

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

August 29, 1980

Joy Anne Fitzhugh
2850 Wallace Avenue
Cambria, CA 93428

A-80-08-091

Re: Opinion Request
No. 80-007

Dear Ms. Fitzhugh:

This is in response to your letter dated August 13, 1980, requesting a formal opinion from the Fair Political Practices Commission concerning the disqualification provisions of the Political Reform Act. Because your letter raises no substantial question involving interpretation of the Act, no formal opinion will be issued. The following comments do, however, constitute informal advice pursuant to Government Code Section 83114(b).

We have reviewed the Attorney General's letter of advice to you dated August 12, 1980. We believe the Attorney General's letter adequately addresses the issues raised in your letter to us, and we would reach the same conclusions.

If you wish to appeal the denial of your opinion request, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please contact Sarah Cameron, Deputy Chief of the Legal Division for Conflicts of Interest.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Prim".

Ted Prim
Executive Director

TP:SC:plh

Request No. 00001

Date Received 8-15-80

Response Due 8-29-80

PROPOSED RESPONSE TO
COMMISSIONERS: 8-25-80

Aug 15 8 47 AM '80

Commissioner Joy Ann Fitzhugh
South Central Coast Regional Commission
2850 Wallace Avenue
Cambria, California 93428
August 13, 1980

Fair Political Practices Commission
1100 K Street
P. O. Box 807
Sacramento, California 95804

Re: Request for Opinion
(Government Code Section 83114)

Dear Commissioners:

Please consider this letter a formal request for a Fair Political Practices Commission Opinion pursuant to Government Code section 83114 with regard to my duties under the Political Reform Act of 1974.

INTRODUCTION

I am a Regional Commissioner on the South Central Coast Regional Commission of the California Coastal Commission. Under the Coastal Act of 1976, the South Central Coast Regional Commission (hereinafter "Regional Commission") has jurisdiction to issue permits for development within the coastal zone portions of Ventura, Santa Barbara, and San Luis Obispo Counties. The Regional Commission also has jurisdiction to approve or disapprove in whole or in part the local coastal programs ("LCPs") which Chapter 6 of the Coastal Act directs local governments to prepare.

A question has arisen under Government Code sections 87100 and 87103 on whether or not I should participate in Regional Commission permit and LCP decisions involving the Lodge Hill area of Cambria. The specific facts upon which the question arises are stated below.

FACTS

1. I own a residence worth more than \$1,000 in Lodge Hill, one of four more or less distinct sections of Cambria. Lodge Hill is the largest subdivided area of Cambria, and approximately 20% of its 9,497 subdivided lots

are developed. Eighty percent of the development potential in the subdivided area of Cambria is in Lodge Hill.

2. I own a partnership interest in a beef cattle agricultural enterprise on a 34 acre ranch owned by my parents and situated adjacent to the subdivided area of Lodge Hill. The ranch land itself is not an asset of the partnership. The land is held in agricultural preserve under a twenty year contract pursuant to the California Land Conservation Act of 1965 (Williamson Act), Government Code section 51200 et seq. The County of San Luis Obispo and the Cambria Community Services District consider the ranch to be within Lodge Hill for public utility purposes. The County's past determination not to issue building permits for Lodge Hill, recently changed, included the location of my parents' ranch.

3. Attached to this letter and incorporated by reference are additional documents which more fully describe the Lodge Hill area and the coastal planning issues associated with it:

- 1) August 1, 1980, and June 20, 1980 memoranda to Regional Commissioners from Ruth Schwartz, Coastal Analyst.
- 2) "Cambria Coastal Restoration Feasibility Study" prepared for the Coastal Conservancy by The Planning Collaborative, Inc. and John M. Sanger Associates, Inc.

Also attached is a letter of advice I received from the Office of the Attorney General.

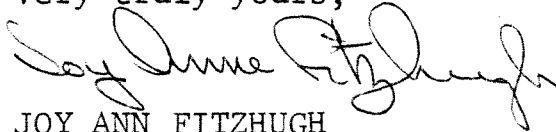
QUESTION

Based on the foregoing facts, do Government Code sections 87100 and 87103 require that I disqualify myself from participating in Regional Commission decisions regarding the Lodge Hill area? If so, must I disqualify myself on all permit decisions for the Lodge Hill area? Must I disqualify

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myself from participating in the Regional Commission's
review of the Lodge Hill portion of San Luis Obispo County's
Local Coastal Plan?

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joy Ann Fitzhugh".

JOY ANN FITZHUGH
Commissioner

South Central Coast Regional Commission

Enclosures



State of California
Department of Justice
George Beukmejian
(PRONOUNCED DUKE-MAY-GIN)
Attorney General

3580 WILSHIRE BLVD.
LOS ANGELES 90010
(213) 736-2304

(213) 736-2112

August 12, 1980

Commissioner Joy Ann Fitzhugh
South Central Coast Regional Commission
2580 Wallace Avenue
Cambria, California 93428

Dear Commissioner Fitzhugh:

You have requested the advice of this office on the question of whether you should disqualify yourself for conflict of interest reasons from voting or participating on permit matters which come before the South Central Coast Regional Commission which involve the Lodge Hill area of Cambria.

Our advice is that you should disqualify yourself from voting on or participating in discussions of permit applications from the Lodge Hill area.

FACTS

Our advice is based upon the factual situation supplied by you in your oral request for advice and upon conversations with the Regional Commission staff. The facts are as follows:

(a) You own a residence worth more than \$1,000 in Lodge Hill, one of four more or less distinct sections of Cambria.

(b) You own a partnership interest worth more than \$1,000 in a beef cattle agricultural enterprise on a 34 acre ranch owned by your parents and situated adjacent to the subdivided portions of Lodge Hill. The ranch land itself is not an asset of the partnership. The County of San Luis Obispo and the Cambria Community Services District consider the ranch to be within Lodge Hill for public utility purposes. The County's past determination not to issue building permits in Lodge Hill, recently changed, included the location of your parents' ranch.

The major coastal planning issues associated with development on Lodge Hill are:

- (1) Adequacy of public services available to accommodate development on subdivided lots.
- (2) Adequacy of current subdivision patterns and lot size. The majority of lots are 3500 square feet and a substantial number are smaller.
- (3) Impact of development as constituted by subdivided pattern on viability of the Monterey Pine Forest, on wildlife, erosion and sedimentation of Santa Rosa Creek.
- (4) Impact of development on capacity of Highway One, and particularly on recreational traffic, which has priority under the Coastal Act.
- (5) Impact of development on visual and scenic qualities, portions of Lodge Hill being visible from Highway One and on the coastal terrace.

ANALYSIS

Under the Political Reform Act of 1974, a public official is not permitted to:

" . . . make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."
(Gov. Code, § 87100.) 1/

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:

"(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

1. All statutory references are to the Government Code unless otherwise noted.

"(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000);

"(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made; or

"(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management."
 (§ 87103.)

Both your residence and your business interest in your parents' ranch appear to be financial resources which could be affected by Regional Commission decisions within the meaning of sections 87100 and 87103, quoted above.

Under the foregoing sections, however, several elements must be present before a public official is required to disqualify herself from participation in a governmental decision. First, it must be reasonably foreseeable that the decision will have a financial effect. Second, the anticipated financial effect must be on at least one of the economic interests described in section 87103. Third, the anticipated effect must be material and, fourth, the effect must be distinguishable from its effect on the public generally.

Section 87103 does not require proof that a decision will effect an official's financial interests, only that it be foreseeable the decision will have a financial effect. Witt v. Morrow (1977) 70 Cal.App.3d 817, 822. The Fair Political Practices Commission has discussed the term foreseeable as follows:

"In general, that which a reasonable person would predict, anticipate, or expect beforehand, can be said to be 'foreseeable'. The term requires the application of reasonable judgment to assess the degree of likelihood that a decision made or participated in will affect a financial interest. Where the likelihood is sufficiently great that a reasonable person would predict or anticipate an effect on a financial interest, the effect of the

Commissioner Fitzhugh
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decision is foreseeable."

FPPC Statement of Policy, Document 4, page 3,
October 1976.

Although we cannot say with certainty that Regional Commission decisions will have a financial effect on your economic interests in the Lodge Hill area, we believe it is reasonably foreseeable, in light of the FPPC discussion of that term, that such an effect may occur. Courts recognize that coastal regulations and coastal permit decisions effect property values. See People ex rel. State Public Works Board v. Talleur (1978) 79 Cal.App.3d 690. Decisions that the Regional Commission makes are likely to have singular or cumulative effects on market values of property in the entire Lodge Hill area. This is especially true, where, as here, the area is relatively undeveloped and there has been no new development permitted for a considerable period of time. Concomitantly, changes in market value will effect tax assessments. Special district or utility assessments may also be affected by permit decisions. Although the ranch land itself is not an asset of the partnership, it is clearly of vital importance to the partnership operations. Decisions which will affect the ranch land will inextricably affect the business as well. Finally, Regional Commission decisions on current permit applications in the Lodge Hill area will tend to have a precedential effect on future permit decisions for the area. In sum, a substantial likelihood exists that both your residence and your business will be financially impacted.

We also believe that the potential financial effects on your property will be material. Fair Political Practices Commission regulations provide in relevant part that:

" . . . The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question."
(2 Cal. Admin. Code, § 18702(a).)

In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant

within the meaning of 2 California Administrative Code section 18702(a), above, subsection (b) of the regulation states that consideration should be given to the following factors:

"(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

"(A) The annualized gross revenues by the lesser of:

"1. One hundred thousand dollars (\$100,000); or

"2. One percent if it is one thousand dollars (\$1,000) or more; or

"(B) Annual net income by the lesser of:

"1. Fifty thousand dollars (\$50,000); or

"2. One half of one percent if it is one thousand dollars (\$1,000) or more; or

"(C) Current assets or liabilities by the lesser of:

"1. One hundred thousand dollars (\$100,000); or

"2. One half of one percent if it is one thousand dollars (\$1,000) or more.

"Current assets are deemed to be decreased by the amount of any expenses incurred as a result of a governmental decision.

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"(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

"(A) The income producing potential of the property by the lesser of:

"1. One thousand dollars (\$1,000) per month; or

"2. Five percent per month if it is fifty dollars (\$50) or more per month; or

"(B) The fair market value of the property by the lesser of:

"1. Ten thousand dollars (\$10,000);
or

"2. One half of one percent if it is one thousand dollars (\$1,000) or more."

It is unlikely that each individual permit decision of the Regional Commission will have a significant financial effect in the manner described in regulation 18702(b). However, the cumulative effects of the decision making process must be considered. Cf. In re Oglesby (1975) 1 FPPC Opinions 71, 79. It is foreseeable, although not certain, that the cumulative effect of Regional Commission permit decisions on Lodge Hill could be a significant one to your financial interests as the term "significant" is to be considered according to regulation section 18702(b). Again, we emphasize that the law requires that the decision's financial effect only be foreseeable, not certain or proven. Witt v. Morrow, supra, 70 Cal.App.3d 817, 822.

The final question to be resolved is whether the potential effect of Lodge Hill permit decisions on your economic interests is distinguishable from the effect upon the public generally. According to the applicable Fair Political Practices Commission regulations, a material financial effect of a decision on an official's interest is distinguishable from the effect on the public generally:

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"unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. . . ."
(2 Cal. Admin. Code, § 18703.)

The phrase "public generally" in this case would be those persons within the jurisdiction of the South Central Coast Regional Commission, i.e., the coastal zone within San Luis Obispo, Santa Barbara and Ventura Counties. See In re Owen (1976) 2 FPPC Opinions 77, 81. It is obvious that the people who do business or reside or own property in Lodge Hill will be affected differently and more directly by the Regional Commission's Lodge Hill decisions than the general public residing in the South Central Coast Region. The question then becomes what constitutes a "significant segment" of the public. In re Owen, supra, 2 FPPC Opinions, 77, 81.

A significant segment of the public is a group that is large in numbers and heterogeneous in quality. In re Ferraro (1978) 4 FPPC Opinions 62, 67.

This definition would clearly seem to apply to the entire population of Cambria, or even the class of all residential owners in Cambria. Whether Lodge Hill property owners constitute a significant segment of the public is a closer question. There are approximately 9,497 residential lots on Lodge Hill, twenty-one percent of which are developed.^{2/} We knew of no facts to indicate that the persons owning these lots are anything but a diverse group of citizens. Arguably then, Lodge Hill residential property owners are a significant segment of the public. If so, your residence would not disqualify you from participating in Lodge Hill permit decisions.

There are facts present which mitigate against such a conclusion, however. The coastal planning issues for Lodge Hill tend to isolate its residents from the public in general and from the other areas of Cambria. In this sense,

2. Data is from the "Cambria Coastal Restoration Feasibility Study," dated August 1979, prepared for the Coastal Conservancy by The Planning Collaborative, Inc. and John M. Sanger Associates, Inc.

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Lodge Hill property owners cannot be considered a significant segment of the public when compared to the class of all residential property owners in Cambria or the general population of Cambria.

Even if we were to conclude that Lodge Hill property owners are a significant segment of the public, and that Regional Commission decisions for Lodge Hill will effect your financial interest in your residence the same way it effects all other Lodge Hill residents, we believe that your business interest in the Lodge Hill area is ground for disqualification. The "segment" of the "public" owning or having an interest in commercial enterprises in the Lodge Hill area is much smaller than that of residential property owners. The effect of the decision making process for Lodge Hill on your partnership interest does not qualify as an effect on a significant segment of the public. The cumulative impact of Lodge Hill permit decisions, in light of the coastal planning issues involved, is likely to be of a particular and identifiable nature with regard to your partnership interest. Because of this we conclude that the effect on your financial interest is distinguishable from the effect on the public generally or a significant segment of the public.

Finally, in addition to the considerations discussed above, we wish to emphasize that even if it is uncertain that an actual, significant conflict of interest will occur in this case, the appearance of a conflict as perceived by the public is as important as an actual one. As the California Fourth District Court of Appeal stated in Witt v. Morrow: "It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties." 70 Cal.App.3d 817, at p. 823. 3/

SUMMARY AND CONCLUSION

Based on the foregoing, our advice is that you should disqualify yourself from voting or participating in

3. The above analysis is based on sections of the 1974 Political Reform Act. We note, however, that the Coastal Commission regulations in relevant part contain the exact same provisions as sections 87100 and 87103 of the Government Code, quoted infra. See 14 Cal. Admin. Code § 13045.

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Regional Commission permit decisions involving the Lodge Hill area. We are aware that you may have potential conflict of interest considerations with regard to other than just permit decisions. Specifically, you have voiced concern with regard to your participation in the Regional Commission's decision on the Cambria segment of San Luis Obispo County's Local Coastal Program. We decline to render such advice at this time because the specific facts and circumstances with regard to the Cambria segment of the LCP and the manner in which Lodge Hill issues will be addressed in the LCP are as yet unknown. Once the County's LCP is submitted to the Regional Commission, we will be happy to render advice to you on this subject.

Our advice to individual coastal commissioners traditionally has been conservative, since the appearance of conflict as perceived by the public can be as important to an individual commissioner as an actual conflict and since we cannot grant you immunity from civil or criminal prosecution. If you still wish to participate in the above mentioned hearing, we suggest that you request an opinion from the Fair Political Practices Commission, since an opinion from the FPPC which found that you need not disqualify yourself under the facts and circumstances presented would immunize you from any potential civil actions or criminal prosecutions that might otherwise occur.

Sincerely yours,



MICHAEL L. CROW
Deputy Attorney General

MLC:dg