IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF MORGAN HILL, a municipality, Plaintiff and Respondent, v. SHANNON BUSHEY, AS REGISTRAR OF VOTERS, etc., et al., Defendants and Respondents.	Case No. S243042 Sixth Dist. No. H043426 Santa Clara Superior Court Case No. 16-CV-292595
RIVER PARK HOSPITALITY, Real Party in Interest and Respondent MORGAN HILL HOTEL COALITION, Real Party in Interest and Appellant	

After a Decision by the Court of Appeal
Sixth Appellate District, Case No. H043426
Superior Court, Santa Clara County
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REPLY BRIEF ON THE MERITS OF REAL PARTY IN INTEREST AND RESPONDENT RIVER PARK HOSPITALITY, INC.

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I. INTRODUCTION.

In its Answer Brief, the Hotel Coalition fails to come to grips with this Court's decision in *Lesher Communications v. City of Walnut Creek* (1990) 52 Cal.3d 531, which holds that Government Code section 65860's consistency requirement limits a local electorate's power to legislate zoning and which relied on *deBottari v. City Council* (1985) 171 Cal.App.3d 1204 to support that conclusion.[1] However, Section 65860's limitation of a city's voters' power of initiative should apply equally to prevent a local electorate from legislating inconsistent zoning by referendum, just as it restricts the ability of the city's governing body to do so.

The Hotel Coalition also does not attempt to refute River Park's showing that the court of appeal's rule of decision, if applied statewide, would undercut the principle of general plan supremacy and otherwise lead to harmful consequences. Indeed, the Hotel Coalition devotes little of its Answer Brief to demonstrating why the court of appeal's rule should prevail over the bright-line rule of *deBottari* at all; nor does it address the practical difficulties and uncertainties the court of appeal's decision would engender, but which the rule of *deBottari* would avoid.

The Hotel Coalition's argument that the statutory stay of the effectiveness of ordinances challenged by referendum permits the electorate to perpetuate inconsistent zoning cannot survive scrutiny. Again, the electorate should not be able to legislate and maintain inconsistent zoning by referendum when it could not do so by initiative, as *Lesher* holds. This is particularly so where, as here, an explicit purpose of the referendum—to preserve industrial land—was squarely at odds with the City of Morgan

[1] Subsequent statutory references are to the Government Code unless otherwise indicated.

Hill's general plan itself, which designated River Park's property for commercial use. The court of appeal's decision would encourage such indirect attacks on general plan policies, with attendant delay in achieving general plan consistency. The rule of *deBottari* would prevent them.

The balance of the Hotel Coalition's Answer Brief does nothing to weaken the demonstration of River Park and the City that, as *deBottari* held, a city's electorate should not be allowed to use its referendum power to maintain intact zoning that has become inconsistent with the city's general plan upon the general plan's amendment. Although *deBottari* has been the law for over 30 years, the Legislature has never chosen to qualify or overrule it. The rule of *deBottari* is consistent with the Planning and Zoning Law and this Court's decision in *Lesher.* It would promote general plan supremacy and foster certainty in planning. It leaves intact the voters' ability to legislate at the local level by consistent initiative measures or direct referendum challenges to general plan policies as they are adopted. For all of these reasons, the Court should reaffirm the rule of *deBottari* and reverse the court of appeal's decision.

II. ARGUMENT

A. The Hotel Coalition Fails to Come to Grips with This Court's Decision in *Lesher,* which Establishes that the Legislature, by Enacting Section 65860's Statewide Consistency Requirement, has Preempted the Ability of a Local Electorate to Use Its Local Reserve Power to Legislate Inconsistent Zoning.

In *Lesher, supra,* 52 Cal.3d 531, this Court confronted issues regarding the interplay of local voters' reserve power with the Planning and Zoning Law's keystone principle of planning consistency. Despite *Lesher's* central relevance to this case, the Hotel Coalition relegates its discussion of *Lesher* to a footnote, in which it purports to distinguish

Lesher from this case. (Answer Brief, p. 26, n. 15.) However, the Hotel Coalition's perfunctory treatment of *Lesher* fails to come to grips with *Lesher*'s holding that Section 65860's consistency requirement places limits on the ability of a city's voters to exercise their reserve power to legislate zoning.

In *Lesher*, this Court held that Section 65860 bars a city's voters from using their reserve power of initiative to put in zoning that is inconsistent with the city's general plan. The principle that Section 65860's consistency requirement preempts the local electorate's reserve power is thus long-established. In the nearly 30 years since it decided *Lesher*, neither the Court nor the Legislature has limited or qualified *Lesher*'s holding on this point. The Hotel Coalition's only response to *Lesher* is to assert that in *Lesher* the local government itself could not do what the electorate had sought to accomplish by initiative, whereas in this case the City of Morgan Hill (City) had the power to reject O-2131, so that the City's voters should likewise be allowed to reject O-2131 by referendum. (Hotel Coalition Brief, p. 26.)

The Hotel Coalition's purported distinction is unavailing. The Hotel Coalition acknowledges that a municipal electorate's reserve power is coextensive with the power of the city's legislative body. At the same time, it fails to recognize that the City did not reject O-2131; rather, it enacted it. As River Park noted in its opening brief, the relevant question therefore is whether the City could have repealed O-2131 after it had enacted the ordinance, when to do so would result in zoning inconsistent with the City's general plan. (River Park Opening Brief, p. 26-27.) As shown, it could not because doing so would violate Section 65860(a) general mandate that a city or county's zoning "shall be consistent with the city's or

county's general plan." (*Ibid.*) In its Answer Brief, the Hotel Coalition fails to address this point.

The Fourth District's decision in *deBottari* recognizes that the local electorate's reserve referendum power is limited by Section 65860's statewide mandate that a city's zoning be consistent with its general plan. Not only is this proposition consistent with *Lesher's* holding that the reserve initiative power is likewise limited, but the Court in *Lesher* expressly relied on *deBottari* for the proposition that "[a] zoning ordinance that is inconsistent with the general plan is invalid when passed." (*Lesher*, *supra*, 52 Cal.3d at 544.)

The Hotel Coalition argues that zoning is a discretionary act that is subject to referendum even when the act seeks to comply with state law. (Answer Brief, pp. 22-25.) It points to *Yost v. Thomas* (1984) 36 Cal.3d 561, in which this Court held that zoning changes adopted to implement a land use plan required by the California Coastal Commission were subject to referendum. In *Yost*, the Court reasoned that zoning changes were legislative rather than administrative and therefore subject to referendum. It stated: "the wide discretion afforded to a local government showed that the city acted legislatively, and its actions are subject to the normal referendum procedure." (*Id.* at 573.) From this the Hotel Coalition argues that the City exercised its discretion in amending its general plan without amending its zoning. (Answer Brief, p. 25.) The Hotel Coalition goes on to claim that because the City had discretion that it exercised both to amend its general plan and to choose general commercial zoning, Section 65860's consistency requirement did not preempt the City's legislative discretion. (*Ibid.*) Therefore, the Hotel Coalition urges, under the Court's reasoning in *Yost*, O-2131 is subject to referendum. (*Ibid.*)

The Hotel Coalition's argument misses the mark. It amounts to saying that because the City had discretion to amend its general plan and adopt of a number of consistent zonings, such discretionary actions, being legislative, were therefore subject to referendum and Section 65860 did not preempt the City's discretion. Obviously, however, Section 65860(a)'s general consistency requirement preempts a city's discretion to put in place inconsistent zoning. Otherwise, the requirement could not be given effect. (See Cal. Const., Art. XI, sec. 7 ["A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws"].)

Indeed, by the Hotel Coalition's reasoning, Section 65860 would not preempt the local electorate's discretion to adopt by initiative zoning that is inconsistent with a city's general plan because the electorate has discretion to put in place other, consistent zoning. An initiative may only adopt ordinances that involve an exercise of legislative power, and the adoption of zoning is a legislative act. (*Arnel Dev. Co. v. Costa Mesa* (1980) 28 Cal.3d 511, 516, & n.6.)[2] Nonetheless, in *Lesher* the Court held that Section 65860 barred the local electorate from adopting inconsistent zoning—in effect, that Section 65860 preempted the local electorate's discretion to do so. (*Lesher*, *supra*, 52 Cal.3d at 544.) A city's voters should not be able to obtain by referendum what they cannot put in place by initiative, namely, zoning that is inconsistent with the city's general plan.

The Hotel Coalition argues that under Section 6 of O-2131 the ordinance would not be effective for a period of thirty days and suggests that this shows that the City understood that the zoning ordinance was

[2] In *Lesher*, this Court noted that the initiative and referendum powers have been held applicable to zoning laws. (*Lesher*, *supra*, 52 Cal.3d at 539.)

subject to referendum. (Answer Brief, pp. 25-26). However, Section 6 of O-2131 simply states the substance of Section 36937, which provides that ordinances generally take effect 30 days after their final passage. In any event, *deBottari*'s rule that a referendum on an ordinance adopted to eliminate an inconsistency was invalid was the governing law at the time. It should be presumed the City was aware of *deBottari* when it adopted O-2131, so that by including in the ordinance a provision delaying the ordinance's effectiveness for 30 days the City did not intend to permit an invalid referendum. (*Viking Pools v. Maloney* (1989) 48 Cal.3d 602, 609 [legislature is deemed to be aware of existing law and to have enacted statutes in light of pertinent decisions].)

Citing *DeVita v. County of Napa* (1995) 171 Cal.4th 763, the Hotel Coalition notes that courts presume absent a clear showing of legislature intent to the contrary that a city's legislative decisions are subject to referendum. (Answer Brief, p. 26.) In *Lesher* this Court discerned, at least implicitly, a clear showing of the Legislature's intent to circumscribe the local electorate's reserve power to put in place inconsistent zoning. The Court's conclusion in *Lesher* is not surprising, since the consistency requirement is the "linchpin" of California's land use and development laws. (*deBottari*, *supra*, 171 Cal.App.3d at 1213.) To allow the consistency requirement to be circumvented by use of the initiative power would undercut the statewide statutory scheme set out in the Planning and Zoning Law.

It is true that the electorate's initiative power, rather than the referendum power, was at issue in *Lesher*. However, the referendum power arises from the same source as the initiative power, as the history of the 1911 amendment by which the rights of initiative and referendum were

adopted that the Hotel Coalition recounts demonstrates. (Answer Brief, p. 18.) Particularly in light of its reliance on *deBottari*, a referendum case, *Lesher* stands for the proposition that the Legislature clearly intended that Section 65860's consistency requirement be paramount in local land use decision-making and that it must prevail over the exercise of the local reserve power, whether by referendum or initiative, in a manner that would result in inconsistent zoning.[3]

B. The Stay of the Effectiveness of an Ordinance Subject to a Referendum Petition Does Not Overcome Section 65860's Consistency Mandate.

The Hotel Coalition argues that the referendum petition prevented O-2131 from becoming effective so that the parcel's zoning remained ML-light industrial. (Answer Brief, p. 28.) It points to Elections Code section 9237, which provides that when presented with a timely and certified referendum petition the effective date of a challenged ordinance is suspended and the legislative body must reconsider it, and then either repeal the ordinance or place it on the ballot. (*Ibid.*) As noted, however, the City's city council could not repeal O-2131 under Section 65860(a) because that would mean the zoning was being made inconsistent. The Hotel Coalition urges that the voters' disapproval of O-2131 by referendum would simply maintain the status quo, as if O-2131 had never happened. (Answer Brief, p. 29) However, the stay of the ordinance's effectiveness

[3] The Hotel Coalition asserts that the absence of reference to the initiative or referendum powers in Section 65860's legislative history strongly suggests that the Legislature did not intend to limit or burden the powers reserved to the people. (Answer Brief, p. 26.) But the very point of Section 65860 is to ensure statewide the primacy of general plans over local zoning.

should not permit the maintenance of inconsistent zoning contrary to the mandate of Section 65860, for multiple reasons.

First, although the effect of an enacted ordinance may be stayed pending a vote on a referendum challenging the ordinance, if the referendum is successful the effect would the same as if there had been no stay and the referendum simply repealed the ordinance in favor of inconsistent zoning. In essence, the electorate would be using its referendum power to prevent the consistency requirement from being satisfied. This is squarely at odds with Section 65860(a) requirement of consistency and Section 65860(c)'s mandate that zoning be made consistent with an amended general plan.

In addition, the effect of a successful referendum in this case would *not* be to restore the status quo, as if O-2131 had never happened. Because a purpose of the referendum challenging O-2131 was to preserve industrial land—in effect, to maintain inconsistent zoning—if the referendum were successful the City would lack the ability to conform its zoning to its general plan at all for at least a year. This is because following a successful referendum a city may not enact other zoning that is "essentially the same" as zoning which the voters rejected for one year. (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 678; Elections Code § 9241.) Whether a subsequent measure is "essentially the same" as a rejected ordinance turns on the features of the rejected measure giving rise to popular objection—that is, the purposes of the referendum. (*Lindelli v. Town of San Anselmo* (2003) 101 Cal.App.4th 1099, 1110.) In this case, a purpose of the referendum was to preserve industrial zoning. But industrial zoning is inconsistent with the amended general plan designation. Consequently, the City could not adopt

consistent zoning at all until at least a year if the referendum succeeded. (Elections Code § 9241.)

Moreover, under the court of appeal's rule, anti-development activists or business competitors could in principle prevent the adoption of zoning consistent with general plan designations to which they object indefinitely by mounting successive referendum challenges. However, the consistency requirement is the keystone of regional planning. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 572.) As explained in River Park's Opening Brief and discussed in Section III(C), below, such prolonged inconsistency would undercut the supremacy of the general plan and be contrary to the policy inherent in the Planning and Zoning Law of achieving early certainty in land use matters.

The Hotel Coalition misstates River Park's argument in its opening brief on this point, asserting that River Park erroneously contends that the Hotel Coalition's primary purpose is to preserve industrial land. (Answer Brief, p. 30.) In fact, River Park argued that the referendum had multiple purposes, both to reserve industrial land and to prevent hotel use on River Park's property. (River Park Opening Brief, p. 24.) The referendum's proponents submitted ballot arguments unequivocally urging the voters to reject O-2131 in order to preserve industrial land. (JA 480-482.) The Hotel Coalition also complains that River Park's president testified in the trial court that he "believe[d] the referendum [was] nothing more than an anti-competition effort brought by the Morgan Hill Hotel Coalition to (1) delay and/or prevent my proposed hotel from being built; (2) limit the local hotel competition, and (3) protect the market share and economic interests of the current hotel operators." (Answer Brief, p. 33; JA 452:20-23) Such a belief is not inconsistent with the referendum's proponents' ballot

arguments that the purposes of the referendum were to preserve industrial land in Morgan Hill and to prevent development of a hotel on River Park's property. (JA 480, 482.) In the trial court, the Hotel Coalition itself stated that its intent was to restrict hotel development and preserve industrial land. (JA 385-386.)

But even Elections Code section 9241 did not bar the City from adopting consistent zoning for a prolonged period given the purposes of the referendum against O-2131, such a circumstance could foreseeably arise in other cities. At the least, in some instances there will be doubt as to whether Elections Code section 9241 precludes the adoption of particular ordinances after successful referenda because it is uncertain whether a later measure is "essentially the same" as a rejected ordinance. There may likewise be questions as to whether there are presently available alternative zoning designations. The court of appeal's rule in this case is premised on there being other alternative zoning designations. (*City of Morgan Hill v. Bushey* (2017) 12 Cal.App.5th 34, 37-38, 42, n.5 ["[w]e express no opinion on the validity of a referendum challenging an ordinance that chooses the only available zoning that is consistent with the general plan"].) Consequently, the rule's application would depend on a city's particular circumstances and the purposes of the referenda at issue. One may envision—as indeed appears to be the case here—that a referendum may be brought whose explicit purposes include rejecting *any* zoning consistent with a city's general plan. The fact-dependent and uncertain application of the court of appeal's rule would thus present cities with difficult choices and foster disputes over the validity of attempts to adopt consistent zoning.

The Hotel Coalition makes no effort to come to grips with the dilemma the court of appeal's decision creates for cities when there is, at

least arguably, no available alternative zoning available, or when the only other zoning choices are essentially the same as consistent zoning defeated by referendum in favor of inconsistent zoning. Nor, indeed, does the Hotel Coalition address the other harmful results that would flow from the court of appeal's decision if adopted statewide, as next discussed.

C. The Hotel Coalition Does Not Refute River Park's Showing that the Court of Appeal's Rule of Decision, if Applied Statewide, Would Undercut the Principle of General Plan Supremacy and Lead to Harmful Consequences.

Apart from invoking the importance of the reserve power of referendum, which River Park acknowledges, the Hotel Coalition devotes little of its argument to demonstrating *why* the court of appeal's rule should prevail over the bright-line rule of *deBottari* in light of the practical difficulties and policy uncertainty the former rule would engender. In its Opening Brief, River Park demonstrated that the court of appeal's rule of decision, if applied statewide, would lead to far-reaching and harmful consequences. (Answer Brief, pp. 28-36.) It would foster uncertainty in land use regulation and frustrate the policies of the Planning and Zoning Law. Not only would it present cities with an uncertain choice as to what other consistent zoning is permissible following a successful referendum, as shown, but it would leave property covered by the inconsistent zoning with no valid or usable zoning pending a vote on one or more referenda or the adoption of new consistent zoning, which may be substantially delayed. It would undercut the supremacy of the general plan and frustrate the implementation of general plan policies by preventing the development of uses consistent with the general plan, for an uncertain length of time. The Hotel Coalition does not refute, or even mention, most of these points.

The Hotel Coalition asserts that River Park contends that the failure to challenge a general plan waives the right to challenge the implementation of the general plan by the adoption of particular zoning. (Answer Brief, pp. 41-42.) This misstates River Park's argument. Rather, River Park argued that the decision below would encourage downstream challenges to land use policies put in place upon the adoption or amendment of a general plan, and that this is an undesirable result. (See River Park Opening Brief, pp. 34-35.) Indeed, in this case the purpose of the referendum to preserve industrial land was directly contrary to the City's general plan designation of River Park's property for commercial uses. The referendum was thus an indirect challenge to the City's general plan itself. The rule of *deBottari* would not permit such challenges, which undermine the principle of general plan supremacy.

The Hotel Coalition contends that in many cases the electorate may not anticipate how a parcel will be used until after the general plan has been amended, but before the zoning has changed. (Answer Brief, p. 41.) However, in the present case, the City amended its general plan as to a single parcel (JA 60), so the purportedly objectionable hotel use and loss of industrial land was readily apparent at the time of the general plan amendment. Yet, no one sought to challenge the general plan by referendum when it was amended.

The Hotel Coalition argues, with little analysis beyond citation to the decision below and the case *Chandis Securities v. City of Dana Point* (1996) 52 Cal.App.4th 475, that zoning that becomes inconsistent as a result of a general plan amendment is not invalid. (Answer Brief, p. 39.) Like the court of appeal, the Hotel Coalition does not say what legal force inconsistent zoning does have before it is replaced by consistent zoning.

As River Park demonstrated in its Opening Brief, such inconsistent zoning may not be enforced so as to permit development that is inconsistent with a city's general plan. (See River Park Opening Brief, pp. 19-23.) Nor does Section 65860(c) allowance of a "reasonable time" to conform inconsistent zoning to an amended general plan allow such development. "The obvious purpose of [Section 65860] subdivision (c) is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan." (*Lesher*, *supra*, 52 Cal.3d 531, 546.) One cannot characterize such ineffective zoning as "valid."

The Hotel Coalition's reliance on *Chandis* is similarly misplaced. In *Chandis*, the court was not confronted with a referendum that would perpetuate inconsistent zoning or an inconsistent specific plan. In addition, *Chandis* concerned the application of a different consistency statute to materially different facts. Section 65860, applicable in this case, broadly provides that city and county zoning ordinances "shall be consistent with the general plan ...." However, Section 65860 does not apply to the rejection by referendum of a proposed specific plan, as occurred in *Chandis*. (*Chandis*, *supra*, 52 Cal.App.4th at 479, 485.) Therefore, the *Chandis* court looked to Section 65454, which states that "[n]o specific plan may be *adopted or amended* unless the proposed plan or amendment is consistent with the general plan." (*Chandis*, *supra*, 52 Cal.App.4th at 485.)(italics added.) The *Chandis* court was not faced with the adoption or amendment of an inconsistent specific plan. Nor would the voters' rejection of the specific plan in *Chandis* leave in place or result in an inconsistency with the City of Dana Point's general plan. Unlike in this case, where River Park's parcel's industrial zoning became inconsistent

with the City's general plan on the amendment of the City's general plan, in *Chandis* there was no previous inconsistent specific plan. The *status quo ante* was not inconsistency. Therefore, *Chandis* is inapposite.

The Hotel Coalition goes on to contend that even if the referendum attacking 0-2131 might maintain zoning that has become inconsistent after a subsequent general plan amendment, the inconsistent zoning is "merely temporary" pending the adoption of another zoning district. (Answer Brief, p. 37.) The Hotel Coalition's attempt to minimize the inconsistency that would result if the referendum on O-2131 succeeded is unavailing. As shown, because a purpose of the referendum was to preserve industrial land, which no consistent zoning would allow, the period of inconsistency would necessarily exceed one year. And, as River Park has argued, opponents of development or business competitors could easily prolong the period of inconsistency by mounting successive referendum challenges to subsequent zoning choices. (River Park Opening Brief, p. 33.) Such prolonged inconsistency is inimical to the policy of early certainty regarding land use inherent in the Planning and Zoning Law.

D. The Hotel Coalition's Remaining Arguments Lack Merit.

The Hotel Coalition makes a number of other arguments, none of which persuasively demonstrates why this Court should adopt the rule of *deBottari* and reverse the court of appeal's judgment.

The Hotel Coalition attempts to distinguish *deBottari* from this case on the basis that in *deBottari* there were purportedly no other consistent alternative zoning districts. (Answer Brief, pp. 43-44.) It argues that the referendum proponents did not mention that the City of Norco could adopt a different district, so that it should be inferred that no alternative district existed. (*Id.* at 44.) However, no principled distinction can be drawn on

the basis that in *deBottari* the City of Norco had no alternative zoning designations available to it. For one thing, whether there were presently available alterative zoning designations in *deBottari* is not apparent from the opinion in *deBottari* and the inference the Hotel Coalition seeks to draw is purely speculative. In addition, the *deBottari* court rejected the argument that, if the referendum were successful, the City of Norco could adopt a new, consistent zoning scheme. (*deBottari*, *supra*, 171 Cal.App.3d at 1212.) There is no difference in principle between requiring a city to a resolve a continuing inconsistency between its zoning and its general plan after a successful referendum challenge by adopting a different zoning designation, on the one hand, or by adopting a new "zoning scheme," on the other. In either case the city must act affirmatively to eliminate the inconsistency.

The Hotel Coalition also contends that the City and River Park seek to eliminate the right to referendum because they contend that O-2131 "must be" enacted in order to remedy the inconsistency between the zoning and the general plan. (Answer Brief, p. 30.) However, 0-2131 had already been enacted, even if, according to the Hotel Coalition, its effectiveness was stayed by certification of the referendum petition. Certainly, the City had been free to enact some other consistent zoning ordinance in the first instance, just as the electorate could have adopted different consistent zoning by initiative.

The Hotel Coalition additionally asserts that the City failed to heed a strong statutory preference set forth in Section 65862 to change a general plan and zoning concurrently. (Answer Brief, p. 31.) It complains that by not doing so the City itself created the inconsistency between River Park's parcel's general plan designation and its zoning. (*Ibid.*) It argues that the

City should not be allowed to use such an inconsistency to deny the local electorate its right to a referendum challenge to the zoning ordinance. (*Ibid.*) It speculates that if the Court applies the *deBottari* rule in this case then other cities will be incentivized to make difficult land use decisions piecemeal in order to forestall challenges to those decisions. (*Ibid.*) The Hotel Coalition's arguments do not withstand scrutiny, for several reasons.

First, although Section 65862 states a preference for the concurrent processing of general plan amendments and zoning changes, it is not mandatory; it expressly permits zoning amendments to be made after the amendment of a general plan. This is doubtless due to the practical reality that after a general plan amendment conforming zoning changes may take time, particular where there are large-scale amendments. Other provisions of the Planning and Zoning Law indicate that consistent zoning should be adopted promptly after a general plan amendment. (See, e.g., Section 65754 [requiring local governments to bring its general plan into legal compliance within 120 days of a court decision finding no compliance and to then conform its zoning to the now-compliant general plan within 120 days].) In this case, the City adopted O-2131 only months after it amended its general plan. (JA 60-61.)

Also, from the perspective of a property owner interested in developing a new land use that is inconsistent with the property's current general plan designation, it may be desirable to see if the general plan can be changed at all before investing further effort and expense in attempting to secure new zoning and permits.

In any event, it is hard to see how a city may be "incentivized" to make difficult land use choices piecemeal, as the Hotel Coalition asserts, when the electorate retains the right to reject those choices by referendum