



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

April 13, 2022

Rebecca Moon  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707

Re: Your Request for Advice  
**Our File No. A-22-026**

Dear Ms. Moon:

This letter responds to your request for advice on behalf of City of Sunnyvale Mayor Larry Klein, Councilmember Gustav Larsson, Planning Commissioners Ken Rheaume and Sue Harrison, and Sunnyvale Assistant to the City Manager Connie Verceles, 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.

## QUESTIONS

1. May Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles participate in decisions related to the adoption of the Sunnyvale El Camino Real Specific Plan when they own real property (primary residences) less than 500 feet from the boundary of the Specific Plan area?

2. May Councilmember Larsson and Planning Commissioner Rheaume participate in decisions related to the adoption of the Sunnyvale El Camino Real Specific Plan when they own real property (primary residences) more than 500 and less than 1,000 feet from the boundary of the Specific Plan area?

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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 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.

3. Would the “public generally” exception allow the officials to participate if they would otherwise be disqualified due to their proximity to the Specific Plan area?

### CONCLUSION

1 & 3. No. Based on the facts presented, Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles have disqualifying financial interests in governmental decisions related to the approval of the Specific Plan because their residences are located less than 500 feet from the boundary of the Specific Plan area. The public generally exception does not apply to the decision to approve the Specific Plan because a significant segment of the population would not be similarly effected due to the close proximity of the officials’ residences to the Specific Plan area. Accordingly, Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles should not take part in these decisions.

2. Yes. Councilmember Larsson and Planning Commissioner Rheume do not have a conflict in decisions related to the approval of the Specific Plan, where they own residences located more than 500 and less than 1,000 feet from the boundary of the Specific Plan area, because it is not reasonably foreseeable that the decisions concerning the approval of the Specific Plan would have a material financial effect on their real property interests in their residences based on the facts presented.

### FACTS AS PRESENTED BY REQUESTER

El Camino Real (ECR) is a six-lane, approximately four-mile long state highway that runs through the entire City of Sunnyvale in a roughly east-west direction. The development of the ECR corridor is currently guided by the El Camino Real Precise Plan which was adopted in 2007.

In July 2015, the City launched a project to update the 2007 Precise Plan and replace it with a Specific Plan. The goal of the Specific Plan is to enable the transition of ECR into a vibrant, mixed-use district with improved streetscapes and safer environments for walking, bicycling, and other alternative modes of transportation. The proposed Specific Plan includes development policies, land use regulations, design guidelines, infrastructure improvement plans, and an implementation and financing program to help guide development within the Specific Plan area through the year 2035.

On August 15, 2017, the City Council reviewed four proposed land use options for the ECR corridor and selected the “Residential Plus” (“R-Plus”) option as the preferred land use plan to be refined and developed in the Specific Plan.<sup>2</sup> Of the four alternatives, the “R-Plus” alternative identified the greatest amount of residential development opportunity along the ECR corridor while still preserving opportunities for additional commercial growth.

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<sup>2</sup> You also note that in March 2017, the City received *Moon* Advice Letter A-17-042, which stated that the above referenced officials did not have a conflict of interest in decisions related to the ECR Specific Plan. However, as noted below, the parameters of the ECR Specific Plan have changed significantly since that time, particularly with respect to zoning and density, as well as significant limits on the City’s traditional discretion in the ordinances and policies that can be applied residential or mixed use projects.

Between 2017 and 2022, City staff and consultants worked to develop a draft Specific Plan and associated Environmental Impact Report (EIR). During this time, the early drafts of the Specific Plan were re-worked to address changes in the state housing law (particularly Senate Bill 330 in 2019). The new housing laws essentially eliminated the City's ability to use its traditional land use authority to maintain a balance of commercial and residential uses in the ECR corridor. As originally conceived, the Specific Plan envisioned that City officials would exercise their discretion on a project-by-project basis to guide the future build-out of the plan area. Instead, the proposed Specific Plan specifically identifies commercial versus residential zones. To balance the loss of housing opportunities in the commercial zones and to help meet the City's Regional Housing Needs Allocation (RHNA) for the 2023-2031 housing cycle, certain mixed use sites in the ECR plan area will be zoned at higher densities than were originally anticipated (up to 42 to 54 dwelling units per acre).

### *Existing Conditions*

The ECR corridor is a major arterial roadway characterized by high traffic volumes and speeds. The uses within the corridor include shopping centers, auto dealerships, auto services, motels, restaurants, and other commercial businesses, interspersed with a relatively smaller number of apartment complexes and townhome developments. In recent years, the City has approved multiple projects that have added higher density housing, multistory hotels, and offices to the ECR corridor.

Currently, most of the Specific Plan area is zoned commercial ("C2-Highway Business") with some residential (R-3 and R-4), public facilities and office. The City's Zoning Code allows residential projects in the C2-Highway Business zoning district with a conditional use permit. The City's Land Use and Transportation Element of the General Plan (LUTE) designates roughly half of the ECR corridor as Corridor Mixed Use with "typical" residential densities of 24 dwelling units per acre. Most of the other parcels are designated Commercial where "residential uses may be considered" but there is no established residential density. The LUTE was written with the assumption that City officials would use their discretion to determine the appropriate location and scale of mixed use development projects on ECR, but as noted above, this traditional discretion was significantly limited by the Legislature's adoption of Senate Bill 330 in 2019 and other changes to the state housing laws. As a result, many of the parcels in the Specific Plan area could currently be redeveloped as residential or mixed use projects, likely at a base density of at least 24 dwelling units per acre, plus any available density bonuses.

### *The Proposed Specific Plan*

The proposed Specific Plan will establish new ECR zoning districts and General Plan designations that will increase the allowed density of residential uses on many sites, while prohibiting residential development on other sites in order to preserve a balance of commercial and residential uses. The highest residential densities will be concentrated within the four "Nodes" (major intersections) along ECR, with less intense development in the "Segments" between the Nodes.

The adoption of the proposed ECR Specific Plan would result in a net increase of approximately 2,700 dwelling units in the Plan area over the number that would be allowed by the

existing General Plan build-out, while reducing the amount of commercial development by approximately 220,000 square feet of floor area compared to the General Plan. The City anticipates that this development will occur gradually over a number of years. It is impossible to predict when, or if, a particular site will be redeveloped. The Specific Plan does not approve any specific development projects.

The 2,700 additional dwelling units will be added to the ECR Specific Plan area by upzoning the allowed residential density at several locations, ranging from 28 to 54 dwelling units per acre, compared to 24 dwelling units per acre currently allowed by the General Plan. These base residential densities can be further increased through the use of the state Density Bonus law (Gov. Code Section 65915) and the City's Green Building program. The proposed Specific Plan will also include a community benefits incentive program that will offer developers the potential for an additional density bonus in return for community benefits such as public open space and other public amenities.

### *Environmental Impacts*

The Environmental Impact Report (EIR) for the ECR Specific Plan update identifies significant and unavoidable impacts to air quality as a result of the possibility that construction-related emissions could contribute to exceedances of regional ambient air quality standards and air pollutants during the construction of individual projects. The EIR also identified significant and unavoidable cumulative impacts to utility systems (sewer capacity). Although the City is planning to study options to expand the City's wastewater treatment plant to accommodate all of the City's anticipated growth (including growth induced by the ECR Specific Plan), the design and improvements are unknown at this time. The EIR concludes that all other impacts are either not significant or can be reduced to below significant with mitigation.

The project will not have a significant impact on traffic using a vehicle miles travelled (VMT) methodology. The Specific Plan will promote development that puts housing closer to jobs and encourages walking, bicycling, and use of transit, thereby reducing or having no impact on VMT. However, the City also prepared an operational Traffic Impact Analysis (TIA) using a Level of Service (LOS) methodology to evaluate traffic congestion using vehicle delay at intersections. This analysis found that increased development within the plan area will add to traffic congestion, resulting in an average of several seconds additional delay at many intersections compared to the cumulative no-project scenario (i.e., anticipated development that will occur within the ECR corridor if the Specific Plan is not adopted).

Traffic on ECR is already congested and expected to get worse as a result of the growth already anticipated by the General Plan. However, the addition of thousands of new housing units on ECR will almost certainly result in more local traffic and throughout the City, despite measures to encourage walking, biking, and use of public transit. For example, the average A.M. delay at ECR and Mathilda would increase from 84.3 seconds ("F") (cumulative-no project) to 97.7 seconds (also "F"). At ECR and Wolfe, the A.M. delay would decline by 1.2 seconds, but the P.M. delay would increase from 76.3 seconds ("E-") to 85.5 seconds ("F"). In total, the TIA finds significant LOS impacts to 19 intersections in Sunnyvale and outside the City's borders.

Development projects that are approved after adoption of the Specific Plan will be required to identify traffic improvements to address LOS deficiencies resulting from the project and pay a fair share contribution and/or construct needed improvements.

*Mayor Klein*

Mayor Klein owns a single-family home on Frances Street approximately 55 feet from the boundary of the Civic Center Node (previously called the Downtown Node). The Civic Center Node is centered around the major intersection of ECR and Mathilda Avenue.

The current zoning in this area is primarily Commercial (C2-Highway Business), with the exception of the Civic Center, which is zoned Public Facilities (PF), and two parcels zoned Office (O). The General Plan designation is Corridor Mixed Use. The current uses in the Civic Center Node include several large shopping centers, multistory apartments, townhomes, and a five-story Marriott hotel. A new, four-story City Hall is under construction at the corner of Matilda and West Olive avenues, which is approximately one block from the intersection of ECR and Mathilda.

Mayor Klein's property is buffered from ECR on the south by one neighboring house and a row of commercial businesses. A traffic barrier on Frances Street prevents cutthrough traffic. Directly behind Mayor Klein's property there are a row of small businesses along Murphy Avenue, which are outside of the Specific Plan area. On the other side of South Murphy Avenue, the boundary of the ECR plan area juts out to include the Allario shopping center, 160 feet from Mayor Klein's rear property line. The Allario shopping center is a one-story strip mall with a Walgreens drug store and a variety of other businesses.

Under the proposed Specific Plan, the row of businesses to the south of Mayor Klein's property would be zoned ECR-C (Commercial). Residential uses will not be permitted in ECR-C zones. The Walgreens shopping center would be rezoned "ECR-MU42" which would allow the potential for the site to be redeveloped with a mixed-use project at a base density of 42 dwelling units per acre, versus 24 dwelling units per acre which the General Plan currently allows in areas designated Corridor Mixed Use.

The Specific Plan would also create the potential for mixed use redevelopment of the existing shopping center on southwest corner of ECR and Sunnyvale Avenue (340 feet from Mayor Klein) and the Sprouts Shopping Center (600 feet from Mayor Klein on the other side of Sunnyvale Avenue). Both of these sites would be zoned ECR-MU54, which would allow mixed use projects at a base density of 54 dwelling units per acre, versus 24 dwelling units per acre currently allowed by the General Plan.

*Planning Commissioner Harrison*

Commissioner Harrison owns a single-family home approximately 270 feet south of the Specific Plan boundary near the dividing line between the Three Points Neighborhood Node (formerly called the Eastern Node) and the Eastern Segment. This area has a mix of existing residential and commercial uses, including apartments on the north side of ECR. A large residential development is currently under construction on the southwest corner of ECR and Wolfe ("Butcher's Corner"). Most of the uses in this area would not change under the Specific Plan. One commercial

parcel to the east of Commissioner Harrison's home (the southeast corner of ECR and Poplar) would be rezoned MU54 to match the density of the existing apartment complex on the site. The shopping center to the east of these apartments, approximately 1,000 feet from Commissioner Harrison's home, would be rezoned MU24.

The largest potential development would occur on the north side of the ECR and Wolfe Road intersection. These corners have small commercial areas and the northwest corner is already partially redeveloped with the addition of a recently built multistory hotel. The remaining commercial sites on this corner would be rezoned MU42 to allow mixed use development at a density of 42 dwelling units per acre (versus 24 dwelling units per acre allowed by the General Plan). These sites are on the opposite side of ECR from Commissioner Harrison's home and located over 1,000 feet away.

#### *Assistant to the City Manager Verceles*

Connie Verceles, Assistant to the City Manager, owns a single-family home approximately 360 feet south of the boundary of the Bernardo Gateway Node (formerly called the Western Node), which is centered around the intersection of ECR and Bernardo Avenue. The existing uses in this area include several older shopping centers, auto dealerships and auto service businesses. There is a more recently built mixed-use development on the north side of ECR that includes a medical office building and multistory apartments.

Under the proposed Specific Plan, the existing commercial parcels on the south side of ECR closest to Ms. Verceles's property would be rezoned from commercial to MU33 and MU42, allowing mixed use development at a base density of 33-42 dwelling units per acre. Half of the existing Safeway shopping center to the west of Ms. Verceles would be rezoned MU54, while the other half would be zoned ECR-C (commercial). Several existing commercial parcels on the north side of ECR would also be rezoned for mixed use development ranging from MU33 to MU42.

#### *Councilmember Larsson and Commissioner Rheaume*

Councilmember Larsson and Commissioner Rheaume each own a single-family home two blocks north of the Civic Center Node, approximately 575 feet from the Allario (Walgreens) shopping center site and 775 feet from the Sprouts shopping centers which (as discussed above in connection with Mayor Klein's property) will be rezoned to allow for the potential mixed use redevelopment at a base density of 42 to 54 dwelling units per acre.

Their homes are insulated from redevelopment activities on these sites by one to two blocks of existing development, including a single-family neighborhood and a row of two- and three-story medical office buildings along Old San Francisco Road.

#### *Public Generally Exception*

The City reviewed Geographic Information System (GIS) data to determine how many residential real properties would be likely to experience the effects of increased development of the ECR corridor. The City's data indicates that almost one-quarter (23.9%) of residential parcels in the City of Sunnyvale are located in or within 2,000 feet of the ECR Specific Plan area boundaries. At

smaller distances, 12.8% of residential parcels are located in or within 1,000 feet of the plan area, and 18.1% are located in or within 1,500 feet the plan area.

## ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official 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 the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests are “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Mayor Klein, Planning Commissioner Harrison, Assistant to the City Manager Verceles, Councilmember Larsson, and Planning Commissioner Rheume each have economic interests in their respective real properties.

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).” The aforementioned officials’ real property interests are not explicitly involved in the governmental decisions relating to the ECR Specific Plan.

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.”

*Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles*

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 presumed material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).) The adoption of the proposed ECR Specific Plan would result in a net increase of approximately 2,700 dwelling units in the Plan area over the number that would be allowed by the existing General Plan build-out, while reducing the amount of commercial development by approximately 220,000 square feet of floor area compared to the General Plan. Several commercial sites in close proximity to their

residences would be rezoned to allow higher density, mixed use redevelopment. You have also stated that the City prepared an operational TIA using LOS methodology which indicated that the ECR Specific Plan would create traffic impacts. No evidence has been provided to indicate that the decisions related to the adoption of the Sunnyvale El Camino Real Specific Plan would not have a measurable impact on Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles's properties. Based on the facts provided, that standard is not met.

### *Public Generally Exception*

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of their interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) In general, an effect on an official's interest is indistinguishable from its effect on the public generally if a significant segment of the public is affected and the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).) A significant segment of the public includes at least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(2).) A unique effect is defined to include a disproportionate effect on an interest in real property resulting from the proximity of a project. (Regulation 18703(c).)

Here, Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles's properties are located less than 500 feet from the boundary of the Specific Plan area, which spans the length of the four-mile El Camino Real corridor. The Specific Plan identifies specific zoning and density requirements for parcels within 500 feet. Your request notes that 12.8% of residential parcels are located within 1,000 feet of the plan area, and that if this radius is extended to 1,500 feet of the boundary, that number increases to 18.1% of residential parcels. Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles's properties, and other residences located within a similar proximity to the boundary of the Specific Plan area do not comprise a significant segment of the public generally, and any effect on Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles's properties would be unique when compared to the effect on properties that are located a greater distance from the Specific Plan area. As such, the public generally exception would not apply to Mayor Klein, Planning Commissioner Harrison, and Assistant to the City Manager Verceles.

### *Councilmember Larsson and Commissioner Rheaume*

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 governmental 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:

- (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.

(Regulation 18702.2(a)(8).)

As Councilmember Larsson and Commissioner Rheume's residences are located between 500 and 1,000 feet from the boundary of the ECR Specific Plan area, the relevant materiality standard is Regulation 18702.2(a)(8). Based on the facts presented, it does not appear likely that the adoption of the Specific Plan would affect the development potential or highest or best use of either official's real property, nor does it appear likely the decision would affect the property's market value or income producing potential. Further, the facts do not indicate that the approval of the proposed ECR Specific Plan would substantially alter traffic levels, intensity of use, parking, and air quality in the vicinity of Councilmember Larsson and Commissioner Rheume's residences, which are separated from the Specific Plan area by one to two blocks of existing development, including a single-family neighborhood and a row of two- and three-story medical office buildings along Old San Francisco Road.

Accordingly, based on the facts presented, it is not reasonably foreseeable that the decision would have a material financial effect on Councilmember Larsson and Commissioner Rheume's real property interests.

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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