



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 28, 2015

Heather Phillips
County Planning Commissioner
1406 Thompson Avenue
Napa, CA 94558

Re: Your Request for Advice
Our File No. A-15-164

Dear Ms. Phillips:

This letter responds to your request for advice regarding your duties as a Napa County Planning Commissioner under 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 Section 1090.

QUESTION

May you make, participate in making, and influence planning commission decisions related to the Yountville Hill Winery Project (the "Project"), despite owning a business and property within 2,000 feet of the project site?

CONCLUSION

You may make, participate in making, and influence planning commission decisions related to the "Project," since the decisions will not materially affect your business or property.

FACTS

You and your husband (as limited partners) have the following interests:

- A 1/3 ownership interest in property located at 7349 - 7357 St. Helena Highway, Napa, CA 94599. The property is five parcels totaling approximately 153 acres and has been recently appraised at \$20,650,000.

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.

- You and your husband also own a 1/3rd interest in the farming operations element of Phillips Family Farming, LLC, which is dedicated to the cultivation of wine grapes on the property. Approximately 40% (71 acres) is dedicated to the cultivation of wine grapes.
- Additionally, Phillips Family Farming LLC consists of a winemaking entity, of which you hold, jointly with your husband, a 2/3 interest. With combined net profits on an annual basis of approximately \$200,000, the estimated value the business is \$2,000,000.

In the future, you expect a project, the Yountville Hill Winery Project, to come before the planning commission. The project is 2,000 feet from your property and is proposed for a 10.9-acre site. Access to the property is via an existing driveway from State Route 29, which will be moved to the south of its current location. The project site is bound by vineyard and open space to the north and south, open space and a single-family residence to the east, and SR 29 to the west with Cosentino Winery, Mustard Grill Restaurant, Oleander House Bed & Breakfast, and three residences on the west side of SR 29. The project site is located in the Agricultural Preserve (AP) zoning district.

The project proposes to construct:

- A new winery with an annual production capacity of 100,000 gallons on a 10.9-acre site in unincorporated Napa County.
- The project would include construction of two winery buildings with approximately 14,000 square feet (sf) of floor area, including a 1,200 sf reception building and a 12,800 sf winery administration and visitor building.
- Unenclosed terraces (9,600 sq), wine cave areas (35,590 sf), on-site parking spaces (37), on-site winery and domestic wastewater treatment system, landscaping, driveway improvements, and signage.
- Tours and tastings would occur by appointment only for a maximum of 420 visitors per week for a minimum of two years after the winery has been granted a certificate of occupancy (Phase I). Thereafter, the Applicant shall not increase visitation to the Phase II level until there has been an administrative review of use permit compliance by staff with a report to the Planning Commission certifying that the applicant complies with the terms of this permit (First Compliance Certification). For a minimum of 12 months after the First Compliance Certification, winery visitation is limited to a maximum of 700 visitors/week (Phase II). Thereafter, applicant shall not increase visitation to the Phase III level of 1,000 visitors/week until (a) the winery has produced a minimum of 50,000 gallons of wine and (b) there has been a second administrative review of use permit compliance and a second report to the Planning Commission certifying that the applicant complies with the terms of this permit (Second Compliance Certification). Once the Second Compliance Certification has been approved by the Planning Commission, winery visitation is limited to a maximum of 1,000 visitors/week.

- The winery would employ up to 19 full-time staff with established hours of operation from 6 a.m. to 3 p.m. (production staff), 8 a.m. to 5 p.m. (administrative staff) and 9:30 a.m. to 6:30 p.m. (hospitality staff) daily. Winery visitation hours (tours and tastings) would vary throughout the year. Between March and October, visitation hours would be between 10 a.m. and 6 p.m. daily. Operation hours at the winery administration and visitor building would be reduced during November through February. During these four months, tours and tastings would end at 4 p.m. with all hospitality staff leaving at 4:30 p.m. and offices closing at 5 p.m.

Currently the project site contains an existing garage, shed, paved driveway, septic tank and system, utility poles, and fountain and an existing 4,750-square-foot residence, all of which are proposed for demolition.

Napa County has determined in a preliminary review that implementation of the proposed Yountville Hill Winery Project would result in no significant environmental impacts with mitigation.

On September 14, 2015, you provided the following additional facts:

- You do not operate a winery/production facility on the property. The core of your business is grape growing. You have 70 acres under vine and work with six Vintner partners. A small amount of the grapes you grow (under 10%) go into a label that you bottle and produce at a facility in Calistoga.
- Your primary access to the property is off Highway 29, where a center turn lane already exists in front of your driveway.
- The County Viewshed Ordinance provides that the height of the structure is twenty-four feet or less as measured from finished grade along fifty percent or more of the longest wall as viewed from any designated public road. Highway 29 is a roadway that triggers the Viewshed Ordinance. The planting plan took into consideration that less than 50% of the project could be visible from Highway 29 at any time.
- The proposed project would be visible from portions of your vineyards, and from one of the houses.

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. You and your husband have a 1/3rd interest in the farming operations of Phillips Family Farming, LLC and a 2/3 interest in the winemaking entity. Both interests are presumably worth \$2,000 or more.

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

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, you have a real property interests based on your 1/3 ownership interest in property located at 7349 - 7357 St. Helena Highway, Napa, CA 94599. The property is five parcels totaling approximately 153 acres and has been recently appraised at \$20,650,000.

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. 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 both 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. You have not identified any sources of income other than your businesses, so we do not analyze this economic interest (except with respect to your businesses) any further.

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. In this case, the foreseeability standard that applies is: “A financial effect need not be likely to be

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.)

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/Business Entities as Sources of Income: Regulation 18702.1(b) provides that an effect on a business entity (including a business entity that is a source of income)³ 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 (as pertinent to your facts) include decisions to:

- Increase or decrease the amount of competition in the field in which the business entity is engaged;

While the approval of any winery in Napa would create increased competition in the wine industry generally, you stated that you do not operate a winery/production facility on your property. You stated that the core of your business is grape growing. Only a small amount of the grapes you grow (under 10%) go into a label that you bottle and produce at a facility in Calistoga. And while any new wine sellers will compete with existing wine sellers, the market is already substantial and diverse. Introduction of a new label is unlikely to have a material financial effect on the value of your wine business, other than a minimal financial effect shared by the entire industry.⁴ Finally, your facts indicate you will not directly compete with the new winery for winetasting customers. Thus, they are not directly competing for business in the area. Even if it were, the minimal increase to competition in an area already full of competing businesses would appear to have a nominal effect on your business.

- 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; or

While the project is significant, it does not appear to be a “major project” as contemplated by the regulation. The project encompasses a 10.9 acre site on which two winery buildings will be built. Tours and tastings would occur by appointment only for a maximum of 420 visitors per week

³ 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.

⁴ Regulation 18702(b) cautions that the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant.

for a minimum of two years after the winery has been granted a certificate of occupancy. Thereafter, the applicant cannot increase visitation until there has been an administrative review of use permit compliance by staff with a report to the Planning Commission certifying that the applicant complies with the terms of this permit. The winery would operate from 6 a.m. to 3 p.m. (production staff), 8 a.m. to 5 p.m. (administrative staff) and 9:30 a.m. to 6:30 p.m. (hospitality staff) daily. Winery visitation hours (tours and tastings) would vary throughout the year. Between March and October, visitation hours would be between 10 a.m. and 6 p.m. daily. Operation hours at the winery administration and visitor building would be reduced during November through February. During these four months, tours and tastings would end at 4 p.m. with all hospitality staff leaving at 4:30 p.m. and offices closing at 5 p.m.

Moreover, Napa County has determined in a preliminary review that implementation of the proposed Yountville Hill Winery Project would result in no significant environmental impacts with mitigation. Therefore, it does not appear that the decisions will have a foreseeable and material financial effect on your business. We also note there are several wineries operating in that area currently.

Real Property: 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 your property is outside the project area. Thus, the tests that must be considered are whether the decision will:

- 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;

Your primary access to the property is off Highway 29, where a center turn lane already exists in front of your driveway. The County's preliminary assessment is that the Project will not substantially alter existing traffic. However, these facts may change as the process moves forward.

With regard to the view, the proposed project would be visible from portions of your vineyards, and from one of the houses. This change in the view would appear not to be so significant as to affect the value of your property.

- 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.

The project is 2,000 feet from your property. Access to the property is via an existing driveway from State Route 29, which will be moved to the south of its current location. The project site is bound by vineyard and open space to the north and south, open space and a single-family residence to the east, and SR 29 to the west with Cosentino Winery, Mustard Grill Restaurant, Oleander House Bed & Breakfast, and three residences on the west side of SR 29. The facts do not

suggest that the governmental decision is of such a nature that its reasonably foreseeable effect would influence the market value of your property.

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

Sincerely,

Hyla P. Wagner
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl