CITY OF MENLO PARK

January 22, 2026

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Electronic Mail Delivery Only

RE: 80 Willow Road (PLN2023-00049) – AB 2011 Determination in Response to December 24, 2025 Re-submittal

Dear Oisín Heneghan,

On May 24, 2024, the City received a formal development application to develop 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")), which new laws affect the City's analysis of the Project. On October 10, 2025, the City received a partial resubmittal of the Project 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") explaining that the Project continued not to meet the criteria required to qualify for processing under AB 2011. On November 19, 2025, the City received a partial resubmittal of the Project proposal, including a reply to the City's Second Response ("Applicant's Second Reply"), which responded to each item identified in the City's Second Response in effort to refute the City's determination that the proposed Project does not satisfy the AB 2011 eligibility criteria prescribed by statute, and submitting additional analysis from their consultants, WRA, regarding sensitive species habitats.[2] On December 18, 2025, the City timely issued a letter ("City's Third

[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

Response") explaining that the Project continued not to meet the criteria required to qualify for processing under AB 2011 for the reasons explained therein. On December 24, 2025, your representatives partially resubmitted their Project proposal, submitting a reply to the City's Third Response ("Applicant's Third Reply"), which responded to the City's Third Response in effort to refute the City's determination that the proposed Project does not satisfy the AB 2011 eligibility criteria prescribed by statute, and submitting a revised tree protection plan and revised calculations regarding residential floor area.

This letter provides a timely determination in response to the December 24, 2025 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.

I. THE OBLIGATIONS UNDER AB 2011 ARE DIFFERENT THAN THE OBLIGATIONS UNDER THE HAA AND PSA. THE CITY HAS COMPLIED WITH EACH.

Section I of Applicant's Third Reply recognizes that the text of specified sections of the Housing Accountability Act ("HAA") and Permit Streamlining Act ("PSA") are not identical to the text of sections of AB 2011, pointing to language that "parallels" and is "similar" between the three statutes. It is well-settled that Courts "strive to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous." (*In re C.H.* (2011) 53 Cal.4th 94, 103.) "When the Legislature uses different words as part of the same statutory scheme, those words are presumed to have different meanings." (*Romano v. Mercury Ins. Co.* (2005) 128 Cal.App.4th 1333, 1343.) "Where a statute referring to one subject contains a critical word or phrase, omission of that word or phrase from a similar statute on the same subject generally shows a different legislative intent." (*Craven v. Crout* (1985) 163 Cal.App.3d 779, 783; *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497 ["where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning"]; *Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 73 ["When one part of a statute contains a term or provision, the omission of that term or provision from another part of the statute indicates the Legislature intended to convey a different meaning"].) As explained in the City's Third Response, in 2024, at the time of the issuance of the City's First Response, the text of AB 2011 did not require the City to provide an exhaustive response or deem the Project consistent with standards not included in the City's determination. This is different than the text of the HAA and the PSA, both of which expressly deem an application consistent or complete with unenumerated standards.

Section II of Applicant's Third Reply incorrectly assumes that "the City seeks to avoid its statutory obligations." To the contrary, if the City processed the Project application under AB 2011's procedures when the Project conflicted with the statutory criteria for eligibility, this would avoid the City's statutory obligation to comply with CEQA by exempting an ineligible Project from environmental analysis.

The City has complied with its statutory obligation to process projects as laid out by the various state laws

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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 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.

regarding housing development applications. Each of the City's First Response, City's Second Response, and City's Third Response (collectively, the "City's Prior Responses") describe in detail the City's interpretation of such laws and explain how the City has complied with its statutory obligations.

None of the arguments presented in Sections I or II of Applicant's Third Reply change the reasoning laid out in the City's Prior Responses and the City's position remains the same as stated therein.

II. INCONSISTENCIES WITH AB 2011

Applicant's Third Reply is a resubmission of the Project's AB 2011 application to address feedback from the City. In particular, Applicant's Third Reply Letter included revised materials related to wetlands, habitat for protected species, and the calculation of the percentage of the Project that constitutes "residential" uses.

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 Prior Responses, which are incorporated herein. The City also provides renewed determinations regarding wetlands, habitat for protected species, and the calculation of the percentage of the Project that constitutes "residential" uses in order to address the additional application materials, and in response to changes in state law effective January 1, 2026.

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 Prior Responses.

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

Effective January 1, 2026, the definition of "housing development project" under both the HAA and AB 2011 excludes proposed hotel uses. (Gov. Code §§ 65589.5(h)(2), 65912.101(i).) The term "housing development project" includes projects with at least two-thirds of the new square footage designated for residential use, but only if "no portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging." (Gov. Code § 65589.5(h)(2)(B)(i)(I)-(II).) Notwithstanding such exclusion, "the portion of the mixed-use project which does not include a hotel, motel, bed and breakfast inn, or other transient lodging shall be considered a housing development project." (Gov. Code § 65589.5(h)(2)(B)(i)(II)(ib)(Ia).)

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

The HAA states that a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a complete preliminary application was submitted. (Gov. Code § 65589.5(o)(1).) "Ordinances, policies, and standards" includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency. (Gov. Code § 65589.5(o)(4).) Such vesting does not immunize housing development projects from changes in state law. Because the change in the definition of "housing development project" is a change to the HAA itself, the Project must meet the revised definition of "housing development project" in order to qualify for protections under the HAA and for processing under AB 2011. Therefore, the City must apply the current definition of "housing development project" to its review of the Project. Consistent with the City's prior determinations, and as further explained below, the Project is inconsistent with the HAA and AB 2011's definition of "housing development project."

First, the materials included with Applicant's Third Reply are not sufficient to demonstrate whether two-thirds of the Project's square footage is designated for residential use. As described in Attachment 1, the three architectural plan sheets submitted with Applicant's Third Reply on December 24, 2025 are internally inconsistent and fail to demonstrate how the area calculations are reached. City staff has been unable to replicate the results reported in the Applicant's Third Reply based on the most recent materials submitted or by referencing the most recent project plan set materials submitted on October 10, 2025 which include more information (six architectural plan sheets). The City has identified on multiple occasions consistency issues between plan sheets and the Applicant has not provided a full project plan set to reflect the piecemealed modifications/updates and this continues to result in internally inconsistent project plans, In the absence of application materials that demonstrate what – if anything – has changed in the Project since October 10, 2025, the City must continue to rely on the last plan set with more information provided by the Applicant, which reflect that 61.18% of the square footage of the Project is residential. Accordingly, the analysis contained in the City's Prior Responses remains the same.

Moreover, even if at least two-thirds of the square footage of the Project were designated for residential use, the hotel portion of the Project is not part of the housing development project. (Gov. Code § 65589.5(h)(2)(B)(i)(II)(ib)(Ia).) Accordingly, the hotel portion of the Project is "not be eligible for any benefits conferred on a housing development project by state law." (Gov. Code § 65589.5(h)(2)(B)(i)(II)(ib)(Ib).) If the hotel is included in the Project, the Project would not conform to the definition of a "builder's remedy project" contained in Gov. Code § 65589.5(h)(11).

For these reasons, the hotel portion of the Project must be removed from the AB 2011 application and processed separately. It cannot be approved without a Zoning Ordinance amendment or rezoning and a General Plan amendment because the existing C-1 zone does not allow hotel uses, nor does the Professional and Administrative Office General Plan designation. An application for these entitlements must be submitted in order to proceed with the hotel portion of the Project.

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

The City maintains in full, the City's Prior Responses. Additionally, the City points out that while the Applicant's Third Reply appears to modify boundaries of the Project "site," the Third Reply includes no evidence that use of the area immediately adjacent to the Project "site" meets the definition of Urban Use.

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

No change from City's Prior Responses.

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

Applicant's Third Reply included a revised Tree Protection Plan (Sheet L0.05) showing that no tree protection fencing will be located on the proposed remainder parcel. The City acknowledges that Applicant's Third Reply no longer shows physical disturbance on the remainder parcel, which Applicant recognizes contain wetlands and habitat for protected species. The City acknowledges Government Code Section 65912.103.5, which became effective January 1, 2026 and amends AB 2011. Section 65912.103.5 would appear to limit the "Project Site" to the area delineated by Parcels A, B, C and D in the Third Reply. To the extent the WRA report provides substantial evidence that the Project Site is not wetlands or habitat for protected species, the City acknowledges that SB 35 criteria are met. However, the City notes that the WRA report and attachments do not show the actual delineated areas in which wetlands or habitat for protected species exist.

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 Prior Responses.

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

No change from City's Prior Responses.

DEVELOPMENT STANDARDS

8. Section 65912.123(b) – Density Calculation

No change from City's Prior Responses.

9. Section 65912.123(c) – Height Limit

No change from City's Prior Responses.

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

No change from City's Prior Responses.

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

No change from City's Prior Responses.

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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 or (650) 330-6763.

Thank you,
Calvin Chan
Senior Planner

Attachment

1. Analysis of December 24, 2025 Revisions Compared to Prior Submissions

Attachment 1
Analysis of December 24, 2025 Revisions Compared to Prior Submissions

Section 1: Documents Reviewed By Staff

10/10/2025 Development Application Submission (Third Round Consistency Review):
- Sheet A0.02 (Project Information) dated 8/5/25
- Sheet A0.60 (Area Calculation Diagrams - GFA) dated 5/8/25

12/25/2025 Applicant Response to 12/18/2025 City AB 2011 Determination:
- Sheet A0.02 (Project Information) dated 12/24/25
- Sheet A0.60 (Area Calculation Diagrams - GFA) dated 12/25/25
- Sheet A0.61 (Area Calculations Diagrams – GSF Program Ratio) dated 12/25/25

Section 2: Highlighted Project Modifications And Consistency Issues Between 10/10/2025 Development Application Submission And 12/25/2025 Applicant Response

Building 1

1. 21,780 GSF of atrium space has been added to floors 8-16. This results in 21,780 GSF less of commercial area/total building GSF. A comprehensive plan set with updated floor plans and other relevant information regarding the proposed project modifications has not been provided.
2. Sheet A0.02 dated 12/24/25 “Area Matrix B-1” is missing the GFA column previously provided on Sheet A0.02 dated 8/5/25. Referencing Sheet A0.60 dated 12/25/25, total building GFA calculates to 351,110 SF, which is 20,690 SF less than the 371,800 SF GFA listed on Sheet A0.02 dated 8/5/25. It is unclear how the atrium results in 21,780 GSF less for the building but also 20,690 SF GFA less (numbers mismatched with no explanation for difference between GSF and GFA). It is unclear if the atrium space can be exempted from GFA. Are there walls around the proposed atrium space? Clarify what Municipal Code GFA exemption is used to exclude the atriums from GSF.
3. Sheet A0.02 dated 12/24/25 lists 11,924 GSF for floor 17, however, the sum of the “MVP” (1,320 GSF) and “Office Rentable” (9,200 GSF) spaces on the floor is 10,520 GSF. This results in an incorrect 345,286 GSF for the building when considering the sum of the “MVP,” “Office Rentable,” “Lobby,” “Conf/Office,” and “Retail” columns, as listed on Sheet A0.02 dated 12/24/25 “Area Matrix - B1.” The correct GSF when considering these spaces appears to be 343,882 GSF.
4. Juxtaposing Sheet A0.02 dated 12/24/25 with Sheet A0.60 dated 12/25/25, there is inconsistency (numbers do not add up) between GFA counted, GFA excluded, and GSF totals for floors 2, 4-5, and 7-16.

Building 2

5. A comprehensive plan set with updated floor plans and other relevant information regarding the following proposed project modifications has not been provided:
   a. Floor 1 proposes a 5,249 GSF increase in hotel.
   b. Floor 2 proposes a 12,477 GSF increase in residential and what appears to be a corresponding 12,477 GSF decrease in hotel.
   c. Floor 6 proposes a 10,233 GSF decrease in hotel and a 1,719 GSF increase in terrace space.
6. Juxtaposing Sheet A0.02 dated 12/24/25 with Sheet A0.60 dated 12/25/25, there is inconsistency (numbers do not add up) between GFA counted, GFA excluded, and GSF totals for floors 1, 3, and 6.

Attachment 1
Analysis of December 24, 2025 Revisions Compared to Prior Submissions

Building 3

7. A comprehensive plan set with updated floor plans and other relevant information regarding the following proposed project modifications has not been provided:
   a. Floor 1 proposes a 11,073 GSF decrease in retail.
   b. Floor 2 proposes a 9,200 GSF increase in residential and what appears to be a corresponding 9,200 GSF decrease in retail.
8. Sheet A0.02 dated 12/24/25 “Area Matrix - B3” lists 161,193 GSF for the proposed parking on floors B2-6, however, the correct sum appears to be 214,779 GSF.
9. Sheet A0.02 dated 12/24/25 “Area Matrix - B3” lists 793,337 GSF and 575,062 SF GFA for the building, representing no change from Sheet A0.02 dated 8/5/25. It is unclear how the building GSF and GFA are unchanged with consideration to the proposed modifications for floors 1-2.
10. Juxtaposing Sheet A0.02 dated 12/24/25 with Sheet A0.60 dated 12/25/25, there is inconsistency (numbers do not add up) between GFA counted, GFA excluded, and GSF totals for floors B2-1 and 3.

Building 4

11. Sheet A0.02 dated 12/24/25 “Area Matrix - B4” lists 2,670 GSF and 3,238 SF GFA for the proposed school. It is unclear how the GSF number can be less than GFA. Sheet A0.60 dated 12/25/25 lists 3,238 SF GFA for the proposed school, however, Sheet A0.61 dated 12/25/25 lists “3,270” (GSF or GFA not stated) in the “Program Usage by Building and Floor” table. It is unclear what the correct GSF and GFA are for the proposed school, including what GFA exemption(s) are being applied, if any.