



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 25, 2025

Aleks R. Giragosian
Senior Counsel
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109

Re: Your Request for Formal Advice
Our File No. A-25-097

Dear Mr. Giragosian:

This letter responds to your request for advice on behalf of the Montecito Sanitary District (“District”) regarding the conflict of interest provisions of the Political Reform Act (“Act”) and Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and Section 1090, and not under other general conflict of interest prohibitions such as common law conflict of interest. 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.

Because your request does not identify a particular official, pursuant to Regulation 18329(c)(4)(B), we are providing only informal advice in regard to the Act, and this letter does not provide any potential District board member with immunity as set forth in Section 83114.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Santa Barbara County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

QUESTIONS

1. As a general matter, does a District Board member have a disqualifying interest under the Act in decisions to approve a capital improvement plan and budget that includes authorizing comprehensive modernization to the District’s Wastewater Treatment Plant (“Facility”) as well as

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.

any progressive design-build contract for the project where the Board member owns real property within 500 feet of the Facility?

2. Does Section 1090 prohibit the District from entering into a design-build contract for the project where a Board member owns real property within 500 feet of the District's Facility?

CONCLUSIONS

1. Yes, where clear and convincing evidence is not provided to show that the decisions will not have any measurable impact on the Board member's property located within 500 feet of the Facility modernization project, the Board member will have a disqualifying interest and may not participate in the decision.

2. No, proximity of a real property interest to the Facility alone does not establish that a Board member has a disqualifying financial interest in the design-build contract, and the District is not prohibited from making the contract under Section 1090.

FACTS AS PRESENTED BY REQUESTER

The Montecito Sanitary District (District) is an independent special district located in Montecito, an unincorporated neighborhood of Santa Barbara County. The community of Montecito has 3,201 residential parcels. Those parcels are either improved or unimproved. Of the improved parcels, 2,936 receive wastewater services from the District.

The District has a five-member Board of Directors. One of the Board Members recently resigned, and the remaining four Directors must appoint a new Director pursuant to state law. Two of the expected applicants for the vacant Board position live within 500 feet of the District's Wastewater Treatment Plant Facility.

The Facility is 61 years old and is undergoing a comprehensive modernization. The comprehensive modernization includes multiple systems with deferred maintenance, including the wastewater treatment plant headworks, basins, blowers, and the electrical system. This comprehensive modernization is authorized both as part of the annual budget and the capital improvement plan ("CIP") approved by the Board of Directors.

Additionally, the comprehensive modernization will include a progressive design-build contract to demolish and rebuild much of the existing Facility. Design, engineering and construction work related to the comprehensive modernization is ongoing and is expected to last until 2028. The impact of the comprehensive modernization on neighboring properties is expected to include noise and traffic. These impacts are temporary and should cease upon the completion of the comprehensive modernization. The District anticipates that the project will provide residents with the same level of service throughout the District.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using their official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within

the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Interests from which a conflict of interest may arise are defined in Section 87103 and include an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)

The District is aware that two prospective Board members each have a real property interest that may be affected by the decisions at issue. We examine, as a general matter and for the District's informational purposes, whether it is reasonably foreseeable that the decisions identified would have a material financial effect on Board members with this type of real property interest.

Foreseeability & Materiality

Regulation 18701(a) states that an effect on an interest is presumed foreseeable if the interest is explicitly involved in the decision. An interest is explicitly involved if it is a named party in, or subject of, the decision. Regulation 18701(a) states that a financial interest is "the subject of" a proceeding under certain criteria, including where the decision affects a real property financial interest as described in the regulation setting forth the real property materiality standard, Regulation 18702.2, items (a)(1)-(6), discussed below.

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 whether "the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical." If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable." (Regulation 18701(b).)

Pertinent to the Board's decisions on approving the capital improvement plan and budget, as well as a design-build contract for the Facility modernization, we first look to the materiality standard in Regulation 18702.2(a)(6). This provision states that the reasonably foreseeable financial effect of a government decision on an official's real property parcel is material if it involves construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the official's parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.² However, the facts state that the services will be received equally by the District's residents, and the Board members' parcels will not receive new or improved services that are disproportionate to other properties. Therefore, a Board member would not have a disqualifying interest in the Facility modernization decisions under the above standard.

Next, we examine the presumption that the decision's effect on an official's parcel is material if it involves property located 500 feet or less from the property line of the official's 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 facts state that the Facility's

² Under a specific exception in Regulation 18702.2(d), the financial effect is not material if: (1) the decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage, or similar facilities. However, these decisions regard the construction of a modernized water treatment facility, and this exception does not appear applicable.

modernization will involve demolishing and rebuilding the Facility, and the prospective Board members each own a parcel located within 500 feet of the Facility. The modernization project will have noise and traffic impacts on the neighboring properties until 2028. There are no facts to show, through clear and convincing evidence, that the years-long anticipated construction noise and traffic impacts would not have any measurable impact on each official's parcel. Accordingly, a Board member with this type of real property interest would have a disqualifying interest in the Facility modernization decisions unless an exception applies.

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 the official's interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) 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 the official's financial interest is not “unique” compared to the effect on the significant segment. (Regulation 18703(a).)

Relevant to these facts, a significant segment of the public is at least 15 percent of all residences within the official's jurisdiction if the official's only interest in the decision is their primary residence. (Regulation 18703(b)(1)(A).) Regulation 18703(d) defines “jurisdiction” as the designated geographical area the official was elected to represent or the area to which the official's authority and duties are limited if not elected.” A “unique effect” on an official's financial interest relevant to these facts includes a disproportionate effect on the development potential, or use of the official's real property resulting from the proximity of a project that is the subject of the decision. (Regulation 18703(c)(2).)

The community of Montecito has 3,201 residential parcels, and 2,936 of these receive wastewater services from the District. Therefore, it is possible a significant segment of the public will be affected by the District's Facility modernization decisions. However, no facts have been provided to establish that the project would have no unique effect on either prospective official's respective property. This is particularly necessary given the close proximity of their residences and the scope of the reconstruction of the Facility, including the nearby noise and traffic impacts the project will have during the construction period. Therefore, the public generally exception would not apply, and an official with this real property interest would be prohibited from participating in the Facility modernization decisions.

Section 1090

The design-build contract decision is additionally subject to Section 1090, which generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Importantly, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is typically precluded from entering into the contract. (*Id.*, see also *Stigall*

v. City of Taft, supra, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

We have determined that Board members with a real property interest located within 500 feet of the Facility would generally have a disqualifying interest under the Act and may not participate in the Facility modernization decisions. At issue is whether the District would be prohibited from making the design-build contract due to the proximity of the officials' respective residences.

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) However, an official has a financial interest in a contract under Section 1090 only when there is a sufficient connection between the contract in question and the interest held by the official. We have previously advised that an official does not have a financial interest in a contract decision for a project under Section 1090 solely because they own property near the project. (See, e.g., *Duke* Advice Letter, No. A-24-112 [the official did not have a financial interest in road project agreements under Section 1090 solely due to the proximity of his property to a road that was subject to the agreements involved]; and *Bordsen* Advice Letter, No. A-17-059 [several officials did not have a financial interest in a contract under Section 1090, which involved frontage road improvements affecting the officials' real properties and business interests, simply because the officials' interests were adjacent to the project and would peripherally benefit along with numerous other properties and businesses along the route]. As a result, under Section 1090, Board members would not have a financial interest in the design-build contract decision solely due to their property's proximity to the Facility, and the District would not be prohibited from making the contract under Section 1090.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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