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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SAVE OUR SPECIFIC PLAN et al.,

Plaintiffs and Appellants,

v.

COUNTY OF ORANGE et al.,

Defendants and Respondents;

CHAD KEARNS,

Real Party in Interest.

G046416

(Super. Ct. No. 30-2010-00421724)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kim Garlin Dunning, Judge. Affirmed.

Shute, Mihaly & Weinberger and Ellison Folk for Plaintiffs and Appellants.
Nicholas S. Chrisos, County Counsel and Nicole M. Walsh, Deputy County Counsel for Defendants and Respondents.

Hart, King & Coldren, Robert S. Coldren, C. William Dahlin, Boyd L. Hill; Greenwald & Hoffman, Paul E. Greenwald, Paul A. Hoffman and John R. Flocken for Real Party in Interest.

Real party in interest Chad Kearns, whose property has long housed commercial stables, sought a conditional use permit to allow him to have wine tastings and special events on his property in the Modjeska Canyon area. Although a large number of neighbors supported the plan, not all the inhabitants of the area were supportive. The opposition was spearheaded by Save Our Specific Plan and Sherry Meddick (appellants). The Orange County Planning Commission (Planning Commission) denied the conditional use permit, but Kearns prevailed on his appeal to the Orange County Board of Supervisors (Board of Supervisors) after he modified his application. Appellants thereafter filed a petition for writs of both ordinary and administrative mandamus (Code of Civ. Proc., §§ 1085, 1094.5), seeking to overturn the board's decision to issue the conditional use permit. The superior court denied the petition and this appeal ensued. We affirm.

I

FACTS AND PROCEDURAL SETTING

Kearns owns an approximately 10-acre piece of property on Jackson Road in the Modjeska unincorporated area of Orange County. In addition to containing a residence built in 1940, the property has two barns, a clubhouse, and horse training rings. The property was previously approved to house an 80 stall commercial horse stable and a vineyard. Kearns's property is zoned A1-SR, "General Agriculture."

In 2009, Kearns submitted an application for a conditional use permit authorizing "additional uses and structures . . . previously approved . . . to allow wine, beverage, snack, and ancillary gift retail sales, use of an existing clubhouse as a wine tasting room and evening dinner restaurant, use of an existing garage as a producing winery, addition of carport for off-street parking requirements and the addition of two horse stalls/stables. The Use Permit request would also allow for special events (weddings anniversaries, parties and fundraisers) up to 300 persons and off-street parking modifications per Zoning Ordinance Section 7-9-145.7."

A report prepared by the county noted the use permit would not involve any new development: “The project site is currently developed with an existing ranch house, two barn structures, a clubhouse, and various paddock areas and training rings. In 2008, the County Zoning Administrator approved Planning Application PA060093 for a Use Permit to allow an 80 horse commercial stable. Presently, the commercial stable is operating with approximately 42 horses. The current application proposes additional uses and does not involve any substantial physical changes to the property.” An Orange County planning report noted the land to the north of the property was used for agriculture and residential, the land to the east for large lot residential, the land to the south was open space, and the land to the west for general agriculture.

The Planning Commission denied Kearns’s application on January 13, 2010. Kearns appealed the denial to the Board of Supervisors. After conducting a public hearing on the matter on May 4, 2010, the Board of Supervisors unanimously remanded the matter to the Planning Commission to reconsider the project in light of revisions suggested by Kearns. Kearns proposed the special events be limited to a maximum of 200 people, the events be held only on Saturdays and Sundays, and wine tastings would not be held on the dates of special events. The Board of Supervisors directed the Planning Commission to determine the maximum number of special events to be held on the property each year, whether to permit amplified music, the maximum amount of people to attend the special events (200 suggested), and other relevant issues.

In sending the matter back to the Planning Commission, Supervisor Campbell made a number of statements for consideration by the commission, including: “The A1 General Agricultural Zoning applicable to this property allows for uses that the Planning Commission finds to be consistent with the purpose and intent of the District. The purpose and intent of the A1 Zone is defined as providing for agriculture, outdoor recreational uses and those low intensity uses that have a predominately open space character. This gives the decision makers fairly broad latitude for interpretation.” The

supervisor stated the vineyard appears to be consistent with the agricultural zoning and the Planning Commission may consider limiting the number of special events to be held on the property each year, requiring the events to end at sundown to avoid disturbing residents, limiting the special events to no more than 200 people, requiring on-site parking, and stating that restaurant use is unlikely to be consistent with the agricultural zoning.

The planning report prepared in anticipation of rehearing the application suggested that if the permit is approved, the commission should limit special events to no more than 20 a year, limit the number of guests at the events to a maximum 200, and deny the application for formal restaurant use. The report did not recommend against amplified music because the noise study demonstrated the project would comply with the county noise ordinance.

On July 28, 2010, the Planning Commission held a second public meeting on the permit application and voted three to one to deny the application. Kearns again appealed. This time the Board of Supervisors approved the permit with certain conditions. The Board of Supervisors found the proposed use to be consistent with the General Plan, the zoning law, and issued a mitigated negative declaration, finding an environmental impact report (EIR) is not required under the California Environmental Quality Act (CEQA). The restaurant was not approved, Kearns having withdrawn the request for approval of a small restaurant. Conditions imposed on the conditional use permit include limiting wine tastings and retail sales to the hours of 10:00 a.m. to 5:00 p.m., limiting the number of special events to 20 per year, and requiring special events to conclude by sundown.

Appellants filed a petition for a writ of mandate on November 2, 2010, challenging the Board of Supervisors approval of Kearns's application for a conditional use permit. The petition alleged the county violated CEQA by failing to have an EIR prepared and by adopting a negative declaration; issuance of the conditional use permit

violated zoning regulations, the Orange County General Plan (General plan), and the Silverado-Modjeska Specific Plan (Specific Plan); and sought declaratory relief. The superior court denied the petition after hearing oral argument. The court found that contrary to appellants' contention, the use permit is not inconsistent with the Specific Plan or the General Plan. Other relevant facts are set forth below.

II

DISCUSSION

A. *Standard of Review*

Appellants contend issuance of the conditional use permit in this matter was not consistent with General Plan or the Specific Plan. As we observed in *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, "The general plan functions as a "constitution for all future developments," and land use decisions must be consistent with the general plan and its elements. [Citation.]" (*Id.* at p. 782.) A project must be compatible with the policies and objectives of the general plan, but "[p]erfect conformity is not required." (*Ibid.*)

"[A] governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion." [Citations.] 'An abuse of discretion is established only if the [agency] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. [Citation.] We may neither substitute our view for that of the [local agency], nor reweigh conflicting evidence presented to that body. [Citation.]' [Citation.] This review is highly deferential to the local agency, 'recognizing that "the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when

applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" [Citation.]" [Citation.] Because an appellate court's task in review of a mandate proceeding is essentially the same as that of the trial court, we review the agency's actions directly and are not bound by the trial court's conclusions. [Citations.]" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816-817.) "Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. [Citation.]" (*Endangered Habitats League, Inc. v. County of Orange, supra*, 131 Cal.App.4th at p. 782, fn. omitted.)

B. *Orange County's General Plan*

Orange County's General Plan was modernized in 2000, and amended a number of times thereafter. It contains elements for land use, transportation, public services and facilities, resources, recreation, noise, safety, housing, and growth management. However, the only elements of the General Plan before us in the administrative record are the growth management and land use elements.

The land use element states it is the "most current expression of County land use policy and is internally consistent with the other General Plan elements." The land use element contains four categorized potential constraints on achieving objectives and policies set forth in the General Plan: environmental constraints, including noise, flood hazards, fire hazards, geologic/seismic hazards, and natural and cultural resources; fiscal constraints and deficiencies; economic and market constraints; and governmental constraints. This element addresses neighborhood commercial guidelines and distinguishes neighborhood commercial designation from regional and commercial centers.

The growth management element expressly refers to the Specific Plan and provides: “New development within the Silverado-Modjeska Specific Plan . . . planning areas shall be rural in character and shall comply with the policies of [the specific plan] in order to maintain a buffer between urban development and the Cleveland National Forest.”

C. Zoning

As noted above, the property is zoned A1, general agricultural. “The A1 District is established to provide for agriculture, outdoor recreational uses, and those low intensity uses which have a predominately open space character. It is also intended that this district may be used as an interim zone in those areas which the General Plan may designate for more intensive urban uses in the future.” Land zoned for general agricultural, may be used principally for agriculture or a single-family dwelling. (Orange County Code, § 7-9-55.2(a), (d).) Other principal uses are permitted subject to approval of a site development permit (Orange County Code, § 7-9-55.3), and still others are permitted upon obtaining a conditional use permit, including airports and heliports. (Orange County Code, § 7-9-55.4(a)(1).) More apropos to the issue at hand, the zoning ordinance anticipates conditional use permits authorizing the property to be used principally for commercial outdoor recreation (Orange County Zoning Code, § 7-9-55.4(a)(5)), commercial stables (Orange County Zoning Code, § 7-9-55.4(a)(7)), and country clubs, golf courses, riding clubs, tennis clubs (Orange County Zoning Code, § 7-9-55.4(a)(8)). Additionally, the zoning ordinance has a catch-all provision and authorizes a conditional use permit to use the property primarily for “[a]ny other use . . . permitted which the Planning Commission . . . consistent with the purpose and intent of this district

per section 7-9-150.” (Orange County Zoning Code, § 7-9-55.4.)¹

D. *Silverado-Modjeska*

The Board of Supervisors adopted the Specific Plan in 1977 by resolution. The Specific Plan addresses eight elements: land use, conservation, safety, open space, circulation, scenic highway, noise, and housing. It also addresses “neighborhood commercial” under the land use element, and does not address agricultural use of any land within the geographical area covered by the plan. Neither does it address commercial uses other than “neighborhood commercial.” The “neighborhood commercial” segment of the Specific plan provides a general prohibition: “Commercial facilities in Silverado and Modjeska are limited to existing sites and shall not be allowed in any residential category in this plan.”

The Specific Plan states the canyon areas are primarily used for residential purposes. In this rural area, housing densities are limited in specified geographical sub-areas to specific maximums of one dwelling unit “per 30, 20, 10, 4 and 2 acres.”

¹ “(a) The following principal uses are permitted subject to the approval of a use permit by the Zoning Administrator per section 7-9-150. [¶] (1) Airports and heliports. [¶] (2) Cemeteries, mortuaries, mausoleums and crematories. [¶] (3) Churches, temples and other places of worship. [¶] (4) Commercial dairies. [¶] (5) Commercial outdoor recreation. [¶] (6) Commercial processing of agricultural minerals. [¶] (7) Commercial stables. [¶] (8) Country clubs, golf courses, riding clubs, swimming clubs, tennis clubs and yacht clubs. [¶] (9) Educational institutions. [¶] (10) Kennels. [¶] (11) Livestock feeding ranches in compliance with applicable health and safety regulations. [¶] (12) Mini-storage facilities. [¶] (13) Packing plants for agricultural products. [¶] (14) Permanent facilities for sale of agricultural products grown on the site. [¶] (15) Research and development testing facilities and activities. [¶] (16) Sanitary land-fills. [¶] (17) Storage of recreation vehicles, campers, trailers and boats. [¶] (18) Recycling and transfer/materials recovery facilities per section 7-9-146.12.

“(b) Any other use is permitted which the Planning Commission finds consistent with the purpose and intent of this district per section 7-9-150.” (Orange County Zoning Code, § 7-9-55.4.)

Tom Smeezek, a resident of Silverado Canyon wrote the guidelines for the Specific Plan. He said the primary purpose of the plan was to “stop massive residential and commercial development in the Canyon,” and not to eliminate or restrict establishment of small local businesses. Smeezek said there were 20 commercial businesses in Silverado and Modjeska canyons when the plan was written, including a shooting range, stables at the horse camp and Jackson Ranch,² two gas stations, two bars, two auto repair shops, and two real estate offices. Only one restaurant and one market remain.

E. Appellants’ Contentions

Appellants contend issuance of the conditional use permit was not consistent with the General Plan or the Specific Plan. According to appellants, the General Plan requires compliance with the Specific Plan, and the Specific Plan prohibits commercial use in a residential area. Appellants also claim the county’s findings were not adequate to demonstrate the condition use permit is consistent with the general and specific plans, the county violated CEQA by failing to prepare an environmental impact report, and the trial court erred in denying appellants’ declaratory relief action as unripe.

F. CEQA

“Whether an activity is regulated by CEQA is a question of law that may be decided on undisputed facts. [Citation.]” (*Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 907.) “To achieve the objectives of CEQA, the Legislature has mandated the preparation and consideration of an EIR before any public agency approves a project that is not statutorily exempt unless the lead public agency issues a negative declaration, i.e., a declaration that the proposed project will not have a

² Kearns’s property is the “original historical Jackson Ranch House site.”

significant effect^[3] on the environment. [Citations.]” (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 184, original fns. omitted.) Under CEQA, the public agency must conduct an initial study to determine whether the project may have a significant effect on the environment. “If the study shows that the project will not have a significant effect, the agency may so declare in a brief negative declaration; if it demonstrates that the project may have a significant effect, the agency must prepare an environment impact report. [Citation.]” (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 794, disapproved on other grounds in *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 918.) On the other hand, in those instances when the project is not exempt from CEQA, an EIR is required if the agency’s initial study of the project “produces substantial evidence supporting a fair argument the project may have significant adverse effects.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319.)

The county conducted an initial study. The Department of Fish and Game determined the project “has no potential effect on fish, wildlife and habitat.” The Land Use Planning Division of the county found no significant effect on the environment due to the mitigation measures added to the project, as well as the conditions of approval. This conclusion was reached after a thorough consideration of the project’s effect on land use and planning, agriculture, population and housing, geophysical, hydrology and drainage, water quality, transportation/circulation, air quality, noise, biological resources, aesthetics, cultural/scientific resources, recreation, mineral resources, hazards, utilities and service systems, and public services.

Appellants contend an EIR should have been prepared to evaluate the impact of significant noise from the project. The initial study, however, considered

³ Public Resources Code section 21068 defines *significant effect on the environment* as “a substantial, or potentially substantial, adverse change in the environment.”

whether having special events on the property would increase the existing noise level or expose people to noise levels above those permitted by county standards. The report noted Kearns's property is zoned for general agriculture and the proposal is to use the site to sell agricultural products, ancillary goods, and for social events such as weddings and receptions. A noise analysis was prepared. It found noise from sources on the property "are much less than the outside recommended residential noise compatibility criteria" level and determined the noise from music equipment, loud speakers, and traffic entering and leaving the property "will not cause a violation of the recommended compatibility threshold and therefore considered to be less than significant." Still, the noise issue was mitigated by placing a curfew on the time by which special events must end and requiring all operations on the property to comply with the county's noise ordinance. The noise report also recommended speakers and sound amplification be directed away from residences to the south of the property. While compliance with a regulatory standard does not automatically mean a project will not have a significant impact on the environment (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109), the county not only found no significant impact on the environment, it also mitigated any remaining impact.

The evidence in the administrative record supports the county finding the project will not have "significant adverse effects" on the environment. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 171.) Accordingly, we find the county was not required to prepare an EIR before issuing the conditional use permit in this matter.

G. *The County's Findings*

Appellants claim the county failed to make the necessary findings to issue the conditional use permit. Code of Civil Procedure section 1094.5 governs administrative mandamus proceedings. Subdivision (b) of that section provides an

“[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code of Civ. Proc., § 1094.5, subd. (b).) In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, the Supreme Court found “that implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Id.* at p. 515.)

The ultimate decision reached by the Board of Supervisors was to issue the conditional use permit. The decision was based on the Board finding use of the property as a winery, permitting wine tasting, the sale of incidental items, and holding up to 20 special events a year on the property are “consistent with the objectives, policies, and general land uses and programs specified in the General Plan,” as well as consistent with the zoning law and any “specific plan regulations applicable to the property,” and will “not result in conditions or circumstances contrary to the public health and safety and the general welfare,” and the “proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.” While the findings could have been more detailed and expressly referred to evidence considered to explain the conclusions of the Board of Supervisors, it is evident the Board considered the General Plan and the applicable zoning ordinance, as well as the initial environmental study before making its findings. We see no problem in “discerning ‘the analytic route the [Board of Supervisors] traveled from evidence to action.’ [Citations.]” (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 517.) Consequently, we find no prejudicial error. (*Ibid.*)

H. *Issuance of the Permit is Consistent with the General and Specific Plans.*

Government Code section 65300 requires all counties and cities to adopt a general plan for the development of their land. (*Endangered Habitats League, Inc. v. County of Orange, supra*, 131 Cal. App. 4th at p. 782.) “The general plan has been aptly described as the ‘constitution for all future developments’ within the city or county. [Citations.] ‘[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.’ [Citations.]” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570-571.)

“[T]o ensure the general plan’s authority as the fundamental ‘constitution’ for the physical development of every city and county, the planning law provides that all zoning regulations, subdivisions approvals and specific plans must be consistent with the general plan. [Citations.]” (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 803.) “[Z]oning laws . . . regulate the geographic allocation and permissible uses of land. [Citation.]” (*United Outdoor Advertising Co. v. Business, Transportation & Housing Agency* (1988) 44 Cal.3d 242, 249.) Zoning represents “a considered, specific, and lasting implementation of the broad statements of policy of the general plan. [Citations.]” (*Ibid.*) Zoning ordinances are subordinate to the general plan and must be consistent with it. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1182; Gov. Code, 65860.)

Kearns’s property is zoned A1, General Agriculture, and has been so zoned for a number decades. To the extent appellants argue the Specific Plan does not permit Kearns’s property to be used for a commercial purpose, that argument should have been made years ago when the county zoned Kearns’s property A1, General Agriculture. (Gov. Code, § 65009, subd. (c)(1)(B) [lawsuit challenging zoning ordinance must be brought within 90 days of the legislative body’s decision].)

Orange County has a general plan in place. Although the General Plan covers a number of elements, including land use, transportation, public services and facilities, resources, recreation, noise, safety, housing, and growth management, only the land use and growth management elements of the General Plan are included in the administrative record. Appellants have thus forfeited any argument the conditional use permit is inconsistent with an element of the General Plan other than land use or growth management.

The Specific Plan expressly recognizes it is “not a part of the Orange County General Plan.” The Specific Plan was adopted in 1977. Its purpose was to “ensure the preservation of the rural environment and lifestyle of the area while providing for reasonable development.” The plan allows for further development, albeit at “significantly lower densities.”

The only reference in the General Plan to the Specific Plan is found in the growth management element of the General Plan. That statement, included under the subheading “Transition Areas for Rural Communities” provides: “New development within the Silverado-Modjeska Specific Plan and Foothill-Trabuco Specific Plan planning areas shall be rural in character and shall comply with the policies of these plans in order to maintain a buffer between urban development and the Cleveland National Forest.”

The growth management element has three goals: reducing traffic congestion, ensuring adequate transportation and public facilities for residents, and protecting the natural environment. The conditional use permit does not impact any of these goals. Because Kearns’s property has commercial stables on it, there is already some traffic going to and from the property. Permitting wine tasting on the property was found to not adversely affect traffic. Further, on the days special events with no more than 200 guests are to be held, the traffic will not be significantly increased as the other commercial uses of the property will not be open on those days, thereby reducing the

impact on traffic. Permitting Kearns to open a winery at his vineyard is not alleged to adversely affect public facilities for residents or to harm the natural environment. As a result, the decision to permit Kearns to have a winery on his property, which already contains a vineyard, was consistent with the growth management element of the General Plan.

The conditional use permit did not authorize any new development in the canyon area. No new residences were authorized and the property already has a vineyard on it. Rather, Kearns was granted permission to have a winery on his property, which has a rural zoning of A1, General Agricultural. Unlike microbreweries, which may be found in urban areas, a vineyard with a winery on the grounds is typically found in rural areas, not urban settings. The special events (including weddings and anniversary receptions) authorized to be held on the property no more than 20 times a year do not change the rural character of Kearns's property. Indeed, the advertisements for the special events stress the property's country setting.

We do not find issuance of the use permit violated the Specific Plan either. As noted, that plan does not address agriculture. That failure aside, the purpose of the Specific Plan "was to ensure the preservation of the rural environment and lifestyle of the area while providing for reasonable development." The conditional use permit does not change the rural environment or lifestyle of the area. No new roads, residences, or businesses are authorized by the permit. One piece of property already containing a vineyard, zoned for agriculture, and approved for a commercial purpose has been approved for a slightly wider use. It will, consistent with its agricultural nature, be permitted to make wine on site.

Consistent with its zoning and its rural setting, Kearns will now be permitted to make wine, conduct wine tastings, sell the wine, snacks and related incidental items, and hold up to 20 special events a year with no more than 200 guests per event. These uses are consistent with the Specific Plan's stated purpose of preserving

the rural environment and lifestyle. And although appellants argue the conditional use permit runs afoul of the Specific Plan's policy that neighborhood commercial facilities are limited to sites that existed at the time the Specific Plan was adopted in 1977, there is *some* evidence Kearns's property was one of those sites. Smeezek testified he drafted the guidelines for the Specific Plan and one of the 20 businesses in the area when the Specific Plan was prepared was the stables at Jackson Ranch. Kearns's property is the "original historical Jackson Ranch House site."

I. Declaratory Relief

Appellants' petition for a writ of mandate contained a cause of action for declaratory relief, and sought a declaration that the terms of the Specific Plan are mandatory and apply to development within the area covered by the Specific Plan. The court denied relief, finding a contrary decision would violate the separation of powers doctrine, the issue was not ripe for decision, and "[t]he court cannot make a declaration pertaining to future application of the Specific Plan to future unknown uses of land within the Specific Plan area."

"Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration

shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.” (Code of Civ. Proc., § 1060.)

The statute’s requirement of an “actual controversy relating to the rights and duties of the respective parties” (Code of Civ. Proc., § 1060) is not satisfied by the mere existence of the pending action. Were the rule otherwise, it would be illusory and a plaintiff could make the requisite showing by simply “pointing to the very lawsuit in which he or she seeks that relief. Obviously, the requirement cannot be met in such a bootstrapping manner; ‘a request for declaratory relief will not create a cause of action that otherwise does not exist.’ [Citations.]” (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80.)

The fact that a plaintiff has made a sufficient showing to support the granting of declaratory relief does not mean a trial court errs in denying relief. “The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.” (Code of Civ. Proc., § 1061.) Because the statutory scheme has built discretion into it, “there are three possible classifications of actions brought solely under the authority of [Code of Civil Procedure] section 1060: (1) actions that must be dismissed by the trial court; (2) actions in which a declaratory adjudication is entirely appropriate, and a trial court would therefore abuse its discretion under [Code of Civil Procedure] section 1061 by dismissing the case; and (3) actions wherein a trial court has discretion to provide declaratory relief under section 1060, but also has discretion to dismiss the action under section 1061.” (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 365.) A court’s decision to deny (or grant) declaratory relief will not be reversed on appeal absent a clear showing the court abused its discretion. (*Id.* at p. 364.)

“The general purposes of declaratory relief inform the interpretation of sections 1060 and 1061. ““The purpose of a declaratory judgment is to “serve some practical end in quieting or stabilizing an uncertain or disputed jural relation.”” [Citation.] ‘Another purpose is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation [citation].’ [Citation.]” [Citation.] ““One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff’s future conduct in order to preserve his legal rights.”” [Citation.]” (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC, supra*, 191 Cal.App.4th at pp. 364-365.)

Thus, when the “actual controversy” is for a future probable controversy, the future probable controversy must be ripe: “the facts have sufficiently congealed to permit an intelligent and useful decision to be made.’ [Citation.]” (*Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 885.) We review de novo whether the claim presents an “actual controversy,” as required by Code of Civil Procedure section 1060. (*Environmental Defense Project of Sierra County v. County of Sierra, supra*, 158 Cal.App.4th at p. 885.)

We find no actual controversy present. Although appellants argue the county did not find the Specific Plan requires compliance with its terms in the present matter and has repeatedly taken that position *in this case*, the county has amended the specific plan on at least three prior occasions when it apparently found a project would conflict with the specific plan. As a result, we cannot say with any assurance the county’s position on the effect of the specific plan presents an actual controversy in need of a declaration of the rights of the respective parties. “The legal issues posed must be framed with sufficient concreteness and immediacy so that the court can render a conclusive and definitive judgment rather than a purely advisory opinion based on hypothetical facts or speculative future events. [Citation.]” (*Teachers’ Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1040.) “[T]here is no basis for declaratory relief

where only past wrongs are involved.” (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC, supra*, 191 Cal.App.4th at p. 366.) Accordingly, we find the trial court did not abuse its discretion in denying appellants declaratory relief.

III

DISPOSITION

The judgment is affirmed. Orange County and Kearns shall recover their costs on appeal.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.