



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 13, 2025

Nicole McCance  
Highland Planning Commissioner  
27681 Powell Dr.  
Highland Ca 92346

Re: Your Request for Advice  
**Our File No. A-24-095**

Dear Ms. McCance:

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

Under the Act, may you take part in decisions related to Phase 2 of the Greenspot Marketplace project, which involves property more than 1,000 feet from your property, when the entire project involves some property within 1,000 feet of your property?

### CONCLUSION

You may take part in decisions regarding the residential development in Phase 2 of the Greenspot Marketplace project because Phase 2 will be segmented from Phase 1, which addressed a commercial development and has been finalized and will not have the possibility of being reopened due to decisions made concerning Phase 2. Because your property is more than 1,000 feet from Phase 2, you are presumed not to have a disqualifying interest in decisions for that phase.

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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.

## FACTS AS PRESENTED BY REQUESTER

You are a Planning Commissioner for the City of Highland and seek advice regarding your participation in decisions surrounding Phase 2 of the Greenspot Marketplace Project (“the Project”) which involves a housing development more than 1,000 feet from your property.

You own a home within 1,000 feet of Greenspot Marketplace, a commercial development in the City, which is a component of the Project, and have recused yourself from decisions surrounding Phase 1 of the development. However, the City is now faced with decisions surrounding Phase 2 of the Project, which focuses solely on a housing development located much farther northeast than the commercial development and more than 1,000 feet from your property. You stated in a follow up telephone call that decisions surrounding the housing development are entirely separate from the commercial development and will not reopen any previous decisions on the commercial development, nor will the commercial development be considered. The decisions surrounding the commercial development entirely concluded with Phase 1 of the project, which you did not participate in. The Phase 2 housing development will focus on the building of townhomes and an apartment building. The only traffic impact you foresee is for traffic off of two main roads that intersect near the Project, however the neighborhood where your property is located is not connected in any way to those roads. You do not anticipate changes in noise, traffic, use, or value of your property in relation to the new development planned in Phase 2.

## ANALYSIS

The Act’s conflict of interest provisions prohibit any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. (Section 87100.) A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) Section 87103 defines a financial interest to include any real property in which the public official has a direct or indirect interest worth \$2,000 or more. Here, you have identified your home as an interest in real property under the Act.

You have recused yourself from previous decisions surrounding the Project, as the commercial development addressed by Phase 1 was within 1,000 feet of your home. However, the decisions now before the Planning Commission under the Project address only Phase 2, a residential development more than 1,000 feet from your home. As such, the first issue to determine is whether the decisions may be segmented between Phase 1 and Phase 2.

The Act’s segmentation rules allow that an official with a conflict of interest may participate in decisions that do not in effect reopen or affect the decision in which the official has a conflict of interest. Regulation 18706 allows for some large, complex decisions to be segmented into separate decisions so that even if an official has a disqualifying interest in one component of the series of decisions, the official may still participate in other components in which there is no financial interest.

Regulation 18706 requires the following:

(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 public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

Where a decision in which an official has a conflict of interest is "inextricably interrelated" (the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision), the official will be required to disqualify from both decisions. (Regulation 18706(b).)

Here, the decisions before the Planning Commission solely regard a new housing development, and not the commercial development located within 1,000 feet of your home. Based on the facts provided, any decision related to the housing development will not impact the earlier decisions made regarding the commercial development and will not reopen those decisions which were finalized in Phase 1. The decisions for Phase 2 will not include any consideration of the commercial development. As such, the decisions for Phase 2 of the project may be segmented from the decisions surrounding Phase 1 and we need only to determine whether you have a potential conflict of interest in the Phase 2 decisions.

Foreseeability standards vary depending on whether an interest is explicitly or not explicitly involved in a governmental decision. A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. An interest in real property is the subject of the decision and explicitly involved in the decision anytime the decision affects the property as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

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, as here, and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. As pertinent to the questions posed, if an official's property is more than 1,000 feet from the property that is the subject of the decision, the financial effect of the decision on the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property. Here, based on the facts presented, there are no indications that the housing project under Phase 2 of the Project would have

a substantial effect on your residence because the townhomes and apartments being built under Phase 2 will not impact traffic to your neighborhood or the street that feeds into your neighborhood; additionally you do not anticipate any change in noise, use, or value of your property. Further, Phase 2 will not act to determine, affirm, nullify, or alter the results of decisions regarding the commercial development under Phase 1 of the Project. Therefore, you do not have a disqualifying conflict interest in the decisions involving Phase 2 of the project and you may take part in the decisions.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Valerie Nuding  
Counsel, Legal Division

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