

CASE NO. S212800

FEB - 3 2014

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

**ORANGE CITIZENS FOR PARKS AND RECREATION; AND
ORANGE PARKS ASSOCIATION,**
Plaintiffs and Appellants,

vs.

THE SUPERIOR COURT OF ORANGE COUNTY,
Respondent;

**MILAN REI IV, LLC; MARY E. MURPHY; CITY CLERK OF THE
CITY OF ORANGE; CITY OF ORANGE; CITY COUNCIL OF THE
CITY OF ORANGE; NEAL KELLEY, REGISTRAR OF VOTERS
FOR THE COUNTY**
Real Parties in Interest.

**CITY COUNCIL OF THE CITY OF ORANGE'S ANSWER BRIEF
ON THE MERITS/JOINDER IN THE ANSWER BRIEF ON THE
MERITS FILED BY MILAN REI IV, LLC**

After a Decision by the Court of Appeal
Fourth Appellate District, Division Three
Case No. G047013 (Consolidated with Case No. G047219)
From Judgment of the County of Orange, Honorable Frederick P. Aguirre
(Superior Court Case No. 30-2011-00494437)

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1. **ISSUE PRESENTED**

Did the City Council of the City of Orange abuse its discretion in finding the Project was consistent with the City's General Plan?

2. **INTRODUCTION**

Through a combination of misrepresenting the salient facts, taking positions contradicted by the Administrative Record, constant morphing of arguments, and seeking relief and advocating a standard of review contradicted by their own Cross-Petition, Petitioners overly complicate a case which is no more than Petitioners' disagreement with the City Council of the City of Orange's ("City Council") interpretation of its General Plan and findings that the Project, which consisted of a zone change and development of 39 one-acre equestrian estates, riding trails, a public park and two horse arenas, was consistent with the General Plan. It was Petitioners' burden to show that the City Council's interpretation was clearly erroneous and that the Project was not consistent with the General Plan and this showing must be "based on evidence from which no reasonable person could have reached the same conclusion." A Local & Regional Monitor v. City of Los Angeles (1993) 16 Cal. App. 4th 630, 648.

Although Petitioners contend otherwise, there is no reasonable doubt that the Orange Park Acres Plan ("OPA Plan") was adopted as and has been to this day, the land use element of the General Plan for Orange Park Acres in which the Project lies. Petitioners' ultimate quarrel is with the City

Council's conclusion that the land use designation on the Project property under the OPA Plan was the one the City Council adopted in 1973 and not the one reflected on a proposed OPA Plan land use map which was never adopted.

The land use designation adopted by the City Council under the OPA Plan was "Other Open Space/Low Density Residential (1 acre)", which permitted the Project. Because prior City staffs did not update the land use map to reflect the City Council's action, the map which appeared with the OPA Plan, which was a proposed map and was never adopted, reflected an Open Space only designation. The General Plan Amendment ("GPA") which was defeated at the election was primarily the City Council's directive to City staff to complete the work never undertaken by City staff in 1973 and did not change the land use designation of the Project property under the OPA Plan.

While Petitioners are now advocating the independent judgment test, in their Cross-Petition they requested the court to find that "the City prejudicially *abused its discretion* by approving the Zone Change and Development Agreement." (Italics added.) Appellants Appendix of Exhibits In Support Of Immediate Stay ("APP"), pg. 27. Petitioners did not in their Cross-Petition seek a declaration that the OPA Plan has been completely superseded as they now do, nor did they seek a declaration that the City's General Plan is so internally inconsistent that the Project may not

proceed until the inconsistencies are rectified, as they do now. Petitioners' contention, plain and simple, was "the Project is not consistent with the General Plan or the OPA Specific Plan" and the relief they sought was a declaration to that effect. APP, Cross-Petition, pg. 27.

This case is primarily about what actions determine the contents of the City's General Plan, those of the City Council embodied in resolution or those derived from ministerial errors of City staff? It is also about who resolve ambiguities within the General Plan? Put simpler, who interprets and determines the contents of the City's General Plan, a document the parties all agree is the constitution for development for the City—the City Council or City staff?¹

The very first case cited in Petitioners Opening Brief provides the answer—it is the City Council. "The general plan *adopted by a legislative body* is [the] constitution for future development..." (Italics added.) DeVita v. County of Napa (1995) 9 Cal.4th 763, 773. Petitioners cite to no case and no statute which stands for their premise that a combination of time, misstatements by City staff and developers, and a failure of City staff to perform its ministerial functions can trump a General Plan which met all statutory requirements for adoption. This would turn land use law on its head and by sheer inaction, ultimately make City staff the de facto City

¹ The City Council agrees with the policy reasons presented by Milan as to why the City Council's actions must determine the contents of a General Plan and joins in Milan's Answer Brief on the Merits.

Council.

If this Court determines that the City Council did not abuse its discretion in concluding that the land use designation in the OPA Plan was Open Space/Residential, a designation that the Project is clearly consistent with, the issue in this case boils down to one which is nearly identical to the issue addressed by the court in Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles (1986) 177 Cal. App. 3d 300 (review denied). In that case, the court upheld the board of supervisors' determination that the community general plan designation of urban/residential (15 dwelling units per acre) for the Malibu/Santa Monica Mountains area controlled over the designation of non-urban/rural in the county-wide general plan (1 dwelling unit per acre) and that the project, which proposed 15 units per acre, was legally consistent with the county's general plan, although not entirely consistent with the county-wide land use policy map.

Similarly, in this case the City Council's findings were that the Project was consistent with the existing land use designation of "Other Open Space/Low Density Residential (1 acre)" in the OPA Plan and other goals and policies of the General Plan, although not entirely consistent with City-wide General Plan land use map. In reaching this conclusion the City Council adopted 56 pages of General Plan consistency findings in the Final Environmental Impact Report for the Project ("Final EIR", AR, 7:2587) which Final EIR identified 68 goals and over 200 policies within the

General Plan that the Project was either consistent with or which did not apply. None of the Final EIR findings relied upon the General Plan Amendment ("GPA"). It is difficult to see how the City Council could have been more comprehensive in adopting findings that the Project did not need the GPA to be consistent with the General Plan.

Petitioners' contention that the Project cannot be consistent with the General Plan if not entirely consistent with the City-wide General Plan land use map is directly contradicted by Las Virgenes, "The mere examination of land use and other policy maps is insufficient to determine consistency." Las Virgenes, *supra*, 177 Cal.App. 3d at 310. "State law does not require perfect conformity between a proposed project and the applicable general plan..." Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal. App. 4th 807, 817. The reality is that no project is entirely consistent with a general plan "[b]ecause policies in a general plan reflect a range of competing interests..." San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App. 4th 656, 678.

From what was initially a straightforward contention in the Cross-Petition that the Project was not consistent with the City's General Plan and what the Petitioners called the Orange Park Acres "Specific" Plan, Petitioners' theories as to why the Project is inconsistent have grown almost exponentially as this case wound its way through the courts. They appear to be: (1) the OPA Plan is completely "inoperative" because it was

"superseded" when the City Council adopted the 1989 General Plan; (2) if it wasn't superseded in 1989, then it was superseded when the City Council adopted the 2010 General Plan; (3) if wasn't superseded either in 1989 or 2010, then these General Plans re-cast the OPA Plan as a "subordinate" document; (4) if the OPA Plan has not been superseded or re-cast as a subordinate document and is still a General Plan document, the sole Open Space designation in the never adopted OPA Plan land use map is the true OPA Plan designation on the Project property; and 5) even if the OPA Plan is a General Plan document and designates the Project Property as Open Space/Residential, it is so internally consistent that the Project cannot go forward.

None of Petitioners' "if not this, then that" theories have merit. The OPA Plan was adopted as a General Plan document and all five times it has been amended, from 1977-2011, it was amended by way of a General Plan amendment. To adopt a specific plan, the State Planning Law requires notice, hearing and adoption by City Council resolution. Petitioners point to no resolution in which the City Council adopted the OPA Plan as anything but a General Plan or designated the Project property under the OPA Plan as anything other than Open Space/Residential. The *same* City Councils which adopted the 1989 and 2010 General Plans within a year in each case, adopted resolutions in which they specifically found the OPA Plan to be part of the City's General Plan. Much of Petitioners'

inconsistency argument relies on the fact that a never adopted OPA Plan land use map was not updated by City staff to reflect the City Council's formal action to designate the Project property as Open Space/Residential. As adopted by the City Council, the General Plan is not legally inconsistent.

Petitioners' position is also belied by their own pre-litigation words. In a 2009 letter submitted during the 2010 General Plan update process by Petitioners' legal counsel (Shute Mihaly & Weinberger) on Petitioners' behalf, Attorney Rachel Hooper wrote, "OPA greatly values the Orange Park Acres Specific [*sic*] Plan, which enunciates the values and features that make Orange Park Acres a wonderful place to live." Shute Mihaly Letter, AR, 14:6253. And as noted above, in their Cross-Petition Petitioners state that the OPA Plan "is applicable to the Project site." APP, pg. 27. In spite of this, Petitioners argue in this litigation that the OPA Plan was completely superseded—as early as 1989, and is inapplicable to any property.

Petitioners' version of the City's General Plan is much different than the one adopted by the City Council. It is a version derived by the passage of time, City staff's omissions, sporadic incorrect references, the words of developers, staff reports, and inferences of city council intent which completely contradict the City Council's formal pronouncements. They contend that the OPA Plan, against which all development in Orange Park

Acres has been measured for the past 40 years, became completely "inoperative" without any public notice, public hearings and indeed, without anyone's knowledge or alternatively that it is a "subordinate plan, even though it has never been adopted as such. They rely on the same type of administrative evidence that the court in No Oil v. City of Los Angeles (1987) 196 Cal.App. 3d 223, found to be unpersuasive and which, in addition, directly contradicts the formal findings of the City Council.

The GPA that was defeated at the Referendum election did not change the land use designation in the OPA Plan, but rather was the City Council's effort to bring greater internal consistency to its General Plan to reflect the existing Open Space/Residential designation in the OPA Plan by directing City staff to perform its ministerial function to update the OPA Plan to reflect past actions taken by the City Council that prior City staffs had failed to perform. The GPA was an attempt to at least start the process that the Petitioners themselves requested in 2009, "OPA believes that the time has come to update the Orange Park Acres Specific [*sic*] Plan so that it can continue to usefully guide the development of this community." Shute Mihaly Letter, AR, 14:6254.

The Appellate Court found 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." Appellate Court Opinion, pg. 43. The Appellate Court was mindful that the GPA was not necessary to direct City

staff to perform its ministerial function to reflect past City Council actions that were beyond challenge. If the Referendum accomplished anything, its chief accomplishment was to keep the Open Space designation on the City-wide General Plan land use map. But under the holding of Las Virgenes and other cases, this alone did not cause the Project to be legally inconsistent with the General Plan.

Petitioners continue to misrepresent some of the significant facts in this case. First, they contend that the City Council approved the developer's request to change the General Plan designation to solely Low Density Residential.² This misstates the record. The undisputed fact is that the City Council rejected this request, finding the Project was consistent with the existing and controlling General Plan designation of Open Space/Residential in the OPA Plan.³ It directed that the City-wide General Plan reflect this designation to make the General Plan designations consistent. Second, Petitioners contend that "the City Council adopted

² "Thus, to proceed with its controversial development project, Milan requested, and the City Council in 2011 approved, a General Plan amendment ("GPA"), changing the land use designation on Milan's property on the General Plan's 'Land Use Policy Map' from Open Space to residential." Petitioners' Opening Brief, pg. 3.

³ "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)...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...' Appellate Court Opinion, pg. 20 (italics not added). Resolution 10566 is attached as Exhibit 1.

Milan's requested Zone Change, rezoning the Property from 'Recreation/Open Space' to residential, 'R-1-40')." The City Council did not adopt Milan's requested zone change, but rather adopted a dual designation of R-1-40 and Open Space. AR, 4:1828, 1832.

Petitioners bemoan the Appellate Court's conclusion, contending it thwarts the people's constitutional right of referendum because it allegedly renders their Referendum meaningless. However, doesn't Petitioners' position that the OPA Plan is "inoperative", "outdated", or completely "superseded", do the same thing? If the OPA Plan is completely superseded, then the GPA which amended the OPA Plan and directed that the City-wide General Plan land use map be made consistent with the OPA Plan would necessarily be meaningless. If the GPA was meaningless, then it would follow that the Referendum was meaningless. Since Petitioners contend that the OPA Plan was superseded when the City Council adopted the 1989 General Plan, this would also render meaningless two general plan amendments to the OPA Plan adopted in 1990 and 2003. Under what is now their primary theory, Petitioners indeed ask this Court to find the entire OPA Plan meaningless.

Petitioners' argument is contradictory and irreconcilable. Petitioners hold up the General Plan as the constitution for development, but take a position which relies upon wholesale articles of this constitution completely falling out or being re-cast as an undefined subordinate plan without notice,

hearing or formal adoption by the City Council and without anyone's knowledge. Petitioners argue for a standard of review that is contrary to the standard they espoused in their Cross-Petition. Petitioners contend that the 2010 General Plan "unambiguously" superseded the OPA Plan, yet in their Cross-Petition contend it is a specific plan applicable to the Project. Petitioners assert that the OPA Plan was as early as 1989 completely superseded, yet by their own words stated as late as 2009, that they "greatly value the Orange Park Acres Specific [*sic*] Plan." They ask the City Council "to update the Orange Park Acres Specific [*sic*] Plan...so that it can continue to usefully guide the development of this community", but when the City Council attempts to do so they contend it no longer exists. Petitioners were blissfully wed to the OPA Plan in 2009, stating that it "enunciates the values and features that make Orange Park Acres a wonderful place to live." Shute Mihaly Letter, AR: 14:6254. Now because they disagree with the City Council's interpretation, they want a divorce.

As Petitioners themselves contend in their Cross-Petition, this case ultimately revolves around Petitioners' quarrel with the City Council's interpretation of the contents of its General Plan and findings of General Plan consistency. The law is clear, a "city's findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion." A Local & Regional Monitor v. City of Los Angeles (1993)

16 Cal. App. 4th 630, 747. Petitioners fall well short of making the necessary showing.

3. **STATEMENT OF THE CASE**

A. **The Contents Of The City's General Plan May Be In More Than One Document And Are Determined Through Formal Actions Taken By The City Council**

One thing the parties do agree upon is the place that the General Plan has among the City's land use regulations. "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." DeVita v. County of Napa (1995) 9 Cal.4th 763, 773.

However, a City's general plan is not required to be, as Petitioners contend, contained within a single document. Pursuant to Government Code section 65301, "(a) The general plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements. (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." (Italics added.)

Many cities and counties have general plans covering their entire jurisdiction and more focused community general plans for subareas of their jurisdictions. See Vineyard Area Citizens v. Rancho Cordova (2007) 40 Cal. 4th 412, 421; Gonzales v. County of Tulare (1998) 65 Cal.App. 4th

777, 781; discussing the consistency of a proposed zone change "with a general plan for the area, known as the 1988 Cutler-Orosi Community Plan..." The court in Las Virgenes, in discussing the consistency of a zone change with a county's general plan, noted that the county's "General Plan consists of two major components: (1) the countywide chapters and elements which set countywide policy framework, and (2) area wide and community plans which deal with local issues of unincorporated communities." Las Virgenes, supra, 177 Cal.App. 3d at 310.

The OPA Plan is no different. It was adopted as a general plan relating to the geographic segment of the City's planning area known as Orange Park Acres and has never been adopted or amended as anything else. While the City-wide General Plan land use element consists of "goals, policies, and implementation programs [to] address eight citywide issues" (2010 General Plan, AR, 10:4053), as stated by the City Council in 1989, "the Orange Park Acres Plan, which is part of the General Plan, *provides a more specific direction for the Plan area.*" (Italics added.) AR, 9:3903. The City Council in 1989 was doing no more than describing the nature of a community general plan, whose "role is to identify more specific land uses, determine actual boundaries between land use categories, and establish more specific residential density ranges within the general parameters established by the countywide goals and policies." Las Virgenes, supra, 177 Cal.App. 3d at 310.

Petitioners' contention that having a general plan as a group of documents "breeds instant confusion" (Petitioners' Brief, pg. 48) is without merit. To the extent confusion is caused by a city or county having a jurisdiction-wide general plan in one document and a more focused general plan for a specific geographic area in another, State law specifically permits it. If Petitioners desire a requirement that a city's general plan must be contained in a single document to avoid this alleged "confusion", that is something they should take up with the Legislature.

In adopting or amending its General Plan, the City must follow the procedures set forth in Government Code section 65350 et seq., which provides, "Cities and counties shall prepare, adopt and amend general plans and elements of the general plans in the manner provided in this article." In summary, the requirements are opportunities for the involvement of citizens, public agencies and other community groups, a noticed public hearing before the planning commission and written recommendation, a noticed public hearing before the City Council and finally, the City Council must "adopt or amend a general plan by resolution..." Government Code sections 65351-65355. "A specific plan shall be prepared, adopted, and amended in the same manner as a general plan...[and]...may be repealed in the same manner as it is required to be amended." Government Code section 65351.

There are several relevant things to take away from this summary.

First, is the statement in DeVita that the general plan "adopted by the legislative body" is the constitution for future development. Second, is that as provided in Government Code section 65301(b), a general plan may be adopted as a group of documents. Third, is that adoption and amendment of a general plan and specific plan must provide for involvement of the public, be noticed, public hearings must be held, and they must be adopted by a resolution of the City Council.

B. Project Description, Setting And Processing

The Project lies within a "sub-community of the City of Orange known as Orange Park Acres (OPA) which includes County and City properties...OPA is characterized by rural environment and equestrian activities...Many of the lots and residents maintain equestrians, other farm animals, and structures associated with their care...The Zoning Designation of property surrounding the project...is designated Single Family Residential with a...square foot minimum lot size (R-1-40)." AR, 2:492. "The project site contains 51.1 acres." AR, 1:61. "The site was formerly used as a golf course, tennis club, private pool and clubhouse banquet facility. All former uses...have been discontinued." AR, 3:1093. The Project lies in the middle of Orange Park Acres and as noted above, is completely surrounded by the same uses it proposes, i.e., one-acre equestrian estates with trails.

The Project came forward initially to the Planning Commission.

Milan's Project application consisted of: (1) a proposed change in the General Plan Land Use designation in the City-wide General Plan from Open Space to Estate Low Density Residential; (2) a change in the OPA Plan general plan land use designation from Other Open Space/Low Density (1 acre) to Single Family Residential (1 acre minimum); (3) a zone change from the existing Recreation Open Space to Single Family Residential, R-1-40; and approval of the Development Agreement. AR, 2:491-492. The Planning Commission "unanimously (5-0) recommended that the City Council approve the project as presented...with the exception that they recommended that the General Plan Land Use Designation for the site remain as 'Other Open Space and Low Density Residential (1 acre).'" AR, 3:1101.

In considering the Planning Commission's recommendation, the City Council, by way of Resolution No. 10566, also rejected Milan's proposed General Plan land use designation changes and instead adopted a general plan amendment which made text amendments to the OPA Plan to "clarify the *original and unchanged terms* of the *existing*" land use designation" and which "affirms the site's *existing* land use Designation of 'Other Open Space and Low Density (1 acre)'" (Italics added.) AR, 4:1948, Exhibit 1. The City Council also directed staff to "make the General Plan's land use designations for the subject property consistent throughout the General Plan", meaning consistent with the Open Space/Residential designation.

AR, 4:1948, Exhibit 1.

Although not recommended by the Planning Commission, the City Council also rejected Milan's proposed zone change to solely residential, choosing instead to adopt a dual Open Space/Residential zoning (the "Zone Change") to delineate Open Space zoning for the trails, ride-in-arena and park from the residential portion of the Project. AR, 4:1827-1832. The City Council also approved the Development Agreement. AR, 4:1833-1835. Thus, as approved by the City Council, the OPA Plan designation of Open Space/Residential stayed the same, City staff was to update the OPA Plan to reflect this designation, the City-wide General Plan land use policy map was to be modified to reflect this designation and the Zone Change was adopted to mirror that designation.

C. Adoption Of The Orange Park Acres Plan

In 1973 a development committee for Orange Park Acres was established to create a "specific plan identifying goals, objectives, policies and recommended land uses," to resolve issues of "major controversy between the developers, major landowners and residents of the area." AR, 11:4915. "Members of this Committee represent the City of Orange, County of Orange, residents of Orange Park Acres, major land owners and developers of Orange Park Acres." AR, 11:4915. This Committee developed the "Orange Park Acres Specific Plan" which covered both areas in the City and in the unincorporated area of the County. It was "the result

of a ten (10) week study prepared by the J.L. Webb Consulting Firm under the direction of the Orange Park Acres Development Committee. The Committee members, appointed by the City Council, represent the City of Orange, County of Orange, Orange Park Acres, residents and property owners." AR 9:3674. It was presented jointly to the City's Planning Commission and the County of Orange Planning Commission, which held a duly advertised public hearing on November 19, 1973. AR, 11:4901.

Although presented as a specific plan by the Committee, both the County and City's Planning Commissions, recommended adoption of the OPA Plan as the General Plan for Orange Park Acres. In adopting Planning Commission Resolution 85-73, the City Planning Commission recommended, among other things, "that said Plan be adopted as representing a portion of the land use element of the General Plan" and further to "Designate the Golf Course as Other Open Space and Low Density (1 acre)." AR, 9:3677. The Golf Course referenced in the OPA Plan is the site of the Project. Joint Resolution 86-73 adopted by both the City and County Planning Commissions at the same meeting states, "the unincorporated portion of the plan is included in the Orange County General Plan..." AR, 9:3679. The minutes of the November 19, 1973 meeting reflect that the City Planning Commission adopted Resolution 85-73 "recommending the adoption of the [OPA] Plan, as amended by the County." AR, 9:3683. The County's amendments included, "3. Designate

the Golf Course as Other Open Space and Low Density (1 acre)." AR, 9:3683. Thus, both the County and City Planning Commissions adopted resolutions recommending, respectively, that the Board of Supervisors and the City Council adopt the OPA Plan as a portion of the land use element of the General Plan for Orange Park Acres and to designate the Project property as Other Open Space/Low Density Residential (1 acre).

The Administrative Record reflects several reasons for the dual designation. The first was, as noted in the staff report to both Planning Commissions, "It is important that the Plan recommended to the City Council be the same Plan recommended by the Orange County Planning Commission to the Board of Supervisors" (AR, 9:3674) and the recommendation by the Orange County Planning Commission was to designate the Project property as Open Space/Residential. Second, the recommendation was made because the County's zoning on the property in 1973 was apparently solely a residential one, E4-1 (Small Estates). AR, 9:3835. An Open Space only general plan designation would not have been consistent with the County's zoning. The Project property was at the time within the County.

The third reason was articulated by James Jackman, Orange Park Acres resident for 35 years, a member of the 1973 Committee and the City Council Member who made the motion to adopt the OPA Plan in 1973 (AR: 9:3742). Mr. Jackman spoke to the City Council about the rationale

for the dual designation during the May 10, 2011 public hearing on the Project stating:

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 do we do next? And the answer was we were worried that it would be developed as commercial which was inconsistent with the parcels – 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. (Emphasis added.) AR, 13:5464.

The Planning Commission's recommendations were subsequently considered by the City Council and by Resolution 3915, the City Council resolved that the "Orange Park Acres Plan approved and adopted herein is part of the required land use element to be included in a General Plan for the City of Orange"; that the OPA Plan "dated September 1973 and as amended by the Planning Commission on November 19, 1973, be adopted and approved as part of the land use element of the City of Orange..."and that the OPA Plan "meets General Plan criteria set forth in Section 65302(a) of the California Government Code..." AR, 9:3688-89. By this action the OPA Plan, as adopted by the City Council, became part of the land use element of the General Plan and the Project property was designated Open Space/Residential. As reported by County Planning Commissioner Shirley Grindle, the Board of Supervisors of the County of Orange had, two weeks earlier, adopted the OPA Plan as part of its general plan. AR, 9:3741.

D. The Legislative History Of The OPA Plan

There is no doubt that the OPA Plan was, always has been and to this day remains the General Plan land use element for Orange Park Acres and that the original OPA Plan land use designation of the Project property as Open Space/Residential has never been changed. For the most part, ambiguity about the OPA's Plan place as a general plan document and its designation of the Project property creeps in by way of references to staff reports, staff omissions, to a never adopted OPA Plan map, reports prepared by consultants and inferences about the City Council's intent that contradict the Administrative Record.

In 1977 the City Council approved by Resolution 4448 a number of General Plan amendments to the OPA Plan and directed the "deletion of the word 'specific' from the text of the Orange Park Acres Area Plan" (AR 9:3774), finding that the OPA Plan is the "Land Use Element of the General Plan for Orange Park Acres", and that it "has not been reviewed or amended" since its adoption in 1973. AR, 9:3769-70. Later that year the City Council adopted Resolution No. 4659 pre-zoning a portion of the Ridgeline Project site to recreation open space, noting that the "Orange Park Acres General Plan for the City of Orange allows recreational use of the site" and that "the County General Plan calls for low density residential (0-1 unit/acre) use of the site in conjunction with a designation of open space. AR, 9:3784-3785.

In 1985 the Project property was annexed into the City. AR, 9:3798. A Local Agency Formation Commission "Justification of Proposal Questionnaire" completed by what appears to be a consultant retained by the then property owner, states that the General Plan designation in "affected city" is "Recreation/Open Space" and that in the County it is "Residential". AR, 9:3818. However, a 1985 City Planning Commission staff report lists the "Classification of Property" as "*City of Orange R-O and R-1-40...*" (Italics added.) AR, 9:3892.

In July of 1989 Resolution No. 7348 was adopted, approving a general plan amendment to the OPA Plan. Among the findings by the City Council were: "The plan was adopted in 1973 as part of the Land Use Element of the General Plan...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 OPA Plan has the authority of a General Plan, rather than a Specific Plan...[and]...the Orange Park Acres Plan, which is part of the General Plan, *provides a more specific direction for the Plan area.*" (Italics added.) AR, 9:3903.

On August 22, 1989, by Resolution No. 7389, the City Council adopted a City-wide General Plan. The 1989 General Plan references the OPA Plan under "Area Plans", stating, "The Orange Park Acres Plan was prepared in 1973. This plan outlines land use policy for the semirural

Orange Park Acres area located generally east of Rancho Santiago Boulevard, between Chapman Avenue and Santiago Canyon Road." AR, 11:4635-4636. The land use map accompanying the 1989 City-wide General Plan showed a single designation of Open Space on the Project property.

Eight months later, on April 17, 1990, the City Council adopted Resolution No. 7557, "General Plan Amendment 3-89, an amendment to the Orange Park Acres Plan, which is part of the Land Use Element of the City's General Plan..." AR, 9:3970. The five council members who unanimously adopted Resolution No. 7557, were the same five council members that unanimously adopted Resolution 7348 above and four of the five that adopted the 1989 General Plan (Council Member Steiner was absent). Thus, just one month before adoption of the 1989 General Plan and eight months after adoption of the 1989 General Plan, the same City Council which adopted the 1989 General Plan specifically found the OPA Plan was part of the land use element of the City's General Plan and the more specific direction for the Orange Park Acres area.

Eight years later on July 14, 1998, in approving Resolution No. 8974 relating to a conditional use permit for the expansion of Salem Lutheran School, the City Council found, "This request was considered with respect to its effect on the City of Orange General Plan and, more specifically, the Orange Park Acres Plan, which was adopted as part of the City's General

Plan and which, collectively, are the only plans that pertain to the area in which the site is located." AR, 9:3921.

On September 12, 2000, the City Council adopted Resolution No. 9327 related to the Holy Sepulcher Cemetery, twice in the Resolution referring to the OPA Plan as the "Orange Park Acres Specific Plan", but the action involved a conditional use permit and not an amendment to the OPA Plan. AR, 9:3930. In 2003, the City Council considered Resolution No. 9778 to remove "Property Located North of Santiago Canyon Road...From The Orange Park Acres Specific Plan." AR, 14:6032. However, Resolution 9778 was "A Resolution of the City Council of the City of Orange Approving a *General Plan Amendment*." (Italics added.) AR, 14:6032.⁴

In 2008 the City Council adopted Resolution Nos. 10318 and 10319, approving a general plan amendment for property within Orange Park Acres, which resolutions make reference to the "Orange Park Acres Specific Plan", although the amendment is a General Plan amendment to the Open Space element of the City-wide General Plan and not an amendment to the OPA Plan. AR, 9:3938.

In 2010 the City Council adopted an updated General Plan. With respect to land use designations, the General Plan proposed changes only in

⁴ The City Council repealed Resolution 9778 before it took effect after opponents obtained sufficient signatures for a referendum.

eight focus areas. The General Plan provides, "Within portions of the City that do not lie within one of the identified focus areas, no significant land use changes are anticipated." AR, 10:4079. The eight focus areas are illustrated at AR 4080-4094 and none are within one mile of Orange Park Acres. The 2010 General Plan references the OPA Plan under the heading of "Adopted Specific Plans and Neighborhood Plans." AR, 10:4074. It further states, "Earlier planning efforts that have influenced the growth and change within Orange include the 1975 East Orange General Plan and Orange Park Acres development plan." AR, 10:4047. As with the 1989 General Plan, the City-wide land use map showed the General Plan designation of the Project site solely as Open Space.

The legislative history makes the following facts not reasonably subject to dispute:

- The City Council has never adopted the OPA Plan as anything but the general plan land use element for Orange Park Acres, stating on at least three occasions that it is not a specific plan;
- The OPA Plan *provides a more specific direction for the Plan area.*" (Italics added.) AR, 9:3903.
- The one and only land use designation placed on the Project property by the City Council under the OPA Plan was Open Space/
Residential;
- All five times the City Council adopted amendments to the OPA

Plan—1977, 1989, 1990, 2003, and 2011—it did so by way of a General Plan amendment.

E. The Referendum, Litigation And Court Decisions Below

On August 1, 2011, the Orange County Registrar of Voters verified the Referendum. On September 6, 2011, the City Council voted to place the Referendum on the ballot for the November 6, 2012, general election.

After the final approval of the Zone Change and the Development Agreement, Petitioners began circulating referendum petitions on both. They were *unsuccessful* in their bid to garner sufficient signatures to place the Zone Change and the Development Agreement on the ballot. APP, pgs. 309, 311.

Milan filed a petition for writ of mandate and complaint for injunctive and declaratory relief primarily alleging that Petitioners violated the elections code in collecting signatures for the Referendum. Petitioners filed their Cross-Petition in which they sought a "declaration that the Project is inconsistent with the current General Plan and that the Project may not proceed until the General Plan is amended to be consistent with the Project." APP, pg. 28. Milan then filed a petition for writ of mandate and cross-complaint for declaratory and injunctive relief to have the trial court find that the GPA was *not* necessary for the Project to proceed and for a variety of reasons, to remove the Referendum from the ballot. APP, pg. 83.

The trial court rendered judgment for Milan and ordered the City

Council to rescind its resolutions placing the Referendum on the ballot. Petitioners requested a stay of the trial court's judgment from the Appellate Court, which was granted. The GPA appeared on the ballot at the November 6, 2012, and failed to garner sufficient votes for passage and thus, is not a part of the City's General Plan.

After the Referendum election the parties completed their briefings to the Appellate Court, the question being whether or not the Project, and specifically the Zone Change and Development Agreement, was consistent with the General Plan in the absence of the GPA. A unanimous Appellate Court concluded that Petitioners had failed to carry their burden of showing that the City Council abused its discretion in approving the Project.

4. STANDARD OF REVIEW

The issue is not as Petitioners put it, "what was the City's...General Plan...at the time of Milan's Project approvals?" Petitioners' Brief, pg. 20. It is abundantly clear that the City's General Plan consisted of two documents, the OPA Plan and the 2010 City-wide General Plan, albeit without the GPA.. The OPA Plan from time of adoption in 1973 through today has been considered as the land use element of the General Plan for Orange Park Acres and as the more specific general plan document for the Orange Park Acres community. Every single development proposed in the Orange Park Acres since 1973 has been measured against the contents of the OPA Plan.

The trial court, Appellate Court, this Court and even Petitioners themselves in their Cross-Petition framed the question before this Court correctly, "whether the Ridgeline Project is in conformance with the City's general plan." Trial Court Order, Appellant's Appendix ("AA"), pg. 53. Petitioners contention in their Cross-Petition was "that the Project is inconsistent with the current General Plan and that the Project may not proceed until the General Plan is amended to be consistent with the Project." APP, Cross-Petition, pg. 27-28. "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." Appellate Court Opinion, pg. 28.

Although Petitioners advocated in their Cross-Petition that the standard of review was abuse of discretion, Petitioners now cite Harrowman Co. v. Town of Tiburon (1991) 235 Cal.App. 3d 388 for the proposition that the standard of review is the independent judgment test. Harrowman is not instructive. The question before the court was the application of a state statute under the Government Code to the city's review of a housing development and its *draft* General Plan. "We must decide whether section 65351 and the extensions issued require the town council to review plaintiff's development application against the 'draft' general plan rather than the existing general plan." Harrowman, supra, at 393. This case stands for the unremarkable premise that the court will not

defer to a city council's interpretation of the application of a state statute to a draft general plan. There is no question before this Court as to the application of a state statute to a draft general plan nor is a draft general plan at issue.

Petitioners' citation to Leshar Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531 is also not instructive. Leshar stated that the "dispositive question, therefore, is whether a basis exists for concluding that the voters of Walnut Creek intended to amend the general plan by adopting Measure H." Leshar, supra, at 541-542. (Italics added.) Thus, the court was attempting to divine the intent of the voters, not the city council. The Cross-Petition is a challenge to the City Council's General Plan consistency findings in the absence of the GPA and most of Petitioners' own argument revolves around what it alleges the City Council intended in adopting the 1989 and 2010 General Plans. The voters' alleged intent in rejecting the GPA is not relevant to whether the Project is consistent with the General Plan in its absence. Because the voters acted after the City Council, this alleged intent was not even in the record before the City Council when it made its decision.

The power of initiative and referendum is limited to approval or disapproval of legislative acts, such as adoption and amendments of general plans, specific plans and zone changes. Andrews v. City of San Bernardino (1959) 175 Cal. App. 2nd 459, 463. The determination as to whether the

Project is consistent with the General Plan is an administrative one. The court in San Franciscans Upholding the Downtown Plan vs. City and County of San Francisco (2002) 102 Cal.App. 4th 656, 677, stated that in reviewing, "*administrative* decisions by local public agencies with respect to consistency with applicable general plans [the issue] 'is whether the local adopting agency has acted arbitrarily, capriciously, or without evidentiary basis.'" [Citations omitted.] (Italics added.) Administrative acts, which include findings of General Plan consistency, are outside the purview of the voters. Lincoln Property Co. No 41 v. Law (1975) 45 Cal. App. 3d 230, 233-234.

The finding of consistency between a project and a city's general plan "will be reversed only if, based on the evidence before City Council, a reasonable person could not have reached the same conclusion." No Oil, Inc. v. City of Los Angeles (1987) 196 Cal. App. 3d 223, 243, citing McMillan v. American General Financial Corporation (1976) 60 Cal. App. 3d 175, 186 and Greenbaum v. City of Los Angeles (1984) 153 Cal. App.3d 391, 407-408. "A city's findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion." A Local & Regional Monitor v. City of Los Angeles (1993) 16 Cal. App. 4th 630, 647, citing No Oil, Inc. v. City of Los Angeles.

In No Oil the primary issue before the court was the Los Angeles

City Council's interpretation of the term "industrial", within the Brentwood-Pacific Palisades District Plan, which much like the OPA Plan was a community general plan for the Brentwood-Pacific Palisades area. In addressing the challenge to the city council's interpretation, the court stated, "While the ultimate interpretation of a statute is an exercise of judicial power, when an administrative agency is charged with enforcing a particular statute, its interpretation will be accorded great respect by the courts and will be followed if not clearly erroneous." No Oil, supra, 196 Cal.App. 3d at 246.

During the trial court proceedings Petitioners themselves submitted into evidence the standard of review by attaching to its appendix this citation from Curtin's California Land Use and Planning Law:

Reviewing courts generally defer to cities' superior abilities to interpret and apply the general plan policies as authored...This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in an adjudicatory capacity. [Citations]...It is the city's responsibility to determine whether proposed land use development approvals are consistent with the general plan. AA, 372.

In Las Virgenes, the case with an issue most similar to the one presented here, petitioners challenged the county's approval of a zone change which allowed 15 residential units per acre. The basis of the challenge was that the county's general plan land use map designated the

property as "nonurban/rural", which calls for less than one dwelling unit per acre. However, the Malibu/Santa Monica Mountains Area Plan designated the property as "urban/residential", a designation which permitted 15 dwelling units per acre. After noting that the county's general plan consists of "two major components: (1) countywide chapters and elements which set countywide policy framework, and (2) area wide and community plans which deal with local issues of unincorporated communities", the court upheld the county's findings of consistency on the basis that they were not "arbitrary or capricious, and did not constitute an abuse of discretion." Las Virgenes, *supra*, 177 Cal.App. 3d at 310.

Petitioners ask this Court to adopt the independent judgment test so that the voters' action in voting down the GPA is not "annulled". They cite no case for the proposition that a different standard of review should be applied on this basis. The issue of whether the Project was consistent with the General Plan without the GPA was not before the voters. If the voters believed that voting down the GPA would stop the Project such a belief was put there by Petitioners who apparently misrepresented the GPA to them. The task of interpreting the City's General Plan without the GPA is an administrative one for which the voters' representatives, the City Council, are tasked.

At the end of the day Petitioners are making the same contention as the petitioners in Las Virgenes and No Oil, first quarrelling with the City

Council's interpretation of the contents of its General Plan and then based upon what they allege to be a faulty interpretation, asking this Court to find that the Project is inconsistent with the General Plan. Petitioners' burden was to show that the City Council's interpretation of its General Plan was clearly erroneous and findings of consistency were arbitrary and capricious and one which no reasonable person would make. It was a burden they did not carry.

5. THE OPA PLAN IS THE GENERAL PLAN LAND USE ELEMENT FOR ORANGE PARK ACRES

A. The OPA Plan Has Never Been Adopted Or Amended As Anything But A General Plan

There is no dispute that when adopted in 1973 by Resolution 3915 the OPA Plan was "adopted and approved as part of the land use element of the City's General Plan." AR, 11:4900. There is also no dispute that in the five instances in which the City Council has amended the OPA Plan, it has been by way of a general plan amendment. While there have been inaccurate references to the OPA Plan as a specific plan, that appears entirely due to past City staff's failure to follow through with its ministerial task of conforming the OPA Plan to reflect the formal actions of the City Council. The OPA Plan was adopted as part of the General Plan and it was called out on a number of occasions by the City Council as not being a specific plan. In addition to stating in 1973 that the OPA Plan "meets

The time in which to challenge the City Council's findings that the OPA Plan remained as the General Plan for Orange Park Acres at any time prior to approval of the Project has long passed. Per Government Code section 65009, the time to challenge the decision of the City Council to adopt or amend a general plan is 90 days. Although the 1989 General Plan did not specifically "incorporate" the OPA Plan, it is clear that the City Council, the community and developers continued to consider it as a General Plan.

C. **The Adoption Of The 2010 City-Wide General Plan Update Did Not Supersede Or Render Inoperative The OPA Plan As A General Plan Document**

This leaves Petitioners to argue that in adopting the 2010 General Plan, the OPA Plan was completely superseded or re-cast as some other undefined subordinate land use document because the City Council did not "incorporate" it into the 2010 General Plan. In making this argument Petitioners contend that the "unambiguous language of the 2010 General Plan" makes "examination of legislative intent...not appropriate here" (Petitioners' Brief, pg. 50), but then on the very next page argue about what "the City Council clearly intended..." in adopting the 2010 General Plan. Petitioners' Brief, pg. 51. Petitioners ask this Court to turn a blind eye to the OPA Plan's legislative history for the sole reason that it lends them no support.

While stating the 2010 General Plan is unambiguous in regards to the OPA Plan, Petitioners themselves have trouble deciding its status. They claim that adoption of the 2010 General Plan resulted in the OPA Plan being "inoperative", "abated", "suspended", "repealed" or "superseded", (Petitioners' Brief, pg. 41), but then alternatively suggest that the result was to re-cast it as some "subordinate 'specific' or 'neighborhood plan.'" Petitioners' Brief, pg. 51. In their Cross-Petition they state unequivocally that it is a specific plan.

Petitioners claim that the "Fourth District erred by ignoring the actual contemporaneous statements and findings of the City Council and instead deferring to the City's post-hoc litigation position." Petitioners' Brief, pg. 50. Petitioners cite Peralta Community College District v. Fair Employment and Housing Commission (1990) 52 Cal. 3d 40, 52, for the premise that the "declaration of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law." Petitioners' Brief, pg. 54.

These claims have no merit. First, Petitioners' contention that the City Council's position is a "post-hoc litigation position" is just another far-fetched misrepresentation in a long string of such misrepresentations. The City Council's pre-litigation findings were that, "the OPA Plan was, pursuant to City Council Resolution 3915, adopted in 1973 as 'part of the land use element to be included in a General Plan for the City of Orange'

and no action by the City Council has been taken that would supersede the action taken in 1973." AR, 4:1948. In affirming that the Project was consistent with the *existing* land use designation in the OPA Plan, the City Council rejected Milan's request to change it. The City Council adopted 56 pages of Project consistency findings in the Final EIR, none of which relied upon the GPA. The City Council's pre-litigation findings are completely consistent with the position it is taking in this litigation.

If anyone has created a post-hoc litigation position, it is Petitioners, who in 2009 were extolling how they "greatly value the Orange Park Acres Specific [*sic*] Plan...[because it]..."enunciates the values and features that make Orange Park Acres a wonderful place to live" and asked the City Council "to update the Orange Park Acres...so that it can continue to usefully guide the development of this community." Thus, while the Petitioners' pre-litigation position was that the OPA Plan had great value, their post-litigation position, at least one of them, is that it has no value.

Second, the findings of the City Council with respect to the status of the OPA Plan after adoption of the 2010 General Plan are not the "declarations of a later Legislature." The membership of the City Council that adopted the 2010 General Plan was *exactly* the same membership of the City Council that approved the Project. Thus, its declaration of intent is *not* a declaration of a later legislative body, but rather of the current one.

The unambiguous language of the 2010 General Plan completely

contradicts Petitioners' contention, unless one is to countenance outright deceit. The 2010 General Plan informed the entire community, "Within portions of the City that do not lie within one of the identified focus areas, no significant land use changes are anticipated." AR, 10:4079. The eight focus areas are illustrated at AR, 10: 4078-4094. None of the focus areas are even with one mile of Orange Park Acres. Thus, the General Plan on its face proposed no significant land use changes to Orange Park Acres or for a majority of the City for that matter, yet despite this Petitioners contend that "2010 General Plan indisputably replaced any conflicting 1973 designation of the Property for residential use" (Petitioners' Brief, pg. 41) and that adoption of the 2010 General Plan completely superseded the OPA Plan and/or re-cast the OPA Plan as "a subordinate and outdated 'specific plan' or 'neighborhood plan.'" Petitioners' Brief, pg. 46. Thus, despite the City informing the community it proposed no "significant land use changes" for Orange Park Acres, Petitioners contend that it made the most significant land use change in Orange Park Acres in 40 years!

If this was what "the City Council clearly intended" (Petitioners' Brief, pg. 51) this intent was apparently lost on Petitioners, who during the General Plan process asked the City to update the OPA Plan "so that it can continue to usefully guide the development of this community." AR, 14:6253. Can it be that the OPA Plan, against which all development in Orange Park Acres since 1973 has been measured, can be extinguished as a

general plan document without any notice to the public or protest from the Petitioners who said they "greatly value" its existence? The answer, as provided by Petitioners, is no. "We cannot at once accept the function of a general plan as a 'constitution' for future development, and the proposition that it can be amended without notice to the electorate..." Petitioners' Brief, pg. 44, quoting Leshar Communications v. City of Walnut Creek.

6. **THE OPA PLAN IS THE MORE SPECIFIC GENERAL PLAN DOCUMENT FOR ORANGE PARK ACRES AND IT DESIGNATES THE PROPERTY AS OTHER OPEN SPACE/LOW DENSITY RESIDENTIAL**

If there was any doubt as to the relationship between the City-wide General Plan and the OPA Plan, it was removed by the City Council in 1989 when it adopted Resolution No. 7348, approving an amendment to the OPA Plan stating, "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 OPA Plan has the authority of a General Plan, rather than a Specific Plan...*the Orange Park Acres Plan, which is part of the General Plan, provides a more specific direction for the Plan area.*" (Italics added.) AR, 9:3903. In reaching this determination the City Council did little more than describe the very nature of a community general plan which "is to identify more specific land uses,

determine actual boundaries between land use categories, and establish more specific residential density ranges within the general parameters established by the countywide goals and polices." Las Virgenes, *supra*, 177 Cal.App. 3d at 310.

Petitioners present City of Poway v. City of San Diego (1991) 229 Cal.App. 3d 847 for the remarkable premise that the City Council's action to place the Open Space/Residential designation on the Project property which met all statutory requirements, can be trumped by City staff omissions which met none. The holding in Poway was that under the particular facts of that case, the "duties imposed by Government Code section 65351, requiring public agencies to provide opportunities for the *public to become involved in amendments to the general plan*, were thus not met." (Italics added.) Id., at 862. The court stated that the "most obvious defect in the effectiveness of the resolution is that it was *never* made available to the general public as required by Government Code section 65357, subdivision (b); in fact, the existence of that resolution was forgotten by the public officials charged with creating and implementing it, until *after* the original hearing on this petition for writ of mandate." (Italics added.) Id., at 862.

Those are not the facts here, not even close. Government Code section 65351 provides: "*During* the preparation or amendment of the general plan, the planning agency shall provide opportunities for the

involvement of citizens...public agencies...and other community groups..." (Italics added.) The opportunities for involvement *during* preparation of the OPA Plan and the designation of the Project property were perhaps unparalleled in the City's history. As noted, the Committee which prepared the OPA Plan represented the City of Orange, County of Orange, residents of Orange Park Acres, major land owners and developers of Orange Park Acres. The OPA Plan was presented jointly in a public hearing to the City's Planning Commission and the County of Orange Planning Commission whose recommendations were made in the public hearing. The Open Space/Residential designation was discussed during these public hearing. The recommendations of the City Planning Commission and County Planning Commission were, respectively, considered by the City Council and the County Board of Supervisors in separate public hearings. Both adopted those recommendations in the public hearings by resolution. The OPA Plan and the designation of Open Space/Residential placed on the Property was vetted through a very public process, not slipped in along with 32 other specific plan amendments as was the case in Poway.

In addition, Government Code section 65357 was not adopted until 1984, 11 years after the OPA Plan was adopted and in any event it does not provide that failure to comply with its provisions affects the validity of a duly adopted General Plan. Even if it did apply, there are no facts that

evidence that documents adopting or amending the general plan were not made available to the general public within Section 65357's time frame. The over the counter copy of the OPA Plan and the one on the City's website included a copy of City Council Resolution 3915, adopting the OPA Plan as part of the land use element of the General Plan and the recommendations of the Planning Commission. AR, 4:1429. The Planning Commission's resolution has always been available in the City Clerk's office.

Also unlike Poway the actions of the City Council in 1973 were not forgotten until after the Project's hearing. The dual designation was recognized in a 1985 City staff report, in the City Attorney's written analysis issued in December of 2009, and by the City Council in 2011. To the extent there was ambiguity, it was cleared up by the City Attorney in December of 2009 in a letter to both the Petitioners and Milan, one and a half years before the Project was considered by the City Council. AR, 7:2646-2650. A map evidencing the dual designation was submitted to the City Planning Commission as part of City staff's May 3, 2010, staff report, a year before the City Council considered the Project. AR, 1:6. The April 2010 Master Responses for the Final EIR for the Project went into a detailed discussion concerning the effect of the 1973 City Council action, concluding that "Resolution No. 7348 adopting the OPA Plan in 1973...also [allows] low density residential uses on minimum one-acre lots." AR,

7:2619-2620. There was a full public vetting of the OPA Plan's status and the land use designation on the Project property both in 1973 and for one and half years from late 2009 through the summer of 2011.

The one and only time a land use designation on the Project property under the OPA Plan was adopted by the City Council was at the end of a process with unprecedented public participation. For the general plan to be effective Government Code section 65301 requires that it "be adopted by the legislative body...in any format deemed appropriate or convenient by the legislative body..." It does not require that it also be adopted by City staff.

7. **THE LAW MANDATES THAT PORTIONS OF A CITY'S GENERAL PLAN BE RECONCILED**

It is acknowledged that prior City staffs are to blame for the initial confusion because it inexcusably failed to perform its ministerial duty to make the changes necessary to reflect the City Council's action, failing to even make a simple editing correction that was specifically directed by the City Council in 1977, i.e., deletion of the word "specific". In a perfect world there would be no ambiguity in the City's General Plan, but as noted in several cases cited by the parties, this is not the first time a general plan has contained some ambiguity. The teaching from those cases is that where ambiguity exists, the City Council is charged with clearing it up and in doing so, should make an effort to reconcile its provisions. "As with the

interpretation of statutes in general, portions of a general plan should be reconciled if reasonably possible." No Oil, supra, 196 Cal.App. 3d at 244. "[W]here possible, significance should be given to every word, phrase, sentence and part of an act in pursuant of legislative purpose." Harrowman, supra, 235 Cal.App. 3d at 395. While Petitioners belittle a similar effort by the City staff and go so far as to insinuate some sort of City-Milan conspiracy in examining the legislative history of the OPA Plan, the City staff and City Council undertook the same type of analysis that was undertaken in No Oil and Las Virgenes, and to some extent in City of Poway and Harrowman, which Petitioners rely on extensively.

To reconcile its General Plan, the City Council undertook the same type of review as did the city council in reconciling the Brentwood-Pacific Palisades District Plan with the city-wide general plan in No Oil, where they looked at the city's zoning ordinance, the Brentwood-Pacific Palisades District Plan, and "two provisions contained in the citywide plan." No Oil, supra, 196 Cal.App. 3d at 247. The "legislative history of the district plan" was considered. Id., at 247.

The City Council based its interpretation on pronouncements by past City Councils, the legislative body charged with interpreting the General Plan and its own understanding of its actions in approving the 2010 General Plan. Petitioners chiefly rely on statements in staff reports, consultant documents and developer applications. The No Oil court gave little weight

to this evidence because "they are not interpretations of a statute by an administrative agency charged with its enforcement." No Oil, *supra*, 196 Cal.App. 3d at 246. "[T]he body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. San Franciscans Upholding the Downtown Plan, *supra*, 102 Cal.App. 4th at 677-678.

The City Council's interpretation gives meaning to every word, phrase and sentence of past City Councils as set forth in resolutions and reasonably reconciles the City's General Plan. Petitioners suggest that the General Plan should be reconciled by throwing the entire OPA Plan out.

8. THE PROJECT IS CONSISTENT WITH THE EXISTING GENERAL PLAN

Petitioners contend that the determination of General Plan consistency begins and ends with the City-wide General Plan land use map. This contention directly contradicts the City Council's own formally stated position both past and present, on the relationship between the OPA Plan and the City-wide General Plan and the very nature of a community general plan. It also contradicts the holding in Las Virgenes. As is the case here, that case involved a challenge to "the approval of the Zone Change Ordinance...on the basis of alleged inconsistency with the County's General Plan Land Use Policy Map. They [petitioners] contend that the 35-

acre parcel...was designated on the General Plan Land Use Policy Map as non-urban...[which]...calls for less than one dwelling unit per acre. The present project as approved shows development...at 15 units per acre." Las Virgenes supra, 177 Cal. App. 3d 300, 310. The court found that "the role of the local plan is to identify more specific land uses...and establish more specific residential density ranges within the general parameters established by the countywide goals and policies...Because it is necessary to judge proposals in relation to stated policies of the General Plan in addition to the policy map itself, a proposal may be consistent even if not literally supported by the map. *The mere examination of land use and other policy maps is insufficient to determine consistency.*" (Italics added.) Id., at 310.

Despite this, Petitioners urge this Court to begin and end its inquiry by reference to the City-wide land use policy map and to ignore the fact that the OPA Plan "provides a more specific direction for the Plan area" and the 56 pages findings of consistency in the Final EIR. The GPA did two things—it made textual changes to the OPA Plan and affirmed the General Plan designation of Other Open Space/Low Density (1 acre). The textual amendments were in large part to undertake at least part of the work that City staff never completed in 1973 and to make the General Plan more consistent with the 1973 City Council action.

Resolution No. 10566 approving the GPA, defines its scope, stating that it "includes an amendment to the OPA Plan to: (i) clarify the original

and unchanged terms of the existing OPA Plan which permitted both golf course and one-acre residential uses on the subject property; (ii) add text that provides for vinyl fencing in addition to wood fencing; (iii) provides text revisions to reflect the Ridgeline Equestrian Estates project dwelling unit densities in the OPA Plan and eliminate golf course references in the OPA Plan; and (iv) make the General Plan land use designations for the subject property consistent throughout the General Plan." AR, 4:1948. Pointedly, it does not change the OPA Plan's land use designation.

Even if the Project is consistent with the General Plan without the GPA, Petitioners contend that the "City Council never made any...finding" (Petitioner's Brief, pg. 21) that the Project was consistent without the GPA. Initially, the Project's Zone Change is a legislative act and does not require findings and thus, the failure to do so cannot form the basis for invalidating the Zone Change. Arnel Development Co. v. City of Costa Mesa (1980) 28 Cal. 3d 511, 514, 522. Although no findings are required a zone change must still be consistent with the General Plan. Arnel, 28 Cal. 3d at 524; Government Code section 65860.

However, it is Petitioners' burden to show that the Zone Change is not consistent with the OPA Plan designation of Open Space/Residential and it must be "based on evidence from which no reasonable person could have reached the same conclusion." A Local & Regional Monitor, supra, 16 Cal. App. 4th at 648. If this Court upholds the City Council's

determination that the OPA Plan land use designation is Open Space/ Residential, it is beyond dispute that the Project is consistent with this designation.

As to the Development Agreement, while the City Council did find that the Development Agreement was "consistent with the objective, policies, general land uses, and programs...in the General Plan, as amended by General Plan Amendment 2007-001..." (AR, 4:1834), the City Council also found that the Development Agreement will "promote and preserve the goals of the Orange Park Acres Plan which is part of the land use element of the General Plan", without reference to the GPA. AR 4:1835. In addition, the Development Agreement itself, which is attached to Ordinance 11-11 and incorporated by reference (AR, 4:1833) finds that "this Agreement and the Land Use Entitlements for the Project implement the goals and polices of the City's General Plan...adopting this Agreement is consistent with the City's General Plan..." AR 4:1840.

The City Council concedes that the Zone Change and the Development Agreement are not entirely consistent with the City-wide land use policy map, but as noted in Las Virgenes that does not end the inquiry. The General Plan is about much more than just the land use policy map. The City Council adopted 56 pages of General Plan consistency findings in the Final EIR (AR, 7:2665-2721). In addition to being consistent with the land use designation in the OPA Plan, the FEIR identified 68 goals and

over 200 policies within the General Plan that the Project was either consistent with or did not apply to the Project. Petitioners did not contest the Final EIR. Among other things, the Final EIR concluded the Project was consistent with the General Plan's land use element, circulation and mobility element, growth management element, natural resources element, public safety element, noise element, cultural resources and historic preservation element, infrastructure element, economic development element, and housing element.

The Final EIR states, "the site of the Proposed Project will retain its designation in the Orange Park Acres Plan...as Other Open Space and Low Density (1 acre) and that designation will be reflected on both the City's General Plan Land Use Map and the OPA Plan land use map." AR, 8:3362. "Subsequent to the adoption of the General Plan Update, the City undertook a thorough evaluation of the Proposed Project's consistency with the General Plan Update...That evaluation...establishes that the General Plan Update does not change the designated uses of the project site and does not establish policies which would conflict with the Proposed Project. Therefore, the conclusions of the Draft EIR that the Proposed Project is consistent with the City's General Plan goals and policies is not affected by this change." AR, 8:3362-63. The City Council's "Findings of Fact and Statement of Overriding Considerations" state, "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." AR, 4:1894.

Under Petitioners' own interpretation of the law, the mere fact that the City Council adopted for second reading the Zone Change and the Development Agreement, on its face establishes that the City Council did not believe the Project needed the GPA. As Petitioners note, they presented the Referendum to the City Clerk on July 12, 2011, prior to the time the City Council adopted the Zone Change and Development Agreement. They state that by law that this submission stopped the GPA from taking effect and made this argument at the City Council hearing. AR, 4:1819. Thus, at the time the City Council approved the Zone Change and the Development Agreement, the GPA had been suspended. However, the City Council still moved forward in adopting the Zone Change and Development Agreement. If Petitioners are so certain the Project required the GPA which was approved June 10, 2011 (AR, 4:1950), why did they also thereafter seek referendums on the Zone Change and Development Agreement?

"An action, program, or project is consistent with the general plan if, considering all of its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment...State law does not require perfect conformity between a proposed project and the applicable general plan, rather to be consistent, the [project] must be compatible with

the objectives, policies, general land uses, and programs specified in the applicable plan." Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal. App. 4th 807, 817. See also, Endangered Habitats League, Inc., v. County of Orange (2005) 131 Cal.App. 4th 777, 789, consistency findings will only be set aside if they are arbitrary and capricious.

The reality is that no project is consistent with or furthers all objectives, policies, land use and programs in a General Plan because they are sometimes at odds. "Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purpose." San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal. App. 4th 656, 678. In this case, while the Project is not entirely consistent with the City-wide land use policy map, it is consistent with the OPA Plan's land use designation and with numerous other goals, policies, and programs of the City's General Plan as laid out in the 56 pages of the Final EIR.

Even if the issue of whether the Project is consistent with the General Plan is "reasonably subject to debate; [the] City Council's specific finding that the project is consistent with the City's general plan contains an implicit finding that the project is not prohibited by any element of the general plan...and that based on the evidence before the City Council, this

finding is reasonable. [In such cases the] court will therefore defer to City Council's interpretation of its own document." No Oil, supra, 196 Cal. App. 3d at 248-249.

9 **CONCLUSION**

The Orange Park Acres community, developers and the City Council have relied upon the OPA Plan as the guiding planning document for Orange Park Acres for the past forty years. Developers within Orange Park Acres have had their feet held to the fire of the OPA Plan during this entire period. Those holding developers' feet closest to the fire of the OPA Plan have often been the Petitioners themselves. For any development in Orange Park Acres, there are several givens—it will be controversial, it will involve rancor and it will be minutely scrutinized against the contents of the OPA Plan. The City Council, and it believes the vast majority of the Orange Park Acres community, continues to value the OPA Plan even if Petitioners do not. For the foregoing reasons, it is requested that the Appellate Court's decision be affirmed.

DATED: January 31, 2014

WOODRUFF, SPRADLIN & SMART,

By: 

DAVID A. DEBERRY

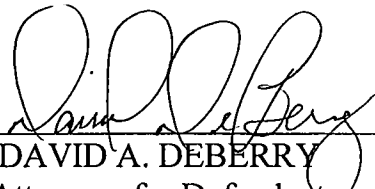
Attorneys for Real Parties In Interest
CITY CLERK OF THE CITY OF
ORANGE, CITY COUNCIL OF THE
CITY OF ORANGE and CITY OF
ORANGE

10. **CERTIFICATE OF WORD COUNT**

The text of the brief, including footnotes, consists of 12,631 words as counted by the Microsoft Word 2007 word processing program used to generate the brief.

DATED: January 31, 2014

WOODRUFF, SPRADLIN & SMART,

By: 

DAVID A. DEBERRY
Attorneys for Defendants and
Respondents CITY CLERK OF THE
CITY OF ORANGE, CITY COUNCIL
OF THE CITY OF ORANGE and CITY
OF ORANGE



RESOLUTION NO. 10566

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE APPROVING GENERAL PLAN AMENDMENT NO. 2007-0001 WHICH INCLUDES TEXT AMENDMENTS TO THE ORANGE PARK ACRES PLAN AND AFFIRMS THE SITE'S EXISTING LAND USE DESIGNATION OF "OTHER OPEN SPACE AND LOW DENSITY (1 ACRE)" WHICH SHALL BE REFLECTED ON THE ORANGE PARK ACRES PLAN AND CITY GENERAL PLAN LAND USE MAP.

GENERAL PLAN AMENDMENT NO. 2007-0001

WHEREAS, the City Council has authority per Orange Municipal Code ("OMC") Section 17.10.010 to take action on General Plan Amendment No. 2007-0001, which includes text amendments to the Orange Park Acres Plan ("OPA Plan") and affirms the site's existing land use Designation of "Other Open Space and Low Density (1acre)"; and

WHEREAS, the applicant, John Martin, on behalf of and with the approval of the property owner, Milan Rei IV, LLC, submitted a project application in accordance with the OMC known as the Ridgeline Equestrian Estates Project, which consists of General Plan Amendment No. 2007-001, Zone Change No. 1243-07, Tentative Tract Map No. 0019-07 (also known as Tentative Tract Map No. 17167), Development Agreement No. 5600, Major Site Plan No. 0496-07, and Design Review Committee No. 4207-07, (collectively, the "Project"); and

WHEREAS, General Plan Amendment No. 2007-001 was processed in the time and manner prescribed by state law and the OMC; and

WHEREAS, the OPA Plan was, pursuant to City Council Resolution 3915, adopted in 1973 as "part of the required land use element to be included in a General Plan for the City of Orange" and no action by the City Council has been taken that would supersede the action taken in 1973; and

WHEREAS, General Plan Amendment No. 2007-0001 includes an amendment to the OPA Plan to: (i) clarify the original and unchanged terms of the existing OPA Plan which permitted both golf course and one-acre residential uses on the subject property; (ii) add text that provides for vinyl fencing in addition to wood fencing; (iii) provide text revisions to reflect the Ridgeline Equestrian Estates project dwelling unit densities in the OPA Plan and eliminate golf course references in the OPA Plan; and (iv) make the General Plan land use designations for the subject property consistent throughout the General Plan; and

WHEREAS, The OPA Plan designates the golf course portion of the Ridgeline project property as "Other Open Space and Low Density (1 acre)" pursuant to City Council adoption of Resolution 3915 which states that "the recommendation of the Planning Commission of the City of Orange be upheld and that the herein described General Plan for the Orange Park Acres area...as set forth in that certain plan prepared by J.L. Webb Planning Consultants, dated September 1973 and as amended by the Planning Commission on November 19, 1973, be adopted and approved as a part of the land use element of the City of Orange..."; and

WHEREAS, In recommending approval of the OPA Plan via PC Resolution 85-73 on November 19, 1973, the Planning Commission adopted the plan as presented in the J.L. Webb Planning document, but with some modifications, one of which was to "designate the Golf Course as Other Open Space and Low Density (1 acre)."; and

WHEREAS, Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City analyzed the proposal and determined that the project will have a potentially significant adverse effect on the environment. A Draft Environmental Impact Report 1788-07 (the "DEIR") was prepared and circulated for public review for a period of at least 45 days, from September 24, 2009, through November 7, 2009, but was extended to November 23, 2009, due to a clerical error that initially inadvertently omitted Section 5.4, Cultural Resources, but was corrected by insertion of the section; and

WHEREAS, the Final Environmental Impact Report consists of the DEIR, Responses to Comments, Errata to the DEIR, a Mitigation Monitoring and Compliance Program, technical appendices, and two letter updates; and

WHEREAS, the FEIR is complete and adequate for the consideration of the General Plan Amendment; and

WHEREAS, the City Council adopted Resolution 10565 on June 14, 2011, certifying the FEIR and adopting a Statement of Overriding Considerations and a Mitigation Monitoring Compliance Program for the Project; and

WHEREAS, the Planning Commission conducted a public hearing on the Project on May 3, 2010, continued the item to May 17, 2010 and again to June 7, 2010, at which time it adopted Planning Commission Resolution No. PC 09-10, which contains a recommendation for approval of General Plan Amendment 1788-07; and

WHEREAS, the City Council conducted a duly advertised public hearing on May 10, 2011, at which time extensive public testimony was taken. The item was continued to May 24, 2011, for further discussion and deliberation and at such time the City Council directed staff to prepare the necessary resolutions, including this Resolution and findings applicable thereto, and ordinances consistent with its deliberations.

NOW, THEREFORE, BE IT RESOLVED that the City Council approves General Plan Amendment No. 1788-07 as shown in Attachment "A", which is incorporated herein by this reference.

SECTION 1 – FINDINGS

General Plan Amendment:

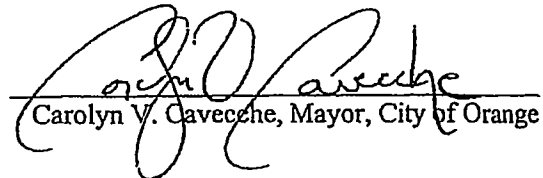
Required Findings:

There are no required findings for a General Plan Amendment since it is considered a legislative action however, the below discusses the project's consistency with the General Plan, which includes the OPA Plan as part of the General Plan Land Use Element.

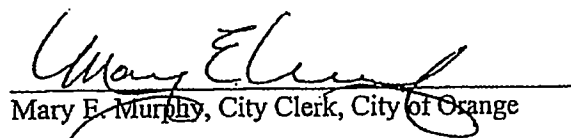
1. *The project must be consistent with the goals and policies stated within the City's General Plan.*

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 OPA Plan which is part of the General Plan Land Use Element pursuant to City Council adoption of Resolution 3915 in 1973 that included the OPA Plan as "part of the required land use element to be included in a General Plan for the City of Orange." Evidence of the General Plan consistency is provided within the "Consistency with Updated General Plan" analysis located in Draft Environmental Impact Report 1788-07, Response to Comments, Master Responses, Section 2.0. Evidence of consistency with the OPA Plan portion of the General Plan Land Use Element is located in Draft Environmental Impact Report 1788-07 in Table 5.8-9 of the Land Use and Planning section and in clarification provided in the response to comments section. The analysis is conducted on a Goal by Goal and Policy by Policy basis and incorporated by reference and as fully set forth in Table 5.8-9 of the Land Use and Planning Section and Response to Comments, Master Responses, Section 2.0 of Environmental Impact Report 1788-07. The existing Other Open Space and Low Density (1 acre) General Plan Designation is consistent with the project and the General Plan, as texturally amended because the open space and residential designation is consistent with residential one acre lots.

ADOPTED this 14th day of June, 2011.

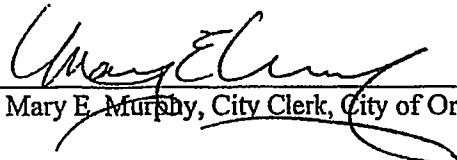

Carolyn V. Cavecche, Mayor, City of Orange

ATTEST:

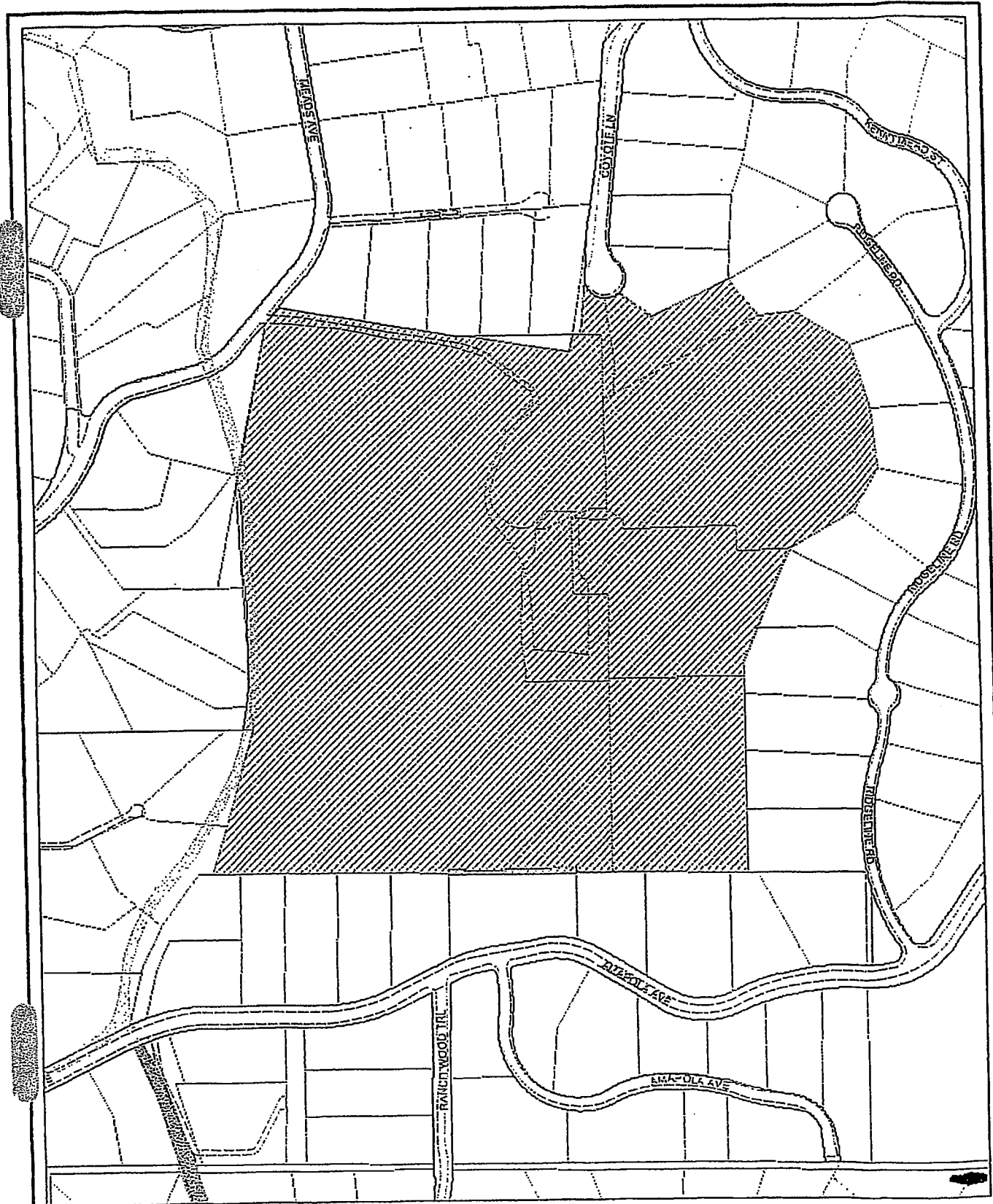

Mary E. Murphy, City Clerk, City of Orange

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting therefore held on the 14th day of June, 2011, by the following vote:

AYES:	COUNCIL MEMBERS:	Whitaker, Cavecche, Dumitru, Bilodeau
NOES:	COUNCIL MEMBERS:	Smith
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None



Mary E. Murphy, City Clerk, City of Orange



Legend

- | | | | | |
|---|--|---|--|--------------------|
| Extra Low Density Residential 4-2 units | Neighborhood Mixed Use Max. 15 units 1.5 FAR | Urban Mixed Use 20-60 units 1.5-3.0 FAR | Light Industrial Max. 1.0 FAR 12 Story or 100ft | Open Space Reserve |
| Other Open Space & Low Density (1 ac) | Neighborhood Mixed Use Max. 24 units 1.5 FAR | Recreational Commercial Max. 0.25 FAR | Industrial Max. 0.75 FAR | Resource Area |
| Low Density Residential 2-4 units | De Towne Mixed Use 6-15 units Max. 0.6 FAR | Urban Office Professional 1.5-2.0 FAR | Public Facilities Max. 0.5 FAR and Institutions Max. 2.0 FAR | Open Space |
| Low Medium Residential 6-15 units | De Towne Mixed Use 6-15 units 0.5-1.0 FAR | General Commercial Max. 1.0 FAR | Open Space Park | |
| Medium Density Residential 15-24 units | De Towne Mixed Use 6-24 units 1.0-1.5 FAR | Neighborhood Office Professional Max. 0.5 FAR | | |

Attachment "A"

OPA Plan Revised Pages for Ridgeline Equestrian Estates

Page 100 Exhibit 1

OPA Plan Text: Promote the use of wood-rail fencing, either natural or painted white to give a sense of openness- while restricting the use of block walls, chain link or other opaque fencing.

Revised Text: Promote the use of wood/vinyl rail fencing, either natural or painted white to give a sense of openness- while restricting the use of block walls, chain link or other opaque fencing.

Page 112 Exhibit 2

OPA Plan Text: This category covers 708 gross acres of the Orange Park Acres area and provides for a minimum one-acre lot size for a maximum density of one dwelling unit per acre.

Revised Text: This category covers 829.8 gross acres of the Orange Park Acres area and provides for a minimum one-acre lot size for a maximum density of one dwelling unit per acre.

Page 113 Exhibit 3

Table #20 Orange Park Acres Proposed Plan Land Use Acreage

Page 114: Exhibit 4

Table #21 Orange Park Acres Proposed Plan Dwelling Unit Densities

Page 115: Exhibit 5

OPA Plan Text: This category of residential land use contains 428 gross acres within Orange Park Acres and provides for single-family attached and detached clusters referred to as "rural clusters" within a greenbelt or open space context.

Revised Text: This category of residential land use contains 344.7 gross acres within Orange Park Acres and provides for single-family attached and detached clusters referred to as "rural clusters" within a greenbelt or open space context.

Page 118: Exhibit 6

OPA Plan Text: This 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 sustainable amenity for recreation and open space within the area.

Revised Text: These two sentences have been removed from this page.

OPA Plan Text: It is recommended that the property immediately to the east of the golf course, owned by the Catholic Church would use the "rural cluster" in order to preserve the vast majority of its natural hillsides and canyon areas.

Revised Text: It is recommended that the property owned by the Catholic Church would use the "rural cluster" in order to preserve the vast majority of its natural hillsides and canyon areas.

Page 119: Exhibit 7

OPA Plan Text: In addition to the golf course, there is a four acre Tennis Club and the seven acre Villa Park Country Club to be sustained within the proposed plan.

Revised Text: There is a four acre Tennis Club and the seven acre Villa Park Country Club to be sustained within the proposed plan.

Ridgeline Equestrian Estates
August 25, 2009

Page 121: Exhibit 8

Table #22 Orange Park Acres Proposed Land Use - Statistics

Page 122: Exhibit 9

OPA Plan Map: The Land Use and Circulation Plan depicts golf course and local park within the Ridgeline site.

Revised Map: The Land Use and Circulation Plan now depicts low-Density 1ac Minimum lots within the Ridgeline Site.

Page 158: Exhibit 10

Revised Text: Asterisk placed next to golf course under 3. a. to refer to the footnote that states *Golf course land use subsequently removed per City Council Resolution 10566 on 6-14-11. An air quality analysis was conducted and is contained in EIR 1788-07, certified by the City Council per Resolution 10565 on 6-14-11.

Page 159: Exhibit 11

Revised Text: Asterisk placed next to golf course under Impact on Local Air Quality to refer to the footnote that states *Golf course land use subsequently removed per City Council Resolution 10566 on 6-14-11. An air quality analysis was conducted and is contained in EIR 1788-07, certified by the City Council per Resolution 10565 on 6-14-11.

PROOF OF SERVICE


STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action; I am employed by WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard, Suite 1200, Costa Mesa, CA 92626-7670.

On January 31, 2014, I served the foregoing document(s) described as **CITY COUNCIL OF THE CITY OF ORANGE'S ANSWER BRIEF ON THE MERITS/JOINDER IN THE ANSWER BRIEF ON THE MERITS FILED BY MILAN REI IV, LLC** by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;

- (BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached service list, for deposit in the United States Postal Service. I am readily familiar with the practice of WOODRUFF, SPRADLIN & SMART for collection and processing correspondence for mailing with the United States Postal Service, and said envelope(s) will be deposited with the United States Postal Service on said date in the ordinary course of business.
- (BY ELECTRONIC SERVICE)** by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.
- (BY OVERNIGHT DELIVERY)** I placed said documents in envelope(s) for collection following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached service list, for collection and delivery to a courier authorized by NORCO DELIVERY SERVICES to receive said documents, with delivery fees provided for. I am readily familiar with the practices of WOODRUFF, SPRADLIN & SMART for collection and processing of documents for overnight delivery, and said envelope(s) will be deposited for receipt by NORCO DELIVERY SERVICES on said date in the ordinary course of business.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 31, 2014 at Costa Mesa, California.


Connie Jo Smith
Connie Jo Smith

SERVICE LIST
Orange Citizens for Parks and Recreation vs.
Orange County Superior Court
Milan REI LLC et al.

California Supreme Court Civil No. S212800

After Decision by
California Court of Appeal
Fourth Appellate District, Division Three
Case No. G047219 and G047013 (Consolidated)
Orange County Superior Court No. 30-2011-00494437

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<p>Steve Baric Baric & Tran 2601 Main Street, Suite 560 Irvine, CA 92614 Tel: 949.251.1870 Fax: 949.251.1886 Email: sbaric@barictran.com Attorneys for <i>Real Party in Interest Milan Rei IV, LLC</i></p>	<p>Colin L. Pearce Duane Morris LLP One Market Plaza, Spear Tower, No. 2200 San Francisco, CA 94105-1127 Tel: 415.957.3015 Fax: 415.704.3098 Email: clpearce@duanemorris.com Attorneys for <i>Real Party in Interest Milan Rei IV, LLC</i></p>

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<p>Leon Page Senior Deputy County Counsel Rebecca S. Leeds Deputy County Counsel Office of Orange County Counsel 333 W. Santa Ana Blvd., Suite 407 Santa Ana, CA 92702 Tel: 714.834.6298 Fax: 714.834.2359 Email: leon.page@coco.ocgov.com Attorneys for <i>Real Party in Interest Neal</i> <i>Kelley, Registrar of Voters for the</i> <i>County of Orange</i></p>	<p>Clerk of the Superior Court Orange County Superior Court Central Justice Center 700 Civic Center Drive West Santa Ana, CA 92701 Respondent <i>The Superior Court of</i> <i>Orange County</i></p>
<p>Clerk of the Court of Appeal For the State of California Fourth District, Division Three 601 West Santa Ana Boulevard Santa Ana, CA 92701</p>	<p><i>Courtesy Copy</i></p>