



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION 1102  
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August 1, 2023

Matthew T. Summers  
Calabasas City Attorney  
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790 E. Colorado Blvd., Suite 850  
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Re: Your Request for Advice  
**Our File No. A-23-114**

Dear Mr. Summers:

This letter responds to your request for advice on behalf of City of Calabasas Council Member Peter Kraut 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 Council Member Kraut participate in the City’s decisions regarding the Caruso Affiliated Commons Lane mixed use housing project development (“Caruso Project”) located 175 feet from the parcel where his business entity has its leased office space?

### CONCLUSION

Yes. Council Member Kraut has demonstrated that the reasonably foreseeable financial effect of the decision on his financial interests is indistinguishable from the decision’s effect on the public generally, in that the decision will affect a significant segment of the businesses in the City

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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.

located in close proximity to the project site and the decision will not uniquely affect his business in comparison to the significant segment. (Regulation 18703.)

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

Councilmember Kraut is the sole owner of South Coast Engineering Group, Inc. (“South Coast Engineering”), an engineering professional services firm. This business draws its clients from across California and the western United States. It does not have “retail, walk-up” clients who might be affected by traffic or parking issues. South Coast Engineering has a sublease for office space located on Park Sorrento in the City. South Coast Engineering is subletting the property from Innovate MR, LLC under a three-year agreement. Both the sublease and lease expire on March 31, 2025. The lease agreement includes a monthly base rent payment and does not contemplate an increase in the base rent dependent upon the surrounding environment. The lease also prohibits sublease by South Coast Engineering.

The City received an application from Caruso Affiliated on May 1, 2023, for the Caruso Project, a mixed-use housing project within the Commons at Calabasas retail center at 4799 Commons Way.<sup>2</sup> There is not yet a staff report or Environmental Impact Report for the project. The proposed Caruso Project lies on a parcel approximately 175 feet from the parcel containing Councilmember Kraut’s firm’s leased office space on Park Sorrento.

The Caruso Project is the site of an existing retail and restaurant outdoor shopping mall at 4799 Commons Way. The Caruso Project proposes the demolition of an existing 33,000 square-foot multi-level movie theater and construction of new mixed-use buildings in the approximate location of the movie theater and a part of the surface level parking lot. The proposed new mixed-use buildings have 210,921 square feet of total new floor area with up to 119 residential units, including 12 affordable units, and up to 24,163 square feet of neighborhood-serving commercial uses to replace the movie theater. Residential parking will be provided in structured parking below the proposed mixed-use buildings.

Building A, replacing the existing movie theater, will consist of up to 101 new residential dwelling units in 155,633 square feet of residential space and 2,033 square feet of ground floor retail. Building A will be 85 feet tall. Building B will include up to 18 new residential dwelling units in 28,999 square feet of residential space and 22,130 square feet of ground floor retail, restaurant uses, along with a new community plaza. Building B will be 53 feet tall and will replace a small part of the existing surface parking.

The Caruso Project will also include a new community public pedestrian plaza, landscaping, and parking improvements, resulting in the addition of 11 surface parking stalls. 270 new parking stalls will be provided underneath the two new buildings, to serve the new uses. The Project’s

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<sup>2</sup> Previously, we advised Councilmember Kraut that he had a prohibited conflict of interest in a new 118,495 square-foot, with 107 residential units, mixed-use development “Park Apartments” project located on a parcel within 500 feet of Councilmember Kraut’s office space. (*Kraut* Advice Letter A-23-047.) We advised that it was reasonably foreseeable that the Park Apartment project decisions would have a material financial impact on his leasehold interest in that the decisions would likely increase or decrease the potential value of the rental property and impact his use and enjoyment of the property. At that time, the Caruso Project was in its early stages, and we recommended he seek advice, as needed, once there was more information.

present entitlements sought are quasi-judicial regulatory permits, without a proposed development agreement.

The City estimates that 800 businesses operate within the City and that there are 125 commercially zoned parcels within the City. Of the 800 business within the City, 370 businesses (roughly 45 percent) fall within a 500-foot radius of the Caruso Project. Of the 125 commercial parcels, the City estimates that 26 of these parcels (20 percent) are within 500 feet and 48 parcels (36.8 percent) are within 1,000 feet of the Caruso Project.

In response to our request for additional information, you provided that the City concentrates its businesses in the neighboring downtown, Calabasas Park Centre Master Plan area and the office parks and shopping centers to the north and east of the Park Centre Master Plan Area, along Calabasas Road and the 101 Freeway. Calabasas is otherwise largely a residential and open space community. Reflecting this, most of the remaining parts of the City are residential or open space, save two other shopping complexes, a couple of office parks, and several smaller commercial strip malls.

You have further clarified that the Caruso Project's temporary, construction-era impacts are expected to be construction noise and parking and internal circulation impacts. As to construction noise, the businesses immediately next to the two building footprints will experience some adverse impacts from added noise, which will be mitigated in part by construction noise mitigation measures. Noise impacts are not expected to be significant for the business farther away, beyond those immediately next to the two building sites. Council Member Kraut's firm's leased office space is not immediately next to the two building sites, and instead several buildings will block much of the direct noise impacts, as a retail/restaurant building and the Civic Center buildings, are between his office and the two building sites. Council Member Kraut's firm's leased office space is similarly situated as to noise impacts as the other businesses in the wider 500' and 1000' project vicinity.

As to construction-era parking impacts, the applicant is expected to implement a construction parking plan designed to mitigate construction era parking impacts by providing some temporary replacement parking spaces. The building containing Council Member Kraut's firm's lease office space will lose none of its designated parking spaces. The net effect of temporarily losing some of the Master Plan area shared parking spaces at the Commons during construction is not expected to be significant, given the temporary construction parking plan and related temporary parking demand reduction during construction – e.g., once the movie theater is closed, its patrons will not be demanding parking, and the replacement residents will not be demanding parking until after the residential buildings and their underground parking garages are built. As with noise, the City expects that, while there may be some temporary construction noise and parking impacts, these are not expected to significantly affect Council Member Kraut's leased office space any differently than other surrounding businesses.

In response to our request for additional information regarding the impacts of the Caruso Project decision on Council Member Kraut's business or office space, you provided that under the Project's proposed plans, Councilmember Kraut's firm is expected to continue to meet all of its parking needs during construction and after the Project is completed. As noted above, the office building will lose none of its designated parking spaces, and the net effect of temporarily losing some

of the Master Plan area shared parking spaces at the Commons during construction is not expected to be significant, given the temporary construction parking plan and related temporary parking demand reduction during construction.

## 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, pertinent to these facts:

- A business interest in any business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any management position (Section 87103(d)).
- An interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).)
- A source of income interest in any source from whom the official receives \$500 or more in value in the 12 months prior to when the decision is made including a pro rata share of income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Sections 82030 and 87103(c).)

You have identified that Council Member Kraut has a business entity and source of income interest in his South Coast Engineering business and a real property interest in the business's office lease.<sup>3</sup>

### **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

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<sup>3</sup> As the sole owner of South Coast Engineering, Council Member Kraut also has a source of income interest in any client or customer that has paid or promised \$500 or more to South Coast Engineering within the 12 months preceding the relevant governmental decision. You have not provided any facts regarding any clients or customers of South Coast Engineering. To the extent that any governmental decision related to the project would have a reasonably foreseeable, material financial effect on a client or customer of South Coast Engineering, Council Member Kraut would likely be disqualified from taking part in the decision under the Act and may wish to seek additional advice, as needed.

absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. (Regulation 18701(b).)

*Real Property Commercial Office Space Sublease*

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Where a public official's real property interest is a leasehold interest, Regulation 18702.2(c) provides that the reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- (1) Change the termination date of the lease;
- (2) Increase or decrease the potential rental value of the property;
- (3) Change the official's actual or legally allowable use of the property; or
- (4) Impact the official's use and enjoyment of the property.

There is no indication from the facts that this development project would change the termination date of South Coast Engineering's lease or its actual or legally allowable use of the property. At issue then is whether the Caruso Project decisions may increase or decrease the potential rental value of the office property or impact the official's use and enjoyment of the property. (Regulations 18702.2(c)(2) and (4).) It appears under the facts presented that each of these standards are met for the City decisions regarding this project.

The decisions to allow or disapprove the mixed-use housing and commercial development will likely increase or decrease the potential rental value of the official's leased property. The Caruso Project will bring a potential 119 new housing units to an area that is currently a theater and a parking lot at a retail center. In the long-term the Caruso Project would likely increase the desirability of the commercial office space, and thus its potential rental value, as the project will introduce potential new customers or businesses to the area. During construction the increased area traffic and displaced parking will likely have a negative effect on the desirability and potential rental value of the commercial office space.

As stated in the earlier advice letter, we note that while South Coast Engineering has a three-year lease with terms that prevents subleasing the property and sets a base pay rent which does not contemplate an increase dependent on the surrounding development, we have previously advised that these facts do not alter the determination of whether the decision will affect the potential rental value of the leased property. (*Gallogly* Advice Letter No. A-19-112; decisions to allow higher-density development, a hotel, on a vacant parcel in a historic downtown district may change the development potential of real properties in the immediate area such that the council member with a leased residence within 500 feet had a conflict of interest under Regulation 18702.2(c)(2) regardless of the lease terms that a sublease was prohibited and the rent would not be changed due to the development.)

Additionally, the decisions to allow or disapprove the mixed-use development will likely impact the official's use and enjoyment of the business's leased office space, due to construction noise, increased traffic, increased residents, and some parking displacement in the area related to the Caruso Project. Under these facts it is reasonably foreseeable the City decisions regarding the Caruso Project will have a material financial effect on Council Member Kraut's leasehold interest under Regulation 18702.2(c)(2) and (4). Accordingly, Council Member Kraut will be disqualified from taking part in the Caruso Project decisions unless an exception applies.<sup>4</sup>

### **Public Generally Exception**

Under what is commonly referred to as the "public generally exception," an otherwise disqualified public official is not prohibited from taking part in a decision if the financial impact on the official's economic interest is indistinguishable from the financial impact on the public generally. (See Section 87100.) A governmental decision's financial effect on a public official's financial interest is "indistinguishable from its effect on the public generally" 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).)

Relevant to these facts, a significant segment of the public is at least 25 percent of all businesses or non-profit entities within the official's jurisdiction or 25 percent of all real property or commercial property within the jurisdiction. (Regulation 18703(b).) Additionally, as relevant to these facts, Regulation 18703(c) provides that a "unique effect" on a public official's financial interest exists if a decision will have a disproportionate effect on:

- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- (2) The official's business entity or real property resulting from the proximity of a project that is the subject of a decision.

Approximately 370 of the City's 800 businesses operate within a 500-foot radius of the Caruso Project site. Therefore, 45 percent—a significant segment—of the City's businesses are within 500 feet of the Project. The significant segment of businesses share the close proximity to the Caruso Project. These businesses will similarly experience increased traffic and parking issues, as well as the improvements and new residents related to the Caruso Project impacting their real property interests' development potential, use and enjoyment, or income producing potential. Council Member Kraut has established that the decision would not have a disproportionate effect on his financial interests compared to this significant segment related to the use of the official's real property interest or income producing potential of his business, or its proximity to the Caruso Project. South Coast Engineering is not dependent upon walk-up, retail clients, its office building's parking needs will be met, and it will not lose any of its designated parking spaces as a result of the decision. Additionally, Council Member Kraut's firm's leased office space is not immediately next to the two building sites, and instead several buildings will block much of the direct noise impacts,

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<sup>4</sup> We do not further analyze the effect of the decision on Council Member Kraut's business or business as a source of income because of this determination.

as a retail/restaurant building and the Civic Center buildings, are between his office and the two building sites.

Given the above analysis, the public generally exception applies in the present circumstances and the Act does not prohibit Council Member Kraut from taking part in decisions relating to the Project. We caution, however, that if these circumstances change or additional details become available during the course of the Project—for example, if an Environmental Impact Report indicates certain unique effects applicable to Council Member Kraut’s property interest not applicable to other nearby properties—then the public generally exception may no longer apply at that point. If such an incident arises and Council Member Kraut is unsure of whether he is still permitted to take part in governmental decisions relating to the Project under the Act, he should seek additional advice.

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  
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