while also providing the local governments an opportunity to provide that exhaustive list following resubmittal.

Pursuant to these 2025 provisions, the City timely and properly issued its determinations in response to the Applicant's resubmittals in 2025, including the November 19, 2025 resubmittal, as further discussed below.

As explained above, when the City issued the City's First Response in June of 2024, Section 65912.124 (added by AB 2011) did not require local governments to provide an "exhaustive list" of the standards specified in AB 2011 with which a project did not comply. Under the 2024 statutory scheme, on review of the first submission of a housing development application submitted pursuant to AB 2011, cities were required to identify only *whether* a proposed project qualified for AB 2011 and to provide documentation to this effect, within 90 days. In the City's First Response, the City surpassed its obligations under the version of Section 65912.124(a) in effect at the time by specifying not only *whether* the Project qualified for AB 2011, but also identifying multiple reasons that the Project did not qualify for AB 2011, within the required 90-day time frame. Since the City provided the required documentation, the development was not deemed to satisfy any of the standards specified in AB 2011.

Under the revised statute, AB 2011, as amended by AB 2243 *now* requires local governments, on review of a housing development application submitted pursuant to AB 2011: (1) to determine *whether* a project qualifies for AB 2011 and also (2) to provide an exhaustive list of those standards with which the project does not comply. However, such requirements did not exist when the City issued the City's First Response.

Statues do not operate retroactively unless there is clear and unavoidable legislative intent to the contrary. There is no clear and unavoidable legislative intent establishing that the provisions of AB 2243 apply retroactively. Applicant's suggestion that such provisions applied when the City issued the City's First Response is contrary to the rule against retroactive effect of legislation. When the City issued the City's First Response, it satisfied its obligations under the provisions of Section 65912.124 effective at the time it was issued.

In addition, the 2025 additions and revisions to subdivisions (a)(1) and (a)(2) of Section 65912.124 make clear that the City had an opportunity, upon resubmittal, to provide consistency determinations within 30 days. These provisions are similar, yet materially different from, the PSA and the HAA, neither of which expressly provides local governments an opportunity to identify inconsistencies upon resubmittal. (See Gov. Code §§ 65943, 65589.5(j)(2), respectively.)

Further, the invocation in Section 65912.124 of standards "in this article," which are state-imposed standards rather than local government-imposed standards, is significant. One principal reason is that Section 65912.121 (which is within "this article," as referenced in Section 65912.124) provides that a necessary criterion for qualifying for AB 2011 is that the project site is "located within a zone where office, retail, or parking are principally permitted use." (Gov. Code § 65912.121(a).) The proposed project does not meet this state standard, as explained in the City's Second Response.

III. INCONSISTENCIES WITH AB 2011

Applicant's Second Reply is a resubmission of the Project's AB 2011 application to address feedback from the City regarding wetlands and habitat for protected species.

The City has evaluated the additional application materials and determined that the Project does not qualify for processing under AB 2011 for the reasons specified herein. Where noted below, the City maintains its previous determinations set forth in the City's Second Response, which are incorporated herein. The City also provides renewed determinations regarding wetlands, habitat for protected species, density and height, in order to address the additional application materials.

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.

SITE CRITERIA

1. Section 65912.121(a)[3] – Office, Retail and Parking are not Principally Permitted Uses on the Project Site

No change from City's Second Response.

2. Section 65912.123(a) – The Project is not a Housing Development Project

No change from City's Second Response.

3. Section 65912.121(e) – Less than 75% of Site is Surrounded by Parcels Developed with Urban Uses

No change from City's Second Response.

4. Section 65912.121(h) – The Project Would Require the Demolition of a Historic Structure

No change from City's Second Response.

5. Section 65912.121(g) – The Project Does Not Meet All SB 35 Criteria

The Applicant's Second Reply provides an additional report from Rachel Miller at WRA, Inc. regarding the wetlands and habitat for protected species on the Project site. While the report indicates that "no portion *of the area that will be developed* [contains wetlands]" (November 19, 2025 Memo from Rachel Miller, p. 3 [emphasis added]) and that "*the area that will be developed* is not habitat for protected species," (*Id*. at 8 [emphasis added]), the report plainly acknowledges that (1) the San Francisquito Creek, which is a wetland,

[3] Unless otherwise specified, all statutory references are to the California Government Code.

runs through the existing parcel (*Id*. at 2), and (2) six special-status species "have potential to occur in the immediate vicinity of the remainder parcel," which is part of the existing parcel. (*Id.* at 4.) As explained in the City's Second Response, the relevant inquiry is not whether the "area to be developed" contains wetlands or habitat for protected species, but whether the existing parcel contains such features. Moreover, the Applicant's Second Reply does not provide substantial evidence demonstrating that development activities will not occur on wetlands or habitat for protected species. Since the existing parcel contains both wetlands and habitat for protected species, the Project is indeed located on a site that is both wetlands and habitat for protected species and the Project is ineligible for streamlined, ministerial processing pursuant to AB 2011.

a. Wetlands

The explanation provided in the City's Second Response remains substantially the same. The November 19, 2025 Memo from Rachel Miller submitted along with the Applicant's Second Reply, does not provide substantial evidence that development activities will not occur on portions of the existing parcel that contain wetlands.

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)" is ineligible for streamlined, ministerial processing pursuant to AB 2011. (Gov. Code §§ 65912.121(g), 65913.4(a)(6)(C).) Applicant's First Reply and Applicant's Second Reply recognize that the existing parcels on which the Project is proposed contain wetlands.

To avoid AB 2011's prohibition on streamlining development on sites that include wetlands, Applicant's First Reply and Applicant's Second Reply interpret AB 2011 to distinguish between "parcel" and "project site." Using this interpretation, Applicant's First Reply concludes that because developed portions (e.g., buildings, landscaping) of the Project would not be located on wetlands, the "project site" is not wetlands, despite the existing parcel containing wetlands. As explained in the City's Second Response, this interpretation of AB 2011 is incorrect and would render other provisions of AB 2011 meaningless and surplusage.

Additionally, even assuming, arguendo, that the interpretation in Applicant's First Reply and Applicant's Second Reply were correct, the Project application does not provide substantial evidence that the development will not occur on the portion of the existing parcel that contains wetlands. The November 19, 2025 Memo from Rachel Miller asserts that "no portion *of the area that will be developed* [contains wetlands]" and that "[n]o construction or site disturbing activity is proposed on the" portion of the existing parcel "that meets the Wetlands criteria." (November 19, 2025 Memo from Rachel Miller, p. 3 [emphasis added].) However, in contrast with these statements, the landscaping plans for the Project (Sheet L0.05, PDF p. 6, Creo Landscape Architecture, May 8, 2025 [see tree protection zone and fencing notes 2 and 3]) make it clear that tree protection zone fencing would extend into areas noted as riparian canopy or beyond the surveyed top of bank, meaning that development activities would occur on wetlands (see Sheet C3.00, PDF p. 10; November 29, 2025 Memo from Rachel Miller). Such fencing would likely need to be installed and maintained for multiple years to accommodate proposed construction. Accordingly, based on the plans submitted to date, it remains apparent that development activities *would* occur on portions of the existing parcel that contain wetlands. Applicant has not discussed or acknowledged this discrepancy.

b. Habitat for Protected Species

The explanation provided in the City's Second Response remains substantially the same. The November 19, 2025 Memo from Rachel Miller submitted along with the Applicant's Second Reply does not provide substantial evidence that development activities will not occur on portions of the existing parcel that contain habitat for protected species.

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)" cannot be processed under Section 65912.124. (Gov. Code §§ 65912.121(g), 65913.4(a)(6)(K).) Applicant's First Reply and Applicant's Second Reply conclude, using the same interpretation of "project site" as described above, that the Project site does not contain habitat for protected species. As explained above, this interpretation of State law would render other provisions of AB 2011 meaningless and surplusage, and therefore it cannot be correct.

Additionally, even assuming, arguendo, that the interpretation in Applicant's First Reply and Applicant's Second Reply were correct, the Project application does not provide substantial evidence that the development will not occur on the portion of the existing parcel that contains habitat for protected species. The November 19, 2025 Memo from Rachel Miller indicates that "*the area that will be developed* is not habitat for protected species," but that "[s]ix special-status species have potential to occur in the immediate vicinity of or [sic.] the remainder parcel, which contains the creek area." (November 19, 2025 Memo from Rachel Miller, p. 8, 4 [emphasis added].) Landscaping plans for the Project (Sheet L0.05, PDF p. 6, Creo Landscape Architecture, May 8, 2025 [see tree protection zone and fencing notes 2 and 3]) make it clear that tree protection zone fencing would extend into the "remainder parcel," including into areas that are habitat for protected species (see Sheet C3.00, PDF p. 10, November 29, 2025 Memo from Rachel Miller). Such fencing would likely need to be installed and maintained for multiple years to accommodate proposed construction. Accordingly, it remains apparent that development activities *would* occur on portions of the existing parcel that contain habitat for protected species, and Applicant has not discussed or acknowledged this discrepancy.

Because the existing parcel – and thus the Project site – contains wetlands and habitat for protected species, the Project is ineligible for streamlined, ministerial processing pursuant to AB 2011.

AFFORDABILITY STANDARDS

6. Section 65912.122(d) – The Project Does Not Meet AB 2011's Bedroom and Bathroom Count Ratio

No change from City's Second Response.

7. Section 65912.122(d) – Equitable Distribution of Affordable Units

No change from City's Second Response.

DEVELOPMENT STANDARDS

8. Section 65912.123(b) – Density Calculation

Applicant's Second Reply notes that the City's Second Response acknowledged that changes in state law with respect to the builder's remedy required the City to conduct additional analysis. Acting diligently to comply with the revised state laws, the City conducted such analysis and determined in the City's Second Response that even under the new laws regarding the builder's remedy, the proposed Project does not comply with the maximum density standards specified in AB 2011. Applicant's Second Reply expresses general disagreement with the City's analysis regarding the revised builder's remedy but does not provide any substantive legal arguments or project modifications that warrant a substantive response.

No change from the remainder of the City's Second Response.

9. Section 65912.123(c) – Height Limit

Applicant's Second Reply misinterprets the determination the City made with respect to the height limit in the City's Second Response of November 7, 2025. Government Code Section 65915(b)(1) makes clear that it is an applicant's obligation to request incentives, concessions, and waivers. The City has simply asked the Applicant to provide such a request so the City can evaluate it and provide feedback as required by 65915(a)(2). The City acknowledged in the City's Second Response and continues to acknowledge that if the Project qualifies for incentives, concessions, and/or waivers, the Project may be eligible to exceed 40 feet in height without the Project being inconsistent with AB 2011. The City notes that the applicant has not submitted enough information to allow the City to make a determination about the State Density Bonus Laws ("SDBL") at this time. Without such information, the City therefore notes the same as it did in the City's Second Response:

In order for a development project to be processed under Section 65912.124, subdivision (c) of Section 65912.123 requires a project to comply with specified maximum height standards. (Gov. Code § 65912.123(c).) The height limit is the greater of the height allowed on the parcel by the local government or, 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. The Project proposes a maximum height of 446 feet, far in excess of the height allowed under AB 2011.

Applicant's First Reply notes that amendments to AB 2011 enacted by AB 2243 allow a project to use incentives, concessions, and waivers pursuant to SDBL to deviate from the height standards specified in Section 65912.123(c). (Gov. Code § 65912.124(f)(2).) The City acknowledges that if the Project qualifies for incentives, concessions, and/or waivers, the Project may be eligible to exceed 40 feet in height without the Project being inconsistent with AB 2011. However, the application does not yet include a single, enumerated list identifying proposed incentives, concessions, or waivers, so the City is unable to make a determination about the SDBL applicability at this time.

10. Section 65912.123(d)(1)(B) – 25-foot Parking Setback

No change from City's Second Response.

11. Section 65912.123(d)(1)(C) – Frontage within 10 Feet of Street

No change from City's Second Response.

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For the reasons presented above, the Project is not eligible for streamlined, ministerial review pursuant to AB 2011. While the City considers the applicant's claim that this determination effectively disapproves the proposed housing development without taking final administrative action under Government Code section 65589.5(h)(6)(D), the City will continue to process the Project application under the PSA, HAA, CEQA, and applicable local processing requirements. Should you have any questions, please contact me at cchan@menlopark.gov.

Thank you,

Calvin Chan
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