



**City of Santa Barbara**  
Community Development

**Memorandum**

DATE: April 8, 2024

TO: Building & Fire Code Appeals Board

FROM: Emil Dilanian, Code Compliance Supervisor

SUBJECT: Appeal of Enforcement case ENF2023-00435 at 1811 Castillo St. Santa Barbara, CA 93101.

*Please note: due to the large volume of text and images included in this report's supplemental material, accessibility software capabilities are limited; however, the documents are available for review in the Building and Safety Division. Readers with vision impairment may contact the Board of Appeals Secretary at 805-897-1971 to schedule an appointment for review.*

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**BACKGROUND**

On October 6, 2023, Code Compliance received a Request for Investigation regarding construction inside Mission Creek bed, removal of City/County boulders with a backhoe, pipe and wire removal, trespassing on neighboring property, and stealing boulders that belong to the creek by the property owner at 1811 Castillo Street, Santa Barbara, California 93101, APN: 027-011-009 (hereinafter the "Property").

On October 9, 2023, Code Compliance supervisor Emil Dilanian reviewed the Property's parcel history in the City's permit tracking software and found no associated planning or building permits for the alleged work inside Mission Creek. Enforcement case ENF2023-00435 was created to further investigate the claim. On the same day, October 9, 2023, Code Compliance supervisor Emil Dilanian along with Erin Markey, Project Planner from Sustainability & Resiliency, and Natalie Tease from Creeks Enforcement Division staff, (collectively referred to as "City staff") scheduled a cold call site visit at the Property to walk the Mission Creek bed and attempt to meet the Property owner.

After observing a crawler excavator inside Mission Creek, City staff also observed and documented that boulders and rocks, which were removed from the creek bed, were relocated to a location past the pipe and fence revetment on the side of the Property. (**EXHIBIT A**). The recent alterations of boulders and rocks were evident due to the fresh surface scratches on the boulders and rocks and their positioning on the Property's embankment. City staff then met with Mr. Richard Handler, the Property owner (hereinafter "Mr. Handler"), to explain the reason for our site visit.

Mr. Handler explained he had received approval from the California Department of Fish and Wildlife ("CDFW"), through Environmental Scientist, Sarah Rains via email, to mitigate damage caused by the heavy creek flow experienced earlier that year. He further explained he was following the guidelines from the Governor's Emergency Order ("EO") and removing debris from the creek bed which was covered through CDFW 1610 Emergency process (**EXHIBIT B**). Mr. Handler explained that he had rented heavy equipment and lowered it down into the Mission Creek bed. He also explained that he needed to submit an emergency notification to CDFW within 14 days, which he stated he had done. Mr. Handler also provided us with a copy of his previously approved

permitted plans BLD2009-00918 (scope: 240 sq. ft. interior remodel of bathrooms and laundry. Replace (e) water heater with new; replace (e) FAU with new; upgrade electrical and lighting. No exterior changes), to show the Property line location in relation to the Mission Creek bed, per the surveyed map on the plans. Mr. Handler further explained that his intention was to restore the revetment fence along with the fallen boulders into Mission Creek by welding additional horizontal piping pieces to stiffen the revetment framework and add new V-fencing. This work would involve repositioning of the boulders and rocks behind the fencing, which was approximately 120 feet long. **(EXHIBIT C, plans dated December 26, 2023, provided by Property owners engineer)**

At the above mentioned meeting, it was clarified that a Stop Work Notice would not be issued since a verbal agreement was made between Mr. Handler and Code Compliance supervisor Emil Dilanian for Mr. Handler to discontinue any further work inside Mission Creek until the full scope of work was clarified and a determination was made regarding permit requirements.

Later the same day, on October 9, 2023, Mr. Handler emailed Code Compliance Supervisor Emil Dilanian photos to show the condition of Mission Creek prior to the work starting. **(EXHIBIT D)**

On October 10, 2023, Building & Safety Staff received another complaint regarding work continuing inside Mission Creek. Building inspection staff then visited the site and posted a Stop Work Notice on the crawler excavator which was still parked inside Mission Creek bed. **(EXHIBIT E)**

On February 1, 2024, a Notice of Violation Warning Letter was prepared and emailed to Mr. Handler. **(EXHIBIT F)**

On February 12, 2024, an Appeal Application was filed by Mr. Handler's attorney Mr. Mark Carney, appealing the Notice of Violation Warning Letter to rescind and revoke the Notice of Violation and expunge it from all records in any way related to the Property. **(EXHIBIT G)**

On March 18, 2024, a Retraction of Previous Notice of Violation Warning Letter; Issuance of Revised Notice of Violation Warning Letter was issued to Mr. Handler and his attorney, revising the code sections cited incorrectly on the original Notice of Violation Warning Letter. **(EXHIBIT H)**

On March 28, 2024, a second appeals application was filed by Mr. Handler and his attorney to rescind and revoke the revised Notice of Violation and expunge it from all records in any way related to the Property. **(EXHIBIT I)**

### **APPLICABLE LAW**

The Santa Barbara Municipal Code (SBMC) section 30.140.050, Development Along Mission Creek, establishes the criteria for permit requirements. Below is the applicable code section:

### **30.140.050. Development Along Mission Creek.**

- A. Purpose.** The purpose of this section is to provide controls on development adjacent to the bed of Mission Creek within the City of Santa Barbara. These controls are necessary:
- 1.** To prevent undue damage or destruction of developments by flood waters;
  - 2.** To prevent development on one parcel from causing undue detrimental impact on adjacent or downstream properties in the event of flood waters; and

3. To protect the public health, safety and welfare.
- B. Applicability.** No person may construct, build, or place a development within the area described in Subsection 30.140.050.C, Development Limitation Area, unless said development has been previously approved as provided in Subsection 30.140.050.E, Approval Required. The development must also comply with the City of Santa Barbara's adopted Floodplain Management regulations.
  - C. Development Limitation Area.** The limitations of this section shall apply to all land within the area of the Mission Creek watercourse pursuant to Section **30.15.040**, Determining Area of a Watercourse, and all land located within 25 feet of the top of either bank of Mission Creek within the City of Santa Barbara.
  - D. Development Defined.** Development, for the purposes of this section, shall include any structure requiring a building permit; the construction or placement of a fence, wall, retaining wall, steps, deck (wood, rock, or concrete), or walkway; any grading; or the relocation or removal of stones or other surface which forms a natural creek channel.
  - E. Approval Required.** Prior to construction of a development in the area described in Subsection 30.140.050.C, Development Limitation Area, the property owner shall obtain approvals as follow:
    1. Any development subject to the requirement for a building permit shall be reviewed and approved by the Community Development Director or the Planning Commission on appeal, prior to the issuance of a building permit.
    2. Any development not requiring a building permit shall be reviewed and approved by the Community Development Director, or the Planning Commission on appeal. A description of the development shall be submitted showing the use of intended development, its location, size and manner of construction.

**Development Standards.** No development in the area subject to this section shall be approved unless it is found that it will be consistent with the purposes set forth in Subsection 30.140.050.A, Purpose.

1. The Community Development Director, or the Planning Commission on appeal, shall consider the following in determining whether the development is consistent with Subsection 30.140.050.A, Purpose:
  - a. That the proposed new development, additions, alterations, and improvements, will not significantly reduce existing floodways, realign stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow, and that the proposed new development will be reasonably safe from flow-related erosion and will not cause flow-related erosion hazards or otherwise aggravate existing flow-related erosion hazards.
  - b. That proposed reconstruction of structures damaged by fire, flood or other calamities will comply with Subparagraph 1.a above or be less nonconforming than the original structure and will not adversely affect other properties.
  - c. The report, if any, of a qualified soils engineer or geologist and the recommendations of the Santa Barbara County Flood Control and Water Conservation District.
  - d. Whether denial of approval would cause severe hardship or prohibit the reasonable development and use of the property.
2. The Community Development Director, or the Planning Commission on appeal, may consider the following factors as mitigating possible hazards which might otherwise result from such development:

- a. Where the development is located on a bank of the creek which is sufficiently higher than the opposite bank to place the development outside a flood hazard area.
  - b. Where the creek bed adjacent to the development is sufficiently wide or the creek bank slope sufficiently gradual that the probability of flood hazard is reduced.
  - c. Where approved erosion or flood control facilities or devices have been installed in the creek bed adjacent to the development.
  - d. Where the ground level floor of the development is not used for human occupancy and has no solid walls.
  - e. Where the development is set on pilings so that the first occupied floor lies above the 100-year flood level, and such pilings are designed to minimize turbulence.
3. The Staff Hearing Officer, or the Planning Commission on appeal, may grant a Modification to required Open Yards or setbacks required by the applicable zone, pursuant to Chapter **30.250**, Modifications, in order to enable a structure to comply with the Development Limitation Area in Subsection 30.140.050.C, or to be relocated to a safer or more appropriate location on the lot.

The Santa Barbara Municipal Code (SBMC) section

**BASIS FOR ISSUANCE OF NOTICE OF VIOLATION WARNING LETTER:**

Per the Department of Wildlife Fish and Game, the removal of debris for this project was the only portion of the entire scope of work that the Emergency Order is applicable to, and that other work being performed would require a separate process through their agency and potentially through the city.

The work being performed by the property owner, removal and replacement of rocks and boulders, requires the Property owner to obtain permits from the City of Santa Barbara based on SBMC section 30.140.050 A through E. Additionally, there is no exemption from a building permit to perform such work in SBMC section 22.2.25, R105.2 Work Exempt from a permit.

The project undertaken at the subject Property requires a Planning Permit for environmental review in addition to a building permit which includes proposed improvements. (**EXHIBIT J, Planning Application**) violation.

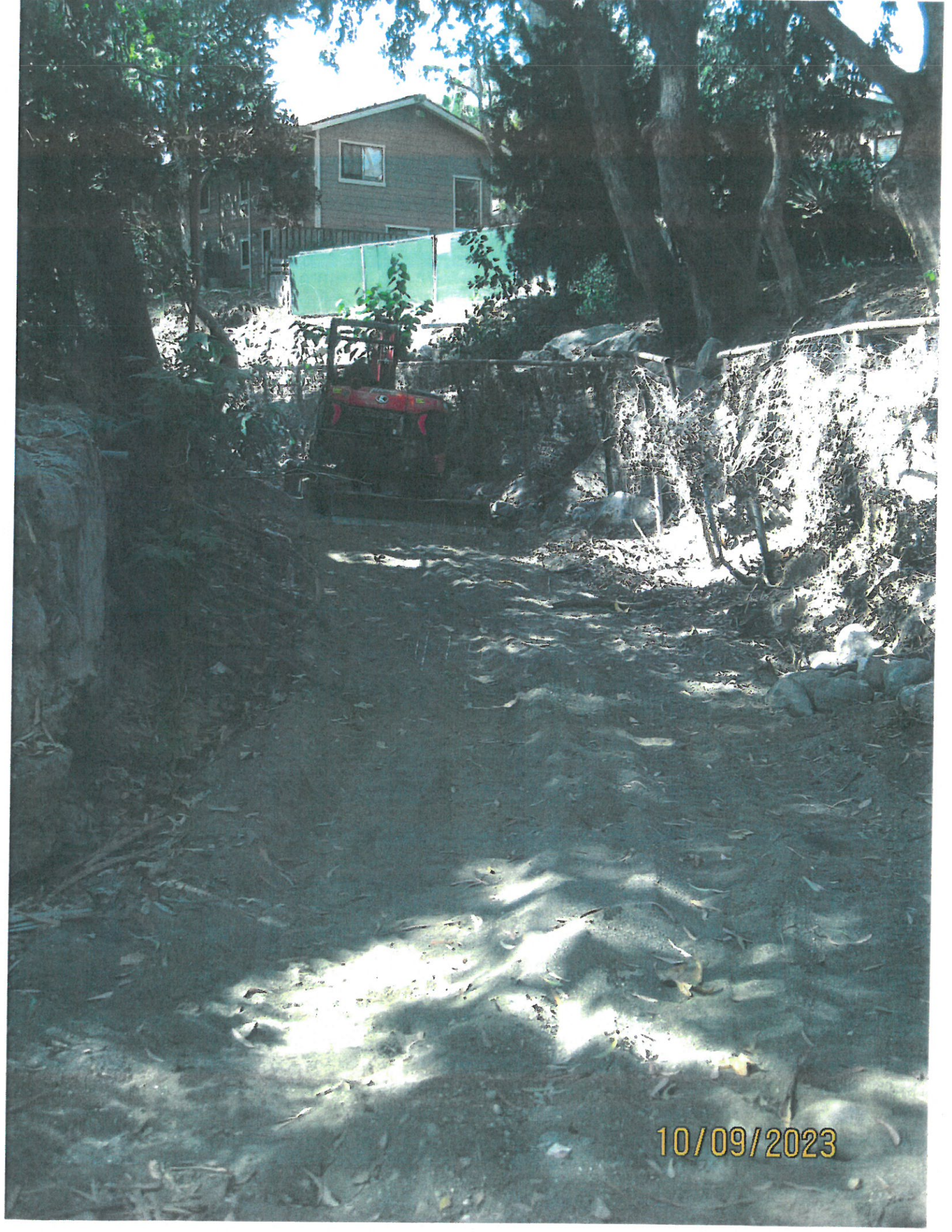
**RECOMMENDATION:**

For the Building and Fire Code Board of Appeals to uphold the Building Official's decision for the issuance of the Notice of Violation dated March 18, 2024, which requires the appellant to abate the by means of obtaining required permits.



**EXHIBIT A**





10/09/2023









10/09/2023





10/09/2023



**EXHIBIT B**

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-10-23**

**WHEREAS** the State has experienced over thirty atmospheric rivers since December 2022, resulting in compounding and cumulative impacts across California, including record or near record amounts of snow in the Sierra Nevada; and

**WHEREAS** on January 4, 2023, I proclaimed a State of Emergency to exist in California as a result of severe winter storms related to an atmospheric river event beginning on December 27, 2022; and

**WHEREAS** on March 1, March 8, March 12, March 14, March 28, April 20, May 15, and June 16, 2023, I proclaimed a State of Emergency to exist in 53 counties, cumulatively, as a result of a series of winter storms that initially struck California beginning in late February and continue to significantly impact the counties identified in my Proclamations; and

**WHEREAS** on April 21, May 10, July 8, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions, and on February 13, 2023, I issued Executive Order N-3-23 and on March 10, 2023, I issued Executive Order N-4-23, to address evolving drought conditions due to the 2022-2023 Winter Storm Events and mitigate flooding by facilitating groundwater recharge; and

**WHEREAS** on March 31, 2023, I issued Executive Order N-6-23 to bolster the emergency response to the 2022-2023 Winter Storm Events, particularly in the Tulare Lake Basin that continues to be affected by historic flooding; and

**WHEREAS** on May 17, 2023, and on June 16, 2023, I issued Executive Order N-7-23 and N-9-23, respectively, to further bolster the emergency response to the 2022-2023 Winter Storm Events, in both the San Joaquin River and the Tulare Lake Basins; and

**WHEREAS** there remains a need for removal of floating vegetation and debris throughout impacted counties, including stretches of the Salinas River mainstem and tributaries, stretches of the Pajaro River mainstream and tributaries, and coastal streams along the Central Coast region from Santa Cruz County to Ventura County, and that removal must expeditiously occur before the next rainy season begins in fall 2023 in order to mitigate the risk of additional flooding and allow for continued recovery efforts; and

**WHEREAS** emergency repairs, debris removal, sediment removal, and vegetation management within waters of the United States are subject to federal approvals from the U.S. Army Corps of Engineers pursuant to section 404 of the federal Clean Water Act (33 U.S.C. § 1344), and the State Water Resources Control Board (Water Board) has previously issued state water quality certifications corresponding to the Corps Regional General Permits 8, 5, or 63 for Repair and Protection Activities in Emergency Situations and the Nationwide Permit 3 for Maintenance Part (a) for repair, rehabilitation, or replacement of structure of fill (collectively Emergency or Repair Corps Orders), which provide a





- f. The project proponent shall keep all repairs and construction to the minimum necessary to alleviate the emergency caused by the 2022- 2023 Winter Storm Events and limited to in-kind replacement or refurbishment of on-site features, although the project may undertake minor upgrading if bioremediation or other environmentally sensitive solutions are used.
  - g. The project proponent shall implement effective best management practices to control erosion and runoff from areas associated with the activity, including access roads. All areas of temporary impacts and all other areas of temporary disturbance that could result in a discharge or a threatened discharge to waters of the U.S. and/or state must be restored. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
  - h. Notification of completion, including representative photos showing completion, shall be submitted to the appropriate Regional Water Board within 30 days of completion of the activity.
5. To support adequate state staffing for all state agencies assigned response and/or recovery role related to the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County), consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. All other restrictions must be adhered to for retired annuitants. The Director of the California Department of Human Resources must be notified of any individual employed in state government pursuant to these suspensions. The suspension of statutes identified in this Paragraph shall also apply to local governments, as applicable, to ensure adequate staffing to appropriately respond to the damage from the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County). Local governmental agencies shall notify the California Public Employees' Retirement System of any individual employed by an agency pursuant to this Paragraph.
6. The limitation for the period of employment for State Personnel Board emergency appointments, as provided in Government Code section 19888.1, is suspended for positions required for emergency response and/or recovery operations related to the 2022-2023 Winter Storm Events in coastal streams including and between the Pajaro River (Santa Cruz/Monterey/San Benito Counties) and the Ventura River (Santa Barbara/Ventura County). The requirements

**EXHIBIT C**









sel # 22-097-civil

**Property Owner:**

Richard Handler  
800 Garden St. Suite H  
Santa Barbara, CA 93101

**REVETMENT  
FENCE REPAIR**

**HANDLER  
RESIDENCE**

**1811 CASTILLO ST  
SANTA BARBARA, CA  
93101**

TITLE

REVISIONS

DATE  
December 26, 2023

SHEET NUMBER

**C-2**

SURVEYORS NOTE

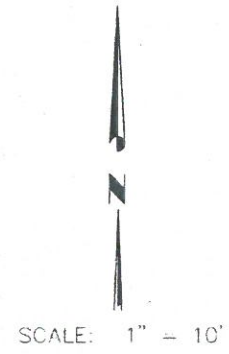
BASE FLOOD ELEVATION (BFE) FOR THIS PARCEL WAS DETERMINED BY THE CITY OF SANTA BARBARA AT AN ELEV. OF 101.4 (NAVD88). FINISHED FLOOR ELEV. OF THE EXISTING BUILDING IS 103.12 (NAVD88).

BASIS OF BEARING

BASIS OF BEARING IS THE WESTERLY RIGHT OF WAY OF CASTILLO ST. AS RECORDED ON PARCEL MAP, BOOK 34, PAGE 95.

BENCH MARK

INITIAL BENCH MARK IS A CITY BOLT AT THE WESTERLY CORNER OF PEDREGOSA ST. AND BATH ST. BM1900 ELEV.=109.53 (NAVD88). LOCAL BENCHMARK IS A CONC. NAIL AT THE WESTERLY CORNER OF CASTILLO ST. AND ISLAY ST. ELEV.= 98.74 (NAVD88).



**EXHIBIT D**

**From:** Emil Dilanian  
**Sent:** Monday, October 9, 2023 1:57 PM  
**To:** richard handler <rlhcpasb@gmail.com>  
**Cc:** Natalie Teaze <nteaze@SantaBarbaraCA.gov>; Erin Markey <emarkey@santabarbaraca.gov>  
**Subject:** RE: 1811castillo

Hi Richard,

It was a pleasure to meet you this afternoon.

We have received all your emails with photos and the communication with Sarah. Thank you for being proactive and responsive.

Natalie Teaze is cc'd here, and she was present towards the end of the meeting today with me. The other lady was Erin Markey who is a project planner with Sustainability and Resiliency division. She is also cc'd here.

Respectfully yours,

**Emil Dilanian, C.B.O., CCEO**  
*Building And Safety Code Compliance Supervisor*  
CITY OF SANTA BARBARA, Community Development  
(805) 897-2567 | [edilanian@SantaBarbaraCA.gov](mailto:edilanian@SantaBarbaraCA.gov)

**The Community Development and Public Works counters at 630 Garden Street are open for walk-in service Monday through Thursday from 8:30AM to 12:00PM.** Online [application submittal and permitting](#), [virtual counter services](#), and the self-service lobby area continue to be available during regular business hours, Monday through Thursday and every other Friday, 8:30AM to 4:30PM. Please visit our websites for additional information.

**Community Development:** [SantaBarbaraCA.gov/CommunityDevelopment](https://SantaBarbaraCA.gov/CommunityDevelopment) | **Public Works:** [SantaBarbaraCA.gov/PublicWorks](https://SantaBarbaraCA.gov/PublicWorks)  
**Virtual Appointment Scheduling Tool:** [SantaBarbaraCA.gov/VirtualAppointment](https://SantaBarbaraCA.gov/VirtualAppointment)

**From:** richard handler <[rlhcpasb@gmail.com](mailto:rlhcpasb@gmail.com)>  
**Sent:** Monday, October 9, 2023 1:32 PM  
**To:** Emil Dilanian <[edilanian@SantaBarbaraCA.gov](mailto:edilanian@SantaBarbaraCA.gov)>  
**Subject:** Fwd: 1811castillo

You don't often get email from [rlhcpasb@gmail.com](mailto:rlhcpasb@gmail.com). [Learn why this is important](#)

**EXTERNAL**

Sent from my iPhone

Begin forwarded message:

**From:** richard handler <[rlhcpasb@gmail.com](mailto:rlhcpasb@gmail.com)>

**Date:** October 9, 2023 at 1:02:03 PM PDT

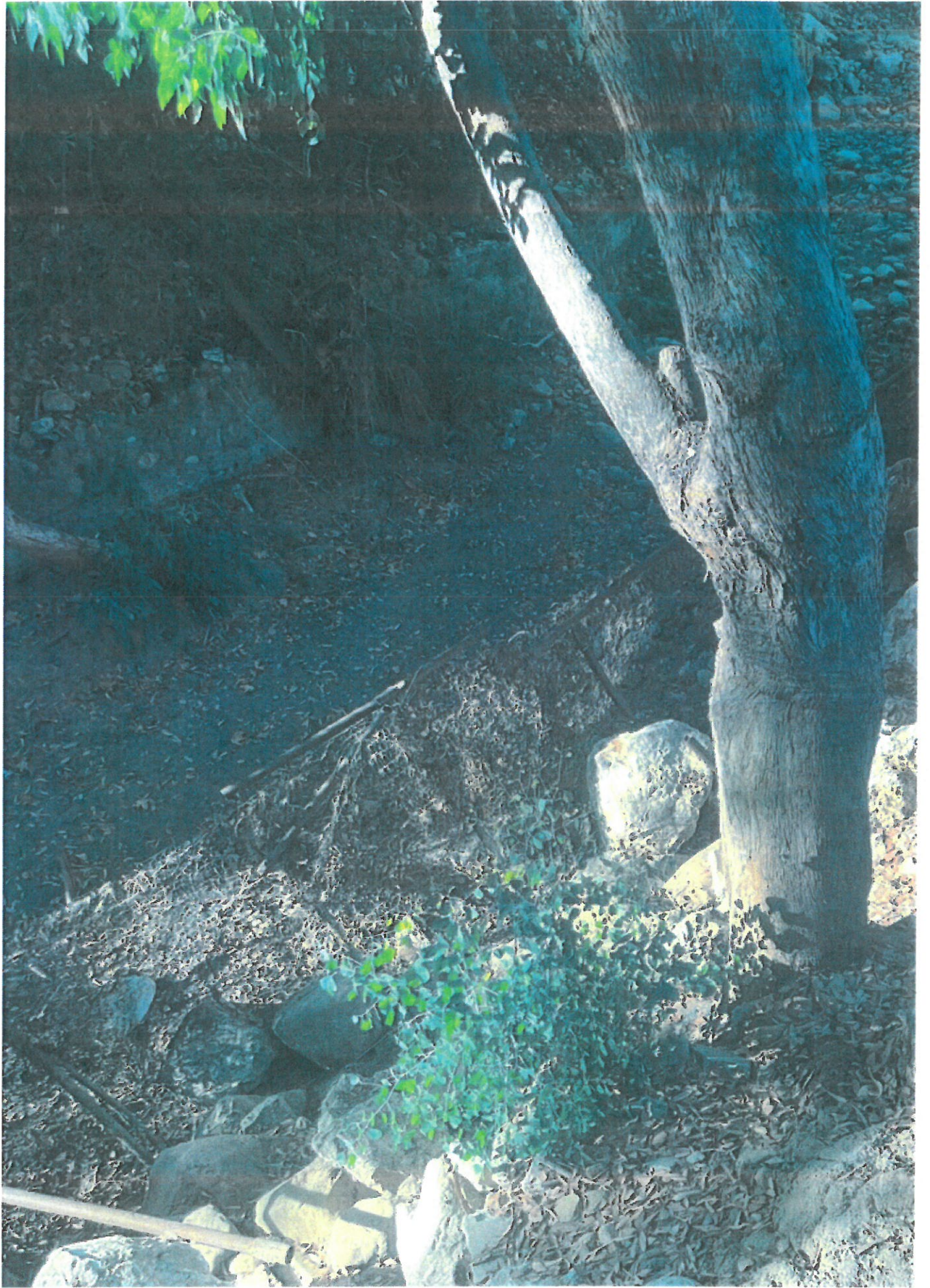
**To:** [edilianian@santabarbaraca.gov](mailto:edilianian@santabarbaraca.gov)

**Subject:** 1811castillo





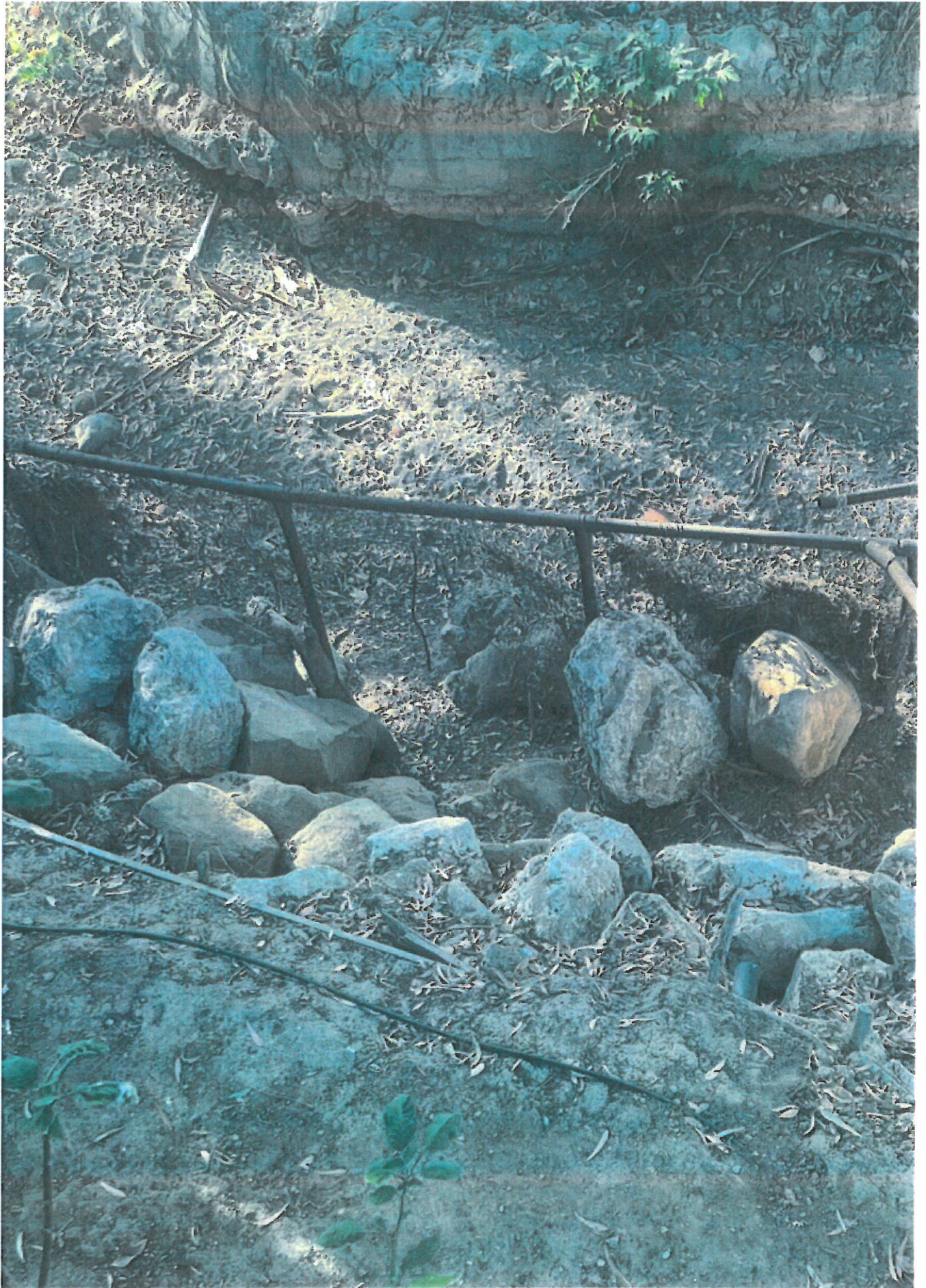




















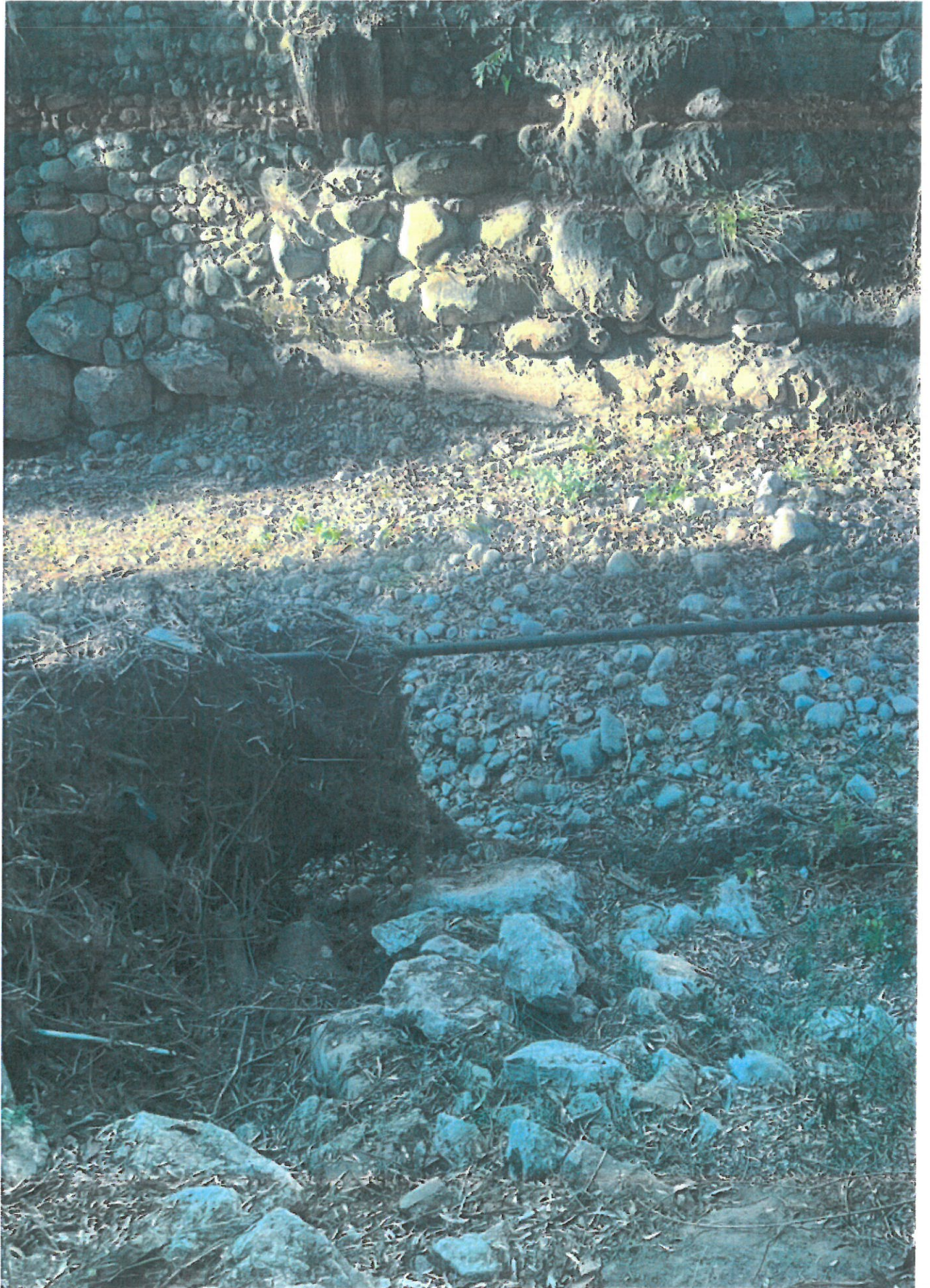


















**EXHIBIT E**



**STOP WORK NOTICE**

*1811 Castillo*

PROJECT NUMBER: *145640*  
DATE ISSUED: *11/15/11*

*Grading - R.R. Water Course*

*All ground disturbance*

*Removal of debris  
without use of equipment*

*Paul Mitchell Paul Mitchell 10/15/11*

313 470 6311













**EXHIBIT F**





## NOTICE OF VIOLATION WARNING LETTER

### BUILDING AND SAFETY

**Director's Office**

Tel: 805.564.5502

Fax: 805.564.5506

**Building & Safety**

Tel: 805.564.5485

Fax: 805.564.5476

**Housing &**

**Redevelopment**

Tel: 805.564.5461

Fax: 805.564.5477

**Planning**

Tel: 805.564.5470

Fax: 805.897.1904

**Rental Housing**

**Mediation Task Force**

Tel: 805.564.5420

Fax: 805.564.5477

630 Garden Street

PO Box 1990

Santa Barbara, CA

93102-1990

2/1/2024

Richard Handler  
1811 Castillo St.  
Santa Barbara, CA 93101

**VIA FIRST CLASS MAIL**

**SUBJECT: 1811 Castillo St. Santa Barbara, Ca 93101**

**APN: 027-011-009**

**ENFORCEMENT CASE NUMBER: ENF2023-00435**

Dear Property Owner/Tenant:

Property records indicate that you are the owner(s) and/or tenants of the above referenced parcel. On 10/9/2023, and 11/27/2023 I, Emil Dilanian, inspected the subject property in response to a complaint received by our office and discovered a/several violation(s) of the Santa Barbara Municipal Code, described below.

The purpose of this notice is to inform you of the violation(s) on the subject property, to give you a reasonable timeframe to abate the violation(s), and to inform you of the consequences of not abating the violation(s) or repeating the violation(s).

#### **DESCRIPTION, REMEDY & FINAL ABATEMENT DATE OF VIOLATION(S):**

Please be advised that the below items are in violation of the Santa Barbara Municipal Code and/or the California Code(s).

1. **Grading and Alterations performed inside Mission Creek bed and surrounding area without approval or a valid permit:**

**Code Violations:** SBMC J103.1 Permits Required, SBMC J103.3 Unpermitted Grading

**Corrective Actions and Abatement Date:** Apply for and obtain a building permit to legalize unpermitted work. Deadline to submit a building permit application and plans **3/1/2024**. Once a building permit is issued, complete all work and obtain an approved final inspection by the City's Building Department

**Violations shall be abated by the dates set for each violation, as shown above:**

Should you find the date to submit a building permit application and plans unreasonable, please contact me to discuss the dates.



### **CONSEQUENCE FOR NOT ABATING BY THE FINAL DATE**

If the violation(s) are not corrected by the Abatement Date(s), the **First Administrative Citation** will be imposed. The amount of the Citation will be **\$100 per violation** that still exists after the abatement date. If the violation(s) continue, additional Administrative Citations will be imposed, with the fine amount increasing to a **maximum of \$250 per violation per day**, for as long as the violation(s) continue, with the possibility of referral to the City Attorney's Office for criminal prosecution.

### **VIOLATION ABATEMENT AND CASE CLOSURE**

Please advise me once you have abated the violation(s). Once we have verified that the violation(s) have been abated, we will close this enforcement case.

### **QUESTIONS & CONCERNS**

The City's intent with enforcement is to achieve compliance with the Municipal Codes and Building Codes. As the Compliance Officer assigned to this case, I would like to assist you in resolving this matter. Please email me at [edilanian@santabarbaraca.gov](mailto:edilanian@santabarbaraca.gov) or call me directly at (805) 897-2567 (between the hours of 8:30 and 4:30 p.m., Monday through Thursday and every other Friday). The city appreciates your cooperation.

Si usted tiene preguntas respecto a la notificación y prefiere hablar con alguien en español, por favor llame la línea de investigaciones al (805) 897-2676 Deje su número de teléfono, la dirección del domicilio respecto a la notificación, el número ENF en la notificación, y un mensaje corto.

### **ADDITIONAL CONTACT INFORMATION**

Our offices are closed every other Friday. Please go to [www.SantaBarbaraCa.gov](http://www.SantaBarbaraCa.gov) for further information [on closure dates](#).

For plan submittal and permit issuance requirements please call (805) 564-5485 between the hours of 7:30 and 4:30 p.m., Monday through Friday (except on closed Fridays). The Community Development public counters are located at 630 Garden Street.

Sincerely,

*Emil Dilanian*

Emil Dilanian  
Code Compliance Supervisor

cc: Current Owner/Tenant  
Address



**For violations that require a building permit, please see below:**

1. Consult with the Planning and Zoning to verify that alterations do not trigger design review of any kind. Contact Planning and Zoning Department by email at [http://www.PlanningCounter@SantaBarbaraCA.gov](mailto:http://www.PlanningCounter@SantaBarbaraCA.gov) or by phone at (805) 564-5578.
2. When approved by the Planning and Zoning to proceed, prepare and submit a complete application for the building permit(s) that are required to legalize the violations found during the inspection. Applications for a building permit can be made online at <http://permits.santabarbaraca.gov/Home>

**Tax Implications**

Pursuant of California Revenue and Taxation Code sections 17274 and 24436.5, the City may forward information regarding you and any other owners of the above-referenced property to the State Franchise Tax Board for violation of State and City laws related to the health, safety, and building if the above listed property constitutes substandard housing. This action will prevent you, any other owners, or subsequent owners from deducting interest, taxes, depreciation, or amortization for the above-referenced property on the state income taxes. In order to prevent this, you must immediately comply with all State and City laws to abate all violations.

**Appeal Rights**

Any party aggrieved by this decision of the City's Chief Building Official including but not limited to decisions or determinations made relative to the application and interpretations of the technical codes, and the refusal, suspension, voiding, or revocation of a license or permit, may appeal such decision to the Building and Fire Code Board of Appeals by obtaining an appeal form on the internet at <http://www.santabarbaraca.gov/services/planning/forms/building.asp> or from the City Building & Safety office. You are required to submit the appeal form within ten (10) days from the date of this notice in order for your appeal to be heard by the Building and Fire Code Board of Appeals. The completed appeal form must be delivered, by hand or postage mail, to the City's Building & Safety office located at 630 Garden St., Santa Barbara, CA 93101. The completed appeal form may also be emailed to [CDBuildingCode@SantaBarbaraCa.gov](mailto:CDBuildingCode@SantaBarbaraCa.gov). For information regarding the appeals process, please refer to Santa Barbara Municipal Code Section 22.04.020 or contact the Community Development Department at (805) 564-5502. For information on the Building and Fire Code Board of Appeals, please visit the following website <http://www.santabarbaraca.gov/gov/brdcomm/ac/bfcba/default.asp>



**EXHIBIT G**





## APPLICATION FOR APPEAL

An appeal is hereby made to Your Honorable Body from the decision of the:

- |  |  |
|--|--|
| <input type="checkbox"/> Architectural Board of Review                     | <input type="checkbox"/> Planning Commission           |
| <input checked="" type="checkbox"/> Building Official / Fire Code Official | <input type="checkbox"/> Parks & Recreation Commission |
| <input type="checkbox"/> Community Development Director                    | <input type="checkbox"/> Sign Committee                |
| <input type="checkbox"/> Floodplain Administrator                          | <input type="checkbox"/> Single Family Design Board    |
| <input type="checkbox"/> Historic Landmarks Commission                     | <input type="checkbox"/> Staff Hearing Officer         |

Which was taken on the 1st day of February, 2024.

I/We, the appellant(s), hereby respectfully request that Your Honorable Body reject the decision and  
 Approve /  Deny the application or permit in question.

### PROPERTY INFORMATION

Project Address: 1811 Castillo Street, Santa Barbara, CA 93101; Enforcement Case ENF2023-00435

### APPELLANT'S INFORMATION – Appealed by Applicant? Yes No

Name: Mark Carney, attorney for Richard Handler Organization (if representing): Reicker Pfau

Address: 1421 State Street, Santa Barbara, CA

ZIP: 93101

Email: rmcарney@rppmh.com

Phone: 805-966-2440

### REASONS FOR APPEAL:

*Explain specifically what actions you are appealing, and attach a copy of the protested notice, if applicable*

Richard Handler, owner of 1811 Castillo Street, is appealing the attached Notice of Violation Warning Letter, dated February 1, 2024, from Emil Dilanian, Code Compliance Supervisor, on behalf of Building and Safety. Mr. Handler is not a current applicant, and there is no application pending, which explains why no box is checked above for the item approve/deny the "application or permit in question" or the question "Appealed by Applicant?"

*Describe the reasons or grounds why you believe the action should be reversed, modified, or otherwise set aside. Include what evidence you have that supports your appeal. You may attach additional pages, if necessary.*

Please see the attached "Background and Grounds for Appeal."

Signature: Mark Carney

Date: 2/12/24





## NOTICE OF VIOLATION WARNING LETTER

### BUILDING AND SAFETY

**Director's Office**

Tel. 805.564.5502  
Fax. 805.564.5506

2/1/2024

**Building & Safety**

Tel. 805.564.5485  
Fax. 805.564.5476

Richard Handler  
1811 Castillo St.  
Santa Barbara, CA 93101

**VIA FIRST CLASS MAIL**

**Housing &**

**Redevelopment**

Tel. 805.564.5461  
Fax. 805.564.5477

**SUBJECT: 1811 Castillo St. Santa Barbara, Ca 93101**  
**APN: 027-011-009**  
**ENFORCEMENT CASE NUMBER: ENF2023-00435**

**Planning**

Tel. 805.564.5470  
Fax. 805.897.1904

Dear Property Owner/Tenant:

Property records indicate that you are the owner(s) and/or tenants of the above referenced parcel. On 10/9/2023, and 11/27/2023 I, Emil Dilanian, inspected the subject property in response to a complaint received by our office and discovered a/several violation(s) of the Santa Barbara Municipal Code, described below.

**Rental Housing**

**Mediation Task Force**

Tel. 805.564.5425  
Fax. 805.564.5477

The purpose of this notice is to inform you of the violation(s) on the subject property, to give you a reasonable timeframe to abate the violation(s), and to inform you of the consequences of not abating the violation(s) or repeating the violation(s).

630 Garden Street

PO Box 1990

Santa Barbara, CA

93102-1990

### **DESCRIPTION, REMEDY & FINAL ABATEMENT DATE OF VIOLATION(S):**

Please be advised that the below items are in violation of the Santa Barbara Municipal Code and/or the California Code(s).

1. **Grading and Alterations performed inside Mission Creek bed and surrounding area without approval or a valid permit:**

**Code Violations:** SBMC J103.1 Permits Required, SBMC J103.3 Unpermitted Grading

**Corrective Actions and Abatement Date:** Apply for and obtain a building permit to legalize unpermitted work. Deadline to submit a building permit application and plans **3/1/2024**. Once a building permit is issued, complete all work and obtain an approved final inspection by the City's Building Department

**Violations shall be abated by the dates set for each violation, as shown above:**

**Should you find the date to submit a building permit application and plans unreasonable, please contact me to discuss the dates.**



### **CONSEQUENCE FOR NOT ABATING BY THE FINAL DATE**

If the violation(s) are not corrected by the Abatement Date(s), the **First Administrative Citation** will be imposed. The amount of the Citation will be **\$100 per violation** that still exists after the abatement date. If the violation(s) continue, additional Administrative Citations will be imposed, with the fine amount increasing to a **maximum of \$250 per violation per day**, for as long as the violation(s) continue, with the possibility of referral to the City Attorney's Office for criminal prosecution.

### **VIOLATION ABATEMENT AND CASE CLOSURE**

Please advise me once you have abated the violation(s). Once we have verified that the violation(s) have been abated, we will close this enforcement case.

### **QUESTIONS & CONCERNS**

The City's intent with enforcement is to achieve compliance with the Municipal Codes and Building Codes. As the Compliance Officer assigned to this case, I would like to assist you in resolving this matter. Please email me at [jwadkowski@SantaBarbaraCA.gov](mailto:jwadkowski@SantaBarbaraCA.gov), or call me directly at (805) 564-5577 (between the hours of 8:30 and 4:30 p.m., Monday through Thursday and every other Friday). The City appreciates your cooperation.

Si usted tiene preguntas respecto a la notificación y prefiere hablar con alguien en español, por favor llame la línea de investigaciones al (805) 897-2676 Deje su número de teléfono, la dirección del domicilio respecto a la notificación, el número ENF en la notificación, y un mensaje corto.

### **ADDITIONAL CONTACT INFORMATION**

Our offices are closed every other Friday. Please go to [www.SantaBarbaraCa.gov](http://www.SantaBarbaraCa.gov) for further information [on closure dates](#).

For plan submittal and permit issuance requirements please call (805) 564-5485 between the hours of 7:30 and 4:30 p.m., Monday through Friday (except on closed Fridays). The Community Development public counters are located at 630 Garden Street.

Sincerely,

*Emil Dilanian*

Emil Dilanian  
Code Compliance Supervisor

cc: Current Owner/Tenant  
Address



**BACKGROUND AND GROUNDS FOR APPEAL BY RICHARD HANDLER**  
**of the Notice of Violation Warning Letter Dated February 1, 2024**  
**Enforcement Case Number ENF2023-000435**

Richard Handler is the owner of a single-family home located at 1811 Castillo Street (the "Property"). Mission Creek runs through the back of the Property, and its bank is located within the boundaries of the Property. On February 1, 2024, Code Compliance Supervisor Emil Dilanian sent Mr. Handler a Notice of Violation Warning Letter which accuses him of being responsible for "Grading and Alterations performed inside Mission Creek bed and surrounding area without approval or a valid permit" and violations of SBMC J103.1 and J103.3 for unpermitted grading. As discussed below, Mr. Dilanian's accusations are false.

The proximity of Mission Creek has long threatened the integrity of the Property, Therefore, years or decades before Mr. Handler purchased the Property 14 years ago, the City and/or the County constructed a steel revetment fence that and attached it to the creek bank from the tow of the slope to the upper bank on the Property. As part of the project, boulders and large rocks were installed and stacked in place between the bank and the revetment fence to protect the bank from erosion during high water events within the Mission Creek. The revetment fence achieved its purpose until January 2023.

During the torrential rains and flooding in January 2023, however, the revetment fence started to break and fail, which allowed several boulders and rocks to slip through the fence and come to rest at the base of the creek. During the summer of 2023, as the creek level receded and ultimately dried up, Mr. Handler discovered the damage to the revetment fence, which exposed the dirt creek bank which supported his residence and left it unprotected from future high water flows. Therefore, Mr. Handler contacted the Army Corps of Engineers and the California Department of Fish and Wildlife ("DFW") to inquire what steps he could take to protect the Property. In response, Sarah Rain, an Environmental Scientist for DFW's Department of Habitat Conservation Planning, apprised Mr. Handler of the Emergency Order issued the Governor of California and DFW's Emergency Notification Process which permitted Mr. Handler to work with DFW to repair the revetment fence and replace the boulders and rocks as long as there were no water in the bed of the creek.

Pursuant to the authority granted by the Emergency Order and in full compliance with DFW's procedures and confirmation by Ms. Rains, Mr. Handler began the work to repair the revetment fence and replace the boulders and rocks. The work required a tractor to be lowered by crane into the creek bed so that the boulder and rocks could be lifted and stacked behind the fence.

After Mr. Handler's first day of work, his neighbor across the creek complained about the work and called the City to report it. On October 9, 2023, Mr. Dilanian and other City representatives arrived at the Property, instructed Mr. Handler to stop the repair work, told him that the work he was doing was not "repairs," and that the City would require him to complete a study and report by a civil engineer before the City would permit him to continue with the work. Although Ms. Rains had explained to City officials that DFW had approved and was monitoring the work pursuant to the Governor's Emergency Order and the policies and procedures of DFW, the City officials insisted to Mr. Handler that they would issue a Stop Work notice if Mr. Handler continued the work. **In response, Mr. Handler immediately stopped work on the repairs and had the tractor removed from the creek bed. Four months later, Mr. Dilanian issued the Notice of Violation and accused Mr. Handler of unpermitted grading.**



The City's claim that Mr. Handler conducted unpermitted grading on the Property is false for the following reasons:

- The Municipal Code's definition of "grading" is either "excavation" or "fill" and Mr. Handler did neither within the creek bed.
- Before he did any work, Mr. Handler contacted City inspector Pete Mikelson, who informed him that he did not need a grading permit for the work because he was only spreading approximately 8 square yards of soil on his Property above and adjacent to the bank.
- The work that Mr. Handler tried to do was fully authorized by the State of California's DFW, who had superior jurisdiction and preemptive authority over the City pursuant to State law and the Governor's Emergency Order.
- Although Mr. Dilanian promised Mr. Handler that if he stopped the work, the City would not issue a Stop Work Notice, it did so anyway. When Mr. Handler questioned that decision, Mr. Dilanian responded, in an email dated October 17, 2023 as follows: "Regarding the Stop Work Notice issued by Pete (Mikelson), please understand that Pete was contacted by the reporting party who said that work was continuing and without Pet being aware of our agreement and discussion earlier, he issued the Stop Work Notice. **You don't need to worry about this at this point. You are not continuing work.**" [Emphasis added.]
- In the same October 17, 2023 email, Mr. Dilanian acknowledged that Mr. Handler was authorized by DFW to conduct the work he was doing when the City stopped him: "**What you have done so far is the limitation of what the emergency repair program state by the State and nothing more.**" [Emphasis added.] Mr. Handler has done no further work on the Property since.
- Since the City concedes that Mr. Handler was authorized to do the work he did before the City stopped him from proceeding with the necessary repairs, and since Mr. Handler has done no work since, the Notice of Violation which Mr. Dilanian issued nearly four months after Mr. Handler stopped the work was issued without just cause.

Unfortunately, because the City prevented Mr. Handler from using the Governor's Emergency Order and DFW's authority and guidance to protect his Property, the recent rains have further threatened the still-unprotected creek bank on the Property, which has caused Mr. Handler significant concern, dismay, and mental anguish. Moreover, Mr. Dilanian's rash decision to issue the Notice of Violation has caused Mr. Handler to incur the time and expense required to hire an attorney to represent his interests. Therefore, Mr. Handler respectfully requests the Building and Fire Code Board of Appeals to grant his appeal and to require Mr. Dilanian to rescind and revoke the Notice of Violation and expunge it from all records in any way related to the Property.



**EXHIBIT H**





**RETRACTION OF PREVIOUS NOTICE OF VIOLATION  
WARNING LETTER;  
ISSUANCE OF REVISED NOTICE OF VIOLATION WARNING  
LETTER**

**BUILDING AND SAFETY**

3/18/2024

Richard Handler  
1811 Castillo St.  
Santa Barbara, CA 93101

RE: Retraction of Previous Notice of Violation Warning Letter dated February 1, 2024

Issuance of Revised Notice of Violation Warning Letter for 1811 Castillo St. Santa Barbara, CA  
93101, APN: 027-011-009, Enforcement Case Number: ENF2023-00435

Dear Mr. Handler,

On February 1, 2024 a letter entitled *Notice of Violation Warning Letter* was sent to you by the City of Santa Barbara (hereinafter the "Original Notice"). The Original Notice notified you that you were in violation of multiple codes involving grading and alterations performed inside Mission Creek bed and surrounding area without approval or a valid permit for 1811 Castillo St. and the following codes were referenced: (1) Santa Barbara Municipal Code J103.1 Permits Required; and (2) Santa Barbara Municipal Code J103.3 Unpermitted Grading. The date for abatement for these violations was set for March 1, 2024. **You are hereby noticed that that the Original Notice was sent in error citing inapplicable code sections and you may disregard the Original Notice in its entirety.**

In addition to informing you of the retraction of the Original Notice, this *Revised Notice of Violation Warning Letter* (hereinafter the "Revised Notice") has been sent to you for the following reasons: (1) provide you notice that you are currently in violation of Santa Barbara Municipal Code 30.140.050; (2) to give you a reasonable timeframe to abate the violation; and (3) to inform you of the consequences of not abating the violation or repeating the violation.

**I. DESCRIPTION, REMEDY & FINAL ABATEMENT DATE OF VIOLATIONS:**

Property records indicate that you are the owner and/or tenant of 1811 Castillo St. Santa Barbara, California APN: 027-011-009 (the "Subject Property"). On 10/9/2023, and 11/27/2023 the Subject Property was inspected by the Santa Barbara City Building and Safety Code Compliance Supervisor in response to a complaint that was made regarding work being done to the Subject Property.

**Director's Office**

Tel: 805.564.5502

Fax: 805.564.5506

**Building & Safety**

Tel: 805.564.5485

Fax: 805.564.5476

**Housing &**

**Redevelopment**

Tel: 805.564.5461

Fax: 805.564.5477

**Planning**

Tel: 805.564.5470

Fax: 805.897.1904

**Rental Housing**

**Mediation Task Force**

Tel: 805.564.5426

Fax: 805.564.5477

630 Garden Street

PO Box 1990

Santa Barbara, CA

93102-1990



During the course of the inspections, a violation of the Santa Barbara Municipal Code was observed which is more thoroughly described below.

**1. Alterations performed inside Mission Creek bed and surrounding areas without approval or permit:**

**a. Code Violation:**

*Santa Barbara Municipal Code 30.140.050 Development Along Mission Creek*

The project you have undertaken at the Subject Property requires Planning Permit for environmental review in addition to a building permit which includes proposed improvements. (*See attachments for Planning Application*).

**b. Corrective Actions and Abatement Date:**

To correct the above violation, you must apply for and obtain a planning and building permit to legalize the unpermitted work. **The deadline to submit a planning permit application and plan is April 17, 2024**. After issuance of the planning permit, a building permit must be applied for within 30 days. Once a building permit is issued, all work must be completed and subsequently approved by a final inspection from the City's Building Department.

**c. Violation Abatement and Case Closure:**

Violations shall be abated by the dates set for each violation. However, should you find the date to submit a building permit application and plans unreasonable or unattainable, please contact me at the methods indicated in the Questions and Concerns section below to discuss the set dates.

Please advise me once you have abated the violation. Once I have verified that the violation was successfully abated, this enforcement case will be closed.

**II. CONSEQUENCE FOR NOT ABATING BY THE FINAL DATE**

If the violation is not corrected by the Abatement Date, the **First Administrative Citation** will be imposed. The amount of the Citation will be **\$100 per violation** that still exists after the abatement date. If the violation continues, additional Administrative Citations will be imposed, with the fine amount increasing to a **maximum of \$250 per violation per day**, for as long as the violation continues, with the possibility of referral to the City Attorney's Office for criminal prosecution.

**III. QUESTIONS & CONCERNS**

The City's intent with enforcement is to achieve compliance with the Municipal Codes and Building Codes. As the Compliance Officer assigned to this case, I would like to assist you in resolving this matter. Please email me at [Edilanian@SantaBarbaraCA.gov](mailto:Edilanian@SantaBarbaraCA.gov) or call me directly at (805) 897-2567 (between the hours of 8:30 and 4:30 p.m., Monday through Thursday and every other Friday). The City appreciates your cooperation.



Si usted tiene preguntas respecto a la notificación y prefiere hablar con alguien en español, por favor llame la línea de investigaciones al (805) 897-2676 Deje su número de teléfono, la dirección del domicilio respecto a la notificación, el número ENF en la notificación, y un mensaje corto.

#### IV. ADDITIONAL CONTACT INFORMATION

Our offices are closed every other Friday. Please go to [www.SantaBarbaraCa.gov](http://www.SantaBarbaraCa.gov) for further information on closure dates. For plan submittal and permit issuance requirements please call (805) 564-5485 between the hours of 7:30 and 4:30 p.m., Monday through Friday (except on closed Fridays). The Community Development public counters are located at 630 Garden Street, Santa Barbara, CA.

Sincerely,

*Emil Dilanian*

---

Emil Dilanian,  
Code Compliance Supervisor



**EXHIBIT I**





## APPLICATION FOR APPEAL

An appeal is hereby made to Your Honorable Body from the decision of the:

- |  |  |
|--|--|
| <input type="checkbox"/> Architectural Board of Review                     | <input type="checkbox"/> Planning Commission           |
| <input checked="" type="checkbox"/> Building Official / Fire Code Official | <input type="checkbox"/> Parks & Recreation Commission |
| <input type="checkbox"/> Community Development Director                    | <input type="checkbox"/> Sign Committee                |
| <input type="checkbox"/> Floodplain Administrator                          | <input type="checkbox"/> Single Family Design Board    |
| <input type="checkbox"/> Historic Landmarks Commission                     | <input type="checkbox"/> Staff Hearing Officer         |

Which was taken on the 18 day of March, 2024.

I/We, the appellant(s), hereby respectfully request that Your Honorable Body reject the decision and

Approve /  Deny the application or permit in question.

### PROPERTY INFORMATION

Project Address: 1811 Castillo Street, Santa Barbara, CA 93101; Enforcement Case ENF2023-00435

### APPELLANT'S INFORMATION – Appealed by Applicant? Yes No

Name: Mark Carney, attorney for Richard Handler Organization (if representing): Reicker Pfau

Address: 1421 State Street, Suite B, Santa Barbara, California ZIP: 93101

Email: rmcарney@rppmh.com Phone: 805-966-2440 ext. 445

### REASONS FOR APPEAL:

*Explain specifically what actions you are appealing, and attach a copy of the protested notice, if applicable*

Richard Handler, owner of 1811 Castillo Street, is appealing the attached Notice of Violation Warning Letter, dated March 18, 2024, from Emil Dilanian, Code Compliance Supervisor, on behalf of Building and Safety. Mr. Handler is not a current applicant, and there is no application pending, which explains why no box is checked above for the item approve/deny the "application or permit in question" or the question "Appealed by Applicant?"

*Describe the reasons or grounds why you believe the action should be reversed, modified, or otherwise set aside. Include what evidence you have that supports your appeal. You may attach additional pages, if necessary.*

Please see the attached letter from R. Mark Carney.

Signature:

*Mark Carney*

Date: March 28, 2024

# REICKER PFAU

ATTORNEYS AT LAW

ALAN A. BLAKEBORO  
JOHN G. BUSBY  
R. MARK CARNEY  
BARTON E. CLEMENS, JR  
ROBERT B. FOROUZANDEH  
KEVIN R. NIMMONS  
MICHAEL E. PFAU  
DANIEL A. REICKER  
RUSSELL D. TERRY  
TIMOTHY J. TRAGER  
FERNANDO VELEZ, JR.  
MEGHAN K. WOODSOME

CORY T. BAKER  
NICHOLAS A. BEHRMAN  
JAKE J. GLICKER  
MELISSA C. RAPP

1421 STATE STREET, SUITE B  
SANTA BARBARA, CA 93101

TELEPHONE: (805) 966-2440  
FACSIMILE: (805) 966-3320  
WWW.REICKERPFAU.COM  
RMCARNEY@RPPMH.COM

March 28, 2024

Board Members  
Building and Fire Code Board of Appeals  
City of Santa Barbara

By email: [kvaughn@santabarbaraca.gov](mailto:kvaughn@santabarbaraca.gov)

Re: Richard Handler – 1811 Castillo Street  
Enforcement Case Number ENF2023-000435

Dear Board Members:

Reicker Pfau represents Richard Handler, the owner of 1811 Castillo Street in Santa Barbara. This letter provides the grounds for Mr. Handler's Appeal of the Revised Notice of Violation Warning Letter dated March 18, 2024, issued by the Division of Building and Safety of the City's Community Development Department.

## I. Summary of the Facts.

In 2009, Mr. Handler purchased a single-family home, built in 1905, and located at the corner of Castillo and Islay Streets (the "Property"). The northern half of Mission Creek falls within the Property's southern boundary, and has long threatened the home. Therefore, decades before Mr. Handler purchased the Property, the City and/or County of Santa Barbara constructed a steel revetment fence and attached it to the creek bank on the Property from top to toe. Boulders and rocks were stacked and arranged between the revetment fence and the bank to mimic a rock retaining wall to protect the bank from erosion during high water events.

The revetment fence functioned reasonably well for decades, in spite of an apparent lack of maintenance by the City or County. However, during the torrential rains and flooding of January through April 2023, Mission Creek swelled and overflowed, carved up its banks, and wreaked havoc throughout the Property. During the summer of 2023, as the creek level receded, Mr. Handler discovered that the storms: (1) scattered rocks, tree limbs, branches, sediment, and assorted debris throughout the Property; (2) caused sections of the revetment fence to bend, buckle, and detach from the creek bank; (3) pushed rocks through the detached sections of the revetment fence to the creek bed below; and (4) left the dirt creek bank that supports Mr. Handler's home far more vulnerable to future high water events.



In response to the storms, an inspector from the Federal Emergency Management Association ("FEMA"), and the City's Senior Building Inspector, Pete Mikelson, visited the Property and informed Mr. Handler that multiple government agencies had some degree of authority or interest in connection with Mission Creek. Therefore, throughout the next few months, Mr. Handler spent countless hours seeking guidance from officials from FEMA, the Army Corps of Engineers ("Army Corps"), the California Department of Fish & Wildlife ("DFW"), the County, the City, and private consultants on how best to repair the revetment fence and otherwise protect his home from the next high water event. Mr. Handler learned that: (1) neither FEMA nor the Army Corps would get involved in any effort to repair the revetment fence; (2) neither the County nor the City acknowledged that it constructed the revetment fence or accepted any responsibility to repair and maintain it; and (3) pursuant to the terms of Executive Order N-10-23, which Governor Newsome signed on August 4, 2023 ("Emergency Order"), DFW had the requisite authority and direction to authorize Mr. Handler to: a) clear the debris, vegetation, and sediment from the Property, b) replace the topsoil that the storms had washed away from the Property, and c) repair the revetment fence.

Armed with this information, Mr. Handler set up an online account with DFW and contacted Sarah Rains, an Environmental Scientist for DFW's Department of Habitat Conservation Planning, to discuss his plans for the work. Ms. Rains confirmed that the Emergency Order and DFW's Emergency Notification Process authorized Mr. Handler to remove the debris, replace the topsoil, remove boulders and rocks that had been displaced upon revetment fence, and repair the revetment fence, as long as there were no water in the bed of the creek, and as long as he completed the work by November 1, 2023.

On October 5, 2023, Messrs. Handler and Mikelson exchanged texts about the work. Mr. Mikelson confirmed that Mr. Handler did not need any permit to clean up the debris or a grading permit to replace the topsoil, because only 8 yards of topsoil were being moved. On October 6, after removing the debris and replacing the topsoil, Mr. Handler emailed Ms. Rains and texted Mr. Mikelson to inform them that he had completed those tasks and would proceed with the balance of the work. In order to remove the boulders and rocks that the flood waters had thrown against the revetment fence, Mr. Handler had to arrange for a tractor to be lowered by crane into the dry creek bed on the Property. On October 7, Mr. Handler's tractor operator spent about four hours pulling rocks and boulders away from the revetment fence to provide access for the repairs. On October 8, Mr. Handler emailed Mr. Mikelson to update him on the progress of the work.

On October 9, Mr. Handler's neighbor across the creek contacted the City to report and complain about Mr. Handler's work. In response, Emil Dilanian, Code Compliance Supervisor for the Division of Building & Safety, Mr. Mikelson, and other City representatives visited the Property. Mr. Dilanian instructed Mr. Handler to stop all work in the creek. Mr. Dilanian claimed that the work being done was not "repair work," but amounted to "new work." Therefore, the City would require him to submit a water flow and impact study by a license civil engineer and obtain a permit to continue with the work. Although Ms. Rains explained to City officials that DFW had approved and was monitoring all of the *repairs* pursuant to the Governor's Emergency Order and DFW's policies and procedures, Mr. Dilanian responded that the City would issue a Stop Work Order if Mr. Handler continued the work. ***Therefore, Mr. Handler immediately stopped the work, had the tractor removed from the creek bed, and has not done any work since.***

Nonetheless, on February 1, 2024, Mr. Dilanian sent Mr. Handler a Notice of Violation which accused him of "unpermitted grading" in violation of SBMC J103.1 and J103.3. In response, Reicker Pfau filed a timely appeal that disputed the City's claims, which the City did not oppose. Instead, the City "retracted" the Notice of Violation and issued a Revised Notice of Violation which abandoned the City's "unpermitted grading" claim and, for the first time, accused Mr. Handler of conducting unpermitted "development" within Mission Creek, in violation of Municipal Code section 30.140.050, because he was responsible for "the relocation or removal of stones or other surface which forms a natural creek channel."

**II. The City Has Acknowledged that the Emergency Order Authorized Mr. Handler to Remove the Debris and Move the Boulders to Provide Access to the Revetment Fence.**

After communicating with officials from all of the relevant government agencies and his private consultants, Mr. Handler concluded that the only way he could provide some interim protection for his home from the impending winter season was to repair the revetment fence pursuant to the Emergency Order and DFW's policies and procedures. Mr. Handler considered this work to be a "stop-gap" measure only. He also learned that he could not obtain the civil engineer's report that the City was requiring until after Mission Creek had dried out after the 2024 rainy season. So he informed the City that he intended to apply for the permits required to construct a more permanent solution during the spring and summer of 2024.

After speaking with Mr. Handler about his proposed scope of work on several occasions, reviewing a number of pictures of the site, and conducting a site visit, Ms. Rains confirmed that the Emergency Order authorized the work and waived all related fees. After the City stopped Mr. Handler from completing the work, Ms. Rains sent Mr. Handler an email in which she confirmed that "the 4 hours of boulder moving and debris removal was done under the Executive Order (EO) of which no reporting was necessary to CDFW as long it what you were doing followed what was described in the EO. So you're good there."

Moreover, *after Mr. Handler completed that work, the City agreed that it was authorized by the Emergency Order.* Specifically, in an email dated October 17, 2023, eight days after Mr. Handler stopped the work, Mr. Dilanian told Mr. Handler that "*What you have done so far is the limitation of what the emergency repair program states by the State and nothing more.*" [Emphasis added.] Mr. Handler has not done any further work on the Property since.

Since the City concedes that the Emergency Order authorized Mr. Handler to do the work he did before the City stopped him, and since Mr. Handler has done no work since, the Revised Notice of Violation that Mr. Handler received from the City was issued without just cause.

**III. DFW and Mr. Handler Made the City Aware of the Emergency Order and the Proposed Scope of Work, and the City Did Not Inform Either that it Would Require a Permit.**

At every stage of the process, Mr. Handler kept Mr. Mikelson informed. In addition to their text exchanges on October 5 and 6, Mr. Handler sent Mr. Mikelson the following email on October 8, 2023:

"I'm following back up on the text I sent you Thursday and Friday All trash has been removed Sarah calif creeks as authorized under emergency creek, bed repair The fixing of the revetment fencing, and the replacing of the missing rocks on Friday. I had a tractor, put it into the creek. On Saturday after four hours, the various rocks were moved so that the fence posts could be properly straightened As previously stated, I am operating under I believe form 1610 I've hired a welder to start straightening out the 17 or 18 posts re-welding and reattaching all missing fencing Please advise what permit if any for city purposes I need to complete Please remember, this is just a temporary fix to get me through the next storm As I previously stated, I'm working on a comprehensive permanent fix, which I will be submitting to the city and the state and the Army Corps of Engineers that work will be scheduled to begin in the spring after it's completely approved. All work needs to completed by November 1 as all work we'll have to stop once water is in the creek. I believe there is about 2 to 3 days of welding and then probably 1 to 2 days of putting rocks back in Please let me know Monday morning if possible what I should do."



In addition, on October 9, Sarah Rains spoke to Code Enforcement Officer Natalie Teaze and summarized her conversation to Mr. Handler as follows:

"Natalie reached out to me. Yes I know both Natalie and Erin. I've worked with Erin Markey on several projects in the past. *I let Natalie know that yes I am working with you and yes the work you are doing is something you can submit under our 1600 emergency notification. As long as there is no water in the creek then you are good to go.* If there is suddenly a rain event and there is water in the creek, we've got another situation on our hands. That being the fact that this is designated a steelhead creek and steelhead are treated as endangered right now which means any work that may impact steelhead could be considered take and take is not allowed without an Incidental Take Permit (ITP). There's no exempting ITP's for emergency projects. So. Best be getting that work done before water comes to the creek. And yes, I did see your pictures showing that there is absolutely no water in the creek right now. Thank you for those!" [Emphasis added.]

#### **IV. Mr. Handler's Actions Do Not Meet the Municipal Code's Definition of "Development."**

More than five months after Mr. Handler stopped his work in response to the City's request, and for the first time ever, the City has accused Mr. Handler of conducting unpermitted "development" within Mission Creek, in violation of Municipal Code section 30.140.050. The apparent justification for this decision is that under that section, "development" is defined to include "the relocation or removal of stones or other surface which forms a natural creek channel." This section does not apply to these circumstances for three reasons: First, Mr. Handler did not relocate or remove stones or other surface "which forms a natural creek channel." The stones that Mr. Handler relocated were hanging on a man-made revetment fence, and did not serve to form a "natural creek channel." Second, the work that Mr. Handler's contractor performed to pull the stones away from the revetment fence was authorized by the Emergency Order and the policies and procedures of the DFW. Third, the City has admitted that the work that Mr. Handler performed was within "the limitation of what the emergency repair program states by the State."

#### **VI. The Stop Work Order and Notice of Violation are Flawed and Unenforceable.**

During the City's site visit on October 9, Mr. Dilanian told Mr. Handler that if he stopped the work, then the City would not issue a Stop Work Notice. In response, Mr. Handler immediately stopped work and has not done any work since. Nonetheless, the very next day, Mr. Mikelson attached a Stop Work Order to the tractor, in a location that was only visible to the complaining neighbor. When Mr. Handler learned of the Stop Work Notice and questioned why he had received it in spite of their agreement to the contrary, Mr. Dilanian responded, in an email dated October 17, 2023 as follows: "Regarding the Stop Work Notice issued by Pete, please understand that Pete was contacted by the reporting party who said that work was continuing *and without Pete being aware of our agreement and discussion earlier, he issued the Stop Work Notice. You don't need to worry about this at this point. You are not continuing work.*" [Emphasis added.]

Nonetheless, the City did not revoke the Stop Work Order; nor did it send Mr. Handler a copy. Now the City is using the Stop Work Order, *which the City agreed it would not issue, was issued inadvertently, and Mr. Handler doesn't "need to worry about,"* as its sole basis for the issuance of the Notice of Violation. Moreover, the Stop Work Order is required to state the reason for the Order, and any subsequent Notice of Violation must be tied to the Stop Work Order. Although Mr. Handler does not have a copy of the Stop Work Order, we are confident that it does not state that Mr. Handler was responsible for unpermitted "development" in Mission Creek, in violation of Municipal Code section 30.140.050, because he was responsible for "the relocation or removal of stones or other surface which forms a natural creek channel."

Since the City admits that the Stop Work Order was issued in spite of the City's agreement with Mr. Handler to the contrary, and since the Stop Work Order does not claim that Mr. Handler violated the Code section identified in the Revised Notice of Violation, the Stop Work Notice has no legal force or effect. Moreover, since the Stop Work Order does not correspond to the City's new theory as to which Code section Mr. Handler violated, the Notice of Violation is unenforceable.

**V. Conclusion.**

The City, without any authority or justification, prevented Mr. Handler from taking advantage of the Governor's Emergency Order and DFW's emergency policies and procedures to protect his Property. Instead, the City required Mr. Handler, in contravention of the Emergency Order, to provide an engineering study that it knew he could not obtain until after the 2024 rainy season. Consequently, the recent storms have further threatened the still-unprotected creek bank on the Property, which has caused Mr. Handler significant concern, dismay, and mental anguish. Moreover, the City's decision to issue the Original and Revised Notices of Violation has caused Mr. Handler to incur considerable time and substantial expense to our firm to represent his interests. Therefore, Mr. Handler respectfully requests the Building and Fire Code Board of Appeals to grant his appeal and to require the City to rescind and revoke the Revised Notice of Violation and expunge it from all records in any way related to the Property.

Thank you for your careful consideration of Mr. Handler's request.

Sincerely,

REICKER, PFAU, PYLE & McROY LLP



By R. Mark Carney



**EXHIBIT J**



# PLANNING (PLN) APPLICATION

## SUBMITTAL PACKET

### INSTRUCTIONS

A complete Planning Application is required whenever a project requires discretionary review, including design review or land use entitlements. Detailed application instructions, including an overview of the process and estimated timelines, checklists to determine if discretionary review is required, and when a mailed notice is necessary, are available in the [Planning \(PLN\) Application Guide](#). Read the information in the Planning Application Guide before starting this application.

### HOW TO SUBMIT

All building permit and planning applications, including all supporting plans and documents, are accepted online via our [Accela Citizen Access Portal \(ACA\)](#). More information: [Electronic Submittals](#).

### WHAT TO SUBMIT

This document includes a comprehensive list of information that is required to submit an application for a development project. Not all information will apply to every project. The application should include all required information to the best of the applicant's knowledge at the time of initial submittal. Prior to determining the application is complete, the City will inform you of any information required before project approval. Minor changes that do not significantly alter the project do not require updated forms.

**TIP!** If you have a minor project that you think may qualify for staff-level approval, please review the [Administrative Design Review Supplemental Application](#) for a list of eligible projects and criteria. If your project qualifies, you do not need to submit this application.

### WHO MAY SUBMIT AN APPLICATION?

Only the property owner or a party designated as the owner's agent may submit a Planning Application for work on that property. The Planning Application must be signed by both the property owner and the owner's agent before it will be accepted for processing. If multiple property owners are involved in the project, a letter of agent authorization from each owner is required.

### SIGN UP FOR MORE INFORMATION

Subscribe for city updates and sign up to automatically receive email notices from the "LDT Bulletin" for important information regarding new or changed policies impacting development projects.



FEES

Payment of fees is required for all applications.

**Fees**

Payment via check, electronic check, or credit card is required before project review or processing. Once the application is submitted, City staff will follow up electronically with an invoice for the total fee amount. Fees may be paid online, mailed, faxed, or dropped off at 630 Garden Street for processing. If paying by mail or fax, a [Fee Payment Submittal Sheet](#) is required. For more information, see: [How to Pay Invoiced Fees](#).

**TIP!** The initial fee covers two completeness reviews and four design review hearings. If the application request exceeds that estimated review time, additional fees will apply.

PHOTOGRAPHS

Photographs are required for all applications. Photos copied onto the project plans are preferred.

**Site and Area Photographs**

Submit current color photographs of the site from the street, each elevation of the buildings, adjacent properties, surrounding neighborhood area, and streetscape. Photos must be clear and in focus with a minimum size of 4 x 6. Internet photos such as Google Maps are not acceptable because they may not show current conditions. Label each page and photo with a number, and include cardinal directions (north, east, south, west) to identify photo directions.

PLANS

Plan sets are required for all applications.

**Project Plans**

See the [Project Plan Submittal Guide](#) for the required contents of plan submittals. If design review is required for the project, applicants are encouraged to present sketches or conceptual drawings on the initial application. For minor projects, see the [Basic Site Plan](#) handout.

**Tentative Map**

If the project includes a new condominium or subdivision, submit a Tentative Map as described in the Subdivision Ordinance Chapter 27.07.

SUPPORTING MATERIALS

Supporting Materials are required only if applicable, as noted below.

**Applicant Letter**

*Planning Commission and Staff Hearing Officer Projects Only.* Include a detailed description of the proposed project in a letter addressed to the appropriate review body. Include any data or other evidence in support of the applicable findings; describe any community benefit derived from the project. Include a design intent statement. This is your opportunity to explain your project goals and give decision-makers a more thorough understanding of the project.

- Homeowner’s Association (HOA) Approval Letter**  
If applicable, submit a letter from the HOA board authorizing the proposed project.
- Preliminary Hydrology Calculations**  
If applicable, prior to Final Approval, provide a preliminary hydrology and drainage report, or the appropriate worksheets from the City’s Storm Water BMP Guidance Manual, indicating how the project is meeting the City’s [Storm Water Management Program](#).
- Public Hearing Minutes**  
After conceptual review, submit a copy of the meeting minutes that contain comments on Project Compatibility criteria. On any other related public approvals, submit a copy of the minutes, letters, or similar with the status of the application and any conditions of approval.
- Preliminary Title Report**  
*Planning Commission and Staff Hearing Officer Projects Only (excluding modification projects).* Include a preliminary title report issued within three months of the application for all parcels.
- Rental Rate History**  
*Housing Development Projects Only.* Submit rental rate history (rent roll) for each type of existing unit on-site for the previous five years that are being replaced.
- Response to Previous City Letters**  
If applicable, submit a copy of any previous pre-application or other determination letters from City staff on the application along with written responses to all requested information.
- Special Studies**  
In order to conduct the preliminary environmental assessment for the project, submit a copy of any special studies or reports that are required or were previously prepared based on project description, location, or construction type and duration. Provide a copy of any environmental site assessments prepared for the project site and any relevant adjacent sites.
- Supplemental Applications**  
Supplemental Applications and checklists are required on some projects, based on the review requested. For assistance determining what Supplemental Applications may be required, please contact the Planning Counter. The list may also be found online: [Planning Handouts](#).

## APPLICATION FORMS & AFFIDAVITS

*All forms must be completed, signed, and submitted as a PDF attachment to your electronic submittal.*

<b>1</b>	<b>Planning Application Form</b>	Pg 4	<b>3</b>	<b>Noticing &amp; Posting</b>	Pg 7
<b>2</b>	<b>Hazardous Waste Form</b>	Pg 6	<b>4</b>	<b>Applicant’s Affidavit</b>	Pg 8



# 1 PLANNING APPLICATION FORM

## RECORD INFORMATION

Application Date: \_\_\_\_\_ PLN RECORD # (if known): \_\_\_\_\_

## PROPERTY INFORMATION

Project Address: \_\_\_\_\_ Zone: \_\_\_\_\_  
 Assessor Parcel Number (APN): \_\_\_\_\_ Avg. Slope: \_\_\_\_\_  
 General Plan/Coastal Land Use Plan Designation: \_\_\_\_\_  
 Existing Use: \_\_\_\_\_ Proposed Use: \_\_\_\_\_

## ADJACENT LAND USES

North: \_\_\_\_\_ South: \_\_\_\_\_  
 East: \_\_\_\_\_ West: \_\_\_\_\_

## LOT COVERAGE INFORMATION

### EXISTING

### PROPOSED

	Sq. Ft.	%	Sq. Ft.	%
Building Footprint:				
Hardscape ( <i>impermeable</i> : concrete, asphalt):				
Landscape ( <i>permeable</i> : turf, gravel, dirt):				

Storm Water Management Program (SWMP):  TIER 1  TIER 2  TIER 3  TIER 4

## GRADING AND CONSTRUCTION DETAILS

Grading – Under Building Footprint (CY) Cut: \_\_\_\_\_ Fill: \_\_\_\_\_  
 Grading – Outside Building Footprint (CY) Cut: \_\_\_\_\_ Fill: \_\_\_\_\_  
 Grading Balanced on Site?  Yes  No Import: \_\_\_\_\_ Export: \_\_\_\_\_  
 Total Construction Duration (in months): \_\_\_\_\_ Number Trucks/Workers: \_\_\_\_\_  
 Demolition (mos.): \_\_\_\_\_ Construction (mos.): \_\_\_\_\_ Landscape (mos.): \_\_\_\_\_

## OWNER'S INFORMATION

Name: \_\_\_\_\_ Email: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone: \_\_\_\_\_

## APPLICANT'S INFORMATION SAME AS ABOVE

Name: \_\_\_\_\_ Company: \_\_\_\_\_  
 Address: \_\_\_\_\_ ZIP: \_\_\_\_\_  
 Email: \_\_\_\_\_ Phone: \_\_\_\_\_

## PROJECT DESCRIPTION

Describe the **existing development** on site including all existing uses, parking, and size of buildings

Explain the **proposed project** including size of additions and any new buildings, units, or uses

## RELATED APPLICATIONS

If there are any other permits or approvals associated with the project, include the permit number and date of application or decision (e.g., BLD#, PBW#, etc.). Any approval required by another City Board or Commission must be completed prior to a determination that the application is complete.

## REVIEWS REQUESTED

To the best of your knowledge, indicate below the review bodies for the project.

### DESIGN REVIEW

- Architectural Board of Review     Historic Landmarks Commission     Single Family Design Board

### DEVELOPMENT REVIEW

- Staff Hearing Officer     Planning Commission     City Council



## 2 HAZARDOUS WASTE & SUBSTANCES

California Government Code §65962.5 requires all applicants for development projects to complete this form and submit it with your signed application. Make sure you check all the lists.

Look up the list of hazardous waste sites online: [calepa.ca.gov/SiteCleanup/CorteseList/](http://calepa.ca.gov/SiteCleanup/CorteseList/)

IS THE SITE LISTED AS A HAZARDOUS WASTE SITE?  YES  NO

- List of Hazardous Waste and Substances sites from Department of Toxic Substances Control (DTSC) EnviroStor database (<http://www.envirostor.dtsc.ca.gov/public/>)
- List of Leaking Underground Storage Tank Sites by County and Fiscal Year from Water Board GeoTracker database (<http://geotracker.waterboards.ca.gov/>)
- List of solid waste disposal sites identified by Water Board with waste constituents above hazardous waste levels outside the waste management unit (PDF). (<http://www.calepa.ca.gov/SiteCleanup/CorteseList>)
- List of "active" Cease and Desist Orders and Cleanup and Abatement Orders from Water Board (PLEASE NOTE: This list contains many Cease and Desist Orders and Cleanup and Abatement Orders that do NOT concern the discharge of wastes that are hazardous materials.) (<http://www.calepa.ca.gov/SiteCleanup/CorteseList/default.htm>)
- List of hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code, identified by DTSC (<https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5a>)

**TIP!** Lead and other constituents of concern may be found in surface and subsurface soils within the city limits of Santa Barbara. Please refer to the EPA's Soil Screening Guidance: User's Guide <https://www.epa.gov/>.

### PROPERTY INFORMATION

Project Address:	ZIP:
Assessor Parcel Number (APN):	
Local Agency (City/County):	
Specify List:	
Regulatory Identification Number:	Date of List:

# 3 NOTICING & POSTING FORM

If a **public notice** is required for the project, complete this form, and submit it with your application certifying the following information is true and correct for the proposed project. Check **ALL** that apply.

**ALL NOTICED PROJECTS** (If a notice is required, always check this first box) or  N/A

- On-Site “Notice of Development” Sign.** I will obtain the City’s Notice of Development sign from the Planning Counter. I am responsible for assuring that the project site is posted 10 days prior to each public hearing. The sign will be placed within 2 feet of the primary front property line, and clearly visible from the closest public roadway. All information will be filled-in with black permanent marker, and the sign will remain in place at least 10 days after Project Design Approval.

**SUPPLEMENTAL NOTICES** (Check all that apply) or  N/A

- Average Unit-Size Density Project (AUD) Supplemental On-Site Notice.** If 5 or more new dwelling units are proposed, in addition to the City’s Notice of Development sign, I am responsible for designing, fabricating, and installing an extra on-site notice sign that meets all of the following:
- **Minimum Size:** 2 x 3 feet
  - **Materials:** Sign will be made of a weather-resistant, rigid material, not paper. I understand flexible banner signs are prohibited. The sign will be erected in a manner to withstand winds.
  - **Content:** One or more perspective views or street elevation drawings of the buildings will be provided. Drawings will be a minimum of 11 x 17 inches and at least 5 sq. ft. Scale will be demonstrated with height dimensions, or human figures, or existing adjacent buildings.
  - **Height:** Sign will be installed on signposts, or attached to a fence or building, at 5-foot minimum height to top of sign.
  - **Location:** Sign will be placed within 2 feet of the primary front property line, or within 10 feet of the property line if the public has free access to walk up and view the sign. The sign will be clearly visible from the closest public roadway; will not block the view to any other signs and will not obstruct the views of drivers exiting driveways or approaching intersections.
  - **Timing:** I will update and maintain the sign as needed and assure that the project site is posted 10-days prior to each public hearing, and at least 10 days after Project Design Approval.

- Condominium Conversion Tenant Notification.** The attached list contains the Assessor’s Parcel Numbers and mailing addresses of all tenants of the proposed condominium conversion.

- Construction Neighborhood Notice.** I am responsible for assuring that a notice is delivered to the property owners, businesses, and residents within 300 feet of the subject property.

- Hand-Delivered Notice.** If the project is a single-family residence, I am responsible for assuring that a hand-delivered notice is delivered to the residents of each of the 10 closest lots to the subject property at least 10 days prior to the hearing date. The 10 closest lots shall, at a minimum, include all lots that directly abut the project site and several lots located across the street. The hand-delivered notice shall include all of the following: the notice date, project address, PLN case number, property owner’s name and contact information, a brief description of the proposed project, and the hearing date.

- P-R Zone Posting.** I am responsible for assuring that the notices are posted at all park entrances and along adjacent streets at a sign spacing interval of 150 feet, 10 days prior to each public hearing.



# 4 APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a. The undersigned is the owner or authorized agent of the owner of this property.
- b. The information presented is true and correct to the best of my knowledge.
- c. **Public Record.** I understand that any information provided becomes part of the public record and can be made available to the public for review and posted to City websites.
- d. **Hazardous Waste and Substances.** I have reviewed all of the lists of Hazardous Waste Sites, and indicated whether the proposed project site, or any alternative site, is listed.
- e. **Site Visit.** I hereby authorize City of Santa Barbara to conduct a site visit of this property as part of the City's review of this application, making all portions of the exterior accessible through completion of construction, and in response to the monitoring of any conditions.
- f. **Noticing and Posting.** I have reviewed the City's noticing and posting requirements and I agree to obtain, install, or assure that all applicable supplemental noticing requirements are submitted, delivered, or installed, as required.
- g. **Owner/Agent Authorization.** If the Applicant is not the Property Owner, both the Property Owner and Applicant must sign this affidavit or the separate [Owner/Agent Authorization Form](#). By signing this affidavit, the Property Owner authorizes the Applicant listed in this application to act as the Property Owner's agent on all matters before the City of Santa Barbara Community Development Department pertaining to development on this property.

**PROPERTY OWNER:**

\_\_\_\_\_  
*Owner's Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Owner's Name (printed)*

**APPLICANT:**  SAME AS ABOVE

\_\_\_\_\_  
*Applicant's Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Applicant's Name (printed)*

\_\_\_\_\_  
*Title (Architect, etc.)*