

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>Save Mount Diablo, a California non-profit organization et al Plaintiff/Petitioner(s) vs. City of Dublin, a municipality et al Defendant/Respondent (s)</p>	<p>No. 24CV086734 Date: 10/01/2025 Time: 1:34 PM Dept: 23 Judge: Michael Markman</p> <p>ORDER re: Ruling on Submitted Matter filed by Save Mount Diablo, a California non-profit organization (Plaintiff); Friends of Livermore, a California non-profit organization (Plaintiff) on 04/16/2025</p>
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The Court, having taken the matter under submission on 07/03/2025, now rules as follows:
TENTATIVE DECISION AND PRELIMINARY STATEMENT OF DECISION

This is the Court’s tentative decision and preliminary statement of decision, subject to a party’s timely objection under California Rule of Court 3.1590(g). It will be the Statement of Decision of the Court unless, within fifteen days (plus five days for mailing) a party files and serves a document that specifies controverted issues or makes proposals not covered in the tentative decision (as provided by Rule 3.1590(c) of the California Rules of Court).

The court sets a status conference for October 21, 2025 at 10am in Dept. 23. The parties are NOT to appear. The status conference is for purposes of confirming receipt of any objections or comments regarding the tentative decision so the court can consider them and can then issue its final statement of decision.

The petition for writ of mandate is GRANTED. The court will enter the proposed writ.

BACKGROUND

ORDER re: Ruling on Submitted Matter filed by Save Mount Diablo, a California non-profit organization (Plaintiff); Friends of Livermore, a California non-profit organization (Plaintiff) on 04/16/2025

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Petitioners Save Mount Diablo and Friends of Livermore bring this California Environmental Quality Act (CEQA) challenge to a City of Dublin resolution placing Measure II on the ballot. Measure II provides:

Dublin Traffic Relief, Clean Air/Open Space Preservation Measure. Shall an ordinance be adopted amending the Open Space Initiative of 2014, at no cost to taxpayers, allowing Dublin to accept land donation to connect Dublin Boulevard 1.5 miles east to North Canyons Parkway, including bike lanes, pedestrian access, improved 911 response/traffic flow, and preserve 100 acres of open space while maintaining voter approved housing development restrictions, in exchange for potential limited commercial development on the adjacent 80 acres?

In 2014, Save Mount Diablo, Friends of Livermore, and a coalition of other organizations drafted and circulated petitions for a Dublin Open Space Initiative (“OSI”). The organizations gathered enough signatures to qualify for placement on the ballot. The Dublin City Council opted to adopt the OSI outright, rather than putting it on the ballot. Ultimately the council made the OSI part of the City’s General Plan.

The OSI, among other things, prohibits commercial development of 180 acres of open space and agricultural land known as the Crosby Properties. The OSI allowed for an arterial road, known as the Dublin Boulevard Extension, that had been under consideration since 1984. The OSI also stated:

Ten years after the effective date of this ordinance, the City Council shall study commercial development along the extension of Dublin Boulevard to North Canyons Parkway up to 1,200 feet north of Interstate Highway 580. The Council should consider, among other matters, whether commercial development is needed to fund the construction or maintenance of the extension, and if water supply and wastewater service is assured for any development. The Council may put a measure on the ballot to authorize development in the designated area.

The City of Dublin commissioned a commercial development study in 2023. On July 16, 2024, the City Council voted 3-2 to place Measure II on the November 2024 ballot. Measure II was designed to, among other things, revoke the portion of the OSI that prevented the City Council from approving development on 80 acres of the Crosby Properties.

Respondents did not conduct an environmental review in connection with the resolution placing Measure II on the ballot. Petitioners requested CEQA review before the vote, but the City determined that (1) the resolution was not a “project” under CEQA and (2) even if it did constitute a project, the “common sense exception” to CEQA’s procedural requirements would apply.

Petitioners filed this challenge in August 2024. The court denied Petitioners’ application for preliminary relief to avoid interfering with the ballot. The voters passed Measure II in November 2024, with 53.11% of the electorate voting in favor of it. Petitioners request a writ of mandate repealing Measure II. After reviewing Petitioner’s proposed writ, the joint response filed by Respondents and Real Party in Interest Livbor-Manning LLC, and Petitioner’s objection to the

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response, and considering the arguments of counsel, the court intends to grant the writ petition.

REQUESTS FOR JUDICIAL NOTICE

Petitioners' unopposed requests for judicial notice of (1) the text of Measure II and (2) the certified election results are granted pursuant to Evidence Code section 452, subdivision (h).

LEGAL FRAMEWORK

CEQA "prescribes how governmental decisions will be made" when public entities are "charged with approving, funding — or themselves undertaking — a project with significant effects on the environment." (Union of Med. Marijuana Patients, Inc. v. City of San Diego (2019) 7 Cal.5th 1171, 1185.) A lead agency's implementation of CEQA "proceeds by way of a multistep decision tree, which has been characterized as having three tiers." (Id.)

"First, the agency must determine whether the proposed activity is subject to CEQA at all. Second, assuming CEQA is found to apply, the agency must decide whether the activity qualifies for one of the many exemptions that excuse otherwise covered activities from CEQA's environmental review. Finally, assuming no applicable exemption, the agency must undertake environmental review of the activity, the third tier." (Marijuana Patients, supra, p. 1185 [citations and quotation marks omitted].) The first two tiers are at issue here.

PROJECT UNDER CEQA

The parties agree that Measure II modifies the General Plan to allow the City to consider approving commercial development in the future. There is no question that commercial development would require additional steps, including governmental approval of an application from the property owner, further amendments to the General Plan, zoning changes, annexation of the property, and Local Agency Formation Commission ("LAFCO") approval of an application to expand the City's sphere of influence. Respondents readily acknowledge that any future changes to land use designations etc. would require CEQA review. Respondents maintain, however, that the Measure II resolution was not a CEQA "project" and therefore did not require environmental review.

The term "Project" is defined by statute. Specifically:

"Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

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(c)An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Pub. Res. Code, § 21065.)

The Measure II resolution was an activity “undertaken directly” by the city council. There is no suggestion that the resolution, standing alone, would cause “a direct physical change in the environment.” (Id., § 21065.)

For purposes of this case, therefore, the question is whether the Measure II resolution may cause a “reasonably foreseeable indirect physical change in the environment.” (Ibid.; see also *Marijuana Patients*, supra, 7 Cal.5th at 1189 [Whether “an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact.”].) The question is “an issue of law” that can be decided on undisputed facts in the record. (*Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com.* (2007) 41 Cal.4th 372, 382.)

The relevant case law causes the court to conclude that the Measure II resolution was a “project” for CEQA purposes. As further explained below, the 2014 Open Space Initiative altered the City’s baseline against which the City must measure whether an action may cause a “reasonably foreseeable indirect physical change in the environment” under CEQA. The OSI, which became part of the City’s general plan, contemplated further study and a ballot measure permitting future development, but for the time being barred development in the area at issue. Against that new baseline, at least some modicum further environmental review was required before authorizing Measure II to go forward.

In *Bozung*, the Supreme Court found an “LAFCO approval of a city annexation” to be a project. (*Bozung v. Loc. Agency Formation Com.* (1975) 13 Cal.3d 263, 279.) The *Bozung* approval entitled the City of Camarillo to annex and use certain land. Respondents argue that unlike the Measure II resolution, the *Bozung* LAFCO approval “necessarily” resulted in actual development because it changed land use designations. (Opp’n, p. 18.) When the *Bozung* defendants, however, pointed out that the approval was “merely permissive” and did not compel the City to annex the land, and the Supreme Court rejected the argument: “That, in theory, the city eventually may not use the entitlement by not annexing, does not retroactively turn a project into a nonproject.” (*Bozung*, 13 Cal.3d at p. 279.)

In *Muzzy Ranch*, the Travis Air Force Base Land Use Compatibility Plan was considered a project, despite an agency argument that any potential displacement effects were too speculative. (*Muzzy Ranch*, supra, 41 Cal.4th at pp. 382–85.) Respondents contend that any environmental impacts from commercial development are too speculative to warrant CEQA review at this stage. The *Muzzy Ranch* decision explains that just because “further governmental decisions need to be made before a land use measure’s actual environmental impacts can be determined with precision does not necessarily prevent the measure from qualifying as a project.” (Id., p. 383.)

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The Measure II resolution is an “essential step” in achieving commercial development of the Crosby Properties, and impacts from such development may be reasonably anticipated. (Ibid.)

Finally, Marijuana Patients is the most factual similar precedent known to the court. Prior to the passage of the ordinance at issue, “no medical marijuana dispensaries were legally permitted to operate” in the City of San Diego. (Marijuana Patients, supra, 7 Cal.5th at p. 1199.) The ordinance “amended the City’s zoning regulations to permit the establishment of a sizable number of retail businesses of an entirely new type.” The Supreme Court concluded that establishment of such businesses was “capable of causing indirect physical changes in the environment,” including new retail construction and changes in traffic patterns. (Ibid.) The “requirement of individual use permits,” which the City of San Diego argued would be a more appropriate juncture for CEQA analysis, did not prevent the ordinance from being considered a project. (Id., p. 1200.)

Respondents argue that the “causal connection” found in Marijuana Patients is lacking here. Respondents cite the lack of any firm commitment to a particular development plan. The Medical Marijuana Patients decision explains that the “likely actual impact of an activity is not at issue in determining its status as a project,” as “virtually any postulated indirect environmental effect” would be “‘speculative’ in a legal sense — that is, unsupported by evidence in the record.” (Marijuana Patients, supra, 7 Cal.5th at p. 1199–200.) An environmental effect may be rejected as speculative only if “the postulated causal mechanism underlying its occurrence is tenuous.” (Id., 1200.)

Here, the “postulated causal mechanism” is not tenuous. There is ample evidence in the record, and indeed in the Open Space Initiative itself, that Respondents have long contemplated commercial development of the Crosby Properties, particularly in connection with funding the Dublin Boulevard Extension. (See, e.g., AR76–78, AR287, 1931, AR2082, AR2089.) Respondents have studied various proposals and communicated with other interested parties, including the property owner, LAFCO, and the City of Livermore. (See, e.g., AR347, AR695, AR377–78, AR1933, AR1936–40.) Respondents acknowledge that the owner of the Crosby Properties “has expressed a willingness to consider future development on the Crosby Properties as a means of financing construction” of a portion of the Dublin Boulevard Extension, an Extension that “extremely important to the City of Dublin – economically and financially.” (Opp’n, p. 6–7 [citing AR1314, 234, 237].) The “necessary causal connection” between the Measure II resolution and the effect of commercial development is present because the resolution is an “essential step” in the process of achieving commercial development which may, in turn, affect the environment. (Marijuana Patients, supra, 7 Cal.5th at p. 1199; see also Muzzy Ranch, supra, 41 Cal.4th at p. 383 [“essential step leading to potential environmental impacts” is sufficient].)

Respondents’ citation to Save Tara is unpersuasive. Save Tara analyzed whether a public agency’s agreement with a private developer constituted a project “approval,” defined in the CEQA guidelines as “the decision by a public agency which commits the agency to a definite course of action in regard to a project.” (Save Tara v. City of W. Hollywood (2008) 45 Cal.4th116, 130.) In this case, Petitioners challenge a resolution—there is no question about the

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timing of approval. While both cases implicate the timing for CEQA review, the analyses are different. Here, the project is the Measure II resolution alters the provisions of the Open Space Initiative. It was not a specific development, and there is no question that Respondents committed to the measure.

COMMON SENSE EXEMPTION

The “common sense” exemption applies where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (Code Regs. tit. 14, § 15061, subd. (b)(3)(emphasis added).) “[W]hether a particular activity qualifies for the common sense exemption presents an issue of fact, that the agency invoking the exemption has the burden of demonstrating it applies.” (Muzzy Ranch, supra, 41 Cal.4th at p. 386.) The court reviews for “substantial evidence” to support the agency’s finding that a project is exempt. (CREED-21 v. City of San Diego (2015) 234 Cal.App.4th 488, 510.).

In Muzzy Ranch, the California Supreme Court agreed the common sense exemption applied because the air force land use plan at issue incorporated “existing county general plan and zoning provisions.” (Muzzy Ranch, supra, 41 Cal.4th at p. 389.) As explained in Rominger, the Muzzy Ranch agency showed, as a factual matter, that any displacement “would not be caused by the plan but instead by the existing land use policies and zoning regulations the plan incorporated.” (Rominger v. County of Colusa (2014) 229 Cal.App.4th 690, 703, disapproved of on other grounds by Marijuana Patients, supra, 7 Cal. 5th 1171.)

Here, Respondents have made no showing that Measure II “will not lead to the development [of the Crosby Properties and to resulting significant environmental effects.” (Rominger, supra, 229 Cal.App.4th 690, 704.) There is an “eminently reasonable possibility” that the City will use its new authority and that the Crosby properties will eventually be developed. (Ibid.) While the exemption “need not necessarily be preceded by detailed or extensive factfinding,” Muzzy Ranch, supra, 41 Cal.4th at 388, Respondents rely solely on the statement that “the Resolution and measure do not propose or permit any new development.” AR4. That does not meet the standard articulated in Muzzy Ranch and Rominger, and Respondents cite no substantial evidence to that effect. Indeed, the evidence suggests that new development is likely, even though there are more steps in the process. Thus, the “common sense” exemption does not apply.

CONCLUSION

This is an unusual situation. Normally, a city has the authority to make zoning changes and only begins CEQA review when it reaches that point. The 2014 Open Space Initiative, however, changed the baseline for the City of Dublin, and changing it back constitutes a project under CEQA. Respondents have not established that the commonsense exemption applies. It appears that Respondents must return to the beginning of the CEQA decision tree. While the specifics of Respondents’ next steps are not at issue on this petition, the court notes that CEQA allows for more general analysis of environmental impacts in appropriate circumstances. (See, e.g., Code Regs. tit. 14, § 15152, subd. (b) [“Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and

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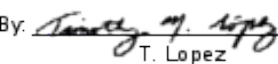
development projects.”].)

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated : 10/01/2025



Michael Markman / Judge

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COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 10/01/2025 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Save Mount Diablo, a California non-profit organization et al	By:  Deputy T. Lopez
DEFENDANT/RESPONDENT: City of Dublin, a municipality et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 24CV086734

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the TENTATIVE DECISION AND PRELIMINARY STATEMENT OF DECISION entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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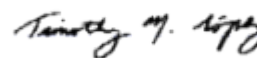
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Chad Finke, Executive Officer / Clerk of the Court

Dated: 10/01/2025

By:



T. Lopez, Deputy Clerk