



# MEMORANDUM

Agenda Item #: 13  
Meeting Date: 7/24/12

**TO: MAYOR BIRD AND THE HONORABLE  
MEMBERS OF CITY COUNCIL**

**FROM: CHRISTI HOGIN, CITY ATTORNEY**

**SUBJECT: CONSIDERATION OF RESOLUTION R12-21 ACCEPTING  
OWNERSHIP OF CERTAIN OPEN SPACE PROPERTIES  
KNOWN AS LOT C AND LOT D FROM THE PALOS VERDES  
HOMES ASSOCIATION AND ALLOWING OWNERSHIP TO  
REVERT TO THE PALOS VERDES HOMES ASSOCIATION  
OF CERTAIN CITY PARKLAND DESIGNATED AS AREA A  
AND ADJACENT TO 900 VIA PANORAMA.**

**DATE: July 18, 2012      MEETING DATE: July 24, 2012**

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## The Issue

The resolution before the Council this evening would accept the transfer of Lot C and Lot D from the Homes Association to the City and allow the reversion of Area A, which consists of existing City parkland adjacent to 900 Via Panorama, to the Palos Verdes Homes Association. These transactions would implement the multi-party agreement previously approved by the Council among the City, the Palos Verdes Peninsula Unified School District, the Palos Verdes Homes Association, and the property owners of 900 Via Panorama (the MOU). That agreement advanced several City objectives including the reaffirmation of the enforceability of deed restrictions on property owned by the District in the City, the specific preservation of Lots C & D as open space, the protection of dark skies in the neighborhood around Palos Verdes High School, and resolution of parkland encroachments in a manner that maintains the open space and relieves the City of any liability or responsibility for the existing retaining walls. The transfers before the Council this evening are part of the agreement.

Since the Council approved the MOU in May, the parties have worked diligently to finalize the myriad of technical tasks necessary to effectuate the transfers contemplated by Resolution No. R12-21. Despite this, at the time of the drafting of this Staff Report, several items remain outstanding. For example, the quitclaim deed transferring Area A to the Homes Association must include as attachments detailed legal descriptions of the general area as well as the sub-parts contemplated by the MOU. As part of the MOU the property owners

agreed to provide such descriptions, and they did provide initial drafts; however, upon review the City Surveyor identified several technical issues with the descriptions which required revisions. Those revisions remain outstanding. Second, while reviewing the legal descriptions, the City Surveyor discovered two utility easements existed on Area A that must be addressed and included in the City's deed in order to preserve the City's interest in those easements. Legal descriptions for those easements are currently being prepared. Finally, the City's Director of Planning and Public Works has requested a field trip to walk the site with the property owners' engineer to ensure that the legal descriptions will accurately describe the conditions of the property.

If the outstanding documents are prepared in time for the Council's hearing on this item and the field trip on Friday does not raise any new or unknown issues surrounding the transfer of Area A, the Council may proceed with a decision on this item. If not, the Council will only receive and file this report, pending review of the final documents.

### **Background Regarding the MOU**

On May 8, 2012, the Council adopted Resolution No. R12-11, approving a four-party agreement memorialized in an MOU that created binding obligations for each of the parties and accomplished a number of disparate goals of the parties:

- The City's goals included to preserve the City's open space, including Lots C & D; to prevent lights at the athletic field at Palos Verdes High School in order to promote dark skies, conservation and neighborhood compatibility; to resolve the parkland encroachments at 900 Via Panorama; and to support the overall community benefits of the enforceability of the deed restrictions and funding for the School District;
- The Homes Association's goals were to resolve the litigation over Lots C & D and the longstanding dispute over the enforceability of the deed restrictions on all District-owned property; to be reimbursed its attorneys' fees spent defending the deed restrictions in the lawsuit filed by the School Board; and to maintain the community assets and character through the deed restrictions
- The School District's goals included resolution of the litigation; the liquidation of the value of Lots C & D; and, by separate agreement, to secure an offered donation of \$1.5 million to assist District operations in light of current fiscal challenges;
- The property owners' goals in entering into the MOU were to obtain limited use of an area adjacent to 900 Via Panorama where previous encroachments had been placed without permits and ordered removed by the City; to legalize the retaining walls installed on parkland by the previous owner; and to contribute to the School District by voluntary donation.

### **The Transfers of Lots C & D and Area A**

All four parties have approved the MOU. Execution and implementation of the agreement will involve several steps.

1. Lots C & D revert back to the Homes Association from the School District pursuant to right of reversion in grant deeds
2. The City exchanges Area A (subject to deed restrictions in favor of the City) with the Homes Association for Lots C & D
3. Homes Association transfers Area A to the property owners (subject to deed restrictions in favor of the City) for a purchase price of \$500,000
4. Homes Association pays \$100,000 from the purchase price to the City (retaining \$400,000 for resolution of legal costs associated with the lawsuit)
5. The School District and Homes Association dismiss the appeals and the Superior Court judgment becomes final.
6. By separate donation agreement, the property owners' donate \$1.5 million to the School District

Resolution No. R12-21 involves the second step.

#### **A. Lots C & D of Tract 7331**

The School District determined that it cannot make effective use of Lots C & D given their restricted purposes (public schools, parks, playgrounds or recreation areas). The original deed provided that the properties were subject to the Tract 7331 Lunada Bay Protective Restrictions, Palos Verdes Estates, which provides at Article VI, section 6, that the property reverts back to Homes Association ownership if it is not used for one of the restricted purposes. Under the MOU the District agreed to cause Lots C & D to revert back to the Homes Association ownership, as contemplated in the original conveyance deed. The deed to effect that transfer was approved as to form by the School District on June 28, 2012. The deed will be deposited into a common escrow, which will complete certain real estate transactions contemplated by the MOU. Upon transfer to the Homes Association, the MOU contemplates that Lots C & D will be transferred to the City. On July 19, 2012, the Homes Association approved as to form the quitclaim deed effecting the transfer of Lots C & D to the City, subject to the same restrictions as applied to the School District.

The preservation of Lots C & D as a landscaped area or small park is consistent with the City's Open Space element of the General Plan, including Goal 2 "[m]aintain small park lots and plazas with formal landscaping in keeping with the neighborhood and desires of the residents."

#### **B. Area A**

##### **1. Background**

The MOU also contemplates the transfer of a portion of City-owned parkland adjacent to 900 Via Panorama. The property is depicted on the map attached to this report as Exhibit B and is referred to as Area A. 900 Via Panorama is located at the end of a cul-du-sac and is

adjacent to City-owned parkland on three sides. The primary benefit of this parkland is for views and to contribute to the open feel of the neighborhood. The area is relatively inaccessible and steep, but for a small section. To the north/northwest of the Via Panorama property, the current owner's predecessor-in-interest installed a series of retaining walls. This installation was done without a permit. The current property owners applied to the City for an after-the-fact permit to allow the retaining walls to remain and be maintained by the property owners. This application is pending. To the west of the property, the property owners landscaped and improved a section of City-owned parkland, including placement of a gazebo and other accessory, non-habitable structures. At the City's direction, the property owners removed the structures encroaching on the City's parkland. The area also includes a fire access road, an underlying storm drain to the west of the residence, and a sewer line that traverses the easterly portion of Area A.

## 2. Transfer of Area A from the City to the Homes Association

Through the MOU, the City and the Homes Association agreed to allow Area A to revert back to the Homes Association ownership.<sup>1</sup> Typically, the creation of new parcels requires compliance with the Subdivision Map Act. However, a parcel map is not required where the parcel is created and conveyed by the City. The Government Code provides that a parcel map is not required for "[I]and conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map" (Cal. Gov. Code § 66428, subd. (a)(2).)

In Palos Verdes Estates, there are three sources of restrictions on the development of property. First, all homes are subject to the Homes Association CC&Rs. Second, development must comply with the Palos Verdes Estates Municipal Code Zoning Regulations. Third, new development is subject to the Homes Association Art Jury process. The deed transferring Area A to the Homes Association binds the property owners, as well as successors in interest, to a number of very specific conditions which run in favor of the City.<sup>2</sup> These only create an exception with respect to the CC&Rs. All future development in Area A must comply with applicable City zoning regulations and Art Jury review.

The conditions specify the following:

- (a) Unless expressly provided for in the deed, the entire property shall be restricted to open space.

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<sup>1</sup> The City's ownership of Area A, like all property in the City, is subject to a reversionary right in favor of the Homes Association as stated in the *Palos Verdes Estates Protective Restrictions* (see Article VI.; Section 6).

<sup>2</sup> These conditions "run with the land" meaning that the restrictions are not terminated when title is transferred but remain in effect from owner to owner.

- (b) If they first obtain any and all required permits and approvals from the City, the property owners 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 Estates Municipal Code (“PVEMC”) Section 18.32.010.D within certain very limited areas designated as areas 1 and 2, which are subsets of Area A; however, any such structure shall comply with any and all requirements of the City, the Homes Association and the Art Jury regarding height, size, orientation, design, and setback. The property owners shall not perform, or allow others to perform, any act on or affecting the property that is inconsistent with this condition.
- (c) Within six (6) months of recordation of the deed, the property owners shall seek and obtain an after-the-fact permit pursuant to PVEMC Section 17.04.110 permitting the existing retaining walls Area 2.
- (d) The property owners shall keep and maintain the property free of weeds and trash and shall provide landscaping that is compatible with adjoining properties and that is satisfactory to the City. The property owners shall be solely responsible for such maintenance.
- (e) The City reserves for its benefit any emergency service agency a permanent easement. The easement shall be for purposes of egress and ingress to provide, without limitation, fire and police protection, ambulances and rescue services and other lawful governmental or private emergency services to the premises, owners, occupants or others.
- (f) The City reserves for its benefit an easement for an existing storm drain. The easement shall be extinguished if and when the existing storm drain is removed and a replacement storm drain is built at the property owner’s expense in a manner acceptable to the City.
- (g) The City reserves for its benefit an easement for an existing sewer line.

The City’s General Plan emphasizes the importance of open space in the City and Area A contributes to the open space feel of the neighborhood. To that end, the entire property is subject to an open space easement. As explained above, the limited exceptions to this general prohibition are allowed only if the property owners obtain proper permits and any required legislative amendments, as well as Art Jury review. In that case, accessory structures would be allowed in the area identified as Area 1 where the previous accessory, non-habitable structures had been installed and removed and except the existing retaining walls would be allowed in the area identified as Area 2 if the property owners obtain after-the-fact permits.

The City will also retain an easement for a fire access road and an easement that would follow the current easterly edge of Area A to account for the existing sewer line. In addition, the City has an existing utility easement for a storm drain. Due to the passage of time, the drain is in poor condition and has deteriorated in certain areas. As part of the transaction, the property owners have agreed that upon completion of the transfer, they will at their own expense remove the existing storm drain and replace it with a new drain located on City property. Accordingly, the deed specifies that the City retains an easement for the storm drain shall be extinguished if and when the existing storm drain is removed and a

replacement storm drain is built at the Grantee's expense in a manner acceptable to the City.

This transfer of ownership of Area A relieves the City of any liability or responsibilities relating to the retaining walls or the hillside, while retaining the open space benefits and the fire access road. The City also gains the benefit of a new storm drain at no expense located in an area that will provide for easier access and service.

As noted, this transaction requires a number of technical steps be satisfied in order for it to occur. For example, the quitclaim deed contemplates a total of six separate legal descriptions, two of which (relating to the utility easements) the City just became aware of last week. As of the time of the writing of this Staff Report, the legal descriptions have not been completed to the satisfaction of the City Surveyor. In addition, the City Planning Director has requested a site visit with the property owners' engineer which is not scheduled to occur until Friday, July 20<sup>th</sup>.

### **Correspondence Received**

The City has not received any correspondence related to this item.

### **CEQA Review**

Approval of the resolution is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to California Administrative Code Title 14, Chapter 3, Section 15317 (Open Space Contracts or Easements) and Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) as it involves the transfers of easements or fee interests in order to maintain the open space character of the area. It is also exempt under the common sense exemption as there is no substantial evidence that this resolution portends any development or changes in the physical environment that may have a significant adverse impact on the environment. It can be seen with certainty that there is no possibility that the approval of the resolution may have a significant effect on the environment.

### **Alternatives Available to Council**

The following alternatives are available to the City Council:

1. Adopt the resolution.
2. Decline to adopt the resolution.
3. Receive and file this item pending review of the final documents and completion of the City field trip.

### **Recommendation from Staff**

Staff recommends that the City Council consider all information presented, including any correspondence and comment from the public and make a decision whether to approve the resolution. If such information is incomplete at the time of the Council's consideration, Staff recommends that the City Council just receive and file this report.

Staff report prepared by:

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Christi Hogin  
City Attorney

Attachment A: Draft Resolution R12-21

DOCUMENTS UNDER PREPARATION:

Draft Quitclaim Deed for Transfer of Area A from the City of Palos Verdes Estates to the  
Palos Verdes Homes Association

Quitclaim Deed for Transfer of Lot C and Lot D from the Palos Verdes Homes Association  
to the City of Palos Verdes Estates



**ATTACHMENT A**

**DRAFT RESOLUTION R12-21 IS NOT INCLUDED BECAUSE IT IS STILL SUBJECT TO CHANGE AS OF THIS WRITING & POSTING. COUNCIL MAY OPT TO ONLY RECEIVE AND FILE THE REPORT. IN THE EVENT A RESOLUTION IS AVAILABLE FOR COUNCIL CONSIDERATION FOR ADOPTION TUESDAY, JULY 24, 2012, IT WILL BE AVAILABLE FOR PUBLIC REVIEW ON MONDAY, JULY 23, 2012 IN THE CITY CLERK'S OFFICE OF CITY HALL.**