



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 25, 2018

Michael C. Ghizzoni
Santa Barbara County Counsel
105 E. Anapamu Street, Suite 201
Santa Barbara, CA 93101

Re: Your Request for Advice
Our File No. A-18-008

Dear Mr. Ghizzoni:

This letter responds to your request for advice on behalf of Santa Barbara County Supervisor Peter Adam regarding the conflict of interest provisions of the Political Reform Act (the "Act")¹ and Government Code Section 1090. Please note that we do not advise on any other area of law, including Public Contract Code or common law conflicts of interest. Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

In regard to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General's Office and the Santa Barbara County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTION

Under the Act and Section 1090, may Supervisor Adam participate in the Santa Barbara County Board of Supervisor's decisions regarding the Cat Canyon Oil Fields Project and pipeline franchise agreement, given that Supervisor Adam owns more than a ten-percent ownership interest in the business entity that owns the property adjacent to the project?

CONCLUSION

Yes. As discussed below, Supervisor Adam does not have a disqualifying conflict of interest in the decisions under the Act because there is no foreseeable material effect on the Supervisor's interests. Additionally, Section 1090 does not restrict Supervisor Adam from participating in the decisions.

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.

FACTS

Cat Canyon Oil Fields ("Cat Canyon") is located approximately seven miles southeast of Santa Maria in northern Santa Barbara County. Cat Canyon is a state-designated oil field with boundaries that are defined by the California Department of Conservation, Division of Oil, Gas and Geothermal Resources. Cat Canyon covers roughly 26,440 acres and currently includes approximately 1,600 active and idle oil wells. Cat Canyon has been used for oil production since approximately 1908.

ERG Operating Company, LLC ("ERG") has applied for a Petroleum Production Plan and a companion Development Plan (collectively the "Project"). The Project would increase the number of oil and natural gas wells and related infrastructure on property that ERG currently owns or leases in Cat Canyon. All proposed Project facilities would be located within an approximately 73-acre portion of ERG's 8,054-acre property holdings. Water for steaming would come from brine water produced and treated by ERG's Cat Canyon field operations. In addition to oil production operations, the Project property is used for cattle grazing, dry farming, and beekeeping. The Project area is located in a canyon, surrounded by rolling hills and some steeper slopes.

The Project shares a property line with an adjacent parcel for approximately 4,340-feet (the "Parcel"). PDK Farming, LLC ("PDK") has owned the Parcel since 2015 and, when purchased, the Parcel included an easement through which ERG runs a pipeline. Supervisor Peter Adam has an ownership interest of \$2,000 or more, and greater than ten-percent in PDK. Supervisor Adam also receives income from PDK, which exceeds \$500 annually.

For many years, cattle grazed on the Parcel. Currently, approximately eighty acres of the Parcel nearest to Cat Canyon are being converted to grow wine grapes. The Parcel is not used for oil or gas drilling or production. The Parcel is separated from Cat Canyon by steep slopes that limit the views from the Parcel of the current Cat Canyon facilities and the Project additions. Of the additional well pads proposed for the Project, none would be visible from the Parcel, and the nearest new well pad would be located approximately 2,400-feet away from the Parcel. The Parcel's water source comes from groundwater wells, which are not affected by the proposed Project. ERG anticipates trucking the equipment and parts needed to build the Project into Cat Canyon from Highway 101 and Clark Avenue/Dominion Road, and there is no anticipated effect on traffic at the Parcel. No new public roads are proposed as part of the Project.

Land uses surrounding the Project area include oil and gas production, livestock grazing, and agriculture. The Project area is within the Santa Barbara County Agricultural II ("AG-II") zone district. The Santa Barbara County Land Use Development Code designates oil and gas extraction as an allowed use within the AG-II zone district. The proposed Project does not include changes in existing land use designation or zone district.

In addition to the Project, ERG applied for a public franchise agreement for the Foxen Petroleum Pipeline ("FPP"). On March 11, 2015, the County Planning Commission approved the FPP, which allows ERG to construct a new approximately 2.9-mile long crude oil pipeline system. The system will carry crude oil from ERG's Cat Canyon oil producing facility to the existing Sisquoc Pump Station and Conoco-Phillips common-carrier pipeline. The proposed pipeline and

public franchise agreement is anticipated to run under County roads and will be located approximately four to five miles away from the Parcel.

ANALYSIS

The Political Reform Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental 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).) Section 87103 identifies interests from which a conflict of interest may arise, including:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- An interest in real property in which the officer has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

In addition, Section 87103 provides:

"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."

For purposes of the Act's conflict of interest provisions and based on the fact provided, Supervisor Adam has interests in PDK as a business entity and source of income. He also has an interest in the real property held by PDK.

Foreseeability and Materiality

The standard for foreseeability varies depending on whether an interest is explicitly involved in the decision.² For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can

² An official's financial interest is explicitly involved in a governmental decision if the interest is a named party in, or subject of, the decision. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, or if the decision affects a real property interest described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).) Supervisor Adam's interests are not explicitly involved in the decisions at issue.

Real Property

Regulation 18702.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As pertinent to the provided facts, the financial effect will be material if the decision:

“(10) Would change the character of the parcel of real property 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.

[¶]...[¶]

“(12) 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.”

The Project does not propose changes to existing land use designation and/or zone district. As proposed, the Project does not anticipate affecting the Parcel's groundwater wells. The requisite equipment and materials needed to build the Project will be trucked into ERG's property by roads located on the opposite side of the Parcel, and are not anticipated to affect traffic at the Parcel. No new public roads are proposed as part of the Project. The Project area is surrounded by rolling hills and steep slopes, providing the Parcel with limited views of the current facilities and the proposed Project. Moreover, the pipeline franchise agreement involves property that is four to five miles from the Parcel. Under the facts provided, it does not appear that the proposed Project or the pipeline franchise agreement would change the character of the Parcel including the Parcel's traffic levels, views, uses, or other factors in a manner that would affect the Parcel's market value.

Business Entities and Source of Income

Regulation 18702.1(b) provides that a 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.³

The Project anticipates affecting a relatively small portion of ERG's property holdings at Cat Canyon and does not appear to change the Parcel's current uses, traffic levels, water sources, or views. The pipeline franchise agreement involves property that is four to five miles from the Parcel.

³ Under Regulation 18702.3, the materiality standard for a source of income that is a business entity is the same as for an interest in the business entity itself.

Neither the Project nor the pipeline franchise agreement appears to inhibit or alter PDK's current use of the Parcel. Cat Canyon, including the proposed Project site, has been utilized for oil and gas production for over one hundred years and PDK has utilized the Parcel for farming and livestock grazing since purchasing the Parcel. Based upon the facts provided, decisions regarding the Project or the pipeline franchise agreement would not likely contribute to a change in PDK's value.

Accordingly, decisions regarding the Project and pipeline franchise agreement do not appear to have a reasonably foreseeable material effect on Supervisor Adam's interests in the Parcel or PDK and he is not prohibited from taking part in the decisions under the Act.

Section 1090

Generally, section 1090 prohibits public officers, while acting in their official capacities from making contracts in which they have a financial interest. The prohibition applies regardless of whether the terms are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.)

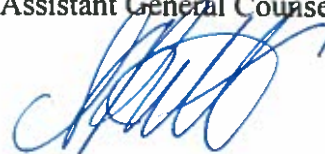
ERG has applied for a Petroleum Production Plan and a companion Development Plan as well as a public franchise agreement. Even if the plans and agreement constitute contracts, the pertinent question is whether Supervisor Adam has a financial interest in the contracts. Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) Financial interest includes both direct and indirect interests in a contract. (*Thomson v. Call, supra*, 38 Cal.3d at p. 645.)

We have previously found that an official does not have an interest in a contract involving a highway project for purposes of Section 1090 merely because the official has a property or a business adjacent to or in close proximity to the project. (*Borsden* Advice Letter, No. A-17-059.) Similarly, the Parcel's close proximity to the Project and ERG's pipeline franchise property does not alone establish a financial interest in any contract with ERG. Moreover, there is no reason to anticipate from the facts provided that Supervisor Adam will profit from a contract with ERG.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Sara K. Puricelli
Counsel, Legal Division

SKP:jgl