



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

June 16, 2021

Manu Koenig
Supervisor, First District
County of Santa Cruz
701 Ocean St, Room 500
Santa Cruz, CA 95060

Re: Your Request for Advice
Our File No. I-21-077

Dear Mr. Koenig:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your question seeks general guidance and is not limited to a specific governmental decision, we are treating your request as one for informal assistance.²

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 you have a conflict of interest in decisions concerning the Santa Cruz Branch Rail Line (“Rail Line”), given that you own a condominium unit located within approximately 1,046 feet of the Rail Line property?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

To the extent that the decisions solely affect the clearly defined RTC rail corridor, these decisions would involve property more than 1,000 feet from your condominium and are thus presumed not to have a material financial effect on your real property interest. This presumption may be rebutted if clear and convincing evidence indicates the decision would have a substantial effect on your property. However, we caution that each decision must be reviewed on a case-by-case basis, and you should seek further assistance in the event that such decisions arise.

FACTS AS PRESENTED BY REQUESTER

You serve as the First District Supervisor on the Santa Cruz County Board of Supervisors, as well as a member of the governing body of the Santa Cruz County Regional Transportation Commission (“RTC”).

The Rail Line is a 32-mile continuous rail corridor traversing the County of Santa Cruz. The RTC owns the Rail Line. The RTC purchased the rail corridor in 2012 and regularly makes land use decisions regarding use of the rail corridor, such as selecting operators and voting on various aspects of proposed uses (e.g., use of the property as a trail, a train, or a combination of both). The Board of Supervisors is also occasionally called upon to take legislative or quasi-judicial actions related to the Rail Line, such as executing or terminating crossing agreements, permitting development, etc.

You own a condominium unit located in Santa Cruz. Your condominium unit is approximately 1,046 feet from the outside edge of the Rail Line property.

ANALYSIS

The Act’s conflict of interest provisions prohibit 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. (Section 87100.) 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, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) Section 87103 defines a financial interest to include any real property in which the public official has a direct or indirect interest worth \$2,000 or more. You have a financial interest in the condominium unit identified above.

Where the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) Based on the facts presented and the nature of the decisions at issue, your real property would not be the subject of decisions concerning the Rail Line itself.³

³ However, we note that if a decision involves the adoption of a development plan or criteria applying to the Rail Line area, and your property is included within the boundaries of the plan area so that the criteria apply to your property, your property would be explicitly involved in the decision and the effect of the decision would be presumed to be foreseeable.

Under Regulation 18701(b), you will have a financial interest in any decisions concerning the Rail Line if there is a realistic possibility the decisions will have a material financial effect on your real property interest.

Decisions related to the RTC rail corridor would involve property more than 1,000 feet from your condominium unit⁴ and are thus presumed not to have a material financial effect on your real property interest. (Regulation 18702.2(b).) This presumption may be rebutted if clear and convincing evidence indicates the decision would have a substantial effect on your property. So long as the decisions concern Rail Line property located 1,000 or more from your residence, and there are no indications that the decisions would have a substantial effect on your property, you would not have a financial interest in the Rail Line decisions.

However, we caution that each decision must be reviewed on a case-by-case basis and we can only provide general and informal assistance based upon the facts provided. If you have questions regarding your potential disqualification under the Act or the applicability of the above standards with respect to any particular decision before the Board of Supervisors or the RTC in the future, please feel free to contact the FPPC for additional advice describing the specific decision at issue.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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⁴ Regulation 18702.2(e)(4) provides that the real property in which an official has an interest “does not include any common area as part of the official’s ownership interest in a common interest development...”