



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

May 5, 2022

Lain MacMillian  
City of Burbank  
380 West Portal Avenue, Suite F  
San Francisco, CA 94127

Re: Your Request for Advice  
**Our File No. A-22-033**

Dear Mr. MacMillian:

This letter is in response to your request for advice on behalf of Burbank Assistant Community Development Director David Kriske (“AD Kriske”) 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

Under the Act, may AD Kriske take part in decisions pertaining to a specific development plan with a boundary located within 500 feet of his residence?

### CONCLUSION

No, given the proximity of AD Kriske’s residence to the specific plan area, as well as the lack of clear and convincing evidence that the decisions would have no measurable financial effect on his real property, the Act prohibits him from taking part in the decision-making process, including providing analysis, conclusions, and recommendations relating to transportation.

### FACTS AS PRESENTED BY REQUESTER

The City of Burbank’s (“City”) approximately 965-acre Downtown Burbank Transit Oriented Development Specific Plan (“Specific Plan”) seeks to merge the City’s 1997 Burbank

---

<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.

Center Specific Plan with its 2012 North San Fernando Boulevard Master Plan and surrounding areas of both plans into one planning area (“Project”). While both plans were effective at the time of adoption, they are no longer effective to help the City address the housing and affordability crises it is currently facing.

As part of the Project, the Specific Plan will consider an update to the City’s General Plan and undertake the appropriate environmental assessment pursuant to the California Environmental Quality Act (CEQA). The Specific Plan will analyze land use, infrastructure, transportation, pedestrian and bicycle amenities, and opportunities for new housing and other in-fill development. The Specific Plan will also analyze vehicle, bicycle, and pedestrian access to the Downtown Burbank Metrolink Station and study ways to take advantage of economic development opportunities and job creation around the station.

*AD Kriske’s “official role” in the project.*

AD Kriske oversees the Transportation and Planning Division. He owns his residence located within 500 feet of the Specific Plan boundary.

Regarding the Specific Plan, AD Kriske would serve as staff management to city staff and a transportation subconsultant. He would oversee preparation of work product, review work product, then provide technical expertise and support, including recommendations, to Assistant Community Development Director Fred Ramirez.

More specifically, AD Kriske would assist in the review of the transportation subconsultant’s work development of the traffic model. He would also review policies and guidelines for ensuring that citywide General Plan, Bicycle Master Plan, and Complete Streets Plan goals and policies are incorporated into the design of arterial, collector, and local streets within the Specific Plan, so that street modifications required by future development or future city infrastructure projects are implemented in conformance to these citywide policy documents. This work would involve recommending street cross sections, configurations, lane dimensions, public infrastructure amenities, green streets, bicycle/pedestrian improvements, street trees, lighting, and other parameters for street designs within the Specific Plan.

AD Kriske would also recommend parking, transit, and transportation demand management policies for city and private developments within the Specific Plan. In all cases, these recommendations would apply to all streets, land uses, or projects within the Specific Plan and would not include location-specific capital projects or programs that would have a specific location or that could be specifically placed within 500 or 1000 feet of AD Kriske’s property.

Finally, AD Kriske would oversee staff recommendations regarding transportation impacts and mitigation measures associated with the Specific Plan program EIR that would apply broadly to the entire Specific Plan.

AD Kriske would submit analysis, conclusions, and recommendations to Assistant Director Fred Ramirez, who would then decide how to incorporate the transportation work product into the Specific Plan. Assistant Director Ramirez would approve all draft work products for the Specific Plan prior to presentation to community groups, the Planning Board, and the City Council. The Community Development Director would subsequently provide high-level approval of all the work

of the Community Development Department, including the work product approved by Assistant Director Ramirez. The City Manager, as chief executive of all City staff, gives final approval before presentation to the City Council for an ultimate decision.

AD Kriske does not oversee any work related to development of any land use policies, programs, or guidelines, nor does he oversee the preparation of the Specific Plan generally. He also does not oversee or present the final staff recommendation to the Planning Board and City Council regarding the final proposed land use designations, public right of way improvements, and overall vision, goals and policies that will facilitate the implementation of the Specific Plan.

*Proposed land uses and improvements in the Specific Plan area near AD Kriske's property.*

The North San Fernando Boulevard area was envisioned in the North San Fernando Boulevard Master Plan as an area that could create new opportunities for townhomes and apartment buildings as well as facilitate mixed-residential development along this main east-west corridor through the City. Building upon this Master Plan vision, the Specific Plan seeks to transform the North San Fernando Boulevard area into a distinct, beautiful, and thriving neighborhood through the introduction of housing at all levels of affordability and the creation of tree-lined, pedestrian-friendly streets with buildings that face and are accessed from the sidewalk. Bike and transit routes along San Fernando Boulevard and Third Street provide convenient access to the Downtown Core, the Metrolink Station, and the rest of the City. The North San Fernando Boulevard subarea is well suited to introducing new residents due to the presence of two grocery stores, McCambridge Park's expansive recreational offerings, and the proximity of San Fernando Boulevard, which provides opportunities for neighborhood-serving commercial and restaurant uses. Key projects and improvements include:

- *Infill Development.* Underutilized parcels are infilled with pedestrian-oriented mixed-use or residential buildings. Key opportunity sites are all located along San Fernando Boulevard and include the Carl's Jr. restaurant Site (between Amherst Drive and Bethany Road), the Ralphs' Grocery Store Site (between Cornell Drive and Delaware Road), the Kmart Shopping Center Site (at Delaware Road) and the Caltrans Remnant Property/IHOP Site (at Burbank Boulevard). Redevelopment of these sites with townhomes and/or mixed-use residential/commercial developments are consistent with the vision of the 2012 master plan (Figure 2-1b: North San Fernando Boulevard Vision Poster; Master Plan Pg. 7). It is important to note that most of the land within the boundaries of the Specific Plan, including a majority of the opportunity sites noted in the Specific Plan, will retain their underlying Maximum Allowable Density per Acre and Maximum Allowable Floor Area Ratio. Any future increases to density and intensity of development both within the Specific Plan area and in surrounding multifamily and single-family residential zones will be driven primarily by State Density Bonus Law and/or other State legislative bills (e.g., SB 35-Streamlined Ministerial Review Process, SB 330-Housing Crisis Act of 2019, Accessory Dwelling Unit laws, SB 9, et cetera).
- *Introduction of New Streets.* Also consistent with the 2012 master plan is the proposed introduction of new streets to existing blocks that are over four acres in area. Potential new street extensions being considered include Walnut Avenue between San Fernando Boulevard and Third Street and Delaware Road, Cornell Drive, and/or Bethany Road

between San Fernando Boulevard and Scott Road. The new streets could align with the existing streets or be located near the alignments.

- *Pedestrian and Bicycle Improvements.* Consistent with the standards with the previously adopted Citywide Complete Our Streets Plan (2020), the following pedestrian and bicycle improvement projects are implemented:
  - Sidewalk and crosswalk improvements funded by Safe Routes to Schools grants are implemented along the streets and blocks surrounding Burbank High School.
  - Introduction of Class IV protected bikeways along Third Street between Burbank Boulevard and Amherst Drive.
  - Introduction of a Class II bike lanes along the east side of San Fernando Boulevard to complement the existing lanes along the west side of the street.
- *Streetscape Improvements.* Missing street trees are planted, pedestrian-scaled streetlights introduced, and where appropriate, street furniture is introduced.

In addition to the Infill Development opportunities noted above, the vision for bike, pedestrian and overall street improvements proposed under the Specific Plan are also consistent with key plan features found in the 2012 master plan. As previously noted, the purpose of the Specific Plan is to take the key features of the master plan and the 1997 Burbank Center Plan and update them to further facilitate responsible development that helps create new opportunities for housing including market rate and affordable housing while also being mindful of preserving the existing surrounding residential character that exists within the Specific Plan and the adjacent residential neighborhoods including those existing north of Glenoaks Boulevard.

#### *Fiscal Impact to R-1 Properties Similar to AD Kiske's Property.*

The City has a jobs-to-housing imbalance of three jobs for every one housing unit. Furthermore, the City's Regional Housing Needs Assessment allocation requires that the City facilitate the build out of 8,779 new dwelling units at various levels of affordability between October 2021 and October 2029. The Specific Plan like the Golden State Specific Plan formulation and the proposed update of the Media District Specific Plan are intended to take the lion-share of housing development potential to protect and preserve the existing single family residential neighborhoods. Implementation of the specific plans will help ensure that new sites are available to meet the City's fair share RHNA obligation, which will in turn keep pace with development of more media office and media studio production services that continue to add new jobs to the City. Couple this with the City's vacancy rate of 4.8 compared to 6.2 vacancy rate of LA County, it notes that households are having difficulty finding housing that is affordable in Burbank. Therefore, with or without the Specific Plan, the City's established single family residential neighborhoods both within the Specific Plan and in the surrounding neighborhoods will continue to be sought after locations and therefore continue to experience appreciation based on the skewed shortage of this housing type and zone.

## 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 [their] official position to influence a governmental decision in which [the official] knows or has reason to know he has a financial interest."

A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).) We have advised that an employee participates in the making of a governmental decision, even if it is reviewed by several superiors, where the supervisor relies on the expertise or recommendations of the employee in making their decisions. (See, e.g., *Rooklidge* Advice Letter, No. A-18-224.) “Significant intervening substantive review” has been interpreted to require more than the mere review of an official’s recommendations by superiors, but rather the independent checking of the official’s results without solely relying on the data of the official. (See, e.g., *Jacobs* Advice Letter, No. A-16-050.)

Here, AD Kriske manages staff, oversees the preparation of work product, and submits analysis, conclusions, and recommendations for approval by Assistant Director Ramirez, whose draft of the Specific Plan is subsequently approved by the Community Development Director, the City Manager, and then ultimately the City Council. Although AD Kriske’s work product, including recommendations, are reviewed by several superiors, the facts indicate those superiors rely on AD Kriske’s technical expertise. The facts do not indicate AD Kriske’s analysis, conclusions, and recommendations are independently checked by those superiors without solely relying on the information provided by AD Kriske. Accordingly, for purposes of the Act, AD Kriske would be participating in the Specific Plan decisions.

“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 “[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).) AD Kriske has an economic interest in his residential real property.

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, as here, 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.”

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 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).)

Governmental decisions regarding the Specific Plan involve real property located less than 500 feet from AD Kriske's real property. Under the Act, such decisions would have a reasonably foreseeable, material financial effect on AD Kriske's real property interest, thereby prohibiting him from taking part in the decisions, unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's real property.

You have indicated that Burbank has a 3:1 jobs-to-housing unit ratio and there is a great need for affordable housing in Burbank. Therefore, you indicate, "with or without the Specific Plan, the City's established single family residential neighborhoods both within the Specific Plan and in the surrounding neighborhoods will continue to be sought after locations and therefore continue to experience appreciation based on the skewed shortage of this housing type and zone." While this may be accurate, it is not relevant to the realistic possibility that residences closer to an area being developed or redeveloped may experience an even greater increase in value than residences further away would experience simply because of general appreciation in the local housing market.

The area near AD Kriske's residence will experience development of mixed-use and residential buildings, introduction of new streets, construction of bikeways and walkways, and improvements to landscaping, among other changes. These changes are being made with the stated goal of transforming the North San Fernando Boulevard area into a distinct, beautiful, and thriving neighborhood. Accordingly, the facts provided indicate that real property near this area may experience a greater increase in value than it would simply because of citywide appreciation. Because there is no clear and convincing evidence the decision will not have any measurable impact on Assistant Kriske's real property, the Act prohibits him from taking part in decisions relating to the Specific Plan, including making recommendations that may ultimately be adopted by the City Council.

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