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IN THE SUPREME COURT OF CALIFORNIA
Case No. _____

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.

After a Decision by the Court of Appeal
Fourth Appellate District, Division Three
Case No. G047013 (consolidated with Case No. G047219)

Appeal from the Orange County Superior Court,
Case No. 30-2011-00494437
The Honorable Robert J. Moss, Judge Presiding

PETITION FOR REVIEW

Rachel B. Hooper (SBN 98569)
*Robert S. Perlmutter (SBN 83333)
Susannah T. French (SBN 168317)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Fax: (415) 552-5816
Attorneys for Petitioners Orange Citizens for Parks and Recreation and Orange Park Association

SUPREME COURT
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Frank A. McGuire Clerk

Deputy

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ISSUES PRESENTED FOR REVIEW

1. Where a city's current general plan contains an unambiguous land use designation for a piece of property, can this designation be superseded by a conflicting designation adopted 40 years ago in 1973?

2. Where a city, in 1973, adopts a resolution modifying the designation for a piece of property, but where that designation is never implemented, never appears on the face of any publicly-available plan, and conflicts with the designation in the city's subsequently-adopted general plans, is the 1973 designation the controlling land use designation for the Property?

3. Where a city council adopts a general plan amendment to resolve internal inconsistencies in its general plan, and the amendment is defeated by referendum, can the court itself resolve the inconsistencies by invalidating portions of the general plan in a manner contrary to the will of the voters?

GROUNDS FOR REVIEW

The Fourth District's decision in *Orange Citizens for Parks and Recreation v. Superior Court*, 217 Cal.App.4th 1005 (July 10, 2013) ("Opinion," attached as Exhibit A), turns California planning law upside-down. It holds that a land use designation in a city's recently adopted general plan—the city's "constitution" for development—can be trumped

by a designation set forth in a 1973 resolution that was buried in a file drawer and forgotten for decades. It mandates deference to a city council's post-hoc litigation position, upholding an untenable "interpretation" of the city's general plan that flatly contradicts its plain language. Finally, the Opinion holds that a city council can thwart the will of the voters by claiming that, under its new interpretation, its own general plan amendment—which the voters resoundingly rejected—was never necessary in the first place and the referendum is therefore irrelevant.

The property at issue in this litigation has been designated "Open Space" in the City of Orange General Plan for decades. Thus, in order to proceed with its controversial development project, Respondent Milan REI IV LLC ("Milan") requested, and the Orange City Council approved, a General Plan Amendment ("GPA"), changing the land use designation of Milan's Property in the General Plan Land Use Map from Open Space to residential.

Milan and the City understood that the GPA was critical to ensure consistency between Milan's proposed residential subdivision ("Project") and the General Plan. Indeed, it was precisely for this reason that Milan vigorously urged the City Council in May 2011—and throughout the previous four years—to adopt the GPA; otherwise, Milan cautioned, its Project would not be "approvable." In adopting the GPA, the City Council likewise found that the GPA would make the designations for

Milan's Property "consistent throughout the General Plan." After the referendum challenging the GPA was placed on the ballot, however, Milan and the City changed their tune. They now argued, to the courts below, that the GPA was entirely unnecessary and that Milan's Project could go forward regardless of the referendum.

The Court of Appeal agreed. Despite the voters' rejection of the GPA on November 6, 2012, the Court held that Milan's Project conforms to the City's General Plan and can proceed. But how can a residential subdivision be consistent with a General Plan that clearly designates the Property for Open Space? Because, the Court of Appeal found, the long-standing Open Space designation is "erroneous"; the Property's real and controlling "General Plan" designation is a *residential* one buried in a 1973 City resolution proposing to amend the "Orange Park Acres Specific Plan" and incorporate that document into the City's previous (and long since superseded) general plan at that time.

This Court has not issued a significant decision addressing general plan law since its landmark decision in *DeVita v. County of Napa,* 9 Cal.4th 763 (1995), more than 18 years ago, which reaffirmed the general plan's role as a community's land use constitution. The Opinion undercuts not only *DeVita,* but also at least four other lines of cases establishing the most basic tenets of modern planning law. Accordingly, review is warranted to re-establish the primary role of the general plan in local

planning throughout California and to resolve several direct conflicts between the Opinion and established appellate and Supreme Court precedent. *See* Cal. Rule of Court 8.500(b)(1).

First, decades of Supreme Court precedent establish that the general plan is "located at the top of 'the hierarchy of local government law regulating land use.'" *DeVita,* 9 Cal.4th at 773 (citation omitted); *see Citizens of Goleta Valley v. Board of Supervisors,* 52 Cal.3d 553, 570-71 (1990) ("The general plan has been aptly described as the 'constitution for all future developments' within the city or county," and thus "'[t]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan.'"). The Court of Appeal, however, held that the controlling land use designation for the Property is a residential designation that appears nowhere in the City's current—or any previous—General Plan, but is set forth *solely* in a 1973 City resolution.

The Opinion also ignores this Court's mandate that courts must give effect to the plain text of a city's general plan. *Lesher Communications, Inc. v. City of Walnut Creek,* 52 Cal.3d 531, 543 (1990). The City's 2010 General Plan unambiguously designates the Property as Open Space and defines the Orange Park Acres Plan as a *subordinate* "specific" or "neighborhood" plan that must be revised to comport with current General Plan policies. The Court of Appeal, however, ignored this

objective language and effectively rewrote the City's General Plan to eliminate its long-standing Open Space designation and replace it with a residential one from a subordinate plan. In so doing, the Court of Appeal engaged in precisely the type of retroactive amendment by "judicial fiat" that this Court has roundly condemned. *Id.* at 541 (holding that a land use regulation that is not understood by the adopting body as being part of the current general plan cannot "become such retroactively by judicial fiat").

Second, the Opinion is inconsistent with *Harroman Co. v. Town of Tiburon,* 235 Cal.App.3d 388, 396 (1991), which holds that where a city adopts a comprehensive revision to its general plan, the revised general plan supersedes the previous general plan. The Court of Appeal instead held that, despite its blatant inconsistency with the 2010 General Plan, the 1973 version of the City's general plan is controlling today because it was never expressly repealed.

Third, the Opinion directly conflicts with *City of Poway v. City of San Diego,* 229 Cal.App.3d 847, 862-63 (1991), which holds that a general plan amendment is ineffective where it is never implemented, never appears on the face of the publicly-available version of the general plan, and conflicts with the current general plan. The Court of Appeal here held that the 1973 residential designation, which never appeared on the face of *any* City plan and was forgotten for decades, was nevertheless valid *and*

that it superseded the Open Space designation for the Property in the current General Plan.

Fourth, the Opinion creates a conflict with the Third and Fifth Districts' decisions in *Sierra Club v. Kern County,* 126 Cal.App.3d 698, 703-04 (1981), and *Concerned Citizens of Calaveras County v. Board of Supervisors,* 166 Cal.App.3d 90, 104 (1985), which hold that where a general plan contains inconsistent designations for a piece of property, no development may be approved until the inconsistencies are resolved through a general plan amendment. Here, after noting that the GPA proposed by the City to resolve the Property's conflicting designations was rejected by referendum, the Court of Appeal simply dismissed the current Open Space designation as "erroneous" and declared that Milan's development could proceed under the conflicting 1973 residential designation.

Finally, the Opinion is inconsistent with *Rossi v. Brown,* 9 Cal.4th 688, 704 (1995), which holds that the constitutionally reserved powers of initiative and referendum give the people "the final legislative word." Here, the voters rejected the City Council's attempt to change the Property's General Plan designation from Open Space to residential. The Opinion, however, effectively nullifies the referendum by dismissing the Open Space designation as invalid. While this Court has repeatedly admonished that the local referendum power is "'one of the most precious

rights of our democratic process,'" which it is the "'duty of the courts to jealously guard,'" (*id.* at 695 (citations omitted)), the Opinion declares the referendum power here to be meaningless.

Central to all these issues is a question of vital importance to land use planning throughout the State: can a city or county circulate a general plan for public review, formally adopt it, distribute it to the public, and place it on its website as its official General Plan, and then turn around and declare that its "real" general plan contains entirely different land use designations and land use plans?

Prior to this Opinion, the case law—and common sense—uniformly held that the answer was "No." This Court should accordingly grant review to reaffirm what the Court of Appeal has now called into question: that the "constitution" for development for cities and counties throughout California is the general plan formally adopted by the legislative body and that it can be amended only through a general plan amendment subject to referendum by the voters.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

1. The Project Application

In 2007, Milan applied to the City for permission to develop a 39-unit residential subdivision within an area of the City known as "Orange Park Acres." Milan's application, as well as all initial planning documents,

acknowledge the Property's Open Space designation in the City's General Plan, the Orange Park Acres Specific Plan, and the City's applicable zoning. *See generally* Administrative Record ("AR"), volume 6, pages 2177-82 (hereinafter cited as AR-6:2177-82) (Project summary from the City's Draft Environmental Impact Report ("DEIR")). Milan therefore requested a General Plan amendment, a specific plan amendment, and a rezone to change the Property's designation from Open Space to residential. *Id.*

2. Milan's New Theory

In late 2009, after facing considerable community resistance to its proposed development, Milan's lawyers presented the City Attorney with a binder of historic resolutions allegedly supporting a remarkable new theory:[1] that the applicable land use designation for the Property was not the Open Space designation in the City's official General Plan, as had been universally understood, but rather a "low-density" residential designation appearing in a 1973 Planning Commission Resolution (and nowhere else).

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[1] *See* Petitioners' Appendix of Exhibits, filed 06/08/12 in consolidated case G047013, volume II, tab 11, page 389, ¶ 3 (hereinafter cited as PA-II:11:APP389).

3. Early Land Use History

The City adopted the Orange Park Acres Specific Plan ("OPA Plan") in 1973, when the Property lay exclusively within the jurisdiction of Orange County. On its face, the OPA Plan has always designated the Property as "Golf Course" and "Local Parks," designations which do not allow residential development. AR-11:5037.

At the end of the planning process, and apparently in an effort to forestall development pressures in the area, the City's Planning Commission recommended that the OPA Plan be approved as "part of" the general plan. AR-9:3676. It also recommended that the Property's land use designation be amended to allow for both open space *and* residential uses. AR-9:3677. On December 26, 1973, the City Council adopted the OPA Plan as amended by the Planning Commission. AR-9:3688-89. Over the years, the City has inconsistently referred to this document as a "specific plan," a "part of" previous general plans, an "area plan," and a "neighborhood plan." However, during this 40-year period, neither the text nor the maps of the OPA Plan (or the General Plan) were ever amended to apply the residential designation recommended by the Planning Commission to the Property. Rather, as Milan and the City have repeatedly conceded, the OPA Plan available to the public has always designated the Property solely for open space uses. AR-4:1895 ¶ 4, 1429.

4. The 1989 General Plan

In 1985, the Property was annexed to the City. In approving the annexation, the City Council found:

> The configuration of the proposed parcels would increase the potential for development to other than recreation oriented uses, *but it is noted that, at a minimum, a General Plan Amendment and Zone Change would be required to allow other uses.*

AR-9:3880 (emphasis added). In other words, the City Council expressly found that a General Plan *amendment* would be required to allow residential uses on the Property.

In 1989, the City adopted its first comprehensive general plan update since the mid-1970's. AR-11:4621; 14:5941. The 1989 General Plan provides that the "single most important feature" of its Land Use Element is "the Land Use Policy Map." AR-11:4634. This map designates the Property solely as Open Space/Golf ("OS/Golf"). AR-14:5919; PA-II:8:APP295.

5. The 2010 General Plan

On March 9, 2010, the City Council approved a City-wide "Comprehensive General Plan Update" ("2010 General Plan"). AR-

14:6277-80. The 2010 General Plan also designates the Property exclusively as "Open Space." Exhibit B hereto at 7-8;[2] Opinion at 17.

6. Project Approvals and the Referendum

Although Milan was largely successful in persuading the City Attorney to adopt its self-serving theory, City staff recognized that this theory created a new problem: the 1973 residential designation conflicted with the existing open space designations in the 2010 General Plan and the OPA Plan.

Accordingly, given the well-established law requiring general plan consistency, the City acknowledged that the Project could not be approved without a General Plan amendment. AR-2:502-03. Just weeks before the approval, Milan's lawyers also reiterated their request for the GPA so that the Project would be "100% approvable." AR-4:1429.

On June 14, 2011, the City Council approved Resolution No. 10566, adopting a GPA for the Project that:

> (1) changes the 2010 General Plan Land Use Policy Map designation for the Property from "Open Space" to "Other Open Space & Low Density";

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[2] Pursuant to Rule of Court 8.504(e)(1)(C), highlighted excerpts of the City's 2010 General Plan are attached hereto as Exhibit B. The entire General Plan is at AR-10:4010.

(2) changes the OPA Plan Map designation for the Property from "Golf" and "Local Parks" to "Other Open Space & Low Density"; and

(3) eliminates the text in the OPA Plan requiring the permanent protection of the golf course.

AR-4:1952-53, 1960, 1963; *see* Opinion at 21.

One month later, after Petitioners Orange Citizens for Parks and Recreation and Orange Park Association (collectively, "OCFPR") submitted the Referendum of the GPA to the city clerk, the City rezoned the Property from "Recreation/Open Space" to residential (the "Zone Change"), and adopted a Development Agreement for the Project. AR-4:1827-32, 1833-78.

On November 6, 2012, City voters defeated the Referendum by a 56% vote, thereby rejecting the GPA adopted by the City Council. Opinion at 3.

B. PROCEDURAL HISTORY

On July 26, 2011, Milan filed suit against the City, followed by cross-complaints by both OCFPR and Milan. All claims regarding the GPA's legal effect, the validity of the Development Agreement and Zone Change, and the legal effect of the Referendum were ultimately severed and briefed based on the Administrative Record. PA-I:5:APP090. The trial court granted Judgment for Milan, and against OCFPR, on these claims and

issued a writ commanding the City to remove the Referendum from the November ballot. AA055-59, AA078-83.

Following an appellate writ petition by OCFPR, the Court of Appeal stayed the trial court's Order and writ, thereby allowing the Referendum election to proceed. OCFPR's appellate writ action was ultimately consolidated with its appeal from the Judgment.

C. THE COURT OF APPEAL DECISION

On July 10, 2013, the Court of Appeal, in a published decision, upheld the trial court's Judgment. No petition for rehearing was filed. The Opinion holds that Milan's Project is consistent with the General Plan because: (1) the OPA Plan is part of the 2010 General Plan, and (2) the 1973 residential designation is part of the OPA Plan and is the controlling land use designation for the Property today. Opinion at 32-37.

The Court of Appeal first held that the City Council in 2011 could reasonably have concluded that the general plan in the 1970's designated the Property for low density residential use. *Id.* at 36-37. While the Court acknowledged that both the 1989 and 2010 general plans designated the Property exclusively for Open Space, it held that this was insufficient to change the 1973 designation absent evidence of an express intent to do so. *Id.* at 37-38.

The Court of Appeal also acknowledged that if the OPA Plan was considered part of the City's current General Plan and designated the

Property for residential use, this designation would conflict with the Open Space designation in the 2010 General Plan. *Id.* at 40. The Court, however, held that such a stark inconsistency did not render the development approvals invalid, concluding instead that the long-standing Open Space designation was simply "erroneous" and that the City was therefore entitled to ignore it, despite the Referendum. *Id.* at 42.

ARGUMENT

I. THE COURT OF APPEAL ERRED IN FAILING TO APPLY THE UNAMBIGUOUS DESIGNATIONS IN THE CITY'S CURRENT GENERAL PLAN.

This case revolves around a central legal question: what was the City's statutorily mandated "comprehensive, long-term general plan" (Gov. Code § 65300[3]) when the City approved Milan's Project in 2011?

In answering this question, the Court of Appeal rejected the "straightforward" argument put forth by OCFPR: that, as a "matter of law," a city's general plan consists of "the most recent *objective* evidence of the general plan (i.e., text and diagrams presented to the public as the general plan)." Opinion at 3, 27, 32 (emphasis in original). Rather, the Court concluded that even if the "uninformed observer" might look to the face of the general plan to determine applicable land use designations (*id.* at 27), the *real* designations could be found elsewhere, in this case, in a long-

[3] All undesignated statutory references are to the Government Code.

forgotten 1973 resolution amending the OPA Plan. This conclusion is a dramatic departure from established planning law and will radically transform the role of general plans throughout California.

A. The 2010 General Plan Plainly Designates the Property Exclusively for Open Space Use and Does Not Incorporate the OPA Plan.

The Court of Appeal accurately summarizes the law concerning the interpretation of general plan language:

> 'Absent ambiguity, we presume that the' adopting body intended the meaning on the face of an enactment '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.'

Opinion at 37 (quoting *Lesher*, 52 Cal.3d at 543). In contravention of this bedrock principle, however, the Opinion then proceeds to ignore the unambiguous language of the 2010 General Plan.

The heart of the general plan is the "land use element," which designates the "location and extent of the uses of the land for housing, business, industry [and] open space." § 65302(a). Cities and counties almost universally establish the applicable land uses by including a map in their general plans, as the City did here, which is then relied upon by public officials, planners, developers, and the entire community to determine the governing development standards. *See* Governor's Office of Planning and Research, *General Plan Guidelines* at 14 (2003) (noting that "a diagram or diagrams, along with the general plan's text, should be detailed enough *so*

that the users of the plan, whether staff, elected and appointed officials, or the public, can reach the same general conclusion on the appropriate use of any parcel of land") (emphasis added).[4]

The 2010 General Plan contains *no* ambiguity with regard to the land use designation for the Property. As the Opinion notes, "The 2010 Policy Map designated the Property as 'OS' (Open Space)." Opinion at 17; *see* Exhibit B at 7. The Plan's map of "Open Space Resources" likewise designates the Property exclusively for Open Space. Exhibit B at 8. *No other designation for the Property appears anywhere in the 2010 General Plan.*

Nor is there any ambiguity with regard to the role of the 2010 Land Use Policy Map. The Land Use Element provides:

> Another important feature of this Element is *the Land Use Policy Map, which indicates the location, density, and intensity of development for all land uses citywide.* The proposed land use designations identify the types and nature of development permitted throughout the planning area.

Exhibit B at 4 (emphasis added). Indeed, the General Plan expressly directs the City to "[e]nsure that City land use decisions are consistent with . . . the land uses shown on the Land Use Policy Map." Exhibit B at 9.

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[4] Available at http://www.opr.ca.gov/s_generalplanguidelines.php.

The 2010 General Plan is also unambiguous with regard to its own scope. The 2010 General Plan itself states: *"The General Plan document is comprised of this Introduction, and eleven elements."* Exhibit B at 2; *id.* at 1.

Finally, the 2010 General Plan is unambiguous regarding the subordinate status of the OPA Plan. The 2010 General Plan expressly underscores its own role as the City's controlling land use charter, declaring that "State law places the General Plan atop the hierarchy of land use planning regulations" and that "other City plans *must conform to General Plan policy direction* and work to implement the General Plan." Exhibit B at 2 (emphasis added).

The General Plan then identifies these subordinate "other City plans" as including "Orange Park Acres." *Id.* at 3; *see also id.* at 6 ("Specific Plans and Neighborhood Plans currently in effect include: . . . Orange Park Acres"). "Each of these plans and any future specific plans adopted by the City," the 2010 General Plan confirms, "*must be consistent with the policies expressed in this Element.*" *Id.* at 6 (emphasis added); *see also id.* at 10 (directing the City to "implement and update, as needed" the City's "adopted specific plans and neighborhood plans," including "Orange Park Acres").

Thus, while the Court of Appeal suggests, without citation, that the 2010 General Plan contains "contradictory references" to the OPA

Plan (Opinion at 39), the plain text of the 2010 General Plan shows otherwise.

In support of its conclusion that the plain text of the 2010 Plan is not controlling, the Court of Appeal relies on *Las Virgenes Homeowners Federation Inc. v. County of Los Angeles,* 177 Cal.App.3d 300 (1986). *Las Virgenes*, however, presents a completely different factual scenario from the present case. Indeed, it confirms that, in interpreting a general plan, the courts must look to the plan's plain language.

Las Virgenes found that, although the maps in an area plan and the county general plan appeared superficially to have conflicting residential density levels for the property at issue, these seeming inconsistencies were reconciled by the plain text of that county's general plan. As the court emphasized, that plan "*states repeatedly* that [its] policy maps are *general in character and are not to be interpreted literally or precisely.*" *Id.* at 310 (emphasis added). It also expressly included the area plans as "component parts" that "establish more specific residential density ranges." *Id.* at 310-11.

Here, the City's 2010 General Plan could not be more different. It mandates that all other City land use decisions *must* be "consistent with . . . the land uses shown on the Land Use Policy Map" and defines the OPA Plan as a specific or neighborhood plan that must "be consistent with" General Plan policies. Exhibit B at 6, 9.

Thus, the General Plan makes clear that it is the OPA Plan which must conform to the General Plan, and not the other way around. Indeed, "no reasonable person . . . could conclude otherwise." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors*, 62 Cal.App.4th 1332, 1341-42 (1998) (invalidating county's finding that project is consistent with general plan policy).

Neither the courts nor a city council can "interpret" a general plan in a manner contrary to its plain language. Where there is a conflict between a general plan provision and a provision outside the general plan, "[t]he general plan stands." *Lesher*, 52 Cal.3d at 541 ("The tail does not wag the dog."). Thus, here, the plain language of the City's 2010 General Plan—which unambiguously designates the Property as Open Space and identifies the OPA Plan as a subordinate document—must stand.

By law, a land use approval "that conflicts with a general plan is invalid at the time it is passed." *Lesher*, 52 Cal.3d at 544; *id.* at 536, 545 (invalidating inconsistent zoning ordinance); *Midway Orchards v. County of Butte,* 220 Cal.App.3d 765, 783 (1990) (invalidating inconsistent development agreement); §§ 65860(a), 65867.5(b), 66473.5, 65567 (mandating consistency between development and the applicable general plan). Because Milan's Project is inconsistent with the current General Plan's clear Open Space designations, the Project cannot go forward.

B. The 1973 Residential Designation Is Irrelevant Because It was Never Implemented and Conflicts with the 2010 General Plan Open Space Designation.

Rather than upholding the unambiguous 2010 General Plan's Open Space designation, the Court of Appeal determined that the 1973 residential designation constitutes the City's controlling general plan designation today. Opinion at 43. This finding is directly contrary to *Poway,* 229 Cal.App.3d at 863.

In *Poway*, a city amended a community plan to allow a long-term road closure, and subsequently adopted a resolution incorporating this amendment into its general plan. *Id.* at 853-54, 861-62. When the road closure was challenged three years later, the city argued that the continued road closure was consistent with its general plan, as modified by the amendment. *Id.*

The Court of Appeal disagreed, holding that the amendment was not legally effective because the resolution "was forgotten by the public officials charged with creating and implementing it" and because the general plan was never amended in a publicly-available document to reflect the proposed change. *Id.* at 862-63. In addition, the court noted that the city's general plan and maps showed "the road to be an open major road." *Id.* at 862. Thus, the amendment was also invalid because it was inconsistent with the publicly-available general plan. *Id.* at 863.

Here, the facts are essentially identical, except that the resolution at issue in *Poway* was "forgotten" only for three years (*id.* at 854-56, n. 4), whereas the 1973 residential designation was forgotten by the City, the Property owners, and the public for *36 years*—from 1973 until late 2009.

The Opinion acknowledges that *Poway* provides "some authority" to support OCFPR's position. Opinion at 35. However, it then sets forth a number of grounds for distinguishing *Poway.* None of these are persuasive. For example, the Opinion states that, unlike *Poway,* it is "reviewing the City Council's characterization of its own general plan." *Id.* But in *Poway,* the respondent city was also urging the court to adopt its own characterization of its own general plan. While viewing the "evidence in the light most favorable to respondent" city, *Poway* nevertheless held it was the *general plan available to the public*, not the never-implemented version relied upon by the city, which controlled. 229 Cal.App.3d at 859, 861-62.

The Opinion also notes that the forgotten resolution in *Poway* amended the city's general plan to incorporate changes to a community plan, whereas, here, the forgotten resolution amended the city's general plan to incorporate and amend the OPA Plan. In both cases, however, the allegedly binding amendment was never included in the general plan and therefore was legally ineffective.

In addition, the Opinion states that "because of the lengthy amount of time" that has passed, here it is "less clear here what was made available to the public" when the resolution was adopted "in the 1970's." Opinion at 36. But the dispositive issue is not what documents were available to the public in the 1970's, but what was available to the public in the 40 years since.

Here, as in *Poway,* it is undisputed that the City never implemented the 1973 resolutions by amending either its General Plan or any publicly-available copy of the OPA Plan to reflect a residential designation for the Property. Indeed, Milan's own lawyers acknowledged that all available copies of the OPA Plan over the past 40 years show the Property designated for open space uses:

> It is our understanding that the "over-the-counter" copy of the OPA Plan, as well as the copy available on the City's website, . . . does not include the Planning Commission's recommended changes to the text which were adopted by the City Council. *Additionally, there appear to be no copies of the OPA Plan which have been edited to reflect the OPA Plan as originally adopted.*

AR-4:1429 (emphasis added). Likewise, in approving the Project a month later, the City Council expressly found that "the textual changes recommended by the Planning Commission and approved by the City Council [in 1973] were never entered into any official copy of the OPA Plan." AR-4:1895, ¶ 4. While granting great deference to the City's

litigation position elsewhere, the Court of Appeal trivializes this factual finding of the City Council, erroneously characterizing it as "specula[tion]" in an "environmental planning document." *See* Opinion at 13; *but see id.* at 32-33 (acknowledging there is "no evidence" that the OPA Plan was ever amended to include a residential designation).

The City, moreover, expressly conceded below that "between 1973 and 2009 it appears to have been forgotten that the City Council adopted the Open Space/Residential designation." PA-II:11:APP384 (lines 1-2). Thus, in 1985, when the Property owners submitted an application to annex the Property into the City, their application listed the "General Plan Land Use designation for the site" as "Recreation/Open Space." AR-9:3818. City staff concurred. AR-9:3893 ("[T]he Land Use Element of the General Plan and the [OPA] Plan designate[] the area for Open Space and Recreation uses."). The City Council likewise found at the time that "a General Plan Amendment and zone change *would be required* to allow other uses" than recreation on the Property. AR-9:3880..

In 2007, Milan too certified in its development application and Initial Study that the Property was designated for Open Space in the City's General Plan and requested amendments to the General Plan and OPA "Specific Plan" to allow residential use. AR-9:4002; AR-14:6068. And both the 1989 and 2010 General Plans clearly designated the Property exclusively for Open Space.

Thus, *Poway* indisputably controls here: the 1973 residential designation is legally ineffective today both because it was immediately forgotten and never implemented and because it directly conflicts with the Property's Open Space designation in all applicable City land use plans for the past 40 years.

C. The 2010 General Plan Supersedes All Prior General Plan Policies.

Even if, as the Court of Appeal concludes, "the City's general plan in the 1970's included a designation of the Property as . . . low density residential" (Opinion at 36-37), it no longer does today. The relevant land use designation for the Property is not the general plan designation from 1973, but the designation in effect in 2011, when Milan's Project was approved.

Harroman establishes the unremarkable proposition that when a city or county adopts a new general plan, the land use designations in previous general plans are no longer applicable. In *Harroman,* a developer alleged that the "applicable general plan" for its development proposal was not the draft general plan being prepared under section 65361, but the general plan in place at the time of its development application. 235 Cal.App.3d at 391-92. The court disagreed, finding that the revised general plan "effectively suspend[s] the provisions of the existing general plan under review" and that the existing plan was therefore "abated or

suspended." *Id.* at 396. *Harroman* recognizes that, under the circumstances set forth in section 65361, development may be required to comport with a revised general plan even *before* it is officially adopted, and that even a *draft* revised general plan will "abate" and "suspend" the operation of the existing general plan policies.

The facts here are even more compelling. The applicable General Plan is not a draft revision prepared under section 65361, but a comprehensive City-wide General Plan Update formally adopted by the City Council a year prior to Project approval.

The record makes indisputably clear that the 2010 General Plan was prepared and adopted as a complete, comprehensive city-wide revision of the entire prior general plan. AR-10:4028, 4031. In its Notice of Preparation, for example, the City announced its intention to complete a "comprehensive update of its adopted General Plan." AR-14:6121; *see also* AR-14:6170 (The "Comprehensive General Plan Update represents a complete updating of the City's 1989 General Plan."). Four years later, in its resolution approving the 2010 General Plan, the City Council likewise expressly found that it "provides the City and its citizens with a shared community vision, goals, policies, and implementation programs . . . , *rather than relying on the content of the 1989 General Plan* which has realized diminished relevance over the course of its 20 year lifespan." AR-14:6278 (emphasis added).

The City's formal adoption of the 2010 General Plan thus clearly "abated" and "suspended" the operation of the 1989 General Plan, which, in turn, "abated" and "suspended" the operation of any pre-existing general plan policies, including those in effect in 1973. *Harroman,* 235 Cal.App.3d at 396; *see also Cow Hollow Improvement Club v. DiBene,* 245 Cal.App.2d 160, 176 (1966) (zoning ordinance that "constitutes a completely new expression on the subject by the . . . local legislative body [and] affects every parcel of real property within the city . . . effects a repeal of all existing zoning ordinances"); *Professional Eng'rs in Cal. Gov't v. Kempton,* 40 Cal.4th 1016, 1038 (2007) (where later law "constitute[s] a revision of the entire subject," it will "repeal or supersede" the prior law).

D. The Court of Appeal's Holding that General Plan Amendments Are Not Sufficient to Supersede Pre-Existing Policies Will Cause Planning Chaos.

By ignoring the well-established principles discussed above, the Opinion effectively holds that general plan designations which have been amended through a formally-adopted general plan revision nevertheless remain in effect unless they have been *expressly* repealed. This holding not only conflicts with existing law, but also will throw land use planning throughout California into chaos.

Here, for example, under the logic of the Opinion, the *entirety* of the City's 1989 General Plan, as well as the entirety of the 1973 General

Plan, remain in effect today because neither of these documents was expressly repealed. In other words, the City now has not one comprehensive general plan—as state law expressly requires (§ 65300) and as the 2010 General Plan proclaims itself to be—but at least three.

Moreover, this would be true not just in the City of Orange, but in every jurisdiction that has ever adopted a general plan amendment or a new comprehensive general plan without *expressly* repealing all the pre-existing policies, a practice which is hardly uncommon. Rather than looking to the most recently adopted general plan to determine the applicable designation, a planner, public official, or property owner would be required to search historic resolutions, plans and policies for conflicting designations; determine whether they were ever expressly repealed; ascertain based on their legislative histories the "true" intent of the adopting body; and then attempt to resolve which designation is controlling. Even after undertaking this analysis, no one could be sure whether some other person or entity might unearth different historic documents, as Milan's attorneys did here, or how the local government or the courts would resolve any conflicting policies.

Clearly, this is not and cannot be the law. The Court of Appeal's holding flies in the face of this Court's insistence that, in determining a proposal's consistency with the general plan, "[o]nly the general plan in effect at the time the [proposal] is adopted is relevant."

Lesher, 52 Cal.3d at 545. Moreover, it renders meaningless the declared intent of the Legislature that "that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies." § 65300.5; *see also General Plan Guidelines, supra* n.4, at 14.

E. The Legislative Intent Behind the Adoption of the 2010 General Plan Is Determined by the City's Actions in 2010, Not by the Post-Hoc Findings of the City Council in Approving Milan's Development.

The Court of Appeal's conclusion that the OPA Plan "remained part of the City's general plan [in 2010], as it was when adopted in 1973," purports to rely on the "intent of the adopting body." Opinion at 38, 37 (quoting *Lesher,* 52 Cal.3d at 543).

Given the unambiguous language of the 2010 General Plan, however, it is not only unnecessary, but plainly inappropriate, for the court to look elsewhere to determine the General Plan's meaning. *Lesher,* 52 Cal.3d at 543; *see also Diamond Multimedia Systems, Inc. v. Superior Court* 19 Cal.4th 1036, 1047 (1999) (Where statutory language "is clear and unambiguous our inquiry ends. There is no need for judicial construction and a court may not indulge in it.").

Moreover, even if it were appropriate to examine legislative intent, the relevant "intent" is the City Council's intent in adopting its General Plan in March 2010, which clearly was to replace all pre-existing General Plan policies in their entirety. *See supra* I.C.

In contrast, there is absolutely no evidence that the City Council in 2010 intended to reject the Open Space designation for the Property shown on the existing General Plan land use map. In fact, at that time, Milan's request for a GPA to *change* the existing Property designation (in the 1989 General Plan) from Open Space to residential had been pending for three years. Had the City Council believed that the existing designation was erroneous, it could certainly have modified the designation as part of the comprehensive General Plan update. The City Council instead *retained the Open Space designation unchanged from the 1989 General Plan,* presumably anticipating that any proposed modification would be properly processed through Milan's pending GPA. Despite ample opportunity, Milan, in turn, never challenged the 2010 designation for its Property as erroneous.

Nor is there the slightest evidence that the City Council in 2010 intended to incorporate the OPA Plan *into* the General Plan. To the contrary, the General Plan on its face repeatedly refers to the OPA Plan as a subordinate "specific" or "neighborhood plan." Exhibit B at 2-3, 6. The 2010 General Plan itself was presented to the public and decisionmakers as a 606-page document that did not incorporate the OPA Plan, but was self-contained and comprehensive. Exhibit B at 1-2. This document alone was the "2010 General Plan" distributed to the public and placed on the City's website. *See* § 65357(b) (requiring that "[c]opies of the documents

adopting or amending the general plan" be promptly "made available to the general public"). In contrast, the "Orange Park Acres Plan" was listed on the City's website *not* under the heading of "General Plan," but rather under the heading of *other* "Plans and Documents" along with other specific plans, design guidelines, and similar documents. AR-14:6483-92. The City Council likewise identified the OPA Plan as a "Specific Plan" in the CEQA documents it certified for the 2010 General Plan. AR-14:6230, 6297.

In determining the "intent" of the City Council, the Court of Appeal completely ignores these indices of legislative intent. Instead, it focuses on the City's resolutions approving Milan's development proposal the following year. The Opinion finds "particularly relevant" the City's findings approving the revised EIR for Milan's Project, which set forth Milan's theory that the OPA Plan remained part of the current General Plan pursuant to the 1973 resolution. Opinion at 21-22.

The Court of Appeal's deference to the City's belated findings, however, is unwarranted. "The declaration of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law," and "[t]his is especially true when, . . . such declared intent is without objective support in either the language or history of the legislation and (until recently) is contrary as well to the practice of the

affected agency." *Peralta Cmty. Coll. Dist. v. Fair Emp't & Hous. Comm'n* 52 Cal.3d 40, 52 (1990).

Here, the City's 2011 conclusion that the OPA Plan is "part of" the 2010 General Plan not only lacks "objective support," it is contrary to numerous City resolutions and planning documents from 2000 onward which consistently refer to the OPA Plan as a "Specific Plan."[5] It is also inconsistent with the City's multi-year processing of Milan's request for a GPA and OPA "Specific Plan" amendment.

Moreover, this is not a typical "consistency" case, where the City Council was required to interpret ambiguous language or weigh and balance conflicting General Plan policies. Rather, the inquiry here is what *constitutes* the City's general plan, which is a "question of law requiring an independent determination by the reviewing court." *Harroman*, 235 Cal.App.3d at 392. The City's asserted findings reflect a *legal* theory concocted by Milan's lawyers, endorsed by the City Attorney, and then presented to the staff, the Planning Commission and the City Council as a

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[5] While earlier resolutions had inconsistently referred to the OPA Plan's status (*see* Opinion at 16), the City Council adopted at least five resolutions from 2000 to 2008 referencing the OPA "Specific Plan." *See* AR-9:3930, 9:3939, 9:3945; AR-14:6034; Appellants' Supplemental RJN ("SRJN") 007-9 (filed 01/30/13) (resolution requiring developers "within the OPA Specific Plan area" to give written notice of "[p]roposed specific plan amendments").

legal *fait accompli.*[6] Such a theory is not entitled to any deference. *California Trout, Inc. v. State Water Res. Control Bd.* 207 Cal.App.3d 585, 607 (1989) (Where an agency "has merely adhered to a view of the general law advanced by counsel," deference is unwarranted; "the court, rather than the staff counsel for an agency, is the superior arbiter.").

Critically, moreover, even after accepting Milan's legal theory, the City Council recognized that it did not go far enough. The Council properly concluded that a general plan amendment was still necessary to eliminate the open space designations that conflicted with the allegedly valid residential designation; that is the whole reason for the GPA.

Thus, in approving Milan's Project, the Council did *not* find that it was consistent with the existing General Plan but only with the "General Plan, *as amended by General Plan Amendment 2007-0001.*" AR-4:1828, § II (emphasis added), 1834 § III(A) (same). If any of the City's findings related to the Project are entitled to deference, it is this determination that the Project could not proceed without amendments to both the General Plan and the OPA Plan.

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[6] *See* AR-2:504; AR-12:5110, 5123, 5302, 5315; AR-13:5405.

Only after OCFPR submitted the Referendum did the City adopt its litigation position that the Project could proceed without the GPA under the pre-existing General Plan. This post-hoc "interpretation" of its General Plan is entirely unwarranted and deserves no deference at all. *See County of Sutter v. Board of Admin.*, 215 Cal.App.3d 1288, 1295 (1989) (agency "litigation position" based on "the legal reasoning of staff counsel" not entitled to deference).

II. THE COURT OF APPEAL ERRED IN HOLDING THAT THE PROJECT COULD PROCEED DESPITE INTERNALLY INCONSISTENT GENERAL PLAN DESIGNATIONS FOR THE PROPERTY.

State law requires that the general plan must comprise an "internally consistent" statement of policies. § 65300.5. A general plan "must be reasonably consistent and *integrated on its face*" because otherwise "those subject to the plan cannot tell what it says should happen or not happen." *Kings Cnty. Farm Bureau v. City of Hanford,* 221 Cal.App.3d 692, 744 (1990) (emphasis added) (citations omitted).

Of course, OCFPR has always maintained the current General Plan *is* internally consistent because it designates the Property exclusively for Open Space.

The Court of Appeal, however, concluded differently. It held, as a matter of law, that the City's current "General Plan" is not the document formally adopted by the City Council in 2010, but an entirely different conglomeration of documents, comprised of the official 2010

General Plan, the 1973 OPA Plan, and the never-implemented provisions of a 1973 City resolution. Assuming, *arguendo,* that this conclusion is correct, this "General Plan" currently has two starkly inconsistent land use designations for Milan's Property: (1) the Open Space designations in the 2010 Land Use and Open Space maps and the OPA Plan, which forbid residential development; and (2) the 1973 residential designation, which permits it. Opinion at 40.

Where a general plan is internally inconsistent, subordinate land use decisions that are implicated by the inconsistency are *ultra vires* and void. In *Sierra Club,* the seminal case on this point, the court held that a general plan was "internally inconsistent" where its land use and open space maps had conflicting designations for a site. 126 Cal.App.3d at 701-04. Because the challenged zone change in that case "could not be consistent with such [a] plan (§ 65860)," it was "invalid when passed." *Id.* at 704.

The same is true here. Given the conflicting residential and open space designations in the City's "General Plan," as construed by the Court of Appeal, the development approvals for Milan's property were "invalid when passed," and the Zone Change and Development Agreement adopted by the City Council are thus void.

The Court of Appeal attempts to distinguish *Sierra Club,* proposing a newly-minted distinction between "substantive" and

"erroneous" general plan inconsistencies and dismissing the General Plan's long-standing Open Space designation as an "error of omission." Opinion at 42, 39. This distinction renders the requirement for internal consistency meaningless. Indeed, any time a general plan contains conflicting designations, one of the designations is necessarily "erroneous."

In *Sierra Club,* for instance, the county attempted to preemptively cure the inconsistencies in its general plan maps by adopting a "precedence clause," which declared that the land use designations "should take precedence until the open space and conservation [element] can be reevaluated and amended, if necessary." 126 Cal.App.3d at 703. Essentially, the county declared that the open space designations were "erroneous" and the land use map contained the correct and applicable designations. The *Sierra Club* court, however, struck down the precedence clause, holding that a county cannot simply "subordinate" one element of its plan to another. *Id.* at 704, 708.

If a public agency cannot subordinate one element of its general plan to another, certainly a court cannot do so. By definition, an internally inconsistent general plan can be remedied only through a *legislative* (not a judicial) action amending the general plan. *See* § 65754; *Sierra Club,* 126 Cal.App.3d at 707. Thus, in *Concerned Citizens*, the court concluded that where two general plan elements were inconsistent, *a general plan amendment was necessary to resolve this inconsistency.* 166

Cal.App.3d at 104. Moreover, it was role of the legislative body, not the court, to choose which element to amend:

> The Board may wish to establish correlation and consistency by amending the land use element, the circulation element, or both. . . . [I]n order to maximize the Board's range of choices we shall invalidate the Board's adoption of both land use and circulation elements. The Board can then choose whether to amend either element, or both, to achieve statutorily required correlation and consistency.

Id.

Similarly, here, it was the role of the City Council and the voters, not the Court, to resolve any General Plan inconsistencies. That the Council's attempt to do so—by eliminating the Open Space designations for the Property to permit Milan's development—was "nullified via referendum" (Opinion at 41), does not permit the Court to resolve the inconsistencies itself.

The voters, of course, had every right to reject the Council's action. It is well established that general plan amendments are subject to referendum and that the "normal referendum procedure" applies as long as the "local government has discretion to choose what action to take." *Yost v. Thomas,* 36 Cal.3d 561, 570, 572-74 (1984). As this Court has recognized, "the local electorate's right to initiative and referendum . . . is generally co-extensive with the legislative power of the local governing body." *DeVita,* 9 Cal.4th at 775. Indeed, the constitutionally reserved powers of initiative

and referendum are "greater than that of the [legislative body]," giving the people "the final legislative word." *Rossi,* 9 Cal.4th at 704.

The voters here exercised their right to have "the final legislative word" by upholding the Open Space designation in the 2010 General Plan and rejecting the City's Council's attempt to resolve any General Plan inconsistency in favor of Milan. The Court of Appeal's determination that Milan's development can nevertheless proceed "improperly annul[s]" the right of referendum, undercutting "'one of the most precious rights of our democratic process.'" *Id.* at 695 (citation omitted).

Indeed, rather than upholding the voters' right of referendum, the Court of Appeal effectively implements its own "amendment" of the General Plan, one that is subject neither to referendum nor to the requirements of public participation and transparency. *See DeVita,* 9 Cal.4th at 773-74 (describing these requirements). In its gratuitous rewriting of the City's General Plan, the Court of Appeal ignores this Court's admonishment that the judicial role is to "construe, not to amend" a legislative enactment: "'the office of the judge is simply to ascertain and declare what is . . . contained therein, not to insert what has been omitted or omit what has been inserted.'" *California Fed. Sav. & Loan Ass'n v. City of L.A.,* 11 Cal.4th 342, 349 (1995) (citation omitted). Here, by "inserting"

a residential designation into the General Plan and effectively eliminating the conflicting Open Space designations, the Court of Appeal does just that.

While the Court of Appeal purports to base its new construction of the General Plan on the City Council's 2011 findings, in fact it goes much further. The findings never suggest that the open space designations in the 2010 General Plan (and the OPA Plan) can be ignored. Nor could they. Rather, they recognize that a General Plan Amendment to *change* these designations to residential is necessary to "make the General Plan land use designations for the subject property consistent throughout the General Plan." AR-4:1948. The Court of Appeal, in contrast, declares that the Open Space designations are not just "inconsistent," but are legally invalid.

The Opinion thus accomplishes precisely what the voters acted to prevent the City Council from doing: it rewrites the General Plan to eliminate the Open Space designation for Milan's Property. In so doing, the Opinion robs the City's voters of their successful Referendum and undertakes precisely the type of a general plan amendment by "judicial fiat" that this Court denounced in *Lesher*.

CONCLUSION

The petition for review should be granted.

DATED: August 19, 2013 SHUTE, MIHALY & WEINBERGER LLP

By: 

ROBERT S. PERLMUTTER
SUSANNAH T. FRENCH

Attorneys for Petitioners Orange Citizens for Parks and Recreation and Orange Park Association

CERTIFICATE OF WORD COUNT

I certify that this petition contains 8,391, exclusive of this certificate and the tables of contents and authorities, according to the word count function of the word processing program used to produce the petition. The number of words in this petition complies with the requirements of Rule 8.504(d)(1) of the California Rules of Court.

DATED: August 19, 2013 SHUTE, MIHALY & WEINBERGER LLP

By: _____
ROBERT S. PERLMUTTER

496925.9

PROOF OF SERVICE

Orange Citizens for Parks and Recreation, et al. v. Milan Rei IV LLC, et al.
California Court of Appeal, Fourth Appellate District, Division 3,
Case No. G047219
Orange County Superior Court, Central Judicial District,
Case No. 30-2011-00494437

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On August 19, 2013, I served true copies of the following document(s) described as:

PETITION FOR REVIEW

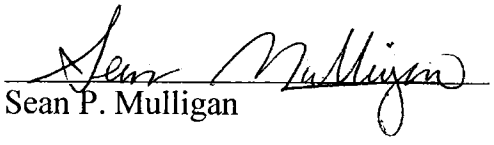
on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 19, 2013, at San Francisco, California.



Sean P. Mulligan

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Orange Citizens for Parks and Recreation, et al. v. Milan Rei IV LLC, et al.
California Court of Appeal, Fourth Appellate District, Division 3, No. G047219
Orange County Superior Court, Central Judicial District, Case No. 30-2011-00494437

Steven Baric
Baric & Tran
2603 Main Street, #1050
Irvine, CA 92614
Tel: 949-468-1047
Fax: 949-251-1886
Email: sbaric@barictran.com
sbaric@bamlawyers.com

Attorneys for Respondent
Milan Rei IV, LLC

Colin L. Pearce
Duane Morris LLP
One Market Plaza, Spear Tower, #2200
San Francisco, CA 94105-1127
Tel: 415-957-3015
Fax: 415-704-3098
Email:
clpearce@duanemorris.com

Attorneys for Respondent
Milan Rei IV, LLC

David E. Watson
Heather U. Guerena
Duane Morris LLP
750 B Street, #2900
San Diego, CA 92101
Tel: 619-744-2200
Fax: 619-744-2201
Email: dewatson@duanemorris.com
huguerena@duanemorris.com

Attorneys for Respondent
Milan Rei IV, LLC

Wayne W. Winthers, Interim City Attorney
City of Orange
300 E. Chapman Avenue
Orange, CA 92866
Tel: 714-744-5580
Fax: 714-538-7157
Email:
wwinthers@cityoforange.org

Attorneys for Respondents
Mary E. Murphy, City Clerk of the City of Orange; City of Orange; City Council of the City of Orange

Leon Page
Senior Deputy County Counsel
Office of Orange County Counsel
333 W. Santa Ana Bl., #407
Santa Ana, CA 92702
Tel: 714-834-6298 / Fax: 714-834-2359
Email: leon.page@coco.ocgov.com

Attorneys for Respondent
Neal Kelley, Registrar of Voters for the County of Orange

David A. DeBerry
Woodruff, Spradlin & Smart
555 Anton Bl., #1200
Costa Mesa, CA 92626
Tel: (714) 558-7000
Fax: (714) 835-7787
Email: ddeberry@wss-law.com

Attorneys for Respondents
Mary E. Murphy, City Clerk of the City of Orange; City of Orange; City Council of the City of Orange

Clerk of the Court
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

Clerk of the Court
California Court of Appeal
Fourth District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Filed 7/10/13

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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.	G047013
ORANGE CITIZENS FOR PARKS AND RECREATION et al., Plaintiffs and Appellants, v. MILAN REI IV LLC et al., Defendants and Respondents.	G047219 (Super. Ct. No. 30-2011-00494437) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Robert Moss, Judge. Petition denied. Appeal from a judgment of the Superior Court of Orange County, Robert Moss, Judge. Affirmed in part, reversed in part, and remanded.

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

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

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

Nicholas S. Chrisos, County Counsel and Leon J. Page, Deputy County Counsel for Real Party in Interest, Defendant, and Respondent Neal Kelley, Orange County Registrar of Voters.

Milan REI IV, LLC (Milan) is the current owner of 51 acres of land (the Property) in the Orange Park Acres neighborhood of the City of Orange (the City). Between 1968 and 2006, the Property featured a nine-hole golf course and other recreational facilities. In 2007, Milan applied to the City to develop a residential subdivision on the golf course portion of the Property. Dubbed "Ridgeline Equestrian Estates," the proposed development consists of 39 homes, each built on a one-acre lot, plus various equestrian amenities (the Project).

The City of Orange City Council (the City Council) ultimately approved the Project in 2011. In connection therewith, the City Council adopted a resolution

amending the City's general plan (General Plan Amendment). Among other things, the General Plan Amendment changed the existing designation of the Property on the general plan land use policy map (Policy Map) from "Open Space" to "Other Open Space & Low Density." In response to petitioning activity by its citizens, the City held a referendum on the General Plan Amendment.[1] On November 6, 2012, participating voters defeated Measure FF, thereby nullifying the General Plan Amendment.

The petitioners, plaintiffs and appellants,[2] whom we shall refer to collectively as Orange Citizens, assert that the referendum essentially undid the City Council's approval of the Project. Orange Citizens' argument is straightforward: (1) a municipality's general plan must be consistent with any proposed development; (2) the City's general plan in 2010 was inconsistent with the Project, as reflected by the Policy Map designation of the Property ("Open Space"); (3) an amendment of the City's general plan was a necessary prerequisite for approval of the Project; and (4) the General Plan Amendment, which was the City Council's attempt to satisfy this necessary condition, failed at the ballot box. (See *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 783 [development agreement voided because project approval was inconsistent with general plan as it existed before a general plan amendment, which was made ineffective by referendum].)

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1 "The referendum is the means by which the electorate is entitled, as a power reserved by it under our state Constitution, to approve or reject measures passed by a legislative body." (*Empire Waste Management v. Town of Windsor* (1998) 67 Cal.App.4th 714, 717.) Amendments to general plans are legislative acts subject to referendum. (*Yost v. Thomas* (1984) 36 Cal.3d 561, 570.)

2 Petitioners, plaintiffs and appellants include Orange Citizens for Parks and Recreation, a political action committee formed to protect the City's open space, and Orange Park Association, an incorporated association of citizens formed to protect the rural character of Orange Park Acres.

Milan, the City, and the City Council contend that the City's general plan since 1973 has always been to allow low density residential development on the Property. As repeatedly found by the City Council in connection with its approval of the Project, the City's general plan was *already* consistent with low-density residential units being constructed on the Property, even without the General Plan Amendment and notwithstanding the "Open Space" designation on the Policy Map. The General Plan Amendment simply corrected errors on the Policy Map (and in other documents). Regardless of whether these errors were corrected, the Project was consistent with the City's general plan. The trial court agreed with this position.

Because we conclude the City Council acted reasonably in making its consistency findings, we affirm the trial court's judgment with regard to denying Orange Citizens' petition for writ of mandate to set aside certain acts of the City Council (i.e., entering into a development agreement with Milan and changing the Property's zoning classification). We reverse the judgment with regard to the issuance of a writ of mandate commanding the City to remove the referendum from the ballot, a portion of the judgment already mooted by our previous stay of the trial court's writ of mandate.

GENERAL PRINCIPLES OF LOCAL PLANNING LAW

Before reciting the relevant facts and procedural history, we begin with an outline of the basic structure of local planning law. This divergence from our usual practice helps to illustrate the significance of the history of the City's planning efforts in Orange Park Acres.

The Planning and Zoning Law (Gov. Code, § 65000 et seq.)[3] channels and limits local governments' exercise of the police power under article XI, section 7 of the

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[3] All statutory references are to the Government Code unless otherwise stated.

California Constitution. (See *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181-1182.) City councils and county boards of supervisors (i.e., local "legislative bod[ies]") possess a "planning agency with the powers necessary to carry out the purposes" of the Planning and Zoning Law. (§ 65100; see 1 Cal. Land Use Practice (Cont.Ed.Bar. 2010) Overview of Land use Regulations, § 1.20, p. 19.) Each "legislative body . . . shall by ordinance assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary." (§ 65100.) In the case before us, the relevant legislative body is the City Council, which apparently assigned some of its planning agency powers to the City of Orange Planning Commission (Planning Commission).

Putting to one side the question of federal or state preemption of local planning authority, the hierarchy of local land use regulation is structured from top to bottom to include: (1) the general plan; (2) any specific plan(s); (3) the zoning code; (4) specific relief from the zoning code — e.g., conditional use permits or variances; (5) subdivision maps; and (6) building permits. (1 Land Use Practice, *supra*, Overview of land use Regulation, § 1.12, p. 14.)

General Plans

"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." (§ 65300; see *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 535 (*Lesher*) ["The Planning and Zoning Law . . . [citation] mandates the adoption of a general plan by every city and every county in this state"], fn. omitted.) The general plan adopted by a legislative body is "a '"constitution" for future development' [citation] located at the top

of 'the hierarchy of local government law regulating land use' [citation]." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 (*DeVita*).) "The planning law . . . compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions." (*Ibid.*)

"The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals." (§ 65302.) "The plan must include seven elements — land use, circulation, conservation, housing, noise, safety and open space — and address each of these elements in whatever level of detail local conditions require [citation]." (*DeVita, supra*, 9 Cal.4th at p. 773.) The land use element "designates 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." (§ 65302, subd. (a).) The open space element requires a "local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction." (§ 65563.) "'Open-space land' is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following: [¶] (1) Open space for the preservation of natural resources . . . . [¶] (2) Open space for the managed production of resources . . . . [¶] (3) Open space for outdoor recreation . . . ." (§ 65560, subd. (b).)

"The general plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements." (§ 65301, subd. (a).) "The general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area." (*Id.*, subd. (b).) "[T]he Legislature intends that the general plan and elements and parts

thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (§ 65300.5.)

"If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan." (§ 65358, subd. (a); see *Lesher*, *supra*, 52 Cal.3d at pp. 538-539 [describing procedural requirements of adoption or amendment of general plan].) Whether a city or county is adopting a new general plan or amending an existing general plan, it must conduct public hearings (§§ 65351, 65355) and "refer the proposed action to" certain interested public entities (§ 65352, subd. (a)). "The planning commission shall make a written recommendation on the adoption or amendment of a general plan." (§ 65354.) "The legislative body shall adopt or amend a general plan by resolution, which resolution shall be adopted by the affirmative vote of not less than a majority of the total membership of the legislative body." (§ 65356.) "Copies of the documents adopting or amending the general plan, including the diagrams and text, shall be made available to the general public" to inspect or to keep for a reasonable fee. (§ 65357, subd. (b)(1)(2).)

Specific Plans

"After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan." (§ 65450.) "A specific plan shall be prepared, adopted, and amended in the same manner as a general plan, except that a specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the legislative body." (§ 65453, subd. (a).)

Specific plans include many of the same features as general plans. (§ 65451, subd. (a).) "The specific plan shall include a statement of the relationship of the specific plan to the general plan." (*Id.*, subd. (b).) "No specific plan may be adopted

or amended unless the proposed plan or amendment is consistent with the general plan." (§ 65454.) "Any specific plan or other plan of the city or county that is applicable to the same areas or matters affected by a general plan amendment shall be reviewed and amended as necessary to make the specific or other plan consistent with the general plan." (§ 65359.)

Zoning Law

"The legislative body of any county or city may . . . adopt ordinances that do any of the following: [¶] (a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." (§ 65850.) "For such purposes the legislative body may divide a county, a city, or portions thereof, into zones of the number, shape and area it deems best suited to carry out the purpose of" the zoning law. (§ 65851.) "All such regulations shall be uniform for each . . . use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones." (§ 65852.)

"County or city zoning ordinances shall be consistent with the general plan . . . ." (§ 65860, subd. (a).) "A zoning ordinance that is inconsistent with the general plan is invalid when passed [citations] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. [Citation.] 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." (*Lesher*, *supra*, 52 Cal.3d at p. 541.)

Approval of Development Projects

"'[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) "The consistency doctrine has been described as 'the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.'" (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) "A 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."'" "A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan." (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.)

"A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan." (§ 65867.5, subd. (b).) "No local agency shall approve a tentative map . . . unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan . . . or any specific plan . . . ." (§ 66473.5.)

FACTS

Orange Park Acres is a neighborhood in Orange County with a semi-rural character, exemplified by large lot sizes and equestrian activities. Portions of Orange Park Acres are located within the City, while the remainder is unincorporated land within the jurisdiction of the County of Orange.

The Project is sited at the Property (51.1 acres located within Orange Park Acres that once featured a golf course, tennis courts, and a clubhouse). In addition to 39 acres of residences, the Project provides for a 2.3 acre equestrian arena and new equestrian trails. Since 1985, the entire Property has been part of the City. But the City exercised its planning authority over the Property even earlier, as the Property fell within the City's "sphere of influence." (See *Merritt v. City of Pleasanton* (2001) 89 Cal.App.4th 1032, 1034; §§ 65300, 65859, subd. (a).)

The question presented in this case appears deceptively simple: Is the development of low-density residential estates on the Property consistent with the City's general plan? But a review of the voluminous administrative record in this case reveals contradictions and ambiguities that call into question the possibility of definitively determining the land use designation of the Property in the general plan.

The City's Adoption of a Plan for Orange Park Acres in 1973

On May 16, 1973, a development committee for Orange Park Acres was established to address controversies arising between stakeholders in the community. The committee included members representing the City, the county, residents of Orange Park Acres, major landowners, and real estate developers. The committee collected information, set objectives, and evaluated competing policies. The area under study included 594 acres within the City and 1127 acres within unincorporated Orange County.

The tangible product of the committee's work was a September 1973 document entitled "Orange Park Acres Specific Plan."[4] After detailing information about Orange Park Acres that had been gathered and discussing several alternative concept

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[4] Although the document referred to itself as a "specific plan," there is no discussion within the document as to whether it was intended to be a statutory "specific plan" under section 65450.

plans, the document set forth a "Proposed Specific Plan." The proposed plan listed goals, objectives, and policies to preserve and enhance the community. The concept of the "Specific Plan" was to mix low-density, one acre residential lots with clusters of denser single-family housing. The "Orange Park Acres Specific Plan" also sought to preserve existing and establish new open space, including trails, parks, hillside slopes, and greenbelts.

As for the Property, "The Plan advocates the permanent retention of the 34 acre golf course within Orange Park Acres. If the private ownership cannot sustain a [viable] economic return, public acquisition is suggested in order to preserve a substantial amenity for recreation and open space within the area."[5] "In addition to the golf course, there is a four acre Tennis Club and the seven acre . . . Country Club to be sustained with the proposed Plan." The "Orange Park Acres Land Use and Circulation Plan," a map included in the proposed plan, designated the Property as "Golf Course" (the golf course portion) and "Local Parks" (the remainder of the Property) within the "Open Space & Recreation" category of uses.

On November 19, 1973, the Planning Commission held a public hearing to consider the adoption of the "Orange Park Acres Plan as a part of the land use element of the General Plan encompassing a portion of incorporated territory and unincorporated territory in the General Planning Area of the City . . . ." By Resolution No. PC-85-73, the Planning Commission recommended the adoption of the "Orange Park Acres Plan," although the Planning Commission disapproved of the circulation element and added several amendments. In adopting the resolution, the Planning Commission found that "the Orange Park Acres Plan meets General Plan criteria set forth in Section 65302[, subdivision](a) . . . . Sections 65352 and 65357 further authorize the Planning

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5 It is worth noting that this language does not purport to require the permanent retention of the golf course or public acquisition of the Property, only to suggest it.

Commission and legislative body to adopt General Plan elements and amendments for all or a portion of a city and a surrounding planning area by resolution . . . ." The Planning Commission further resolved to direct its staff "to prepare implementation ordinances or resolutions . . . consistent with this resolution and the Orange Park Acres Plan."

One of the Planning Commission's proposed amendments was to "[d]esignate the Golf Course as Other Open Space and Low Density (1 acre)." James A. Jackman, who was a member of the Orange Park Acres committee and the City Council at the time, provided insight into the purpose of this amendment at a May 2011 public hearing: "The concern of the committee at that time was really what happens if the golf course no longer is the function of the golf course? What are we to do next? And the answer was we were worried that it would be developed as commercial which was inconsistent with the . . . large parcel of land right in the center of Orange Park Acres, right in the very heart of the area that we were planning and we said it has to be the one-acre estates." Jackman added that the 2011 City Council had "an opportunity to put in a development that we [the 1973 City Council] would have, in my opinion, have approved in a heartbeat had it come before us back in 1973, had the golf course wanted to go out at that time."

On December 26, 1973, the City Council adopted Resolution No. 3915, which resolved to uphold the recommendation of the Planning Commission to adopt and approve the "General Plan for the Orange Park Acres area . . . as set forth in that certain plan . . . dated September 1973 *and as amended by the Planning Commission* on November 19, 1973 . . . as a part of the land use element of the City . . . and that copies of this plan be maintained on file . . . in order that this plan may be readily accessible to members of the public." (Italics added.) Resolution No. 3915 did not explicitly set forth the text of the amendments added by the Planning Commission. Resolution No. 3915 made findings that the Orange Park Acres plan met the requirements of a general plan

under the Government Code and was to be considered "part of the required land use element to be included in a General Plan for the City . . . ."

In sum, as of December 1973, the Planning Commission and City Council had resolved to include the amended Orange Park Acres plan as part of the City's general plan. The relevant amendment for our purposes is the designation of the golf course portion of the Property as "Other Open Space and Low Density (1 acre)." But the record does not include a copy of the Orange Park Acres plan or a general plan map from the 1970's reflecting this amended designation of the Property. It may be, as speculated by the City in an environmental planning document prepared in connection with the Project, that "the textual changes recommended by the Planning Commission and approved by the City Council were never entered into any official copy of the" Orange Park Acres plan. Milan's attorney acknowledged in a May 2011 letter to the City Council that the copy of the Orange Park Acres plan readily available to the public (at least in 2011) "includes the City Council's adopting resolution from 1973 which reflects incorporation of the Planning Commission's changes, but does not include the Planning Commission's recommended changes to the text which were adopted by the City Council." In other words, the *draft* Orange Park Acres plan and resolution No. 3915 were presented in recent years to the public as the Orange Park Acres plan, but actual language designating the Property as "Other Open Space and Low Density (1 acre)" was not.

Subsequent Planning Activities

In January 1977, the City Council resolved to delete the word "'specific' from the text of the Orange Park Acres Area Plan." It is unclear from the record how this resolution was (or was not) actually implemented with regard to copies of the Orange Park Acres plan from 1977 to the present.

In October 1977, the City Council resolved to change the zoning classification for the clubhouse portion of the Property from its county zoning

designation, "County E4-1 zoning (Single Family Residence, one acre minimum lot size)," to "City R-O (Recreation-Open Space)." The resolution indicated this change was necessary" to permit use of the property as a clubhouse." According to the resolution, the "zone change is consistent with the Orange Park Acres General Plan." Apparently, the City and the owner of the clubhouse property had agreed that the City would annex the clubhouse portion of the Property.

In September 1985 the City Council resolved to annex the "Ridgeline Country Club" portion of the Property at the request of the property owner. According to an analysis prepared by the County of Orange Local Agency Formation Commission, "[a] portion of the country club is already within the city limits of Orange, and the landowner desires to have all the property under one jurisdiction to provide uniform development standards to all the property." The application itself, in response to a question about the general plan land use designations, stated that the County of Orange designation was "Residential" while the City designation was "Recreation/Open Space." The application stated that the current and proposed use for the land was a golf course and tennis club, and that the proposed zoning was R-O (Recreation-Open Space). The Local Agency Formation Commission letter stated: "The subject territory is developed with a golf course and tennis club. There are no residents onsite. Current zoning on the site is County E4-1 (Small Estates). The landowner has filed an application with the City of Orange to re-zone the property R-O (Recreation Open Space) which is consistent with the existing use and the city's General Plan for the site. [¶] The site is surrounded by single family residences."

In October 1985, the City Council resolved to reclassify the entirety of the Property's zoning to R-O (Recreation-Open Space). Prior to the City's annexation and rezoning of the Property, multiple parcels on the Property had inconsistent zoning designations. This resolution also indicated the following facts had been established: "The configuration of the proposed parcels would increase the potential for development

to other than recreation oriented uses, but it is noted that, at a minimum, *a General Plan Amendment* and Zone Change *would be required to allow other uses*." (Italics added.) In noting this alleged fact, the resolution is at odds with the notion that the general plan in effect designated the Property "Other Open Space and Low Density (1 acre)."

In July 1989, the City Council resolved to amend the Orange Park Acres plan. This resolution did not pertain to the Property, but included a finding of fact relevant to the dispute before us: "That although the Orange Park Acres Plan labels itself as a 'specific plan', it does not contain the level of detail required of a Specific Plan under state law . . . . Therefore due to its contents, and the manner in which it was adopted, the [Orange Park Acres] Plan has the authority of a General Plan, rather than a Specific Plan."

1989 General Plan

The City Council adopted by resolution a new general plan in August 1989. In the introduction to this general plan, it was noted that the City's existing general plan was "outdated" and that a new general plan was required "to bring the Plan up to date and to establish definitive land use and development policy to guide the City into the next century."

The 1989 general plan stated that its "Land Use Element and the Land Use Policy Map are the most important components of the General Plan." "Through the use of text and diagrams, the Land Use Element establishes clear and logical patterns of land use as well as standards for new development. The single most important feature of this element is the Land Use Policy Map. This map, a copy of which is contained in the back pocket of the General Plan, indicates the location, density and intensity of development for all land uses city-wide." The 1989 general plan's Policy Map included an "OS GOLF" (i.e., open space, golf) notation on the Property.

The 1989 general plan also referenced "other plans and programs that need to be considered in the formulation, adoption and implementation of land use policy." These other plans included "[t]wo additional land use plans . . . for the unincorporated areas located in the eastern portion of the City. The Orange Park Acres plan was prepared in 1973. This plan outlines land use policy for the semi-rural Orange Park Acres area . . . ." The Orange Park Acres plan was classified as an "Area Plan." The 1989 general plan clearly does not deem the Orange Park Acres plan to be a "specific plan," but it also does not explicitly reaffirm that the Orange Park Acres plan remains a part of the City's general plan.

A mere eight months later, the City Council (in a resolution amending the Orange Park Acres plan) stated that the Orange Park Acres plan "is part of the Land Use Element of the City's General Plan . . . ." Similarly, in July 1998, the City Council observed in a resolution approving a conditional use permit that "the proposed project is consistent with the City's General Plan and, more specifically, the Orange Park Acres Plan, which was adopted as part of the City's General Plan . . . ." But in September 2000, October 2003, and August 2008, the City Council adopted resolutions which referred to the "Orange Park Acres Specific Plan." The October 2003 resolution was billed as a *general plan amendment* to, in part, remove certain land from the scope of the Orange Park Acres *Specific Plan.*

By way of review, there was a certain amount of ambiguity in the land use classification of the Property from the inception of the Orange Park Acres plan in 1973. The proposal provided for an open space designation. Upon recommendation of the Planning Commission, the City Council adopted an amended Orange Park Acres plan by resolution. But the amendment designating the Property as Open Space *or* low-density residential was (perhaps) never reflected in the maps or text associated with the Orange Park Acres plan, but (perhaps) only ever appeared in the Planning Commission resolution

(Resolution No. PC-85-73) referenced by the City Council in its own Resolution No. 3915 adopting the Orange Park Acres plan as amended.

Until the Project and the controversy surrounding it, apparently no explicit attempt was ever made by the City Council to clear up the ambiguity in its planning documents. Indeed, matters only grew more confused. The zoning changes to the Property as part of its annexation in the late 1970's and 1980's reflected only the open space component of the dual open space/low density residential designation of the Property by the City Council in 1973. Was this simply a reflection of the current owner's use or did these zoning designations reflect a belief on the part of the City Council that open space was the only use consistent with the then-existing general plan? The updated 1989 general plan did not explicitly reference the Orange Park Acres plan as a continuing part of the general plan. Some subsequent City Council resolutions stated that the Orange Park Acres plan was still part of the general plan, but other resolutions refer to the Orange Park Acres Specific Plan. And even assuming the Orange Park Acres plan was still part of the general plan, the 1989 Policy Map explicitly classified the Property as OS (Open Space)/Golf. To the extent the pre-1989 general plan allowed low-density single family residential development, did the 1989 general plan (and in particular the Policy Map) amend the general plan to limit the Property to open space uses?

2010 General Plan

In March 2010, the City adopted yet another general plan. The 2010 general plan applied to all of Orange and its eastern sphere of influence, including Orange Park Acres. In an introductory section, the 2010 general plan observed with regard to Orange Park Acres that "most of the area was annexed by the City . . . during the 1990s." The 2010 Policy Map designated the Property as "OS" (Open Space). "Open Space" was defined elsewhere in the 2010 General Plan to refer to "[s]teep hillsides, creeks, or environmentally sensitive areas that should not be developed."

The 2010 general plan listed "Orange Park Acres" as one of the "Specific Plans and Neighborhood Plans" that were "currently in effect." In contrast, the Orange Park Acres plan is not listed among the "[a]dopted Specific Plans and Neighborhood Plans" in another section of the document. Instead, the text states "[e]arlier planning efforts that have influenced the growth and change within Orange include the . . . Orange Park Acres development plan." In an implementation index, however, the 2010 General Plan states it should "[c]ontinue to implement and update, as needed," the Orange Park Acres Plan and other specific plans and neighborhood plans.

Milan's Application to Develop the Project

In 2007, Milan submitted an application to the City to develop the Project at the Property. The application requested "[t]he approval of a General Plan Amendment, Development agreement, Change of Zone, Specific Plan Amendment, Tentative Tract Map, Parcel Map, Master Site Plan, and [California Environmental Quality Act] documents to allow the construction of" the Project. An initial study prepared pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) stated that Milan requested a general plan amendment to designate the Project site as "Estate Residential" on the Policy Map. The initial study also stated that Milan requested an amendment to the "Orange Park Acres Specific Plan Map" to designate the Project site as "Low Density — One Acre Minimum."

Similarly, a 2009 draft environmental impact report prepared pursuant to CEQA described and illustrated (by showing the existing and proposed general plan and zoning designations on maps of the Property and its surrounding environs) the changes to the general plan and Orange Park Acres Specific Plan under consideration. This document stated that "[a]lthough the proposed project is inconsistent with the existing City General Plan land use designation for the project site, upon approval of a General Plan Amendment it would be in substantial compliance with the Land Use Element Goals

and Policies. The proposed General Plan Amendment would amend the Land Use Element Map to designate the proposed project site as Estate Density Residential."

The Project generated considerable controversy, based in part on its replacement of open recreational space with a private residential subdivision.

Sometime in 2009, Milan's counsel presented the City's attorney, David DeBerry (City Attorney), with the 1973 resolutions described above (i.e., Planning Commission Resolution No. PC-85-73 and City Council Resolution No. 3915). In response, the City Attorney conducted a full review of the City's planning history pertaining to the Property. On December 22, 2009, based on his review, the City Attorney transmitted a letter to interested parties with two findings: (1) "The [Orange Park Acres] Plan is a part of the land use element of the City"; and (2) "The [Orange Park Acres] Plan designates the golf course portion of the [Property] as 'Other Open Space and Low Density (1 acre).' As such, [the Project] would be consistent with the Plan's designation of the [P]roperty, although somewhat inconsistent with other aspects of the Plan." The City Attorney later speculated that the "best explanation" for the confusion and inconsistencies in the City's planning history is "the action taken in 1973 was forgotten."

A June 2010 Planning Commission memorandum described the state of affairs as discerned by the City's Planning Manager: "the [Orange Park Acres] map does not accurately depict the designation as 'Other Open Space and Low Density (1 acre)' as approved by the City Council in 1973. Since the [Orange Park Acres] map was not updated after the City Council action, the City's General Plan Land Use Map reflects the [Orange Park Acres] Plan as it is shown currently. One of the proposed actions before the City is to formally amend the [Orange Park Acres] Plan and General Plan to ensure consistency with the proposed project."

Milan agreed with this analysis. Even after the discovery of this lost history, Milan proposed a general plan amendment to "reflect the proper land use

designation for the Project site, to remove incorrect descriptions of the [Orange Park Acres] Plan such as 'specific plan' or 'neighborhood plan,' and to properly reflect the [Orange Park Acres] Plan. If the General Plan is so amended, the Project will be entirely consistent with the General Plan and 100% approvable . . . ." Orange Citizens, on the other hand, disagreed with the entire notion that the 1973 Orange Park Acres plan had anything to do with the City's General Plan as it existed in 2007 through 2011.

Project Approval

By a July 2010 resolution, the Planning Commission recommended that the City approve the Project by certifying the final environmental impact report, adopting its findings of fact, adopting a statement of overriding considerations, approving a general plan amendment, and approving a zone change for the Property. As to the general plan amendment, the Planning Commission noted it was recommending that the City Council *deny* Milan's proposal to change the land use designation of the Property in the general plan. Instead, the Planning Commission recommended that the City Council maintain the "existing land use designation of 'other open space and low density (1 acre).'"

On June 14, 2011, the City Council adopted a series of resolutions amounting to its approval of the Project. Resolution No. 10566 adopted the General Plan Amendment. The title of the resolution "AFFIRMS THE SITE'S EXISTING LAND USE DESIGNATION OF 'OTHER OPEN SPACE AND LOW DENSITY (1 ACRE).'" The first recital of the resolution again "affirms the site's *existing* land use Designation of 'Other Open Space and Low Density (1 acre).'" (Italics added.) Resolution No. 10566 further states that the purpose of the General Plan Amendment is to "clarify the *original and unchanged terms* of the existing [Orange Park Acres] Plan" (italics added) and to "make the General Plan land use designations for the subject property consistent throughout the General Plan."

The General Plan Amendment itself, contained in an exhibit, revises the text and diagrams included within the City's General Plan, including the Orange Park Acres Plan. A new map establishing the Property as "Other Open Space & Low Density (1 ac)" is attached as part of the exhibit. The language recommending retention of the golf course was removed entirely from the Orange Park Acres plan. The land use and circulation plan map in the Orange Park Acres plan was changed from a golf course and local park designation to a low-density, one acre minimum lot designation. The General Plan Amendment also allowed vinyl fencing (as opposed to only wood fencing) and updated land use statistics detailed in the original Orange Park Acres plan.

Resolution No. 10566 found with regard to the consistency of the Project with the City's General Plan: "Upon 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 [Orange Park Acres] Plan as 'part of the required land use element to be included in a General Plan for the City of Orange.' . . . The existing Other Open Space and Low Density (1 acre) General Plan Designation is consistent with the project and the General Plan, as textually amended because the open space and residential designation is consistent with residential one acre lots."

A second resolution certified the final environmental impact report for the Project. As part of this resolution, the City Council adopted certain findings of fact. We list particularly relevant findings. "[A]t the time of the adoption of the [Orange Park Acres] Plan, it was not the intent of the City Council to prohibit residential development on the Property, but rather the very specific intent that one-acre residential lots be permitted on the Property." "As adopted in 1973, the [Orange Park Acres] Plan specifically permitted low density residential uses on minimum one-acre lots on the Project site." "The [Orange Park Acres] Plan was adopted by the City in 1973 as a part of the Land Use Element of the City's General Plan. Although since its original

adoption, various City documents have incorrectly referred to the [Orange Park Acres] Plan as a specific plan, community plan, and/or area plan, the official records of the City clearly establish that the [Orange Park Acres] Plan was adopted only as part of the Land Use Element of the General Plan. There is no evidence that the City has ever adopted (as opposed to incorrectly referenced) the [Orange Park Acres] Plan as anything other than part of the City's General Plan." "The Record indicates 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 [Orange Park Acres] 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 [Orange Park Acres Plan], 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 City's existing zoning classification for the Property (RO) excludes residential land use as a permitted use. Changing the zoning of the Project Site from RO to R-1-40 is consistent with the 1973 [Orange Park Acres] Plan Land Use designations and the land use designations adopted by the City Council's approval of [General Plan Amendment] 2007-001. Therefore, the R-1-40 zoning is consistent with the City's General Plan."

A third resolution approved a tentative tract map for the Project. This resolution found the tentative tract map to be "consistent with the City of Orange General Plan which includes the Orange Park Acres Plan as part of the Land Use Element . . . ." These June 14, 2011 resolutions were voted on by four of the five City Council members who adopted the 2010 General Plan.

On July 12, 2011, the City Council passed an ordinance changing the zoning classification for the Property from "Recreation/Open Space to Residential 43,560 square feet (R-1-40)." The City Council found this zone change was "consistent with and furthers 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 2007-0001 . . . ." Also on July 12, 2011, the City Council passed an ordinance approving a development agreement with Milan, which was also deemed to be "consistent with the objectives, policies, general land uses, and programs specified in . . . the General Plan, as amended by General Plan Amendment 2007-0001, which General Plan includes the Orange Park Acres Plan as part of its land use element."

Referendum

On July 12, 2011, Orange Citizens for Parks and Recreation submitted to the City Clerk a referendum of Resolution No. 10566 (adopting the General Plan Amendment). On August 1, 2011, the County Registrar certified that sufficient signatures had been submitted to qualify the referendum for the ballot. On September 6, 2011, the City Council placed the referendum on the ballot for the November 6, 2012 election. Jumping ahead in the story, on November 6, 2012, the voters of the City defeated Measure FF, thereby nullifying Resolution No. 10566.

Litigation

On July 26, 2011, Milan filed a petition for writ of mandate and complaint for injunctive and declaratory relief, by which Milan sought to stop the referendum of Resolution No. 10566 from proceeding due to alleged improprieties in the signature-gathering process.[6]

In October 2011, Orange Citizens filed a cross-petition for writ of mandate and cross-complaint for declaratory relief seeking to set aside the zone change and

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[6] Mary E. Murphy, the City Clerk, and Neal Kelley, Registrar of Voters for the County of Orange, were named as respondents and defendants. Orange Citizens for Parks and Recreation was named as the real party in interest.

development agreement as inconsistent with the City's General Plan.[7] Specifically, Orange Citizens contended that the referendum suspended the effectiveness of the General Plan Amendment, and that without the General Plan Amendment, the City's general plan designates the Property as open space.

Milan responded with another petition for writ of mandate and cross-complaint for declaratory relief, specific performance, and injunctive relief.[8] By this pleading, Milan sought to establish it was entitled to proceed with the Project regardless of the outcome of the referendum because the Project was consistent with the general plan even without the General Plan Amendment. Milan contended the Project was authorized and supported by the original designation of the Property as "Other Open Space and Low Density (1 Acre)" in 1973. Alternatively, Milan asserted that repeal of the General Plan Amendment would be improper and legally void because it would create an internally inconsistent general plan.

In January 2012, the parties stipulated to bifurcate and sever pleadings and causes of action in an effort to obtain a speedy resolution of certain time sensitive issues. The stipulation indicated Orange Citizens' cross-petition and four of the causes of action in Milan's petition and cross-complaint were severed and bifurcated for a one-day bench trial based on the administrative record and trial briefs. The court heard argument on the bifurcated claims in March 2012.

Trial Court's Ruling

On May 7, 2012, the court issued a three-page minute order explaining its ruling in favor of Milan. The court did not explicitly defer to any of the City Council's

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[7] The City and the City Council were named as cross-respondents and cross-defendants. Milan was named as the real party in interest.

[8] The City, the City Council, and Neal Kelley were named as respondents and cross-defendants to this pleading.

findings. "Here, there is little question the City intended the [Orange Park Acres] Plan to be incorporated into the City's general plan. The various City Council resolutions make that clear. It is equally clear that the [Orange Park Acres] Plan designates the . . . Project site as 'Other Open Space and Low Density (1 acre.) While it is true that subsequent resolutions and general plan documents describe the property as 'open space,' none of these documents were sufficient to officially amend the original designation as set forth in the [Orange Park Acres] Plan. They were, simply, inaccurate designations. . . . The fact that the [Orange Park Acres] Plan was created over forty years ago is irrelevant. Land use planning is long range planning designed to control development for years to come."

"The [General Plan Amendment] did not attempt to change the land use designation established in the [Orange Park Acres] Plan. Instead, its chief purpose was to correct errors that occurred over the years in describing the land use designation for the . . . Project and clarify that the . . . Project was indeed designated as low density. Thus, even if the voters reject the [General Plan Amendment], the designation remains the same. The record will simply continue to contain inconsistent and confusing references to the property being designated open space. For that reason, the developer and the City do not have to await the outcome of the referendum to begin the project."

On June 19, 2012, the court issued a peremptory writ of mandamus addressed to the City and the City Council. The writ commanded the City and City Council to rescind applicable resolutions and "remove the referendum regarding the General Plan Amendment from the November 6, 2012 election ballot." The writ further commanded the City and City Council to permit Milan to develop the Property "in accordance with the actual and original General Plan designation of the property as 'Other Open Space and Low Density (1 Acre), and the Development Agreement, and all other applicable requirements of the City."

On July 9, 2012, the court entered judgment on the claims before it at the March 2012 trial. In addition to ordering issuance of the writ of mandate, judgment was entered in favor of Milan and the City (and City-affiliated parties) and against Orange Citizens on all causes of action at issue.

Court of Appeal Writ and Appellate Proceedings

On June 8, 2012, Orange Citizens filed with this court a petition for writ relief, including an immediate stay of the court's May 7 minute order. Orange Citizens requested a peremptory writ of mandate directing the trial court to: (1) vacate its May 7 minute order; (2) restore the referendum to the November 6, 2012 ballot; and (3) enter judgment in favor of the Orange Citizens and against Milan on all claims at issue. Orange Citizens subsequently submitted a copy of the trial court's peremptory writ of mandamus, of which this court took judicial notice.

On July 12, 2012, we issued an order to show cause why mandate or other appropriate relief should not issue. We also granted Orange Citizens' request for a stay of the court's May 7 order and the resulting peremptory writ of mandate.

On July 26, 2012, Orange Citizens filed a notice of appeal of the July 9 judgment. On August 9, 2012, we consolidated the appeal with the writ petition for all purposes.

DISCUSSION

So what is the City's general plan with regard to the land use designation of the Property, without reference to the General Plan Amendment (which was voted down by referendum)? And is the general plan consistent with the Project? There are three possibilities advanced by the parties.

First, as asserted by Orange Citizens, the general plan allows only open space uses at the Property. A general plan amendment is necessary to change the

designation of the Property from open space to low density residential. To reach this conclusion, one must simply review the 2010 Policy Map adopted by the City Council as part of the 2010 general plan, which designates the Property as "Open Space." There is no need to revisit ancient history. And even if one ventures into out-of-date planning records (e.g., the 1989 general plan, the Orange Park Acres plan), there is no general plan map or any other post-1973 document in the extant records authorizing development of the Property for use as residences. In sum, the general plan consists of the most recent *objective* evidence of the general plan (i.e., text and diagrams presented to the public as the general plan), not some long forgotten remnant of days past.

Second, as argued by Milan and the City, the general plan allows low density residences on the Property. A general plan amendment was unnecessary to approve the development agreement, zone changes, environmental impact report, and subdivision map. Thus, the Project can go forward despite the referendum. This conclusion vindicates the original intent of the City Council that adopted the Orange Park Acres plan in 1973. As adopted, the Orange Park Acres plan authorized low density residential development on the Property. Although various "clerical errors" occurred through the years in the City's planning documents (which could lead an uninformed observer to infer that the Orange Park Acres plan was a specific plan and the Property could only be used as open space), no City Council ever intentionally reversed the legislative policy choice made by the 1973 City Council. Indeed, on repeated occasions, City Council resolutions have reaffirmed the continuing vitality of the Orange Park Acres plan as part of the general plan. (§ 65301, subd. (b) ["general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area"].) And the Orange Park Acres plan (in contrast to the City's broader general plan) has never been comprehensively amended or specifically amended to restrict the Property to open space uses. It is easy enough to see how the errors designating the Property as "Open Space" may have occurred. The Property was largely

outside of the City's borders from 1973 to 1985. The Property was actually utilized as open space from 1973 until 2007, obviating the need for anyone to examine whether a residential use was acceptable under the general plan. The open space designation could have been copied from the proposed Orange Park Acres plan map to the 1989 Policy Map to the 2010 Policy Map, each time without consideration of the accuracy of prior designations. Ideally, of course, these mistakes would not have occurred. It should be easy for the public to determine what the general plan has to say about the uses allowed on a particular property. But general plans contain an enormous amount of information and policy maps cover wide stretches of real estate. When these sorts of mistakes inevitably occur, the *subjective intent* of the City Council should be honored over clerical errors manifested in planning maps.

Third, the general plan is hopelessly inconsistent and therefore indeterminate on the question of developing low density residences on the Property. Perhaps the Orange Park Acres plan is still part of the general plan and allows residential development on the Property. But the 2010 Policy Map allows only open space uses on the Property. Although it is clear what the 1973 City Council intended, it is impossible to divine what subsequent City Councils would have done had they explicitly considered Resolution No. 3915 (the 1973 City Council adoption of the Orange Park Acres plan as amended) and its effect on the land use designation of the Property on various general plan maps. This is Orange Citizens' fallback position; they contend internal inconsistency in a general plan necessitates an amendment to the general plan prior to the approval of a project affected by the inconsistency.

Standard of Review

The primary issue presented for our review is the question of whether the Project is consistent with the City's pre-General Plan Amendment general plan. By petition for writ of mandate, Orange Citizens challenged as inconsistent with the City's

general plan the July 12, 2011 decision of the City Council to approve a zone change and development agreement. Relatedly, Milan's first and fourth causes of action alleged the City acted correctly in approving the Project notwithstanding the pendency of the referendum.

The peripheral dispute is Milan's petition for writ of mandamus to invalidate the referendum on the grounds it would create an inconsistency in the City's general plan. This petition is in tension with Milan's position that the pre-amendment general plan is consistent with the Project. But as characterized in the parties' stipulation, this is an argument made in the "alternative[]."

"We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.)[9] "'It is, emphatically, *not* the role of the courts to micromanage these development decisions.' [Citation.] Thus, as long as the City reasonably could have made a determination of consistency, the City's decision must be upheld, regardless of whether *we* would have made that determination in the first instance." (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638.) We review the City Council's decision and do not defer to the trial court. (*Id.* at p. 637.)

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9 Although the parties included causes of action for declaratory relief, specific performance, and injunctive relief in their pleadings, any remedies provided pursuant to these causes of action would necessarily be derivative of relief obtained via mandamus review of the City Council's acts.

"A court . . . cannot disturb a general plan based on violation of the internal consistency and correlation requirements unless, based on the evidence before the city council, a reasonable person could not conclude that the plan is internally consistent or correlative." (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1195; see § 65751 [action challenging general plan elements or internal consistency must be brought under Code Civ. Proc., § 1085, i.e., ordinary mandamus].)

Orange Citizens contend our review is de novo. De novo review is appropriate where the propriety of a land use decision turns on the correct interpretation of a statute. (See, e.g., *Harroman Co. v. Town of Tiburon* (1991) 235 Cal.App.3d 388, 392-393 (*Harroman*).) In *Harroman*, the dispute concerned whether an established general plan or a draft revised plan applied to a proposed project. (*Id.* at p. 390.) The contents of the established general plan and the draft revised plan were clear. It was also clear that the established general plan was consistent with the project but the draft revised plan was inconsistent with the project. (*Id.* at pp. 391-392.) The only question for the court was whether the legislative body had correctly determined that the Government Code dictated that a draft amended general plan applied to a pending project application. (*Id.* at pp. 392-393.) Here, we are reviewing the City's Council's determination of the contents of the City's general plan and its concomitant finding of the Project's consistency with that general plan. (See *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243, 247 [city council's "interpretation of its own land use document" and consistency finding can be reversed only if "a reasonable person could not have reached the same conclusion"].) Of course, to the extent we must interpret applicable statutes in assessing the reasonableness of the City Council's determination, we will not defer to the City Council's express or implied interpretations of those statutes.

Orange Citizens also claim we cannot defer to the City Council's consistency determination because the City Council actually limited its consistency

findings to the post-General Plan Amendment general plan. In approving the pertinent ordinances, the City Council referred to the general plan as amended by the General Plan Amendment.[10] Obviously, the City Council did not know at the time that Orange Citizens would succeed in defeating the General Plan Amendment by referendum. Because the voters voided the General Plan Amendment, there is no post-General Plan Amendment general plan to be consistent with the Project. But Orange Citizens ignores the City Council's repeated findings in multiple resolutions and the challenged ordinances that the Orange Park Acres Plan was part of the City's general plan and that the General Plan Amendment did not amend the land use designation of the Property, which remained low density residential (1 acre). Orange Citizens do not identify any of the other features of the General Plan Amendment as necessary for the Project to be found consistent with the general plan. Taken at face value, the City *did not amend* the land use designation of the Property by means of the General Plan Amendment. Thus, reference to the amended general plan does not negate any deference owed to the City Council's approval of the zone change and development agreement.

The Merits: Composition of the General Plan and Its Consistency with the Project

"[S]tate law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan. [Citations.] Instead, a finding of consistency requires only that

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[10] The two ordinances actually challenged by Orange Citizens include the zone change and the approval of the development agreement. The City Council found the zone change was "consistent with and furthers 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 2007-0001 . . . ." The City Council found the development agreement to be "consistent with the objectives, policies, general land uses, and programs specified in . . . the General Plan, as amended by General Plan Amendment 2007-0001, which General Plan includes the Orange Park Acres Plan as part of its land use element."

the proposed project be '*compatible* with the objectives, policies, general land uses, and programs specified in' the applicable plan. [Citation.] The courts have interpreted this provision as requiring that a project be "'in agreement or harmony with"' the terms of the applicable plan, not in rigid conformity with every detail thereof." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678.)

Our comprehensive review of the record leads us to conclude that reasonable persons can disagree as to the actual composition of the City's general plan and its consistency with the Project. There is substantial evidentiary support for the City Council's finding that the City's general plan allowed low density residential development at the Property by way of the Orange Park Acres plan. And it logically follows that it was reasonable for the City Council to conclude the Project is consistent with the City's general plan as interpreted by the City Council.

This is not the end of our inquiry, however. Orange Citizens posit that, as a matter of law, the City's general plan does not include the Orange Park Acres plan and/or the low density residential designation.

The Alleged Lack of Implementation of the 1973 Amendment to the Orange Park Acres Plan Is Not Dispositive

Orange Citizens first suggest the City Council's amendment of the proposed Orange Park Acres plan to allow low density residential development at the Property never became part of the City's general plan because it was never "implemented." Recall there was a Planning Commission resolution recommending this amendment, and the City Council resolution adopting the Orange Park Acres plan as part of the general plan included the recommended amendment. (§ 65356 ["The legislative body shall adopt or amend a general plan by resolution"].) But there is no evidence additional documentation was ever prepared by the City (e.g., a map or text added to the

Orange Park Acres plan) to accurately reflect the composition of the Orange Park Acres plan as adopted by the City Council (rather than as proposed by the committee).

Orange Citizens cite *City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847 (*Poway*) in support of its argument that "implementation" (and not merely a resolution under § 65356) is necessary to amend a general plan. *Poway* addressed a circumstance in which a legislative body's amendment of the general plan was not reflected in the publicly available version of the general plan. Pomerado Road connects areas of northeast San Diego County with the City of San Diego (San Diego). (*Poway*, at p. 852.) San Diego's general plan designated Pomerado Road as a "'major'" road. (*Id.* at pp. 852-853.) In 1987, San Diego annexed county land adjoining the City of Poway (Poway), through which ran a substandard portion of Pomerado Road. (*Id.* at p. 853.) San Diego's city council amended an applicable *specific plan* by resolution to allow for the closure of Pomerado Road, both until construction was completed to bring Pomerado Road up to San Diego standards *and* until an alternative route to Interstate 15, Scripps North Parkway, was constructed. (*Ibid.*) Subsequently, the San Diego city council passed an omnibus resolution incorporating 32 specific community plan amendments into San Diego's general plan, including the Pomerado Road closure amendment. (*Id.* at p. 854.) "Two maps attached to [this] resolution . . . showed the road, one designating it as an open major street." (*Ibid.*) "The copy of the general plan booklet available to the public does not show any amendment designating the road as closed." (*Id.* at p. 856.)

Pomerado Road construction was completed before the Scripps North Parkway was finished. (*Poway*, *supra*, 229 Cal.App.3d at pp. 853-854.) San Diego did not reopen the reconstructed portion of Pomerado Road at this time. (*Id.* at p. 854-855.) The closure of Pomerado Road negatively affected traffic flow in Poway. (*Id.* at p. 854.) Poway petitioned for a writ of mandate, arguing San Diego had a mandatory duty to reopen Pomerado Road. (*Id.* at p. 855.)

The trial court issued a writ of mandate in 1990. (*Poway, supra*, 229 Cal.App.3d at pp. 852, 855.) Based on the evidence before it, the trial court ruled that the specific plan amendment was insufficient to amend the general plan. (*Id.* at p. 855.) The text of the San Diego city council resolution, "the general plan amendment, disappeared from view and was not found until the time of the motion for new trial on the petition for writ of mandate." (*Id.* at p. 854, fn. 4.) The trial court denied San Diego's motion for new trial, which was based on its rediscovery of the city council resolution amending the general plan. (*Id.* at pp. 855-856.)

The appellate court affirmed on two independent grounds. First, it held that, regardless of the contents of its general plan, Vehicle Code section 21101, subdivision (f),[11] did not confer upon municipalities the right to close regionally significant streets or highways for merely parochial purposes (i.e., to reduce traffic for the benefit of the municipality's residents at the expense of outsiders). (*Poway, supra*, 229 Cal.App.3d at pp. 851-852, 864-867.) Second, the appellate court held that San Diego had not validly amended its general plan to allow for the closure, even if Vehicle Code section 21101 allowed it to close Pomerado Road under the pertinent circumstances. (*Poway, supra*, 229 Cal.App.3d at pp. 859-863.) Only this latter analysis is relevant to the case before us.

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[11] "Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters": "(f) Prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of a general plan adopted pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code. The rules and regulations authorized by this subdivision shall be consistent with the responsibility of local government to provide for the health and safety of its citizens." (Veh. Code, § 21101, subd. (f).) Apparently, San Diego was authorized under Vehicle Code section 21367 to close Pomerado Road while construction was in progress. (*Poway, supra*, 229 Cal.App.3d at p. 861.)

The appellate court identified four shortcomings in San Diego's position (i.e., its general plan incorporated its specific plan amendment to close Pomerado Road until the completion of Scripps North Parkway): (1) the city council resolution incorporating the specific plan amendment was "never made available to the general public as required by . . . section 65357, subdivision (b)"; (2) the publicly available documents (i.e., the general plan booklet and maps) showed Pomerado Road to be open (*Poway*, *supra*, 229 Cal.App.3d at p. 862); (3) "[s]pecific plans must be consistent with general plans" under section 65454 (*id.* at p. 860); and (4) no additional amendments were passed to "implement" the general plan amendment (*Poway*, at pp. 862-863 ["Even though the general plan is always subject to change [citation], the material in the plan must have some current utility in order for the public to become informed of the current and projected land uses depicted in the plan"].) In sum, *Poway* provides some authority in support of the theory that publicly available documents are the basis for a general plan, not resolutions forgotten by the planning agency.

But *Poway* does not lead us to conclude the City Council acted arbitrarily or capriciously in this case. First, *Poway* applied a different standard of review. *Poway* reviewed the trial court's order granting the petition for writ of mandate and its order denying the motion for a new trial for an abuse of discretion. (*Poway*, *supra*, 229 Cal.App.3d at pp. 858-859.) We are reviewing the City Council's characterization of the contents of its own general plan and the consistency of the general plan with the Project. We will reverse the trial court only if the City Council's determinations were arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.

Second, *Poway* is factually and procedurally distinguishable. In *Poway*, an amendment of the *specific plan* occurred by resolution, which was not sufficiently implemented by an effective amendment of the general plan. Here, the entire Orange Park Acres plan (including the amended designation of the Property) was adopted by resolution as part of the City's general plan. The City Council resolution adopting the

Orange Park Acres plan as amended was made available to the public. There was no specific plan inconsistency with the general plan in 1973; the Orange Park Acres plan was the City's general plan for Orange Park Acres. (§§ 65301, subd. (a) ["The general plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements"], 65301, subd. (b) ["The general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area"].) Moreover, unlike in *Poway*, the City Council was aware of its own 1973 resolution allowing low density residences at the time of its relevant legislative acts in 2011, and the trial court was on notice of the 1973 amendment before it denied Orange Citizens' petition for writ of mandate.

Finally, because of the lengthy amount of time at issue in the instant case, it is less clear here what was made available to the public in the 1970's. Certainly, the evidence suggests the City's general plan as presented to the public at a recent point in time did not include a copy of the Planning Commission resolution setting forth the text of the amendment to the Orange Park Acres plan. But the record is silent as to what occurred in the 1970's. Moreover, section 65357, subdivision (b), which *Poway* cited in pointing out that the general plan amendment was not made available to the public, was only enacted in 1984. (Stats. 1984, ch. 1009, § 13.5 [adding public availability language]; Stats. 1985, ch. 338, § 1 [current form of § 65357].) Former section 65360, from which section 65357 was derived, did not include specific language providing for distribution to members of the public who requested copies of the general plan. (Stats. 1965, ch. 1880, §5.)

In sum, *Poway* suggests that courts should not overlook the objective manifestations of the general plan (i.e., "implementation") in favor of the subjective intent of the relevant legislative body in every case. But we reject the notion that *Poway* controls here. It was not arbitrary or capricious for the City Council to conclude that the

City's general plan in the 1970's included a designation of the Property as open space or low density residential, despite the lack of evidence of "implementation."

The City Council Did Not Act Unreasonably in Concluding that the Orange Park Acres Plan Was Not Superseded by Subsequent General Plans

Next, Orange Citizens contend that regardless of what the general plan was in the 1970's, the subsequent adoption of revised general plans in 1989 and 2010 with open space designations in the respective policy maps superseded the Orange Park Acres plan's amended text designation of the Property.

Relatedly, Orange Citizens complain that the judgment "permits public entities to have one general plan that they release to the public and a different general plan that they can trot out to help favored developers avoid a potential referendum." The process for adopting general plans and general plan amendments "would be meaningless if a city — or the courts — could simply declare that a city's 'real' general plan is not the plan the city actually circulated and approved, but includes other plans or policies that were not presented to the public as part of that general plan." Orange Citizens point to the distribution of the 2010 general plan for public review before its adoption and the presentation of the 2010 general plan as the City's general plan (e.g., on the City's website).

The essential issue is what the City Council intended in 1989 and 2010 in enacting the general plans. (See *Lesher*, *supra*, 52 Cal.3d at pp. 541-542 [reviewing voter initiative, holds that "dispositive question" in evaluating contents of general plan is voters' intent].) "Basic to all statutory construction . . . is ascertaining and implementing the intent of the adopting body. [Citations.] Absent ambiguity, we presume that the" adopting body intended the meaning on the face of an enactment "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." (*Id.* at p. 543 [analyzing voter initiative to determine whether it amended

general plan].) When there is an ambiguity in a statute, courts refer to a variety of interpretive aids — including legislative history and purposes — to determine the legislative body's intent. (*Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1545.) Similarly, when there is ambiguity in the text of a local ordinance, those tasked with interpreting and applying it can look to these same interpretive aids. (See *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 407-408.)

Undoubtedly, the 1989 and/or 2010 general plans *could have* superseded the Orange Park Acres plan. "Local agencies must periodically review and revise their general plans as circumstances warrant . . . ." (*Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at p. 572.) If it is intended to do so, a revised general plan takes precedence over an older general plan. (See, e.g., *Harroman*, *supra*, 235 Cal.App.3d at pp. 395-396 ["provisions of existing general plan under review" were suspended to ensure consistency with draft general plan].) Had the 1989 or 2010 general plan plainly expressed the intent to eliminate the ongoing viability of the Orange Park Acres plan, we would not hesitate to characterize the City Council's actions as arbitrary and capricious.

But on the other hand, the Orange Park Acres plan could also have remained part of the City's general plan, as it was when adopted in 1973. An inconsistent land use designation on the "General Plan Land Use Policy Map" does not necessarily entail a conclusion that a zone change ordinance is inconsistent with the general plan. (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 310.) In *Las Virgenes*, the "General Plan Land Use Policy Map" designated the relevant real estate as "nonurban," which "calls for less than one dwelling unit per acre." (*Ibid.*) An area plan, considered part of the general plan for the portion of Los Angeles County at issue, designated the parcel as "residential, with two to four dwelling units per acre allowed." (*Ibid.*) The county's approval of the project was not

arbitrary or capricious because it was reasonable to conclude that the area plan served "to complete, extend and refine the General Plan land use policy, not contradict it." (*Id.* at p. 312.) *Las Virgenes* differs from the instant case in that the county's general plan explicitly stated that the policy maps were "general in character and are not to be interpreted literally or precisely" because of the vast areas shown. (*Id.* at p. 310.) Nonetheless, *Las Virgenes* demonstrates that the Policy Map is not the end of the analysis. (See also *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 297, overruled on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11 ["ease of access to a plan (as opposed to whether it actually exists) is not a basis for attack under a mandate action"].)

It is unclear from the 1989 or 2010 general plans precisely what was intended with regard to the Orange Park Acres plan. There are contradictory references to the Orange Park Acres plan within these documents. Other resolutions by the City Council both before and after the adoption of the 1989 and 2010 general plans further muddied the waters. Given this uncertainty, we are unwilling to conclude that the City Council acted unreasonably by finding the 1989 and/or 2010 general plans were not intended to supersede the Orange Park Acres plan, and that the low density residential designation therefore survived the adoption of the 1989 and 2010 general plans.

The slippery slope alluded to by Orange Citizens (i.e., municipalities could in bad faith retain hidden general plan documents to use when favored developers sought special treatment) does not concern us, as it has little to do with this case. It is not as if the City Council invented an alternate general plan out of whole cloth. There is no evidence of bad faith. Instead, the most reasonable inference from the record is that a seemingly insignificant (at the time) error of omission by City planning employees in the early 1970's reared its ugly head 30 years later.

The Alleged Internal Inconsistency of the General Plan Does Not Mean the City Council Acted Unreasonably in Approving the Project

As its fallback position, Orange Citizens claim that if the Orange Park Acres plan is still part of the general plan, the City's general plan is internally inconsistent and cannot provide the basis for approval of the Project. Clearly, the Policy Map is not the same as the Orange Park Acres plan designation for the Property. And in its attempted adoption of the General Plan Amendment and in the other 2011 resolutions and ordinances approving the Project, the City Council admitted to at least some lack of clarity in its general plan.

"If a general plan is to fulfill its function as a 'constitution' guiding 'an effective planning process,' a general plan must be reasonably consistent and integrated on its face. A document that, on its face, displays substantial contradictions and inconsistencies cannot serve as an effective plan because those subject to the plan cannot tell what is says should happen or not happen. When a court rules a facially inconsistent plan unlawful and requires a local agency to adopt a consistent plan, the court is not evaluating the merits of the plan; rather, the court is simply directing the local agency to state with reasonable clarity what its plan is." (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97 (*Calaveras*); *id.* at pp. 94-95, 103 [case in which adoption of general plan was challenged because land use element called for large population growth while circulation element did not address how to pay for additional circulation infrastructure other than lobbying the state for additional funds].)

If it is determined that a facially inconsistent general plan was adopted, the remedy is the issuance of a writ of mandate directing the legislative body to set aside its adoption of deficient elements and to adopt legally sufficient elements. (*Calaveras*, *supra*, 166 Cal.App.3d at p. 105.) Of course, Orange Citizens are not asking this court to order the City Council to set aside its adoption of the 2010 general plan and clarify the land use element with regard to use of the Property. The City Council already attempted

to clarify the contents of its general plan via the General Plan Amendment, which was nullified via referendum. Instead, Orange Citizens assert that the internal inconsistency of the City's general plan precludes approval of the Project via the zone change and development agreement.

In support of its argument, Orange Citizens cite *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698 (*Sierra Club*). There, the general plan was deemed to be internally inconsistent because its land use and open space elements (including relevant maps) designated the same property for different uses. (*Id.* at p. 703.) Despite an awareness of inconsistencies in the two elements at the time the general plan was adopted, planning officials opted not to harmonize the elements by actually considering the best use for each geographical area. Instead, the planning agency inserted a "precedence clause" in the general plan, which provided that in case of conflict between the land use and open space elements, the land use element designation had precedence. (*Ibid.*)

Sierra Club's challenge to a zoning change necessary for a particular project was moot because, during the course of the litigation, the legislative body amended the general plan to explicitly reconcile the land use and open space elements applicable to the affected geographical region. (*Sierra Club*, *supra*, 126 Cal.App.3d at p. 704-705.) The appellate court nevertheless found the precedence clause (which was still applicable to much of the county's general plan) to violate the purpose of the Open Space Lands Act (§ 65560 et seq): "The legislative intent . . . [citation] is frustrated if counties can simply subordinate the open space element to other elements of the general plan." (*Sierra Club*, *supra*, 126 Cal.App.3d at p. 704.) With the precedence clause invalidated, the court deemed the general plan to be internally inconsistent and concluded that (were the issue not moot) the zoning ordinance under review "could not be consistent with such plan [citation] and was invalid when passed." (*Ibid.*)

Sierra Club is inapplicable to the facts before us. The *Sierra Club* court was concerned with planning agencies intentionally avoiding their obligation to "adopt a comprehensive, long-term general plan" (§ 65300) with all seven required elements (§ 65302). The Legislature intended that "the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (§ 65300.5.) By simply inserting a precedence clause into its general plan, the county partially abdicated its obligation to prepare a general plan.

Here, the City unintentionally allowed a single ambiguity to creep into its general plan. When the ambiguity was discovered, the City Council analyzed the situation and concluded that a classification of the Property as solely open space was inaccurate and not in keeping with its intent. The City Council attempted to remove the erroneous information from the general plan. That the erroneous information remains in the Policy Map because of the referendum does not alter the reasonableness of the City Council's conclusion that the open space designation is an error and not a substantive inconsistency like that present in *Calaveras* and *Sierra Club*.

The Merits: Validity of Referendum Voiding General Plan Amendment

By staying the trial court's writ of mandate, we allowed an election to proceed on the question of whether the modifications proposed in the General Plan Amendment should be incorporated into the City's general plan. The voters of the City said no. Orange Citizens state in their opening brief that the court erred by issuing a writ of mandate to the City to "[r]escind Resolutions 10580 and 10581 and remove the referendum regarding the General Plan Amendment from the November 6, 2012 election ballot." Neither Milan nor the City defend this part of the court's judgment in their briefs. Moreover, the question of allowing the referendum to proceed is moot. We also note it would be contradictory to find that the Project is consistent with the general plan (without the General Plan Amendment), but that the nullification of the General Plan

Amendment by referendum created unacceptable inconsistency in the general plan. We therefore agree with Orange Citizens that the judgment should be reversed in part.

Milan and the City ignore the question of the validity of the referendum and instead argue that the General Plan Amendment was simply unnecessary for approval of the Project. As discussed above, we agree. In 1973, the City Council adopted the Orange Park Acres plan as part of the general plan, and in doing so designated the Property as open space or low density residential. In 1977, the City Council resolved to remove any language in the Orange Park Acres plan inaccurately suggesting it was a specific plan. In 2011, the City Council repeatedly found the Orange Park Acres plan was still part of the general plan and the Property's use designation still allowed low density residential development. The City may fix errors in the Orange Park Acres Plan and the Policy Map by reference to previously adopted resolutions of the City Council. The General Plan Amendment was nullified by the voters, but it does not matter with regard to the major points of contention.

None of the parties specifically address the portion of the judgment ordering the issuance of a writ of mandate that commands the City to "[p]ermit Milan to develop the . . . Property in accordance with the actual and original General Plan designation of the property as 'Other Open Space and Low Density (1 Acre)' and the Development Agreement, and all other applicable requirements of the City." It is unclear why this relief was strictly necessary, but the City does not object in its brief to allowing this portion of the judgment to remain in force. We therefore affirm this portion of the judgment.

DISPOSITION

The judgment is affirmed in part and reversed in part. We reverse the judgment in favor of Milan on its second cause of action for writ of mandate (which had

challenged placement of the referendum on the ballot), the fifth cause of action for declaratory relief (which had sought a declaration of invalidity of the referendum), and the portion of the judgment ordering the issuance of a writ of mandate rescinding the City's resolutions Nos. 10580 and 10581 (which had placed the referendum on the ballot). The judgment is otherwise affirmed. Orange Citizens' petition for writ of mandate is denied. Orange Citizens' request and supplemental request for judicial notice are granted. Our July 12, 2012 stay order is lifted. In the interests of justice, the parties shall bear their own costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.

these workshops, the City made a special effort to reach out to both youth and seniors, with individual workshops focused upon each of these groups.

Other community participation tools included Joint Workshops with the City Council and the Planning Commission, and working with the Chamber of Commerce's Junior Leadership group.

The City also invited representatives of the regions' Native American tribes to contribute to the process. The tribes contacted included the Juaneno Band of Mission Indians and the Gabrieleno/Tongva Tribal Council.

Organization and Use of the General Plan

The Orange General Plan contains goals, policies, and plans to guide land use and development decisions in the future. The General Plan consists of the following elements, or chapters:

- Land Use Element
- Circulation & Mobility Element
- Natural Resources Element
- Public Safety Element
- Noise Element
- Growth Management Element
- Cultural Resources &Historic Preservation Element
- Infrastructure Element
- Urban Design Element
- Economic Development Element
- Housing Element

As shown in Figure I-4, Orange's General Plan sometimes deviates from the state- and county-mandated elements in non-substantive ways to better conform to the objectives of the Vision Statement. For example, the state-required Conservation and Open-Space Elements have been combined in the Natural Resources Element. In addition to the state-mandated elements, stipulations of Orange County's Measure M require cities to prepare a Growth Management Element, addressing timely provision of capital facilities and public services associated with new development.

The Orange General Plan also includes optional elements that address unique concerns that will affect Orange's quality of life in the future. These optional elements include Cultural Resources & Historic Preservation, Infrastructure, Urban Design, and Economic Development.

Several supporting documents were produced during the development of the General Plan, including the General Plan Program Environmental Impact Report (Program EIR). Other technical reports and studies used in preparing the Plan include an existing land use survey, a traffic/circulation model, a historic resources inventory and cultural resources predictive model, and market studies and fiscal impact reports for opportunity areas identified in the Land Use Element.

General Plan Structure

The General Plan document is comprised of this *Introduction*, and eleven elements. Each element may stand alone, but is also an integral part of the overall plan. The General Plan is accompanied by an Implementation Program and Glossary. Each of the elements is organized according to the following format: 1) Introduction; 2) Issues, Goals, and Policies; and 3) the Plan.

The *Introduction* of each element describes the focus and the purpose of the element. The relationship of the element to other General Plan elements is also specified in the Introduction.

The *Issues, Goals, and Policies* section of each element contains a description of identified planning issues, goals, and policies related to the element topic, based on input received from the community, members of the GPAC, and members of the City Council, Planning Commission, and City staff. *Issues* represent the needs, concerns, or desires addressed by the General Plan. *Goals* are overall statements of community desires and consist of broad statements of purpose or direction. *Policies* serve as guides to the City Council and City staff in reviewing development proposals and making other decisions that affect future growth and development in Orange.

Each element also contains a *Plan* section. The Plan section offers an overview of the City's course of action to implement identified goals and policies. Many of the elements also contain one or more policy maps which consolidate the various opportunities, constraints, classifications, and policies expressed in the Element in graphic form. For example, the Land Use Element contains a "Land Use Policy Map" and a "Land Use Plan" identifying and describing the locations of future land uses by type, density, and intensity within the City of Orange.

Following the elements is the *Implementation Program*, which identifies specific actions to achieve the goals, policies, and plans identified in each General Plan element. The Implementation Program is provided as an Appendix to the General Plan.

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 interrelated and should be examined collectively. Policies are presented as written statements, tables, diagrams, and maps. All of these components must be considered together when making planning decisions.

Related Plans and Policies

State law places the General Plan atop the hierarchy of land use planning regulations. Several local ordinances and other City plans must conform to General Plan policy direction and work to implement the General Plan. Also, regional governmental agencies, such as the Southern California Association of Governments (SCAG), the South Coast Air Quality Management District (SCAQMD), and the Regional Water Quality Control Board (RWQCB) have been established in recognition of the fact that planning issues extend beyond the boundaries of individual cities. Efforts to address regional planning issues such as air and water quality, transportation, affordable housing, and habitat conservation have resulted in the adoption of regional plans. The policies adopted by Orange will be affected by these plans, and will in turn have effects on these other plans. The paragraphs below describe ordinances, plans, and programs that should be consulted in association with the General Plan when making development and planning decisions.

Orange Zoning Code

The Zoning Code, the primary tool used to implement the General Plan, regulates development type and intensity citywide. Development regulations imposed include those setting limits on building height, requiring setbacks, and specifying the percentage of a site that must be landscaped. The Zoning Code also outlines standards for residential planned unit development and affordable housing, among many other land use issues.

Orange Redevelopment Plans

Under California law, cities can form redevelopment agencies and adopt redevelopment plans as mechanisms for facilitating community renewal. The Orange Redevelopment Agency (Agency) was established with redevelopment authority on August 11, 1983, with the adoption of Ordinance No. 21-83. Since then, the Agency has been instrumental in upgrading the Tustin Street project area, redeveloping the Southwest Project area that includes the City's southwest quadrant and the Old Towne Historic District, and renewing the Northwest Project area, which includes a large section of the City's industrial areas. In 2001, the three redevelopment project areas were merged into one, known as the Orange Merged and Amended Redevelopment Project Area. The Agency strives to achieve its three-fold mission: to enhance the commercial and industrial areas of the City; to revitalize those areas; and to increase, improve, and preserve the community's supply of low- and moderate-income housing available at affordable housing cost. Orange's City Council acts as the governing board of the Redevelopment Agency.

Specific Plans and Neighborhood Plans in Orange

A Specific Plan is a detailed plan for the development of a particular area. Falling under the broader umbrella of the General Plan, Specific Plans are intended to provide more finite specification of the types of uses to be permitted, development standards (setbacks, heights, landscape, architecture, etc.), and circulation and infrastructure improvements within identified subareas of the City. Specific Plans are often used to ensure that multiple property owners and developers adhere to a single common development plan. Further, they can provide flexibility in development standards beyond those contained in the Zoning Ordinance. Orange has utilized Specific Plans and Neighborhood Plans as tools to achieve the coordinated development of individual parcels within a broader context. Adopted Specific Plans and Neighborhood Plans include:

- Archstone Gateway
- Chapman University
- Immanuel Lutheran Church
- Orange Park Acres
- Pinnacle at Uptown Orange
- St. John's Lutheran Church and School
- Santa Fe Depot Area
- Serrano Heights
- Upper Peters Canyon

Earlier planning efforts that have influenced the growth and change within Orange include the 1975 East Orange General Plan and the Orange Park Acres development plan.

The Land Use Element provides a key policy foundation for the entire General Plan. Through the use of text and diagrams, the Land Use Element establishes clear and logical patterns of land use as well as standards for new development. The goals and policies contained in this Element establish a constitutional framework for future land use planning and decision-making in the City.

Another important feature of this Element is the Land Use Policy Map, which indicates the location, density, and intensity of development for all land uses citywide. The proposed land use designations identify the types and nature of development permitted throughout the planning area. The goals and policies contained in this Element are designed to ensure land use diversity and balanced development; encourage mixed-use development; promote commercial enterprise in Orange; encourage high quality industrial development; maintain and enhance the role of Old Towne within the community; encourage an efficient and responsible relationship between land use, transit, open space, and areas of environmental sensitivity; ensure City interests are achieved through inter-jurisdictional and regional planning; and encourage public involvement in land use planning decisions.

Purpose of the Land Use Element

The Land Use Element is one of seven elements required by the State to be included in Orange's General Plan. The Land Use Element directs and defines development patterns by designating allowable uses, requirements, and locations for both existing and future development. This Element has the most wide-ranging scope in the General Plan, and affects all of the others. Although the interpretation of the Land Use Element is the responsibility of the community's policymakers, this vision of long-term land use will influence short-term plans such as infill development, Specific Plans, and public works investments.

Scope and Content of the Land Use Element

The Land Use Element is divided into three sections:

(1) Introduction
(2) Issues, Goals, and Policies
(3) Land Use Plan

The *Introduction* defines the purpose, scope, and content of the Land Use Element, and its relationship to other General Plan Elements. The *Issues, Goals, and Policies* section describes the City's intent to encourage diverse land uses that foster a vibrant and sustainable community, and to coordinate planning and public participation activities in determining future land uses. The *Land Use Plan* section communicates how these goals and policies will be implemented through land use diagrams and maps depicting assigned land uses, locations, and the extent of future use envisioned by the community.

The Land Use Plan complies with the requirements of the Land Use Element as stated in Section 65302 of California's Government Code. Land uses requiring future planning include "housing, business, industry, open space, forest/timber, agriculture, natural resources, recreation, scenic beauty, education, public buildings and land, solid and liquid waste disposal facilities, and other public and private uses of land." The Land Use Plan also establishes standards for residential

Table LU-1
Land Use Designations

Land Use Designation		Density or Intensity		Description
		Range	Expected	
YSCO	Yorba South Commercial Overlay	Max. 1.0 FAR	0.35 FAR	A wide range of potential retail and service commercial uses, in conjunction with on-site parkland improvements, off-site parkland, and/or park improvements. Commercial use may only be activated through a Development Agreement with the City that identifies specific parkland obligations.
Industrial Designations				
LI	Light Industrial	Max. 1.0 FAR 3-story height limit	0.50 FAR	Allows for manufacturing, processing, and distribution of goods. Wholesale activities associated with industrial operations, as well as small-scale, support retail, service commercial and office uses may also be established in areas with ready access to major circulation routes. A 3-story building height limit applies within Light Industrial designated areas.
I	Industrial	Max. 0.75 FAR	0.65 FAR	
Public Facilities and Open Space Designations				
PFI	Public Facilities and Institutions			Provides for several types of public, quasi-public and institutional land uses, including schools, colleges and universities, City and County facilities, hospitals, and major utility easements and properties. Includes service organizations and housing related to an institutional use, such as dormitories, employee housing, assisted living, convalescent homes, and skilled nursing facilities.
Civic uses/Schools		Max. 0.50 FAR		
Cemeteries, Corporate yard, Water towers, Southern California Electric facilities			.05 FAR	
Schools, Water Department facilities			.15 FAR	
Civic Center, Libraries, Police and Fire Department facilities			.25 FAR	
Institutions		Max. 2.0 FAR		
Colleges and Universities			.35 FAR	
Hospitals			1.0 FAR	
OS	Open Space	NA	NA	Steep 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. Lands in this category include both privately held open spaces and public lands.
OS-P	Open Space–Park	NA	NA	Public lands used for passive and active recreation. Includes all parklands owned and maintained by the City of Orange, as well as parks operated by the County.
OS-R	Open Space–Ridgeline	NA	NA	Areas designated open space to preserve visually significant ridgelines identified on the Land Use Policy Map. No development or grading is permitted.
RA	Resource Area	NA	NA	Allows for agricultural uses and continued use of stream and river channels for aggregate mining. Passive and active recreational uses are also permitted. May serve as a holding zone for future uses compatible with established and planned land uses in surrounding areas.

General Plan and Zoning Consistency

The Land Use Element is primarily implemented by the City's Zoning Code, which specifies districts and performance standards for various types of land uses described in the General Plan. Table LU-3 indicates the corresponding zone district that applies to each General Plan land use designation. The zone districts specify the permitted uses for each category as well as applicable development standards. Zone districts specified in Table LU-3 for Mixed-use General Plan designations are new districts, and will be developed as part of the Zoning Code update implementing the General Plan.

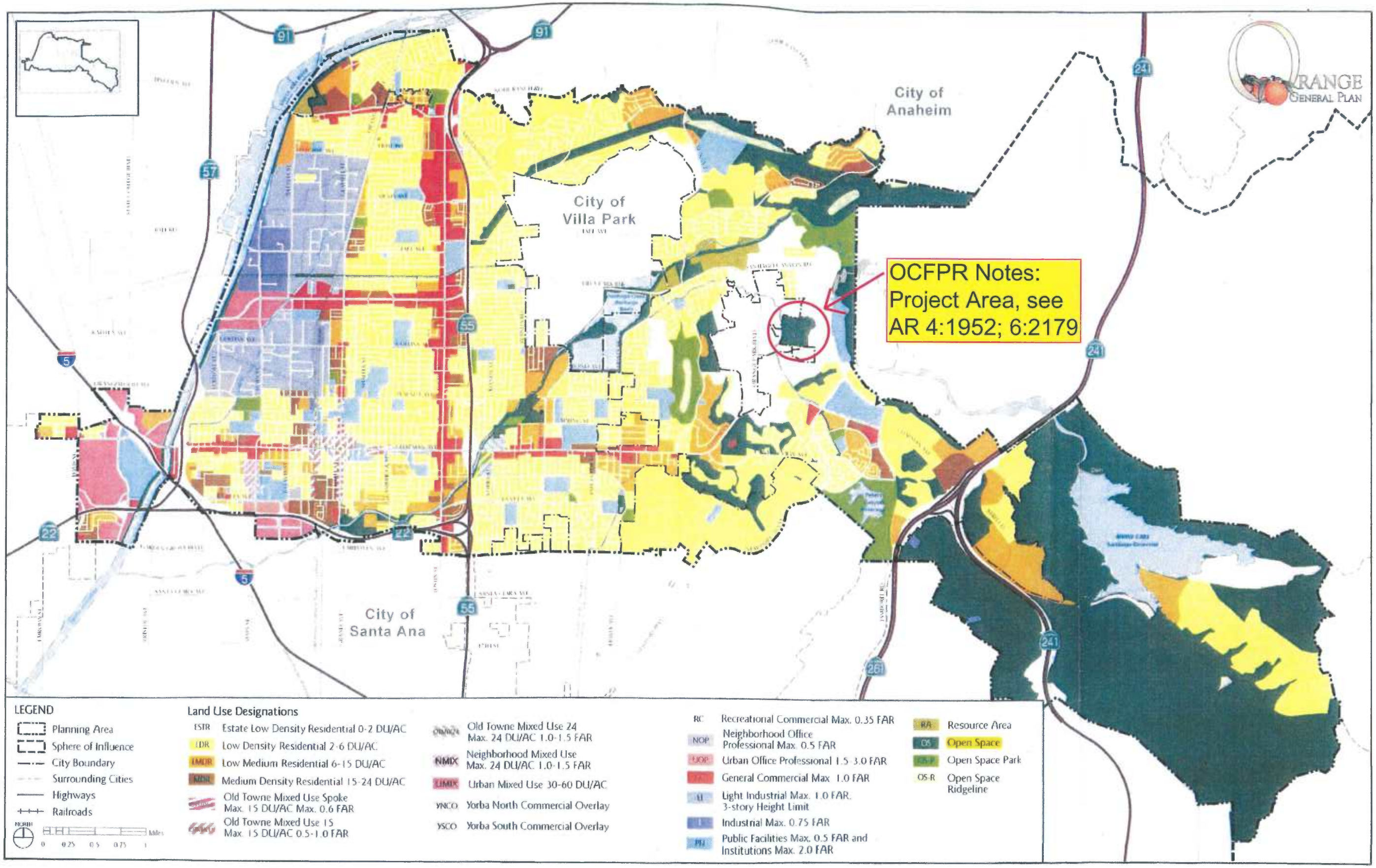
Specific Plans and Neighborhood Plans in Orange

A specific plan is a detailed plan for the development of a particular area. Specific plans are intended to provide finite specification of the types of uses to be permitted, development standards (setbacks, heights, landscape, architecture, etc.), and circulation and infrastructure improvements that are only broadly defined by the General Plan. Specific plans are often used to ensure that multiple property owners and developers adhere to a single common development plan. Specific plans are also used as a means of achieving superior design by providing flexibility in development standards beyond those contained in the Zoning Ordinance.

The City has used Specific Plans and Neighborhood Plans as tools to achieve the coordinated development of individual parcels. Specific Plans and Neighborhood Plans currently in effect include:

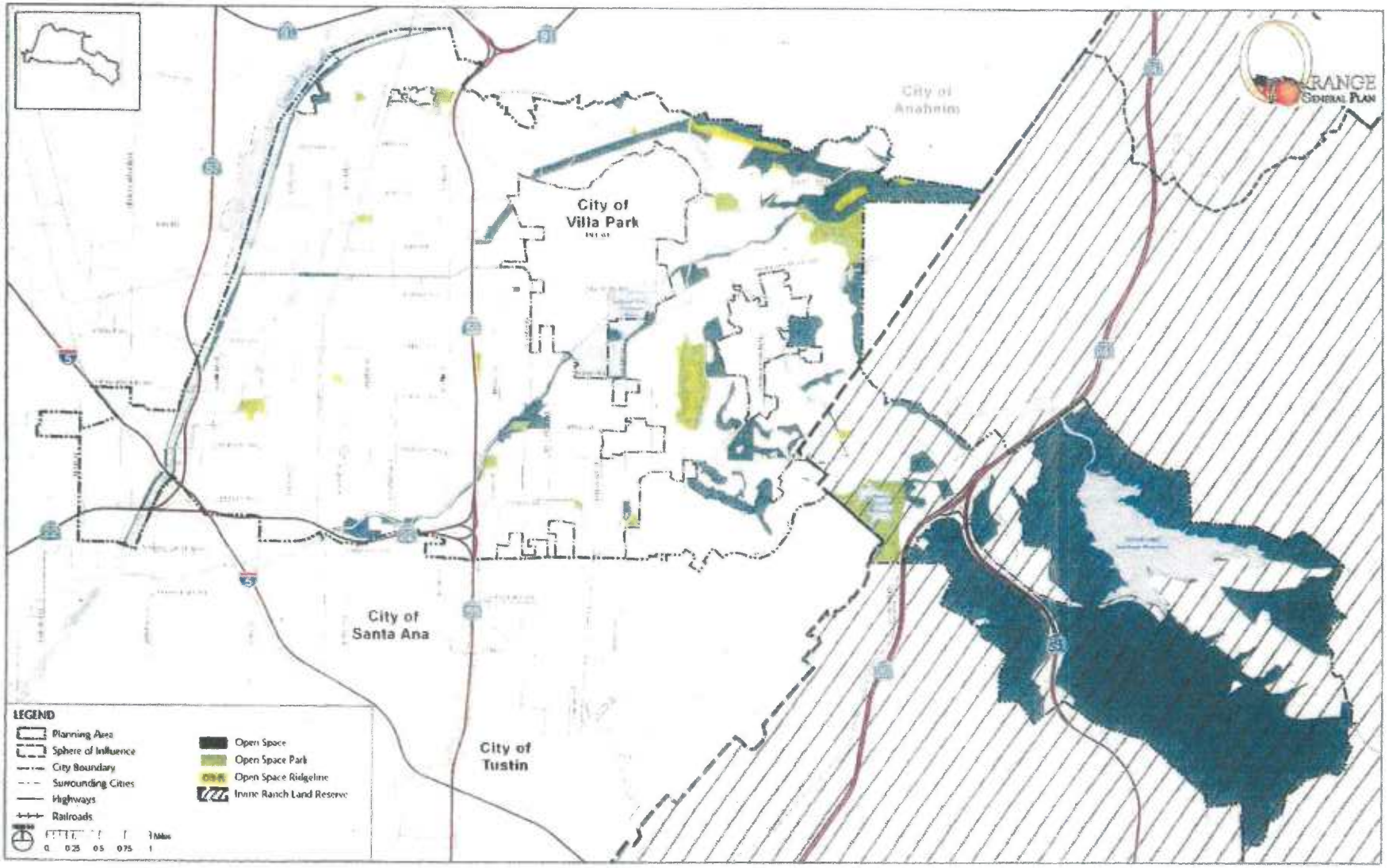
- Archstone Gateway
- Chapman University
- East Orange Plan (1975)
- Immanuel Lutheran Church
- Orange Park Acres
- Pinnacle at Uptown Orange
- St. John's Lutheran Church
- Santa Fe Depot Area
- Serrano Heights
- Upper Peters Canyon

Each of these plans and any future specific plans adopted by the City must be consistent with the policies expressed in this Element. The City will continue to utilize specific plans to achieve development objectives consistent with the General Plan.



LU-25

Figure LU-5 Land Use Policy Map



NR-11

Figure NR-1 Open Space Resources

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- Incorporation of sustainable development principles, such as the adoption of resource conservation measures for building codes and standards, and specifications for multi-modal transportation;
- Maintenance of the building security ordinance and addition of a cpted element to those standards; and
- Preparation of development standards that address national pollutant discharge elimination system (npdes) requirements.

Agency/Department:	Community Development Department, Police Department, Public Works Department
Funding Source:	General Fund, redevelopment funds
Time Frame:	Updated by December 2013
Related Policies:	
Land Use:	1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 2.5, 2.7, 2.8, 2.9, 4.1, 4.2, 4.4, 4.5, 5.1, 5.2, 5.3, 6.1, 6.2, 6.4, 6.7, 6.8, 6.9, 8.1
Cultural Resources & Historic Preservation:	1.3, 1.4, 1.5, 2.1, 2.3, 3.2, 4.5
Public Safety:	2.3, 2.4, 3.3, 7.2, 7.5, 7.6, 9.1
Noise:	1.1, 1.2, 1.3, 2.1, 2.2, 3.1, 4.3, 5.1, 5.2, 5.3, 6.1, 6.2, 7.3
Urban Design:	1.1, 1.4, 1.7, 4.1, 5.1, 5.2, 5.3, 6.1, 6.3, 6.6
Economic Development:	1.1, 1.3, 1.4, 4.5, 5.3, 5.5

Program I-2 Land Use Policy Map and Focus Area Development Objectives

Ensure that City land use decisions are consistent with the policies of the Land Use Element and the land uses shown on the Land Use Policy Map. Using the development review process and other tools outlined throughout the General Plan, ensure that the development objectives specified for each of the eight focus areas described in the Land Use Element are achieved for new development and infill projects located in the focus areas.

Agency/Department:	Community Development Department
Funding Source:	General Fund
Time Frame:	Ongoing
Related Policies:	
Land Use:	All
Economic Development:	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 3.1, 3.2, 3.3, 3.4, 7.1, 7.2

Program I-3 Specific Plans and Neighborhood Plans

Prepare, adopt, and implement specific plans and neighborhood plans consistent with state law to establish permitted densities, intensities, and uses within Orange for the systematic implementation of the General Plan.

Continue to implement and update, as needed, the following adopted specific plans and neighborhood plans:

- Archstone Gateway
- Chapman University
- East Orange General Plan (1975)
- Immanuel Lutheran Church
- Orange Park Acres
- Pinnacle at Uptown Orange
- St. John's Lutheran Church and School
- Santa Fe Depot Area
- Serrano Heights
- Upper Peters Canyon

New specific plans may be permitted elsewhere within the planning area in the future. Through the specific plan process, encourage developers to include or provide:

- Context sensitivity and connectivity to surroundings,
- Complementary mix of uses,
- Pedestrian-oriented places,
- Transit-oriented design,
- Public spaces,
- Green spaces, and
- CPTED design features.

Agency/Department:	Community Development Department
Funding Source:	General Fund, redevelopment funds, private property owners
Time Frame:	As needed
Related Policies:	
Land Use:	2.1, 2.4, 3.4, 5.1, 5.2, 5.3, 5.5, 5.8, 5.9, 6.7, 6.10, 6.11, 7.1, 7.2
Circulation & Mobility:	3.2, 3.3
Public Safety:	7.2
Urban Design:	1.1, 5.1, 5.3, 6.1, 6.2, 6.4

Program I-4 Plans, Standards, and Guidelines

Adopt, review, implement, and update as necessary the following master plans, standards, and guidelines: