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Attorney for Plaintiffs
CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS and JOHN
HARBISON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS and JOHN
HARBISON,

Plaintiffs,

vs.

CITY OF PALOS VERDES ESTATES, a
municipal corporation; PALOS VERDES
HOMES ASSOCIATION, a California
corporation; ROBERT LUGLIANI and
DELORES A. LUGLIANI, as co-trustees
of THE LUGLIANI TRUST; THOMAS J.
LIEB, TRUSTEE, THE VIA
PANORAMA TRUST U/DO MAY 2,
2012 and DOES 1 through 20,

Defendants,

**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

DEC 05 2014

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

) Case No.: BS142768

) (Assigned for all purposes to
) Hon. Barbara A. Meiers, Dept. 12)

) **SEPARATE STATEMENT OF
) UNDISPUTED MATERIAL FACTS IN
) SUPPORT OF PLAINTIFFS' MOTION
) FOR SUMMARY JUDGMENT OR
) SUMMARY ADJUDICATION OR BOTH**

) Hearing Date: February 25, 2015
) Hearing Time: 10:30 a.m.
) Department: 12

) Action Filed: May 13, 2013
) Trial Date: None Set

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<u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u>
Issue No. 1. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction that the Panorama Parkland be Used and Administered “Forever” for Park Purposes.	
1. This litigation concerns the ownership and use of undeveloped parkland located on Via Panorama in the City of Palos Verdes (the “Panorama Parkland” or “Area A.”) Declaration of John Harbison (“Harbison Decl.”), ¶ 4; Exhibit 1 [Second Amended Complaint].	1.
2. The Panorama Parkland is located to the North/Northwest of the residential property at 900 Via Panorama, Palos Verdes Estates, California 90274. Harbison Decl., ¶ 5; Exhibit 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map].	2.
3. The Panorama Parkland is an irregularly shaped parcel in the form of a crescent that wraps around the residential property at 900 Via	3.

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u></p> <p> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Panorama.</p> <p>4</p> <p>5 Harbison Decl., ¶ 5; Exhibit 2 [Area Map];</p> <p>6 Exhibit 3 [Legal Description]; Exhibit 4</p> <p>7 [Bolton Engineering Map].</p>	
<p>8 4. The boundaries of the Panorama</p> <p>9 Parkland cross three different tract</p> <p>10 lines and, therefore, the Panorama</p> <p>11 Parkland falls within the following</p> <p>12 three different tracts within the City</p> <p>13 of Palos Verdes Estates (“City”):</p> <p>14 7540, 8652 and 26341.</p> <p>15</p> <p>16 Harbison Decl., ¶ 5; Exhibit 2 [Area Map];</p> <p>17 Exhibit 3 [Legal Description]; Exhibit 4</p> <p>18 [Bolton Engineering Map].</p>	<p>4.</p>
<p>19 5. At no time has there been signs or</p> <p>20 notices posted on the Panorama</p> <p>21 Parkland restricting access or use of</p> <p>22 the property to residents of the City.</p> <p>23</p> <p>24 Harbison Decl., ¶ 9.</p>	<p>5.</p>
<p>25 6. At no time has there been signs or</p> <p>26 notices posted on the Panorama</p> <p>27 Parkland restricting access or use of</p> <p>28 the property to members of the</p>	<p>6.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Palos Verdes Homes Association ("Association.") Harbison Decl., ¶ 10.	
7. On May 16, 1923, the Association was formed. Harbison Decl., ¶ 12.	7.
8. On June 25, 1923, the Association enacted its bylaws. Harbison Decl., ¶ 12; Exhibit 5, p. 39.	8.
9. On July 5, 1923, the developer for Palos Verdes Estates recorded Declaration No. 1 establishing basic land use restrictions for real property within what would later be known as the City. Harbison Decl., ¶ 13; Exhibit 5, p. 13.	9.
10. The land use restrictions recorded on July 5, 1923 were amended and supplemented several times after July 5, 1923. Harbison Decl., ¶ 14.	10.

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>11. On July 26, 1926, Bank of America recorded Declaration No. 25 establishing the conditions, covenants and restrictions for Tract 8652.</p> <p>Harbison Decl., ¶ 15; Exhibit 5, p. 9.</p>	<p>11.</p>
<p>12. Declaration No. 25 describes the purpose of the Association as follows:</p> <p>To carry on the common interest and look after the maintenance of all lots and the welfare of all lot owners right from the beginning, a community association, with the name of Palos Verdes Homes Association, has been incorporated as a non-stock, non-profit body under the laws of California, in which every building site has one vote. It will be the duty of this body to maintain the parks, street planting and other community affairs, and to perpetuate the restrictions.</p> <p>Exhibit 5, p. 3.</p>	<p>12.</p>
<p>13. Declaration No. 25 provides that the land use restrictions “are for the benefit of each owner of land...”</p> <p>Exhibit 5, p. 10.</p>	<p>13.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
14. Declaration No. 25 provides that a breach of the restrictions shall cause the property to revert to the Association. Exhibit 5, § 6, pp. 22-23.	14.
15. Declaration No. 25 provides that any breach of the restrictions can be enjoined by the Association or by any property owner in the Association. Exhibit 5, § 8, p. 23.	15.
16. Declaration No. 25 provides that a breach of the restrictions shall constitute a nuisance which may be abated by either the Association or any lot owner subject to the Association's jurisdiction. Exhibit 5, § 8, p. 23.	16.
17. Declaration No. 25 provides that the provisions of the declaration "shall bind and inure to the benefit of and be enforceable by" the Association or "by the owner or owners of any	17.

<p><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>property in said tract...” Exhibit 5, § 12, p. 24.</p>	
<p>18. Plaintiff John Harbison (“Harbison”) owns property located within the City. Harbison Decl., ¶ 2.</p>	<p>18.</p>
<p>19. Harbison has owned property located within the City since 1992. Harbison Decl., ¶ 2.</p>	<p>19.</p>
<p>20. Harbison owns property that is subject to the Association’s jurisdiction. Harbison Decl., ¶ 2.</p>	<p>20.</p>
<p>21. Harbison is a member of the Association. Harbison Decl., ¶ 2.</p>	<p>21.</p>
<p>22. Harbison is a member of plaintiff Citizens for Enforcement of Parkland Covenants (“CEPC.”) Harbison Decl., ¶ 1.</p>	<p>22.</p>

<u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u>
<p>23. Harbison has paid property taxes annually since purchasing his property in 1992.</p> <p>Harbison Decl., ¶ 2.</p>	<p>23.</p>
<p>24. In the late 1930’s, the Association faced an overwhelming tax debt and the threat of foreclosure of its parklands.</p> <p>Harbison Decl., ¶ 16; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City’s answer to second amended complaint].</p>	<p>24.</p>
<p>25. To avoid this result, the Association deeded its parklands to the City and to the District between 1938 and 1940.</p> <p>Harbison Decl., ¶ 17; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City’s answer to second amended</p>	<p>25.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
complaint].	
26. The Association has no current ownership of parklands. Harbison Decl., ¶ 18.	26.
27. Instead, the City has taken on both the ownership of and stewardship of the parks. Harbison Decl., ¶ 19.	27.
28. The City has established a Parklands Commission. Harbison Decl., ¶ 20.	28.
29. Applications by residents that would impact parklands are brought to the City's Parkland Commission and not the Association. Harbison Decl., ¶ 21.	29.
30. Permits and enforcement actions concerning parklands involve the City and not the Association. Harbison Decl., ¶ 22.	30.

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
1 2 3 31. The Association is no longer a body 4 that takes, holds, maintains and 5 regulates public parks and has not 6 done so since 1940. 7 8 Harbison Decl., ¶ 23.	31.
9 32. On June 14, 1940, the Association 10 conveyed a number of parks to the 11 City in multiple grant deeds. 12 13 Harbison Decl., ¶ 24; Exhibit 1 [Second 14 Amended Complaint], ¶ 12; Exhibit 6, p. 3, 15 Item 5 [June 14, 1940 deed for Lot A of 16 Tract 7540]; Exhibit 7, p. 2, Item 7 (b), 17 [June 14, 1940 deed for Lot A of Tract 18 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani 19 and Lieb answer to second amended 20 complaint]; Exhibit 15, ¶ 12 [City's answer 21 to second amended complaint].	32.
22 33. The properties conveyed by the 23 Association to the City on June 14, 24 1940 included the Panorama 25 Parkland. 26 27 Harbison Decl., ¶ 24; Exhibit 1 [Second 28 Amended Complaint], ¶ 12; Exhibit 6, p. 3,	33.

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].	
34. The properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 7540. Harbison Decl., ¶ 25; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].	34.
35. The properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 8652. Harbison Decl., ¶ 26; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3,	35.

<p>1 <u>PLAINTIFF’S UNDISPUTED</u> 2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Item 5 [June 14, 1940 deed for Lot A of 4 Tract 7540]; Exhibit 7, p. 2, Item 7 (b), 5 [June 14, 1940 deed for Lot A of Tract 6 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani 7 and Lieb answer to second amended 8 complaint]; Exhibit 15, ¶ 12 [City’s answer 9 to second amended complaint].</p>	
<p>10 36. The June 14, 1940 deeds conveying 11 property from the Association to the 12 City included restrictions on the 13 future use and ownership of the 14 conveyed property. 15 Harbison Decl., ¶ 27; Exhibit 6, pp. 7, 9 and 16 10 [June 14, 1940 deed for Lot A of Tract 17 7540]; Exhibit 7, pp. 4, 7 and 8 [June 14, 18 1940 deed for Lot A of Tract 8652].</p>	<p>36.</p>
<p>20 37. The June 14, 1940 deeds state that 21 the transferred property “is to be 22 used and administered forever for 23 park and/or recreation purposes...” 24 Harbison Decl., ¶ 28; Exhibit 6, p. 7 [June 25 14, 1940 deed for Lot A of Tract 7540]; 26 Exhibit 7, p. 4 [June 14, 1940 deed for Lot 27 A of Tract 8652].</p>	<p>37.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>38. The June 14, 1940 deeds state that as to the transferred real property “no buildings, structures or concessions shall be erected, maintained or permitted” on the property “except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”</p> <p>Harbison Decl., ¶ 29; Exhibit 6, p. 9, ¶ 4 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 4 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>38.</p>
<p>39. The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...except to a body suitably constituted by law to take, hold, maintain and regulate public parks...”</p> <p>Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>39.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>40. The June 14, 1940 deeds state that, with written permission from the Association and a permit from the City, a property owner abutting the park may construct paths or landscaping on the conveyed property as a means of improving access to or views from such property. Such improvements must not impair or interfere with the use and maintenance of said realty for park and/or recreation purposes.</p> <p>Harbison Decl., ¶ 31; Exhibit 6, p. 9, ¶ 6 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 6 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>40.</p>
<p>41. The June 14, 1940 deeds state that none of the use or ownership restrictions set forth in the June 14, 1940 deeds may be changed by the City or the Association even if the Association complies with its own internal procedures for modifying land use restrictions and obtains the written consent of two-thirds of the</p>	<p>41.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
1 2 3 property owners. 4 5 Harbison Decl., ¶ 32; Exhibit 6, p. 9, ¶ 7 6 [June 14, 1940 deed for Lot A of Tract 7 7540]; Exhibit 7, p. 5, ¶ 7 [June 14, 1940 8 deed for Lot A of Tract 8652].	
9 42. The June 14, 1940 deeds state any 10 breach of the use or ownership 11 conditions "shall cause said realty to 12 revert to the" Association. 13 14 Harbison Decl., ¶ 33; Exhibit 6, p. 10 [June 15 14, 1940 deed for Lot A of Tract 7540]; 16 Exhibit 7, p. 6 [June 14, 1940 deed for Lot 17 A of Tract 8652].	42.
18 43. The June 14, 1940 deeds state that 19 the deed restrictions "inure to and 20 pass with said property and each and 21 every parcel of land therein, and shall 22 apply to and bind the respective 23 successors in interest of the parties 24 hereto, and are...imposed upon said 25 realty as a servitude in favor of said 26 property and each and every parcel 27 of land therein as the dominant 28 tenement or tenements."	43.

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u></p> <p> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Harbison Decl., ¶ 34; Exhibit 6, p. 10 [June</p> <p>4 14, 1940 deed for Lot A of Tract 7540];</p> <p>5 Exhibit 7, p. 6 [June 14, 1940 deed for Lot</p> <p>6 A of Tract 8652].</p>	
<p>7 44. The June 14, 1940 deeds do not</p> <p>8 contain any express provision</p> <p>9 authorizing the City or Association</p> <p>10 to “swap” parkland properties.</p> <p>11</p> <p>12 Harbison Decl., ¶ 35; Exhibit 6 [June 14,</p> <p>13 1940 deed for Lot A of Tract 7540]; Exhibit</p> <p>14 7 [June 14, 1940 deed for Lot A of Tract</p> <p>15 8652].</p>	<p>44.</p>
<p>16 45. The June 14, 1940 deeds do not</p> <p>17 contain any express provision</p> <p>18 authorizing the City or Association</p> <p>19 to convey parks as part of a</p> <p>20 resolution of litigation.</p> <p>21</p> <p>22 Harbison Decl., ¶ 36; Exhibit 6 [June 14,</p> <p>23 1940 deed for Lot A of Tract 7540]; Exhibit</p> <p>24 7 [June 14, 1940 deed for Lot A of Tract</p> <p>25 8652].</p>	<p>45.</p>
<p>26 46. The June 14, 1940 deeds do not</p> <p>27 contain any express provision</p> <p>28 authorizing the City or Association</p>	<p>46.</p>

<p><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>to convey parks to fund budgetary shortfalls for school districts.</p> <p>Harbison Decl., ¶ 37; Exhibit 6 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7 [June 14, 1940 deed for Lot A of Tract 8652].</p>	
<p>47. The City passed Resolution No. 12 formally accepting the deeds and confirming the land use restrictions.</p> <p>Harbison Decl., ¶ 38, Exhibit 8 [Resolution No. 12].</p>	<p>47.</p>
<p>48. Resolution No. 12 re-states verbatim each of the land use restrictions set forth in Fact Numbers 37 through 43 above.</p> <p>Harbison Decl., ¶ 38; Exhibit 8, pp. 11-12 [Resolution No. 12].</p>	<p>48.</p>
<p>49. The City’s Municipal Code makes it clear that a private person’s use of public parkland for private purposes is a city nuisance. (City of PVE Mun. Code, §§ 17.32.050, 18.16.020).</p>	<p>49.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Request for Judicial Notice, Exhibits A and B.	
50. The City Municipal Code declares it is the "right and duty" of all residents to "participate and assist the city officials" in the enforcement of the City's zoning and building codes. (City of PVE Mun. Code, § 17.32.050). Request for Judicial Notice, Exhibit A.	50.
51. Similarly the Municipal Code requires the city attorney to commence legal proceedings and take other legal steps to remove illegal structures and abate illegal uses of public parklands. (City of PVE Mun. Code, § 17.32.050). Request for Judicial Notice, Exhibit A.	51.
52. The prior and current owners of 900 Via Panorama have paid for and constructed encroachments on the Panorama Parkland by erecting or maintaining landscaping and improvements without City approval.	52.

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u></p> <p> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Harbison Decl., ¶¶ 39-45; Exhibit 1 [Second</p> <p>4 Amended Complaint], ¶ 20; Exhibit 15, ¶ 20</p> <p>5 [City’s answer to second amended</p> <p>6 complaint; Exhibit 16 [1972 letter from</p> <p>7 Association]; Exhibit 17 [July 18, 2003 letter</p> <p>8 from City]; Exhibit 18 [August 11, 2003 City</p> <p>9 memo by Allan Rigg]; Exhibit 19 [April 14,</p> <p>10 2009 letter from City]; Exhibit 20</p> <p>11 [September 19, 2011 letter from City].</p>	
<p>12 53. In late 1972, the Association wrote</p> <p>13 to the City about the parkland on</p> <p>14 Lot A, Tract 8652. The</p> <p>15 Association’s 1972 letter stated that</p> <p>16 the Board of Directors for the</p> <p>17 Association had determined that “the</p> <p>18 use of parkland for the benefit of a</p> <p>19 single private residence is not</p> <p>20 consistent with the intent of the deed</p> <p>21 restrictions and such use should be</p> <p>22 disallowed...”</p> <p>23</p> <p>24 Harbison Decl., ¶ 40; Exhibit 16, [1972</p> <p>25 letter by Patricia Gribben of Association to</p> <p>26 City].</p>	<p>53.</p>
<p>27 54. On July 18, 2003, the City sent the</p> <p>28 Luglianis a letter requesting that the</p>	<p>54.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u></p> <p> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Luglianis remove encroachments on</p> <p>4 the “City parklands adjacent to the</p> <p>5 west side” of the property at 900 Via</p> <p>6 Panorama.</p> <p>7</p> <p>8 Harbison Decl., ¶ 41; Exhibit 18 [July 18,</p> <p>9 2003 letter].</p>	
<p>10 55. On April 14, 2009, Allan Rigg, the</p> <p>11 then-Public Works and Planning</p> <p>12 Director, wrote to the Luglianis and</p> <p>13 requested that all “unauthorized</p> <p>14 encroachments on City Parkland</p> <p>15 Adjacent to 900 Via Panorama” be</p> <p>16 removed.</p> <p>17</p> <p>18 Harbison Decl., ¶ 43; Exhibit 19, [April 14,</p> <p>19 2009 letter by Allan Rigg].</p>	<p>55.</p>
<p>20 56. On September 19, 2011, the City</p> <p>21 sent the Luglianis a “final notice”</p> <p>22 requesting that the Luglianis remove</p> <p>23 “non-permitted encroachments and</p> <p>24 debris located on the City’s</p> <p>25 Parkland.”</p> <p>26</p> <p>27 Harbison Decl., ¶ 44; Exhibit 20 [September</p> <p>28 19, 2011].</p>	<p>56.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1</p> <p>2</p> <p>3 57. The September 19, 2011 “final</p> <p>4 notice” by the City to the Luglianis</p> <p>5 requested that the Luglianis remove</p> <p>6 “any fences, walls, landscape, tree</p> <p>7 houses, and any other man-made</p> <p>8 items beyond your property line.”</p> <p>9</p> <p>10 Exhibit 20 [September 19, 2011 letter by</p> <p>11 City].</p>	<p>57.</p>
<p>12 58. The encroachment on the Panorama</p> <p>13 Parkland includes landscaping, a</p> <p>14 baroque wrought-iron gate with</p> <p>15 stone pillars and lion statutes, a</p> <p>16 winding stone driveway, dozens of</p> <p>17 trees (some of which are as high as</p> <p>18 50 feet), a now-overgrown athletic</p> <p>19 field half the size of a football field, a</p> <p>20 21-foot-high retaining wall and other</p> <p>21 retaining walls. The stone pillars and</p> <p>22 lion statutes are within the City’s</p> <p>23 easements and right of way.</p> <p>24</p> <p>25 Harbison Decl., ¶ 45; Exhibit 18 [August 11,</p> <p>26 2003 City memo by Allan Rigg].</p>	<p>58.</p>
<p>27 59. At the April 19, 2012 meeting of the</p> <p>28 Association’s board of directors, the</p>	<p>59.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u> 2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Association considered and 4 approved an agreement to convey 5 the Panorama Parkland to Thomas 6 Lieb. 7 8 Harbison Decl., ¶ 47; Exhibit 21 [Resolution 9 166, Dated April 19, 2012].</p>	
<p>10 60. On May 8, 2012 , the City held a city 11 council meeting to consider whether 12 to convey the Panorama Parkland to 13 Thomas Lieb. 14 15 Harbison Decl., ¶ 48.</p>	<p>60.</p>
<p>16 61. The City did not post a sign at the 17 Panorama Parkland to publicize that 18 the proposed conveyance of the 19 Panorama Parkland would be 20 discussed at the May 8, 2012 city 21 council meeting. 22 23 Harbison Decl., ¶ 49; Exhibit 25, p. 2, li. 23- 24 24 [Special Interrogatories to City]; Exhibit 25 26, p. 5, li. 25-27 [City’s Response to Special 26 Interrogatories].</p>	<p>61.</p>
<p>27 62. The City did not perform a mailing 28 of notices to the neighbors adjacent</p>	<p>62.</p>

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<p align="center"><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p align="center"><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>to the Panorama Parkland to publicize that the proposed conveyance of the Panorama Parkland would be discussed at the May 8, 2012 city council meeting.</p> <p>Harbison Decl., ¶ 50; Exhibit 25 p. 3, li. 2-3 [Special Interrogatories to City]; Exhibit 26, p. 6, li. 8-9 [City’s Response to Special Interrogatories].</p>	
<p>63. The City did not publish a notice in any local newspapers to publicize that the proposed conveyance of the Panorama Parkland would be discussed at the May 8, 2012 city council meeting.</p> <p>Harbison Decl., ¶ 51; Exhibit 25, p. 2, li. 27-28 [Special Interrogatories to City]; Exhibit 26, p. 6, li. 1-2 [City’s Response to Special Interrogatories].</p>	<p>63.</p>
<p>64. At the May 8, 2012 city council meeting, the City approved the conveyance of the Panorama Parkland.</p>	<p>64.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u> 2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u> <u>SUPPORTING EVIDENCE</u></p>
<p>3 Harbison Decl., ¶ 52; Exhibit 12 [The 4 MOU].</p>	
<p>5 65. By quitclaim deed recorded 6 September 5, 2012, Instrument 7 Number 20121327414, the 8 Panorama Parkland was conveyed 9 from the City to the Association. 10 11 Harbison Decl., ¶ 54; Exhibit 9 [September 12 5, 2012 Quitclaim Deed].</p>	<p>65.</p>
<p>13 66. By grant deed recorded September 5, 14 2012, Instrument Number 15 20121327415, the Association 16 conveyed the Panorama Parkland to 17 Thomas Lieb. 18 19 Harbison Decl., ¶ 55; Exhibit 10 [September 20 5, 2012 Grant Deed].</p>	<p>66.</p>
<p>21 67. The September 5, 2012 quitclaim 22 deed states in paragraph 6 that 23 although the Panorama Parkland is 24 to remain open space, should the 25 owner of the Panorama Parkland 26 obtain the necessary permits and 27 approvals from the City, Lieb “may 28 construct any of the following: a</p>	<p>67.</p>

<p><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’ ...”</p> <p>Harbison Decl., ¶ 56; Exhibit 9, p. 2, ¶ 6 [September 5, 2012 Quitclaim Deed].</p>	
<p>68. The September 5, 2012 grant deed states in paragraph 2 that although the Panorama Parkland is to remain open space “it is the intent of the parties....that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’ ...”</p> <p>Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2 [September 5, 2012 Grant Deed].</p>	<p>68.</p>
<p>69. Lieb is an individual.</p> <p>Harbison Decl., ¶¶ 58-59; Exhibit 13, p. 1, li. 4-10 [Lugliani and Lieb answer to second amended complaint].</p>	<p>69.</p>
<p>70. Lieb is the trustee of the VIA</p>	<p>70.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u></p> <p> <u>SUPPORTING EVIDENCE</u></p>
<p>3 PANORAMA TRUST U/DO MAY</p> <p>4 2, 2012 (“Panorama Trust”).</p> <p>5</p> <p>6 Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1</p> <p>7 [Via Panorama Trust Agreement].</p>	
<p>8 71. The Panorama Trust is an estate</p> <p>9 planning instrument for the benefit</p> <p>10 of the children of Dr. and Mrs.</p> <p>11 Lugliani.</p> <p>12</p> <p>13 Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1,</p> <p>14 p. 7, ¶ 1.11 [Via Panorama Trust</p> <p>15 Agreement].</p>	<p>71.</p>
<p>16 72. The Panorama Trust is not “a body</p> <p>17 suitably constituted by law to take,</p> <p>18 hold, maintain and regulate public</p> <p>19 parks...”</p> <p>20</p> <p>21 Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1,</p> <p>22 p. 7, ¶ 1.11 [Via Panorama Trust</p> <p>23 Agreement].</p>	<p>72.</p>
<p>24 73. The current owners of the Panorama</p> <p>25 Parkland intend to use that property</p> <p>26 for private uses.</p> <p>27 Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-</p> <p>28 3 [March 7, 2013 Rocky & Wahl letter];</p>	<p>73.</p>

<p><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	
<p>74. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>74.</p>
<p align="center">Issue No. 2. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Structures on the Panorama Parkland.</p>	
<p>75. The June 14, 1940 deeds state that as to the transferred real property “no buildings, structures or concessions shall be erected, maintained or permitted” on the property “except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation</p>	<p>75.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u> 2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u> <u>SUPPORTING EVIDENCE</u></p>
<p>3 purposes.” 4 5 Harbison Decl., ¶ 29; Exhibit 6, p. 9, ¶ 4 6 [June 14, 1940 deed for Lot A of Tract 7 7540]; Exhibit 7, p. 5, ¶ 4 [June 14, 1940 8 deed for Lot A of Tract 8652].</p>	
<p>9 76. The prior and current owners of 900 10 Via Panorama have paid for and 11 constructed encroachments on the 12 Panorama Parkland by erecting or 13 maintaining landscaping and 14 improvements without City approval. 15 16 Harbison Decl., ¶¶ 39-45; Exhibit 1 [Second 17 Amended Complaint], ¶ 20; Exhibit 15, ¶ 20 18 [City’s answer to second amended 19 complaint; Exhibit 16 [1972 letter from 20 Association]; Exhibit 17 [July 18, 2003 letter 21 from City]; Exhibit 18 [August 11, 2003 City 22 memo by Allan Rigg]; Exhibit 19 [April 14, 23 2009 letter from City]; Exhibit 20 24 [September 19, 2011 letter from City].</p>	<p>76.</p>
<p>25 77. By quitclaim deed recorded 26 September 5, 2012, Instrument 27 Number 20121327414, the 28 Panorama Parkland was conveyed</p>	<p>77.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND</u></p> <p><u>SUPPORTING EVIDENCE</u></p>
<p>3 from the City to the Association.</p> <p>4</p> <p>5 Harbison Decl., ¶ 54; Exhibit 9 [September</p> <p>6 5, 2012 Quitclaim Deed].</p>	
<p>7 78. By grant deed recorded September 5,</p> <p>8 2012, Instrument Number</p> <p>9 20121327415, the Association</p> <p>10 conveyed the Panorama Parkland to</p> <p>11 Thomas Lieb.</p> <p>12</p> <p>13 Harbison Decl., ¶ 55; Exhibit 10 [September</p> <p>14 5, 2012 Grant Deed].</p>	<p>78.</p>
<p>15 79. The September 5, 2012 quitclaim</p> <p>16 deed states in paragraph 6 that</p> <p>17 although the Panorama Parkland is</p> <p>18 to remain open space, should the</p> <p>19 owner of the Panorama Parkland</p> <p>20 obtain the necessary permits and</p> <p>21 approvals from the City, Lieb “may</p> <p>22 construct any of the following: a</p> <p>23 gazebo, sports court, retaining wall,</p> <p>24 landscaping, barbeque, and/or any</p> <p>25 other uninhabitable ‘accessory</p> <p>26 structure,’ ...”</p> <p>27 Harbison Decl., ¶ 56; Exhibit 9, p. 2, ¶ 6</p> <p>28 [September 5, 2012 Quitclaim Deed].</p>	<p>79.</p>

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p> <u>DEFENDANTS’ RESPONSE AND</u></p> <p> <u>SUPPORTING EVIDENCE</u></p>
<p>3 80. The September 5, 2012 grant deed</p> <p>4 states in paragraph 2 that although</p> <p>5 the Panorama Parkland is to remain</p> <p>6 open space “it is the intent of the</p> <p>7 parties....that [Thomas Lieb] may</p> <p>8 construct any of the following: a</p> <p>9 gazebo, sports court, retaining wall,</p> <p>10 landscaping, barbeque, and/or any</p> <p>11 other uninhabitable ‘accessory</p> <p>12 structure,’ ...”</p> <p>13</p> <p>14 Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2</p> <p>15 [September 5, 2012 Grant Deed].</p>	<p>80.</p>
<p>16 81. The current owners of the Panorama</p> <p>17 Parkland intend to use that property</p> <p>18 for private uses.</p> <p>19</p> <p>20 Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-</p> <p>21 3 [March 7, 2013 Rockey & Wahl letter];</p> <p>22 Exhibit 23, pp. 1-2 [February 19, 2013 City</p> <p>23 Staff Report to Planning Commission].</p>	<p>81.</p>
<p>24 82. In February 2013, the current owners</p> <p>25 of the Panorama Parkland applied to</p> <p>26 the City for a zone change to change</p> <p>27 the zoning from Open Space to R-1</p> <p>28 and to obtain “after the fact”</p>	<p>82.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	
<p>83. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association's 1972 letter stated that the Board of Directors for the Association had determined that "the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed..."</p> <p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p>	<p>83.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p style="text-align: center;">Issue No. 3. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Conveyance or Sale Except to a Body Suitably Constituted by Law to Take, Hold, Maintain and Regulate Public Parks.</p>	
<p>84. In the late 1930's, the Association faced an overwhelming tax debt and the threat of foreclosure of its parklands.</p> <p>Harbison Decl., ¶ 16; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>84.</p>
<p>85. To avoid this result, the Association deeded its parklands to the City and to the District between 1938 and 1940.</p> <p>Harbison Decl., ¶ 17; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended</p>	<p>85.</p>

<p style="text-align: center;"><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p style="text-align: center;"><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>complaint].</p>	
<p>86. The Association has no current ownership of parklands. Harbison Decl., ¶ 18.</p>	<p>86.</p>
<p>87. Instead, the City has taken on both the ownership of and stewardship of the parks. Harbison Decl., ¶ 19.</p>	<p>87.</p>
<p>88. The City has established a Parklands Commission. Harbison Decl., ¶ 20.</p>	<p>88.</p>
<p>89. Applications by residents that would impact parklands are brought to the City’s Parkland Commission and not the Association. Harbison Decl., ¶ 21.</p>	<p>89.</p>
<p>90. Permits and enforcement actions concerning parklands involve the City and not the Association. Harbison Decl., ¶ 22.</p>	<p>90.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
91. The Association is no longer a body that takes, holds, maintains and regulates public parks and has not done so since 1940. Harbison Decl., ¶ 23.	91.
92. On June 14, 1940, the Association conveyed a number of parks to the City in multiple grant deeds. Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].	92.
93. The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...except to a body suitably constituted by law to take, hold, maintain and regulate public parks...”	93.

<p><u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652].</p>	
<p>94. By quitclaim deed recorded September 5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association.</p> <p>Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p>	<p>94.</p>
<p>95. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 55; Exhibit 10 [September 5, 2012 Grant Deed].</p>	<p>95.</p>
<p>96. Lieb is an individual.</p> <p>Harbison Decl., ¶¶ 58-59; Exhibit 13, p. 1, li. 4-10 [Lugliani and Lieb answer to second amended complaint].</p>	<p>96.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
1 97. Lieb is the trustee of the VIA 2 PANORAMA TRUST U/DO MAY 3 2, 2012 ("Panorama Trust"). 4 5 Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1 6 [Via Panorama Trust Agreement].	97.
9 98. The Panorama Trust is an estate 10 planning instrument for the benefit 11 of the children of Dr. and Mrs. 12 Lugliani. 13 14 Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, 15 p. 7, ¶ 1.11 [Via Panorama Trust 16 Agreement].	98.
17 99. The Panorama Trust is not "a body 18 suitably constituted by law to take, 19 hold, maintain and regulate public 20 parks..." 21 22 Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, 23 p. 7, ¶ 1.11 [Via Panorama Trust 24 Agreement].	99.
25 100. The current owners of the Panorama 26 Parkland intend to use that property 27 for private uses. 28	100.

<p><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	
<p>101. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>101.</p>
<p>Issue No. 4. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Purport to Authorize Landscaping and Construction in Violation of the June 14, 1940 Deed Restrictions that Bar Improvements that Interfere with the Use and Maintenance of the Parkland for Park and Recreation Purposes.</p>	
<p>102. The June 14, 1940 deeds state that, with written permission from the Association and a permit from the City, a property owner abutting the</p>	<p>102.</p>

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<p align="center"><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p align="center"><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>park may construct paths or landscaping on the conveyed property as a means of improving access to or views from such property. Such improvements must not impair or interfere with the use and maintenance of said realty for park and/or recreation purposes.</p> <p>Harbison Decl., ¶ 31; Exhibit 6, p. 9, ¶ 6 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 6 [June 14, 1940 deed for Lot A of Tract 8652].</p>	
<p>103. The encroachment on the Panorama Parkland includes landscaping, a baroque wrought-iron gate with stone pillars and lion statuettes, a winding stone driveway, dozens of trees (some of which are as high as 50 feet), a now-overgrown athletic field half the size of a football field, a 21-foot-high retaining wall and other retaining walls. The stone pillars and lion statuettes are within the City’s easements and right of way.</p>	<p>103.</p>

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<u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u>
Harbison Decl., ¶ 45; Exhibit 18 [August 11, 2003 City memo by Allan Rigg].	
104. The September 5, 2012 quitclaim deed states in paragraph 6 that although the Panorama Parkland is to remain open space, should the owner of the Panorama Parkland obtain the necessary permits and approvals from the City, Lieb “may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’ ...” Harbison Decl., ¶ 56; Exhibit 9, p. 2, ¶ 6 [September 5, 2012 Quitclaim Deed].	104.
105. The September 5, 2012 grant deed states in paragraph 2 that although the Panorama Parkland is to remain open space “it is the intent of the parties....that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory	105.

<p>1 <u>PLAINTIFF’S UNDISPUTED</u></p> <p>2 <u>MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND</u></p> <p><u>SUPPORTING EVIDENCE</u></p>
<p>3 structure, ’...’</p> <p>4</p> <p>5 Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2</p> <p>6 [September 5, 2012 Grant Deed].</p>	
<p>7 106. The current owners of the Panorama</p> <p>8 Parkland intend to use that property</p> <p>9 for private uses.</p> <p>10</p> <p>11 Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-</p> <p>12 3 [March 7, 2013 Rockey & Wahl letter];</p> <p>13 Exhibit 23, pp. 1-2 [February 19, 2013 City</p> <p>14 Staff Report to Planning Commission].</p>	<p>106.</p>
<p>15 107. In February 2013, the current owners</p> <p>16 of the Panorama Parkland applied to</p> <p>17 the City for a zone change to change</p> <p>18 the zoning from Open Space to R-1</p> <p>19 and to obtain “after the fact”</p> <p>20 approval for various accessory</p> <p>21 structures on the Panorama</p> <p>22 Parkland.</p> <p>23</p> <p>24 Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-</p> <p>25 3 [March 7, 2013 Rockey & Wahl letter];</p> <p>26 Exhibit 23, pp. 1-2 [February 19, 2013 City</p> <p>27 Staff Report to Planning Commission].</p> <p>28</p>	<p>107.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>108. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association's 1972 letter stated that the Board of Directors for the Association had determined that "the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed..."</p> <p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p>	108.
Issue No. 5. The Court Should Grant Summary Adjudication of the Waste of Public Funds/Ultra Vires Cause of Action Because there are no Triable Issues of Material Fact that the June 14, 1940 Deeds Created a Public Trust and that the City Violated that Trust by Executing the September 2012 Deeds.	
<p>109. The properties conveyed by the Association to the City on June 14, 1940 included the Panorama Parkland.</p> <p>Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3,</p>	109.

<p><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City’s answer to second amended complaint].</p>	
<p>110. By quitclaim deed recorded September 5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association. Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p>	<p>110.</p>
<p>111. The City passed Resolution No. 12 formally accepting the deeds and confirming the land use restrictions. Harbison Decl., ¶ 38, Exhibit 8 [Resolution No. 12].</p>	<p>111.</p>
<p>Issue No. 6. The Court Should Grant Summary Adjudication of the Waste of Public Funds/Ultra Vires Cause of Action based on the Doctrine of Collateral Estoppel Because of the Prior Litigation Concerning these Deed Restrictions.</p>	
<p>112. In 1949, the City litigated substantially identical deed</p>	<p>112.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>restrictions in <i>Roberts v. City of Palos Verdes Estates</i> (1949) 93 Cal.App.2d 545 (“<i>Roberts</i>.”)</p> <p><i>Roberts v. City of Palos Verdes Estates</i> (1949) 93 Cal.App.2d 545.</p>	
<p>113. The deed restriction at issue in <i>Roberts</i> was:</p> <p>“that except as provided above, no buildings, structures or concessions shall be erected, maintained or permitted upon the said realty, except such as, (in the opinion of the Park Department of Palos Verdes Homes Association), are properly incidental to the convenient and/or proper use of said realty for park purposes.”</p> <p>(<i>Roberts</i>, at 546).</p>	<p>113.</p>
<p>114. In the <i>Roberts</i> case, the City argued that it could substitute its “best judgment” for the use of the park for the express terms of the deed.</p> <p>(<i>Roberts</i>, at 546-47).</p>	<p>114.</p>

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<u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u>
Issue No. 7. The Court Should Grant Summary Adjudication as to the Affirmative Defense of Standing Because there is no Triable Issue of Fact Regarding CEPC and Harbison’s Right to Assert Claims.	
<p>115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no standing in this matter.</p> <p>Exhibit 13 [Lieb and Lugliani answer to second amended complaint].</p>	<p>115.</p>
<p>116. The Association has asserted as its second affirmative defense that Plaintiffs have no standing in this matter.</p> <p>Exhibit 14 [Association’s answer to second amended complaint].</p>	<p>116.</p>
<p>117. The City has asserted as its eighth affirmative defense that Plaintiffs have no standing in this matter.</p> <p>Exhibit 15 [City’s answer to second amended complaint].</p>	<p>117.</p>
<p>118. Plaintiff John Harbison (“Harbison”) owns property located within the City.</p>	<p>118.</p>

<p><u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p><u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Harbison Decl., ¶ 2; Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second Amended Complaint].</p>	
<p>119. Harbison has owned property located within the City since 1992.</p> <p>Harbison Decl., ¶ 2.</p>	<p>119.</p>
<p>120. Harbison owns property that is subject to the Association's jurisdiction.</p> <p>Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second Amended Complaint].</p>	<p>120.</p>
<p>121. Harbison is a member of the Association.</p> <p>Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second Amended Complaint].</p>	<p>121.</p>
<p>122. Harbison is a member of plaintiff Citizens for Enforcement of Parkland Covenants.</p>	<p>122.</p>

<p style="text-align: center;"><u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p style="text-align: center;"><u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Harbison Decl., ¶ 1.</p>	
<p>123. Harbison has paid property taxes annually since purchasing his property in 1992.</p> <p>Harbison Decl., ¶ 2.</p>	<p>123.</p>
<p>124. The Association’s bylaws state that its members shall be constituted of “all who hold legal title of record” to any lot located within Palos Verdes Estates. (By-Laws, 24 Art. I, § 1(c).) “Such building title shall be the sole qualification for membership in the [Association].”</p> <p>Exhibit 5, p. 30, Art I, § 1(c).</p>	<p>124.</p>
<p>Issue No. 8. The Court Should Grant Summary Adjudication as to the Affirmative Defense of Non-Joinder Because there is no Triable Issue of Fact Regarding the District’s Participation in this Action.</p>	
<p>125. The Association has asserted as its seventh affirmative defense that there is an indispensable party missing from this action.</p> <p>Exhibit 14 [Association’s Answer to Second Amended Complaint].</p>	<p>125.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
126. The City has asserted as its thirteenth affirmative defense that there is an indispensable party missing from this action. Exhibit 15 [City's Answer to Second Amended Complaint].	126.
127. On April 11, 2014, the Court issued a minute order containing a tentative ruling on defendants' demurrers and motions to strike. Lewis Decl., ¶ 7; Exhibit 27 [April 11, 2014 minute order].	127.
128. On May 21, 2014 the Court confirmed that the April 11, 2014 tentative ruling would be the final ruling of the Court. Lewis Decl., ¶ 7; Exhibit 28 [May 21, 2014 Reporter's Transcript].	128.
129. The April 11, 2014 order included the following ruling by the Court: "The matters now before this court do not depend, in this Court's view,	129.

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<u>PLAINTIFF’S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS’ RESPONSE AND SUPPORTING EVIDENCE</u>
<p>on the MOU and who were or were not parties to it.”</p> <p>Exhibit 28, p. 9, li. 13-14 [May 21, 2014 Reporter’s Transcript].</p>	
<p>130. The April 11, 2014 order included the following ruling by the Court: “The parties to the MOU made a deal and took the risk that what they were doing would not be challenged or, if challenged, the challenge would not be successful. That challenge is what they are now facing, but the MOU, in this court’s view, does not need to be vacated or set aside for the restrictions allegedly tied to [the Panorama Parkland] to be enforced if they have been or are being violated. The private agreement of parties to the MOU does not bind others with an interest or preclude a court from acting...”</p> <p>Exhibit 28, p. 8, li. 28 – p. 9, li. 5 [May 21, 2014 Reporter’s Transcript].</p>	<p>130.</p>

<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>131. On May 1, 2014, the plaintiffs requested dismissal, without prejudice, of the Palos Verdes Peninsula Unified School District ("District.")</p> <p>Lewis Decl., ¶ 8; Exhibit 29 [Notice of Entry of Dismissal].</p>	<p>131.</p>
<p>132. On May 5, 2014, the clerk entered the dismissal of the District.</p> <p>Lewis Decl., ¶ 8, Exhibit 29 [Notice of Entry of Dismissal]</p>	<p>132.</p>
<p>133. On May 7, 2014, plaintiffs served notice of the dismissal of the District.</p> <p>Lewis Decl., ¶ 8; Exhibit 29 [Notice of Entry of Dismissal].</p>	<p>133.</p>
<p>134. On October 31, 2014, plaintiffs' stipulated to leave to file a cross-complaint against the District.</p> <p>Lewis Decl., ¶ 9; Exhibit 30 [October 31, 2014 letter by Lewis to Dveirin].</p>	<p>134.</p>
<p>135. No defendant has filed a cross-complaint in this matter.</p>	<p>135.</p>

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<u>PLAINTIFF'S UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Lewis Decl., ¶ 9.	
136. No defendant took any action in response to the request for entry of dismissal. Lewis Decl., ¶ 9.	136.
137. No defendant has accepted plaintiffs' stipulation for leave to file a cross-complaint against the District. Lewis Decl., ¶ 9.	137.

DATED: December 3, 2014

BROEDLOW LEWIS LLP

By: 
Jeffrey Lewis

Attorneys for Plaintiffs
CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS and JOHN
HARBISON