

# 900 Via Panorama

Perspective from  
John and Renata Harbison  
Residents of 916 Via Panorama

PVE Planning Commission  
February 19, 2013

# Those Who Share Our Concerns

- Letter submitted detailing our concerns and questions that we have
- Letters signed (and received by us as of 2/18/13):

Last Name	First Name	Via Mirada Via Panorama	Beyond Neighborhood
Allen	G. Bruce		
Chang	Dorothy		
Chang	Nien Chih		
Chevalier	Marilyn		
Dotson	Linda		
Dotson	Arleigh		
Fsy	Richard		
Fotion	George		
Guzzino	Maryam		
Guzzino	Kim		
Harbison	John		
Harbison	Renata		
Harbison	Robert		
Holmes	Carol		
Melton	Linwood		
Melton	Catherine		
Miletich	Ljepa		
Miller	Tom		
Miller	Karen		
Olsen	Willard		
Shawa	Tania		
Shawa	David		
Smoke	Margaret		
Smoke	Stephen		
Tsutsui	Peggy		
Tsutsui	Fred		
Uharriet	John		
Uharriet	June		

2/18/13

\* Sent directly to City Hall

# One of the Best Coastline Views from Parkland along a Road in PVE

People often stop and enjoy the view. Every 4<sup>th</sup> of July, crowds come from all over PVE to watch the fireworks. Access is easy from Via Panorama



*"It is not accessible parkland"*

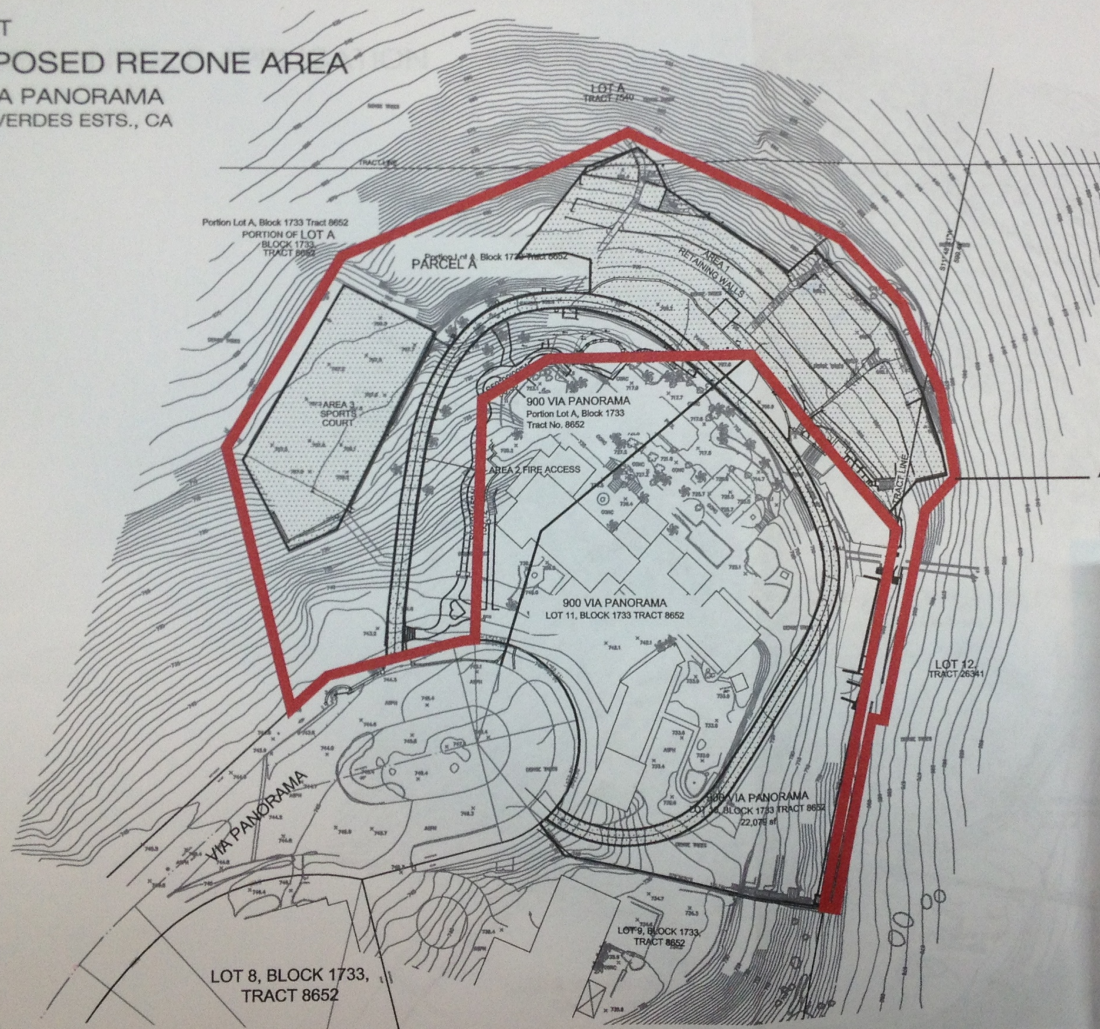
*-- City Attorney Hogin in 5/8/12 City Council Minutes*

?



EXHIBIT  
PROPOSED REZONE AREA

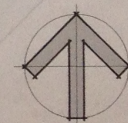
900 VIA PANORAMA  
PALOS VERDES ESTS., CA



AREA TO BE REZONED:  
EXISTING ZONING: OPEN SPACE  
PROPOSED ZONING: R-1

900 Via Panorama  
ZC-2/M-902-13

**Received**  
JAN 28 2013  
City of Palos Verdes Estates  
Building & Planning Departments



**NORTH**  
SCALE: 1"=60'



**Bolton Engineering Corp.**  
Civil Engineering & Surveying  
26834 NARBONNE AVENUE STE 210  
LAKELAND, CA 92017  
Phone (310) 325-5580 Fax (310) 325-5581



Note extensive structures,  
sports field and roads built  
without permits on City  
Parkland within Parcel A

Parcel A

900 Via  
Panorama

\$4.56M

\$1.04M

\$1.70M

\$3.51M

\$2.56M

\$2.9K

\$12K

Map

2/18/13

5



original property line

Encroachments on parkland  
include gate, road, walls and trees

2/18/13

6





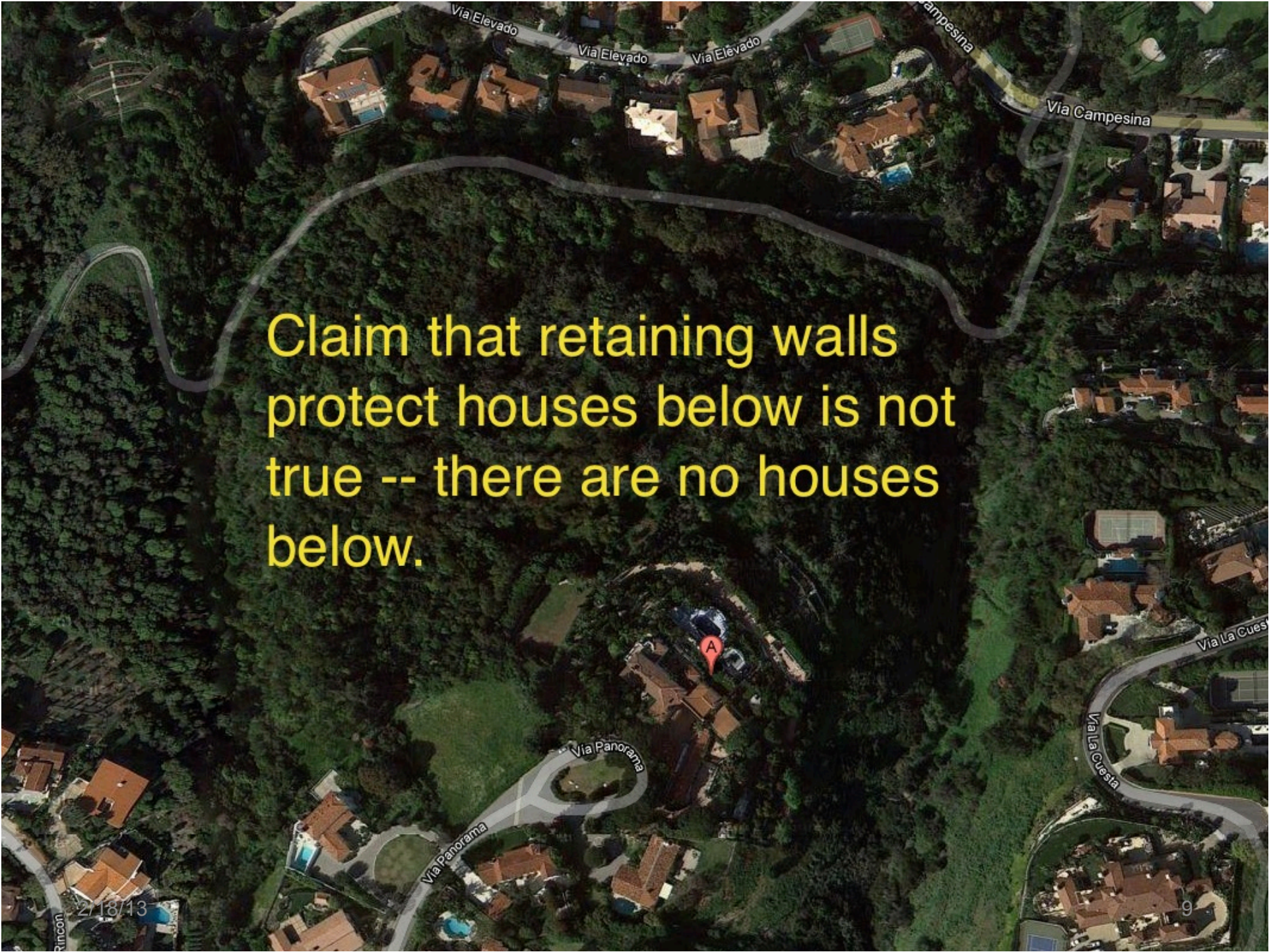
Gate, Landscaping and driveway built entirely on Parkland (Parcel A)





If unpermitted sport field had **not** been carved out of the hillside, retaining wall would not have been necessary.



An aerial photograph of a residential neighborhood built into a hillside. The houses are clustered along winding roads. A large, semi-transparent yellow text box is centered over the image. The text inside the box reads: "Claim that retaining walls protect houses below is not true -- there are no houses below." The roads are labeled "Via Elevado", "Via Campesina", "Via Panorama", and "Via La Cuesta". A red location pin labeled "A" is placed on a house in the lower-middle section. In the bottom left corner, there is a date stamp "2/18/13" and a small label "Rincon". In the bottom right corner, there is a small number "9".

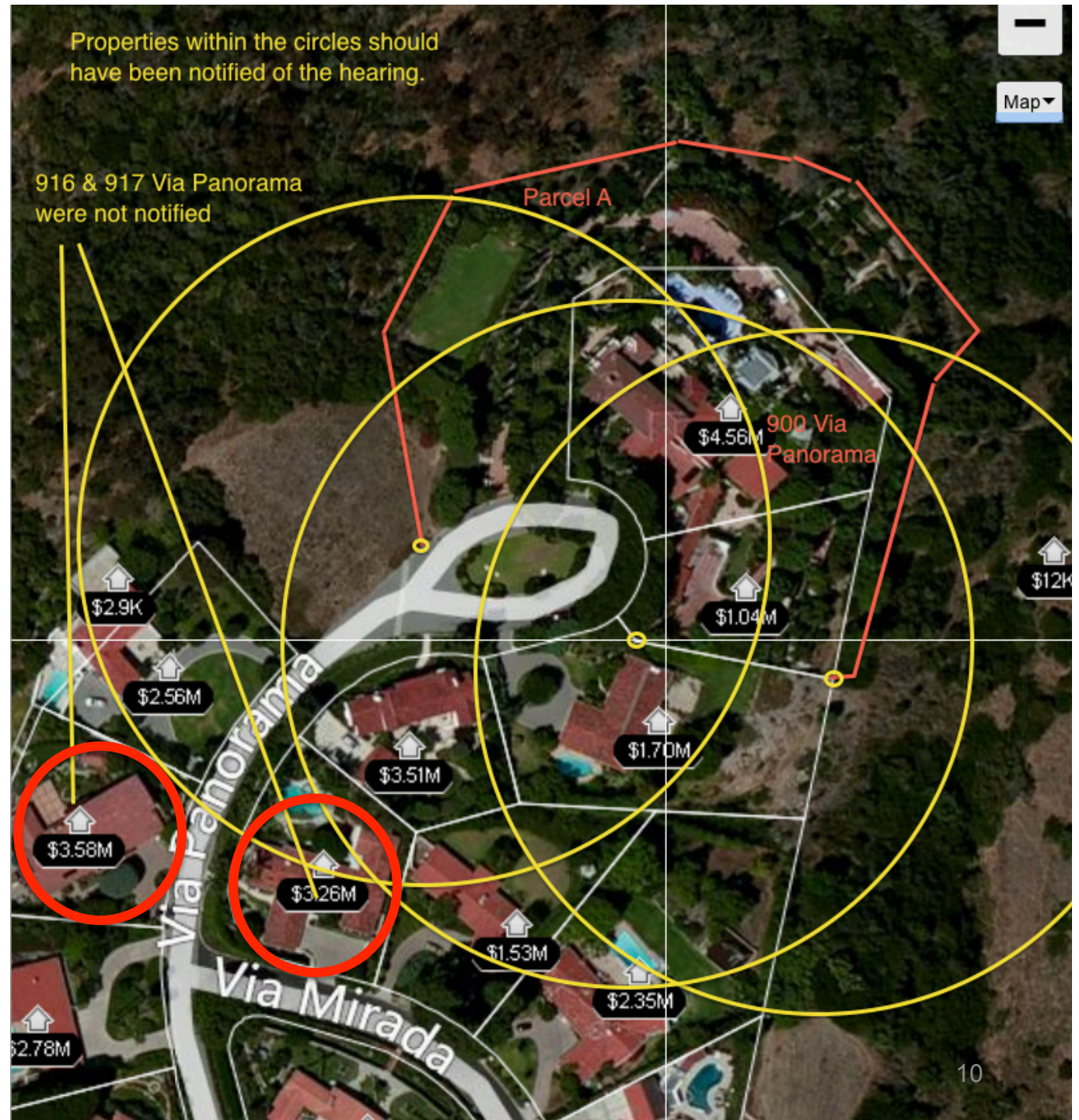
Claim that retaining walls  
protect houses below is not  
true -- there are no houses  
below.

2/18/13

9



Notices in  
Feb 2013  
not sent to  
two  
properties  
within 300  
feet





# Our Concerns

- Precedent of selling parkland to private owner, when that is prohibited by CC&Rs from 1923
- Rewarding past illegal encroachments
  - 35 years of personal use of public asset
  - No property tax paid because City owned
- Process shortcomings last year
  - No notifications by posted signs or mail
  - \$500,000 for 1.7 acres does not seem fair value in PVE; no public bids solicited
  - Details of dissenting opinion by former Mayor Joseph Barnett in 5/8/12 City Council hearing omitted in published minutes
- R1 zoning not consistent with open space
- Recommendation – We MUST preserve open space
  - Fence in the middle of visible portion of parkland is unacceptable
  - Any new construction visible from road is unacceptable



# Our Questions (page 1)

- Why was a resident allowed to purchase parkland, when that is explicitly forbidden in the original 1923 CC&Rs governing establishment of PVE? (Cannot be changed without 2/3 vote of PVE residents)
- 7/24/12 Minutes: “prohibits [Parcel A] from ever being merged with the adjacent residential property.” Doesn’t that make re-zoning to R1 Single Family Residential a non-starter?
- Why did PVHA warrant in MOU that there are no violations of CC&Rs?
- Why is the encroachment from building on public lands in a manner that is explicitly disallowed being forgiven and rewarded decades after the fact?
- Why so secret? Why were no residents within 300 feet notified of the proceedings involving the sale of parkland property in May & July 2012? Why was the draft of MOU not provided before 7/24/12 meeting?

# Our Questions (page 2)

- MOU inaccuracies/inconsistencies: e.g. How is 37,962 sq. ft. for Lots C & D “roughly equivalent” to 75,930 sq. ft. for Parcel A? How is \$1.5M for C & D “roughly equivalent” to \$0.5M for Parcel A?
- Now that the City/PVHA has made this questionable transfer, what is their response when anyone else in PVE decides to build on adjacent parkland and/or asks to buy the property?
- Why did the City Council not preclude any modifications that encroach on open space? Is that not a matter of CC&Rs in the deed and not a matter of interpretation by the Planning Commission?
- 7/27/12 Minutes: “Areas 1 and 3 of this property are currently, and would remain, zoned as open space.” So why is a re-zoning being considered?
- Court in 2012 ruled that PVPUSD cannot sell property designated as open space to private owners. PVHA defended that principle in the lawsuit. Why did the City and PVHA choose to ignore the principles it had just vigorously defended and reward the family making a charitable contribution by selling parkland to them?



# There is no good faith, justifiable, legal basis to rezone from OS to R-1 and it would be a breach of the public trust and your fiduciary duties if you do so.

## 1. The 2012 transaction violated the CC&R's by transferring public "open space" property to private ownership.

The MOU recites that "the prior owner installed a series of retaining walls to stabilize the Via Panorama Property . . . without permit." "[I]n City-owned parkland, the Property Owners landscaped and improved Area A, including placing a gazebo and other accessory, non-habitable structure" but, "[a]t the City's direction, Property Owners removed the structures encroaching on the City's parkland." The MOU expressly contemplated only that "Property Owners shall apply for planning approvals and city permits to allow them to maintain the retaining walls located as shown on Exhibit 3."

The Deed provides: "1. Unless expressly provided for herein, Grantee shall not construct any structure on the Property and the Property shall be restricted to open space." However, it also provides, "Upon obtaining any required permits and approvals from Grantor, Grantee shall be permitted to construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other 'accessory structure,' as defined by Palos Verdes Estate Municipal Code ('PVEMC')." The Deed also provides (par. 2) that, "Within six (6) months of recordation of this Deed, Grantee shall seek and obtain an after-the-fact permit pursuant to PVEMC Section 17.04.110 permitting the existing retaining walls. . . ." And par. 5: "This Deed shall not cause the Property to be merged with any adjacent lot and any such merger shall be prohibited."

Thus, not only transfer to private ownership but for private use and development.

## 2. The proposed rezoning violates the CC&Rs, MOU and Deed.

The CC&Rs, MOU and Deed all require maintenance of the property as open space -- i.e., OS zoning. To rezone a portion of the property R-1 residential violates these restrictions.

The MOU and Deed contemplate only obtaining permits (MOU - retaining wall; Deed, retaining walls and "accessory structure"), not rezoning from open space.

Wouldn't R-1 rezoning "cause" the rezoned property to be "merged" in ownership and zoning with the adjacent lot, in violation of the Deed?

The Property Owners have previously, without ownership or permit, constructed their own private "playground" on the public property. Now, by the 2012 transaction and current rezoning attempt, they are trying to convert their "playground" into a personally owned "playground," with conceivably the ability to bar public access by that ownership and zoning. The whole series of events certainly smells like a scheme to add 1.7 acres onto Property Owner's property. What next after this rezoning?

Because the 2012 transaction violated the Grant restrictions and the Property Owner's current rezoning request violates the Grant restrictions, MOU and Deed, shouldn't the ownership of the property revert to the Homeowner's Association?

MOU recites incorrectly that "the prior owner installed a series of retaining walls" and the current draft Resolution does likewise: "Section 5. Miscellaneous Application Findings. \* \* \* 2. The existing retaining walls were built by the prior owners of 900 Via Panorama." A weak attempt to try to justify helping the Property Owner escape from the illegal encroachments.

## 3. At most, Property Owner should be allowed to only apply for permits for the retaining wall (and "accessories"?), with the OS zoning remaining as required.

(As quoted in the 1/19/13 Staff Memorandum (p. 2), "The OS zoned is defined in the Zoning Ordinance as follows: 'The open space zone land consists of all publicly owned land . . . and all land owned or which could be owned by the Palos Verdes Homes Association as a result of the exercise of any reversionary right.'")

Thank you for your time  
and consideration