

LAW OFFICE OF MARC CHYTILO,
A PROFESSIONAL CORPORATION

ENVIRONMENTAL LAW

June 8, 2026

VIA EMAIL TO:

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Ms. Barbara Burkhardt
Project Planner
City of Santa Barbara
Community Planning Division
630 Garden Street
Santa Barbara, CA 93101

RE: Comments Concerning the City's Housing Accountability Act – Notice of Environmental Delay for 505 East Los Olivos Street, Govt Code §65589.5(h)(6)(E) and Revised Project Proposed at 505 Los Olivos Street (PLN2024-00299)

Dear Ms. Burkhardt:

We are writing on behalf of our client, Smart Action for Growth & Equity – Santa Barbara (“SAGE”), to provide comments on the revised development application submitted for 505 Los Olivos Street (hereinafter the “Project”) and specifically pursuant to the City’s website notice entitled, “Housing Accountability Act – Notice of Environmental Delay for 505 East Los Olivos Street.”¹ SAGE is a Santa Barbara community-based organization dedicated to promoting safe and equitable housing and development, supporting affordable and workforce housing, and taking action to safeguard a sustainable, resilient and equitable community.

SAGE asserts that the developer’s notice under Government Code Section 65589.5(h)(6)(E) was defective, and submits the following comments in response to this defective notice and generally on the City’s processing of this proposed Project.

SAGE notes that the applicants have materially revised their residential project description at least eight (8) separate times, with changing numbers of units and other substantial amendments to their previously submitted project descriptions. Through these serial changes,

¹ <https://santabarbaraca.gov/notice-environmental-delay-505-los-olivos>

the applicant has caused virtually all of the delays of which they complain. The City found the last of these submittals to qualify as a complete application on July 3, 2025, and on August 29, 2025 issued the City's Consistency Review Letter, addressing that completed Project application. These constantly evolving project descriptions have placed a considerable burden on the public and SAGE as the public seeks to fulfill its responsibilities to participate in environmental and land use decisionmaking affecting the City. Due to the location of the proposed Project, on culturally and historically significant lands between the Santa Barbara Mission, Mission Creek and its designated Critical Habitat for the endangered Steelhead trout, Santa Barbara County's Rocky Nook Park and the Santa Barbara Museum of Natural History, any development project should be expected to face close and careful scrutiny from the City, County and the public. The proposed Project, with numerous design and land use inconsistencies due to its massive size, bulk and height, would similarly face close public scrutiny, regardless of location. Adding them together makes this Project extraordinarily complex from a land use planning and environmental review perspective.

Building on these self-inflicted delays and difficulties, the Applicants further compounded the challenges they and the City face by, after finally achieving the City's determination of completeness in July 2025, adding a new, significant Project component on March 9, 2026, a lot line adjustment of the two Project parcels.

The Applicant's pattern and practice of serial revisions to the project description and associated applications, and repeated failure to recognize, understand and respond to the governing authority, is principally responsible for the pace of the City's processing of this project. Further, the Applicant's disjointed and variable sequencing of a series of project descriptions substantially increased the burden upon the public that is keenly interested in and concerned about this Project, which proposes to install a blight upon a City Landmark that would irrevocably impugn one of the community's character-defining features.

Further, this Project proposes development at a density that exceeds the allowable maximum for a Builders Remedy project, as defined by Gov. Code § 65589.5(h)(11). As such, the Project does not qualify as a Builders Remedy project and is thus not entitled to the dispensations from local General Plan and zoning standards claimed by the Applicant.

In addition, this Project's Preliminary Applications failed to satisfy the objective submittal requirements in Gov. Code § 65941.1, and is null and void. Subsequent actions, including the City's determination of Application completeness, are similarly void.

SAGE has concluded that the Applicant's Notice under Gov. Code § 65589.5(h)(6)(E) is frivolous, unsubstantiated, and utterly without merit. The Applicant made a similar contention, then sought judicial review of the City's response in *The Mission LLC v. City of Santa Barbara*, 25 CV03180. The applicant's comparable contentions were categorically rejected in the resolution of that case. The past is a likely prelude of the future in this regard.

SAGE herein shares its comments on the City's processing of the serially-revised project, and the Applicant's latest correspondence, which was styled in part as an objection under Gov. Code § 65589.5(h)(6)(E). That demand is based on an unsupported contention that the City's April 8, 2026 Consistency Review Letter constituted project denial under Gov. Code § 65589.5, and includes erroneous factual contentions, misstatements and incorrect conclusions of law, and a fundamental failure to respond to the City's numerous advisories and insistence on a grossly inappropriate, highly impactful project that is ill-suited to the proposed site.

I. The Applicant's April 10, 2026 Notice Is Defective, and The City's Actions are Exempt from Being Deemed a "Disapproval" of the Project

On July 3, 2025 the City deemed the much-revised project application was complete, and on August 29, 2025 issued the City's consistency letter. On March 9, 2026 the Applicant submitted a new application for a new lot line adjustment. On April 8, 2026 the City issued a Consistency Review informing the Applicant that the lot line adjustment application was defective and could not be approved under the City's General Plan and zoning ordinance, as required by the Subdivision Map Act. See Gov. Code § 65941.1.

The applicant's lot line adjustment entails a revision of more than 20 percent of the lot and construction footage, and consequently nullifies the completeness determination rendered for an earlier version of the project. Gov. Code § 65941.1(d). The Applicant must begin the application process anew with an application for a zoning-compliant project.

The City must consider public comments concerning the Applicant's notice under Govt Code §65589.5 (h)(6)(E). (Govt Code §65589.5(h)(6)(E)(iii) ["The local agency shall consider all objections, comments, evidence, and concerns about the project or the applicant's written notice." [emphasis added].) In correspondence dated April 10, 2026 to the City from Ben Eilenberg, the agent for Applicant The Mission LLC and emailed from SoCal Industrial Equities (hereinafter "Applicant") referencing the proposed development at 505 Los Olivos Street, and summarily concluded that, based on 4 findings in the consistency review letter, "the City's current position is such that it constitutes a denial of the project under Gov. Code § 65589.5, please institute the administrative review procedures set forth in Gov. Code § 65589.5(h)(6)(E)."

Government Code Section 65589.5(h)(6)(E) provides that a local agency's actions on a project may be deemed a "disapproval" if the local agency, "Fails 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 if all of the following conditions are met: (i) The project applicant provides written notice detailing the challenged conduct and why it constitutes disapproval to the local agency established under Section 65100."

The Applicant's notice is defective in that it did not detail the challenged conduct nor detail in what manner the City's conduct (in identifying the ways that the revised project is inconsistent with applicable objective General Plan and zoning standards and is ineligible for the proposed lot line adjustment) constitutes disapproval, thus violating Government Code Section 65589.5(h)(6)(E)(i). The plain meaning of "detailing" in a notice would include enumerating facts and circumstances relevant to the underlying purpose of the notice, as the plain meaning of "detail" is to "describe item by item; give the full particulars of." (*See Jackpot Harvesting Co., Inc. v. Superior Court* (2018) 26 Cal.App.5th 125, 142 [court looks to plain meaning of statute]; Oxford Languages, English Edition.) A bare or conclusory notice would undermine legislative intent to limit arbitrary and improper disapprovals. The requirement to "detail" the challenged conduct must at least require enough factual specificity to permit the City and public to understand the basis for the alleged "disapproval." Here, the Applicant failed to identify let alone "detail" what conduct by the City was undertaken for an improper purpose. Consistency Review letters are mandated to respond to all comparable applications, including for Builders Remedy projects (although the Project's qualification as a Builders Remedy project as defined under Gov. Code § 65589.5(h)(11) is disputed). The City appears to be following the proscribed course of conduct in its review of the Project.

Additionally, the City's conduct was clearly not undertaken for an improper purpose, but to comply with CEQA and, through the environmental review process, identify, consider, and seek to avoid or mitigate the Project's potentially significant adverse impacts, including impacts to the safety of prospective Project occupants and others that utilize the nearby and connected road network for both routine circulation and emergency ingress and egress. Similarly, the City's conduct was clearly not undertaken for an improper purpose, but to comply with the Subdivision Map Act and its objective standards.

II. The Justification and Need for the Proposed Lot Line Adjustment Is Insufficient

The Applicant's justification and motives for the lot line adjustment request is unclear and may be an effort to game the process. While the Applicant claims the purpose for the lot line adjustment is to "define the boundaries between the developable and non-developable portions of the site" (Eilenberg email p.2) and that this is "a reasonable and common land use planning approach in proximity to watercourses" (id.), there exist numerous other methods to protect riparian lands from development that are more effective at mitigating the impacts of development.

III. The Lot Line Adjustment May Not Be Approved Due to Conflicts with the City's Subdivision Ordinance

The lot line adjustment application was submitted and described in a way that the lot line adjustment plainly conflicted with the City's Subdivision Ordinance, since it proposed to create

an adjusted parcel unable to contain at least one building site. SBMC 27.02.010. This is a distinct standard from General Plan Development Standards or zoning ordinance requirements. Chapter 27 of the Santa Barbara Municipal Code is not a part of the City's zoning ordinance, but separately enacted to ensure the proper division of land as required by the Subdivision Map Act. Approval of the lot line adjustment conflicts with the subdivision ordinance, and the Builders Remedy authority does not allow the City to take actions that violate subdivision standards that are not found in the General Plan and zoning ordinance.

IV. Consideration of The Lot Line Adjustment Is Premature Until Environmental Review Is Completed

The lot line adjustment is premature until the CEQA process is completed. CEQA's environmental review process will ensure that areas of sensitivity on both parcels will be identified, and based on those locations and the nature of sensitive resources, alternatives and mitigation measures may be developed. Premature adjustment of lot lines as proposed will constrain the alternatives and mitigation measures that the environmental review process will consider.

Additionally, the proposed lot line adjustment would create new inconsistencies with objective standards and requirements of the General Plan and zoning ordinance, as evidenced by the City's April 8, 2026 letter. CEQA identifies a project's conflicts with a land use plan, policy, or standard adopted for the protection of the environment as a potentially significant impact. See CEQA Guidelines, XI.b; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930. These conflicts need impact assessment, avoidance and mitigation.

Finally, SMBC 27.40.040 creates the requirement that lot line adjustments conform to the General Plan and applicable zoning ordinance standards. The Project does not, and is subject to denial on that basis.

V. The Preliminary Application Was Defective and the Project Is Not Qualified as a Builders Remedy Project.

The Applicant's Preliminary Application was and is defective, and thus failed to vest the Project application. Gov. Code § 65941.1(a). The Applicant's Preliminary Application fundamentally mis-stated site conditions and failed to include accurate information on several of the 17 mandatory requirements for an adequate Preliminary Application. These mis-statements and omissions include a failure to acknowledge the presence of wetlands, flood areas, the earthquake fault underlying Mission Creek, and the presence of both species of special concern and historical and cultural resources on the site. Providing incorrect site information prevented the Preliminary Application from being deemed submitted under Gov. Code § 65941.1(a).

Gov. Code § 65941.1(e) requires “all of the information required by subdivision (a)” while subdivision (a) only allows a preliminary application to be deemed submitted “upon providing all of the following information”. The applicant’s failure to provide all such information with their preliminary application renders such application incomplete and invalid.

No action by the City can validate a defective Preliminary Application. Gov. Code § 65941.1 places the burden on the Applicant to submit an adequate Preliminary Application and specifies the mandatory submittal information, and the failure to confirm with Gov. Code § 65941.1(a)’s requirements renders the Preliminary Application void and of no effect.

VI. The Project’s Density Exceeds That Allowable as a Builders Remedy Project

This Project does not qualify as a Builders Remedy project. Specifically, the Project proposes development at a density that exceeds the allowable maximum for a Builders Remedy project, as defined by Gov. Code § 65589.5(h)(11). As such, the Project does not qualify as a Builders Remedy project and is thus not entitled to the dispensations from local General Plan and zoning standards claimed by the Applicant.

VII. Conclusion

For the reasons stated above, SAGE requests the City reject the applicant’s conclusory contentions that the City’s orderly land use application review procedures are not a bad-faith delay tactic and properly apply the City’s Subdivision Ordinance to this latest project revision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc Chytilo', with a stylized, flowing script.

Marc Chytilo
Law Office of Marc Chytilo, APC