Case No. S212800

In the Supreme Court
of the
State of California

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

vs.

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.

MILAN REI IV LLC'S ANSWER BRIEF ON THE MERITS

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

From Judgment of the County of Orange, Honorable Robert J. Moss
(Superior Court Case No. 30-2011-00494437)

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I. INTRODUCTION

Local legislative bodies are most qualified to interpret, construe, and give effect to their own legislative acts. A court can only intervene if there is no basis for the legislative act. This Court should re-affirm this well-established law.

This Court has framed the issue as follows:

> Is the proposed development project of low density housing at issue in this case consistent with the city's general plan?

The answer is yes. The City Council of the City of Orange[1] has answered this question "yes" and this Court should uphold that determination because it is supported by both the law and the record.

The issue presented has three fundamental parts: (1) who has the authority to determine consistency between the proposed project and the general plan, (2) what is the general plan that must be evaluated, and (3) is the Project consistent with that general plan? The applicable land use law and the City's record of actions and determinations establish:

1. The City Council is the proper legal entity to construe its laws to determine if the proposed Project is consistent with the City's General Plan.

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[1] Hereinafter the following abbreviations will be used: the City of Orange is the "City"; the City Council for the City is the "City Council", the City Attorney for the City is the "City Attorney", and the City's Planning Commission is the "Planning Commission".

2. The 1973 Orange Park Acres Plan ("OPA Plan") land use designation for the property of "other open space and low density (1 acre)" was validly enacted as part of the City's General Plan and was never subsequently repealed or modified. (See Exhibit 1.) Thus, the OPA Plan land use designation governs development on the Property.

3. The City Council acted reasonably in interpreting its own General Plan to determine that the Project is consistent with the open space and residential designation. Thus, the Court must defer to the City Council's finding of consistency.

The Petitioners failed to meet their burden to refute any of these points. Petitioners cannot establish the City's conduct is not supported by the record. To the contrary, Petitioners' position is premised on the presumption that a clerical error trumps official legislative acts. However, when there is a mere clerical error in failing to update legal documents to reflect the law as adopted, the local legislative body does not need to resubmit that issue for a vote. Rather, the staff should correct the administrative error.

The Court of Appeal correctly held that the City Council acted reasonably in finding Milan's proposed development consistent with the General Plan designation for the Property. The Court of Appeal also correctly determined that the Petitioners' arguments were not supported by

either the law or the facts. The same is true in the Petitioners' Opening Brief on the Merits ("OB").[2]

This Court should affirm the Opinion and remand the case to the trial court to issue the writ of mandate directing the City to permit Milan to develop the Property in accordance with the actual and original General Plan designation for the Property, "Other Open Space and Low Density (1 acre)," the Development Agreement, and all other applicable requirements of the City.

II. STATEMENT OF FACTS

A. The City Adopted the OPA Plan as Part of the General Plan in 1973

Orange Park Acres is a semi-rural region in the City and County of Orange, which covers both incorporated and unincorporated land. (AR2:492.) In 1973, the City and County of Orange put together a committee of various individuals and interest groups to collect information and address controversies about the development of the area. (AR11:4915.) After detailed discussions and information gathering, the committee prepared a document entitled "Orange Park Acres Specific Plan" (the "proposed plan"). (AR9:3674-3675; AR11:4901.) As noted by the Court

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[2] Milan agrees with, joins in, and adopts the City's Answer Brief, which discusses the factual liberties taken by Petitioners with the record and all arguments set forth therein. In turn, Milan focuses this Answer Brief on the legal and policy issues presented to the Court.

of Appeal "[a]lthough the document referred to itself as a 'specific plan,' there is no discussion within the document as to whether it was intended to be a statutory 'specific plan' under [Govt. Code] section 65450." (Slip Opinion ("Op.") p. 10, fn 4; AR9:3903.)

The proposed plan listed a variety of goals, objectives and policies, including that the community should include a mix of low-density homes, one acre residential lots with clusters of denser single-family homes, and contain new open spaces, including trails, parks, hillside slopes, and greenbelts. (AR9:3677; AR11:4902.) As for the Ridgeline Property, the proposed plan suggested that the General Plan should require the permanent retention of the golf course, and if the golf course did not create a viable economic return, the area should be preserved for recreation. (AR11:5033.)

The citizens expressed a different view about the Ridgeline Property during the public review process.

On November 19, 1973, the Planning Commission, in conjunction with the County of Orange's planning commission, held a joint public hearing to consider the adoption of the proposed "Orange Park Acres Plan as a part of the land use element of the General Plan encompassing a portion of incorporated territory and unincorporated territory in the General Planning Area of the City...." (AR9:3680-3689; AR11:4901-4903.) During the hearing many residents expressed the wish to designate the golf course for low density residential housing to match the surrounding area.

(AR9:3681-83; AR9:3676-3678.) The Planning Commission amended the general plan based on these comments.

By Resolution No. PC-85-73, the Planning Commission recommended the adoption of the "Orange Park Acres Plan," with several amendments to the proposed plan. (*Id.*) The Planning Commission specifically found that "the Orange Park Acres Plan meets General Plan criteria set forth in Section 65302, (a)...Sections 65352 and 65357 further authorize the Planning Commission and local legislative body to adopt General Plan elements and amendments for all or a portion of a city and a surrounding planning area by resolution...." (*Id.*) One of the amendments was to "[d]esignate the Golf Course as Other Open Space and Low Density (1 acre)." (*Id.*) The Planning Commission further resolved to direct its staff "to prepare implementation ordinances or resolutions...consistent with this resolution and the Orange Park Acres Plan." (*Id.*)

On December 26, 1973, the City Council adopted Resolution 3915, which approved the OPA Plan, with the Planning Commission amendments, as "part of the required land use element to be included in a General Plan for the City of Orange." (AR3:1148-1149; AR9:3688-3689; AR11:4899-4900.) Resolution 3915 found that the OPA Plan met the "General Plan criteria set forth in Section 65302(a) of the California Government Code." (AR3:1148-1149; AR9:3688-3689.) It also adopted amendments proposed by the Planning Commission, which included an

amendment to "designate the Golf Course as Other Open Space and Low Density (1 acre)." (AR3:1141-1347; AR9:3683-3689.) The Resolution and Committee Meeting Notes were made available to the public with the OPA Plan.

Apparently, the City staff did not revise the proposed plan to make the OPA Plan reflect the Planning Commission amendments adopted by the City Council. This clerical oversight is central to Petitioners' position.

B. No Subsequent Legislative Planning Activity Changed the OPA Land Use Designations

Between 1973 and 1977, the portions of the Ridgeline Property where the golf course was ultimately constructed were zoned for single-family residential lots. (AR9:3784.) In 1977, the City Council approved Resolution 4448, which contained certain revisions to the OPA Plan including, "deletion of the word 'specific' from the text of the Orange Park Acres Area Plan." (AR9:3774.) Later that year the same City Council adopted Resolution 4659, which re-zoned some unincorporated portions of the Ridgeline property to recreation open space from the County designation of E4-1, one-acre minimum lot sizes, which it indicated was necessary to permit the use of a clubhouse. (AR9:3784-3785.) This re-zoning did not change OPA Plan dual land use designation.

In 1985, the owner of the golf course sought to have the City annex the remainder of the Ridgeline Golf Course. (AR9:3798-3804, 3818, 3892-

3895.) The general plan land use designation adopted by the City and the County permitted both open space and residential zoning for the Property. The Planning Commission staff report, which preceded the City Council's action, reflects the open space and residential dual land use designation for the Property of "City of Orange R-O ***and R-1-40***." (AR9:3892, emphasis added.)

The City adopted Resolution 6443 to annex the remainder of the Property, including the golf course, clubhouse and tennis courts. (AR9:3798-3804.) The County zoned the unincorporated portion of the Property as residential; however, the City Council re-zoned the entire Property to Recreation-Open Space. (AR9:3798, 3818.) Both the zoning designations were consistent with the OPA Plan dual land use designation.

In July 1989, the City Council resolved to amend a portion of the OPA Plan. (AR9:3902-3908.) Although the amendment did not affect the Property, the findings of fact are relevant because the City found 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 Plan has the authority of a General Plan, rather than a Specific Plan." (*Id.*)

C. The City Adopts the 1989 General Plan

In 1989, the City Council adopted a new General Plan to address certain areas where the goals of the City had changed. The Land Use portion of the 1989 General Plan acknowledges that there are a series of existing plans which are included in the Land Use Element. (AR11:4634.) The 1989 General Plan specifically references two "area plans," one of which is the OPA Plan, which "was prepared in 1973. This plan *outlines land use policy for the semi-rural Orange Park Acres area* ..." (AR9:3970, AR11:4619, AR11:4635-4637. AR11:4899-4905, emphasis added.) As a result, the OPA Plan continued to govern the General Plan land use designation for the area.

Eight months later, in April 1990, the same City Council adopted a resolution amending the OPA Plan and specifically referred to the OPA Plan as "part of the Land Use Element of the City's General Plan." (AR:3909-3910.)

In July 1998, the City Council observed in a resolution approving a conditional use permit that "the proposed project is consistent with the City's General Plan and, more specifically, the Orange Park Acres Plan, which was adopted as part of the City's General Plan...." (AR9:3921.) Although in 2000, 2003, and 2008, the City Council adopted resolutions which referred to the "Orange Park Acres Specific Plan" (AR9:3930, AR9:3938-3955; AR14:6032-6036), the City never took any action to

formally change the status of the OPA Plan to a specific plan or remove it from the General Plan.

The 2003 resolution was adopted as a "general plan amendment" to remove portions of the "Fieldstone Communities" from the scope of the "Orange Park Acres Specific Plan." (AR14:6032-6036.) These resolutions, however, did not have the effect of removing the OPA Plan from the Land Use Elements of the General Plan.

D. 2010 General Plan

In March 2010, the City Council again updated the General Plan, this time to address eight "focus areas" that required additional land use planning. (AR10:4053, 4079-4101.)These eight focus areas did not include the Ridgeline Property. While there are some other contradictory references to Orange Park Acres in the "Specific Plans and Neighborhood Plans" section, the OPA Plan is not listed in the section that discusses adopted, subordinate plans. Rather, the 2010 General Plan reaffirmed that the City intended for the General Plan to continue to implement previously adopted plans for several neighborhoods, including the OPA Plan. (AR10:4028, 4050.)

The 1989 General Plan included the OPA Plan as originally adopted by the City Council in 1973. The 2010 General Plan, specifically revised only eight focus areas, none of which included the Ridgeline Property. As a result, no action has ever been taken by the City to change the General

Plan designation of the Ridgeline Property to something other than "Other Open Space and Low Density (1 acre)." The clerical error regarding the dual OPA Plan designations has remained unaffected for nearly forty years. (See Exhibit 1.)

E. Milan's Application to Develop the Property

Since 1973, the Orange Park Acres area was developed in sections and inhabited primarily by people who resided on large parcels and who enjoyed outdoor and equestrian activities. (APP1:061.) Over time, the Ridgeline Golf Course and Country Club went out of business. (*Id.*)

In 2006, Milan purchased 51.5 acres of land in the Orange Park Acres area that was the struggling Ridgeline Golf Course and Country Club (previously and hereinafter referred to as the "Property"). Due to the surrounding residential one-acre homes, Milan determined that the area would be excellent for single-family equestrian oriented homes that mirror the land use surrounding the Property (the "Ridgeline Project" or the "Project"). (AR1:1.) Additionally, the Project contains provisions for a 2.30 acre public Ride-In-Only Equestrian Arena, Open Space/Passive Park and the donation of an off-site 3.9 acre parcel known as the Mara Brandman Arena Site. (AR4:1841.) In 2007, after careful consideration of the area and community needs, Milan submitted an application to the City to develop the Ridgeline Project. (AR9:4000.)

In 2009, during standard City processing and review of Milan's application, questions arose regarding the General Plan's land use designation for the Ridgeline Property. The City Attorney conducted a comprehensive analysis of all documents and public proceedings that related to the General Plan for the Ridgeline Property to address those questions. (AR7:2642-2650; AR9:3956-3965.)

In December 2009, the City Attorney sent a letter to interested parties with two findings: (1) "The [Orange Park Acres] Plan is a part of the land use element of the City"; and (2) "The [Orange Park Acres] Plan designates the golf course portion of the [Property] as 'Other Open Space and Low Density (1 acre).' As such, [the Project] would be consistent with the Plan's designation of the [P]roperty, although somewhat inconsistent with other aspects of the Plan." (AR7:2646.)

In June 2010, the Planning Commission issued a memorandum, which stated "the [Orange Park Acres] map does not accurately depict the designation as 'Other Open Space and Low Density (1 acre)' as approved by the City Council in 1973. Since the [Orange Park Acres] map was not updated after the City Council action, the City's General Plan Land Use Map reflects the [Orange Park Acres] Plan as it is shown currently." (AR1:484.) In essence the planning commission acknowledged that the 2010 Planning Map did not accurately reflect the land use designation in the OPA Plan because of the 1973 clerical error.

During one of the later hearings regarding Milan's development of the Property, James A. Jackman, a member of both the Orange Park Acres committee and the City Council in 1973, provided insight into the purpose of the amendments to the OPA Plan proposed and adopted in 1973. "The concern of the committee at the time was really what happens if the golf course no longer is the function of the golf course? What are we to do next? And the answer was we were worried that it would be developed as commercial which was inconsistent with the...large parcel of land right in the center of Orange Park Acres, right in the very heart of the area that we were planning and we said it has to be the one-acre estates." (AR13:5464.) He went on to add that "an opportunity to put in a development that we would have, in my opinion, have approved in a heartbeat had it come before us back in 1973, had the golf course wanted to go out at that time." (*Id.*)

F. Project Approval

In May 2011, the City Attorney reiterated the following findings in a memorandum to the City Council: (a) the OPA Plan is part of the land use element of the City's General Plan; (b) the subsequent adoption of the 1989 and 2010 General Plans did not change the General Plan designation of "Other Open Space and Low Density (1 acre)" for the Ridgeline Property, as originally adopted by the City Council in 1973; and (c) there has never been an amendment to the General Plan to change the designation of the

Ridgeline Property set forth in the 1973 General Plan. (AR4:1446-1450, AR6:2542-2550.)

On June 14, 2011, the City Council approved Resolution 10565, which adopted and certified the Final Environmental Impact Report ("FEIR") for the Ridgeline Project. (AR4:1455-1458, AR4:1713-1716.) This approval relied on the City Council's extensive review and consideration of evidence and information regarding the Ridgeline Property, its General Plan, related planning documents, and public hearings and comments.

Through Resolution 10565, the City specifically found that the FEIR reflected the City Attorney's and City Council's independent judgment and analysis, based on a series of Findings of Fact and Statements of Overriding Consideration.

The City's Findings of Fact included the following:

1. At "the time of the adoption of the [Orange Park Acres] Plan, it was not the intent of the City Council to prohibit residential development on the Property, but rather the very specific intent that one-acre residential lots be permitted on the Property."
2. "As adopted in 1973, the [Orange Park Acres] Plan specifically permitted low density residential uses on minimum one-acre lots on the Project site."
3. "The [Orange Park Acres] Plan was adopted by the City in 1973 as part of the Land Use Element of the City's General Plan. Although since its original adoption, various City documents have incorrectly referred to the [Orange Park Acres] Plan as a specific plan, community plan, and/or area plan, the official records of the City clearly establish that [Orange Park Acres] Plan was adopted only as part of the Land Use Element of the General Plan. There is no evidence that the city has ever adopted (as opposed to incorrectly

referenced) the [Orange Park Acres] Plan as anything other than part of the City's General Plan."

4. "The Record indicates that, most likely through clerical oversight and contrary to the express terms of Resolution No. 3915, the textual changes recommended by the Planning Commission and approved by the City Council were never entered into any official copy of the [Orange Park Acres] Plan."
5. "In approving [General Plan Amendment] 2007-001, it is the intent of the City Council to exercise its legislative discretion to honor the intent of the original adoption of the [Orange Park Acres] Plan, remove any uncertainty pertaining to the permitted uses of the Property, and allow uses on the Property which the City Council believes to be appropriate."
6. "The City's existing zoning classification for the Property (RO) excludes residential land use as permitted use. Changing the zoning of the Project Site from RO to R-1-40 is consistent with the 1973 [Orange Park Acres] Plan land use designations and the land use designations adopted by the City Council's approval of [General Plan Amendment] 2007-001. Therefore, the R-1-40 zoning is consistent with the City's General Plan."[3]

(AR4:1894-1895.)

On June 14, 2011, the City Council also approved the Ridgeline Project, through Resolution 10567, by approving the Tentative Tract Map for the Ridgeline Property, and related plans. The City Council also adopted, for first reading, Ordinance No. 10-11, approving the Zone Change for the Ridgeline Property to establish single family residential ("R-1-40") for a portion of the Property and designating the remainder open space ("R-O"), and Ordinance No. 11-11, approving a Development Agreement between the City and Milan. (AR4:1828, 1832) The City Council also found the zone change was "consistent with and furthers the objectives and policies of the Orange Park Acres Plan, which is part of the

[3] Petitioners' attempt to challenge to the City's approval of the FEIR or the Findings of Fact failed.

land use element of the General Plan..." (AR4:1828.) The City adopted the ordinances for final reading on July 12, 2011. (AR4:1455-1458, AR4:1713-1716, AR4:1879-1947.)

The City Council adopted Resolution 10566 on June 14, 2011, which approved and incorporated a General Plan Amendment ("GPA"). (AR4:1948-1965.) The title of the resolution was "AFFIRMS THE SITE'S EXISTING LAND USE DESIGNATION OF 'OTHER OPEN SPACE AND LOW DENSITY (1 ACRE).'" (*Id.*) The recital stated "affirms the site's existing land use Designation of 'Other Open Space and Low Density (1 acre).'" It also stated that the purpose of the GPA was to "clarify the *original and unchanged terms* of the existing [Orange Park Acres] Plan" and to "make the General Plan land use designation for the subject property consistent throughout the General Plan." (*Id.*, italics added.) The GPA made textual revisions to the original language of the OPA Plan (as opposed to the 2010 General Plan) to ensure that the City's planning documents were internally consistent and included a new map establishing the Property as "Other Open Space & Low Density (1 ac)." (*Id.*) It also removed reference to retention of the golf course in the OPA Plan, changed the circulation plan map in the OPA Plan, allowed for vinyl fencing (as opposed to only wood fencing), and updated land use statistics detailed in the original OPA Plan. (*Id.*)

All three resolutions were presented for final adoption and approval on July 12, 2011. (AR4:1721-1729.) Thus, the City Council approved the Project, found it was consistent with the current General Plan for the City, changed the zoning to accommodate the Project, and entered into the Development Agreement through the adoption of Ordinances 10-11 and 11-11. (AR4:1730-1756.) The City Council's adoption of the GPA did not change land use elements of the General Plan, but rather it corrected inaccuracies. The inaccuracies were not previously noticed because this was the first instance where the City reviewed the General Plan land use designation for the Property to determine permissible uses.

G. The Referendum

On June 17, 2011, Petitioners sponsored and circulated a referendum petition asking for voter approval of the GPA set forth in Resolution 10566. (APP1:138-280.) On August 23, 2011, the City Attorney prepared an opinion for the City Council regarding the City's ability to proceed with the Ridgeline Project in light of the referendum. (APP1:281-285.) The City Attorney determined that the repeal of GPA 2007-0001 would "not necessarily negate the other actions the City Council took related to the Ridgeline Equestrian Estates project, such as the change in zoning and approval of the Development Agreement." (APP1:282.) The City Attorney opined that the GPA would function to remove some of the internal inconsistencies which occurred over time. (APP1:282-284.) He went on to

state that "the Project is compatible with just about all of the objectives, policies, general land uses and programs specified in the General Plan and this compatibility analysis is not altered to any significant degree by a repeal of the GPA." (APP1:284.)

On September 6, 2011, the City Council placed the referendum calling for approval of the GPA on the November 6, 2012 election ballot. (APP1:286-288.) In the November 6, 2012 election, the voters in the City rejected the GPA.

III. PROCEDURAL HISTORY

A. Trial Court Litigation

On July 26, 2011, Milan filed a petition for writ of mandate and complaint for injunctive and declaratory relief to stop the referendum from proceeding because of multiple violations of the Elections Code, which was later amended. (APP1:001-017, AA004-041.)

On October 5, 2011, Petitioners filed a "Cross-Petition for Writ of Mandate and Cross-Complaint for Declaratory Relief" against the City and the City Council, and cross-real party in interest, Milan. Petitioners alleged a single cause of action, for "Violations of State Planning and Zoning Law," alleging that the City abused its discretion through its June 14, 2011 approval of the Zone Change and Development Agreement because "the Project is not consistent with the General Plan or the OPA Specific Plan." (APP1:019-029.)

On November 9, 2011, Milan filed a second, separate petition for writ of mandate and Cross-Complaint for declaratory relief, specific performance, and injunctive relief. (APP1:056-084.) Milan sought to establish that it was entitled to proceed with the Project irrespective of the outcome of the referendum because the original designation for the Property has been "Other Open Space and Low Density (1 Acre)" since its adoption in 1973. Alternatively, Milan contended that a repeal of the GPA was improper and legally void because it would create internal discrepancies in the General Plan. (*Id.*)

In January 2012, the trial court granted the parties' stipulation to bifurcate and sever the Petitioners' Cross-Petition, and the First, Second, Fourth, and Fifth causes of action in Milan's Cross-Complaint regarding the land use designation of the Property based on the existing General Plan, and to set an expedited trial on March 19, 2012. (APP1:086-095.) The City prepared and certified an Administrative Record for all of the claims set for trial. Following briefing and a one day trial on March 19, 2012, the Court took the matter under submission. (APP1:096-APP3:704.)

B. Trial Court Ruling

On May 7, 2012, the trial court issued an order finding in favor of Milan on all four causes of action and against Petitioners on their single cause of action. (APP3:705-707.) In the order, the trial court upheld the

City Council's approval of the Ridgeline Project, Zone Change, Development Agreement and related documents. The trial court ruled:

1. The OPA Plan is part of the land use element of the General Plan of the City.
2. The OPA Plan designates the Ridgeline Project site as other open space/low density residential because the City never took official action to amend the original designation.
3. Milan can immediately proceed with the Ridgeline Project.
4. The potential repeal of the General Plan Amendment adopted by the City to clarify aspects of the General Plan and to remove uncertainties surrounding the Project will not impact Milan's ability to proceed with the Ridgeline Project.
5. Directed that Judgment for Milan and against Petitioners be entered on all of the bifurcated causes of action set for trial on March 19, 2012.

(APP3:705-707.)

On June 19, 2013, the trial court issued a peremptory writ of mandamus addressed to the City and the City Council commanding them to rescind applicable resolutions and "remove the referendum regarding the General Plan Amendment from the November 6, 2013 election ballot." (AA058-059.) The writ further commanded the City and City Council to permit Milan to develop the Property "in accordance with the actual and original General Plan designation of the property as 'Other Open Space and Low Density (1 Acre), and the Development Agreement, and all other applicable requirements of the City." (AA058-059.)

On July 9, 2012, the trial court signed and filed the judgment on the severed causes of action; however, it did not serve the judgment on the parties until July 24, 2012. (AA081-083.) On July 25, 2012, Petitioners filed and served Notice of Entry of Judgment. (AA084-AA092.)

C. Writ and Appeal to the Court of Appeal

On June 6, 2012, before the trial court had approved and signed the proposed judgment and writ of mandate, Petitioners filed a Petition for Writ of Mandate, Prohibition, or Other Applicable Writ, in which they requested that the Court of Appeal order the trial court to vacate its May 7 order and enter judgment in favor of Petitioners. Petitioners also requested that the Court of Appeal stay the trial court's order, and the proposed peremptory writ and judgment.

On July 12, 2012, the Court of Appeal issued an Order to Show Cause why the writ of mandate or other appropriate relief should not issue. This Court also granted Petitioners' request to stay the May 7, 2012 order and the resulting peremptory writ of mandate issued by the trial court. (July 12, 2012 Order on Writ Petition.) On July 26, 2012, Petitioners filed a notice of appeal based on the July 9 judgment. (AA093-156.) On August 9, 2012, the Court of Appeal consolidated the writ and the appeal and ordered the parties to submit joint briefs addressing the writ and the appeal.

Based on the Court of Appeal's stay of the trial court's May 7 order, the GPA Referendum appeared on the November 6, 2012 ballot as Measure FF and failed.

D. Court of Appeal Opinion

On July 10, 2013, the Court of Appeal issued a published Opinion affirming in part and reversing in part the trial court's order. The Court of Appeal held that "the City Council acted reasonably in making its consistency findings" and therefore, it affirmed "the trial court's judgment with regard to denying Orange Citizens' petition for writ of mandate to set aside certain acts of the City Council (i.e., entering into a development agreement with Milan and changing the Property's zoning classification)." (Op.4.) The Opinion reversed the judgment as to the writ of mandate related to the referendum; however, that was mooted based on the Court of Appeal's prior stay of the trial court's writ of mandate. (*Id.*)

The Court of Appeal made the following determinations:

1. The Court reviews the City's determination of consistency with its own general plan under the arbitrary and capricious standard. (Op.28-31.)

2. "Orange Citizens ignores the City Council's repeated findings in multiple resolutions and the challenged ordinances that the Orange Park Acres Plan was part of the City's general plan and that the General Plan Amendment did not amend the land use designation of the Property, which remained low density residential (1 acre). Orange Citizens do not identify any of the other features of the General Plan Amendment as necessary for the Project to be found consistent with the general plan. Taken at face value, the City *did not amend* the

land use designation of the Property by means of the General Plan Amendment. Thus, reference to the amended General Plan does not negate any deference owed to the City Council's approval of the zone change and development agreement." (Op.31, emphasis in original.)

3. "There is substantial evidentiary support for the City Council's finding that the City's general plan allowed low density residential development at the Property by way of the Orange Park Acres plan. And it logically follows that it was reasonable for the City Council to conclude the Project is consistent with the City's general plan as interpreted by the City Council." (Op.32.)

4. "There was no specific plan inconsistency with the general plan in 1973; the Orange Park Acres plan was the City's general plan for Orange Park Acres. ([Govt. Code] §§ 65301, subd. (A) ['The general plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements'], 65301, subd. (b) ['The general plan may be adopted as a single document or as a group of documents relating to subject or geographic segments of the planning area'].)" (Op.35-36.)

5. "It was not arbitrary or capricious for the City Council to conclude that the City's general plan in the 1970's included a designation of the Property as open space or low density residential, despite the lack of evidence of 'implementation.'" (Op.36-37.)

6. "An inconsistent land use designation on the 'General Plan Land Use Policy Map' does not necessarily entail a conclusion that a zone change ordinance is inconsistent with the general plan." (Op.38.)

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

survived the adoption of the 1989 and 2010 general plans." (Op. p. 39.)

8. "[T]he City unintentionally allowed a single ambiguity to creep into its general plan. When the ambiguity was discovered, the City Council analyzed the situation and concluded that a classification of the Property as solely open space was inaccurate and not in keeping with its intent. ... That the erroneous information remains in the Policy Map because of the referendum does not alter the reasonableness of the City Council's conclusion that the open space designation is an error and not a substantive inconsistency like that presented in *Calaveras* [*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90] and *Sierra Club* [*Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698]." (Op.42.)

9. "[T]he question of allowing the referendum to proceed is moot. We also note it would be contradictory to find that the Project is consistent with the general plan (without the General Plan Amendment), but that the nullification of the General Plan Amendment by referendum created unacceptable inconsistency in the general plan." (Op.43.)

On August 19, 2013, Petitioners filed a Petition for Review with this Court, which was granted on October 30, 2013.

IV. STANDARD OF REVIEW

In reviewing an order granting an administrative petition for writ of mandate under Code of Civil Procedure section 1085, this Court's inquiry necessarily is confined to the question whether the local legislative body's actions in construing its own general plan were "arbitrary, capricious, or [without] reasonable or rational basis." (*American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 460, quoting *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1,

11; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 ["decisions regarding consistency with a general plan ... are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair."].)

The Court uses "the arbitrary and capricious standard to review quasi-legislative decisions resulting from an agency's exercise of its statutorily delegated policymaking discretion." (*American Coatings, supra,* 54 Cal.4th at 461.) "It is, emphatically, not the role of the courts to micromanage these development decisions. Thus, as long as the City reasonably could have made a determination of consistency, the City's decision must be upheld, regardless of whether [the court] would have made that determination in the first instance." (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638, citations omitted, emphasis in original.)

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

The "petitioner always bears the burden of proof in a mandate proceeding brought under Civil Code section 1085. [citation] Thus, it is petitioner's burden to establish that [the local legislative body's] decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." (*American Coatings, supra,* 54 Cal.4th at 460, internal citations omitted; *see also, Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 816–820, 824.) As this Court recently explained in *American Coatings, supra*:

> The arbitrary and capricious standard of review employed under Code of Civil Procedure section 1085 is more deferential to agency decisionmaking than the substantial evidence standard. [citation] Although both standards " 'require a reasonable basis for the decision' " [citation], they should not be conflated. We use substantial evidence review to examine administrative adjudications that apply general rules to a particular dispute in which evidence is presented and contested. We use the arbitrary and capricious standard to review quasi-legislative decisions resulting from an agency's exercise of its statutorily delegated policymaking discretion. In the latter context, an agency adopts generally applicable rules through an administrative process in which "the demarcation between facts, reasoning, policy, and discretion is quite vague." (Childress & Davis, 3 Federal Standards of Review (4th ed. 2010) § 15.07, p. 15-44.)

(*American Coatings, supra,* 54 Cal.4th at 461, internal citations omitted.)

In their Opening Brief, Petitioners try to evade this controlling authority by arguing that "[d]etermining which version of the general plan applies to a piece of property presents 'a question of law requiring an independent determination by the reviewing court.'" (Petitioners' Opening

Brief on the Merits ("OB") at p. 20.) The Petitioners contend that because there was a GPA, which was subject to referendum, the Court is confronted with two general plans that must be reconciled. Petitioners' erroneous emphasis on the voters' rejection of the referendum is the driving determination for the issue as they present it. (OB21-22.) There is no support for Petitioners' contention, which misstates the proper standard of review.

Petitioners contend that *Harroman Co. v. Town of Tiburon* (1991) 235 Cal.App.3d 388, 392, governs because the Court is addressing a question of law. Petitioners are wrong. *Harroman, supra,* dealt with the application and interpretation of Section 65351 and whether the statute required a city to evaluate consistency based on the existing general plan or the draft general plan. (*Id.* at 393.) This Court is not being asked to interpret the Government Code. Rather, this Court must address whether the City's determination that the Ridgeline Project was consistent with its General Plan was arbitrary and capricious.

Petitioners' reference to *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d at 540, is also inapposite. (OB21.) In *Lesher, supra,* the court was asked to determine whether an initiative constituted a general plan amendment or if it was some lesser planning document. (*Lesher, supra,* 52 Cal.3d at 535.) Because the issue presented was purely legal – what is the initiative presented by the voters – it was a

case which required statutory interpretation, and thus *de novo* review. That is not the case here. This Court is not interpreting an initiative.

To the contrary, this Court is reviewing the City Council's determination of consistency with its general plan *without* the application of any subsequent proposed amendments. The Legislature has expressly delegated the obligation to make a consistency finding to the local legislative body. (§ 65867.5.) Even if we adopt Petitioners theory – that some independent judicial review was appropriate – when a local legislative body construes a controlling statute, it is still appropriate for the judiciary *to accord great weight and respect* to the local bodies' construction because that interpretation may be inextricably intertwined with facts, policy, and discretion of the interpreting body. (*American Coatings, supra,* 54 Cal.4th at 461.)

This Court's review should focus on whether the City acted without authority in determining that the development agreement was consistent with its existing general plan (without the general plan amendment). The standard is "arbitrary and capricious." (*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.)

V. GENERAL PRINCIPLES OF LOCAL PLANNING LAW

As aptly noted by the Court of Appeal, an understanding of how planning law designations are enacted and given effect by the local legislative body is required to evaluate this case. (Op.4.) The basis for deference to the City Council in construing its own general plan is founded on the Legislature's intent that local legislative bodies must have preeminent control over land use decisions. The Legislature has declared that in enacting zoning laws, "it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." (Gov. Code § 65800.)

The Planning and Zoning Law codified at Government Code section 65000 *et seq.* [4] provides the structure for local city councils and county boards of supervisors ("local legislative bod[ies]") to exercise their police power under article XI, section 7 of the California Constitution to govern development in their jurisdiction. (See *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181-1182.) Local legislative bodies are required to establish planning and zoning laws in order to preserve the land and guide growth through "goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and

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

economic development factors." (§ 65030.1.) Thus, the Legislature intends for the local legislative bodies to have ultimate control over their land use laws.

The local legislative bodies must establish a "planning agency with the powers necessary to carry out the purposes" of the Planning and Zoning Law, and "assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary." (§ 65100.) However, it is only through the official acts of the local legislative bodies that land use designations are created. (§§ 65300, 65301, 65350, 65356.)

Once enacted, the land use designation may only be modified or superseded through action by the local legislative body in accordance with the express statutory requirements in the Government Code – it cannot be amended or superseded by implication. (*Id.; Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540-541 ["Implied amendments or repeals by implication are disfavored in any case (*Flores v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 171, 176 [113 Cal.Rptr. 217, 520 P.2d 1033])"].) The Planning and Zoning Laws create a procedure to enact, amend, and interpret land use laws, and invest the penultimate act in the local legislative body when it adopts the resolution that creates the land use law.

The Legislature established a hierarchy of local land use law to allow for both general and specific planning efforts. The hierarchy is structured from top to bottom: (1) general plans (§ 65300 *et seq.*); (2) specific plans (§ 65450 *et seq.*); (3) zoning codes (§ 65800 *et seq.*); (4) specific relief from the zoning regulations, such as conditional use permits or variances; (5) subdivision maps; and (6) building permits. (1 Land Use Practice (Cont.Ed.Bar. 2010) Overview of Land Use Regulations, § 1.12, p. 14.) The legislative bodies are also empowered to "enter into development agreements to promote certainty in approval of development projects and to encourage investment in and commitment to comprehensive planning in the area consistent with the legislative body's general plan." (§ 65864 *et seq.*)

A. General Plans

"Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." (§ 65300.) A local legislative body's general plan is "a constitution for future development" (*Lesher, supra,* 52 Cal.3d at 540), and is "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.)

The general plan consists of a "statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals." (§ 65302.) The general plan must include seven elements:

1. **land use element**, which "designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, ... and other categories of public and private uses of land." (§ 65301(a).)

2. **circulation element,** which consists "of the general location and extent of existing and proposed major thoroughfares, transportation routes, ..., all correlated with the land use element of the plan." (§ 65301(b))

3. **housing element,** which deals with the importance of expanding housing opportunities and accommodating housing needs of Californians of all economic levels. (§§ 65301(c), 65580.)

4. **conservation element** "for the conservation, development, and utilization of natural resources ...." (§ 65301(d).)

5. **open space element**, which requires a "local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction," and includes preservation and managed production of natural resources and outdoor recreation. (§§ 665301(e), 65560(b), 65563.)

6. **noise element** "that shall identify and appraise noise problems in the community...[and]...analyze and quantify...current and projected noise levels..." (§ 65301(f).)

7. **safety element** "for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, ...and other seismic hazards ..." (§ 65301(g).)

The Legislature contemplated that the general plan is not required to be adopted all at once. (§ 65301(a).) Each element may be addressed in

whatever level of detail local conditions require and "in any format deemed appropriate or convenient by the legislative body, including combining of elements." (*Id.*) Further, 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." (§ 65301(b).) Thus, the Legislature recognizes and specifically delegates to the local legislative body the right to determine the best manner to prepare and update its general plan in one or more parts.

In enacting the Planning and Zoning Law, the Legislature "intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (§ 65300.5.)

"If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan." (§ 65358(a); see *Lesher, supra,* 52 Cal.3d at 538-539 [describing the procedure to adopt or amend the general plan].) Regardless of whether the local legislative body adopts a new general plan or amends an existing general plan, it must conduct public hearings (§§ 65351, 65355) and "refer the proposed action to" certain interested public entities (§ 65352(a)). "The planning commission shall make written recommendations on the adoption or amendment of a general plan." (§ 65354.) "The legislative body shall adopt or amend a general plan by resolution, which resolution shall be adopted by the

affirmative vote of not less than a majority of the total membership of the legislative body." (§ 65356.) "Copies of the document adopting or amending the general plan, including the diagrams and text, shall be made available to the general public" to inspect or to keep for a reasonable fee. (§ 65357(b)(1)(2).)

The planning law thus compels local legislative bodies to undergo the discipline of drafting a master plan to guide future local land use decisions. (*DeVita, surpa,* 9 Cal.4th at 773.) Accordingly, any action or decision affecting land use and development must be consistent with the general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1182-86.)

B. Specific Plans

The local legislative body may also adopt specific plans, which are subordinate to the general plan. Government Code Section 65450 states: "After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan." (§ 65450.) "A specific plan shall be prepared, adopted, and amended in the same manner as a general plan, except that a specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the legislative body." (§ 65453(a).)

The Government Code contains significant requirements to create a specific plan. Not only are there notice, community input, and public hearing requirements, but even more detailed documentation outlining how the general plan land use designations should be implemented is required in order for the document to qualify as a specific plan. (See Gov. Code § 65450-65454, 65507.) "The specific plan shall include a statement of the relationship of the specific plan to the general plan." (§ 65451(b).) "No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan." (§ 65454.) "Any specific plan or other plan of the city or county that is applicable to the same areas or matters affected by a general plan amendment shall be reviewed and amended as necessary to make the specific or other plan consistent with the general plan." (§ 65359.)

C. Zoning Law

"The legislative body of any county or city may ... adopt ordinances that do any of the following: [¶] (a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." (§ 65850.) "All such regulations shall be uniform for each...use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones." (§ 65852.)

The legislative body's zoning ordinances "shall be consistent with the general plan..." (§ 65860(a).)

D. Approval of Development Projects

In addition to establishing long term goals for land use planning, the Legislature recognized that developers need certainty in the Planning and Zoning Laws to warrant investing in developing a particular area. (§ 65864 *et seq.*) Article 2.5 of the Planning and Zoning Laws permits local legislative bodies and developers to enter into a "development agreement," which is a binding agreement to develop property after complying with a series of hearings and approvals. (§ 65865.) Upon adoption of the development agreement, it "shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the [local legislative bodies] entering into the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866." (§ 65865.4.)

Prior to entering into the development agreement, there must be a public hearing with the planning agency and the local legislative body. (§ 65867.) The development agreement is approved by ordinance. At the time of adoption, the local legislative body must find "that the provisions of the agreement are consistent with the general plan and any applicable specific plan." (§ 65867.5(b).) The local legislative body's approval is a legislative act. (§ 65867.5(a).)

VI. DISCUSSION

A. The Local Legislative Body Must Have Ultimate Authority to Construe Its Own General Plan

1. The City Council is entitled to great deference when construing its General Plan

The Legislature intended for the local legislative body to have the ultimate authority to construe and give effect to its own general plan. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 118.) The local legislative body is in the best position to understand the vision for development and give effect to its legislative actions to reach that objective. If the courts were permitted to conduct their own analysis of how the general plan governs a local area, then the judiciary would be inserting itself into planning law, which the Legislature has expressly delegated to the local legislative body. Therefore, this Court only looks at whether there was support in the administrative record for the City's decision. Plentiful support exists.

The City's approval of the Ridgeline Project, and specifically the Zone Change and Development Agreement, was based on its interpretation and application of its General Plan, and specifically the OPA Plan, which is part of the General Plan. The City expressly found that the OPA Plan is part of the General Plan that governs development on the Property. (AR4:1894-1895.)

In approving the Ridgeline Project, the City made a variety of findings, one of which specifically held that "The [Orange Park Acres] Plan was adopted by the City in 1973 as part of the Land Use Element of the City's General Plan. Although since its original adoption, various City documents have incorrectly referred to the [Orange Park Acres] Plan as a specific, community plan, and/or area plan, the official records of the City clearly establish that [Orange Park Acres] Plan was adopted as part of the Land Use Element of the General Plan. There is no evidence that the City has ever adopted (as opposed to incorrectly referenced) the [Orange Park Acres] Plan as anything other than part of the City's General Plan." (AR4:1894-1895.)

The City Council's determination is supported by ample evidence. The 2010 General Plan did not replace the OPA Plan, but rather "expressly adopts the OPA Plan as a land use element." (APP3:706.) As acknowledged by the Court of Appeal, the City Council made repeated findings in multiple resolutions acknowledging the OPA Plan as part of the City's general plan. (AR9:3784-85, AR9:3774, AR10:4028, AR10:4039-4047, AR11:4634-37, AR11:4619, AR11:4899-4905; see also Exhibit 1.)

2. The City determines consistency with the General Plan

The Legislature requires a city to make consistency findings between the proposed development agreement and its general plan. (§ 65867.5.) "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 L.A.* (1993) 16 Cal.App.4th 630, 648.)

The City's opinions and determinations of its own General Plan are subject to considerable deference. Because the adoption or amendment of a general plan is a legislative act, "the wisdom of the plan is within the legislative and not the judicial sphere." (*Dale v. City of Mountain View* (1976) 55 Cal.App.3d 101, 108, quoting *Selby Realty, supra,* 10 Cal.3d at 118.) The planning law "leaves wide discretion to a local government ... to determine the contents of its land use plans ...." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 573.) Courts have recognized that "[g]eneral plans or policy statements are often semantical exercises which require considerable interpretation on the part of persons charged with implementing them." (*Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 883.)

In *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, the court explained:

> When we review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination. 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 its adjudicatory capacity. [Citation.] 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 purposes. [Citations.] A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]

(*Id.* at 142, internal citations omitted.)

As discussed in detail above, and found by the Court of Appeal, there is "substantial evidentiary support for the City Council's finding that the City's general plan allowed low density residential development at the Property" through the OPA Plan. (Op.32.)

"The City *did not amend* the land use designation of the Property by means of the General Plan Amendment. Thus, reference to the amended general plan does not negate any deference owed to the City Council's approval of the zone change and development agreement." (Op.31, emphasis in original.)

B. The Local Legislative Body Determines What is Part of Its General Plan

1. The City properly enacted the OPA Plan as part of its General Plan in 1973 and designated the Property as "other open space and residential (1 acre)" and has never taken any official action to amend that designation

a. The 1973 resolution properly and conclusively authorized residential development on the Property.

The Legislature delegated the manner in which a general plan should be adopted to the local legislative body. The Government Code specifically permits the local legislative body to choose whether to enact a single

document or multiple documents because it recognizes that the local entity is in the best position to determine how to facilitate its land use planning laws. (§§ 65351, 65352, 65355, 65358(a); see *Lesher, supra*, 52 Cal.3d at 538-539; *DeVita, surpa*, 9 Cal.4th at 773.)

The City determined in 2011 the OPA Plan was adopted as part of the City's General Plan. In making that determination, the City was presented with and considered extensive evidence and information regarding the lengthy, involved and highly public planning process, which resulted in the OPA Plan and the residential development authorization for the Ridgeline Property.

In 1973, when the OPA Plan was adopted, the Planning Commission of the City, County of Orange, the Board of Supervisors, and City Council all worked together to create a comprehensive plan. (AR9:3674.) The City and County entered into the joint planning effort to ensure continuity in the development of the OPA area. Following the lengthy review process and multiple hearings, the City, Planning Commission, and the County, specifically adopted the recommendation to "Designate the Golf Course as Other Open Space and Low Density (1 acre)".[5] (AR9:3677.)

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[5] It also amended the Plan to provide for "On the one-acre lot development, encourage incorporation of adjacent open space for riding trails, riding rings, and other associated uses." (AR9:3677.) The Ridgeline Project complies precisely with these requirements.

The City Council approved the OPA Plan, as amended. Specifically, the City Council adopted the OPA Plan on December 26, 1973, through Resolution 3915, as "part of the required land use element to be included in a General Plan for the City of Orange." Through Resolution 3915, the City Council resolved 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..." (AR11:4900.)

The fact that the County and the City adopted the same OPA Plan is further evidenced by the "pre-zone change resolution" adopted by the City Council in 1977, in which the City states that the "County General Plan calls for low density residential...use of the site in conjunction with a designation of open space." (AR9:3785.) The City zoned its portion of the area Open Space to permit development of the golf course, while the County zoned the area for residential to be consistent with the surrounding community. (AR9:3785.) The dual designation intended to encompass and recognize different uses for the area. A single open space designation would have been inconsistent with the City and County's plan for OPA.

Thus, the 1973 resolution designating the Ridgeline Property as "Other Open Space and Low Density (1 acre)" is the "Constitution" for land use development in the area. The 1973 resolution constitutes a binding, final action of the City, pursuant to Article XI, Section 7, of the

California Constitution. Where municipal ordinances or resolutions have been enacted pursuant to competent authority, "they will be supported by every reasonable intendment, and reasonable doubts as to their validity will be resolved in their favor. Courts are bound to uphold municipal ordinances and bylaws unless they manifestly transcend the powers of the enacting body." (*Glass v. City of Fresno* (1936) 17 Cal.App.2d 555, 560.)

b. A general plan can only be changed through the legal process set forth by the legislature

Once a general plan is adopted, it may be amended (Gov. Code § 65358(a)) only after the appropriate government agency follows a series of procedural steps, including appropriate notice, hearings, public comment, public involvement, written recommendations, and legislative action. (Gov. Code §§ 65351-65356; *DeVita*, *supra*, 9 Cal.4th 763.) Before amending a general plan, a city is required to involve the public in the amendment process, including through consultation with citizens, local agencies, companies and civic groups. (§§ 65033, 65304, 65302, 65351, 65353-65356.)

Once a city enacts a general plan, it cannot be amended absent express disclosures and opportunities for public comment on the proposed amendments. Because of the detailed nature of the formation and amendment process required by the Government Code, any time a change or amendment takes place, substantial documents and public records

necessarily are created to explain and evidence any intended changes or amendments. A clerical error is not an amendment. (See generally, *Lesher, supra,* 52 Cal.3d at 541-542.)

Likewise, the Government Code contains significant requirements to create a specific plan. Not only are there notice, community input and public hearing requirements, but even more detailed documentation is required in order for the document to qualify as a specific plan. (§§ 65450-65454, 65507.)

The OPA Plan was comprehensively reviewed and considered by the public when it was adopted in 1973. There is no evidence in the record to indicate that any of the subsequent General Plan amendments intended to change the designation of the Ridgeline Property in the OPA Plan. As aptly noted by the trial court, "While it is true that subsequent resolutions and general plan documents describe the property as 'open space' none of these documents were sufficient to officially amend the original designation as set forth in the OPA Plan." (APP3:707; see also Exhibit 1.)

Any contention that the General Plan was amended to change the designation of the Ridgeline Property after 1973 fails. The record establishes that the City never gave notice or any indication that it intended to amend the General Plan's designation of the Ridgeline Property. The City further gave no indication that it was changing the status or substance of the OPA Plan to something other than a General Plan.

Contrary to Petitioners' contentions, the General Plan was not and could not have been amended or altered by implication as a result of the adoption of the 1989 and 2010 updates to the General Plan. Instead, the documents available with the 1989 and 2010 General Plan updates, and considered by the City in 2011, establish that the City always intended that the OPA Plan remain part of the General Plan. (APP3:706, citing, AR11:4615-4898, AR4:1446-1450.)

2. Clerical Errors Cannot Invalidate the Original Land Use Designation of the OPA Property

Petitioners erroneously contend that the ministerial error of failing to change the OPA Plan to conform with enacting Resolution 3915 nullified the act of the local legislative body. This is not the law. Clerical errors are not official legislative acts. It is only the official act – adopting the resolution – that creates the law, not subsequent ministerial conduct. (Former § 65360.) If an inadvertent or intentional failure to make the changes set forth in the enacting legislation trumped the vote of the local legislative body, the staff would have more power than the City Council.

The City is not bound by a clerical error.

C. Petitioners' Mischaracterization of the Facts and the Law Does Not Change the General Plan Land Use Designation for the Property as set Forth in the OPA Plan

The Petitioners make inaccurate factual claims about the record and also improperly rely on false premises. Petitioners' arguments fall into

three basic categories: (1) The OPA Plan was never "implemented," therefore the designation for the Property remains, "open space"; (2) even if the designation was properly adopted, the 1989 and 2010 General Plans superseded the designation in the OPA Plan through the inclusion of the "Open Space" designation on the Land Use policy map within the new General Plan; and (3) rejection of the referendum impacts how the Court reviews the case or the City Council's interpretation of its general plan. Petitioners' arguments are unsupported by both the law and the facts.

1. Petitioners' contention regarding an alleged failure to "implement" the land use designation for the OPA Property is not supported by the record or the law

Petitioners contend that the amended designation changing the Property from Golf Course to "Other Open Space and Low Density (1 acre)" never took effect because it was never implemented by the staff. (OB31-49.) Petitioners primarily rely on *Poway, supra*, to support this contention. Petitioners' reliance on *Poway* is misplaced, and their contentions regarding the "implementation" of the 1973 land use designation are not supported by the facts considered by the City Council in 2011.

The court in *Poway* found that an amendment to a City's general plan was ineffective because it was not adopted in a public process and was thereafter not made available to the public. The opposite happened here.

The OPA Plan was duly adopted as part of the City's General Plan by resolution by the City Council following a substantial amount of public involvement. (AR9:3674-3687.)

As noted by the Court of Appeal: "The City Council resolution adopting the Orange Park Acres plan as amended was made available to the public. There was no specific plan inconsistency with the general plan in 1973; the Orange Park Acres plan was the City's general plan for Orange Park Acres. (§§ 65301, subd. (a) ["The general plan may be adopted in any format deemed appropriate or convenient by the legislative body, including the combining of elements"], 65301, subd. (b) ["The general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area"].) Moreover, unlike in *Poway*, the City Council was aware of its own 1973 resolution allowing low density residences at the time of its relevant legislative acts in 2011, and the trial court was on notice of the 1973 amendment before it denied Orange Citizens' petition for writ of mandate." (Op.36.)

Unlike the resolution in *Poway, supra,* which was adopted behind closed doors and not brought to anyone's attention until after the trial, the City has always included a copy of Resolution 3915 at the front of the OPA Plan and the Administrative Record indicates that prior publications also included the Planning Commission Resolution. (AR9:4898-4900; AR9:3687-3689.) Further, both Resolution 3915 and the Planning

Commission Resolution have been discussed in connection with the Ridgeline Project since 2009.

Poway is also distinguishable because the Court relied on Government Code Section 65357, which Petitioners claim requires an amendment to a general plan to be made available to the public within one working day of the adoption of the amendment. As noted by the Court of Appeal, § 65357 was enacted in 1984 – eleven years after the OPA Plan was adopted. (Op.36.) Former section 65360 did not require distribution in order for the adoption to take effect. (*Id.*, citing Stats. 1965, ch. 1880, § 5.) Further, both the Planning Commission Resolution and the City Council Resolution from 1973 have always been available to the public.

The clerical errors did not come to light sooner because no one was attempting to develop the Property. As soon as the Project was submitted for review by the Planning Commission, it immediately determined that the binding designation was the 1973 adopting Resolution. (AR2:733-765.) The clerical errors that resulted in a failure to update the designations for the Property did not impact the reasonableness of the City's determination that the 1973 Resolution designated the Property as open space or low density residential.

2. The Land Use Policy Map is a mere illustration of the General Plan, and does not supersede the land use designation for the area in the OPA Plan

Petitioners contend that the adoption of later general plans, which include a Policy Map that depicts the land use designation for the Property as only "open space," supersedes any prior designations. (OB27.) This is not the law. Although Petitioners properly cite the law regarding the requirement for the Land Use Element, they apply that element as part of their argument that the designation on the 2010 Policy Map unambiguously trumps the text of the OPA Plan as adopted by the 1973 City Council. (OB26-29.) Petitioners further argue that if the OPA Plan is still part of the General Plan, then the Policy Map and the dual designation adopted by the 1973 Resolution 3915 are irreconcilable and therefore, void. Again, this is not the law.

a. The 2010 General Plan Map Designation Did Not Change Textual Land Use Designation For The Property

Petitioners rely on *Lesher, supra,* and *Stephens v County of Tulare* (2006) 38 Cal.4th 793, 802, in support of their position. They argue that the City Council is presumed to have meant what it said and the plain meaning of the document governs; therefore, the identification of the OPA Plan as a subordinate plan governs and the designation on the map of "Open Space" is the current designation for the Property. Essentially, Petitioners seek to demote the OPA Plan to a specific plan by implication.

In *Lesher, supra,* this Court rejected a similar contention that a general plan could be amended by implication, explaining, "[w]e cannot at once accept the function of a general plan as a 'constitution,' or perhaps more accurately a charter for future development, and the proposition that it can be amended without notice to the electorate that such amendment is the purpose of an initiative. Implied amendments or repeals by implication are disfavored in any case..., and the doctrine may not be applied here." (*Lesher, supra*, 52 Cal.3d at 541-542.)

In *Lesher,* this Court also stated with regard to a zoning ordinance: "The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a *pro tanto* repeal or implied amendment of the general plan. The general plan stands." (52 Cal.3d at 541.) That logic is directly applicable to this case. Petitioners' contention is essentially that designation of "O-S", which was placed on the map – a secondary planning document – changed the original land use designation of the Ridgeline Property. The *Lesher* court expressly rejected such a proposition. "The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform." (*Ibid.*) The original designation of the Ridgeline Property in the General Plan and OPA Plan as adopted by Resolution 3915 still "stands."

As discussed by the Court of Appeal, although it is possible that the 1989 and/or 2010 general plans *could have* superseded the OPA Plan, there is nothing on the face of the 1989 or the 2010 general plan which "plainly expressed the intent to eliminate the ongoing viability of the Orange Park Acres plan..." (Op.38-39.) Moreover, the mere fact that the 2010 General Plan contained a designation that was incomplete when compared to the OPA Plan, does not necessarily render the prior version moot. The court in *Las Virgenes Homeowners Fed'n, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, explained the "General Plan Land Use Policy Map" designated the relevant real estate as "nonurban," which "calls for less than one dwelling unit per acre." (*Id* at 310.) An area plan, considered part of the general plan for the portion of Los Angeles County at issue, designated the parcel as "residential, with two to four dwelling units per acre allowed." (*Id.*) The county's approval of the project was not arbitrary or capricious because it was reasonable to conclude that the area plan served "to complete, extend and refine the General Plan land use policy, not contradict it." (*Id.* at p. 312.) As the Court of Appeal aptly noted, *Las Virgenes, supra,* demonstrates that the Policy Map is not the end of the analysis.

The Court of Appeal determined that it was "unwilling to conclude that the City Council acted unreasonably by finding the 1989 and/or 2010 general plans were not intended to supersede the Orange Park Acres plan, and the low density residential designation therefore survived the adoption

of the 1989 and 2010 general plans." (Op.39.) There is no reason or justification for this Court to reach a different conclusion

b. The 2010 General Plan Map Does Not Create an Inconsistency Under § 65300.5

Petitioners next erroneously argue that the Map creates an irreconcilable inconsistency between the 2010 General Plan Map and the Orange Park Acres Plan. As this Court explained in *DeVita, supra*:

> The general plan consists of a "statement of development policies...setting forth objectives, principles, standards and plan proposals." (Gov. Code, § 65302). The plan must include seven elements – land use, circulation, conservation, housing, noise, safety and open-space – and address each of these elements in whatever level of detail local conditions require. (*Id.*, § 65301).

(9 Cal.4th at 773.)

It is well established that a general plan is only inconsistent if two of the r*equired elements* mandate different conduct. (See *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 96 [held that the land use elements were internally inconsistent and insufficiently correlated, as there was no plan to maintain or construct roadways or highways commensurate with the projected growth of the county]; *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 879 [holding that a zoning ordinance is consistent with the general plan if it furthers the objectives of the general plan].) The map

in the instant case is not inconsistent, it is merely incomplete. The map lists only one of the two permissible land use designations.

Further, the map is not the same as the Orange Park Acres land use designation for the Property. A map is not a required element of the general plan. (*Las Virgenes, supra, at* 310-312.) The decision in *Las Virgenes* is particularly instructive. There, two homeowners' associations sought to stop the approval of a development on the ground that it conflicted with the land use designation set forth in the general plan. (177 Cal.App.3d at 303-305.) The trial court denied the writ to stop the development, and the appellate court affirmed that order, stating:

> 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 the land use and other policy maps is insufficient to determine consistency.

(*Id.* at 310.) Accordingly, the *Las Virgenes* court held that the project was consistent with the stated policy for the area and could therefore proceed, *despite a conflicting designation on the general plan map.* (*Id.* at 311-312.)

The maps attached to a general plan cannot create an inconsistency with the more general policies expressed in the plan. (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259 (overruled on other grounds by *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725).) The *Garat* court explained: "To put it another way, section 65300.5 requires that the

general plan and its elements and parts 'comprise an integrated, internally consistent and compatible statement of policies ....' It is the policies which must be integrated, internally consistent and compatible, not the maps which simply depict policies applied to specific land areas, not the data and statistics, and not even the objectives within the various elements." (*Id.*)

There is nothing unreasonable or unsupported in the City Council's determination that the Orange Park Acres Plan was part of the current General Plan and the 2010 General Plan Map did not change that designation.

3. The Voter's Rejection of the Referendum Did Not Create New Law – the General Plan Simply Remained Consistent as Though No General Plan Amendment was Proposed

Petitioner's contention that the Court is required to create new law in light of the voters' rejection of the referendum is without merit, and is contradicted by substantial, undisputed evidence in the record. Petitioners interpret *DeVita, supra,* and *Yost, supra,* as holding that when voters reject a referendum, the Court is required to imply the inverse of the referendum presented. That is not the law.

Voters in California are allowed to exercise their right to referendum pursuant to article II of the California Constitution. (*DeVita, supra,* 9 Cal.4th at 775.) If the voters approve the referendum, then it becomes law, but if the voters reject the referendum, the local legislative body is left with

the law as if the resolution subject to referendum was never presented. (*Merritt v. City of Pleasanton* (2001) 89 Cal.App.4th 1032, 1038.) The only effect of the rejected resolution is that the law remains as it was before the referendum; it is as though the resolution was never proposed. (*Ibid.*) The rejection of a referendum does not result in a change – it results in preservation of the *status quo*. (*Ibid.*)

In this case, the voters rejected a referendum which proposed a General Plan Amendment. In light of that rejection, this Court must review the matter as though no General Plan Amendment was purposed. As described in detail above, the City Council approved the Ridgeline Project based on the pre-existing land use designation. The voters' rejection of the amendment does not affect the City Council's decision to approve the Ridgeline Project, and enter into the development agreement with Milan.

The Court of Appeal agreed with Milan and the City's position "that the General Plan Amendment was simply unnecessary for approval of the Project." (Op.43.) The Court of Appeal explained:

> In 1973, the City Council adopted the Orange Park Acres plan as part of the general plan, and in doing so designated the Property as open space or low density residential. In 1977, the City Council resolved to remove any language in the Orange Park Acres plan inaccurately suggesting it was a specific plan. In 2011, the City Council repeatedly found the Orange Park Acres plan was still a part of the general plan and the Property's use designation still allowed low density residential development. The City may fix errors in the Orange Park Acres Plan and the Policy Map by reference to previously adopted resolutions of the City Council. The

> General Plan Amendment was nullified by the voters, but it does not matter with regard to the major points of contention.

(Ibid.)

VII. CONCLUSION

The courts recognized that the Legislature instilled local legislative bodies with the obligation to create, implement, and construe land use laws in their area. The official acts of the local legislative bodies create the local land use laws, and they are in the best position to construe and give effect to those laws, including general plans. This Court should hold that:

1. The courts must exercise deference and apply the arbitrary and capricious standard when reviewing a local legislative body's determination of consistency between a proposed development and the general plan.

2. Only official acts of the local legislative body as authorized by the Government Code may create land use law, not clerical errors.

Petitioners have not established that the City Council acted without authority when it determined that the Ridgeline Project was consistent with the "other open space and low density (1 acre)" land use designation in the General Plan. The City Council's determination must be left undisturbed.

For the foregoing reasons, the Court of Appeal decision should be affirmed.

Dated: February 3, 2014

DUANE MORRIS LLP

By: _____

Colin L. Pearce
David E. Watson
Heather U. Guerena
Attorneys for Defendants and Respondents
MILAN REI IV, LLC

TABLE OF CITY RESOLUTIONS REGARDING THE PROPERTY

Date	Res.	AR Cite	What Did The Resolution Do?	Did It Effect The Ridgeline Property General Plan Designation?
12/26/73	3915	9:3688-3689	Adopts OPA Plan as part of the Land Use Element of the General Plan	Yes. Establishes the General Plan Land Use Designation for the area as "Other Open Space and Low Density (1 acre)."
1/11/77	4448	9:3769-3774	"Deletion of the word 'specific' from the text of the Orange Park Acres Area Plan."	*No.* Reaffirms OPA Plan is part of the General Plan
10/18/77	4659	9:3784-3785	Pre-zoned portion of the Ridgeline Project site for Open Space, which is a change from the County's General Plan Designation of low density one acre	*No.* It re-zoned the Property from residential to open space. Reaffirms that the OPA Plan adopted jointly by the City and the County allowed for both Open Space and Residential development on the Property.
10/18/77	4660	9:3789-3797	Re-zoned other portions of the OPA Area.	*No.*
9/10/85	6443	9:3798, 3818, 3892	City annexed the remaining portion of the Golf Course and Tennis Club into the City and re-zoned the Property to permit the development of the Country Club. Both the City and the County had portions of the 51 acres zoned for residential. The approval changed the zoning to O-S to allow the development of the Country Club.	*No.* It re-zoned the Property. Reaffirms that the OPA Plan adopted jointly by the City and the County allowed for both Open Space and Residential development on the Property. The Planning Commission staff report lists the "Classification of Property" as "City of Orange R-O and R-1-40." (AR9:3892.)
7/18/89	7348	9:3903	Adopts a general plan amendment that states the OPA Plan was "adopted in 1973 as part of the Land Use Element of the General Plan"	*No.* Reaffirms the OPA Plan is part of the General Plan.

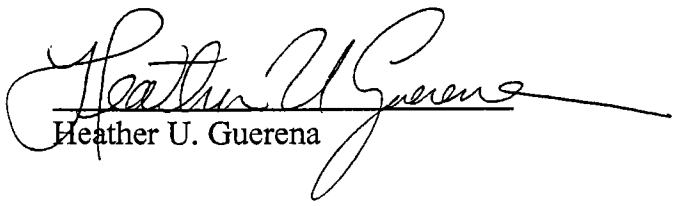
Date	Res.	AR Cite	What Did The Resolution Do?	Did It Effect The Ridgeline Property General Plan Designation?
8/22/89	7389	11:4615-4898	Adopted a City-wide General Plan which identifies the OPA Plan under "Area Plans" stating "The Orange Park Acres Plan was propose in 1973. This plan outlines the land use policy for the semirural Orange Park Acres area located generally east of the Rancho Santiago Boulevard, between Chapman Avenue and Santiago Canyon Road."	*No.* Reaffirms the OPA Plan is still the General Plan for the area.
4/17/90	7557	9:3903-3910	Adopted a General Plan amendment to the OPA Plan, which states it is "part of the Land Use Element of the City's General Plan…the OPA Plan has the authority of a General Plan, rather than a Specific Plan."	*No.* Reaffirms the OPA Plan is part of the City's General Plan even after adoption of the 1989 General Plan.
7/14/98	8974	9:3921	Discussed the conditional use permit and specifically states that the OPA Plan is part of the City's General Plan	*No.* Reaffirms the OPA Plan is part of the City's General Plan even after adoption of the 1989 General Plan.
9/12/00	9327	9:3930	City Council adopts a resolution referring to the Orange Park Acres Specific Plan.	*No.* Reaffirms the OPA Plan is part of the City's General Plan.
10/14/03	9778	14:6032-6035	Approves a General Plan Amendment to remove a portion of property located north of Santiago Canyon Road, previously considered part of Orange Park Acres, from the within the sphere of influence of the OPA Plan.	*No.* Reaffirms the OPA Plan is part of the City's General Plan. AR14:6032 [This was later repealed before it took effect; however, it is instructive to show the intent of the City.]
8/26/08	10318, 10319	9:3938-3955	Approves a General Plan Amendment for another portion of Orange Park Acres	*No.* Reaffirms the OPA Plan is part of the City's General Plan because the action was taken through a General Plan Amendment.

Date	Res.	AR Cite	What Did The Resolution Do?	Did It Effect The Ridgeline Property General Plan Designation?
3/10		10:4009-4614	Adopts a City-wide General Plan for 8 focused areas for which the City is proposing land use changes: (1) Chapman Avenue/Tustin Street; (2) Katella Avenue Corridor; (3) South Main Street Corridor; (4) West Chapman Avenue/Uptown Orange; (5) Old Towne and Santa Fe Depot; (6) Industrial Areas; (7) Lemon Street Corridor; and (8) Eckhoff Street/Orangewood Avenue	*No.* The Ridgeline site was not within any of the 8 focus areas identified for changes in the land use designation.
6/14/11	10565	4:01894-1895	Adopts the Ridgeline EIR and makes findings of fact that the development is consistent with the existing land use designations for the Ridgeline Property.	*No.* Finds that the 1973 land use designation has never been changed and remains "other open space and low density (1 acre)."
6/14/11	10566	4:01948-1965	Adopted a General Plan Amendment which made textual changes to the OPA Plan to be consistent with the enacting Resolution 3915, and other minor changes including updating statistics and permitting vinyl fencing.	*No.* Attempts to correct the clerical errors and adjust the statistics within the OPA Plan. [This was successfully subject to a referendum and was not approved by the voters].
6/14/11	10567	4:1828, 1832	Adopted the Development Agreement to develop the Ridgeline Property and zoning ordinance to re-zone most of the Property for residential and some of the Property for open space.	*No.* Changed the zoning for portions of the Property to R-1-40 and O-S for the remainder. Both zones are consistent with the OPA Plan designations.

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify that this Answer to the Brief on the Merits contains 13,939 words[6], not including the Tables of Contents and Authorities, the caption page, signature blocks, attachments or this certification page.

Dated: February 3, 2014



Heather U. Guerena

[6] This word count includes all words in Exhibit 1, attached to the brief. Milan's Brief contains 13,080 words and Exhibit 1 contains 859 words.

DECLARATION OF SERVICE

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above-entitled action. My business address is 750 B Street, Suite 2900, San Diego, CA 92101-4681. I am a citizen of the United States and am employed in the City and County of San Diego. On February 3, 2014, I caused to be served the following document(s):

MILAN REI IV LLC'S ANSWER BRIEF ON THE MERITS

upon the parties in this action by placing true and correct copies thereof in a sealed envelopes as follows:

FOR OVERNIGHT DELIVERY VIA FEDEX:

Clerk of the Court California Supreme Court 350 McAllister Street, Room 1295 San Francisco, CA 94102	Original + 14 Copies

FOR COLLECTION VIA U.S. MAIL:

Clerk of the Court Orange County Superior Court Central Justice Center 700 Civic Center Drive West Santa Ana, CA 92701	Respondent 1 Copy
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 3, 2014, at San Diego, California.

Carlos Armijo

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