Case No. A175855

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
Division One

SAVE MOUNT DIABLO AND FRIENDS OF LIVERMORE,
Petitioners and Respondents,
v.
CITY OF DUBLIN, CITY OF DUBLIN CITY COUNCIL, AND
MARSHA MOORE, MMC,
Respondents;

LIVBOR-MANNING LLC,
Real Party in Interest and Appellant.

Case No. 24CV086734, Hon. Michael Markman
On Appeal from a Final Judgment of the
Superior Court of California, County of Alameda

APPLICATION OF CALIFORNIA WILDLIFE FOUNDATION, GREENBELT ALLIANCE, CITIZENS FOR BALANCED GROWTH, AND OHLONE AUDUBON SOCIETY FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS AND RESPONDENTS; AMICUS CURIAE BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL First **APPELLATE DISTRICT, DIVISION** ONE	COURT OF APPEAL CASE NUMBER: A175855
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 176753 NAME: Mark R. Wolfe FIRM NAME: M. R. Wolfe & Associates, P.C. STREET ADDRESS: 580 California Street, Suite 1200 CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: 415-369-9400 FAX NO.: 415-369-9405 E-MAIL ADDRESS: mrw@mrwolfeassociates.com ATTORNEY FOR (*name*): Amicus Curiae CITIZENS FOR BALANCED GROWTH	SUPERIOR COURT CASE NUMBER: 24CV086734
APPELLANT/ PETITIONER: SAVE MOUNT DIABLO, ET AL. RESPONDENT/ REAL PARTY IN INTEREST: CITY OF DUBLIN; LIVBOR-MANNING, LLC	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one)*: [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party *(name)*: Amicus Curiae Citizens for Balanced Growth

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[ ] Continued on attachment 2.

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Date: September 7, 2026

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APPLICATION OF CALIFORNIA WILDLIFE FOUNDATION, GREENBELT ALLIANCE, CITIZENS FOR BALANCED GROWTH, AND OHLONE AUDUBON SOCIETY FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS AND RESPONDENTS

Pursuant to Rule 8.200(c) of the California Rules of Court, California Wildlife Foundation, Greenbelt Alliance, Citizens for Balanced Growth, and Ohlone Audubon Society, all California non-profit 501(c)(3) organizations ("Amici"), respectfully apply for permission to file the accompanying amicus brief in support of Petitioners below and Respondents, Save Mount Diablo and Friends of Livermore.

In accordance with Rule 8.200(c)(3), Amici affirm that no party or counsel for a party in the pending case authored the proposed amicus brief in whole or in part, or made any monetary contribution intended to fund its preparation.

Interests of Amici

California Wildlife Foundation is a California non-profit public benefit corporation headquartered in Berkeley. Established in 1990 by a group led by the then Resources Agency Secretary to support the work of the California Department of Fish and Wildlife (formerly California Department of Fish and Game), CWF partners with federal, state, regional, and local agencies as well as land trusts and other non-profit organizations to protect the state's rich diversity of wildlife and plant species by acquiring, restoring, and managing sufficient habitat to sustain healthy populations over time. CWF has longstanding interest and expertise in California land use policy and law, including the application of California Environmental Quality Act (CEQA) to programs, plans, and projects that impact plant and animal habitat, including habitat that supports imperiled species.

Greenbelt Alliance is a California nonprofit public benefit corporation headquartered in Oakland. Over its 70-year history, Greenbelt Alliance has stewarded the Bay Area's natural landscapes while promoting the growth needed for thriving communities for generations to come. Part of this legacy is its work preserving open space from sprawl, while advocating for SMART (Sustainable, Multi-use, Affordable, Resilient, Transit-oriented) infill development. Greenbelt Alliance views the land affected by Measure II as an essential open space buffer, which provides habitat for wildlife and other ecosystem benefits, and considers CEQA an important mechanism to review potential impacts of any significant proposed land use changes and to communicate these impacts to the public.

Citizens for Balanced Growth is a nonprofit land conservation organization dedicated to supporting jobs-housing balance in the Tri-Valley region of the San Francisco Bay Area, including the cities of Dublin, Pleasanton, and Livermore. Its members monitor for CEQA compliance for ballot measures and general plan actions across this region, and have a direct interest in ensuring that local agencies cannot use ballot-box mechanisms to remove voter-enacted environmental protections without the environmental review CEQA requires for functionally equivalent legislative or administrative actions.

Ohlone Audubon Society is a local chapter of the National Audubon Society, a nonprofit public benefit corporation. It has a strong interest in this appeal because the land at issue lies within an important open-space landscape between Dublin and Livermore that provides habitat for birds and other wildlife. As an organization dedicated to protecting birds and their habitat, Ohlone Audubon's interests will be directly impacted by the lack of environmental review prior to the removal of conservation protections by the ballot measure at issue in this case.

How the proposed amicus brief will assist the Court in deciding the matter.

This case presents an issue of first impression with statewide significance: whether an agency can insulate a decision to remove a categorical, voter-approved development prohibition from CEQA review merely by characterizing the removal as a grant of "authority" to a future decisionmaker, even where that future decisionmaker is the same body that placed the measure on the ballot for a stated development-enabling purpose. The resolution of this question will affect how California cities and counties structure ballot measures affecting open-space initiatives, growth-control ordinances, and general plan protections throughout the state. Amici's input can provide the Court with a perspective on the practical consequences of the new rule that would arise from acceptance of Appellant's arguments, consequences which would extend well beyond the Crosby Properties and the parties to this action.

For these reasons, Amici respectfully request that the Court grant permission to file the accompanying proposed amicus curiae brief.

Dated: Sept. 7, 2026 Respectfully submitted,

M. R. WOLFE & ASSOCIATES, P.C.

/s/ Mark R. Wolfe

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AMICUS CURIAE BRIEF OF CITIZENS FOR BALANCED GROWTH, ET AL. IN SUPPORT OF PETITIONERS AND RESPONDENTS

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INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal turns on whether the City's decision to remove a voter-enacted prohibition on development from an identified parcel, for a stated development-financing purpose, may cause a reasonably foreseeable indirect physical change in the environment. Respondents have persuasively shown that it does. Amici write to sharpen arguments that the litigants' briefing, understandably focused on the immediate record, has not fully developed, and to address the systemic consequences that make this case significant well beyond Alameda County.

First, Appellant distinguishes between agency actions that make "binding policy decisions" about the scope, location, or intensity of future development (which it concedes can be projects for purposes of CEQA) and actions that are mere "factual or procedural prerequisites" to development (which it says cannot be). That distinction does not describe what Measure II did. A voter-enacted categorical prohibition on development is itself a binding land-use policy that can be undone only by another vote of the electorate. Measure II substantively removed the parcel-specific prohibition on commercial development on the Crosby Properties for the stated purpose of enabling commercial development to fund a road-extension project, making future environmental change on that parcel legally possible for the first time since 2014. Every general plan and zoning case Appellant cites to distinguish this one involved permanent redesignations that "affected the scope and type of potential future development." Measure II did the same.

Second and more fundamentally, the rule that would arise from this Court's adoption of Appellant's argument would allow California agencies to evade CEQA review entirely. Appellant's own Reply Brief offers, in a footnote intended as a reductio ad absurdum, that under Respondents' reasoning even the 2014 Open Space Initiative could be characterized as an "essential step" toward the same development. Appellant's hypothetical instead illustrates the importance of identifying the point at which an agency's sequence of actions has materially enabled the contemplated development. Otherwise, each action can be characterized as "preliminary" by reference to some later step, and an agency could defer CEQA review indefinitely by piecemealing approvals as a chain of technically non-binding actions. That is the type of segmentation the Supreme Court disallowed in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

Third, this case arises in a context the litigants' briefs have not squarely addressed: a ballot measure is what removed the environmental protection, not an ordinary legislative act. Ballot measure outcomes cannot be revisited through the ordinary legislative process. Undoing or even revising Measure II would require a new election. That practical irreversibility, combined with a ballot title that emphasized “Clean Air” and “Open Space Preservation” for a measure that removed 80 acres from open-space protection, gives CEQA’s informational purpose particular importance at the ballot measure referral stage. Pre-election review was the time when environmental information could have informed voters before they removed the parcel’s voter-enacted development restriction.

Fourth, CEQA’s common-sense exemption does not apply because the administrative record supplies a concrete basis to conclude that Measure II may result in significant environmental effects: a commissioned financial feasibility study, conceptual site plans, and a stated ballot purpose of using development to finance a major infrastructure project, the Dublin Boulevard Extension. Unlike *Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n* (2007) 41 Cal.4th 372, 389, where the court excused CEQA review when there was “no reason to assume” an agency would act to remove development restriction, Dublin has already expressly stated that it would, and has already commissioned the studies to do it.

For these reasons, and those in Respondents' Brief, amici urge this Court to affirm.

ARGUMENT

I. Measure II Satisfies CEQA's Causal-Connection Test Because It Effectuates the Same Kind of Permanent, Site-Specific Policy Change That Courts Have Found Sufficient in Analogous Cases.

A. Removing a Categorical, Voter-Enacted Development Prohibition Is a Binding Policy Decision, Not Simply a Procedural First Step.

Appellant argues that Measure II "did not change any land use or zoning designations, impose development standards, or cap/concentrate demand," and therefore cannot bear the kind of causal connection to future environmental change that *Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197 ("*Marijuana Patients*") requires. The argument treats the absence of a zoning-map amendment as dispositive, although the operative question is whether the action may cause a foreseeable indirect physical change. The 2014 Open Space Initiative was the operative land-use designation governing the Crosby Properties: it categorically foreclosed commercial development on the parcel. Measure II amended that designation to permit an entirely new category of use, commercial development, that had been legally impossible for over a decade. That is a substantive change in the parcel's development status for CEQA purposes, regardless of the legislative vehicle (ordinance versus voter-approved ballot measure) through which it was accomplished.

CEQA does not distinguish between the form of the instrument that changes a parcel's development status and the substance of that change. Whether a city council amends a zoning map, amends a general plan land-use designation, or (as here) the electorate amends a voter-initiative-imposed open-space designation, the result is the same: a parcel that could not lawfully be developed for a particular use can now be considered for that use. The causal mechanism *Marijuana Patients* requires (a non-speculative link between the challenged action and a reasonably foreseeable indirect physical change) is present here in the same form it was present *in Marijuana Patients* itself, where the "newfound authority to approve" retail cannabis businesses was what made construction of new retail space reasonably foreseeable. (*Marijuana Patients*, *supra*, 7 Cal.5th at pp. 1181–1182, 1199.)

Appellant is correct that the *Marijuana Patients* ordinance also capped development in some areas and concentrated it in others, but that additional regulatory detail was not the sole basis for the causal connection found there. The threshold fact that made any of it relevant was that the ordinance made a previously prohibited use newly possible, and Measure II does the same for the Crosby Properties.

Appellant characterizes Measure II as a "purely procedural" change (e.g., Reply Br. at pp. 8, 30, 41), but that description does not match what Measure II actually does. A procedural change alters how a decision is made; it does not alter what may lawfully be decided. Before Measure II, no procedure existed by which the City Council could approve commercial development on the Crosby Properties, because the Open Space Initiative, an instrument amendable only by a vote of the electorate, categorically foreclosed that outcome. After Measure II, that same substantive prohibition is gone, replaced by City Council discretion to authorize the very use the electorate had barred.

The ordinance in *Marijuana Patients* was a project under CEQA because it newly permitted "a sizable number of retail businesses of an entirely new type," where previously "no medical marijuana dispensaries were legally permitted to operate in the City." (*Marijuana Patients*, *supra*, 7 Cal.5th at p. 1199.) Measure II does the same for commercial development on the already-studied Crosby Properties.

B. The General Plan and Zoning Cases Appellant Distinguishes Actually Confirm That Measure II Is a Project Under CEQA.

Appellant attempts to distinguish the general plan amendment cases that Respondents cite: *St. Vincent's Sch. for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989 (removing lands from annexation restrictions); *Fed'n of Hillside and Canyon Assn's v. City of L.A.* (2000) 83 Cal.App.4th 1252 (creating a framework for future population and employment growth); *Black Prop. Owners Ass'n v. City of Berkeley* (1994) 22 Cal.App.4th 974 (contemplating new housing units); and *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521 (redesignating land from residential to industrial). Appellant argues that each of these cases "involved binding policy decisions that permanently affected the scope and type of potential future development."

Measure II satisfies that standard. Before Measure II, the scope of potential future development on the Crosby Properties was zero: commercial development was categorically prohibited. After Measure II, the scope of potential future development includes the commercial uses contemplated by the City's own feasibility analysis. That is a permanent change in the scope and type of potential future development on this parcel, the same change these cases treat as sufficient.

Appellant's effort to cabin these cases to actions that changed "allowable land uses" or "zoning designations" in name only, while treating the removal of a substantively identical open-space prohibition as something categorically different, draws a distinction CEQA's statutory text does not support. Public Resources Code section 21065 asks whether an activity may cause a reasonably foreseeable indirect physical change in the environment, not whether the label attached to the instrument that authorizes the change is "zoning ordinance," "general plan amendment," or "ballot measure amending a prior initiative." (*See* CEQA Guidelines, § 15378, subd. (a)(1) [listing general plan amendments and zoning ordinance amendments together as examples of the same category of potential "project"].) Appellant identifies no authority holding that an action which otherwise satisfies the causal-connection test escapes CEQA review merely because it operates by removing a prior initiative's restriction rather than by affirmatively adopting a new one. CEQA's project definition turns on the foreseeable environmental consequences of the governmental action, rather than the label attached to the legal instrument through which the action is taken.

C. *Friends of the Sierra Railroad* and Appellant's "Mere Prerequisite" Cases Are Distinguishable Because They Involved Independent Third-Party Decisionmakers.

Appellant relies heavily on *Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147 Cal.App.4th 643 ("*Friends*"), *Bridges v. Mt. San Jacinto Community College Dist.* (2017) 14 Cal.App.5th 104, *City of Santee v. County of San Diego* (2010) 186 Cal.App.4th 55, *Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, and *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified Sch. Dist.* (1992) 9 Cal.App.4th 464, for the proposition that an action enabling, but not committing an agency to, future development lacks the requisite causal connection. Each of these cases shares a structural feature entirely absent here: the entity empowered to act, and whose future conduct supposedly remained genuinely open, was independent of (or at arm's length from) the agency whose action was under review. In *Friends*, the land recipient was a sovereign Tribe with its own independent development timeline and decision-making process; the transferring agency had no further role in whether, when, or how development would occur. (*Friends*, *supra*, 147 Cal.App.4th at pp. 649, 656–659.) In *Bridges, City of Santee,* and *Parchester Village*, the challenged agreements contemplated development options across multiple potential sites or facility types, with no site-specific commitment and no identified end-use. *In Kaufman & Broad*, the assessment district simply raised funds; it made no decision at all about what, if anything, would be built.

The City Council that placed Measure II on the ballot is the same body that will exercise the "discretion" Appellant says remains fully open. The City Council sponsored Measure II to enable commercial development of the Crosby Properties as a funding source for the Dublin Boulevard Extension, and the City retained authority over the later approvals. The record includes a feasibility analysis and conceptual site plans for that contemplated development. There is no independent third-party decisionmaker standing between Measure II and the environmental change it enables, and no diffusion of the decision across multiple potential sites or uses, unlike the attenuated, multi-party fact pattern of *Friends* and its progeny. The nexus *Marijuana Patients* requires exists because the "later" decision Appellant points to as the true point of CEQA review is not meaningfully independent of the decision already made.

D. Appellant's Citizen-Initiative Hypothetical Does Not Show Measure II Is Immune From CEQA.

Appellant suggests in a footnote that "the voters also could have proposed an initiative" giving the City Council the same authority, or authorizing commercial development outright, and that “neither action would have been subject to CEQA.” (Reply Br. at p. 12, fn. 6, citing CEQA Guidelines, § 15378, subd. (b)(3), and *Tuolumne Jobs & Small Bus. Alliance v. Superior Court* (2014) 59 Cal.4th 1029.) The premise is correct as far as it goes: CEQA generally does not reach a legislative body’s submission of a genuine, voter-qualified citizen initiative to the electorate, because the body exercises no discretion over whether the measure reaches the ballot. That premise has no application here. Measure II was not a citizen-sponsored initiative. It originated with, and was placed on the ballot by, the Dublin City Council’s own Resolution No. 86-24, a discretionary act the Council took for the stated purpose of enabling commercial development to help finance a City infrastructure project.

A local government’s decision to place its own measure before the voters is itself discretionary agency action subject to CEQA’s threshold inquiry. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 187, 191.) The discretion that removes a genuine citizen initiative from CEQA’s reach is the agency’s lack of any choice about whether to place a measure before voters. That is the discretion the City Council exercised, and continues to exercise, at every stage of this process. Appellant cannot borrow the immunity that attaches to citizen-sponsored initiatives for a measure the City itself authored, sponsored, and placed on the ballot.

E. Appellant's "Meaningful Environmental Review" Argument Addresses a Later Stage of CEQA Review, Not the Threshold Determination Presented Here.

Appellant argues that "meaningful environmental review" of Measure II is not yet possible (Reply Br. at pp. 37-38). That argument conflates two distinct stages of the CEQA process rather than showing that Measure II is not a project. By Appellant's own account, an agency confronted with a proposed activity "must first decide whether the proposed activity is subject to CEQA," a threshold inquiry that requires only "a preliminary review to determine whether the proposed activity constitutes a 'project.'" (AOB, p. 23, quoting *Marijuana Patients*, *supra*, 7 Cal.5th at p. 1185.) "If the proposed activity is found not to be a project, the agency may proceed without further regard to CEQA." (*Id.* at pp. 1185-1186.)

Section I.A above demonstrates that Measure II is a project under CEQA. CEQA consideration does not, however, stop at that determination. To the contrary, it starts: it moves on to separate questions about whether an exemption applies and, if not, what form of environmental document the agency must prepare and how much specificity that document must contain. (CEQA Guidelines, §§ 15060, subd. (c), 15152, 15168.)

Appellant's "meaningful environmental review" argument belongs entirely to that second, later stage. The Supreme Court has already rejected the attempt to import it into the first. In *Marijuana Patients*, the city argued that "too little is known about the environmental impact of the Ordinance to permit effective environmental review." (7 Cal.5th at p. 1200.) The Supreme Court held that this argument "conflates the various tiers of CEQA review," explaining that "[a]t this initial tier in the CEQA process, the potential of the Ordinance to cause an environmental change requires the City to treat it as a project and proceed to the next steps of the CEQA analysis." (*Ibid.*)

The same analysis defeats Appellant's reliance on *Save Tara* and *Friends* for the proposition that CEQA review must wait until a project is "well enough defined to allow for meaningful environmental evaluation." (Reply Br. at pp. 37-38, quoting *Save Tara*, *supra*, 45 Cal.4th at p. 130; *Friends*, *supra*, 147 Cal.App.4th at p. 657.) *Save Tara* and *Friends* address when an agency must prepare an EIR and how definite a project must be before that document can meaningfully analyze it. Neither addresses whether the underlying governmental action is a project in the first place. Whether enough is yet known about the eventual development of the Crosby Properties to support a particular level of environmental documentation, and how much specificity that documentation must contain, are questions for the next tier of CEQA review, one that has not yet been reached because Appellant contends, incorrectly, that Measure II is not a project at all. Tools such as tiering and subsequent or supplemental review let an agency proceed at the project stage while deferring detailed analysis of impacts that are foreseeable in kind but not yet fixed in detail. (CEQA Guidelines, §§ 15152, 15162, 15163, 15168.) Appellant cannot use the same uncertainty that those tools are designed to accommodate as a reason to avoid the threshold project determination altogether.

II. Appellant's Rule Would Create a Roadmap for Evading CEQA Through Segmented, Incremental Approvals.

A. Appellant's Own Reply Brief Illustrates the Danger.

Appellant's Reply Brief offers, as a criticism of Respondents' position, the observation that "under Petitioners' logic, the Dublin Open Space Initiative of 2014 itself might have been considered an 'essential step' toward future development on the Crosby Properties because it authorized the City Council to place Measure II on the ballot in the first instance." Appellant intends this as a reductio ad absurdum. The hypothetical instead illustrates the importance of identifying the point at which an agency's sequence of actions has materially enabled the contemplated development; otherwise, each action can be characterized as preliminary by reference to a later step.

Under Appellant's own theory, that no action counts as a project unless it alone "necessarily entails" or "requires" the ultimate environmental change, and that any action merely enabling a later step is not itself a project, an agency could sequence any development approval through an indefinite chain of formally non-binding, mutually enabling steps. Each step in the chain could always point to the next as the "real" decision point, and the last step in the chain (the actual development approval) would arrive only after the parcel's environmental fate had already been substantially, if not entirely, determined by the earlier, unreviewed steps. CEQA review could be repeatedly deferred by treating each action as preliminary in light of the next anticipated approval.

The concern follows directly from Appellant's own footnote and is addressed in *Save Tara*. There, the Supreme Court held that an agency must complete CEQA review before it "commit[s] itself to [a] project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures .... including the alternative of not going forward with the project." (*Id.* at p. 139.) Appellant reads *Save Tara* as addressing only the timing of review for an admitted project, divorced from the threshold "project" inquiry. The two questions cannot be so neatly separated where, as here, an agency's chosen sequencing is itself what obscures whether and when a "project" has come into being.

Friends recognized as much, noting that the questions of prematurity and project status can "merge for all practical purposes" where the dispute is, in essence, over whether enough was known about anticipated development at the time of the challenged action to permit meaningful environmental review. (*Friends*, supra, 147 Cal.App.4th at p. 657, fn. 2.) The record here presents those circumstances: the City had already commissioned feasibility studies and conceptual site plans sufficient to inform meaningful review at the time it placed Measure II on the ballot, and its choice to defer that review to a later project-level approval does not erase the fact that the environmentally significant decision, whether this parcel's protected status should be undone at all, was made when the voters approved Measure II.

B. Appellant's Rule Would Undermine Long-Established General Plan Amendment Case Law.

Virtually every general plan amendment or zoning ordinance amendment that courts have found to be a CEQA project also required further downstream discretionary approvals (site plan review, subdivision approval, building permits, or, as here, annexation) before actual construction could occur. If this Court were to adopt the rule Appellant proffers, none of those downstream approval requirements would matter; an agency could characterize any general plan amendment as a mere grant of "authority" to itself to consider development "at a future time," insulate the amendment from CEQA review on that basis, and conduct the "real" CEQA review only once every remaining approval is a foregone conclusion in practice, even if not in form.

That result cannot be reconciled with *St. Vincent's*, *Fed'n of Hillside and Canyon Ass'ns*, *Black Prop. Owners Ass'n*, and *City of Santa Ana,* all of which involved land-use redesignations followed by further necessary approvals, and all of which nonetheless required CEQA review at the redesignation stage. Amici urge this Court to make explicit what those cases already establish: the existence of further required approvals does not, by itself, defer the point at which CEQA review must occur, where, as here, the earlier action already removed the substantive legal barrier to a previously studied development outcome.

III. Ballot Measures That Remove Voter-Enacted Environmental Protections Warrant Heightened Scrutiny In Light of CEQA's Informational Purpose.

A. The Practical Irreversibility of Ballot Measure Outcomes.

The litigants' briefs treat Measure II's status as a ballot measure as incidental to the CEQA analysis. The ballot-measure context bears directly on CEQA's informational purpose. An ordinary city council action removing a development restriction can, at least in principle, be reconsidered, amended, or reversed by a subsequent council vote if new information emerges. A ballot measure amending a voter-enacted initiative cannot be undone except by another vote of the electorate, a costly, uncertain, and rarely invoked process.

That asymmetry matters to CEQA's core purpose of ensuring decisionmakers and the public have relevant environmental information before an action is taken, because it is only before the vote that meaningful alternatives remain realistically available. Once voters have approved removing a parcel's open-space protection for a stated development-financing purpose, the political and practical space for reconsidering that outcome narrows, even though nothing in Measure II's text formally commits the City to anything. The ballot-measure process amplified the practical difficulty of reconsidering the removal of the open-space restriction after the election, a consideration relevant to the timing principles *Save Tara* discusses, and that difficulty is heightened here by the ballot-measure vehicle Appellant insists should receive lesser scrutiny.

Appellant responds that the City Council "remains free to consider all potential mitigation measures and alternatives . . . , including the alternative of not approving any development at all." (Reply Br. at p. 19.) Although the City retained legal discretion over later approvals, the record shows that Measure II was adopted to facilitate an identified development-financing strategy and that the City had already evaluated prospective development of the parcel: it commissioned a feasibility study quantifying the development it contemplates, exchanged conceptual site plans with the property owner, and told the voters that Measure II's purpose was to finance a road extension through commercial development of this parcel.

Having secured the electorate's approval to pursue that course, the City has little practical incentive to reverse it, and the electorate that alone could compel a reversal would have to organize, qualify, and win a second ballot measure to restore the protection it just voted to remove. *Save Tara*'s foreclosure inquiry turns on whether meaningful alternatives remain realistically available at the time environmental review would occur. (*Save Tara*, *supra*, 45 Cal.4th at p. 139.) Once the ballot box has spoken, those alternatives are no longer realistically available here.

B. The Ballot Presentation Did Not Convey Measure II's Actual Effect.

The record reflects that Measure II appeared on the ballot as the "Dublin Traffic Relief, Clean Air/Open Space Preservation Measure," a title emphasizing open-space preservation for a measure whose operative effect was to remove 80 acres from an existing open-space protection. The measure passed with only 53.11% of the vote, a margin narrow enough that a shift of roughly three percentage points would have defeated it. (2 AA 368.) Amici do not ask this Court to resolve any election-law challenge to the ballot title, which is not before it. Amici raise the point because it reinforces why CEQA review at the pre-election stage, rather than at a later administrative approval, was the stage at which independent, legally mandated environmental disclosure could have reached the voters who made this decision irreversible.

A rule holding that ballot measures of this kind are categorically exempt from CEQA review, because the "real" project has not yet arrived, leaves voters without the independent environmental disclosure CEQA is designed to guarantee.

IV. The Common Sense Exemption Does Not Apply Because the Record Shows a Concrete, Non-Speculative Basis for Future Development.

A. *Muzzy Ranch's* "No Reason to Assume" Rationale Does Not Apply Here.

The common-sense exemption does not independently save Measure II even under a narrower reading of the "project" question. CEQA Guidelines section 15061, subdivision (b)(3), applies only where "it can be seen with certainty that there is no possibility" of a significant environmental effect, the narrowest exemption CEQA provides, and one for which Appellant bears the burden. (*Muzzy Ranch, supra,* 41 Cal.4th 372 at p. 386.) In *Muzzy Ranch*, the Supreme Court found the exemption satisfied in part because there was "no reason to assume" the responsible agencies would take further steps to remove the restrictions that limited development. (*Id.* at p. 389.) That rationale rested on the absence of any concrete indication that removal of the restriction was actually contemplated.

The record here shows the opposite. The City itself commissioned a financial feasibility analysis (the KMA Study) quantifying potential commercial and industrial development on the Crosby Properties, reviewed conceptual site plans depicting that development, and placed Measure II on the ballot with the stated purpose of using future commercial development to help fund the Dublin Boulevard Extension. (AR90–91 [estimating that the Crosby Properties would support approximately 1.2 million square feet of industrial park development]; AR1769–71 [conceptual site plan depicting 16 buildings totaling more than 900,000 square feet].)

The record thus affirmatively shows the agency's own contemplated use of the restored authority, not merely the theoretical possibility that some future, unspecified agency action might occur, as in *Muzzy Ranch*. Where an agency has already articulated its purpose and already commissioned studies to accomplish it, "no reason to assume" cannot describe the record, and the exemption is unavailable as a matter of law.

B. *Rominger*'s "More Amenable to Development" Standard Turns on Removal of Legal Barriers, Not Physical Subdivision.

Appellant distinguishes *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690 on the ground that the agency action there physically subdivided the property into smaller, separately financeable and transferable parcels, whereas Measure II changed nothing about the physical or legal configuration of the Crosby Properties. *Rominger* focused on the removal of development barriers, not merely the physical division of land.

In *Rominger*, the subdivision was significant because it removed legal barriers to separate financing, lease, sale, and development, making the property "more amenable to development" in a legal, not merely physical, sense. (*Rominger*, *supra*, 229 Cal.App.4th at pp. 702–704.) Measure II accomplishes the same kind of legal transformation: it removes the categorical legal prohibition that, until Measure II passed, made any commercial development on the Crosby Properties unlawful regardless of the property's physical characteristics. The relevant common sense exemption inquiry does not ask whether the challenged action moved dirt or redrew parcel lines; it asks whether, in combination with the surrounding circumstances, there is a reasonable possibility of a significant environmental effect. The record establishes at least a reasonable possibility of such effects, given the City's own feasibility studies and stated development-financing purpose, and Appellant cannot meet its burden of showing "no possibility" to the contrary.

Appellant's own description of Measure II elsewhere in its briefing is difficult to reconcile with its attempt to distinguish *Rominger* on physical-configuration grounds. Appellant tells this Court that Measure II "did not . . . change [the Crosby Properties'] permitted uses or land use or zoning designations" (Reply Br. at p. 44), yet

Appellant's causal-connection position depends on the premise that Measure II amended Section 2.8 of the Open Space Initiative, an instrument amendable only by a vote of the electorate, for the stated purpose of authorizing the City Council "to designate, in the future and in its future exercise of discretion, certain open space lands . . . for commercial development as a means of financing the Dublin Boulevard [E]xtension project" (AOB at pp. 16–17.) An amendment to a use-restricting initiative, adopted for the express purpose of enabling a previously barred use, is a change in permitted uses for purposes of the common sense exemption's demanding "no possibility" standard, whatever discretionary approvals remain before construction begins.

V. The Precedential Stakes Extend Well Beyond This Particular Case.

California jurisdictions which, like Dublin, face funding gaps for major infrastructure will predictably and understandably explore development-based financing mechanisms tied to protected or restricted land. If this Court adopts Appellant's rule, it will supply those jurisdictions with a template: place a ballot measure before voters that "restores" or "grants" authority to a future council to consider development on a parcel, for a stated public-benefit purpose, without any CEQA review, so long as some further discretionary approval remains formally necessary before a shovel goes into the ground. If the existence of further approvals alone negated project status, agencies could characterize many land-use amendments as nonreviewable preliminary actions even when the amendments remove the principal legal impediment to identified development. That result would be a structural change in how CEQA applies to the decision to permit development where none was previously possible.

This Court's opinion should make clear that the causal-connection test turns on the substance of what an action changes, not on the label attached to the instrument that changes it, or on how many further steps an agency chooses to interpose between that change and the resulting construction.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Respondents' Brief, Amici respectfully request that the Court affirm the judgment of the trial court.

DATED: Sept. 7, 2026   M. R. WOLFE & ASSOCIATES, P.C.

By: /s/ Mark R. Wolfe

MARK R. WOLFE

Attorney for Amici Curiae
Citizens for Balanced Growth, et al.

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the attached Brief of Amici Curiae, exclusive of the cover, tables of contents and authorities, certificate of interested entities or persons, signature blocks, this certificate, and any proof of service, contains 4,926 words as counted by the word-count function of the word processing program used to prepare this brief. The brief is therefore within the 14,000-word limit set by rule 8.204(c)(1).

DATED: Sept. 7, 2026 M. R. WOLFE & ASSOCIATES, P.C

By: /s/ Mark R. Wolfe
MARK R. WOLFE
Attorney for Amici Curiae

PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 580 California Street, Suite 1200, San Francisco, CA, 94104.

On September 8, 2026 I served **APPLICATION OF CALIFORNIA WILDLIFE FOUNDATION, ET AL. FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS AND RESPONDENTS; AMICUS CURIAE BRIEF** on the Trial Court and all parties to this action as follows:

- By electronic mail, addressed as shown:

  Honorable Michael Markman
  Alameda County Superior Court
  Department 1
  1225 Fallon Street
  Oakland, CA 94612
  dept1@alameda.courts.ca.gov

- On counsel for all parties in this action by electronic service via the Court's TrueFiling electronic service system.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 8, 2026

/s/ Sharon Beerling

Sharon Beerling