

May 14, 2014

Ms. Dendra Dengler  
419 Beach Drive  
Arcata, CA 95221

Re: Your Request for Advice (500 foot rule)  
**Our File No. A-14-089**

Dear Ms. Dengler:

This letter responds to your request for advice regarding the 500 foot rule conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Our advice is limited to the provisions of the Act and does not consider other conflict of interest laws that may apply, such as common law conflict of interest. Furthermore, this letter is based on the facts presented; the Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### **QUESTION**

May you add to the agenda and participate as a board member in a decision as to whether or not the Manila Community Services District approves the Manila Community Center being designated as a possible Red Cross Shelter in the event of a major disaster such as an earthquake or tsunami?

### **ANSWER**

Yes, though you live within 500 feet of the community center, under the Act's real property conflicts rules and new Regulation 18705.2(a)(11), you may participate in the decision. Under your facts, it is not reasonably foreseeable that the designation of the community center as an emergency shelter will have a measurable economic impact on your property.

### **FACTS**

You provided the following facts. You are an elected board member of the Manila Community Services District (the "CSD"), serving a small community of approximately 1,000

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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 18110 through 18997 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.

residents and about 350 homes. Your district lies on a peninsula between Humboldt Bay and the Pacific Ocean within a major earthquake and tsunami area, and if a major event occurs your community will be cut off from all roads and most incoming resources.

Your property consists of 1.2 acres and borders a district parcel that is classified “natural resources.” Your property is within 500 feet of another district parcel where the Manila Community Center, a basketball court and signage for trails is located.

You wish to put an item on the CSD’s agenda and vote on a proposal to designate the community center as a temporary Red Cross shelter in case of a major disaster in the area such as an earthquake or a tsunami. You have received written advice from the FPPC before concerning possible conflicts because your home is near the community center in Advice Letters No. I-11-066 and I-13-121.

### ANALYSIS<sup>2</sup>

Generally, under Regulation 18705.2 (a)(11), an official has a conflict of interest when participating in any governmental decision that involves real property located within 500 feet of the official’s real property. However, this provision allows the Commission to apply an exception when the official makes a request for formal advice and the Commission “determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official’s property.” (Regulation 18705.2(a)(11).)

We find that the above facts do not provide any reason that would “cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.” (See Regulation 18705.2(a)(12).) Accordingly, you do not have a conflict participating in the above described decision.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

HPW:jgl

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<sup>2</sup> Amendments to Regulations 18705.2 and 18706 were adopted by the Commission and will be submitted to the Office of Administrative Law for review. Although not currently effective, the regulations express the Commission’s policy concerning application of the conflict of interest rules of the Act. Therefore, staff is advising consistent with the Commission’s policy.