Statement by PVE Residents about the 900 Via Panorama Application ZC-2/M-902-13

We the undersigned PVE Residents, wish to express our concerns about Application number: ZC-2M-902-13, which is on the agenda for the 02/19/13 meeting of the PVE Planning Commission.

"The Project: Zone Change of Parcel A adjacent to 900 Via Panorama from Open Space to R-1 Family Residential and Miscellaneous Application for walls exceeding the maximum allowable height. Application number: ZC-2/M-902-13"

We the undersigned PVE residents also wish to express our concerns about a transaction by the City of Palos Verdes Estates ("City") and the Palos Verdes Homes Association ("PVHA") approved at the City Council Meeting of 7/24/12 whereby 1.7 acres of parkland ("Parcel A") surrounding 900 Via Panorama was sold for $500,000 to Mr. Lugliani ("Owner") who has owned 900 Via Panorama since 1975.

Our concerns include the following:

- Parcel A was part of the 800 acres in the original formation of PVE in 1923 designated as public parklands and constrained by certain Covenants, Conditions and Restrictions ("CC&Rs") put in place on 6/26/23 in "The Declaration of Establishment of Basic Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges Affecting the Real Property to be Known as Palos Verdes Estates Parcel A and B" and designated to remain in force in perpetuity and binding on all owners including subsequent owners. Those CC&Rs were assumed by the City when the PVHA transferred the parklands to the City in 1938.
- To our knowledge, this sale of parklands is unprecedented -- meaning that neither the City nor PVHA has ever sold parkland to a private entity for non-public use (other than a swap of parkland on Via Castilla with non-parkland at a different location in Lunada Bay to compensate for it -- hence that transaction did not decrease the total amount of parkland acreage and hence is not a precedent.) As such, we believe both the sale of parkland on Via Panorama and the proposed rezoning violate the original CC&Rs in an unprecedented way.
- The sale transaction violates the CC&Rs covering this tract within PVE, and hence should never have been approved. Our understanding is that the City cannot sell public parkland.
- The sale transaction also violates statements on the websites of the City and PVHA about the importance of preserving the open space that is so critical to differentiating PVE as a community (see below), and this violation would be exacerbated if re-zoning of Parcel A was approved.
- The process by which the sale of parkland was approved in July 2012 was inappropriate and (we believe) illegal, since no signs were posted or letters sent out to any residents within 300 feet of the property being sold. None of the neighbors on Via Panorama or Via Mirada were aware of the transaction before, during or after the 07/24/12 City Council Meeting that approved the sale – until a sign was posted on or about 02/05/13, that the owners of 900 Via Panorama were applying to re-zone the property from OS (Open Space) to R-1 (Single Family Residential) and mailings were sent out to select residences in early February 2013.
- The current process to consider re-zoning also has not been conducted properly, since the owners of 916 Via Panorama (900 Via Mirada) are approximately 198 feet away from the boundary of the property subject to the re-zoning request and did not receive notice in the mail, as required by PVE procedures for all properties within 300 feet. The owners of

917 Via Panorama are also within the designated radius and did not receive notice. (See attached Zillow map with property boundaries and overlay.)

- Information presented to the City Council by staff was misleading in some regards, such as the true origin, nature and status of the encroachments on the west side of 900 Via Panorama. In the staff report 05/01/12, it says "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, Property Owners removed the structures encroaching on the City's parkland." This was reinforced by the City Attorney's comments at the 05/08/12 meeting -- that the encroachments caused by constructing a sports court, retaining walls, steps, gazebo and landscaping were mostly done by the predecessor owner and not the Luglianis. In reality, many of the structures were never removed, and it was the Lugianis and not the predecessors that built them. Several minutes after the City Attorney made her comments, a resident (Joseph Barnett) delivered a detailed description how he was intimately familiar with the property in the early 1970s as a real estate agent. He said that none of those encroachments existed at the time of the Lugliani purchase; he also expressed surprise at the extent of the encroachments and concern about rewarding "a violator of city codes" and the precedent for selling parkland. Yet none of his critical remarks were detailed in the otherwise very accurate and specific minutes of the meeting as reflected in the audio and compared it to what was written in the minutes. Barnett was correct on this point, and in fact on 02/09/13, David Lugliani (son of the owner and a real estate developer) acknowledged to us verbally that his family built these structures.
- The amount paid ($500,000) is significantly below market for 1.7 acres, and no solicitation (to our knowledge) was made to other parties. Approximately $400,000 of the proceeds was used by the PVHA to pay legal fees on a lawsuit, and the remaining $100,000 was used by the City for its general budget. As such, the City and PVHA both benefitted from the transaction, but failed to act in a fiduciary manner in regards to maintaining parkland for public use in its stewardship roles.
- When the Owner (Lugliani) acquired 900 Via Panorama in 1975, the previous owner (Haagen) had built a road on the parkland property – without notice or permits; other non-approved structures, including a trellised rose garden, gates and stairs, had also been built. The new Owner then significantly expanded and extended encroachments on parkland to include grading a large sports field into the hillside, building a 30 foot retaining wall to shore up the now exposed slope due to the graded field, and constructing pergolas and other structures as well as new landscaping; the landscaping includes trees that have grown to over 40 feet tall on the public parkland which now block neighborhood views of the coastline and ocean.
    - The Owner has derived benefit from these illegal encroachments for over 30 years and has left the impression that portions of Parcel A (such as the sports field) were private; these benefits were derived without receiving any permits or paying any taxes for use of this land.
    - We believe such behavior should not be rewarded.
    - When the City became aware of these encroachments in 2004 through their GIS system (the encroachments are clearly visible in Zillow/Google Maps satellite views in the attachment), the City appropriately demanded that the Owner remove all structures. That demolition was begun some time between 2011 and 2012, but halted before removal was completed.

- This transaction clearly violates the charter for PVHA. Here are relevant excerpts from the PVHA website (http://www.palosverdes.com/homesassociation/history.htm): "...the 3200 acres were transferred to a trustee, **subject to the terms and provisions of a trust indenture commonly known as "Palos Verdes Trust Indenture"**... **By the terms of the deeds transferring these properties to Palos Verdes Homes Association, the property must be perpetually devoted to public uses; otherwise, title reverts to the trustee….** The Homes Association has independent functions to perform, which no city can legally perform. These functions must be performed by the Homes Association to **protect one of the most valuable assets that the community has**. Palos Verdes Estates is one of the few communities in Southern California, and indeed in the State of California, which has a comprehensive plan of both use and building restrictions. With the growth of the population and industry in Southern California, i**t is becoming increasingly important that use and building restrictions be perpetuated**. The Homes Association under the Restrictions themselves, under the Trust Indenture, and under its Articles of Incorporation and By-laws, is given the power and the right to enforce these restrictions….The deeds from the trustee to each original purchaser refer specifically to the restrictions, the organization of the Homes Association and the Art Jury **bind the purchaser to comply with the restrictions. The restrictions and the original deeds are recorded, and being matters of record, each subsequent purchaser is also bound by the restrictions."**
- This transaction also violates what the City of PVE says on its own website. From the City of Palos Verdes website at **http://www.pvestates.org/index.aspx?page=38: "**Deed restrictions were imposed on the land in 1923, when the Bank of America, as trustee for Vanderlip's Palos Verdes Project, drafted a trust indenture and outlined provisions for development…. Over the years, the City's governance has been guided by the vision of the original founders with an emphasis on **preserving, protecting and enhancing the quality of life and natural assets that make Palos Verdes Estates unique**."
- The undersigned residents would like answers to the following questions:
  - City Council minutes from 7/24/12 state that the transaction "prohibits [Parcel A] from ever being merged with the adjacent residential property." Why then is the City considering re-zoning it to residential?
  - Why was a resident allowed to purchase parkland, when that is explicitly forbidden in the original legal documents that formed PVE?
  - Why is the illegal activity of building on public lands in a manner that is explicitly disallowed being forgiven and rewarded decades after the fact?
  - Why were no residents within 300 feet notified of the proceedings involving the sale of parkland property in July 2012? Not giving appropriate notice makes this look like a cover-up.
  - Why were some residents within the same 300 feet not notified of the Planning Commission meeting on 02/19/13?
  - After the Owner acquired Parcel A in 2012, are they now paying taxes? If so, what is the assessed value of the newly acquired property? And since they have been using it for over 30 years for their personal use, are they going to pay any back taxes on the assessed value?
  - The Memorandum of Understanding ("MOU") is filled with inaccuracies and inconsistencies. For instance, it states that "Area A [The Via Panorama Parcel A] is approximately 75,930 sq ft and roughly equivalent in size and value to Lots C & D." The MOU sites the square feet of Lot C & D as 19,984 sq ft and 17,978 sq ft respectively for a total of 37,962 sq ft. Obviously 75,930 sq ft is not "roughly"

equivalent – it is almost twice the size. Further, the whole argument of a trade for open space is spurious, since both properties were designated open space before the transaction. As for value, if the values are equivalent, how does the $500,000 price paid by the Owner reflect fair market value when the value of lots C & D is $1.5M or more?

- How did the City/PVHA determine the appropriate value for the sale? And how does the donation to the Palos Verdes Unified School District of $1,500,000 figure into the value of the acquired parkland? The donation to PVUSD was directly connected in the MOU to the sale of Parcel A; the donation was contingent on the sale of Parcel A.
- Why did the City/PVHA not resolve the situation by granting permits for the retaining walls since that was deemed to be for the public good, while retaining ownership on the property by the City? We've been told that without the retaining walls, portions of 900 Via Panorama property might collapse onto the houses below. However, the instability of the house was created by the Owner's illegal construction of the sport field which cut into the natural hillside and created the need for the 30-foot retaining wall. Further, there are no houses at risk below the property.
- Now that the City/PVHA has made this illegal transfer, what is their response when anyone else in PVE decides to build on adjacent parkland and/or asks to buy the property? Is the City/PVHA prepared for lawsuits from residents demanding similar rights to parkland they wish to purchase?
- City Council minutes 7/24/12 state that "they are not precluding, nor permitting any improvements" including accessory structures. 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?
- The CC&Rs established in 1923 require that parkland be maintained for public use and benefit. How is selling it to a private individual compatible with that requirement?
- In the City Council minutes 7/24/12, City Attorney Hogin says "it is to remain as open space in perpetuity" but then that "accessory structures" that would be allowed. Attorney Hogin said the definition of accessory structures includes "gazebo, sports court, retaining wall, landscaping, barbecues or any other accessory structure as defined in 18.32.010B of the PVEMC if approved." Then she went on to say "accessory structures are not allowed in open space; an application for rezoning of Area 1 would be required". So does this mean that City Attorney Hogin was aware that the owners intended to re-zone and hence circumvent the open space requirement that the City Council was told would be in effect "in perpetuity"?
- In the City Council minutes 7/24/12, "MPT Goodhart confirmed with Attorney Hogin that Areas 1 and 3 of this property are currently, and would remain, zoned as open space." So why is a re-zoning being considered?
- This transaction violates the finding of the Court in 2012 that PVPUSD cannot sell property designated as open space to private owners. PVHA defended that principle in the lawsuit, and settlement of the appeals process was part of the Resolution that was approved on 7/24/12. However that principle seems to have been violated in this aspect of the Resolution. Hence, we find it ironic that in the same transaction, the City and PVHA chose to ignore the principles it had just vigorously defended and reward the family making a charitable contribution by selling parkland to them. Why?

As for the re-zoning application, we believe the request to rezone from OS (Open Space) to R1 (Single Family Residential) should be denied since that would allow usage inconsistent with both

the CC&Rs in force, as well as the "open space" easements on the property that are controlled by the City. Any kind of structure (including a fence or wall) would be in conflict with the feeling of open space and the views of the neighbors who look out at the "Queen's Necklace" coastline view through Parcel A and the adjacent parkland.

If the rational for the re-zoning to R-1 is to allow the old and new lots to be considered a single parcel, that is explicitly forbidden under the express conditions of the recorded quit claim deed, which state "The Deed shall not cause the Property to be merged with any adjacent lot and any such merger shall be prohibited." The express conditions also states, "Unless expressly provided for herein, Grantee shall not construct any structure on the Property and the Property shall be restricted to open space."

Signature:	Address:
Name:	Date:

Signature:	Address:
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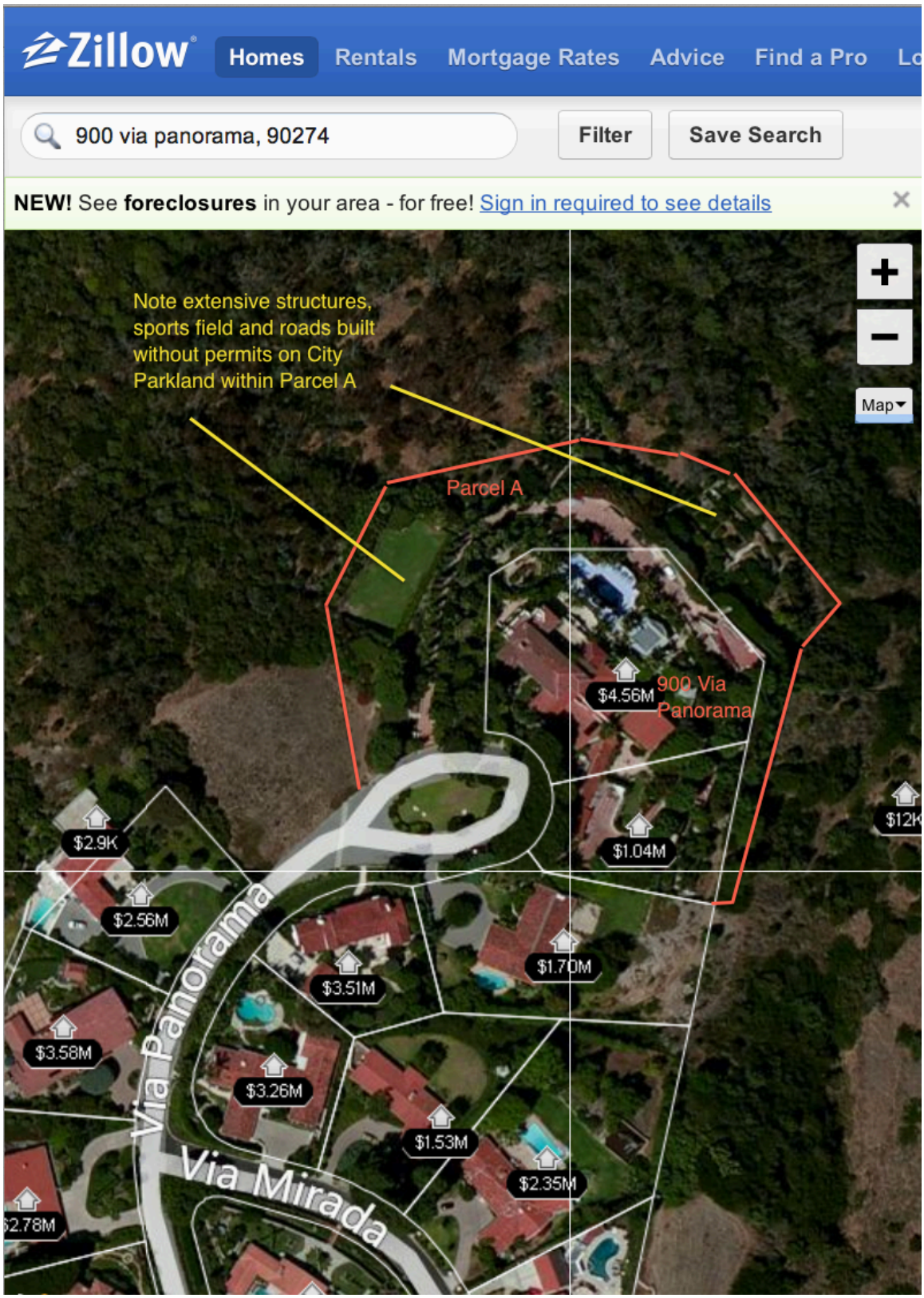
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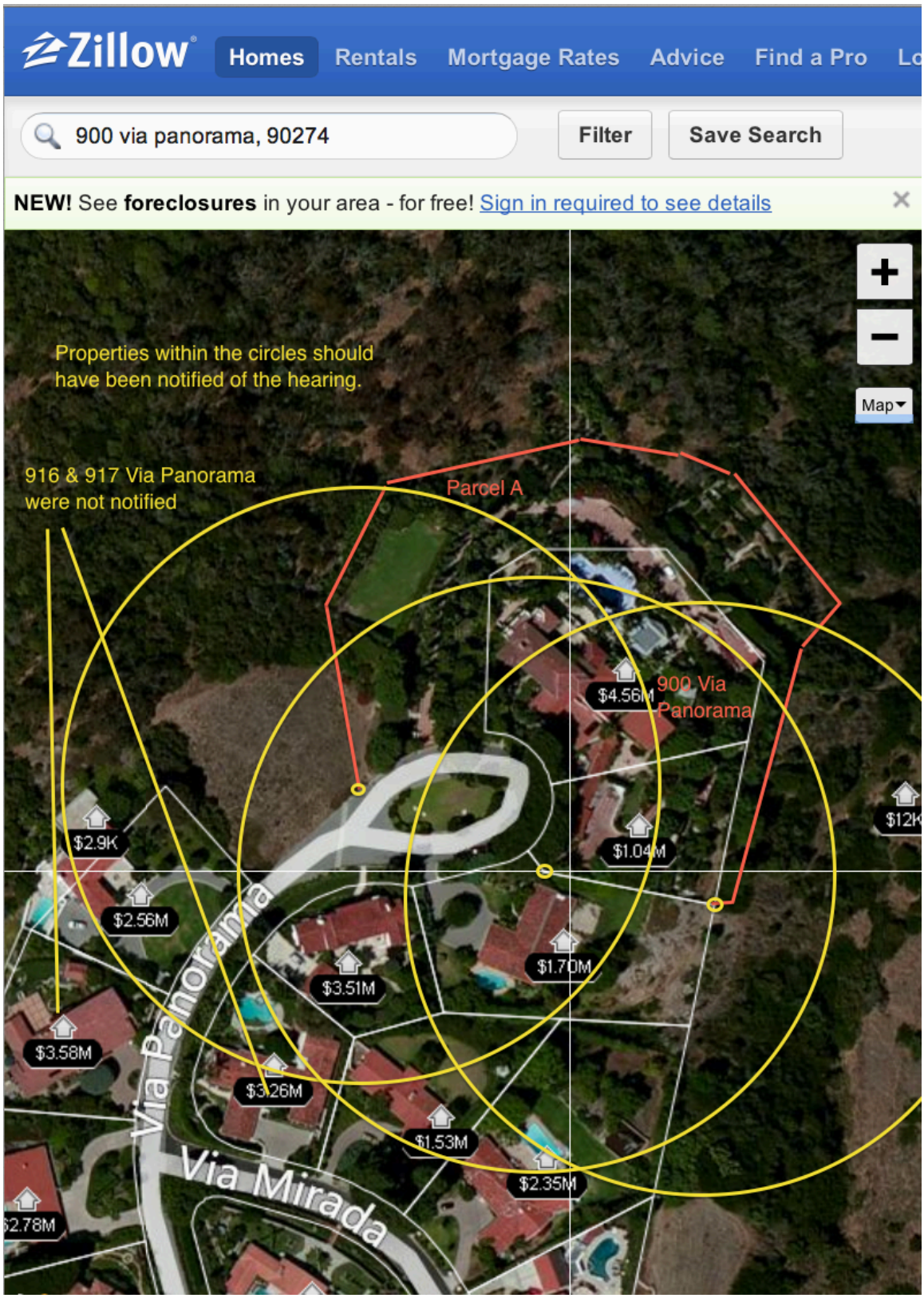
NEW! See foreclosures in your area - for free! Sign in required to see details
Note extensive structures, sports field and roads built without permits on City Parkland within Parcel A
Parcel A
900 Via Panorama
$4.56M
$1.04M
$2.9K
$2.56M
$3.51M
$1.70M
$3.58M
$3.26M
$1.53M
$2.35M
Via Panorama
Via Mirada
Map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NEW! See foreclosures in your area - for free! Sign in required to see details
Properties within the circles should have been notified of the hearing.
916 & 917 Via Panorama were not notified
Parcel A
900 Via Panorama
$4.56M
$2.9K
$2.56M
$3.51M
$1.70M
$1.04M
$3.58M
$3.26M
$1.53M
$2.35M
$2.78M
Via Panorama
Via Mirada
Map