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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

WILLOW PROJECT LLC, Petitioner, v. CITY OF MENLO PARK, CITY COUNCIL OF THE CITY OF MENLO PARK, COMMUNITY DEVELOPMENT DEPARTMENT OF THE CITY OF MENLO PARK, DOES 1–20, Respondents.	Case No. _____ **VERIFIED PETITION FOR WRIT OF MANDATE, WRIT OF PROHIBITION, AND DAMAGES** [Code Civ. Proc., §§ 1085, 1094.5, 1095, 1094.9, 1103; Gov. Code §§ 65589.5, 65912.100–65912.140, 65914.2, 65915] **ATTENTION: THIS MATTER IS ENTITLED TO PRIORITY AND SUBJECT TO THE EXPEDITED HEARING AND REVIEW PROCEDURES CONTAINED IN SECTION 1094.9 OF THE CODE OF CIVIL PROCEDURE**

Petitioner Willow Project LLC ("Petitioner") files this Verified Petition for Writ of Mandate, Writ of Prohibition, and Damages ("Petition") and alleges as follows:

INTRODUCTION

1. "California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." (Gov. Code, § 65589.5(a)(2)(A).) "The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing." (Gov. Code, § 65589.5(a)(1)(B).) "Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects." (Gov. Code, § 65589.5(a)(1)(D).)

2. To address this statewide problem, the Legislature has enacted a number of housing reform laws within the Planning and Zoning Law (Gov. Code, §§ 65000–66499.58) that constrain the ability of local governments to block various kinds of qualifying housing projects.

3. This case involves Petitioner's proposed Willow Park Project ("Project"), a mixed-use development that would add 665 residential units—including 100 units affordable to low-income households—in a mixed-use neighborhood of Respondent City of Menlo Park ("City").

4. Due to the interplay between several state housing reform laws, the Project is considered a use by right and qualifies for streamlined, ministerial review—in other words, the City is not permitted to say no to the Project. Yet over the course of nearly three years, the City has repeatedly refused to comply with state housing reform laws with respect to the Project, drawing admonishments from the California Department of Housing and Community Development ("HCD") and the California Attorney General.

5. The City's refusal to comply with applicable state housing reform laws and approve the Project has forced Petitioner to file this lawsuit.

PARTIES

6. Petitioner is, and at all times relevant to this action was, a limited liability company organized and existing under the laws of the State of Delaware and authorized to transact business in the State of California. Petitioner is, and at all times relevant to this action was, the fee owner of the real property located at 80 Willow Road in the City ("Property"). Petitioner is, and at all times relevant to this action was, the developer of the Project.

7. The City is, and at all times relevant to this action was, a municipal corporation and general law city incorporated in the State of California.

8. Respondent City Council of the City of Menlo Park ("City Council") is, and at all times relevant to this action was, the legislative body of the City.

9. Respondent Community Development Department of the City of Menlo Park ("Department") is, and at all times relevant to this action was, a department within the City that is responsible for administering the Planning and Zoning Law and the City's Zoning Ordinance.

10. Petitioner does not know the identities of Does 1 through 20 and therefore sues these respondents by these fictitious names. Petitioner is informed and believes, and on that basis alleges, that Does 1 through 20 are in some manner responsible for the acts or omissions alleged in this Petition. Petitioner will amend this Petition to identify each such person or entity as a respondent if and when Petitioner ascertains the identity, interest, and capacity of any such person or entity.

11. Petitioner is informed and believes, and on that basis alleges, that each of the City, the City Council, the Department, and Does 1 through 20 (collectively, "Respondents") is, and at all times relevant to this action was, an agent or employee of each and all of the other Respondents, and its acts or omissions alleged in this Petition were within the scope of such agency or employment.

JURISDICTION AND VENUE

12. The Superior Court of the State of California for the County of San Mateo ("Court") has original jurisdiction in this action pursuant to Article VI, Section 10 of the California Constitution; Code of Civil Procedure sections 1085, 1094.5, 1094.9, and 1103;

Government Code sections 65589.5(k)(1)(A)(i), 65915(d)(3), and 65915(e)(1); and other applicable laws.

13. Venue for this action is proper in this Court pursuant to Code of Civil Procedure sections 392(a)(1), 393(b), 394(a), and 395(a) because Respondents are public entities and public officers, Respondents are situated in and reside in the County of San Mateo, the Property is located in the County of San Mateo, Respondents' acts or omissions complained of occurred in the County of San Mateo, and the causes of action alleged in this Petition arose in the County of San Mateo.

LEGAL BACKGROUND

Housing Element Law

14. All cities and counties must include in their general plan a housing element meeting the requirements of the Housing Element Law (Gov. Code, §§ 65580–65589.11). (Gov. Code, § 65302(c).)

15. Local governments must review and revise their housing elements periodically, on a "planning period" schedule as specified in the Housing Element Law. (Gov. Code, § 65588.)

The Housing Accountability Act

16. The Legislature enacted the Housing Accountability Act (Gov. Code, § 65589.5) "to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." (Gov. Code, § 65589.5(a)(2)(K).)

17. The Housing Accountability Act should "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code, § 65589.5(a)(2)(L).)

18. The Housing Accountability Act provides that if a housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, the local agency can disapprove the project only if it finds that (a) the project would have a

"specific, adverse impact upon the public health or safety" and (b) the only feasible method to satisfactorily mitigate or avoid that adverse impact is disapproval or lowering the density of the project. (Gov. Code, § 65589.5(j)(1).)

19. The Housing Accountability Act also provides that if a housing development project includes specified amounts of affordable housing, the local agency may disapprove the project only in limited circumstances. (Gov. Code, § 65589.5(d).) One such circumstance is if (a) the local government had adopted a revised housing element that was in substantial compliance with the Housing Element Law on the date the application for the project was deemed complete and (b) the project is inconsistent with both the zoning ordinance and general plan land use designation. (Gov. Code, § 65589.5(d)(5).) Thus, if a local government has *not* adopted a revised housing element that is in substantial compliance with the Housing Element Law on the date the application was deemed complete, the local government *cannot* disapprove the project based on its inconsistency with either the zoning ordinance or the general plan land use designation. This is known as the "builder's remedy."

20. The Housing Accountability Act broadly defines what constitutes a local agency's disapproval of a housing development project, including when a local agency "[f]ails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action" or "[f]ails to make a determination of whether the project is exempt from the California Environmental Quality Act [('CEQA') (Pub. Resources Code, §§ 21000–21189.91)] or commits an abuse of discretion" if certain requirements are met. (Gov. Code, § 65589.5(h)(6)(E), (J).)

21. Under a provision of the Housing Accountability Act added by Senate Bill ("SB") 330 (2019), a housing development project "shall be subject only to the ordinances, policies, and standards adopted and in effect" on the date that a "preliminary application" meeting specified requirements was submitted to a local agency. (Gov. Code, § 65589.5(o)(1).) "'[O]rdinances, policies, and standards' include[] 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, as defined in [Government Code] Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions." (Gov. Code, § 65589.5(o)(4).) Provisions of the Housing Accountability Act based on the date an application is "deemed complete" apply to the date a complete preliminary application was submitted. (Gov. Code, § 65589.5(h)(5).)

22. Assembly Bill ("AB") 1893 (2024) amended the Housing Accountability Act to, among other things, provide that "[f]or a housing development project application that is deemed complete before January 1, 2025, the development proponent for the project may choose to be subject to the provisions of this section that were in place on the date the preliminary application was submitted, or, if the project meets the definition of a builder's remedy project, it may choose to be subject to any or all of the provisions of this section applicable as of January 1, 2025." (Gov. Code, § 65589.5(f)(7)(A).)

23. The definition of a "housing development project" in the Housing Accountability Act was amended by SB 838 (2025), effective January 1, 2026, to, *inter alia*, exclude hotels from the definition.

24. If a court finds that a local agency has failed to comply with its order or judgment compelling compliance with the Housing Accountability Act, the court must impose fines on the local agency in a minimum amount of $10,000 per housing unit in the housing development project on the date the application was deemed complete. (Gov. Code, § 65589.5(k)(1)(B).) If the court finds that the local agency acted in bad faith when it violated the Housing Accountability Act and failed to carry out the court's order or judgment within the time period prescribed by the court, the court must multiply this fine by a factor of five. (Gov. Code, § 65589.5(*l*).) If the court previously found that the local agency violated the Housing Accountability Act within the same planning period, the court must multiply the fines by an additional factor for each previous violation. (*Id.*)

The Density Bonus Law

25. The Density Bonus Law (Gov. Code, §§ 65915–65918) allows housing development projects that include specified amounts of affordable housing to receive a specified

number of incentives or concessions and unlimited waivers or reductions of development standards. (Gov. Code, § 65915(d), (e).) The local agency must grant requested incentives or concessions and waivers or reductions of development standards unless it makes specified findings. (*Id.*)

The Affordable Housing and High Road Jobs Act

26. The Affordable Housing and High Road Jobs Act (Gov. Code, §§ 65912.100–65912.140) was added by AB 2011 (2022) and has since been amended several times. This law provides that housing development projects that meet specified requirements (including a specified amount of affordable housing) "shall be a use by right" and "shall be subject to a streamlined, ministerial review." (Gov. Code, § 65912.120.) As a "use by right," the project is not subject to any discretionary local government approval, permit, or review process, and is not a "project" subject to CEQA. (Gov. Code, § 65912.101(y).)

27. As presently amended, the Affordable Housing and High Road Jobs Act provides that when a local government reviews a housing development application for consistency with the standards in that law, it must provide the applicant a written <u>exhaustive list</u> of any standards that the project conflicts with, and an explanation for the reasons of such conflicts, within specified timeframes. (Gov. Code, § 65912.124(a)(2)(A).) If the local government does not provide this required documentation, the project "shall be deemed to satisfy the objective planning standards." (Gov. Code, § 65912.124(a)(4).) <u>In any subsequent review, "the local government shall not request the development proponent to provide any new information that was not stated in the initial list of items that were determined to be in conflict."</u> (Gov. Code, § 65912.124(a)(2)(B).) (Underlined provisions in this paragraph were added by AB 2243 (2024), effective January 1, 2025.)

28. If a housing development project application is submitted before December 31, 2024, the project is subject to the provisions of the Affordable Housing and High Road Jobs Act that were applicable on December 31, 2024, unless the development proponent chooses to be subject to any of the provisions as applicable on January 1, 2025. (Gov. Code, § 65912.106.)

AB 712

29. AB 712 (2025), codified at Government Code section 65914.2, provides that if an applicant for a housing development project is the prevailing party in an action brought against a public agency to enforce the agency's compliance with a state housing reform law as applied to the applicant's project, and specified conditions are satisfied, the court must impose a fine of *at least* $10,000 per housing unit. (Gov. Code, § 65914.2(b)(2)(A)(i).) An applicant is not required to present a claim pursuant to the Government Claims Act in order to seek the fine referenced herein. (Gov. Code, § 65914.2(b)(2)(B).) If a court has previously found that the local agency violated the same housing reform law on which an applicant prevailed in its lawsuit, within the same planning period, the court must impose a fine of at least $50,000 per housing unit. (Gov. Code, § 65914.2(b)(2)(A)(ii).)

30. AB 712 also prohibits public agencies from requiring housing development project applicants to indemnify the public agency with respect to an action alleging that the public agency violated the applicant's rights or deprived the applicant of the benefits or protections provided by a housing reform law. (Gov. Code, § 65914.2(c).)

SB 808

31. SB 808 (2025), codified at Code of Civil Procedure section 1094.9, establishes special procedures for expedited judicial review of a local agency's denial of entitlements for a housing development project. These expedited procedures include the following: "The clerk of the court shall set a hearing for review of the petition for writ of mandate no later than 45 calendar days from the date the petition is filed." (Code Civ. Proc., § 1094.9(d)(5).) "Following the conclusion of the hearing, the court shall render its decision in an expeditious manner. In no event shall the decision be rendered later than 30 calendar days after the matter is submitted or 75 calendar days after the date the petition is filed . . . whichever is earlier." (Code Civ. Proc., § 1094.9(d)(6).)

GENERAL ALLEGATIONS

32. The Project would demolish an existing single-story commercial office building on the Property and construct four new buildings, including 665 residential units (of which 15

percent, or 100 units, would be restricted as affordable to low-income households), office and retail space, a hotel with 130 rooms, a preschool and playground, a swim and fitness club, and an outdoor common area.

33. On or about December 7, 2023, Petitioner submitted to the Department a complete preliminary application for the Project.

34. On December 22, 2023, the Department acknowledged that the Project's preliminary application included all items required to be submitted pursuant to Government Code section 65941.1(a). Therefore, the Project "shall be subject only to the ordinances, policies, and standards adopted and in effect" as of December 7, 2023. (Gov. Code, § 65589.5(o)(1).)

35. At the time Petitioner submitted a complete preliminary application for the Project on December 7, 2023, the City had not adopted a revised housing element that was in substantial compliance with the Housing Element Law. Therefore, the Project is subject to the builder's remedy. HCD certified that the City's Housing Element was substantially compliant with state law on or around March 20, 2024.

36. On May 24, 2024, Petitioner submitted to the Department a full development application for the Project pursuant to Government Code section 65941.1(e)(1). Petitioner noted in the application that the Project was subject to the builder's remedy under the Housing Accountability Act and was a use by right and subject to streamlined, ministerial review under the Affordable Housing and High Road Jobs Act.

37. On June 22, 2024, the Department sent Petitioner a letter asserting that the Project did not meet certain site criteria and objective development standards in the Affordable Housing and High Road Jobs Act and, therefore, was not subject to streamlined, ministerial review under that law.

38. Also on June 22, 2024, the Department sent Petitioner a separate letter asserting that the Project's development application was incomplete. The Department asserted that the application was incomplete in part because Petitioner had not applied for a general plan amendment or zoning amendment, despite the fact that the builder's remedy precluded such a requirement.

39. On July 15, 2024, Petitioner submitted a request for technical assistance to HCD regarding the Department's refusal to accept the Project's development application as complete without submittal of a General Plan amendment and zoning amendment.

40. On September 12, 2024, Petitioner resubmitted the Project's development application to address the items that the Department had identified as missing in its June 22, 2024, incompleteness letter.

41. On October 11, 2024, the Department sent Petitioner a letter again asserting that the Project's development application was incomplete.

42. On October 16, 2024, Petitioner resubmitted the Project's development application to address the items that the Department had identified as missing in its October 11, 2024, incompleteness letter.

43. On November 14, 2024, the Department sent Petitioner a letter with its determination that the Project's development application was complete.

44. On November 26, 2024, HCD sent a Letter of Technical Assistance to the City explaining that because the Project was subject to the builder's remedy, the Housing Accountability Act prohibited the City from requiring Petitioner to apply for an amendment to the City's General Plan. The Letter of Technical Assistance further explained that even if a General Plan amendment were permitted under the Housing Accountability Act, the Permit Streamlining Act would also prohibit the City from using the absence of a General Plan amendment application as a basis for determining that the Project's development application was incomplete because that item was not explicitly required on the City's application submittal requirement checklist.

45. On December 20, 2024, the Department responded to HCD's Letter of Technical Assistance, asserting that the issue was moot because the Department had already determined that it would no longer require Petitioner to apply for General Plan or zoning amendment applications as requirements for finding the Project's development application to be complete.

46. On January 13, 2025, the Department sent Petitioner a 46-page letter asserting that the Project was inconsistent with various development standards. This letter asserted again that the Project was inconsistent with the City's General Plan and zoning (despite the Project's being

subject to the builder's remedy under the Housing Accountability Act) and with development standards that were adopted after the Project's complete preliminary application was submitted on December 7, 2023 (despite the Project's being vested in the development standards in effect on that date under the Housing Accountability Act).

47. Petitioner provided additional information regarding the Project's development application on March 7, 2025, and March 19, 2025. Petitioner made minor revisions to the Project's application to address the development standard inconsistencies that the Department had previously identified. Petitioner also identified concessions and waivers under the Density Bonus Law to the extent the Project remained inconsistent with any applicable development standards. Petitioner reminded the Department that under the Housing Accountability Act, the City could not enforce any purported inconsistencies with the City's General Plan and zoning because the Project was subject to the builder's remedy, nor could the City enforce any purported inconsistencies with development standards that were adopted after the Project's complete preliminary application was submitted on December 7, 2023, because the Project was vested in the development standards in effect on that date.

48. On May 6, 2025, the Department sent Petitioner a letter again asserting that the Project was inconsistent with various development standards.

49. On October 10, 2025, Petitioner responded to the Department's June 22, 2024, letter that had asserted the Project did not meet the requirements for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act. Petitioner's response letter addressed each of the Department's asserted grounds for ineligibility and explained why the Project was a use by right and eligible for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act.

50. The Department responded to Petitioner on November 7, 2025, again asserting that the Project was not eligible for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act. Nearly every basis of ineligibility that the Department asserted in this letter was a new item that the Department had not previously identified in its June 22, 2024, letter.

51. Also on November 7, 2025, the Department sent Petitioner another letter asserting

that the Project was inconsistent with various development standards.

52. On November 19, 2025, Petitioner sent a letter to the Department responding to the Department's November 7, 2025, letter regarding the Project's eligibility for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act. Petitioner pointed out that nearly every basis of ineligibility that the Department had asserted in its letter on November 7, 2025, was a new issue that it was prohibited from raising. Petitioner also provided additional information from an environmental consultant to demonstrate that the Project met the site development criteria related to wetlands and protected species habitat. Finally, Petitioner notified the Department that its letter was a written notice pursuant to the Housing Accountability Act (specifically, Government Code section 65589.5(h)(6)) that the City had effectively denied the Project because the City's course of conduct had been undertaken for an improper purpose and the City had failed to make a determination that the Project was exempt from CEQA and had committed an abuse of discretion.

53. The Department responded to Petitioner on December 18, 2025, again asserting that the Project did not meet the criteria for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act. The Department disputed that it was prohibited from identifying new bases of ineligibility that it had not asserted in its June 22, 2024, letter.

54. On December 24, 2025, Petitioner responded to the Department, again explaining why the Project qualified for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act.

55. On January 16, 2026, Petitioner sent to the Department a letter identifying all of the concessions and waivers that it had previously requested under the Density Bonus Law. Although not required by the law, Petitioner provided this letter in response to the City's request for a "single, enumerated list" of all requested concessions and waivers. Petitioner's letter reminded the Department that the purportedly inconsistent development standards did not apply to the Project because the Project was subject to the builder's remedy. Petitioner's letter stated, among other things, that (a) this list was complete to the best of Petitioner's knowledge based on the correspondence to date, and (b) Petitioner reserved the right to seek additional concessions

and waivers under the Density Bonus Law if the City identified other purported inconsistencies with development standards. Petitioner requested the Department to advise Petitioner if the Department determined that Petitioner had omitted any items that the Department identified as a required concession or waiver; thereafter, the Department did not inform Petitioner of any omitted items. Petitioner's letter identified the following development standards for which it sought a waiver (reserving its right to categorize the first two items as concessions if necessary):

a. Number and size of below market rate units (City's Below Market Rate Housing Program Guidelines, § 5.1).

b. Below market rate unit distribution and appearance (City's Below Market Rate Housing Program Guidelines, § 5.1).

c. Minimum lot depth (City Code, § 16.30.030(2)).

d. Minimum lot width (City Code, § 16.30.030(2)).

e. Minimum yard depth (City Code, § 16.30.030(3)).

f. Maximum lot coverage (City Code, § 16.30.030(4)).

g. Maximum structure height (City Code, § 16.30.030(5)).

h. Maximum floor area ratio (City Code, § 16.30.030(7)).

56. On January 22, 2026, the Department responded to Petitioner regarding the Project's eligibility for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act. The Department continued to assert that the Project was ineligible for streamlined, ministerial review, based entirely on new reasons that the Department had not identified in its original June 22, 2024, letter.

57. On February 10, 2026, the Department responded to Petitioner's November 19, 2025, letter, disputing that the City was deemed to have disapproved the Project under the Housing Accountability Act. The Department also asserted that the Project was no longer a "housing development project" under the Housing Accountability Act because SB 838's recent amendment to the statutory definition excluded projects with a hotel.

58. On February 12, 2026, the Department sent Petitioner a letter in which it continued to assert that the Project was inconsistent with various development standards. The Department

also asserted that the Project did not qualify for the builder's remedy because the Project was no longer a "housing development project" under the Housing Accountability Act as recently amended by SB 838.

59. On February 12, 2026, Petitioner transmitted to the Department a letter from the Project's architect, SCB, that disputed the Department's prior assertions that the Project was not a "housing development project" under the current definition in the Housing Accountability Act because Petitioner had elected to be subject to the prior definition, as Petitioner was entitled to do under Government Code section 65589.5(f)(7)(A) because the Project's application was deemed complete before January 1, 2025.

60. On April 6, 2026, Petitioner sent a letter to the Department explaining again why the Project qualified for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act and why the Department had not identified (and could not identify) any lawful reason why the Project was ineligible. Petitioner requested the Department "provide its final comprehensive response" with regard to the Project's eligibility for streamlined, ministerial review.

61. On April 13, 2026, the Department sent Petitioner a letter asserting that the Project was inconsistent with various development standards, and again asserting that the Project was not a "housing development project" under the current definition in the Housing Accountability Act due to its inclusion of a hotel. The Department's letter did not address Petitioner's election (as memorialized in Petitioner's February 12, 2026, letter to the Department) to be subject to the prior definition of "housing development project" under Government Code section 65589.5(f)(7)(A).

62. On May 6, 2026, the Department sent Petitioner its most recent letter asserting that the Project does not qualify for streamlined, ministerial review under the Affordable Housing and High Road Jobs Act based on 10 purported inconsistencies with eligibility criteria.

63. Based on the Department's May 6, 2026, letter, Petitioner is informed and believes, and on that basis alleges, that the Department disputes that the Project satisfies the following eligibility criteria under the Affordable Housing and High Road Jobs Act:

a. The Project is on a site located within a zone where office, retail, or parking is a principally permitted use (*see* Gov. Code, § 65912.121(a)) and, even if not, the Project is deemed to comply with this standard because the City did not timely raise this issue in its initial inconsistency determination letter (Gov. Code, § 65912.124(a)(4)).

b. The Project is a "housing development project" under the Housing Accountability Act (*see* Gov. Code, § 65912.123(a)) and, even if not, the Project is deemed to comply with this standard because the City did not timely raise this issue in its initial inconsistency determination letter (Gov. Code, § 65912.124(a)(4)).

c. The Project is located on a site where at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses (*see* Gov. Code, § 65912.121(e)).

d. The Project is not located on a site that has wetlands or habitat for protected species (*see* Gov. Code, §§ 65912.121(g), 65913.4(a)(6)(C), (J)).

e. The Project is deemed to comply with the requirement that the affordable units have the same bedroom and bathroom count ratio as the market rate units (*see* Gov. Code, § 65912.122(d)) because the City did not timely raise this issue in its initial inconsistency determination letter. (Gov. Code, § 65912.124(a)(4).)

f. The Project is deemed to comply with the requirement that the affordable units be equitably distributed within the Project (*see* Gov. Code, § 65912.122(d)) because the City did not timely raise this issue in its initial inconsistency determination letter. (Gov. Code, § 65912.124(a)(4).)

g. The Project is deemed to comply with residential density standards (*see* Gov. Code, § 65912.123(b)) because it is a builder's remedy project. (Gov. Code, § 65589.5(f)(6)(F)(i).)

h. The Project is entitled to a waiver from height limits (*see* Gov. Code, § 65912.123(c)) under the Density Bonus Law. (Gov. Code, §§ 65912.124(f)(2), 65915(e)(1).)

i. The Project is deemed to comply with the requirement that all parking must

be set back at least 25 feet from any property line that fronts a commercial corridor (*see* Gov. Code, § 65912.123(d)(1)(B)) because the City did not timely raise this issue in its initial inconsistency determination letter. (Gov. Code, § 65912.124(a)(4).)

j. The Project is deemed to comply with the requirement that the ground floors of the Project's buildings must abut within 10 feet of the street for at least 80 percent of the property lines that front a commercial corridor (*see* Gov. Code, § 65912.123(d)(1)(C)) because the City did not timely raise this issue in its initial inconsistency determination letter. (Gov. Code, § 65912.124(a)(4).)

64. On July 29, 2026, the Attorney General sent a letter to the City pursuant to AB 712 to notify the City that its treatment of the Project's development application violated the Housing Accountability Act and the Affordable Housing and High Road Jobs Act, a copy of which is attached hereto as **Exhibit 1** ("AB 712 Letter"). The AB 712 Letter determined, in part, that:

a. "The Office of the Attorney General remains concerned that the City has not handled the application in accordance with the Affordable Housing and High Road Jobs Act of 2022 (the 'Act'). (Gov. Code, §§ 65912.100-65912.140.) As we discussed, records show that the City untimely asserted additional grounds to support its initial determination that the Project was ineligible for streamlined approval under the Act. Because the City cannot change its rationale for finding the Project ineligible for streamlined approval from its initial rationale, and because the City's initial rationale is incorrect, the City's handling of the application for this Project would represent a violation of the Act."

b. "The City's treatment of the Project also violates the Housing Accountability Act (the 'HAA') in two respects. First, the City is failing to afford the Project the protections to which it is entitled under the builder's remedy. (§ 65589.5, subd. (d)(5)-(6).) Second, the City is unlawfully requiring the Project applicant to pay for the City's legal counsel in connection with the City's review of the Project, which goes beyond the limited authority the HAA reserves to local agencies to impose fees on development applicants. (See *id*., subd. (f)(3).)"

c. Each of the City's initial inconsistency findings under Government Code section 65912.123 was without merit, and the City's subsequent inconsistency findings were either without merit or were prohibited new grounds not stated in the City's initial response.

d. Under the Housing Accountability Act and AB 712, the City cannot require Petitioner to pay the City's attorney fees related to the Project's development application.

65. On August 3, 2026, Petitioner sent a letter to the City pursuant to AB 712 to notify the City of its intent to commence this lawsuit to enforce the City's compliance with state housing reform laws. Petitioner also notified the City that its practice of requiring Petitioner to pay the City's legal fees in connection with the Project's development application was unlawful, and that the City was required to refund the approximately $300,000 in legal fees that Petitioner had paid to date. Because Petitioner provided this written notice to the City pursuant to AB 712, in the event that Petitioner is the prevailing party in this action, the Court is *required* to impose a fine in a *minimum* amount of $10,000 per housing unit in the Project as of the date the application was deemed complete—*at least* $6,650,000. (*See* Gov. Code, § 65914.2(b)(2).)

66. On August 5, 2026, Petitioner sent a letter to the City pursuant to SB 808 (specifically, Code of Civil Procedure section 1094.9(d)(2)) to request the City prepare the record of proceedings or administrative record regarding the Project.

67. On September 29, 2026, the City Council met in closed session to discuss potential litigation related to the Project's development application. At the conclusion of that closed session, the City Council reported to the public that it disagreed with the Attorney General's AB 712 Letter and intended to litigate the matter notwithstanding the threat of significant fines and other financial consequences. The Mayor of the City stated that the "City Council is united in its position that the Attorney General has incorrectly directed the City to approve the 80 Willow Road project under the terms of [the Affordable Housing and High Road Jobs Act]," that the City Council "strongly opposes approval of the project under the terms in the [Attorney General's] letter," and that the City would litigate the matter "even if there are financial consequences and service impacts for the City that may be triggered by our effort to vindicate our rights and protect

the Menlo Park community."

68. Respondents have failed, and continue to fail, to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the Project, that effectively disapproves the Project without taking final administrative action, and all the conditions in Government Code section 65589.5(h)(6)(E) are met; this constitutes an ongoing violation of applicable housing reform laws.

69. Respondents have failed to make a determination of whether the Project is exempt from CEQA and committed an abuse of discretion, as defined in Government Code section 65589.5.1(b), and all the conditions in Government Code section 65589.5.1(a) are satisfied; this constitutes an ongoing violation of applicable housing reform laws.

70. The Department's letter to Petitioner on May 6, 2026, constitutes a disapproval of the Project under the Housing Accountability Act. (Gov. Code, § 65589.5(h)(6).) The City Council's statement regarding the Project following its meeting in closed session on September 29, 2026, also constitutes a disapproval of the Project under the Housing Accountability Act. (*Id.*)

71. Respondents have acted in bad faith when they violated the Housing Accountability Act, the Affordable Housing and High Road Jobs Act, the Density Bonus Law, AB 712, and other applicable laws as alleged in this Petition.

72. Petitioner has no plain, speedy, and adequate legal remedy other than the relief sought in this Petition.

73. Petitioner has exhausted all available administrative remedies to the extent required by law. To the extent Petitioner has not exhausted any available administrative remedies, it would have been futile to attempt to do so and any such remedies would have been inadequate.

74. Petitioner has satisfied all prerequisites to filing this Petition.

75. This action seeks enforcement of an important right affecting the public interest and will confer a significant benefit on the general public or a large class of persons.

76. This action is subject to the procedures contained in SB 808 because this is an action or proceeding to review Respondents' denial of entitlements for a housing development project and Petitioner has provided the notice described in Code of Civil Procedure section

1094.9(d)(4).

STATUTES OF LIMITATIONS

77. This action is timely under the Housing Accountability Act because this Petition is filed and will be served on Respondents no later than 90 days (plus a 60-day extension under AB 712) from the later of (1) the effective date of a decision of Respondents imposing conditions on, disapproving, or any other final action on the Project, or (2) the expiration of the time periods in Government Code section 65589.5(h)([6])(B). (Gov. Code, §§ 65589.5(m)(1), 65914.2(b)(2)(A)(i)(III).)

78. This action is timely under SB 808 because this Petition is filed and will be served on Respondents no later than 90 days (plus a 60-day extension under AB 712) from the later of (1) the effective date of a decision of Respondents imposing conditions on, disapproving, or any other final action on the Project, (2) the effective date of the denial of a permit for the Project, or (3) any other action by which Respondents disapprove the Project. (Code Civ. Proc., § 1094.9(d)(4); Gov. Code, § 65914.2(b)(2)(A)(i)(III).)

79. This action is timely under AB 712 because this Petition is filed at least 60 days after Petitioner provided notice to the City of its intent to commence this action following the Attorney General's AB 712 Letter to the City advising it that its decision, action, or inaction represents a violation of housing reform law in substantially the same manner as alleged in this Petition. (Gov. Code, § 65914.2(b)(2)(A)(i).)

FIRST CAUSE OF ACTION

(Writ of Mandate and/or Writ of Prohibition: Violation of Housing Accountability Act, Affordable Housing and High Road Jobs Act, and Density Bonus Law)

80. Petitioner realleges and incorporates by reference the allegations set forth in each of the paragraphs above as though set forth fully herein.

81. The Project is a housing development project under the Housing Accountability Act.

82. The Project includes housing for very low, low-, or moderate-income households under the Housing Accountability Act.

83. The Project is a builder's remedy project under the Housing Accountability Act.

84. The Project complies with all applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete.

85. The Project is entitled to incentives or concessions under the Density Bonus Law. (Gov. Code, § 65915(d)(2).) Respondents have not made—and, based on the evidence in the record of proceedings, cannot make—findings required to deny the Project's requested concessions or incentives under the Density Bonus Law (specifically, Government Code section 65915(d)(1)).

86. Under the Density Bonus Law, the Project is entitled to an unlimited number of waivers or reductions of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of Government Code section 65915(b) at the densities or with the concessions or incentives permitted under the Density Bonus Law. (Gov. Code, § 65915(e)(1).) Respondents have not made—and, based on the evidence in the record of proceedings, cannot make—findings required to deny the Project's requested waivers or reductions of development standards under the Density Bonus Law (specifically, Government Code section 65915(e)(1)).

87. The Project is a use by right and is subject to streamlined, ministerial review under the Affordable Housing and High Road Jobs Act because with respect to each requirement in Government Code sections 65912.121, 65912.122, and 65912.123, the Project either (1) satisfies the requirement, (2) is deemed to comply with the requirement because it is a builder's remedy project, (3) is entitled to a concession or waiver from the requirement under the Density Bonus Law, and/or (4) is deemed to satisfy the requirement pursuant to Government Code section 65912.124(a)(4) because Respondents did not timely identify any inconsistency with the requirement. Respondents must approve—but have not approved—the Project within 90 days after the Project is determined to comply with all applicable requirements in the Affordable Housing and High Road Jobs Act. (Gov. Code, § 65912.124(a)(3)(B).)

88. Respondents have not made—and, based on the evidence in the record of

proceedings, cannot make—findings required to disapprove the Project under the Housing Accountability Act (specifically, Government Code sections 65589.5(d) and 65589.5(j)(1)).

89. Respondents have clear, present, and mandatory duties to: (a) comply with the Housing Accountability Act, the Affordable Housing and High Road Jobs Act, the Density Bonus Law, and other applicable laws; (b) grant all of the Project's requested concessions and waivers under the Density Bonus Law; (c) deem the Project a use by right and subject to streamlined, ministerial review under the Affordable Housing and High Road Jobs Act; and (d) approve the Project under the Housing Accountability Act, the Affordable Housing and High Road Jobs Act, the Density Bonus Law, and other applicable laws. Petitioner has a clear, present, and beneficial right to Respondents' performance of these mandatory duties. Respondents have failed to perform these mandatory duties.

90. Respondents' acts or omissions alleged in this Petition violate the Housing Accountability Act, the Affordable Housing and High Road Jobs Act, the Density Bonus Law, and other applicable laws.

91. Respondents' acts or omissions alleged in this Petition were without or in excess of their jurisdiction.

92. Respondents' acts or omissions alleged in this Petition constitute a prejudicial abuse of discretion in that they were arbitrary, capricious, without evidentiary support, and failed to conform to procedures required by law.

93. Respondents' acts or omissions alleged in this Petition constitute a prejudicial abuse of discretion in that Respondents did not proceed in the manner required by law, Respondents' actions are not supported by legally adequate findings, and any alleged findings are not supported by the evidence.

SECOND CAUSE OF ACTION

(Writ of Mandate, Writ of Prohibition, and/or Damages: Violation of Housing Accountability Act and AB 712)

94. Petitioner realleges and incorporates by reference the allegations set forth in each of the paragraphs above as though set forth fully herein.

95. Respondents have a clear, present, and mandatory duty to comply with the Housing Accountability Act and AB 712. Petitioner has a clear, present, and beneficial right to Respondents' performance of this mandatory duty. Respondents have failed to perform this mandatory duty.

96. Respondents have required Petitioner to reimburse the City's legal fees in connection with the Project's development application.

97. To date, Petitioner has paid the City approximately $302,938.00 to reimburse the City for its legal fees in connection with the Project's development application.

98. Petitioner's August 3, 2026, letter requesting a refund of the City's legal fees that Respondents required Petitioner to pay constituted a claim for money or damages under the Government Claims Act (Gov. Code, §§ 900 *et seq.*). To the extent it did not, Petitioner submitted an additional claim to the City under the Government Claims Act on October 1, 2026.

99. Respondents have not responded to Petitioner's August 3, 2026, request for a refund or Petitioner's October 1, 2026, claim.

100. Respondents have not refunded to Petitioner the City's legal fees that Respondents have required Petitioner to pay.

101. Petitioner is informed and believes, and on that basis alleges, that Respondents intend to continue to require Petitioner to reimburse the City's legal fees in connection with the Project's development application.

102. Under the Housing Accountability Act, Respondents cannot require Petitioner to reimburse the City's legal fees in connection with the Project's development application because no objective standard requiring payment of such fees was in effect on the date that the Project's complete preliminary application was submitted.

103. The Mitigation Fee Act (Gov. Code, §§ 66001 *et seq.*) does not permit the City to assess fees for legal services incurred in reviewing project applications for consistency with state housing laws.

104. AB 712 also prohibits Respondents from requiring Petitioner to reimburse the City's legal fees in connection with the Project. The City Council's statement following its

meeting in closed session on September 29, 2026, makes clear that the City has required Petitioner to reimburse the City for legal services that have been procured in anticipation of this litigation, in which Petitioner alleges that Respondents have violated Petitioner's rights or deprived Petitioner of the benefits or protections provided by a housing reform law. By requiring Petitioner to reimburse these legal fees, Respondents have required Petitioner "to indemnify, defend, or hold harmless [the City] in any manner with respect to [this] action," in violation of AB 712. (Gov. Code, § 65914.2(c)(1).)

105. Petitioner is entitled to a refund of all money that it paid to the City to reimburse the City's legal fees in connection with the Project's development application.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for Judgment as follows:

1. A writ of mandate and/or writ of prohibition pursuant to Code of Civil Procedure sections 1085, 1094.5, and 1103; Government Code sections 65589.5(k)(1)(A)(ii), 65912.120, 65915(d)(3), and 65915(e)(1); and other applicable laws, ordering Respondents and their agents and employees (a) to comply with the Housing Accountability Act, the Affordable Housing and High Road Jobs Act, the Density Bonus Law, and other applicable laws; (b) to grant all of the Project's requested concessions and waivers under the Density Bonus Law; (c) to deem the Project a use by right and subject to streamlined, ministerial review under the Affordable Housing and High Road Jobs Act; and (d) to approve the Project.

2. A writ of mandate and/or writ of prohibition pursuant to Code of Civil Procedure sections 1085, 1094.5, and 1103; Government Code sections 65589.5(k)(1)(A)(ii) and 65914.2(c); and other applicable laws, (a) prohibiting Respondents and their agents and employees from requiring Petitioner to pay the City's legal fees in connection with the Project's development application, and (b) ordering Respondents and their agents and employees to refund to Petitioner all such legal fees that Petitioner has actually paid to the City.

3. Damages according to proof and prejudgment interest pursuant to Code of Civil Procedure section 1095.

4. Fines pursuant to Government Code sections 65589.5(k)(1)(B), 65589.5(*l*),

65914.2(b)(2), and other provisions of law.

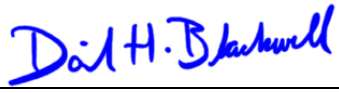
5. Costs of suit pursuant to Code of Civil Procedure sections 1021 and 1032; Government Code sections 65589.5(k)(1)(A)(ii), 65914.2(b)(1), 65915(d)(3), and 65915(e)(1); and other provisions of law.

6. Attorney fees pursuant to Code of Civil Procedure section 1021.5; Government Code sections 800, 65589.5(k)(1)(A)(ii), 65914.2(b)(1), 65915(d)(3), and 65915(e)(1); and other applicable law.

7. Such other relief as the Court deems just and proper.

Dated: October 2, 2026

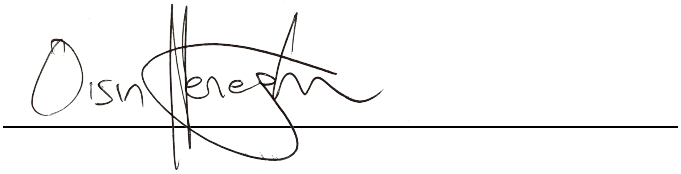
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: 

DAVID H. BLACKWELL
JACOB E. ARONSON
Attorneys for Petitioner
WILLOW PROJECT LLC

VERIFICATION

I, Oisín Heneghan, have read the foregoing Verified Petition for Writ of Mandate, Writ of Prohibition, and Damages, and know its contents. I am an authorized signatory of Willow Project LLC, Petitioner in this action. I am authorized to make this verification for and on behalf of Willow Project LLC, and I make this verification for that reason. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I am informed and believe that they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, on October 1, 2026.