



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

November 17, 2020

Chad E. Roberts
2150 River Plaza Dr, Suite 450
Sacramento, CA 95833

Re: Your Request for Advice
Our File No. A-20-124

Dear Mr. Roberts:

This letter responds to your request for advice on behalf of the Placer Vineyards Development Group, LLC (Development Group) regarding Section 84308 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.

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

Is the development of Placer Vineyards Park and Recreation District still a proceeding “pending before” the Placer County LAFCO, such that Section 84308(d) is applicable to the Development Group, given that the no “certificate of completion” has been filed yet?

CONCLUSION

Because the terms and conditions that must be satisfied prior to the filing of the certificate of completion do not appear to be “purely ministerial,” Section 84308(d) remains applicable to the Development Group, and the Group and its members may not make contributions of more than \$250 to Placer County LAFCO officers prior to the filing of the certificate of completion.

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 AS PRESENTED BY REQUESTER

The Development Group is the proponent of the Placer Vineyards Specific Plan project in Placer County. At its May 13, 2020 hearing, the Placer County Local Agency Formation Commission (LAFCO) considered and approved a proposal to form the Placer Vineyards Park and Recreation District (District) by adopting LAFCO Resolution 2020-02 (Resolution), subject to certain terms and conditions.

In its discussion and analysis of the proposed District, the Placer County LAFCO wrote:

The proposed District will provide recreation and park services (including organized recreational programs) and maintenance. The development and level of services will be determined by the District's Board of Directors in a phased approach, as well as the level and range of services.

[¶]

The Placer Vineyards Specific Plan Neighborhood Park and Community Fee Programs will fund construction of District facilities and other improvements. The Board of Supervisors formed Community Facilities District (CFD) No. 2018-3 (Placer Vineyards-Park, Open Space, and Landscaping) to fund District services and maintenance as further set forth in Exhibit A to Resolution 2020-03. Proposed phasing of the development of the District, as well as revenues and expenditures, are detailed in the attached Plan for Services. Depending on market conditions, final buildout is estimated to be between 2030 and 2050.

Estimated CFD amounts for 2019-2020 are

- *Low Density Residential - \$615.41 per unit*
- *Low Density Residential (Age-Restricted) - \$400.77 per unit*
- *Medium Density Residential - \$529.55 per unit*
- *Medium Density Residential (Affordable) - \$265.87 per unit*
- *High Density Residential - \$443.70 per unit*
- *High Density Residential (Affordable) - \$222.94 per unit*
- *Commercial/Mixed Use - \$443.70 per unit*
- *Commercial/Mixed Use (Affordable) - \$222.94 per unit*
- *Nonresidential - \$1,458.11 per acre*

The Rate and Method of Apportionment for CFD No. 2018-3 includes annual inflationary adjustments and an option to tax undeveloped property if it is determined that there are insufficient revenues generated from the varying land uses to support the District's costs.

In adopting the Resolution, the Placer County LAFCO adopted as a finding of fact that “the District will have sufficient revenues to carry out its purposes as provided in California Public Resources Code section 5782.7.”

The Placer County LAFCO approved the proposal for the formation of the District, subject to certain terms and conditions, including that “[t]he District’s facility development will be financed through the future Placer Vineyards Neighborhood Park and Community Fee Programs and the District’s services will be funded through the CFD and user fees. The Neighborhood Park and Community Park Fee Programs must be formed prior to recordation of the first small lot subdivision map within the Territory.” An additional condition of approval required that “Placer County shall provide the Executive Officer evidence of sufficient revenues for the operation of the first year of the District prior to recordation of the Certificate of Completion.” These conditions are restated in the resolution as requiring that “[p]rior to filing the certificate of completion, the Executive Officer shall require written evidence from Placer County of sufficient revenues for the operation of the first year of the District and the approval of the Placer Vineyards Neighborhood Park and Community Park Fee Programs” In a follow-up email, you stated that you are not aware of any specific definition of “sufficient revenues,” but believe the specific criterion is that projected revenues will be equal to or exceed the projected costs for the District’s first year.

The Resolution approving formation of the District further stated, “[u]pon satisfaction of all conditions of this approval, the Executive Officer is authorized to prepare and execute a Certificate of Completion in accordance with California Government Code section 57200.”

The Placer County LAFCO approved an extension of three additional years to file the Certificate of Completion, such that it is possible the Certificate of Completion may not be filed until 2024. A public protest hearing was conducted by the executive officer on July 1, 2020.

In a follow-up email, you clarified that the Placer County LAFCO includes members of the Placer County Board of Supervisors, and the Placer County Board of Supervisors’ consideration of the Placer Vineyards Neighborhood Park and Community Fee Programs is currently scheduled for December 1, 2020.

ANALYSIS

Section 84308(d) provides:

A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

Under Regulation 18438.2, a proceeding involving a license, permit or other entitlement for use is “pending before” an agency:

- (1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;
- (2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision; and
- (3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

(Regulation 18438.2(b).)

Under Section 57200(a), “[t]he executive officer shall prepare and execute a certificate of completion and shall make the filing required by this division upon all of the following:

- (1) The completion of all commission actions pursuant to Part 3 (commencing with Section 56650), including the time period allowed to file and act upon requests for reconsideration pursuant to Section 56895.
- (2) The satisfaction of any conditions contained in the commission resolution making determinations that are required to be completed prior to filing a certificate of completion.
- (3) The completion of all proceedings pursuant to Part 4 (commencing with Section 57000).

In *Wright* Advice Letter, No. A-16-055, we advised that the formation of the District at issue here constitutes an entitlement for use and is subject to the provisions of Section 84308 because the Development Group would derive financial benefits from, and would be directly affected by, the decision. The present question is whether Section 84308 remains applicable to the Development Group now that the Placer County LAFCO has already adopted the Resolution and held a public protest hearing. The answer to that question will ultimately depend on whether the special district formation proceeding is still “pending before” the Placer County LAFCO.

For the special district formation proceeding to be considered “pending before” the Placer County LAFCO, each of the three prongs of Regulation 18438.2(b), noted above, must be satisfied. Regulation 18438.2(b)(1) and (2) are easily satisfied, given that the special district formation process has commenced and been submitted to the Placer County LAFCO, which is required to make decisions approving the special district before it can officially formed. As noted, Regulation 18438.2(b)(3) requires that any decision before an agency “not be purely ministerial.” If the only remaining decisions that will come before the Placer County LAFCO are purely ministerial, then the proceeding is no longer “pending before” the agency for purposes of Section 84308.

Previously, the Commission has advised that in a situation in which a public official has “little discretion” and there is “clear objective criteria” for a decision, “the officer would be making a ministerial decision . . .” (*Greenwald* Advice Letter, No. I-93-220.) Similarly, in the context of conflicts of interests, and determining if an official has taken part in a governmental decision, the

Commission has previously advised that “an action is ministerial, even if it requires considerable expertise and professional skill, if there is no discretion as to the outcome (or at least, no discretion with respect to any part of the result which could influence the governmental decision in question).” (*Kaplan* Advice Letter, No. A-82-108.)

With respect to Section 57200(a)(1), it appears that all commission actions pursuant to Part 3 (commencing with Section 56650) have been completed. Part 3 pertains to proceedings for a change of organization or reorganization, which may be initiated by petition or by resolution of application. (Section 56650; see also Section 56859 [proceedings for formation of a special district].) Here, the Placer County LAFCO has adopted a resolution making a determination approving the proposed formation of the District, subject to certain terms and conditions, and the time for the submission of a request for reconsideration has passed. (See Sections 56880, 56895(b).)

Similarly, with respect to Section 57200(a)(3), it appears that all proceedings pursuant to Part 4 (commencing with Section 57000) have also been completed. Part 4 pertains to proceedings conducted by the LAFCO after adoption of a resolution making a determination, i.e., public protest hearings. (See Section 57000, et seq.) A public protest hearing was held on July 1, 2020. (See Section 57008.)

Section 57200, subdivisions (a)(1) and (a)(3) having been satisfied based on the facts provided, the Placer County LAFCO’s executive officer will be required to prepare and execute a certificate of completion and make the appropriate filing once subdivision (a)(2)—the fulfillment of conditions contained in the commission resolution—is satisfied. Thus, for purposes of determining whether Section 84308 remains applicable to the Development Group and its members, the relevant question becomes whether any of the conditions contained in the commission resolution involve decisions before the Placer County LAFCO that are not “purely ministerial.”

The Resolution requires the establishment of the Placer Vineyards Neighborhood Park and Community Park Fee Programs prior to recordation of the first small lot subdivision map and prior to the executive officer executing a certificate of completion. The imposition of a parks and recreation facilities fee in Placer County is a decision that must be approved by the Placer County Board of Supervisors. (See Placer County Code Sections 15.30.070, 15.34.040.) However, as you have clarified, the Placer County LAFCO includes members of the Placer County Board of Supervisors. Although the Placer County Board of Supervisors will be faced with the decision of whether to approve the Fee Programs and the Placer County LAFCO is technically faced with determining whether the Fee Programs have been established, interpreting the decision before the Placer County LAFCO as “purely ministerial,” such that a proceeding might be considered no longer “pending before” the LAFCO, would ignore the fact that the underlying non-ministerial decision (whether to approve the Fee Programs) is still before certain members of the LAFCO, albeit in their capacities as County Supervisors. For this reason, we consider the term and condition of establishing the Placer Vineyards Neighborhood Park and Community Park Fee Programs prior to execution of a certificate of completion to be a not purely ministerial decision.

The Resolution also requires “written evidence from Placer County of sufficient revenues for the operation of the first year of the District and the approval of the Placer Vineyards Neighborhood Park and Community Park Fee Programs” The Resolution does not specifically define “sufficient revenues,” but the Placer County LAFCO has already made a finding of fact,

based on the executive officer's report, that the District "will have sufficient revenues to carry out its purposes as provided in California Public Resources Code section 5782.7." Additionally, you have stated that while you are not aware of any specific definition of "sufficient revenues," you believe the specific criterion is that projected revenues will be equal to or exceed the projected costs for the District's first year. However, based on the facts provided, the requirement of presenting "written evidence" to the Executive Officer suggests subjective consideration and weighing of that evidence for the purpose of proving the fact of sufficient revenues. Moreover, in other contexts, the Executive Officer is statutorily required to perform comprehensive fiscal analysis, which further suggests that, in this context, the actions are not ministerial, as the Executive Officer, with such expertise, appears to be in a position requiring an evaluation of the revenues as opposed to tasked with merely accepting the evidence as provided. (See Section 56800, 56804 [pertaining to incorporations and disincorporations].) Accordingly, and in the absence of any express definition or objective criteria to the contrary, the Executive Officer's consideration of written evidence of sufficient revenues for the operation of the first year of the District is not a purely ministerial decision. The proceeding is still "pending before" the Placer County LAFCO and Section 84308(d) remains applicable. Therefore, the Development Group (and members thereof) may not contribute more than \$250 to officers of the Placer County LAFCO.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:aja