

Communication from Public

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April 7, 2026

VIA ELECTRONIC MAIL **AND UPLOAD**

Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 395
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**Re: Further Supplemental Appeal Justification; Appearance Under Protest;
Barry Building (Historic-Cultural Monument #887); Case Nos. ENV-2019-
6645-EIR-1A; CHC-2007-1585-HCM; Council File No. 25-1518**

Honorable Members of the PLUM Committee:

This Firm represents Angelenos for Historic Preservation ("AHP" or "Appellant") regarding the pending CEQA appeal for the proposed demolition of the Barry Building at 11973-11975 W. San Vicente Boulevard ("Project"). AHP submits this comprehensive Further Supplemental Appeal Justification ahead of the April 14, 2026 PLUM Committee hearing to thoroughly detail the profound procedural, legal, and environmental defects in the City's handling of this matter.

We incorporate by reference our February 11, 2026, letter regarding objections to the PLUM Committee proceedings, our Supplemental Objections dated February 16, 2026, our 55-page Supplemental Appeal Letter submitted on February 17, 2026, and all prior submissions, expert reports, and public comments in the administrative record.

Furthermore, this letter serves as AHP's formal, point-by-point rebuttal to both the Department of City Planning's Staff Report dated February 19, 2026, and the Applicant's correspondence dated February 19, 2026.

I. APPEARANCE STRICTLY UNDER PROTEST: THE EXPIRATION OF JURISDICTION

As a threshold matter, AHP appears at this April 14, 2026, PLUM hearing strictly under protest. As detailed in our correspondence to the City Council dated March 13, 2026, and March 31, 2026, the City Council's jurisdiction to act on this CEQA appeal irrevocably expired on March 6, 2026.

Under Los Angeles Municipal Code ("LAMC") § 13B.11.1.F.7.a, the City had a mandatory 75-day final date to take action. While the Applicant and the Council President's Councilmember designee previously exercised their authority under Ordinance 184833 in a January 20, 2026, filing to timely extend the City Council's original last date to act from February 14, 2026, to March 6, 2026, the City had ample opportunity between the City Council's March 4, 2026 reconsideration and the March 6, 2026 deadline to obtain timely, mutual written consent for a further extension. Having failed to do so, the deadline passed without a valid hearing or determination.

Consequently, the appeal was deemed denied by operation of law. The City's own CEQA Appeal Form verifies AHP's interpretation of law. It states as follows:

"If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, **the appeal is automatically deemed denied, and the original decision will stand.** The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant." (Bold emphasis added.)

Jurisdiction cannot be retroactively manufactured. The City has no legal authority to hold this April 14, 2026, hearing, and AHP's participation today does not waive our right to seek judicial relief regarding this fatal jurisdictional defect.

II. REBUTTAL TO APPLICANT'S AND CITY PLANNING'S FEBRUARY 19, 2026 SUBMISSIONS

On February 19, 2026, both the Applicant's counsel (Alston & Bird) and the Department of City Planning ("DCP") submitted documents attempting to retroactively justify the deeply flawed record. Both documents rely on legal fictions and mischaracterizations of AHP's expert evidence.

A. The City Cannot Weaponize Its Own Denial of Access to Discredit AHP's Experts

Both the DCP Staff Report and the Applicant attempt to dismiss AHP's expert structural engineer report (Alpha Structural) as unreliable and lacking substantial evidence. The Staff Report points out that the Alpha Structural Observation Letter states it is a "rough estimate," that no structural integrity was evaluated, and that visibility was limited because "the building was enclosed with temporary fences and inaccessible."

This argument cannot withstand scrutiny. The only reason Alpha Structural's estimate had to be based on limited visibility is because the Applicant deliberately fenced off the structure and refused to provide physical access to AHP's experts. Furthermore, the Staff Report attempts to excuse this by claiming "The City cannot legally compel access to private property for inspection by a third party." This is a red herring. While the City cannot arbitrarily force entry onto private land, the Applicant is seeking a highly discretionary, highly contested entitlement - the destruction of a designated Historic-Cultural Monument based on an EIR. The City absolutely possesses the authority to condition the processing of the Applicant's CEQA clearance on allowing the Appellant's experts to physically verify the Applicant's financial and structural claims. The City and the Applicant cannot actively obstruct physical and documentary access to the site, and then rely on that manufactured lack of access to disqualify AHP's expert report.

Despite these manufactured hurdles, Alpha Structural accurately estimated the mandatory Soft-Story Retrofit at approximately \$379,000. This was fully validated by David Cocke of Structural Focus, an undisputed expert who actually served on Mayor Garcetti's Technical Task Force to write the City's mandatory seismic retrofit ordinances.

B. LADBS Lacks the Legal Authority to Certify the EIR

The Staff Report erroneously argues that because LADBS is required to make a finding under LAMC § 91.106.4.5, it is automatically the decisionmaker required to certify the EIR. As detailed in the November 17, 2025, letter by Susan Brandt-Hawley, this misinterprets the Code. LAMC § 91.106.4.5 does not give the Board authority to undertake CEQA analysis nor approve CEQA documents. It only dictates that LADBS cannot issue a demolition permit without a specific finding. The proper procedure dictates that LADBS must refer the project for CEQA review and decision-making to an *authorized* City body (like City Planning) equipped to conduct the EIR process.

C. The City and Applicant Improperly Dismissed Tribal Cultural Resources and Violated AB 52 Consultation Requirements

In its January 20, 2026, letter, the Applicant attempts to justify the City's unilateral closure of tribal consultation by arguing there was no substantial evidence of Tribal Cultural Resources on the site. The February 19, 2026, Staff Report echoes this, claiming consultation was properly concluded under Public Resources Code (PRC) Section 21080.3.2. This position relies on a fundamental misrepresentation of the physical project impacts and a blatant violation of state law.

As thoroughly detailed in the February 5, 2026, comment letter submitted by Sieglinde Kruse Blue, the City and Applicant have failed to comply with AB 52 in several fatal ways:

1. Concealing Impacts to Native Alluvial Soils: The City and Applicant have repeatedly downplayed the demolition by claiming the soil was previously disturbed. This is factually misleading. The SCWA Environmental Consultants technical report acknowledges that the proposed demolition requires excavation up to five feet below grade. Crucially, the same report identifies that the known artificial fill at the site *only extends to two feet below grade*. Therefore, *the Project will excavate at least three feet*

into virgin, native alluvial soils. The City cannot sweep the disturbance of undocumented TCRs in native soil under the rug simply by labeling the project a demolition.

2. Dismissal of the Kizh Nation's Expert Evidence: During the consultation process, the Gabrieleño Band of Mission Indians – Kizh Nation provided oral testimony and documented evidence that the Project Site is located within and around the Village of Kuruvungna, adjacent to sacred waterways and trade routes that qualify as cultural landscapes. Rather than accept this tribal expertise, the City issued a pre-closure letter on July 6, 2022, dismissing the Tribe's history because it lacked physical, archaeological proof.

3. Violation of the *Koi Nation* Decision: The City's demand for physical scientific evidence over the Tribe's documented oral history is the exact error recently struck down in *Koi Nation of Northern California v. City of Clearlake* (2025) 109 Cal.App.5th 815. State law requires that tribes be treated as the experts on their own cultural resources. By prioritizing its own narrow archaeological survey over the Kizh Nation's identification of a cultural landscape, the City failed to conduct the good faith consultation required by law before unilaterally closing the consultation on July 21, 2022.

4. The Tribe's Express Objection to Premature Closure: The City's claim that consultation was properly concluded is directly contradicted by the Tribe itself. In a letter submitted on the date of the previous PLUM Committee hearing on February 24, 2026, the Gabrieleño Band of Mission Indians – Kizh Nation explicitly confirmed and made clear that they agree the AB 52 consultation was closed prematurely¹. The City's unilateral termination of the process without reaching mutual agreement, and over the ongoing, documented objections of the consulting Tribe, renders the City's consultation process legally indefensible.

Additionally, the applicant's consultant's report states in part: “The analysis and conclusions stated herein are based on the expertise and professional judgment of SWCA’s qualified archaeologists and are intended as a means of presenting evidence to be used in assessing the potential for tribal cultural resources under CEQA, and should **not** be considered a replacement for tribal expertise or assumed to represent tribal cultural values.”² (emphasis

¹ More information regarding the consultation process can be found in the SB 18 Tribal Consultation Guidelines published by the Governor’s Office of Planning and Research available at <https://nahc.ca.gov/wp-content/uploads/2019/04/SB-18-Tribal-Consultation-Guidelines.pdf> (see **Exhibit C**) and the Technical Advisory on AB 52 available at https://lci.ca.gov/ceqa/docs/20200224-AB_52_Technical_Advisory_Feb_2020.pdf (see **Exhibit D**).

² SWCA Environmental Consultants, *Tribal Cultural Resources Assessment for the 11973 San Vicente Boulevard Barry Building Demolition Project, Los Angeles, Los Angeles County, California*, Draft Environmental Impact Report, Appendix F-3 (November 2022), Management Summary, p. 2 (Study Constraints and Disclaimer); see also Introduction, p. 7 and Conclusion, p. 32 (reiterating the same disclaimer and study constraints).

added). Again, the Applicant's own expert has specifically stated that their analysis should **not** be considered a replacement for tribal expertise.

Because the City unlawfully dismissed the Tribe's substantial evidence and prematurely closed consultation without reaching mutual agreement on proper mitigation for the deep excavation, the EIR is legally inadequate. A standard inadvertent discovery condition of approval is not an adequate substitute for meaningful, good-faith mitigation under AB 52 when native soils are actively being disturbed.

First, an inadvertent discovery condition is inherently reactive; it applies only after a potential Tribal Cultural Resource has already been struck, disturbed, or damaged by heavy machinery. As the Kizh Nation explained in its correspondence, the very purpose of CEQA's mitigation framework is to avoid or minimize impacts before they occur, not merely to respond after irreversible harm has been inflicted. Second, relying exclusively on a post-hoc inadvertent discovery protocol completely forecloses the opportunity to implement project alternatives. Once consultation is prematurely closed and ground-disturbing activities are authorized, it becomes impossible to consider alternatives to demolition or ground disturbance that might have entirely avoided the cultural resource in the first place. This reactive approach subverts the core legislative intent of AB 52, which is to identify proactive, culturally appropriate mitigation, such as requiring qualified tribal monitors with the authority to halt work prior to discovery, before a project is ever approved

D. The Applicant's "Separate LLC" Argument is a Legal Fiction

The Applicant's February 19, 2026 letter claims it is clearly unreasonable to expect the EIR's alternatives analysis to consider the adjacent parcels because they are owned by a different LLC. The Staff Report parrots this, insisting that "*... the Project does not include future development, and is not piecemealed or "segmented."*"

This is a subversion of CEQA's requirement to look at the "whole of an action." As AHP proved in AHP's February 17, 2026 Supplemental Letter, the official Statements of Information from the California Secretary of State completely pierce this corporate veil. Both "11973 San Vicente, LLC" (the Barry Building parcel) and "11991 San Vicente, LLC" (the adjacent parcels) are managed by the exact same individuals: William Harold Borthwick and Charles T. Munger Jr. They share the same principal office address, the same mailing address, and the same agent for service of process.

CEQA Guidelines § 15126.6(f)(1) explicitly requires the lead agency to consider whether the proponent "can reasonably acquire, control or otherwise have access to the alternative site." Because the exact same individuals manage the adjacent 73,000+ square foot land assemblage, the Applicant unequivocally has access to the alternative site.

E. AHP Timely Objected to the EIR and Alternatives Analysis

In its February 19, 2026, letter, the Applicant falsely asserts that AHP did not object to the alternatives analysis or the certification of the EIR in its original July 2025 appeal, claiming it is now "too late" to raise these issues.

This is factually incorrect. As AHP explicitly pointed out in our February 16, 2026, Supplemental Objections, the original July 8, 2025, Appeal Justification Letter clearly and unequivocally stated: *"The EIR is inadequate and should not be certified, and The statement of overriding considerations is not supported by substantial evidence."* The adequacy of the EIR and its alternatives have been the central, contested issues of this appeal from day one.

F. The Staff Report's Defense of BBSC Bias is Unavailing

The February 19, 2026, DCP Staff Report attempts to excuse the disqualifying bias exhibited by BBSC Commissioner Rosales during the November 18, 2025, hearing. The Staff Report claims Commissioner Rosales relied on his "18 years of experience in the general construction industry, specializing in electrical engineering" to dismiss AHP's expert structural report. An electrical engineer's personal opinion on seismic soft-story retrofit costs does not constitute substantial evidence sufficient to override the technical findings of licensed structural engineers on that same subject. This disparity in expertise, and the Commissioner's willingness to substitute personal opinion for the expert record, demonstrates an unacceptable probability of actual bias under *Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963.

G. All Five Statement of Overriding Considerations Fail

The Staff Report attempts to sustain the Statements of Overriding Considerations ("SOC") by arguing AHP failed to specifically contest findings #4 (housing/RHNA goals) and #5 (construction jobs). AHP explicitly rebuts both: a vacant dirt lot does not advance the City's RHNA obligations. Moreover, a preservation and rehabilitation project would inherently generate *more* construction employment than a demolition-only scope. Neither finding is supported by substantial evidence in the record, and neither is sufficient to override the permanent loss of a designated Historic-Cultural Monument.

H. The City Cannot Claim the Benefits of Future Development While Refusing to Analyze its Environmental Impacts

The City's reliance on Statement of Overriding Considerations (SOC) #4 exposes a fatal contradiction in its CEQA analysis. In SOC #4, the City attempts to justify the destruction of the Barry Building by claiming the vacant site "could accommodate housing or other commercially viable development in the future" and contribute to the City's Regional Housing Needs Assessment (RHNA) allocations.

Yet, when AHP demands that the City analyze the environmental impacts of this future development, the Staff Report and the Applicant suddenly reverse course, claiming that future development is "unspecified and uncertain" and that analyzing it would be "sheer speculation." The City cannot have it both ways. It cannot weaponize the supposed benefits of future housing to override the destruction of a Historic-Cultural Monument, while simultaneously refusing to consider the environmental consequences that will inevitably flow from that exact same redevelopment.

The Applicant has explicitly admitted in the record that their intention is to clear the site and sell it. Therefore, the sale of this property (as well as the others controlled by the Applicant) is a reasonably foreseeable consequence of the demolition. If future development is foreseeable enough to serve as the foundational justification for an SOC, it is absolutely foreseeable enough to require environmental analysis in the EIR.

The Applicant's excuse that they do not yet have a specific building design is irrelevant. The City is fully capable of analyzing reasonably foreseeable consequences by evaluating maximum build-out scenarios based on the site's underlying zoning. By relying on the benefits of future housing in the SOC while intentionally blinding itself to the environmental impacts of that housing in the EIR, the City is engaging in textbook piecemealing in violation of CEQA.

I. HABS Documentation is Not Adequate Mitigation

The February 19, 2026 City Planning Staff Report attempts to brush off concerns regarding the loss of the Barry Building by pointing out that a Mitigation Measure requires a Historic American Building Survey (HABS) be submitted prior to the issuance of a demolition permit. However, archival documentation does not reduce impacts to insignificance. As perfectly stated in the July 8, 2025 appeal letter submitted by Susan Brandt-Hawley, case law dictates that "drawing a chalk mark around a dead body is not mitigation." (*Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1019). The promise of taking deferred photographs before bulldozing the site does not excuse the physical destruction of the monument.

J. Failure to Analyze Cumulative Impacts to the Coral Trees (HCM #148)

The EIR fails to properly evaluate the cumulative historical impacts of the Project, particularly regarding the adjacent Coral Trees on the San Vicente median (HCM #148). The Historic Resources Group (HRG) memo incorrectly claimed there is no historic association between the Barry Building and the Coral Trees. However, the record, including evidence submitted by Robert and Sieglinde Blue, proves that David Barry Jr. was the director of the "Los Angeles Beautiful" project and was instrumental in the installation of those exact Coral Trees. The City's failure to analyze the historical association and cumulative impacts to both of these linked monuments is a fatal flaw in the EIR.

K. Rebuttal to Specific Claims in the Applicant's February 19, 2026 Letter

The Applicant's counsel makes several granular, misleading arguments in their February 19, 2026 correspondence that demand direct refutation.

1. The Bad-Faith Attack on the Preservation Architect's Report

The Applicant attempts to completely discredit AHP's preservation architect, Frances Offenhauser, by claiming her analysis of economic infeasibility is limited to a single paragraph (Paragraph 21 of her Declaration) and lacks any supporting evidence. This is a deliberate misrepresentation of the administrative record. The Applicant attacks the sworn declaration (Exhibit K to our February 17, 2026, submission) while purposefully ignoring Exhibit A of that exact same submission, which is a highly detailed, 30+ page line-by-line cost analysis authored

by Offenhauser/Mekeel Architects. Her expert opinion is not unsubstantiated; it is backed by an exhaustive technical report that reverse-engineers and dismantles the Applicant's inflated figures.

To cure any alleged doubts regarding Ms. Offenhauser's expertise, AHP is attaching a Supplemental Declaration of Frances Offenhauser to this letter, which includes her full biography, formally documenting her 45+ years of experience and specialized expertise in historic preservation. See **Exhibit A**.

2. Information Was Unlawfully Hidden from Public Review

The Applicant argues that AHP's claims of missing information are untrue, asserting that the technical appendices within the EIR satisfy the required analysis. However, as AHP has repeatedly noted, Los Angeles Administrative Code § 22.171.14(b) specifically requires a Reuse Feasibility Study.

Furthermore, the Applicant's recent submission of a 500+ page document dump is a smokescreen. While the Applicant points to the inclusion of the Draft EIR's structural and historic technical appendices (Appendices C, G, H-2, 3, 4, 7, and 9) to claim no information is missing, this massive submission completely fails to provide the actual underlying reports used to justify their grossly inflated rehabilitation costs. Specifically, the record is still devoid of the mold reports, hazardous material abatement reports, and HVAC studies that account for millions of dollars in the Hill International estimate. The Department of City Planning's own February 19, 2026, Staff Report essentially admits these documents are missing by attempting to excuse their absence as unrelated studies that do not change structural stability findings.

The City cannot have it both ways: it cannot rely on millions of dollars in undocumented HVAC and hazardous material abatement costs to manufacture economic infeasibility for the SOC, while simultaneously claiming the underlying reports for those exact costs are "unrelated" and therefore unnecessary for public review. By admitting these reports are missing, the City confirms that its financial feasibility findings are based on unsubstantiated, hidden data.

3. The Misapplication of the California Historical Building Code (CHBC):

The Applicant claims their structural engineer, Englekirk, *did* evaluate the building under the CHBC and concluded the same massive retrofit recommendations applied. This is false. As David Cocke of Structural Focus (who served on the Mayor's task force to write the City's seismic ordinances) pointed out, Englekirk's Phase 2 scheme is a full-building ASCE 41-13 retrofit, which is entirely voluntary. The CHBC focuses on load path continuity and specifically allows seismic forces to not exceed 75% of standard code. Englekirk ignored these historical code allowances and applied massive, full-scale overstress standards to artificially inflate the cost to manufacture infeasibility.

4. Fencing a Building is Not Maintenance

The Applicant relies on Appendix O of the Final EIR to claim they have been performing ongoing maintenance and points to Appendix I to argue the seismic flaws aren't caused by

neglect. This completely misses the point. While the 1951 structural design is inherent, the attractive nuisance and blight arguments, which the City relies upon heavily in the SOC, are 100% self-created. Putting a chain-link fence around an abandoned building and occasionally clearing the lot is not maintenance of a historic resource; it is a calculated strategy of demolition by neglect.

The Applicant's own May 1, 2016, eviction letter to tenants proves this was an orchestrated scheme, explicitly stating: "After careful consideration, we have decided to close the Barry Bldg. as soon as reasonably possible and no later than December 31, 2016... Our decisions are final. We will not negotiate for more money or more time. We can and will resort to legal process if we are forced to." The City cannot cite a self-created, intentional nuisance as an overriding consideration to destroy an HCM.

III. THE CITY'S OWN HISTORIC EXPERTS UNANIMOUSLY REJECTED THE DEMOLITION JUSTIFICATION

The Board of Building and Safety Commissioners' (BBSC) decision to adopt the SOC and certify the EIR directly contradicts the unanimous recommendation of the City's own historic resources expert body, the Cultural Heritage Commission (CHC).

After reviewing the EIR on September 5, 2024, the CHC unanimously recommended that the Department of Building and Safety **not** adopt the Statement of Overriding Considerations. OHR Staff Planner Melissa Jones forcefully testified that the proposed benefits of demolition are "not supported with substantial evidence" and that a vacant lot "frequently contributes to additional community problems, serving as a further detriment."

Furthermore, CHC Commission President Barry Milofsky stated that the project is an egregious example of "demolition by neglect" and that rewarding it sets a "very bad precedent for the city." By rejecting the unanimous, expert opinion of the CHC and the City Planning Department's OHR, the BBSC acted outside the scope of its institutional competence.

IV. ECONOMIC INFEASIBILITY IS BASED ON INFLATED, VOLUNTARY COSTS

The single most critical flaw in the EIR/SOC is the unsubstantiated finding that preserving the Barry Building is economically infeasible. This finding is entirely unsupported by substantial evidence and is based on grossly overstated cost estimates that purposefully conflate the minimum mandatory retrofit with voluntary, non-required, full-scale rehabilitations.

- **Mandatory vs. Voluntary Scope:** The Soft-Story Ordinance only mandates retrofitting the "soft, weak, or open-front" wall lines, which is limited to the first story of the south wing. Any work beyond this, including retrofitting all four wings to address non-mandated overstress concerns or upper stories, is entirely voluntary.

- **Voluntary ADA Upgrades:** The Applicant's inflated cost included full upgrades for ADA compliance, which is not required for a vacant building undergoing mandated seismic work and can be deferred.
- **Failure to Evaluate Preservation Funding Mechanisms:** The City's finding of economic infeasibility is further invalidated by the EIR's complete failure to address available financial mechanisms designed specifically to assist with the restoration of historic resources. The establishment of a private fund, or the use of the Mills Act and Historic Tax Credits, should have been evaluated in the alternatives analysis. The City cannot legally declare the preservation of the Barry Building financially infeasible when it intentionally ignored the very financial lifelines established by law to make historic preservation projects viable.
- **The "Impossibility" Narrative is Defeated by a 95% Compliance Rate:** The Applicant's narrative that retrofitting this specific building is an impossible or financially ruinous task is directly contradicted by citywide data. As the Los Angeles Conservancy highlighted, over ninety-five percent (11,820) of all soft-story buildings in Los Angeles have initiated plans, had permits issued, or successfully completed their mandatory retrofits without resorting to demolition. The Applicant falls into the tiny minority of property owners (less than five percent) who have done nothing to comply. This staggering statistic constitutes substantial evidence that similar buildings are routinely and feasibly retrofitted, rendering the Applicant's claims of unique infeasibility entirely hollow.

As validated by David Cocke of Structural Focus, the true cost of mandated safety compliance is approximately **\$379,000** - less than 2.3% of the Applicant's lowest preservation alternative estimate. The EIR's conclusion that preservation is economically infeasible is therefore unsupported by substantial evidence and cannot stand.

V. DUE PROCESS VIOLATIONS

The record reveals that Council District 11 staff bypassed independent City review and acted as a private conduit for the Applicant, inserting developer-drafted findings directly into the administrative process. This conduct destroys the quasi-judicial neutrality required under California law.

Internal communications obtained via CPRA requests reveal that Council District 11 (CD-11) staff acted as a private conduit for the Applicant, transmitting the developer's drafted Statement of Overriding Considerations directly to LADBS leadership.

On October 15, 2024, Sean Silva (Deputy/Planning Liaison for Councilmember Traci Park) emailed Devin Myrick (Asst. Deputy Superintendent of Bldg at LADBS) stating: *"Providing you some documents that pertain to the Barry Building, which may assist you with your work."* Attached to this email from the Council Office were documents explicitly drafted by the Applicant's legal counsel, Alston & Bird, including a *"Draft Statement of Overriding Considerations.docx."*

Bypassing the independent, professional vetting of City Planning and LADBS staff to insert developer-written legal findings via a political office is a fatal violation of due process (*Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963).

VI. DUE PROCESS VIOLATIONS: PRE-JUDGMENT AND IMPROPER CONDUIT COMMUNICATIONS

The certification of an EIR and the adoption of an SOC are quasi-judicial acts requiring strict adherence to fair hearing standards and a neutral decision-maker under California Code of Civil Procedure § 1094.5. The record here demonstrates both disqualifying pre-judgment and an improper ex parte conduit, each of which independently taints the proceedings.

A. Disqualifying Pre-judgment by the Appellate Decision-Maker.

The City Council, acting through the PLUM Committee, serves as the final appellate body for this CEQA appeal and is legally required to review the evidence impartially. However, the transcript from the September 5, 2024 Cultural Heritage Commission (CHC) hearing demonstrates absolute pre-judgment and improper coordination between the Applicant and Council District 11 (CD-11).

At the CHC hearing, the Applicant's lobbyist, Aaron Green, publicly revealed that the developer had been negotiating off-the-record mitigations directly with the Council Office. Mr. Green testified: *"And in working with the council office, we have proposed a voluntary covenant that will reside on this property if ... the demolition is granted. And what that covenant will require is the safe removal and storage of the two ... curved staircases in the courtyard of the building,"* along with the benches.

Immediately following this admission, Sean Silva (CD-11 Planning Liaison) testified to corroborate this unvetted deal and announced Councilmember Traci Park's predetermined position. Mr. Silva stated on the record: "I'm here to relay our office's support for the certification of the EIR and a recommendation to adopt a Statement of Overriding Consideration for the property known as the Barry Building." He further justified this by referencing the backroom deal, stating that the stairs and benches "are to be used in the site's future development," and concluded by actively lobbying the Commission: "We respectfully request that this Commission certify the EIR and recommend – recommend certification of the EIR and a support for a Statement of Overriding Considerations, to acknowledge the potential for this site to be transformed into something that better serves the community."

This public declaration of support, and the admission of private negotiations resulting in a "phantom" voluntary covenant, occurred nine months before LADBS officially certified the EIR, and long before the Appellant even filed this CEQA appeal. By relying on this illusory, unvetted agreement (which is absent from the formal Conditions of Approval) to lobby for the demolition, the City committed a prohibited deferral of mitigation under *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.

More importantly, a Councilmember cannot legally act as a predetermined, active advocate for the developer's demolition during the environmental review process, and then subsequently sit as a neutral, quasi-judicial arbiter evaluating the legal adequacy of that exact same environmental review on appeal.

B. CD-11 Acted as an Improper Conduit for the Applicant's Findings.

Following this public pre-judgment, internal communications obtained via CPRA requests reveal that CD-11 staff subsequently acted as a private back-channel for the Applicant. On October 15, 2024, Mr. Silva emailed Devin Myrick (Asst. Deputy Superintendent of Bldg at LADBS) stating: *"Providing you some documents that pertain to the Barry Building, which may assist you with your work."* Attached to this email were documents explicitly drafted by the Applicant's legal counsel, including a *"Draft Statement of Overriding Considerations.docx."*

Bypassing the independent, professional vetting of City staff to insert developer-written legal findings via a political office that had already publicly pre-judged the outcome strips this entire proceeding of the required quasi-judicial neutrality.

C. Disparate Treatment and Information Sharing by City Staff.

The unacceptable probability of actual bias is further demonstrated by the City's disparate treatment of the parties. Not only did the Council Office act as a conduit to feed the Applicant's documents to LADBS, but City staff also actively transmitted the Appellant's confidential hearing materials directly to the Applicant. Prior to the November 18, 2025, BBSC hearing, AHP submitted its materials - including a November 14, 2025, rebuttal letter and a PowerPoint presentation - directly to the BBSC Board Secretary. These documents were shared with City Planner Jason McCrea, who, under the subject line "Supplemental Correspondence - Barry Building," proactively forwarded AHP's entire submission to the Applicant's representative. At no point during this multi-year administrative process did any City department forward unsolicited information from the Applicant to the Appellant. This systematic, one-sided information sharing violates the fundamental requirements of a fair, impartial quasi-judicial hearing. See **Exhibit B**.

VII. CONCLUSION AND REQUESTED ACTIONS

The EIR fails as an informational document, improperly rejects feasible preservation alternatives based on overstated and unsubstantiated cost data, relies on a piecemealed project description that conceals the full scope of the proposed development, and incorporates an SOC drafted by the Applicant's own counsel and transmitted to the decision-maker through a political back-channel. Each of these defects is independently sufficient to warrant reversal. Taken together, they render the City's approval legally indefensible.

To protect the integrity of the City's historic preservation program, prevent the reward of intentional demolition by neglect, and avoid inevitable judicial reversal, AHP respectfully requests that the PLUM Committee and the City Council take the following actions:

1. **Acknowledge Jurisdictional Loss:** Affirm that the City's jurisdiction to act expired on March 6, 2026, resulting in a deemed denial by operation of law.
2. **Grant the CEQA Appeal:** Acknowledge that the current record is poisoned by improper conduit communications and a lack of substantial evidence.
3. **Reject the EIR and SOC:** Find that LADBS and BBSC erred and abused their discretion in certifying the EIR and adopting the developer-drafted Statement of Overriding Considerations.
4. **Deny the Demolition Permit:** Void the BBSC's action of November 18, 2025, and direct LADBS not to issue a demolition permit for the Barry Building (HCM #887).

Thank you for your consideration of this matter. I may be contacted at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall

Encls.

- Exhibit A: Declaration of Francis Offenhauser
- Exhibit B: November 11, 2025, Email from City Planner Jason McCrea to Applicant Representative Ed Casey
- Exhibit C: State of California Tribal Consultation Guidelines (cited via link in Footnote 1)
- Exhibit D: Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA (cited via link in Footnote 1)