Comments on Letter from PVE City Major Jim Goodhart
dated November 22, 2015

PVE Mayor's Letter is in Red
CEPC comments/response is in blue
Quotes from the Ruling are in black

"The City Council is appealing the judgment because of potential serious consequences to all of Palos Verdes Estates. There is one extraordinary provision that allows John Harbison and the CEPC the perpetual right to return to the courtroom, at their discretion, at any time in the future to challenge existing and future encroachments on all City parklands."

The clause of concern is apparently f (iv):

> "…Thereafter, neither the Association nor the City as to similarly situated property owned by the City that is subject to the Establishment Documents or the 1940 Deed Restrictions shall allow any new structure, vegetation or object to be maintained on the Property if it would violate the Establishment Documents or the 1940 Deed Restrictions."

This is merely a statement that enforcement actions against encroachments need to be consistent with the deed restrictions. It does not grant any special powers to CEPC. Indeed, we can find no "special enforcement authority" specific to encroachments in the judgment. Such powers would derive from any of the clauses that use the word "enjoin" and here is that list:

- 2i) The Association is enjoined from conveying any right or title in the Property to any party other than an entity which is authorized by law to hold, maintain and operate public parkland.
- 2J) The Association is enjoined from entering into any contract providing private parties the right to use the Property in violation of the Establishment Documents and/ or the 1940 Deed Restrictions (Exs. "5," "6," "7" or "8.")
- 2k) Defendants Lieb, Robert Lugliani and Delores Lugliani are hereby enjoined from constructing or maintaining any structures on the Property or altering the landscaping on the Property (except to cooperate with the removal of landscaping as described in this Judgment).
- 2l) The City and Association are enjoined from entering into any contracts or taking any actions to eliminate or modify those deed restrictions unless the Association first complies with the Amendment Procedures described in Article **VI,** sections **1,** 2 or 3 of the attached Exhibit "3."
- 3) The Court hereby enjoins the City from creating an "open space, privately owned" zoning district or from making any other order, ordinance, promulgation, or other action which has the purpose or effect of removing the Property from use for park and/ or recreational purposes
- 8) All parties are enjoined from changing any aspect of Area A or the legal posture of the issues in the case until after the Judgment is signed and entered.

None of these clauses relate to encroachments — other than the one focused on the Luglianis, which states they are not allowed to construct or maintain structures or landscaping. There is no

'extraordinary provision' and to assert that there is, misrepresents the Ruling. This obfuscation serves no purpose other than to mislead the public and support an unjustifiable decision to appeal.

Further, the Judgment actually directly contradicts the assertion in Mayor Goodhart's letter about the City losing its discretion to allow encroachments by stating:

> "Nothing contained in this Judgment shall prohibit any party from allowing landscaping, paths or other improvements whose purpose and effect are to improve the quantity and quality of the coastal view from the Property or public access to the Property to the extent permitted by, and done in compliance with all requirements under the Establishment Documents or the 1940 Deed Restrictions (Exhibits "5," "6," "7" and "8.")

Finally, if this "extraordinary provision" was so serious in its implications, then why did the City not raise an objection during the three months from the day the ruling was issued to the day the final judgment was published in late September? Drafts of the judgment were circulated and commented upon by all the lawyers, and the City did not raise an objection in writing or in the Court Hearings during that period.

"In this regard, the ruling goes beyond the relief sought by the plaintiffs and the scope of the court's authority. "

CEPC sought to have the deed and transfer of land voided and the encroachments removed. The injunctions inserted by the Court merely make it explicit that the Court does not wish to waste its time by hearing on the validity of CC&Rs and deed restrictions a third time. The first two instances are 1) this case and 2) the ruling in 2011 on the PVPUSD's suit to be able to sell Lots C & D.

"As a result, the City has lost its ability to protect residents' rights to a fair hearing guided by common sense, fiscal responsibility and community accountability."

The City can (and should) continue its process for airing proposed changes in parklands through public deliberations of the Parklands Committee and the City Council whenever changes are proposed. These changes include changes in use such as new or re-routed trails, new uses such as a skateboard park, tennis courts, or other public recreational use. The only changes that would bypass such a process are those related to one of the areas of injunction above, such as sale of parkland, eliminating or reducing public access, or attempting to circumvent or modify the deed restrictions other than through the processes delineated in the 1923 covenants. Those CC&Rs spell out a process whereby PVE residents can modify restrictions with either a two-thirds or 90% vote of the public. The PVE City Council cannot make those changes itself without such a public vote.

"This judgment will likely have the effect of perpetuating litigation each time the Court is involved in any encroachment action."

Absolutely false. There is nothing in the ruling that grants CEPC, John Harbison (or anyone else) a right to litigate encroachment actions other than those by the Luglianis on the subject Panorama parkland.

"Attached and on the City's website www.pvestates.org (under Departments & Services / Legal Matters) is information elaborating further on this basis for the appeal."

(See separate response from CEPC to the assertions on the PVE website.)

"It is also important to emphasize this point: The City Council has always maintained as a priority the preservation of parklands and open space. The subject matter of the appealed lawsuit is a 2012 settlement agreement. At that time, the City Council determined there were substantial benefits to the entire community by participating in the agreement as compared to the relatively small and singular concession it allowed."

The problem is this "singular concession" involved an illegal act of selling parkland to a private owner, and hence the City and the PVHA exceeded their authority in executing that aspect of the overall MOU. The underlying deed that was violated is a contract and the PVHA in conjunction with the City broke that contract.

"The City Council discussed the agreement thoroughly in open meetings and publicly approved the agreement, …"

We have documented many times on www.pveopenspace.com that notice of these public meetings in 2012 were woefully deficient:

- No signs posted
- No notices sent to any residents in the area
- No notices in the local newspapers (even though several City Council Members claimed in City Council meetings since 2012 that they were published). When we could not find any notices, we asked for specifics, and then were told that notices had not been published in the local paper
- None of the residents on Via Panorama and Via Mirada (other than Luglianis) were aware that parkland was sold as part of the complicated MOU in 2012 until the Lugliani's attempted to rezone the parkland in early 2013

"… which resulted in additions to the City's inventory of parklands among other benefits."

The City picked up Lots C & D, which were 37,962 sq ft but gave up Parcel A which was 75,930 sq ft. That is a net decrease in parklands of 37,968 sq ft (or about 1 acre). In the staff reports and in verbal comments by the City Attorney in Council meetings, the land swap was always described as "comparable in size" even though the land sold was almost twice the size of the land obtained. Further the City Attorney characterized the Via Panorama Parcel A as "steep and inaccessible" and hence of limited value to the public; this characterization is also inaccurate since the slope of Parcel A is 60 feet and the slope of lots C & D is 65 feet. Parcel A has no curb and is wheel-chair accessible and Lots C & D have a curb which prevents such access. Finally, the views of Parcel A are worthy of the name of the street it is on (Via Panorama), with a spectacular Queen's Necklace view compared to the more modest view of Lots C & D looking out over the roofs of PV High.

view of Parcel A on Via Panorama

"Since then, the City Council has again heard community consensus that the City's parklands be maintained forever and the integrity of the community's underlying deeds is inviolable. We encourage you to see the many examples of this commitment throughout the City and through our ongoing efforts to remove unpermitted encroachments in parklands in partnership with many residents, including Mr. Harbison."

We are glad that the City realizes there is strong consensus on the importance of commitment to parkland – we just can't comprehend how to reconcile that statement with refusing to accept the Court's ruling that the sale of this parkland to private owners violates those deeds.

We are grateful to have been given the opportunity to dialogue with representatives of City government on the subject of other encroachments, which should be explored and addressed. In September 2013, we presented a report with maps and photos detailing over 80 such encroachments. Over the past few years, on multiple occasions in City Council Meetings we have spoken and thanked Alan Rigg and the City Council for establishing Resolution R05-32 to define a process for addressing encroachments; the City then took action in 2005 against 37 homeowners who had encroached – leading to a successful resolution. We are encouraged that in the past year an enforcement officer has been hired and some actions have been taken to address the list of current encroachments. There's more to do, but it is a good start.

"We welcome your continued involvement in the broader effort to maintain the City's beautiful parklands and participation in maintaining the original vision of Palos Verdes Estates. The City Council and I look forward to answering any other questions you may have on this or other City matters."

We look forward to continuing a dialogue. There are many residents in the PVE community that still don't understand how our City Council believes PVE benefits from an appeal of this case, and hopefully further clarification by the Mayor and others on City Council will enlighten us.