

Katherine Douglas

Public Comment

A-21

LATE
DIST

From: Jana Zimmer <zimmerccc@gmail.com>
Sent: Monday, June 9, 2025 8:48 AM
To: sbcob; Laura Capps; roy.lee@countyofsb.org; Joan Hartmann; Steve Lavagnino; Bob Nelson; Solomon Richard; mindy.wilcox@hcd.ca.gov
Subject: Item A-21 Request to remove Adoption of Fire Maps from Administrative Agenda and Continuance
Attachments: SanDiego-HAU 1319-TA SB 9 Lot Split-04102025 (1) (1) (1).pdf; letter B of S re Fire Maaps 6.10.2025.docx

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Dear Chair Capps and Honorable Supervisors:

We have just learned that you have an item on the administrative agenda for *second* reading to adopt a new ordinance which designates our home to be located in the new, "Local Responsibility Area Fire Hazard Severity Zone", and subject to new requirements which you know, or should know, are already being unfairly applied to my property, and other single family lot owners, as we speak. Despite their specific knowledge that I have a direct interest in this topic, I was not provided any notice of the June 3 hearing. Of more importance to the public, this action, if not clarified, would be inconsistent with the Safety Element amendments which your Board made in 2023, in response to comments by HCD, of which your staff is well aware.^[1] The SB 9 ordinance that you adopted in February (again, with no notice to me or any others you knew could be affected) suffers from the same defect(s).

Please take this opportunity to correct this without forcing other homeowners to file litigation against the County. **This can be accomplished by your explicit acknowledgement that Government Code Section 66411.7 prohibits you from requiring any offsite road improvements, and also prohibits you from charging fees, including traffic fees, to fund such offsite improvements, as HCD has already declared. Your County Counsel is well aware that HCD has already opined that you cannot require an SB 9 applicant to fund such improvements. (See, below, e mail R. Solomon to C. Kim, and attachment, 4.22.2025 and HCD Memo attachment).**

Supervisor Nelson was correct, at the hearing of June 3, to worry about how the new standards will be applied to broccoli. The residents of Mission Canyon and all the other mapped (and newly mapped) very high fire areas have a right to understand how, exactly, these new powers will be exercised as they pertain to housing units, and what process will be implemented to allow appeals, and to avoid all the errors made in my case from being repeated.

Thank you for your consideration.

Jana Zimmer

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannan Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



April 10, 2025

Anwer Ibriheem, Assistant Engineer
Engineering Division
Development Services Department
City of San Diego
202 C St.
San Diego, CA 92101

Dear Anwer Ibriheem:

RE: San Diego - 3121 Boundary Street - Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding a proposed Senate Bill 9 (SB 9) (Chapter 162, Statutes of 2021) urban lot split¹ application at 3121 Boundary Street. Specifically, the applicant requested guidance on whether the City of San Diego (City) can require Americans with Disabilities Act (ADA) improvements to an existing driveway apron and sidewalk located in the public right-of-way as a condition of approval of the urban lot split. The purpose of this letter is to provide technical assistance to the City regarding its implementation of SB 9 by clarifying that offsite improvements cannot be required to be constructed prior to the approval of an SB 9 urban lot split application.

Background

HCD understands the applicant has submitted a parcel map application for an SB 9 urban lot split to subdivide an approximately 5,100 square-foot lot into two parcels. One of the proposed parcels is designed to access the public street via an existing private driveway, an existing driveway apron, and sidewalk between the private driveway and apron. The driveway is located on private property while the driveway apron and sidewalk are located in the public right-of-way. HCD understands that the driveway apron and sidewalk do not meet current City design standards. Specifically, they do not meet Standard No. SDG-159, which, among other purposes, is intended to implement ADA requirements. HCD understands and appreciates that addressing ADA requirements is a high priority to the City.

In the City's review comments for the parcel map application (dated September 24, 2024), the City is requiring that the driveway apron and sidewalk be reconstructed in conformance with SDG-159 and that an encroachment permit be obtained prior to

¹ Gov. Code, § 66411.7.

commencing this work. The encroachment permit is required because the work would be in the public right-of-way. The reconstruction work is required to be complete before the City will issue an approval of the parcel map. HCD understands that the City intends to place a hold on the recordation of the parcel map until such time as the reconstruction is complete.

SB 9 Precludes Offsite Improvements for an Urban Lot Split

The law specifies what a local agency cannot require in approving an SB 9 urban lot split. Specifically, Government Code section 66411.7, subdivision (b)(3), provides the following:

Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way **or the construction of offsite improvements** for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section. (Emphasis added.)

The required reconstruction of an existing driveway apron and sidewalk in the public right-of-way, to meet current City standards, constitutes a requirement for “the construction of offsite improvements.” Furthermore, approval of the parcel map is subject to compliance with this reconstruction requirement and therefore constitutes a “condition of issuing a parcel map for an urban lot split” that is prohibited in Government Code section 66411.7, subdivision (b)(3).

HCD notes that the City’s municipal code² states the following for urban lot splits:

An urban lot split shall be permitted in accordance with a Process One parcel map and shall comply with Chapter 14, Article 4, Division 2, except that dedications of public rights-of-way or **the construction of offsite improvements for the parcels being created and the correction of nonconforming development regulations of the base zones are not required.** (SDMC 143.1315(a), emphasis added.)

However, the City’s SB 9 information page³ states that for urban lot splits:

B. (A) Public rights-of-way, offsite improvements and the correction of nonconforming zoning conditions are not required. **However, Americans with Disabilities Act (ADA), accessibility, pedestrian, and vehicular access, alley, utility service and other improvements may be required.** (Emphasis added.)

The City’s municipal code language conforms with the requirements of SB 9, but the City’s SB 9 information page does not and must be revised to remove the requirement for potential ADA-related offsite improvements during an urban lot split application.

² <https://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art03Division13.pdf>.

³ <https://www.sandiego.gov/development-services/forms-publications/information-bulletins/409>.

HCD wholeheartedly agrees with the importance of improving ADA access. HCD also understands, through discussion with City staff, that the City does have the legal authority to require the specified driveway apron and sidewalk improvement during future construction permit processes for the subject site. Therefore, while HCD has determined that these offsite improvements cannot be required during an urban lot split application, HCD understands from the City that there will be other opportunities for the improvements to be required as a part of future land development approvals.

Conclusion

Reconstruction of an existing driveway apron and abutting sidewalk located in the right-of-way are offsite improvements and cannot be required as a condition of approval for an SB 9 urban lot split application. The City's SB 9 information page must be updated to reflect this determination. HCD requests a response from the City by May 10, 2025 that includes a plan to correct its SB 9 information page.

HCD looks forward to assisting the City with its implementation of SB 9 and in its compliance with state housing laws. HCD would like to remind the City that HCD has enforcement authority over SB 9, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. If you have questions or need additional information, please contact Mindy Wilcox at mindy.wilcox@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief

Re: Item A-21 Adoption of designated LRA Fire Hazard Severity Zones--Request to remove Item from Administrative Agenda and for continuance

Dear Chair Capps and Honorable Supervisors:

We have just learned that you have an item on the administrative agenda for *second* reading to adopt a new ordinance which designates our home to be located in the new, “Local Responsibility Area Fire Hazard Severity Zone”, and subject to new requirements which you know, or should know, are already being unfairly applied to my property, and other single family lot owners, as we speak. Despite their specific knowledge that I have a direct interest in this topic; I was not provided any notice of the June 3 hearing. Of more importance to the public, this action, if not clarified, would be inconsistent with the Safety Element amendments which your Board made in 2023, in response to comments by HCD, of which your staff is well aware.¹ The SB 9 ordinance that you adopted in February (again, with no notice to me or any other you knew could be affected) suffers from the same defect(s).

Please take this opportunity to correct this without forcing other homeowners to file litigation against the County. **This can be accomplished by your explicit acknowledgement that Government Code Section 66411.7 prohibits you from requiring any offsite road improvements, and also prohibits you from charging fees, including traffic fees, to fund such offsite improvements, as HCD has already declared. Your County Counsel is well aware that HCD has already opined that you cannot require an SB 9 applicant to fund such improvements. (See, below, e mail R. Solomon to C. Kim, and attachment, 4.22.2025 and attachment).**

I note that there was no notice and there were no members of the public present to speak on June 3, and it is obvious that neither the agenda item staff report, nor the discussion clearly disclosed the hidden impacts, specifically of your local Fire Chief putting all of lower Mission Canyon south of Foothill **back on** to the LRA maps, without any specific evidence or justification, when the State had deleted this area. For example, the “evacuation” concerns may apply to the Riviera, and the 250 units proposed adjacent to the Mission, but I have two evacuation routes from my lane and would not use Mission Canyon Road. Basic fairness and due process require that you consider the specific impacts and consequences of your actions on individual homeowners.

I have listened to the presentations on June 3, both on the CWPP, and on the first reading of this ‘companion’ ordinance. We were given **no** notice of these presentations, despite the fact that your staff and your lawyers know of our acute interest in them. It was obvious from the staff responses to questions from Board member Nelson *that the Fire Department was adding in areas that the State had deleted from the maps*. As a matter of fact, evacuation issues in Mission Canyon are site and roadway specific, so this cannot be a justification for a blanket policy. Likewise, it was never disclosed or explained that the *consequences* to individual homeowners trying to build any structure, let alone new housing, are more onerous now, than in 2009. These “policies” will allow the Fire Marshal to make fundamental policy decisions, which should and must be coordinated with housing requirements, and must be subject to review by your Board. This action, if not clarified, would be inconsistent with the Safety Element amendments which your Board made in 2023, in response to earlier comments by HCD, of which your staff is well aware.²

The sections of stat law set forth by staff apply to *all* development. Your staff and attorneys (as well as homeowners in Mission Canyon) should be made aware that this ordinance may be interpreted to impose new and more stringent requirements than those which apply today, and which will inevitably impair the development of **additional single unit housing, both through SB 9, and ADUs and JADUs**, specifically in the lower Mission Canyon, without any real world justification. Your staff are well aware that there are pending and proposed projects, including my own, which may be negatively affected by these unvetted changes in the future. I am very concerned that, in this context, this Board continues to delay resolving my litigation.³

² This is not the first time you have been advised to adopt changes which will damage, if not destroy my ability to build the caretaker residence which your own Planning/Building and Fire Departments both approved. (See, e.g., your SB 9 ordinance of which I was given no notice, and which was adopted when I was in the hospital for quadruple bypass surgery, in February of 2025). Most recently, your staff has refused to provide me records under the Public Records Act pertaining to the adoption of your SB 9 ordinance, claiming they are all “attorney/client” privileged. County Counsel has continued to fail to place our litigation on your closed session agenda. I remind you that among their other offenses to fundamental principles of due process, your staff has prevented me from exercising my rights of appeal, and four of you have refused, - presumably on their advice- at any time, to view my property, or allow me to speak with you.

³ This concern is compounded by the fact that your proposed CWPP acknowledges that my property is not a “single evacuation route” property. The fact that you are now recognizing the evacuation issues at the corner of Alameda Padre Serra and Los Olivos should come as good news to those of us appalled at the City’s consideration of a 250 unit project at this very intersection has no bearing on my circumstances, for my one caregiver unit, because I have an additional egress route along Puerta del Sol to Alamar/State. **My lawsuit alleges that the County cannot lawfully require either construction or payment for any offsite improvement.** If I am forced to continue, my complaint will allege additional harms, and name additional Defendants.

My First Amended Complaint alleges, at Para. 51:

“Defendants Board of Supervisors adopted amendments to their Safety Element on July 11, 2023, including minimum road width requirements which, if applied as mandatory, purported to add new requirements which Defendants knew Plaintiff could not meet, **which were and are inconsistent with the Land Use Element/Mission Canyon Plan FIRE policies pertaining to road widths for discretionary lot splits, and which would deprive Plaintiff of her vested right to have her lot split approved ministerially.** Plaintiff notified the Board of Supervisors of this issue in written public comment on or about July 6, 2023. Both Defendants Plowman and Hazard specifically assured Plaintiff, in writing, that they retained the authority to approve her lot split.”

“...The County adopted changes to its Safety Element on July 11, 2023, which purported to require a minimum 20’ road width. Without informing Plaintiff, the (former) Fire Marshal erroneously asserted to the Fire Chief that he could apply that road width to Plaintiff’s project in an email to his Chief dated July 6, 2023.”⁴

The “new” CWPP appears to incorporate several new (draft?) proposed Fire Policies which were incorporated into the Dudek study, but do not appear in the Safety Element adopted in 2023 ***and have not been vetted for their effect on housing opportunities. No one asked any questions, nor was there any discussion of whether or how these “policies” apply to housing development under SB 9:***

“State Fire Code and Fire Safe Regulation Compliance **Policy FIRE 5.2 Non-Conforming Roads and Development:** The County will continue to evaluate non-conforming development and apply contemporary road standards consistent with the State Fire Safe Regulations through the development review process.”

“Access and Evacuation Policy FIRE 8.0: Residential Subdivision Access Standards in the VHFHSZ. The County shall require new residential subdivisions in the Very High Fire Hazard Severity Zone to provide not less than two means of access for emergency vehicles and resident evacuation. A deviation from this policy is only allowed if substantial mitigations and management plans are put in place to offset the known risks, and when the Fire Chief approves the proposed deviation mitigation and management plans.

⁴ Chief Hartwig approved his actions.

Access and Evacuation Policy FIRE 8.1 Access Requirements in the VHFHSZ All new development in the Very High Fire Hazard Severity Zone VHFHSZ will comply with ingress/egress requirements found in applicable wildfire Development Standards, Fire Code, and the State Fire Safe Regulations.

State Fire Code and Fire Safe Regulation Compliance Policy FIRE 5.2
Non-Conforming Roads and Development: The County will continue to evaluate non-conforming development and apply contemporary road standards consistent with the State Fire Safe Regulations through the development review process.⁵

Any one of these policies, if adopted, could empower the Fire Marshal to prevent construction of a single new housing unit, with no appeal, no evidence and no findings. I remind you that your Fire Marshal authorized an 11' wide dirt road to access a cannabis project in a high fire area in north County, - without even a same practical effect determination- but is insisting on a uniform 15' wide "offsite" road to be widened and repaved by me, over property I do not own or control.

Supervisor Nelson was correct, at the hearing of June 3, to worry about how the new standards will be applied to broccoli. The residents of Mission Canyon and all the other mapped (and newly mapped) very high fire areas have a right to understand how, exactly, these new powers will be exercised as they pertain to housing units, and what process will be implemented to allow appeals, and to avoid all the errors made in my case from being repeated.

Thank you for your consideration.

Jana Zimmer

⁵ This proposed policy flies directly in the face of SB 9.