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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 CITIZENS FOR ENFORCEMENT OF  
11 PARKLAND COVENANTS, an  
unincorporated association,

12 Plaintiff and Petitioner,

13 v.

14 CITY OF PALOS VERDES ESTATES, a  
15 municipal corporation; PALOS VERDES  
HOMES ASSOCIATION, a California  
16 corporation; PALOS VERDES PENINSULA  
UNIFIED SCHOOL DISTRICT, a political  
17 subdivision of the State of California,

18 Defendants and Respondents,  
19

20 \_\_\_\_\_  
21 ROBERT LUGLIANI and DOLORES A.  
LUGLIANI, as co-trustees of THE  
22 LUGLIANI TRUST; THOMAS J. LIEB,  
TRUSTEE, THE VIA PANORAMA TRUST  
23 U/DO MAY 2, 2012 and DOES 1 through  
20,  
24 Defendants and Real Parties in Interest.

CASE NO. BS142768

*Assigned to the Hon. Barbara A. Meiers*

**CITY OF PALOS VERDES ESTATES'  
SUPPLEMENTAL BRIEF IN  
SUPPORT OF CITY'S DEMURRER**

Date: May 21, 2014  
Time: 9:30 a.m.  
Dept.: 12

Petition and Complaint Filed: May 13,  
2013

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1 On May 2, 2014, the court invited the parties to file supplemental briefs regarding  
2 the court's April 11, 2014 tentative ruling on the demurrers to the first and second causes  
3 of action. In this Supplemental Brief, the City addresses two elements of the tentative  
4 ruling: first, that the public trust doctrine does not apply to Area A due to the  
5 Association's reversionary interest; and second, that the proposed bifurcation of the writ  
6 and civil actions would offend the single judgment rule because no final judgment has  
7 issued regarding the writ cause of action.

8 **I. THE PUBLIC TRUST DOCTRINE IS INAPPLICABLE TO AREA A**  
9 **AS A MATTER OF LAW**

10 The tentative ruling suggested that the deficiencies in Petitioners' standing allegations  
11 might be addressed by looking to the public trust doctrine, "which is usually applied to  
12 municipal holdings of restricted properties," and that "if the doctrine can be applied by  
13 analogy to the PVHA situation, it may be the case that it is enough to simply allege that  
14 one is a member of the public..." Tentative Ruling, p. 6, lines 15-18. However, the Court  
15 cautioned that it used "might" and "maybe" "because the parties have not completely  
16 examined or briefed this issue." *Id.* at p. 7, lines 15-16.

17 The imposition of conditions subject to reversion precludes a public trust. "An interest  
18 subject to a condition subsequent is not, because of the condition, held in trust." *Walton v.*  
19 *City of Red Bluff*, 2 Cal.App.4th 117, 125 (1991) (citing the 2d Restatement on Trusts).  
20 Further, a grant to a municipal transferee evidencing "an intent to divest the transferee of  
21 its interest if it fails to [abide by the conditions indicates] no trust was intended." *Id.*

22 Courts have consistently applied this rule to find that holdings of restricted property by  
23 cities are not subject to the public trust. In *City of Red Bluff*, due to a reversionary power,  
24 property granted to the city for the purpose of maintaining a library was not held in trust  
25 and the grantor's heirs had a right of reversion because the city failed to maintain a  
26 library. *Id.* Similarly, in *City of Palm Springs*, conveyance of property—also subject to a  
27 reversionary interest—to the city for use as a desert wildlife preserve did not create a trust,  
28 but the conveyance "must be construed as granting to the City a fee simple subject to a

1 condition subsequent, and assigning [grantor] a power of termination.” *City of Palm*  
2 *Springs v. Living Desert Reserve*, 70 Cal.App.4th 613, 622 (1999).

3 In this case, the First Amended Petition and Complaint (“FAPC”) alleges—and the  
4 City does not deny—that Area A was conveyed to the City subject to deed restrictions.  
5 Those deed restrictions require the City to maintain Area A “for park and/or recreation  
6 purposes... for the benefit of the (1) residents and (2) non-resident property owners within  
7 the boundaries of... ‘Palos Verdes Estates.’” FAPC ¶10(d). If the City failed to do so,  
8 Area A may revert to the Palos Verdes Homes Association (“Association”). FAPC ¶10(d).  
9 In that regard, the City held Area A in the same manner as the cities of Red Bluff and  
10 Palm Springs, where the courts held the reversionary provisions inconsistent with creation  
11 of a the public trust.

12 In any event, Area A was not held “in trust” for the benefit of the public. Instead, the  
13 Association conveyed the property to the City for the benefit of a defined, narrow  
14 population (residents and non-resident property owners within the boundaries of the City)  
15 and not the general public. *See* FAPC ¶10(d). Accordingly, the deed cannot be read to  
16 have created a public trust. In fact, the City did not hold Area A pursuant to any trust  
17 before it was conveyed to the Association pursuant to the Memorandum of Understanding  
18 (“MOU”). Thus, the public trust doctrine does not apply here, even by analogy.

19 Moreover, because the City did not hold Area A in trust, but rather held it in fee simple  
20 subject to a reversionary right held by the Association (and the FAPC alleges violations of  
21 the deed restrictions which would, if true, trigger reversion), unwinding the City’s  
22 obligations under the MOU would be inconsistent with the very deed restrictions the  
23 FAPC seeks to enforce. Violation of the deed restrictions creates a right of reversion of  
24 Area A to the Homes Association. The City conveyed Area A to the Association. Either  
25 as a consequence of the valid MOU, or the right of reversion triggered by the alleged deed  
26 restriction violations, the City now lacks legal title to, and the ability to abate nuisances  
27 and encroachment upon, Area A.



1                   **II. SEVERANCE AND BIFURCATION WOULD VIOLATE THE**  
2                   **SINGLE JUDGMENT RULE**

3           The tentative ruling notes that “the mandate petition was denied,” and the “denial of an  
4           administrative mandate petition is an appealable judgment.” Tentative Ruling, p. 2, lines  
5           8-9. Further, the tentative ruling observes that “the denial for mandamus relief has been  
6           upheld on appeal, and the court has determined to treat the remainder of the case in  
7           keeping with its present ‘civil’ nature” by ordering “the case severed, with all of the  
8           mandate claims and issues bifurcated in keeping with the final judgment rendered on those  
9           matters, and orders that the case is now converted to a simple civil action.” Tentative  
10          Ruling, p. 2, lines 11-15.

11          The City would respectfully clarify the procedural status of the writ cause of action.  
12          The mandate petition was not denied. Rather, the City’s demurrer to the third cause of  
13          action was sustained without leave to amend as an interlocutory order. Because no single,  
14          final judgment has issued in this case, no final judgment has issued as to the writ action.

15          “The Supreme Court made clear that ‘[u]nder the one final judgment rule, ‘an appeal  
16          may be taken only from the final judgment in an entire action.’... The one final judgment  
17          rule is ‘a fundamental principle of appellate practice,’ recognized and enforced in this  
18          state since the 19th century.” *Lopez v. Brown*, 217 Cal.App.4th 1114, 1131 (2013).

19          The January 6, 2014 ruling on the third cause of action was not the end of this lawsuit:  
20          “[i]t is the substance and effect of the adjudication, and not the form, which determine if  
21          the order is interlocutory and nonappealable, or final and appealable. If no issues in the  
22          action remain for further consideration, the decree is final and appealable. But if further  
23          judicial action is required for a final determination of the rights of the parties, the decree is  
24          interlocutory. The decree will not be appealable ‘unless it comes within the statutory  
25          classes of appealable interlocutory judgments.’” *In re Clergy Cases I*, 188 Cal.App.4th  
26          1224, 1234 (2010). The statutory classes of appealable interlocutory judgments involve  
27          contempt, right to redeem property from a mortgage or lien, partition, or sanctions. Cal.  
28          Code Civ. Pro § 904.1(a). The January 6, 2014 order issued by Department 86 does not

1 involve a statutory class of appealable interlocutory judgments.

2 In fact, it “is settled that an order sustaining a demurrer is not appealable.” *Evans v.*  
3 *Dabney*, 37 Cal.2d 758, 759, (1951). “An appeal does not lie from an order sustaining a  
4 demurrer without leave to amend [or] from an order sustaining a demurrer with leave to  
5 amend.” *Singhanian v. Uttarwar*, 136 Cal.App.4th 416, 425 (2006). “Instead, an ‘order  
6 sustaining a demurrer ... is generally reviewable on appeal from the final judgment in the  
7 action.’” *Lopez v. Brown*, 217 Cal.App.4th at 1132. This is particularly so where a  
8 demurrer is sustained as to one or some causes of actions, but the remaining causes of  
9 action are germane to the rights of the parties at issue. *Mounger v. Gates*, 193 Cal.App.3d  
10 1248, 1254 (1987).

11 Notwithstanding the single judgment rule, the Court of Appeal may treat a purported  
12 appeal of a nonappealable order as a petition for writ of mandate if a question of public  
13 importance is presented. *Id.* at 1254. The ruling by Department 86 did not involve a  
14 question of public importance; therefore, the petition was denied by the Court of Appeal.  
15 Nevertheless, because further judicial action is required for a final determination of the  
16 rights of the parties in this case, the decree by Department 86 is interlocutory and has not  
17 been reduced to a final judgment.

18 While the writ cause of action has been fully litigated, it should not be severed from  
19 the remaining causes of action. All of the causes of action in this lawsuit arise out of the  
20 same facts. Bifurcation would violate the single judgment rule, because a single judgment  
21 would not issue as to all of the claims integral to resolution of the ultimate dispute:  
22 whether whichever party bears responsibility for enforcing the deed restrictions may be  
23 mandated to do so. Bifurcation would leave the parties with a “piecemeal disposition  
24 [requiring] multiple appeals in a single action[, which] would be oppressive and costly.”  
25 *Lopez v. Brown*, 217 Cal.App.4th at 1131. This is because, at some point, a final, single  
26 judgment must issue as to the case as a whole before an appeal (including an appeal to the  
27 January 6, 2014 order) is proper and may result in a final order.



This chart summarizes the current status of the case:

<b>Cause of Action</b>	<b>Basis</b>	<b>Relief sought</b>	<b>History</b>	<b>Status</b>
<b>First</b> Against “all parties”	Plaintiff claims City is obligated to own Area A, lacks authority to convey/allow reversion of Area A to Ass’n, and is obligated to enforce CC&Rs  Claims Ass’n obligated to enforce reversionary right	<b>Declaratory relief</b> that City’s conveyance/reversion of Area A to Ass’n is void; that City must enforce CC&Rs; and <b>order</b> to enjoin future approval of improvements	Dept 86 did not hear demurrers to first cause of action;  Dept 1 assigned and transferred case to Dept 12 along with pending demurrers to first and second causes of action (non-writ claims), after Dept 86 issued final ruling on writ cause of action	Subject of tentative; Awaiting ruling
<b>Second</b> Against City	Under CCP 526(a) [waste of taxpayer funds], Plaintiff claims that the City cannot process property owner’s improvement applications or have conveyed Area A to Ass’n	<b>Injunction</b> to enjoin use of funds to process future owners’ applications; <b>Declaration</b> conveyance by city <i>ultra vires</i> and waste of money	<b>Fully briefed</b> City’s position: City obligated to consider all applications, applicants pay fees to cover cost, final City decision subject to judicial review  Area A reverted/conveyed from City to original grantor subject to all applicable restrictions.	Awaiting ruling
<b>Third</b> Against City & Homes Ass’n	Plaintiff claimed City obligated to own Area A, lacked authority to convey/allow reversion of Area A to Ass’n and was obligated to enforce CC&Rs  Claimed Ass’n obligated to enforce reversionary right	<b>Writ</b> directing the City to enforce CC&Rs and remove illegal improvements  And directing Ass’n to enforce its reversionary right	1. Superior Court (Dept 86): demurrer sustained without leave to amend Finding no mandatory duty preventing the challenged real estate transactions  2. Appeals Court: Summarily denied extraordinary writ seeking interlocutory appeal	Fully litigated in Dept 86;  law of the case;  may be appealed on merits with a final judgment
<b>Fourth</b> Against “Area A recipients”	Private action to abate a public nuisance	Mandatory and prohibitory <b>Injunction</b> re use of Area A	New claim by new Plaintiff added <i>without leave</i> in the FAPC. Dept. 86 GRANTED w/o prejudice RPI’s Motion to Strike Harbison as a Plaintiff	With leave, Harbison may be added as a Plaintiff and Nuisance claim pleaded



1                   **III. THE CITY’S DEMURRER TO THE SECOND CAUSE OF ACTION**  
2                   **SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND**

3           In the second cause of action, plaintiffs seek injunctive and declaratory relief under  
4           Code of Civil Procedure section 526a to prevent the City from spending any additional  
5           funds processing the Panorama Property Owners’ applications for a zoning ordinance  
6           amendment and after-the-fact approvals for the existing improvements on Area A. FAPC,  
7           Prayer ¶ 4. Plaintiffs also seek an order declaring the conveyance/reversion of Area A  
8           from the City to the Association to be a waste of taxpayer funds. FAPC, Prayer ¶ 5.  
9           Plaintiffs seek this relief on the theory that these actions are “*ultra vires*”—that is, outside  
10          the City’s legal authority. As detailed in the City’s moving papers, plaintiffs’ second  
11          cause of action fails to state a cognizable claim for relief. Processing of entitlement  
12          applications is not “*ultra vires*,” it is a core governmental function. In fact, the City has  
13          an obligation to process the applications in the manner prescribed by its municipal code.  
14          See City’s Demurrer to FAPC at 9-10. *Coshov v. City of Escondido* (2005) 132  
15          Cal.App.4<sup>th</sup> 687, 714 (“A cause of action under Code of Civil Procedure section 526a will  
16          not lie where the challenged governmental conduct is legal.”)

17          Likewise, the alleged conveyance/reversion of Area A by the City to the grantor  
18          Homes Association is not illegal conduct that can form the basis of a CCP § 526a claim  
19          because the City is authorized by law to control and dispose of real property for the  
20          common benefit. Gov’t Code § 37350 (a city may “purchase, lease, receive, hold, and  
21          enjoy real and personal property, and control and dispose of it for the common benefit.”)

22          The FAPC does not allege that the City is *using* the property for any purpose  
23          inconsistent with the restrictions, nor could it. The City is not using the property at all.<sup>1</sup>

24          <sup>1</sup>All of the cases cited by plaintiffs involved public entities attempting to use property in a manner  
25          inconsistent with terms of the dedication to the general public. See *County of Solano v.*  
26          *Handlery* (2007) 155 Cal.App.4<sup>th</sup> 566 (County sought to make alternative use of land that had  
27          been dedicated to it for public fairground purposes); *Big Sur Properties v. Mott* (1976) 62  
28          Cal.App.3d 99 (state statute authorizing rights-of-way for private access across public parkland  
under certain circumstances is not applicable to property that has been donated to the state for  
exclusive use as a public park); *City of Hermosa Beach v. Superior Court* (1964) 231  
Cal.App.2d 295 (holding that a taxpayer had standing to maintain an action to prevent the  
construction of a road over property restricted from such use and dedicated “as a public pleasure

1 As discussed above, the FAPC cannot allege that a “public trust” was created by  
2 the Homes Association’s original 1940 conveyance because the property was not  
3 conveyed to be used for the general public benefit, but, rather only for the benefit of the  
4 residents of and non-resident property owners of Palos Verdes Estates. FAPC ¶10(d).  
5 PVE was an entirely planned subdivision/community. FAPC ¶9. The conveyances by the  
6 Homes Association were made to extinguish tax liability (HOA pays taxes; City doesn’t).  
7 FAPC ¶9. Also, no public trust was created because the property was transferred subject  
8 to the reversionary interest. *City of Red Bluff, supra*, 2 Cal.App.4<sup>th</sup> 117. Plaintiffs plainly  
9 and rightly plead at FAPC ¶10(d) that the deed expressly provided for circumstances  
10 under which the City would be divested of interests, thereby not creating a trust.

11 In any event, the City’s obligations were adjudicated in the writ cause of action and  
12 any remaining issues regarding the responsibilities of the City under the deeds may be  
13 addressed in the First Cause of Action, for which this court in its tentative ruling has  
14 already indicated its willingness to grant leave for Plaintiffs to amend. The Second Cause  
15 of Action does not contribute to Plaintiffs’ claims and does not state a proper claim in any  
16 event because a violation of a deed restriction is not an *ultra vires* act, where the property  
17 is not held for the benefit of the general public and where it reverted/was conveyed to the  
18 original grantor, as is alleged in this case.

19 Toward the goal of streamlining, the City respectfully requests that its demurrer to the  
20 second cause of action be sustained without leave and that the Plaintiffs be directed to set  
21 out its remaining, post-mandamus claim in the first cause of action.

22 ///

23 ///

24 ///

25  
26  
27 ground.”); *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215  
28 Cal.App.3d 1003 (City could not commercially develop property dedicated to it to “continue and  
forever maintain the Palm Springs Free Public Library.”)



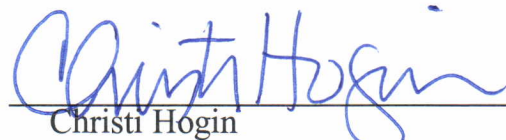
1           **IV. CONCLUSION**

2           The City respectfully requests that the tentative ruling not be adopted as the final  
3 ruling because as it stands, the tentative ruling would result in the improper application of  
4 the public trust doctrine to property not held in trust, and the inequities concomitant with  
5 violation of the single judgment rule.

6  
7 Dated: May 14, 2014

Respectfully submitted,

8  
9 By:



Christi Hugin  
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Attorneys for Defendant/Respondent  
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 May 14, 2014, I served the foregoing documents described as:

6 **CITY OF PALOS VERDES ESTATES' SUPPLEMENTAL BRIEF IN**  
7 **SUPPORT OF CITY'S DEMURRER;**

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

9 *PLEASE SEE SERVICE LIST ATTACHED*

10 ☒ **VIA EMAIL.** I caused such document as described above, to be transmitted via E-Mail  
11 to the offices of the addressee(s).

12 ☐ **VIA FACSIMILE.** I caused such document to be transmitted via facsimile to the offices  
of the addressee(s).

13 ☐ **VIA OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package  
14 provided by an overnight delivery carrier and addressed to the person(s) at the address(es)  
stated above. I placed the envelope or package for collection and overnight delivery at a  
regularly utilized drop box of the overnight delivery carrier.


15 ☒ **VIA U.S.MAIL.** I enclosed the above described documents in a sealed envelope or  
16 package addressed to the person(s) listed above or on the attached; caused such envelope  
with postage thereon fully prepared to be placed in the United States mail at Los Angeles,  
17 California.

18 *I am readily familiar with the Jenkins & Hogin, LLP's practice of collection and processing correspondence for*  
19 *outgoing mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with*  
20 *postage thereon prepaid at Manhattan Beach, California, in the ordinary course of business. I am aware that*  
*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.*

21 ☒ **STATE.** I declare under penalty of perjury under the laws of the State of California  
22 that the above is true and correct.

23 ☐ **FEDERAL.** I declare that I am employed in the office of a member of the Bar of this  
Court at whose direction the service is made.

24 Executed this 14th day of May, 2014, at Manhattan Beach, California.

25   
26 WENDY HOFFMAN



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