



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 18, 2015

Jeff Ginsburg
Councilmember
City of Redondo Beach
100 Paseo De La Playa
Redondo Beach, CA 90277

Re: Your Request for Informal Assistance
Our File No. I-15-138

Dear Mr. Ginsburg:

This letter responds to your request for advice regarding your duties as a Redondo Beach City Councilmember pursuant to the 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. Because your questions are general in nature and you have not identified all your interests in question, we are treating your request as one for informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTIONS

1. May you participate in the City Council’s discussions and decision relating to certifying the CenterCal Project’s (the “Project”) Environmental Impact Report (“EIR”)?
2. May you participate in the City Council’s discussions and decision with respect to other decisions relating to the Project, including potential decisions to approve infrastructure improvements and entitlements?

CONCLUSIONS

1. Due to your numerous interests near the Project site, you may not participate in the City Council’s discussions and decision relating to certifying the Project’s EIR.

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.

2. Based on Regulation 18706, you may participate in the decisions in which you do not have a conflict of interest, so long as the decisions (a) will not result in a reopening of, or otherwise financially affect, the certification decision and (b) you do not have an independent financial interest in these decisions. However, based on your numerous interests near the Project site, many decisions regarding the Project will be interlinked and you will be disqualified with respect to all the interlinked decisions.

FACTS

The "Project": According to June 19, 2014, Notice of Preparation/Notice of Initial Study/Notice of Scoping Meeting:

“Project Description: The proposed project ... would revitalize approximately 35.6 acres of land and water by redeveloping and expanding local and visitor serving commercial uses, enhancing public access and recreational opportunities and facilities, and improving the aging support infrastructure and parking facilities.

“The project also proposes substantial improvements in site connectivity, public access and public views to and along the waterfront. The proposed project is specifically designed as a new waterfront village to reconnect the Pier and Harbor area with resident and visitor serving uses. As such, the proposed project seeks to integrate the best of the public and private needs and interests in a revitalized village providing broad coastal access and enjoyment. The proposed project is designed to reconnect the public with the waterfront and to help resolve a long-standing separation of uses and disconnection from the community.

“The main components include proposed demolition of approximately 221,347 square feet of existing structures, demolition/renovation of the existing pier parking structure, and construction renovation of up to approximately 523,732 square feet (289,906 square feet net new development) to include retail, restaurant, creative office, specialty cinema, a market hall, and a boutique hotel. The proposed project includes public recreation enhancements such as a new boat launch ramp, improvements to Seaside Lagoon, new parking facilities, and pedestrian and bicycle pathways. Site connectivity would be improved by the establishment of a new pedestrian bridge across the Redondo Beach Marina Basin 3 entrance and the reconnection of Pacific Avenue.

“Based on the findings of the Initial Study prepared in conjunction with the NOP, the City has identified potential significant impacts for the following topics: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology/Water Quality, Noise, Public Services, Recreation, Transportation/Traffic and Utilities/Service Systems.”

Prior to your election to the City Council in May 2013, the City selected CenterCal Properties as the preferred developer of the waterfront and harbor revitalization. The Project is still

in the environmental review stage and the City Council has not taken formal action to entitle or authorize the Project to proceed to actual development. In the future, the City Council will likely vote on whether or not to certify the Project's EIR. Additionally, the City Council may also confront decisions to authorize improvements to City infrastructure intended to serve the Project and to approve various entitlements to facilitate Project development.

The City Council is comprised of an at-large elected Mayor and five Council Members elected from each of five City Council Districts. You represent Council District 1, which is located in the southwest portion of the City. You stated that Redondo Beach is approximately 6.209 square miles in size and home to approximately 66,748 people according to the 2010 census. District 1 has the following characteristics: 2,976 properties; 3,894 property owners; 557 multi-family properties with up to 26 units; 108 multi-family properties with ten or more units; and 52 multi-family properties with twenty or more units.

Your Interests. You have the following interests:

- A 24-unit residential apartment building located at 504 Esplanade Way, approximately 1,108 feet from the Project's southern border;
- A commercial building located at 2512 Artesia Boulevard, approximately 13,208 feet from the Project's western border;
- A large commercial office/retail building located at 1611 S. Catalina Avenue, approximately 6,894 feet from the Project's southern border; and
- A personal residence located at 100 Paseo de la Playa, approximately two miles from the southern border of the Project.

You own these properties through corporations in which you own at least a 10-percent interest, and which you direct and control. Your interest in each property is more than \$2,000. The business properties are occupied by rent-paying residential and commercial tenants. Through your ownership in the corporations, you have received more than \$1,000 from the individual tenants in these buildings over the past twelve months.

- NSI Corporation is a broker/property management Chapter S corporation owned 50/50 by you and your son.
 - Over the prior twelve months, NSI Corporation received the following income from GGE Management (a business owned and controlled by your father) for various property management, brokerage, and maintenance services: August 11, 2014, \$67.95; October 8, 2014, \$915.00; and October 17, 2014, \$117.95. You have no ownership interest in GGE Management.
 - Over the prior twelve months, NSI Corporation received the following payments from Kobe Group (a business owned and controlled by your father). The Kobe Group owns the master lease on City-owned property located at 211 Yacht Club Way which is used for mixed residential and commercial uses adjacent to the beach.

It is roughly 2,600 feet from the northern border of the Project. North Harbor Drive connects the Yacht Club Property with the Project, as well as a series of publicly accessible parking lots, walkways, and businesses. The payments were in connection with fire alarm and security services for the Yacht Club Property: September 10, 2014, \$190; and October 8, 2014, \$903.84. The Yacht Club Property currently has an outstanding balance in the amount of \$234.00 with NSI Corporation.

ANALYSIS

Section 87100 prohibits public officials from participating in governmental decisions in which they have a financial interest. Section 87103 provides that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the interests specified in Section 87103. You have a variety of interests specified in Section 87103 as follows.

1. Any business entity in which you have a direct or indirect² investment worth \$2,000 or more (Section 87103(a)) or a business entity in which you are a director, officer, partner, trustee, employee, or hold any position of management. (Section 87103(d).)

Section 82005 defines a “business entity” as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. Pursuant to this broad definition the following entities are considered “business entities” in which you have an investment:³

- The business that owns and operates the 24-unit residential apartment building located at 504 Esplanade Way;
- The business that owns and operates the commercial building located at 2512 Artesia Boulevard;
- The business that owns and operates the large commercial office/retail building located at 1611 S. Catalina Avenue.
- NSI Corporation.

2. Any real property in which you have a direct or indirect interest worth \$2,000 or more. (Section 87103(b).)

² “For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.” (Section 87103.)

³ You also noted your father owned certain businesses that will be discussed in connection with income received by your businesses. Your father’s investment in the businesses is not imputed to you for conflict of interest purposes.

Section 82033 defines “interest in real property” to include “any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.” Based on this definition, your real property interests are as follows:

- The 24-unit residential apartment building located at 504 Esplanade Way;
- The commercial building located at 2512 Artesia Boulevard;
- The large commercial office/retail building located at 1611 S. Catalina Avenue; and
- Your personal residence located at 100 Paseo de la Playa.

3. Source of income aggregating \$500 or more in value provided or promised to or received by you within 12 months prior to the time when the decision is made. (Section 87103(c).)

Each of your businesses is a source of income to you as well as an investment interest. We do not relist those businesses here because we listed them under the “investment” discussion.

In addition, income of an individual includes a pro rata share of the income of a business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82030(a).) Thus, customers or clients of all your businesses who are sources of income to your businesses are also considered sources of income to you to the extent that your share of the income will be \$500 or more. For example, GGE and Kobe Group are sources of income to you because they have been sources of income to NSI, a business of which you own 50 percent. The Kobe Group (a business owned and controlled by your father) owns the master lease on City-owned property located at 211 Yacht Club Way, which is used for mixed residential and commercial uses adjacent to the beach and is roughly 2,600 feet from the northern border of the Project.

You have not identified the following persons, but these persons also are presumably sources of income to you and may also be the basis of a conflict of interest:

- Tenants of the 24-unit residential apartment building located at 504 Esplanade Way;
- The lessee of the commercial building located at 2512 Artesia Boulevard;
- The tenants or lessee of the large commercial office/retail building located at 1611 S. Catalina Avenue.

Foreseeability

The standard for foreseeability differs depending on whether or not an interest is explicitly involved in the decision. None of your interests appear to be explicitly involved in the decisions. However, we do not know the identity of the persons that lease property from you. If any of them are explicitly involved in the decision by virtue of being a named party, the subject of the decision, or owning property that may be subject to the decision as set forth in Regulation 18702.2(a)(1)-(6), the financial effect on those interests would be foreseeable.

For purposes of this analysis we assume that your interests will not be explicitly involved in the decisions on the Project.⁴ In these cases, the foreseeability standard that applies is: “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.”

Materiality

Investments in Business Entities: Regulation 18702.1(b) provides that an effect on a business entity (including a business entity that is a source of income)⁵ is material as follows:

“[The] financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in the price of the business entity’s publicly traded stock, or the value of a privately-held business entity.”

Examples of decisions that may affect the value of a privately-held business entity include decisions to:

- Make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives.
- Decide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project.

The Project would be considered a major development. It will affect a 35.6 acre area of the City’s waterfront and harbor and develop the area to include a boutique hotel, market hall, specialty cinema, retail/restaurant, and creative office space. The Project would also include the City’s Seaside Lagoon (a salt water swimming and pleasure facility), and a new small-craft boat launch.

⁴ If our assumptions are incorrect, then our advice would differ and the conclusion contained in this letter cannot be relied upon. You should request additional advice.

⁵ Regulation 18702.3 provides that for income received by the official or his or her spouse for goods and services provided in the ordinary course of business, including a salary, the financial effect is material if the business is: (1) a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or (2) the business will be financially affected under the standards as applied to a financial interest in Regulation 18702.1.

You have four businesses in which you have an investment that could be impacted by the decision to certify the EIR for the project.

- The business that owns and operates the 24-unit residential apartment building located at 504 Esplanade Way, approximately 1,108 feet from the Project's southern border;
- The business that owns and operates commercial building located at 2512 Artesia Boulevard, approximately 13,208 feet from the Project's western border;
- The business that owns and operates the large commercial office/retail building located at 1611 S. Catalina Avenue, approximately 6,894 feet from the Project's southern border; and
- NSI Corporation owned 50/50 by you and your son.

While your commercial property on Artesia Boulevard seems sufficiently distant to be buffered from the effects of the Project, two of your businesses operate property within about a mile from the Project. One corporation operates a 24-unit residential apartment building located at 504 Esplanade Way, approximately 1,108 feet from the Project's southern border, and one operates a large commercial office/retail building located at 1611 S. Catalina Avenue, approximately 6,894 feet from the Project's southern border.

A prudent person with sufficient information would find that it is reasonably foreseeable that the Project's financial effect (whether negative or positive) would contribute to a change in the value of the privately-held business entities that operate these properties. For example, the residential rentals may be more desirable once the Project is complete. The same might be true about the commercial properties that your business leases out.

We also note that NSI is doing business with the Kobe Group which operates businesses within 2,600 feet of the Project. And by the nature of NSI's services provided to the Kobe Group, NSI itself may gain additional business from the Project. Therefore, the effects on NSI are also a basis for a conflict of interest.

Therefore based on your investment interests you will have a conflict of interest in the certification decisions.⁶

Real Property: We have already determined that your real property is not explicitly involved in the decision under Regulation 18702.2(a)(1) through (6). Regulations 18702.2(a)(7) – (8) would also most likely not apply to the property since the properties are outside the project area. Thus, the tests that must be considered are whether the decision will:

- Change the highest and best use of the real property in which the official has an interest;

⁶ Because we concluded you have a conflict of interest based on your investments, we only briefly analyze your real property interests and effects on your sources of income. If your situation with your investments changes please feel free to contact us for further advice.

- Change the character of the parcel of real property by substantially altering traffic levels 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;
- 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.

While your personal residence and the commercial property on Artesia Boulevard seem sufficiently distant to be buffered from the effects of the project, the residential apartment building located at 504 Esplanade Way and the commercial office/retail building on Catalina Avenue could be affected by the Project. Thus, a conflict of interest exists based on your real property interests.

Sources of Income: For income received by the official or his or her spouse for goods and services provided in the ordinary course of business, including a salary, the financial effect is material if:

“(1) The source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or

“(2) The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively; or

“(3) The source is a nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2; or

“(4) The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1.”

While the lessees of your commercial property on Artesia Boulevard may not be affected by the Project, tenants and lessees at 504 Esplanade Way and the commercial office/retail building on Catalina Avenue could be affected by the Project (whether positively or negatively). Moreover, of even more significance, Kobe Group owns the master lease on City-owned property located at 211 Yacht Club Way which is used for mixed residential and commercial uses adjacent to the beach and is roughly 2,600 feet from the northern border of the Project.⁷

⁷ 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.)

Public Generally

- “A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.”
- A significant segment of the public is at least 25 percent of: (1) all businesses or nonprofit entities within the official's jurisdiction; (2) all real property, commercial real property, or residential real property within the official's jurisdiction; or (3) all individuals within the official's jurisdiction.
- “Jurisdiction” means the jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected.

Thus, if the decision will affect a significant segment of the public is at least 25 percent of: (1) all businesses or nonprofit entities within your district; (2) all real property, commercial real property, or residential real property within your district; or (3) all individuals within your district, and not have a unique effect on you, you could participate despite the foreseeable and material financial effects on your property. However, based on the extent of your holdings in and around the Project, you will be uniquely affected and the exception would not apply.

Segmentation

You also asked if you may participate in the City Council's discussions and decision with respect to other aspects of the Project, including potential decisions to approve infrastructure improvements and entitlements. Generally, the conflict of interest rules of the Act are applied on a decision-by-decision basis. For example, even related decisions can be analyzed separately. In cases where an official has a conflict of interest with one decision, he or she is not disqualified from other decisions so long as they are not inextricably interrelated. Regulation 18706 provides the method for segmentation of a governmental decision:

“(a) An agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all of the following conditions apply:

“(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) 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.

“(b) For purposes of this regulation, decisions are ‘inextricably interrelated’ when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

Based on Regulation 18706, you may participate in the decisions in which you do not have a conflict of interest, so long as the decisions (1) will not result in a reopening of, or otherwise financially affect, the certification decision and (2) you do not have an independent interest in these decisions.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

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

JWW:jgl