SANTA BARBARA COUNTY BOARD OF SUPERVISORS
MEETING OF NOVEMBER 7, 2023

CLOSED SESSION AGENDA

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Government Code section 54956.9)

American Medical Response West v. County of Santa Barbara et al.; Santa Barbara County Superior Court Case No. 23CV04250.

Joyce E. Dudley, Santa Barbara County District Attorney v. County of Santa Barbara; Santa Barbara County Superior Court Case No. 22CV05054.

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
(Paragraph (2) of subdivision (d) of Government Code section 54956.9)

Significant exposure to civil litigation: 1 case, based on these "facts and circumstances:"

The Santa Barbara County District Attorney's Office has filed a First Amended Verified Petition for Writ of Mandate concerning a Public Records Act request the District Attorney's Office submitted to the County of Santa Barbara in Case No. 22CV05054. In that Petition, the District Attorney's Office states that the Consumer and Environmental Protection Unit of the Santa Barbara County District Attorney's Office has been investigating the County's response to a "Toro Canyon Creek oil spill" since July 2021.

Significant exposure to civil litigation: 1 case.

The Solomon-Zimmer Living Trust submitted a claim for $800,000 as attached to the Agenda item.

CLAIM
COUNTY OF SANTA BARBARA

PLEASE RETURN ORIGINAL AND ONE COPY TO:

COUNTY OF SANTA BARBARA
CLERK OF THE BOARD OF SUPERVISORS
105 EAST ANAPAMU STREET, SUITE 407
SANTA BARBARA, CA 93101

* READ THE INSTRUCTIONS ON THE REVERSE SIDE BEFORE COMPLETING *
* IF ADDITIONAL SPACE IS NEEDED, USE SEPARATE PIECES OF PAPER *

Kathleen Douglas
RECEIVED BY (DEPUTY CLERK)

☐ Personal Delivery
☐ Mail
☒ Other Email

2023 JUL 21 A 11:20

BOARD OF SUPERVISORS

CLERK OF THE BOARD TIME STAMP

A. NAME AND ADDRESS OF THE CLAIMANT:
SOLOMON-ZIMMER LIVING TRUST
JANA ZIMMER
2640 LAS ENCINAS LANE, SB 93105
TELEPHONE: 805 705 3734
EMAIL (optional): zimmerccc@gmail.com

B. ADDRESS TO WHICH THE PERSON PRESENTING THE CLAIM DESIRES NOTICES TO BE SENT:
RICHARD C. SOLOMON ATTORNEY
2640 LAS ENCINAS LANE
SANTA BARBARA CA 93105
TELEPHONE: 805 452 5839
EMAIL (optional): rsolomon2@cox.net

C. DATE, PLACE, AND OTHER CIRCUMSTANCES OF THE OCCURRENCE OR TRANSACTION WHICH GAVE RISE TO THE CLAIM:
DATE: FEB 13.2023 - JUNE 14/23 TIME: AND ONGOING
PLACE: SANTA BARBARA
CIRCUMSTANCES: SEE ATTACHMENT 1 INCORPORATED, AND EXHIBITS

D. GENERAL DESCRIPTION OF THE INDEBTEDNESS, OBLIGATION, INJURY, DAMAGE, OR LOSS INCURRED SO FAR AS IT MAY BE KNOWN AT THE TIME OF PRESENTATION OF THE CLAIM:
SEE ATTACHMENT 1 AND EXHIBITS

E. NAME(S) OF THE PUBLIC EMPLOYEE(S) CAUSING THE INJURY, DAMAGE, OR LOSS:
ROB HAZARD, FRED TAN, LISA PLOWMAN DOES 1-30
TRAVIS SEAWARDS, DAJ WILLIAMS

F IS THE AMOUNT CURRENTLY CLAIMED LESS THAN $10,000? YES ___ NO X

IF "YES": STATE THE AMOUNT CLAIMED, AND THE BASIS OF COMPUTATION:
$ 300,000 SEE ATTACHMENT 1 AND EXHIBITS

IF "NO": DO NOT STATE A DOLLAR AMOUNT, AND INSTEAD STATE WHETHER THE CLAIM WOULD BE A "LIMITED CIVIL CASE":

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT

SIGNATURE OF CLAIMANT OR REPRESENTATIVE

7/20/23
DATE SIGNED

Attachment 1- Claim for damages under the Government Claims Act

Claim of: Solomon- Zimmer Trust, Jana Zimmer Trustee,

against County of Santa Barbara, and Rob Hazard, Fire Marshal, Lisa Plowman, Planning Director, Travis Seawards, Supervising Planner, Fred Tan, Deputy Fire Marshal, and Das Williams, First District Supervisor.

Introduction

> Oliver Wendell Holmes said: "Men (sic) must turn square corners when they deal with *the Government." (Rock Island A. & L.R. Co. v. United States (1920) 254 U.S. 141, 143; 65 L.Ed. 188, 189.) Our own California Supreme Court remarked: "'It is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens.' Ventura Foothill Neighbors v. County of Ventura (2015)*

This claim for damages by Jana Zimmer as Trustee of the Solomon-Zimmer Trust, and sole Owner of the property addressed as 2640 and 2642 Las Encinas Lane, arises out of the County's callous disregard of its obligation to treat her, and applicants seeking to develop modest housing opportunities fairly and honestly. The County has failed to process and approve, in good faith, in the time frames and under standards mandated by California law, a **ministerial,** two-way lot split under Government Code 66411.7 (also known as "SB 9").[1] Owner meets all applicable, objective criteria set forth in Government Code Section 66411.7 and related State and local laws.

The County has already approved a **ministerial** building permit, 22 BDP 00357, for a 1200 square foot ADU (accessory dwelling unit) on Owner's property, as fully compliant with building codes, including the Fire Code. Owner readily agreed to the Fire Department's sole condition, to address access for fire equipment- to sprinkler the new dwelling.[2] In order to secure separate financing of the *same* ADU/dwelling, and proceed with construction, Owner applied for a two way lot split under SB 9 so that the approved dwelling would be constructed on its own parcel, in the same location as already approved by the Fire Department.

SB 9 establishes an unusually high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency's **building official** (who is supervised by the Planning Director) must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to

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[1] Owner clearly qualifies under current standards. County has yet to adopt a local ordinance implementing SB 9 but plans to do so in early 2024.

[2] Owner agreed to this condition notwithstanding that for an ADU County has no legal authority to impose it. Fire asserted that the location of rear of the structure was beyond their 150 foot hose length. As an alternative to access from the drive, there is an available 20' wide easement to the property to the north from which a fire at the new structure could be tackled. Owner agreed, nevertheless to the condition to maximize access for firefighting on her property and Fire found "same practical effect" in compliance with their development standards.

satisfactorily mitigate or avoid the specific, adverse impact. *"Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)"* No such 'specific, adverse impact' from putting the **same** dwelling for which the County approved a building permit, in the **same** location, but on its own lot has ever been identified by the County.

To the contrary, months after the application was deemed complete under the Permit Streamlining Act, and, as a matter of law, deemed approved, and after failing to comment within the legal timeframes, the County Fire Marshal has inserted himself to demand that Owner comply with demonstrably illegal, infeasible conditions, unrelated to any identified impact of the proposed lot split, which would result in a taking of Owner's property, and which are utterly useless and irrelevant for legitimate fire protection needs.

For her part, the County Planning Director has failed and refused to exercise her authority to reject those illegal conditions, and refuses to render a decision and findings either approving or denying Owner's lot split application. She now contends that there is no administrative appeal of any of their staff determinations, and, after consuming thousands of dollars in permit fees, over a period of six months, has purported to reverse her own staff determination of February 13, 2023 – after the application was deemed complete as a matter of law under the Permit Streamlining Act- that the property is "eligible" for a lot split, at all.[3]

The County's bullying, arbitrary and capricious course of conduct has resulted and will result in damage to Owner in excess of $800,000 in monetary damages alone.[4] It also entirely frustrates the State's housing mandates, and Owner's modest goal to provide onsite housing for her family caregivers as she continues to age in place in the home she has owned for 50 years.

1. Summary of Applicable Law

California Government Code Section 66411.7 requires the County to consider and approve certain lot splits ministerially, under objective standards. A proposed housing development

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[3] The County has failed to produce any guidelines, adopted or not, which it uses to determine "eligibility" for an SB 9 lot split. The letter dated 2/13/2023 stated: "Upon analysis of the application, staff determined that the project is eligible for ministerial processing pursuant to SB 9. CEQA does not apply to the approval of ministerial projects."[Exhibit 8] The letter nowhere mentions the Permit Streamlining Act, nor any right of appeal from a determination of incompleteness under the PSA.

[4] This claim is submitted to assure Claimant's timely compliance with the Government/Tort Claims Act. [See City of *Stockton v. Superior Court* (2007) 42 Cal. 4th 730. Owner reserves the right to file and assert any and all other cognizable claims against the County, and its officers and employees, which do not require the filing of a tort claim, including but not limited to an action for declaratory judgment and damages for the County's violation of Owner's substantive and procedural rights under all applicable state and local laws, and the State and federal Constitutions. This claim is based on information currently available to Owner. She will amend if necessary upon receipt of all documents to which they are entitled, and for which they have filed requests under the Public Records Act, and discovery of any and all additional evidence.

or lot split may be disallowed only if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6), *and* if there is no exception to the restriction. Examples of conditions that **may** disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. However, the burden is on the County to first establish that disqualifying conditions exist on the project property, and, in the case of fire hazards, that no exceptions to the restrictions exist, and they have not done so in this case.

The only issue in this case is the applicability of Gov. Code 65913.4(a)(6) pertaining to fire hazard areas. However, County has failed to acknowledge that the restriction in Gov. Code Section 65913.4 is intended by the State Legislature and, in their adopted guidelines by State Housing and Community Development (HCD), to apply only where a project cannot meet existing building standards, and only to sites designated on the State maps, as clearly stated in the State's Housing and Community Development Department (HCD) guidelines for SB 35[5], Section 401(b)(4):

> **"A. This restriction does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to Government Code section 51179(b), or sites that are subject to adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.**[6]

Owner has already agreed to sprinkler the approved ADU/residence, which is the only applicable building standard she knows of. The County has not identified any other applicable "existing building standard". The Fire Marshal appears to believe that he has unfettered ability to impose subdivision standards applicable to discretionary permits of tract maps, regardless of their (un)reasonableness. Nor has Fire identified any specific additional impact from constructing the exact same house as they have already approved, in the same exact location, on its own lot. Nevertheless, despite the fact that there is no identified impact from the lot split to fire access or fire safety, the Fire Marshal has attempted to compel Owner – alone- to fund and construct offsite improvements - a condition which is expressly prohibited under SB 9, (See, Gov. Code Section 66411.7(b)(3)), and which the Fire Marshal , the Planning Department and County Counsel all know are legally, environmentally and physically impossible for her to perform.

The other "option" he has offered would require Owner to convey to County Fire an exclusive easement for a hammerhead turnaround on their property, which they know cannot fit, and which would result in a physical taking of all of Owner's private parking (required for her residence to remain conforming as to parking requirements, and to enable her to build the additional residence they have already approved.) To this date, the Fire Marshal has arbitrarily refused to exercise his authority to determine that numerous alternative mitigations Owner has already performed on her property- widening her own frontage, widening her driveway, widening her parking area,

trimming oaks to the regulation 13'5" width, providing assurance of continued availability of a bulb style turnaround at the property next door, -and other voluntary road widening with her neighbors together constitute "same practical effect" under the Fire Code.

2. The County's conduct is irrational, arbitrary and capricious.

The County (including the Fire Department), has already approved a building permit for a 1200 square foot ADU on Owner's property based on Owner's agreement to install sprinklers. She has agreed to install the same sprinklers on the approved residence under 22 BDP 00357, or any new residence on the new lot, and she and her neighbors (except for Francavilla, at 2636, whose property is the most nonconforming in lane width) have voluntarily performed every possible improvement for access for fire and emergency vehicles- lane and driveway widening to the extent legally and environmentally feasible, as well as trimming of oaks to the required height [See, e.g. Exh 73, e mail to Capt. Gray re completed improvements 2.13.2023].

Las Encinas Lane is and always has been wide enough for fire equipment access, and already provides a "bulb style" turnaround which has existed at the property at 2646, *next door to Owner,* and which has been used for at least fifty years. [See, Letter from Owner of 2646 Las Encinas dated June 28, 2023 confirming continuing availability of that turnaround. Exh 78] **Fire has failed to identify any impact from allowing the same residence for which they have already approved a building permit, subject to sprinklering, to be built on its own parcel.** Yet, they have insisted on imposing more draconian requirements than they would or could impose under the Mission Canyon Specific Plan if this were a discretionary permit, which it is not.

County Fire has arbitrarily failed and refused to accept these voluntary measures as adequate, or to find that they constitute "same practical effect" as defined in their Development Standards, and has upended the permit approval process. Instead, and well after the expiration of Permit Streamlining Act deadlines, on June 14, 2023, the Fire Marshal purported to rescind P&D's conclusion of February 13 that the property is "eligible" for a lot split, and has required additional conditions, on Owner alone, unrelated to any identified impact of the addition of one single family residence to Owner's property, and which they know or should know are legally, environmentally, and physically infeasible: (1) a requirement that Owner widen and repave an existing private access road serving three other properties, to 20 feet, (since reduced to a 'minimum' of 15') which remains legally and environmentally infeasible, and/or (2) to provide a hammerhead turnaround on Owner's property, which is physically and legally infeasible [See, Exh 23, 27, 29 re: Fire Marshal letter of June 14, 2023].

On July 17, 2023, they actually **imposed even more onerous conditions**, which they know or should know would result in a taking: a requirement that Owners not only give up existing, approved parking for their residence, *and* that they be prohibited from parking on the new lot, such that they cannot meet parking requirements for the approved residence. Thus, the Fire Marshal has effectively revoked the building permit that they already approved. Despite their actual knowledge that both of these newly asserted requirements are impossible to fulfill, the Fire Marshal refuses to concede, and the Planning Director refuses to reject their unsupported demands and refuses to make findings or a decision based on the preponderance of evidence as

required by law. Their apparent strategy is to force Owner to either agree to perform conditions that are illegal, and/or to withdraw her application.

With respect to the two "alternatives" Fire demanded on June 14, Fire and P&D are well aware that Owner, and her neighbors, have only a 15' easement for ingress and egress over the Lane, partially over Museum of Natural History property and property of the owner of 2589 Puesta Del Sol. The Fire Marshal is well aware that Owner has already voluntarily widened and repaved the Lane along their frontage, gaining approximately 2 feet on her property, has agreed to further widen the lane up to her property line with the Museum, has widened her driveway entrance to 17 feet, has trimmed oaks on her property to the required 13'5" height, so the 15' lane width can be achieved on her frontage, and has worked with her neighbors on the lane [7]to voluntarily widen the paved area to the extent environmentally and legally feasible. Owner has acquired bids from Challenge Asphalt to further widen the lane and pave the lower portion of her driveway as well as her lane frontage. These improvements are all that the County is empowered to require of Zimmer under SB9.

If they really believe the current condition of the lane constitutes a fire hazard, the Fire Department has the authority to require more of the other owners: it can require the Museum of Natural History to remove obstacles to fire equipment access on the lane which are on their property, and that have been placed by others in the easement, and to limb mature oaks which they have claimed impair access for their equipment, but has failed and refused to do so. Fire can require Francavilla 2636 to remove the obstacles he has placed in the lane easement. Fire can require Bartz (2589 Puesta del Sol) to remove new boulders he has placed in the easement. Fire also refuses to determine that the improvements already provided, and the turnaround already existing on the property next door, constitute alternatives which provide "same practical effect' under their Development Standards 1.1.3.3, even assuming that 'standard' is applicable.

Owner has been trying to meet Fire's demands for months to resolve their demands amicably. Upon further demand by the Fire Department, and in an attempt to do everything asked of her to achieve resolution,[8] Owner provided an architect's design showing that the County's proposed hammerhead cannot fit on her property, even if it were lawfully imposed as a requirement, and even if it had any utility for Fire engine access, which it would not. More importantly, under their own Development Standards, if a hammerhead were built, **and because their Development Standards require hammerheads to be unobstructed by parking (Dev. St. 1.2.21), Owner would thus still not be allowed to park on her own property, in any of the five (5) permitted spaces.**[9] Fire would also require removal of her

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[7] Except Mr. Francavilla, at 2636 Las Encinas, who refuses to cooperate, even though his frontage is the most nonconforming as to Fire's new "standard". Zimmer has filed a zoning violation complaint- which she has never done in the 50 years of her ownership, asking P&D to enforce the zoning ordinance to compel him to remove obstructions he has placed in the easement which narrow the traversable roadway from the 15' demanded by Fire to "only" 12' 4". A Fire truck is 9" wide. Fire is aware of these obstructions and has failed and refused to ask Francavilla to abate the nuisance he has created.

[8] And, under a specific threat from the P&D Director that they would simply 'return' her application if she did not comply.

[9] When Owner's husband- who is 80 years old,-politely challenged Deputy Chief Tan about their effective condemnation of all the Owner's on site parking spaces, (there is no "street parking"

existing front patio, and would require removal of her EV chargers, for her two vehicles, all of which result individually and collectively in a taking, as Owner has pointed out in detail to County Counsel. [10]

On or about July 17, 2023, Fire actually **reasserted** their two infeasible, illegal 'options', with the additional explicit condition that Owner would not be allowed to park anywhere on her own property, and a new prohibition: that Owner would not be allowed to install a fence and gate anywhere in the so called 'turnaround', for her own privacy and security. Fire has actual knowledge that Owner is in the process of planning and obtaining permits for the construction of a sliding gate, for which their own Captain measured the driveway width on May 19, 2023 and determined it to be adequate. This newest 'requirement" is purely malicious, and demonstrates that the Fire Marshal has been operating in bad faith throughout.[11]

In this case, all County actors know that in 2022, the County (including the Fire Marshal) approved a building permit, 22 BDP 00357, for an ADU on owner's property as consistent with all County standards, including fire safety, access and evacuation. The only "condition" related to fire equipment access that was imposed was that Fire required sprinklering of the new ADU because they claimed, *then,* that their truck could not enter Owner's driveway, and therefore their 150 foot hose length requirement to reach the rear wall of the ADU could not be met. Fire accepted sprinklering as a "same practical effect" condition, in compliance with their Development Standard #1. *Except for widening the foot of the driveway, and widening the portion of the Lane on owner's property, (at a cost to her of over $25,000 and based on comments from the previous fire captain, and limbing of the oaks to Fire's specifications,- **all beneficial for access**- nothing has changed with respect to the physical condition of existing access to the parcel as a result of the lot split application.*

Owner was unable to pull the building permit, due to financing and other factors,[12] has received an extension of that permit from the Building Division until January of 2024, [Exh 72], and has applied for this lot split under SB 9 to enable financing of construction under that approved building permit. **The County has not identified any significant, quantifiable, direct, and unavoidable impact from allowing the approved ADU to be built in the same location as approved, on its own parcel, which is the *only* change that would result from the lot split.** County Planning and Development

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available within hundreds of feet), he threatened to simply leave. This is bullying. This is elder abuse. When the Fire Marshal demanded an architect's drawing of a turnaround he knew they would never approve, the P&D Director threatened to simply return the application to Owner, and then asserted that there is no administrative appeal of any of their actions. This, too, is bullying.

[10] As of July 19, Fire has again demanded that Owner grant them an exclusive easement over the entire parking area, which would preclude the construction of the same residence that the County approved, for lack of a designated parking space, thus effectively revoking the building permit that they already approved as consistent with their standards.

[11] The fact that no one in the County hierarchy- not the Planning Director, not the CAO, not County Counsel, is willing to set the Fire Marshal straight is incomprehensible. The Board of Supervisors has both the opportunity and the duty to hold their staff – and themselves- accountable for the burdens placed on a single taxpayer trying to build a single housing unit.

[12] And the fact that her insurer of 50 years would cancel her fire insurance if she builds on the existing lot.

has been aware of this plan since June of 2022, and has affirmed that it makes no difference whether the building permit is pulled before, or after a lot split is approved. [Exh 3, e mail Seawards to Zimmer, 6.28.2022]. P&D has been asked repeatedly to reject the Fire Marshal's untimely, illegal, and infeasible demands, make the findings they are required to make by law, and they have refused to do so.

Furthermore, P&D and County Counsel have failed to respond to the fact that Owner has repeatedly offered to voluntarily amend her project description to deed restrict the new parcel so that the entire property will be limited to two residences, rather than the four (4) potentially allowed under SB 9 to assuage the Fire Marshal's trumped up and irrelevant "concerns" about increased intensity of use. The property currently supports the primary residence, last remodeled in 1994, and an approved, attached JADU/RSU originally approved by the Fire Department as consistent with all applicable standards in 2009, and which are separately addressed by County Fire as 2640 and 2642 Las Encinas Lane. The County is well aware that -notwithstanding the Fire Marshal's mischaracterization of the record, **the property was indeed found to be in full compliance with Fire's Development Standards for two units by Captain Brian Hayden** [See, e mail exchange June 12, 2009, Zimmer and Captain Brian Hayden][13]

3. The County is in violation of the Permit Streamlining Act

The County's consideration of lot splits under SB 9, while a 'ministerial' act, is nevertheless expressly subject to the Permit Streamlining Act (PSA), Gov. Code Section 65920. See, SB 8. Owner submitted an application for a two-way lot split on or about December 22, 2022, and it was understood to be "accepted" for processing on January 3, 2023. [e mail K. McCarthy to Zimmer, January 3,2023.]

The County sent a letter to Owner on February 13, 2023, ten days *after* the PSA deadline for finding application completeness, *which did not reference the PSA,* but which actually recited that the lot split application was "eligible" under SB 9. [Exh 5]. By law, the application for the lot split was deemed complete 30 days after it was accepted for processing- that is, no later than February 2, 2023. The PSA further provides that for projects which are exempt under CEQA (the California Environmental Quality Act), the County had 60 days to act on the SB 9 lot split application, or it is deemed approved. The 60 day limit ended on or about April 4, 2023.

The so-called "eligibility" letter of February 13, 2023 contained no language pertaining to the Permit Streamlining Act, nor any allegation that the application was "incomplete", *nor did it provide any notice of the appeal available under the Permit Streamlining Act, the right to which is specifically required and set forth in the County zoning ordinance at Section 35 .102.040.A.3.* Nevertheless, on or about June 23, 2023, six months after the project was submitted, P&D asserted -for the first time- that the application was not , and never had been, complete under the Permit Streamlining Act.

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[13] Initially, Fire erroneously purported to deny the permit for the RSU, in 2009, citing to the same inapplicable requirements they attempt to impose currently. See, correspondence with Capt Johnson and Brian Hayden, clarifying that Owner was then (and is now), in compliance.

Six months after the acceptance of the application (and submittal by Owner of a $10,000 "deposit" for processing fees, and after the Planning Department "spent" over $4500 of the deposit, both the Planning Department (June 23, 2023) and the Fire Department (June 14, 2023) have purported to make determinations that Owner is not "eligible" for an SB 9 lot split, and that these determinations are not subject to **any** administrative appeal process. [Plowman e mail 6.23.2023; Clerk of the Board email of 6.26.2023] The Planning Department refuses to correct these unlawful determinations, absent Owner's consent to continue to be billed, for staff's *review and correction of their own errors*. And, P&D now disputes not only that the application was deemed approved, but that it was ever deemed complete. The County's irrational, arbitrary and capricious course of conduct constitutes a breach of the covenant of good faith and fair dealing implied in every contract, as set forth in detail, below.

4. Additional Facts Pertaining To The Subject Property and Setting

Owner's property , which she has owned since in or about 1971, is located in the County of Santa Barbara, directly on the City of Santa Barbara boundary, in the Mission Canyon Specific Plan area, on Las Encinas Lane, (the Lane), a private road serving four parcels (five if they count the parcel fronting on Puesta del Sol). The property is located well South of Foothill Road, (the southernmost boundary of the State Responsibility Area/Very High Fire Area) on a flat, fully landscaped parcel which contains no brush or wildland vegetation. It is surrounded on the north, east and west by fully developed single family homes, and the Museum of Natural History parking lot to the south. By no stretch of the imagination does this qualify, as a matter of fact, as a "wildland interface" area.

There are two routes available for evacuation in a wildfire coming from the north: west on Puesta del Sol to State Street (a 3 minute drive) or south, to Los Olivos Road (a one minute drive). The property is not in the mapped State Responsibility Area (SRA) for wildfire, it is in the Local Responsibility Area, or LRA. The County's Safety Element acknowledges that Owner has two evacuation routes. Based on history, there is little to no likelihood that any fire agency would choose to fight a wildfire from the Lane, rather than from Foothill Road, Glendessary , Puesta del Sol, or even the adjacent Museum of Natural History parking lot. Owner has experienced every major wildfire since 1971, including the Paint Fire in 1990 (which burned across Highway 101, and the Jesusita Fire, in 2009. The sad reality is that if a wind driven fire crosses Foothill Road, the Fire department will defend the Museum, not the four properties on Las Encinas Lane.

Owner, along with three owners on the Lane, has a 15' wide easement for ingress and egress over property owned primarily by the Santa Barbara Museum of Natural History, immediately to the South, and which is located within the City of Santa Barbara limits. There never has been a roadway maintenance agreement among the owners on the Lane, with each taking responsibility for maintaining the portion along their frontage. The easement is partially within the City boundary. The location and configuration of the paved portion of the roadway has not significantly changed over the decades. Owner's agreement to sprinkler any new dwelling on her property, as well as the availability of a 20' easement on the property to the north address any fire igniting on the property. While the older subdivision maps show the potential of a

thirty-foot-wide road extending to and along a roadway currently called Las Encinas "West", the current road terminates at the property at 2646 Las Encinas Lane, Zimmer's immediate neighbor to the west.

That property next door to Zimmer's, at 2646 has been owned by the same family since before 1971, and was annexed to the City of Santa Barbara approximately 35 years ago, to enable construction of a second primary residence. It currently supports two dwelling units and a guesthouse. At the western end of the Lane, on the property at 2646 (Hill) and along the boundary of the Museum property, **there is a 'bulb' style paved turnaround which has been consistently used by fire trucks and other emergency vehicles, as well as weekly by Marborg, Sparkletts, and other trucks since at least 1971. The owners of 2646 have consented to this continued use. [See, Exh 78, Letter from Ron Hill, June 28, 2023]** Therefore, while Zimmer remains willing to provide additional modifications on her property to enable ambulances to better service her residence, as suggested by Fire staff, and apart from the obvious 'takings' liability, there no rational basis for Fire's continuing focus on requiring an additional, but effectively unusable turnaround on the Zimmer property.

With respect to Fire's demand that Zimmer assure – and reconstruct- a minimum 15' wide paved road width along the entire lane, the main potential 'obstruction' to larger fire equipment access along the lane is and has been a large limb of an oak tree located on the Museum of Natural History property immediately south and east of the residence opposite 2636 Las Encinas Lane. County Fire requested the Museum to remove that limb/tree in or about 2020, and the status of that request is unclear. The Museum advises that County Fire withdrew their request, but have also advised Zimmer that they are willing to remove that limb/tree if required [Exh 68a, e-mail Luke Swetland, Museum Director]. County Fire has authority to require removal of this "obstacle", but instead seeks to hold Owner accountable for the alleged 'impairment' of access which she neither created nor has any power to control, as a pretext for their arbitrary and irrational demands. The alleged vertical impairment of this one tree limb was the basis for Fire's completely inaccurate characterization that portions of the lane are only 9'5" wide in their letter of June 14, 2023. Notwithstanding this alleged obstruction, Fire and other large trucks have always been able to pass.

The other obstacle to lane widening at 2636 Las Encinas where is, because of obstructions (landscaping and boulders), placed in the easement by that owner, the lane width is only 12'4". If this lane width has suddenly become a real world obstacle to fire equipment access, (which endangers Zimmer's life and property as well as Hills) that owner should be required to remove the obstructions that he placed, and to repave the lane to the 15' width. The Fire Marshal has refused to attempt to abate these obstacles, alleging that they are a 'private' nuisance. They are no different from the obstacles to access they ordered removed from the Museum property. Since Fire has refused to abate, Zimmer has reported these obstructions to access as a zoning violation.

The only other obstacle to regaining a 15' wide accessway is at the entrance to the lane, along the property addressed as 2589 Puesta del Sol. County Fire approved an ADU at that property in 2020, and put no condition on the construction to require widening the lane. Zimmer has no power to compel that owner to reduce the landscaped portion of that parcel but if the County claims it is a hazard to fire equipment access, they can abate it. They simply refuse to do so, but

maintain that Zimmer must assure and construct a uniform 15' lane width on property she does not own or control.

5. Current Status of the Dispute

At all times relevant here, the Planning Director has refused to take action on the application, or to make the findings under Government Code section 65589.5, subdivision (d)(2), and now asserts [Exh 69, Plowman e mail to Zimmer, 6.23.2023] that Owner has no right of administrative appeal. County has likewise failed to provide an appeal of the Fire Marshal's "Determinations" and demands of June 14, 2023, which are beyond their authority, and not supported by any evidence, and appear to represent their final position. [Exh 30a, e mail from Clerk of the Board of Supervisors to Owner, 6.26.2023]. Apart from its obvious substantive and procedural due process implications, the implication that Owner must litigate these issues poses an obvious and intentional burden on her ability to build the one housing unit that the County has approved.

P&D failed to provide any notice of their newly asserted position that the project, which was submitted in December of 22 and **accepted for processing on January 3, 2023,** remains 'incomplete' for processing, but failed ever to give notice of Owner's right to appeal that determination under the Permit Streamlining Act and their own zoning ordinance. In fact, the application was deemed complete by operation of law no later than February 3, 2023. P&D's first so called "eligibility" letter, [14] was dated February 13, 2023. Until a new contention by P&D Director Plowman on June 23. 2023, Owner was never advised the "eligibility" letter was meant to be an "eligibility/Permit Streamlining Act completeness" letter. It does not contain the words "Permit Streamlining Act". Nor does it advise of Zimmer's right to appeal.

Shockingly, after Owner submitted a Public Records request in June seeking documents pertaining to this issue, P&D staff asserted, in an undated, unsigned document and for the first time, that the application was not accepted for processing until January 17, 2023. The application was submitted with all requested documents on December 22, 2022. As directed, Zimmer paid the $10,500 "deposit" by credit card. But because their system only accepted credit card payments up to $10,000, they claim the application was not 'accepted' until a replacement check was processed. As soon as she was informed of this occurrence, Zimmer wrote and delivered a check for the amount requested. Thus, and even though P&D had all the information they needed on December 22, 2022, they profit from their own mistake to the detriment of the homeowner/applicant.

Staff never responded to Owners' February 14, 2023 e -mail which challenged their so-called 'consistency' analysis in that letter. Staff never asserted that the application was incomplete under the Permit Streamlining Act until June 23, 2023. To the contrary, they proceeded to process the application, solicited comments from other departments, including the Surveyor and Fire, and scheduled a hearing before the SDRC (Subdivision Review Committee) for March, 2023, which was never held, and never rescheduled. Staff requested and received written comments from the Surveyor, (which inaccurately stated area requirements for an SB9 lot split), and the Fire Department's comments, which were not submitted until March 28, 2023, (which inaccurately stated the applicable requirements), and which were not shared with Owner by

[14] As of the date of submittal, P&D (T. Seawards) asserted that they had no written guidelines to determine eligibility for SB 9 lot splits. Now, Director Plowman has inaccurately recharacterized that "eligibility" letter as an "incompleteness" letter.

P&D until she specifically requested them in mid-April, by which time the application was deemed approved by operation of law. P&D failed to respond to Owner's objections. Staff failed to timely solicit comments from any other department, so far as Owner knows.

Therefore, and only after Fire inserted themselves, Owner directed P&D to stop billing them pending resolution of the dispute over Fire's demands, and other potential illegal conditions. P&D has refused to even inquire of other departments (Public Works, for instance) whether they propose any additional conditions, unless Owner continues to pay them at the extortionate rate of $253.00 per hour for their planner time. Actual Planner time, including salary and benefits, is approximately $60.00 per hour.[15] As of June 23, 2023, P&D has offered two options: that owner agree to whatever the Fire Department demands, or that owner withdraw their application for this ministerial permit, thus abdicating their duty to make findings on the application. As of July 19, 2023, the Fire department has reasserted the same illegal demands they made on June 14, and has doubled down- now asserting that not only would Owner be prevented from parking on their property, they cannot install a gate in their driveway for privacy and security. **Thus, one of the "options" they offer is plainly illegal and beyond their authority, and the other would require the owner to consent to a physical taking of her property, and would prevent her from building the residence that fire has already approved. Fire has failed and refused to consider the suite of reasonable, sensible and proportionate mitigations that Owner has offered.**

6. Breach of Covenant of Good Faith and Fair Dealing

Owner's Agreement to pay processing fees for the County's consideration of their application for an SB 9 lot split, like all contracts, is subject to an implied covenant of good faith and fair dealing. Carma Developers (Cal.), Inc. v. Marathon Development California (1992) 2 Cal. 4 342, 371-72 ("'Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.' (Rest.2d Contracts, § 205.) This duty has been recognized in the majority of American jurisdictions, the Restatement, and the Uniform Commercial Code. [citations]. It has been consistently applied in this state to commercial leases." Accord, Floystrup v. City of Berkeley Rent Stabilization Board (1990) 219 Cal. App. 3d 1309 (applied to agreement between City and landlord) The County has breached this covenant in a number of ways:

6.1 County approved a building permit for a 1200 square foot ADU on the Owner's property in August of 2022, with only a condition requiring sprinklering for the ADU, to which Owner agreed although, as County concedes, that condition was not authorized under State standards for an ADU where the main residence is not required to be sprinklered. However, Fire accepted sprinklering in this case as "same practical effect" as their 150 foot hose length standard, because they claimed that a Fire truck could not turn into Owner's driveway from the Lane. Apparently, and inexplicably, that is no longer the case, they now believe a fire truck *can* enter the property, *and* turn around on it, and they have now demanded a full hammerhead "turnaround" be constructed on Owner's property prior to recordation of the map.

[15] It is noteworthy that the County's recently released draft Housing Element inaccurately represents that the fees charged under SB 9 are limited to planner time, and fails to mention the overhead charges which quadruple the cost to the homeowner/applicant. This practice poses yet another unacceptable burden on homeowners seeking to add housing units.

6.2 In August of 2022 Owner informed County that they could not proceed under the approved building permit for various reasons not in their control, including financing the construction cost of the project, without risking their current and only property. Owner inquired whether they would be allowed to split the lot, under SB 9, specifically to enable separate financing for the approved residence. Comparables for a vacant lot in the Mission Canyon area, and even those in the Very High Fire Hazard Area, SRA, north of Foothill, demonstrate that a separate lot would be worth $750,000 or more., and Owner's bank has confirmed that a construction loan could be secured by the value of the vacant lot alone. If Owner proceeded under the ADU building permit, she would lose her fire insurance on her existing home, among other things.

6.3 P&D, Fire and County Counsel refused to confirm that no other fire access-related conditions would be imposed for the ministerial lot split, to enable construction of the *same* proposed residence that they approved under 22 BDP 00357, in its approved location. Instead, County insisted that Owner enter into a 'processing' Agreement, which required Owner to submit a $10,000 "deposit" for a ministerial permit, against which P&D staff bill at $253.00 per hour, and which required Owner to commission preparation of and submit a subdivision map by a licensed Surveyor, at the cost of approximately $8000.00, to enable the application to be 'accepted'. *There is no information on the map which changes conditions on the ground for fire equipment access.*

6.4 County Planning and Development, County Fire Marshal, and County Planning Director have, individually and collectively failed and refused to process the map in good faith. Almost six months after the County accepted the map on January 3, 2023, and almost four months after the application was deemed complete as a matter of law, (and in fact, deemed approved) County Fire issued a letter dated June 14, 2023 which was replete with factual errors, which misstated the property history, and which failed to assert any significant, quantifiable, direct and unavoidable impact to fire equipment access *that would result from the lot split* based on objective written standards. Without citing to any specific building code provision which authorizes such a demand, the Fire Marshal asserted that the Owner must agree to perform one of two improvements, **prior to recordation** of any parcel map, in violation of Gov. Code Section 66411(a) and (b), P&D, County Counsel and Fire Marshal know that either or both of these 'improvements' would result in a physical taking of Owner's property, and, without specific modifications, are physically, legally and environmentally impossible to achieve. Furthermore, P&D, County Counsel and Fire know that the SB 9 lot split would not result in any legally cognizable increase in intensity of use of the property: the property already supports two dwelling units, the main residence, addressed by Fire as 2640 Las Encinas Lane, and the attached RSU/JADU originally approved by County in 2009, and separately addressed by Fire as 2642 Las Encinas Lane. P&D has acknowledged that Owner may offer a deed restriction to prevent any increase from two units. Therefore there is no basis whatsoever for Fire to continue to assert that the lot split will result in an increased 'intensity' of use, even if they were authorized to mitigate for that increase in an SB 9 lot split, which

they are not. Nevertheless, with no evidence of any cognizable impact, they have asserted again, on July 19, that Owner must agree to and perform the same two illegal conditions they proposed on June 14.

The Fire Department, with P&D's acquiescence, is unlawfully attempting to force Zimmer to bear the cost and brunt of improvements that are not now and never have been her legal responsibility- and which involve changes to others' properties for which she could not get consent, even if she were legally required to perform them.

It bears emphasizing that Fire is fully aware that the existing paved easement, which mostly lies over property owned by the Museum of Natural History, has been less than 15 feet in width in places for over 50 years. When the County approved and constructed a sewer line in lower Mission Canyon, and connected Owner's parcel, as well as all her neighbors at 2620,2636, and 2646, in or about 1985, they repaved the road easement to its preexisting width, which averaged 12-15 feet. County was and has been aware at all times that reconstruction of the roadway to a greater width than currently exists would require removal of multiple oak trees, some over 50-80 years old, belonging to the Museum of Natural History, and cannot be done without the consent of the Museum.

There is one large oak on the Museum property opposite the property at 2636, (Francavilla) with a large limb which extends over the roadway easement, which has been under discussion periodically since 2009. An arborist report was prepared in 2009 which recommended pruning in two stages. The first stage was completed, but then Francavilla, a new property owner at 2636 objected to completion for 'aesethetic' reasons. That property owner has also added boulders, paths, and vegetation on the Museum property without apparent objection from the Museum, and also added a landscaped area on the north side of the easement next to their 8 foot wall and entry gate (which extends about 7 feet into the easement and is nonconforming as to location under the Mission Canyon Plan). That owner has also allowed flammable bushes (not oaks) to grow to up to 16' on his west and east property lines, over the objections of neighbors, including Owner, but has never been cited by County Fire or P&D, nor has he been asked to remove his landscaping from the easement, or to comply with defensible space requirements.

In or about March of 2020, County Fire directed the Museum to remove two mature oaks along the roadway easement. One was removed, (probably from Zimmer's property) and the Museum apparently believed that a third oak met the Fire Department's 13'5" vertical limit, and that Fire had withdrawn their demand to remove it. [Exh 40,49,50] However, notwithstanding that Owner repeatedly offered to approach the Museum, with Fire, to request their renewed cooperation, Fire now refuses to address that tree with the Museum, but seeks to hold Owner accountable for the perceived – and pre-existing- narrowing of the roadway in front of 2636. [See, Fire Marshal's **incorrect** and misleading claim that the lane is "only" 9'5" width in that location, June 14, 2023].

Second, with respect to Fire's claim that the roadway is *only* 12' in some locations, in fact, the County has caused and perpetuated that perceived flaw when they approved an ADU at 2589 Puesta del Sol, in or about 2020. That property takes access to and parks on its frontage along Las Encinas, which is the narrowest paved portion of the roadway [Exh 74] Fire did not require that property owner to widen the paved area of the lane over their property *at all.* Nor did they require removal of any landscaping they previously installed. However, Fire now asserts that Zimmer must reconstruct and widen the lane to at least 15', *along its entire length, including at that location, with no exceptions.* P&D asserts that their recent approval of that ADU is of no consequence, because standards for an SB 9 lot split are "different", but doesn't specify how. But that does not change the fact that nothing Owner has done or proposed to do has any impact the continuing 'substandard' road width at that location. **The County is solely responsible for allowing that condition to persist.**

Worse, and in addition to the fact that Fire created their own alleged access 'problem', they failed to insist that the Museum limb or remove the oak which is the greatest- and only- obstacle to "full" access, (and which the Museum has again indicated they will do if directed by Fire, [Exh 50,59,68a]. They failed to insist that the owner of 2636 pull back his landscaping at least to the location of his nonconforming stucco wall and gate, [See, survey Exh 75 p. 3], Fire refused to even *measure* the remainder of the lane width, as Owner proposed to do during their site visit of June 19, 2023 [Exh 75] to confirm that in the majority of areas, and with the voluntary work of Owner, and of the new Owner of 2620, the traversable area of the Lane is actually at or near 15' in width along the vast majority of its length. [Photos of Owner measurements, Fire visit [Exh 1a,1b] And, Fire has failed to acknowledge or credit the fact that Owner, after consultation with Capt. Gray of Fire in 2022, has also *already* performed all feasible improvements to widen her driveway entrance to 17 feet. That one improvement has been confirmed by Capt. Olmstead. In addition, Owner has performed all feasible improvements on her property and along her frontage to widen the lane, and to assure vertical access requirements are met, facts of which Fire is fully aware. She did this work at a cost to her of $25,000.

Fire staff know or should know that their continuing demands for offsite improvement, including that Zimmer be responsible for paving the entirety of Las Encinas Lane violates the specific mandate of of SB 9, Gov. Code Section 66411.7(b)(3), of which County Counsel has been advised (e mail 7.19.2023) and which states:

> **" 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."**

Their continuing demand that Zimmer perform all this 'work' that they are not authorized to require, **prior to recordation,** rather than prior to development, also violates Section 66411(a) and (b).

P&D and County Fire seem to believe that Owner, whose property is and has been fully in compliance with every County requirement for the fifty years she has owned it, must remedy the errors and omissions of the County over the last fifty years, and most recently, in the last three years. They are using this ministerial lot split application to exact commitments from this one owner to achieve improvements that should have been publicly funded and completed a half century ago, even assuming they are necessary for fire safety. Owner has pointed out to County Counsel, repeatedly, that such demands violate Owner's substantive and procedural rights to due process, to no avail.

6.5 Despite their objections to the County's illegal demands, Owner has made specific written proposals to the County (via P&D, County Fire and County Counsel) to resolve the matter, to which County has failed to respond in good faith, or at all. Owner considered the demand for a turnaround, and proposed modifications to Fire. Owner communicated with their neighbors, including the Museum, to try to achieve maximum widening of the private lane on their properties. Owner confirmed with the neighbor at 2646 that they have no objection to the continuing use (over fifty years) of the existing and perfectly adequate turnaround on their properties.

6.6 P&D is fully aware of the unreasonableness of the conduct of the Fire Marshal, but either is happy to join in, or simply refuses to exercise their authority to reject their unreasonable and illegal conditions. P&D has a duty to make findings and approve the lot split based on the "preponderance of evidence" standard set forth in SB 9. Incredibly, to avoid their own mandated obligation to make findings and approve or deny the lot split, P&D now suddenly contends, five months after the application was deemed complete as a matter of law, that the project was never complete under the Permit Streamlining Act, and/or was never 'eligible' for an SB 9 Lot split. P&D contends that none of their decisions are appealable under the zoning code because they have not yet implemented local Code amendments on SB 9. County contends that the Fire Marshal's "determination" of June 23, 2023 is not appealable to the Board of Appeals identified in Chapter 15 of the County Code, or to the Board of Supervisors under any other provision of the County Code. The protections of the due process clause seem to have lost all meaning in the County of Santa Barbara.

7.

7.1 SB 8, also effective January 1, 2022, extends the requirements of the Permit Streamlining Act to housing projects of one unit or more that require no discretionary approvals. Consequently, SB 9 projects are subject to the Permit Streamlining Act's requirements for completeness letters (within 30 days of submittal) and approval deadlines (within 60 days of determining that the project is exempt from CEQA, which is the case here as it is a ministerial project). Under

the Permit Streamlining Act, Cal. Govt Code 65920 and the provisions applicable to SB 9 lot splits, the application was deemed complete not later than February 2, 2023, and deemed approved on or about April 3, 2023. It should be noted that in an effort to remain cooperative, and as Owner was leaving the country from March 5, 2023 to March 28, 2023, she agreed to defer staff's intended consideration by the Subdivision Review Committee until her return on March 28, 2023 so that she could be present to hear any departmental concerns. Staff has since failed to schedule an SDRC "hearing", and has evidently failed to obtain comment letters from any department other than Fire and the Surveyor, both of which contain erroneous assertions of legal requirements and neither of which have been corrected. Owner has not waived, and will not waive the deadlines in the Permit Streamlining Act.

7.2 On or about February 13, 2023, P&D issued an "eligibility letter" which **concluded that the project is eligible for approval under SB 9, but** which also included language which asserted that it was potentially "inconsistent" with respect to Govt Code Section 65913.4(a)(6)(d. Owner requested that this language, among other things, be corrected, but P&D failed to acknowledge that Owner's property is not on the State High Fire Severity Map, and that HCD interpretation of the statute excludes 'locally' designated properties from the restrictions set forth in SB 9. P&D failed to respond to this request for correction. The letter referenced only the Building Code, (which required sprinklers, to which Owner had already agreed), and only referenced Fire requirements for defensible space and vegetation management. P&D also did not then assert that the "eligibility" determination or lack thereof has any bearing on its duties under the Permit Streamlining Act. In its letter of June 14, 2023, the Fire Marshal presumes to make their own "eligibility" determination, retroactively. There is no legal authority cited for this "determination".

7.3 To the date of this filing, P&D failed to timely obtain comments or conditions from other County departments reflecting any proposed objective standards as authorized by SB9. On or about March 28, staff received *late* comments from Fire, which were not communicated to Owner, suggesting conditions that are infeasible or illegal and which were tantamount to project denial, such as, 30 foot setbacks from property lines, and a vegetation management plan for vegetation that does not exist. P&D failed to respond to Owner's objections, at all. Notwithstanding these errors by staff, Owner has stated her commitment to trim oaks on her own property, and has made every effort to assure that her neighbor at 2636, Francavilla, comply with their past agreement to limit the height of a hedge/fence on their boundary line to a total of 8' feet, and which was identified as a hazard by Fire, in 2009. Neither P&D nor Fire have made any effort to assure that this neighbor abate the hazardous conditions on this property, or that he abate the so-called deficiency in fire equipment access on his property. See, zoning complaint filed by Zimmer 7.18.2022. [Exh 98]

7.4 County staff and County Fire are aware that the paved portion of the lane is primarily on the property of the Museum of Natural History, that there are

several very mature oaks along the lane, and that Owner has only a 15' easement over the lane. Fire and P&D fail to acknowledge that SB 9 prohibits a requirement that Owner construct *any* offsite improvements, and that even if this were a fully *discretionary* permit, they may only impose "reasonable" conditions, consistent with the extent of the Owner's easement, per Mission Canyon Plan policy. [DevStd FIRE-MC-3.4: "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.**"] Notwithstanding that this is a ministerial permit, Owner and her neighbors (with the notable exception of Francavilla, at 2636 who has been allowed to retain the obstructions he placed in the easement and on Museum property, have, already, and with Fire's knowledge *voluntarily* constructed all reasonable road frontage improvements as could be required under the Mission Canyon Plan.

7.5 P&D also did not forward Fire's (late) comments on the lot split to Owner until she specifically requested them, on or about April 13, 2023. P&D knew, or should have known that the conditions proposed by Fire were infeasible and illegal but refused to challenge or engage directly with Fire about them. At all times, P&D knew or should have known that imposition of these conditions would render the project infeasible. These proposed conditions were allegedly justified solely based on the location of the property in a designated very high fire area.

7.6 County has utterly failed to acknowledge the actual conditions on the ground: that Owner's property is flat, that it is surrounded by urban development, that it has no brush or other "wildland" vegetation, and that the County Safety Element identifies that Owner has two evacuation routes. During the Jesusita Fire, in 2009, even before any evacuation order, Owner evacuated in three minutes, while her family, who reside opposite the Botanic Garden, along Tunnel Road took 45 minutes. Owner has been on some version of the high fire maps since Schwarzenegger was Governor. But that mapping has never, before now, operated to prevent the construction of housing.

7.7 Throughout the process, P&D persistently disclaimed any duty to give Fire direction as to the proper scope of their conditions, but finally agreed to "facilitate" a single meeting between Owner and Fire on May 16, 2023. At that meeting, Fire presented a new proposed condition on the map, even more onerous than the conditions suggested in the February 13 "eligibility" letter: that Owner grant an easement to Fire, and that Owner pay for and construct a regulation Fire truck ' hammerhead turnaround' on Owner's property. [Fire had previously maintained that their trucks could not turn into Owner's driveway, *at all,* thereby justifying their assertion that Owner could not meet the 150 foot hose requirement to the rear of a new building, and their requirement that Owner sprinkler the ADU

despite the statutory prohibition on requiring sprinklering in that circumstance.] **Owner invited Fire to come to the property to measure.** *During that site visit Fire asserted that Owner would no longer be able to utilize their own approved parking spaces (2 for the existing residence and 3 for guests, deliveries) nor to provide the required space for the ADU and/or new dwelling on the proposed new parcel.* At that point Owner notified County Counsel and staff that their demand was unlawful and reiterated that they would agree to (1) sprinkler any new residence on the new lot, although that could not legally be required for the ADU, and (2) repeated their offer to voluntarily amend the project description to deed restrict the new lot to only one residence, notwithstanding State law allowing a greater density, at considerable loss of value. P&D never responded to these offers.

7.8 In addition to the unlawful Fire Marshal's Condition, and only after Owner's request, P&D provided a proposed memo from the **Surveyor** which purported to require that the area of the two lots be "equal", notwithstanding that it is infeasible to make them equal, and notwithstanding that SB 9 specifically requires that parcels be "approximately" equal, further defined in the statute as not less than a 60/40 split. SB 9 specifically preempts contrary local law. Owner immediately notified staff of this exception, but there has been no response or acknowledgement. Owner is unaware of any other last minute demands from other Departments, because P&D refuses to even inquire or confirm without payment of additional fees by Owner.

7.9 On or about June 23, 2023, the Director of Planning and Development asserted, *for the first time* that Owner's application remained incomplete under the Permit Streamlining Act. P&D demanded that Owner *either* agree to one of the Fire Marshal's illegal proposed conditions, or they would return their application, minus the $4500 they had already expended.

7.10 On July 20, 2023, when Owner received documents pursuant to a Public Records Request, she learned for the first time that staff alleged that the application was not complete under the Permit Streamlining Act on account *of their own error* in rejecting a credit card payment of the $10,000 deposit they had required. Staff had contacted Owner and asked her to submit a check, which she did immediately. At no time was owner informed that this second attempt to pay changed the application acceptance date. P&D now assert for the first time that the application was only "accepted" on January 17. Regardless, the 'eligibility letter' was never identified as an application completeness letter, nor was applicant advised of her right of appeal. P&D has developed a persistent pattern and practice of 'blaming the applicant/victim' for their own errors and failures. While complaining about permit fees may seem petty, the fact is that requiring a $10,000 "evergreen" deposit against a $253 hourly charge should at least assure competent work. And, their staff have developed a nasty habit of bullying applicants, and then gaslighting them about who the bully is. And, they have a practice of demanding that applicants 'indemnify' P&D from their own errors. This may not be a problem for corporate developers, but it certainly discourages individual homeowners from

pursuing ADUs and two way lot splits. Regardless, P&D never informed Owner that her application was not complete, or that she had an appeal of that determination under the Permit Streamlining Act under their own ordinance.

7.11 Owner contends that, based on their collective and individual conduct, the departments collectively have not been acting in good faith and are therefore in breach of the implied covenant of good faith and fair dealing in the agreement to process the application. County staff (P&D) has variously claimed the project is 'ineligible'and threatened not to continue processing to a decision to even enable Owner (at even more expense) to be heard on appeal to the Planning Commission and/or the Board of Supervisors. P&D has not responded to the suggestion that they comply with their own duty to approve the application, and based on the preponderance of evidence, to decline to impose Fire's proposed unlawful condition and allow Fire to appeal to the Board of Supervisors, should they persist. Staff's concerted action to prevent the case from being heard by Owner's elected representatives so that they can be held accountable for the burdens on housing development they allow to persist is incomprehensible.

7.12 Fire knows that their standard hammerhead turnaround cannot be constructed on Owner's lot. Fire asserted that they 'could' modify their requirements, but would not identify any specifics, insisting instead that Owner hire an architect to "design" a hammerhead turnaround to be placed on the property. Owner did so, and provided the design to Fire on 6.26.2023, with a list of modifications that would be required to make the hammerhead legally acceptable to Owner. Fire did not respond to the proposed modifications. Instead, on or about July 19, 2023, Fire (Deputy Chief Tan) notified Owner that her design was not acceptable, and reiterated the conditions that would amount to taking of all of Owner's parking area, as well as added a condition that would prohibit Owner from ever constructing a fence or gate for security and privacy on any part of her driveway.

7.13 It is worth noting that Fire previously tried to unlawfully demand construction of a turnaround on the Owner's property in 2009, and initially denied an application for conversion of an existing bedroom and bath area to an attached residential second unit. However, that demand was withdrawn in June of 2009 and the property was found in compliance with all standards, and Fire signed off on the permit. Despite Owner's Public Records Act request for their files, Fire failed to turn over this documentation. Owner retained and has located some but not all the correspondence. Fire has attempted to rationalize their current demands by *falsely* asserting that Owner **did** have an obligation to construct a turnaround in 2009.

7.14 Fire's insistence on pursuing a new, dysfunctional turnaround on Owner's property, even with whatever minor modifications they 'might' agree to, when they know that there is currently an adequate and superior turnaround on the property immediately next door which has been used by fire equipment and other trucks for at least fifty (50) years – and to mitigate an alleged impact from the lot split which

simply does not exist- is arbitrary, discriminatory, capricious and without any rational basis.

7.15 Fires' insistence that they cannot find "same practical effect" for substantial improvements voluntarily made by owners on the lane to a paved roadway that has existed for more than 50 years and which is in substantial compliance with their new 15' mandatory width is arbitrary, capricious, and discriminatory without any rational basis.

9.23 On 7.13.2023 Zimmer wrote to Deputy Chief Tan identifying points of clarification pertaining to intended conditions on the Hammerhead, and identified efforts to achieve maximum lane width to support a same practical effects finding. Tan did not respond, and instead sent Zimmer a demand for a hammerhead which includes each and all of the requirements that they knew Zimmer could not agree to, and in addition purported to prohibit Zimmer from ever building the gate and fence required for security which they knew she was in the process of applying for. The demand also included a requirement that all improvements would be required to be constructed prior to recordation, in direct violation of SB 9. The letter did not include any analysis or propose "same practical effect findings" for the lane widening improvements Zimmer had proposed and completed and requested her neighbors to agree to perform. And there was no acknowledgement of the commitment letter from neighbor Ron Hill identifying the *existing, perfectly adequate turnaround at his property at 2646, which had been physically inspected by Captain Olmstead on his site visit of May 19, 2023.*

7.16 P&D's blind "support" of Fire's continuing demands, their threats to return the application without action unless Zimmer complied with Fire's illegal demands, their refusal to make their own findings on the lot split, based on the preponderance of evidence standard in the statute, and County's failure and refusal to provide any administrative appeal of their erroneous factual and legal assertions violate State Housing mandates, burden the production of housing, as well as Owner's substantive and procedural due process rights.

8. The Fire Marshal's aggressive, irrational, illegal and inappropriate demands provide no benefit to fire safety, and put the County in direct conflict with the State's directives, legislatively and in HCD guidelines, to approve housing projects.

In addition to the exception to the restriction referenced in the statute, Government Code Section 65913.4(a)(6) above, HCD has adopted a guideline as follows, further limiting the applicability of the restriction on development in very high fire hazard areas:

> **B. <u>This restriction does not apply to sites that have been locally identified as fire hazard areas, but are not identified by the Department of Forestry and Fire Protection pursuant to</u>**

Government Code section 51178 or Public Resources Code section 4202.

Owner's property has been identified as a Local Responsibility Area (LRA) on various County - adopted maps. The property is located within the Mission Canyon Specific Plan area, well south of Foothill Road, which is the southernmost boundary of the State Responsibility Area (SRA). The Mission Canyon Specific Plan specifically acknowledges that areas south of Foothill pose a different and lesser level of fire hazard than areas north of Foothill, in the SRA. Owner's parcel **is directly on the City boundary, on flat land, with no brush or wildland vegetation, and has two evacuation routes.** Her property location does not qualify- as a matter of **fact-** and under the County's definition, as a very high fire hazard risk, at all. In fact, if Zimmer's property were included solely on the basis that a wind driven wildfire could reach it, [16] then every single property in the County should be included on the maps, and every property south of the Santa Ynez Mountains should be included in the "Wildland Interface" area, and the County will not be able to approve any housing at all.

County contends that the Department of Forestry has identified the site under Pub. Res. Code Section 51178 or Public Resources Code Section 4202. To the date of this filing, County has provided no evidence that the process of identification has occurred as required by State law. In fact, the Fire Marshal has admitted to Zimmer that the LRA designation was never submitted to the State: He asserted: "14 CCR 1280.02 was not enacted until 2020. There wouldn't have been any requirements to send LRA maps to the Board of Forestry in 2013." And both the City of Santa Barbara and the State [Cal Fire/Board of Forestry] have failed, to date, in response to Public Records requests, to produce any documents pertaining to the inclusion of Owner's property on the LRA maps, while several similarly situated properties south of Foothill Road have been excluded.

If the HCD guideline applies as written, the Fire Marshal has no authority whatsoever to condition Zimmer's lot split in the manner that he has attempted. The fact that he continues to assert authority, and to impose irrational, arbitrary requirements outside of the legal timeframes for comment, let alone to propose conditions which have nothing to do with any perceived or actual impact of the lot split is inexcusable.

Even if the HCD guideline is determined not to apply in this case, the Fire Marshal's arbitrary and capricious exercise of their authority in this case has placed an impossible burden on this modest development, and others similarly situated. HCD expressly stated, with respect to ADUs:

> **"VHFHSZ mapping was not intended to serve as a development moratorium. Rather, according to Cal Fire, these maps are intended to be used for planning purposes and *mitigation* measures,** (emphasis added) namely: • Implementing wildland-urban interface building standards for new construction • Natural hazard real estate disclosure at time of sale • 100-foot defensible space clearance requirements around buildings • Property development

standards such as road widths, water supply and signage • Consideration in city and county general plans"

[HCD Letter to City of Rancho Palos Verdes Exh 102]

The Fire Marshal found, in connection approving Zimmer's building permit for their ADU, that sprinklering the unit would sufficiently mitigate for any implied inconsistency based on the location of the property in the VHFHZ. That same requirement is the only rational, justifiable requirement on the very same residence, in the very same location, but on its own parcel, and Zimmer has already agreed to it.

The Fire Marshal's irrational, arbitrary and unjustified insistence on proposing conditions that he knows Zimmer cannot fulfill, and that he knows are *prohibited* under state law, coupled with their refusal to require abatement of known fire hazards on other adjacent properties does and will constitute a total moratorium on housing development, and denies Zimmer's rights under the equal protection clause of the State and federal Constitutions, and undeniably places a burden on the development of housing in direct contravention of State mandates.

9. Damages

In addition to tens of thousands of dollars in costs and fees already paid for the ADU permit, which the Fire Marshal has effectively revoked through his proposed new conditions, and after P&D expressly represented that it could be pulled either before or after the lot split were approved, (T. Seawards), Owner has expended at least $10,000 in permit fees for the lot split, $8000 for a Surveyor to prepare a Map, as well as $25,000 to widen their driveway, widen the road along their frontage, and trim oak trees on their property at the direction of the Fire Department in connection with their ADU permit, as well as $850 in additional Architect fees in response to further demands from the Fire Department, even though they have actual knowledge (See, photo 1a of Fire representative *inspecting* the turnaround on May 19, 2023) that a turnaround exists at the property next door, and that Owner cannot provide a regulation hammerhead on her property, which the County knows or should know is infeasible, legally, and environmentally, and which would have no additional benefit for fire equipment access for any purpose.

Denial of the lot split will result in at least an additional $750,000 loss to owner – the value of a **vacant** lot, even in the Very High Fire Area in Mission Canyon (Exh 45, Comparable Lot in Escrow in Mission Canyon), and will make it impossible to finance construction pursuant to the approved building permit that County P&D and Fire have approved, and other damages. Worse, Fire's latest attempt to absolutely prohibit parking anywhere on Owner's property to provide an exclusive easement for emergency access that will never occur, would effectively revoke the building permit that the County (and Fire) have already approved. County is well aware that, in addition to other unacceptable risks and increased costs, if Zimmer were to construct on the existing parcel, her fire insurance, which she has maintained at a reasonable rate from the same company for 50 years, would be nonrenewed. All of these actions collectively place an insurmountable burden on the development of individual housing units, contrary to the express intent of the Legislature.

1. **Demand**

Owner hereby demands that either:

1. County agree to pay Owner the amount of $900,000 or

2. P&D expeditiously approve their ministerial SB 9 lot split without any conditions beyond those imposed on the building permit they have already approved, and without any demand for deposit of additional fees to P&D.

Evidence in support of claim: Please see Exhibits 1-142, transmitted by e mail.