

1 CHRISTI HOGIN, State Bar No. 138649  
2 City Attorney, City of Palos Verdes Estates  
3 TARQUIN PREZIOSI, State Bar No. 198014  
4 JENKINS & HOGIN, LLP  
5 Manhattan Towers  
6 1230 Rosecrans Avenue, Suite 110  
7 Manhattan Beach, California 90266  
8 Phone: (310) 643-8448 / Fax: (310) 643-8441  
9 Email: CHogin@LocalGovLaw.com

Exempt from fees pursuant  
to Government Code § 6103

Attorneys for Defendant/Respondent  
City of Palos Verdes Estates

7 DANIEL V. HYDE, State Bar No. 063365  
8 BRANT H. DVEIRIN, State Bar No. 130621  
9 LEWIS BRISBOIS BISGAARD & SMITH LLP  
10 633 W. 5th Street, Suite 4000  
11 Los Angeles, CA 90071  
12 Phone: (213) 250-1800 / Fax: (213) 250-7900  
13 Email: Brant.Dveirin@lewisbrisbois.com

Attorneys for Defendant  
Palos Verdes Homes Association

13 ARMBRUSTER GOLDSMITH & DELVAC LLP  
14 DAMON P. MAMALAKIS, State Bar No.: 184489  
15 R.J. COMER, State Bar No.: 186284  
16 11611 San Vicente Blvd., Suite 900  
17 Los Angeles, CA 90049  
18 Phone: (310) 209-8800 / Fax: (310) 209-8801  
19 Damon@agd-landuse.com

Attorneys for Defendants  
Robert Lugliani and Dolores A. Lugliani, as co-  
trustees of The Lugliani Trust; Thomas J. Lieb,  
Trustee, The Via Panorama Trust

20 **SUPERIOR COURT OF CALIFORNIA**  
21 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

22 CITIZENS FOR ENFORCEMENT OF  
23 PARKLAND COVENANTS and JOHN A.  
24 HARBISON,

Plaintiff,

25 vs.

26 CITY OF PALOS VERDES ESTATES, a  
27 municipal corporation; PALOS VERDES  
28 HOMES ASSOCIATION, a California  
corporation; ROBERT LUGLIANI and

Case No.: BS142768

*Assigned for all purposes to the  
Hon. Barbara A. Meiers, Dept. 12*

**DEFENDANTS CITY OF PALOS VERDES  
ESTATES; PALOS VERDES HOMES  
ASSOCIATION; ROBERT LUGLIANI AND  
DOLORES A. LUGLIANI, AS CO-TRUSTEES OF  
THE LUGLIANI TRUST; AND THOMAS J. LIEB,  
TRUSTEE, THE VIA PANORAMA TRUST U/DO  
MAY 2, 2012'S JOINT EVIDENTIARY**

**DEFENDANTS CITY OF PALOS VERDES ESTATES, PALOS VERDES HOMES ASSOCIATION,  
ROBERT LUGLIANI AND DOLORES A. LUGLIANI, THOMAS J. LIEB'S JOINT EVIDENTIARY  
OBJECTIONS TO REPLY DECLARATION OF HARBISON AND MOTION TO STRIKE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DOLORES 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.

**OBJECTIONS TO REPLY DECLARATION OF  
JOHN HARBISON AND MOTION TO STRIKE**

Petition Filed: May 13, 2013  
Trial Date: None Set  
Hearing Date: May 29, 2015  
Hearing Time: 10:30 a.m.  
Department: 12

1 **I. EVIDENTIARY OBJECTIONS/MOTION TO STRIKE**

2 Among Plaintiffs' Reply papers, Plaintiffs inappropriately included new facts that  
3 purportedly support their Motion for Summary Judgment or Summary Adjudication or Both  
4 ("Motion"). Those facts are contained in the Reply Declaration of John Harbison ("Harbison Reply  
5 Dec.") and in the Plaintiffs' Reply in Support of Plaintiffs' Motion for Summary Judgment  
6 Summary Adjudication or Both ("Plaintiffs' Reply"). Further, Plaintiffs have impermissibly filed a  
7 "Reply Separate Statement Undisputed Material Facts in Support of Plaintiffs' Motion for  
8 Summary Judgment or Summary Adjudication or Both."

9 A party is not permitted to introduce new facts on a motion for summary judgment in reply;  
10 rather all facts are to be contained in the moving papers. *San Diego Watercrafts, Inc. v. Wells*  
11 *Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 313 ("While the code [CCP Section 437c] provides  
12 for reply papers, it makes no allowance for submitting additional evidence or filing a supplemental  
13 separate statement;" trial court violated motion for summary judgment opposing party's due  
14 process rights in considering evidence submitted to support the motion with reply papers); *see also*  
15 *The Rutter Group, Civil Procedure Before Trial* at 10:222 ("The moving party generally may *not*  
16 rely on additional evidence filed with its reply papers." (Emphasis original).)

17 The summary judgment statute does *not* provide for a "Reply Separate Statement." Nor are  
18 "Exhibits and Evidence in Support of Reply" generally allowed to the reply papers. There is no  
19 provision in the statute for this. *See Nazir v. United Airlines, Inc.*, (2009) 178 Cal.App.4th 243,  
20 252; *see also The Rutter Group, Civil Procedure Before Trial* at 10:222.6 (citing *Nazir v. United*  
21 *Airlines, Inc.*, *supra*, 178 Cal.App.4th 243 and *San Diego Watercrafts, Inc. v. Wells Fargo Bank,*  
22 *N.A.*, *supra*, 102 Cal.App.4th 308).

23 As such, the Harbison Reply Dec. should not be admitted as evidence in support of the  
24 Motion and should be struck in its entirety as well as the corresponding references to those facts in  
25 the Plaintiffs' Reply and Plaintiffs' Response to Defendants' Joint Evidentiary Objections;  
26 Plaintiffs' Reply Separate Statement should be struck as well.

**DEFENSE PARTIES' OBJECTIONS TO REPLY**  
**DECLARATION OF JOHN HARBISON**

| <b><u>Material Objected To:</u></b>  | <b><u>Grounds for Objection:</u></b>  |
|--|---|
| <p>1. <u>Page 1, ¶ 2, lns. 6-17:</u> "I am aware of a contention by the defendants in this case that the Panorama Parkland (also known as "Area A") is "roughly equivalent" in value and size with two other parcels previously owned by the Palos Verdes Peninsula School District known as "Lots C &amp; D." That is not true. Lots C and D together measure 37,962 square feet. Area A measures 75,930 square feet. These measurements are set forth in the Memorandum of Understanding that preceded the sale of Panorama Parkland. The defendants in this case have also contended that Area A is steep and inaccessible while Lots C and D are not steep. Again this is not true. The elevation change between the top and bottom of Area A is 60 feet. The elevation change between the top and bottom of Lots C and D is 65 feet. The source of my information regarding altitude change is Google</p> | <p><i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308, 314; The Rutter Group, Civil Procedure Before Trial at 10:222.<br/><br/>Lacks foundation; lack of personal knowledge; irrelevant.</p> |

**DEFENSE PARTIES' OBJECTIONS TO REPLY**

**DECLARATION OF JOHN HARBISON**

| <b><u>Material Objected To:</u></b>  | <b><u>Grounds for Objection:</u></b>   |
|--|--|
| Maps. A summary of these figures and other comparisons of the view and uses for the two properties is attached hereto and incorporated herein as Exhibit "31."   |  |
| 2. <u>Page 2, ¶ 3, ln. 18-pg. 3, ln. 8:</u> "The City of Palos Verdes Estates ("City") has taken the position in this case that it may decide the best use for the Panorama Parkland and it is not bound by deed restrictions. In other instances, the City has claimed to have no power over open space such as the Panorama Parkland. On January 28, 2014, the City of Palos Verdes Estates issued a staff report in support of adopting a housing element of the City's general plan. The City is required to submit a housing element to the State of California to ensure that the City is complying with state requirements regarding providing housing for the community. At pages 59-60 of the housing element, the City | <i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308, 314; The Rutter Group, Civil Procedure Before Trial at 10:222.<br><br>Lacks foundation; lack of personal knowledge; irrelevant. |

**DEFENSE PARTIES' OBJECTIONS TO REPLY**

**DECLARATION OF JOHN HARBISON**

| <b><u>Material Objected To:</u></b>   | <b><u>Grounds for Objection:</u></b> |
|---|--------------------------------------|
| <p>represents to the state:</p> <p><b>All land in the City of Palos Verdes Estates is subject to private deed restrictions developed at the time the master planned Palos Verdes project was established.</b> These restrictions include allowable land uses and architectural style. Thus, the potential for subdivision or intensification of use in most areas is quite low. ...<b>Deed restrictions also apply to dedicated City open space. Thus, such areas would not be available for other uses,</b> even if constraints posed by topography, infrastructure and other factors discussed below did not exist. <b>These legally binding private restrictions were established prior to City incorporation.</b> The Palos Verdes Homes Association currently oversees compliance with the deed restrictions. The Homes Association operates independently from the City and consists of owners of property within the planned community subdivision, both inside and outside the boundaries of the City of Palos Verdes Estates. <b>The City has no authority to alter or override the deed restrictions or the decisions of the Homes Association.</b></p> <p>(Emphasis added). A true and correct copy of the relevant portions of the January 28, 2014 staff report and housing element is attached hereto and</p> |                                      |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEFENSE PARTIES' OBJECTIONS TO REPLY**

**DECLARATION OF JOHN HARBISON**

| <b><u>Material Objected To:</u></b>  | <b><u>Grounds for Objection:</u></b>  |
|--|---|
| incorporated herein as Exhibit "32." I obtained the staff report from the City's website.  |   |
| 3. <u>Page 3, ¶ 4, Ins. 9-11:</u> "I obtained from the Malaga Cove branch of the Palos Verdes Library District a publication from 1969 entitled "Open Space Action". A true and correct copy of the relevant portions of the article is attached hereto and incorporated herein as Exhibit "33.""  | <i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308, 314; The Rutter Group, Civil Procedure Before Trial at 10:222.<br><br>Irrelevant.  |
| 4. <u>Page 3, ¶ 5, Ins. 12-28:</u> "The City routinely posts audio recordings of city council meetings. I have reviewed the audio recording for the May 8, 2012 meeting where the city council approved the memorandum of understanding authorizing the sale of the Panorama Parkland. At 44 minutes into the audio, then-mayor George Bird made the below comments which I personally transcribed:<br><br>As it's been said eloquently by my colleagues to my left and right, this was a Win-Win-Win. The Homes | <i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308, 314; The Rutter Group, Civil Procedure Before Trial at 10:222.<br><br>Hearsay; lacks foundation; lack of personal knowledge; irrelevant. |

**DEFENSE PARTIES' OBJECTIONS TO REPLY**

**DECLARATION OF JOHN HARBISON**

**Material Objected To:**

**Grounds for Objection:**

Association, the School District has asked us to sign off on this, and credit goes to one person, and that's our City Attorney, who the public must know that she really spearheaded and brought together the parties after having talked to each of them and worked together to come up with a Win-Win-Win-Win situation. As it's been said, rarely in legal settlements does everyone come out better off, and this is one of those situations where it can be truly said everyone is the better because of coming together of all these individuals and entities to resolve an issue. I agree with Mr. Barnett -- there is no good precedent to selling parkland, it's our most valuable resource here, and what we all do. The reason why I am also in favor of this proposed MOU is because of the liability issues that we would undoubtedly have, the uniqueness of that particular issue with regard to that particular property, the inaccessibility of any members of the public to utilize that parkland, and the preservation of that dirt forever to never be developed—so it will look the same to our residents. We will all get the benefit of looking at that open space and now someone else will be paying property tax on it, which will put a few extra dollars in our pockets – so that's an additional win that hasn't been mentioned previously. For those reasons and as eloquently as Councilmember Perkins stated it, I am also in favor. That being said, can we have a motion?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEFENSE PARTIES' OBJECTIONS TO REPLY**

**DECLARATION OF JOHN HARBISON**

| <b><u>Material Objected To:</u></b>  | <b><u>Grounds for Objection:</u></b>   |
|--------------------------------------|--|
| 5. Exhibit 33 to Harbison Reply Dec. | <i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308, 314;<br>The Rutter Group, Civil Procedure Before Trial at 10:222.<br>Hearsay; lacks foundation; lack of personal knowledge; irrelevant. |

1 **II. MOTION TO STRIKE REPLY HARBISON DECLARATION AND PORTIONS OF**  
2 **THE PETITIONERS' REPLY BRIEF AND RESPONSE TO JOINT EVIDENTIARY**  
3 **OBJECTIONS**

4 The Defense Parties' move to strike the entirety of the Reply Harbison Declaration and  
5 portions of the Plaintiffs' Reply and Plaintiffs' Response to Defendants' Joint Evidentiary  
6 Objections wherein the Reply Declaration of John Harbison was referenced (set forth below). The  
7 Defense Parties' Motion to Strike is based upon authorities set forth above.

8 **DEFENSE PARTIES' MOTION TO STRIKE REFERENCES OF HARBISON**  
9 **DECLARATION MADE IN PLAINTIFFS' REPLY BRIEFING**

10 **Materials To Strike:**

11 **A. Plaintiffs' Reply in Support of Plaintiffs' Motion for**  
12 **Summary Judgment, Summary Adjudication or Both**

13 1. Page 1, Ins. 3-12: "...More than anything else, Palos Verdes Estates is unique because of  
14 its open spaces. A full quarter of the city's 3,015 acres is permanently protected as  
15 parkland – and has been, ever since deed restrictions were imposed on the land in 1923.  
16 Much of it runs along the unbuildable slopes of the beaches.... "The people of this city,"  
17 says Planning Commissioner Paul Peppard, "want the parkland left the way it is. They  
18 don't want it formal or manicured – or built on...We have all this free, open land," says  
19 Dr. Peppard. "From time to time, someone comes along and tries to grab on to a piece of  
20 it." So far, no one has succeeded....

21 "These restrictions are stronger than the U.S. Constitution. The way they are set up, they  
22 can hardly be mended." [said then president of the Association. His predecessor Gaybert  
23 Little is quoted as saying] "In all these years, we haven't lost a single foot of the  
24 parkland that we started with. Not many communities can say the same. ...Here they  
25 started with a dream and it was beautiful." Patricia Gribben (then manager of the  
26 Association) said, "You can accomplish wonders. You just keep enforcing the  
27 restrictions on the land." [Footnote 1: Harbison Decl., Ex. 33]

28 2. Page 2, Ins. 12-13: "The City Attorney was the architect of the transaction. (Harbison  
Decl., ¶ 5)."

3. Page 8, Ins. 2-5: "Defendants would have been unable to prove their good faith decision  
making in the separate statement. For example, defendants have repeatedly asserted that  
the land swapped as part of the MOU settlement were "roughly equivalent" in size, value  
and other attributes. (Harbison Reply Decl., ¶ 2, Ex. 31)."

1 **DEFENSE PARTIES' MOTION TO STRIKE REFERENCES OF HARBISON**  
2 **DECLARATION MADE IN PLAINTIFFS' REPLY BRIEFING**

3 **Materials To Strike:**

- 4 4. Page 8, lns. 5-6: "That is demonstrably false and negates any possible finding of good  
5 faith. (Harbison Reply Decl., ¶ 2, Ex. 31)."

6 **B. Plaintiffs' Response to Defendants' Joint Evidentiary Objections**

- 7 1. Page 6, ¶ 26, lns. 6-7: "He [Harbison] also declares in his reply declaration that he has  
8 listened to audio recordings of the May 8, 2012 city council meeting."

9  
10 Dated: May 27, 2015

JENKINS & HOGINS, LLP

11  
12 By  \_\_\_\_\_

Tarquin Preziosi

Attorneys for Defendant/Respondent

13  
14 CITY OF PALOS VERDES ESTATES

15 Dated: May 27, 2015

ARMBRUSTER-GOLDSMITH & DELVAC LLP

16  
17 By  \_\_\_\_\_

Damon P. Mamalakis

Attorneys for Defendants

18  
19 ROBERT LUGLIANI and DOLORES A.  
20 LUGLIANI, as co-trustees of THE LUGLIANI  
21 TRUST; THOMAS J. LIEB, TRUSTEE, THE VIA  
PANORAMA TRUST U/DO MAY 2, 2012

22 Dated: May 27, 2015

LEWIS BRISBOIS BISGAARD SMITH LLP

23  
24 By:  \_\_\_\_\_

Brant H. Dveirin

Attorneys for Defendant

25  
26 PALOS VERDES HOMES ASSOCIATION

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 *Citizens for Enforcement of Parkland Covenants, et al.*

3 v.

4 *City of Palos Verdes Estates, et al.*

5 *File No.: 50013.1840*

6 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

7 At the time of service, I was over 18 years of age and not a party to the action. My business  
8 address is 633 West 5<sup>th</sup> Street, Suite 4000, Los Angeles, CA 90071.

9 On the below date, I served the following document(s) described as: **DEFENDANTS CITY  
10 OF PALOS VERDES ESTATES; PALOS VERDES HOMES ASSOCIATION; ROBERT LUGLIANI  
11 AND DOLORES A. LUGLIANI, AS CO-TRUSTEES OF THE LUGLIANI TRUST; AND THOMAS  
12 J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012'S JOINT EVIDENTIARY  
13 OBJECTIONS TO REPLY DECLARATION OF JOHN HARBISON AND MOTION TO STRIKE**  
14 on the following persons at the following addresses (including fax numbers and e-mail addresses, if  
15 applicable):

16 **SEE ATTACHED SERVICE LIST**

17  **(BY U.S. MAIL)** I enclosed the above-stated document(s) in a sealed envelope or package  
18 addressed to the person(s) at the address(es) listed by placing the envelope or package for collection  
19 and mailing, following our ordinary business practices. I am readily familiar with the firm's practice  
20 for collection and processing correspondence for mailing. Under that practice, on the same day that  
21 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business  
22 with the U.S. Postal Service, in a sealed envelope of package with the postage fully prepaid thereon.  
23 I am aware that on motion of the party served, service is presumed invalid if postal cancellation date  
24 or postage meter date is more than one day after date of deposit for mailing in affidavit.

25  **(BY FAX TRANSMISSION)** Based on an agreement of the parties to accept service by fax  
26 transmission, I faxed the documents to the persons at the fax numbers listed above. No error was  
27 reported by the fax machine that I used. A copy of the record of the fax transmission containing the  
28 time, date, and sending fax machine telephone number, which I printed out, is attached.

**(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I  
placed the envelope or package for collection and delivery at an office or a regularly utilized drop box  
of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on **May 27, 2015**, at Los Angeles, California.

  
DONNA L. MATA

**SERVICE LIST**

*Citizens for Enforcement of Parkland Covenants, et al. v. City of Palos Verdes Estates, et al.*  
*File No.: 50013.1840*

1  
2  
3  
4 Jeffrey Lewis, Esq.  
BROEDLOW LEWIS, LLP  
5 734 Silver Spur Road, Suite 300  
Rolling Hills Estates, CA 90274  
6 Telephone: (310) 935-4001  
Facsimile: (310) 872-5389  
7 Email: [Jeff@BroedlowLewis.com](mailto:Jeff@BroedlowLewis.com)

8 Christi Hogin, Esq.  
Tarquin Preziosi, Esq.  
9 JENKINS & HOGIN, LLP  
1230 Rosecrans Avenue, Suite 110  
10 Manhattan Beach, CA 90266  
Telephone: (310) 643-8448  
11 Facsimile: (310) 643-8441  
Email: [CHogin@LocalGovLaw.com](mailto:CHogin@LocalGovLaw.com)  
12 [tpreziosi@localgovlaw.com](mailto:tpreziosi@localgovlaw.com)

13 R.J. Comer, Esq.  
Damon Mamalakis, Esq.  
14 ARMBRUSTER GOLDSMITH & DELVAC LLP  
11611 San Vicente Boulevard, Suite 900  
15 Los Angeles, CA 90049  
Telephone: (310) 209-8800  
16 Facsimile: (310) 209-8801  
Email: [damon@agd-landuse.com](mailto:damon@agd-landuse.com)

17 Sidney F. Croft, Esq.  
18 LAW OFFICE OF SIDNEY CROFT  
314 Tejon Place  
19 Palos Verdes Estates, CA 90274  
Telephone: (310) 849-1992  
20 Email: [SFCroftlaw@aol.com](mailto:SFCroftlaw@aol.com)