STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

August 9, 2021

Christine Breen
O/b/o Robert Frusetta and Edward Schmidt
Via email: cob@breenlaw.net

Re: Advisory Letter
In the Matters of Robert Frusetta, FPPC Case No. 2016-0774; and Edward Schmidt, FPPC Case No. 2016-0775

Dear Ms. Breen,

The Enforcement Division of the Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act.[1] This letter arises from a sworn complaint alleging that Robert Frusetta and Edward Schmidt had a conflict of interest when they participated in, voted on, and influenced governmental decisions related to a housing development project. After an investigation, the Enforcement Division is closing its file in this matter with this advisory letter as discussed below.

No public official at any level of state or local government may make, participate in making, or in any way attempt to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.[2] A public official has a financial interest in a decision if it is reasonably foreseeable the decision will have a material financial effect on the official's real property interests.

A public official's participation in a governmental decision results in a conflict of interest only if there is a reasonable foreseeability that the governmental decision will have a material financial effect on the official's financial interest.[3] However, there is no conflict if the official demonstrates that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally. This is referred to as the public generally exception. At all relevant times, the standard for determining whether the public generally exception applied was found in Regulation 18703. A governmental decision's financial effect is indistinguishable if there is a significant segment of the public that is affected by the decision and the public official's interest is not unique compared to the effect on the significant segment. A significant segment of the public is at least 25% of, for example, all real property, commercial real property, or residential real property within the official's jurisdiction.[4] A unique effect on a public official's

[1] The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.
[2] Section 87100.
[3] Regulation 18700.
[4] Regulation 18703, subdivision (b) (2015, 2016).

financial interest includes a disproportionate effect on the official's real property interest due to proximity of a project.

The investigation determined that Frusetta and Schmidt, acting in their official capacity as Board Members for the Tres Pinos Water District ("Water District") and the Tres Pinos School District ("School District"), participated in, influenced or attempted to influence, and made governmental decisions concerning a housing development proposal (the "Project") that would have been within 500 feet of the officials' real property. Specifically, the project concerned 21 single-family dwelling units located on Southside Road, Tres Pinos, CA.[5] The decisions took place between June 22, 2015 and February 23, 2016.

Tres Pinos is an unincorporated area in San Benito County with a population of 476 within approximately 3.6 square miles. In 2015, the Water District managed approximately 112 connections and the School District reported enrolling 135 students. The Project would have increased the total number of water connections by nearly 20%. Approximately 37 of the District's 112 connections were within 500 feet of the proposed project. This amounts to approximately 33% of the connections within the District. Similarly, there is evidence to show that a significant segment of real property interests within the School District's jurisdiction would be within close proximity of the Project.

Although both officials have real property interests within close proximity of the Project, there is insufficient evidence to conclude that decisions related to the Project would cause a unique effect. The type of impacts that would result from this project would not be uniquely felt due to proximity. There is no reason to believe that the subject decisions involving the approval for a 21-home development project would cause a unique effect to a single residence as compared to other residences within the area. Issues such as increased traffic, lack of water capacity, or increases in school enrollment would be felt similarly within this small, but relatively dense community.

Based on the foregoing, the Enforcement Division finds insufficient evidence that a conflict of interest has occurred.

Even though we are closing our file in the matter, please be advised of the conflict of interest provisions of the Act in any future actions your clients may take. As the members of boards within small communities, it is recommended that they consider the Act's conflict of interest provisions as future decisions may uniquely impact their financial interests.

In addition, the Commission has amended the regulations governing conflicts, including the public generally exception. If you need guidance regarding the Act's conflict of interest provisions, contact the Commission's Advice team by calling 1-866-275-3772 or sending an email to advice@fppc.ca.gov. There is also information pertaining to the conflict of interest provisions available on the Commission's website, www.fppc.ca.gov.

[5] The applicant was John Eade and the application was referred to as TSM 13-87 and TSM 13-88.

Please do not hesitate to call if you have any questions.

Sincerely,

Theresa Gilbertson
Commission Counsel
Enforcement Division

cc: Sworn Complainant, John Eade