



MEMORANDUM

Agenda Item #: 5
Meeting Date: 5/8/12

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

FROM: CHRISTI HOGIN, CITY ATTORNEY

**SUBJECT: ADOPTION OF RESOLUTION R12-11 APPROVING FOUR-PARTY
MEMORANDUM OF UNDERSTANDING RESOLVING DISPUTE
OVER ENFORCEMENT OF DEED RESTRICTIONS AND
ENCROACHMENTS**

DATE: MAY 1, 2012

The Issue

Whether to adopt Resolution No. R12-11 approving a multi-party agreement among the City, the Palos Verdes Peninsula Unified School District, the Palos Verdes Homes Association, and the property owners of 900 Via Panorama, which resolves litigation among the City, the School District and the Homes Association; reaffirms the enforceability of the deed restrictions on property owned by PVPUSD in the City; resolves certain encroachments in City parkland near 900 Via Panorama; and provides for the preservation of certain open space properties (Lots C & D) and of dark skies in the neighborhood around Palos Verdes High School.

Goals of the MOU

The four-party agreement is memorialized in a Memorandum of Understanding (MOU) that creates binding obligations for each of the parties and accomplishes disparate goals of the parties:

- The City's goals are 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 in a manner that maintains the open space and relieves the City of any liability or responsibility for the existing retaining walls; 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 are to resolve the current 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 are to resolve the current litigation; to liquidate the value of Lots C & D; and, by separate agreement, secure an offered donation of \$1.5 million to assist District operations in light of current fiscal challenges;
- The Property Owners’ goals are to obtain limited use of an area adjacent to 900 Via Panorama; to legalize the retaining walls installed on parkland by the previous owner; to contribute to the School District by voluntary donation.

Context of the MOU

In essence, this MOU calls upon the City, the Homes Association and the School District to assume their historic roles in Palos Verdes Estates.

City founders are widely credited with conceiving a uniquely detailed vision for a magnificent community by the sea. To secure that vision, deed restrictions were imposed on the land in 1923 when the Bank of America, acting as trustee for the Palos Verdes Project, drafted a trust indenture and outlined provisions for development of the new community. The restrictions included specific items to “preserve the fine views of ocean, mountains and park,” and “increase with the years the wonderful natural beauty of the property.” Exhibit 2 to the MOU consists of a copy of the restrictions and other governing documents. The restrictions establish setback requirements, prohibit billboards and impose a system of architectural review on builders administered by the Homes Association and the Palos Verdes Art Jury. The Homes Association, through the Art Jury, still has jurisdiction for aesthetic approval of all architectural plans and modifications of homes in Palos Verdes Estates and the Miraleste portion of Rancho Palos Verdes.

In these early days of the Peninsula’s development, the trustee also deeded 800 acres to the Homes Association. This is another mechanism by which the City founders secured their vision. Specifically, in 1925, various lots subject to deed restrictions which limited the use of the properties to public schools, parks, playgrounds or recreations areas were conveyed by grant deed to the Homes Association (the 1925 Grant Deed). From these conveyances, a golf course was built, a swimming club constructed, the La Venta Inn was erected and remaining portions of City land were created as parks and open areas, or planted with trees, shrubs, and flowers.

The Great Depression hit the area hard. Lots were not selling well and property owners were not keeping up with their assessments. The Homes Association faced financial ruin with inadequate funds to maintain its obligations. Its operating funds were derived from annual assessments and sales of lots. By 1938, the Homes Association owed the state a significant amount of back taxes and faced the possibility of losing the property to foreclosure. Both the

school district and the soon-to-be city played a role in saving the properties from foreclosure and preserving their use consistent with the deed restriction and the vision for PVE.

In 1938, the Homes Association conveyed 13 properties (1938 Conveyed Properties) in the City to the School District's predecessor-in-interest subject to deed restrictions restated from the 1925 Grant Deed (i.e., limiting the use of the properties to public schools, parks, playgrounds or recreation areas) and subject to the general restrictions applicable to all properties, including the requirement for Art Jury approval of all improvements to the property.¹

Two of the 1938 Conveyed Properties are commonly referred to as "Lots C & D". Lot C is approximately 19,984 square feet and Lot D is approximately 17,978 square feet. Lots C & D are flanked on either side by houses located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West. Like all School District owned property in the City, Lots C & D are zoned OS (Open Space). The 1938 Grant Deed also included a right of reversion providing that ownership of Lots C & D could revert back to the Homes Association if the property was not used in compliance with the deed restrictions.

In 1940, the city incorporated and immediately thereafter the Homes Association transferred ownership to the city of the park properties, shore line, and the golf and swimming clubs. As a result of the transfer, the back taxes were forgiven by the state and the properties are no longer subject to property tax.

The Homes Association has used deed restrictions and strategic conveyances to preserve the character of PVE and both the School District and the City have played historical roles in receiving properties for specific public purposes. The MOU before the Council tonight keeps with that tradition by transferring Lots C & D to the City for preservation as open space/parkland and by imposing additional deed restrictions on Area A, adjacent to 900 Via Panorama. The MOU also proposes to use the existing deed restrictions to create incentives for the School District to maintain PV High Field without lighting to the benefit of the community. In these regards, while the MOU is unusual in the manner it brings together disparate interests, the MOU accomplishes its goals in a manner that is distinctly rooted in PVE tradition.

Specific Provisions

Set forth below are the main aspects of the MOU. I have also included some of the relevant background information on each component of the agreement to set the stage.

¹The 13 lots conveyed in the 1938 grant deed are grouped into seven properties. Those seven properties are commonly known to residents as (i) Malaga Cove Administration Center; (ii) Valmonte Early Learning Academy; (iii) Lunada Bay Elementary ; (iv) Palos Verdes High School; (v) Montemalaga Elementary; (vi) Margate (Palos Verdes Intermediate School) and (vii) via Zurita property (George Allen Field). In 1988, the via Zurita property was transferred from the District to the Homes Association and from the Homes Association to the City, so that it is currently under City ownership. However, the 1988 transfer establishes a reversionary interest in the District under certain circumstances.

A. Deed Restrictions on District-Owned Properties and the Use of Lots C & D

1. Background

Like all public schools in California, the School District is facing financial challenge. The Governor's budget plan for 2012-13 again cuts the level of state funding for school districts and there is uncertainty about whether tax measures on the November ballot will provide relief. To address its ongoing financial challenges, the School District has taken many actions to cut costs and otherwise to manage its budget. One of the actions that the School District decided to pursue was the sale of Lots C & D for development as residential property, which the School District hoped would bring it at least \$2 million. The City and the Homes Association objected to the plan because the deed restrictions and zoning for Lots C & D preclude residential development. The District filed a lawsuit against the City and the Association. The lawsuit has two causes of action. The first is to "quiet title" and is against only the Association. That cause of action addresses whether (a) the Association still has a valid reversionary interest if the property is used for any purpose other than school/park/recreation and (b) whether the school/park/recreation use restrictions are still enforceable. The second cause of action is for declaratory relief and is against both the City and the Association; and the District seeks a court order declaring that (a) the Association cannot prevent the subdivision of the property and (b) the District is not subject to the City's ordinary hearing procedures for rezoning and subdivision applications and that Government Code section 65852.9 compels the rezoning and subdivision of the property without public hearing.

Before trial commenced, the School District dismissed the City from the litigation, choosing instead to invoke its right to apply to the City for re-zoning. Every property owner in the City is entitled to apply for rezoning and the City must consider any such application in light of the applicable laws.

In the summer 2010, the School District applied to the City to re-zone the property from OS to R-1 in order to facilitate the sale of the property. The School District sought to take advantage of Government Code section 65852.9, which affords the School District the right to rezoning under certain circumstances. The City held a public hearing to consider the application and tabled the matter until the court determined whether the deed restrictions (which precluded residential development) were valid and enforceable.

Meanwhile, following approximately four and a half days of trial in spring 2011, on September 22, 2011, the trial court entered judgment for the Homes Association in the School District's lawsuit. The court's judgment is attached to the MOU as Exhibit 1. The court specifically finds that the deed restrictions for Lots C & D are valid and enforceable against the School District. As the prevailing party, the Homes Association was awarded costs of \$16,491.83. The Homes Association also filed a motion with the trial court seeking to recover \$291,701.25 in attorneys' fees. That motion was denied on February 14, 2012.

As matters currently stand, the School District has filed an appeal challenging the Court's judgment. The Homes Association intends to appeal the denial of its attorneys' fee motion.

And because of the importance of the deed restrictions to realizing the plan for PVE, the City Council authorized the City to file an amicus brief in support of the Homes Association's position and in defense of the deed restrictions.

2. Effect of the MOU on the enforceability of the deed restrictions

The MOU would reaffirm that the deed restrictions are enforceable and valid with respect to all 13 properties owned by the School District located in the City and that those properties may only be used for public schools, parks, playgrounds or recreation areas. This is a very significant provision. Note that the litigation specifically addressed the deed restrictions only with respect to Lots C & D. Under the MOU, the School District acknowledges that the deed restrictions apply to all District-owned properties in PVE. In this respect, the MOU achieves a broader understanding and agreement than was possible from the court, which only addressed the dispute framed by the litigation (Lots C & D).

3. Effect of the MOU on Lots C & D

The School District has determined that it cannot make effective use of Lots C & D for their restricted purposes (public schools, parks, playgrounds or recreation areas). That factored into the School Board's decision to pursue residential development of the property and initiate the litigation against the Homes Association and the City. The School District's desire was to raise funds from the sale of the property. Even if successful, the proceeds of the sale likely would have been restricted to use for capital improvements and not operating funds. Nevertheless, such revenues would have created the opportunity to divert other funds to operations. As these issues came to light in the community, a PVE property owner expressed interest in assisting the School District in meeting its immediate financial goal without affecting the City's zoning or the challenging the deed restrictions, which are a foundation of the City's planned community. To that end, by separate donation agreement, the PVE property owners will contribute \$1.5 million to the School District. This donation is the opposite of a real estate transaction, in that the donation is made after the School District has abandoned the effort to sell Lots C & D.

Under the MOU, Lots C & D (now currently owned by the District) would revert back to the Homes Association as contemplated in the original conveyance deed. As explained further below, Lots C & D would be transferred to the City. This would preserve Lots C & D as open space owned by the City, not subject to property taxation. 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." At the time that the City considered the rezoning application of the School District, residents in the vicinity of Lots C & D expressed interest in keeping the property as parkland and not allowing development or use of the property for storage or other school purposes.

4. Dismissal of the litigation and status of the judgment

Under the MOU, the School District and the Homes Association will dismiss their respective appeals and the Superior Court judgment would become final.

B. Lights at Palos Verdes High School

a. Background

The City and Homes Association share a common interest with respect to protecting the City's development as manifested in the PVE General Plan and the deed restrictions. The City and the Homes Association both believe that outdoor institutional lighting warrants careful review to determine neighborhood compatibility and avoid any adverse land use impacts. Generally speaking, outdoor lighting would not likely be consistent with the City's land use goals and the Homes Association's aesthetic goals. As stated above, the School District has the authority under state law to exempt itself from City zoning standards in certain circumstances where "classroom facilities" are at issue. Athletic fields have been considered by courts to be classroom facilities. Accordingly, under state law the District may exempt itself from City zoning requirements that would otherwise prohibit the use of lights on the athletic field. The state law, however, does not enable the School District to exempt itself from the deed restrictions.

One of the goals in preparation of the MOU was to prevent use of lights – temporary or permanent -- at PV High School athletic field without the City's and the Home Association's consent. Currently, the School District indicates that it does not have plans to install lights on the athletic field. The law creates a complication in addressing this issue because the School Board may not bind the hands of future school boards with respect to certain legislative actions. While not entirely clear how this doctrine would apply to the situation at hand, all parties want to structure the agreement in a manner that would withstand legal challenge and effectuate the parties' intent. For that reason, the MOU does not simply obligate the School District to never install or use lights on the PV High athletic field. Instead, the MOU creates an incentive for future school boards to choose not to light the field unless they have the consent of the City and the Homes Association to do so.

a. Effect of the MOU

As discussed above, the School District is bound by the deed restrictions, including the procedural requirements of obtaining Art Jury approval for all improvements to School District property within the Homes Association's jurisdiction. Over the years, as an accommodation to the School District, the Homes Association has allowed an expedited process to evolve under which the School District submits plans for a 30-day review by the Art Jury. This truncated review process is a voluntary concession by the Homes Association, which the Homes Association has agreed to memorialize in the MOU and continue to abide by, as long as the School District does not light the PV High athletic field without the consent of the City or the School District. If the School District does light the field, the Homes Association will fully enforce the protective restrictions in the deed restrictions that give the

Art Jury jurisdiction over aesthetics of all development and prohibit any development without the Art Jury's approval.

The MOU provides that in almost all cases (excepting a limited number of "mandate" scenarios), the School District would be subject to the City's zoning requirements should it wish to light the field. Should some future School Board exempt itself notwithstanding the MOU, the School District must pay the City the appraised value of lots C & D as of the execution date of the MOU. Also, irrespective of any "mandate" scenario, the MOU provides that if a School District exempts itself from the City's zoning regulations, the School District is then subject to the full jurisdiction of the Art Jury and the Homes Association will enforce the CC&Rs with respect to all requests from a future school board to improve District-owned property in the City. As long as the School District is not lighting the field over the City's objection, it continues to enjoy the historic practice of a truncated (and no fee) review by the Art Jury.

C. 900 Via Panorama

a. Background

900 Via Panorama is located at the end of a cul-du-sac and is adjacent to City-owned parkland on three sides. A picture of this area is Exhibit 3 to the MOU and designated Area A. 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. It is less than ideal to have private structures maintained on City-owned property but the retaining walls serve to stabilize the hillside. 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. The Property Owners desire to use that area for those purposes and have discussed the matter with the Homes Association.

a. Effect of the MOU

As part of the MOU, the City would convey Area A to the Homes Association and receive Lots C & D (which under the MOU reverts back to the Homes Association ownership). The City would impose certain deed restrictions on Area A to ensure that it could only be open space and that only the previous accessory, non-habitable structures and the existing retaining walls would be allowed in that portion of Area A designated as Area 3 on the Exhibit 3 map, while the retaining walls would be allowed in the portion designated as Area 1. The imposition of these special deed restrictions in addition to the existing general deed restrictions would secure the continued benefit of the views and open feel of the area to the City and the neighborhood. The City would also retain an easement for a fire access road. The Homes Association would sell Area A (subject to the City's deed restrictions) to the Property Owners for a purchase price of \$500,000. The Homes Association would retain

\$400,000 (to cover the attorneys' fees and costs associated with the Litigation), and transfer \$100,000 to the City which it may use for municipal purposes. From the City's standpoint, 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 Logistics of the MOU

Execution and implementation of the MOU would involve several steps. Initially, there must be appraisals completed and legal documents drafted (deeds, escrow instructions). If all four parties approve the MOU, the schedule of events to implement the MOU is as follows:

1.	Lots C & D revert back to the Homes Association 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 transfers \$100,000 to the City for its use towards municipal purposes (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

The Homes Association, through its Board, has authority to enter into this MOU by virtue of Article 3 of its by-laws. The Board has approved the MOU as presented tonight and requests that the City Council approve it as well. The School District has the authority to enter into this MOU pursuant to the California Education Code. The District Board has studied the MOU and indicated its willingness to approve the MOU as presented.

Correspondence Received

The City has not received any correspondence related to this item. The Homes Association released a statement announcing its approval of the MOU and encouraging the City to do the same.

CEQA Review

Approval of the MOU 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 MOU 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 MOU 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 to approve the MOU.
2. Decline to adopt the resolution to approve the MOU.

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 MOU.

Staff report prepared by:

Christi Hogin
City Attorney

Attachment A: Resolution R12-11

Attachment B: Memorandum of Understanding and Exhibit 1

Attachment C: Exhibit 2 of Memorandum of Understanding

Attachment D: Exhibit 2 of Memorandum of Understanding (continued)

Attachment E: Exhibits 3 & 4 of Memorandum of Understanding