



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 9, 2022

Kimberly Hood
Assistant County Counsel
County of Yolo, Office of the County Counsel
625 Court Street, Room 201
Woodland, CA 95695

Re: Your Request for Advice
Our File No. A-22-042

Dear Ms. Hood:

This letter responds to your request for advice on behalf of Yolo County Supervisor Jim Provenza 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.

QUESTIONS

1. Does Supervisor Provenza have a conflict of interest under the Act with respect to any decisions regarding a proposed residential development project, given that his residence is located within 500 feet of the boundaries of the development project?
2. Would the “public generally” exception allow Supervisor Provenza to participate if he would otherwise be disqualified due to his proximity to the development project?

CONCLUSION

Based on the facts presented, Supervisor Provenza has disqualifying financial interest in governmental decisions related to the approval of the development project because his residence is located less than 500 feet from the boundary of the development project. The public generally

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 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.

exception does not apply to project related decisions because a significant segment of the population would not be similarly affected due to the close proximity of his residence to the project area. Accordingly, Supervisor Provenza may not take part in these decisions.

FACTS AS PRESENTED BY REQUESTER

The County will be making decisions regarding a residential development project, on approximately 234.29-acres of undeveloped agricultural land known as the Shriners Property, which is currently located in the unincorporated area of the County but adjacent to the City of Davis ("Shriner's Property Project"). A pre-application was submitted to the City of Davis on behalf of a property owner with preliminary development concepts for the Project. As summarized on the City's website:

This pre-application [was] submitted for a 234.29-acre parcel located outside and adjacent to Davis' northeastern city limits of the City of Davis [...]. While no longer owned by the Shriners, the property has been commonly referred to as the Shriners property (Property). It is bounded on the west by the existing Wildhorse [residential] neighborhood and the Wildhorse Horse Ranch property, on the south by Covell Boulevard, bisected at the north end by Channel A (a tributary to Willow Slough), and undeveloped farmland to the east. The Yolo County General Plan designation for the Property is Agricultural (AG), and is zoned Agricultural Intensive (A-N). Future land uses envisioned for the Property by this proposal are residential, parks and open space. The proposed new residential neighborhood would include a range of 1,100 to 1,200 residential units geared toward families in varying lot sizes and densities on approximately 145 acres. Also included in this proposal is a Community Park of 45+ acres comprised of 15+ acres of active park space, 30+ acres of passive park space, an additional 10+ acres of greenways, and 15+ acres of agricultural buffer.

The City will be the lead agency for this Project and will be the entity deciding whether to approve the Shriner's Property Project. However, the County will likely be involved in reviewing and potentially commenting on the environmental analysis, reviewing annexation of the Shriner's property into the City of Davis (including negotiation of a tax sharing or tax exchange agreement pursuant to Revenue and Taxation Code section 99 *et seq.*), and providing election services if the Project proceeds since the City requires majority voter approval for proposed changes to agricultural and open space general plan land use designations.

The Supervisors are elected to the County's five-member Board of Supervisors with each Supervisor representing one of the five Supervisorial districts. Supervisor Provenza represents District 4, which is approximately 48.86 square miles and includes approximately half of the City of Davis. The Project is located within District 4. Supervisor Provenza's personal residence, which he owns, is approximately 426 feet from the southern boundary of the Shriner's Property Project site as the crow flies.

You also state that the actual travel distance to the Project site, however, is much further. Supervisor Provenza's residence is in a residential neighborhood south of the Shriner's Property Project site and separated from the proposed project by Covell Boulevard, a major east-west arterial

roadway with a landscape median between the east-west lanes. Supervisor Provenza's residence and his neighborhood have no direct access to either Covell Boulevard or the Shriner's Property Project site. He has to make several turns from local neighborhood streets to reach a minor collector street at Alhambra Drive to then reach Covell Boulevard. In addition, Supervisor Provenza's residence is separated by a six-foot sound wall and two rows of residences from Covell Boulevard. As such, you state that you do not anticipate that his residential property will experience any significant increase in noise, traffic, or visual impacts if the Shriner's Property Project is developed; nor is any impact to his property's residential use or market value apparent given these factors.

Public Generally Exception

Supervisor Provenza's jurisdiction, District 4, contains 12,163 residential parcels. Although Supervisor Provenza's District is large in physical size, encompassing approximately 48.86 square miles. You note that 1,829 residential parcels are within 2,775-feet of the Project. None of the residential parcels near the Project site directly abut the Project as there are green belts and open space buffering the residential neighborhood directly to the west of the Project site (Wild Horse). The remaining residential parcels, like Supervisor Provenza's residence to the south of the Project site, are all separated by Covell Boulevard (major arterial) and the sound wall from the Project site with similar meandering routes from local neighborhood streets to an arterial street before reaching Covell Boulevard. There is no direct access to either Covell Boulevard or the Project site from either Supervisor Provenza's residence or the other residential neighborhoods near the Shriner's Property Project site, resulting in no visual impacts and minimal, if any, impacts on the traffic or noise around Supervisor Provenza's neighborhood and residence. However, in a follow-up email, you confirmed that environmental review, which would include traffic studies, has not yet begun.

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).) Supervisor Provenza has an economic interest in his 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)." Supervisor Provenza's real property interest is not explicitly involved in the governmental decisions relating to the Project.

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."

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 decisions regarding the Shriner's Property Project would facilitate the development of a 234.29-acre parcel of undeveloped agricultural land, transforming it into an urban area which would include a new residential neighborhood with 1,100 to 1,200 housing units. At minimum, this would result in changes to intensity of use, noise levels, and air quality. No evidence has been provided to indicate that the decisions related to the Shriner's Property Project would not have a measurable impact on Supervisor Provenza's property. 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 his or her 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, Supervisor Provenza's residence is located less than 500 feet from the boundary of the Shriner's Property Project. Your request notes that District 4 contains 12,163 residential parcels, and that there are 1,829 residential parcels within 2,775-feet of the Shriner's Property Project. While this is just over 15% of residential parcels, these properties are located within a radius of more than one-half mile. Supervisor Provenza's property, and other residences located within a similar proximity to the boundary of the Project, do not comprise a significant segment of the public generally, and any effect on Supervisor Provenza's property would be unique when compared to the effect on properties that are located a greater distance from the Shriner's Property Project area. As such, the public generally exception would not apply to Supervisor Provenza.

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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