



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 5, 2023

Hazel Joanes  
229 Valdez Ave  
Half Moon Bay Ca, 94019

Re: Your Request for Advice  
**Our File No. A-23-079**

Dear Ms. Joanes:

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

Under the Act, may you take part in Half Moon Bay Planning Commission decisions regarding a building permit for an addition to the property adjacent to your residence?

### CONCLUSION

No, in the absence of clear and convincing evidence the decision would have no measurable impact on your real property, the Act prohibits you from taking part in the decision, given the close proximity of the subject property.

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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.

## FACTS AS PRESENTED BY REQUESTER

In 2021, the Half Moon Bay (“City”) Planning Commission approved a property owner’s (“Property Owner”) Coastal Development Permit (“CDP”) for an addition and remodel to a single-family residential property within the City. The CDP approved a first-floor addition and a 285 square-foot second-floor covered terrace.

In 2022, you notified the City of certain inconsistencies between what the City approved in the CDP versus what was being built. You, along with several other residents, sent letters to City staff and the Planning Commission regarding the Property Owner’s violations of the CDP. The City verified that what was built was inconsistent with the CDP. Specifically, the Property Owner constructed unpermitted structural elements. In a report dated November 22, 2022, the City stated that the implementation of this project brought forth serious neighborhood tensions, and staff found it very difficult to work through the process due to what evolved into highly charged communications.

You own real property adjacent to the real property that is the subject of the CDP. As such, you are able to see the property that is the subject of the CDP. You were also able to hear construction before the City issued a stop-work order because the addition was being built without the proper approvals and permit modifications.

You were appointed to the City Planning Commission and took office in January 2023.

City staff has advised the Property Owner of two options to proceed forward: either bring the project into compliance as approved or submit a plan for a major CDP amendment through the Planning Commission. As such, the Property Owner may go before the Planning Commission to address the violations by seeking changes to the CDP.

In a follow-up email, you stated that you cannot state for certain whether more than 15% of the City’s residential properties are located within 500 feet of the residence that is the subject of the potential Planning Commission decisions, but that you do not believe there are.

## 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 official’s 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.) Those specified economic interests include, “[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).) You have an economic interest in your 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 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).)

Your real property is located less than 500 feet from the property that is the subject of the CDP and there is no clear and convincing evidence a decision by the Planning Commission related to the CDP would not have any measurable impact on your real property. As such, the Act prohibits you from taking part in such a decision unless an exception applies.

Under what is commonly referred to as the “public generally exception,” an otherwise disqualified public official is not prohibited from taking part in a decision if the financial impact on the official’s economic interest is indistinguishable from the financial impact on the public generally. (See Section 87100.) A governmental decision’s financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes “[a]t 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).) You have indicated you cannot say with certainty whether more than 15% of the City’s residential properties are located within 500 feet of the residence that is the subject of the potential Planning Commission decisions, but that you do not believe there are. Because the facts do not establish that a significant segment of the public is similarly affected by the potential Planning Commission decisions, the public generally exception does not apply, and the Act prohibits you from taking part in decisions involving the subject property.

Finally, although we are unable to provide conflict advice beyond the Political Reform Act, we note you may also want to inquire with your City Attorney or private counsel regarding the common law doctrine against conflicts of interest, which “prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.” (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171 (quoting 64 Ops.Cal.Atty.Gen. 795, 797 (1981)).)

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

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Senior Counsel, Legal Division

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