



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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The advice contained in this letter is **RESCINDED**, as the material facts on which the letter's conclusion is based are no longer accurate. This advice may no longer be relied upon under the provisions of Section 83114(b).

February 26, 2021

John Corrigan
Commissioner
City of Los Altos Parks and Recreation Commission ("PARC").
P.O. Box 9
Los Altos, CA 94023

Re: Your Request for Advice
Our File No. A-21-008

Dear Mr. Corrigan:

This letter responds to your request for advice regarding the conflict of interest provisions 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

Do the conflict of interest provisions of the Act prohibit your participation in Parks and Recreation Commission decisions regarding improvements to the Redwood Grove Nature Preserve, including the Halsey House, given that you own real property located between 500 to 1,000 feet from the Preserve?

CONCLUSION

No. You may take part in a decision on the proposed park improvements because the evidence indicates that these improvements would have no measurable impact on your 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.

FACTS AS PRESENTED BY REQUESTER

You are currently serving as a commissioner on the City of Los Altos Parks and Recreation Commission (“PARC”). The PARC is evaluating an “Open Space” project of the “2020-2021 Work Plan.” The “Open Space” project requires PARC to make a recommendation to the Los Altos City Council for improvements that include Shoup Park, Redwood Grove Nature Preserve, and the historic Halsey House located within the Preserve. Shoup Park is a separate parcel from the Redwood Grove Nature Preserve parcel, but connected by a walking trail. The improvements being considered are as follows:

- Redwood Grove: landscaping improvements to the collection of redwood trees with a bridge, creek, and, possibly, improvements to a small, vacant caretaker home.
- Halsey House: This is an historic home built in 1923 that is currently in disrepair and not in use. The Historical Commission and the PARC are considering options to restore, replace, or demolish this house and convert the land to open space.

Your residence is located on University Avenue without any view of the Redwood Grove Nature Preserve or Halsey House and with multiple homes and foliage separating your home from these venues. Your residence is located 867 feet from the Preserve. In a subsequent email, you state that the parcel-to-parcel distance from your property to Shoup Park at the nearest point is 1,209 feet.

You state that while Halsey House and Redwood Grove Nature Preserve have attracted visitors, the numbers have never had any observable or identifiable impact on traffic. You state that it is possible to live on University Avenue and not even know that the nature preserve is down the street due to the absence of traffic or crowds. The improvements to these resources are contemplated to be restorative and not introduce any feature that would attract crowds or traffic. Redwood Grove is likely to experience minimal improvements as it consists of a collection of redwood trees with a bridge, creek, and small, vacant caretaker home. As noted above, none of these improvements would be visible from your residence.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests is any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Section 87103(b).)

Foreseeability

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. 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, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.” Your real property interest is not explicitly involved in the decisions at issue, and the latter standard applies.

Materiality

Applicable to these facts, Regulation 18702.2(a)(8) provides that the reasonably foreseeable financial effect of a governmental 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 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value.

Here, you have noted that the PARC will be considering landscaping improvements to the existing collection of redwood trees located in Preserve, and options to restore, replace, or demolish the currently unused and historic Halsey House, which is located within the park property. Based on the facts provided, it is evident that the proposed park improvements are restorative in nature and thus would not change the development potential, income producing potential, or highest and best use of your property. With regard to the property's character, the distance and physical barriers (multiple homes and foliage separating your home from these venues), lack of any view of the areas for improvement from your property, and the fact that the improvements are restorative indicate that the decisions would not impact traffic levels, intensity of use, parking, view, or privacy.

Based on the facts provided, it is not reasonably foreseeable that the decisions identified will have material financial effect on your interest in your residence. Accordingly, you are not prohibited from taking part in the decisions.

We note that no facts were provided regarding the improvements to Shoup Park, located 1200 feet from your residence, nor was the Shoup Park improvement decisions part of your request for advice. The applicable materiality standard for decisions affecting a parcel over 1,000 feet from your real property presumes there would not be a material financial effect on your interest, absent clear and convincing evidence that the decision would have a substantial effect on your property.

(Regulation 18702.2(b).) However, we express no opinion regarding your involvement in decisions involving the park as we do not have sufficient facts to make a determination.

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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