



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 17, 2015

Councilmember Mike Tracy  
City of Ventura  
501 Poli Street  
Ventura, CA 93001

Re: Your Request for Advice  
**Our File No. A-15-129**

Dear Mr. Tracy:

This letter responds to your request for advice regarding your duties as a Ventura city councilmember under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note, we do not provide advice to third parties about another person's duties under the Act. (Regulation 18329.)

Moreover, 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.

### QUESTION

Do the Act's conflict of interest provisions require you to disqualify yourself from participating in decisions relating to a new residential development located less than 500 feet from two properties you own?

### CONCLUSION

Based on the scope of the entire project (including the proposed development and open space) it is reasonably foreseeable that the government decisions will have a material financial effect on your properties.

### FACTS

You are a member of the Ventura City Council. The city council will be considering a proposal is to build 55 luxury single family homes on approximately 40 acres of residentially zoned property and creation of approximately 175 acres as permanent open space on the hillside in

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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.

midtown Ventura. This property is known as Mariano Ranch. The proposed development will occur directly above an existing hillside neighborhood.

You and your spouse own two properties in the immediate neighborhood: your personal residence (406 Lincoln Drive) and a residential rental (1800 Sunset Drive), that are less than 500 feet from the proposed development.

You stated that the proposed homes will be larger, of better design, higher quality than most of the existing homes in the area. While most of the existing homes are custom homes, these homes were built 30-50 years or more ago. You are a licensed realtor and you believe that if the development is approved and built, existing homes in the area will benefit from appreciating valuations based on the following:

- The new development will likely result in infrastructure improvements that will benefit a majority of the homes in the immediate neighborhood. The proposed development is on property contiguous with and above the existing hillside neighborhood. Currently, in a heavy rainstorm Lincoln Drive and Catalina Street experience excessive water runoff, at times overflowing curbs and gutters. This water is coming off the undeveloped land on which the new homes will be built. The new development will require storm water system improvements, likely to the benefit of many of the property owners below.
- It is your understanding that the developer has offered to work with the existing home owners on a mechanism to underground some of the existing above ground utilities.
- In addition, it is possible that the proposed development will impact traffic on several streets in the immediate neighborhood. For example, currently Poli Street is closed between Fairview and Catalina at Ventura High School on school days. This causes traffic to route around the closure, often onto the residential streets of the hillside neighborhood. The proposed development could result in increased traffic on these streets, especially during the days and times of the Poli Street closure. Conversely, traffic mitigation measures imposed on the new development could potentially relieve some of the traffic issues already experienced on these hillside streets.

We have also received the following facts from the city attorney in connection with the project.

- The developer intends to build fifty-five single and two-story luxury homes ranging from 3,750 to 4,500 square feet on approximately 11,000 square foot lots.
- Contiguous to the north of the project site, the developer has also acquired roughly 175 acres of undeveloped land, which will be dedicated to the City as open space with some trail development.
- In connection with the development application, the developers stated: “[T]he Project is planned in a clustered fashion on approximately 40 acres at the southern portion of the 215 acre Project Site, and will guarantee no disturbance to a majority of the Project Site while

designating approximately 175 undisturbed acres as permanent open space that will remain undeveloped in perpetuity and available for conservation and recreation. It is notable that the proposed open space is currently designated as residential under the General Plan (Neighborhood Low) and Zoning Code (R-1-7). Accordingly, any public access that currently occurs is on private, residentially designated property that could be developed at any time. The Specific Plan would designate this property as open space and would provide trailhead and parking for public access, creating a new opportunity for permanent conservation and recreation that wouldn't otherwise be available.”

- The main access to the Project is proposed via improvements to Hall Canyon Road with emergency access provided at Lincoln Drive. This proposal is based on the narrow nature of the current road system in the Hobson Heights neighborhood along with the existence of many single family homes there that would be impacted by locating the main access to the Project at Lincoln Drive. Instead, the Project proposes to fully improve Hall Canyon Road to provide a unique sense of arrival for the Project and to orient circulation along a route where there are far fewer existing residences. No Project access from Erburu is proposed other than for underground utilities and infrastructure. New trips are preliminarily estimated at 41 AM peak hour and 55 PM peak hour trips per day . . . .”

You stated that you believe you can set your personal financial interests aside and evaluate the proposal with an open mind. Having said that, the fact that your property is in the neighborhood that stands to benefit (or experience the negatives) of the proposed development clearly creates the perception for the public that you might be swayed by personal interests.

## ANALYSIS

In 1974, the voters enacted the Political Reform Act. In adopting the Act, the voters recognized that conflicts of interest in governmental decision-making by public servants posed a significant danger. Section 81001, which sets forth Findings and Declarations of the original Proposition 9 provides:

“The people find and declare ...:

“(a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

“(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them....”

The Act not only prohibits actual bias in decision-making but also “seeks to forestall ... the appearance of possible improprieties.” “[T]he whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed.” (*Witt v. Morrow* (1977) 70 Cal. App. 3d 817 at 822–823)

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 a financial 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.)

Of the interests recognized under the Act, the interests you have described are an interest in real properties and an interest in a source of income (your tenant) as a source of income. (Section 87103(b) and (c).)

*Foreseeability and Materiality; Real Property*

For a financial interest that is not explicitly involved in a decision (such as your residence and the tenant), Regulation 18701(b) provides:

“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 absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

Regulation 18702.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property is material. As relevant to your facts, the financial effect will be material if the decisions:

1. “Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel.” (Regulation 18702.2(a)(3).)
2. “Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.” (Regulation 18702.2(a)(10).)
3. “Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18702.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property.

4. “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.” (Regulation 18702.2(a)(12).)

Currently, the impacts of the proposed development have not been officially evaluated. However, with the limited information we have at this early stage the effect on your properties appear to be material. While the magnitude of the development is modest (55 homes), the subject of the governmental decision is actually over forty-acres of currently vacant property in the hillsides within the City. According to the application, the project will “guarantee no disturbance to a majority of the Project Site while designating approximately 175 undisturbed acres as permanent open space that will remain undeveloped in perpetuity and available for conservation and recreation.”

“It is notable that the proposed open space is currently designated as residential under the General Plan (Neighborhood Low) and Zoning Code (R-1-7). Accordingly, any public access that currently occurs is on private, residentially designated property that could be developed at any time. The Specific Plan would designate this property as open space . . . .”

This is a significant change to a large area near your properties and would cause a reasonably prudent person to be concerned that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property. Consequently, you have a conflict of interest and may not participate in the decision.<sup>2</sup>

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: John W. Wallace  
Assistant General Counsel,  
Legal Division

JWW:jgl

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<sup>2</sup> Because we have concluded a conflict of interest exists with respect to your properties, we need not analyze your other interests at this time. Please note that when a public official who holds an office specified in Section 87200 (such as a city councilmember) has a conflict of interest in a decision noticed at a public meeting, then he or she must: (1) immediately prior to the discussion of the item, orally identify each type of economic interest involved in the decision as well as details of the economic interest on the record of the meeting; (2) recuse himself or herself, and (3) leave the room for the duration of the discussion and/or vote on the item. (Section 87105; Regulation 18707.)