



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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November 20, 2020

Roxanne Diaz  
Indio City Attorney  
RWG Law  
350 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071-3101

Re: Your Request for Advice  
**Our File No. A-20-113**

Dear Ms. Diaz:

This letter responds to your request for advice on behalf of City of Indio City Councilmember Lupe Ramos Amith 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

Does the Act prohibit the Councilmember from taking part in governmental decisions relating to a proposed 103-unit residential development project (the “Ventana Project” or “Project”) located between 500 and 1,000 feet of the Councilmember’s residence?

### CONCLUSION

Yes. The Act prohibits the Councilmember from taking part in decisions relating to the Ventana Project because it is reasonably foreseeable that those decisions would have a material financial effect on the Councilmember’s financial interest in her residence.

### FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Indio and the authorized representative of Indio City Councilmember Lupe Ramos Amith. The Indio City Council will soon consider governmental decisions relating to Ventana Project, a proposed 103-unit residential development project on three

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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.

vacant parcels totaling 45.17 acres. The Project Site is located within an urban area of the City, on Avenue 50 between Jefferson Street and Madison Street.

The Project is comprised of two distinct planning areas: Planning Area 1, the non-gated portion of the Project, and Planning Area 2, the gated portion of the Project. Planning Area 1 would contain 23 smaller lots, with a minimum lot area of 7,000 square feet. Residential units in Planning Area 1 would include both one- and two-story single-family homes of up to 3,100 square feet in size with a maximum building height of 28 feet.

Planning Area 2 would contain 80 larger lots and is further divided into Planning Area 2A and Planning Area 2B. Planning Area 2A would contain 51 lots, with a minimum lot area of 11,000 square feet and a maximum residential unit size of 4,100 square feet. Planning Area 2B would contain 28 lots, with a minimum lot area of 13,500 square feet and a maximum residential unit size of 4,600 square feet. Residential units in Planning Area 2 would be limited to a maximum building height of 24 feet. The largest single-family home within the Project offered by the developer would be 3,528 square feet in size, and the Project's overall density would be 2.3 residential units per acre.

The Project Site is bounded by low-density residential development to the south and a mix of vacant lands and low-density residential development to the north, east, and west. Structures on those surrounding properties are primarily one- and two-story single-family homes similar to the residential units proposed by the Project. The Project Site is currently designated "Desert Eagle Neighborhood" in the City's 2040 General Plan which permits residential development of up to one residential unit per acre. The applicable zoning authorizes low density residential developments of one and two residential units per acre.

Governmental decisions relating to the Project and its associated applications and proposals will first be considered by the City's Planning Commission, which will make recommendations on those decisions. The City Council will then take up those decisions. In order to obtain the City's authorization to proceed with the Project, the developer is pursuing all of the following:

- A General Plan Amendment to amend the land use designation for the Project Site to "Suburban Neighborhood" which permits a residential density of up to eight residential units per acre.
- A Specific Plan to establish the development standards for the Project Site.
- A Tentative Tract Map for the Project Site.
- Design Review of the Project.
- A Mitigated Negative Declaration for the Project.
- A Mitigation Monitoring and Reporting Program for the Project.

The Councilmember owns a one-story 3,150 square foot single-family home on a 22,216 square foot lot (just over one-half acre) located on Gila River Street within the Desert River Estates gated community. The Councilmember's real property also contains a garage and swimming pool

and is enclosed by block walls with enhanced landscaping. The boundaries of Desert River Estates are completely enclosed by split-faced block walls with robust landscaping including trees and shrubs in a larger-than-typical landscape setback. Ingress and egress for Desert River Estates and the Councilmember's real property is a gated entrance located on Avenue 49.

All or a portion of five lots within Planning Area 2B of the Project, in the northwest corner of the Project Site, are located within 500 to 1,000 feet of the Councilmember's real property within Desert River Estates. The remainder and majority of the Project Site is located more than 1,000 feet from the Councilmember's real property.

The Project would be accessible from two driveways on Avenue 50 between Jefferson Street and Madison Street. One driveway would be for primary access and the other would be for emergency access. The Project's smaller lots in Planning Area 1 would be clustered by the driveways on Avenue 50, and the Project's larger lots in Planning Area 2, the gated portion of the Project, would be located in the Project's interior or on its periphery. The larger lots in Planning Area 2 would only be accessible via the Project's interior streets because that portion of the Project would be gated.

As part of the environmental review of the Project, a traffic study was conducted to evaluate the Project's traffic impacts. The traffic study analyzed the intersections at Jefferson Street and Avenue 49, Madison Street and Avenue 49, Jefferson Street and Avenue 50, and Madison Street and Avenue 50. The traffic study considered the directional distributions of projected trips resultant from the Project and determined those trips would all be on Avenue 50, with no impact to Avenue 49. The City's Traffic Engineer has confirmed that the traffic study does not foresee additional traffic on Avenue 49 due to the Project. Because all parking for the Project would be contained within the Project Site, and because Desert River Estates is a gated community, there is no anticipated change to or impact on parking at the Councilmember's real property due to the Project.

The environmental review of the Project included a noise study which analyzed the Project's potential effect on ambient noise levels in the Project's vicinity due to Project-generated vehicular traffic. The noise study concluded that the Project would have no impact on the existing noise levels along Avenue 49. The environmental review also included an initial study of the Project's potential air quality impacts that determined the Project would have no impact or less than significant impacts.

The City contains approximately 31,930 existing housing units, its population is approximately 87,000 people, and the addition of 103 housing units would constitute a 0.0032-percent increase in the total housing units within the City.

## 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 interests that may give rise to a disqualifying conflict of interest are identified in Section 87103. Based on the facts

presented, Councilmember Ramos Amith has the following interests with respect to decisions relating to the Ventana Project:

- An interest in her residential real property located within Desert River Estates under Section 87103(b).
- An interest in her personal finances and those of immediate family members under 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 which affects that interest as described in Regulation 18702.2(a)(1)-(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."

Under Regulation 18702.2(a)(8), the reasonably foreseeable financial effect of a decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision involves property located more than 500 but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

Under the facts provided, it does not appear that the Ventana Project will affect the current use of the Councilmember's residence or that it will significantly affect traffic levels, intensity of use, or parking availability experienced at the Councilmember's residence. However, we must consider whether the decisions regarding development of currently vacant property in close proximity to the official's residence may potentially affect the market value of the property.

We have advised on multiple occasions, that the Act's conflict of interest provisions prohibit a city councilmember from taking part in decisions relating to a proposed large residential development project located on undeveloped real property between 500 and 1,000 feet from the councilmember's residence because it is reasonably foreseeable that those decisions would have a

material financial effect on the market value of the councilmember's real property interest in a residence under Regulation 18702.2(a)(8)(E).<sup>2</sup>

In this case, decisions relating to the Ventana Project involve the construction of a large residential development project, consisting of 103 single family homes, located between 500 and 1,000 feet from the Councilmember's residence on currently vacant property. As planned, the Project will eliminate 45.17 acres of vacant property in favor of other high-end and low-density residential properties, which would possibly improve the market value of nearby residences. Just as significantly, the Project all but ensures that the currently vacant property is not available for other projects that may be more detrimental to the market value of nearby property, including other commercial purposes or high-density housing. Because the Project has the potential to protect or increase the market value of property within a close proximity to the Project, it is reasonable foreseeable that decisions will have a material financial effect on the official's residence under Regulation 18702.2(a)(8)(E).

Accordingly, the Act's conflict of interest provisions prohibit the Councilmember from taking part in decisions relating to the Project and require the Councilmember to recuse from those decisions pursuant to Regulation 18707.<sup>3</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Brian Lau  
Assistant General Counsel

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<sup>2</sup> *Wisinski* Advice Letter, No. A-20-085 [councilmember disqualified from decisions relating to proposed residential project consisting of 510 units on undeveloped real property located 703 feet from councilmember's residential real property interest]; *Minner* Advice Letter, No. A-20-072 [councilmember disqualified from decisions relating to proposed mixed-use project including up to 620 residential units on largely vacant real property located 939 feet from councilmember's residential real property interest].)

<sup>3</sup> We do not analyze the effect of decisions relating to the Project on the Councilmember's interest in her personal finances and those of immediate family members because we have already determined that the Councilmember is prohibited from taking part in decisions relating to the Project.