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OPINION	:	No. 83-1201
of	:	JUNE 5, 1984
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THE HONORABLE ROBERT B. PRESLEY, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Under the "window" provisions of chapter 1095 of the Statutes of 1981, may a local government find at its option that the proposed alternative use of Williamson Act contract property is consistent with either the October 1, 1981, general plan or with the general plan amended thereafter as a result of proceedings initiated before January 1, 1982?

CONCLUSION

A local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of chapter 1095 of the Statutes of 1981.

ANALYSIS

Section 8 of article XIII of the Constitution states in part:

> "To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses."

Consistent with this express constitutional grant of authority, the Legislature enacted the California Land Conservation Act of 1965 (Gov. Code, §§ 51200-51294)[1] commonly known as the Williamson Act ("Act"). In general terms, the Act authorizes cities and counties to enter into contracts with owners of agricultural lands to restrict the use of such lands for a minimum of ten years in return for favorable property tax treatment. (§§ 51240-51244.)

In *Sierra Club* v. *City of Hayward* (1981) 28 Cal.3d 840, the Supreme Court reviewed the Act's provisions concerning the cancellation of land contracts. (§§ 51280-51286.) The court found, among other things, that the Legislature intended to impose certain requirements not expressly stated in the statutory scheme. (*Id.*, at pp. 855, 857, 860.)

In response to the *Hayward* decision, the Legislature enacted chapter 1095 of the Statutes of 1981. (Stats. 1981, ch. 1095, § 8, p. 4254 ["the purpose of this act is . . . to clarify and make the law workable in light of problems and ambiguities created by the California Supreme Court decision in the case of *Sierra Club* v. *City of Hayward*, 28 Cal.3d 840"].) Among the new provisions was a one-time, short-term opportunity to cancel contracts with few conditions or requirements—the so-called "window" opportunity to "let out" dissatisfied landowners surprised by the *Hayward* decision. (Stats. 1981, ch. 1095, §§ 3-9, pp. 4251-4254; see Widman, *The New Cancellation Rules Under the Williamson Act* (1982) 22 Santa Clara L.Rev. 589, 621-632 (hereafter "Widman").)

The question presented for resolution concerns the following "window" language:

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[1] All references hereafter to the Government Code are by section number only.

"The board or council may grant tentative approval for cancellation of a contract pursuant to this section only if it makes all of the following findings:

"(1) That the cancellation and alternative use will not result in discontiguous patterns of urban development.

"(2) That the alternative use is consistent with applicable provisions of the city or county general plan which either was in effect on October 1, 1981, or was amended after October 1, 1981, as a result of proceedings which were formally initiated by the landowner or local government as provided in Article 6 (commencing with Section 65350) prior to January 1, 1982."[2]

We are asked whether this language gives to a city or county the option to find consistency with either its October 1, 1981, general plan or with the general plan amended thereafter as a result of proceedings initiated before January 1, 1982. We conclude that it does not.

The literal language used by the Legislature appears to provide the option in question. The words "either" and "or" seem clear. Nevertheless, we find the asserted literal reading of the statutory enactment to be contrary to the intent of the Legislature and in conflict with other relevant statutory provisions.

Several principles of statutory construction are applicable to our analysis. "The literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole." (*County of Sacramento* v. *Hickman* (1967) 66 Cal.2d 841, 849, fn. 6; accord, *People* v. *Davis* (1981) 29 Cal.3d 814, 828-829; *County of San Diego* v. *Muniz* (1978) 22 Cal.3d 29, 36.) "[E]very statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect." (*Moore* v. *Panish* (1982) 32 Cal.3d 535, 541.) "[S]tatutes relating to the same subject matter must be read together and reconciled whenever possible to avoid nullification of one statute by another." (*Kalina* v. *San Mateo Community College Dist.* (1982) 132 Cal.App.3d 48, 53.) "The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Corsack* v. *City of Los Angeles* (1974) 11 Cal.3d 726, 732.)

[2] "Article 6" generally requires that the planning commission of the city or county hold a hearing (§ 65351) and that the legislative body of the city or county hold a hearing (§ 65355) before a general plan may be amended.

Sierra Club v. *City of Hayward*, *supra*, 28 Cal.3d 840, interpreted the cancellation provisions of the Act in what the court termed a "narrow" manner. (*Id.*, at pp. 853, 864.) Through the "window" provisions, the Legislature authorized landowners for a short period of time to cancel their contracts with minimum conditions attached. To limit the easy conditions to those most affected by *Hayward* (those with development plans in mind), an appropriate date (October 1, 1981) was picked for the general plan consistency requirement. Understandably, by such date (only eight months after the *Hayward* decision), the designation in the general plan for a particular parcel might not reflect the proposed development envisioned by the landowner. In such case the landowner was authorized to terminate the contract and develop the property consistent with an amended general plan. (See *Widman*, *supra*, pp. 608, 618, 622.)

We find nothing in the legislation, however, to suggest that a contract could be terminated and development approved which was inconsistent with the general plan applicable at the time of the governmental decision. Such a suggestion would be contrary to provisions of the statutory scheme pertaining to general plans. Governmental decisions are to be made in conformity with the current general plan. (See §§ 65567, 65860, 66473.5, 66474; *City of Los Angeles* v. *State of California* (1982) 138 Cal.App.3d 526, 531, 534; *Brownds* v. *City of Glendale* (1980) 113 Cal.App.3d 875, 880; *Friends of "B" Street* v. *City of Hayward* (1980) 106 Cal.3d 988, 998; *Hawkins* v. *County of Marin* (1976) 54 Cal.App.3d 586, 594-595.) Such requisite consistency was the obvious underlying basis for the Legislature's authorizing the amendment exception to the October general plan requirement.

Accordingly, the finding of consistency under the "window" legislation may not be based upon a prior general plan that has been discarded and is no longer in effect. The Legislature simply did not contemplate that a state of inconsistency in decision-making would prevail at the time of development approval.

In answer to the question presented, therefore, we conclude that a local government may not approve an alternative use of Williamson Act contract property which is not consistent with its current general plan under the "window" provisions of chapter 1095 of the Statutes of 1981.

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