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10 CITIZENS FOR ENFORCEMENT OF
11 PARKLAND COVENANTS and JOHN
12 HARBISON

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

15 CITIZENS FOR ENFORCEMENT OF
16 PARKLAND COVENANTS and JOHN
17 HARBISON,

18 Plaintiffs,

19 vs.

20 CITY OF PALOS VERDES ESTATES, a
21 municipal corporation; PALOS VERDES
22 HOMES ASSOCIATION, a California
23 corporation; ROBERT LUGLIANI and
24 DELORES A. LUGLIANI, as co-trustees
25 of THE LUGLIANI TRUST; THOMAS J.
26 LIEB, TRUSTEE, THE VIA
27 PANORAMA TRUST U/DO MAY 2,
28 2012 and DOES 1 through 20,

Defendants.

Case No.: BS142768

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

**PLAINTIFFS' SEPARATE STATEMENT
OF UNDISPUTED MATERIAL FACTS
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

1 Plaintiff hereby submits its Separate Statement of Undisputed Material Facts in
2 opposition to Motion for Summary Judgment or Adjudication:

3
4 **ISSUE 1: Plaintiffs' First Cause of Action for declaratory relief fails as a matter of law**
5 **because 1) Area A was validly transferred to the Association by the City's actions; and**
6 **2) the City has no affirmative duty to enforce private deed restrictions or to remove**
7 **"illegal" improvement from Area A.**

CITY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
12 1. The 1940 deeds that conveyed Area A 13 from the Association to the City ("1940 14 Deeds"), provides that a breach of the 15 provisions, conditions, restriction, 16 reservations, liens, charges and covenants 17 set forth in paragraphs 2 to 7, inclusive, shall 18 cause the realty to revert to the Grantor. 19 Declaration of Vickie Kroneberger 20 ("Kroneberger Decl."), Exhibits A & B 21 thereto.	Undisputed for purposes of this motion.
22 2. Area A, the property that is the subject 23 of this litigation, was transferred from the 24 Association and accepted by the City in 25 1940. 26 Kroneberger Decl., Exhs. A & B	Undisputed for purposes of this motion.

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<p>3. Area A, the property that is the subject of this litigation, was transferred from the Association to the City in 1940 “upon and subject to” seven provisions, conditions, restrictions and covenants. Kroneberger Decl., Exhs. A & B</p>	<p>Undisputed for purposes of this motion.</p>
<p>4. Condition number 3 provides in part “said realty is to be used and administered forever for park and/or recreation purposes only ... for the behalf of the (1) residents and (2) non-resident property owners within the boundaries of the property heretofore commonly known as “Palos Verdes Estates” ... under such regulations consistent with the other conditions set forth in this deed as may from time to time hereafter be established by said municipality or other body suitably constituted by law to take, hold, maintain and regulate public parks....” Kroneberger Decl., Exh. A, pg. 7; Exh. B, pg. 4.</p>	<p>Undisputed for purposes of this motion.</p>
<p>5. Condition number 4 provides in part that “no buildings, structures or concessions shall be erected, maintained or permitted upon said realty, except such as are properly incidental to the convenient and/or proper use of said realty for park and /or recreation purposes.”</p>	<p>Undisputed for purposes of this motion.</p>

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<p>Kroneberger Decl., Exh. A, pg. 9, Exh. B., pgs. 5-6.</p>	
<p>6. Condition number 5 states “That, except in paragraph 3 hereof, said realty shall not be sold or conveyed, in whole or in part, by the Grantee herein except subject to the conditions, restrictions and reservations set forth and/or referred to herein and except to a body suitably constituted by law to take, hold, maintain and regulate public parks; provided, that portions of said realty may be dedicated to the public for parkway and/or street purposes.” Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 5.</p>	<p>Undisputed for purposes of this motion.</p>
<p>7. Condition number 6 states “That, said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot abutting on said realty to construct and/or maintain paths, steps and /or other landscape improvements, as a means of egress from and ingress to said lot or for the improvement of views therefrom, in such a manner and for such length of time and under such rules and regulations as will not, in the opinion of said municipality or other</p>	<p>Undisputed for purposes of this motion.</p>

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<p>body and of Palos Verdes Art Jury, impair or interfere with the use and maintenance of said realty for park and/or recreation purposes, as hereinbefore set forth.” Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 5.</p>	
<p>8. Condition number 7 states “That none of the conditions, restrictions, covenants and reservations set forth in paragraphs 3 to 6, inclusive, hereof may be changed or modified by the procedure established in Section 3 of Article VI of said Declaration of Establishment of Basic Protective Restrictions, in Section 9 of said Declarations Nos. 4, 20, 23, and 24 of Establishment of Local Protective Restrictions, and in Section 10 of said Declaration No. 25 of Establishment of Local Protective Restrictions. Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 5.</p>	<p>Undisputed for purposes of this motion.</p>
<p>9. The 1940 Deeds state “PROVIDED, that a breach of any of the provisions, conditions, restrictions, reservations, liens, charges and covenants set forth in paragraphs 2 to 7, inclusive, hereof shall cause said realty to revert to the Grantor herein, or its successor in Interest, as owner</p>	<p>Undisputed for purposes of this motion.</p>

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<p>of the reversionary rights herein provided for...” Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg.5.</p>	
<p>10. The 1940 Deeds provides that “the disincorporation of the Grantee herein as a municipality or the dissolution of said body referred to in paragraph 5 hereof (in the event of the transfer of any said realty thereto) shall in like manner cause said realty to revert to the Grantor herein or its successor in interest...” Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 6.</p>	<p>Undisputed for purposes of this motion.</p>
<p>11. The 1940 Deed provides 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 by such other lot or parcel owner, and/or by any other person or corporation designated in said Declarations or Restrictions.” Kroneberger Decl., Exh. A, pg. 9; Exh. B., pg. 6.</p>	<p>Undisputed for purposes of this motion.</p>

1 2 3 4 5	12. The City conveyed its interest in Area A to the Palos Verdes Homes Association on August 8, 2012, but retained an open space easement and a utility easement. Kroneberger Decl., Exh. C.	Undisputed for purposes of this motion.
6 7 8 9 10	ISSUE 2: Plaintiffs' Second Cause of Action for waste of public funds/<i>ultra vires</i> activity fails because 1) the City possesses the legal authority both to convey real property under Gov't Code §37350 and to enact zoning laws; and 2) Plaintiffs cannot estop the City from exercising its legislative function in the future.	
11 12 13 14 15 16 17 18	13. On February 19, 2013 the City's Planning Commission heard and denied an application to re-zone Area A from Open Space to R1 Single Family Residential and to obtain after the fact approval for improvements that were placed on Area A. Kroneberger Decl., ¶ 6; Second Amended Complain ("SAC"), ¶ 34.	Undisputed for purposes of this motion.
19 20 21 22 23 24 25	14. On March 12, 2013 the City's Council took no action on the application to re-zone Area A from Open Space to R1 Single Family Residential and to obtain after the fact approval for improvements that were placed on Area A. Kroneberger Decl., ¶ 7; SAC, ¶ 34.	Disputed. In fact the City directed staff to prepare a zone text amendment as set forth in material fact number 15 below. Kroneberger Decl., ¶ 7; see SAC, ¶ 34.
26 27 28	15. On March 12, 2013 via oral vote the City Council directed the City Attorney to prepare a zone text amendment that would	Undisputed for purposes of this motion.

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<p>address the use of privately owned OS-zoned (open space) property. Kroneberger Decl., ¶ 7; see SAC, ¶ 34.</p>	
<p>16. Neither the Planning Commission nor the City Council has taken any action toward Area A since March 12, 2013. Kroneberger Decl., ¶ 8.</p>	<p>Undisputed for purposes of this motion.</p>
<p>Additional Material Facts in Dispute</p>	
<p>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</p>	<p>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</p>
<p>17. The Association has no current ownership of parklands. Harbison Decl., ¶ 18.</p>	
<p>18. Instead, the City has taken on both the ownership of and stewardship of the parks. Harbison Decl., ¶ 19.</p>	
<p>19. The City has established a Parklands Commission. Harbison Decl., ¶ 20.</p>	
<p>20. Applications by residents that would impact parklands are brought to the City's Parkland Commission and not the Association.</p>	

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Harbison Decl., ¶ 21.	
21. Permits and enforcement actions concerning parklands involve the City and not the Association.	
Harbison Decl., ¶ 22.	
22. 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.	
23. The June 14, 1940 deeds state that the transferred property “is to be used and administered forever for park and/or recreation purposes...”	
Harbison Decl., ¶ 28; Exhibit 6, p. 7 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 4 [June 14, 1940 deed for Lot A of Tract 8652].	
24. 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...”	
Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5	

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<p>[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>25. The June 14, 1940 deeds do not contain any express provision authorizing the City or Association to “swap” parkland properties.</p> <p>Harbison Decl., ¶ 35; 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>26. The June 14, 1940 deeds do not contain any express provision authorizing the City or Association to convey parks as part of a resolution of litigation.</p> <p>Harbison Decl., ¶ 36; 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>27. The June 14, 1940 deeds do not contain any express provision authorizing the City or Association 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</p>	

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7 [June 14, 1940 deed for Lot A of Tract 8652].	
28. 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].	
29. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Panorama Parkland was conveyed from the Association to Thomas Lieb as trustee of the Via Panorama Trust for the benefit of the Luglianis. Harbison Decl., ¶ 54; Exhibit 10 [September 5, 2012 Grant Deed].	
30. The September 5, 2012 quitclaim deed and grant deed were recorded simultaneously and bear consecutive instrument numbers. Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed]; Harbison Decl., ¶ 54; Exhibit 10 [September 5, 2012 Quitclaim Deed].	

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<p>31. 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,’ ...”</p> <p>Harbison Decl., ¶ 56; Exhibit 9, p. 2, ¶ 6 [September 5, 2012 Quitclaim Deed].</p>	
<p>32. The September 5, 2012 quitclaim deed states in paragraph 8 that: “This Deed shall not cause the Property to be merged with any adjacent lot and any such merger shall be prohibited.”</p> <p>Harbison Decl., ¶ 56; Exhibit 9, ¶ 8 [September 5, 2012 Quitclaim Deed].</p>	
<p>33. Plaintiffs were not a party to the September 2012 quitclaim deed from the City to the Association.</p> <p>Harbison Decl., ¶ 56; Exhibit 9, [September 5, 2012 Quitclaim Deed].</p>	

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<p>34. Thomas J. 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>35. Lieb is the trustee of the VIA PANORAMA TRUST U/DO MAY 2, 2012 (“Panorama Trust”).</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1 [Via Panorama Trust Agreement].</p>	
<p>36. The Panorama Trust is an estate planning instrument for the benefit of the children of Dr. and Mrs. Lugliani.</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, p. 7, ¶ 1.11 [Via Panorama Trust Agreement].</p>	
<p>37. The Panorama Trust is not “a body suitably constituted by law to take, hold, maintain and regulate public parks...”</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, p. 7, ¶ 1.11 [Via Panorama Trust Agreement].</p>	
<p>38. The current owners of the Panorama Parkland intend to use that property for private uses.</p>	

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<p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rocky & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	
<p>39. 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. 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.</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>	

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<p>41. Plaintiff John Harbison (“Harbison”) owns property located within the City.</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>42. Harbison has owned property located within the City since 1992.</p> <p>Harbison Decl., ¶ 2.</p>	
<p>43. Harbison is a member of plaintiff Citizens for Enforcement of Parkland Covenants.</p> <p>Harbison Decl., ¶ 1.</p>	
<p>44. The April 11, 2014 minute order / tentative ruling on the defendants’ demurrer to the first amended complaint that was adopted as the final ruling of the court states:</p> <p>Authority 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 <u>Hermosa Beach, Welwood Library, County of Solano</u> and <u>Big Sur</u> cases.</p> <p>(Lewis Decl, ¶ 3, Ex. 25, p. 4, li. 1-4 [April 11, 2014 minute order].</p>	

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<p>45. The April 11, 2014 minute order / tentative ruling on the defendants’ demurrer to the first amended complaint that was adopted as the final ruling of the court states:</p> <p>“...under the authority of the case of <u>Save the Welwood Murray Memorial Library Com.</u>, <i>infra</i>, 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.”</p> <p>(Lewis Decl, ¶ 3, Ex. 25, p. 4, li. 27-p. 5 li. 6 [April 11, 2014 minute order].</p>	
<p>46. The City was a party to the four party memorandum of understanding (“MOU”) that preceded and authorized the 2012 quitclaim deed.</p> <p>Harbison Decl., ¶ 52; Exhibit 12, p. 2 [The MOU].</p>	

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<p>47. That MOU called for Lieb to pay the Association \$500,000.</p> <p>Harbison Decl., ¶ 52; Exhibit 12, p. 8, Art. 5, ¶ C [The MOU].</p>	
<p>48. The MOU called for the Association to retain \$400,000 of the \$500,000 and pay \$100,000 to the City.</p> <p>Harbison Decl., ¶ 52; Exhibit 12, p. 7, Art. 3, ¶ C [The MOU].</p>	
<p>49. The May 2, 2012 City Staff Report recommending that the City Council approve the MOU references a \$1.5 million donation made to the Palos Verdes Peninsula Unified School District.</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 2 [The May 2012 Staff Report].</p>	
<p>50. The May 2, 2012 City Staff Report recommending that the City Council approve the MOU states that two of the goals achieved by the MOU are:</p> <p>The School District's goals are to resolve the current litigation; to liquidate the value of Lots C & D; and, by separate agreement, secure an offered donation of</p>	

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<p>\$1.5 million to assist District operations in light of current fiscal challenges;</p> <p>The Property Owners’ goals are to obtain limited use of an area adjacent to 900 Via Panorama; to legalize the retaining walls installed on parkland by the previous owner; to the School District by voluntary donation.</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 2 [The May 2012 Staff Report].</p>	
<p>51. The May 2, 2012 City Staff Report recommending that the City Council approve the MOU states that with respect to the \$500,000 paid by Lieb to purchase the Panorama Parkland:</p> <p style="padding-left: 40px;">The Homes Association would retain \$400,000 (to cover the attorneys’ fees and costs associated with the Litigation), and transfer \$100,000 to the City which it may use for municipal purposes.</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 2 [The May 2012 Staff Report].</p>	
<p>52. The May 2, 2012 City Staff Report recommending that the City Council approve the MOU identified six necessary steps to implement the MOU:</p>	

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<p>1. Lots C & D revert back to the Homes Association pursuant to right of reversion in grant deeds;</p> <p>2. The City exchanges Area A (subject to deed restrictions in favor of the City) with the Homes Association for Lots C & D;</p> <p>3. Homes Association transfers Area A to the Property Owners (subject to deed restrictions in favor of the City) for a purchase price of \$500,000;</p> <p>4. Homes Association transfers \$100,000 to the City for its use towards municipal purposes (retaining \$400,000 for resolution of legal costs associated with the lawsuit);</p> <p>5. The School District and Homes Association dismiss the appeals and the Superior Court judgment becomes final; and</p> <p>6. By separate donation agreement, the Property Owners’ donate \$1.5 million to the School District.</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 8, [The May 2012 Staff Report].</p>	
<p>53. The sizes are of “Lots C & D” referenced in the MOU are approximately 19,984 square feet [Lot C] and approximately 17,978 [Lot D] for a total size of approximately 37,962 square feet for both Lots C and D.</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 3 [May 2012 Staff Report]; Harbison Decl., ¶ 52; Exhibit 12, p. 2 [The MOU].</p>	

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<p>54. The Panorama Parkland is approximately 75,930 square feet.</p> <p>Harbison Decl., ¶ 52; Exhibit 12, p. 4 [The MOU].</p>	
<p>55. The square footage of the Panorama Parkland (75,930) is approximately twice the square footage of Lots C and D (37,962).</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 3 [May 2012 Staff Report]; Harbison Decl., ¶ 52; Exhibit 12, p. 2, 4 [The MOU].</p>	
<p>56. The Panorama Parkland and Lots C and D are not roughly equivalent in size.</p> <p>Lewis Decl., ¶ 4, Ex. 26, p. 3 [May 2012 Staff Report]; Harbison Decl., ¶ 52; Exhibit 12, p. 2, 4 [The MOU].</p>	

DATED: May 15, 2015

BROEDLOW LEWIS LLP

By: 
Jeffrey Lewis

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