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November 19, 2025

Calvin Chan
Senior Planner
Planning Division
City Hall
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Applicant Response to the City's November 7, 2025 AB 2011 Determination
80 Willow Road (PLN2023-00049)

Mr. Chan:

Our office has received your November 7, 2025 correspondence ("City Determination") to Oisin Heneghan, the representative for project applicant Willow Project LLC ("Applicant"). The City Determination responded to our letter dated August 29, 2025[1], wherein Applicant addressed the seven items identified in the City's June 22, 2024 letter that claimed required elements of AB 2011/2243 were not met.

The seven items identified in the City's June 22 letter, and which were addressed in Applicant's August 29 response, were as follows:

- 65912.121(e) – adjoining urban uses
- 65912.121(g) – wetlands
- 65912.121(g) – protected species habitat
- 65912.123(b) – density calculation
- 65912.123(c) – height limit
- 65912.123(f) – Phase I assessment
- 65912.123(j) – objective standards/density maximum

[1] We acknowledge the City's receipt date of October 10, 2025.

As you know, California law does not permit a local agency to base its determinations of application incompleteness or inconsistency on items that were not initially identified by the local agency. With regard to any development application, the Permit Streamlining Act requires the agency to provide an applicant with "an exhaustive list of items that were not complete," and in any subsequent review, the 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).) With regard to a local agency's claims that a proposed AB 2011 housing project is not compatible with local or statutory objective development standards, the agency is limited to its initial list of items and cannot cite new items in subsequent reviews. (Gov. Code, §§ 65589.5(j)(2), 65912.124(a).)

Despite claiming that its response is pursuant to the requirements of Section 65912.124(a), the City Determination cites completely new items as justification for deeming the project inconsistent with AB 2011's objective development standards. This approach is unlawful per the Government Code sections above.

At this point, it is clear that the City intends to fight this application at every opportunity. Applicant believes that the City's actions to date constitute disapproval of a housing development project per Government Code section 65589.5(h)(6). As you know, AB 1893 substantially revised this subdivision in an attempt to dissuade local agencies from stonewalling housing development applications. Relevant here are subdivision (h)(6)(I) regarding the City's failure to recognize the project as exempt from CEQA per AB 2011, and subdivision (h)(6)(D), due to the City's course of conduct to cause unnecessary delay or needless increases in the cost of the proposed project. This letter serves a notice of the improper conduct per Section 65589.5(h)(6)(D)(i).

Nevertheless, Applicant responds to each item identified in the City Determination, in the order presented by the City:

1. **Section 65912.121(a) – principally permitted uses.** As set forth above, this is an improper new item.

2. **Section 65912.123(a) – housing development project**. As set forth above, this is an improper new item.

3. **Section 65912.121(e) -- surrounded by urban uses.** The City's June 22 letter stated: "Notably parks, open space, and natural areas are omitted from AB 2011's definition of 'urban uses.'" Applicant's August 29 response noted that AB 2243's amendments makes clear that "urban uses" expressly include public parks such as Timothy Hopkins Creekside Park. The City Determination briefly claimed that the Creekside Park is not a park, but pivoted from this head-scratching claim to instead raise new arguments regarding the project's parcel configuration. This alleged basis for inconsistency was not raised in the City's June 22 letter, and is therefore an improper new item.

4. **Section 65912.121(h) – demolition of historic structure.** As set forth above, this is an improper new item. Even if this basis were timely raised by the City, it would not serve as a legal basis for an ineligibility claim because of the vested rights secured by the project's December 7, 2023, submittal of its preliminary application pursuant to Government Code section 65941.1. (See Gov. Code, §§ 65589.5(o)(1),(4); 65912.124(r); 65913.10(a)[2]; 66000(c).)

5. **Section 65912.121(g) – SB 35 criteria.** Please see the attached memoranda from WRA that address the issues raised in the City Determination regarding the absence of wetlands or protected species on the development site.

6. **Section 65912.122(d) – bedroom and bathroom ratio.** As set forth above, this is an improper new item.

7. **Section 65912.122(d) – BMR distribution.** As set forth above, this is an improper new item.

8. **Section 65912.123(b) – density calculation.** In its June 22 letter, the City claimed that the project did not meet a maximum 40 du/ac imposed by this Section. In its August 29 response, Applicant explained that AB 1893 provides 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).) Having lost that argument, the City Determination now raises a *new* argument that the project is not a builder's remedy project and that the AB 1893 provision above therefore does not apply. This gamesmanship is wholly improper.

9. **Section 65912.123(c) – height limit.** The City now recognizes that Applicant may use a height waiver pursuant to the State Density Bonus Law (SDBL) to exceed the otherwise-applicable building height limits. The City Determination now simply states that because the application "does not yet include a single, enumerated list identifying proposed incentives, concessions, or waivers," the "City is unable to make a determination about SDBL applicability at this time." There is no statutory requirement to provide such a "single list" at this juncture, nor is the absence of one a legitimate basis for an inconsistency finding. Moreover, providing a list would have no bearing on the applicability of an SDBL development standard waiver,

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[2] "For purposes of any state or local law, ordinance, or regulation that requires the city or county to determine whether the site of a proposed housing development project is a historic site, the city or county shall make that determination at the time the application for the housing development project is deemed complete."

which are unlimited and must be granted absent a finding of a specific, adverse impact on the public health or safety.

10. **Section 65912.123(d)(1)(B) – parking setback.** As set forth above, this is an improper new item.

11. **Section 65912.123(d)(1)(C) – street frontage.** As set forth above, this is an improper new item.

Very truly yours,

David H. Blackwell

cc: Oisin Heneghan
Bentley Regehr, HCD
Nira Doherty, City Attorney