CITY OF MENLO PARK

February 10, 2026

Oisín Heneghan
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Electronic Mail Delivery Only

RE: 80 Willow Road (PLN2023-00049) – Response to Challenged Conduct Letter (Government Code Section 65589.5(h)(6)(D)(iv))

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") from N17 Development, the representative for project applicant Willow Project LLC (the "Applicant"). 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 November 19, 2025, the City received a written notice via email ("Challenged Conduct Letter") asserting that the City's actions to date with respect to the proposed Project constitute "disapproval of a housing development project" per Government Code section 65589.5(h)(6). Specifically, the Challenged Conduct Letter alleges that the City has disapproved the Project by engaging in a "course of conduct to cause unnecessary delay or needless increases in the cost" of the Project (Gov. Code § 65589.5(h)(6)(E)[1]) and by determining that the Project is not exempt from CEQA per AB 2011 (Gov. Code § 65589.5(h)(6)(J)[2]).

As an initial matter, Government Code section 65589.5(h)(6), which defines "disapprove the housing development project," only applies to actions taken with respect to a "housing development project," as that term is defined by Government Code Section 65589.5(h)(2). As discussed below in Section I of this determination, the Project is not a "housing development project" because it does not conform to the definition in Government Code section 65589.5(h)(2). Therefore, none of the City's actions could constitute a disapproval of a housing development project, and Government Code Section 65589.5(h)(6) does not apply. On February 5, 2026, staff met with the applicant to discuss residential and non-residential square footage calculations, however, the materials submitted to date do not demonstrate the two-thirds residential square footage requirement for a "housing development project."

[1] At the time of the submission of the November 19, 2025 Challenged Conduct Letter, subd. (h)(6)(D).

[2] At the time of the submission of the November 19, 2025 Challenged Conduct Letter, subd. (h)(6)(I).

Second, the Challenged Conduct Letter does not comply with Government Code section 65589.5(h)(6)(E)(i), which requires an applicant to "provide written notice detailing the challenged conduct and why it constitutes disapproval." The Challenged Conduct Letter implies that the City has intended to "cause unnecessary delay or needless increases in the cost of the proposed project," but includes no facts that would support such conclusion or explain how the City's actions constitute disapproval. As discussed further below, the City has provided timely responses to each Project submittal. After determining that the Project did not meet the statutory criteria to qualify for processing under AB 2011, the City continued to process the Project application and selected an environmental consultant to assist the City with the review necessary to comply with CEQA. However, the Applicant has refused to provide the requisite deposit of funds for the consultant to commence their work, meaning that the current processing delay is due to the Applicant's withholding of the deposit, not the City's conduct.

Third, the Challenged Conduct Letter does not comply with Government Code section 65589.5.1(a)(5)(A), which requires an applicant to give "timely written notice to the local agency of the action or inaction that the applicant believes constitutes a failure to make a determination" that "contain[s] all of the following:"

> (i) The information specified in paragraphs (1), (2), (5), and (6) of subdivision (a) of Section 15062 of Title 14 of the California Code of Regulations.
> (ii) 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.
> (iii) A brief statement of reasons supporting the assertion that the project is exempt.
> (iv) A copy of the excerpts from the record constituting substantial evidence that the criteria of paragraphs (1) to (4), inclusive, are satisfied.

The Challenged Conduct Letter does not include a copy of the excerpts from the record that provide any evidence that the criteria of Section 65589.5.1(a)(1)-(4) are satisfied. Because the Applicant has not followed the procedures set forth in Section 65589.5.1, the City cannot be deemed to have disapproved the Project under Section 65589.5(h)(6)(I).

Regardless of such deficiencies, the City is issuing this letter ("Response to Challenged Conduct Letter") as a courtesy as if it were required to comply with Government Code sections 65589.5(h)(6)(E)(ii)-(iv) and 65589.5.1(a)(5)(B)-(F).

I. The City Has Not "Disapproved a Housing Development Project" Because the Proposed Project Is Not a "Housing Development Project"

Effective January 1, 2026, the Housing Accountability Act ("HAA") definition of "housing development project" was amended. The HAA provides three categories of mixed-use projects that are considered "housing development projects" pursuant to Government Code section 65589.5(h)(2):

> **(B) Mixed-use developments consisting of residential and nonresidential uses that meet any of the following conditions:**
> (i) A mixed-use development that meets both of the following:
> (I) At least two-thirds of the new or converted square footage is designated for residential use.
> (II)(ia) No portion of the project is designated for use as a hotel, motel, bed and

breakfast inn, or other transient lodging.

(ib)(Ia) Notwithstanding sub-subclause (ia), if a mixed-use project as defined in this paragraph includes a hotel, motel, bed and breakfast inn, or other transient lodging, 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.

(Ib) The local agency may separately approve the portion of the project that includes a hotel, motel, bed and breakfast inn, or other transient lodging, which shall not be eligible for any benefits conferred on a housing development project by state law, including, but not limited to those available to a development under Section 65913.4.

(ic) For purposes of this subclause, the term "other transient lodging" does not include either of the following:

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

(Ib) 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.

(ii) At least 50 percent of the new or converted square footage is designated for residential use and the project meets both of the following:

(I) The project includes at least 500 net new residential units.

(II) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

(iii) At least 50 percent of the net new or converted square footage is designated for residential use and the project meets all of the following:

(I) The project includes at least 500 net new residential units.

(II) The project involves the demolition or conversion of at least 100,000 square feet of nonresidential use.

(III) The project demolishes at least 50 percent of the existing nonresidential uses on the site.

(IV) No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

The Project does not meet the criteria specified in either subdivisions (B)(ii) or (B)(iii), because although at least 50% of the Project's new square footage is designated for residential use and the Project includes at least 500 net new residential units, the Project includes a hotel.

Additionally, the Project does not meet the criteria specified in subdivision (B)(i) because at least two-thirds of the new square footage is not designated for residential uses and the Project contains a hotel. The application materials submitted to date do not demonstrate that two-thirds of the Project's square footage is designated for residential use. While the Applicant asserts in a summary document submitted on December 24, 2025 (three architectural plan sheets) that approximately 70% of the square footage of the Project is residential, this document is inconsistent with piecemealed plans submitted to date, which plans

staff has carefully analyzed. City staff have been unable to replicate and resolve the internal inconsistencies of the calculations reported in the December 24, 2025 materials based on such materials or by referencing the most recent project plan set materials submitted on October 10, 2025 which include more information (six architectural plan sheets). 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 regarding the residential square footage calculations contained in the City's Prior Responses (attached hereto and incorporated herein as Attachments 1–4) continues to be applicable and accurate.

The portion of the Project that does not include a hotel could be considered a housing development project as long as the Project as a whole, including the hotel, meets the two-thirds residential square footage requirement. (Gov. Code § 65589.5(h)(2)(B)(i)(II)(ib)(Ia)). However, as explained above, the Project does not meet the residential square footage requirement based on internally inconsistent materials submitted to the City as of the date of this letter. Therefore, even if the hotel portion of the Project was removed from the currently development application, the Project still would not constitute a housing development project, as defined.

The City reminds the Applicant that the Project is subject to the revised, 2026 definition of "housing development project." The HAA provides 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), emphasis added.) Such vesting does not immunize housing development projects from changes in *state* law. Thus, the Project must meet the revised definition of "housing development project" in order to qualify for those provisions of the HAA which apply only to housing development projects. This includes any remedies for a claim that the City has "disapproved the housing development project," as that term is defined in Section 65589.5(h)(6).[3]

As the City has explained in a number of communications regarding the Project and again explains here, the Project is inconsistent with the HAA's definition of "housing development project." Because the proposed Project is not a "housing development project," the City's actions cannot constitute a disapproval of a housing development project per Government Code Section 655899.5(h)(6). Likewise, because the proposed Project is not a housing development project, the Project does not conform to the definition of a "builder's remedy project" set forth in section 65589.5(h)(11).

[3] The City notes that even if the definition of "housing development project" in effect prior to January 1, 2026 were applicable to the Project, the Project still would not satisfy the prior definition of "housing development project" because less than two-thirds of the square footage of the Project is dedicated to residential uses based on internally inconsistent materials submitted to the City as of the date of this letter.

II. The City Has Not Engaged in a Course of Conduct Undertaken for an Improper Purpose

Regardless of the deficiencies in the Challenged Conduct Letter and the fact that the Project is not a "housing development project," the City has substantially complied with the procedures established within Government Code section 65589.5(h)(6)(E), including as discussed below:

- After receiving the Challenged Conduct Letter, the City posted the required notice on the City's internet website, provided a copy of the notice to any person who had made a written request for notices, and filed the notice with the county clerk. (See Gov. Code § 65589.5(h)(6)(E)(ii).) The Challenged Conduct Letter and notices were available for at least 60 days prior to this determination.
- After posting the notice, the City received one public comment about the Project. The City has considered all objections, comments, evidence, and concerns about the Project and the Challenged Conduct Letter. (See Gov. Code § 65589.5(h)(6)(E)(iii).)
- This letter serves as the required written findings pursuant to Government Code section 65589.5(h)(6)(E)(iv), issued not less than 60 days but within 90 days of the Challenged Conduct Letter, that (I) articulate an objective basis for why the challenged course of conduct is necessary and (II) provide clear instructions on what must be submitted or supplemented so that the City can make a final determination regarding the next necessary approval.

1. The City's Challenged Course of Conduct Is Necessary (Gov. Code § 65589.5(h)(6)(E)(iv)(I))

The City finds that its course of conduct does not constitute a disapproval of the Project and that the challenged course of conduct is necessary.

The sole basis of the alleged Project disapproval identified in the Challenged Conduct Letter is the fact that the City determined the Project does not qualify for processing under AB 2011 and, thus, is not exempt from CEQA. The HAA states that "nothing . . . shall be construed to relieve the local agency from complying with . . . [CEQA]." (Gov. Code § 65589.5(e).) Thus, the City has an obligation to consider if CEQA applies to the Project and, assuming that the Project is not exempt, analyze and disclose the Project's environmental effects.

Furthermore, the HAA expressly states that "[a] local agency's action in furtherance of complying with the California Environmental Quality Act . . . shall not constitute project disapproval" as that term is defined in subparagraph (h)(6) of the HAA. (Gov. Code § 65589.5(h)(6)(E)(vi).) The only bases for the alleged disapproval specified in the Challenged Conduct Letter are the actions the City has taken regarding AB 2011, including determining that the Project does not qualify for processing under AB 2011 and is therefore not exempt from CEQA. Accordingly, the City's actions cannot constitute disapproval under Government Code section 65589.5(h)(6)(E).

In addition, the City's actions are necessary because the Project objectively conflicts with the standards specified in AB 2011. A project must be consistent with the requirements specified in Government Code section 65912.100 *et seq.* in order to qualify for processing under AB 2011. The Challenged Conduct Letter asserts that the Project qualifies for processing under AB 2011. However, for the reasons explained in the City's four AB 2011 determinations[4] (attached hereto and incorporated herein as Attachments 1–4), the

[4] The City has issued four determinations that the project is ineligible for processing pursuant to AB 2011. The first determination (Attachment 1) was timely issued on June 22, 2024, in response to the initial filing of a development application on May 24, 2024. The second determination (Attachment 2) was timely issued

Project does not qualify for processing under AB 2011, which determination is necessary to comply with Government Code section 65912.100 *et seq.* (E.g., Gov. Code § 65912.121 ["A development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.124 unless" specified criteria are met]; § 65912.122 [same]; § 65912.123 [same].)

The current Project proposal does not qualify for processing pursuant to the current version of AB 2011[5] for the following reasons, as described in more detail in Attachment 4:

1. Section 65912.121(a) – Office, Retail and Parking are not Principally Permitted Uses on the Project Site
2. Section 65912.123(a) – The Project is not a Housing Development Project
3. Section 65912.121(e) – Less than 75% of Site is Surrounded by Parcels Developed with Urban Uses
4. Section 65912.121(h) – The Project Would Require the Demolition of a Historic Structure
5. Section 65912.121(g) – The Project Does Not Meet All SB 35 Criteria
6. Section 65912.122(d) – The Project Does Not Meet AB 2011's Bedroom and Bathroom Count Ratio
7. Section 65912.122(d) – Equitable Distribution of Affordable Units
8. Section 65912.123(b) – Density Calculation
9. Section 65912.123(c) – Height Limit
10. Section 65912.123(d)(1)(B) – 25-foot Parking Setback
11. Section 65912.123(d)(1)(C) – Frontage within 10 Feet of Street

The City may not process or approve the Project pursuant to AB 2011 if the Project does not comply with the statutory criteria, and it has a duty to evaluate the Project pursuant to CEQA if AB 2011 does not apply. Therefore, the City's conduct is necessary.

2. Next Steps for the City to Make a Final Determination Regarding the Next Necessary Approval (Gov. Code § 65589.5(h)(6)(E)(iv)(II))

Although the Project is inconsistent with AB 2011's eligibility requirements, the City has continued to review and process the application as a development project. As discussed above, the Project must be revised with internally consistent information to demonstrate that at least two-thirds of the Project's square footage is dedicated for residential uses. In addition, Section 65589.5(h)(2)(B)'s definition of a "housing development

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by the City on November 7, 2025, in response to Applicant's submittal of a revised development application on October 10, 2025. The third determination (Attachment 3) was timely issued by the City on December 18, 2025, in response to Applicant's partial resubmittal of the Project proposal on November 19, 2025. Applicant's November 19, 2025, resubmittal accompanied the subject Challenged Conduct Letter. On December 24, 2025, the Applicant again resubmitted a Project proposal and the City timely issued a fourth AB 2011 determination on January 22, 2026 (Attachment 4.) As you know, that fourth determination reflects the City's current position with respect to the Project's ineligibility for processing pursuant to AB 2011.

[5] AB 2011 was most recently amended by AB 893 which became effective on January 1, 2026. The City relied on and evaluated the Project in its January 22, 2026 AB 2011 determination based upon the January 1, 2026 version of the statute.

project" excludes portions of a project designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging. When such uses are proposed, "[t]he local agency *may* separately approve the portion of the project that includes a hotel, motel, bed and breakfast inn, or other transient lodging, *which shall not be eligible for any benefits conferred on a housing development project by state law*." (Gov. Code § 65589.5(h)(2)(B)(i), emphasis added.) This means that even if the Project were revised to meet the definition of a housing development project by dedicating at least two-thirds of its square footage for residential uses, the hotel component would still be ineligible for any state law benefits, including but not limited to any benefits conferred by the builder's remedy. Because hotel uses are not permitted on the Project site, the Project will need to be resubmitted without the hotel portion, or an application for the hotel portion can be submitted and processed separately. Regardless, the hotel component of the Project cannot be approved without a Zoning Ordinance amendment or rezoning and a General Plan amendment because the existing C-1 (Administrative and Professional District, Restrictive) zone does not allow hotel uses, nor does the Professional and Administrative Office General Plan designation. An application for these entitlements must be submitted before the City can act on the hotel component of the Project.

In addition, before the City can make a final determination regarding the Project, it must comply with CEQA. To facilitate this process, the City has engaged a CEQA consultant to prepare an initial study and an Environmental Impact Report ("EIR"), if required, for the Project. On May 14, 2025, the City requested the Applicant to submit a deposit of $799,951 to allow the City and consultant to begin work on the initial study. To date, the City has not received the requested deposit. Please provide the deposit at your earliest convenience so that CEQA review of the Project may commence.

III. The City Properly Determined that the Project Is Not Exempt from CEQA Pursuant to AB 2011

As a preliminary matter, a claim that a city has "disapproved [a] housing development project" by failing "to make a determination whether the project is exempt from [CEQA]" after a local agency has given the applicant written notice of the local agency's determination that the project is not exempt is timely "if and only if" such claim is "delivered to the local agency within 35 days of the date that the local agency gave the applicant notice of the local agency's determination." (Gov. Code § 65589.5.1(a)(5)(E).) A local agency has no obligation to respond to claims under Section 65589.5(h)(6)(J) that are untimely. (Gov. Code § 65589.5.1(a)(5)(C) [local agency shall make a determination between 60 and 90 days after "applicant has given *timely* written notice" to the local agency].) The City first determined that the Project does not qualify for AB 2011 – and thus, is not exempt from CEQA by virtue of AB 2011 – via written notice on June 22, 2024. The City received the Challenged Conduct Letter 515 days later, on November 19, 2025. Thus, the claim that the City has "disapproved the housing development project" by determining that the Project does not qualify for a CEQA exemption under AB 2011 is untimely, and the City has no obligation to respond to such claim.

Although the City is not required to respond within 60 to 90 days because Applicant has not given timely written notice, the City has, as a courtesy, complied with the procedures established within Government Code section 65589.5.1(a)(5)(B)-(F) as follows:

- After receiving the November 19, 2025 Challenged Conduct Letter, the City posted the notice on the City's internet website, provided a copy of the notice to any person who has made a written request for notices, and filed the notice with the county clerk. (See Gov. Code § 65589.5.1(a)(5)(B).)
- After posting the notice, the City received one public comment about the Project. The City has considered all objections, comments, evidence, and concerns about the Project and the Challenged Conduct Letter. (See Gov. Code § 65589.5.1(a)(5)(C).)
- This letter serves as the required written response pursuant to Section 65589.5.1(a)(5)(C)-(D), issued not less than 60 days but within 90 days of the Challenged Conduct Letter, that the Project is not exempt from CEQA by virtue of AB 2011.

Even if Applicant had given timely written notice pursuant to section 65589.5.1, Applicant is barred from invoking the procedures set forth in section 65589.5.1 because the Project does not meet all conditions set forth in that section (see Gov. Code § 65589.5.1(a).) First, as explained above, the Project is not a housing development project based on the information submitted to the City and the procedures set forth in section 65589.5.1 are reserved to housing development projects.

Second, there is not substantial evidence in the record that the Project is eligible for a CEQA exemption. AB 2011 creates a ministerial review and approval process for housing development projects that comply with the requirements specified in Government Code section 65912.100 *et seq*. Because qualifying projects are subject to ministerial review and approval, CEQA does not apply to such projects. The Challenged Conduct Letter asserts that the Project is exempt from CEQA per AB 2011. (See Gov. Code § 65589.5.1(a)(5)(A)(ii).) The City has notified the Applicant of the reasons that the project does not qualify for processing pursuant to AB 2011. As explained above, those reasons are referenced in Attachments 1 through 4, incorporated herein. Attachment 4, the City's most recent AB 2011 determination, explains why the current proposed Project, as revised by Applicant, is ineligible for the current version of AB 2011, as amended. Because there is not substantial evidence in the record that the Project is eligible for AB 2011, the City has not disapproved the Project pursuant to Sections 65589.5(h)(6)(I) and 65589.5.1.

Lastly, the Project does not meet the conditions set forth in section 65589.5.1(a)(2). The Project is not (1) located within one-half mile walking distance to either a high-quality transit corridor or a major transit stop; (2) not located in a very low vehicle travel area; (3) not proximal to six or more amenities pursuant to paragraph (4) of subdivision (b) as of the date of submission of the application for the project; or (4) Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site.

For these reasons, the City has not "disapproved a housing development project" pursuant to Government Code section 65589.5.1.

* * *

As established above, the City has not "disapproved [a] housing development project" because the Project is not a "housing development project." Even if the Project were a "housing development project," the City

has not “disapproved” the Project either by (1) causing unnecessary delay or needless increases in the cost of the proposed Project or (2) improperly determining that the Project is not exempt from CEQA under AB 2011.

The City will work with its environmental consultant to determine and complete the appropriate level of environmental review as the Project progresses, following the requisite deposit of funds for the consultant to commence their work. Such actions in furtherance of complying with CEQA are expressly excluded from the definition of “disapproval” under the HAA. (Gov. Code § 65589.5(h)(6)(E)(vi).)

Should you have any questions, please contact me at dmchow@menlopark.gov or (650) 330-6733.

Sincerely,
Deanna Chow
Community Development Director

Attachments
Hyperlinks from project webpage: menlopark.gov/80willow

1. City’s June 22, 2024 AB 2011 Determination: https://www.menlopark.gov/files/sharedassets/public/v/1/community-development/documents/projects/under-review/80-willow-rd/20240622-ab-2011-determination.pdf
2. City’s November 7, 2025 AB 2011 Determination: https://www.menlopark.gov/files/sharedassets/public/v/1/community-development/documents/projects/under-review/80-willow-rd/20251107-ab-2011-determination.pdf
3. City’s December 18, 2025 AB 2011 Determination: https://www.menlopark.gov/files/sharedassets/public/v/1/community-development/documents/projects/under-review/80-willow-rd/20251218-ab-2011-determination.pdf
4. City’s January 22, 2026 AB 2011 Determination: https://www.menlopark.gov/files/sharedassets/public/v/1/community-development/documents/projects/under-review/80-willow-rd/20260122-ab-2011-determination.pdf