



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 16, 2024

Quinn M. Barrow
City of Calimesa
RWG Law
350 South Grand Avenue
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Re: Your Request for Advice
Our File No. A-24-093

Dear Mr. Barrow:

This letter responds to your request for advice on behalf of City of Calimesa Mayor William Davis and Mayor Pro Tem Wendy Hewitt 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.

QUESTIONS

1. Are Mayor Davis or Mayor Pro Tem Hewitt disqualified from participating in the proposed Oak Valley North Project decisions due to their respective interests real property interests?
2. If so, does the “public generally” exception apply to these facts?

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 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.

CONCLUSIONS

1. Yes. It is reasonably foreseeable that the Oak Valley North Project decisions would have a material financial impact on Mayor Davis's ten parcels and Mayor Pro Tem Hewitt's two parcels, which are located within 608 and 648 feet, respectively, from the Project site, a 110-acre site of undeveloped land proposed for a commercial business park and high-density residential development, as discussed below.

2. No. The facts do not indicate that the "public generally" exception is applicable.

FACTS AS PRESENTED BY REQUESTER

The Oak Valley North Project

The Oak Valley North Project (the "Project") is a proposed development of a principally undeveloped 110.2 acre site into a commercial and residential development. The Project proposes four warehouse buildings (totaling up to 982,232 square feet of floor area), two truck trailer storage lots for up to 940 truck trailers, and a site for up to 223 high-density residential dwelling units or a 1200-seat house of worship within the residential zone. The Project would also include roadway widening and related improvements to Calimesa Boulevard and Beckwith Avenue within the boundaries of the Project site and fair share monetary contributions to the future improvement of other area intersections, including intersections along Singleton Road at its intersections with Beckwith Avenue, Calimesa Boulevard and the Interstate (I-10) Freeway.

More specifically, the Project proposes a General Plan Amendment changing the site's designation from "Business Park, Light Industrial and Residential Low Medium" to "Business Park and Residential High Density." The Project proposes a Zoning designation change from "Business Park, Light Industrial, and Residential Low Medium" to "Specific Plan Area 4" for the proposed Oak Valley North Specific Plan.

The newly proposed Specific Plan would divide the project site into seven parcels with two Planning Areas that would support business park uses (Planning Area 1, with 95.6 acres) and high-density residential or a place of worship (Planning Area 2, with 11.2 acres). The application also includes six Development Plan Reviews and four Conditional Use Permits for four industrial buildings (approximately 982,232 square feet) and two trailer storage lots (approximately 38.93 gross acres, 10.36 and 28.57 acres, respectively). In addition, the Project proposes to subdivide the 110.2-acre site into seven numbered lots ranging in size from 10.04 to 27.24 net-acres and the dedication of 3.41 acres of right-of-way to the City for the widening of Calimesa Boulevard (1.65 acres) and Beckwith Avenue (1.76 acres).

The proposed Development Agreement for the Project² requires the Project developer to realign and widen Calimesa Boulevard along the Project site frontage so as to have a 92-foot right of way with a striped center median, two vehicular travel lanes in each direction and a 6-foot sidewalk along the Project site frontage. Additional landscape buffers would be provided beyond the sidewalk along the Project site frontage and landscape improvements would be required

² This letter does not address decisions regarding the Development Agreement for the Project.

between I-10 Freeway and Calimesa Boulevard opposite of the Project site. Other proposed site features include streetscape and interior site landscaping, drive aisles, truck courts, walls, fences, truck court entry gates, lighting, signage, and supporting infrastructure. A multi-use trail is proposed adjacent to the south side of Beckwith Avenue, separated from the proposed building and parking lot development by a solid perimeter wall and landscaped slope. The intersection of Calimesa Boulevard at Singleton Road will be moved further east from its current location.

Total vehicle trips to and from the Project site at buildout will be approximately 7,000 per day. Most of the truck and vehicle traffic coming to and from the Project site will take access to and from the on-and off-ramps of the I-10 Freeway at Singleton Road and then use Singleton Road to Calimesa Boulevard to obtain ingress and egress to and from the Project site. The vehicle trips to and from the Project site will be distributed among area roadways and intersections, for example, 70 percent of project trips from the Project site will proceed northerly on Calimesa Boulevard to Singleton Road, with 47 percent proceeding onto the west-bound Interstate (I-10) Freeway, 15 percent proceeding onto the eastbound on-ramp at Singleton Road and 4 percent proceeding northerly on Singleton Road away from the Freeway. Other trips will proceed southerly on Calimesa Boulevard and onto the I-10 Freeway at Cherry Valley Boulevard.

Independent of the Project, the City is preparing capital improvement projects for the construction or improvement of existing or missing freeway on-ramps and off-ramps at Singleton Road and the I-10 Freeway, Calimesa Boulevard at Singleton Road and Beckwith Avenue at Singleton Road. These roadway projects will be funded by federal grants and by traffic impact fees paid for by area developments, including the Project.

Mayor Davis's Financial Interests Related to the Project

Mayor Davis is a member of the City Council and currently serves as Mayor, a rotational position. He was first elected in 2004 and has been re-elected in "at-large" City-wide elections to the City Council since that time. His current term ends in November 2024.

Mayor Davis and his wife own and live on an 80+ acre land assemblage with its most southerly boundary located approximately 608 feet from the exterior boundary of the Project site. Four of the Mayor's parcels have a General Plan land use and Zoning Map designation of Residential Low ("RL"). Six of the Mayor's parcels have a General Plan land use and Zoning Map designation of Residential Low Medium ("RLM"). These ten parcels are collectively referred to as Mayor Davis's "Property."

Mayor Davis's Property is northwesterly of the Project site and further uphill on Singleton Road and after vehicles coming to and from the Project site would exit the Interstate (I-10) Freeway at Singleton Road, turn onto Calimesa Boulevard and proceed southerly to get to the entrance to the Project site or exit the Project site and turn northerly on Calimesa Boulevard up to Singleton Road and turn left on Singleton to proceed to Interstate (I-10) Freeway. The roadway on the north side of the Project site (Beckwith Avenue) is conditioned to be an emergency access route only and not a main ingress or egress to or from the Project site.

Mayor's Property is located along Singleton Road, north of the Project site. The Mayor's Property is accessed from a driveway on the westerly side of Singleton Road, approximately 785

feet northerly of the intersection of Singleton Road and Beckwith Avenue. The closest building on the Project site would be located approximately 880 feet from the closest boundary line of the Mayor's Property and approximately 960 feet from his home. Mayor Davis would not be able to see the Project site from his home. Because his home is setback at least 80 feet from Singleton Road and the Project site will include landscaping to screen the buildings when viewed from Singleton Road, you believe that the Project would not affect his view or privacy. As noted above, only about 4 percent of total Project trips would travel northerly from the Project site and past the Mayor's Property along Singleton Road.

The nearest roadway improvements that the Project is conditioned to construct are located more than 630 feet from Mayor Davis's Property. Those improvements involve the installation of curb, gutter, sidewalk, street, trail and landscaping improvements on the south side of Beckwith Avenue along the frontage of the Project site. The City, and not the Project applicant, will be undertaking improvements to the intersection of Singleton Road and Beckwith Avenue independently of the Project.

Mayor Pro Tem Hewitt's Financial Interests Related to the Project

Mayor Pro Tem Hewitt is a member of the City Council and is currently serving as Mayor Pro Tem, a rotational position. She was first elected in 2020. Her current term ends in November 2024.

Mayor Pro Tem Hewitt and her husband own and live on real property on Roberts Road in the City. The Mayor Pro Tem's property is on two contiguous parcels of land totaling approximately five acres, with its easterly boundary located approximately 648 feet from the exterior boundary of the Project Site. Mayor Pro Tem Hewitt's parcels have a General Plan designation of Specific Plan Area 1 and a Zoning Map designation of Summerwind Specific Plan. Among the uses allowed on the parcels are general retail/general services, convenience stores, medical offices, libraries, and government offices. The two parcels are collectively referred to as Mayor Pro Tem Hewitt's "Property."

Mayor Pro Tem Hewitt's homesite is located to the west and on the opposite side of the Interstate (I-10) Freeway from the Project site. Her home is separated from the Project site by the Freeway and by Calimesa Boulevard, which is parallel and to the east of the Freeway. The closest warehouse building on the Project site would be located approximately 950 feet from the closest boundary line of Mayor Pro Tem Hewitt's Property and approximately 1,380 feet from her home. Mayor Pro Tem cannot see the Project site from her property. The realignment of Calimesa Boulevard, at its intersection with Singleton Road, moves the intersection further to the east and thus further away from Mayor Pro Tem Hewitt's Property and from the Freeway. As realigned, the intersection of Calimesa Boulevard at Singleton Road would be approximately 1,172 feet from the nearest point of Mayor Pro Tem Hewitt's Property.

The closest intersection to Mayor Pro Tem Hewitt's home that would be affected by the Project would be the eastbound on-ramp to the Interstate (I-10) Freeway at Singleton Road. Approximately 15 percent of Project trips would proceed onto that eastbound on-ramp. Portions of that freeway on-ramp are located within 30 feet of Mayor Pro Tem Hewitt's rear property line.

Mayor Pro Tem Hewitt's property is accessed from a driveway on the easterly side of Roberts Road. If one were to drive from the driveway on Mayor Pro Tem's property to the Project site, one would proceed north on Roberts Road to Singleton Road and then across the I-10 Freeway on Singleton Road to Calimesa Boulevard and then southerly along Calimesa Boulevard to the Project site, an approximate driving distance of one mile. You state that there are no facts to indicate that the Project would affect the view or privacy of her home or property.

Additional Information

You state that the Project is not anticipated to have any significant local air quality impacts on either Mayor Davis's Property or Mayor Pro Tem Hewitt's Property. However, according to the summary of the Draft Environmental Impact Report ("DEIR") provided with the request, "the Project would result in significant impacts to the environment [including air quality, greenhouse gas emissions, and transportation/traffic] that cannot be mitigated to below a level of significance."³ According to City Staff, there are 4,186 parcels of residential real properties in Calimesa and that 15 percent of the City's residential real properties is 628 parcels. According to City Staff, 15 percent of the City's residential real property parcels are located within an approximate 2,150 foot radius of the Project Site. Of the approximately 628 residential properties within that 2,150 radius distance from the Project site, the average lot or parcel size of those properties is approximately 1.2 acres.⁴

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 include:

- A business entity interest, where an official has a direct or indirect investment of \$ 2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- Any real property in which the official has a direct or indirect interest worth more than \$ 2,000 or more. (Section 87103(b))

³ You have stated that it is not anticipated that the project will have a significant local air quality impact on the officials' properties. It is unclear what factual basis supports this statement given the express conclusions within the DEIR. (See Notice of Availability of the Report for the Project, Project Impacts, p. 4. See Also, DEIR, Summary of Impacts, pp. S-8 to S-11.) Regardless, the air quality impact is not determinative of whether either official has a disqualifying interest.

⁴ As discussed below, the appropriate standard for an official with property interests in addition to their primary residence is 25 percent of all real property, commercial real property or residential real property within the official's jurisdiction.

- An interest in a source of income, aggregating five hundred dollars (\$ 500) or more in value provided or promised to, received by, the official within 12 months prior to the time when the decision is made. (Section 87103(c).)

Related to the Project decisions, Mayor Davis has identified a real property interest in ten contiguous parcels of land totaling approximately 80 acres, one of which includes his residence. This advice only addresses his real property interests, as no facts were provided regarding any interests other than his real property interests.⁵

Mayor Pro Tem Hewitt has identified a real property interest in two contiguous parcels of land totaling approximately five acres, one of which includes her residence. Although her parcels are identified as zoned for commercial uses, no facts were provided regarding any interest she may have in a business or in any sources of income. Accordingly, this analysis only addresses her real property interests.

Foreseeability and Materiality

We next examine whether it is reasonably foreseeable that the Project decisions will have a material financial effect on each official's real property interests. Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[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. A financial interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).⁶ There is no indication from the facts that Mayor Davis's Property or Mayor Pro Tem Hewitt's Property are explicitly involved in the Project decision under any of these factors.

⁵ Previously, Mayor Davis described this 80+ acres as his ranch property, which included two businesses and sources of income interests (one related to his ranch and one to his rental property business). (See *Barrow Advice Letter*, No. A-23-135.) No information has been provided in this request or the previous request regarding Mayor Davis's business interests (ranching or rental business) or source of income interests (such as clients or tenants). Therefore, we do not analyze these interests, and, in light of our conclusion, no further facts or analysis of interest is necessary at this time.

⁶ Under Regulation 18702.2(a)(6), the official's real property is the "subject of the decision" if the decisions regard street construction or improvements that will provide new or improved service that disproportionately affects an official's real property compared to other properties receiving the service. Although the Project involves street improvements and construction (the installation of curb, gutter, sidewalk, street, trail, and landscaping improvements along the frontage of the Project Site on the south side of Beckwith Avenue and realignment and widening of Calimesa Blvd along the Project site), the facts do not indicate that the Project's street improvements and construction would disproportionately affect either officials' real property in comparison to the properties in the surrounding area. The planned freeway construction/improvements of existing or missing freeway off and on ramps and the improvements to the Singleton and Beckwith intersection are independent of the Project.

For financial interests not explicitly involved in a decision, as we have here, 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).)

For determining the material effect of the decisions on real property interests, we look to the applicable real property materiality standards in Regulation 18702.2. Relevant to these facts, Regulation 18702.2(a)(8) states that the reasonably foreseeable effect of a decision is material where the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, and the decision would change any of the following: the parcel's development potential; income producing potential; highest and best use; character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality); or its market value. (Regulation 18702.2(a)(8)(A)-(E).)

Mayor Davis

Mayor Davis's Property line is 608 feet from the Project site's property line. His parcels, which total approximately 80 acres, are designated residential (with four as Residential Low and six as Residential Low Medium). The Project would bring a large commercial and high-density residential development to an undeveloped 110.2-acre site that is currently zoned for a Business Park, Light Industrial, and Residential Low Medium use. It is reasonably foreseeable that a development of this scale on undeveloped land with a high-density residential zoning change would materially affect the Mayor's Property under the standards in Regulation 18702.2(a)(8). In bringing commercial development, traffic, and residences in high-density to the nearby area, it is reasonably foreseeable that the Project would change the development potential of his undeveloped parcels currently zoned low to medium residential density. It would also foreseeably change the income-producing potential and the highest and best use of his Property. It is also reasonably foreseeable that the Project would change the character of the Mayor's Property by substantially altering traffic levels in the area and impacting air quality, as well as changing the market value of his parcels. Therefore Mayor Davis has a disqualifying financial interest in the Project decisions under the Act.

Mayor Pro Tem Hewitt

Mayor Pro Tem Hewitt's 5-acre Property is located 648 feet from the Project. It is separated from the Project by the I-10 Freeway and further by Calimesa Blvd. Her Property includes two parcels, her residence and undeveloped land, zoned commercial to include developments such as convenience stores, general retail/services, and offices. The Project estimates an increase of 7,000 trips to and from the site per day, with 62 percent of the traffic increase taking the freeway (47 percent westbound and 15 percent eastbound). Her Property is within 30 feet of the eastbound freeway on-ramp, which will see an increase of 1,050 trips daily. Under these facts, it is reasonably foreseeable that the Project's increased traffic in the vicinity is likely to change her property's development potential, income producing potential, highest and best use, as well as its market value, particularly where her Property is zoned for commercial development. It is also reasonably foreseeable that the Project would change the character of her Property by substantially altering traffic levels in the area and impacting air quality. Therefore, Mayor Pro Tem Hewitt has a disqualifying financial interest in the Project decisions under the Act.

Public Generally Exception

You request whether Mayor Davis or Mayor Pro Tem Hewitt may participate despite a financial interest in the Project decisions under the “public generally” exception. Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of the official’s interests if the decision’s financial effect on the interest is indistinguishable from its effect on the public generally. This standard is met if the official establishes that a significant segment of the public is affected, and the effect on the official’s financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).)

A significant segment of the public is at least 25 percent of all real property, commercial real property, or residential real property within the official’s jurisdiction. (Regulation 18703(b).) A “unique effect” on an official’s financial interest relevant to these facts includes a disproportionate effect on the development potential, or use of the official’s real property or on the income producing potential of the official’s real property; or a disproportionate effect on the official’s real property due to the proximity of the project. (Regulation 18703(c)(1) and (2).)

Where the *only* interest the official has in the governmental decision is the official’s primary residence, a significant segment of the public is at least 15 percent of residential real property in the official’s jurisdiction. (Regulation 18703(b)(2).) In past advice we have applied this standard where an official owned two adjacent properties that the official treated as their personal residence; and the vacant parcel was not a buildable parcel. (*Gross* Advice Letter, No. A-22-009.) However, any additional interest, such as where an official operated a business out of the primary residence, will warrant the higher significant segment standard. (*Rennie* Advice Letter, No. A-23-123.) Here each official’s additional parcels are currently undeveloped and zoned for development (the Mayor’s parcels are zoned “low to medium residential” and the Mayor Pro Tem’s parcels are zoned for commercial development. The fact that the parcels may be vacant is not determinative. We have advised that the 25 percent significant segment standard was applicable where an official owned and lived in one unit of a residential duplex and the other unit was unoccupied. (*Rodriguez* Advice Letter, No. I-23-134.) Therefore, because the two officials each have real property interests in addition to that of their primary residence parcel, the officials must establish that at least 25 percent of the real property in the City is similarly affected by the Project decisions and that there is no unique effect on the officials’ respective real property interests.

Here, the officials have not established that a significant segment of commercial or residential real property in the City is similarly affected by the Project decisions. The facts indicate that of the 4,186 parcels of residential real property in the City, 628 parcels, or only 15 percent of the City’s residential real property parcels, are located within an approximate 2,150-foot radius of the Project – much further than the officials’ properties’ boundaries distance to the Project- and have an average lot size of 1.2 acres. This does not meet the required standard of 25 percent of real property within a similar distance (approximately 650 feet) from the Project site. Additionally, we note that the officials, who each have more than one parcel of undeveloped land in close proximity to the Project, would likely have a unique effect as a result of the Project decisions compared to other real property owners in the City due to the Project’s effect on the development potential, use of the official’s real property, or on the income producing potential of the official’s real property which are in close proximity to the Project. (Regulation 18703(c).)

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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