



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 17, 2023

Melina C. H. Stewart
City Attorney
City of Vacaville
650 Merchant Street
Vacaville, CA 95688

Re: Your Request for Advice
Our File No. A-23-130

Dear Ms. Stewart:

This letter responds to your request for advice on behalf of City of Vacaville Councilmember Roy Stockton 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 Stockton have a conflict of interest under the Act that would disqualify him from voting on the North Village Development Project (“NV Project”) amendments due to his financial interest in his residence located within the North Village Specific Plan area?

CONCLUSION

Yes. Under Regulation 18702.2(a)(8) it is reasonably foreseeable that decisions related to the relocation and the redesignation of the housing area within the Open Space Buffer adjacent to

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.

his parcel to a location further north would have a material financial effect on his parcel in regard to its character and market value. He may not participate in these decisions. However, we note that in some circumstances it may be possible to segment the decisions identified to allow Councilmember Stockton to take part in subsequent NV Project decisions in which he would not otherwise have a disqualifying conflict of interest.

FACTS AS PRESENTED BY REQUESTER

Councilmember Stockton was elected by the voters of District 1 in November 2020 to serve as a City of Vacaville (“City”) Councilmember. He owns and resides in a single-family residence located in the North Village Specific Plan area, near the north-east boundary of the portion of the North Village Specific Plan area known as Area Plan 1.

The City Council adopted the North Village Specific Plan in January 1995 as part of the approval of land use entitlements for the NV Project, a master-planned development encompassing approximately 882 acres in Northeast Vacaville. The NV Project is comprised of a variety of land uses, including residential, commercial, business park public/institutional public school public park and public open space, which are incorporated into two Area Plans. Area Plan 1 (“AP-1”) encompasses the southern half of the North Village development area, and Area Plan 2 (“AP-2”) encompasses the northern half. AP-1 and AP-2 are separated from each other by an Open Space Buffer that commences from the northern boundary of AP-1 and is located generally within the southern area of AP-2.

As originally approved, AP-1 included 1,348 dwelling units (single-family and multi-family), a business park, general commercial uses, open space, and a site designated for a public school. AP-2 was approved to include 1,151 residential units with a mixture of single-family and multi-family units, a public park, a private swim club, and open space. In August 2012, the project was amended to remove the school site in AP-1 and convert it to a 64-unit residential site. The amendment also included the adoption of a new General Plan policy to revise AP-2 in the future to provide an 11-acre school site.

AP-1 1 of the NV Project is primarily built out. The areas of AP-1 currently pending completion include portions of the business park, the commercial area and 36 residential lots. Buildout of AP- 2 has not yet commenced.

In August 2017, the developer sought a preliminary review from the City of future changes to the NV Project entitlements, primarily for AP-2. In February 2019, the City Council initiated an amendment to the General Plan Land Use Map to change land use designations. In June 2019, the NV Project developer submitted an application to amend the entitlements related primarily to AP-2, and seeking amendments to the General Plan Map, the Zoning Map, the North Village Specific Plan, the Vesting Tentative Map and the Annexation and Development Agreement, including a request for a 20-year extension of that Agreement. The application also requested amendments to AP-1 to change the designation of a small portion of land in the Business Park from “Business Park” to “Open Space.” This change was a result of the developer’s work with the Army Corps of Engineers to mitigate the loss of wetlands. The resulting negotiations required the preservation of seasonal wetlands in the middle of the Business Park area (the “Proposed Mitigation Area”). This

results in a decrease in the AP-1 Business Park area from 71.2 acres to 57.2 acres. You provided an additional map showing the specific areas impacted by the proposed changes.²

The major amendments requested to the NV Project are currently pending approval of the Vacaville City Council and can be outlined as follows:

- a) Change to the General Plan and Zoning Map designations to reflect a revised land use plan and housing mix for AP-2 to include more “missing middle” housing - including a 2.4-acre reduction in residential low-density uses and a corresponding increase in residential low-medium density uses and changing the layout/locations of the approved and requested land uses.
- b) Change to the General Plan and Zoning Map designations to reflect a conservation/open space area replacing some of the land designated as a business park in AP-1.
- c) Reservation of a school site in AP-2 (originally planned for AP-1).
- d) Increase in total allowable units from 2,499 to 2,599 (dependent upon the local public school district’s acquisition of property reserved for a school site).
- e) Add requirements that 100 units in AP-2 be deed-restricted to be affordable as follows: 35 units moderate income, 36 units low income, and 29 units very low income.
- f) Modify the requirement to construct a private swim club in AP-2 to allow recreation centers (fitness clubs, private swim clubs, etc.) in the Business Park zoning district in AP-1.
- g) 20-year extension of the Annexation and Development Agreement.

As noted above, Councilmember Stockton’s residence is located in the North Village Specific Plan area, within AP-1. In regard to the proposed changes in AP-1, Councilmember Stockton’s residence is more than 1000 feet away from the Business Park area and the proposed mitigation area.

Councilmember Stockton’s residence is within 500 feet of AP-1’s northernmost boundary with AP-2. The area which extends 500 feet from the boundary of his residence includes an overflow drainage facility and an area designated as the Open Space Buffer. The area which extends between 500 - 1000 feet from the boundary of Councilmember Stockton’s residence, currently includes the Open Space Buffer and some land zoned for residential low density. (The maps depict this housing area as an “island” in the midst of the Open Space Buffer.) As a part of the requested NV Project modifications, this residential low-density use area would be moved north,

² The maps designate “BP” for Business Park, “CG” for Commercial Area, “OS” for Open Space, “RL” for Residential low Density and RLM for Residential Low-Medium Density. Blue borders designate the areas subject to the proposals.

outside the 1000-foot range from Councilmember Stockton's residence and redesignated as Open Space, within the Open Space Buffer area.

You note that the primary vehicular access to the NV Project site and both plan areas is North Village Parkway, located more than 1,000 feet from Councilmember Stockton's residence, and you state that "there is no indication that any additional traffic, traffic-related noise, or other similar impacts generated by the proposed changes would impact Councilmember Stockton's residence in a manner different from the NV Project as currently approved."

The Vacaville City Council certified a Final Environmental Impact Report ("FEIR") for the North Village Development Project in January 1995. As a result of the requested amendments to the NV Project, the City retained a consultant to prepare a quantitative/qualitative comparative environmental analysis between the project as originally adopted and the proposed revised project, including traffic, noise, air quality, and other impacts. An Addendum to the FEIR was prepared. The Addendum confirmed that: (1) the incremental changes produce a negligible impact compared to the overall project and previous FEIR, (2) the mitigation measures adopted for the NV Project as originally designed and approved were equally applicable to the Project's proposed revisions, and (3) no further environmental analysis was warranted.

ANALYSIS

Under Section 87100, a public official may not make, participate in making, or use the official's position to influence a governmental decision in which he 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 on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including as relevant to these facts: "[A]ny real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more." (Section 87103(b)).

Councilmember Stockton has a real property interest in his residence located within the North Village Specific Plan area and the NV Project's boundaries. At issue is whether it is reasonably foreseeable that the NV Project decisions will have a material financial effect on Councilmember Stockton's real property interest.

The standard for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is "explicitly involved" as a named party in, or "the subject of," the decision. An 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 interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6).³ However, none of these are

³ Generally, potentially relevant to these facts, Regulation 18702.2(a)(1)-(6) pertains to decisions that apply to the parcel, such as amending its development plan or criteria, changing its zoning, its boundaries, its taxes, or assessment, or involves construction or improvements to streets, water, sewer, storm drainage or similar facilities, and

applicable to the decisions here. While the decisions will, for example, affect the zoning and entitlements for use in some portions of the NV Project, none of the described changes would affect his residential parcel's zoning or entitlements for use. Councilmember Stockton's real property is not a named part or the "subject of" the NV Project decisions.

Where, as here, the official's financial interest is not explicitly involved as a named party or subject of the decision(s), the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b)).

Real Property Interest

Regulation 18702.2 provides the materiality standards for decisions involving an official's financial interest in real property. Regulation 18702.2(a)(7) is the applicable standard where the decision involves property located 500 feet or less from the official's parcel. Under this provision, there is a presumption that the reasonably foreseeable effect of the decision on the official's property is material, unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.

Regulation 18702.2(a)(8) is the applicable materiality standard where an official's real property parcel is located within 500 to 1,000 feet from property involved in a decision. The reasonably foreseeable effect of a decision on the official's parcel will be material if the decisions would change the official's parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

The Open Space Buffer area at issue has its south boundary located within 500 feet of Councilmember Stockton's parcel. The "island" of housing designated area within the Open Space Buffer is located within 500 and 1,000 feet of the official's parcel. One of the decisions is to remove the "island" of proposed housing within the Open Space Buffer, and relocate the housing area to the north, outside the 1,000 foot area from the official's parcel. This will require changes to the General Plan, Zoning Maps and the designated land use of the areas involved.

To the extent that the relocation decision involves property located 500 feet or less from the official's parcel, it is presumed the decision will have a material financial effect on his parcel, absent clear and convincing evidence that there will be no measurable impact on the property.

the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.

Typically, where a property is being affected by a decision, here the Open Space Buffer, the 500 foot distance is measured to the edge of the property line. However, we need not determine if the relocation decision “involves property located 500 feet or less,” as the decision clearly involves property 500 feet to 1,000 feet from his parcel and will have a material impact on his parcel under 18702.2(a)(8).

Under the facts presented, the decision to approve or disapprove moving the designated low density housing area further away from the official’s parcel and designating the same area as Open Space and part of the Open Space Buffer would change the character and market value of the official’s parcel. Redesignating an area from housing to Open Space within 1,000 feet of the official’s parcel would likely change the construction noise, traffic levels, intensity of use, privacy, noise levels for the official’s parcel.⁴ It is reasonably foreseeable that having a parcel near an uninterrupted Open Space Buffer as opposed to near-by housing would affect the marketability of the property and its market value. Therefore, Councilmember Stockton has a prohibitive financial interest in the decision under Regulation 18702.2(a)(8) and may not take part in the NV Project decisions identified except as noted below.

While Councilmember Stockton has a disqualifying financial interest that prohibits him from taking part in the decisions identified, we note that in some circumstances decisions may be segmented which allows an official to take part in other, subsequent decisions in which the official would not be disqualified so long as the decisions in which the official has a financial interest are considered first and the other decisions are not inextricably interrelated to the decisions in which the official is disqualified. Under the Act, segmentation enables an official with a conflict of interest to participate in other decisions that do not 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 to enable an official with a disqualifying financial interest in one component of the series of decisions to participate in other components where no financial interest exists. Regulation 18706(a) 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 This analysis is focused on the impacts relative to the official’s parcel, rather than the impacts on the NV Project as a whole, as the FEIR Addendum appeared to have examined. Additionally, while the facts indicate that “primary” vehicular access to the NV Project site and both plan areas is North Village Parkway, located more than 1,000 feet from Councilmember Stockton’s residence, there are other near-by roads that may be impacted by housing development location, as indicated by the maps provided.

(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.

When a decision in which an official has a conflict of interest is “inextricably interrelated,” where the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision, the official is disqualified from both decisions. (Regulation 18706(b).)

Based upon the facts presented, it appears that segmentation may be appropriate for some of the NV Project decisions identified. For instance, the proposed changes to AP-1, to replace some of the land designated as a Business Park with a Conservation/Open Space area for wetlands, allow private swim and fitness clubs (recreation centers) in the Business Park zoning, as well as the proposed change in AP-2 to reserve a school site within the area currently designated for residential housing and no longer locate a private swim club in the area, each affect property that is over 1,000 feet from Councilmember Stockton’s residence. Regulation 18702.2(b) provides the materiality standard for decisions affecting property located over 1,000 feet from the official’s property and states:

(b) The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of 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.

There are no facts that rebut the presumption with clear and convincing evidence that the decisions affecting property located over 1,000 feet from Councilmember Stockton’s property will have a substantial effect on his property. It has been a part of the NV Project plan for the school site to be relocated in AP-2 since 2012, and the proposed site is over 1,000 feet from his residence. The Business Park area in AP-1 that would allow for private swim and fitness club businesses and additional Conservation/Open Space, is also over 1,000 feet from his property, and it appears that the original location designation for the private swim club was also over 1,000 feet away. Therefore, under the facts presented, he will not have a prohibitive financial interest in these particular decisions provided the relocation of the housing area and redesignation of the area as Open Space decisions regarding AP-2 are considered first, without Councilmember Stockton’s participation and that the subsequent NV Project decisions would not reopen the AP-2 housing/open space decisions in any way.

Please seek additional advice if you need additional assistance regarding the segmentation of other decisions from the decisions identified.

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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