



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

April 22, 2022

Carrie Hunt  
Planning Commissioner  
City of Healdsburg  
1337 Creekside Court  
Healdsburg, California 95448

Re: Your Request for Advice  
**Our File No. A-22-025**

Dear Ms. Hunt:

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

Does the Act prohibit you from taking part in Planning Commission decisions concerning an affordable housing project given your employer is actively bidding on construction jobs for home sites between 500 and 1000 feet from the project and your position requires you to find new project opportunities and secure new construction contracts?

### CONCLUSION

Yes. The Act prohibits you from taking part in decisions concerning the affordable housing project because it is reasonably foreseeable that the project will have a material financial effect on your business and source of income interests in your employer, and because of the impermissible nexus between the decisions and income you receive from your employer.

### FACTS AS PRESENTED BY REQUESTER

You serve as a Planning Commissioner for the City of Healdsburg. You are employed by Sonoma Hill Builders (“SNH”), a residential general contractor, as the Director of New Business

---

<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 18104 through 18998 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.

Development (sales and networking). Your core responsibilities are to find new project opportunities and secure new construction contracts for SNH, which is actively bidding for construction jobs in the Montage residential area and likely will be awarded some of them. The build sites are between 500 and 1000 feet from the Saggio Hills Affordable Housing development project (the "Project") that is under review by the Planning Commission. There are 35 home sites available in the Montage area and several of the home sites will have a direct view of the Project.

The Project will cover about 12 acres with 110 units, comprised of multiple buildings. It is your understanding that there will be 15 individual structures, some two stories tall, but most 3 stories tall. There will be large areas paved for uncovered parking. Amenities will include a central community building with a community room and property management offices, and outdoor amenities including community gardens/farm, picnic areas, playgrounds, plazas, pedestrian and bike paths, and hiking trails connecting to the broader trail network.

As a salesperson in your company, you earn commissions on top of your base salary for opportunities that you identify and secure. The Montage residential development is one of the contracts you will earn commissions on, and you will likely be involved with for years to come. You are concerned that the look of the project has the potential to impact the value of the lots/houses in the Montage area, which may then financially impact your company and your commissions. Moreover, you are concerned that clients may select not to build at all if they determine they do not like the view of the Project from their homesite.

You hope to have clients execute build contracts that will eventually pay you a commission. If your clients do not like the look of the affordable housing project within their view corridor, they may choose not to build and therefore you would not earn commissions from their project. You state that the Project could impact SNH by increasing or decreasing its annual gross revenue by more than \$1,000,000.

The planning commission decisions regarding the Project will involve not only the look of the Project but whether it should move forward at all.

## ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in 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 distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) An official's financial interests, which may give rise to a disqualifying conflict of interest under the Act, are identified in Section 87103. The following interests are relevant to your situation:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

Here, as an employee of SNH, you have both a business entity and source of income interest in your employer. In addition, an official always has an interest in his or her personal finances and those of immediate family members. (See Section 87103.)<sup>2</sup>

### *Foreseeability and Materiality*

Regulation 18701(a) provides that a 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 as a named party in, or the subject of, the decision. 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 including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). The facts indicate your employer, SNH, is not explicitly involved in the Project decisions, as it is not named in the decisions nor is it the subject of the decisions. Regulation 18701(b) sets forth the foreseeability standard applicable here, for a decision's effect on an official's interest that is not explicitly involved in the decision – the effect of the decision on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

### *Business as a Source of Income*

For a business entity not explicitly involved in the decision, Regulation 18702.1(a)(2) provides that the decision's reasonably foreseeable financial effect is material if the decision may result in an increase or decrease of the business's annual gross revenues, or the value of the business's assets or liabilities, in an amount equal to or more than \$1,000,000, or five percent of the business's annual gross revenues and the increase or decrease is at least \$10,000.

Regulation 18702.3 sets forth the materiality standards with respect to an official's source of income interest. Regulation 18702.3(a)(4) provides that a decision's reasonably foreseeable financial effect on an official's source of income interest in a business entity is material if the business entity "will be financially affected under the materiality standards of Regulation 18702.1," discussed above. Additionally, the "nexus" standard in Regulation 18702.3(b) provides that "[a]ny reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal."

---

<sup>2</sup> Under Regulation 18702.5(c), an effect on an official's personal finances is not considered separately than an effect on the official's interest in a business entity or real property. Accordingly, we do not analyze the effect on your personal finances further and apply Regulation 18702.1 to determine whether the Act's conflict of interest provisions prohibit you from taking part in decisions relating to the Project.

Therefore, the Act would prohibit you from taking part in the planning commission decisions concerning the Project if it is reasonably foreseeable that the decisions may result in an increase or decrease of SNH's annual gross revenues in an amount equal to or more than \$1,000,000 or five percent of SNH's annual gross revenues and the increase or decrease is at least \$10,000. The Act would also prohibit you from taking part in the decisions if they will further or hinder a goal of SNH and you are promised income for achieving this goal.

Here, you state that SNH is actively bidding for construction jobs in the Montage residential area and will likely be awarded some of those jobs on sites that are between 500 and 1,000 feet from the Project, an affordable housing development under review by the Planning Commission. You further state that because several of the home sites will have a direct view of the Project, potential clients may choose not to build because they do not like the view of the Project. You therefore state that the potential impact of the Project on SNH, including its aesthetics or whether to build it at all, could result in the increase or decrease of annual gross revenues by more than \$1,000,000.

In addition, as SNH's Director of New Business Development, including sales and networking, you receive income to assist SNH in finding new project opportunities and securing new construction contracts. The Planning Commission decisions concerning the Project, including its design and aesthetics or whether to even go forward with it, appears to aid in the goal of finding new project opportunities and securing new construction contracts by ensuring that the Project will not keep potential SNH clients from building in the Montage residential area where SNH is actively bidding for construction jobs.

Based on these facts, it is reasonably foreseeable that the Project will have a material financial effect on your business and source of income interests in SNH. Additionally, you will be disqualified because of the impermissible nexus between the decisions and income you receive from SNH.

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

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

JW:aja