TRINITY COUNTY

COMMUNITY DEVELOPMENT SERVICES
PLANNING DEPARTMENT
P.O. BOX 2819, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1351 ♦ FAX (530) 623-1353

MEMORANDUM

DATE: Wednesday, March 9, 2022

TO: Members of the Trinity County Planning Commission

FROM: Lisa Lozier, Interim Director Building & Planning

SUBJECT: Agenda Item 5 Planning Commission Zoning Workshop Cannabis "Opt-Out" Regulations

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Please find the attached comments received for Agenda Item 2.

To the Trinity County Planning Commission,,

There has been a lot of talk in Trinity County that the cannabis cultivators in District 1 are not supported by their communities. It has even been suggested that some of my neighbors, the compliant cultivators that currently exist in my area, be asked to relocate to a different part of the county. It has also been suggested that they should have special limitations put onto their rights under the law.

It is time to put an end to this myth. Our families, our neighbors and our friends that have worked so hard and invested so much should not have to live in fear that at any moment the rug could be pulled from under their feet.

I support the compliant farmers of the North Trinity Lake area. I believe they are part of our community and deserve to be treated with the same respect as all of our citizens. I believe that the grandfathered farms should have equal rights and responsibilities as other farms in the county with the same license type. I do not believe they should be asked to leave or be treated differently from any other license holders. I believe the individuals that have worked so hard and invested so much to come into the regulated market deserve our support.

I urge the Commissioners to please stand against discrimination and support economic prosperity in Trinity County. I would like to see grandfathered, compliant cannabis farms in District 1 continue to maintain their Grandfathered status with the same rights and responsibilities as other cultivators required by the Trinity County Cannabis Cultivation Ordinance. I ask that you support our rural American ideals and support the American Dream in a world of ever decreasing opportunity for so many young people.

I support the grandfathered, compliant cannabis farmers of District 1

Thank you,

Print name and address:

Alyse Hazard

Signature:
AH

Date:
3/7/2022

Deborah Rogge

From: Geri Jefferson
Sent: Monday, March 7, 2022 12:52 PM
To: Info.Planning; Carol Fall
Subject: Fw: Planning Commission Letter

Sent from Yahoo Mail on Android

----- Forwarded Message -----
From: "Geri Jefferson"
To: "
Sent: Mon, Mar 7, 2022 at 12:44 PM
Subject: Opt out comments

To: Trinity County Planning Commission

Let me introduce myself. I am Matthew Jefferson's mother. Matthew is the owner of Trinity Alps Canna Craft located in the Coffee Creek opt out.

I have watched Matthew all of his adult life work in the cannabis industry.

Matthew and Rhoda joined together years ago to continue down the road of cultivating a quality, in compliance, cannabis product.

Over the past five years Matthew and Rhoda have worked day and night cultivating their farm, Trinity Alps Canna Craft, in Trinity. As of 2017, they were one of the front runners to begin the licensing process. They were one of the few to obtain all the licensing requirements, (license #CCL112). They are law abiding citizens of Trinity County practicing due diligence in the filing of all licensing requirements, including taxes, for the safe and quality cannabis product they produce. They continue to have a "no violation" history and are among the first ten to begin the CEQA process this year. They are currently in full compliance with CEQA. They have always contributed to the Trinity community over the years for the betterment of the community. They have remained consciousious through the lean and challenging years. They are evermindful of supporting their community for they are an integral part of Trinity which they love and care for.

I endorse the following letter with no reservations.

Sent from Yahoo
To the Trinity County Planning Commission,,

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I support the grandfathered, compliant cannabis farmers of District 1

Thank you,

Geri Sue Jefferson

Woodlake, CA 93286

Date: 03/07/2022

on Android

Deborah Rogge

From: Dee Johnson
Sent: Monday, March 7, 2022 10:45 AM
To: Info.Planning; Carol Fall
Subject: Fwd: Public comment for March 10th Planning Commission

To the Trinity County Planning Commission,,

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I support the grandfathered, compliant cannabis farmers of District 1

Thank you,
Dee Johnson
Eastfork, Trinity County

Jan and John Smith

Lewiston, CA 96052
Parcel

March 9, 2022

Trinity County Planning Department
P.O. Box 2819
Weaverville, CA 96093
Sent by email

RE: Planning Commission Workshop: Zoning Workshop Cannabis "Opt Out" Regulations

Dear Planning Department:

I am writing concerning the draft regulations for Cannabis Opt Out areas.

1. Pre-existing non-conforming uses: The placement of an Opt Out area is essentially a rezone, and should be treated as such. Typically, existing uses that do not conform to the new zoning are grandfathered in, permanently. They have invested in their activity under the reasonable assumption that it would continue to be legal and allowable on their property. For example, if a grocery store had been operating for years in an area that was suddenly rezoned to non-commercial use, the store would be allowed to continue to operate with no time limit.

What is the rationale for allowing a pre-existing operation to continue for only a few years? Is there a formula that determines when they are *supposed* to have made back their investment? How can that be predicted, with the vagaries of farming, fires, and the Planning Department suddenly revoking all permits due to a lawsuit, etc.? To deprive property owners of their previously existing rights on their property could be considered a Regulatory Taking, resulting in yet another lawsuit for the County.

2. Notification: You rezoned my property with no notice. I live on Lewiston Road, near Highway 299. I heard about the Grass Valley Opt Out from the newspaper, and my neighbors, and the Winery people when they showed up in the pandemic, in the snow, and tried for a half hour to get us to sign their petition, which we didn't. I still didn't know the Opt Out would extend all the way up Lewiston Road, including my property and the two vacant ones next door that didn't get a say at all.

I found out by reading the newspaper that my parcel was included in the Opt Out. All of the subject parcels and all parcels within 350 feet of a project are supposed to receive formal notice in time for them to comment at the public hearing. Also, another formal notice should have come after the Opt Out was decided and the map adopted, even if it is called 'temporary'.

The net result, even though we don't grow Cannabis commercially, and we have been here longer than anyone else around here, we are now the outcasts in our own community, just for speaking out against the Opt Outs and standing up for fairness and decency instead of hate and fear.

Thank you,

Janice C. Smith

Deborah Rogge

From: Sally Barrow
Sent: Monday, March 7, 2022 8:50 AM
To: Info.Planning; Carol Fall; Keith Groves; Dan Frasier
Subject: opt out workshop 3.10.2022

3.10.2022 opt out workshop
We have been listening to the reasons that the county is willing to recognize as valid for asking for an opt out. We have been told that it is not enough that residents don't want commercial cannabis operations in their neighborhoods. **Why** isn't that enough?
The question of where commercial cannabis should be allowed would have been best answered before any permits were issued by a specific zone acceptable to commercial cannabis. The rural residential door was left open, I have heard, to encourage the legacy illegal growers to come into the legal market. That door quickly got kicked in and the county lost control of what came next. The zoning option is now passed until the elusive General Plan is completed, which always seems to be "five years out" no matter how much time has elapsed between conversations. The opt out was the answer we were offered as the only solution to regain self-determination for our traditionally residential neighborhoods. We amateur property owners were left to figure out how to negotiate this process with very little help: no consultants, no check list, and an uphill battle to fight an ordinance that has no provision to protect our interests.

- Code Enforcement

It was suggested last meeting that since the cannabis fees fund the TCSO's Code Enforcement, the opt out areas which collect no cannabis fees should not receive any enforcement services. There are many valid arguments against this suggestion. Primarily, enforcement of the cannabis ordinance by Code Enforcement does not only benefit the neighbors of an illegal cannabis cultivation operation. Every single illegal cultivator that is taken out of business by Code Enforcement is an advantage to the legal cultivators, even if the illegal grow is located in an opt out area.

- Criminal Danger

I don't believe that crime should be dismissed from the area specific consideration. The idea that cannabis cultivation is just like any other agricultural use is ridiculous. By definition, legal cannabis cultivators that are in compliance are not involved in criminal cannabis activity. However, the legal and illegal cultivations both have expected quanities of valuable product and cash on site. Both operations are magnets to thieves who don't distinguish between legal and illegal operations, endangering neighbors in the process.

- Transfers

If my first experience with people trying to obtain a CCL was the nice family from Coffee Creek, I might not be involved in this opt out effort today. The ordinance written to benefit people like this family, also allows for the horrible experience that our neighborhood has suffered through. Leon Draper took advantage of residents in our area desperate to sell their property. He installed tenants to grow on these properties. They quickly damaged the properties almost beyond repair. The many compliance and enforcement issues and shady dealings didn't prohibit the county from issuing a permit and preparing to issue two more to Draper's tenants. Draper understood the meaning of the ordinance beyond the original intent and took advantage of it, much to our dismay. He is not the only one. The residents of rural residential neighborhoods need some recourse to protect their investments and way of life. There isn't any protection included in the ordinance as written. Leon

Draper and other bad actors understand that. This opt out with the no transfer language is our attempt to gain that protection. I understand the lady from the north county wishing to pass her property and business to her children. I also want to pass my residential property to my family. Maybe an automatic variance given to the remaining legacy growers and their families that have been operating with a good compliance record and the approval of their neighbors would be a good solution.

I've been told that the no transfer of permits with the sale of the property would be difficult to enforce. LLC's were mentioned as a way cultivators might get around the no transfer language. Years ago, when I first was in the Planning Department getting answers to my opt out questions, multiple staff members assured me that the grandfather clause in our opt out was applicant specific. I was told that even if the property did not sell, the name on the application – a tenant perhaps – was the only person the permit would be issued to. The license was only good as long as the applicant was cultivating. I spoke to Jeff Dickey on February 24. He is the only person who gave me this information in those early days that still works for the county. He confirmed his definition of our grandfather clause. Perhaps this could be the answer to the enforcement question. No transfer of current licenses to different applicants, with or without the sale of the property.

- Violations

I agree that opt out licenses shouldn't be held to a higher standard as far as violations go. **All** CCLs should have to comply with every single requirement, no exceptions. Any violation of a grandfathered permit should result in the permit being revoked and the property moved into the opt out restrictions.

Thank you for your attention to these and all of the issues you are examining.
Sally Barrow
Bear Creek Road

To the Trinity County Planning Commission,

There has been a lot of talk in Trinity County that the cannabis cultivators in District 1 are not supported by their communities. It has even been suggested that some of my neighbors, the compliant cultivators that currently exist in my area, be asked to relocate to a different part of the county. It has also been suggested that they should have special limitations put onto their rights under the law.

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I support the grandfathered, compliant cannabis farmers of District 1

Thank you,

Linda Burns

Trinity Center, CA 96091

Date:3/8/2022

To the Trinity County Planning Commission,

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I support the grandfathered, compliant cannabis farmers of District 1

Thank you,

Brian Burns

Trinity Center, CA 96091

Date:3/8/2022

Deborah Rogge

From: Spare Thyme <
Sent: Monday, March 7, 2022 7:41 PM
To: Info.Planning; Carol Fall
Subject: Comment for Mar. 10, 2022 - Petition to protect grandfathered properties
Attachments: Petition to Commissioners p 1-3.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Trinity County Planning Commissioners,

I respectfully request that when considering the new draft the planning commission honor the grandfather clause in the current Trinity County Cannabis Program Ordinance section 17.43.050. Limited on Location to cultivate cannabis that reads, A. Applications will not be approved for the cultivation of cannabis in any amount or quantity, in the following areas...7. Within the legal boundaries of...Coffee Creek Volunteer Fire District and Trinity Center Community Services District...which are in proximity to high density areas, and therefore, create a substantial risk of a public nuisance. An exception to this limitation is allowed for applicants who have submitted an application for enrollment under NCRWQCB Order no.
2015-0023 by the following dates: Coffee Creek Volunteer Fire district and Trinity Center Community Services District by November 30, 2017.

Attached is a petition that I began gathering signatures for today. I plan to continue gathering signatures and present more to the commission by the time of the meeting on March 10th, 2022.

I will show the commissioners that the grandfathered farms of District
1 enjoy a great deal of community support.

I will show that the community requests that all Trinity County cultivators , including grandfathered, regulated properties in opt-out zones, should have the same rights and responsibilities allowed and required by the law.

Thank you for your consideration,

Rhoda Cain

Trinity Center, CA 96091

Petition to the Trinity County Planning Commission and Board of Supervisors

*I support regulated, grandfathered, legal cannabis farms in the North Trinity Lake area. I also believe that all regulated, grandfathered facilities should have equal rights and responsibilities as any other in the county.
*I do not feel that the legal, compliant North Lake farmers are having negative impacts on our family-friendly, recreation based economy or that they are a nuisance to our community.
*I do not believe the grandfathered, regulated cultivators in the North Lake area will destroy the character and integrity of our community.

We, the undersigned, request that the Trinity County Planning Commission and Board of Supervisors honor the Grandfather clause in the current Trinity County Cannabis Program Ordinance in section 17.43.050 Limited on Location to cultivate cannabis that reads, A. Applications will not be approved for the cultivation of cannabis in any amount or quantity, in the following areas...7. Within the legal boundaries of...Coffee Creek Volunteer Fire District and Trinity Center Community Services District...which are in proximity to high density areas, and therefore, create a substantial risk of a public nuisance. An exception to this limitation is allowed for applicants who have submitted an application for enrollment under NCRWQCB Order no. 2015-0023 by the following dates: Coffee Creek Volunteer Fire district and Trinity Center Community Services District by November 30, 2017.

Print name	Signature	Resident	Visitor
Josephine Dunham	Josephine Dunham	✓	
William Dunham		✓	
Sidney Ainsworth		✓	
Bill CARPENTER		✓	
Guy Thorgahen		✓	
Susan J. Corrigan		✓	
Kelly G Corrigan		✓	
Cynthia Nicol		✓	
Alyse Hazard		✓	
Clayton Hazard		✓	
RYAN GENOVESE		✓	
Rhoda Cain		✓	

Petition to the Trinity County Planning Commission and Board of Supervisors

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Print name	Signature	Resident	Visitor
Dee A. Johnson	Dee A. Johnson	X	
Steve C. Hershberger	Steve C. Hershberger	X	
LORI D CRAIG	Lori D Craig	X	
LORRAE CRAIG	Lorrae Craig	X	
Dan Miller	Dan Miller	X	
Debbie Councilman	Debbie Councilman	X	
Hoyt Courtney Roy Councilman	Hoyt Courtney	X	
Jessica Kirkland	Kirkland	X	
DARIN KIRKLAND		X	
Regan Dillon		X	
Brian Burns		X	
Linda Burns	L Burns	X	

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Print name	Signature	Resident	Visitor
Matthew Jefferson		X	
Keith Gagomino		X	
Joe Councilman		X	

Deborah Rogge

From: Carol Fall
Sent: Tuesday, March 8, 2022 9:13 AM
To: Info.Planning
Subject: Fw: grandfathered farms

From: Susan Corrigan
Sent: Monday, March 7, 2022 3:56 PM
To: Carol Fall
Subject: grandfathered farms

To the Trinity County Planning Commission,,

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Thank you,

Print name and address:
Susan Corrigan

Trinity Center, CA 96091

Signature: Susan Corrigan

Date:3-7-2022

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Thank you,

Print name and address:

RYAN GENOVESE
TRINITY CENTER

Signature:

Date:

3/7/22

Deborah Rogge

From: Carol Fall
Sent: Tuesday, March 8, 2022 9:39 AM
To: Info.Planning
Subject: Fw: Cannabis Carve-Outs
Attachments: Planning Comm Comments from Lisa Wright re carve-outs June 2018 (1) (1).pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: Lisa Wright
Sent: Monday, March 7, 2022 3:27 PM
To: Carol Fall
Subject: Cannabis Carve-Outs

Hello Carol,

I want to share some information with you that may be helpful in your deliberations regarding carve-outs for cannabis businesses.

First, please note that I hold a license myself in the Lewiston CSD and I was grandfathered in due to my Water Board cannabis irrigation program enrollment date.

I also represent over 150 Trinity County farmers in the overall program through my company, Flowra. We employ 12 full-time and 5 part-time employees to help with cannabis regulatory compliance including CEQA document preparation, CDFW notifications, Water Board enrollment and technical reports, Biological Assessments and more; as well as application preparation for local and state cannabis licenses/permits. We have 5 clients in carve-outs with another 3 who started the application process but did not finish before the Grass Valley Urgency Ordinance went into effect. One of these has a parcel zoned Ag that got caught in a broad swath of red-lining.

I have alway been concerned with the use of carve-outs for political appeasement rather than good land use planning. We are marching right down that path again with the proposed inclusion of even more carve-outs.

Please see my attached comments from June 2018 to the Planning Commission that still hold valid today regarding a state code requirement that zoning ordinances (our cannabis ordinance is a zoning ordinance) are in sync with zoning code and the General Plan. When you arbitrarily disallow a zoning use in a red-lined area while allowing that use for other similarly zoned parcels outside of the red-lined area, you are not in compliance with this state code. My comments include CA Supreme Court cases upholding this requirement.

Further, when you adopt a zoning ordinance that discriminates against someone based on source of income, especially since they have to have a residence under our cannabis ordinance, the county is in further violation of state code, this time under the Dept of Fair Employment and Housing.

I am happy to discuss this in detail if you have questions. The county generally takes the stance of "go ahead and sue us then", but that certainly is not beneficial for the taxpayers in the long run.

I appreciate your consideration of these issues.

Best Regards,

Lisa Wright
CEO
Flowra

Schedule a meeting with me!

Recd 6/28/18
during public Comment

PLANNING COMMISSION MEETING

June 28, 2018, 7PM Library

Public Comment – Lisa Wright, Lewiston

I am voicing my concern with recent action by this Commission around the carve-out provisions of Trinity County Ordinance 315-823 and its amendments.

First, what are the duties and responsibilities of the Planning Commission? County Code refers you to CA Gov't Code:

GOVERNMENT CODE - GOV
TITLE 7. PLANNING AND LAND USE [65000 - 66499.58]
(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)
DIVISION 1. PLANNING AND ZONING [65000 - 66210]
(Heading of Division 1 added by Stats. 1974, Ch. 1536.)
CHAPTER 3. Local Planning [65100 - 65763]
(Chapter 3 repealed and added by Stats. 1965, Ch. 1880.)

Noteworthy is,

ARTICLE 1. Local Planning [65100 - 65107]

Each planning agency shall perform all of the following functions:
(a) Prepare, periodically review, and revise, as necessary, the general plan.
(b) Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.
(c) Annually review the capital improvement program of the city or county and the local public works projects of other local agencies for their consistency with the general plan, pursuant to Article 7 (commencing with Section 65400).
(d) Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.
(e) Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.
(f) Promote the coordination of local plans and programs with the plans and programs of other public agencies.
(g) Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by this title.
(Repealed and added by Stats. 1984, Ch. 690, Sec. 2.)

Nearly every duty refers to following, reviewing and revising, as necessary, the General Plan including the administration of plans, zoning, and subdivision ordinances.

Looking at the duties of this Commission, let's look at CA Government Code §65860.

Gov't Code §65860 states that:

(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

(1) The city or county has officially adopted such a plan.

(2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, specified in the plan.

(b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with subdivision (a). Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. No action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning
ordinance.

(c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

(d) Notwithstanding Section 65803, this section shall apply in a charter city of 2,000,000 or more population to a zoning ordinance adopted prior to January 1, 1979, which zoning ordinance shall be consistent with the general plan of the city by July 1, 1982.[Amended by Stats. 1998, Ch. 689, Sec. 5. Effective January 1, 1999]"

I would contend that the geographic "carve-outs" of Trinity County Ordinance 315-823 are not in agreement with Trinity County General Plan or its zoning provisions. Instead, this ordinance's exclusion of certain areas, without regard to zoning, violates Gov't Code Section 65860's requirement of local zoning ordinances adherence to the General Plan.

Further, this Commission, as a general practice, should be reviewing adherence to Gov't Code Section 65860 and advising the Board of Supervisors of any zoning ordinance noncompliance. And of added concern, this Commission is including even more of these "carve-out" provisions in new ordinances being introduced around other elements of the cannabis industry without zoning consistency with the General Plan, causing possible irreparable damage to individuals attempting to lawfully operate in this industry.

Zoning ordinances should not be used for political purpose to assuage special interests, but rather should encompass thoughtful land-use planning and adherence to County and State Gov't Code.

Gov't Code Section 65860 has been upheld by the CA Supreme Court in at least 2 court cases, Lesher and Orange Citizens (copies attached for your reference).

As a possible remedy, I respectfully request that this Commission call for the formation of Stakeholders Group, together with the Planning Dept. staff, to review all of the zoning ordinances around Cannabis Cultivation presented to date and to consolidate into a thoroughly reviewed single zoning ordinance that adheres to the Trinity County General Plan, to all State Gov't Code including section 65860 but also all of the regulations resulting from the passage of SB94. Thank you for your time and consideration.

Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531 [277 Cal.Rptr. 1; 802 P.2d 317]

[No. S012604.

Dec 31, 1990.]

LESHER COMMUNICATIONS, INC., et al., Plaintiffs and Respondents, v. CITY OF WALNUT CREEK, Defendant and Appellant.

(Superior Court of Contra Costa County, No. 282115, Richard Patsey, Judge.)

(Opinion by Eagleson, J., with Lucas, C. J., Broussard, Panelli, Kennard and Arabian, JJ., concurring.) Separate dissenting opinion by Mosk, J.)

COUNSEL

David Benjamin and Thomas Haas, City Attorneys, John Truxaw, Deputy City Attorney, Shute, Mihaly & Weinberger, Mark I. Weinberger, Marc B. Mihaly, Wendy S. Strimling and Rachel B. Cooper for Defendant and Appellant. **{Page 52 Cal.3d 535}**

Barbara S. Blinderman, Stephen C. Volker, John K. Van de Kamp, Attorney General, Andrea Sheridan Ordin, Chief Assistant Attorney General, Theodora Berger, Assistant Attorney General, Susan L. Goodkin and Susan L. Durbin, Deputy Attorneys General, Freilich, Stone, Leitner & Carlisle and Katherine E. Stone as Amici Curiae on behalf of Defendant and Appellant.

McCutchen, Doyle, Brown & Enersen, Sanford M. Skaggs, Daniel J. Curtin, Jr., and Maria P. Rivera for Plaintiffs and Respondents.

Gibson, Dunn & Crutcher, John A. Arguelles, Richard G. Duncan, Jr., Jeffrey T. Thomas, Edward L. Xanders, Ronald A. Zumbrun, Edward J. Connor, Jr., John H. Findley, John M. Groen, Nossaman, Guthner, Knox & Elliott, Alvin S. Kaufer and Winfield D. Wilson as Amici Curiae on behalf of Plaintiffs and Respondents.

OPINION

EAGLESON, J.

We are asked to decide whether an initiative measure limiting municipal growth which conflicts with a city's general plan amends that plan, and, if it is not an amendment, whether it is invalid.

As we explain below, we conclude that the initiative measure in dispute is not a general plan amendment, and that state law which requires that zoning ordinances conform to the general plan invalidates newly enacted zoning ordinances that do not conform to an existing general plan.

I

The Planning and Zoning Law of the State of California (Gov. Code, § 65000 et seq.)fn. 1 mandates the adoption of a general plan by every city and every county in this state (§ 65300),fn. 2 provides that its adoption is a legislative act, and authorizes review by petition for writ of mandate pursuant to section 1085 of the Code of Civil Procedure. (§ 65301.5.)

A general plan must set out a statement of the city's development policies and objectives, and include specific elements among which are land use and **{Page 52 Cal.3d 536}** circulation elements. (§ 65302, subds. (a) & (b).)fn. 3 Once the city has adopted a general plan, all zoning ordinances must be consistent with that plan, and to be consistent must be "compatible with the objectives, policies, general land uses, and programs specified in such a plan." (§ 65860, subd. (a)(ii).)

As of November 5, 1985, the date on which Measure H, the initiative ordinance in issue here, was adopted, the general plan of the City of Walnut Creek (Walnut Creek or the city) was growth oriented. It had as an objective, accommodation of "that portion of the projected population growth of Contra Costa County and the Bay Region which reasonably can be accommodated in Walnut Creek." It also provided for land use that would expand residential areas with densities both compatible with existing development and responsive to the need for additional housing; expand the city's central commercial district; enhance the city's position as a subregional administrative and professional office center, and as a subregional retail shopping center; and provide for expansion of existing office, research and limited development employment center. The general plan anticipated, indeed acknowledged in its transportation plan, that: " 'Commute-hour congestion experienced along Ygnacio [Valley Road], Treat [Boulevard], [Freeway] I-680, and other roadways will continue to increase as new development occurs. Although some minor improvements can be made to these roadways, drivers will have to adjust to an increased level of congestion.' (Italics added.)"

Measure H, designated in its title as a "Traffic Control Initiative," creates a building moratorium triggered by traffic congestion on the same roadways, providing inter alia:

"No buildings or structures shall be built in the City of Walnut Creek unless (1) the AM and PM Peak Hour Volume to Capacity Ratio of all intersections on Ygnacio Valley Road and all intersections within the Core Area along Main Street, Broadway, California Blvd., Mt. Diablo Blvd., Civic Drive and Parkside Drive is .85 or less, and (2) the traffic generated by the proposed building or structure when such traffic is added to the existing **{Page 52 Cal.3d 537}** and expected traffic volumes, will not increase the AM or PM Peak Hour Volume to Capacity Ratio at any of those intersections above .85."

Plaintiffs challenged the validity of Measure H by petition for writ of mandate and complaint for

declaratory relief, asserting in their first cause of action (1) that Measure H was a land use ordinance which operated as a zoning ordinance and was inconsistent with the city's general plan, and (2) that the general plan itself was invalid.fn. 4 They alleged, and Walnut Creek admitted in its answer, that peak hour traffic volume at some of the designated intersections already exceeded the .85-volume-to-capacity threshold at which the moratorium took effect, and for that reason the city had already imposed a moratorium on the construction of buildings and structures other than those explicitly exempted by Measure H and those already under construction on its effective date.

Pursuant to stipulation, this count and the sixth count, seeking declaratory relief on that basis, were severed and tried on evidence submitted through declarations and matters of which the court could take judicial notice.fn. 5 After trial the court directed issuance of a peremptory writ of mandate commanding Walnut Creek to void Measure H and to cease enforcing it, ruling that Measure H was invalid because it conflicted with the general plan goals and policy of growth and expansion of commercial and residential development.

The trial court concluded that Measure H was not an amendment of the general plan, observing that it was not described as such in the ballot **{Page 52 Cal.3d 538}** measure, the analysis of the city attorney, or any of the arguments in favor of or in opposition to the measure. Further support for that conclusion was found in the detailed scope and the self-executing nature of Measure H, features not common to general plan provisions which are the basis for future development to be implemented by additional detailed measures. The court found it unnecessary to determine if Measure H was a zoning ordinance, because the effect of inconsistency with the general plan was the same regardless of whether Measure H was a zoning ordinance or a measure other than a general plan amendment affecting land use.

The peremptory writ was granted on February 23, 1987. Walnut Creek appealed, arguing that Measure H was consistent with the city's general plan because it was compatible with the progrowth policies expressed in the plan, and promoted other policies expressed in the general plan. The city argued in the alternative that even if Measure H was inconsistent with the general plan, it was valid as an amendment of the general plan.

The Court of Appeal rejected Walnut Creek's argument that Measure H was consistent with the general plan,fn. 6 but held that the initiative must be construed as an amendment to the general plan.

While the appeal was pending, Walnut Creek amended the general plan in an effort to incorporate Measure H and to eliminate the inconsistencies identified by the trial court. [1] The Court of Appeal concluded that possible mootness did not preclude consideration of the issues raised by the city. Because a conclusion that Measure H itself amended the general plan might trigger the statutory prohibition of legislative amendment of an initiative measure (see Elec. Code, § 4013) and cast doubt on the validity of the subsequent legislative amendment of the plan, this court agrees.

II General Plan Amendment

The Planning and Zoning Law provides for adoption or amendment (§ 65356.1) of a general plan, following notice and at least one hearing, by resolution of the local planning commission (§ 65352) and endorsement reflecting its approval by resolution of the legislative body. (§§ 65353, 65357.) The legislative body's approval must also follow at least one noticed **{Page 52 Cal.3d 539}** public hearing. (§ 65355.) Nevertheless, because adoption of a general plan is a legislative act, the people's reserved power of referendum (art. II, § 11) has been held to be applicable (Yost v. Thomas (1984) 36 Cal.3d 561, 570-571 [205 Cal.Rptr. 801, 685 P.2d 1152]) and both the initiative and referendum powers have been held applicable to zoning ordinances (Arnel Development Co. v. City of Costa Mesa (1980) 28 Cal.3d 511, 516-517 [169 Cal.Rptr. 904, 620 P.2d 565]; Friedman v. City of Fairfax (1978) 81 Cal.App.3d 667, 672, fn. 5 [146 Cal.Rptr. 687]) notwithstanding similar procedural requirements which apply to the legislative body.

This court has never considered whether a general plan may be adopted or amended by initiative. Several amici curiae argue that, because compliance with the numerous substantive provisions of the Planning and Zoning Law can be achieved only by a legislative body, that law preempts the local initiative power.fn. 7 [2a] We need not address that issue here because we conclude that Measure H was not offered as, and may not be construed as, a general plan amendment.

The Court of Appeal recognized that the courts must resolve all doubts in favor of the people's exercise of the initiative power and uphold the validity of an initiative wherever it is possible to do so. (See Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].) It found no significance in the fact that Measure H was not described in its title or in other ballot measures as an amendment to the general plan, but agreed with the trial court that the specificity and self-executing nature of Measure H resembled a zoning ordinance rather than a general plan provision. The court then considered whether those features would have rendered Measure H invalid as part of a general plan, concluding that notwithstanding the purpose of **{Page 52 Cal.3d 540}** the general plan as a "constitution" for future development, a specific and self-executing provision would be permissible in a general plan.

The Court of Appeal recognized inconsistencies between Measure H and other provisions of the general plan, but reasoned that the inconsistencies could be remedied by setting aside the internally inconsistent element. The judiciary, it held, could require legislative correction of the inconsistencies because section 65754, subdivision (a), requires local government to bring a general plan into compliance with the law when a court determines that an element is internally inconsistent.

Finally, the Court of Appeal considered the omission of any statement in Measure H advising the voters that the initiative would amend the general plan. That was not fatal, the court held, because "the profound duty of the courts to 'jealously guard' the initiative process, the will of the Walnut Creek voters cannot be thwarted based on such a hypertechnicality."

We need not consider whether the Court of Appeal was correct in its conclusion that the courts may compel legislative action to eliminate internal inconsistencies in a general plan when the

inconsistency is created by an amendment to an existing, valid plan. This question need not be addressed because we disagree with that court's characterization of the absence of advice to the voters that Measure H would amend the general plan as a hypertechnicality.

[3] "Although the initiative power must be construed liberally to promote the democratic process [citation] when utilized to enact statutes, those statutes are subject to the same constitutional limitations and rules of construction as are other statutes." (Legislature v. Deukmejian (1983) 34 Cal.3d 658, 675 [194 Cal.Rptr. 781, 669 P.2d 17].) The same is true when a local initiative is at issue.

[4] We cannot at once accept the function of a general plan as a "constitution," or perhaps more accurately a charter for future development, and the proposition that it can be amended without notice to the electorate that such amendment is the purpose of an initiative.fn. 8 Implied amendments or **{Page 52 Cal.3d 541}** repeals by implication are disfavored in any case (Flores v. Workmen's Comp. Appeals Bd. (1974) 11 Cal.3d 171, 176 [113 Cal.Rptr. 217, 520 P.2d 1033]), and the doctrine may not be applied here. The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. **The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed** (deBottari v. City Council (1985) 171 Cal.App.3d 1204, 1212 [217 Cal.Rptr. 790]; Sierra Club v. Board of Supervisors (1981) 126 Cal.App.3d 698, 704 [179 Cal.Rptr. 261]) **and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan.** (§ 65860.) **The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.**

Therefore, we necessarily reject Walnut Creek's suggestion that an intent to amend the general plan may be inferred from the very inconsistencies which under the Planning and Zoning Law invalidate the ordinance.

[2b] We also reject Walnut Creek's argument that because Measure H could function as a general plan amendment by setting out objectives, principles and standards for future development, thereby serving a general planning function, it may be considered such. Measure H, on its face, regulates land use. As such it resembles a zoning ordinance, not simply a statement of policy to govern future regulations. It does not identify an existing provision of the general plan that is to be amended by adoption of the measure, or state that it is an addition to the plan. Absent some basis in the title, the ballot summary, or elsewhere in the ballot materials to support a conclusion that the voters both understood that the purpose of Measure H was to amend the Walnut Creek general plan and that they intended to do so, Measure H cannot be deemed a general plan amendment.

Whether adopted by the legislative body or the electorate, an ordinance that is not understood by that body as a general plan amendment does not become such retroactively by judicial fiat. Indulging in a presumption that, by the enactment of what appears to be a zoning ordinance, the

voters intend to amend a general plan, would violate the clear legislative intent underlying the Planning and Zoning Law. "Unrestricted amendments of the general plan to conform to zoning changes would destroy the general plan as a tool for the comprehensive development of the community as a whole." (deBottari v. City Council, supra, 171 Cal.App.3d 1204, 1212.)

The dispositive question, therefore, is whether a basis exists for concluding that the voters of Walnut Creek intended to amend the general plan by **{Page 52 Cal.3d 542}** adopting Measure H. Since we cannot presume the existence of such intent, it must be found, if it exists, in the ballot measure itself or the explanatory material in the ballot pamphlet.

Notice of the purpose of a local initiative should be given in the title and ballot summary. Article II, section 11, reserved the local initiative power, but in so doing specifies that the power is to be exercised "under procedures that the Legislature shall provide." The constitutional provision has been implemented in division 5 of the Elections Code, commencing with section 4000. The statutory provisions repeatedly emphasize the importance of notice to the voters of the purpose of an initiative ordinance. The "Notice of Intent to Circulate Petition" must include a statement of purpose. (Elec. Code, § 4002.) The statement of purpose must be included in the published and posted notices of intent to circulate. (Elec. Code, § 4003.) The city attorney must prepare a ballot title and summary of the proposed measure expressing its purpose. (Elec. Code, § 4002.5.)

Similar provisions apply to statutory initiatives. (Elec. Code, §§ 3501, 3503, 3507.) [5] Their purpose, like that of the predecessor requirements of the Constitution and the Political Code (see Vandeleur v. Jordan (1938) 12 Cal.2d 71 [82 P.2d 455]), is to inform the voters "in order to protect the electorate from imposition" by disclosing "the chief purpose and points of the proposed measure." (Epperson v. Jordan (1938) 12 Cal.2d 61, 70 [82 P.2d 445].)fn. 9

Adequate notice is crucial in this context if the purpose of the Planning and Zoning Law is to be achieved by creating and maintaining a general plan that is an "integrated, internally consistent and compatible statement of policies" (§ 65300.5) and a "basic land use charter governing the direction of future land use" in the city. (City of Santa Ana v. City of Garden Grove (1979) 100 Cal.App.3d 521, 532 [160 Cal.Rptr. 907]. See also, Wallace v. Zinman (1927) 200 Cal. 585, 593 [254 P. 946, 62 A.L.R. 1341]: "If an amendment of the constitution were intended, [former section 1 of article IV] requires steps to be taken that will apprise the voters thereof so that they may intelligently judge of the fitness of such measure as a constituent part of the organic law.") [6] As the Court of Appeal recognized, far from becoming part of an "integrated, internally consistent **{Page 52 Cal.3d 543}** and compatible statement of policies," the addition of Measure H to the Walnut Creek general plan would have created impermissible inconsisten- cies in that plan.fn. 10

[2c] The title and ballot summary are relevant to construction of Measure H since they did not inform the voters that the purpose and effect of Measure H would be amendment of the general plan. Measure H imposed a building moratorium, a matter that is properly the subject of a zoning ordinance. (Associated Home Builders etc., Inc. v. City of Livermore, supra, 18 Cal.3d 582.) Its provisions gave no notice to the voters that the measure was anything more than an ordinance

limiting development. The title, "Traffic Control Initiative," was even less informative than the text of the measure since "traffic control" was nothing more than a potential by-product of the building moratorium for which the measure actually provided.

The analysis of Measure H prepared by the city attorney informed the voters that "existing law" permitted construction consistent with the general plan, zoning ordinance and building code, and that Measure H would change "existing law" by prohibiting construction under the specified circumstances. The analysis therefore informed the voters only that the adoption of Measure H would change the existing law that permitted construction consistent with the general plan, not that it would amend the general plan itself.

[7] We agree with the Court of Appeal that the court must, wherever possible, construe an initiative measure to ensure its validity. Basic to all statutory construction, however, is ascertaining and implementing the intent of the adopting body. (Code Civ. Proc., § 1859; Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com. (1990) 51 Cal.3d 744, 764 [799 P.2d 1220]; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645 [335 P.2d 672].) Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure (Burger v. Employees' Retirement System (1951) 101 Cal.App.2d 700 [226 P.2d 38]) and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language. (People v. One 1940 Ford V-8 Coupe (1950) 36 Cal.2d 471 [224 P.2d 677].) **{Page 52 Cal.3d 544}**

[2d] No basis exists for believing that the voters viewed Measure H as anything other than an ordinance in the nature of a zoning ordinance. Therefore, assuming, but not deciding, that the voters may amend a general plan by initiative, Measure H cannot be deemed a general plan amendment.

III Remedy for Inconsistencies

Both the trial court and the Court of Appeal concluded that Measure H is inconsistent with the general plan in effect when Measure H was passed because that general plan was growth oriented and anticipated continued development of housing, commercial and administrative/professional uses. The plan expressly recognized that the anticipated development would lead to traffic congestion which the residents would have to accept. Walnut Creek does not dispute this characterization of the general plan.

The city argued below that Measure H was consistent with other provisions of the general plan. [8a] Before this court it argues only that consistency should be determined by comparison with its newly adopted general plan incorporating Measure H, and that, in any event, a compliance decree rather than invalidation of Measure H is the appropriate remedy when the inconsistencies involve policy. Neither argument has merit in light of our conclusion that Measure H is an ordinance in the nature of a zoning ordinance.

A zoning ordinance that conflicts with a general plan is invalid at the time it is passed. (deBottari v. City Council, supra, 171 Cal.App.3d 1204, 1212; Sierra Club v. Board of Supervisors, supra,

126 Cal.App.3d 698, 704.) The court does not invalidate the ordinance. It does no more than determine the existence of the conflict. It is the preemptive effect of the controlling state statute, the Planning and Zoning Law, which invalidates the ordinance.

A void statute or ordinance cannot be given effect. This self-evident proposition is necessary if a governmental entity and its citizens are to know how to govern their affairs. Thus, persons who seek to develop their land are entitled to know what the applicable law is at the time they apply for a building permit. City officials must be able to act pursuant to the law, and courts must be able to ascertain a law's validity and to enforce it. The validity of the ordinance under which permits are granted, or pursuant to which development is regulated, may not turn on possible future action by the legislative body or electorate. **{Page 52 Cal.3d 545}**

An amendment to an invalid statute may itself constitute a valid enactment operative from its effective date (see Brown v. Superior Court (1982) 33 Cal.3d 242, 252 [188 Cal.Rptr. 425, 655 P.2d 1260]; County of Los Angeles v. Jones (1936) 6 Cal.2d 695, 708 [59 P.2d 489]), but neither such amendment nor an amendment of the general plan revives an invalid zoning ordinance. (Cf. Gov. Code, § 9611; Corning Hospital Dist. v. Superior Court (1962) 57 Cal.2d 488, 494 [20 Cal.Rptr. 621, 370 P.2d 325] [revival after temporary suspension of law].)

Amendments to the Walnut Creek general plan approved subsequent to the enactment of Measure H cannot save the initiative as a zoning ordinance. Only the general plan in effect at the time the ordinance is adopted is relevant in determining inconsistency. Since Measure H was inconsistent with the plan in effect when Measure H was adopted, the measure is invalid.fn. 11

Walnut Creek's suggestion, that it is not necessary that an inconsistent zoning ordinance or land use regulation be invalidated, is based on the statutory authorization in subdivision (b) of section 65860 for actions "to enforce compliance" with the mandate of subdivision (a) of that section that zoning ordinances be consistent with the general plan. The argument rests in part on subdivision (c), which provides: "[i]n the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to such a plan, or to any element of such a plan, such zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended." (§ 65860, subd. (c).)

In Building Industry Assn. v. Superior Court (1989) 211 Cal.App.3d 277, 297 [259 Cal.Rptr. 325], the Court of Appeal stated in dictum that application of section 65860 to a municipal ordinance limiting growth by a numerical formula, an ordinance which was inconsistent with the city's general plan, could result in a compliance decree rather than a finding of invalidity. The court distinguished Sierra Club v. Board of Supervisors, supra, 126 Cal.App.3d 698, as involving an internally inconsistent general plan with which no zoning ordinance could be consistent.

We do not agree. Subdivision (c) of section 65860 does not permit a court to rescue a zoning ordinance that is invalid ab initio. As its language makes **{Page 52 Cal.3d 546}** clear, the subdivision applies only to zoning ordinances which were valid when enacted, but are not consistent with a subsequently enacted or amended general plan. It mandates that such ordinances be conformed to the new general plan, but does not permit adoption of ordinances

which are inconsistent with the general plan. [9a] The obvious purpose of subdivision (c) is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan.

[8b] We also reject the suggestion that by authorizing suits to enforce compliance with the consistency requirement of subdivision (a) of section 65860, subdivision (b) creates a procedure by which ordinances forbidden by subdivision (a) may be validated. Subdivision (a) provides in its entirety: "County or city zoning ordinances shall be consistent with the general plan of the county or a city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if: [¶] (i) The city or county has officially adopted such a plan, and [¶] (ii) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in such a plan."

[9b] Again, it is apparent that the legislative purpose underlying subdivision (b) of section 65860 is to permit actions to compel local governments to bring their existing zoning ordinances into conformity with their general plan, not to validate ordinances that were inconsistent with the general plan when adopted.fn. 12

[8c] The construction proposed by Walnut Creek is at odds with the Legislature's concern that general plans provide "a comprehensive, long-term general plan for the physical development" of a city (§ 65300), a plan whose mandatory elements may be amended no more frequently than four times a year. (§ 65358.) Conforming a general plan to an inconsistent growth-control ordinance might also be inconsistent with the legislative policy that each city and each county provide in the general plan for its appropriate share of the regional need for housing. (§ 65302.8.) Under that section, amendment of a general plan to limit the number of housing units to be built annually must be accompanied by findings that justify reduction of housing opportunities in the region. This requirement may not be avoided **{Page 52 Cal.3d 547}** by the adoption of a growth control ordinance through the initiative process. A city may not adopt ordinances and regulations which conflict with the state Planning and Zoning Law. (Art. XI, § 7; Hurst v. City of Burlingame (1929) 207 Cal. 134, 140 [277 P. 308], overruled on other grounds in Associated Home Builders etc., Inc. v. City of Livermore, supra, 18 Cal.3d 582, 596.) To the extent that Building Industry Assn. v. Superior Court, supra, 211 Cal.App.3d 277, suggests otherwise, it is disapproved.

The trial court properly ordered issuance of a writ of mandate to compel invalidation of Measure H.

The judgment of the Court of Appeal is reversed. The matter is remanded to the Court of Appeal with directions to modify the judgment of the trial court to order dismissal of the fourth and fifth causes of action and to affirm the judgment as amended.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Arabian, J., concurred.

MOSK, J.

I dissent.

In my view, this case is moot because it is undisputed that in August 1989 defendant City of Walnut Creek amended its general plan, to bring it either substantially (as acknowledged by plaintiffs) or entirely (as claimed by defendant) into conformity with Measure H, the 1985 ordinance challenged in this case. Plaintiffs, assertedly barred from expanding certain facilities by Measure H, have filed yet another suit, apparently to challenge the 1989 general plan as amended. The majority's decision today cannot address that pending suit, the outcome of which will be virtually unaffected by the majority's holding. We should therefore dismiss this appeal.fn. 1

I.

"[J]udicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to **{Page 52 Cal.3d 548}** enable the court to make a decree finally disposing of the controversy." (Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104, 655 P.2d 306], italics added.) It appears that this controversy will continue for years; the decision today will not and cannot put an end to it.fn. 2 Hence, today the majority contravene the rule that we should strive whenever possible to bring matters to a legal conclusion, at most asking the trial and appellate courts to grapple with the consequences of factual matters to be determined on remand.

Moreover, because the majority cannot afford plaintiffs any effective relief, the case should be dismissed for want of a live controversy. (See Consol. etc. Corp. v. United A. etc. Workers (1946) 27 Cal.2d 859, 863 [167 P.2d 725].) As I shall explain below, although the majority's rejection of an enactment plaintiffs oppose may provide them some moral support, their legal cause is not advanced by the majority's decision, which amounts to an impermissible advisory opinion.fn. 3 (People ex rel. Lynch v. Superior Court (1970) 1 Cal.3d 910, 912 [83 Cal.Rptr. 670, 464 P.2d 126].)

Sierra Club v. Board of Supervisors (1981) 126 Cal.App.3d 698 [179 Cal.Rptr. 261] (hereafter Sierra Club), which held that a change in a general plan mooted a consistency challenge, teaches us that dismissal as moot is the best course. The Sierra Club had challenged an ordinance that rezoned a parcel on the ground that it was inconsistent with the county's general plan. The trial court had found the ordinance consistent. In a parenthetical discussion, the Court of Appeal disagreed with that finding and commented that the ordinance thus was void ab initio. But it held that the case was moot because while the appeal was pending the county had adopted a new plan and map that cured the inconsistency. (Id. at p. 705.)

Calling the mootness issue "troublesome indeed," the Court of Appeal herein acknowledged that Sierra Club stood for a "rule that if disputed legislation is repealed during the pendency of an appeal concerning its validity, the appeal will be dismissed as moot." Harmonizing Sierra Club with deBottari v. City Council (1985) 171 Cal.App.3d 1204 [217 Cal.Rptr. 790], the Court of Appeal distilled the following rule: "An inconsistent land **{Page 52 Cal.3d 549}** use regulation is invalid at the time it is passed, but if the general plan is amended or a new general plan adopted

to eliminate the inconsistency while an appeal is pending on that issue, the appeal will be dismissed as moot." But, perhaps hoping its decision would be final, the Court of Appeal then retrenched, agreeing to decide the case because plaintiffs were already asserting "a host of reasons why the [1989] amendment is 'illegal' ..., the validity of the mooting event is in hot dispute, ... [and we] are already on the brink of appellate litigation ad infinitum in this case."

Our grant of review dashed any such hopes that the Court of Appeal may have entertained, and has merely wasted judicial resources. Further legal battles are a foregone conclusion given the collision between plaintiffs' interests, the voters' desires, and the city's acquiesence to those desires. We should have allowed the Court of Appeal decision to stand, thus letting the parties travel the same long road as will the majority's largely ineffectual decision: i.e., to a comprehensive challenge to the 1989 plan. There plaintiffs can present their views on why the 1989 amendment is illegal.fn. 4 To permit a comprehensive challenge to the 1989 plan to proceed would have served judicial economy and the law of abstention handsomely. Instead, the majority arrive at a holding that will be relegated to a footnote in future decisions involving the validity of the 1989 plan.fn. 5

The majority declare that the section 4013 issue justifies a decision at this time. (See maj. opn., ante, at p. 538.) I am not persuaded. True, section 4013 provides in part that, "No ordinance ... adopted by the voters ... shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance." But it is obvious that the drafters intended to bar amendments that would thwart the voters' will. In this case, the general plan amendment-adopting wholesale the enactment that the voters favored-would be wholly consonant with the electorate's wishes. **{Page 52 Cal.3d 550}**

II.

The only arguably defensible alternative to dismissing the case would be to construe the 1989 general plan. But to do so would be premature, for this case is a pure consistency challenge, leaving critical constitutional and statutory issues for future consideration. Thus ripeness forbids us from engaging in such a construction.

Building Industry Assn. v. City of Oxnard (1985) 40 Cal.3d 1 [218 Cal.Rptr. 672, 706 P.2d 285] is instructive. There the plaintiff sought a declaration that an ordinance requiring builders to pay certain capital costs associated with urban growth was invalid. The trial court upheld the ordinance. The plaintiff appealed, and while the appeal was pending the defendant amended the ordinance. We wrote that when "injunctive relief against a legislative enactment is sought[,] the relevant provision for purposes of the appeal is the measure ... in effect at the time the appeal is decided. [Citations.] ... [¶] Plaintiff nevertheless urges us to determine the validity of the old ordinance for the benefit of developers who paid the fee pursuant to its terms and who might be entitled to a refund if it is invalid." (Id. at p. 3.) We refused: "Plaintiff is an association which merely sought to enjoin enforcement of the ordinance. No specific fee is at issue, and thus there is no aggrieved party with regard to the old ordinance." (Ibid., fn. omitted.) The case at bar is also an action in equity in essence seeking injunctive relief via a writ of mandate, although the

words "injunction" or "injunctive relief" do not appear in the prayer for relief. And as in Building Industry, "there is no aggrieved party with regard to the old ordinance." (Ibid.)

Other cases support the view that only the 1989 plan would be available for review if considerations of ripeness did not preclude evaluation of that plan. "It is settled law that the rights of the parties in an action in equity will be determined on the basis of the law as it exists at the time of the determination, rather than at the time the complaint was filed, and this rule applies to judgments on appeal as well as to judgments in the trial court." (City of Whittier v. Walnut Properties, Inc. (1983) 149 Cal.App.3d 633, 640 [197 Cal.Rptr. 127] [holding that reviewing court would decide validity of adult-bookstore regulatory ordinance to take effect by reason of decision on appeal, not the ordinance the trial court invalidated]; see also, for the general rule, White v. Davis (1975) 13 Cal.3d 757, 773 & fn. 8 [120 Cal.Rptr. 94, 533 P.2d 222] [new constitutional provision controlling on appeal because " 'Relief by injunction operates in futuro, and the right to it must be determined as of the date of decision by an appellate court.' "].) Thus, ordinarily a reviewing court must evaluate a denial of a building **{Page 52 Cal.3d 551}** permit on the basis of the law at the time of its decision. (Selby Realty Co. v. City of San Buenaventura (1973) 10 Cal.3d 110, 125-126 [109 Cal.Rptr. 799, 514 P.2d 111].)

III.

I also regret the undemocratic tenor of today's decision, which runs athwart the will of the citizens of Walnut Creek. Tired of the then-existing general plan's willingness to tolerate ever worse traffic congestion, the voters enacted Measure H on November 5, 1985. Plaintiffs filed suit January 31, 1986, attacking Measure H as inconsistent with the existing general plan. The city apparently was reluctant to enforce the ordinance in full, for it acknowledges that in both 1986 and 1989 the city council asked the voters to weaken Measure H, without success. The city concedes that the voters' rejection of the latter attempt amounted to a popular reaffirmation of Measure H. Only then did the city council accede fully to the voters' desire to reduce congestion: it voted in August 1989 to incorporate wholly or in large part Measure H's provisions into the new general plan.

Thus, the Court of Appeal's holding that Measure H was a permissible amendment to the general plan vindicated the public interest. The majority's holding instead favors the apparent view of the city council, a five-member body, over the views that the electorate has expressed repeatedly. The holding flies in the face of the rule that our overarching duty is to effectuate the intent of the lawmakers, who in the case of an initiative are the voters. (Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com. (1990) 51 Cal.3d 744, 771 [274 Cal.Rptr. 787, 799 P.2d 1220] (conc. and dis. opn. of Mosk, J.).) The majority acknowledge that we must resolve all doubts in favor of the people's exercise of the initiative power. (Maj. opn., ante, at p. 539.) But they then resolve their doubts in a diametrically different direction.fn. 6 **{Page 52 Cal.3d 552}**

As mootness places the challenge to Measure H beyond our grasp and lack of ripeness stymies our ability to evaluate the 1989 plan, I would dismiss the appeal on abstention grounds.

↑FN 1. All statutory references are to the Government Code unless otherwise indicated. References to constitutional provisions are to the California Constitution.

↑FN 2. Section 65300: "Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. Chartered cities shall adopt general plans which contain the mandatory elements specified in Section 65302."

↑FN 3. The land use element must designate "the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use elements shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. ..." (§ 65302, subd. (a).)

The circulation element must consist "of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals and other local public utilities and facilities, all correlated with the land use element of the plan." (§ 65302, subd. (b).)

↑FN 4. In the remaining causes of action plaintiffs claimed that Measure H: (second cause of action) was arbitrary, capricious and violated due process; (third cause of action) was arbitrary, discriminatory and violated equal protection; (fourth cause of action) failed to comply with section 65863.6 in that it did not include findings addressing its impact on regional housing opportunities; and (fifth cause of action) failed to comply with Public Resources Code section 21000 et seq., the California Environmental Quality Act, in that an environmental impact report or negative declaration requirements had not been fulfilled.

In the sixth and seventh causes of action plaintiffs sought a declaration that Measure H was, for those reasons, invalid and unenforceable on its face and as applied to applicants for new construction and projects approved but not yet under construction.

The trial court sustained defendant's demurrer to the fourth and fifth causes of action. The second, third and seventh causes of action have been dismissed at plaintiffs' request.

↑FN 5. The Court of Appeal questioned whether there could be an appealable judgment since no judgment had then been entered on the fourth and fifth causes of action, but concluded that the trial court had intended a complete disposition. Therefore, the Court of Appeal could amend the judgment appealed from to include the intended, but omitted, rulings. (See Molien v. Kaiser Foundation Hospitals (1980) 27 Cal.3d 916, 920-921, 933 [167 Cal.Rptr. 831, 616 P.2d 813, 16 A.L.R.4th 518]; Tenhet v. Boswell (1976) 18 Cal.3d 150, 153-155, 161 [133 Cal.Rptr. 10, 554 P.2d 330].)

The Court of Appeal judgment did not include an order amending the judgment of the trial court, however. Our disposition corrects this oversight.

↑FN 6. Walnut Creek did not challenge this conclusion in its petition for review or brief on the merits in this court. Counsel acknowledged at oral argument before this court that the city no longer disputes the conclusion that Measure H is inconsistent with the general plan as it existed when Measure H was adopted.

↑FN 7. Amici curiae Building Industry Association of Southern California, Inc., and ARVIDA/ JMB Partners note, in particular, section 65358, which provides that the "legislative body" may amend all or part of a general plan when deemed to be in the public interest, a power that might be limited by the restriction on repeal or amendment of local initiatives by legislative bodies. (Elec. Code, § 4013.)

They also note that the Planning and Zoning Law now requires the body preparing a general plan to consider regional and statewide concerns, by mandating that counties as well as cities adopt general plans (§ 65300); by requiring consultation with other affected jurisdictions (§§ 65352, 65919.5); by imposing responsibility to cooperate with other local governments in addressing housing needs (§ 65580, subd. (e)), which is declared to be a matter of "vital statewide importance" (§ 65580, subd. (a)); and in implementing housing elements directed to the state housing goal (§ 65581, subd. (d)), and which make provision for the local share of regional housing needs (§§ 65583, subd. (a), 65584).

Administrative regulations require that adoption or amendment of a general plan be done in compliance with the California Environmental Quality Act. (Cal. Code Regs., tit. 14, § 15206, subd. (b)(1).)

↑FN 8. One not inconsequential impact of the enactment of a municipal initiative is the statutory requirement that any future amendment of the initiative ordinance be submitted to the voters for approval. (Elec. Code, § 4013.) As the Court of Appeal recognized, that statute may apply to limit the power to amend a general plan given the legislative body by section 65358. If so, an initiative amendment might impermissibly limit the authority and responsibility of the legislative body to periodically review and amend the general plan. (See § 65358; Simpson v. Hite (1950) 36 Cal.2d 125, 134 [222 P.2d 225]; L.I.F.E. Committee v. City of Lodi (1989) 213 Cal.App.3d 1139, 1148-1149 [262 Cal.Rptr. 166].)

↑FN 9. Notice of purpose is routinely included in both statewide and local initiatve measures which use strikeout type to designate deletions, italics to designate additions, and/or state, for example, "_____ is added to," "_____ is repealed," or "_____ is amended, to read _____." (See, e.g., Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 6, 1990) passim; S.F. Voter Information Pamp. (Nov. 6, 1990) pp. 126, 142, 152.)

↑FN 10. Walnut Creek argues that incorporation of Measure H into the general plan is the only

"remedy" that complies with the Planning and Zoning Law and preserves the right of initiative. Exercise of the local initiative power, like the legislative power, is subject to constitutional and statutory limitation, however. (Legislature v. Deukmejian, supra, 34 Cal.3d 658, 674; Wallace v. Zinman, supra, 200 Cal. 585, 593-595.) Enforcing compliance with those overriding limitations on the exercise of the power in no way denies the right of initiative.

↑FN 11. The necessity for this rule would be more readily apparent had this litigation arisen in the context of a petition for mandate to compel issuance of a building permit. The courts could not postpone deciding the validity of a newly adopted zoning ordinance which precluded issuance of the permit, but conflicted with the general plan, until such indefinite future time that the city might act to conform its general plan to the ordinance.

↑FN 12. Section 65754 is to the same effect. It provides that if the court finds inconsistencies in a general plan, the city must amend the general plan to bring it into conformity with the requirements of the Planning and Zoning Law. After that, it must make its zoning ordinances consistent with the amended plan.

The legislative body may not, however, consistent with Elections Code section 4013, amend an initiative zoning ordinance to make it consistent with a general plan if the Planning and Zoning Law does not have preemptive effect.

↑FN 1. The city correctly argued before us that this case is moot. Similar views were expressed by numerous amici curiae, including the Cities of Belvedere, Benicia, Chico, Cloverdale, Colma, Commerce, Corte Madera, Cotati, Danville, Delano, Dunsmuir, El Cajon, Half Moon Bay, Hayward, Healdsburg, Indio, Industry, Livermore, Lompoc, Los Altos, Maricopa, Martinez, McFarland, Merced, Milpitas, Modesto, Monrovia, Monterey, Morgan Hill, Nevada City, Oceanside, Oroville, Oxnard, Pacifica, Palm Desert, Palm Springs, Paradise, Paris, Pasadena, Pleasant Hill, Pleasanton, Rancho Mirage, Rialto, Riverside, Roseville, San Carlos, San Diego, San Juan Bautista, San Leandro, San Luis Obispo, San Rafael, Santa Barbara, Santa Paula, Saratoga, Seaside, Sonoma, Tehachapi, Turlock, Vacaville, Vallejo, Ventura, Watsonville, and Woodside, the Counties of Mariposa, Mono, and Plumas, and the City and County of San Francisco.

↑FN 2. Plaintiffs concede this point when they argue that we "can leave to subsequent litigation, as did the court of appeal, the separate question whether the Measure H amendment to the new [1989] General Plan was valid." But they err in suggesting that the subsequent litigation necessarily involves a separate question. As I shall show, the entire matter can and should be resolved in a challenge to the 1989 plan.

↑FN 3. Plaintiffs' victory is Pyrrhic because the effect of our decision is to confirm provisionally the 1989 plan's validity: Election Code section 4013 (hereafter section 4013) is no longer a procedural bar to the new plan, and hence that plan will have to be evaluated on its merits if, as seems likely, a challenge to it reaches the appellate courts.

↑FN 4. Of course the inevitable appeal from the 1989 plan will now lack one item-whether section 4013 made the 1989 general plan invalid. (See maj. opn., ante, at p. 538.) But that is a trifle-it is the constitutional and statutory validity of the policies and plans underlying Measure H and the 1989 plan that will be at issue no matter what the court decides today.

↑FN 5. There are exceptions to the mootness doctrine, but none applies. As this case is relatively fact-specific, it does not "resolve an issue of continuing public interest that is likely to recur in other cases [citations] ...." (Daly v. Superior Court (1977) 19 Cal.3d 132, 141 [137 Cal.Rptr. 14, 560 P.2d 1193].) Nor is this dispute "capable of repetition, yet evading review" (Roe v. Wade (1973) 410 U.S. 113, 125 [35 L.Ed.2d 147, 161, 93 S.Ct. 705]). Rather, review seems to come to this case all too easily, and the parties face the Sisyphean labor of several future appeals.

↑FN 6. The complaint declares that, "City and its citizens will substantially gain from this cause" and that plaintiffs "seek to enforce important public rights and confer significant and widespread benefits ... on the general public ...." While, as I have explained, today's decision confers no meaningful benefit on anyone, the quoted language in the complaint and the nature of the judgment raise the specter that plaintiffs could conceivably seek reim- bursement for their attorney fees under a private attorney general theory. (See Code Civ. Proc., § 1021.5.) Understandable resistance by the city will generate still more purposeless litigation.

Orange Citizens for Parks & Recreation v. Superior Court (2016) 2 Cal.5th 141

[No. S212800.

Dec. 15, 2016.]

ORANGE CITIZENS FOR PARKS AND RECREATION et al., Petitioners, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; MILAN REI IV LLC et al., Real Parties in Interest.

ORANGE CITIZENS FOR PARKS AND RECREATION et al., Plaintiffs and Appellants, v. MILAN REI IV LLC et al., Defendants and Respondents.

(Superior Court of Orange County, No. 30-2011-00494437, Robert J. Moss, Judge.)

(The Court of Appeal, Fourth Dist., Div. Three, No. G047013, 217 Cal.App.4th 1005.)

(Opinion by Liu, J., expressing the unanimous view of the court.)

COUNSEL

Daniel P. Selmi; Shute, Mihaly & Weinberger, Rachel B. Hooper, Robert S. Perlmutter and Susannah T. French for Petitioners and for Plaintiffs and Appellants.

Kerr & Wagstaffe, Michael von Lowenfeldt for Professor Joseph F.C. Dimento, Terrell Watt, AICP, Greenbelt Alliance and the Planning and Conservation League as Amici Curiae on behalf of Petitioners and Plaintiffs and Appellants.

Zach Cowan, City Attorney (Berkeley); David Kahn, City Attorney (Brisbane), Teresa Stricker, Deputy City Attorney; and Julia Hayward Biggs, City Attorney (Menifee) for City of Berkeley, City of Brisbane and City of Menifee as Amici Curiae on behalf of Petitioners and Plaintiffs and Appellants.

Michelle Wilde Anderson and David Pettit for California Native Plant Society, Center on Biological Diversity, Center on Race, Poverty & the Environment, Communities for a Better Environment, Endangered Habitats League, Friends of Harbors, Beaches, and Parks, Hills for Everyone, Natural Resources Defense Council and Sierra Club as Amici Curiae on behalf of Petitioners and Plaintiffs and Appellants.

Linda Krop for Environmental Defense Center as Amicus Curiae on behalf of Petitioners and Plaintiffs and Appellants.

Wayne W. Winthers, City Attorney; Woodruff, Spradlin & Smart and David A. DeBerry for Real Parties in Interest and for Defendants and Respondents Mary Murphy, City Clerk of the City of Orange, City Council of the City of Orange and City of Orange.

Duane Morris, Colin L. Pearce, Keith Zakarin, David E. Watson and Heather U. Guerena for Real Party in Interest and for Defendant and Respondent Milan REI IV LLC.

Nicholas S. Chrisos, County Counsel, and Leon J. Page, Deputy County Counsel, for Real Parties in Interest and for Defendants and Respondents Neal Kelley and Orange County Registrar of Voters.

Jennifer B. Henning; Michael R.W. Houston City Attorney (Anaheim); Mark W. Steres, City Attorney (Cerritos); Michael J. Shirey, Deputy City Attorney (Chula Vista); and Douglas C. Holland, City Attorney (Palm Springs) for California State Association of Counties and the Cities of Anaheim, Cerritos, Chula Vista and Palm Springs as Amici Curiae on behalf of Real Parties in Interest and Defendant and Respondents.

No appearance for Respondent Superior Court. ***{Page 2 Cal.5th 146}***

OPINION

LIU, J.-

In 2006, real party in interest Milan REI IV LLC (Milan) purchased over 50 acres of land (Property) in the Orange Park Acres area in the City of Orange (City). Milan envisioned a 39-unit residential development (Project or Ridgeline Project) on the Property, which was formerly the home of the Ridgeline Golf Course and Country Club. But the Project was controversial because the private development would replace public open space. Despite the controversy, the City advanced the Ridgeline Project by approving Milan's request to amend its general plan and permit development on the Property. In response, the Orange Parks Association and a political action committee called Orange Citizens for Parks and Recreation (together, Orange Citizens) challenged the City's amendment by referendum. The City then changed course, arguing that there was no need to amend its general plan to approve the Ridgeline Project because a resolution from 1973 permitted residential development on the Property. The City thus concluded that the referendum, whatever its outcome, would have no effect. In November 2012, 56 percent of voters rejected the City's general plan amendment.

The main question before us is whether the 1973 resolution is part of the City's current general plan. The City frames its approval of Milan's development application and reliance on the 1973 resolution as an exercise of its legislative discretion to which we owe deference. But deference has limits. In light of the contents of the City's 2010 General Plan, no reasonable person could interpret that plan to include the 1973

resolution. Because we conclude that the City abused its discretion in interpreting the 2010 General Plan to permit residential development on the Property, we reverse the Court of Appeal's judgment upholding the City's approval of the Project.

I.

Orange Park Acres covers over 1,500 acres of land in the foothills of the Santa Ana Mountains. In 1973, Orange's city council (City Council) established an Orange Park Acres development committee to resolve ongoing disputes among local landowners, developers, and residents. After 10 weeks of outreach and evaluation, the development committee adopted the Orange Park Acres Specific Plan (OPA Plan). The OPA Plan designates the Property for use as a golf course or, should that prove economically infeasible, for recreation and open space. ***{Page 2 Cal.5th 147}***

The City's planning commission considered the OPA Plan and, after a hearing, adopted resolution No. PC-85-73 on November 19, 1973. This resolution recommended that the City Council adopt the OPA Plan subject to amendments providing, among other things, that the Property be designated as "Other Open Space and Low Density (1 acre)" instead of "Open Space" and that the OPA Plan be adopted as "representing a portion of the land use element of the General Plan."

The City Council adopted the OPA Plan on December 26, 1973. The pertinent legislative act, resolution No. 3915, upholds the "recommendation of the Planning Commission" and identifies the OPA Plan as "the herein described General Plan for the Orange Park Acres area . . . as set forth in that certain plan prepared by J.L. Webb Planning Consultants [J.L. Webb], dated September 1973 and as amended by the Planning Commission on November 19, 1973." Neither the City Council's resolution No. 3915 nor the OPA Plan prepared by J.L. Webb referred to the planning commission's resolution No. PC-85-73 by name or described the planning commission's proposed amendments to the OPA Plan. In 1977, the City Council passed resolution No. 4448, which amended the general plan's land use element to permit low-density residential development in Orange Park Acres and removed the word "Specific" from the title of the OPA Plan. It also authorized the department of planning and development services to "make the necessary changes to the official maps and text of the Orange Park Acres Area Plan and Land Use Element of the General Plan so that both documents correctly reflect" these changes.

For reasons that are unclear, the City never made these changes. Neither the text of the OPA Plan nor its attached land use policy map was revised to designate the Ridgeline Project site as "Other Open Space and Low Density (1 acre)" instead of "Open Space." If any members of the public had requested a copy of the OPA Plan, they would have received the unamended OPA Plan with resolution No. 3915 attached. Neither of these documents included the planning commission's proposed amendments in resolution No. PC-85-73. This oversight bred confusion from the late 1970s onward. City planning documents and internal analyses have referred to the OPA Plan in varying and

inconsistent terms, sometimes describing it as part of the general plan, sometimes as a specific plan, and sometimes as a different type of plan altogether, such as an area, neighborhood, or community plan.

The City has revised its general plan since the OPA Plan's adoption. In 1989, the City adopted a general plan intended to "establish definitive land use and development policy to guide the City into the next century." On the 1989 land use policy map, identified by the general plan as the "single most important feature" of the land use element, the Property is designated as ***{Page 2 Cal.5th 148}*** "OS/Golf" or "Open Space/Golf." The 1989 General Plan incorporated the OPA Plan under the heading "Area Plans." The publicly available OPA Plan also designated the Property as "Open Space."

In light of this history, both Milan and the City believed a general plan amendment would be required to develop the Property. When Milan submitted a development application in 2007, it requested a general plan amendment to change the Property's land use designation from "Open Space" to "Estate Residential," as well as a change in zoning from "Open Space" to "R-1-40." In a September 2009 draft environmental impact report on the Project, the City agreed that Milan's proposed changes were required. The report indicated that the existing general plan designation for the Property is "Open Space," while finding that the Project was otherwise consistent with the 1989 General Plan and the OPA Plan.

In late 2009, as the City was processing Milan's development application, Milan's counsel discovered resolution No. PC-85-73 and conveyed it to the city attorney, prompting the City to conduct a comprehensive review of planning documents related to the Property. In a December 22, 2009, letter to the Orange Park Acres Homeowners Association, the city attorney reached the following conclusions: (1) the 1973 OPA Plan is part of the general plan, and (2) the OPA Plan designates the golf course portion of the property as "Other Open Space and Low Density (1 acre)." The city attorney observed that the OPA Plan and the Ridgeline Project were inconsistent with the City's general plan but asserted that "[f]rom a processing standpoint, [the city attorney's] findings have little impact on the Ridgeline project" because "the Plan's designation for the golf course is Other Open Space and Low Density (1 acre)."

At that time, the City was also revising its general plan, a final version of which was adopted in March 2010. The 2010 General Plan includes an introduction and 11 enumerated elements. It refers to (but does not incorporate) "[s]everal supporting documents [that] were produced during the development of the General Plan, including" an environmental impact report (EIR), a land use survey, a circulation model, inventories of historical and cultural resources, and market studies. It states, "The organization of the General Plan allows users to identify the section that interests them and quickly obtain a perspective of the City's policies on that subject . . . . Policies are presented as written statements, tables, diagrams, and maps. All of these components must be considered together when making decisions."

The 2010 General Plan also discusses "ordinances, plans, and programs that should be consulted in association with the General Plan when making development and planning decisions." The 2010 General Plan directs readers ***{Page 2 Cal.5th 149}*** to consult "Specific Plans and Neighborhood Plans in Orange" that "are intended to provide more finite specification of the types of uses to be permitted . . . ." The OPA Plan is listed as an "Adopted Specific Plan[] and Neighborhood Plan[]." While citing the OPA Plan as an example of "[e]arlier planning efforts that have influenced the growth and change within Orange," the 2010 General Plan states that specific and neighborhood plans, including the OPA Plan, "must be consistent with the policies expressed" in the land use element.

Part of the land use element is the land use policy map, which "indicates the location, density, and intensity of development for all land uses citywide." It designates the Project site as "Open Space" and defines "Open Space" as "[s]teep hillsides, creeks, or environmentally sensitive areas that should not be developed. Although designated as permanent open space, most areas will not be developed as public parks with the exception of river and Creekside areas that promote connectivity of the City's trails system."

In July 2010, the planning commission advised the City Council that a general plan amendment was "needed to (i) clarify and amend the original and unchanged terms of the existing OPA Plan which permitted both golf course and one-acre residential uses by amending the OPA Plan land use designation to Low Density -- One Acre Minimum, . . . and (iv) make the General Plan land use designations for the subject property consistent throughout the General Plan." The planning commission recommended approval of such an amendment, general plan amendment No. 2007-0001, and found that "[u]pon approval of the proposed amendments to the General Plan, the project is consistent with the goals and policies" of the 2010 General Plan.

On June 14, 2011, the City Council certified the final environmental impact report (FEIR) for the Project. The FEIR concluded that the OPA Plan was part of the general plan based on the city attorney's review of the City Council's actions in 1973. The report found that at the time the OPA Plan was adopted, "the very specific intent" of the City Council was that "one-acre residential lots be permitted on the Property." It explained that "most likely through clerical oversight and contrary to the express terms of resolution No. 3915, the textual changes recommended by the Planning Commission and approved by the City Council were never entered into any official copy of the OPA Plan. [¶] . . . In approving [general plan amendment] 2007-0001, it is the intent of the City Council to exercise its legislative discretion to honor the intent of the original adoption of the OPA, remove any uncertainty pertaining to the permitted uses of the Property, and allow uses on the Property which the City Council believes to be appropriate." The FEIR ***{Page 2 Cal.5th 150}*** concluded that "contingent on passage of the proposed General Plan Amendment the proposed project would be both consistent and in many cases furthers the City's policies."

Also on June 14, 2011, the City Council adopted a general plan amendment, stating that "[u]pon approval of the proposed amendments to the General Plan, the project is consistent with the goals and policies of the City's General Plan that was approved by the City Council on March 9, 2010, including the OPA Plan which is part of the General Plan Land Use Element pursuant to City Council adoption of Resolution 3915 in 1973 that included the OPA Plan as 'part of the required land use element to be included in a General Plan for the City of Orange.' "

On June 17, 2011, Orange Citizens circulated a referendum petition challenging the City's general plan amendment. Orange Citizens filed the referendum with the city clerk on July 12, 2011, precluding the general plan amendment from taking effect. (See Elec. Code, § 9241.) But that same day, the City Council moved forward with the Ridgeline project, implementing Milan's requested zoning change and approving the development agreement with Milan. The City Council made several consistency findings, including a finding that the zoning change was "consistent with and further[ed] the objectives and policies of the Orange Park Acres Plan, which is part of the land use element of the General Plan, as amended by General Plan Amendment 2007-001," and that the development agreement was "consistent with the objectives, policies, general land uses, and programs specified in the . . . General Plan as amended by General Plan Amendment 2007-001, which General Plan includes the Orange Park Acres Plan as part of its land use element."

On August 18, 2011, counsel for Milan wrote to the city attorney with an "elegant solution." Counsel posited that City staff had inadvertently failed to update the OPA Plan to conform to the planning commission's recommendations in resolution No. PC-85-73 as adopted by the City Council in resolution No. 3915. This clerical error, Milan suggested, could not change the fact that the true designation for the Property was "Other Open Space and Low-Density Residential (1 acre)." Thus, the general plan amendment was not required to permit the Project to go forward. Instead, the "legal inadequac[y]" in the 2010 land use policy map could be remedied through "administrative correction."

The city attorney adopted this solution and, in an August 23, 2011 report, suggested that the general plan amendment's defeat by referendum would "not necessarily negate the other actions the City Council took" to advance the Ridgeline Project. While acknowledging that a general plan amendment ***{Page 2 Cal.5th 151}*** would make "the OPA Plan more internally consistent than it is without" and "more consistent with the approval of the Project," the city attorney reasoned that the project "would remain consistent [with the general plan] irrespective of repeal of the [general plan amendment]."

Meanwhile, on July 26, 2011, Milan filed a petition for writ of mandate and complaint for injunctive and declaratory relief to stop the referendum. Orange Citizens cross-complained, seeking to nullify the zone change and the Project's approval as inconsistent with the Property's land use designation under the 2010 General Plan.

Milan filed its own cross-complaint, seeking to establish that the Project could proceed regardless of the outcome of the referendum because the Property's land use designation was controlled by the 1973 OPA Plan. Alternatively, Milan argued that the general plan amendment's defeat would be devoid of any legal effect because it would result in an internally inconsistent general plan.

In July 2012, the trial court entered judgment in favor of Milan. The court ordered the City to remove the referendum from the ballot and allow Milan to proceed with the Project "in accordance with the actual and original General Plan designation of the property as 'Other Open Space and Low Density (1 Acre).' " Orange Citizens filed a petition for writ relief, requesting that the Court of Appeal vacate the trial court's orders, reinstate the referendum to the November 6, 2012 ballot, and enter judgment in their favor. On July 12, 2012, the Court of Appeal issued an order to show cause and granted Orange Citizens' request for a stay of the trial court's order, allowing the public to vote on the referendum.

The referendum appeared on the November 2012 ballot. The city attorney's analysis in the ballot pamphlet stated that the amendment "clarifies that the Orange Park Acres Plan is part of the land use element of the City of Orange's General Plan and that the land use designation of 'Other Open Space and Low Density (1 acre)' is the existing General Plan land use designation on the 51 acres of property." It explained that the general plan amendment was enacted in connection with the Ridgeline Project and concluded that the "land use map, which shows solely an 'Open Space' land use designation on the 51-acre site, would also be revised to reflect the 'Other Open Space and Low Density (1 acre)' General Plan land use designation." In November 2012, 56 percent of voters rejected the general plan amendment.

Despite the referendum, the Court of Appeal affirmed the Project's approval on July 10, 2013. Framing the central issue as "whether the Project is consistent with the City's pre-General Plan Amendment general plan," the Court of Appeal deferred to the City's consistency finding and found that substantial evidence supported the City's decision. The Court of Appeal ***{Page 2 Cal.5th 152}*** further found that the land use designation in the 2010 land use policy map did not bar Milan's requested zoning change because "the Policy Map is not the end of the analysis." The Court of Appeal identified "contradictions and ambiguities that call into question the possibility of definitively determining the land use designation of the Property in the general plan," including "ambiguity in the land use classification of the Property" and "ambiguity in [the City's] planning documents." But the court found that this uncertainty counseled in favor of deferring to the City Council's judgment.

With respect to the practical effect of the referendum, the Court of Appeal held that despite the persistence of "erroneous information" in the 2010 General Plan, the vote "does not alter the reasonableness of the City Council's conclusion that the open space designation is an error and not a substantive inconsistency." The court reasoned that because the City has the power to "fix errors in the Orange Park Acres Plan and the

Policy Map by reference to previously adopted resolutions of the City Council," the amendment did not "matter with regard to the major points of contention."

We granted review.

II.

The Legislature has recognized that "decisions involving the future growth of the state . . . are made and will continue to be made at the local level." (Gov. Code, § 65030.1; all undesignated references are to this code unless otherwise indicated.) To ensure that localities pursue "an effective planning process" (§ 65030.1), each city and county must "adopt a comprehensive, long-term general plan" for its own "physical development" as well as "any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (§ 65300.) When adopting general plans, localities must "confront, evaluate and resolve competing environmental, social and economic interests." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571 (*Goleta Valley*).) Because of its broad scope, long-range perspective, and primacy over subsidiary land use decisions, the "general plan has been aptly described as the 'constitution for all future developments' within the city or county." (*Id.* at p. 570.) Accordingly, "[t]he process of drawing up and adopting these revisions often becomes, essentially, a 'constitutional convention,' at which many different citizens and interest groups debate the community's future." (Fulton & Shigley, Guide to California Planning (4th ed. 2012) p. 118.) "During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through **{Page 2 Cal.5th 153}** public hearings and any other means the planning agency deems appropriate." (§ 65351.) A legislative body must refer its proposal to a number of listed public entities before adopting or amending a general plan. (§ 65352.) Planning commissions must hold at least one public hearing and make a written recommendation to the legislative body; legislators must hold at least one public hearing before acting on the recommendation. (§§ 65353--65356; see § 65354.5 [a planning agency authorized to approve or amend a general plan must "establish procedures for any interested party to file a written request for a hearing by the legislative body" and must provide public notice of any hearings].)

A general plan may be issued in "any format," including "a single document" or "a group of documents relating to subjects or geographic segments of the planning area" (§ 65301, subds. (a), (b)), so long as it "comprise[s] an integrated, internally consistent and compatible statement of policies for the adopting agency" (§ 65300.5). It also must include development policies, "diagrams and text setting forth objectives, principles, standards, and plan proposals," and seven predefined elements – land use, circulation, conservation, housing, noise, safety, and open space. (§§ 65302, subds. (a)--(g), 65303.)

Until 1971, the general plan was " 'just an "interesting study," ' " which did not bind local

land use decisions. (*deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1211 (*deBottari*).) But now " '[t]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.' " (*Goleta Valley*, *supra*, 52 Cal.3d at p. 570, quoting *Resources Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806; see §§ 65359 [requiring that specific plans be consistent with the general plan], 66473.5 [same with respect to tentative maps and parcel maps], 65860 [same with respect to zoning ordinances], 65867.5, subd. (b) [same with respect to development agreements].) "A zoning ordinance that conflicts with a general plan is invalid at the time it is passed." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544 (*Lesher*).) In addition, the general plan must be internally consistent. "Internal consistency requires that diagrams in the land use, circulation, open space, and natural resource elements reflect the written policies and programs of those elements." (Barclay & Gray, California Land Use & Planning Law (35th ed. 2016) p. 23.) In other words, "the requirement of consistency . . . infuse[s] the concept of planned growth with the force of law." (*deBottari*, *supra*, 171 Cal.App.3d at p. 1213.) " 'An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' " (Governor's Office of Planning & Research, General Plan Guidelines (2003) p. 164.)
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The Government Code guarantees the public a role in adopting and amending a general plan. (§ 65300 et seq.) "The process . . . is structured to transcend the provincial. Public participation and hearings are required at every stage, in order to obtain an array of viewpoints." (*Goleta Valley*, *supra*, 52 Cal.3d at p. 571.) The Governor's Office of Planning and Research encourages local governments to structure their procedures to facilitate public involvement and suggests making planning materials available in different languages, conducting advertising and outreach to different segments of the community, holding events in familiar and welcoming spaces, and providing "access to information about the issues that are being addressed by the process." (Governor's Office of Planning & Research, General Plan Guidelines, *supra*, at p. 144; see *id.* at pp. 144–148.) At a more basic level, meaningful public participation in the planning process requires that the public have access to the general plan. Since 1984, the Government Code has mandated that "[c]opies of the documents adopting or amending the general plan, including the diagrams and text," be made available to the public "one working day following the date of adoption" or "two working days after receipt of a request for a copy." (§ 65357, subd. (b)(1), (2).)

III.

In support of the City's approval of the Project, Milan emphasizes that "[t]he OPA Plan was comprehensively reviewed and considered by the public when it was adopted in 1973. There is no evidence in the record to indicate that any of the subsequent General Plan amendments intended to change the designation of the Ridgeline Property in the OPA Plan." However, the relevant land use designation for the Property is not the

general plan designation from 1973, but rather the designation in effect in 2012 after the voters rejected the City's general plan amendment. The import of that vote depends, in turn, on the Property's status before the City sought to amend the general plan in 2011. Milan contends that an amended OPA Plan has been continuously in effect since 1973, so the voters' rejection of the general plan amendment in 2011 merely preserved the status quo of the Property as zoned for open space and residential development. Orange Citizens argues that the Property's designation is solely open space, as determined by the text and maps in the publicly available version of the 2010 General Plan, so the voters' rejection of the 2011 amendment means that the Property remains open space. We conclude that Orange Citizens has the better view.

As an initial matter, Milan and the City correctly contend that our review in this case is confined to whether the City abused its discretion in finding the Project consistent with the 2010 General Plan. A city's determination that a development approval is consistent with its general plan has been described by some courts as "adjudicatory" (*San Franciscans Upholding the* **{Page 2 Cal.5th 155}** *Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 678) and by others as "quasi-legislative" (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782). Where a consistency determination involves the application of a general plan's established land use designation to a particular development, it is fundamentally adjudicatory. In such circumstances, a consistency determination is entitled to deference as an extension of a planning agency's " 'unique competence to interpret [its] policies when applying them in its adjudicatory capacity.' " (*San Franciscans Upholding the Downtown Plan*, at p. 678.) Reviewing courts must defer to a procedurally proper consistency finding unless no reasonable person could have reached the same conclusion. (*Id.* at p. 677; see *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 695--696; *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 514--515.)

Although the City and Milan contend that the City found the Project consistent with the 2010 General Plan, the record shows that the City Council's consistency finding was conditioned upon the general plan amendment in 2011 that was negated by referendum. The City Council found that the relevant zoning change for the Property was "consistent with and further[ed] the objectives and policies of the Orange Park Acres Plan, which is part of the land use element of the General Plan, *as amended by General Plan Amendment 2007-001*." (Italics added.) It also found that the relevant development agreement was "consistent with the objectives, policies, general land uses, and programs specified in the . . . General Plan *as amended by General Plan Amendment 2007-001*, which General Plan includes the Orange Park Acres Plan as part of its land use element." (Italics added.) But even if we assume that the City found the Project consistent with the 2010 General Plan, we cannot uphold its approval of the Project under the terms of that plan.

The invalidity of the City's consistency finding is evident from the text of the 2010 General Plan and the City's and Milan's own understanding of it. Members of the public

who requested the City's general plan at the time relevant here would have received its 2010 General Plan, a document with an introduction, 11 elements, and several appendices. The introduction defines the General Plan as consisting of these documents and explains how the document should be interpreted. The introduction begins by clarifying that even if the reader is only interested in a particular parcel, he or she may have to consult all of the 2010 General Plan's elements: "The organization of the General Plan allows users to identify the section that interests them and quickly obtain a perspective of the City's policies on that subject. However, General Plan users should realize that the policies in the various elements are ***{Page 2 Cal.5th 156}*** interrelated and should be examined collectively . . . . All of these components must be considered together when making planning decisions." The introduction refers to several supporting documents but does not indicate that these documents have the authority of a general plan. It expressly mentions the OPA Plan but makes clear that as a specific plan "[f]alling under the broader umbrella of the General Plan," the OPA Plan "must conform to General Plan policy" and "must be consistent with the policies expressed in this Element."

One of those policies in the land use element is an unambiguous designation of the Property as open space. The 2010 General Plan includes a land use policy map within its land use element and notes that the map "indicates the location, density, and intensity of development for all land uses citywide." The map designates the Property as open space and defines "Open Space" as "[s]teep hillsides, creeks, or environmentally sensitive areas that should not be developed." No other element, appendix, or document incorporated into the 2010 General Plan states otherwise. The publicly available OPA Plan, which "must be consistent" with the land use element under the terms of the 2010 General Plan, also designates the Property for use as a golf course and, in the alternative, as open space.

With such a specific land use designation for the Property, and without any competing designations, policies, or extant amendments to the contrary, no reasonable person could conclude that the Property could be developed without a general plan amendment changing its land use designation. Indeed, for several years, both Milan and the City agreed that the Property was designated for use as open space. Even after Milan identified resolution No. PC-85-73, the City continued to recognize that the 2010 General Plan designated the Property solely for open space, although it maintained that this defect would not be fatal to the Project.

Milan and the City argue that the OPA Plan is a part of the City's general plan and that the OPA Plan designates the Property's allowable land uses as "Other Open Space and Low Density (1 acre)." But the 2010 General Plan designates the OPA Plan as a specific plan, and the OPA Plan a citizen would have received in 2010 would have shown, in text and graphics, that the disputed property was not to be developed. The 1973 Resolution No. 3915 referred to the J.L. Webb draft OPA plan, which designates the property as a golf course or, if that should prove economically infeasible, for recreation and open space. Resolution No. 4448, from 1977, amended the general plan

and directed that the OPA Plan be corrected to reflect that the property could be subject to low density development, but that correction never occurred. As a result, not only does no language permitting low density development appear in the publicly available OPA Plan, but the language that does appear ***{Page 2 Cal.5th 157}*** designates the property for use as a golf course or open space. The 1973 planning commission amendment authorizing residential development never became integrated into the publicly available OPA Plan, let alone the 2010 General Plan. (See Gov. Code, § 65300.5; see also *id.* §§ 65302, 65303.) Any reasonable person examining the documents publicly available in 2010 would have concluded that the OPA Plan was consistent with the General Plan map designating the Property as open space.

Even if Milan and the City were correct that the 1973 planning commission amendment did properly amend the OPA Plan to authorize low-density residential development on the Property, this would have made the OPA Plan inconsistent with the 2010 General Plan's land use designation for the Property. The City attempts to downplay the facial inconsistency between the 2010 General Plan, on one hand, and its interpretation of the OPA Plan and the Project, on the other. It stresses that no project is entirely consistent with a general plan " ' "[b]ecause policies in a general plan reflect a range of competing interests." ' " (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.) For this reason, "[s]tate law does not require perfect conformity between a proposed project and the applicable general plan." (*Id.* at p. 817; see also *id.* at p. 816 [" ' "A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies." ' "].) Accepting this argument, the Court of Appeal found that the City's history with the OPA Plan created "contradictions and ambiguities" in the City's general plan and thus deferred to the City's consistency finding.

But here, while the Property is designated solely for open space in the General Plan, the Ridgeline Project calls for low-density residential development. No consistency between the 2010 General Plan and the Project can be found. The City does not point to any countervailing policy consideration from the General Plan that the Ridgeline Project furthers, nor does the City contend that it was trying to balance various competing interests in its consistency finding. (*Friends of Lagoon Valley*, at p. 816; see *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1342 [planning agency abused its discretion by finding consistency between a development and its land use element where the development's "inconsistency with [a] fundamental, mandatory and specific land use policy [was] clear"].) Contrary to the Court of Appeal's suggestion, the OPA Plan's history does not inject ambiguity into the City's 2010 General Plan.

The City did not need to structure its general plan as it did in 2010. A city may enact a general plan in any form it chooses. (§ 65301, subd. (a).) The ***{Page 2 Cal.5th 158}*** City could have vested an amended version of the OPA Plan with general plan authority by adopting resolution No. PC-85-73 as a separate document that was incorporated into the 2010 General Plan. The City could have decided to conduct its general planning

piece by piece, accumulating a general plan over time. But that was not what the City did, and on this point, the 2010 General Plan is unambiguous: The 2010 General Plan is an integrated document, authoritative except as amended. The City may have manifested a contrary intention in older documents such as resolution No. 3915 and resolution No. 4448. But the 2010 General Plan did not mention much less incorporate those resolutions. Instead, it designated the Property for exclusive use as open space in its policy map.

Relying on *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300 (*Las Virgenes*), the Court of Appeal opined that "the Policy Map is not the end of the analysis." In *Las Virgenes*, the county approved a development agreement for a project that was inconsistent with the land use designation apparently set forth in a high-level general plan land use map, but consistent with the applicable area plan's land use map. (*Las Virgenes*, at pp. 310--311.) Upholding the county's approval, the Court of Appeal noted that the general plan in that case provided that "a proposal may be consistent even if not literally supported by the map," that "mere examination of land use and other policy maps is insufficient to determine consistency," and that "policy maps are general in character and are not to be interpreted literally or precisely." (*Id.* at p. 310.) Further, the general plan "was designed to include the more specific areawide [*sic*] plans as component parts" (*id.* at p. 311), especially since the countywide general plan land use map only displayed patterns that were 50 acres or larger (*id.* at p. 310). "The areawide plan serve[d] to complete, extend and refine the General Plan land use policy, not contradict it." (*Id.* at p. 312.)

Las Virgenes does not provide support for the City's approval of the Project here. *Las Virgenes* simply illustrates that uses of a particular parcel of land must be discernible from the general plan itself, however a city may choose to organize it. The general plan in that case directed interested parties to the other relevant documents, explained the relationship between the main body of the general plan and those documents, and indicated that the land use policy map did not identify the uses for every small parcel of land. In this case, the City chose to organize its general plan differently. By its own terms, the 2010 General Plan contains only an introduction, 11 elements, and several appendices. The introduction clarifies that a reader must consult all of the General Plan's elements to be certain of a particular parcel's use. The 2010 General Plan does not incorporate any extant documents designating the Property's land use as anything other than open space, and it notes that its policy map "indicates the location, density, and intensity of development for **{Page 2 Cal.5th 159}** all land uses citywide." Thus, residential development on the Property is inconsistent with the 2010 General Plan under its express terms.

Milan argues that the City, after it adopted the 1973 resolution purporting to make the OPA Plan part of the general plan, never gave notice that it intended to change the general plan's designation of the Property. But why would the City and interested members of the public over the past 35 years consider amending the general plan's open space designation if the publicly available general plan already reflects such a

designation? We must conclude that the 2010 General Plan means what it says: The Property is designated as open space ("[s]teep hillsides, creeks, or environmentally sensitive areas that should not be developed"), a designation inconsistent with residential development like the Project.

Milan further argues that "[t]he City is not bound by a clerical error" because clerical errors cannot invalidate the provisions of a general plan; they are not legislative acts that comply with the Government Code's requirements for general plan amendments. To hold otherwise, Milan argues, would give municipal staff greater power than the City Council. But a city official cannot exercise a "power" that is by definition exercised inadvertently. Nor is there any allegation or evidence in the record indicating that a city official intentionally flouted the City Council's directive to write resolution No. PC-85-73's proposed changes into the OPA Plan in 1973. In any event, it is undisputed that the properly enacted provisions of the 2010 General Plan *could* amend a general plan. So while "[t]he City is not bound by a clerical error," it is bound by its failure to modify the OPA Plan to conform to resolution No. PC-85-73's proposed changes and to incorporate those changes into the 2010 General Plan.

CONCLUSION

A general plan and its specific plans have been described as a "yardstick"; one should be able to "take an individual parcel and check it against the plan and then know which uses would be permissible." (Barclay & Gray, Curtin's California Land Use & Planning Law, *supra*, at p. 31.) "[P]ersons who seek to develop their land are entitled to know what the applicable law is at the time they apply for a building permit. City officials must be able to act pursuant to the law, and courts must be able to ascertain a law's validity and to enforce it." (*Lesher*, *supra*, 52 Cal.3d at p. 544.) That is why cities are directed to make their general plans available to the public. (§ 65357, subd. (b).) Public access has little value if the general plan's policies are not readily discernible. (See *City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847, 862--863 ["Even though the general plan is always subject to change [citation], the material in the plan **{Page 2 Cal.5th 160}** must have some current utility in order for the public to become informed of the current and projected land uses depicted in the plan."].)

The open space designation for the Property in the 2010 General Plan did not inform the public that the Property would be subject to residential development. The City's proposed general plan amendment put its citizenry on notice that such development would be possible. In response, Orange Citizens successfully conducted a referendum campaign against the amendment. If "legislative bodies cannot nullify [the referendum] power by voting to enact a law identical to a recently rejected referendum measure," then the City cannot now do the same by means of an unreasonable "administrative correction" to its general plan undertaken " 'with intent to evade the effect of the referendum petition.' " (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 678.)

For the reasons above, we reverse the judgment of the Court of Appeal.

Cantil-Sakauye, C. J., Werdegar, J., Chin, J., Corrigan, J., Cuéllar, J., and Kruger, J. concurred.