



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 10, 2020

Samantha W. Zutler
Healdsburg City Attorney
Burke, Williams & Sorensen, LLP
1 California Street, Suite 3050
San Francisco, CA 94111-5432

Re: Your Request for Advice
Our File No. A-20-089

Dear Ms. Zutler:

This letter responds to your request for advice on behalf of City of Healdsburg Planning Commissioner Kevin Deas regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does the Act prohibit Planning Commissioner Deas from taking part in governmental decisions relating to the Mill District Project, a mixed-use development project, given that the parent of the business entity that employs the Commissioner owns commercial real property located within 500 feet of the Project site?

CONCLUSION

Yes. The Act prohibits the Commissioner from taking part in decisions relating to the Project because it is reasonably foreseeable that those decisions would have a disqualifying effect on the parent of his employer’s financial interest in its commercial real property located within 500 feet of the Project site.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Healdsburg and the authorized representative of Healdsburg Planning Commissioner Kevin Deas. In his private capacity, the Commissioner is an employee of EandM, a business that provides automation solutions and works with well-respected automation companies from around the world. EandM's headquarters is located on Mill Street within the City.² Deas Family LLC, a limited liability company owned by the Commissioner's father and uncles, owns EandM as well as the commercial real property that serves as EandM's headquarters. Neither the Commissioner nor his spouse or dependent children has any ownership interest in Deas Family LLC or EandM.

The Mill District Project is a mixed-use development project that would include an approximately 50-unit hotel, 200 residential apartments condominiums, and 15,000 square feet of commercial space. The Project would also include a variety of amenities, including a privately owned and maintained open space in the center of the Project site that will be available for public use and enjoyment, public plaza spaces, a community garden, bicycle racks, and electric vehicle charging stations. The real property underlying the Project site is approximately 9.5 acres in size and is located within 500 feet of the Deas Family LLC's commercial real property that serves as EandM's headquarters.

The Healdsburg Planning Commission will soon consider the following governmental decisions relating to the Mill District Project:

- (1) Whether to amend the Mill District Development Agreement to address shifting the obligation to pay fees under the Quimby Act³ for the affordable housing project planned for Lot 7 of the Project to other components of the Project (e.g., the market-rate housing portion of the Project).
- (2) Whether to amend the Agreement to modify the point of vehicular access to Lot 7.
- (3) Whether to modify the Master Conditional Use Permit to remove the existing prohibition that would otherwise preclude the restaurant in the planned hotel on Lot 1 of the Project.
- (4) Whether to approve a Design Review and Conditional Use Permit application for the hotel.
- (5) Whether to approve Design Review applications for market-rate housing on Lots 2, 3, and 6.

You state that City staff anticipates that all of these decisions, other than the decision pertaining to the Quimby Act fees, would have potential traffic, noise, aesthetic, or other impacts on Deas Family LLC's commercial real property that serves as EandM's headquarters.

ANALYSIS

² The real property that serves as EandM's headquarters is comprised of a large two-story commercial building, multiple other businesses also operate out of that building, and there are single family residences located across Mill Street from the building. Otherwise, the building appears to be surrounded by similar commercial buildings.

³ The Quimby Act is set forth in Section 66477.

Sections 87100 and 87103 of the Act prohibit a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. Section 87103 identifies an official's interests that may give rise to a disqualifying conflict of interest under the Act. Based on the facts presented, Planning Commissioner Deas has the following interests with respect to decisions relating to the Mill District Project:

- A source of income interest in EandM assuming the Commissioner has been promised or has received income aggregating \$500 or more in value from EandM within the 12 months prior to the decision. (See Section 87103(c).)
- A business interest in EandM because the Commissioner is an employee of EandM. (See Section 87103(d).)
- An interest in his personal finances and those of immediate family.⁴ (See Section 87103.)

Regulation 18700.2(b)(1) defines a "parent" as a "business entity that controls more than 50 percent of the voting stock of another corporation." Because Deas Family LLC owns EandM, Deas Family LLC is EandM's parent.

Regulation 18700.2(c) provides that an official with a financial interest in a business entity also has an interest in a parent or subsidiary of that business. Because the Commissioner has a business interest and a source of income interest in EandM, and because Deas Family LLC is the parent of EandM, the Commissioner also has a business interest and a source of income interest in Deas Family LLC.

Therefore, with respect to decisions relating to the Project, the Commissioner has a business interest and a source of income interest in EandM, a business interest and a source of income interest in Deas Family LLC, and an interest in his personal finances and those of immediate family members.⁵

Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or

⁴ Section 82029 defines "immediate family" as the spouse and dependent children.

⁵ Section 82033 defines "interest in real property" for purposes of the Act and provides that an individual has a real property interest in the real property of any business or trust in which the individual or immediate family owns a 10-percent interest or greater. Neither the Commissioner nor his immediate family have any ownership interest in Deas Family LLC or EandM. Therefore, the Commissioner does not have a real property interest in Deas Family LLC's commercial real property that serves as EandM's headquarters.

other entitlement to, or contract with, the interest. In addition, an official's business interest is explicitly involved in any decision affecting the business as described in Regulation 18702.1(a)(1).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

We first consider whether the decisions relating to the Mill District Project would have a disqualifying financial effect on the Commissioner's business interest in Deas Family LLC. Regulation 18702.1(a)(4)(B) provides that a decision's reasonably foreseeable financial effect is material if the official knows or has reason to know that the business at issue has an interest in real property and there is clear and convincing evidence the decision would have a substantial effect on the property.

Because he is an EandM employee and a close relative of the owners of Deas Family LLC, the Commissioner has reason to know that Deas Family LLC has an interest in its commercial real property that serves as EandM's headquarters. The Project site is located within 500 feet of that commercial real property, and the Project would significantly change the character of the real properties in its immediate vicinity. City staff anticipates that decisions relating to the Project, other than the decision pertaining to the Quimby Act fees, would have potential traffic, noise, aesthetic, or other impacts on the Deas Family LLC's commercial real property that serves as EandM's headquarters.

Moreover, because those decisions may enable new uses of the Project site, including the Project's contemplated hotel and multi-family residential housing, they could affect the developmental potential, income producing potential, and market value of the Deas Family LLC's commercial real property that serves as EandM's headquarters due to that property's close proximity to the Project site. Therefore, decisions relating to the Project would have a substantial effect on Deas Family LLC's real property interest in that commercial real property.

Thus, the Act prohibits the Commissioner from taking part in decisions relating to the Project because it is reasonably foreseeable that those decisions would have a substantial effect on Deas Family LLC's real property interest in the commercial real property that serves as EandM's headquarters and is located within 500 feet of the Project site.⁶

Segmentation

Regulation 18706(a) provides that an agency may segment a decision in which an official has a financial interest to allow participation by the official in one or more associated decisions, if all the following conditions apply:

⁶ We do not further analyze the effect of the decisions related to the Project on the Commissioner's other financial interests at issue because we have already determined that those decisions would have a disqualifying financial effect on the Commissioner's business interest in Deas Family LLC.

(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

(2) The decision in which the official has a financial interest is segmented from the other decisions;

(3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and

(4) Once the decision in which the official has a financial interest has been made, the disqualified official's participation in associated decisions does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

Regulation 18706(b) provides that decisions are "inextricably interrelated" if "the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision."

The facts presented are insufficient to determine whether the decision regarding the potential amendment to the Mill District Development Agreement to shift the obligation to pay Quimby Act fees to other components of the Project is inextricably interrelated to the other decisions relating to the Project at issue. Therefore, we can generally advise only that decisions regarding the Quimby Act fees are may be segmented from other decisions relating to the Project if the determination of the decisions regarding the Quimby Act fees would not "determine, affirm, nullify, or alter the result of" the other decisions relating to the Project.⁷

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Matthew F. Christy

By: Matthew F. Christy
Counsel, Legal Division

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⁷ You should seek additional advice, presenting all material facts, if you are unable to determine whether the decision regarding the Quimby Act fees is "inextricably interrelated" to other decisions relating to the Project.