

# State of California



## Fair Political Practices Commission

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June 15, 1984

Bernard F. Norton  
742 Horizon Drive  
Martinez, CA 94553

Re: Your Request for Advice  
Our File No. A-84-118

Dear Mr. Norton:

Thank you for your letter requesting advice from this office concerning your obligations under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> You are a member of the Planning Commission of the City of Martinez, and you asked whether you could participate in a decision on proposed amendments to the Alhambra Hills Specific Plan. You own a home in the Quail Creek subdivision in the Alhambra Valley which is near the area covered by the Specific Plan.

### FACTS

My understanding of the situation is as follows. Alhambra Hills is a planning study area in the City of Martinez. A Specific Plan for Alhambra Hills was adopted in 1973. In 1983, the City commenced a study of the Plan in order to consider possible modifications.<sup>2/</sup> The Alhambra Hills Specific Plan Advisory Committee was set up to make findings and recommendations on the Plan. The City Council and the Planning Commission recently had a joint meeting to discuss the findings of the Advisory Committee. According to the planning schedule in the Third Draft of the Plan, the Planning Commission will

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<sup>1/</sup> Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> This will also involve an amendment to the City's General Plan.

hold public hearings in November 1984 to certify the Environmental Impact Report and consider the final Draft Specific Plan, and the City Council will consider the Planning Commission recommendation in December 1984.

Your residence is located on Horizon Drive in the Quail Lakes subdivision. This subdivision is outside of but close to the Alhambra Hills Study Area.

#### ANALYSIS

The conflict of interest provisions of the Political Reform Act prohibit a public official from making, or participating in, decisions in which he has a financial interest in the outcome. Section 87100. Section 87103 states that an official has a financial interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect on any real property in which the official has a direct or indirect interest worth more than \$1,000. Section 87103(b). Assuming that you have an interest in your home worth more than \$1,000, you must refrain from participating in any Planning Commission decisions which could have a material financial effect on the fair market value of your home.

By regulation, the Commission has defined a "material financial effect" to mean a significant effect. 2 Cal. Adm. Code Section 18702 (copy enclosed). An effect on real property is considered significant if the decision will substantially affect the use or enjoyment of the property, or if will affect the fair market value of the property. In its regulation, the Commission has also provided monetary guidelines for determining when an effect on a financial interest is material or significant. In the case of an effect on the fair market value of an interest in real property, Section 18702(b)(2)(B) provides that the effects of a decision will be considered material if the decision could increase or decrease the fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

You were informed by City planning staff that you had a conflict of interest in the decision on the Specific Plan based on a memo from the City Attorney dated May 24, 1983 (copy attached to your letter). You were not aware of this memo until recently, and you believe that not all of the facts stated in

the memo are accurate. The basis for the City Attorney's reasoning was that, since you presently live on a quiet, secluded court and the proposed amendments to the Plan will change that court to a through street, there would be a material financial effect on the fair market value of your home.

You stated in your request for advice dated May 8, 1984, as follows:

One of the major problems with the stated facts [in the City Attorney's memo] is the description of my house as being located on a "court." My address is 742 Horizon Drive, Martinez (see Appendix C). Obviously, I don't live on a "court" where the official city address of my home is "Drive." There is no "court" located on any section of Horizon Drive.

Since the 1971 General Plan amendment, Horizon Drive has always been designated for circulation into the hills (see Appendix D and E). This is the reason why the street was designated as a "Drive." When I purchased my home in 1979, I fully understood that the street was designated a "Drive" for circulation purposes.

. . .

Because the Quail Creek builder has not fully developed all of his land on Horizon Drive (additional developable area does exist beyond the location of my house), it is currently vacant. Additionally, Horizon Drive is an official fire road and is utilized by both fire and public works vehicles. The vacant area also has a large open sewerage system which will connect additional development along Horizon Drive.

On the other hand, in the Third Draft of the Summary Findings and Recommendations on the Alhambra Hills Specific Plan, parts of which you provided to me, the issue of Horizon Drive as an access street to the plateau is specifically discussed. The report states on pages 24 and 25:

C. Access/Circulation

The current Specific Plan for the Alhambra Hills identified several access points, not only to the fringe areas, but the plateau as well. Access to existing development along the fringe area has already been accommodated with relative ease, directly from

Alhambra Avenue, Reliez Valley Road, Blue Ridge Drive, or Roanoke Drive. Examples of existing developments receiving access from these streets include the Foothills, Valley Ridge, Skyline and Quail Creek tracts.

The 1973 Alhambra Hills Specific Area Plan also identified two public streets which were to serve as access routes to future development of the plateau area. These streets are Horizon Drive and Benham Drive. These two access points are of particular concern to the area residents inasmuch as both would be extensions of public streets through existing neighborhoods. The extension of Horizon Drive would provide access to the plateau area from Reliez Valley Road side of the Study Area. However, Horizon Drive also serves as the only access to the existing Quail Creek subdivision.

The extension of Benham Drive would provide access to the plateau from the Alhambra Avenue side of the Study Area. However, Benham Drive also serves as a major access to the existing Foothills development.

Residents of both developments have expressed extreme concern with regard to the current Specific Plan's proposal to provide access to the plateau through their respective neighborhoods. Increased traffic and related hazards, increased noise and general disruption of existing tranquil neighborhoods have been cited by residents as prime concerns at this point.

In addition to reviewing the appropriateness of the current Specific Plan's land use and density designations for the Alhambra Hills, the appropriateness of retaining the use of either Benham or Horizon Drives as future access points to the plateau was also considered by the Committee.

1. Issues

Several issues evolved out of the access/circulation discussions. The most significant concern seemed to be that access and egress from the Study Area should be directed so as not to disrupt existing neighborhoods from potentially adverse noise, safety and traffic impacts.

The topography of the Study Area makes it difficult to access the entire area (particularly, the plateau) from a single roadway, therefore, the 1973 Alhambra Hills Specific Area Plan calls for access to the plateau from both the Alhambra Avenue and Reliez Road sides of the hills. The Committee identified an alternative access alignment to the plateau which avoided the need to use Benham Drive; however, was unsuccessful in identifying an access alternative from the Reliez Valley Road side of the hills which eliminated the need for Horizon Drive.

It appears from this discussion that the designation of Horizon Drive as an access road to the plateau as set forth in the present Specific Plan has raised some concern and controversy in the community. The issue is not just whether Horizon Drive will become a through street, but it is whether Horizon Drive will become an access road to future development planned for the plateau. The factors cited by the residents in opposition to the use of Horizon Drive as an access road include the type of effects on real property which are normally deemed to have a significant or material effect on the property value, e.g., increased traffic and noise. Even though Horizon Drive is currently designated as an access road and you knew that when you bought your home, the fact is that in the review of the Specific Plan, the issue has been reopened and will be decided again. Since resolution of this issue could foreseeably have a direct and significant effect on your property, you should not participate in any of the decisions which involve the issue of access to the plateau and the use of Horizon Drive as an access road. However, it appears that the other issues raised in the parts of the report that I received will not materially affect the value of your property, and you may participate in the decisions on those issues.

In your follow-up letter dated May 25, 1984, you asked questions concerning the permissible extent of your participation in public meetings and hearings on the Plan. As I noted above, you should not participate in decisions concerning the use of Horizon Drive as an access road. This prohibition also includes any attempts to use your official position as a Planning Commissioner to influence the decision on this issue. Section 87100. I have enclosed a copy of the Commission regulation, 2 Cal. Adm. Code Section 18700 which defines these terms. Basically, the prohibited activities with reference to this issue would include participating in any public or private discussions or deliberations by the Planning Commission on the matter, participating in hearings, chairing meetings or

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Commission hearings, and voting. There is an exception for appearances by a public official as a member of the general public on matters related solely to his personal interest. Personal interest has been defined to mean personal financial interest. Therefore, you could speak at a public meeting of the Planning Commission on the access issue if you represented only your interest as a property owner and if you spoke under the same terms and conditions as any other member of the public. Of course, none of these limitations would apply to the issues and decisions on the Plan for which you do not have a conflict of interest.

Please feel free to contact me if you would like to discuss this letter or if you have further questions.

Sincerely,



Diane Maura Fishburn  
Staff Counsel  
Legal Division

DMF:plh  
Enclosure

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Ms Barbara Milman  
Fair Political Practices Commission  
1100 K. St.  
P.O. Box 807  
Sacramento CA 95804

Dear Ms. Milman:

The purpose of this letter is to request an opinion from your staff regarding a possible conflict of interest with a Planning Commission action. I am presently a member of the City of Martinez Planning Commission. I have served two years of a four-year term.

A few days ago I was informed by a city staff member that I might have a conflict of interest with a specific plan amendment which the Planning Commission will be considering in the next few weeks. Upon being told of this situation, I requested documentation outlining the facts. Enclosed for your review is a copy of the memorandum (5/24/83) which supposedly describes the circumstances of the conflict of interest. I find it rather interesting that I was informed of this possible conflict of interest almost one year after the former Planning Director requested an opinion — unknown to me.

I believe the facts recorded in the attached memorandum are

misrepresented and the opinion is incorrect, in the following narrative I would like to describe the situation to you and reiterate why I believe there is no conflict of interest.

I live at 742 Horizon Drive, Martinez. Horizon Drive is located in the Quail Creek Subdivision which parallels Relief Valley Road in the Alhambra Valley (see Appendix A). The study area under consideration is known as the Alhambra Hills.

The first sentence of the memorandum states that my property (a house) is adjacent to the study area. If you review Appendix B you will note that my house is ~~adjacent~~ adjacent to city-owned open space for Golden Hills Park. It is not adjacent to the study area. The Quail Creek Subdivision has been excluded from the 1983-84 study which will involve an amendment to the General Plan. There is additional property owned by the builder on Horizon Drive which has yet to be developed. This area is adjacent to the study area, but not included in the study.

One of the major problems with the stated facts is the description of my house as being located on a "court". My address is 742 Horizon Drive, Martinez (see Appendix B). Obviously, I don't live on a "court" where the official city address of my home is "Drive." There is no "court"

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located on any section of Horizon Drive.

Since the 1971 General Plan amendment, Horizon Drive has always been designated for continued circulation into the hills (see Appendix D and <sup>E</sup> 9). This is the reason why the street was designated as a "Drive". When I purchased my home in 1979, I fully understood that the street was designated a "Drive" for circulation purposes.

I have drawn a configuration of Horizon Drive as it now exists (see Appendix <sup>F</sup> 10). You will observe that houses are located opposite one another like any other street identified as a "Drive". It does not in any manner simulate a "court".

Because the Quail Creek builder has not fully developed all of his land on Horizon Drive (additional developable area does exist beyond the location of my house), it is currently vacant. Additionally, Horizon Drive is an official fire road and is utilized by both fire and public works vehicles. The vacant area also has a large open sewerage system which will connect additional development along Horizon Drive.

I question the use of the term "thoroughfare" when Horizon Drive has always been designated for circulation

in the General Plan and also when both fire and public vehicles are utilizing the street for traffic purposes. Horizon Drive has never been posted by the City of Martinez, as "Not a Through Street".

The attached attorney's opinion focuses his entire interpretation on the fact that I live on a court which will become an extended street. This fact is totally erroneous. I do not live on a court. Additionally, the "Drive" is presently being utilized by fire vehicles and public works trucks/autos. When the developer of Quail Creek initiates further building up the hill, the street will continue its extension.

The financial comparison is not correct. You cannot compare a house on a "Drive" to a house on a closed "Court". This is not my situation. Consequently, the financial assessment which has been applied is wrong.

The attorney continually uses the term "quiet" court. A street used as a "Drive" is hardly "quiet". We experience a constant flow of vehicles up Horizon Drive for various purposes. Most individuals believe it is a throughfare, and with no signs posted to the contrary, proceed like

it is one.

Since the criteria (material financial effect) utilized to determine a conflict is based on erroneous data, I cannot accept the claim of a conflict of interest. Additionally, the criteria utilized cannot be verified and consequently, only a recommendation has been made. I find the recommendation also to be inappropriate because the dollar amounts cannot be substantiated.

It appears that someone has attempted to create a fictitious "lot" from developable area not yet built belonging to the developer of the Quail Creek Subdivision.

I do not see how action on a General Plan amendment will have any material financial effect on my property. It is not distinct from the public at large, especially in the City of Martinez which includes numerous hilly areas.

A meeting has been scheduled on May 23, 1984, for the Specific Plan Committee, Planning Commission, and City Council. I would greatly appreciate a response from the Fair Political Practices Commission prior to that date.

Thank you for consideration regarding this matter.

Sincerely,  
Bernard F. Noston  
742 Haddon Drive