May 6, 2026

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Electronic Mail Delivery Only

RE: 80 Willow Road (PLN2023-00049) – AB 2011 Determination in Response to April 6, 2026 Correspondence

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. As explained further below, the City timely found that the Project was ineligible for AB 2011 and proceeded to process the Project application as a standard development application under the provisions of the Permit Streamlining Act and the Housing Accountability Act ("HAA").

Following legislative amendments to AB 2011, Applicant resubmitted its application and re-invoked AB 2011 as amended. Since the new submittal, Applicant and the City have exchanged a number of letters with regard to the Project's compliance with AB 2011. Most recently, on April 6, 2026, the City received a letter from Applicant ("Applicant's Fourth Reply") seeking to clarify the outstanding issues regarding this project. The City's determination in response to each of the points in the Applicant's Fourth Reply letter is provided below.

I. APPLICATION PROCESSING HISTORY WITH REGARD TO AB 2011

On May 24, 2024, the City received a formal development application for the Project. The cover letter to the application asserted that the Project qualified for streamlined ministerial review pursuant to AB 2011.

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 and determined that the Project was ineligible for processing under AB 2011. The City continued to review the Project application pursuant to provisions of the Permit Streamlining Act and the HAA, finding the Project application complete on November 14, 2024 and providing written consistency review determinations on January 13, 2025, May 6, 2025, November 7, 2025, February 12, 2026, and April 13, 2026.

In late 2024, the State Legislature amended state housing laws relevant to the City's review and processing of the Project application, including through the enactment of AB 2243 (amending AB 2011) and AB 1893 (amending the HAA). Both AB 2243 and AB 1893 became effective on January 1, 2025.

On October 10, 2025, the City received a partial resubmittal of the Project application 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 would be 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. The City's Second Response included "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" as required by Government Code section 65912.124(a)(2) as of January 1, 2025, the effective date of AB 2243.

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 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, Applicant partially resubmitted the 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.

On January 22, 2026, the City timely issued a letter ("City's Fourth Response") explaining that the Project continued to be inconsistent with the enumerated criteria and objective planning standards specified in AB 2011.

On April 6, 2026, the City received a letter from Applicant ("Applicant's Fourth Reply") seeking to clarify the outstanding issues regarding this project. Applicant's Fourth Reply did not include any accompanying resubmission of application materials. Rather, Applicant's Fourth Reply restates arguments made in Applicant's previous replies, and adds a few new arguments, in effort to refute the City's determination that the proposed Project does not satisfy the AB 2011 eligibility criteria prescribed by statute. Applicant's Fourth Reply also requests that the City identify which issues remain outstanding.

This letter ("City's Fifth Response") responds to Applicant's Fourth Reply of April 6, 2026. Through the

[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 disapproved the proposed housing development without taking final administrative action pursuant to Government Code section 65589.5(h)(6)(D). The City complied with the procedures specified in Government Code section 65589.5(h)(6)(D)(ii) and (iii) and separately provided a written statement and made findings as required by Government Code Section 65589.5(h)(6)(D)(iv) within 90 days of receipt of the Applicant's Second Reply on February 10, 2026.

process of the various resubmittals and project revisions, Applicant has remedied some, but not all, of the inconsistencies with AB 2011 timely identified by the City. This City's Fifth Response summarizes the outstanding reasons that the Project remains inconsistent with the enumerated criteria and objective planning standards specified in AB 2011 and previously identified by the City.

II. THE PROJECT REMAINS INCONSISTENT WITH MULTIPLE CRITERIA AND OBJECTIVE PLANNING STANDARDS SPECIFIED IN AB 2011

The Project does not qualify for processing under AB 2011 for the reasons specified herein. The City will continue to review the formal development application pursuant to the requirements of the Permit Streamlining Act, the HAA, 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

As explained in the City's Second Response, office, retail, and parking are not "principally permitted uses" on the Project Site:

> In order for a development project to be processed under Section 65912.124, subdivision (a) of Section 65912.121 requires that the project be on a site that is "located within a zone where office, retail, or parking are a principally permitted use." (Gov. Code § 65912.121(a).) "Principally permitted use" means a use that, as of January 1, 2023, or thereafter, may occupy more than one-third of the square footage of designated use on the site **and** does not require a conditional use permit. (Gov. Code § 65912.101(q) (emphasis added).) The Project site is zoned C-1. The City's Municipal Code states that "there are no permitted uses in the C-1 district" without a conditional use permit. (Menlo Park Municipal Code ("MPMC") Ch. 16.30.010.) Office and retail uses require a conditional use permit in the C-1 district. (MPMC Ch. 16.30.020.) Parking is neither a permitted nor conditionally permitted use in the C-1 district. (See MPMC Ch. 16.03.010, 16.03.020.) Therefore, the Project is not located on a site in a zone where office, retail or parking are principally permitted uses. As a threshold matter, the Project is thus ineligible for streamlined, ministerial processing pursuant to AB 2011.

Applicant's Fourth Reply states that the existing office use meets the definition of "principally permitted use" because it "has existed for decades without the need for a use permit." (Fourth Reply, p. 2.) The existing office use is a nonconforming use that was permitted at the time that it was established, but that would require a conditional use permit if established today. (Menlo Park Municipal Code §§ 16.04.480, 16.80.010.) There are examples of required discretionary review permitting for the site following the use's original establishment, such as a variance for exterior site fencing within setback areas (1972), use permit for the annual Sunset Celebration Weekend (1999-2015), and architectural control for construction of an outdoor test kitchen facility (2009). The nonconforming use status does not transform conditionally-permitted office uses in the C-1 zone into a "principally permitted use" as defined in AB 2011. A "principally permitted use" is a "use that, as of January 1, 2023, or thereafter, may occupy more than one-third of the square footage of designated use on the site and does not require a conditional use permit, except that parking uses are considered principally permitted whether or not they require a conditional use permit." (Gov. Code § 65912.101(u).) As of January 1, 2023, the zoning code did not permit office or retail uses on sites with a C-1 zoning designation (including the Project site) without a conditional use permit. Likewise, as of January 1, 2023, the zoning code did not permit parking uses on sites with a C-1 zoning designation (including the

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

Project site) even with a conditional use permit. Therefore, by the plain text of AB 2011, although the existing office use on the site may be a legal, nonconforming use, it is not a "principally permitted use."

Accordingly, the Project is not consistent with this standard.

The Applicant's Fourth Reply also asserts that Section 65912.124(a)(2) and subdivision (a)(4) prevent the City from relying on this inconsistency between AB 2011's requirements and the Project. It is correct that the City first identified this issue on November 7, 2025, after previously determining that the Project was ineligible for AB 2011 in the City's First Response on June 22, 2024. However, Section 65912.124(a)(2)'s requirement that the City's AB 2011 determination include an "exhaustive" list of inconsistencies was not added to the law until AB 2234 took effect on January 1, 2025. Every one of the City's responses to the Applicant's submissions after January 1, 2025 identified this issue. Therefore, the City's determination that the Project remains ineligible for AB 2011 because the C-1 zone does not allow office, retail, or parking as a principally permitted use was provided in a timely manner, consistent with AB 2011's requirements.

2. Section 65912.123(a) – The Project is not a Housing Development Project Under the 2026 Definition of "Housing Development Project"

As explained in Section II of the City's Third Response, because of changes in state law between the City's First Response and the City's Second Response, this issue did not exist at the time of the City's First Response, and it could not have been raised until after AB 1893 took effect. Therefore, it was proper for the City to raise this issue for the first time in the City's Second Response.

As explained in the City's Fourth Response, while the submission of a preliminary application locks in local standards and regulations as of the date of submission of the preliminary application, such submission does not lock in state laws:

> 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.
>
> 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).)

While the Applicant is correct that AB 1893 modified the HAA to allow housing development projects with complete preliminary applications filed prior to January 1, 2025, to "be subject to the provisions of [the HAA] .

. . that were in place on the date the preliminary application was submitted," only those projects which meet the definition of a "builder's remedy project" can be subject to "any or all provisions" of the HAA as modified by AB 1893 (Gov. Code § 65589.5(f)(7)(A).) Because, as explained above, the Project is not a housing development project, the project does not meet the definition of a "builder's remedy project."

Applicant resubmitted a revised version of the Project on February 12, 2026 and the City provided the consistency review required by Gov. Code Section 65589.5(j)(2)(A)(ii) on April 13, 2026. As explained in the April 13, 2026 consistency review, the version of the Project submitted on February 12, 2026 dedicates at least two-thirds of the square footage of the Project to residential uses. Accordingly, consistent with Section 65589.5(h)(2)(B)(i)(II)(ib)(Ia), the City recognizes that a portion of the proposed Project excluding the hotel could be a housing development project if properly submitted as such. However, because the Project currently includes the hotel, the Project cannot be processed as a housing development project. Any hotel project would 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)(Ia), (Ib).)

Additionally, even if Applicant elects to utilize the version of the HAA in effect prior to AB 1893 (i.e., prior to January 1, 2025), there is nothing in State law providing Applicant such an election as to AB 2011 or any other State laws. Thus for purposes of AB 2011 review and processing, the Project must meet the current definition of a housing development project. Because the Project is not a housing development project, the Project is ineligible for processing pursuant to AB 2011.

Finally, Applicant's Fourth Reply implies that an informal Zoom meeting on February 5, 2026 constituted the "submittal of a development proposal" triggering Section 65912.124(a)(1)(C)'s obligation for the City to issue a full written AB 2011 consistency determination within 30 days. Applicant did not claim at the time of the interaction that such interaction constituted a submittal, no documents were provided via the City's application portal, and information provided to staff during the interaction was shared on an informal basis. It is not AB 2011's intent to require cities to provide a full AB 2011 consistency determination every time an applicant sends an email or corresponds with city staff. Accordingly, the Project is not deemed to satisfy this standard under Section 65912.124(a)(4).

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

As explained in Section II of the City's Third Response, because of changes in state law between the City's First Response and the City's Second Response, it was proper for the City to elaborate on this issue in the City's Second Response compared to the City's First Response, and the Project is not deemed consistent with this standard as a matter of law. Moreover, Applicant's First Reply contained new legal theory regarding the interpretation of Section 65912.121(e), warranting elaboration in the City's Second Response.

As explained in the City's Second Response, Applicant's interpretation of Section 65912.121(e) is incorrect and renders other sections of AB 2011 meaningless:

> In order for a development project to be processed under Section 65912.124, subdivision (e) of Section 65912.121 requires that the development project be located on a site where "at least 75 percent of the perimeter of the site adjoins <u>parcels</u> that are developed with <u>urban uses</u>." (Gov. Code § 65912.121(e).) "Urban uses" means "any current or former residential, commercial, public institutional, 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." (Gov. Code 65912.101(t).) The Project does not satisfy Section 65912.121(e) because less than 75% of the perimeter of the site where the Project is proposed adjoins parcels developed with urban uses.

The Reply Letter takes the position that the Project "site" is limited to portions of existing parcels on which the Project will be developed. This interpretation cannot be correct, because such interpretation would render portions of AB 2011 meaningless. For example, were the position in the Reply Letter correct, then any project developed within a slight setback from the boundaries of a parcel (e.g., 1 foot on all sides) would automatically satisfy the 75% perimeter requirement as long as the parcel on which the project was located contained an "urban use." In other words, only the existing use on the parcel to be developed would be relevant, because the perimeter of the "project site" would be completely surrounded by the existing "parcel" on which the "project site" is located. This would be contrary to Section 65912.121(e)'s meaning, which is to allow AB 2011 projects on existing parcels that are primarily surrounded by urban uses on other parcels. Under the Reply Letter's interpretation, the infill requirement would thus be rendered meaningless. Because statutes must be interpreted to give every provision meaning, the Reply Letter's interpretation cannot be correct. Thus, the relevant question is whether at least 75% of the perimeter of the existing *parcel* is surrounded by "parcels" that are developed with "urban uses."

Less than 75% of the perimeter of the existing parcels where the Project is proposed are surrounded by "urban uses," because the open space area owned by the City of Palo Alto adjacent to the existing parcels is not an "urban use." Although urban uses can include parks, the open space adjacent to the existing parcels is a natural feature preserved for its environmental value, not a park. Therefore, it is not an urban use. The Reply Letter attempts to redefine the Project site so that more than 75% of the site would be surrounded by a "designated remainder" area within the existing legal parcels on which the Project is located. Even assuming arguendo that the Reply Letter were correct and the Project "site" excluded the proposed designated remainder portion of the property, less than 75% of the Project site would be surrounded by parcels developed with urban uses. First, the designated remainder portion of the Project parcel adjoining the Reply Letter's definition of Project site is not an existing adjoining "parcel." This is because the designated remainder area is not an existing legal parcel, nor can it be approved as a new legal parcel because the designated remainder area does not meet City minimum width and area requirements applicable to parcel creation. Second, the "designated remainder" would not be an "urban use" because it is not any of the uses specified in Section 65912.101(t). Instead, it would be privately owned land containing wetlands and habitat for protected species. Since more than 25% of the perimeter of the Project site as defined in the Reply Letter would adjoin this privately owned wetland and habitat area, less than 75% of the perimeter would be developed with urban uses.

Accordingly, the Project is not consistent with this standard.

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

Upon further review, the City agrees that the inclusion of the property on the National Register of Historic Places (determined eligible for listing on June 24, 2025) and the California Register of Historical Resources (listed on July 11, 2025) after the date that the Project's preliminary application was filed (December 7, 2023) prevents the City from considering the Project inconsistent with Section 65912.121(h).

This issue has been resolved.

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

In response to each of the City's First Response, City's Second Response, and City's Third Response, Applicant made substantive changes to the Project application addressing inconsistencies with SB 35 criteria. As explained in the City's Fourth Response, the resubmittal included with Applicant's Third Reply addressed such inconsistencies. Moreover, changes to state law effective January 1, 2026 change the City's prior analysis of this inconsistency. Accordingly, the City concluded in the City's Fourth Response:

> "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."

The City maintains the above position as set forth in the City's Fourth Response.

AFFORDABILITY STANDARDS

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

As explained in Section II of the City's Third Response, because of changes in state law between the City's First Response and the City's Second Response, it was proper for the City to raise this issue for the first time in the City's Second Response, and the Project is not deemed consistent with this standard as a matter of law.

In its January 16, 2026 correspondence, Applicant submitted a request for a State Density Bonus Law waiver of the portion of Section 5.1 of the City's Below Market Rate (BMR) Guidelines that imposes requirements regarding the number and size of the BMR units. The City agrees that the requested waiver would satisfy the local requirements related to bedroom and bathroom counts, if approved. However, compliance with local BMR Guidelines (as modified by the State Density Bonus Law) is not sufficient to establish that the Project is eligible for processing under AB 2011, because the Project does not satisfy AB 2011's bedroom and bathroom count ratio requirements.

Section 65912.11(d) provides that a "development project shall not be subject to the streamlined, ministerial review process provided by [AB 2011] unless . . . [a]ffordable units in the development project shall have the same bedroom and bathroom count ratio as the market rate units, be equitably distributed within the project, and have the same type or quality of appliances, fixtures, and finishes." The bedroom and bathroom count ratio requirements imposed by Section 65912.122(d) (a state law) are separate and distinct from the requirements imposed by the BMR Guidelines (local regulations), and Section 65912.122(d)'s requirements are not subject to modification pursuant to the State Density Bonus Law.

AB 2011 specifies that State Density Bonus Law incentives, concessions, and waivers may only be used for a limited number of standards imposed by AB 2011. (Gov. Code § 65912.124(f)(2).) Specifically, an applicant may only use State Density Bonus Law incentives, concessions, and waivers to deviate from the following standards specified by AB 2011: Section 65912.123(c) [height limits], (d)(2) [specified setback requirements], and (d)(3) [specified setback requirements]. (Gov. Code § 65912.124(f)(2).) AB 2011 does not allow for the use of State Density Bonus Law waivers with respect to the standards contained in Section 65912.122(d). Therefore, the Project's State Density Bonus Law requests do not affect the Project's eligibility for AB 2011.

In order for a development project to be processed under Section 65912.124, subdivision (d) of Section 65912.122 requires affordable units in the project to have the same bedroom and bathroom count ratio as the market rate units. For example, in Building B2, the proposed Project includes market-rate 2-bedroom units with

a mix of 1 and 2 bathrooms with a large majority (approximately 80%) of the market-rate units having 2 bathrooms. In contrast, all (100%) of the BMR 2-bedroom units have 1 bathroom. Similarly, the proposed Project includes market rate 3-bedroom units with a mix of 2 and 3 bathrooms but no BMR 3-bedroom units contain 3 bathrooms. Additionally, the 3-bedroom BMR units are the smallest of the 3-bedroom designs. Because the Project does not provide affordable units in the same bedroom and bathroom count ratio as market-rate units, the Project is ineligible for streamlined, ministerial processing pursuant to AB 2011.

Accordingly, the Project is not consistent with this standard.

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

As explained in Section II of the City's Third Response, because of changes in state law between the City's First Response and the City's Second Response, it was proper for the City to raise this issue for the first time in the City's Second Response, and the Project is not deemed consistent with this standard as a matter of law.

In its January 16, 2026 correspondence, Applicant submitted a request for a waiver of the portion of Section 5.1 of the City's BMR Guidelines that imposes requirements regarding the distribution of the BMR units throughout the Project. The equitable distribution requirements imposed by Section 65912.122(d) (a state law) are separate and distinct from the requirements imposed by the BMR Guidelines (local regulations). While the State Density Bonus Law may allow for waivers from development standards imposed by a local government, AB 2011 specifies that State Density Bonus Law incentives, concessions, and waivers may only be used for a limited number of standards imposed by AB 2011. (Gov. Code § 65912.124(f)(2).) Specifically, an applicant may only use State Density Bonus Law incentives, concessions, and waivers to deviate from the following standards specified by AB 2011: Section 65912.123(c) [height limits], (d)(2) [specified setback requirements], and (d)(3) [specified setback requirements]. (Gov. Code § 65912.124(f)(2).) AB 2011 does not allow for the use of State Density Bonus Law waivers with respect to the standards contained in Section 65912.122(d).

In order for a development project to be processed under Section 65912.124, subdivision (d) of Section 65912.122 requires affordable units in the project to equitably distributed throughout the project. In Building B3, no BMR units are above the 23rd floor of the 33-floor structure with a majority (72%) of the proposed BMR units below the 15th floor. In Building B2, all BMR units are on the lowest floors with no units above the 22nd floor of the 39-floor structure. Because the Project does not distribute affordable units equitably throughout the Project, it is ineligible for streamlined, ministerial processing pursuant to AB 2011.

Accordingly, the Project is not consistent with this standard.

DEVELOPMENT STANDARDS

8. Section 65912.123(b) – Density Calculation

As explained in the City's Second Response, the City acknowledges that a "builder's remedy project shall be deemed to be in compliance with the residential density standards for the purposes of complying with subdivision (b) of Section 65912.123." (Gov. Code § 65589.5(f)(6)(F)(i)). The City's Second Response also explained that in order for Section 65589.5(f)(6)(F)(i) to apply, a project must satisfy both the definition of a "builder's remedy project" and a "housing development project":

> AB 1893 also amended the HAA to define "builder's remedy project" in great detail (Gov. Code § 65589.5(h)(11)) and to require that "builder's remedy projects" meet certain requirements. (Gov. Code § 65589.5(f).) Thus, a builder's remedy project complies with the residential density standards of AB 2011 only if it meets AB 1893's definition of "builder's remedy project." A "builder's remedy project" must meet the definition of "housing development project." (Gov. Code § 65589.5(h)(11)(A).)

As explained in paragraph 2 above, the City has repeatedly explained that the Project is not a "housing development project." Thus, the Project does not satisfy the definition of "builder's remedy project." Moreover, an applicant's election to be subject to the pre-AB 1893 version of the HAA does not deem a project to satisfy the definition of "builder's remedy project" specified in AB 1893. Though a project may qualify for the pre-AB 1893 benefits of the HAA without qualifying as a "builder's remedy project," as defined by AB 1893, other post-AB 1893 benefits are applicable only if a project meets the definition of "builder's remedy project" as specified in AB 1893. Government Code Section 65589.5(f)(6)(F)(i) deems a project compliant with Section 65912.123(b) only if such project is a "builder's remedy project" as defined by AB 1893. Because the Project is not a "housing development project," it does not satisfy AB 1893's definition of "builder's remedy project." Thus, the Project must comply with the density standards specified in Section 65912.123(b) in order to qualify for processing under Section 65912.124.

As explained in the City's Second Response, because the Project's density is 99.6 du/acre, it exceeds the maximum density specified in Gov. Code section 65912.123(b) (i.e., 40 du/acre) and the Project is not consistent with this standard.

9. Section 65912.123(c) – Height Limit

As stated in the City's Second Response, 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. An applicant may use a State Density Bonus Law waiver to exceed the maximum height permitted by AB 2011. (Gov. Code § 65912.124(f)(2).)

In the City's Second Response, the City requested a single, enumerated list of requested State Density Bonus Law concessions and waivers so that the City would have the information required to evaluate such requests. Merely providing such list does not deem such requests granted. (See Gov. Code § 65915(d)(1), (e)(1).) Moreover, cities are not required to grant requests for incentives, concessions, or waivers related to hotel uses, even if a hotel use is associated with a housing development project that qualifies for benefits under the State Density Bonus Law. (Gov. Code § 65915(l)(2).)

The applicant has requested a waiver of this development standard under the State Density Bonus Law. If the applicant receives a waiver from this standard, the standard would not be applicable to the Project.

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

As explained in Section II of the City's Third Response, because of changes in state law between the City's First Response and the City's Second Response, it was proper for the City to raise this issue for the first time in the City's Second Response, and the Project is not deemed consistent with this standard as a matter of law.

In order for a development project to be processed under Section 65912.124, subdivision (d)(1)(B) of Section 65912.123 requires all parking to be set back at least 25 feet from any property line that fronts a commercial corridor. (Gov. Code § 65912.123(d)(1)(B).) None of the application materials, including the latest partial plan set submitted on February 12, 2026, demonstrate that the Project complies with this standard. Willow Road and Middlefield Road are commercial corridors. The project plans include subterranean parking for Buildings 1, 2, and 3 that encroach into the 25-foot setback standard for both Willow Road and Middlefield Road. For example, Buildings 1 and 2 propose subterranean parking up to the property line along Middlefield Road. Because parking is located within 25 feet of the property lines along Willow Road and Middlefield Road, the proposed Project does not qualify for processing under Section 65912.124.

Accordingly, the Project is not consistent with this standard.

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

As explained in Section II of the City's Third Response, because of changes in state law between the City's First Response and the City's Second Response, it was proper for the City to raise this issue for the first time in the City's Second Response, and the Project is not deemed consistent with this standard as a matter of law.

In order for a development project to be processed under Section 65912.124, subdivision (d)(1)(C) of Section 65912.123 requires the ground floor of buildings to "abut within 10 feet of the street for at least 80 percent of the frontage." (Gov. Code § 65912.123(d)(1)(C).) "Street" includes sidewalks. (Gov. Code § 65912.101(s).) Thus, on the ground floor, at least 80% of the frontage of each building must be set back from the sidewalk by no more than 10 feet. None of the application materials, including the latest partial plan set submitted on February 12, 2026, demonstrate that the Project complies with this standard. For example, the ground floor of Building B3 would be set back from the sidewalk along Willow Road between approximately 8 and 19 feet and the ground floor of Building B2 would be set back from the sidewalk along Middlefield Road approximately 51 feet. Such setbacks are inconsistent with section 65912.123(d)(1)(C). Therefore, the Project is ineligible for streamlined, ministerial processing pursuant to AB 2011.

Accordingly, the Project is not consistent with this standard.

* * *

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