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CA Supreme Court Decision is a Change of Course for Zoning

The California Supreme Court recently considered the people's reserve referendum power and a local agency's duty and ability to amend its zoning ordinances to conform to its general plan. The Court ultimately held that a referendum is appropriate to challenge such an amendment where the city has other means available to make the zoning ordinance and the general plan consistent. This case overrules a longstanding appellate decision, and gives important guidance to cities and counties on the interpretation of Government Code section 65860 and the use of referenda in relation to the processing of zoning ordinances and general plan amendments.

In November, 2014, the City of Morgan Hill ("City") amended its general plan to change the designation of a parcel from industrial to commercial. Several months later the City adopted an ordinance re-zoning the property from industrial to commercial to conform to the prior amendments to the general plan. A local group petitioned the City Clerk for a referendum seeking to vacate the zoning ordinance. The City challenged the referendum on the basis that the referendum would cause the zoning code to be inconsistent with the amended general plan. The trial court agreed with the City and ordered the referendum be removed from the ballot, relying primarily on the language of California Government Code section 65860 (a), which requires zoning ordinances be consistent with the general plan of a city. The trial court also followed the appellate decision of *deBottari v. City of Norco* (1985) 171 Cal.App.3d 1204, 1212 ("deBottari"), which held that referendums are always invalid if they reject a zoning ordinance enacted by the local government to bring a property's zoning into compliance with the jurisdiction's general plan. The Court of Appeal disagreed with *deBottari's* holding and reversed the trial court's decision.

After careful analysis of Government Code section 65860, the Supreme Court held that that a referendum challenging a zoning ordinance amendment can be appropriate, even though a successful referendum would make the City's zoning ordinance inconsistent with the general plan for a period of time, but only if the City has other zoning designation options or measures which could have been selected to conform the zoning code to the general plan. The Court disapproved of the reasoning in *deBottari* and found that Government Code section 65860(a) should be interpreted to prohibit the existence

of a newly created zoning ordinance that is not compliant with the general plan. Although the City argued that allowing such an interpretation of the statutes would undermine the purpose of a general plan and create a lengthy period in which the general plan is inconsistent with the zoning ordinance, the Court disagreed and also pointed out that local governments could prevent such lengthy delays in the future by processing applications for amendments to the zoning code and the general plan simultaneously rather than successively. Ultimately, however, the Court vacated the judgment of the Court of Appeal and remanded the case to the trial court to determine if the City had other zoning designation options or other means available to achieve consistency between the zoning ordinance and the amended general plan after a referendum.