



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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July 13, 2020

Tom McCune  
Belmont City Councilmember  
2456 Hallmark Drive  
Belmont, CA 94002  
[mccuneto@gmail.com](mailto:mccuneto@gmail.com)

Re: Your Request for Advice  
**Our File No. A-20-074**

Dear Mr. McCune:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> 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. 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.

### QUESTION

Do the Act’s conflict of interest provisions prohibit you, Belmont City Councilmember Tom McCune, from making, participating in making, or attempting to use your official position to influence governmental decisions relating to the ongoing operation of Crystal Springs Cross Country Running Course (the “Crystal Springs”) given that your residence is located less than 500 feet from Crystal Springs?

### CONCLUSION

Yes. The Act’s conflict of interest provisions prohibit you from taking part in governmental decisions relating to the ongoing operation of Crystal Springs, which is located less than 500 feet from your residence, because it is reasonably foreseeable that those decisions would have a material financial effect on your real property interest in your residence under Regulation 18702.2(a)(7).

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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.

### **FACTS AS PRESENTED BY REQUESTER**

Crystal Springs is a cross country running course located just outside of, and immediately adjacent to, the eastern border of the City of Belmont. The access gates to Crystal Springs, however, are all located on Belmont city streets or in Belmont city parks.

The real property underlying Crystal Springs is owned by the San Francisco Public Utilities Commission (the “SFPUC”). The College of San Mateo (the “College”) has managed the course and cross country meets at the course pursuant to a memorandum of understanding (the “MOU”) between the SFPUC and the College. Because the College track team no longer uses Crystal Springs and is concerned about the cost and potential liabilities associated with continuing to manage the facility, the College recently announced its intent to withdraw from the MOU.

You are a Belmont City Councilmember, and your residence is located within 500 feet of a portion of Crystal Springs. The Belmont Heights Civic Improvement Association (the “Association”) is a neighborhood association that represents the homes in the City that border Crystal Springs, and you are a member of the Association’s Board of Directors.

With respect to Crystal Springs, you state that the Association would like the course to remain open for recreational walking and jogging and for small, local cross country meets, and would also like improvements to be made to alleviate major traffic and parking problems created within the neighborhood by large, regional cross country meets at Crystal Springs.

The Association has asked the City to consider taking on the College’s responsibilities under the MOU. If the City does so, it is possible the City could become the primary manager of Crystal Springs with the Association assisting the City with some functions on a voluntary basis. The City has not acted upon the Association’s request to date.

The City may establish a City Council subcommittee to meet with the Association and other interested parties, including school districts and running clubs, to discuss possible options for Crystal Springs. You state that it has been suggested that you should serve on this subcommittee.

### **ANALYSIS**

The Act’s conflict of interest provisions prohibit a public official from making, participating in making, or attempting to use his or her official position to influence a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests. (Sections 87100 and 87103.) An official’s financial interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103. The facts presented indicate that you have the following interests with respect to decisions relating to Crystal Springs:

- An interest in your residential real property located within 500 feet of Crystal Springs, assuming you have an interest in that property worth \$2,000 or more. (Section 87103(b).)

- An interest in your personal finances and those of immediate family members. (See Section 87103.)

### Foreseeability and Materiality

Regulation 18701(a) provides that a governmental decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an 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 interest. In addition, an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, and provides that the effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Regulation 18702.2(a)(7) provides that a decision's reasonably foreseeable financial effect on an official's real property interest is material if the decision: "Involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property."

Crystal Springs is located less than 500 feet from the property line of your residence, and decisions relating to Crystal Springs may determine whether it will continue to be used as a cross country running course. The facts presented do not indicate that the decisions at issue would not have any measurable impact on your residence. To the contrary, you state that major traffic and parking problems are created within the neighborhood of your residence by large, regional cross country meets at Crystal Springs, and the decisions at issue could preclude meets of that size or result in Crystal Springs no longer being used as a cross country running course. Therefore, those decisions would have a measurable impact on your residence based on the facts presented.

Accordingly, the Act prohibits you from making, participating in making, or attempting to use your official position to influence decisions relating to Crystal Springs, including decisions before the proposed City Council subcommittee on potential futures for Crystal Springs.<sup>2</sup>

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<sup>2</sup> Regulation 18702.5(a) sets forth the materiality standard applicable to a decision's effect on an official's interest in his or her personal finances. Regulation 18702.5(c), however, provides that if the decision would have a reasonably foreseeable financial effect on the official's real property interest, any related effect on the official's personal finances is not considered separately, and the effect is only analyzed under Regulation 18702.2. Because we have already determined that decisions relating to Crystal Springs would have a disqualifying effect on your real property interest in your residence, we do not further analyze those decisions' effect on your interest in your personal finances.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Matthew F. Christy*

By: Matthew F. Christy  
Counsel, Legal Division

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