

From: [Carpinteria Group](#)
To: [Mindy Fogg](#); [Bret McNulty](#)
Cc: [Eilenberglegal@gmail.com](#); [Richard Jacobs](#)
Subject: Invocation of Government Code Section 65589.5(h)(6)(D) re: 3rd Incompleteness Letter, Project No. 25-2358, 5115 Ogan Road
Date: Tuesday, December 23, 2025 4:46:16 PM
Attachments: [image002.png](#)
[image.png](#)

****EXTERNAL EMAIL****

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Bret/Mindy,

We reviewed your letter sent today and dated December 23, 2025. It has become apparent that we are now at the point where the City has decided to stand by its actions that violate the California State Housing Laws. Therefore, we are invoking Government Code Section 65589.5(h)(6)(D) and offering the City the final opportunity to come into compliance. Our attorney has helped prepare this letter and is preparing the necessary litigation, but we hope that the City will come into compliance prior to the filing of the litigation.

The issues that appear to be at issue at this stage are the following:

A.1. Coastal Development Permit/Local Coastal Plan

Our position was set forth in our submission, but allow me to address a few points you have made.

First, the City's reliance on a Superior Court opinion in a matter that has been back up to the Court of Appeal and overruled is improper. There are at least two reasons:

- (1) While you appear to contend that the Superior Court decision is final, you also admit that this portion of it remains on appeal. As per California Rule of Court 8.264, a decision by the Superior Court is not "final" until the Court of Appeals rules on the merits and the appeal deadline to the California Supreme Court has lapsed. You acknowledged in your letter that this has not happened. Therefore, the City cannot cite this even as a final judgment at the Superior Court level.
- (2) Superior Court decisions are not binding authority on anyone except the parties to that lawsuit. The only binding precedent is published appellate opinions. Therefore, even if the Superior Court opinion was final, as we are not a party to that case it would remain irrelevant.

As an additional matter, I should mention that we have been quite clear throughout that we do plan to apply for a Coastal Development Permit unless there is another change to the underlying laws regarding Builder's Remedy projects. However, our position is that the Coastal Development Permit falls outside the jurisdiction for the California Coastal Commission to appeal it.

However, it is premature to address the Coastal Development Permit process until the application is deemed complete as the Coastal Development Permit process runs concurrently with applying for building permits, not the initial planning review.

As you note in your letter, the Carpinteria Submittal Checklist begins on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf. Notably, nowhere in the Carpinteria Submittal Checklist starting on page 11 of the packet is there a requirement for a Coastal Development Permit for the completeness evaluation.

Government Code Section 65943(a) provides: "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. **If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist.** In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description."

As the Carpinteria submittal requirements checklist does not require a Coastal Development Permit for completeness, this is a moot issue at this time and is an improper basis to determine our SB330 submittal incomplete.

If the City believes that there is an item in the City's submittal requirement checklist that we are missing, please show your work and provide the page number and item number on that page. Please also note, anything cited must be in the submittal checklist portion of the packet as identified by the City as starting on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf.

A.2. Additional Items On Review

It appears that the City has conceded that any "additional items" requested cannot be used as a basis for determining completeness. Therefore, we can move forward from this item.

B.1.a. Local Coastal Plan Amendment

As you note in your letter, the Carpinteria Submittal Checklist begins on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf. Notably, nowhere in the Carpinteria Submittal Checklist starting on page 11 of the packet is there a requirement for a Local Coastal Amendment for the completeness evaluation.

Government Code Section 65943(a) provides: "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. **If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist.** In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description."

Notably, the submittal requirement checklist does not even contain the word "Coastal"

anywhere within it. As the Carpinteria submittal requirements checklist does not require a Local Coastal Amendment for completeness, this is a moot issue at this time and is an improper basis to determine our SB330 submittal incomplete.

If the City believes that there is an item in the City's submittal requirement checklist that we are missing, please show your work and provide the page number and item number on that page. Please also note, anything cited must be in the submittal checklist portion of the packet as identified by the City as starting on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf.

B.1.b. Tentative Parcel Map

As you note in your letter, the Carpinteria Submittal Checklist begins on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf. Notably, nowhere in the Carpinteria Submittal Checklist starting on page 11 of the packet is there a requirement for a Tentative Parcel Map for the completeness evaluation.

Government Code Section 65943(a) provides: "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. **If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist.** In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description."

Notably, the submittal requirement checklist does not even contain the phrase "parcel map" anywhere within it. As the Carpinteria submittal requirements checklist does not require a

Tentative Parcel Map for completeness, this is a moot issue at this time and is an improper basis to determine our SB330 submittal incomplete.

If the City believes that there is an item in the City's submittal requirement checklist that we are missing, please show your work and provide the page number and item number on that page. Please also note, anything cited must be in the submittal checklist portion of the packet as identified by the City as starting on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf.

In addition, while that issue is disposed of because it is not part of the submittal checklist, I will also point out that this appears to be another bad faith attempt by the City. The City has significantly slowed the parcel split application from Frontier (the current owner of the parcel being split to allow this project to move forward), and turned it from the normal 3-6 month process into one that is currently well over a year, ostensibly to delay and increase the costs of this project. The City's actions creating that delay and increased costs are violations of both the Subdivision Map Act and the Housing Crisis Act. While we have left that matter in the hands of Frontier and its consultant Blu Croix to address with the City, the City's actions in that subdivision do show the continued bad faith actions by the City.

The City's claim that now the in-process parcel split must start over again with us as the applicant rather than the parcel owner also fails legally and common sense. Please provide any authority for the proposition that the property owner (Frontier) is unable to move forward with the parcel split application because of the anticipated use of the portion of the property that is being split off.

B.2.a. Utility Plan & Utility Service Requirements

In your letter, you state that somehow the umbrella statement at the beginning of the checklist that all questions are "fully and honestly answered[.]" allows the City to determine the application is incomplete if, as here, the City subjectively believes that "it is unclear whether [the response] is accurate." The City's uncertainty is not a valid basis to determine that the application is incomplete, particularly when the actual requirements set forth in the submittal checklist have been complied with.

Notably, the entire requirement in the City's submittal requirement checklist regarding utility plans is : "UTILITY PLAN". There is nothing beyond those two words to specify the requirements the City is now retroactively attempting to impose on this project. As the retroactive requirements are not in the submittal requirement checklist, they cannot be completeness items and are an improper basis to determine our SB330 submittal incomplete.

If the City believes that there is an item in the City's submittal requirement checklist that we are missing, please show your work and provide the page number and item number on that page. Please also note, anything cited must be in the submittal checklist portion of the packet as identified by the City as starting on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf.

B.2.b. Water and Sewer

In your letter, you state that we are required to obtain will serve letters from water and sewer for the project completeness evaluation.

While we addressed this in our submittal, the City has chosen not to respond to the issue with its own submittal checklist. The City's submittal checklist states that will serve letters are only required for ADU's. This is not an ADU project. Therefore, will serve letters are not required under the submittal checklist for completeness and are an improper basis to determine our SB330 submittal incomplete.

If the City believes that there is an item in the City's submittal requirement checklist that we are missing, please show your work and provide the page number and item number on that page. Please also note, anything cited must be in the submittal checklist portion of the packet as identified by the City as starting on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf.

B.2.c Stormwater Management Plan

The City continues to assert that this project requires a Tier 4 rather than Tier 3 Stormwater Management Plan based upon the County of Santa Barbara's requirements. The County's own website states that the City is incorrect. According to the County of Santa Barbara's website located at <https://www.countyofsb.org/2324/New-Redevelopment>:

Type of New or Redevelopment Project	Application Completeness
Tier 1 - Projects, including single-family homes, that create or replace 2,500 square feet or more of impervious surface	Submit a Stormwater Control Plan for Small (Tier 1) Projects
Tier 2 - Projects, other than single-family homes, that create or replace 5,000 square feet or more of net impervious surface (see note)	Submit a Stormwater Control Plan that addresses Site Design (Tier 1), runoff treatment, and source control measures (Tier 2)
Tier 3 - Projects, other than single-family homes, that create or replace 15,000 square feet or more of impervious surface. Detached single-family homes that create or replace 15,000 square feet or more of net impervious surface (see note)	Submit a Stormwater Control Plan that addresses site design (Tier 1), runoff treatment and source control measures (Tier 2), and stormwater retention (Tier 3)
Tier 4 - Projects that create and/or replace 22,500 square feet or more of impervious surface (collectively over the entire project site)	In addition to the above for Tiers 1, 2, and 3 follow the Santa Barbara County Flood Control District requirements for managing post-development peak flows . Note the County's requirements are typically more stringent than Tier 4 requirements and have a lower threshold of applicability than Tier 4 projects.

Note: Net impervious surface equals new and replaced impervious area minus the total pre-project-to-post-project reduction in impervious area (if any).

I suggest that the City reevaluate its position, particularly in light of the Note stating: "Net impervious surface equals new and replaced impervious area minus the total pre-project-to-post-project reduction in impervious area (if any)." Under this metric, our project falls directly within the Tier 3 Stormwater requirements. Therefore, a Tier 4 Stormwater Management Plan is not required under the submittal checklist for completeness and requiring one is an improper basis to determine our SB330 submittal incomplete.

B.2.d – Easements

As you note in your letter, the Carpinteria Submittal Checklist begins on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf. Notably, nowhere in the Carpinteria Submittal Checklist starting on page 11 of the packet is there a requirement for an applicant to provide letters from utilities regarding potential future easements to determine the scope of the project for completeness review.

Government Code Section 65943(a) provides: "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. **If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on**

the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description."

Notably, the submittal requirement checklist does not even contain the word "easement" anywhere within it. As the Carpinteria submittal requirements checklist does not require anything regarding easements for completeness, this is a moot issue at this time and is an improper basis to determine our SB330 submittal incomplete.

If the City believes that there is an item in the City's submittal requirement checklist that we are missing, please show your work and provide the page number and item number on that page. Please also note, anything cited must be in the submittal checklist portion of the packet as identified by the City as starting on page 11 of the packet located at https://carpinteriaca.gov/wpcontent/uploads/2020/03/cd_development-permit-packet_2019.pdf.

3. Payment of Fees

As you mention in your letter, you are working to provide the basis for the fees imposed costing over four times the annual salaries for the people who have worked on the project. We will await your responsive materials justifying that the fees charged can be over four times the amount the people who incurred them on behalf of the County earn.

Conclusion

The remainder of the letter addresses consistency items that will be addressed once the City comes into compliance with the California state housing laws. Please confirm that the City will cease the illegal conduct and will come into compliance with the State Housing Laws by determining our SB330 submittal complete. Otherwise, we await your responses so we can pursue the actions needed to move this important housing project forward.

Thank you.

Ben Eilenberg
Carpinteria Group LLC

On Tue, Dec 23, 2025 at 4:43 PM Mindy Fogg <mindyf@carpinteriaca.gov> wrote:

Good afternoon Mr. Eilenberg,

The City of Carpinteria has completed its review of your project resubmittal dated November 25, 2025 and determined that the application is incomplete pending submittal of additional required information and materials. Please find enclosed our Determination of Application Incompleteness letter. Should you have any questions concerning this letter, please contact me or Bret McNulty (copied here).

We are also working on your Public Records Act request and should have the first batch of responsive documents to you shortly.

Thank you,



Mindy Fogg *(she/her)*
Community Development Department

City of Carpinteria

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