IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
Department 39

OAK HILL PARK COMPANY,
a California Corporation,
Petitioner and Plaintiff,

v.

THE CITY OF ANTIOCH,
et al., *Respondents and Defendants*.

Case No. N18-2228

ZEKA RANCH, ONE, LLC,
a California limited liability company, et al.,
Petitioners and Plaintiffs,

v.

THE CITY OF ANTIOCH,
et al., *Respondents and Defendants*.

Case No. N18-2232

ORDER AFTER HEARING

The hearing on what were previously identified as "Phase II" issues in the above-captioned writ proceedings came on regularly for hearing on November 21, 2019, at 9:00 a.m., in Department 39 of this court, the Honorable Edward G. Weil presiding. The parties were represented by counsel, as stated on the record.

After hearing oral argument, the Court took the Phase II issues under submission. The Court now rules as follows.

The petitions for a writ of mandate by Oak Hill Park Company and the Zeka Ranch petitioners are granted. The Court affirms the tentative rulings issued on November 20. The Court also makes brief additional findings, set out under a separate heading below.

N18-2228 – The Affirmed Tentative Ruling

The Court rules as follows on the Motion For Judgment On The Peremptory Writ filed by petitioner and plaintiff Oak Hill Park Company, a California corporation ("Oak Hill"). The motion concerns an initiative approved by the City Council Of The City of Antioch ("City Council") in July 2018: the West Sand Creek Tree, Hillside, and Open Space Protection, Public Safety Enhancement, and Development Restriction Initiative ("Richland Initiative").

The motion is opposed by the City of Antioch ("City"), and by real parties in interest Richland Communities, Inc. a Florida corporation, and Richland Planned Communities, Inc., a California corporation (collectively "Richland"). The Richland Initiative includes a provision approving a development agreement between Richland and the City ("the Development Agreement") that would authorize a housing development Richland hopes to build ("the Richland Ranch Project").

A. Summary of Ruling.

The Court rules as follows:

- The approval of the Development Agreement is grammatically and functionally severable from the Richland Initiative, but is not volitionally severable from that initiative.
- Section 3.B.21 of the Richland Initiative exceeds the proper scope of the initiative process, but Section 6(C) does not. Section 3.B.21 of the Richland Initiative is severable from that initiative, and so does not invalidate the entire initiative.
- The Richland Initiative does not unlawfully impair essential government functions.
- The Richmond Initiative does not violate Government Code section 65300.5.
- The Richmond Initiative does not violate the Housing Element Law.
- The Richmond Initiative does not violate the Equal Protection Clause.

Because the Court has already found that the Richland Initiative's approval of the Development Agreement is invalid, the Court's additional finding that the approval is not severable means that the entire Richland Initiative is invalid and Oak Hill's petition for a writ of ordinary mandamus must be granted.

This renders moot the contemplated Phase III, which would have dealt with Oak Hill's taking claim. Oak Hill shall prepare a proposed writ and shall submit that proposed writ to the opposing parties for approval as to form.

B. The Severability of the Development Agreement.

B-1. The Issue.

The Richland Initiative has three primary components: (1) it amends the City's General Plan; (2) it revises certain zoning ordinances in the Antioch Municipal Code, and; (3) it approves the Development Agreement. In the Court's order of May 31, 2019, the Court found that the Development Agreement could not be approved by initiative, but the Court deferred the question of whether the Development Agreement was severable from the rest of the Richland Initiative. That question is now before the Court in Phase II of these proceedings.

The Richland Initiative contains a severability clause. Accordingly, the Court may find the Development Agreement severable "if it can be separated grammatically, functionally, and volitionally." (*Pala Band of Mission Indians v. Bd. of Supervisors* (1997) 54 Cal.App.4th 565, 585-586.) Oak Hill does not dispute that the Development Agreement is grammatically severable. Oak Hill does contend that the Development Agreement is neither functionally nor volitionally severable.

B-2. Functional Severability.

The Court of Appeal has described the test for functional severability as follows:

> We next consider whether the sections are functionally separate. That is, are they capable of independent application. In order to pass this test "[t]he remaining provisions must stand on their own, unaided by the invalid provisions nor rendered vague by their absence nor inextricably connected to them by policy considerations. They must be capable of separate enforcement." [Citation omitted.]

(*People v. Library One* (1991) 229 Cal.App.3d 973, 989.) In its opening memorandum, Oak Hill devotes almost all of its argument to volitional severability, concluding with the following single sentence on the subject of functional severability:

> The Development Agreement is also not functionally severable because the Development Agreement is clearly inextricably connected to the entire [Richland Initiative], its findings and objectives, and the public cannot separate one action from the other.

(Motion, p. 11, lines 12-14.) It appears to the Court that Oak Hill is here conflating functional and volitional severability, rather than treating them as separate concepts. Although Oak Hill devotes more attention to the issue in its reply memorandum, Oak Hill there again conflates functional and volitional severability. (Reply, pp. 3-6.)

The Court sees no reason why the amendments to the General Plan and the Municipal Code are incapable of independent application; they stand alone, and are not rendered vague by the absence of the Development Agreement. The policy considerations the amendments reflect (the protection of ridgelines, etc.) are not necessarily dependent on the additional benefits

that would be provided under the Development Agreement. Zoning and General Plan changes can, and for many years have been, made without an accompanying development agreement. The Court therefore finds that the Development Agreement is functionally severable from the rest of the Richland Initiative.

B-3. Volitional Severability.

The Court of Appeal has described the test for volitional severability as follows:

> The volitional requirement concerns whether the voters would have adopted the initiative without the invalid provisions. [Citations omitted.] " 'The test is whether it can be said with confidence that the electorate's attention was sufficiently focused upon the parts to be severed so that it would have separately considered and adopted them in the absence of the invalid portions.' " [Citation omitted.] In applying this test, "[w]e may examine the proposition itself, as well as the ballot materials . . . ." [Citation omitted.]

(*Pala Band of Mission Indians v. Bd. of Supervisors, supra,* 54 Cal.App.4th at 586.) The title of an initiative, and the findings within the initiative, may be used to assess volitional severability. (*The Park at Cross Creek, LLC v. City of Malibu* (2017) 12 Cal.App.5th 1196, 1212.) The Court finds that it must address two sub-issues concerning volitional severability.

Whose Volition Is At Issue?

In considering volitional severability, the Court must determine whose volition is at issue when an initiative is not submitted to the voters, but is instead adopted by a city council. The Court concludes that it is the volition of the City Council members who voted on the initiative that matters. The Richland Initiative was never approved by the entire electorate. The signature of a voter on an initiative petition means only that the voter believes that the initiative should be considered according to the statutory procedures, and not necessarily that it should become law. (See, Elec. Code, § 9215.)

Oak Hill's Evidence Concerning Volitional Severability

Oak Hill begins its discussion of volitional severability by referencing the staff report on the Richland Initiative, which was submitted to the Mayor of Antioch and the City Council. (Administrative Record ["AR"] 426-431.) The staff report describes one of the initiative's features as follows:

> The Initiative would also allow development of the project commonly known as "The Ranch" on approximately 311.7 acres of land within the Limited Development Area. The Ranch is a master planned residential community that would include up to 1,177 single-family residential dwellings, donate land for fire protection facilities and services, provide transportation improvements, fund additional police services, donate at least $ 1,000,000 to fund sports and performing arts facilities at Deer Valley High School, and protect approximately 44% of the approximately 551.5-acre project site for parks, open space, and trails.

(AR 428.)

Oak Hill next references the statement of purposes within the Richland Initiative, on the first page of the initiative. (AR 432.) The stated purposes include the following:

> [The initiative would allow for] the development of the flatter portion of the land commonly known as "The Ranch" as a master planned residential community that thoughtfully balances future development with respect for the site's substantial natural features and provides extraordinary community amenities for the citizens of Antioch including the preservation of substantial open space, creation of new recreation and park land, public access with perimeter trails within the Ranch, substantial funding for local high school sports and performing arts facilities, creation of new housing and retail choices, improved public safety (fire and police) facilities and services, and infrastructure improvements to improve traffic circulation and traffic safety and allow quicker access to Antioch hospitals.

(*Ibid.*)

Oak Hill also references the Richland Initiative's findings. (AR 432-433.) These findings state that the people of the City of Antioch find and declare that the initiative will protect and enhance the City's unique character and quality of life by, inter alia:

- Requiring developers to donate a site for a future fire station at Deer Valley Road and Sand Creek Road to service southeast Antioch. (Finding No. 4.)

- Requiring the developer of the Richland Ranch Project to donate at least $ 1,000,000 to the Antioch Unified School District. (Finding No. 5.)

- Requiring developers to provide substantial community amenities including parks, trails, road improvements, and public safety facilities and services. (Findings 6-7.)

- Providing a pedestrian-friendly, amenity rich community that focuses on open space, parks, and trails to facilitate resident and visitor access to natural and historical experiences both on and off-site in the East Bay Regional Park District system. (Finding No. 12.)

- Providing a Village Center adjacent to Deer Valley Road and across from the Kaiser Permanente Antioch Medical Center. (Finding No. 13.)

- Providing significant economic development in Antioch through the creation of hundreds of new construction and permanent jobs. (Finding No. 14.)

- Providing extraordinary community amenities for the citizens of Antioch including the preservation of substantial open space, creation of new recreation and park land, creation of new housing and retail choices, improved public safety, and needed traffic and other infrastructure improvements. (Finding No. 15.)

(*Ibid.*)

As Oak Hill points out, these benefits — which are benefits that approval of the Development Agreement would provide to the City — are identified as benefits of the Richland Initiative as a whole. There is no attempt in these findings to distinguish between benefits provided by changes to the Antioch General Plan and Zoning Code, and benefits provided by approval of the Development Agreement. It is notable that Finding No. 5, although identified as a benefit of the Richland Initiative as a whole, specifically refers to a benefit that would only be received if the Development Agreement were approved: the requirement that the developers of the Richland Ranch Project donate at least $ 1,000,000 to the Antioch Unified School District.

There is also a separate finding specific to the Development Agreement and the Richland Land Project, Finding No. 16. (AR 433.) This is one of the most detailed findings in the initiative, suggesting the importance of the finding. It highlights nine benefits from the Development Agreement, including a number of those same benefits previously identified as benefits of the Richland Initiative as a whole. (*Ibid.*)

Finding No. 22 states that the Richland Initiative as a whole, and not just the Development Agreement, "specifically implements and promotes numerous General Plan provisions ..." (AR 433.) These include the following: Objective 3.5.2.1 [fire prevention and emergency services]; 3.5.3.1 and 8.11.1 [adequate police facilities]; Objective 3.5.7.1, 8.9.1, and 10.3.1 [parks and recreational facilities]; Objective 8.10.1 [adequate fire stations], and; 8.13.1 [infrastructure]. (AR 433-434.) Oak Hill argues that if the Development Agreement is severed from the Richland Initiative, these benefits would not be obtained.

Finding No. 24 supplements Finding No. 16, again highlighting the Development Agreement. (AR. 434.) This finding refers to the "extraordinary public benefits" that would be provided by approval of the Development Agreement. (*Ibid.*)

Oak Hill next references a PowerPoint presentation shown to the City Council in support of the Richland Initiative. (AR 583-591.) The first slide is labeled "THE INITIATIVE," followed by the Richland Initiative's title. (AR 583.) But the balance of the slides all reference at least in part the benefits that would be provided by approval of the Development Agreement:

- The second slide lists the "Initiative & Project Benefits," without distinguishing between the benefits provided by the changes to the General Plan and the Antioch Municipal Code and the benefits provided by the Development Agreement. (AR 584.)

- The third slide, entitled "Environmental Protections," includes as one protection "Preservation at *The Ranch*." (AR 585.)

- The fourth slide is a map entitled "*The Ranch* – Plan Evolution." (AR 586.)

- The fifth slide is a map entitled "*The Ranch* — New Plan." (AR 587.)

- The sixth slide is a map entitled "*The Ranch* – High Quality Neighborhoods." (AR 588.)

- The seventh slide is entitled "Citywide Benefits," and lists four benefits including "$1.2 million for Deer Valley High School facility improvements." (AR 589.)

- The eighth slide is entitled "Public Safety Benefits," and lists three public safety enhancements that approval of the Development Agreement would provide. (AR 590.)

- The last slide is entitled "Why Adopt Now." (AR 591.) This slide shows a series of bullet points, all but one of which refer to benefits that approval of the Development Agreement would provide:

> "Delivers a **Model Project** shaped directly by **community feedback** in an area of the City long identified for well-planned growth"
>
> "Provides **environmental protections** that Antioch residents want"
>
> "Delivers Antioch's first **active adult/senior community**"
>
> "Delivers two **executive home neighborhoods**"
>
> "Generates **$ 1.2 million for Deer Valley HS** improvements"
>
> "Avoids uncertainty"
>
> (*Ibid.* [Bold in original.])

The Court notes that the benefit of avoiding uncertainty as to how the new zoning area would be developed would only be achieved if the Development Agreement were approved.

Oak Hill next references the minutes of the City Council meeting where the Richland Initiative was adopted. (AR 069-082.) Oak Hill notes that there was no discussion by any participant of the possibility that the Development Agreement might be severed from the Richland Initiative, pending further study, and that the changes to the General Plan and the Antioch Municipal Code be adopted separately. (*Ibid.*)

The Court does not find these minutes persuasive. Under the Government Code, the City Council could only adopt the initiative, send the initiative to the voters, or order a report pursuant to Elections Code section 9212; it could not modify the initiative. (See, Elec. Code, § 9215.)

Finally, Oak Hill references the City Attorney's "Notice of Amendment To The Antioch Municipal Code," published after the Richland Initiative was approved. (AR 782-783.) The Court does not find this document helpful, because it was not a document considered by the City Council.

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Richland's Evidence Concerning Volitional Severability

For the most part, Richland does not cite to pages of the administrative record that Oak Hill has not already cited. Instead, Richland contests Oak Hill's interpretation of this evidence as it applies to the issue of volitional severability.

First, Richland points out that many of the benefits that would be provided by approval of the Development Agreement would also have to be provided by any other developer, if the Development Agreement were severed and not approved. Richland points to Finding No. 24, which states that "the Development Agreement confirms the extraordinary public benefits provided for in the General Plan Amendments ..." (AR 434.)

Richland next points out that the Richland Initiative has three separate severance clauses. (AR 504-507.) Richland regards this as a strong expression of the intention that the Richland Initiative be approved "even if some provision, specifically including the [Development Agreement]," were later declared invalid.

Richland also highlights the fact that there was no guarantee that the Richland Ranch Project would actually be completed. Richland cites Government Code section 65868, which provides as follows:

> A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Section 65867. An amendment to an agreement shall be subject to the provisions of Section 65867.5.

Richland also references one of the amendments to the General Plan, which provides that "the actual development yield [contemplated by the Richland Initiative] is not guaranteed by the General Plan, and could be substantially lower." (AR 459.) Finally, Richland references two additional contingencies: "future non-legislative discretionary approvals by the City," and CEQA review. (AR, 433-434, 504.)

Richland's last argument is that the PowerPoint presentation and public comments should not be considered, because "[n]either the PowerPoint nor comments were part of the Initiative, and neither were before the voters who signed the petition."

Findings

The Court finds that the Development Agreement is not volitionally severable from the Richland Initiative. The Court finds Oak Hill's evidence on this issue substantially more persuasive than Richland's evidence.

The evidence does not show that any developer would have given the City the same deal as Richland did in the Development Agreement. For example, Richland agreed to give the Antioch Unified School District at least $1,000,000. But the corresponding General Plan amendment only states as follows:

> Proponents of new residential development within the Limited Development Area are strongly encouraged to provide extraordinary public benefits to the community,

including financial contributions to the Antioch Unified School District for local high school sports facilities and performing arts facilities.

(AR 461-462.) There is no guaranty that a different developer would agree to give the school district as much money as Richland agreed to give, just as there is no guaranty that a different developer would agree to devote 44% of its land to open space and parks, etc. This is why the last, seal-the-deal point made in the PowerPoint presentation shown to the City Council was that the Richland Initiative "[a]voids uncertainty." (AR 591.) The benefit of avoiding uncertainty concerning how the new zoning area would be developed would only be achieved if the Development Agreement were approved. If it were not approved, there would be no certainty as to when another willing developer might come along, and no certainty that the new developer would offer the City as good a deal.

In fact, approving the General Plan and Antioch Municipal Code amendments without approving the Development Agreement would almost certainly place Richland, or any successor in interest to Richland's land, in a much stronger bargaining position. Richland would already have gotten the benefit of the General Plan amendments and the rezoning Richland wanted, without having given up anything in return.

With regard to the severance clause, this does create a rebuttable presumption of severability. The Court finds that Oak Hill has rebutted the presumption.

With regard to contingencies, the Court acknowledges that completion of the Richland Ranch Project was not a certainty. But Richland points to no evidence that anyone involved with the Richland Initiative was concerned about discretionary approvals or CEQA compliance, routine hurdles that any project must get past. Further, any concern about discretionary approvals was substantially mitigated by Section 6(C) of the initiative, which rendered many approvals ministerial and not discretionary.

Finally, the Court has already found that it is the volition of the City Council that is at issue, and not the volition of the voters who signed the petition placing the Richmond Initiative before the City Council. Accordingly, the PowerPoint presentation shown to the City Council is relevant and persuasive evidence.

Additional Issues

The Court could end its analysis here, given that the unseverability of the Development Agreement invalidates the entire Richland Initiative. But in order to create a more complete record for purposes of any appellate review, the Court will address the additional arguments asserted by Oak Hill.

C. The Scope Of Initiative And Referendum.

Oak Hill argues that the Richland Initiative exceeded the scope of initiative and referendum. (See, Cal. Const., Art. II, § 8.) This is because the powers of initiative and referendum apply only to legislative acts, and do not extend to administrative acts.

The test for distinguishing between legislative and administrative acts has been summarized as follows:

> The power of referendum conferred by article II, section 9, of the California Constitution applies "only to acts which are legislative in character, and not to executive or administrative acts." [Citation omitted.] In distinguishing between the two, California cases have commonly cited the formulations in *McKevitt v. City of Sacramento* (1921) 55 Cal.App. 117, 124 [203 P. 132], and *McQuillin on Municipal Corporations*. [Citations omitted.] The *McKevitt* decision states: "Acts constituting a declaration of public purpose, and making provision for ways and means of its accomplishment, may be generally classified as calling for the exercise of legislative power. Acts which are to be deemed as acts of administration . . . are those which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body, . . ." (55 Cal.App. at p. 124.) Somewhat more succinctly, *McQuillin* states: "The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it." (5 McQuillin on Municipal Corporations (3d ed. 1989) § 16.55, at p. 266.)

(*Southwest Diversified v. City of Brisbane* (1991) 229 Cal.App.3d 1548, 1555.) Oak Hill argues that the Richmond Initiative exceeds the scope of the initiative process in three separate respects.

Amendments To The General Plan

Oak Hill argues that the Richmond Initiative is invalid because Section 3.B.21 of the initiative "directly adopts findings that the Ranch Project Initiative is consistent with (and shall at all times be interpreted to be consistent with) the objectives and policies of the General Plan as amended by the [Richland Initiative] ... which intrudes into the City's powers to determine administratively whether a future specific project proposal is consistent with the General Plan." (Motion, p. 12, lines 3-8.) Oak Hill cites two decisions in support of this argument.

In the *Turlock* decision, the Court of Appeal held in pertinent part as follows:

> However, for the guidance of the trial court if this matter should come before it again, we note that while zoning is unquestionably a legislative act, "a variety of administrative land use decisions, including the granting of a variance [citation], the granting of a use permit [citation], and the approval of a subdivision map [citation]," have been classified as adjudicative, and thus reviewable by the substantial evidence test. [Citations omitted.] We find that the decision as to whether a particular project is consistent with a general plan involves "the application of standards . . . to individual parcels" which renders that decision adjudicatory, and thus subject to the substantial evidence test on judicial review. [Citation omitted.]

(*Guardians of Turlock's Integrity v. Turlock City Council* (1983) 149 Cal.App.3d 584, 598.) Oak Hill also cites the *Topanga* decision, which held in pertinent part as follows:

> Consistent with the reasoning underlying these cases, we hold that regardless of whether the local ordinance commands that the variance board set forth findings, that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action.

(*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514.)

In its opposition memorandum, Richland argues that an initiative may properly include findings. The decisions Richland cites, however, concerned general findings in support of changes to zoning laws; they did not involve a specific finding that a given development project is consistent with a general plan. (See, *Arcadia Development Co. v. City of Morgan Hill* (2011) 197 Cal.App.4th 1526, 1530-31 [finding, e.g., that "[t]he indiscriminate continued expansion of the city and urban service area boundaries further imbalances the jobs to housing ratio"]; *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1256 [finding, e.g., that "compact housing developments will not have the adverse effect on the environment that 'sprawl' does"]; *California Gillnetters Assn. v. Department of Fish & Game* (1995) 39 Cal.App.4th 1145, 1165 ["appellants cite no authority to support the contention that it is improper for an initiative to contain an uncodified statement of intent, and many initiatives include preambles setting out uncodified statements of intent"].)

That portion of the *San Luis Obispo* decision cited by Oak Hill on this issue is inapposite because it concerned an agency's advisory comments, and not its adjudicatory authority. (See *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 372 ["the SAA states repeatedly that the comments of an airport land use commission as to consistency are advisory only"].) The *Los Angeles* decision is also distinguishable, because it dealt with legislative findings that a new ordinance was consistent with a general plan, and not that a specific development project was consistent with the general plan. (See, *No Oil v. City of L.A.* (1987) 196 Cal.App.3d 223, 243.)

The Court finds that the *Turlock* decision is the decision most closely on point. The Court therefore finds that Section 3.B.21 of the initiative is invalid because it exceeds the proper scope of the initiative process. This, however, is not a ruling on whether the Richland Initiative actually is consistent with the General Plan, but merely a determination that the findings it sets forth on that issue are not dispositive.

This leaves the question of severability, which has not been briefed in connection with Section 3.B.21. Based on the legal authorities cited above, the Court finds that the amendment is grammatically, functionally, and volitionally severable.

Amendments To The Municipal Code

Oak Hill argues that the Richmond Initiative is defective for a second reason: because Section 6(C) of the initiative adds a new Article 42 to the City Zoning Code. Oak Hill argues that Article 42 is improper for the following reason:

> [Article 42] unlawfully converts discretionary permits and approvals ordinarily required for a development of the magnitude of the Richland Ranch Project into ministerially approved permits (AR: 499, 503). Article 42 requires that any future development applications for the Ranch Project be ministerially granted. By establishing a development review process for a specific project that deviates dramatically from the normal permit process and takes away the power of the City Council to administratively review the Richland Ranch Project, the [Richland Initiative] impermissibly intrudes upon the administrative authority granted to the City.

(Motion, p. 12, lines 14-22.) Oak Hill cites the *City of Malibu* decision, which held in pertinent part as follows:

> Measure R similarly withdraws from Malibu's city council the ability to issue discretionary land use entitlements or permits concerning a development project—unless and until voters approve a specific plan for that project. (§ 17.02.045, subds. B.5. & E.) In this respect, Measure R is really about project-by-project review—which would otherwise be subject to administrative, not voter, approval—in the guise of a specific plan. ... These provisions underscore Measure R's attempt to usurp administrative authority.

(*The Park at Cross Creek, LLC v. City of Malibu* (2017) 12 Cal.App.5th 1196, 1207. See also, *Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 302 [initiative invalid because it "impermissibly withdraws from the city council and lodges in the electorate adjudicatory powers with respect to the issuance of conditional use permits for the location"].)

In making this argument, Oak Hill has not addressed the Court's observation concerning Section 6(C) in the Court's order of May 31, 2019. The Court observed as follows:

> To the second point, it is difficult to reconcile Oak Hill's argument with *Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 365, 378, which upheld a voter initiative even though it specifically restricted a board of supervisors and local airport authority from making discretionary changes to an initiative for mixed-use development of a 131-acre property. Instead, it provided that the initiative was subject only to a specific set of "express, objective standards and ministerial actions that cannot be changed by subsequent discretionary actions or interpretations ...." (*Id.* at 365.) "[T]he people's power of initiative is greater than the power of legislative bodies because the people may bind future legislative bodies." (*Id.* at 378.) This is in clear conflict with Oak Hill's position yet goes unaddressed in opposition.

The Court continues to find the *County of San Luis Obispo* decision to be the most closely on point. The *Wiltshire* decision is distinguishable, because an established body of case law has held that the issuance of a special use permit is an adjudicatory act and so is not properly the subject of an initiative. (*Wiltshire*, *supra*, 172 Cal.App.3d at 304 ["[t]he award of a special use permit is characterized as an act adjudicatory in nature requiring notice and an opportunity to be heard"].) The *City of Malibu* decision is distinguishable because it did not deal with provisions for the ministerial approval of a specific project; rather it abrogated the agency's adjudicatory authority entirely for all future projects. (*The Park at Cross Creek, LLC v. City of Malibu* (2017) 12 Cal.App.5th 1196, 1207 ["Measure R not only withdraws administrative authority but it also adds 'layers' to the administrative process"].)

A city's zoning ordinance may provide that certain types of uses are subject to discretionary review, while other "uses of right" are approved ministerially. That decision may be made through an initiative. The Court finds that Section 6(C) does not exceed the proper scope of the initiative process.

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Adoption of The Development Agreement

Oak Hill argues that the Richmond Initiative is defective for a third reason: because Section 7 and Exhibit G of the initiative approve the Development Agreement. This point is moot, because the Court has already ruled that this aspect of the initiative is invalid. (See, *Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 695 ["the Legislature intended to exclusively delegate approval of development agreements to local legislative bodies and to make such approval subject to referendum, but not to initiative"].)

D. The Impairment Of Essential Government Functions.

Oak Hill argues that the Richmond Initiative is invalid because it "unlawfully impairs essential government functions." Oak Hill cites two initiative provisions in support of this argument: Section 8, relating to mitigation measures, and Section 6(C), which adds new Chapter 42 to the Antioch Municipal Code.

Section 8

Oak Hill argues that Section 8 improperly usurps an administrative function by prescribing mitigation measures required under the California Environmental Quality Act ("CEQA") for the Richland Ranch Project. This argument lacks merit, because Section 8 merely states the intent of the voters that the project will fully comply with CEQA; it does not prescribe any specific mitigation measures. (AR 504.) Oak Hill offers no legal authority suggesting that such a general statement of intent is improper. (See, *California Gillnetters Assn.*, *supra*, 39 Cal.App.4th at 1165 ["appellants cite no authority to support the contention that it is improper for an initiative to contain an uncodified statement of intent, and many initiatives include preambles setting out uncodified statements of intent"].)

Further, Oak Hill's argument appears to be based on the factual premise that the zoning restrictions the Richland Initiative placed on Oak Hill's property were intended to serve as a CEQA mitigation measure. But Oak Hill does not cite to any evidence in the administrative record supporting this factual premise.

Section 6(C)

Plaintiff's brief, conclusory argument on Section 6(C) cites no legal authority. (Motion, p. 15, lines 23-28.) This argument appears to be duplicative of the more detailed argument concerning the proper scope of the initiative process, which is addressed above in Part C of this ruling. The Court finds that Section 6(C) does not impair essential governmental functions. (See, *Citizens for Planning Responsibly*, *supra,* 176 Cal.App.4th at 365, 378.)

E. Government Code Section 65300.5.

Oak Hill argues that the Richmond Initiative is invalid because it violates Government Code section 65300.5, which generally requires that a General Plan be internally consistent. Oak Hill cites 12 purported inconsistencies.

The Court rejects this argument because it has not been adequately briefed. Oak Hill sets out the alleged inconsistences in twelve conclusory bullet points, but does not quote the pertinent portions of the General Plan that are allegedly inconsistent with the revisions to the

General Plan made by the Richland Initiative. Further, Richland has provided a persuasive point-by-point rebuttal of Oak Hill's argument in the opposition memorandum, and Oak Hill has not persuasively responded to that rebuttal in the reply. Finally, insofar as Oak Hill is arguing that the General Plan as amended is inconsistent with the *prior* version of the General Plan, as opposed to being internally inconsistent, the argument lacks merit. (See, Gov. Code, § 65358, subd. (a) ["[i]f it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan"].)

On November 19, Richland provided the Court with a copy of the recent Court of Appeal opinion in *Denham, LLC v. City of Richmond* (2019) ___ Cal.App.5th ___ (October 25, 2019). In that case, the court held that even where an initiative contained provisions that rendered the city's general plan internally inconsistent, the remedy is not to invalidate the initiative, but to order the city to adopt measures necessary to remedy the inconsistency. Reliance on this opinion, which is consistent with prior case law, is not necessary because of the Court's ruling on the substance of this issue.

F. The Housing Element Law.

Oak Hill argues that the Richmond Initiative is invalid because it violates the Housing Element Law. (See, Gov. Code, § 65580 et seq.) The discussion of this argument in Oak Hill's opening memorandum consists of an almost verbatim repetition of paragraphs 126 through 137 of the Second Amended Petition: the discussion does not cite to the administrative record or other evidence, and does not cite new appellate authority. (See, Motion, pp. 19-22.)

In its opposition Richland points out this lack of evidentiary support. Richland also argues that voters can approve changes to the Housing Element Law by initiative, without complying with the procedural requirements that are binding on the City Council.

The Court will address individually the alleged procedural and substantive violations of the Housing Element Law articulated by Oak Hill.

Procedural Violation No. 1

Oak Hill argues that the City Council failed to comply with section 65585 of the Government Code, which provides in pertinent part as follows:

> (b)
>
> > (1) At least 90 days prior to adoption of its housing element, or at least 60 days prior to the adoption of an amendment to this element, the planning agency shall submit a draft element or draft amendment to the department.
> >
> > (2) The planning agency staff shall collect and compile the public comments regarding the housing element received by the city, county, or city and county, and provide these comments to each member of the legislative body before it adopts the housing element.
> >
> > (3) The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case

> of an adoption or within 60 days of its receipt in the case of a draft amendment.

Oak Hill's argument on this point is as follows:

> The [Richland Initiative], on its face, amended the Housing Element of the City of Antioch's General Plan without complying with the procedural requirements of Government Code Section 65585. Neither the City nor the City Council ever submitted the Housing Element amendments contained in the [Richland Initiative] to HCD [the Department of Housing and Community Development] for review prior to City Council's adoption. HCD was never given the opportunity to review those amendments, and never will since further approvals would be ministerial, to evaluate their compliance with state housing laws, or to submit a report for the City Council's consideration. Petitioner alleges that the Housing Element has not been certified by HCD subject to amendment by the [Richland Initiative].

(Motion, p. 21, lines 5-12.)

In its opening memorandum, Oak Hill did not identify where within the Richland Initiative the City's state-approved Housing Element is amended. Richland, however, supplied this information in the opposition memorandum; Richland cites to and quotes Section 5.1 of the initiative. (Opposition, p. 30, lines 3-14. See, AR 483.) The amendment updates Section 2.1.4 of the Housing Element, with regard to the status of developments that would have added to or that may in the future add to the City's store of executive housing. (See Richland's RJN, Exh. 2.)

The Court agrees with two of Richland's arguments on this point: (1) that Government Code section 65585 does not apply to "conforming, non-substantive changes" that constitute "little more than editorial tidying up," and; (2) that the statute does not apply to changes made by initiative rather than by the City Council. (Opposition, p. 30, lines 14-23.) The City's Housing Element is aspirational; it states goals for creating housing during the subject time frame. Simply updating the Housing Element to reflect the current status of one of those goals (creating a certain number of executive housing units) would not appear to be a substantive change requiring approval of the Department of Housing and Community Development ("HCD"). Further, the California Supreme Court has held that such statutory notice procedures do not apply to the initiative process. (See, *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596 ["we conclude that sections 65853-65857 do not apply to initiative action, and that the Livermore ordinance is not invalid for noncompliance with those sections"].) Thus, assuming *arguendo* that these changes to the Housing Element ordinarily would have been required by statute to be submitted to HCD for review before final adoption, changes adopted through the initiative process are not subject to the requirement.

Finally, the Court points out an additional hurdle that Oak Hill would face, even if it had demonstrated a violation of the Housing Element Law: there is no reason why this single, minor amendment to the City's Housing Element would not be severable. Based on the legal authorities cited above, the Court finds that the amendment is grammatically, functionally, and volitionally severable.

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Procedural Violation No. 2

Oak Hill makes a second procedural argument, as follows:

> Further, the City's adoption of the [Richland Initiative], and the terms and provisions therein, is inconsistent with the City's adopted Housing Element in that it substantially reduces the amount of land in the City designated for housing. The City did not evaluate this actual governmental constraint that directly impacts the cost and supply of residential development in violation of 65583, subdivision (a)(5).

The Government Code section cited by Oak Hill provides in pertinent part as follows:

> *§ 65583. Housing element components*
>
> ... The [housing] element shall contain all of the following:
>
> (a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:
>
> ...
>
> (5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7).

The cited Government Code section addresses the required components of a Housing Element submitted to the HCD for approval. It does not address subsequent zoning decisions by a local agency and how to determine whether they create inconsistency with the Housing Element. Further, as noted above, the California Supreme Court has held that such statutory notice procedures do not apply to the initiative process. (See, *Associated Home Builders*, *supra*, 18 Cal.3d at 596.)

Insofar as Oak Hill meant to cite Government Code section 65863.6 instead of section 65583, Oak Hill's argument still lacks merit. The California Supreme Court has held as follows:

> Section 65863.6 establishes guidelines that can be carried out by a city or county government, but which reasonably cannot be satisfied by the initiative process. For this reason, we conclude that the section does not apply to initiative measures. To hold otherwise would place an insurmountable obstacle in the path of the initiative process and effectively give legislative bodies the only authority to enact this sort of zoning ordinance.

(*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 824.)

Finally, Oak Hill in the opening memorandum offers no citation to the record or other evidence supporting the proposition that the Richland Initiative "is inconsistent with the City's adopted Housing Element in that it substantially reduces the amount of land in the City designated for housing." In the reply memorandum, Oak Hill cites to two maps that are part of the Richland Initiative. (AR 573 and AR 574.) But Oak Hill fails to explain how these two maps, standing alone, support the sweeping factual assertion made in support of its Housing Element argument. Further, Oak Hill fails to refute Richland's opposition showing that the Richland Initiative does not affect any of the land that the Housing Element identified as being available for meeting the Housing Element's goals. (See, Richland RJN, Exh. 2.)

Procedural Violation No. 3

Oak Hill makes a third procedural argument, as follows:

> The process for adopting and amending the Housing Element of a city or county's General Plan, as outlined in Government Code Section 65585, was delegated by the California Legislature exclusively to the locally elected legislative bodies and is not subject to the initiative process. The Housing Element is unique among the elements of a General Plan in multiple ways that proscribe its amendment by initiative.

The Court finds that this 'exclusive delegation' argument lacks merit, because Oak Hill has not cited pertinent legal authority in support of the argument. Further, as noted above, the California Supreme Court has held that such statutory notice procedures do not apply to the initiative process. (*Associated Home Builders*, *supra*, 18 Cal.3d at 596. See also, *Building Industry Assn.*, *supra*, 41 Cal.3d at 824.)

Substantive Violation

In the reply memorandum, Oak Hill attempts to recast its procedural arguments as substantive arguments:

> Real Party focuses on the fact that the notice and procedures referred to in Government Code section 65853-65857 do not apply to initiatives and therefore the [Richland Initiative] cannot be invalidated. Further, Real Party states that the guidelines provided in Government Code section 65853.6 cannot be satisfied by initiatives. ... **[1]** Real Party has intentionally ignored the crux of Petitioner's argument, which is that the City's adoption of the [Richland Initiative], and the terms and provisions therein, is inconsistent with the City's adopted Housing Element in that it substantially reduces the amount of land in the city designated for housing, and specifically affordable housing for seniors, and eliminates housing for this area from the Housing Element (see amended Housing Element

> Policy, AR: 687). **[2]** The City did not evaluate the actual governmental constraint that directly impacts the cost and supply of residential development for seniors. **[3]** Finally, with the recent passage of Senate Bill 330 (which takes effect on January 1, 2020), the [Richland Initiative] simply cannot be applied to Petitioner's property in a manner that would restrict the City's approval of housing units that the General Plan and Municipal Code allowed before the Council's adoption of the [Richland Initiative].

(Reply, pp. 14-15. [Underlining in original, bracketed numbers added.])

The first part of this reply argument lacks merit for one of the reasons discussed in the previous section: it is not supported by citations to the record or other evidence. Also, there is no legal authority indicating that every zoning regulation that reduces the amount of land designated for housing constitutes an *ipso facto* substantive violation of the Housing Element Law. At some point a zoning regulation might reduce land designated for housing so substantially that it rendered compliance with the Housing Element effectively impractical, but no such showing has been made here.

In the second part of this reply argument, Oak Hill appears to be tacitly invoking Government Code section 65863.6, the statute that requires a local agency to assess the impact of new zoning regulations on housing goals. This is a procedural argument and not a substantive argument. Further, it lacks merit for the reason stated in the previous section. (See, *Building Industry Assn.*, *supra*, 41 Cal.3d at 824.)

The third part of Oak Hill's reply argument lacks merit, because Oak Hill has raised the issue for the first time in its reply memorandum, and the issue has not been adequately briefed. Oak Hill does not explain what part of Senate Bill 330 is relevant to the validity of the Richland Initiative, and does not explain how Senate Bill 330 could be applied retroactively to invalidate already approved amendments to the City's General Plan and Municipal Code. (See, *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840 ["[g]enerally, statutes operate prospectively only"].)

G. The Equal Protection Clause.

Oak Hill argues that the Richland Initiative violates the equal protection clauses of both the federal and the California constitutions. The concept of equal protection has been summarized as follows:

> The Fourteenth Amendment to the United States Constitution provides that "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." The California Constitution likewise prohibits the denial of equal protection. (Cal. Const., art. I, § 7, subd. (a).) " ' "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." ' [Citation.]" (*In re Eric J.* (1979) 25 Cal.3d 522, 531 [159 Cal.Rptr. 317, 601 P.2d 549].) A corporation is considered a "person" entitled to the constitutional guarantee of equal protection. (*National General Corp. v. Dutch Inns of America, Inc.* (1971) 15 Cal.App.3d 490, 495, fn. 3 [93 Cal. Rptr. 343].)

(*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 434.) Oak Hill acknowledges that the equal protection standard applicable in the case at bar is the highly deferential rational relationship standard:

> Equal protection of the law means that persons who are similarly situated with respect to a law must be treated alike under the law. [Citations omitted.] But depending upon the circumstances, differential treatment can be constitutionally valid. "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [Citations.] Where there are 'plausible reasons' for [the government] action, 'our inquiry is at an end.' [Citation.] This standard of review is a paradigm of judicial restraint. 'The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.' " [Citations omitted.] "In other words, the plaintiff must show that the difference in treatment was ' "so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational." ' " [Citations omitted.]

(*Arcadia Development Co. v. City of Morgan Hill* (2011) 197 Cal.App.4th 1526, 1534-35.)

Oak Hill summarizes its argument as follows:

> In adopting the [Richland Initiative], the City has provided favored treatment to the Real Party to the detriment of Petitioner, volunteering land owned by Petitioner to act as open space and mitigation for the Ranch Project, substantially limit any development on Petitioner's property, without any rational basis in the public benefit, and in a wholly arbitrary manner in violation of equal protection under the law. The City redesignated Petitioners' land to "Rural Residential, Agriculture, Open Space" under the pretense of sacrificing it so that the City Council could prohibit development on Petitioner's land so as to approve the Ranch Project. The City Council did this without telling Petitioner or any of the other landowners that their properties would now effectively be open space mitigation for the impacts of development of the Ranch Project. The use of Petitioners' private land is not a proper mitigation measure.

Oak Hill appears to be making three sub-arguments.

First, Oak Hill simply labels the Richland Initiative as being "without any rational basis" and "arbitrary." The Court finds this argument unpersuasive; such labels are not a substitute for reasoned argument and citations to the record. The fact that the initiative achieves its stated purposes in a manner that Oak Hill regards as unfair does not mean that the initiative lacks a rational basis. Every property owner affected by a new zoning restriction will no doubt regard the restriction as unfair, but it does not logically follow that the restriction lacks a rational basis.

The second sub-argument is that the City Council acted without advance notification to Oak Hill or other affected landowners. But this would appear to be more in the nature of a due

process argument than an equal protection argument, and Oak Hill has neither alleged nor briefed a due process violation legal theory.

The third sub-argument is that rezoning Oak Hill's land "is not a proper mitigation measure." This sub-argument lacks merit for two reasons. First, Oak Hill does not cite to any portion of the record suggesting that the rezoning of certain land, including Oak Hill's land, was intended to constitute CEQA mitigation for the Development Agreement. The second problem with Oak Hill's argument is that Oak Hill appears to be invoking the Twelfth Cause of Action, in which Oak Hill alleges that the Richland Initiative constitutes a taking, and that cause of action is not before the Court in this Phase II. Whatever merit there may be to this argument, it is not an equal protection argument.

Nor has Oak Hill established that its land is similarly situated to the Richland Ranch Project land for purposes of the land use and environmental concerns at issue here, which is a threshold showing in an equal protection analysis. Oak Hill has not met its burden of demonstrating an equal protection violation.

N18-2232 – The Affirmed Tentative Ruling

The Court rules as follows on the Phase II issues raised by the Zeka Ranch entity petitioners ("Zeka Ranch"). These issues concern the validity of an initiative approved by the City Council Of The City of Antioch in July 2018: the West Sand Creek Tree, Hillside, and Open Space Protection, Public Safety Enhancement, and Development Restriction Initiative ("Richland Initiative").

The relief sought by Zeka Ranch is opposed by the City of Antioch ("City"), and by real parties in interest American Superior Land, LLC and EPC Holdings 820, LLC ("Real Parties"). The Richland Initiative includes a provision approving a development agreement between one of Real Parties' affiliates and the City ("the Development Agreement") that would authorize a housing development the affiliate hopes to build.

Zeka Ranch seeks to invalidate the Richland Initiative on the ground that the Development Agreement is not severable from the balance of the Richmond Initiative. The Court finds that the Development Agreement is not severable for the reasons stated in Part B of the Court's ruling on the companion proceeding brought by Oak Hill Park Company.

Real Parties have objected to the opening declaration of Andrew A. Bassak, which attaches four online news articles dated April 30, May 2, May 4, and May 10, 2018. Real Parties argue that this evidence may not be considered, because it is outside the scope of the administrative record; i.e., there is no evidence that these articles were submitted to and considered by the City Council.

The Court sustains these evidentiary objections. This is a necessary result of the following finding in the Court's ruling on the companion motion:

> In considering volitional severability, the Court must determine whose volition is at issue when an initiative is not submitted to the voters, but is instead adopted by a city council. The Court concludes that it is the volition of the City Council members who voted on the initiative that matters. The Richland Initiative was never approved by the entire electorate. The signature of a voter on an initiative petition

> means only that the voter believes that the initiative should be considered according to the statutory procedures, and not necessarily that it should become law. (See, Elec. Code, § 9215.)

This ruling renders moot the contemplated Phase III, which would have dealt with Zeka Ranch's taking claim. Zeka Ranch shall prepare a proposed writ and shall submit that proposed writ to the opposing parties for approval as to form.

Additional Findings

1. Volitional Severability.

The focus of oral argument was on volitional severability. The Court would like to clarify a few points concerning that issue.

First, while the Court did consider the PowerPoint presentation shown to the City Council, that was just one piece of evidence on which the Court relied. The Court also considered the way in which the benefits of the Richland Initiative and the benefits of the Richland Ranch Project were conflated in the text of the Richland Initiative, etc. The totality of the evidence persuades the Court that the Richland Initiative was a package deal, with the City agreeing to certain General Plan and Municipal Code amendments in exchange for the benefits specified in the Development Agreement, and that the City Council would not have adopted the Richland Initiative if they had known that the Development Agreement would have to be severed. Rather, the City would have waited until it could evaluate other package deals, perhaps with another developer such as Oak Hill or Zeka Ranch, so that it could tailor the General Plan and Municipal Code amendments to accommodate the needs of a different project.

The City and Richland also pointed out that the Richland Initiative not only governed development in the Richland Ranch area, but imposed substantial development restrictions on other parts of the Sand Creek Focus Area, including those owned by Zeka Ranch and Oak Hill Park, which the City could have wanted to continue in effect regardless of the fate of Richland Ranch. While this is possible, the Court concludes that the record reflects that the development in Richland Ranch and the restrictions imposed on Zeka Ranch and Oak Hill Park are part of a package by which the initiative sought to balance competing interests in the Sand Creek Focus Area, reducing physical

development, but not prohibiting it completely. Accordingly, the other development restrictions are not volitionally severable.

Second, there was much discussion during oral argument concerning the Court's observation that "approving the General Plan and Antioch Municipal Code amendments without approving the Development Agreement would almost certainly place Richland, or any successor in interest to Richland's land, in a much stronger bargaining position." Respondents pointed out that the City would still have some leverage over Richland in the context of design approval and Subdivision Map Act approval, although respondents conceded that this would not guaranty that Richland could be compelled to donate $ 1,000,000 to the Antioch Unified School District. Respondents also characterized the Court's observation as the Court substituting its judgment for that of the City Council.

One could quibble about whether Richland would be in a *much* stronger bargaining position or only in a *somewhat* stronger bargaining position. But the Court stands by the basic premise of its observation: giving Richland the General Plan and Municipal Code amendments it wanted, without obligating Richland to any particular package of public benefits associated with its proposed development project, strengthened Richland's hand. This is particularly so because the amendments could only be repealed through the initiative process, and not by a vote of the City Council.

The Court also states that it is not substituting its judgment for that of the City Council; the Court has no idea whether the Development Agreement was a good deal for the City or not. Rather, the Court is considering the uncertainty and reduced bargaining power that would be caused by the loss of the Development Agreement as part of the Court's volitional severability analysis: these are considerations that would have influenced the City Council's decision if the City Council had known that the Development Agreement would be severed from the Richland Initiative.

Finally, the Court points out a conceptual problem with treating the General Plan and Zoning Code amendments as standalone benefits independent of the Development Agreement: the Richland Initiative included amendments specifically approving the Development Agreement. These include Section 3.B.21 of the initiative, which adopts

findings that the Richland Ranch Project is consistent with the General Plan, and Section 6(C) of the initiative, which added a new article to the Antioch Zoning Code making certain approvals concerning the Richland Ranch Project ministerial. Why would the City Council have wished to enact these amendments, if the City was not going to receive the benefits of the Development Agreement? This is another factor supporting the Court's ruling on volitional severability.

2. Remedy.

During oral argument respondents requested that the Court, rather than invalidating the Richland Initiative, send the initiative back to the City Council for reconsideration. The Court declines this request, because the Court is unaware of any legal authority authorizing such a remedy.

The Court disagrees with respondents' argument that invalidating the Richland Initiative without an opportunity for reconsideration would deprive the voters of the right to the initiative process. If the voters wish to enact the General Plan and Zoning Code amendments provided for in the Richland Initiative, even without the Development Agreement, they are free to circulate a new petition and submit a new initiative to the City Council.

Counsel for Oak Hill Park and Zeka Ranch are directed to prepare an appropriate writ of mandate and judgment and submit them pursuant to Section XI of the Electronic Filing Order.

IT IS SO ORDERED.

November 22, 2019

Hon. Edward G. Weil
JUDGE OF THE SUPERIOR COURT