Wyatt, Rosie

From: Capitola Morrissey <morrisseycapitola@gmail.com>
Sent: Sunday, April 13, 2025 7:54 AM
To: Clarke, Joe; Pedersen, Alexander; Margaux Morgan; Gerry Jensen; Melinda Orbach; Goldstein, Jamie (jgoldstein@ci.capitola.ca.us); Gautho, Julia; City Council
Subject: [PDF] Validity and Enforcement of Capitola Municipal Code Chapter 8.72 (Greenway Capitola Corridor)
Attachments: COURT - 18CV02200 - Memo of P's A's In Opposition to Petition for Writ 8-10-18 (01596202)[58].pdf

Dear Capitola City Council:

As we all heard in the "Oral Communications by Members of the Public" section of the April 10th Capitola City Council meeting, the intent and clarity of Capitola Municipal Code (CMC) Chapter 8.72 is unambiguous and clearly states it's purpose, in plain and ordinary language, to preserve the trail within the rail corridor and prohibit its diversion onto Capitola streets, sidewalks, or properties.

Two long-time Capitola residents, Sam Story and Steve Woodside, each with decades of legal training and experience, were absolutely clear in their remarks that CMC Chapter 8.72 is unambiguous, valid and enforceable. Please take the time to watch the replay of this section of the city council meeting so you are fully informed and understand the narrative that's counter from the one you've heard previously from the city staff and attorney.

The Mayor, Council, and City staff must recognize the strong legal foundation that supports the enforceability of CMC Chapter 8.72. The ordinance is unambiguous: the only lawful method for changing it is to bring it back to voters through another election.

The people of Capitola expect you to follow the law—not misinterpret or ignore it. Uphold CMC Chapter 8.72, as written!

In the simplest of terms, upholding CMC Chapter 8.72 means you are accountable for voting against the RTC proposal to move the trail from the rail corridor to the city right-of-way on Park Avenue itself, the sidewalk adjacent to Park Avenue and Park Avenue shoulder.

As Sam Story highlighted in his remarks to the Council, the 2018 court case City of Capitola v. Linda Fridy et al. (Case No. 18CV02200) challenged the legality of placing this initiative on the ballot. The legal brief filed by attorneys from Shute, Mihaly & Weinberger LLP (see attached court filing) in defense of Measure L—which passed by an overwhelming margin and was later codified in Capitola Municipal Code Chapter 8.72—makes several key points clear:

1. Measure L is legally valid and legislative in nature: It doesn't create new laws from scratch—it reaffirms and clarifies existing city policy by directing the city to:

- Use the rail corridor and historic trestle for biking and walking.
- Avoid using public funds to develop a long-term detour through local streets.

2. **It supports existing General Plan and Coastal Act goals:** Contrary to claims that it conflicts with city or regional plans, Measure L actually supports long-standing goals of safe, sustainable, and integrated transportation. It also allows flexibility—it doesn't prohibit other uses of the corridor (such as rail), nor does it stop the city from maintaining bikeways elsewhere.

3. **The initiative process was lawful and strongly supported:** Over 800 Capitola residents signed the petition in just a few weeks. The initiative passed legally and was certified for the ballot before the city attempted to block it in court.

4. **No interference with other agencies:** The initiative respects federal authority over freight rail and doesn't attempt to stop rail service. It focuses solely on local decisions about recreation and transportation funding and policy.

5. **It does not hinder city operations or budgets:** Legal precedent shows that cities can enact policies through initiatives that guide how funds are used—especially when those policies reinforce existing plans.

6. **The language is legally sound:** Critics claimed it was vague, but the court brief shows its language mirrors many of Capitola's own city ordinances and legal precedents. Terms like "necessary steps" and "related to" are common and acceptable in municipal law.

The Capitola City Council should thoroughly review the attached brief from Shute and carefully consider the supporting case law, which provides a strong legal foundation for the validity and enforceability of CMC Chapter 8.72. This ordinance is the law, and it must be followed according to its plain and ordinary language—specifically, to keep the trail within the rail corridor and not divert it onto Capitola streets, sidewalks, or other properties.

Any Capitola City Council decision that violates CMC 8.72—which exists solely to preserve the trail within the rail corridor and prohibit its diversion onto Capitola streets, sidewalks, or properties—poses serious legal, financial, and political risks for both the City and the Council..

Thanks - Mike Morrissey
Capitola

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Real Party in Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

CITY OF CAPITOLA,

Petitioner and Plaintiff,

v.

LINDA FRIDY, in her official capacity as Capitola City Clerk; GAIL PELLERIN, in her official capacity as Santa Cruz County Registrar of Voters,

Respondents and Defendants.

JUAN ESCAMILLA,

Real Party in Interest.

Case No. 18CV02200

Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate; Complaint for Judicial Declaration that Proposed Initiative Cannot Lawfully Be Submitted to Voters; and Request for Injunctive Relief to Relieve City/County Official from Obligation to Submit Initiative to Voters on November 2018 Ballot

(CCP §§ 1085, 1060 and 526; Elections Code § 13314)

Hearing Date: August 20, 2018
Time: 8:30 am

Assigned for All Purposes to
Hon. John Gallagher (Dept. 4)

Filed Concurrently with Declaration of Robert S. Perlmutter and Request for Judicial Notice

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INTRODUCTION

The City of Capitola's General Plan calls for the future development of a bicycle and pedestrian pathway along the Santa Cruz Branch Rail Line Corridor ("Corridor"), including across the historic Soquel Creek Trestle ("Trestle"). This vision mirrors the Monterey Bay Sanctuary Scenic Trail Master Plan ("Master Plan"), which also promises that a Trestle replacement will include recreational facilities.

Concerned by the City's lack of action to implement this long-term vision for the Corridor, Real Party in Interest Juan Escamilla prepared an initiative to reaffirm City policy regarding the Trestle. Specifically, the proposed Greenway Capitola Corridor Initiative ("Initiative") directs the City to work to preserve and utilize the Trestle for recreational use. The Initiative also addresses the concern that short-term use of an existing bicycle and pedestrian path could become a permanent trail "detour" away from the Trestle, through Capitola Village. Accordingly, the Initiative prohibits the City from expending resources to construct or maintain such a detour.

Rather than vote to approve the Initiative outright or place it on the ballot, the City took the drastic step to file a pre-election challenge, alleging a litany of claims. Specifically, the City argues that the Initiative impermissibly directs "administrative action" and that it conflicts with the City's General Plan. These claims have no basis in fact or law, as the Initiative is a quintessential legislative act that readopts and refines the City's existing policy. The City also briefly alleges that the Initiative interferes with agency discretion, but it relies on case law now limited by the California Supreme Court. The City's final claim—that the Initiative is impermissibly vague—is specious, as the City's own zoning ordinance is replete with the very language that the City now protests.

The power of initiative is a precious right under the California Constitution. *DeVita v. County of Napa* (1995) 9 Cal.4th 774, 776. The City now seeks an extraordinary remedy—pre-election interference in the initiative process—with paltry claims against the Initiative's validity. Because there is no basis for this action, the writ should be denied.

STATEMENT OF FACTS

In 2013, the Santa Cruz County Regional Transportation Commission ("RTC") adopted the Master Plan, which established a vision for a bicycle and pedestrian pathway ("Trail") within the 32-mile Corridor, from Davenport to Watsonville. Petitioner's Request for Judicial Notice ("Pet. RJN"), Ex. D

("Master Plan"). Within Segment 11, which includes much of Capitola, the Trail would run *over the Trestle*. *See* Master Plan at 4-63 (Segment 11 Proposed Trail Alignment); 1-3 (describing Rail Trail as "spine" or primary alignment). The Master Plan acknowledges that the Trestle must be retrofitted before these plans become a reality; however, it directs that any design plans for a new rail bridge replacement include bike and pedestrian facilities. Master Plan at 4-61. The Plan notes that, in the short-term, "existing surface streets and sidewalks" should be used to cross Soquel Creek. *Id.*

In 2014, the City updated its General Plan, which "provides a vision for the future and establishes a framework for maintaining Capitola's special identity." General Plan at I-1. The General Plan contains a "Mobility Element," which provides "a framework for a balanced transportation system in Capitola," including bicycle and pedestrian facilities. Pet. RJN, Ex. E ("Mobility Element") at MO-1. In the "Background and Context" section of this document, the City explains that a multi-use trail is planned along the Rail Line, including *a proposed crossing at the Trestle*. *Id.* at MO-10 ("[A] multi-use trail for bicycles and pedestrians is planned along the Santa Cruz Branch rail line corridor. The long term plan is for the multi-use trail to cross Soquel Creek along the Trestle."), MO-12 (planned uses of Corridor and Trestle include bicycle and pedestrian facilities). However, like the Master Plan, the General Plan contemplates that bicycles and pedestrians will use Stockton Bridge to cross Soquel Creek "in the short term." *Id.* at MO-10. Stockton Bridge already contains a Class II Bikeway. *Id.* at MO-11.

The Initiative's proponent, Mr. Escamilla, strongly supports the ultimate vision of both the Master Plan and the General Plan: a bike and pedestrian pathway along the Trestle. Indeed, the Initiative's findings illustrate the many benefits of the Trestle route: including keeping the Trail flat and accessible (Pet. RJN, Ex. A ("Initiative") § 8.72.030(C)), providing a route for skateboarders, who are barred from other City streets (*id.* § 8.72.030(D)), keeping some bicycle and pedestrian traffic off congested roads (*id.* § 8.72.030(E)), providing safer access to New Brighton Middle School (*id.* § 8.72.030(F)), and allowing access for tourists (*id.* § 8.72.030(I)). He has become increasingly concerned, however, that the City is failing to accomplish this long-term vision.

Accordingly, Mr. Escamilla prepared the Initiative to accelerate realization of the City's long-term vision. His overarching purpose is to enact a policy keeping the Trail within the Corridor, rather than detoured onto public streets. To achieve this public purpose, the Initiative enacts two directives:

> 1. "The City of Capitola, through its constituent departments, shall take all steps necessary to preserve and utilize the Corridor and Trestle for active transportation and recreation." § 8.72.040(A).
>
> 2. "No City of Capitola department, agency or employee shall expend any funds or resources related to the construction, reconstruction, operation, maintenance, financing, marketing, or signage for a detour of the Trail onto Capitola streets or sidewalks." § 8.72.040(B).

The Initiative also specifies that its adoption "shall not be construed as amending or rescinding any provisions of the general plan, local coastal program or zoning ordinances, but rather shall be construed and harmonized in a manner to strengthen and define such provisions." Initiative § 8.72.060.[1]

On April 2, 2018, Mr. Escamilla filed with the City Clerk a Notice of Intent to Circulate Petition to adopt Chapter 8.72 ("Greenway Capitola Corridor") into the City's Municipal Code. After the City prepared the Ballot Title and Summary, the Initiative supporters began circulating petitions. In just over five weeks, volunteer circulators had collected over 800 signatures, more than 10 percent of the City's registered voters. Petition for Writ of Mandate, ¶ 8. On June 27, 2018, the County Elections Official certified that the petition contained sufficient signatures to qualify for the ballot.

Nevertheless, the Initiative became politically contentious. The City Council initially deferred its responsibilities under the Elections Code, instead seeking an impact report. As the City's deadline for action drew closer, the City filed this last-minute lawsuit. At its August 9, 2018 meeting, the City Council received many public comments regarding the Initiative's validity and consistency, including from the California Coastal Commission. Real Party's Request for Judicial Notice and Declaration of Robert S. Perlmutter ¶¶ 4-5, Ex. 3. While the City Council voted 5-0 to place the measure on the ballot, it continues to challenge the Initiative here. *Id.*

ARGUMENT

I. Petitioner's Challenge Is Not Appropriate for Pre-Election Review.

The California Supreme Court has repeatedly emphasized the duty of the judiciary to "jealously

[1] The City's opening brief ("OB") speculates that the Initiative's purpose is to "sever" rail service on the Santa Cruz Branch Line. OB:8, 14. However, neither the City nor its voters may interfere with freight service on the line pursuant to the federal Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. § 10101 et seq.), and the Initiative makes no mention of rail service.

guard" the people's initiative power." *Rossi v. Brown* (1995) 9 Cal.4th 688, 695 (citations omitted). Thus, "[i]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled." *Id.* (citations omitted). Courts must "resolve doubts in favor of the exercise of the right whenever possible." *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 934.

Given the preeminence of the people's initiative power, courts disfavor, and routinely reject, legal challenges to an initiative's substantive provisions prior to the election:

> [I]t is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity.

Brosnahan v. Eu (1982) 31 Cal.3d 1, 4. In considering the propriety of pre-election review, courts must exercise "considerable caution" given the "important state interest in protecting the fundamental right of the people to propose statutory or constitutional changes through the initiative process." *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1007.

The Supreme Court's ruling in *Independent Energy Producers Association v. McPherson* (2006) 38 Cal.4th 1020 ("*IEPA*") is instructive. There, the Court warned judges to strongly consider deferring judicial resolution until after the election wherever possible, to allow for "full briefing" and "unrushed deliberation." *Id.* at 1030. As the Court explained, claims that are not rendered moot by an election provide "good reason for a court to be even more cautious" in granting pre-election review. *Id.* While the Court acknowledged that potential costs incurred in conducting an election may be taken into consideration—as raised by Petitioner (OB:2-3)—it clarified that "deferring judicial resolution until after the election … often will be the wiser course." *IEPA*, 38 Cal.4th at 1030.

The Court's reasoning is directly relevant here, as Petitioner's legal challenge would be more properly raised *after* the election. None of the four claims—legislative action, plan inconsistency, fiscal discretion, and vagueness—would be affected in any way by the election. At the same time, deferred consideration (in the event the voters adopt the Initiative) would allow both sides to fully litigate the issues.

Courts have recognized three limited exceptions to the broad rule against pre-election review of initiatives, but none is applicable here. First, Petitioner's claims are not procedural, and therefore present

no risk of becoming moot after the election. *See Costa*, 37 Cal.4th at 1006-07. Second, while Petitioner alleges that the Initiative is non-legislative, the allegations do not remotely rise to the level of "clear" invalidity found in cases like *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 715 (sustaining pre-election challenge to an initiative purporting to adopt a resolution for a federal constitutional convention) and *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384, 402 (sustaining pre-election challenge to initiative that was "an effort to administratively negate the legislative purpose" of *preexisting* legislation). As explained in Section II.A, *infra*, the Initiative is plainly legislative in character. Third, Petitioner has not met the extremely high burden of establishing that the Initiative is so obviously invalid that it should not appear on the ballot. *E.g.*, *Gayle v. Hamm* (1972) 25 Cal.App.3d 250, 258 (pre-election review only warranted where "the invalidity of the proposed measure is clear beyond a doubt").

Because pre-election review is inappropriate here, this Court need not reach the merits of Petitioner's claims. If the Initiative passes, the issues can be resolved with "unrushed deliberation," assuming the City or another challenger initiates legal action. *See IEPA*, 38 Cal.4th at 1030.

II. The Initiative Is a Valid Exercise of the People's Rights Under the Constitution.

A. Petitioner Erroneously Claims that the Initiative Does Not Enact Legislation.

Petitioner's primary argument is that the Initiative does not enact legislation, but instead adopts administrative or executive acts. Petitioner misconstrues both the Initiative and the relevant law.

The Supreme Court identified a "dichotomy between a governing body's legislative acts, which are subject to initiative and referendum, and its administrative or executive acts, which are not." *DeVita,* 9 Cal.4th at 776. The form and structure of the initiative do not matter. So long as an initiative "declare[s] a public purpose" or "policy" and "provide[s] the ways and means for its accomplishment," it is a legislative act. *Hopping v. City of Richmond* (1915) 170 Cal. 605, 613-15; *Dunkl*, 86 Cal.App.4th at 399.

Here, the Initiative enacts, into the City's Municipal Code, a policy choice about how the City should prioritize its resources to complete the Trail as contemplated by the City's General Plan. The Initiative directs City staff to ensure that all possible resources are used to secure completion of the Trail on the Trestle. Initiative § 8.72.040(A). It then directs City staff to refrain from spending resources on completion of a Trail detour in other parts of the City. *Id.* § 8.72.040(B). Contrary to Petitioner's argument,

this is a quintessential legislative act. It declares a public policy (completion of the Trail on the Trestle) and provides the ways and means for its accomplishment (directing the City staff to take certain actions).

Numerous cases confirm the Initiative's legislative character. For instance, in *Hopping*, the Supreme Court held that an act to "locate [a] public building [or] public place or institution" is legislative in nature. 170 Cal. at 612. The Court distinguished the act of procuring gas for a public building, which it found to be "merely a thing incidental to the execution of the legislative purpose implied from the acquisition and use of said buildings." *Id.* at 615. The Initiative is similar: it enacts a policy choice about the location of the Trail and establishes the "ways and means" for the City to accomplish that choice. At the same time, it does not direct the City to preserve the Trail in any particular way, an act that, under *Hopping*, could be viewed as "merely a thing incidental."

It is of no import that the City's General Plan already includes broad statements about the future of the proposed Trail. *See* OB:5. The Supreme Court has expressly held that the readoption or reaffirmation of a legislative policy is itself legislative. In *DeVita*, for instance, the initiative simply "confirm[ed] and readopt[ed] … existing portions of the [County General Plan] land use element" and made any future amendment to those portions subject to voter approval. 9 Cal.4th at 770-71. Likewise, zoning ordinances, by definition, implement and must be consistent with policies already enacted by the General Plan. *See* Gov. Code § 65800 ("It is the purpose of [zoning] to implement such general plan as may be in effect in any [] county or city."). Yet, the Supreme Court has categorically held that such ordinances are legislative acts. *Arnel Development Co. v. Costa Mesa* (1980) 28 Cal.3d 511, 523.

Here, just as in *DeVita* and the zoning ordinances cases, the Initiative reaffirms and readopts an existing policy of the City: the Trestle should include a bicycle and pedestrian pathway. *Compare* Mobility Element at MO-10 ("The long term plan is for the multi-use trail to cross Soquel Creek along the trestle.") *with* Initiative § 8.72.040 (The City shall "preserve and utilize the Corridor and Trestle for active transportation and recreation."). And just as in *DeVita*, it also limits the City's ability to change that policy. *DeVita*, 9 Cal.4th at 770-71; Initiative § 8.72.050. That the Initiative readopts and refines General Plan policies does not transmute it into an administrative act.

It is also irrelevant that the Initiative focuses on certain aspects of City policy for the Trestle (bicycle/pedestrian facilities) and not others (rail). Courts have routinely recognized that general plans

contain many broad policies, some of which may be in tension. *E.g.*, *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 677-78. In balancing such provisions, both the City and its voters are permitted to enact policy choices favoring one aspect of the plan over the others. For example, in *Chandis Security Company v. City of Dana Point* (1996) 52 Cal.App.4th 475, 482, the court upheld referenda against a development plan that conformed to the city's general plan, noting that other development options favoring other plan policies could have been approved. Notably, the Initiative here does not embrace one policy while abandoning the other. It calls upon City staff to *preserve* and utilize the Trestle for active transportation and recreation—not to *restrict* use of the Trestle exclusively for these purposes. It does not preclude use of the Trestle for rail.

Petitioner's key case is readily distinguishable. In *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1331-34 ("*Citizens*"), the initiative did not seek to directly adopt any legislation or any policy choice. Instead, it sought to overturn an existing county policy *indirectly*, by imposing a series of onerous procedural hurdles on the accomplishment of that policy. It is these procedural actions—"defining the project, preparing and processing EIRs, holding hearings for approval of a project, and/or placing an approved project on the ballot"—that the court determined were "administrative or executive acts." *Id.* at 1331-32. In this case, however, the Initiative adopts an affirmative policy choice—to accelerate the long-term vision of placing the Trail on the Trestle—and the mechanisms to achieve that policy. It contains none of the "layers of voter approval and hearing requirements" found offensive in *Citizens*. *Id.* at 1333. And, crucially, as described in Section II.B, *infra*, the Initiative seeks to promote the achievement of existing General Plan policies, not interfere with them.

Petitioner also cites *Dunkl*, but that case is inapposite. In *Dunkl*, city voters had previously passed an initiative to enable construction of ballpark; that measure directed the city to prepare an agreement to carry out the construction under certain conditions. 86 Cal.App.4th at 388. When opponents of the ballpark later prepared another initiative to declare that those conditions had not been met, the court found that this second measure "administratively negat[ed] the legislative purpose" of the first initiative. *Id.* at 402. By contrast here, the Initiative does *not* attempt to accomplish specific administrative acts or interfere with a previous initiative. Rather, it promotes, and seeks to realize, long-term policy goals of the City. For this reason, the present measure is a valid exercise of the initiative power and must be allowed on the ballot.

B. The General Plan Consistency Doctrine Does Not Invalidate the Initiative.

1. The Initiative Does Not Conflict with the City's General Plan.

Petitioner asserts that the Initiative conflicts with the General Plan's Mobility Element. The argument is entirely unavailing. The Mobility Element calls for "a balanced multi-modal transportation system that enhances mobility in a safe and sustainable manner." Mobility Element at MO-15 (Goal MO-1). The Initiative is fully consistent with this goal, as it simply directs the City to "preserve and utilize the Corridor and Trestle for active transportation and recreation" and bars funding for a detour of the Trail onto City streets. Initiative § 8.72.040. Further, as set forth below, the Initiative actually *promotes* several key General Plan goals that call for safe, integrated bicycle and pedestrian facilities.

Petitioner first claims that the Initiative conflicts with two paragraphs from the "Mobility Background" section. OB:6-7. Not so. This background section merely describes "the existing transportation system in Capitola" as of 2014, when the General Plan was adopted. Mobility Element at MO-1. It does not set forth General Plan goals and policies. Nevertheless, even if the background section does constitute a General Plan policy, the Initiative does not contradict it.

The initial text cited by Petitioner states that the long-term plan for the Corridor is to have a multi-use trail crossing Soquel Creek along the Trestle. Mobility Element at MO-10; *see* OB:6. The General Plan acknowledges that in the short-term, while funding is unavailable to retrofit the Trestle, pedestrians and cyclists will cross at Stockton Bridge. But it does not require the City to expend resources to detour the Trail onto this existing route. General Plan MO-10. The Initiative does not conflict with these statements. It directs the City to take steps to preserve the Corridor for active transportation and to promote the route on the Trestle—exactly the strategy the General Plan outlines.

Next, Petitioner cites the Mobility Element's background description of the Corridor. OB:7. This passage notes: "Planned transportation uses within this right-of-way include passenger rail service, bicycle and pedestrian facilities, and freight rail service." Mobility Element at MO-12. Notably, the Initiative anticipates accommodating *all three* with an upgraded Trestle. And the Mobility Element explicitly recognizes plans for the Trail along the Corridor, which includes the Trestle. General Plan MO-12.

Petitioner next claims that eleven General Plan policies and two actions "are arguably impeded or frustrated by the Initiative, read literally." OB:7-8. Tellingly, however, Petitioner never attempts to explain

how the Initiative would actually impede these policies. *See id.* In fact, the Initiative is entirely harmonious with them. General Plan Policies MO-2.1, MO-2.4, MO-2.5, MO-6.5, MO-6.6, MO-6.7, MO-8.2, MO-8.3, MO-8.4, and Action MO-8.3 all promote safe, accessible, and integrated bicycle and pedestrian networks. Likewise, the Initiative promotes safety by decreasing passthrough bicycle and pedestrian traffic on City streets. Initiative § 8.72.030. It encourages accessibility by keeping the Trail on the Trestle and providing a flat path across the City. *Id.* It promotes an integrated network by providing a direct pathway from one side of the City to the other, as well as to New Brighton Middle School. *Id.*

The Initiative also does nothing to prevent the City from working with regional partners to explore the feasibility of passenger rail. *See* OB:7 (citing Policy MO-7.6). The Initiative does not sever the rail connection at the Trestle. *See* OB:8. Instead, it accelerates, or prioritizes, the "plan … for the multi-use trail to cross Soquel Creek along the trestle," which both the City and the RTC have planned to accommodate *alongside rail*. *See* Mobility Element at MO-10.

Finally, the Initiative does not prevent the City from constructing bikeways shown in the City's Bicycle Transportation Plan (BTP), as Petitioner asserts. *See* OB:7 (citing Policy MO-8.1, Action MO-8.2). The General Plan recognizes that the Trail, which is the subject of the Initiative, is *additional to and separate from* the BTP bikeways. Mobility Element at MO-10. The Initiative's statements regarding the detour thus can be easily harmonized with the General Plan, as the City is required to do pursuant to the Initiative. Initiative § 8.72.060. While Policy MO-8.1 sets forth a broad goal for constructing and maintaining BTP bikeways throughout the City, it does not mandate any particular expenditure of City funds or other resources. Under the Initiative, the City may still maintain its bikeways as long as it does not affirmatively facilitate the use of these bikeways *as a detour* of the Trail.

The Initiative's approach does not contravene case law on general plan consistency. In fact, courts will find measures to conflict with a general plan only rarely, when the inconsistency is clear and direct. *See, e.g., Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1338, 1342 ("*FUTURE*") (inconsistency with general plan found only when case presents clear conflict with "fundamental, mandatory and specific land use policy," such that no "reasonable person" could find otherwise); *Building Industry Assn. v. City of Oceanside* (1994) 27

Cal.App.4th 744, 749-50 (initiative ordinance specifically controlling number and location of housing units conflicted with general plan policy rejecting such direct limits).

In particular, courts refuse to find a conflict where the challenged measure actually promotes policies of the general plan, or where the measure merely creates tension with the plan's general policy statements and goals. For example, in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704, 719, where the challenged project was consistent with 14 of 17 general plan policies, the court rejected plaintiff's claim, reasoning that a "project need not be in perfect conformity with each and every … policy." *See also Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 992, 996-97 & fn. 2 (rejecting plaintiff's "attempts to use general policy statements and goals to argue that General Plan 'requirements' were not complied with").

Here, Petitioner can cite no direct conflict with specific General Plan requirements that would warrant invalidation of the Initiative. Instead, it relies upon the Plan's "background" section and various general policies that the Initiative can easily be harmonized with or actually promotes. Given these facts, Petitioner's consistency claim cannot stand. *See id.*; *FUTURE*, 62 Cal.App.4th at 1342.

Finally, Petitioner's reliance on *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, is misplaced. OB:6. In *Lesher*, the general plan specifically called for increased growth in the city, while recognizing that new development would increase traffic. 52 Cal.3d at 536. Because the challenged "traffic control" initiative would have imposed a building moratorium throughout most of the city, it directly contravened the general plan. *Id*. at 536, 544. By contrast here, the Initiative creates no such conflict with core policies and requirements of the City's General Plan.

2. Petitioner Presents No Cognizable Claim that the Initiative Conflicts with the RTC's Master Plan.

Petitioner next argues that the Initiative is inconsistent with the RTC's Master Plan. This Court need not tarry long with this claim, as it suffers from two fundamental flaws.

First, there is no legal requirement that a land use initiative conform to another jurisdiction's master plans. Under California law, zoning ordinances, specific plans, and other subordinate approvals must be consistent with the city's own *general plan*. Gov. Code §§ 65860 (zoning), 65454 (specific plans), 66474 (subdivision maps). However, there is no analogous requirement for consistency with another agency's

master plan, even if the City has purported to adopt it[2]—and Petitioner has cited none. *See A Local and Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1814 ("Because consistency is a statutory requirement, no inconsistency can be stated in the absence of a statutory requirement."). Accordingly, Petitioner's claim that the Initiative impedes the RTC's Master Plan is legally irrelevant.

Second, even if such a requirement existed, the Initiative is fully consistent with the Master Plan. Describing the City's section of the Trail, the Master Plan states that the "rail corridor parallels the entire length of the existing [Trail] alignment and could serve as an alternate off-street, multi-use route." Master Plan 3-10. The Master Plan also recognizes that the Trestle needs to be replaced and requires that "[b]ike and pedestrian facilities be included in any design plans for new rail bridge replacement of the Soquel Creek rail crossing." Master Plan at 4-61. The Initiative promotes this plan. In particular, it specifically requires the City to "take all steps necessary to preserve and utilize the Corridor and Trestle for active transportation and recreation." Initiative § 8.72.040.

Petitioner claims that the Initiative conflicts with "[Master Plan] policies that call for the continuation of rail service on the Capitola Rail corridor." OB:9. But this is incorrect. The Initiative does nothing to end or block rail service along the Corridor, and it nowhere designates active transportation and recreation as exclusive uses in the Corridor and Trestle. *See* Initiative § 8.72.040.

Petitioner also asserts that the Initiative provision prohibiting the expenditure of funds on a Trail detour conflicts with the Master Plan. OB:10 (claiming Master Plan "unequivocally call[s] for the City to spend funds and resources to construct, enhance, improve and maintain Village bikeways in the City"). Petitioner is wrong. The Master Plan does not mandate funding of the detour or any specific facilities in the City; in fact, the Master Plan does not set funding priorities at all. *See* Master Plan 4-61. Further, contrary to Petitioner's suggestion (OB:10), the Master Plan *supports* the City adding active transportation and recreation to the Trestle. Master Plan at 4-61 ("Bike and pedestrian facilities to be included in any design plans for new rail bridge replacement of the Soquel Creek rail crossing").

[2] In fact, the City did not adopt the Master Plan as part of the City's General Plan. City Resolution 4019, which "adopted" the Master Plan, nowhere incorporates that document into the General Plan or even references the General Plan. Pet. RJN, Ex. B (Resolution 4019); *see Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 158-159 (where general plan did not expressly incorporate "extant documents," these documents were not properly part of the plan).

Last, Petitioner claims that the Initiative somehow prohibits connecting the City's bikeways to the Trail. *See* OB:8-10. But nothing in the Initiative bars "alignment 'connection points'" or spur trails. *See* OB:9. Instead, the Initiative prohibits future expenditures to promote *a detour* of the spine Trail and directs the City to take steps to utilize the Trestle for the proposed paved Trail in the Corridor, as shown in the Master Plan's Proposed Trail Alignment. Master Plan at 4-63 (showing proposed Trail within the Corridor, with connection points/spur trails within existing on-street facilities). The City is free to construct other bikeways in the City and to connect these bikeways to the Trail as long as it is not promoting these bikeways as a detour to the Trail. *See* Perlmutter Dec., Ex. 3 (Coastal Commission concurs with this interpretation of the Initiative).

C. The Initiative Does Not Interfere with Any Essential Governmental Function.

Citing a series of older taxation cases that have since been sharply limited by the Supreme Court, Petitioner invokes the "interference with essential governmental functions" doctrine to argue that the Initiative is invalid, claiming a future City budget *may* provide for unspecified bikeway improvements. Petitioner's argument is nonsensical, and it finds no support in either the facts or the law.

Factually, Petitioner is simply incorrect in two key ways. First, the Initiative *does not* prohibit the City from making most bicycle or pedestrian infrastructure improvements in the City, including the pedestrian safety devices at the Stockton Avenue/Esplanade intersection. OB:11-12. By the plain language of the Initiative, the only thing it prohibits is "a *detour* of the Trail onto Capitola streets or sidewalks." Initiative § 8.72.040(B) (emphasis added). Petitioner's strained argument works only if one reads "detour" out of the Initiative. *In re Eddie M.* (2003) 31 Cal.4th 480, 496 (declining to interpret initiative to render language "mere surplusage"); *see also* Section I.B, *supra*. Second, nothing in the City's existing budget or Measure F commits the City to spending *any* funding on the detour. Petitioner admits as much. OB:11-12 (noting there is no current plan in the Capital Improvement Program for bikeway improvements).

Petitioner's argument also finds no support in the case law. The primary case it relies upon—*Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832; *see* OB:12—has no relevance here. That case simply applied the California Constitution's express prohibition on using the *referendum* power to challenge "tax levies." *Id.* at 835. The Supreme Court subsequently held that this limitation does *not* apply to initiatives at all. *Rossi*, 9 Cal.4th at 705-11 (overruling the long line of cases that had applied the so-called *"Myers*

rule" to invalidate initiatives affecting cities' fiscal affairs). Accordingly, initiatives may be used to affect the fiscal affairs of a city. *Id.*

In expressly declining to follow the other two cases cited by Petitioner—*Myers v. City Council of Pismo Beach* (1966) 241 Cal.App.2d 237 and *City of Atascadero v. Daly* (1982) 135 Cal.App.3d 466—the Supreme Court explained that the proper question to ask is whether the initiative at issue would "impermissibly interfere with fiscal management" by, for instance, "eliminat[ing] a major revenue source [when] no other revenue source is available that may be tapped to offset a resulting budget deficit or to avoid future deficits." *Rossi*, 9 Cal.4th at 710. Petitioner has not made this showing. Nor could it; the Initiative is unlikely to have any major impact on the City's budget.[3]

As for Petitioner's insistence that *Myers* prohibits initiatives from "'tying the hands of the city council'" (OB:13 (quoting *Myers*)), the Supreme Court has twice expressly rejected this rationale. *See Rossi*, 9 Cal.4th at 711 ("Our obligation to jealously guard the people's reserved right of initiative precludes the restriction on its exercise suggested by the *Myers* court."); *DeVita*, 9 Cal.4th at 798-99 (unlike local elected officials, the voters may properly "circumscribe the power of future governing bodies").

Finally, Petitioner simply ignores the critical element of the interference with essential government function test. This doctrine provides that the "initiative or referendum is not applicable where 'the *inevitable effect would be greatly to impair or wholly destroy* the efficacy of some other governmental power, the practical application of which is essential ….'" *Simpson v. Hite* (1950) 36 Cal.2d 125, 134 (emphasis added and citation omitted). Petitioner has not even attempted to identify such an impact here.

D. The Initiative Is Not Impermissibly Vague.

Petitioner claims that the Initiative is unconstitutionally vague because it uses the terms "all steps necessary," "related to," and "any funds and resources." OB:13. However, as Petitioner reluctantly concedes (OB:14), the standard for setting aside an initiative or other law on vagueness grounds is exceedingly high. Petitioner must "demonstrate that 'the law is impermissibly vague *in all of its applications*.'" *Evangelatos*

[3] *Myers*—which is the source of the "*Myers* Rule" the Supreme Court rejected—is further distinguishable because the Legislature had granted the local elected body the exclusive authority to levy the type of tax at issue. 241 Cal.App.2d at 244. Such issues are not presented here.

v. Super. Ct. (1988) 44 Cal.3d 1188, 1201 (emphasis in original and citation omitted). It has not done so.

Applying this standard, the Supreme Court and other courts have expressly rejected vagueness challenges to the terms challenged by Petitioner, which are nearly ubiquitous in state and local laws—including Petitioner's own. In *County of Nevada v. MacMillen* (1974) 11 Cal.3d 622, 673, for instance, the Court rejected a vagueness challenge to an initiative, holding that terms such as "'reasonable,' 'prudent,' 'necessary and proper,' 'substantial,' and the like" are entirely permissible "nonmathematical standards" that regulate a "wide spectrum of human activities." *See also id.* ("[S]tandards of this kind are *not* impermissibly vague."); *Rutherford v. Cal.* (1987) 188 Cal.App.3d 1267, 1280 ("[T]he phrase 'emergency work necessary to protect life or property' is neither vague nor ambiguous …."); *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1122-23 ("[W]ords such as 'similar' and 'closely *related to* … are sufficiently clear so as to avoid a constitutional vagueness challenge").

To hold otherwise here would suggest that hundreds of provisions of Petitioner's own Municipal Code and General Plan, which collectively use the Initiative's allegedly unconstitutional terms *at least 420 times*, must be invalidated. *See* Declaration of Robert S. Perlmutter in Opposition to Petition for Writ of Mandate, ¶¶ 2-3. Courts in analogous circumstances have routinely rejected vagueness challenges for this very reason. *See, e.g.*, *Mission Springs Water Dist. v. Verjil* (2013) 218 Cal.App.4th 892, 915-17 (rejecting challenge to allegedly vague term used in numerous other statutes and explaining that the court "would not lightly cast doubt on the validity of all of these statutes").

Moreover, it is immaterial that the Initiative does not identify who will determine what steps are "necessary" or what funds or resources are "related to" the identified items. *See* OB:13. The Supreme Court rejected an identical claim about an initiative's failure to "specify what agency or person" would make certain determinations, explaining that "by such a test most of the civil and criminal laws of this state would be invalidated." *Associated Home Builders of the Greater East Bay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 597-99.

Petitioner also asserts—without any support—that the Initiative would inevitably produce absurd results. OB:14. However, even if Petitioner could prove the possibility of such absurd results—which it cannot—the point is unavailing. Courts are obligated "to give specific content to terms that might otherwise be unconstitutionally vague." *Associated Home Builders*, 18 Cal.3d at 598; *see also*

Evangelatos, 44 Cal.3d at 1202 (If initiative requires clarification, courts carry out their "traditional role of interpreting ambiguous statutory language or 'filling in the gaps' of statutory schemes."); *Mission Springs*, 218 Cal.App.4th at 915 ("Where more than one statutory construction is arguably possible, [the court's] 'policy has long been to favor the construction that leads to the more reasonable result.'") (citation omitted).

Indeed, Petitioner itself retains ample authority (and therefore the duty) to adopt clarifying legislation if needed. *See Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1016, 1019, fn. 7 (city properly adopted ordinance clarifying initiative that required rental control board to "finance its reasonable and necessary expenses by charging landlords annual registration fees … [and] to request and receive funding when [and] if necessary").

Petitioner fails to mention any of the foregoing cases. Instead, it once again relies entirely on a block quote from *Citizens*, 94 Cal.App.4th 131. *See* OB:14-15. However, *Citizens* is readily distinguishable. It involved an initiative that improperly imposed a series of insurmountable procedural barriers to a county's adopted policy without addressing that policy directly. The court specifically relied on these *other* constitutional defects to find the initiative impermissibly vague. *Citizens*, 94 Cal.App.4th at 1335 ("The uncertainty of the type of instructions imposed on the Board, *in the context of the planning process* authorized by Measure A, *interacts in this case with other defects already identified* in the measure to demonstrate its invalidity.") (emphasis added). More importantly, as just shown, the Supreme Court has expressly *rejected* vagueness challenges to each of the terms and circumstances at issue here. *Associated Home Builders*, 18 Cal.3d at 599; *MacMillen*, 11 Cal.3d at 673. The court's decision in *Citizens* provides no basis for ignoring these directly on-point Supreme Court holdings.[4]

CONCLUSION

For the foregoing reasons, this Court should uphold the Mr. Escamilla's constitutional right to the initiative power and deny Petitioner's petition for writ of mandate in its entirety.

[4] *Citizens* does not even mention, let alone discuss, any of these cases. Instead, it relied on *Motorola Commc'n & Elec., Inc. v. Dept. of Gen. Serv.* (1997) 55 Cal.App.4th 1340, 1335, a wholly inapposite case involving the Public Records Act.

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