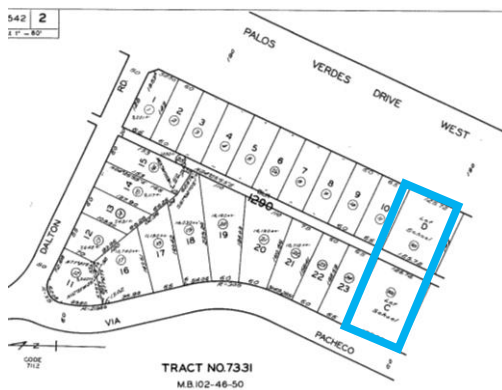


SUMMARY OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY, PALOS VERDES PENINSULA SCHOOL DISTRICT, PALOS VERDES HOMES ASSOCIATION, AND THE LUGLIANI TRUST

The purpose of this document is to provide accurate and factual information about the Memorandum of Understanding (MOU) among the City of Palos Verdes Estates (City), Palos Verdes Peninsula Unified School District (District), Palos Verdes Homes Association (Homes Association) and the Lugliani Trust (Lugliani). The City is aware that some inaccurate information has been distributed and some residents have asked questions. The following information is offered to respond to questions, correct misunderstandings and provide clarification. This four-party agreement is complex; thus adequate clarification does not lend itself to a concise explanation.

The properties involved. There are two parcels of land involved in this MOU:

(1) Lots C & D (located in the 2000 blocks of Palos Verdes Drive West and Via Pacheco respectively, connecting the Palos Verdes High School with the playing fields east of Palos Verdes Drive West .



(2) A portion of City parkland adjacent to 900 Via Panorama (Parcel A).



From some of the pictures that have been circulated among the public, residents may be led to believe that the parkland located to the east of to 915 Via Panorama (indicated in yellow on the picture above) was also a part of this agreement. That property is not a part of the transfers and remains city-owned open space.

Historical context. The dispute that led to the MOU arose from the District's ownership of open space property within the City, including Lots C & D. For that reason, the historical context of how the District came to own those parcels plays a role in understanding the MOU.

Palos Verdes Estates is an entirely planned community. The community plan is implemented by the Homes Association through deed restrictions (also known as Covenants, Conditions & Restrictions or CC&Rs) imposed on all property within the community. During the Great Depression, the Homes Association (a private entity which existed before the City was founded) sold approximately 120 acres of land to the School District's predecessor for the nominal sum of ten dollars (\$10). This transaction was undertaken by the Homes Association as a precautionary measure, fearing the property might otherwise be lost in foreclosure or bankruptcy. The Homes Association placed a special restriction on the property: the land could only be used for school purposes or as open space, or else the ownership would revert to the Homes Association.

The District sought to raise revenue to address its budget deficit by selling property conveyed to it by the Homes Association. In an attempt to deal with its multi-billion dollar deficit, the State of California began making drastic funding cuts to public education. In an effort to make up the shortfall, the District sought to sell some of the land it had acquired from the Homes Association: namely, Lots C & D. These two parcels of vacant land are contiguous to one another and are located in the 2100 blocks of Palos Verdes Drive West and Via Pacheco, respectively. The ~0.9 acres of Lots C & D are relatively flat and flanked by homes on either side. The District desired to sell or develop this property into two or four residential lots. For Lots C & D to be developed for residential use, however, the open space deed restrictions imposed by the Homes Association had to be removed, and the properties' zoning changed from open space to residential. When the Homes Association refused to waive the deed restrictions, the District filed a lawsuit.

The District filed a lawsuit against the City and the Association seeking to secure the right to sell Lots C & D for residential development. The District filed suit against both the Homes Association and the City (the City persuaded the District to drop the City from the lawsuit in the early stages for technical reasons), claiming that the Homes Association had failed to take the necessary steps to keep its deed restrictions enforceable. The lawsuit essentially sought to invalidate the deed restrictions, which would allow the District to sell its PVE land for development. State law allows school districts to sell off unwanted school property and, if certain conditions are met, forces cities to rezone such school property on request. The general rule is that rezoning is left to the discretion of the City, but this state law takes the decision away from the City by mandating a zoning change upon the District's request, if the conditions are met. The District in fact pursued rezoning of Lots C & D to R-1, coming before the City Council, while its lawsuit against the Homes Association was pending. That application was put in abeyance during the litigation and rendered moot by the MOU.

The stakes in this lawsuit were high because a court decision allowing the School District to sell Lots C & D would mean all District owned property in the City could be sold for development. Although the lawsuit concerned only Lots C & D, if the District prevailed, then the decision effectively would have invalidated the deed restrictions on all District properties, of which there are 12 parcels in the City. For example, a future need for funds could have led to the sale of perhaps 50 acres in the City of Palos Verdes Estates, forever changing the character of our community. Properties such as the Lunada Bay Little League field, Palos Verdes Intermediate School, Valmonte School, and parts of Malaga Cove School could have been developed and subdivided into perhaps 200 parcels, some of which may have been designated as high-density housing due to yet another state law mandating cities to provide for low- and moderate-income housing as part of their general plans.

Although this possible development would have been severely detrimental to the community, the City was little more than an observer in the lawsuit: the issue was the enforceability of the deed restrictions imposed by the Homes Association. Deed restrictions are enforceable by the Homes Association, and not by the City.

The District lost in the trial court and filed an appeal. The Court of Appeal is not bound by the legal reasoning of the trial judge. Therefore, the outcome of the District's challenge to the Homes Association's deed restrictions was uncertain.

900 Via Panorama. An unrelated historical event involves the illegal encroachment and construction on City parkland adjacent to 900 Via Panorama, henceforth referred to as Parcel A. Parcel A is approximately 1.7 acres of open space parkland located on the hillside below 900 Via Panorama. In 1986, Lugliani purchased the property at 900 Via Panorama, and apparently much of Parcel A had been built upon with a series of walkways and terraces which were sustained by illegal retaining walls, constructed by a prior owner. The retaining walls are contained within subzones of Parcel A referred to as Areas 1 & 3. It is unclear whether the Luglianis or their predecessor added other illegal structures including a retaining wall, two gazebos and grass sports field on the northwest portion of Parcel A (termed Area 3) but seemingly with no view impact from neighboring properties. In 2004, the City began action against the Luglianis, demanding the removal of all illegal structures and the vacation of encroached City property within five years. The Luglianis partially complied by demolishing the two gazebos in Area 3. However, they cautioned the City regarding the slope instability that might result from deconstructing the retaining walls, which could threaten their home.

The City was therefore in a dilemma. Removing the retaining walls could destabilize the hillside and imperil the Lugliani property, exposing the City to liability. Alternatively, keeping the retaining walls could also expose the City to liability should the walls fail and, in any event, the retaining walls also constituted a technical violation of the CC&Rs and open space zoning. Thus, continued City ownership of Parcel A exposed the City to civil liability arising from these retaining walls, regardless of whether they were maintained and kept, and even though the walls had been illegally constructed on City land.

In the latter part of 2012, the City was presented with a proposal aimed at preserving the Homes Association's open space deed restrictions on properties owned by the District, and jeopardized

by the lawsuit. The proposal also provided a solution for the City to avoid exposure regarding the illegally constructed but apparently necessary retaining walls in Parcel A. After significant consideration during public meetings, the City used the elements of the proposal as the framework for the MOU, and negotiated protective measures to the benefit of the community. The City Council unanimously supported the MOU (with Council Member Humphrey recused due to her employment by the District) at its public meeting of May 8, 2012.

An unusual confluence of events led to a multi-party agreement. It is important to emphasize some of the more significant elements of the MOU. While the lawsuit between the District and the Homes Association pertained specifically to lots C & D, the MOU settled the deed restriction issue for **all land** signed over to the District during the original conveyance. Preserving the open space character of our community from potential development by the District is extremely important, and the District's reaffirmation of the deed restrictions was only achievable through the MOU. Even if the District had lost its case in the Court of Appeal, this would not have resulted in a reaffirmation of the deed restrictions on all District-owned property. Thus, the City and residents are now assured that no District-owned school sites, from Valmonte and the Little League fields, to Malaga Cove and PV Intermediate School, may ever be sold and developed for residential or commercial purposes. The significance of this benefit to our city cannot be overstated.

Additionally, under the MOU, the City and the community obtained protections against the possibility that the District would install lights on the playing fields at PV High. State law exempts the District from the City's Planning Code, and the District is not subject to the level of public notification and scrutiny as is required for public and private projects. The residents near PV High will recall the District's recent construction of a grandstand adjacent to Epping Road, without prior warning or community input. As a result, the City was mindful of the District's ability to erect stadium lights at the High School, without regard to community sentiment favoring dark skies.

The City's part of the agreement was to allow the reversion to the Homes Association of the ownership of Parcel A (the hillside area owned by the City below the Panorama property) and to accept ownership of Lots C & D, previously owned by the District. The City required an "open space easement" on the entirety of Parcel A, to protect against development, and retained several utility easements and a fire access road. This "open space easement" is independent from and in addition to the "open space zoning" on the parcel and the applicable CC&Rs. While the agreement clearly protects against development, it does provide a mechanism for the Luglianis to apply for legalization of the existing retaining walls within Areas 1 and 3, and it also contemplates the possible reconstruction of the gazebo and the construction of a sports court in the sports region of Area 3. Any construction would require approvals not only from the City, but also from the PVHA's Art Jury.

While not part of the MOU, the Luglianis made a \$1.5 million donation to the District consistent with the value of Lots C & D, which was the value determined by an independent appraisal, and paid \$500,000 to the Homes Association for Parcel A, the greater portion of which is limited to open space. These payments were crucial because the Luglianis directly addressed the School District's goal, which was to raise revenues lost by state budget cuts. The sale and development

of open space lots was merely the means to that end. Once that financial goal was met, the parties were able to address the broader issues raised by the lawsuit and the District's erstwhile strategy.

The District's part of the agreement was to dismiss its lawsuit against the Homes Association, which was then pending in the Court of Appeal; to reaffirm the applicability of the Homes Association's deed restrictions to all District-owned property in PVE; to agree to some protection for dark skies in our community; to surrender ownership of Lots C & D to the Homes Association; and finally, to begin mending the District's relationship with the community, which was fractured by its suit against the Homes Association and the City and the threat to open space properties that the lawsuit represented.

The Homes Association's part was to accept title of Lots C & D from the District and to convey it to the City, along with \$100,000 which could be used to maintain and upgrade the property; to accept title of Parcel A from the City along with the open space easement; and to convey Parcel A to the Luglianis.

In summary, the City Council determined that the City's participation in the MOU was in the best interests of the City and community, and was well within its legal authority to act. The MOU agreement concluded a costly and damaging lawsuit; reaffirmed the deed restrictions on all 12 District-held properties (the revocation of which would have been devastating to the community); addressed a risk to dark skies in Lunada Bay; provided financial relief to the District; indemnified the Homes Association from the cost of defending the community deed restrictions; converted lots C & D to open space (instead of the District fenced lots where the District was parking surplus [dilapidated] trucks); relieved the City of liability exposure arising from the maintenance, removal and/or failure of the retaining walls in Parcel A; preserved the existing views and character of Parcel A through the imposition of an open space easement.

This was an unusual circumstance where so many divergent interests were able to find common ground. The City Council's role was limited, but the City saw this as a productive partnership between public and private entities, where most of the benefits inured to residents of Palos Verdes Estates, who were, of course, the City's primary concern.

Summary of definitions:

Covenants, Conditions and Restrictions (CC&Rs) –

Certain rights and obligations imposed by the PVHA on all land in the city.

Easement-

An easement is the right to use the real property of another for a specific purpose. The easement is itself an interest in the real property, but legal title to the underlying land is retained by the original owner for all other purposes. Typical easements are for access, for utility or sewer lines both under and above ground, or for conservation of open space.

Memorandum of Understanding (MOU)-

The MOU is a multilateral understanding between two or more parties expressing the shared intent of future action to be followed by the parties.

Parcel-

A unit of land with a defined boundary.

Palos Verdes Homes Association (PVHA)-

The Palos Verdes Homes Association and Art Jury were established in 1923 to enforce the Protective Deed Restrictions set forth in the early planning and development of this city. These deed restrictions determine the building setbacks within each lot as well as the type of architecture allowed. A group of local architects and engineers, known as the Art Jury, reviews all projects within Palos Verdes Estates to determine if the design meets all criteria set forth in the Protective Restrictions. Any project that includes modifying the exterior of the house (i.e. additional square footage, window/door changes, roof material change, paint colors, etc.), or the landscaping, requires Art Jury review and approval.

R-1 Zone-

A residential zone with permitted use under the Palos Verdes Estates Municipal Code 18.04.010 as follows:

- A. A one-family dwelling of a permanent character, placed in a permanent location and used by but one family;
- B. Home occupations complying with all of the criteria set forth in PVEMC 18.42.030 and approved by the finance director;
- C. The following accessory buildings and uses, provided there is a main building on the premises:
 - 1. Private recreational facilities,
 - 2. Private bath house, private greenhouse, private gardens or private service yard,
 - 3. Private shed or private workshop;
- D. The keeping of domestic animals only and excluding all other animals. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 567 § 2, 1993; Ord. 441 § 1, 1987; Ord. 374 § 1, 1983; Ord. 84 § 5.1, 1948)