

1 Jeffrey Lewis (SBN 183934)
2 Kelly Broedlow Dunagan (SBN 210852)
3 **BROEDLOW LEWIS LLP**
4 734 Silver Spur Road, Suite 300
5 Rolling Hills Estates, CA 90274
6 Tel. (310) 935-4001
7 Fax. (310) 872-5389
8 E-Mail: Jeff@BroedlowLewis.com

9 Attorney for Plaintiff and Petitioner
10 **CITIZENS FOR ENFORCEMENT OF
11 PARKLAND COVENANTS**

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

14 **CITIZENS FOR ENFORCEMENT OF
15 PARKLAND COVENANTS, an
16 unincorporated association,**

17 Plaintiff and Petitioner,

18 vs.

19 **CITY OF PALOS VERDES ESTATES, a
20 municipal corporation; PALOS VERDES
21 HOMES ASSOCIATION, a California
22 corporation; PALOS VERDES
23 PENINSULA UNIFIED SCHOOL
24 DISTRICT, a political subdivision of the
25 State of California,**

26 Defendants and Respondents,

27 **ROBERT LUGLIANI and DELORES A.
28 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 and Real Parties in
Interest.

Case No.: BS142768

(Assigned for all purposes to
Hon. Joanne O'Donnell, Dept. 86)

**MEMORANDUM OF POINTS AND
AUTHORITIES BY CITIZENS FOR
ENFORCEMENT OF PARKLAND
COVENANTS IN OPPOSITION TO
DEMURRER BY PALOS VERDES
ESTATES**

Hearing Date: October 25, 2013
Hearing Time: 1:30 p.m.
Department: 86

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

This lawsuit seeks to enforce land use restrictions that, until very recently, the City of Palos Verdes Estates (the “City”) and Palos Verdes Homes Association (the “Association”) regarded as sacrosanct. In 2003 and 2005, the City described these restrictions as follows:

The original developers of the City placed restrictions on these properties so that they would be eternally open to all people, and not used privately. These restrictions *legally bind* the City to keep these areas free of fences, walls or any other private usage...The City has not and will not grant any permits for permanent private occupation of City Parklands *as we are legally bound to keep these areas open to the public.*¹

Soon after its incorporation in 1939, 849 acres of open space were dedicated to the City by the Palos Verdes Homes Association, *subject to the deed restriction that these areas must be perpetually maintained for the public to enjoy.* The deed restrictions further stipulated that should any open space be privately, occupied, ownership would revert to the original owner: the Homes Association. The City *wholeheartedly accepted this condition...*²

...the City owns 849 acres of parklands that comprise much of the open space and *are deed-restricted to remain open for the public’s use...*³

In 2005 the City gave the Luglianis and 39 other residents five years to remove encroachments that had been made on adjoining parklands. By 2010, 38 of the residents had complied – but not the Luglianis. The City then commenced nuisance abatement proceedings against the owners of 900 Via Panorama, Dr. Robert and Delores Lugliani (the “Luglianis”) for their illegal encroachment on public lands. The City had the right to force abatement through the underlying protective restrictions, and brought in a bulldozer which began to knock down some of the structures. However, the Luglianis threatened the City with legal liability if removing certain retaining walls (specifically a 23 foot high retaining wall created when the Luglianis carved out a sports field on the parkland hillside adjacent to their house)

¹ City Staff Memo about 900 Via Panorama by Allan Rigg, Public Works Director, August 11, 2003, emphasis added. CEPC recognizes that the statements of Mr. Rigg are not necessarily properly before the Court on demurrer. CEPC offers them now as an offer of proof to the Court of additional facts that CEPC could plead, if necessary in an amended pleading, in support of its

² City Staff Memo by Allan Rigg, Public Works Director, October 25, 2005, emphasis added.

³ Resolution R05-32, A Resolution of the City Council of the City of Palos Verdes Estates, emphasis added. See Request for Judicial Notice, Ex. C.

1 caused damage to their house. Fearing a lawsuit by the Luglianis, the City suspended the
2 abatement.

3 During the same timeframe that the City brought incomplete and ineffective
4 abatement proceedings against the Luglianis, the Association spent over \$300,000 defending
5 itself in litigation brought by the Palos Verdes Peninsula Unified School District (the
6 “District”) regarding the enforceability of the same parkland land use restrictions that are at
7 issue here. The District contended that parkland land use restrictions were no longer
8 enforceable. The District lost that case in September 2011. What circumstance occurred that
9 would prompt the City, Association and Luglianis to file joint briefs in this Court indicating
10 that these same land use restrictions are now optional to be enforced at the whim of the City
11 and Association?

12 Money. A lot of money. \$2 million to be specific.

13 In addition to paying \$500,000 for the parkland property around their house, Robert
14 and Dolores Lugliani “donated” \$1.5 million dollars⁴ to the District to buy their way out of
15 decades of illegal encroachment on public parkland. In responses to requests for admission
16 in this case, the Luglianis confirmed that their motivation for making the “donation” was as
17 follows:

18 ...as part of the MOU transactions, Robert and Dolores Lugliani provided
19 \$1.5 million to the [District] in 2012 to address the school budgetary deficit
20 with the expectation that the MOU transactions would be completed and that
21 required governmental authorizations referred to in the MOU would be
22 granted provided the applications for such authorization satisfied all applicable
23 standards and conditions.”

22 In summary, following decades of illegal encroachment on public parklands, the
23 Luglianis bought their way out of their troubles by paying off a public agency \$1.5 million. In
24 return for this “donation,” the Association and City conveyed public parkland to the
25

26
27 ⁴ \$1.5 million was paid to the District while \$500,000 was paid to the Association to look the other
28 way and abandon its historical role as guardian of the City’s parklands. The Association then gave
\$100,000 of its \$500,000 to the City – motivating the City with a monetary reward to support the
deal.

1 Luglianis⁵ for their private use for construction of a gazebo, sports court, retaining walls and
2 the private use of the Luglianis. After trying for four months to convince the City and the
3 PVHA to do the “right thing” and reverse the sale of parkland, the Citizens for Enforcement
4 of Parkland Covenants (“CEPC”) filed this lawsuit to put the City and Association back on
5 the track they were on before the Luglianis made the \$1.5 million dollar “donation.” The
6 Luglianis’ lawyers have cynically portrayed this action as brought by a single grumpy neighbor
7 who is unhappy with a discretionary land use decision. In fact, the opposition to the
8 Lugliani’s illegal acquisition and occupation of parkland has widespread support throughout
9 Palos Verdes as evidenced by the 100 letters, emails and petition signatures that the City has
10 received on this topic; since then CEPC has received another 15 signed petitions. Moreover,
11 as set forth below, this is not a typical land use decision entitled to deference by the courts.
12 Rather, it is the illegal settlement agreement – the MOU – and the two void deeds that CEPC
13 seeks judicial intervention to correct. The actions taken were illegal, in violation of land use
14 restrictions and this Court is not required to defer to these illegal actions.

15 The Demurrer should be overruled for the following four reasons:

16 First, the City joins its co-defendants’ demurrer and urges dismissal of the first cause
17 of action for declaratory relief because it is duplicative of the claim for writ of mandate. Not
18 so. The declaratory relief claim is asserted against all parties (the signatories and beneficiaries
19 of the MOU) while the mandate claim is directed at only two parties, the City and the
20 Association. The declaratory relief claim seeks to invalidate three documents: the MOU and
21 two deeds while the mandate claim seeks to compel the City and Association to take action to
22 enforce land use restrictions. The argument that the declaratory relief claim is either
23 superfluous or duplicative is without merit.

24 Second, the City joins its co-defendants’ demurrer and urges dismissal because the
25 City has no duty to enforce the land use restrictions for Area A. This argument, too, lacks
26 merit. The City unquestionably has a duty to enforce the land use restrictions protecting City
27

28 ⁵ Technically, the conveyed land was deeded to Thomas J. Lieb, Trustee of the Via Panorama Trust
for the benefit of the Luglianis.

1 parkland. The City’s Municipal Code establishes the City’s duty to protect parklands and
2 enforce land use restrictions. (City of PVE Mun. Code, §§ 17.32.050, 18.16.020). The City’s
3 own resolutions also confirm the City’s own understanding of this mandatory duty.
4 Resolution R05-32⁶ directed City staff to tighten up its enforcement of illegal encroachments
5 on parkland. Resolution R05-32 employed mandatory “shall” language requiring, without
6 exception, all illegal encroachments to be removed, at the latest, within five years of the City’s
7 notification to the offending property owner. (RFJN, Ex. C, p. 3). The argument that the
8 City has the “right” but not the “duty” to enforce land use restrictions is, therefore,
9 contradicted by the City’s Municipal Code and resolutions.

10 Third, the City’s attack against the second cause of action pursuant to Code of Civil
11 Procedure, section 526a is without merit. The City has mistated the gravamen of this claim.
12 The claim is not concerned solely with the “consideration of applications for a zoning
13 amendment and after the fact entitlements.” (Demurrer, p. 5). Rather the thrust of the claim
14 is to attack the MOU and two deeds for Area A as ultra vires. (Complaint, ¶¶ 32-32). (*City of*
15 *Hermosa Beach v. Superior Court* (1964) 231 Cal.App.2d 295, 300 [recognizing validity of claim
16 under Code of Civil Procedure, § 526a challenging city’s unlawful use of public lands.]

17 Fourth, the City is estopped by its prior conduct from now claiming that the land use
18 restrictions are optional for enforcement. In the 1940’s, the Association avoided a large tax
19 burden and the City acquired parklands by representing that the City had accepted the deeds
20 for the parklands, including the land use restrictions. Having reaped the benefits in the
21 1940’s of this transaction, the City is now estopped from denying the binding nature of those
22 restrictions. The City is also estopped from denying the mandatory nature of the land use
23 restrictions due to its prior, unsuccessful litigation of this very issue in the 1940s.

24 In sum, the pleadings establish that the City has a duty to enforce the land use
25 restrictions protecting Area A. The pleadings also establish the existence of a controversy
26 among CEPC, all the defendants and the real parties in interest.

27
28 ⁶ CEPC Request for Judicial Notice, Ex. C

1 **II. THE DEMURRER TO THE FIRST CAUSE OF ACTION SHOULD BE**
2 **OVERRULED BECAUSE THE CLAIMS FOR DECLARATORY**
3 **RELIEF AND WRIT OF MANDATE SEEK DIFFERENT RELIEF**
4 **AGAINST DIFFERENT PARTIES**

5 The City joins in the co-defendants’ request for dismissal of the declaratory relief
6 claim on the grounds that it is “identical” to the petition for writ of mandate claim. (Lugliani
7 Demurrer, p. 5, li. 11-17). CEPC respectfully disagrees. The declaratory relief is fairly broad
8 in scope while the petition for writ of mandate is very narrow. Three key differences in the
9 claims:

- 10 • The declaratory relief claim seeks relief against all of the parties to this action (the
11 signatories to the MOU as well as the Luglianis). (Complaint, p. 10, li. 6-7). The
12 mandate claim seeks only relief against two parties, the City and Association.
13 (Complaint, p. 13, li. 1-3).
- 14 • The declaratory relief claim seeks a judicial declaration that the portion of the
15 MOU that authorizes the conveyance of Area A is illegal. The declaratory relief
16 claim also asks the Court to declare that the two deeds for Area A violate land use
17 restrictions. No similar relief is sought in the petition for writ of mandate.
- 18 • While the declaratory relief action seeks to invalidate three *documents* (the MOU
19 and two deeds) the mandate action seeks to compel *action* above and beyond those
20 documents: to enforce land use restrictions.

21 Notably, if the declaratory relief claim is dismissed, CEPC will be left with no remedy
22 against the Luglianis, Thomas Lieb or the District. Moreover, the ability of CEPC to obtain a
23 judicial declaration as to the MOU will be impaired absent the presence of all the signatories
24 to that agreement as indispensable parties.

1 **III. THE DEMURRER TO THE FIRST CAUSE OF ACTION SHOULD BE**
2 **OVERRULED BECAUSE CEPC HAS STATED THE EXISTENCE OF**
3 **A CONTROVERSY**

4 The City joins in the co-defendants’ request for dismissal of the declaratory relief
5 claim on the grounds that CEPC is not a party to the MOU and has failed to state the
6 existence of an actual controversy. Both arguments lack merit. At the outset, it should be
7 noted that a demurrer is a poor tool to test CEPC’s declaratory relief claim. A “general
8 demurrer is usually not an appropriate method for testing the merits of a declaratory relief
9 action, because the plaintiff is entitled to a declaration of rights even if it is adverse to the
10 plaintiff’s interest.” (*Qualified Patients Ass’n v. City of Anaheim* (2010) 187 Cal.App.4th 734,
11 751). That rule is particularly appropriate here where the moving parties’ arguments are
12 directed to the underlying merits rather than the adequacy of the pleading.

13
14 **A. CEPC has standing to assert these claims as a Taxpayer’s Action, under**
15 **the Citizen’s Suit doctrine and through Harbison’s right to directly**
16 **enforce the land use restrictions.**

17 CEPC adequately pled its standing at paragraph nine of the complaint:

18
19 CEPC has standing to assert the below pled claims for the following three
20 reasons: First, by virtue of John Harbison’s payment of taxes within the past
21 year, CEPC may assert on his behalf, a taxpayer’s action pursuant to Code of
22 Civil Procedure section 526a. Second, under the “Citizen Suit” doctrine,
23 CEPC has standing to enforce a public duty (the property restrictions alleged
24 below) and raising questions of public rights (the rights of CITY residents to
enforcement of protective covenants, to preserve open space and to prevent
unlawful conveyances of parklands to private parties). Third, by virtue of Mr.
Harbison’s ownership of real property within the CITY, he is a beneficiary of
the restrictions and CEPC may assert those restrictions on Mr. Harbison’s
behalf.

25 The passing reference⁷ to standing does not address these three separately pled bases
26 to establish CEPC’s standing. This is not surprising since California courts routinely

27
28 ⁷ Lugliani Demurrer, p. 8, li. 11-16, p. 11, li. 17-22, p. 12, li. 8-10.

1 recognize the standing of citizens to challenge a municipality’s attempt to violate land use
2 restrictions for parks.

3
4 **B. CEPC has adequately pled a dispute between CEPC and the City**
5 **regarding the legality of the MOU, the validity of the deeds and the**
6 **failure of the City to perform its ministerial duties**

7 The City joins in the co-defendants’ argument that CEPC has failed to allege a
8 justiciable controversy concerning the City. (Lugliani Demurrer, p. 8, li. 26-28). The moving
9 parties argue that in 1940 when the City accepted ownership of Area A, the City did not
10 become bound by the land use restrictions. (Lugliani Demurrer, p. 9, li. 13-19). Specifically,
11 the moving parties argue that the City was without the power to “contract away” the power
12 of a future city council. (Lugliani Demurrer, p. 9, li. 13-15). This argument lacks merit. If
13 such a legal principle were valid then the entire basis of the MOU: the City’s extraction from
14 the District of recognition of the enforceability of land use restrictions on parkland in the City
15 is a sham. If the City was without the power in 1940 to “contract away” the power of a
16 future city council to make land use decisions, then the District was likewise without power
17 in 2012 to sign the MOU and thereby “contract away” the District’s right to contest the land
18 use restrictions.⁸

19 The argument also is contrary to well established law governing land grants for the
20 purpose of public parks. *City of Hermosa Beach v. Superior Court, supra*, 231 Cal.App.2d at p. 296
21 is instructive. In that case, in 1907, the city was deeded beach property for recreational
22 purposes and prohibiting traffic. Fifty years later, when the city erected a fence and
23 constructed a road on the deeded property, a city resident sued the city to enforce the 1907
24 deed restriction. The city demurred on the ground that only the attorney general could
25 enforce the land restrictions. The demurrer was overruled and the city sought writ relief. In

26
27 ⁸ Notably, the MOU provides that it is “binding on all Parties” and on their successors. (Complaint,
28 Ex. 4, MOU, p. 12, ¶ L). If the City represented to the parties to the MOU that it could be bound by
land use restrictions now and in the future how can the City now make contrary representations to
this Court?

1 denying writ relief, the court of appeal confirmed that when a municipality is deeded land for
2 public purposes:

3 the municipality owes the public a duty to employ the property in a certain
4 way and that the members of the public can proceed in equity to compel the
municipality to live up to this part of its governmental obligations.

5 (*City of Hermosa Beach v. Superior Court, supra*, 231 Cal.App.2d 295, 298-99)

6 The court went on to hold that once a city accepts a deed with restricted public
7 purposes, the city must continue to use that land for public purposes. (*Id.* at 300). The city,
8 in such a circumstance ‘is without the power of a municipality to divert or withdraw the land
9 from use for park purposes.’ (*Ibid.*) A city that attempts to use a property in violation of the
10 deed restrictions “would be an ultra vires act.” (*Ibid.*; see also *Big Sur Properties v. Mott* (1976)
11 62 Cal.App.3d 99, 104). The *City of Hermosa Beach* case is not an aberration:

12 California courts have been loathe to cast aside use restrictions on property
13 contained in deeds: “It is well settled that where a grant deed is for a
14 specified, limited and definite purpose, the subject of the grant cannot be used
15 for another and different purpose. (*Roberts v. City of Palos Verdes Estates* [(1949)
16] 93 Cal.App.2d 545, 547 [209 P.2d 7]; *Griffith v. Department of Public Works* [
(1956)] 141 Cal.App.2d 376, 380 [296 P.2d 838].)’” (*Big Sur Properties v. Mott*
17 (1976) 62 Cal.App.3d 99, 103, 132 Cal.Rptr. 835 [*Big Sur Properties*]; see also
18 *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215
19 Cal.App.3d 1003, 1012, 263 Cal.Rptr. 896 [Welwood Murray].)

20 Likewise, California courts have often held that “[w]here a tract of land is
21 donated to a city with a restriction upon its use—as, for instance, when it is
22 donated or dedicated solely for a park—the city cannot legally divert the use
23 of such property to purposes inconsistent with the terms of the grant.’
(Citations.) Further, where, as here, property is acquired by a public entity
24 through private dedication, the deed is strictly construed. (Citations.) As
25 several California courts have observed: “Courts have guarded zealously the
26 restrictive covenants in donations of property for public use....” (Citations.) In
27 fact, where property has been donated for public use, some courts have
28 concluded such property “is held upon what is loosely referred to as a ‘public
trust,’ and any attempt to divert the use of the property from its dedicated
purposes or uses incidental thereto is an ultra vires act. (Citations.)

(*County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 575-76).

25 The City has done exactly what was prohibited in *County of Solano*: diverted public
26 parkland “for purposes inconsistent with the terms of the grant.” It is beyond dispute that
27 conveying parkland to the Luglianis and allowing the construction of a private gazebo, sports
28 court and retaining walls is entirely inconsistent with the land use restrictions that the City

1 “wholeheartedly” accepted in in the 1940’s. The moving parties cite several cases in support
 2 of their argument that the City is not bound by the deed land restrictions. Each case is
 3 inapplicable to the facts here. The moving parties cite *County of Sacramento v. Lackner* (1979)
 4 97 Cal.App.3d 576, 589, 590 for support. The *Lackner* case involved a dispute between the
 5 State of California and individual counties over Medi-Cal reimbursement. The question
 6 presented in *Lackner* was the validity of certain Medi-Cal legislation. The validity of deed
 7 restrictions was not considered. Here, in stark contrast, we have deed restrictions which the
 8 City “wholeheartedly” accepted in 1940. The moving parties also cite *Thompson v. Board of*
 9 *Trustees* (1904) 144 Cal. 281 for the proposition that the land use restrictions do not bind the
 10 City. (Lugliani Demurrer, p. 9, li. 16-18). In *Thompson* the California Supreme Court
 11 considered a city ordinance that allowed residents to, by ten percent vote of the population,
 12 bring certain issues to a public vote. This ordinance was held to be an improper suspension
 13 of the city council’s legislative powers. (*Id.* at 282). The *Thompson* case has no applicability to
 14 this case involving deed restrictions. The moving parties also cite *Briare v. Matthew* (1927) 202
 15 Cal. 1. In the *Briare* case, the California Supreme Court concerned itself with whether an
 16 ordinance concerning appointments to the police department was enforceable. Ultimately,
 17 the court held that it was not enforceable because it conflicted with the city charter. (*Id.* at 7).
 18 Notable, *Lackner*, *Thompson* and *Briare* have never been cited in the context of a case
 19 involving city owner property and deed restrictions.

20 In sum, it is beyond cavil that the City was bound by the land use restrictions when it
 21 accepted the parkland parcels in 1940. *City of Hermosa Beach v. Superior Court, supra*, 231
 22 Cal.App.2d at pp. 298-99 and *County of Solano v. Handlery, supra*, 155 Cal.App.4th at pp. 575-76
 23 confirm that a city that accepts deeds with land use restrictions remains bound by those land
 24 restrictions. The City’s present legal posture: that the land use restrictions have no force and
 25 effect confirm the existence of the very controversy alleged in the pleadings: the \$2.0 million
 26 payoff by the Luglianis in exchange for parkland property presents a very real and actionable
 27 justicable dispute.
 28

1 **IV. THE DEMURRER TO THE THIRD CAUSE OF ACTION SHOULD**
2 **BE OVERRULED BECAUSE MANDATE LIES WHERE THE CITY**
3 **TAKES NO ACTION TO ENFORCE THE LAND USE**
4 **RESTRICTIONS**

5 The City contends, and CEPC agrees, that mandate only lies to compel a ministerial
6 act. The City argues: “because the City has a number of options for dealing with the alleged
7 illegal improvements on Area A...Petitioner is not entitled to a writ.” (Demurrer, p. 11). If
8 the City had chosen any option to eliminate the encroachments on Area A, the City would be
9 correct, mandate would not lie. Instead of eliminating the illegal encroachment issue, the City
10 sold Area A for \$1.5 million. That was not a legal option for the City to pursue.

11 If the City were to choose the manner in which the land use restrictions were to be
12 enforced, CEPC could not compel the City through the courts to pick a different option.
13 For example, if the City decided on reasonable measures to only enforce illegal
14 encroachments on parkland that the City deemed substantial in nature or occupied more than
15 50 square feet of parkland, that is a matter of City discretion insulated from judicial review.
16 Here, however, the City owned parkland (Area A) and sold it to the Lugianis, via Lieb. That
17 is not “enforcement” of land use restrictions in any sense of the word. This Court has ample
18 authority to issue mandate to compel the City to void the September 2012 deeds and enforce
19 the Area A land use restrictions.

20
21 **V. THE DEMURRER TO THE THIRD CAUSE OF ACTION SHOULD**
22 **BE OVERRULED BECAUSE MANDATE WILL LIE TO ENFORCE**
23 **THE LAND USE RESTRICTIONS ONCE THIS COURT VOIDS THE**
24 **DEEDS**

25 The City contends that once it illegally conveyed Area A to the Association (and
26 ultimately to Lieb), it was absolved of any duty to enforce the land use restrictions.
27 (Demurrer, p. 8). That argument misses the point. This action seeks to invalidate the
28 September 2012 deeds. Should this Court confirm that those deeds were illegal and declare

1 those deeds void, the City will once again own Area A. At that point, mandamus will lie to
2 enforce its own Municipal Code, resolutions and the land use restrictions. It will also lie to
3 prevent the City from spending taxpayer monies on staff to achieve an illegal purpose – the
4 violation of land use restrictions. Absent the remedy of mandate, once the deeds are declared
5 illegal, the City has proven it will disregard the land use restrictions again in the future.

6
7 **VI. THE DEMURRER TO THE THIRD CAUSE OF ACTION SHOULD**
8 **BE OVERRULED BECAUSE THE CITY MUNICIPAL CODE,**
9 **RESOLUTIONS AND OTHER GOVERNING DOCUMENTS**
10 **DEMONSTRATE THAT THE CITY OWES A DUTY – NOT A MERE**
11 **RIGHT – TO ENFORCE LAND USE RESTRICTIONS**

12 The City urges dismissal of the third cause of action on the grounds that the City has
13 no obligation to enforce the land use restrictions of Area A. This argument has no merit.
14 The City unquestionably has a duty to enforce the land use restrictions protecting City
15 parkland. The City’s argument that it has the mere “right” but no “duty” argument is without
16 merit. The City’s Municipal Code makes it clear that a private person’s use of public parkland
17 for private purposes is a city nuisance. (City of PVE Mun. Code, §§ 17.32.050, 18.16.020).
18 The City Municipal Code declares it is the “right and duty” of all residents to “participate and
19 assist the city officials” in the enforcement of the City’s zoning and building codes. (City of
20 PVE Mun. Code, § 17.32.050). Similarly the Municipal Code *requires* the city attorney to
21 commence legal proceedings and take other legal steps to remove illegal structures and abate
22 illegal uses of public parklands. (*Ibid.*).

23 The City’s own resolutions also confirm the City’s own understanding of this
24 mandatory duty. In 2005, faced with an ineffective policy to end illegal encroachments on
25 City parkland, the City passed Resolution R05-32. (RFJN, Ex. C). That Resolution directed
26 staff to tighten up its enforcement of illegal encroachments on parkland. All of the language
27 directing staff to remove illegal encroachments on City parkland uses the mandatory “shall”
28 language. For example, when a property has been transferred adjacent to an illegal

1 encroachment, Resolution R05-32 states that the illegal encroachment “shall be removed by
2 the adjacent property owner and the area shall be restored” to its parkland condition. (RFJN,
3 Ex. C, p. 3, ¶ 3). Resolution R05-32 also states that if a property adjacent to an illegal
4 encroachment has not been transferred within five years following notification by the city of
5 an illegal encroachment, the encroachment “shall be removed by the adjacent proeprty
6 owner.” (RFJN, Ex. C, p. 3, ¶ 4). Resolution R05-32 also requires that as City staff learns of
7 illegal encroachments on parkland, a notice of violation “shall” be sent to the adjacent
8 property owner. (RFJN, Ex. C, p. 3, ¶ 5). Resolution R05-32 requires staff to track property
9 transfer records and requires the City’s Code Enforcement Officer to investigate all transfers.
10 (RFJN, Ex. C, p. 3, ¶ 6). Resolution R05-32 concludes with the following statement:

11
12 If an illegal encroachment(s) is not removed per this policy, the City will
13 immediately remove the encroachment(s), bill the adjacent proeprty owner,
14 lien the property if necessary, and cite the adjacent property owner for an
15 infraction(s).

16 (RFJN, Ex. C, p. 3, ¶ 6).

17 The City’s repeated use of mandatory language in Resolution R05-32 compels the
18 conclusion that the City itself acted as though it had a duty to enforce the land restrictions.
19 Resolution R05-32, if followed by the City, would have eradicated all known illegal
20 enrcoachments on parklands by November 8, 2010. There is no language in Resolution R05-
21 32 suggesting that either the City Council, City Attorney or City Staff viewed the enforcement
22 of land restrictions as discretionary.

23 Based on PVE’s own Municipal Code and Resolution R05-32, this Court should find
24 that the City has a duty to enforce the land use restrictions affecting Area A and overrule the
25 demurrer.

26 **VII. THE CITY AND ASSOCIATION IS ESTOPPED FROM DENYING**
27 **THE ENFORCEABILITY OF THE LAND USE RESTRICTIONS**

28 In 1940, the City accepted the parkland conveyance from the Association, including
the land use restrictions, for the purposes of cancelling the substantial tax debt impairing the

1 properties. (Complaint, Ex. 2, p. 4, §§ 1-4). The County of Los Angeles subsequently
2 cancelled that tax debt. Evidence Code, section 623 provides:

3
4 Whenever a party has, by his own statement or conduct, intentionally and
5 deliberately led another to believe a particular thing true and to act upon such
6 belief, he is not, in any litigation arising out of such statement or conduct,
7 permitted to contradict it.

8 The City, having taken possession of the parkland property is now estopped from
9 now denying the efficacy of the entire deeds, including the land use restrictions.

10 The City is also estopped to deny the mandatory nature of the land use restrictions
11 due to prior litigation of this very issue. In *Roberts v. City of Palos Verdes Estates* (1949) 93
12 Cal.App.2d 545, the Court of Appeal was faced with the issue of the deed restrictions for
13 land granted to the City “exclusively for park purposes.” The City wanted the flexibility to
14 use the deeded property as a housing yard for city owned trucks and vehicles. The *Roberts*
15 court found against the City on this issue and held:

16 Courts have guarded zealously the restrictive covenants in donations of
17 property for public use as the foregoing cited decisions will reveal. Such an
18 effort on the part of a municipality if successful may be but the opening
19 wedge and, as stated in *Kelly v. Town of Hayward, supra* [192 Cal. 242, 219 P.
20 750], ‘some future board might claim that under their discretion a corporation
21 yard and rock pile for the employment of prisoners, and other very useful
22 adjuncts to the administration of the economic affairs of the town, might be
23 located thereupon, until the entire space was fully so occupied.’ What a city
24 council or board of trustees would like to do under whatever guise it may be
25 proposed is not the test as to the validity of the proposal. The terms of the
26 deed alone are controlling.

27 (*Roberts v. City of Palos Verdes Estates, supra*, 93 Cal.App.2d at p. 548).

28 Having already litigated the issue of what flexibility the City enjoys over land use
restrictions for deeded parklands, the City may not re-litigate the issue here. (*Vandenberg v.*
Superior Court (1999) 21 Cal.4th 815, 828 [holding that collateral estoppel “may allow one who
was not a party to prior litigation to take advantage, in a later unrelated matter, of findings
made against his current adversary in the earlier proceeding.”].) Having lost this issue in
1949, the City may not relitigate it here.

1 **VIII. IF THE COURT SUSTAINS THE DEMURRER, CEPC REQUESTS**
2 **LEAVE TO AMEND TO STATE ADDITIONAL FACTS REGARDING**
3 **THE DEFENDANTS' PAST ADMISSIONS AND CONDUCT GIVING**
4 **RISE TO THE DUTY TO ENFORCE THE RESTRICTIONS AND**
5 **SUPPORTING THE DOCTRINE OF ESTOPPEL**

6 Should the Court sustain the demurrer for any reason, CEPC requests leave to amend
7 by alleging additional historical facts concerning the City's statements and conduct
8 establishing: a) the City's duty to enforce the land use restrictions of Area A; b) estoppel of
9 the City to deny the existence of the duty to enforce the land use restrictions; and c) the
10 existence of controversies among the named parties.

11
12 **IX. CONCLUSION**

13 For the foregoing reasons, CEPC respectfully requests that the Court overrule the
14 demurrer in its entirety. Alternatively, CEPC requests leave to amend.

15 DATED: October 11, 2013

BROEDLOW LEWIS LLP

16
17
18 By: _____


Jeffrey Lewis

Attorneys for Plaintiff and Petitioner
CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS

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PROOF OF SERVICE

Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates, et al.
Los Angeles Superior Court Case No. BS142768

I, Jason R. Ebbens, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 734 Silver Spur Road, Suite 300, Rolling Hills Estates, CA 90274.

On October 11, 2013, I served the foregoing: **MEMORANDUM OF POINTS AND AUTHORITIES BY CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS IN OPPOSITION TO DEMURRER BY PALOS VERDES ESTATES** on the interested parties in this action by placing the original a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

** See Attached Service List **

- BY MAIL. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the U. S. Postal Service. The within correspondence will be deposited with the U. S. Postal Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Palos Verdes, California, following ordinary business practices.
- BY OVERNITE EXPRESS/FEDERAL EXPRESS. The within correspondence will be deposited with Overnight Express on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Palos Verdes, California, following ordinary business practices.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 11, 2013, in Los Angeles County, California.



Jason R. Ebbens

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Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates, et al.
Los Angeles Superior Court Case No. BS142768

<p>ATKINSON, ANDELSON, LOYA, RUUD & ROMO 12800 Center Court Drive, Suite 300 Cerritos, CA 90703</p> <p>Terry T. Tao, Esq. TTao@AALRR.com Tel: (562) 653-3200 Fax: (562) 653-3333</p> <p>Scott J. Sachs, Esq. SSachs@AALRR.com Tel: (562) 653-3599 Fax: (562) 653-3951</p>	<p><i>Attorneys for Defendant and Respondent:</i></p> <p>Palos Verdes Peninsula Unified School District</p>
<p>JENKINS & HOGIN, LLP 1230 Rosecrans Avenue, Suite 110 Manhattan Beach, CA 90266</p> <p>Christi Hogin, Esq. CHogin@LocalGovLaw.com Tel: (310) 643-8448 Fax: (310) 643-8441</p>	<p><i>Attorneys for Defendant and Respondent:</i></p> <p>City of Palos Verdes Estates</p>
<p>LAW OFFICE OF SIDNEY CROFT 314 Tejon Place Palos Verdes Estates, CA 90274</p> <p>Sidney F. Croft, Esq. SFCroftLaw@AOL.com Tel: (310) 849-1002</p> <p>GREENWALD, PAULY, FOSTER & MILLER APC 1299 Ocean Avenue, Suite 400 Santa Monica, CA 90401</p> <p>Andrew J. Haley, Esq. AHaley@GPFM.com Tel: (310) 451-8001 Fax: (310) 395-5961</p>	<p><i>Attorneys for Defendant and Respondent:</i></p> <p>Palos Verdes Homes Association</p>

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www.BroedlowLewis.com

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Los Angeles Superior Court Case No. BS142768

<p>ARMBRUSTER GOLDSMITH & DELVAC LLP 11611 San Vicente Blvd., Suite 900 Los Angeles, CA 90049</p> <p>Damon P. Mamalakis, Esq. Damon@AGD-LandUse.com Tel: (310) 254-9026 Fax: (310) 254-9046</p> <p>R.J. Comer, Esq. RJ@AGD-LandUse.com Tel: (310) 254-9056 Fax: (310) 254-9046</p>	<p><i>Attorneys for Defendants and Real Parties in Interest:</i></p> <p>Robert Lugliani and Delores A. Lugliani as co-trustees of The Lugliani Trust</p> <p>Thomas J. Lieb, Trustee, The Via Panorama Trust U/Do May 2, 2012</p>
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