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Exempt from fees pursuant
to Government Code § 6103

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES—CENTRAL DISTRICT

10
11 CITIZENS FOR ENFORCEMENT OF
12 PARKLAND COVENANTS, an
unincorporated association; JOHN
13 HARBISON, an individual

14 Plaintiffs and Petitioners,

15 v.

16 CITY OF PALOS VERDES ESTATES, a
municipal corporation; PALOS VERDES
17 HOMES ASSOCIATION, a California
corporation,

18 Defendants and Respondents,

CASE NO. BS142768

**CITY OF PALOS VERDES ESTATES'
SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF CROSS-MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

[Filed concurrently with Notice of Motion;
Memorandum of Points and Authorities;
Request for Judicial Notice; and Declaration
of Vickie Kroneberger Evidence]

Date: May 29, 2015
Time: 9:30 a.m.
Dept.: 12

Hon. Barbara A. Meiers

Petition and Complaint Filed: May 13, 2013

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24 ROBERT LUGLIANI and DOLORES A.
LUGLIANI, as co-trustees of THE
25 LUGLIANI TRUST; THOMAS J. LIEB,
TRUSTEE, THE VIA PANORAMA TRUST
26 U/DO MAY 2, 2012 and DOES 1 through
20,

27 Defendants and Real Parties in
Interest.
28

Pursuant to California Code of Civil Procedure section 437c(b) and Rule 3.1350 of the California Rules of Court, Defendant and Respondent the City of Palos Verdes Estates (, the "City") submits this Statement of Undisputed Material Facts in support of its Motion for Summary Judgment or, in the Alternative, Summary Adjudication as follows:

The following facts are all relevant to the motion for summary judgment.

The following facts are also all relevant to the motion for summary adjudication of the following issues:

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

CITY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. The 1940 deeds that conveyed Area A from the Association to the City ("1940 Deeds"), provides that a breach of the provisions, conditions, restriction, reservations, liens, charges and covenants set forth in paragraphs 2 to 7, inclusive, shall cause the realty to revert to the Grantor.</p> <p>Declaration of Vickie Kroneberger ("Kroneberger Decl."), Exhibits A & B thereto.</p>	
<p>2. Area A, the property that is the subject of this litigation, was transferred from the Association and accepted by the City in 1940.</p> <p>Kroneberger Decl., Exhs. A & B</p>	

1 3. Area A, the property that is the subject of
2 this litigation, was transferred from the
3 Association to the City in 1940 “upon and
4 subject to” seven provisions, conditions,
5 restrictions and covenants.
6 Kroneberger Decl., Exhs. A & B

7 4. Condition number 3 provides in part “said
8 realty is to be used and administered forever
9 for park and/or recreation purposes only ...
10 for the behalf of the (1) residents and (2)
11 non-resident property owners within the
12 boundaries of the property heretofore
13 commonly known as “Palos Verdes Estates”
14 ... under such regulations consistent with the
15 other conditions set forth in this deed as may
16 from time to time hereafter be established by
17 said municipality or other body suitably
18 constituted by law to take, hold, maintain and
19 regulate public parks....”
20 Kroneberger Decl., Exh. A, pg. 7; Exh. B, pg.
21 4.

22 5. Condition number 4 provides in part that
23 “no buildings, structures or concessions shall
24 be erected, maintained or permitted upon
25 said realty, except such as are properly
26 incidental to the convenient and/or proper
27 use of said realty for park and /or recreation

<p>1 purposes.” 2 Kroneberger Decl., Exh. A, pg. 9, Exh. B., pgs. 3 5-6.</p>	
<p>4 6. Condition number 5 states “That, except in 5 paragraph 3 hereof, said realty shall not be 6 sold or conveyed, in whole or in part, by the 7 Grantee herein except subject to the 8 conditions, restrictions and reservations set 9 forth and/or referred to herein and except to a 10 body suitably constituted by law to take, 11 hold, maintain and regulate public parks; 12 provided, that portions of said realty may be 13 dedicated to the public for parkway and/or 14 street purposes.” 15 Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 16 5.</p>	
<p>17 7. Condition number 6 states “That, said 18 municipality or other body having 19 jurisdiction may, by and with the written 20 approval of Palos Verdes Art Jury first 21 obtained, permit the owner of a lot abutting 22 on said realty to construct and/or maintain 23 paths, steps and /or other landscape 24 improvements, as a means of egress from and 25 ingress to said lot or for the improvement of 26 views therefrom, in such a manner and for 27 such length of time and under such rules and</p>	

<p>1 regulations as will not, in the opinion of said 2 municipality or other body and of Palos 3 Verdes Art Jury, impair or interfere with the 4 use and maintenance of said realty for park 5 and/or recreation purposes, as hereinbefore 6 set forth.” 7 Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 8 5.</p>	
<p>9 8. Condition number 7 states “That none of 10 the conditions, restrictions, covenants and 11 reservations set forth in paragraphs 3 to 6, 12 inclusive, hereof may be changed or 13 modified by the procedure established in 14 Section 3 of Article VI of said Declaration of 15 Establishment of Basic Protective 16 Restrictions, in Section 9 of said 17 Declarations Nos. 4, 20, 23, and 24 of 18 Establishment of Local Protective 19 Restrictions, and in Section 10 of said 20 Declaration No. 25 of Establishment of Local 21 Protective Restrictions. 22 Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg. 23 5.</p>	
<p>24 9. The 1940 Deeds state “PROVIDED, that 25 a breach of any of the provisions, conditions, 26 restrictions, reservations, liens, charges and 27 covenants set forth in paragraphs 2 to 7,</p>	

1 inclusive, hereof shall cause said realty to
2 revert to the Grantor herein, or its successor
3 in Interest, as owner of the reversionary
4 rights herein provided for...”
5 Kroneberger Decl., Exh. A, pg. 9; Exh. B,
6 pg.5.

7 10. The 1940 Deeds provides that “the
8 disincorporation of the Grantee herein as a
9 municipality or the dissolution of said body
10 referred to in paragraph 5 hereof (in the event
11 of the transfer of any said realty thereto) shall
12 in like manner cause said realty to revert to
13 the Grantor herein or its successor in
14 interest...”
15 Kroneberger Decl., Exh. A, pg. 9; Exh. B, pg.
16 6..

17 11. The 1940 Deed provides that the
18 “provisions, conditions, restrictions,
19 reservations, liens, charges and covenants
20 shall be covenants running with the land, and
21 the breach of any thereof or the continuance
22 of any such breach may be enjoined, abated
23 or remedied by appropriate proceedings by
24 the Grantor herein or its successors in
25 interest, or by such other lot or parcel owner,
26 and/or by any other person or corporation
27 designated in said Declarations or

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

1 15. On March 12, 2013 via oral vote the City
2 Council directed the City Attorney to prepare a
3 zone text amendment that would address the
4 use of privately owned OS-zoned (open space)
5 property.

6 Kroneberger Decl., ¶ 7; see SAC, ¶ 34.

7 16. Neither the Planning Commission nor the
8 City Council has taken any action toward Area
9 A since March 12, 2013.

10 Kroneberger Decl., ¶ 8.

11
12
13 DATED: March 13, 2015

Respectfully submitted,
JENKINS & HOGIN, LLP

By: 

Tarquin Preziosi
Attorneys for Defendants City of Palos Verdes
Estates

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1230 Rosecrans Avenue, Suite 110,
Manhattan Beach, CA 90266.

5 On March 13, 2015, I served the foregoing documents described as:

6 **CITY OF PALOS VERDES ESTATES' SEPARATE STATEMENT OF**
7 **UNDISPUTED MATERIAL FACTS IN SUPPORT OF CROSS-MOTION FOR**
8 **SUMMARY JUDGEMENT OR, IN THE ALTERNATIVE, SUMMARY**
9 **ADJUDICATION**

10 on the interested party or parties in this action by placing the original thereof enclosed in sealed
11 envelopes with fully prepaid postage thereon and addressed as follows:

12 *PLEASE SEE SERVICE LIST ATTACHED*

- 13 **VIA EMAIL.** I caused such document as described above, to be transmitted via E-Mail
14 to the offices of the addressee(s).
- 15 **VIA FACSIMILE.** I caused such document to be transmitted via facsimile to the offices
16 of the addressee(s).
- 17 **VIA OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package
18 provided by an overnight delivery carrier and addressed to the person(s) at the address(es)
19 stated above. I placed the envelope or package for collection and overnight delivery at a
20 regularly utilized drop box of the overnight delivery carrier.
- 21 **VIA U.S.MAIL.** I enclosed the above described documents in a sealed envelope or
22 package addressed to the person(s) listed above or on the attached; caused such envelope
23 with postage thereon fully prepared to be placed in the United States mail at Los Angeles,
24 California.

25 *I am readily familiar with the Jenkins & Hogin, LLP's practice of collection and processing correspondence for
26 outgoing mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with
27 postage thereon prepaid at Manhattan Beach, California, in the ordinary course of business. I am aware that
28 on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.*

- 29 **STATE.** I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct.
- 31 **FEDERAL.** I declare that I am employed in the office of a member of the Bar of this
32 Court at whose direction the service is made.

33 Executed this 13th day of March 13, 2015, at Manhattan Beach, California.

34 
35 LISA WHITEMAN

SERVICE LIST

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