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13 Trustee, The Via Panorama Trust

14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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

18 Plaintiffs,

19 vs.

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

25 Defendants.

Case No.: BS142768

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

**DEFENDANTS 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 SEPARATE STATEMENT OF
DISPUTED AND UNDISPUTED ADDITIONAL
MATERIAL FACTS IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT OR SUMMARY ADJUDICATION OR
BOTH**

Petition Filed: May 13, 2013

Trial Date: None Set

Hearing Date: May 29, 2015

Hearing Time: 10:30 a.m.

Department: 12

28 **DEFENDANTS PALOS VERDES HOMES ASSOCIATION, ROBERT LUGLIANI AND DOLORES A.
LUGLIANI, AND THOMAS J. LIEB'S SEPARATE STATEMENT IN OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OR BOTH**

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
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Issue No. 1. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction that the Panorama Parkland be Used and Administered "Forever" for Park Purposes.

<p>1. This litigation concerns the ownership and use of undeveloped parkland located on Via Panorama in the City of Palos Verdes (the "Panorama Parkland" or "Area A.")</p> <p>Declaration of John Harbison ("Harbison Decl."), ¶ 4; Exhibit 1 [Second Amended Complaint].</p>	<p>1. Disputed as to characterization of land in question; Area A is not "parkland." Area A consists of Lots in three Tracts in Palos Verdes (Tract 8652, 26341 and 7540. (Exhibit 3 to Evidence In Support of Plaintiffs' Motion For Summary Judgment or Summary Adjudication or Both ("Plaintiffs' Evidence"). Each of those Tracts are part of the Business and Public Use Districts Class F under Declaration No. 1. (Declaration of Sid Croft In Support of Opposition to Plaintiffs' Motion for Summary Judgment or Summary Adjudication or Both ("Croft Decl.") ¶ 34; Exhibit A to Croft Decl. (Declaration No. 1).) The Class F designation permits the following uses:</p> <p>"no building, structure or premises shall be erected, constructed or designed or intended to be used for any purpose other than that of a public or private school, playground, park, aeroplane or</p>
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<p align="center"><u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p align="center"><u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u></p>
	<p>dirigible landing field or accessory aerodrome or repair shop, public art gallery, museum, library, firehouse, nursery, or greenhouse or other public or semi-public building, or a single family dwelling.”</p> <p>Croft Decl. Exhibit A (Article IV, Zoning, Section 9, Business and Public Use Districts Class F). Given the broad array of permitted uses, it is incorrect to characterize Area A as “Parkland.”</p>
<p>2. The Panorama Parkland is located to the North/Northwest of the residential property at 900 Via Panorama, Palos Verdes Estates, California 90274.</p> <p>Harbison Decl., ¶ 5; Exhibit 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map].</p>	<p>2. Undisputed as to location; Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>3. The Panorama Parkland is an irregularly shaped parcel in the form of a crescent that wraps around the residential property at 900 Via Panorama.</p> <p>Harbison Decl., ¶ 5; Exhibit 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map].</p>	<p>3. Undisputed as to description; Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>4. The boundaries of the Panorama Parkland cross three different tract lines and, therefore, the Panorama Parkland falls within the following three different tracts within the City of Palos Verdes Estates ("City"): 7540, 8652 and 26341.</p> <p>Harbison Decl., ¶ 5; Exhibit 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map].</p>	<p>4. Undisputed as to boundary description; Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>5. At no time has there been signs or notices posted on the Panorama Parkland restricting access or use of the property to residents of the City.</p> <p>Harbison Decl., ¶ 9.</p>	<p>5. See Evidentiary Objection No. 4 to Harbison Decl. (lack of foundation; lack of personal knowledge); Irrelevant; Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>6. At no time has there been signs or notices posted on the Panorama Parkland restricting access or use of the property to members of the Palos Verdes Homes Association ("Association.")</p> <p>Harbison Decl., ¶ 10.</p>	<p>6. See Evidentiary Objection No. 5 to Harbison Decl. (lack of foundation; lack of personal knowledge); Irrelevant; Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>7. On May 16, 1923, the Association was formed.</p> <p>Harbison Decl., ¶ 12.</p>	<p>7. Undisputed</p>
<p>8. On June 25, 1923, the Association enacted its bylaws.</p> <p>Harbison Decl., ¶ 12; Exhibit 5, p. 39.</p>	<p>8. Undisputed</p>
<p>9. On July 5, 1923, the developer for Palos Verdes Estates recorded Declaration No. 1 establishing basic land use restrictions for real property within what would later be known as the City.</p> <p>Harbison Decl., ¶ 13; Exhibit 5, p. 13.</p>	<p>9. Undisputed</p>
<p>10. The land use restrictions recorded on July 5, 1923 were amended and supplemented several times after July 5, 1923.</p> <p>Harbison Decl., ¶ 14.</p>	<p>10. Undisputed</p>
<p>11. On July 26, 1926, Bank of America recorded Declaration No. 25 establishing the conditions, covenants</p>	<p>11. Undisputed</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>and restrictions for Tract 8652.</p> <p>Harbison Decl., ¶ 15; Exhibit 5, p. 9.</p>	
<p>12. Declaration No. 25 describes the purpose of the Association as follows:</p> <p>To carry on the common interest and look after the maintenance of all lots and the welfare of all lot owners right from the beginning, a community association, with the name of Palos Verdes Homes Association, has been incorporated as a non-stock, non-profit body under the laws of California, in which every building site has one vote. It will be the duty of this body to maintain the parks, street planting and other community affairs, and to perpetuate the restrictions.</p> <p>Exhibit 5, p. 3.</p>	<p>12. Undisputed as to quote; Disputed as phrased – the quote does not state that it is the “purpose of the Association”</p>
<p>13. Declaration No. 25 provides that the land use restrictions “are for the benefit of each owner of land...”</p> <p>Exhibit 5, p. 10.</p>	<p>13. Disputed – Exhibit is not Declaration No. 25, rather it is “Amendment No. 10 to Declaration No. 20 of Establishment... and Declaration No. 25 of Establishment” and exhibit does not contain such quote on page 10; rather the correct quote under “Amendment to Declaration No. 20”, states:</p> <p>“Now, Therefore, Know All Men By These Presents: That Bank of America hereby certifies and declares that in addition and supplemental to the basic plan set forth in said “Declaration No. 1” it has established and does hereby establish the local plan for the</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
	<p>protection, maintenance, development and improvement of said Tract 8652, and has fixed and does hereby fix the local protective restrictions, conditions, covenants, reservations, liens and charges upon and subject to which all lots, parcels and portions of said tract shall be held, leased or sold and/or conveyed by it as such owner, each and all of which is and are for the benefit of all of said tract and of each owner of land therein and shall inure to and pass with said tract and each and every parcel of land therein and shall apply to and bind the respective successors in interest of the present owners thereof, and are and each thereof is imposed upon said realty as a servitude in favor of said property, and each and every parcel of land therein as the dominant tenement or tenements, as follows, to-wit:”</p>
<p>14. Declaration No. 25 provides that a breach of the restrictions shall cause the property to revert to the Association.</p> <p>Exhibit 5, § 6, pp. 22-23.</p>	<p>14. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 6 (page 23 of Exhibit 5) provides:</p> <p>“A breach of any of the restrictions, conditions and covenants hereby established shall cause the real property upon which such breach occurs to revert to the Commonwealth Trust Company or its successor in interest as owner of the reversionary rights therein provided for, and the owner of such reversionary shall have the right of immediate re-entry upon such real property, in the event of any such breach;”</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>15. Declaration No. 25 provides that any breach of the restrictions can be enjoined by the Association or by any property owner in the Association.</p> <p>Exhibit 5, § 8, p. 23.</p>	<p>15. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 8 of Declaration No. 1 (page 23 of Exhibit 5) does not provide for enjoining:</p> <p>“Every act or omission, where-by any restriction, condition or covenant in this declaration set forth, is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association; and such remedy shall be deemed cumulative and not exclusive.”</p>
<p>16. Declaration No. 25 provides that a breach of the restrictions shall constitute a nuisance which may be abated by either the Association or any lot owner subject to the Association’s jurisdiction.</p> <p>Exhibit 5, § 8, p. 23.</p>	<p>16. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 8 of Declaration No. 1 (page 23 of Exhibit 5) is quoted in its entirety above at Response to Fact No 15.</p>
<p>17. Declaration No. 25 provides that the provisions of the declaration “shall bind and inure to the benefit of and be enforceable by” the Association or “by the owner or owners of any property in</p>	<p>17. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 12 of Declaration No. 1 (page 24 of Exhibit 5) provides:</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>said tract....”</p> <p>Exhibit 5, § 12, p. 24.</p>	<p>“The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by Commonwealth Trust Company, Palos Verdes Homes Association, by the owner or owners of any property in said tract, their, and each of their, legal representatives, heirs, successors, assigns and failure by the Commonwealth Trust Company, Palos Verdes Homes Association or any property owner, or their legal representatives, heirs, successors or assigns, to enforce any of such restrictions, conditions, covenants, reservations, liens or charges shall in no event be deemed a waiver of the right to do so thereafter.”</p>
<p>18. Plaintiff John Harbison (“Harbison”) owns property located within the City.</p> <p>Harbison Decl., ¶ 2.</p>	<p>18. Undisputed</p>
<p>19. Harbison has owned property located within the City since 1992.</p> <p>Harbison Decl., ¶ 2.</p>	<p>19. Undisputed</p>
<p>20. Harbison owns property that is subject to the Association’s jurisdiction.</p> <p>Harbison Decl., ¶ 2.</p>	<p>20. Undisputed</p>
<p>21. Harbison is a member of the Association.</p>	<p>21. Undisputed</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Harbison Decl., ¶ 2.	
<p>22. Harbison is a member of plaintiff Citizens for Enforcement of Parkland Covenants ("CEPC.")</p> <p>Harbison Decl., ¶ 1.</p>	22. Undisputed
<p>23. Harbison has paid property taxes annually since purchasing his property in 1992.</p> <p>Harbison Decl., ¶ 2.</p>	23. Undisputed
<p>24. In the late 1930's, the Association faced an overwhelming tax debt and the threat of foreclosure of its parklands.</p> <p>Harbison Decl., ¶ 16; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>24. Undisputed; see Evidentiary Objection No. 7 to Harbison Decl. (lack of foundation; lack of personal knowledge). Objection to Exhibit 1 (SAC) to establish Fact 24. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>25. To avoid this result, the Association deeded its parklands to the City and to the District between 1938 and 1940.</p>	<p>25. Undisputed; see Evidentiary Objection No. 8 to Harbison Decl. (lack of foundation; lack of personal knowledge). Objection to Exhibit 1</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>Harbison Decl., ¶ 17; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>(SAC) to establish Fact 25. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>26. The Association has no current ownership of parklands.</p> <p>Harbison Decl., ¶ 18.</p>	<p>26. Disputed as to characterization of land at issue as "parkland" (see Defendants' Response to Fact 1 above); see Evidentiary Objection No. 9 to Harbison Decl. (lack of foundation; lack of personal knowledge). Dispute as Irrelevant - Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Declaration of Brant H Dveirin ("Dveirin Decl."), Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).)</p>
<p>27. Instead, the City has taken on both the ownership of and stewardship of the parks.</p> <p>Harbison Decl., ¶ 19.</p>	<p>27. Undisputed; see Evidentiary Objection No. 10 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>
<p>28. The City has established a Parklands Commission.</p>	<p>28. Disputed as phrased. The City has established a Parklands Committee,</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 2 3 Harbison Decl., ¶ 20. 4 5 6</p>	<p>which is an advisory body to the City Council. Declaration of Sheri Repp-Loadsman ("Repp Decl."), ¶ 5.</p>
<p>7 29. Applications by residents that would 8 impact parklands are brought to the 9 City's Parkland Commission and not 10 the Association. 11 12 Harbison Decl., ¶ 21. 13 14</p>	<p>29. Disputed. Only applications for some types of permits may be considered by the Parklands Committee for the Committee's non-binding recommendation to the City Council. Repp Decl., ¶ 5. See Evidentiary Objection No. 11 to Harbison Decl. (lack of foundation and personal knowledge).</p>
<p>15 30. Permits and enforcement actions 16 concerning parklands involve the City 17 and not the Association. 18 19 Harbison Decl., ¶ 22. 20 21 22 23</p>	<p>30. Disputed as incomplete. The City's permitting authority is limited to issuing permits under the PVEMC. Likewise, the City only enforces violations of the PVEMC. The City does not enforce private deed restrictions. Repp Decl., ¶ 6. See Evidentiary Objection No. 12 to Harbison Decl. (lack of foundation and personal knowledge).</p>
<p>24 31. The Association is no longer a body 25 that takes, holds, maintains and 26 regulates public parks and has not 27 done so since 1940. 28</p>	<p>31. Disputed; Irrelevant. Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25;</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>Harbison Decl., ¶ 23.</p>	<p>46:1-6.) SAC, pg. 15, para 36.c states that “the ASSOCIATION has the right and affirmative duty to enforce its reversion rights to Area A.” Plaintiffs’ SAC pleading is in direct dispute with Plaintiff Harbison’s declaration that the Association is not a body that can hold title to Area A. Harbison Decl., ¶ 23. Regardless as to whether the 1940s Deeds apply, the 1940 Deeds do not require the Association to currently take, hold, maintain and regulate parks – only to have the legal ability to do so. SAC, pg. 7, para. 14.i.-ii. [“it shall be the duty of [the Association] maintain the parks...”]; Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5 [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] [The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...<u>except to a body suitably constituted by law to take, hold, maintain and regulate public parks</u>”</p>
<p>32. On June 14, 1940, the Association</p>	<p>32. Undisputed. Objection to Exhibit 1</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>conveyed a number of parks to the City in multiple grant deeds.</p> <p>Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>(SAC) to establish Fact 32. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>33. The properties conveyed by the Association to the City on June 14, 1940 included the Panorama Parkland.</p> <p>Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>33. Undisputed as to conveyance; Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 33. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>34. The properties conveyed by the</p>	<p>34. Undisputed as to the fact; objection to</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>Association to the City on June 14, 1940 included Lot A of Tract 7540.</p> <p>Harbison Decl., ¶ 25; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>the certain evidence: see Evidentiary Objection No. 13 to Harbison Decl. (lack of foundation; lack of personal knowledge); none of the following cited exhibits establish the fact at issue - Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> <p>Objection to Exhibit 1 (SAC) to establish Fact 34. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>35. The properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 8652.</p> <p>Harbison Decl., ¶ 26; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract</p>	<p>35. Undisputed as to the fact; objection to the certain evidence: see Evidentiary Objection No. 14 to Harbison Decl. (lack of foundation; lack of personal knowledge); none of the following cited exhibits establish the fact at issue - Exhibit 6, p. 3, Item 5 [June 14, 1940</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>deed for Lot A of Tract 7540]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint]. Objection to Exhibit 1 (SAC) to establish Fact 35. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>36. The June 14, 1940 deeds conveying property from the Association to the City included restrictions on the future use and ownership of the conveyed property.</p> <p>Harbison Decl., ¶ 27; Exhibit 6, pp. 7, 9 and 10 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, pp. 4, 7 and 8 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>36. Undisputed as to the 1940s Deeds; Disputed as to the characterization of the Deed terms.</p>
<p>37. The June 14, 1940 deeds state that the transferred property "is to be used and administered forever for park and/or</p>	<p>37. Undisputed.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>recreation purposes...”</p> <p>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].</p>	
<p>38. The June 14, 1940 deeds state that as to the transferred real property “no buildings, structures or concessions shall be erected, maintained or permitted” on the property “except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”</p> <p>Harbison Decl., ¶ 29; Exhibit 6, p. 9, ¶ 4 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 4 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>38. Undisputed.</p>
<p>39. 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...”</p>	<p>39. Disputed as incomplete. Complete section states:</p> <p>“except to a body suitably constituted by law to take, hold, maintain and regulate public parks; <u>provided</u>, that portions of said realty may be dedicated to the public for parkway and/or street purposes.”</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5 [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>Exhibit 6, p. 9, ¶ 5 [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>40. 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. Disputed as phrased; the 1940s Deeds do not require a permit to be obtained:</p> <p>“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 under such rules and regulations as will not, in the opinion of said municipality or other body and of Palos Verdes Art Jury, impair or interfere with the use and maintenance of said realty for park and/or recreational purposes, as hereinbefore set forth.”</p> <p>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>See Evidentiary Objection No. 15 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>
<p>41. The June 14, 1940 deeds state that</p>	<p>41. Disputed as phrased – the 1940s Deeds</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>none of the use or ownership restrictions set forth in the June 14, 1940 deeds may be changed by the City or the Association even if the Association complies with its own internal procedures for modifying land use restrictions and obtains the written consent of two-thirds of the property owners.</p> <p>Harbison Decl., ¶ 32; Exhibit 6, p. 9, ¶ 7 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 7 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>do not prohibit any modification of the covenants and restrictions, only modification via certain procedures:</p> <p>“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 or Article VI of said Declaration of Establishment of Basic Protective Restrictions, and in that certain section, entitled “Modification of Restrictions”, of Declarations Nos. 2, 4, 5, 6, 12 and 27 of Establishment of Local Protective Restrictions hereinafter referred to.” Exhibit 6, p. 9, ¶ 7 [June 14, 1940 Deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 7 [June 14, 1940 Deed for Lot A of Tract 8652</p> <p>See Evidentiary Objection No. 16 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>
<p>42. The June 14, 1940 deeds state any breach of the use or ownership conditions “shall cause said realty to revert to the” Association.</p> <p>Harbison Decl., ¶ 33; Exhibit 6, p. 10 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 6 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>42. Undisputed; Incorrect citation to evidence – neither p. 10 of Exhibit 6 nor page 6 of Exhibit 7 provide support for the fact. Citations should be to page 9 of Exhibit 6 and page 5 of Exhibit 7.</p>
<p>43. The June 14, 1940 deeds state that the</p>	<p>43. Undisputed.</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>deed restrictions “inure to and pass with said property and each and every parcel of land therein, and shall apply to and bind the respective successors in interest of the parties hereto, and are...imposed upon said realty as a servitude in favor of said property and each and every parcel of land therein as the dominant tenement or tenements.”</p> <p>Harbison Decl., ¶ 34; Exhibit 6, p. 10 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 6 [June 14, 1940 deed for Lot A of Tract 8652].</p>	
<p>44. 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>44. Disputed. The June 14, 1940 Deed (Plaintiffs’ Evidence Exhibit) at page 3, section 2, incorporates the provisions, covenants, restrictions and covenants of 1931 Deed from Bank of America to Palos Verdes Homes Association (book 10494, page 360. (Croft Decl. Exh. B). The 1931 Deed expressly provides that the Palos Verdes Homes Association can “re-convey title to portions of said realty ... in exchange for other lands.” (Croft Decl. Exhibit B, Section 5).</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
	Not a proper fact; see Evidentiary Objection No. 17 to Harbison Decl. (lack of foundation; lack of personal knowledge); Disputed as to characterization of land at issue as "parkland" (see Defendants' Response to Fact 1 above).
45. 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. 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].	45. Not a proper fact; see Evidentiary Objection No. 18 to Harbison Decl. (lack of foundation; lack of personal knowledge).
46. 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. Harbison Decl., ¶ 37; Exhibit 6 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7 [June 14, 1940 deed for Lot A of Tract 8652].	46. Not a proper fact; see Evidentiary Objection No. 19 to Harbison Decl. (lack of foundation; lack of personal knowledge).

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>47. The City passed Resolution No. 12 formally accepting the deeds and confirming the land use restrictions.</p> <p>Harbison Decl., ¶ 38, Exhibit 8 [Resolution No. 12].</p>	<p>47. Undisputed.</p>
<p>48. Resolution No. 12 re-states verbatim each of the land use restrictions set forth in Fact Numbers 37 through 43 above.</p> <p>Harbison Decl., ¶ 38; Exhibit 8, pp. 11-12 [Resolution No. 12].</p>	<p>48. Undisputed; see Responses to Facts 40 and 41 (Disputed).</p>
<p>49. The City's Municipal Code makes it clear that a private person's use of public parkland for private purposes is a city nuisance. (City of PVE Mun. Code, §§ 17.32.050, 18.16.020).</p> <p>Request for Judicial Notice, Exhibits A and B.</p>	<p>49. Not a proper fact. Disputed. The cited PVEMC sections do not state this. PVEMC 17.32.050, Violation – Nuisance, states:</p> <p>Any building or structure erected or maintained, or any use of property, contrary to these provisions of this title and PVEMC Title 18 shall be unlawful and a public nuisance and the city attorney shall, upon order of the city council, immediately commence action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
16 17 18 19 20 21 22 23 24	50. The City Municipal Code declares it is the "right and duty" of all residents to "participate and assist the city officials" in the enforcement of the City's zoning and building codes. (City of PVE Mun. Code, § 17.32.050). Request for Judicial Notice, Exhibit A.	grant such relief as will abate or remove such building, structure or use, and restrain and enjoin any person from setting up, erecting or maintaining such building or structure, or using any property contrary to the provisions of this title and PVEMC Title 18. It shall be the right and duty of every citizen to participate and assist the city officials in the enforcement of the provisions of this title and PVEMC Title 18. PVEMC 18.16.020 simply states the various uses allowed in the OS zone. See Request for Judicial Notice, Exhibit E. Disputed as to characterization of land in question as "parkland" (see Defendants' Response to Fact 1 above).
25 26 27 28	51. Similarly the Municipal Code requires the city attorney to commence legal proceedings and take other legal steps to remove illegal structures and abate	50. Not a proper fact; Immaterial; Disputed as incomplete. In order to bring an enforcement action under the PVEMC, the City Council must first declare a nuisance, and then order the City Attorney to commence an action to abate the nuisance. Request for Judicial Notice, Exhibit E. 51. Not a proper fact; Immaterial; Disputed as incomplete. In order to bring an enforcement action under the PVEMC, the City Council must first declare a

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 2 3 4 5 6 7 8 9</p> <p>illegal uses of public parklands. (City of PVE Mun. Code, § 17.32.050).</p> <p>Request for Judicial Notice, Exhibit A.</p>	<p>nuisance, and then order the City Attorney to commence an action to abate the nuisance.</p> <p>Request for Judicial Notice, Exhibit E.</p> <p>Disputed as to characterization of land in question as “public parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>52. The prior and current owners of 900 Via Panorama have paid for and constructed encroachments on the Panorama Parkland by erecting or maintaining landscaping and improvements without City approval.</p> <p>Harbison Decl., ¶¶ 39-45; Exhibit 1 [Second Amended Complaint], ¶ 20; Exhibit 15, ¶ 20 [City’s answer to second amended complaint; Exhibit 16 [1972 letter from Association]; Exhibit 17 [July 18, 2003 letter from City]; Exhibit 18 [August 11, 2003 City memo by Allan Rigg]; Exhibit 19 [April 14, 2009 letter from City]; Exhibit 20 [September 19, 2011 letter from City].</p>	<p>52. Irrelevant; see Evidentiary Objection No. 20 to Harbison Decl. (lack of foundation; no personal knowledge); Evidentiary Objection No. 21 to Harbison Decl. (lack of foundation, lack of personal knowledge). Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 52. Exhibit 1 is Plaintiffs’ Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>26 27 28</p> <p>53. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association’s 1972</p>	<p>53. Irrelevant; Disputed as incomplete. Complete quote is:</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 letter stated that the Board of Directors 2 for the Association had determined 3 that "the use of parkland for the 4 benefit of a single private residence is 5 not consistent with the intent of the 6 deed restrictions and such use should 7 be disallowed..."</p> <p>8 Harbison Decl., ¶ 40; Exhibit 16, [1972 letter 9 by Patricia Gribben of Association to City].</p>	<p>10 "If the City finds justification for the 11 continued existence or use of the paved 12 driveway, etc., within the parkland 13 please advise the Board so that further 14 consideration may be given the matter." 15 Exhibit 16</p> <p>16 In addition, the driveway in question 17 was used for Fire and Police Access 18 (Exhibit 17). Disputed as to 19 characterization of Area A as "parkland" 20 (see Defendants' Response to Fact 1 21 above).</p>
<p>22 54. On July 18, 2003, the City sent the 23 Lugliani a letter requesting that the 24 Lugliani remove encroachments on 25 the "City parklands adjacent to the 26 west side" of the property at 900 Via 27 Panorama.</p> <p>28 Harbison Decl., ¶ 41; Exhibit 18 [July 18, 2003 letter].</p>	<p>54. Undisputed; Irrelevant; Incorrect citation to evidence – Exhibit 18 is not the letter cited; rather Exhibit 17 is the correct letter.</p>
<p>55. On April 14, 2009, Allan Rigg, the then-Public Works and Planning Director, wrote to the Lugliani and requested that all "unauthorized encroachments on City Parkland Adjacent to 900 Via Panorama" be removed.</p>	<p>55. Undisputed; Irrelevant.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 Harbison Decl., ¶ 43; Exhibit 19, [April 14, 2 3 2009 letter by Allan Rigg].</p>	
<p>4 5 56. On September 19, 2011, the City sent 6 the Luglianis a “final notice” 7 requesting that the Luglianis remove 8 “non-permitted encroachments and 9 debris located on the City’s Parkland.” 10 11 Harbison Decl., ¶ 44; Exhibit 20 [September 12 19, 2011].</p>	<p>56. Undisputed; Irrelevant.</p>
<p>13 57. The September 19, 2011 “final notice” 14 by the City to the Luglianis requested 15 that the Luglianis remove “any fences, 16 walls, landscape, tree houses, and any 17 other man-made items beyond your 18 property line.” 19 20 Exhibit 20 [September 19, 2011 letter by 21 City].</p>	<p>57. Undisputed; Irrelevant</p>
<p>22 58. The encroachment on the Panorama 23 Parkland includes landscaping, a 24 baroque wrought-iron gate with stone 25 pillars and lion statues, a winding 26 stone driveway, dozens of trees (some 27 of which are as high as 50 feet), a 28 now-overgrown athletic field half the</p>	<p>58. Disputed – see Evidentiary Objections No. 21 to Harbison Decl. (lack of foundation; lack of personal knowledge). Exhibit 18 is not properly authenticated and does not contain facts as set forth in Fact 103 (see Evidentiary Objection No. 31); Exhibit 18 does not</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>size of a football field, a 21-foot-high retaining wall and other retaining walls. The stone pillars and lion statues are within the City's easements and right of way.</p> <p>Harbison Decl., ¶ 45; Exhibit 18 [August 11, 2003 City memo by Allan Rigg].</p>	<p>contain facts as set forth in Fact 58; Irrelevant. Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>59. At the April 19, 2012 meeting of the Association's board of directors, the Association considered and approved an agreement to convey the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 47; Exhibit 21 [Resolution 166, Dated April 19, 2012].</p>	<p>59. Disputed as phrased – Resolution 166 (Exhibit 21) provides the Palos Verdes Homes Association board's authorization to execute the "Final Draft Memorandum of Understanding" or "MOU", a global settlement agreement not a mere agreement to convey the Area A to Thomas Lieb. Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>60. On May 8, 2012, the City held a city council meeting to consider whether to convey the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 48.</p>	<p>60. Undisputed; see Evidentiary Objection No. 22 to Harbison Decl. (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>

<p style="text-align: center;"><u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p style="text-align: center;"><u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>61. The City did not post a sign at the Panorama Parkland to publicize that the proposed conveyance of the Panorama Parkland would be discussed at the May 8, 2012 city council meeting.</p> <p>Harbison Decl., ¶ 49; Exhibit 25, p. 2, li. 23-24 [Special Interrogatories to City]; Exhibit 26, p. 5, li. 25-27 [City's Response to Special Interrogatories].</p>	<p>61. Undisputed; Irrelevant. See Evidentiary Objection No. 23 to Harbison Decl. (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>62. The City did not perform a mailing of notices to the neighbors adjacent to the Panorama Parkland to publicize that the proposed conveyance of the Panorama Parkland would be discussed at the May 8, 2012 city council meeting.</p> <p>Harbison Decl., ¶ 50; Exhibit 25 p. 3, li. 2-3 [Special Interrogatories to City]; Exhibit 26, p. 6, li. 8-9 [City's Response to Special Interrogatories].</p>	<p>62. Undisputed; Irrelevant. See Evidentiary Objection No. 24 to Harbison Decl. (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>63. The City did not publish a notice in any local newspapers to publicize that the proposed conveyance of the</p>	<p>63. Undisputed; Irrelevant. See Evidentiary Objection No. 25 to Harbison Decl. (lack of foundation; lack of personal</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 Panorama Parkland would be 2 discussed at the May 8, 2012 city 3 council meeting. 4 5 6 Harbison Decl., ¶ 51; Exhibit 25, p. 2, li. 27- 7 28 [Special Interrogatories to City]; Exhibit 8 26, p. 6, li. 1-2 [City's Response to Special 9 Interrogatories].</p>	<p>knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>10 64. At the May 8, 2012 city council 11 meeting, the City approved the 12 conveyance of the Panorama Parkland. 13 14 Harbison Decl., ¶ 52; Exhibit 12 [The MOU]. 15 16 17 18 19 20</p>	<p>64. Undisputed; cited evidence does not establish Fact 64 (Exhibit 12 does not set forth when the City approved the MOU or the conveyance); see Evidentiary Objection No. 26 to Harbison Decl. (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>
<p>21 65. By quitclaim deed recorded September 22 5, 2012, Instrument Number 23 20121327414, the Panorama Parkland 24 was conveyed from the City to the 25 Association. 26 27 Harbison Decl., ¶ 54; Exhibit 9 [September 5, 28 2012 Quitclaim Deed].</p>	<p>65. Undisputed as to 2012 Quitclaim Deed. Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>66. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 55; Exhibit 10 [September 5, 2012 Grant Deed].</p>	<p>66. Undisputed as to 2012 Grant Deed.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>67. 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>67. Disputed. Exhibit 9 (The 2012 Quitclaim Deed) states: “Upon obtaining any and all required permits and approvals from the Grantor, Grantee (Palos Verdes Homes Association) may construct any of the following...”. The grantee is not Lieb. Exhibit 9, p. 1.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>68. The September 5, 2012 grant deed states in paragraph 2 that although the Panorama Parkland is to remain open space “it is the intent of the</p>	<p>68. Undisputed as to 2012 Grant Deed, though quote is incomplete: “it is the intent of the parties, subject to compliance with the requirements for</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>parties....that [Thomas 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., ¶ 57; Exhibit 10, p. 2, ¶ 2 [September 5, 2012 Grant Deed].</p>	<p>such development of accessory structures of the City and Grantor that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,' . . . Grantee shall apply for approval of any such permitted structures by the Grantor and the City in accordance with standard procedure and in conformance with applicable covenants, ordinances, and codes.”</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>69. 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>69. Disputed as phrased. Thomas Lieb is not an individual, but is the “Trustee, The Via Panorama Trust U/Do May 2, 2012” in this action. Cited evidence does not support Fact Number 69 - page 1 is the caption page of the verified answer.</p>
<p>70. 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</p>	<p>70. Undisputed.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
[Via Panorama Trust Agreement].	
<p>71. 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>71. Undisputed; Irrelevant; see Evidentiary Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>
<p>72. 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>72. Not a Proper Fact; Improper Legal Conclusion; see Evidentiary Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>
<p>73. The current owners of the Panorama Parkland intend to use that property for private uses.</p> <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>73. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, the property remains subject to an open space easement. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>74. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change</p>	<p>74. Irrelevant. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>Issue No. 2. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Structures on the Panorama Parkland.</p>	
<p>75. The June 14, 1940 deeds state that as to the transferred real property “no buildings, structures or concessions shall be erected, maintained or permitted” on the property “except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”</p> <p>Harbison Decl., ¶ 29; Exhibit 6, p. 9, ¶ 4 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 4 [June 14, 1940 deed for Lot A of Tract 8652].</p>	<p>75. Undisputed.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>76. The prior and current owners of 900 Via Panorama have paid for and constructed encroachments on the Panorama Parkland by erecting or maintaining landscaping and improvements without City approval.</p> <p>Harbison Decl., ¶¶ 39-45; Exhibit 1 [Second Amended Complaint], ¶ 20; Exhibit 15, ¶ 20 [City's answer to second amended complaint; Exhibit 16 [1972 letter from Association]; Exhibit 17 [July 18, 2003 letter from City]; Exhibit 18 [August 11, 2003 City memo by Allan Rigg]; Exhibit 19 [April 14, 2009 letter from City]; Exhibit 20 [September 19, 2011 letter from City].</p>	<p>76. Irrelevant; see Evidentiary Objection No. 20 to Harbison Decl. (lack of foundation; no personal knowledge); Evidentiary Objection No. 21 to Harbison Decl. (lack of foundation, lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 76. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>77. By quitclaim deed recorded September 5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association.</p> <p>Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p>	<p>77. Undisputed as to 2012 Quitclaim Deed. Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>78. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 55; Exhibit 10 [September 5, 2012 Grant Deed].</p>	<p>78. Undisputed as to 2012 Grant Deed.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>79. 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>79. Disputed. Exhibit 9 (The 2012 Quitclaim Deed) states: “Upon obtaining any and all required permits and approvals from the Grantor, Grantee (Palos Verdes Homes Association) may construct any of the following . . .”. The grantee is not Lieb. Exhibit 9, p. 1.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>80. The September 5, 2012 grant deed states in paragraph 2 that although the Panorama Parkland is to remain open space “it is the intent of the parties....that [Thomas Lieb] may</p>	<p>80. Undisputed as to 2012 Grant Deed, though quote is incomplete: “it is the intent of the parties, subject to compliance with the requirements for such development of accessory</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,' ...”</p> <p>Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2 [September 5, 2012 Grant Deed].</p>	<p>structures of the City and Grantor that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,' . . . Grantee shall apply for approval of any such permitted structures by the Grantor and the City in accordance with standard procedure and in conformance with applicable covenants, ordinances, and codes.”</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>81. The current owners of the Panorama Parkland intend to use that property for private uses.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>81. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, the property remains subject to an open space easement. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>82. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change</p>	<p>82. Irrelevant. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>83. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association’s 1972 letter stated that the Board of Directors for the Association had determined that “the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed...”</p> <p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p>	<p>83. Irrelevant; Dispute as to characterization – letter is undated and quote is incomplete: “If the City finds justification for the continued existence or use of the paved driveway, etc., within the parkland please advise the Board so that further consideration may be given the matter.” In addition, the driveway in question was used for Fire and Police Access (Exhibit 17). Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>

<p style="text-align: center;"><u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u></p>	<p style="text-align: center;"><u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u></p>
<p>Issue No. 3. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Conveyance or Sale Except to a Body Suitably Constituted by Law to Take, Hold, Maintain and Regulate Public Parks.</p>	
<p>84. In the late 1930's, the Association faced an overwhelming tax debt and the threat of foreclosure of its parklands.</p> <p>Harbison Decl., ¶ 16; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p>	<p>84. Disputed as to characterization of land at issue as "parkland" (see Defendants' Response to Fact 1 above); see Evidentiary Objection No. 7 to Harbison Decl. (lack of foundation; lack of personal knowledge). Objection to Exhibit 1 (SAC) to establish Fact 84. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>85. To avoid this result, the Association deeded its parklands to the City and to the District between 1938 and 1940.</p> <p>Harbison Decl., ¶ 17; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's</p>	<p>85. Undisputed as to fact; see Evidentiary Objection No. 8 to Harbison Decl. (lack of foundation; lack of personal knowledge). Disputed as to characterization of land at issue as "parkland" (see Defendants' Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 85. Exhibit 1 is</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
answer to second amended complaint].	Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4 th 704, 720.)
86. The Association has no current ownership of parklands. Harbison Decl., ¶ 18.	86. Disputed as to characterization of land in question as parkland (see Defendants' Response to Fact 1 above); see Evidentiary Objection No. 9 to Harbison Decl. (lack of foundation; lack of personal knowledge). Dispute as Irrelevant - Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).)
87. Instead, the City has taken on both the ownership of and stewardship of the parks. Harbison Decl., ¶ 19.	87. Undisputed; see Evidentiary Objection No. 10 to Harbison Decl. (lack of foundation; lack of personal knowledge).
88. The City has established a Parklands Commission. Harbison Decl., ¶ 20.	88. Disputed as phrased. The City has established a Parklands Committee, which is an advisory body to the City Council.

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
	Repp Decl., ¶ 5.
<p>89. Applications by residents that would impact parklands are brought to the City's Parkland Commission and not the Association.</p> <p>Harbison Decl., ¶ 21.</p>	<p>89. Disputed. Only applications for some types of permits (i.e., only those that require City Council approval) may be considered by the Parklands Committee for the Committee's non-binding recommendation to the City Council.</p> <p>Repp Decl., ¶ 5. See Evidentiary Objection No. 11 to Harbison Decl.</p>
<p>90. Permits and enforcement actions concerning parklands involve the City and not the Association.</p> <p>Harbison Decl., ¶ 22.</p>	<p>90. Disputed as incomplete. The City's permitting authority is limited to issuing permits under the PVEMC. Likewise, the City only enforces violations of the PVEMC. The City does not enforce private deed restrictions.</p> <p>Repp Decl., ¶ 6. See Evidentiary Objection No. 22 to Harbison Decl.</p>
<p>91. The Association is no longer a body that takes, holds, maintains and regulates public parks and has not done so since 1940.</p> <p>Harbison Decl., ¶ 23.</p>	<p>91. Disputed; Irrelevant. Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).) Regardless as to whether the 1940s Deeds apply, the 1940 Deeds do not require the Association to currently take, hold, maintain and regulate parks –</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
	<p>only to have the legal ability to do so. SAC, pg. 7, para. 14.i.-ii. [“it shall be the duty of [the Association] maintain the parks...”]; Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5 [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] [The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...<u>except to a body suitably constituted by law to take, hold, maintain and regulate public parks</u>”]</p>
<p>92. On June 14, 1940, the Association conveyed a number of parks to the City in multiple grant deeds.</p> <p>Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City’s answer to second amended complaint].</p>	<p>92. Undisputed. Objection to Exhibit 1 (SAC) to establish Fact 92. Exhibit 1 is Plaintiffs’ Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>93. 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 [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>93. Disputed as incomplete quote: “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.”</p>
<p>94. 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].</p>	<p>94. Undisputed as to 2012 Quitclaim Deed. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>95. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb. Harbison Decl., ¶ 55; Exhibit 10 [September 5, 2012 Grant Deed].</p>	<p>95. Undisputed as to 2012 Grant Deed. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>96. 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>96. Disputed as phrased. Thomas Lieb is not an individual, but is the “Trustee, The Via Panorama Trust U/Do May 2, 2012” in this action. Cited evidence does not support Fact 69 – Exhibit 13, page 1 is the caption page of the Verified Answer.</p>
<p>97. 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>97. Undisputed.</p>
<p>98. 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>98. Undisputed; Irrelevant; see Evidentiary Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>
<p>99. 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>99. Not a Proper Fact; Improper Legal Conclusion; see Evidentiary Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>100. The current owners of the Panorama Parkland intend to use that property for private uses.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>100. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, the property remains subject to an open space easement. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>101. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>101. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU, and as required by the PVEMC. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p style="text-align: center;">Issue No. 4. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Purport to Authorize Landscaping and Construction in Violation of the June 14, 1940 Deed Restrictions that Bar Improvements that Interfere with the Use and Maintenance of the Parkland for Park and Recreation Purposes.</p>	
<p>102. 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>102. Disputed as phrased; 1940s Deeds do not require a permit to be obtained:</p> <p>“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 under such rules and regulations as will not, in the opinion of said municipality or other body and of Palos Verdes Art Jury, impair or interfere with the use and maintenance of said realty for park and/or recreational purposes, as hereinbefore set forth.”</p> <p>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>See Evidentiary Objection No. 15 to Harbison Declaration (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as “parkland”.</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>103. The encroachment on the Panorama Parkland includes landscaping, a baroque wrought-iron gate with stone pillars and lion statues, a winding stone driveway, dozens of trees (some of which are as high as 50 feet), a now-overgrown athletic field half the size of a football field, a 21-foot-high retaining wall and other retaining walls. The stone pillars and lion statues are within the City's easements and right of way.</p> <p>Harbison Decl., ¶ 45; Exhibit 18 [August 11, 2003 City memo by Allan Rigg].</p>	<p>103. Disputed – see Evidentiary Objections No. 21 to Harbison Decl. (lack of foundation; lack of personal knowledge). Exhibit 18 is not properly authenticated and does not contain facts as set forth in Fact 103 (see Evidentiary Objection No. 31); Irrelevant. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>104. 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>104. Disputed. Exhibit 9 (The 2012 Quitclaim Deed) states: “Upon obtaining any and all required permits and approvals from the Grantor, Grantee (Palos Verdes Homes Association) may construct any of the following . . .”. The grantee is not Lieb. Exhibit 9, p. 1. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 Harbison Decl., ¶ 56; Exhibit 9, p. 2, ¶ 6</p> <p>2</p> <p>3 [September 5, 2012 Quitclaim Deed].</p> <p>4</p>	
<p>5 105. The September 5, 2012 grant deed</p> <p>6 states in paragraph 2 that although the</p> <p>7 Panorama Parkland is to remain open</p> <p>8 space “it is the intent of the</p> <p>9 parties....that [Thomas Lieb] may</p> <p>10 construct any of the following: a</p> <p>11 gazebo, sports court, retaining wall,</p> <p>12 landscaping, barbeque, and/or any</p> <p>13 other uninhabitable ‘accessory</p> <p>14 structure,’ ...”</p> <p>15</p> <p>16 Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2</p> <p>17 [September 5, 2012 Grant Deed].</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>105. Undisputed as to 2012 Grant Deed,</p> <p>though quote is incomplete:</p> <p>“it is the intent of the parties, subject to</p> <p>compliance with the requirements for</p> <p>such development of accessory</p> <p>structures of the City and Grantor that</p> <p>[Thomas Lieb] may construct any of the</p> <p>following: a gazebo, sports court,</p> <p>retaining wall, landscaping, barbeque,</p> <p>and/or any other uninhabitable</p> <p>‘accessory structure,’ . . . Grantee shall</p> <p>apply for approval of any such permitted</p> <p>structures by the Grantor and the City in</p> <p>accordance with standard procedure and</p> <p>in conformance with applicable</p> <p>covenants, ordinances, and codes.”</p> <p>Disputed as to characterization of Area A as</p> <p>“parkland” (see Defendants’ Response to Fact 1</p> <p>above).</p>
<p>24 106. The current owners of the Panorama</p> <p>25 Parkland intend to use that property for</p> <p>26 private uses.</p> <p>27</p> <p>28 Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3</p>	<p>106. Disputed as phrased. See Evidentiary</p> <p>Objection Nos. 29-30 to Harbison Decl.</p> <p>(lack of foundation; lack of personal</p> <p>knowledge). As set forth in Exhibits 23</p> <p>and 24, the property remains subject to</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>[March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>an open space easement. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>107. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p>	<p>107. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p>108. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association’s 1972 letter stated that the Board of Directors for the Association had determined that “the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed...”</p>	<p>108. Irrelevant; dispute as to characterization – letter is undated and quote is incomplete:</p> <p>“If the City finds justification for the continued existence or use of the paved driveway, etc., within the parkland please advise the Board so that further consideration may be given the matter.”</p> <p>In addition, the driveway in question was used for Fire and Police Access.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p>	<p>(Exhibit 17) Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>
<p align="center">Issue No. 5. The Court Should Grant Summary Adjudication of the Waste of Public Funds/Ultra Vires Cause of Action Because there are no Triable Issues of Material Fact that the June 14, 1940 Deeds Created a Public Trust and that the City Violated that Trust by Executing the September 2012 Deeds.</p>	
<p>109. The properties conveyed by the Association to the City on June 14, 1940 included the Panorama Parkland.</p> <p>Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City’s answer to second amended complaint].</p>	<p>109. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 109. Exhibit 1 is Plaintiffs’ Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p>
<p>110. By quitclaim deed recorded September 5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association.</p>	<p>110. Undisputed as to 2012 Quitclaim. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 Harbison Decl., ¶ 54; Exhibit 9 [September 5,</p> <p>2 2012 Quitclaim Deed].</p>	
<p>5 111. The City passed Resolution No. 12</p> <p>6 formally accepting the deeds and</p> <p>7 confirming the land use restrictions.</p> <p>8</p> <p>9 Harbison Decl., ¶ 38, Exhibit 8 [Resolution</p> <p>10 No. 12].</p>	<p>111. Undisputed</p>
<p>11 Issue No. 6. The Court Should Grant Summary Adjudication of the Waste of Public</p> <p>12 Funds/Ultra Vires Cause of Action based on the Doctrine of Collateral Estoppel Because of</p> <p>13 the Prior Litigation Concerning these Deed Restrictions.</p>	
<p>14 112. In 1949, the City litigated substantially</p> <p>15 identical deed restrictions in <i>Roberts v.</i></p> <p>16 <i>City of Palos Verdes Estates</i> (1949) 93</p> <p>17 Cal.App.2d 545 (“<i>Roberts.</i>”)</p> <p>18</p> <p>19 <i>Roberts v. City of Palos Verdes Estates</i> (1949)</p> <p>20 93 Cal.App.2d 545.</p>	<p>112. Disputed. This is a legal conclusion,</p> <p>not a fact.</p>
<p>21 113. The deed restriction at issue in Roberts</p> <p>22 was:</p> <p>23</p> <p>24 “that except as provided</p> <p>25 above, no buildings, structures</p> <p>26 or concessions shall be</p> <p>27 erected, maintained or</p> <p>28 permitted upon the said realty,</p> <p>except such as, (in the opinion</p> <p>of the Park Department of</p> <p>Palos Verdes Homes</p> <p>Association), are properly</p> <p>incidental to the convenient</p>	<p>113. Irrelevant.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>and/or proper use of said realty for park purposes.” <i>(Roberts, at 546).</i></p>	
<p>114. In the <i>Roberts</i> case, the City argued that it could substitute its “best judgment” for the use of the park for the express terms of the deed. <i>(Roberts, at 546-47).</i></p>	<p>114. Irrelevant. This is a legal conclusion, not a fact.</p>
<p>Issue No. 7. The Court Should Grant Summary Adjudication as to the Affirmative Defense of Standing Because there is no Triable Issue of Fact Regarding CEPC and Harbison’s Right to Assert Claims.</p>	
<p>115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no standing in this matter. Exhibit 13 [Lieb and Lugliani answer to second amended complaint].</p>	<p>115. Undisputed</p>
<p>116. The Association has asserted as its second affirmative defense that Plaintiffs have no standing in this matter. Exhibit 14 [Association’s answer to second amended complaint].</p>	<p>116. Undisputed</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
117. The City has asserted as its eighth affirmative defense that Plaintiffs have no standing in this matter. Exhibit 15 [City's answer to second amended complaint].	117. Undisputed
118. Plaintiff John Harbison ("Harbison") owns property located within the City. Harbison Decl., ¶ 2; Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second Amended Complaint].	118. Undisputed
119. Harbison has owned property located within the City since 1992. Harbison Decl., ¶ 2.	119. Undisputed
120. Harbison owns property that is subject to the Association's jurisdiction. Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second Amended Complaint].	120. Undisputed
121. Harbison is a member of the Association.	121. Undisputed

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1 Harbison Decl., ¶ 2; Exhibit 14, ¶ 9</p> <p>2 [Association's Answer to Complaint]; Exhibit</p> <p>3 15, ¶ 9 [City's Answer to Second Amended</p> <p>4 Complaint].</p>	
<p>5 122. Harbison is a member of plaintiff</p> <p>6 Citizens for Enforcement of Parkland</p> <p>7 Covenants.</p> <p>8 Harbison Decl., ¶ 1.</p>	<p>9 122. Undisputed</p>
<p>10 123. Harbison has paid property taxes</p> <p>11 annually since purchasing his property</p> <p>12 in 1992.</p> <p>13 Harbison Decl., ¶ 2.</p>	<p>14 123. Undisputed</p>
<p>15 124. The Association's bylaws state that its</p> <p>16 members shall be constituted of "all</p> <p>17 who hold legal title of record" to any</p> <p>18 lot located within Palos Verdes</p> <p>19 Estates. (By-Laws, 24 Art. I, § 1(c).)</p> <p>20 "Such building title shall be the sole</p> <p>21 qualification for membership in the</p> <p>22 [Association]."</p> <p>23 Exhibit 5, p. 30, Art I, § 1(c).</p>	<p>24 124. Disputed as phrased. Complete quote</p> <p>25 states:</p> <p>26 "The members of this corporation shall</p> <p>27 be all who hold legal title of record to</p> <p>28 any such building site or who, while</p> <p>holding a contract for the purchase of</p> <p>any such building site from the</p> <p>Commonwealth Trust Company, shall</p> <p>reside upon the building site described</p> <p>in such contract. Such holding of legal</p> <p>title or such residence shall be the sole</p> <p>qualification for membership in the</p> <p>corporation. Contract holders shall</p> <p>establish their right to membership to</p> <p>the satisfaction of the Secretary of this</p> <p>corporation."</p> <p>Exhibit 5, p. 30, Art I, § 1(c).</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Issue No. 8. The Court Should Grant Summary Adjudication as to the Affirmative Defense of Non-Joinder Because there is no Triable Issue of Fact Regarding the District's Participation in this Action.	
125. The Association has asserted as its seventh affirmative defense that there is an indispensable party missing from this action. Exhibit 14 [Association's Answer to Second Amended Complaint].	125. Undisputed
126. The City has asserted as its thirteenth affirmative defense that there is an indispensable party missing from this action. Exhibit 15 [City's Answer to Second Amended Complaint].	126. Undisputed
127. On April 11, 2014, the Court issued a minute order containing a tentative ruling on defendants' demurrers and motions to strike. Lewis Decl., ¶ 7; Exhibit 27 [April 11, 2014 minute order].	127. Undisputed

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>128. On May 21, 2014 the Court confirmed that the April 11, 2014 tentative ruling would be the final ruling of the Court.</p> <p>Lewis Decl., ¶ 7; Exhibit 28 [May 21, 2014 Reporter's Transcript].</p>	<p>128. Undisputed</p>
<p>129. The April 11, 2014 order included the following ruling by the Court: "The matters now before this court do not depend, in this Court's view, on the MOU and who were or were not parties to it."</p> <p>Exhibit 28, p. 9, li. 13-14 [May 21, 2014 Reporter's Transcript].</p>	<p>129. Not a proper fact; Incorrect citation to evidence – Exhibit 28 does not contain the quote or the April 11, 2014 order.</p>
<p>130. The April 11, 2014 order included the following ruling by the Court: "The parties to the MOU made a deal and took the risk that what they were doing would not be challenged or, if challenged, the challenge would not be successful. That challenge is what they are now facing, but the MOU, in this court's view, does not need to be vacated or set aside for the restrictions allegedly tied to [the Panorama</p>	<p>130. Not a proper fact; Incorrect citation to evidence – Exhibit 28 does not contain the quote or the April 11, 2014 order.</p>

<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>Parkland] to be enforced if they have been or are being violated. The private agreement of parties to the MOU does not bind others with an interest or preclude a court from acting...”</p> <p>Exhibit 28, p. 8, li. 28 – p. 9, li. 5 [May 21, 2014 Reporter’s Transcript].</p>	
<p>131. On May 1, 2014, the plaintiffs requested dismissal, without prejudice, of the Palos Verdes Peninsula Unified School District (“District.”)</p> <p>Lewis Decl., ¶ 8; Exhibit 29 [Notice of Entry of Dismissal].</p>	<p>131. Undisputed.</p>
<p>132. On May 5, 2014, the clerk entered the dismissal of the District.</p> <p>Lewis Decl., ¶ 8, Exhibit 29 [Notice of Entry of Dismissal]</p>	<p>132. Undisputed.</p>
<p>133. On May 7, 2014, plaintiffs served notice of the dismissal of the District.</p> <p>Lewis Decl., ¶ 8; Exhibit 29 [Notice of Entry of Dismissal].</p>	<p>133. Undisputed.</p>
<p>134. On October 31, 2014, plaintiffs’ stipulated to leave to file a cross-complaint against the District.</p>	<p>134. Undisputed, Irrelevant.</p>

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<u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u>	<u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u>
Lewis Decl., ¶ 9; Exhibit 30 [October 31, 2014 letter by Lewis to Dveirin].	
135. No defendant has filed a cross-complaint in this matter. Lewis Decl., ¶ 9.	135. Undisputed, Irrelevant.
136. No defendant took any action in response to the request for entry of dismissal. Lewis Decl., ¶ 9.	136. Undisputed, Irrelevant.
137. No defendant has accepted plaintiffs' stipulation for leave to file a cross-complaint against the District. Lewis Decl., ¶ 9.	137. Undisputed, Irrelevant.

DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE

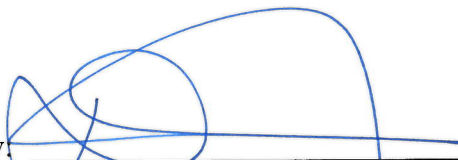
<u>DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE</u>	<u>PLAINTIFFS' RESPONSE AND SUPPORTING EVIDENCE</u>
<p>1. At least 10 members of the Citizens for Enforcement of Parkland and Covenants are not residents of Palos Verdes Estates.</p> <p>Dveirin Decl., Exhibit A (Plaintiffs' Responses to Special Interrogatories, Set One Propounded by Defendant Palos Verdes Homes Association, Response to Special Interrogatory No. 1 [pg. 2, lns. 17-18].)</p>	<p>1.</p>
<p>2. Area A (as legally described in Plaintiffs' Evidence, Exhibit 3) is part of Business and Public Use Districts Class F under Declaration No. 1.</p> <p>Croft Decl. ¶ 11; Exhibit A to Croft Decl. [Declaration No. 1].</p>	<p>2.</p>
<p>3. Plaintiff Harbison did not did not file a recall petition or take any other administrative action to contest or challenge the Association's decision to enter into the MOU.</p>	<p>3.</p>

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<u>DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE</u>	<u>PLAINTIFFS' RESPONSE AND SUPPORTING EVIDENCE</u>
Dveirin Decl., Exhibit B (Harbison Depo., pgs. 137, ln. 8-138, ln. 16.)	
<p>4. The Association is a body duly constituted to take and hold parkland within the meaning of the 1940 deeds.</p> <p>Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6.)</p>	4.

Dated: May 15, 2015

ARMBRUSTER GOLDSMITH & DELVAC LLP

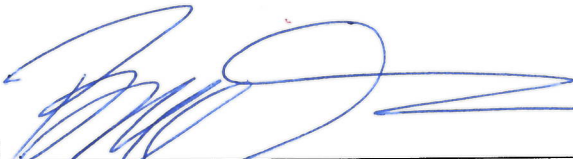
By: 

 DAMON P. MAMALAKIS
 Attorneys for Defendant

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

Dated: May 15, 2015

LEWIS BRISBOIS BISGAARD SMITH LLP

By: 

 Brant H. Dveirin
 Attorneys for Defendant

PALOS VERDES HOMES ASSOCIATION