APPENDIX B

Court and Attorney General Opinions

This appendix summarizes major planning-related litigation and pertinent opinions of the California Attorney General. The brief summaries highlight one or more pertinent principles, but are by no means comprehensive discussions of each case or opinion. The intent is to bring these cases to your attention; please refer to the full text of the cases and opinions for in-depth information. For advice regarding the applicability of a case to specific situations, particularly those cases involving "takings," consult your counsel.

U.S. SUPREME COURT CASES

Dolan v. City of Tigard *(1994) 114 S.Ct. 2309*

As conditions of approval for a building permit, the City of Tigard required that the owners of a plumbing supply store dedicate a strip along their street frontage for a bicycle lane and dedicate the drainage ditch along the side of their property for flood control purposes. Tigard cited its land use plan as the basis for these exactions. The owners sued, alleging that the dedication requirements amounted to regulatory takings for which just compensation was due.

The U.S. Supreme Court reversed the lower court's decision and overturned Tigard's exactions. The court held that in addition to the essential "nexus" described in the court's *Nollan* decision, the extent of an exaction must have a "rough proportionality" to the demand or impact of the project. The court found that the city's exactions exceeded the proportional impact the enlarged store would contribute to bicycle traffic and flooding.

This case demonstrates the Supreme Court's concern over regulations that attempt to place an unfair burden on a single property owner. A general plan can provide the broad basis for ordinances that impose exactions to implement the plan, but may not be specific enough to be the sole basis for exactions.

Nollan v. California Coastal Commission *(1987) 107 S.Ct. 3141*

The Nollans wished to demolish and rebuild their single family residence in the coastal zone. The Coastal Commission approved a permit for the new residence, conditional upon the Nollans dedicating a strip of land along the property's beach frontage for public access. The purpose of the dedication was to carry out the goals of the Coastal Act in preserving the public's view of the ocean from Highway 1. The Nollans sued, alleging that the dedication was a regulatory "taking," unconstitutional under the Fifth Amendment of the U.S. Constitution, which prohibits governmental taking of private property without just compensation.

The Supreme Court overturned the lower court's decision and held for the Nollans. Government's power to regulate land uses is well established in law. However, such regulations must advance a legitimate public purpose and be linked to the land use's impacts on that public purpose. In this case, the Commission may legitimately regulate development along the coast in a manner that protects public views of the ocean from Highway 1. However, the dedication of beachfront land for public access is not necessary, nor is it related to this purpose.

This case introduced the word "nexus" to the lexicon of exactions. *Nollan* instructs that governments must document the link, or nexus, between the exactions being imposed, the legitimate public purpose being served, and the necessity of the exaction to remedy projects' impacts on that public purpose.

CALIFORNIA SUPREME COURT CASES

DeVita v. County of Napa *(1995) 9 Cal.4th 763*

In 1990, Napa County voters approved an initiative amending the county's general plan to limit development in agricultural areas for a 30-year period and to restrict the ability of the Board of Supervisors to consider, with certain exceptions, general plan amendments that would change agricultural designations. Proposed general plan amendments in agricultural areas would be subject to a countywide election. DeVita challenged the initiative, arguing that the measure rendered the general plan internally inconsistent and that amending the general plan is the responsibility of the Board of Supervisors and not properly undertaken by initiative. The trial court and the court of appeal held for the county.

The Supreme Court affirmed, holding that the reference to "legislative body" in Government Code §65356 and §65358 does not limit the authority to amend a general plan solely to a city council or county board of supervisors. The initiative power reserved to the voters by the California Constitution allows them to take any legislative action that is otherwise within the power of their elected legislative body, unless such power is specifically restricted to the legislative body. In this case, the court concluded that the statute was not so specific as to exclude the electorate from acting as the legislative body. As a valid amendment to the general plan, the measure did not create any internal inconsistency.

Lesher Communications v. City of Walnut Creek *(1990) 52 Cal.3d 531*

Walnut Creek voters approved an initiative linking the level of allowable office development to the level of service on key roads within the city. Its effect was to limit future development throughout the city. Lesher Communications sued, alleging, in part, that the initiative failed to amend the general plan and thus was inconsistent with the plan.

The Supreme Court agreed, concluding that the voter initiative was a zoning change rather than a general plan amendment and, because of its inconsistency with the plan, was invalid when passed. Simply be-

cause a measure is passed by the voters rather than adopted by the city council does not absolve it from meeting the consistency requirement.

***Yost v. Thomas** (1984) 36 Cal.3d 561*

The Park Plaza Corporation filed several applications, including a specific plan, to authorize construction of a 360-room hotel and conference center under the City of Santa Barbara's certified Local Coastal Program (LCP). After the council had approved the project, a local citizens' group attempted to file a referendum petition to reverse the council's action. The petition was rejected by city clerk Thomas. The city argued that its approval was ministerial under the Coastal Act and not subject to referendum. The citizens' group sued and the trial court found for the city, holding that the city's actions were administrative under the Act and that the powers of initiative and referendum apply only to legislative actions by a local governing body.

The Supreme Court reversed, citing the established principle that a referendum applies only to legislative acts. Since adopting or amending a general plan and rezoning are legislative acts, the court reasoned that specific plans are likewise legislative. The court also concluded that in enacting the Coastal Act, the Legislature had not intended to limit local authority to a point beyond the reach of referendum. While the Coastal Commission may disapprove an LCP that is inconsistent with state policy or too weak to effectively implement it, the Commission may not specify the precise content of the LCP. Furthermore, local governments may choose the means of implementing the Coastal Act and may be more restrictive of particular development than state policies require.

***Arnel Development Company v. City of Costa Mesa** (1980) 28 Cal.3d 511 (California Court of Appeal (1981) 126 Cal.App.3d 330)*

Arnel Development Company (Arnel) proposed to develop a 50-acre parcel in Costa Mesa. The city approved a specific plan and rezoned the Arnel property to planned development residential low-density and planned development residential medium-density. A final development plan and a tentative subdivision map were also approved.

After the city's action, city voters approved an initiative measure rezoning the Arnel property and adjacent agricultural parcels to single-family residential. Thereafter, the city refused to process Arnel's applications for a final subdivision map and building permits. In response, Arnel sought to have the initiative invalidated, arguing that the rezoning of specific, relatively small parcels was an adjudicative, rather than a legislative, act and thus could not be enacted by initiative.

The Supreme Court ruled for the city, concluding that enactment or amendment of a zoning ordinance is a legislative act regardless of the size or ownership of the land involved and is subject to enactment by initiative. It noted that an initiative may be declared invalid because it is arbitrary or unreasonable, it bears no reasonable relationship to the regional welfare, or it deprives property owners of substantially all use of their land. Furthermore, zoning changes, even those adopted by initiative, must conform to the general plan.

The Supreme Court remanded the case to the California Court of Appeal to address the other arguments made by Arnel contesting the validity of the initiative. The California Court of Appeal ruled for Arnel, holding that the initiative ordinance was arbitrary and unreasonable and, therefore, invalid. In contrast to the zoning adopted by the city after 18 months of planning and 30 public hearings, the zoning initiative was not based on any significant change in circumstances, but enacted for the sole purpose of thwarting the Arnel project. Further, the zoning initiative was invalid because it failed to meet the regional welfare test set out in *Associated Homebuilders of the East Bay v. City of Livermore (1976) 18 Cal.3d 582*. By precluding development of multifamily residences in the area, the initiative ordinance did not effect a reasonable accommodation of the competing interest on a regional basis and was, therefore, an invalid exercise of the police power.

***Youngblood v. Board of Supervisors of San Diego County** (1978) 22 Cal.3d 644*

In 1974, the Santa Fe Company filed a tentative map for 131 lots based on the adopted San Dieguito Community Plan. The Planning Commission and the Board of Supervisors determined that the map was consistent with the community plan and granted approval. Shortly thereafter, the Board of Supervisors adopted an amended the San Dieguito Community Plan. The board denied a request by Youngblood and other neighboring property owners to rezone Santa Fe's property to the lower density called for in the amended plan. Santa Fe filed a final map in 1975, which the county approved.

Youngblood sued to force the board to rezone the property "within a reasonable time" to the reduced density specified in the amended general plan. Youngblood alleged that the board abused its discretion by refusing to rezone the property to conform to the amended plan and by approving final subdivision maps that did not conform to the amended

plan. Youngblood claimed that the Subdivision Map Act requirement for consistency of final subdivision maps with general and specific plans should be interpreted to mean the general and specific plans in effect at the time of review of the final map, even if different from the plans in effect at the time of the tentative map approval.

Youngblood argued alternatively that if consistency with the general plan is determined upon approval of the tentative map, a tentative map is not actually approved until all the conditions placed on the map are met. Thus, consistency with the plan would not be determined until the conditions are satisfied, not when the map is submitted. This would subject the tentative map to any changes in the general plan or specific plans occurring in the interim.

The California Supreme Court ruled for the county, holding that "approval" of a tentative map occurs when it is approved by the local body, not upon fulfillment of the imposed conditions. In addition, since the 1967 community plan did not specify a minimum lot size, only a density range of 0 to 0.75 dwelling units per acre, a subdivision map allowing 0.6 dwelling units per acre was consistent with that plan. The appropriate plan for determining consistency, then, was the plan in effect at the time of the tentative map's approval.

Associated Homebuilders of the East Bay v. City of Livermore (1976) 18 Cal.3d 582

Livermore voters enacted an initiative ordinance in April 1972 restricting the issuance of building permits. No permits were to be issued unless it could be shown by the developer that the project would not lead to school overcrowding or double sessions in the local school district and would not exceed sewage treatment and water supply capacity as regulated by the Regional Water Quality Control Board.

Associated Homebuilders (Builders) sued, arguing that the ordinance was vague and that its effect would be to unconstitutionally bar immigration. The trial court issued an injunction against the city on the basis that the ordinance was unconstitutionally vague and precluded by *Hurst v. City of Burlingame (1929) 207 Cal.3d 134*, which held that state statutes requiring notice and hearing to precede enactment of zoning ordinances also applied to initiatives. The city appealed.

The Supreme Court held in favor of the city. The court reversed its earlier *Hurst* decision, concluding that to require notice and hearing would preclude the use of initiatives in general law cities and unconstitutionally limit the electorate's constitutional right to the initiative process. Further, it held that the ordinance was not vague. By interpreting the ordinance to incorporate standards established by the Livermore Valley Joint School District and the Regional Water Quality Control Board, the court found its terms to be sufficiently specific to allow their implementation. The failure to designate a person or agency to determine when the standards are met was likewise not unconstitutionally vague. The duty to enforce the ordinance lies with the city's building inspector.

Finally, the court rejected the claim that the ordinance unconstitutionally barred immigration. The court established a standard based not upon sustainability by a compelling state interest, but rather upon a reasonable relationship to "the welfare of the region affected by the ordinance." In other words, the city does not exceed its police powers when they are "reasonably related" not only to the welfare of the city's residents, but also to those of the surrounding region.

CALIFORNIA COURT OF APPEAL CASES

Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (1998) Cal.App.4th 1332

In March of 1998, the 3rd District California Court of Appeal considered allegations that the El Dorado County Board of Supervisors failed to comply with the county's Draft General Plan and the California Environmental Quality Act in approving a residential subdivision encompassing 566 lots on 7,868 acres.

The appellate court found that the project was submitted at the time when the county was preparing a general plan update and was subject to the conditions of a general plan extension as approved by the Office of Planning and Research (OPR). As it was authorized to do, OPR required the county to make specific findings reasonably supported by evidence in the record that any development approved be consistent with the county's draft general plan and that there be little or no probability that the development would be detrimental to or interfere with the future adopted general plan. The draft general plan included a policy stating that designations for developments the size of the subject proposal only be assigned to lands contiguous to "Community Regions and Rural Centers." The project was not contiguous to any such lands.

In reviewing this matter, the court relied on *Corona-Norco Unified School District v. City of Corona (1993) 17 Cal.App.4th 985*, in which the court, quoting the *General Plan Guidelines*, held that a project is consistent with the general plan "if, considering all its as-

pects, it will further the objectives and policies of the general plan and not obstruct their attainment." The court concluded that the project was inconsistent with clear and essential policies of the land use element of the draft general plan, and the county's finding of consistency was not supported by substantial evidence.

Hoffmaster v. City of San Diego *(1997) 55 Cal.App.4th 1098*

In 1994, Mr. and Mrs. Hoffmaster, as class representatives for the homeless of the city, sued San Diego asserting that its general plan housing element did not identify adequate sites for homeless emergency shelters and transitional housing as required by Government Code §65583(c)(1) and that the element had not been revised in a timely manner.

The trial court found that the city failed to adopt a housing element meeting the statutory requirements of Government Code §65588(b)(3) and ordered the city to adopt an adequate element within 120 days. The city adopted a revised element in March of 1995, which prompted the filing of a subsequent amended complaint that the revised element was again not adequate. The trial court again found that the city had not identified adequate emergency shelters or transitional housing. Finding again for the plantiffs, the court ordered the city to revise its housing element and ordered it to approve all use permits for emergency shelters and transitional housing until compliance was achieved.

The Court of Appeal also found that the revised element failed to "substantially comply" with housing element law (Government Code §65583(c)(1)) requiring agencies to identify adequate sites designed to facilitate the development of emergency shelters and transitional housing. The Court of Appeal directed the trial court to stay for 60 days its order that the city approve all use permit applications for emergency shelters and transitional housing until compliance was reached, giving the city additional time to adopt an element consistent with statutory requirements.

Chandis Securities Co. v. City of Dana Point *(1997) 52 Cal.App.4th 475*

The Dana Point City Council approved Chandis' general plan amendment and specific plan for a hotel and 370-unit residential development on the Headlands. Petitions were filed forcing a successful voter referendum against the project and, as a result, the council's action was reversed.

The court held that although the city council acted reasonably to approve the project, the electorate is empowered to reverse that action, particularly since reversal did not conflict with the general plan and maintained the status quo. The court held that the restriction on denying a "development project" under Government Code §65589.5 does not apply to legislative projects.

City of Santa Cruz v. Superior Court of Santa Cruz County (Bombay Corp.) *(1995) 40 Cal.App.4th 1146*

The City of Santa Cruz adopted a new general plan after numerous public hearings. The plan included an area identified as a greenbelt that was to be restricted to open-space uses. During deliberations on the plan, Bombay Corp. had unsuccessfully requested that the city exclude its property from the greenbelt. Bombay sued to overturn the city's general plan adoption, charging that city officials had failed to proceed as required by law because they had allegedly predetermined not to allow development of the greenbelt, regardless of the evidence presented to them. The trial court ordered depositions from city officials seeking to define their motives in ignoring Bombay's request.

The Court of Appeal reversed, holding that judicial inquiry into the motives of officials is prohibited by the separation of powers doctrine, absent some evidence of illegal activity. The city's decision was upheld.

Alameda County Land Use Association v. City of Hayward *(1995) 38 Cal.App.4th 1716*

Alameda County and the cities of Hayward and Pleasanton entered into a Memorandum of Understanding (MOU) pledging to use their "best efforts" to adopt common open-space designations for the 13,100-acre Ridgelands Area, which lay, in part, in each of their jurisdictions. The MOU prohibited any change in these general plan designations without the approval of all three entities. The Alameda County Land Use Association sued, alleging that the MOU invalidly restrained the cities and the county from acting independently, even when an amendment would be in the public interest. The jurisdictions countered that these claims were not ripe for review and the trial court dismissed the case on those grounds.

The Court of Appeal reversed. The court found that the MOU impaired the jurisdictions' future exercise of their exclusive power to amend their respective general plans. This would have effectively provided each jurisdiction with veto power over outside jurisdictions' future general plan amendments.

San Mateo County Coastal Landowners Association v. County of San Mateo *(1995) 38 Cal.App.4th 523*

In 1986, San Mateo County voters approved initiative Measure A amending the county's Local Coastal Program (LCP). The initiative, with minor exceptions, did not amend the substance of the LCP, but rather identified a number of LCP land use policies and provided that those policies could only be amended by voter approval. These amendments were subsequently certified by the Coastal Commission. The Coastal Landowners Association sued, alleging, among other things, that Measure A dealt with a matter of statewide concern that could not be addressed by local initiative and that it conflicted with the Coastal Act by circumventing the statutory requirements for public hearings, participation, and involvement by the Coastal Commission otherwise applicable to LCP amendments. The trial court held for the county.

The Court of Appeal affirmed the trial court's decision. Under *Yost v. Thomas (1984) 36 Cal.3d 561* and the Coastal Act, local governments have broad discretion to determine the content of the land use plan portion of their LCP. Accordingly, Measure A was not preempted by the Coastal Act. In addition, *DeVita v. County of Napa (1995) 9 Cal.4th 763* supported amendment of the county general plan, of which the land use plan was a part, by initiative. Based on *DeVita*, the court opined that none of the procedural requirements of the Coastal Act can limit proper exercise of the initiative power. The county's coastal protection initiative did not conflict with and was not preempted by the California Coastal Act.

Hernandez v. City of Encinitas *(1994) 28 Cal.App.4th 1048*

Low-income and homeless residents brought suit against the city, claiming that, among other things, in quantifying its housing needs and goals for low-income residents the city had not used "regional fair share" data in identifying adequate housing opportunities for low-income and homeless people.

The court reviewed the general plan based upon the well-established standard for determining the adequacy of a general plan: the plan must be in "substantial compliance" with the law and the review cannot be based upon the "merits" of the plan.

The court upheld the city's land use and housing elements, finding actual compliance with the law and describing many of the arguments as being based on the "merits" of the general plan and thus beyond the scope of the review.

Marblehead v. City of San Clemente *(1991) 226 Cal.App.3d 1504*

In 1988, San Clemente voters approved Measure E, which established traffic levels of service intended to serve as standards by which future general plan amendments, specific plans, rezonings, and other land use decisions were to be judged. Measure E purported itself to be a general plan amendment and directed the city to revise its zoning ordinance accordingly. Marblehead sued.

The Court of Appeal concluded, after examining Measure E, that the initiative was not a general plan amendment but rather a resolution by voters that the general plan and zoning should be amended to reflect the Measure's principles. Although the electorate is empowered to enact legislation such as a general plan amendment or rezoning, the initiative power does not enable voters to direct the city council to amend the plan or effectuate a rezoning.

No Oil, Inc. v. City of Los Angeles *(1988) 196 Cal.App.3d 223*

Occidental Petroleum (Occidental) filed applications with the City of Los Angeles to establish three oil drilling districts and a drill site in Pacific Palisades. The proposed drilling zones were designated for open-space use in the city's Brentwood-Pacific Palisades district plan. The city planning commission considered the applications and project EIR and denied the rezonings. Occidental appealed to the city council, which reversed the commission's decision. When the ordinances were referred back to the planning commission, the commission denied them again and Occidental made another appeal to the council, which granted final approval.

No Oil, an association of area landowners, filed suit. The trial court held for No Oil and this appeal ensued. No Oil cross-appealed, contending, in part, that the drilling ordinances were inconsistent with the city's district plan and with the open-space and conservation elements of its general plan. Their argument rested on two main points: that oil drilling is an exclusively industrial use and that the project site's open-space designation precludes industrial uses.

The Court of Appeal reversed and held that under the provisions of the city's plans and Government Code §65560, "open-space land" may include open space used for "the managed production of resources" in areas containing major mineral deposits. Since oil recovery is managed production of a natural resource, the project could reasonably be found consistent with the policies of the general and district plans. With regard

to zoning, the city did not act in an arbitrary manner or reach a conclusion that could not reasonably be made given the evidence before it. The city's zoning scheme did not limit oil drilling exclusively to industrial zones. It was apparent that drilling and production could be approved in any zone upon approval of a supplemental use district.

Under this interpretation of Government Code §65560(b), open-space uses could be construed to include such resource recovery operations as oil production facilities. In light of this, it behooves local governments to specify the types of open-space land being designated in their open-space elements (e.g., is it open space for the preservation of natural resources, for the managed production of resources, for outdoor recreation, or for public health and safety).

Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles *(1986) 177 Cal.App.3d 300*

Los Angeles County approved a project proposing 1,192 dwelling units, one million square feet of light industrial space, and various public uses on 516 rural acres located south of the Ventura Freeway in the Santa Monica Mountains. The Las Virgenes Homeowners Federation (Homeowners) filed suit against the county and the developer, alleging, among other things, that the Malibu/Santa Monica Mountains Area Plan (MSMMAP) was inconsistent with the county plan and that the project was inconsistent with both plans. The trial court held for the county and the developer. Homeowners appealed.

The Court of Appeal affirmed the lower court decision and found the following. Los Angeles County's plan consists of general elements that set countywide policy and community plans that deal with local issues. The MSMMAP's purpose is "to identify specific land uses, determine actual boundaries between land use categories, and establish specific residential density ranges within the parameters established by the countywide goals and policies." Although a 35-acre portion of the project was not literally consistent with the densities shown on the county's planning maps, the court held that the project was consistent when the maps were read with the text of the MSMMAP. Since the general plan map did not apply at a small scale, the MSMMAP was the pertinent land use policy document and there was no inconsistency between the countywide plan and the MSMMAP. As a result, the court held that project density did not exceed the overall ceiling set by the MSMMAP and was consistent with both the MSMMAP and the county general plan.

Elysian Heights Residents Association v. City of Los Angeles *(1986) 182 Cal.App.3d 21*

Morton Park Associates (Morton) intended to construct a 46-unit apartment complex as allowed by existing city zoning. Morton obtained the necessary city permits, demolished existing structures, and began site preparation. The Elysian Heights Residents Association (Elysian) attempted to halt construction by appealing the issuance of the building permit. They claimed that the project density exceeded the twelve-unit per acre maximum prescribed by the city's Silver Lake-Echo Park district plan and, by inference, the city general plan.

While Elysian's administrative appeals were in progress, as a result of an unrelated lawsuit the Superior Court ordered the city to bring its zoning into consistency with its general plan. To demonstrate its good faith, the city enacted an ordinance prohibiting further issuance of permits for projects that were incompatible with the general plan. This ordinance exempted previously issued permits such as Morton's.

Elysian filed suit against the city claiming that the building permit issued by the city was inconsistent with the district and citywide plans. The trial court dismissed Elysian's case, ruling that Morton had a vested right to proceed. Elysian appealed.

The California Appeal Court affirmed. It opined that "neither the language of [Government Code] Section 65860 nor the statutory scheme in general mandates that building permits be scrutinized for plan consistency...[H]ad the legislature intended to fashion such a requirement, it clearly had the power to do so." In dismissing Elysian's central argument—that case law had established a link between the general plan and all land use decisions—the court held that *Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176* was distinguishable from this case because it was based upon an alleged inadequacy of the Calaveras County general plan. Elysian had not claimed that the city general plan was inadequate.

Furthermore, there was no local requirement for consistency between the plan and building permits. The ordinance in effect at the time Morton's permit was issued required only consistency between the zoning and the use. The city's interim ordinance, which required consistency with the plan, was not applicable in the case because it took effect after Morton had obtained permits.

Buena Vista Garden Apartments Association v. City of San Diego Planning Department *(1985) 175 Cal.App.3d 289*

The 56-acre Buena Vista Gardens Apartments complex represented approximately 34 percent of the available rental housing in the San Diego community of Clairemont Mesa. At the request of the developers, the city council conditionally approved a planned residential development permit allowing demolition of 1,023 apartments and their replacement with 2,287 condominiums over a ten-year period. The Buena Vista Gardens Apartments Association and others (together Association) brought suit. The Association claimed that San Diego lacked the authority to approve the development permit because portions of the city's housing element failed to comply with the requirements of the Government Code.

San Diego countered Association's challenges to its housing element by maintaining that the standard of review for a housing element was found in *Bownds v. City of Glendale (1980) 113 Cal.App.3d 875* ("Absent a complete failure or at least substantial failure on the part of a local governmental agency to adopt a plan which approximates the Legislature's expressed desires, the courts are ill-equipped to determine whether the language used in a local plan is 'adequate' to achieve the broad general goals of the Legislature."). Further, the city claimed that the housing element requirements interfered with San Diego's charter city status. In the city's view, the statute wrongfully required San Diego to use its legislative and administrative authority to accomplish the state's housing goal. The trial court decided in favor of the city and Association appealed.

The California Court of Appeal affirmed in part and reversed in part, holding as follows. San Diego's housing element lacked necessary programs for conserving existing affordable housing opportunities and, therefore, did not substantially comply with Government Code §65583(c)(4). The court granted a writ directing the lower court to refuse approval of the development permit until the housing element was brought into compliance. The court rejected use of *Bownds*, noting that "the *Bownds* decision no longer accurately reflects the state of the legislatively mandated housing element nor its standard of review. The standard of review is not limited to whether there is a 'complete' or 'substantial' failure of a city to adopt a plan which 'approximates the Legislature's expressed desires' (*Bownds v. City of Glendale, supra*) but whether there is 'actual compliance' (*Camp v. Board of Supervisors, 123 Cal.App.3d 334, 348*) with specified requirements. Bownds retains validity to the extent it prohibits a court from examining the 'merits' of an element."

The court observed that both the Legislature and the judiciary have found housing to be a matter of statewide concern. As a result, "if a matter is of state-wide concern, then charter cities [such as San Diego] must yield to the applicable general state laws regardless of the provisions of its [sic] charter."

deBottari v. City Council of Norco *(1985) 171 Cal.App.3d 1204*

The Norco City Council approved a general plan amendment that redesignated a parcel of land from residential/agricultural (up to two units per acre) to residential-low density (three to four units per acre). The council also rezoned the site accordingly.

Louis deBottari circulated referendum petitions challenging the zone change ordinances. After the Norco city clerk certified the correctness of the petitions, they were presented to the Norco City Council pursuant to California Elections Code §4055, which requires the council to either repeal the rezoning ordinances or call a referendum. The council refused to do either, contending that a repeal of the ordinances would result in zoning that was inconsistent with the city's general plan. deBottari then sought a writ of mandate to compel the council to act. The trial court denied the writ and deBottari appealed.

The California Court of Appeal affirmed. Normally, Norco's city council would have been required by the Election Code to act on the referendum. Additionally, court review of a challenged referendum is usually more appropriate after the election than before. However, two exceptions exist to this general rule. First, a court will intervene before an election if the voters are not empowered to adopt the disputed proposal. The court noted, for example, that election officials have been required to withhold initiative and referendum proposals from the ballot when such measures were not legislative in nature. Secondly, pre-election review would be warranted if the substantive provisions of a ballot measure were legally invalid. The court agreed with the city that a repeal of the challenged ordinances would have violated Government Code §65860, making the city's zoning ordinance inconsistent with its general plan.

Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County *(1985) 166 Cal.App.3d 90*

In 1982, the Calaveras County Board of Supervisors adopted a new general plan. Subsequently, Concerned Citizens of Calaveras County (Citizens) filed suit, alleging that the general plan was inadequate be-

cause the circulation and the land use elements were internally inconsistent and insufficiently correlated, solid and liquid waste disposal facilities were not designated, and the plan omitted population density standards for three areas of the county.

The trial court concluded that the circulation element was adequate and areas for waste disposal did not need to be designated in the general plan until they were identified by the county. However, the land use element's omission of population density standards rendered it legally inadequate. Citizens appealed.

The Court of Appeal reversed the trial court on the adequacy of the circulation element. Section 65300.5 of the Government Code requires that a general plan and its elements comprise an integrated, internally consistent, and compatible statement of policies. Section 65302(b) requires that a general plan contain a circulation element that addresses transportation infrastructure and that is correlated with the land use element. The court found that one portion of the element indicated that county roads were sufficient to accommodate the projected traffic, while another described a worsening traffic situation aggravated by continued subdivision activity and development in areas with inadequate roads. The court concluded that the circulation element was internally inconsistent.

On the issue of correlation between the land use and the circulation elements, the court interpreted §65302(b) to mean that the circulation element must describe, discuss, and set forth standards and proposals reflecting any change in demands on the various roadways or transportation facilities of the county as a result of changes in uses of land contemplated by the plan. The court noted that the land use element, which provided for substantial growth, neither discussed the potential inadequacy of the roadways nor contained proposals by which growth would be restricted in the event the road system was overwhelmed. At the same time, the circulation element pointed out current and expected deficiencies in the state highways serving the county. Further, the element's only policy for rectifying the situation was to "lobby for funds." No other funding sources were identified. The court concluded that the land use and circulation elements were not sufficiently correlated and violated §65302(b).

Neighborhood Action Group v. County of Calaveras *(1984) 156 Cal.App.3d 1176*

The Calaveras County Planning Commission approved a conditional use permit (CUP) to allow processing of sand and gravel from hydraulic mine tailings near the town of Jenny Lind and certified a final environmental impact report (EIR). The Neighborhood Action Group (NAG), an association of neighbors, appealed the matter to the Board of Supervisors which subsequently upheld the commission's decision. NAG filed suit, claiming that the CUP was invalid because the county's general plan did not comply with state statute and the CUP did not conform to the current general plan. The trial court ruled for the county and NAG appealed.

The Court of Appeal reversed. Upon reviewing relevant law, the court held that although there is no explicit requirement that a CUP be consistent with an adequate general plan, it's validity is derived from compliance with the hierarchy of planning laws—a CUP is governed by zoning, which in turn must comply with the adopted general plan, which in turn must conform to state law. According to the court, a general plan that fails to provide the required statutory criteria relevant to the use being sought, will not provide a valid measure by which a CUP can be evaluated. The court also found the county noise element lacking. The EIR prepared for the CUP could not adequately assess the potential noise impacts of the project without the noise standards that should have been provided by the noise element.

Twain Harte Homeowners Association, Inc. v. County of Tuolumne *(1982) 138 Cal.App. 3d 664*

The Tuolumne County Board of Supervisors certified an EIR for a new general plan. At the same hearing, the board made several wording changes to the draft plan, referring it back to the planning commission for consideration. When the planning director later declared the wording changes to be consistent with the EIR, the board adopted the modified plan.

The Twain Harte Homeowners Association (Association) filed suit to compel the county to rescind certification of the EIR (claiming that the wording changes created potential environmental impacts not addressed) and prepare a new plan (alleging the land use, circulation, and housing elements to be inadequate). The trial court ruled for the county, except to require the county to reconsider including certain timberlands in the general plan. Association appealed.

The California Court of Appeal reversed. The court found that the EIR was an adequate, reasoned analysis, and a good-faith effort at full disclosure; however, it was deficient in addressing the wording changes made to the draft plan after certification of the EIR. These changes deleted provisions restricting heavy industrial development in a certain area and amended a policy statement regarding seismic safety. The court held that

these changes, without further analysis in the EIR, constituted an abuse of the county's authority.

Regarding the general plan, the court found that the housing element was adequate but not the land use and circulation elements. The land use element failed to include standards of population density and building intensity as required by Government Code §65302(a). The court reasoned that population density refers to numbers of people in a given area and not to dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and numbers of people is set forth in the plan. Tuolumne County's plan contained no such correlation. Further, the plan contained no standards for building intensity for the nonresidential areas of the county. In addition, the court could not discover whether in fact the circulation element was correlated with the land use element as required by Government Code §65302(b), and so concluded that it was not.

Sierra Club v. Board of Supervisors of Kern County *(1981) 126 Cal.App.3d 698*

The Kern County Board of Supervisors approved a zoning change from agricultural to residential use on property owned by the Ming Center Investment Company. At the time of the zoning approval, the residential zoning was consistent with the land use element of the general plan but inconsistent with the open-space/conservation element. Anticipating possible conflicts between elements of the general plan, the board adopted a statement as part of the land use element that its policies would take precedence over those of the adopted open-space/conservation element where conflicts existed.

The Sierra Club filed suit to set aside the zoning approval, arguing that the zoning change was invalid on several grounds, including inconsistencies between the land use and open-space/conservation elements. After the trial court ruled against the Sierra Club, the county adopted the Rosedale Community Plan, which eliminated the inconsistency between elements.

The California Court of Appeal ruled in part for the Sierra Club, holding that the general plan, at the time the zoning ordinance amendment for Ming Center was adopted, was internally inconsistent. Accordingly, the zoning ordinance amendment was invalid when passed. The use of a precedence clause subordinating the open-space element to another element violated the general plan internal consistency requirement, as well as specific requirements of the Open-Space Lands Act. However, the issue of internal consistency was moot as applied to the Ming Center zoning because adoption of the Rosedale Community Plan had eliminated the problem. Since the zoning was consistent with the community plan and the general plan was now internally consistent, no purpose would be served by setting aside the zoning ordinance and requiring the board of supervisors to rezone the property.

Camp v. County of Mendocino *(1981) 123 Cal.App.3d 334*

The Mendocino County Board of Supervisors adopted its general plan as a collection of elements over the period between 1967 and 1977. In 1978 the county approved several tentative subdivision maps, including two for projects known as Eden Valley Ranch and Waunita Meadows. Walter Camp filed a writ of mandate to set aside the tentative map approval for Waunita Meadows. Other local residents and the State Attorney General filed additional writs to overturn the board's approval of the Eden Valley Ranch map. In each suit, the plaintiffs alleged that the general plan was inadequate and, as a result, tentative subdivision maps could not be approved.

The plaintiffs sought several remedies, including a declaratory order that the general plan was legally inadequate, an order compelling the county to set aside the Waunita Meadows and the Eden Valley Ranch approvals, an order requiring the county to adopt an adequate general plan, and an injunction against future subdivision activity until an adequate plan was prepared. The county challenged the authority of the court to examine the plan for its adequacy, alleging that this constituted an impermissible inquiry into the merits of the plan.

The Court of Appeal combined the three cases and ruled for the plaintiffs. Courts have the authority to review a general plan for substantial compliance with the requirements of the Government Code. The land use element failed to comply with the requirements of Government Code §65302(a) because it did not identify population and building density standards. In addition, the circulation element was legally deficient because it was not correlated with the land use element. The housing element was inadequate because it did not include standards and plans for improving housing and for the provision of adequate sites for housing. It also lacked adequate provisions for the housing needs of all economic segments of the community and a comprehensive problem-solving strategy. The noise element was inadequate because it contained no noise exposure information and the county failed to monitor areas deemed noise sensitive. The county's argument that the existing element was adequate for a quiet rural

county did not persuade the court since the statutory requirement is neither subjective nor geographical.

Prohibiting the processing of zoning changes and certificates of compliance was an appropriate court remedy where the county failed to adopt an adequate general plan. However, the county could not be enjoined from approving final maps that were in substantial compliance with a tentative map approved prior to the injunction and not subject to court challenge (approval of a final map is ministerial under *Youngblood v. Board of Supervisors (1978) 22 Cal.3d 644).*

Karlson v. City of Camarillo *(1980) 100 Cal.App.3d 789*

Camarillo amended its land use element in October of 1977, changing a 132-acre parcel from agricultural to low-density residential. Two months later, the city amended its land use element for a 10-acre parcel, changing it from agricultural to commercial use. This parcel was adjoined by agricultural land on three sides, which would remain agricultural. An amendment for a third parcel was considered, but rejected by the council.

Mr. Karlson sued, alleging that the city failed to comply with the internal consistency requirement in Government Code §65300.5 because the two amendments were inconsistent with general plan policies on leapfrog development and conversion of agricultural lands; violated the former §65361 (now §65358) by exceeding the allowable number of yearly general plan amendments; and violated §65356 by failing to return the set of general plan amendments to the planning commission for recommendation after revising the commission's recommendations.

The Court of Appeal ruled for the city, holding that a general plan amendment, regardless of the size or ownership of the parcel affected, is a legislative act. Therefore, the appropriate standard for judicial review is Code of Civil Procedure §1085, which limits the scope of review to an examination of the proceedings before the local agency to determine whether its actions were arbitrary or capricious or entirely lacking in evidentiary support and whether it has proceeded in the manner prescribed by law. The internal consistency requirement does not modify this scope of review. A difference of opinion over changes in the general plan does not warrant a court's rejection of a city's action if opposing viewpoints were presented, extensively considered, and on the basis of the evidence, the city council selected one of the alternatives.

Section 65361 limited the number of occasions on which amendments to a general plan could be considered to three per calendar year [now four]. The court opined that there is no limit on the number of parcels that can be considered on each of those occasions.

Friends of B Street v. City of Hayward *(1980) 106 Cal.App.3d 988*

The City of Hayward approved a city project to widen B Street and construct a bridge. The project would have removed existing residences and businesses, as well as 153 mature trees. The citizens' group Friends of B Street filed suit, seeking to set aside the decision to improve B Street. The group also sought an injunction on the grounds that the public works project was inconsistent with the city's general plan and that the city's general plan lacked a noise element.

The Court of Appeal ruled for Friends of B Street, holding that in requiring cities and counties to prepare general plans, it must have been the Legislature's intent that all local decisions involving future growth, including decisions by a city to undertake public works projects, be consistent with the general plan. An injunction against a public works project is an appropriate remedy until the local government adopts a complete and adequate general plan. Any appropriate legal or equitable remedy, including an injunction or writ of mandate, is available as relief for the failure of a general plan to contain a mandatory element.

Save El Toro Association v. Days *(1977) 74 Cal.App.3d 64*

The City of Morgan Hill adopted its open-space element in 1973. Later that year, it adopted a policy stating that all lands on El Toro Mountain above the 800-foot elevation would remain in permanent open space. In 1976, the city approved final subdivision maps for 52 acres of land below the 800-foot elevation and created an assessment district to fund necessary improvements. Save El Toro Association (El Toro) sued the city to halt the proposal and to annul approval of the maps and the resolution creating the district. El Toro alleged that the city's actions were unlawful because any action that restricted the use of open-space land must be consistent with the open-space plan and the city had not adopted a legally valid open-space element or general plan.

The Court of Appeal ruled for El Toro, holding that for the open-space element to be adopted as a part of the general plan, there must be a general plan. Although the city offered a number of ordinances that it claimed fulfilled the statutory requirements for a general plan, these ordinances did not approach satisfying the requirements of state law. Of the nine elements then re-

quired, the plan lacked five. As the city did not have a general plan, it could not have adopted an open-space element as part of that plan. Further, without an inventory of available open-space resources, there could not be a plan as contemplated in the Open-Space Lands Act. Instead, only isolated, uncoordinated projects would occur—the type of development the Act specifically intended to prevent. Morgan Hill had also failed to adopt the open-space zoning ordinance required by the Act. In light of the above, the court concluded, the city could not take any action to acquire or regulate open-space land or to approve a subdivision map.

STATE ATTORNEY GENERAL OPINIONS

82 Ops.Cal.Atty.Gen. 135 (1999)

Subject: General plan applicability to school district

Question: May a school district construct an elementary school on land designated for "agricultural, open space, or rural land use" under a county ordinance that was adopted by the electorate as an initiative measure amending the county's general plan?

Conclusion: A school district may construct an elementary school on land designated for "agricultural, open space, or rural land use" under a county ordinance that was adopted by the electorate as an initiative measure amending the county's general plan, provided the governing board of the school district, by vote of two-thirds of its members, renders the ordinance inapplicable to the proposed use of the property and such action is not arbitrary and capricious.

81 Ops.Cal.Atty.Gen. 57 (1998)

Subject: Combined general plan and zoning land use designations

Question: May a county adopt a single set of land use designations to serve both the general plan and zoning ordinance? If that is done, may it then repeal its zoning ordinances and replace them with a single ordinance that requires all land use activity to conform to the general plan?

Conclusion: Yes to both questions. The California Codes provide sufficient flexibility to allow a general plan to be parcel-specific and to address issues of local importance, such as zoning. Similarly, the Codes allow flexibility in zoning schemes, so a county may repeal its zoning ordinances and replace them with a single ordinance that requires all land use activity in the county to conform to its general plan, including the incorporated zoning ordinances. The opinion points out possible pitfalls of a combined general plan/zoning approach, such as loss of long-term perspective.

78 Ops.Cal.Atty.Gen. 327 (1995)

Subject: Posting of Public Hearing Agenda

Question: Are weekend hours counted as part of the 72-hour period for posting an agenda prior to the regular meeting of a local agency? Does posting within a public building that is locked during evening hours count toward the 72-hour posting?

Conclusion: The Ralph M. Brown Open Meeting Act (Government Code 54950, et seq.) requires that the agenda of a regular public meeting of a local agency be posted 72 hours in advance of that meeting. Weekend hours do count as part of the notice period. However, posting within a building that is inaccessible for a portion of the 72-hour period does not meet the requirements of the Brown Act. The notice must be posted in a location where it may be read by the public at any time during the 72 hours prior to the meeting.

75 Ops.Cal.Atty.Gen 89 (1992)

Subject: Public Testimony at Public Hearings

Question: May the legislative body of a public agency limit public testimony on particular issues at its meetings to five minutes or less for each speaker, depending upon the number of speakers?

Conclusion: Yes, it may, depending upon the circumstances, such as the number of speakers.

70 Ops.Cal.Atty.Gen. 231 (1987)

Subject: Determination of a locality's share of regional housing needs by a council of governments

Question: (1) Must the determination include both the existing and projected housing needs of the locality? (2) Must the availability of suitable housing sites be considered based upon the existing zoning ordinances and land use restrictions of the locality or based upon the potential for increased residential development under alternative zoning ordinances and land use restrictions? (3) Must the income categories of sections 6910-6932 of title 25 of the California Administrative Code be used?

Conclusion: (1) The determination of a locality's share of the regional housing needs by a council of governments must include both the existing and projected housing needs of the locality. (2) The availability of suitable housing sites must be considered based not only upon the existing zoning ordinances and land use restrictions of the locality but also based upon the potential for increased residential development under alternative zoning ordinances and land use restrictions.

(3) The income categories of sections 6910-6932 of title 25 of the California Administrative Code must be used.

67 Ops.Cal.Atty.Gen. 75 (1984)

Subject: City and County General Plan Diagrams

Question: Is a parcel-specific map required for the land use element of a general plan adopted by a city or county, as described in Government Code §65302?

Conclusion: A parcel-specific map is not required. The Legislature used the word "diagram" in §65302 rather than "map." When the Legislature recodified the statutory requirements for general plans in 1965, it substituted the word "diagram" for the term "map," which had been used previously. When the Legislature has used the term "map," it has required preciseness, exact location, and detailed boundaries (for example, a subdivision map). A diagram, on the other hand, is defined in *Webster's* as "a graphic design that explains rather than represents: a drawing that shows arrangement and relations."

Various commentators have concluded that the purpose of the general plan is to provide general guidance for land use decision-making. A specific mapping of land uses should not be necessary for this purpose if the plan's policies are detailed in reflecting community objectives for the spatial relationships among land uses. Use of a parcel-specific map can hinder the making of logical connections between various land use decisions and the community's goals and objectives as presented in the plan text. This may lead to over-reliance upon a precise map in place of the plan as an integrated whole.

This does not mean, however, that the owner of a specific parcel of land may not be able to determine the range of possible uses of his or her property. Although the diagram locations are general, the plan's policies should be detailed enough when applied to a particular parcel to identify the possible uses.