



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 20, 2023

Jim Waschura  
Los Altos Hills Planning Commissioner  
12658 La Cresta Ct.  
Los Altos Hills, CA 94002

Re: Your Request for Advice  
**Our File No. A-23-036**

Dear Mr. Waschura:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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

May you take part in the Town of Los Altos Hills Planning Commission decisions relating to a proposed ordinance amendment excepting certain wireless telecommunication facilities from the existing permitting process, where your residence is located within 500 feet of a property that will be affected by the proposed amendments?

### CONCLUSION

No. You have a financial conflict of interest under Regulation 18702.2(a)(7) because your residence is located within 500 feet of the single property identified as being affected by the proposed amendments based on the existing use of the property, and there are no facts indicating that the decision would not have any measurable impact on your real property. Nor have you

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<sup>1</sup> 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 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are tot Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

demonstrated that the financial effect on your interest in your residence is indistinguishable from the effect on the public generally. (Regulation 18703.) You may appear before the Planning Commission as a member of the general public solely in regard to your interest in your real property under Regulation 18704(d)(2)(A), but you must refrain from otherwise taking part in the decision and follow the recusal requirements as detailed below.

### **FACTS AS PRESENTED BY REQUESTER**

The Town of Los Altos Hills (“Town”) is considering an ordinance change to remove the requirement that certain wireless telecommunications facilities, such as point-to-point microwave dishes for a residential HAM radio, be exempt from the Town’s existing wireless telecommunications ordinances. The change is expected to streamline the construction of such facilities by avoiding hearings, approvals, permits, and screening that the Town ordinances require of other wireless telecommunications facilities such as cell phone towers. These changes would affect any such installation throughout the Town for five years.

The proposed change relates to a neighboring property located within 500 feet of your residence. You provided a report from Steve Padovan, Interim Planning Director, which documented that this issue relates to an “amateur (HAM) Radio operator” who resides on La Cresta Drive, and his radio tower and microwave dishes used for transmissions. In 2020, the neighbor added microwave dishes in order to transmit signals for the Los Altos Hills Community Fiber (“LAHCF”) organization. The Town was responding to neighborhood complaints from surrounding property owners regarding the visual impacts of the added microwave dishes and concerns about the permit process. The Town found that the LAHCF microwave dishes addition made the neighbor’s tower and equipment qualify as a “new wireless telecommunications facility” and as such would be subject to a conditional use permit process, among other requirements.

You provided an Outline of Proposed Amendments to the Wireless Telecommunications Ordinance which proposes to create a temporary exemption for LAHCF equipment and functionally similar facilities from the conditional use permitting process and other requirements. The proposed amendments are not limited to the neighbor’s specific property and operation, but you state that the neighbor’s property is the “present singular such installation.” You request whether you may participate in Planning Commission decisions involving this proposed ordinance since the neighbor’s property is within 500 feet of your residence. You also request how you may participate in this decision as a private citizen in regard to your own real property interests.

### **ANALYSIS**

The Act’s conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will 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. (Sections 87100 and 87103.) The financial interests that may give rise to an official’s disqualifying conflict of interest under the Act are set forth in Section 87103 and includes an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) You have identified that you have a real property interest in your residence relevant to this decision.

## **Foreseeability and Materiality**

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here, a financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. (Regulation 18701(b).)

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Regulation 18702.2 defines when a financial effect of a government decision on real property is material. Pursuant to Regulation 18702.2(a)(7), the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)

Under this standard, the reasonably foreseeable financial effect of this governmental decision involving your neighbor's property located within 500 feet of your parcel is material, unless there is clear and convincing evidence that the decision will not have any measurable impact on your real property. Here, there are no facts indicating that the decision would not have any measurable impact on your real property. As a result, you have a financial conflict of interest in the ordinance amendment decisions.

## **Public Generally Exception**

We next examine whether the "public generally exception" is applicable. A public official, otherwise disqualified from a decision because it is reasonably foreseeable the decision will have a material financial effect on the official's interest, may still participate if the official demonstrates that the financial effect on the official's interest is indistinguishable from the effect on the public generally. (Regulation 18703.) Under Regulation 18703(a), a decision's financial effect on a public official's financial interest is indistinguishable from the effect on the public generally if the official establishes that (1) a significant segment of the public is affected and (2) the effect on the official's financial interest is not unique compared to the effect on the significant segment.

Where the only interest an official has identified in the decision is the official's primary residence, as we have here, Regulation 18703(b)(1)(C)(2) defines a "significant segment" as at least 15 percent of residential real property within the official's jurisdiction.<sup>2</sup> Regulation 18703(c)(2) provides that a decision will have a "unique effect" on a public official's financial interest if it will have a disproportionate effect on the official's real property due to its proximity to a project that is

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<sup>2</sup> Regulation 18703(d) defines "jurisdiction" to include "the designated geographical area the official was elected to represent."

the subject of the decision. Therefore, the public generally exception does not apply, as there are no facts establishing that 15 percent of the Town's residential property is located within 500 feet of a property subject to the decision or will be similarly affected as your property interest. In comparison to other properties within the Town, your interest in your property will be uniquely affected due to your property's proximity to the neighbor's property, the "singular" property identified as presently affected by this decision.

### **Making, Participating in Making, or Influencing a Decision**

You are thus prohibited from taking part in the ordinance amendment decisions, and you must recuse yourself from the proceeding pursuant to Regulation 18707. This regulation requires that you publicly identify your financial interest that gives rise to the conflict prior to consideration of the item, leave the room, and refrain from any participation in the decision before the Planning Commission.

Additionally, a public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. Rather, the official is prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Regulation 18704 includes definitions for "making a decision," "participating in a decision," and "using official position to influence a decision." "A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency." (Regulation 18704(a).) "A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Regulation 18704(b).) A public official uses an official position to influence a governmental decision if the official:

- (1) Contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision; or
- (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact.

(Regulation 18704(c).)

Because you have a disqualifying conflict of interest, any conduct by you that meets the above definitions is prohibited. We note, however, that the Act does not prohibit you from appearing before the Planning Commission as a member of the general public if you are appearing solely with regard to real property owned entirely by you and/or members of your immediate family and limit your comments to the potential effect the decision will have on your real property.

(Regulation 18704(d)(2)(A).)

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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