FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

Robert Morgan
[redacted]

March 12, 2024

Re: No Action Closure Letter: Robert Morgan, FPPC No. 2021-00791

Dear Robert Morgan,

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").[1] This letter is in response to an anonymous complaint alleging that you were in violation of the Act's conflict of interest provision. The Enforcement Division has completed its investigation and has determined that there is insufficient evidence to determine that a violation has occurred.

Under the Act, no public official may make, participate in making, or influence a governmental decision in which they have a financial interest.[2] A public official has a financial interest in a decision 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, on a member of their immediate family, or on certain specified financial interests such as a real property interest, including a leasehold interest, in which the official has a direct or indirect interest worth $2,000 or more.[3]

To assess whether the financial effect will be material, the regulations provide that there is materiality when a decision involves the construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.[4] For a leasehold interest, the materiality will depend on whether the decision changes the termination date of the lease will increase or decrease the potential rental value of the property, will change the official's actual or legally allowable use of the property, or will impact the official's use and enjoyment of the property.[5]

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[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 18104 through 18998 of Title 2 of the California Code of Regulations.
[2] Section 87100.
[3] Regulations 18700.
[4] Regulation 18702.2, subdivision (a)(6).
[5] Regulation 18702.2, subdivision (c).

The regulation provides that there is no materiality when the decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage, or similar facilities.[6]

The final part of the analysis is whether the public generally exception will apply. When a decision's financial effect is indistinguishable from the public generally, there is no conflict.[7] To establish public generally, the official must show that the decision affects a significant segment of the public within the official's jurisdiction and that the decision does not have a unique or disproportionate effect on the official's interest.[8]

You serve as a Board Member for the Mojave Air and Space Port District (hereafter, "District.") You have a land-lease for Hangar 935, located within the General Aviation Area of the District. The land-lease provides that any improvements to the premises, such as the existing hangar facility, will transfer, without cost, to the District upon termination or expiration of the lease. However, while the lease is in effect, you own the hangar and have a real property interest in the hangar.

Here, the decision at issue is the June 15, 2021 contract approval for "General Aviation Pavement Reconstruction and Drainage Improvements Airport Engineering Design Services." According to the staff report, the project concerned the General Aviation area, covering an area of 5.5 acres and consisting of 55 box hangars and eight taxi lanes. The existing pavement was damaged, showing severe cracking, and there was a recurrent drainage problem. The project would include the replacement of existing pavement, the installation of a drainage system between hangars, and the installation of taxi-lane pavement markers. Though the bid for services was approved, the project contracts were never finalized, and no proposed work has been completed.

The public generally exception is unlikely to be applicable where the decision impacts the real property interest of private hangar owners. The decision would have distinguishable financial effects on private hangar owners, compared to other real property owners located in the jurisdiction that elects the Board Members. Moreover, the owner of a private hangar would have a unique interest compared to the general public or even other leaseholders who do not have a real property interest in a hangar.

With respect to your land-lease interest, the governmental decision would likely impact your use and enjoyment of the property, at least while the construction was ongoing and potentially after with respect to repairs made to the concrete and drainage systems. However, as discussed above, there is an exception when the decision relates solely to repairs and maintenance. The investigation found insufficient evidence that your financial interests would have received a disproportionate improvement compared to the other hangars and land-lease interests. Therefore, the Enforcement Division finds that the exception for decisions solely related to repairs and

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[6] Regulation 187202.2, subdivision (d)(1).
[7] Section 87100, Regulation 18703.
[8] Regulation 18703.

maintenance applies here. Based on the foregoing, we have closed our investigation into this matter.

Should you have any questions regarding this letter, please feel free to contact me at (279) 237-5960 or Tgilbertson@fppc.ca.gov.

Sincerely,

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division

CC: Scott Nave, attorney for Mojave Air and Space Port District