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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BY FAX

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.	Case No.: BS142768 (Assigned for all purposes to Hon. Barbara A. Meiers, Dept. 12) **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT CITY OF PALOS VERDES ESTATES' CROSS-MOTION FOR SUMMARY JUDGMENT, SUMMARY ADJUDICATION OR BOTH** Hearing Date: May 29, 2015 Hearing Time: 9:30 a.m. Department: 12 Action Filed: May 13, 2013 Trial Date: None Set

MEMORANDUM

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MEMORANDUM OF POINT AND AUTHORITIES

I. INTRODUCTION

If the Motion for Summary Judgment ("MSJ") by the City of Palos Verdes Estates (the "City") looks familiar, it should. The City raised identical arguments in the form of successive demurrers to the first and second amended complaints herein. This Court overruled these arguments. There is nothing new presented in the MSJ. The same facts assumed to be true for purposes of demurrer are restated by the City here as undisputed. The same legal principles that the Court applied to that set of facts in denying the City's successive demurrers apply with equal force now to the MSJ. Moreover, each of the arguments advanced in the City's MSJ is repetitive of the issues already before the Court on the pending motion for summary judgment by plaintiffs filed last November. The City could have raised these issues in opposition to plaintiffs' motion for summary judgment. Instead, the City is unnecessarily doubling the burden on the Court and the parties by filing a duplicative motion.

The City's MSJ requests that the Court take a myopic view of its own role in the four-party transaction: the deed of public parkland (the "Panorama Parkland") to the Palos Verdes Homeowners Association (the "Association.") The City asks the Court to look no further than that transaction. However, the Court need not limit its view to that transaction. The four-party memorandum of understanding ("MOU") that contractually bound the City and Association to this transaction called for several interrelated, contractually required actions, including: a) the City's transfer of the Panorama Parkland to the Association; b) the Association's transfer of the Panorama Parkland to Thomas J. Lieb ("Lieb") for the benefit or Robert and Delores Lugliani; c) the payment of $1.5 million to the Palos Verdes Peninsula School District (the "District."); d) the payment of $400,000 to the Association; and e) the payment of $100,000 to the City. (MF Nos. 46-52).[1] The City signed the MOU consenting to all of these transactions. When the City deeded the Panorama Parkland to the Association

[1] All references herein to "MF No." are to the material facts identified in plaintiffs' separate statement filed concurrently herewith.

it did so knowing full well that the property would be immediately deeded to Lieb for the benefit of the Luglianis. The Court need not limit its review of the facts in this case to the single deed between the City and the Association.

The MSJ should be denied for the following six reasons:

First, plaintiffs are entitled to declaratory relief against the City because the 2012 quitclaim deed conveying the Panorama Parkland from the City to the Association violated the 1940 deed restrictions limiting future conveyances. Specifically, the 1940 deed restrictions states that the property "shall not be sold or conveyed…except to a body suitably constituted by law to take, hold, maintain and regulate public parks…" (MF No. 6). The Association is not presently a body that takes, holds, maintains or regulates parks. (MF Nos. 17-22). To the contrary, the Association has abdicated all of its parkland affairs to the City. (MF Nos. 17-22).[2] The violation of the 1940 deed restrictions renders the 2012 deed an ultra vires act that is void. (*Foxen v. City of Santa Barbara* (1913) 166 Cal. 77, 82). Plaintiffs are entitled to a judicial declaration confirming that the 2012 deed is void.

Second, plaintiffs are entitled to declaratory relief against the City because the 2012 quitclaim deed violated the 1940 deed restrictions that bar "improvements" that interfere with the public use and enjoyment of the Panorama Parkland by the public. 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. (MF No. 7). Such improvements must not impair or interfere with the use and maintenance of said realty for park and/or recreation purposes. (MF No. 7). The 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, he "may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque,

[2] Likewise, the ultimate recipient of legal title to the parkland, Thomas J. Lieb is not a "body suitably constituted by law to take, hold maintain and regulate public parks." (MF Nos. 34-37). Nor is the Luglianis' family trust that holds the beneficial interest in the parkland. (MF Nos. 34-37).

and/or any other uninhabitable 'accessory structure,'…" (MF No. 31). The owners of the Panorama Parkland intend these improvements to be used for private use. (MF No. 38). The City's affirmative statement authorizing these private improvements for private use violates the use restrictions of the 1940 deeds.

Third, the Court should reject the City's mootness argument. The City contends it does not own the Panorama Parkland based on the 2012 quitclaim deed to the Association and, therefore, any claim against the City is moot. However, the plaintiffs contend that the 2012 quitclaim deed is illegal and void. If the plaintiffs' arguments are accepted as true, the City never lost ownership of the Panorama Parkland and the 2012 quitclaim deed has no force and effect. The City still owns the parkland today. Whether the City currently owns the parkland is a key issue to be resolved by this Court and certainly presents a live controversy.

Fourth, the Court should not accept the City's argument that the sole remedy for violation of the 1940 deed restrictions is the Association's power to enforce reversionary interest. The face of the 1940 deeds confirms that every lot owner in Palos Verdes Estates has standing to enforce a breach of the 1940 deeds restrictions. The City's argument that the Association's power of reversion is exclusive is specious.

Fifth, the Court should not accept the City's merger argument. The 2012 deed states on its face that the parties do not intend any merger to occur. Moreover, the burden of proving what the parties intended regarding merger rests with the City and the City has provided no evidence of the parties' on this point.

Sixth, the Court should reject the City's argument that no action for injunctive relief under Code of Civil Procedure, section 526a (hereinafter, "Section 526a") is available to plaintiffs. This Court has already ruled that a City that violates public trust by allowing donated parkland to be converted to public use may be enjoined under Section 526a.

For these reasons, the Court should deny the City's MSJ.

II. PLAINTIFFS ARE ENTITLED TO DECLARATORY RELIEF THAT THE 2012 QUITCLAIM DEED VIOLATED THE 1940 DEED RESTRICTIONS BECAUSE THE CITY CONVEYED THE PROPERTY TO THE ASSOCIATION WHICH IS NOT AN ENTITY THAT HOLDS, MAINTAINS OR REGULATES PUBLIC PARKS

The City argues that because the 1940 deed restrictions govern use and not ownership, the City was free to convey the Panorama Parkland to whomever it wanted. (MSJ, 9:18-23). This is a misconstruction of the 1940 deeds. On their face, the 1940 deeds preclude the City from conveying the property anyone "…except to a body suitably constituted by law to take, hold, maintain and regulate public parks…" (MF No. 6). The Association is not presently a body that takes, holds, maintains or regulates parks. (MF Nos. 17-22). The Association has no current ownership of parklands. (MF No. 17). Instead, the City has taken on both the ownership of and stewardship of the parks. (MF Nos. 18-21). The City has established a Parklands Commission. (MF No. 20). Applications by residents that would impact parklands are brought to the City's Parkland Commission and not the Association. (MF No. 20). Permits and enforcement actions concerning parklands involve the City and not the Association. (MF No. 20). The Association is no longer a body that takes, holds, maintains and regulates public parks and has not done so since 1940. (MF Nos. 17-22).

The City's 2012 deed was an *ultra vires* act because it attempted to divert the Panorama Parkland from its use as a public park to the private exclusive use by the Luglianis. (*Save the Welwood Murray Memorial Library Com. v. City of Palm Springs* (1989) 215 Cal.App.3d 1003, 1017).

> A public trust is created when property is held by a public entity for the benefit of the general public. (Citations.) Here, title to the library property is held by City to be used by City for the benefit of the general public as a public library. Any attempt to divert the use of the property from its dedicated purposes or uses incidental thereto would constitute an ultra vires act.

(*Id.*)

Because the ill conceived 2012 deed was *ultra vires* the instrument is void from its inception. (*Foxen v. City of Santa Barbara*, *supra*, 166 Cal. at p. 82). Plaintiffs are entitled to a judicial declaration confirming that the 2012 deed is void. Not only should this Court deny the City's MSJ on the declaratory relief cause of action but the Court should grant declaratory relief to the plaintiffs as requested in their concurrently filed MSJ.

III. PLAINTIFFS ARE ENTITLED TO DECLARATORY RELIEF THAT THE 2012 QUITCLAIM DEED VIOLATED THE 1940 DEED RESTRICTIONS BECAUSE THE CITY AUTHORIZED A PRIVATE PARTY TO CONSTRUCT PRIVATE USE "IMPROVEMENTS" ON PUBLIC PARKLAND

The 2012 quitclaim deed also violated the 1940 deeds prohibition on improvements that interfere with the public's use and enjoyment of public parklands. 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. (MF No. 7). Such improvements must not impair or interfere with the use and maintenance of said realty for park and/or recreation purposes. (MF No. 7). On the face of the 2012 deed, the City authorized the ultimate recipient of the parkland, defendant Thomas J. Lieb ("Lieb") to "…construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,'…" (MF No. 31). These improvements are for the exclusive use of the beneficial owners of the property, defendants Robert H. and Delores Lugliani (the "Luglianis.") (MF No. 38).

The City's 2012 deed was an *ultra vires* act because it violated the restrictions in the 1940 deed concerning construction of improvements. (*Save the Welwood Murray Memorial Library Com. v. City of Palm Springs*, *supra*, 215 Cal.App.3d 1003, 1017). As an ultra vires act, the 2012 quitclaim deed is also void from the inception. (*Foxen v. City of Santa Barbara*, *supra*,

166 Cal. at p. 82). Plaintiffs are entitled to a judicial declaration confirming that the 2012 deed is void.

IV. THE COURT SHOULD REJECT THE MOOTNESS ARGUMENT BECAUSE THE CITY WILL BE IMPACTED BY THIS COURT'S RULING ON THE VALIDITY OF THE SEPTEMBER 2012 DEEDS

The City's MSJ repeats the arguments made in the earlier demurrers that because it does not presently own the Panorama Parkland, there is no justiciable controversy against the City. This Court rejected this argument when raised on demurrer. It should do so again now. Prior to 2012, the City owned the Panorama Parkland. (MF Nos. 2, 28, 29). It was only due to the illegal 2012 deed that ownership of the property changed. The legality of the 2012 deed is the subject of this lawsuit. Should the Court grant the relief prayed for by plaintiffs, the 2012 deed will be declared void and title will remain with the City. This presents a live controversy.

V. THE COURT SHOULD REJECT THE "REVERSION IS THE EXCLUSIVE REMEDY" ARGUMENT BECAUSE BOTH PLAINTIFFS HAVE THE RIGHT TO FILE THIS LAWSUIT AND ENFORCE THE 1940 DEEDS

The City argues that the sole and exclusive remedy for violation of the 1940 deed restrictions is for the Association to invoke its reversionary right to the Panorama Parkland and claim ownership. (MSJ, 8). While the Association has the duty[3] to invoke this interest, this is not the exclusive remedy for the City's *ultra vires* actions. Plaintiffs have the direct right to enforce the 1940 deed restrictions. The 1940 deed states that the

> provisions, conditions, restrictions, reservations, liens, charges and covenants shall be covenants running with the land, and the breach of any thereof or the continuance of any such breach may be enjoined, abated or remedied by appropriate proceedings by the Grantor herein or its successors in interest, or

[3] Plaintiffs contend that the Association has the duty to enforce this interest. The Association suggests it only has the right but not the duty to do so.

> by such other lot or parcel owner, and/or by any other person or corporation designated in said Declarations or Restrictions.

(MF No. 11)

Plaintiff John Harbison is a lot owner. (MF No. 42). Moreover, plaintiff CEPC is an association, including other lot owners. (MF No. 43). Under the terms of the 1940 deeds, both plaintiffs may enforce the 1940 deed restrictions.

It should be noted that the Association has not made any indication that it intends to invoke its reversionary interest in the Panorama Parkland. To the contrary, throughout this litigation it has taken the position that the Association need not do so. Moreover, the fact that the Association signed the memorandum of understanding that predated the 2012 quitclaim deed and also signed a 2012 grant deed to Lieb suggests that the Association has no intent to ever claim ownership of the Panorama Parkland. For the City to suggest that the only remedy for the deed violation is for the Association to take an action that will never be taken is the equivalent of the City saying, there is no remedy for the breach of the deeds. Such an argument is contrary to California public policy. "For every wrong there is a remedy." (Civ. Code, § 3523).

VI. THE COURT SHOULD REJECT THE CITY'S AFFIRMATIVE DEFENSE OF MERGER BECAUSE THERE WAS NEITHER AN INTENT TO MERGE THE ESTATES NOR WAS THERE THE REQUIRED UNITY OF INTEREST

In September 2012 two deeds were recorded. The first conveyed the Panorama Parkland from the City to the Association. The second conveyed the property from the Association to Lieb. The City contends that the effect of the first conveyance was to merge the estates in the parkland property such that any and all deed restrictions were eliminated. (MSJ, 9). Re-stated, the City contends that when the Panorama Parklands were deeded to the Association, the dominant and servient tenements merged. This argument fails for several reasons.

First, the suggestion that the Association took "possession" of the parkland is a fiction. The deeds were recorded simultaneously. (MF Nos. 28-30). Any possession by the Association was fleeting.

Second, the face of the 2012 quitclaim deed states that: "This Deed shall not cause the Property to be merged with any adjacent lot and any such merger shall be prohibited." (MF No. 32). Clearly the signatories of the 2012 quitclaim deed intended for no merger to occur.

Third, for the merger doctrine to apply, the two estates to be merged must be identical. However, before the 2012 transaction, the Panorama Parkland was subject to the 1940 deed restrictions in favor of all property owners in Palos Verdes Estates. (MF No. 11). All of the property owners in the Palos Verde Estates are dominant interest holders.[4] Only those property owners had the power to release those deed restrictions. (*Leggio v. Haggerty* (1965) 231 Cal.App.2d 873, 884 [finding merger did not apply to quitclaim deed when less than all owners of easement were parties to quitclaim deed]); see also *Tract Development Services, Inc. v. Kepler* (1988) 199 Cal.App.3d 1374, 1384). The plaintiffs were not a party to the 2012 quitclaim deed. (MF No. 33). At the least, the plaintiffs' interests in the enforcement of the 1940 deed restrictions was retained and survived the 2012 quitclaim deed.

Fourth, a party urging the application of the affirmative defense of merger has the burden of proof of establishing an intent to effect a merger:

> Whether there has been a merger depends not just on the equities, but also the intent of the parties, *which presents a question of fact*. (Citations.) While it is presumed that there is no merger where merger would work an inequity, the presumption against merger can be overcome by evidence that the parties intended a merger upon the union of two or more estates, and as to this question *the person claiming merger has the burden of proof*. (Citations.)

(*Kolodge v. Boyd* (2001) 88 Cal.App.4th 349, 362, emphasis added)

The City has offered no evidence in its MSJ as to the intent of the parties concerning merger. The only evidence now before the Court is the statement in the quitclaim deed itself

[4] Indeed, the Los Angeles Superior Court found that every property owner in Palos Verdes Estates holds a dominant tenement with respect to certain parkland restrictions that the District attempted to invalidate in earlier litigation between the Association and the District. (Ex. 11, p. 3, ¶¶ 4-5).

that "[t]his Deed shall not cause the Property to be merged with any adjacent lot and any such merger shall be prohibited." (MF No. 32). Given the state of the evidence, the City cannot meet its burden of proof on the affirmative defense of merger. At the least, the statement in the deed that no merger was intended creates a triable issue of fact precluding the application of the merger doctrine in the context of a summary judgment motion.

Finally, California courts will not apply the merger doctrine where to do so would work an injustice, injury or prejudice to a third party. (*Kolodge v. Boyd* , *supra*, 88 Cal.App.4th at p. 362). If the merger doctrine were applied here, each property owner in Palos Verdes Estates would suffer irreparable injury and prejudice due to the loss of parkland. For this reason, the Association prevailed against the District in litigation over enforcement of substantially identical parkland covenants. In the final judgment, Judge Richard Fruin wrote that violation of the parkland covenants would "cause irreparable harm" to the development plan for the City and that such violation can be enjoined by the Superior Court. (Ex. 11, p. 3, ¶ 5).

VII. THE COURT SHOULD DENY THE CITY'S MOTION FOR SUMMARY JUDGMENT OF THE TAXPAYER'S WASTE ACTION BECAUSE CALIFORNIA LAW RECOGNIZES SUCH AN ACTION WHERE A CITY ATTEMPTS TO DIVERT A PUBLIC PARK FROM PUBLIC USE

The City argues that it is entitled to summary judgment as to the action for waste under Section 526a. (MSJ, p. 14). The City's tautology is that the conveyance of the Panorama Parkland "was clearly a lawful exercise of the City's power" and, therefore, an action for violation of Section 526a cannot lie. (MSJ, 15:13). Plaintiffs do not dispute the plenary power of the City in general to buy and sell its real property. However, where, as was the case here, the City accepts real property for public use, its plenary power is subject to the limitations in the granting deed.

Plaintiffs allege that the City's transfer of public parkland to a private party was an *ultra vires* act because of land use restrictions for that land. (2AC, ¶ 43). Plaintiffs also allege

that the City's ongoing attempts to create a new "open space, privately owned" zoning district solely for the benefit of the Lugilianis is also *ultra vires*. (2AC, ¶ 43). These *ultra vires* acts support a claim for waste of public funds under Section 526a.

City of Hermosa Beach v. Superior Court (1964) 231 Cal.App.2d 295, 296 is instructive. In that case, in 1907, the city was deeded beach property for recreational purposes and prohibiting traffic. Fifty years later, when the city erected a fence and constructed a road on the deeded property, a city resident sued the city to enforce the 1907 deed restriction. The city demurred on the ground that only the attorney general could enforce the land restrictions. The demurrer was overruled and the city sought writ relief. In denying writ relief, the court of appeal confirmed that when a municipality is deeded land for public purposes:

> the municipality owes the public a duty to employ the property in a certain 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

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

The court went on to hold that once a city accepts a deed with restricted public purposes, the city must continue to use that land for public purposes. (*Id.* at 300). The city, in such a circumstance 'is without the power of a municipality to divert or withdraw the land from use for park purposes." (*Ibid.*) A city that attempts to use a property in violation of the deed restrictions "would be an *ultra vires* act." (*Ibid.*; see also *Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99, 104). Notably, the City of Hermosa Beach case specifically approved the procedure of asserting a claim asserting *ultra vires* acts under Section 526a to protect parkland. (*City of Hermosa Beach v. Superior Court*, *supra*, 231

15 Cal.App.2d, at p. 300).

The *City of Hermosa Beach* case is not an aberration:

> California courts have been loathe to cast aside use restrictions on property contained in deeds: " 'It is well settled that where a grant deed is for a specified, limited and definite purpose, the subject of the grant cannot be used for another and different purpose. (*Roberts v. City of Palos Verdes Estates* [(1949)] 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* (1976) 62 Cal.App.3d 99, 103, 132 Cal.Rptr. 835 [*Big Sur Properties*]; see also *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003, 1012, 263 Cal.Rptr. 896 [Welwood Murray].)

> Likewise, California courts have often held that " '[w]here a tract of land is donated to a city with a restriction upon its use—as, for instance, when it is donated or dedicated solely for a park—the city cannot legally divert the use of such property to purposes inconsistent with the terms of the grant.' (Citations.) Further, where, as here, property is acquired by a public entity through private dedication, the deed is strictly construed. (Citations.) As several California courts have observed: "Courts have guarded zealously the restrictive covenants in donations of property for public use...." (Citations.) In fact, where property has been donated for public use, some courts have 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).

In sum, *City of Hermosa Beach v. Superior Court*, *supra*, 231 Cal.App.2d at pp. 298-99 and *County of Solano v. Handlery*, *supra*, 155 Cal.App.4th at pp. 575-76 confirm that a city that accepts deeds with land use restrictions remains bound by those land restrictions. The City's present legal posture: that the land use restrictions have no force and effect confirm the existence of the very controversy alleged in the pleadings: the $2.0 million payoff[5] by the Luglianis in exchange for parkland property presents a very real and actionable justicable dispute.

It should be noted that this Court has already ruled in denying the City's successive demurrers that "[a]uthority for plaintiffs' *ultra vires* theories and citations to the concomitant 'public trust' doctrine is to be found in plaintiffs' Opposition cases including but not limited to the Hermosa Beach, Welwood Library, County of Solano and Big Sur cases. (MF No. 45). There is no reason for the Court to change its ruling now.

VIII. THE COURT SHOULD DENY THE CITY'S MOTION FOR SUMMARY JUDGMENT OF THE TAXPAYER'S WASTE ACTION BECAUSE CALIFORNIA LAW ALLOWS INJUNCTIVE RELIEF TO PREVENT AN ULTRA VIRES ACT

The City argues that it is entitled to summary judgment as to the action for taxpayer's

[5] More specifically, the Luglianis donated $1.5 million to the District, paid $400,000 to the Palos Verdes Homes Association and $100,000 to the City. (UMF Nos. 47-52).

waste under Section 526 because the judicial branch is not permitted to invade and interfere with the legislative function of government. (MSJ, p. 15, li. 24-28). The Court should reject, again, this separation of powers argument. An identical argument was raised and rejected by the City of Palm Springs when it wanted to authorize the operation of a restaurant on property that was donated for library uses. When the trial court enjoined the city from engaging in future uses of the property for non-library purposes, the City of Palm Spring appealed and raised a separation of powers argument. The Court of Appeal rejected the argument:

> City contends that the language of the writ is too broad, and that it prevents City or the relevant agencies from exercising their discretion as to the best use of the Library Property for library purposes. Not so. The language of the writ does not prevent City from removing sections of the library, from conveying easements or other legal rights over the Library Property or from otherwise undertaking any acts necessary for library purposes. It merely commands City not to undertake any such actions if they are done primarily for a nonlibrary purpose or if they interfere with library use.

(*Save the Welwood Murray Memorial Library Com. v. City of Palm Springs*, *supra*, 215 Cal.App.3d at p. 1017).

The Court need only replace the word "library" with "park" and apply the principles of *Welwood Murray* case here. Indeed, this Court has already found that the relief prayed for by plaintiffs here would not violate the separation of powers doctrine:

> "…under the authority of the case of Save the Welwood Murray Memorial Library Com., infra, pp. 1017-1018 … the court held that although a court cannot generally enjoin a municipality from issuing a legislative act, when it violates its duties as trustee of a public trust (to wit, the trust imposed by accepting land for public use which is restricted in that manner) by not enforcing the restrictions of the deeds or taking steps which would enable or cause there to be violations of restrictions on such donated property, its acts are ultra vires, cannot be deemed legislative in nature, and, accordingly, can be enjoined."

(MF No. 45)

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IX. THERE ARE MATERIAL DISPUTED FACTS ABOUT WHETHER THE CITY WAS A PARTY TO THE CONVEYANCE OF THE PANORAMA PARKLAND TO LIEB AND WHETHER THE CITY RECEIVED CONSIDERATION FROM THE SALE OF PARKLAND

The City takes pains to point out that it was not a party to the conveyance of the Panorama Parkland from the Association to the Luglianis and certainly did not receive any money from the Luglianis. (MSJ, p. 7, li. 14, fn 1). In fact, the City was a party to the four party memorandum of understanding ("MOU") that preceded and authorized the 2012 quitclaim deed. (MF No. 46). That MOU called for Lieb to pay the Association $500,000. (MF No. 47). The MOU called for the Association to retain $400,000 of the $500,000 and pay $100,000 to the City. (MF No. 48). The $500,000, of course, came from Lieb for the benefit of the Luglianis. These payments and the transfers of real property were all interrelated contractual obligations imposed by the MOU, including a $1.5 million "donation" by the Luglianis to the Palos Verdes Peninsula School District. (MF Nos. 49-52). The suggestion that the City was not a party to the conveyance to private parties or that the City did not receive compensation from the sale is disputed. (MF Nos. 49-52).

X. THERE ARE MATERIAL DISPUTED FACTS ABOUT WHETHER THE SO-CALLED SWAPPED LOTS WERE EQUIVALENT IN SIZE AND VALUE AND WHETHER WASTE OF PUBLIC PROPERTY OCCURRED

The City argues that the action for taxpayer's waste has no merit because the sale of public parkland to a private party involved a "swap" for property of equivalent size and that property will be open space. (MSJ, p. 15, li. 15-19). This argument fails for several reasons. First, the 1940 deeds do not authorize a land swap. (MF No. 25). Second, the property obtained as part of the "swap" are half the acreage of the Panorama Parkland. (MF Nos. 53-56). The suggestion by the City that the swapped properties are of similar size is without factual support. (MF Nos. 53-56). Third, the property that was "swapped" was already open space prior to this transaction. The sale of Panorama Parkland did not alter the open space

zoning. Moreover, the property that was swapped was already going to remain parkland as a result of the prior litigation involving the District. The judgment in that case ensured that the swapped lots would remain parkland forever.

XI. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the MSJ be denied.

DATED: May 15, 2015

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