

California Supreme Court Rejects City's Attempt To "Evade" General Plan Amendment Referendum

The California Supreme Court has unanimously denied an effort by the City of Orange to defend its approvals for a residential development project despite an intervening public vote that rejected a general plan amendment the city had passed to advance the project. By later attempting to make an "administrative correction" to its general plan, the court held, the city improperly sought "to evade the effect of the referendum petition." *Orange Citizens for Parks and Recreation v. Superior Court*, No. S212800 (Dec. 15, 2016).

A close up look at a courthouse or government building with lots of copy space to the right To resolve the case, the court was forced to grapple with the convoluted planning history underlying an open space tract recently approved for development as 39 residential units. In 1973, the city council adopted a specific plan that designated the property as open space, but also passed a resolution upholding the "recommendation of the Planning Commission" to designate the property as open space and low-density housing, not solely as open space. However, conforming revisions were not made to the specific plan. In 2010, the city adopted a new general plan that designated the project site as open space. The 2010 general plan stated that specific plans, including the 1973 plan, must be consistent with general plan land use policies. The city council later approved the developer's request to amend the general plan to allow housing on the property. Shortly thereafter, project opponents challenged the amendment by referendum. In response, the city "changed course" and argued there was no need to amend the general plan to approve the project because the 1973 resolution adopting the Planning Commission recommendation permitted residential development on the property. The city concluded, accordingly, that a successful referendum of its action amending the general plan would have no effect. The voters went on to reject the general plan amendment, and in ensuing litigation the courts were asked to determine whether an amendment was required to authorize the project. The California Supreme Court said it was. The court determined that the city council conditioned its finding that the housing project was consistent with the general plan on the general plan amendment later rejected by voters. Nevertheless, the court continued, even if it were to assume the city had found the project consistent with the un-amended 2010 general plan, the court would not defer to the city's finding. The court rejected the city's argument that the specific plan had designated the property as open space and low-density housing. The 1973 planning commission recommendation to adopt this designation "never became integrated into the publicly available [specific] plan, let alone the 2010 General Plan." Rather, the court stated, the 2010 general plan land use element gave the project site "an unambiguous designation" as open space, and the publicly available specific plan designated the property similarly. Citing case law and Perkins Coie's *California Land Use and Planning Law* treatise, the court concluded that the 2010 general plan land use designation had not informed the public that the property would be subject to residential development. The proposed general plan amendment, in contrast, did so, but was rejected by the citizenry. The city was not then permitted to conform its 2010 general plan to the 1973 planning commission recommendation through an "unreasonable" correction.

Authors



[Alan Murphy](#)

Partner

AMurphy@perkinscoie.com [415.344.7126](tel:415.344.7126)

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