Comments on PVE Press Release 11/17/15 Announcing Appeal
Response dated November 22, 2015

PVE Press Release text is in Red
CEPC comments/response is in blue
Quotes from the ruling are in black

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"City Council authorizes appeal of judgment in lawsuit: Citizens for Enforcement of Parkland Covenants, John Harbison v. City of Palos Verdes Estates, et al

"On November 10, the City Council unanimously approved joining in the appeal of the September judgement by a Los Angeles County Superior Court judge regarding a lawsuit filed by John Harbison and an unincorporated organization called the Citizens for Enforcement of Parkland Covenants and against the City of Palos Verdes Estates, the Palos Verdes Homes Association and the owners of property at 900 Via Panorama.

"The lawsuit challenged a 2012 settlement agreement among the City, the Palos Verdes Peninsula Unified School District, the Palos Verdes Homes Association and the property owners. The agreement, among other things, preserved more parklands for the City. For further background on the benefits of the agreement, click here. "

This characterization is incorrect. The lawsuit **did not** challenge the settlement agreement. It only challenged the portion of that settlement (MOU) that was illegal – namely the **sale of public parklands to a private individual**. Moreover, the Judge in the CEPC case made it very clear that her ruling did not affect the other aspects of the MOU, and that even if she did want to affect that, she would be unable to do so since the PVPUSD is not party to the CEPC case. In fact, Section II of her Summary Judgment Ruling dated **6/29/15** titled "The Court Need Not Find the Settlement Agreement to be Void." In that section, the ruling states:

> "The court does not need to void the contract or, in this court's view, any part of it in order to enjoin or otherwise address as law and equity may dictate the conduct of the parties proposed in their agreement (MOU) and/or as then subsequently carried out because of their private contract among themselves. "

Moreover, reversal of the sale of parkland to Lugliani does not impact in any way the benefits to the PVPUSD as negotiated in the MOU, so there is no reason for the PVPUSD to renege on the aspects of the MOU under their control. Most notably, PVPUSD will retain the $1.5 million donation from the Luglianis because that was separated from the land purchase by the Luglianis for tax purposes. So the agreement by the PVPUSD not to sell parkland in the future -- which was the main reason both the City and the PVHA entered into the MOU -- is still in effect.

"The appeal is based exclusively on the Council's determination that the judgment is not in the best interest of the City's residents.

"The Council based its decision to appeal on two key aspects of the judgment:

> [1] "• **Protecting residents' rights.** If left unchallenged, the effect of the judgment would be to confer special enforcement authority over City parklands and open space to Mr. Harbison and a private group. Though all the claims in the lawsuit related to a single parcel, the judgment goes beyond the relief sought by the plaintiffs and applies to all "similarly situated property owned by the City," conferring on the plaintiffs the right to appear in court on 24-hours' notice to force the City to remove immediately any "structure, vegetation, or object" encroaching on City parklands. No other private citizens have this discretionary right. This enforcement authority is a role properly reserved for City government, guided by common sense, fiscal responsibility, fairness and, importantly, community accountability and transparency."

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:

- 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.
- 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.")
- 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).
- 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."
- 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 4 action which has the purpose or effect of removing the Property from use for park and/ or recreational purposes
- 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 on the parkland. There is no 'extraordinary provision' and to assert that there is, represents an attempt by the Mayor to misrepresent the specifics of the Ruling. It is very disconcerting that the City is resorting to such obfuscation that serves no purpose other than to intentionally mislead the public and provide justification for an unjustifiable decision to appeal.

Further, the Judgment actually directly contradicts the assertion about the City losing its discretion to allow encroachments in the following:

> "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 "special enforcement authority" was so serious in its implications, then why did the City not raise an objection at any time 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.

> [2] • **Cost to taxpayers.** As the judgment now stands, the City would be returning to court and paying legal fees each and every time Mr. Harbison and the private group utilized the powers granted in this court judgment. The costs for these multiple court appearances could be substantial.

This is a red herring. The ruling grants no one (including CEPC and Harbison) any rights to return to court and press for the removal of encroachments on any property other than the subject Parcel A Via Panorama Parkland property presently owned by Defendant Lugliani.

In addition, the judgment could impose on the City the cost of removing any and all encroaching structures, vegetation or objects in parklands. Under normal City enforcement procedures, these costs and actions would typically be borne and facilitated by the violator. This is not an abstract concern given that the plaintiffs have identified more than 80 such "structures, vegetation, or objects" throughout the City that they could seek to have removed at taxpayer expense.

This is also a serious misstatement. There are specific provisions in the 1923 CC&Rs for the PVHA to recover costs of intervention to remove encroachments, and the PVE Municipal Code Chapters 12.04 and 17.32, along with Resolution R05-32 specify a similar process for recovering the costs. The Judgment contemplates such recovery:

> "Nothing contained in this Judgment shall authorize or prohibit any party from taking any actions or filing any legal proceedings to recover the costs of encroachment removal

from the other Defendants in this matter. "

The City has been and will continue to be fully committed to the preservation and protection of Palos Verdes Estates parklands and open space. Recent examples include these:

- Under the settlement agreement, the City acquired two additional parklands parcels (Lots C&D);

Yes, the City picked up as parkland 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 parkland 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 while 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.

- The Bluff Cove properties have been demolished, leaving additional public park space;

Yes, but this was done out of concern over liability, rather than a desire to increase parkland. Notably, it is my understanding that the City Council opted to avoid designating this land as open space parkland, perhaps to preserve flexibility to sell it in the future if it so chooses.

- The City Council accepted a preservation easement for open space adjacent to the Malaga Cove School;

I am not familiar with this situation.

- Under the agreement, City Council retrained an open space easement over the Via Panorama parcel;

I think they mean "retained." True, there is such an easement on this former parkland, but the City also actively tried to rezone the parkland property as privately owned open space to allow certain structures such as a sports field, barbecue, gazebo and other non-habitable structures to be built exclusively for private use. This is hardly evidence of a commitment to public park space and it is ludicrous that it is listed in a set of accomplishments under that description.

- The City successfully implemented a program to cause removal of encroachments along its border with Torrance, and;

Yes, and Harbison has acknowledged and complemented Allan Rigg and the City for this initiative in 2005 several times in City Council meetings. Of the 40 citations, all but two were

resolved – Lugliani and Hagen (who was the owner of 900 Via Panorama before 1975 and then built extensive terraced orchards on parkland adjacent to his house on Via Elevado) According to the City, Hagan's encroachments were subsequently also removed in contrast to the Luglianis, which were not.

- The City Council appropriated more funds to hire a Code Enforcement Officer to increase enforcement efforts for encroachments and code violations.

Yes, and Harbison has been very supportive of that action, including meeting with Ellisa Hall (and Carl Moritz and Sheri Repps-Loadsman) to share a Google Maps overlay software tool we developed to assist them in their enforcement actions.

Enforcement and management of our parklands and open space begin with the open system of local government. On the behalf of all residents, we now look to an appellate court to protect our proven system of local control, due process and open decision-making, as well as to prevent potentially escalating and significant legal fees.

The only escalating legal fees are from the City's disregard of its residents in deciding to appeal this case and continue to expend legal resources in pursuit of an appeal. Since the Judge has awarded reimbursement of CEPC's legal fees, continuing to an appeal means PVE will have to pay additional legal costs of its own counsel as well as CEPC's counsel.

All relevant documents associated with this matter can be found on our website. We will continue to provide updates and look forward to maintaining communications with our residents on this important item.

The City's website has posted a small fraction of all the documents on this topic. For a complete set of documents and press articles from all sides of the issue, we suggest you refer to www.pveopenspace.com where we embrace full transparency and facts, rather than misleading assertions and distortions. We welcome you to compare the documents in the two websites and come to your own conclusions.