Sheila de la Guerra General Public Comment

LATE DIST

From: Jana Zimmer <zimmerccc@gmail.com>
Sent: Monday, March 9, 2026 4:51 PM
To: sbcob
Subject: PLEASE DISTRIBUTE THIS LETTER AS PUBLIC COMMENT

Honorable Supervisors:

The below letter is being submitted as public comment. It will be submitted to the Clerk on March 10 as my appeal of your Fire Marshal's failure and refusal to find "same practical effect" under 14 C.C.R. 1270 et seq. so that my SB 9 lot split can be approved. I have been given inconsistent information about the function the Board of Supervisors as the Board of Fire Appeals. If the County maintains that Chapter 15 applies, I ask that the Board of Supervisors schedule this matter for public hearing within 30 days, as required. The County's continuing failure and refusal to resolve this matter- for three (3) years, is causing me quantifiable harm.

If you have any questions, please do not hesitate to contact me.

Jana Zimmer

March 10, 2026

Clerk of the Board of Supervisors
Mona Miyasoto, Clerk of the Board of Fire Appeals
c/o Santa Barbara County Board of Supervisors
1100 Anacapa Street
Santa Barbara, California 93101

BY HAND DELIVERY

Re: **Appeal of Fire Marshal denial of Same Practical Effect Determination**
14 C.C.R. 1270.06 and County Code Chapter 15- Appendix

Ms. Miyasoto and Honorable Supervisors:

1. Introduction

Appellant Jana Zimmer respectfully requests that your Board grant her appeal of the Fire Marshal's denial of her "Request for Modification" dated March 5, 2026, and that you order the Director of Planning and

Development to allow recordation of her SB 9 lot split application forthwith. By the rules and regulations adopted by the Board of Supervisors on 2/27/2007, the hearing is required to be set within 30 days.

The Fire Marshal's decision is arbitrary and capricious, represents a clear abuse of discretion, fails to include findings, and/or the findings are not supported by the evidence. It cannot form the basis of a decision to deny Zimmer's lot split under SB 9, where the County, not Zimmer, has the burden to support their denial by a preponderance of the evidence. The County's treatment of Zimmer's application has been fundamentally unfair, under any standard.

The Fire Marshal continues to stand in the way of approval of Zimmer's ministerial lot split when he knows that the specific demands he has made and continues to make are and were unlawful, both as to substance and timing. And the Planning Director has refused to make a decision until Zimmer complies with his unlawful demands. Thus, a decision which was and is required to be made within sixty (60) days of application has been in limbo for over *three years*, and has resulted in significant damage to Zimmer, denial of both procedural and substantive due process, loss of the opportunity to build the same housing unit which has been **approved** by both Fire and P&D, and has created a significant and wholly unnecessary conflict between the State's housing and fire protection policies. The simple fact is that the Fire Marshal could have substantially achieved any legitimate safety improvements in this case if he had agreed to defer his demands (if otherwise lawful), until after recordation of the lot split[1]. He still refuses to do so and continues to demand improvements be performed that he knows are literally impossible for Zimmer to complete.

2. Whether heard as an appeal under 14 C.C.R. 1270 or through the County Fire Code, Marshal Tan's decision of March 5, 2026 is arbitrary and capricious, not supported by findings, not supported by the law, or by the evidence, and it is inconsistent with the specific applicable Mission Canyon Plan and County Safety Element, and the Housing Element.

MCCP DevStd FIRE-MC-3.4 states:

"Development on private roads that does not currently comply with the minimum County Fire Department's development standards for private roads and driveways shall construct reasonable road frontage improvements or other applicable measures to expand the road and driveway space available for emergency turnout zones, pedestrian access and appropriate landscaping and hardscaping, to the extent allowable by publicly or privately owned easements."

This is the *applicable* standard in this case. Zimmer's easement is 15'. To whatever extent the Fire Marshal has "discretion", Marshal Tan failed to apply it because he has insisted on a uniform 15' easement width. There is no "discretion" to claim that the applicable standard is 20', a legal truth which both former Marshal Hazard and former Chief Hartwig recognized.

With regard to the Safety Element, the Board specifically concurred that Policy 8.1 shall not be interpreted to preclude a finding of "same practical effect". Staff amended the language of Policy 1.2 to address HCD's concerns and adopted a policy to minimize risks to the greatest extent feasible. This was specifically acknowledged by both Hazard and Plowman, on July 11, 2023, in response to a letter from Zimmer. The letter is posted on the Board's Agenda for July 11, 2023. These governing policies have been completely ignored.

A. Tan denies the "same practical effect" application without making sufficient site-specific factual findings to justify it. His findings are inconsistent both with the express policies of the Mission Canyon Community Plan Fire Policy 3.4, and with the County Safety Element, which, as the Board of Supervisors knows, HCD required to be amended specifically to avoid arbitrary denials of housing proposals, as has occurred here. (See, letter HCD to County P&D dated October 25, 2025, attached, and Zimmer letters to Board of Supervisors re: Safety Element of July 11, 2023). Both Marshal Hazard and Director Plowman specifically assured Zimmer, in writing, that they would take HCD's modifications to the Safety Element into account in determining "same practical effect". Then they proceeded to do the opposite, and Marshal Tan has now, belatedly, denied the application *in toto.*

B. Tan's conduct of this matter (with the ongoing deference of P&D) has repeatedly violated Zimmer's procedural and substantive due process rights and has resulted in escalating damage to Zimmer over a period of two and a half years. Because of this controversy, the County (Plowman) has effectively revoked the building permit they granted, notwithstanding Zimmer's substantial expenditures in reliance on that permit- *and* on the Fire Protection Certificate which the Fire Marshal approved, and which included a determination of same practical effect for sprinklers in lieu of their 'hose length' requirement, which was the *only* alleged inconsistency of the project with **applicable** rules.[2] Zimmer asserted that the Fire Marshal could and should find "same practical effect" multiple times based on improvements she made or caused to be made, of which Marshal Tan has and had specific knowledge. She offered to deed restrict the new lot to one unit and give up her right to the approved Residential Second unit attached to her current home to address Marshal Hazard's assertion that there would be an impermissible increase in "intensity of use". There was no response. In his decision of March 5, Marshal Tan effectively eliminates any possibility of finding "same practical effect", by insisting on a uniform 15' road width, with no deviations.

C. Tan's decision fails completely to address the ultimate question: whether improvements already performed (lane widening, lane paving, removal of the Museum's overhanging branch) have the same practical effect as a uniform 15' road width, in terms of fire equipment access, consistent with the applicable MCCP, Safety Element, and Housing Element policy.

Tan does not specify whether or where he claims the road is less than 15' wide, or what he means by "improvements". At the beginning of this controversy, Zimmer specifically asked Tan to measure and record each property frontage down the lane, in her presence, and inform her specifically where he thought additional widening was needed. He refused. He conducted his subsequent "inspections" in Zimmer's absence and without informing her. Whether he now asserts that the roadway must be further widened, or where, or he means that it must be repaved in its entirety (it is already paved) prior to P&D's completion of "processing" the SB 9 lot split, his demands are clearly illegal as to timing of performance, regardless of location.

D. Tan's insertion of new 'issues' asserting how Zimmer should improve the existing alternative access she identified to the north misses the point completely. His "suggestion" that Zimmer perform improvements on that property is patently absurd: Zimmer has no right whatsoever to make any changes on that property. This is an even more irrational demand than their insistence that she perform widening of the easement on the property of the Museum of Natural History, which has explicitly opposed such widening[3], and has failed and refused to even require obstacles placed in Zimmer's easement by another neighbor (Francavilla) be removed. Zimmer cannot "take" her neighbors' private property without compensation, or at all.

The point Zimmer made is that a fire truck can access that property from the north- at 2679 Puesta del Sol, and a fire stream from that property could reach the approved unit on Zimmer's property in its approved location, at

less than 150' distance. Regardless, their rejection of this "same practical effect" demonstrates that all of these demands are completely irrelevant to the Fire Department's ability to timely respond to wildfire. Zimmer's agreement to comply with a sprinkler requirement, coupled with the fact that Fire Station 15 is less than five minutes away, and the uncontradicted evidence that the current condition of the lane is and has been adequate to accommodate fire trucks, are more than adequate, as a matter of common sense, to constitute same practical effect.

Furthermore, if there is a wildfire that begins above Foothill, or spreads to lower Mission Canyon, it is well accepted that the Fire Department would make a stand at Foothill, or at Glendessary Lane, or at Puesta Del Sol, north of Las Encinas Lane. Then they would go to the Museum to protect that, and the Mission. No one is coming down Las Encinas Lane specifically to save Zimmer's house from a wildfire if a spark flies two miles and lands on her roof. But even if that did occur, the presence of the sprinkler that Zimmer agreed to would mitigate for the few seconds that a fire engine might be delayed in its five-minute journey from Fire Station 15 by a curve in the lane, if one existed.

The County knows there is no evacuation issue (which they asserted and then withdrew prior to the filing of the application) because Zimmer specifically informed them that she has two roads out: Puesta del Sol to Alamar, or south on Los Olivos. So, after the application was submitted, they 'switched' their area of alleged concern to fire *equipment access*, which they have known was adequate from the beginning: a Fire Truck is no greater than 10' wide by the express terms of the Vehicle Code, Captain Olmstead previously stated that the lane was 14'[4], and the evidence is undisputed that Fire trucks, garbage trucks, utility trucks, water trucks can all access Zimmer's driveway along the lane, *and* there is an existing turnaround at the end of the lane, immediately next door to Zimmer, at 2646 Las Encinas *which was approved by the same County Fire Department*. While the Fire Department can access any property in an emergency without permission, the County knows that owner gave his written consent,- three years ago- at the beginning of this application process, specifically for fire engines to use his property. So Hazard's demand, and Tan's insistence on a 'regulation' turnaround on Zimmer's property, (which cannot be constructed without trespass onto Francavilla *and* the Museum's properties, coupled with Tan's demand that she never park on that turnaround, and knowing that she has no other place to park, was completely arbitrary, and made with intent to prevent Zimmer from exercising her approved building permit.

Finally, there is **no** evidence whatsoever that the current condition of the lane, and especially as it has been widened over the last two years, presents any real-world obstacle to fire equipment access. It is inexcusable that after numerous site visits addressing issues with the individual properties- which have been substantially improved, Tan now fails to specify where, on the lane it has been inadequately "improved". He knows or should know that with the *possible* exception of a small portion adjacent to 2589 Puesta del Sol, (Bartz) it has indeed been widened to the stated minimum. He knows that the property at 2589 Puesta del Sol, at the entrance to the lane, was approved for an ADU by his department based on that applicant's representation that the lane was 15' wide. He knows that the lane has nevertheless been *additionally* widened at the entrance to 17' to facilitate turning, and it has been widened along the property line to the south. Tan knows that fire trucks, garbage trucks, SCE trucks and other large trucks have no difficulty navigating the lane.

If there is some remaining significant defect in lane width, the County should have addressed it when it approved that ADU for Bartz. If it constitutes a health and safety hazard, the County has the authority to require it to be abated *by Bartz*. Tan knows that Zimmer has *no* right or authority to demand further widening. Tan knows that the one, so-called obstacle identified by Captain Hazard has been removed, by an Act of God (the

Museum's oak tree). And he knows that *repaving* and other improvements have already occurred and would certainly be completed prior to certificate of occupancy, and that Zimmer has offered to complete them prior to issuance of building permit, which is the maximum authorized by law. He also knows that his unlawful demands and Plowman's failure to reject them are the reason that Zimmer cannot finance construction of the unit for which his own department – and the same personnel- approved a fire protection certificate. Knowing all these facts, he persists in his illegal demands.

Finally, and perhaps most importantly, while Tan's demands are dressed up in the language of protecting the community from wildfire, Zimmer has already pointed out that his own department has declined to require road widening or repaving along roadways serving cannabis development[5], deeming them 'adequate'. And most recently, Tan (and the same staff involved in this case) did not require improvement of a *county- owned road* in the Painted Cave State Responsibility Area (SRA),and allowed two new units to be approved because he apparently understood the limits of his authority in that case, and, based on a memo from Lisa Plowman to the Planning Commission, the County's obligation to approve otherwise qualified housing projects. That property had no practical access to fire protection, while Zimmer's property is below Foothill Road, on flat land, less than five (5) minutes from the County Fire station, and has two evacuation routes. Tan's demands- which perpetuated and were even more onerous than Hazard's, were illegal, arbitrary and capricious, and unsupported by any relevant fact.

3. Request to Consolidate Administrative Appeals

To mitigate further continuing damages, Zimmer respectfully requests that the Board of Supervisors hear this appeal promptly and directly, and that all relevant legal questions be discussed in public.

Based on County documents, the "Fire Board" currently has only two members, does not include a representative from the First District, only meets periodically, and has no demonstrated expertise to opine on the specific issues in context of the standards applicable to SB 9 lot splits. Furthermore, a narrow, artificially constricted "technical" decision will inevitably prejudice any later appeal on the merits of the SB 9 application. Therefore, to serve due process and fundamental fairness, the Board of Supervisors must hear this appeal, and combine it with an appeal of any related P&D decision.

In this case, ultimately, the **County** has the burden to prove, by a preponderance of evidence, that approval of Zimmer's application for an SB 9 Lot Split would result in a specific adverse impact to public health and safety. Gov. Code Section 66411.7(d). "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written **public health** or **safety** standards." There is no such significant, quantifiable impact, here. Zimmer requests that findings be made on these issues, and on the Fire Marshal's additional and knowing abuse of any discretion he claims, based on all the evidence presented, and referenced[6], because this is the sole reason that P&D have refused to make a decision to approve Zimmer's SB 9 lot split. The actions and inaction of your Executives, including Marshal Hazard, Marshal Tan, Chief Hartwig, Director Plowman, Deputy Director Seawards, over a period of three years, have upended Zimmer's plan to age and die in her home of 50 years, and the delay has resulted in significant and continuously accruing damage to her. Zimmer will be over 80 years old before this matter comes to trial.

The court's tentative decision on writ of mandate did *not* include findings on whether the County has abused its discretion in its treatment of the "same practical effect" issue. Rather, the court effectively directed that the matter be remanded to the County. The Fire Marshal's conclusory, and factually and legally erroneous decision, which fails to consider the overall procedural and legal context, cannot and should not be a substitute

for the Board's timely exercise of its full responsibilities in this case, especially given their continuing denial of due process, their denial of any right of appeal, their unlawful deference to the former First District Supervisor, their refusal to review her materials, their refusal to visit the site, and the fact that all prior discussions of this case have been held in closed session. This appeal hearing is requested now, rather than three years ago when Zimmer's formal request for it was ignored, based on former Marshal Hazard's 'advice' to the Clerk, and solely because the County has now claimed *to the court* that it was never required to hold such a hearing. In light of the continuing prejudice to Zimmer, the contents of all prior Board discussions must be disclosed on the record, and it is requested that the Board engage independent legal counsel to advise them going forward. On a staff level, the process followed in this case is another example of the County's failure to comply with SB 473, which requires *all County Departments* to comply with statutory timelines. P&D's delay, their explicit and continuing deference to the former Fire Marshal, and former fire Chief, and their failure to make a decision, has created this impasse. Despite numerous opportunities to remedy their errors, your current Fire Marshal is perpetuating and compounding them. The Board of Supervisors is therefore requested to take this matter up, to address the policy conflicts staff has created, so that the "tail is (not continually) wagging the dog." *Lesher Communications v City of Walnut Creek (1990) 52 Cal. 3d 531.*

As critical and important as our fire rules are, in this context they cannot and should not be used to override the State's housing goals **unless the case presents a clear public health and safety issue**. It simply does not, and staff knows it. The Board is fully aware of the conflicts their staff have created between the Housing Element and their Safety Element. The Board is aware that HCD agrees that the Fire Marshal cannot require any offsite improvements, at all.[7] In order to resolve this case, Zimmer has gone to extraordinary efforts to satisfy the Fire Marshal, and to attempt to get her neighbors – some of whom do not want to see this unit built- to cooperate.

Staff's conduct, collectively and individually, is not based on evidence, is a serious abuse of discretion, and breach of the public trust. After three *years* in litigation over the County's failure to process her SB 9 Lot Split application to a decision, County Counsel has claimed that Zimmer failed to exhaust her administrative remedies because she did not file a one page, no-cost form (which she was never informed existed) to summarize her multiple prior written requests, including to the Board of Supervisors, to require that the County find, as authorized by the Safety Element, and Title 14 of the California Code of Regulations that fire protection improvements she has achieved constitute the "same practical effect" as strict compliance with measures to assure fire equipment access to and egress from her property in a wildfire. The application they demanded, Request for Modification or Alternative Design and Methods Review, is not sufficient or appropriate to this determination or in this context.[8]

Zimmer also continues to contend that the measures demanded by the Fire Marshal(s) are and were unlawful because they required her to (1) complete "offsite improvements", and- importantly, (2) the P&D Director demanded that those improvements be completed *prior to* processing her SB 9 application. Because the County never allowed any appeal, these fundamental issues have never been addressed by the Board. The former Fire Marshal, Rob Hazard first made these illegal demands in a letter to Zimmer dated June 14, **2023**. Hazard made these demands notwithstanding his knowledge that there never has been an obstacle to either evacuation from or fire equipment access to Zimmer's property.

Worse, in a new and separate violation, the current Fire Marshal, Fred Tan, **has expanded on Hazard's demands** to assert that the minimum lane width is 20' feet, -to accommodate two way traffic- and not the 15' width of Zimmer's easement, as acknowledged in the Mission Canyon Community Plan, *and as specifically*

acknowledged- in writing- by former Marshal Hazard and Chief Hartwig. All County staff, including the Fire Marshal, have known from day one that Zimmer never would have applied for the Lot Split had she been told the "minimum" road width requirement was 20', and that it must accommodate two-way traffic, which are both physically and legally impossible.

Conclusion

The sad irony in this case is that if the County Executives responsible for these decisions had been willing at any point to enter any genuine discussion, the matter could have been resolved. Zimmer attempted to comply with the Fire Marshal's demands, first, in order to avoid litigation, and then, continuing for two years, to resolve it. Zimmer made multiple offers to resolve the Fire Marshal's (unwarranted) concerns, and was prepared to agree to complete any legitimately required additional improvements *after* recordation, and on issuance of a building permit, as the law authorizes. But staff never engaged: not prior to submittal of the application, not during the approval process, and their executives literally treated Zimmer's attempts to understand their demands as a laughing matter. See, e.g. e-mail exchange Zimmer, Seawards to Plowman (4/13/2023). They- and County Counsel- forced Zimmer to litigate, and now, apparently, they continue to advise, *in closed session,* and with no opportunity for Zimmer to know what they represent to the Board, or to respond, that the Board stick to a factually, legally and ethically bankrupt position. It behooves the Board to finally demand an explanation, and in public.

Please grant the appeal and direct P&D to approve the lot split forthwith, and with no conditions.

Very Truly Yours,

Jana Zimmer

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[1] Zimmer preserves her objection that unless **all relevant issues are considered**, the issues in this case go beyond this board's functions to "provide for reasonable interpretations of the provisions of the Fire Code". See, Rules and Regulations of County Fire's Board of Appeals. 2/15/07. Zimmer will be required under these rules to testify under penalty of perjury, as will Tan and other staff. The individual and collective motivation for the County's continuing failure to acknowledge that Marshal Tan's demands are and were unlawful will be addressed after completion of necessary discovery, and at the trial of Zimmer's Complaint for their breach of the implied covenant of good faith and fair dealing. Her Complaint will be amended as necessary depending on the result of the Board's action. Zimmer has filed additional Public Records requests based on the need to respond to the Fire Marshal's contentions of March 5, 2026.

[2] Zimmer would have been willing to resolve that by moving the structure sufficiently to the south to meet the requirement. They didn't ask, and she agreed to the sprinklers. Now they have increased their demands for "access" to include the **offsite** road and **refused to modify the 15' width requirement in any location.**

[3] Indeed, creating a new dispute, the Museum has recently demanded that Zimmer agree to *reduce* the width of her 15' easement to enable Francavilla to keep his most recent obstructions in place.

[4] Hazard's assertion of June 14, 2023 that the lane was "only 9.6'" was wrong when made, but he refused to correct it. Notwithstanding his contrary testimony to the court, Tan knows that the oak branch that extended over the lane is gone and the traversable area of the lane has been widened.

[5] Zimmer has filed a new Public Records request asking specifically for evidence of the department's practices on approving same practical effect. She expects complete responses before the Board's hearing on this case.
[6] See, documents cited in the Index to administrative record, already submitted, as well as additional relevant documents to be presented at the hearing.
[7] This is only one of over 20 reasons that HCD has rejected the County's SB 9 ordinance, which perpetuates the harm done to Zimmer and others who may be similarly situated.
[8] The request Zimmer made was in writing, and sufficient under the plain language of 14 C.C.R. 1270: b) Requests for an Exception shall be made in writing to the Local Jurisdiction listed in 14 CCR § 1270.06 by the applicant or the applicant's authorized representative.
At a minimum, the request shall state the specific section(s) for which an Exception is requested; material facts supporting the contention of the applicant; the details of the Exception proposed; and a map showing the proposed location and siting of the Exception. Local Jurisdictions listed in § 1270.06 (Inspections) may establish additional procedures or requirements for Exception requests.

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Jana Zimmer

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