



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 12, 2024

Amber Maltbie  
Nossaman LLP  
777 South Figueroa Street, 34th Floor  
Los Angeles, CA 90017

Re: Your Request for Advice  
**Our File No. A-24-063**

Dear Ms. Maltbie:

This letter responds to your request for advice regarding Section 84308 (the “Levine Act”) of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are only providing advice under the Act. 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 a contribution by an agent to a party to a proceeding disqualify Los Angeles County Supervisor Lindsey Horvath (“Supervisor Horvath”) from voting on a proceeding, despite the fact that the contribution was received more than 12 months before the date the proceeding will be on the Los Angeles County Board of Supervisors’ (“Board of Supervisors”) agenda for consideration?

### CONCLUSION

Since more than 12 months have passed from the date of receipt of the contribution, the restrictions of Section 84308 would not prohibit Supervisor Horvath from participating in the decision that will come before the Board of Supervisors so long as she had no knowledge of the project or the contributor’s representation of the applicant as an agent at the time the contribution was accepted.

### FACTS AS PRESENTED BY REQUESTER

Supervisor Horvath was elected to the Board of Supervisors in the November 2022 general election. The County of Los Angeles currently has a pending project, project no. R2014-02690-(3)

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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 to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

(“Project”) that is an appeal from the Regional Planning Commission’s (“Planning Commission”) decision to approve a Conditional Use Permit (“CUP”) authorizing the conversion of an existing 4,042-square-foot single-family residence into a four-bedroom guest ranch with accessory special events on a 38-acre parcel within a designated Significant Ecological Area in the Santa Monica Mountains Planning Area. Although the initial application for the CUP was filed in 2014, the first public hearing on the Project was on March 30, 2022, before the Planning Commission.

A second public hearing before the Planning Commission was held on August 23, 2023, where the Planning Commission approved the CUP. After the approval, the Las Virgenes Homeowners Federation (“Appellant”) appealed the Planning Commission’s decision on August 31, 2023. The Project applicant, Howard Leight (“Applicant”), also appealed two conditions of the Project approval (“Appeal”) on September 6, 2023. (Collectively, the Project and Appeal will be referred to hereinafter as the “Proceeding.”) The Applicant is represented, for compensation, by Benjamin Reznik on the Appeal. Mr. Reznik made a campaign contribution to Supervisor Horvath in the amount of \$1,500 on February 21, 2023. Supervisor Horvath was not aware of the Project at the time the contribution was made and, therefore, was unaware of both Mr. Reznik’s status as an agent and that Mr. Reznik was representing the Applicant in a proceeding.

On September 6, 2023, Supervisor Horvath received a briefing on the Project by the Director of Regional Planning. You indicate that this is the date upon which Supervisor Horvath became aware of the Applicant’s proceeding.

The Appeal was placed on the Tuesday, March 12, 2024, Board of Supervisor agenda for consideration. However, the Department of Regional Planning pulled the item before the Board of Supervisors considered it. Mr. Reznik was identified as an agent of the Applicant as part of the March 12, 2024, agenda packet. Although the item has not yet been set for a future agenda, it is expected that it will be placed on a future agenda within the next couple of months.

In a follow-up email, you clarified that Supervisor Horvath is not aware of any other appearances that Mr. Reznik made before the Board of Supervisors during her time in office. Mr. Reznik did, however, send a letter to Supervisor Horvath, dated March 6, 2024, on behalf of the Applicant regarding the project. The County Counsel’s office is aware that Mr. Reznik has represented the Applicant since the Project’s beginning. However, you indicate that Supervisor Horvath did not have personal knowledge of this at the time of the contribution and has not independently confirmed it.

## ANALYSIS

The Act’s “pay to play” restrictions, contained in Section 84308, aim to ensure that officers of government agencies are not biased by contributors or potential contributors of large campaign contributions who might appear before them in a proceeding involving a license, permit, or entitlement for use. Section 84308 is aimed not only at actual corruption or bias but also at the appearance of corruption or bias that may occur if a public officer were to solicit or accept contributions from a party or financially interested participant, a party’s agent, or a financially interested participant’s agent while a proceeding is pending before the public officer’s agency or has recently concluded.

*Making and Receiving the February 2023 Contribution*

As preliminary matters, we note the possibility that Mr. Reznik's contribution and Supervisor Horvath's acceptance of the contribution may have implicated Section 84308 at the time the contribution was made and accepted.

A party and agent in an entitlement for use proceeding are prohibited from contributing to an officer of the agency more than \$250 during any 12-month period while the proceeding is pending and for 12 months after a final decision is rendered. (Section 84308(e)(2).) While the proceeding is pending, a party is also required to disclose any contribution(s) exceeding an aggregate \$250 made to an officer of the agency by the party or the party's agent within the preceding 12 months. (Section 84308(e)(1).)

Regulation 18438.3(a) states that a person is the "agent" of a party to, or a participant in, a pending proceeding involving a license, permit, or other entitlement for use only if the person represents that party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding.

For the party or party's agent, an entitlement for use proceeding is "pending" when it is before the jurisdiction of the agency for its decision or other action. (Regulation 18438.2(b)(2).) Accordingly, Section 84308 prohibition on the party and party's agent applies as soon as the application is filed.

An officer of an agency is similarly prohibited from accepting a contribution greater than \$250 from a party or party's agent while the entitlement for use proceeding is pending and for 12 months after a final decision is made. (Section 84308(b).) For the officers involved, an entitlement for use proceeding has commenced and is considered "pending" only under the following circumstances:

(A) The decision is before the officer for the officer's consideration. If the officer is a member of a governing body, this includes any item placed on the agenda for discussion or decision at a public meeting of the body; or

(B) The officer knows or has reason to know a proceeding involving a license, permit or other entitlement for use is before the jurisdiction of the agency for its decision or other action, and it is reasonably foreseeable the decision will come before the officer in the officer's decisionmaking capacity.

(Regulation 18438.2(b)(1).)

Additionally, Regulation 18438.5(b) provides:

An officer has no reason to know a contribution from an individual or entity is required to be aggregated with a contribution from the party or participant and any agent of the party or participant, and does not violate Section 84308 as a result of the contribution from the individual or entity if, at the time of the potential violation, both the following criteria are met:

- (1) The party, participant, or agent has not disclosed the contribution on the record of the proceeding; and
- (2) The officer does not otherwise know facts establishing that the contribution must be aggregated pursuant to Section 82015.5 and this regulation.

You indicate Mr. Reznik was identified as an agent of the Applicant on the March 12, 2024 agenda and sent a March 6, 2024 letter to Supervisor Horvath on behalf of the Applicant. You have also clarified that per the County Counsel but unbeknownst to Supervisor Horvath at the time of the contribution, Mr. Reznik has represented the Applicant since the beginning of the Project, which predates the February 2023 contribution. However, as the contribution from Mr. Reznik has already been made, we express no opinion as to whether the contribution violated Section 84308 as a contribution made by an agent while a proceeding is pending. As stated in Regulation 18329(b)(6)(A), we are unable to advise on conduct that has already occurred.

Similarly, as we cannot provide advice pertaining to past conduct, we can express no opinion regarding Supervisor's Horvath acceptance of the contribution based upon her knowledge at the time of the contribution. Our analysis proceeds based on the information provided and you have indicated that Supervisor Horvath had no knowledge of the Project or Mr. Reznik's representation of the Applicant when the contribution was made. However, we must note that the conclusions reached herein apply only to the extent that the information provided is correct and Supervisor Horvath had no knowledge of the Project or Mr. Reznik's representation of the Applicant at the time she accepted the contribution.

#### *Participation in the Proceeding*

As noted above, Section 84308 establishes requirements and restrictions when an officer of an agency receives a contribution exceeding \$250 from a party or participant or their respective agent within the 12 months prior to rendering a decision in a proceeding involving a license, permit, or other entitlement for use.

Among the statutes' prohibitions, Section 84308(b) provides:

While a proceeding involving a license, permit, or other entitlement for use is *pending*, and *for 12 months following the date a final decision is rendered* in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7.

(Emphases added.)

Section 84308(c) further provides:

Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the

record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency *if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or a party's agent*, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

(Emphasis added.)

Here, we examine Supervisor Horvath's contribution from Mr. Reznik, now an agent in the Proceeding, in the amount of \$1,500 on February 21, 2023. You have provided that the item has not yet been set for a future agenda; it is expected that it will be placed on a future agenda within the next couple of months. Thus, it will be more than 12 months from the time Supervisor Horvath makes a potential decision involving the Proceeding from the time the contribution is received. Since more than 12 months have passed from the date of receipt of the contribution and prior to any participation in the proceeding by Supervisor Horvath, the restrictions of Section 84308 do not prohibit her from participating in the decision that will come before the Board of Supervisors at a future date so long as she had no knowledge of the Project or Mr. Reznik's representation of the Applicant at the time the contribution was accepted.

If you have other questions on this matter, please contact me at [kbaeta-orick@fppc.ca.gov](mailto:kbaeta-orick@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel



By: Katelyn L. Baeta-Orick  
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