



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

May 9, 2023

Eric May  
Senior Deputy County Counsel  
County of Yolo  
625 Court Street, Room 201  
Woodland, CA 95695

Re: Your Request for Informal Assistance  
**Our File No. I-23-077**

Dear Mr. May:

This letter responds to your request for advice regarding of Section 84308 of the Political Reform Act (the “Act”).<sup>1</sup> Because your question is general in nature, we are treating your request as one for informal assistance.<sup>2</sup> 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. Is a General Plan Amendment to change the land use designation of single property a “proceeding involving a license, permit, or other entitlement” under Section 84308(b)?
2. If so, would the Board’s consideration of a pre-application to authorize the filing of a formal application for a General Plan Amendment also be a “proceeding involving a license, permit, or other entitlement” under Section 84308(b)?
3. If so, would the proceedings be “pending,” for purposes of Section 84308(b), upon the applicant’s filing of the pre-application?

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## CONCLUSIONS

1-2. Yes. Both the pre-application to authorize the filing of a formal application, and the formal application for a General Plan amendment, are “proceeding[s] involving a license, permit, or other entitlement for use” under Section 84308.

3. Under the existing regulatory language and the most conservative reading of Section 84308, the proceeding should be considered pending once the pre-application has been submitted. However, the Commission is currently considering regulations which contain differing standards for determining when a decision is “pending,” and we cannot provide a determinative answer until the Commission makes a final decision.

## FACTS AS PRESENTED BY REQUESTER

You seek guidance regarding Section 84308. Specifically, you ask whether proceedings resulting from “pre-application” required by the Yolo County Code of Ordinances before a private party requests an amendment to the County’s General Plan are proceedings involving a license, permit, or other entitlement of use and, if so, when the proceeding is considered pending.

As pertinent to your questions, a “pre-application” is typically submitted when a landowner is seeking to change the General Plan’s land use designation of their property so as to allow a different use on their property. Upon receipt of the pre-application, the County’s Planning staff must solicit comments from any affected departments, agencies, and citizen advisory committees. Following a pre-application conference, Planning staff prepares a report and recommendation on whether the amendment should be processed and schedules a “GPA Authorization Hearing” with the Board of Supervisors. At the hearing, the Board “may authorize the General Plan Amendment for further study and processing by staff, or the Board of Supervisors may deny the authorization request.” If the Board denies the authorization, the applicant cannot submit a formal application. If the Board authorizes the amendment for further study, the applicant is allowed to submit a formal application, which initiates CEQA review, followed by hearings before the Planning Commission and Board of Supervisors to consider approval of the General Plan Amendment. The Board’s authorization at the GPA Authorization Hearing in no way is an approval of the amendment itself; it is merely a precondition for staff to receive and process the formal application.

## ANALYSIS

The Act’s “pay to play” restrictions, contained in Section 84308, aim to ensure that all officers of local government agencies are not biased by contributors or potential contributors of large campaign contributions, who might appear before them in a proceeding involving a license, permit or entitlement for use.

As pertinent to the questions posed, Section 84308 imposes two requirements on officers subject to the section. First, Section 84308(b) states: “[w]hile a proceeding involving a license, permit, or other *entitlement for use* is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party’s agent, or

from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest . . . ." (Emphasis added.)<sup>3</sup>

Second, Section 84308(c) requires that if an officer has received a contribution of more than \$250 during the past 12 months from a party or participant in a proceeding involving a license, permit or other entitlement for use pending before an agency, the officer must disclose that fact on the record of the proceeding and must recuse from the proceedings.

### *Entitlement for Use*

Your first two questions concern the definition of "proceeding involving a license, permit, or entitlement for use." However, the term "entitlement for use" has not been defined within the express provisions of Section 84308. The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered by Section 84308 are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants.

A pre-application is typically submitted by a landowner to change the land use designation of their property so as to allow a different use on their property. Upon receipt of the pre-application, the County's Planning staff must solicit comments from any affected departments, agencies, and citizen advisory committees. Following a pre-application conference, Planning staff prepares a report and recommendation for consideration by the Board of Supervisors. You state that The Board may then decide to authorize the General Plan Amendment for further study and processing by staff, or deny the authorization request. If the Board denies the authorization, the applicant cannot submit a formal application. If the Board authorizes the amendment for further study, the applicant is allowed to submit a formal application, which initiates CEQA review, followed by hearings before the Planning Commission and Board to consider approval of the General Plan Amendment.

Examples of the types of decisions covered by Section 84308 include decisions on professional license revocations, conditional use permits, rezoning of specific real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, cable television franchises, building and development permits, public street abandonments, and private development plans. (*Washington Advice Letter*, No. I-91-521.) Section 84308 applies to professional contracts, such as engineering, accounting and legal agreements which are not competitively bid, labor or personal employment contracts. (*Ibid.*)

Also illustrative of the scope of the term, is what has been excluded from the coverage of Section 84308. The California Court of Appeal in *City of Agoura Hills v. Local Agency Formation Com.*, (1988) 198 Cal.App. 3d 480, 497-498, explained in the context of disqualification under Section 84308 that "entitlement for use" does not cover proceedings in which general policy decisions or rules are made or where the interests affected are many and diverse. (Citing *Fallon Advice Letter*, No. A-85-050.) The law is intended to apply to decisions which have a direct and significant effect upon specific parties. (*Pleines Advice Letter*, No. A-87-220.)

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<sup>3</sup> Section 84308(a)(5) defines "license, permit, or other entitlement for use" as "all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises."

In light of the policy purposes and prior advice on Section 84308, in addition to the case law noted above, we conclude that decisions on a pre-application to authorize the filing of a formal application for a General Plan Amendment, and the consideration of that subsequent General Plan Amendment to change the land use designation of single property are subject to Section 84308. You state that these types of requests are initiated when a private party requests an amendment to the County's General Plan. Such requests are typically submitted when a landowner seeks to change the General Plan's land use designation of their property so as to allow a different use on their property. Under your facts, there are specific, identifiable persons who will be directly affected, and these numbers are not large or diverse.

There will also be a direct substantial financial impact upon the applicants. As stated in your request, this process is initiated when a private party requests an amendment to the County's General Plan land use designation of their property so as to allow a different use on their property. This would likely result in a financial benefit to the value of the property. Further, while these decisions are amendment to the General Plan, they are initiated by the property owner, and applicable to that owner's specific parcel. As such, they are more akin to rezoning of a specific real estate parcel, or the granting of zoning variances; proceedings which have previously been found to involve an entitlement for use" and are covered by Section 84308. Consequently, these are proceedings which involve an "entitlement for use" covered by Section 84308.

*"Pending"*

Section 84308 places limitations on certain public officials' ability to take part in licensing, permitting, and other use entitlement proceedings when a party or participant in the proceeding has contributed more than \$250 to the official; and also prohibits officials from receiving contributions exceeding \$250 during such a proceeding and for a defined period after a final decision in the proceeding. Legislative amendments significantly expanding the scope of Section 84308 became effective January 1, 2023, and the Commission will soon be considering regulations for the implementation and application of the expanded statute.

As relevant to your facts, existing Regulation 18438.2(b)(1) states, in pertinent part, that a proceeding is "pending before" an agency for purposes of Section 84308, "[w]hen the application has been filed." Applying the existing regulation, a proceeding is "pending before" the Board upon the applicant's filing of the pre-application.

However, current Regulation 18438.2(b)(1) was adopted prior to current Section 84308 and regulations which contain differing standards for determining when a decision is "pending" are currently scheduled to appear before the Commission. Moreover, we are unable to offer formal advice on a matter that involves an unsettled area of law, or an area of the law susceptible to multiple reasonable interpretations, and require an interpretation best made by the Commission.

(Regulation 18329(b)(6)(E).) Accordingly, a determinative answer to this question under newly amended Section 84308 is dependent on that Commission decision.<sup>4</sup>

Although we cannot provide a determinative answer until the Commission makes a final decision, under the existing regulatory language and the most conservative reading of Section 84308, we can only conservatively advise at this time that the proceeding should be considered “pending” once the pre-application has been submitted.

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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<sup>4</sup> We note that the Commission is expected to consider final adoption of a series of regulations that codify recent legislative amendments to Section 84308. The proposed regulations are expected to be discussed and potentially adopted at the Commission’s meeting on May 18, 2023.