



From: Jana Zimmer <zimmerccc@gmail.com>  
Sent: Thursday, July 6, 2023 3:03 PM  
To: Miyasato, Mona  
Cc: Wade Horton; sbcob  
Subject: Re: Request for CAO Resolution

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Dear Ms.Miyasoto:

I'm following up on my request that your office assist in resolving conflicts related to my SB 9 lot split application. Just this morning I became aware that the Board of Supervisors is considering amendments to the Safety Element to address wildfire hazards at their meeting on July 11. **I am concerned that the staff recommendation does not adequately address the fact that the County's laudable wildfire protection policies appear to be on a collision course with State mandated housing policies, and in particular to support ministerial SB 9 lot splits.** Therefore, for the reasons stated below, I am requesting that you ask P&D, County Counsel and the Board to clarify that the Development Standards referenced in proposed Policy 8.1, which are applicable to *discretionary subdivisions*, will not be interpreted or applied to prohibit *ministerial* lot splits. Specifically,

1. That Policy 8.1 shall not be interpreted to preclude a finding of "same practical effect" as any otherwise applicable requirement in Fire's "Development Standards"; and
2. That any adverse determination by the Fire Department or P&D on an SB 9 lot split shall be appealable to the Board of Supervisors.

Depending on how they are interpreted and applied by County Fire and P&D in individual cases, these new Safety Element policies could make ministerial lot splits under SB 9 impossible to approve, especially at properties in areas like lower Mission Canyon, which have been on the VHFHSZ maps since Schwarzenegger was Governor, but which do not have any of the physical characteristics that these maps were meant to address. The further confusion is that while most of the policies would not authorize (let alone require) project denial, as you know, County Fire has recently upended my own pending application for an SB 9 lot split, based on their interpretation of their present authority, with which I disagree, and which will make it infeasible for me to build the ADU for which the County has already approved a building permit, as I have explained elsewhere.

The Board letter recites that Staff has

**"changed the language of Policy 1.2 to eliminate concerns that it could be interpreted as potentially reducing the number, or burden development of, housing opportunity sites within the 2023-2031 Housing Element as a result of a need to comply with Government Code §65302.8.** This Government Code provision states that if the County's Comprehensive Plan policies (e.g. Safety Element wildfire policies) operate to limit the number of housing units constructed on an annual basis, certain findings must be made to do so. The language has been changed from:

*"The County shall discourage land uses that could put people at unreasonable risk in High or Very High Fire Hazard Severity Zones", to*

*"The County will consider risks from hazards when reviewing plans for development and occupancies in High or Very High Fire Hazard Severity Zones and take action to minimize risks to occupants to the greatest extent feasible"*

While most of the applicable standards do not appear to be 'project killers' (i.e. defensible space, vegetation management, sprinkler requirements) the immediate concern for my application- and probably others- is that County Fire is "interpreting" their road width standards in a manner which, if not addressed, and corrected, could lead to their untrammled authority to deny these housing projects.

In addition, while on their face policies applicable to discretionary applications for subdivisions do not mandate denial, but rather (and consistent with longstanding policy in the Mission Canyon Specific Plan), compliance to the greatest extent feasible, See, e.g. Fire 1.5 Subdivision Access<sup>[1]</sup>, Proposed Policy Fire 8.1, appears to require that "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." As County Counsel will no doubt advise, "Shall" or "will" is mandatory. That appears to be a change from current policy, which authorizes the Fire Marshal to find "same practical effect" for alternative measures. [Note: notwithstanding stated 'concerns' about evacuation, my property is shown as having two evacuation routes on the Safety Element Map.]

As you know, I have disagreement, both with which wildfire Development Standards are "applicable", and with the scope of authority that the Fire Marshal may have to demand literal compliance with current road width requirements in my case and in my location. I have provided Fire, P&D and County Counsel with documentation that I have done everything that is legally and physically within my power to provide compliance with "standard" [new subdivision] road width to the maximum extent feasible, e.g. widening the access along my frontage, widening my driveway entrance to 17', agreeing to sprinkler the approved unit, trimming my oaks to the mandated height to provide vertical access.

I have also asked my neighbors (i.e. the Museum) to confirm that if necessary to meet their current demand for a minimum 15' road width along my frontage, that I can add paving on the south side of my easement, if necessary, and I have reminded my other neighbor at 2636 Las Encinas to perform the defensible space mitigations that he has promised along our common boundary, and to take all feasible further steps to widen the lane in front of his property. And, I have also obtained confirmation from my immediate neighbor at 2646 Las Encinas that he has no objection to the Fire Department continuing to use the existing bulb style turnaround that Fire has used for the last 50 years of my ownership.

Finally, as a matter of settlement of our dispute, and in view of the fact that the building permit for the residence I intend to build has already been approved, as an ADU, and while the lot split would have no impact whatsoever on fire access, I have proposed a very specific additional driveway improvement to assure that ambulances can turn more quickly in my driveway in the event of a medical emergency. In my view, the Fire Marshal can and should determine that the improvements I have already made and offered to make, collectively, constitute "same practical effect" as strict compliance with any Development Standards that might otherwise apply, and which are clearly legally and environmentally infeasible. If they cannot, or will not do so, and apart from the legal consequences, I am concerned that whatever high minded statements we hear about housing, the interpretation of the Safety Element policies will indeed eliminate, and inappropriately burden the development of housing, as it already has in my case.

Finally, despite the delay in processing my application for over six months, I have never been informed by staff that the draft Safety Element contains policy that could be interpreted to require denial of my application which, as you know, I contend has been approved already by operation of law. Therefore, the County's continued delay is a substantial concern.- especially in light of their pending approval of "new" requirements that could further burden my and other applications for housing.

Unless staff confirms that Fire has withdrawn their objections to my application by Monday afternoon, it is my intention to request a continuance of the Safety Element item until the implications of this important issue are further examined and clarified. While I am only proposing one additional unit, I am quite certain that this same concern will unfairly "burden" other housing proposals by owners proposing both single or multiple units. Every unit counts.

Thank you.

Jana Zimmer

cc: Board of Supervisors

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<sup>11</sup> Subdivision projects shall site access roads between new homes and wildland areas, *to the greatest extent feasible*, while also minimizing disturbance to sensitive environmental resources, in order to maximize defensible space, access for fire suppression, egress for affected residents, and to reduce wildfire risk to new homes and structures.

On Mon, Jul 3, 2023 at 11:27 AM Miyasato, Mona <[mmiyasato@countyofsb.org](mailto:mmiyasato@countyofsb.org)> wrote:

Dear Ms. Zimmer

I understand your concern, and the Assistant CEO over these areas – Wade Horton (also on this email) – will meet with you to further hear your perspective. However, I think that meeting may be more productive after the Fire Department has reviewed your latest proposal, which I believe was sent last week.

Mr. Horton will keep in close contact with the Fire Department and set something up promptly after that.

Mona Miyasato

County Executive Officer

County of Santa Barbara

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**From:** Jana Zimmer <[zimmerccc@gmail.com](mailto:zimmerccc@gmail.com)>  
**Sent:** Monday, July 3, 2023 9:36 AM  
**To:** Miyasato, Mona <[mmyasato@countyofsb.org](mailto:mmyasato@countyofsb.org)>  
**Subject:** Request for CAO Resolution

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Jana Zimmer

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July 3, 2023

Mona Miyasato, Chief Executive Officer

County of Santa Barbara

105 E. Anapamu St

Santa Barbara, CA. 93101

*By e-mail*

Dear CEO Miyasato:

I am writing to request your assistance with a permit issue involving Planning and Development, the Fire Department and the Surveyor's office. I understand that your office oversees these departments and that you have appointed a new Assistant CEO to perform this very function. I have been trying to resolve the matter for several months, and am asking that you exercise your authority to help accomplish a just and lawful result.

I have been in process for a ministerial lot split under SB 9 since late December of 2022. On January 3, 2023, P&D "accepted" the application for processing. The lot split is necessary to enable construction of a residence [22 BDP 00357], already approved as an ADU, to allow for a family caregiver to live on my property so I can age in place. For financing purposes, and to enable implementation of my approved building permit, a separate lot is required. The approval of the SB 9 lot split has been upended by demands from County Fire and the Surveyor (so far) which I contend are illegal and untimely. P&D has not timely complied with their duty to consider and either approve or deny my application.

My main objections to the Departments' conduct in this case are as follows:

1. My application was deemed complete by operation of law (Permit Streamlining Act) on February 2, 2023. Nevertheless, P&D claimed for the first time *on June 23* that it is still incomplete.
2. P&D sent me a letter on February 13 in which they specifically stated that my application was 'eligible' for an SB 9 lot split, but which suggested that Fire might propose conditions with which, as I informed P&D on February 14, 2023, I disagreed. There was never an acknowledgement or response to my objection.
3. On or about June 14, over four months after my application was deemed complete by operation of law, County Fire sent what purported to be a Determination of *Ineligibility* for an SB 9 Lot Split unless I agree to one of two 'modifications'- which, apart from their lateness, are completely unauthorized under the law. While I have been willing to, and have made numerous voluntary improvements to my property, each and both of their current demands would result in a taking of my property, to which I will not consent, as I have informed County Counsel.

4. The County has taken the position that I cannot appeal Fire's "Determination" of June 14. I am not aware of any adopted guidelines for them to determine "eligibility," or which office or ordinance delegated that function to Fire.

5. I have requested P&D to reject Fire's unlawful conditions and to find, based on the preponderance of evidence that I am entitled to the lot split. P&D has refused to take action, and has taken the position that their Director's determination under SB 9, if it is ever made, is not appealable.

6. P&D never informed me, prior to June 23, 2023, that they claim my application was incomplete, and never acknowledged that such a decision is specifically appealable under the LUDC. P&D also refuses to acknowledge that, as a matter of law, my application was approved 60 days after it was deemed complete.

Thus, Fire continues to assert authority over this application, and to attempt to impose exactions which are both untimely and completely unauthorized, and P&D refuses to take *any* action, now asserts my application is incomplete, that I have no administrative appeal, and proposes to either return my application or leave it in limbo unless I accede to Fire's untimely, illegal, irrational and capricious demands.

I am still trying to suggest to Fire staff ways that they can find "same practical effect", assuming without conceding they have any authority at all, based on all of the improvements I have made on my own property, with their knowledge, since August of 2022, but they seem not to be understanding that their new demands are well outside of the time limits for action established by State law, or the standards under which they are required to operate.

This is no way to fulfill the County's "moral" or legal obligations to encourage housing, and no way to treat an elderly, 50 year homeowner and taxpayer in the First District seeking to build the housing that the County building official has already approved. I have continued to propose solutions which fully address staff's alleged "concerns" to which no one in authority seems willing to actually respond, in substance. [See Attachment, below] The County Administrator would be well served to encourage the departments to accept my proposal, which is fair, rational and clearly meets any cognizable policy concern.

Thank you in advance for your assistance, and if you have any questions, please do not hesitate to call me. Even if you choose not to respond to this request, please acknowledge receipt.

Very Truly Yours,

Jana Zimmer

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## Proposal for Resolution

**A. I have proposed to amend my map (as long as P&D does not claim a new Permit Streamlining Act deadline has been triggered) to include a note that the proposed new lot shall be deed -restricted for only one single family residence. *Prior to or simultaneous with recordation of the map*, I will record a deed restriction giving up my existing, vested permit for an RSU, and/JADU on my existing lot. This would address any claim that my lot split would result in any cognizable increase in density, as alleged by the Fire Marshal. And, the note on the map is more than adequate notice to a purchaser or future builder.**

**B. I have already completed numerous improvements to access for emergency equipment. I have widened the lane by at least 2' feet, I have widened my driveway to 17 feet, I have limbed my oaks to at least 13'5" as directed by Fire. I would implement additional frontage improvements in front of my property to the extent allowed under the terms of my easement over Museum property, to assure that the *paved* portion of the lane is a minimum of 15' wide along my property, subject to the consent of the Museum. This work would be completed *prior to occupancy* for the residence approved under 22 BDP 00357, or any subsequent building permit.**

**In exchange,**

**A. The Fire Marshal shall withdraw their objections to my lot split and the demands in their letter to me of June 14 , 2023. If they fail to do so, P&D and Counsel shall determine, based on a preponderance of the evidence that the conditions proposed by Fire are legally, environmentally, and practically infeasible, that the application is in compliance with all applicable requirements, and approve the application.**

**B. Planning and Development shall expeditiously complete processing of my SB 9 lot split and approve it with the same conditions as were imposed on my approved building permit on my ADU, 22 BDP 00357, and no other conditions, and at no cost in excess of their \$7000.00 total estimate of costs they initially provided.**

**C. Your County Counsel and P&D confirm that no other conditions are warranted or will be imposed by any other Department.**

***This proposal is submitted as a matter of settlement, only. I would be happy to discuss any details with you.***

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Jana Zimmer

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Jana Zimmer

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