



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

January 31, 2025

Steven Graham Pacifico
City Attorney
City of Yucaipa
COLE HUBER LLP
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661

Re: Your Request for Advice
Our File No. A-25-012

Dear Mr. Pacifico:

This letter responds to your request for advice on behalf of the City of Yucaipa and Councilmember Bob Miller 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 Councilmember Miller have a disqualifying interest in the Serrano Estates Project (“Project”) due to his real property interest located 215 feet from the Project?

CONCLUSION

Yes. Councilmember Miller is disqualified from participation in the Project. It is reasonably foreseeable that the decisions to develop the vacant area into 51 single family lots and open

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.

space/vineyards will have a material financial on his residential real property interest located within 215 feet of the proposed Project.

FACTS AS PRESENTED BY REQUESTER

Councilmember Miller owns his primary residence, which is located on Crystal Street in the City of Yucaipa (“City”) and approximately 215 feet from the property line for the proposed Project boundary. The Project is situated on vacant land east of Yucaipa Ridge Road, north of Ivy Avenue, and adjacent to Quartz Street and Crystal Street. The Project consists of approximately 51 single-family residential lots and associated open space/vineyards.

The City Council approved the Project before Councilmember Miller was appointed in December 2024, but the Project has been subject to ongoing litigation under the California Environmental Quality Act (“CEQA”). The City Council is expected to discuss and make decisions concerning this litigation in upcoming closed session meetings and may also address any remaining entitlements or modifications in future open sessions. Such decisions may result in no change to the Project, modifications to the Project, or the rescission of previous approvals.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. 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 “financial interests” to include, relevant to these facts: An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)

Councilmember Miller has a real property interest in his residence. We examine whether it is reasonably foreseeable that the Project decisions will have a material financial effect on his financial interest.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. Regulation 18701(a) states that a financial interest is “the subject of” a proceeding under certain criteria, including where the decision affects a real property financial interest as described in the regulation setting forth the real property materiality standard, Regulation 18702.2, items (a)(1)-(6).²

² We note that an official’s property is the “subject of a decision” where that decision:

Where, as here, an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). It states, "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."

To determine whether a decision's financial effect on an official's interest in real property is material, we look to the standards in Regulation 18702.2. Relevant to these facts, Regulation 18702.2(a)(7) states that the reasonably foreseeable financial effect of a government decision on a real property parcel is material when the 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.

No facts were provided indicating that the Project decisions, to develop a vacant property with 51 single-family home lots, with open space and vineyards, will not have any measurable impacts on the official's property. Therefore, under Regulation 18702.2(a)(7), the reasonably foreseeable effect of the Project decisions on his financial interest is material, and he may not make, participate in making, or influence the decisions.

You have also generally asked for clarification as to what actions the official may take when they have a conflict of interest in a decision. As noted above, a public official who has a conflict of interest with respect to a particular decision may not make, participate in making or in any way use an official position to influence the decision. (Section 87100.) Pursuant to Regulation 18704, 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. 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. 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

"[i]nvolves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the [official's] parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services."

(Regulation 18702.2(a)(6).)

However, no facts were provided regarding the Project's construction or impacts on the official's services.

purports to act within the official's authority or on behalf of the official's agency in making the contact.

(Regulation 18704(a)-(c).)

Appearance as a Member of the Public

Regulation 18704(d)(2)(A) provides a limited exception for certain appearances before the official's agency as a member of the public. Under this exception an official may appear at a public meeting of the governing board as a member of the public to address matters related solely to the official's interest in real property owned entirely by the official or the official and members of the official's immediate family. Councilmember Miller's interest will fall under this exception if he (or he and members of his immediate family) owns the real property residence in its entirety. However, we caution that this is a narrow exception and allows only for public comments regarding the implications of the decisions specifically on Councilmember Miller's interest in his residence. The exception does not allow presentations of a general nature where Councilmember Miller has a conflict of interest in the decision.

To invoke the exception, Councilmember Miller must follow the recusal procedures set forth in Regulation 18707(a)(3). Specifically, he must publicly identify his real property interest that gives rise to the disqualifying conflict of interest. The identification must be made after the announcement of the agenda item, but before the discussion or vote commences. Councilmember Miller must then recuse himself from the matter, leave the dais to speak from the same area as the members of the public, and limit his remarks solely to his real property interest. Furthermore, the exception will only apply if he makes it clear that he is not acting in his official capacity when he appears as a member of the general public. (*Willkins* Advice Letter, A-18-227.) Councilmember Miller may listen to public discussion and deliberations on the matter from the same area as other members of the public. (*Ibid.*) If Councilmember Miller will not exercise this exception, he must follow the recusal procedures outlined above (identify that he has a real property financial interest in the decision and identify the property) and leave the room. (Regulation 18707.)

Communications to the General Public or Media

Regulation 18704(d)(4) clarifies that a public official who is disqualified from taking part in a governmental decision, is not prohibited from speaking to the general public or the media. In interpreting this regulation, we have previously advised that an official is free to discuss a project with the press, friends, neighbors, or other members of the community, even if the official does so to rally support or opposition of an action, unless those individuals are members, officers, employees, or consultants of the official's agency. (*Mizrahi* Advice Letter, No. A-12-036.) Therefore, while Councilmember Miller is prohibited from taking part in decisions regarding the Project he is not prohibited from talking about it with members of the public, provided there are no members, officers, employees, or consultants of his agency present.

If you have other questions on this matter, please contact me at KHarrison@FPPC.CA.Gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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