

January 9, 2015

Margaret Kemp-Williams
Inyo County Counsel
P.O. Box M
224 No. Edwards Street
Independence, CA 93526

Re: Your Request for Advice
Our File No. A-14-216

Dear Ms. Kemp-Williams:

This letter responds to your request for advice on behalf of members of the Inyo County (the “County”) Board of Supervisors (the “Board”) 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 Government Code Section 1090.

QUESTION

Do any of the supervisors have a conflict of interest in Board decisions regarding the designation of certain county roads as “combined use routes” that can be used by off-highway motor vehicles?

CONCLUSION

No. Under the facts provided, the decisions will not have a reasonably foreseeable material financial effect on any of the supervisors’ interests.

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 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.

FACTS²

Inyo County is the ninth largest county in the United States covering about 10,227 miles. There are 18,500 residents and 9,438 housing units in the County.

The Board will be considering a pilot project to designate certain unincorporated County roads as routes that may be used by both highway vehicles and off-highway vehicles (“OHVs”) under Section 38026.1 of the California Vehicle Code. This pilot project, known as “Adventure Trails,” will terminate on January 1, 2017 unless extended by the legislature.

The project contemplates the designation of up to 37 combined use routes spanning 234 miles in the county. In addition, the project applicant has requested the city of Bishop to designate eight miles of city roads as combined use routes, some of which will have a beginning point in the city and end point just off of a County road. Should Bishop not designate such a route, the entire route, including the portion located on a County road, would not be designated.

Approval of the designations will require adoption of a resolution that would: (1) certify an Environmental Impact Report (EIR); (2) make all required California Environmental Quality Act findings; (3) adopt the mitigation measures identified in the EIR; (4) adopt a Mitigation and Monitoring Program; (5) decide which of the proposed routes identified in the EIR will be designated as combined use routes; and (6) revise certain implementing procedures that apply to the project. The following table shows, for each supervisor, the distance between his or her real property and the nearest proposed route.

District	Supervisor ³	Address	Distance between supervisor’s property and nearest proposed route
1	Dan Totheroh	215 Acturis Circle, Bishop	13,094 feet or 2.5 miles
3	Rick Pucci	2672 Irene Way, Bishop	1,695 feet or .4 miles
5	Matt Kingsley	210 Laskey Lane, Lone Pine	1,407 feet or .4 miles
2	Jeff Griffiths	387 Willow St, Bishop	502 feet
4	Mark Tillemans	215 N. School St, Big Pine	on the route

Concerns have been raised regarding the potential negative effect of OHV travel on the value of nearby residential property, particularly as to increased noise and air pollutant emissions. Several real estate professionals have expressed conflicting opinions as to whether the OHV travel will cause property values to decrease, increase or have no effect.

The effects of noise, air pollution and other impacts of the proposed project are addressed in the EIR. According to the EIR, the combined use routes would increase noise levels but the increase would be minor. However, the EIR also states that, because the behavioral patterns of

² This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Our analysis relies not only on the facts provided in your request for advice, but additional facts you provided in our teleconference of January 5, 2015.

³ We have omitted Supervisor Arcularius from our discussion since she is no longer in office.

OHV users are unpredictable, there could be an unexpected high concentration along certain popular roads, causing noise impacts that could be significant.

The EIR proposes the following mitigation measures which, if adopted, would reduce noise impacts to less than significant: where combined-use routes are located less than 100 feet from sensitive receptors, including residences, speeds would be reduced to 25 mph; the project applicant would conduct ongoing community outreach to the public, local OHV groups and OHV-related businesses to improve awareness regarding aftermarket exhaust systems (e.g., mufflers), noise reduction and the importance of staying on designated routes; and a noise-monitoring program would be implemented for routes located within 100 feet of sensitive receptors to determine whether noise exceeds acceptable standards over a 24-hour period, in which case OHVs would be banned on those routes.

The EIR also states that, without mitigation, the impacts of air pollutant emissions (particularly dust) would be potentially significant. The EIR proposes the following mitigation measures which, if adopted, would reduce the impacts to less than significant: the speed limit for combined-use routes that have unpaved intervals within 0.5 miles of any residence would be decreased to 15 miles-per-hour and knock-off grates would be installed at points where unpaved roads transition to paved roads in order to remove dust from vehicle tires and minimize the accumulation of dirt on the paved roads on routes located within .5 miles of a combined use route.

ANALYSIS

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has interest specified in Section 87103. A public official has a financial interest in a government 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).) Recently revised Regulation 18705.2(a) provides a list of circumstances under which a government decision will have a reasonably foreseeable material financial effect on real property in which a public official has an interest.

The supervisors are public officials and will be making and participating in making a government decision when they consider the approval of the proposed project and other decisions regarding the project. Under the facts provided, Supervisors Tothoroh, Pucci, Kingsley and Griffiths have an interest in real property. As discussed below, Supervisor Tillemans does not have an interest in real property.

Supervisor Tothoroh

Supervisor Tothoroh owns real property located 2.5 miles from the nearest proposed combined use route. At this distance, the property will not be affected by OHV use of combined use routes and Supervisor Tothoroh does not have a conflict of interest in decisions regarding the routes.

Supervisor Pucci: Supervisor Pucci owns a residence located approximately .4 miles from the nearest proposed combined use route. There are intervening residences located between his property and the route that would buffer any potential noise from increased traffic. Also, the proposed route does not go through his residential neighborhood, but follows a paved route entirely through an open area and turns away from his neighborhood before reaching the street that is adjacent to the neighborhood. Given the facts presented that relate to potential adverse factors involving noise and dust, we cannot see how either of these factors would affect his property value. Accordingly, Supervisor Pucci does not have a conflict of interest in decisions regarding the combined use routes.

Supervisor Kingsley: Supervisory Kingsley owns a residence located approximately .4 miles from the nearest proposed combined use route. His property is separated from the route by Interstate Highway 395, which is a heavily traveled highway that serves as the principal highway for Inyo County and the primary means of travel into and out of the County. Thus, any noise, air or traffic impacts of the proposed route would be insubstantial compared to the greater impacts of the existing highway. Accordingly, Supervisor Kingsley does not have a conflict of interest in decisions regarding the combined use routes.

Supervisor Griffiths: Supervisor Griffiths owns real property located 502 feet from the nearest proposed combined use route. You have asked that, for purposes of our analysis, we treat his property as if it were located 500 feet from the route. Given the recent changes to the materiality standards for real property, including the modification of the 500 foot rule and the elimination of the one penny rule, there is no difference between how we would analyze a case involving a property located 502 feet away from the subject route than we would one located 498 feet away. The only difference is that the requestor is still presumed to have a conflict of interest within 500 feet unless he or she receives an opposite finding by advice letter.

Supervisor Griffiths' property is located one block from the proposed route along E. Line Street. E. Line Street is the major east-west route through Bishop. It intersects with Hwy. 395, located a few blocks east of Supervisor Griffiths' property. The intersection is the center of downtown Bishop. The route begins/ends at this intersection and proceeds east from there. No portion of the route enters Supervisor Griffiths' neighborhood, so there will not be any effect on traffic on his street. Additionally, you have indicated that his street is already heavily used, in part, by serving as an access road for residents in the neighborhood to the airport, the center of town and recreational areas. This, combined with the fact that the route is along the major east-west arterial for Bishop, indicates that the effects will have little, if any, impact on traffic or intensity of use on nearby streets that would affect his property.

The only other factors mentioned in the regulation that might be applicable are changes in noise and air quality. The impacts of these changes are addressed in the EIR.

According to the EIR, increases in noise levels would be minor. The EIR also states that even though there may be unexpected high concentration of use of several popular streets that could have significant noise impacts, adoption of mitigation measures would reduce these impacts to less than significant. These measures include reduced speed limits on routes located

less than 100 feet from residences and use of public outreach to educate and instruct users on the use of aftermarket exhaust systems and the importance of staying on designated routes. Another mitigation measure, we believe, assures that any increased noise will have little or no impact on nearby residences. It requires that a noise-monitoring system be installed and, if noise that exceeds acceptable standards over a 24-hour period is detected, OHVs will be banned on those routes. Additionally, the route begins/ends at the nearby downtown intersection, so there will not be impacts ordinarily associated with through traffic.

The EIR also states that the impacts of air pollutant emissions (particularly dust) would be potentially significant unless certain mitigation measures are adopted. Here, however, Supervisor Griffiths' property is located several miles from the nearest unpaved combined use route. Thus, it is unlikely that there will be any changes in air quality on his property.

Under the facts provided, we find that it is not reasonably foreseeable that the location of this route will have any material financial effect on the market value of the property. Accordingly, Supervisor Griffiths is not prohibited from participating in decisions regarding the proposed routes.

Supervisor Tillemans: A public official has an interest in real property in which he or she holds a leasehold, beneficial or ownership interest, or option to acquire such an interest, that is located in the official's jurisdiction if the official, or a member of his or her immediate family, owns the interest, directly or indirectly, and the fair market value of the interest is \$2,000 or more. (Section 82033.) You have indicated that Supervisor Tillemans does not have an ownership or leasehold interest in the subject property, which is located along one of the proposed routes. Rather, the property is owned by his father. "Immediate family" means an official's spouse or dependent children under the Act. (Section 82029.) Thus, Supervisor Tillemans' father is not "immediate family." Accordingly, Supervisor Tillemans does not have an interest in the property that could give rise to a conflict of interest under the Act.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl