



California Fair Political Practices Commission

April 9, 1987

James P. Fox
District Attorney
County of San Mateo
County Government Center
Redwood City, CA 94063

Re: Your Request for Advice
Our File No. I-87-064

Dear Mr. Fox:

Your office has written requesting our assistance in interpreting various provisions of the Political Reform Act (the "Act")^{1/} as they apply to Vincent A. Muzzi, Planning Commissioner for the County of San Mateo. Michael Murphy of your staff advised me on March 23, 1987, that the specific decisions referred to in your letter have already taken place. Consequently, we are treating your letter as a request for informal assistance rather than the formal written advice which your letter originally requested.^{2/} We will provide you and Mr. Muzzi with general guidance in response to the issues raised by your questions.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Your letter was received in this office on February 25. It did not indicate a response was needed more quickly than the statute requires (March 26). In our conversation of March 23, Mr. Murphy explained that the decisions had moved along more quickly than you anticipated and were completed by March 11. Consequently, you now seek only general guidance for future, unspecified decisions. The Commission does not provide formal written advice regarding past conduct. (Regulation 18329(b)(8)(A), (9) and (c)(4)(A).) Informal assistance does not provide the requestor with the immunity which is provided for in Section 83114(b). (Regulation 18329(c)(3).)

QUESTIONS

Public Generally

1. What is the jurisdiction of the planning commission for purposes of the "public generally" exception?

2. Do persons having a direct or indirect interest in real property zoned Planned Agricultural District ("PAD") constitute a significant segment of the general public?

3. Will the effect on Mr. Muzzi's interests in lands zoned PAD be distinguishable from the effect on the public generally?

Reasonably Foreseeable Material Financial Effect

4. Does the term "financial effect" as set forth in Regulation 18702.1(c)(3) include a requirement that such effect be material?

5. Does the term "financial effect" as used in Regulation 18702.1(c)(3) include a requirement that such effect be reasonably foreseeable?

Making or Participating in Making Decisions

6. Is a planning commissioner making or participating in making decisions when acting upon matters as to which the board of supervisors is the ultimate decision-making authority?

Using Official Position to Influence

7. May a disqualified planning commissioner, who has a financial interest in a decision pending before the planning commission, discuss matters affecting his economic interest with the planning commission staff?

CONCLUSIONS

Public Generally

1. With respect to actions taken by the San Mateo County Planning Commission, the "public generally" is considered to be the entire population of San Mateo County, not merely of the unincorporated area of the county.

2. Based upon the facts provided, we conclude that persons having a direct or indirect interest in real property zoned PAD do not constitute a significant segment of the general public.

3. As an owner of substantial acreage in the PAD zone, an effect on Mr. Muzzi's real property interests as a result of decisions to amend the PAD zoning would be distinguishable from an effect upon the public generally or a significant segment of the general public.

Reasonably Foreseeable Material Financial Effect

4. The term "no financial effect" as used in Regulation 18702.1(c)(3) means no measurable or discernible financial effect stemming from the decision. Stated in the alternative, a decision would have "no financial effect" if the financial effect flowing from the decision was negligible (i.e., so insignificant that it cannot be quantified).

5. The term "financial effect" as used in Regulation 18702.1(c)(3) refers to an effect which is foreseeable. However, the context is different than that in which the term is used in Section 87103. In the context of Regulation 18702.1(c)(3), it must be reasonably foreseeable that the decision would have no financial effect upon the person, business entity, or real property.

Making or Participating in Making Decisions

6. A planning commissioner is a high level government official who makes decisions when voting on matters before the planning commission and who participates, through planning commission recommendations, in decisions made by the board of supervisors. This is true even though the board of supervisors frequently may not follow the recommendations of the planning commission.

Using Official Position to Influence

7. Assuming that a planning commissioner is disqualified due to an interest in real property which is the subject of the planning commission's decision, he or she may not in any way use his or her official position to influence the decision of the other planning commissioners or the planning department staff. In the case of property which belongs solely to the planning commissioner or members of his or her immediate family, the planning commissioner may "appear" in the same manner as any other member of the general public before the planning commission or the planning department staff. In this context, "appearing" would include written communications which are made a part of the public record in the matter and necessary responses to questions raised by staff in the course of its review of the matter. These communications would not be

permitted where the planning commissioner is not representing solely his own interest in the real property.

FACTS

Mr. Muzzi has recently been appointed to the San Mateo County Planning Commission. Mr. Muzzi has numerous and varied interests in real property and business entities which may be affected in various ways by planning commission decisions.

Mr. Muzzi has sole ownership of nine parcels, consisting of approximately 293 acres, of land located in the PAD zone. This interest is worth more than \$100,000. He has a joint tenancy interest in four parcels, consisting of an additional 222 acres, of PAD lands, ranging in size from 40 to 59 acres. These parcels are also valued in excess of \$100,000.

Mr. Muzzi is the trustee of an estate which includes among its assets three parcels, consisting of approximately 10 acres of land, located within the PAD. The parcels are also valued in excess of \$100,000.

Mr. Muzzi is president of Certosa, Inc., which has among its assets six parcels, consisting of 78 acres of land, located in the PAD, ranging in size from .06 to 43 acres. These parcels are also valued in excess of \$100,000. Mr. Muzzi has an ownership interest of 7 percent in Certosa, Inc. However, he owns 75 percent of the voting stock.

Mr. Muzzi also has a nonexclusive right to use water from a water system consisting of a series of lakes, small dams, flumes, and an open stream channel, located on PAD lands and fed by runoff and a diversion of water from Little Butano Creek. The water is used to support agricultural operations on PAD lands in which Mr. Muzzi has an interest.

Mr. Muzzi also has various business and real estate interests in other zoning areas within the coastal zone area of San Mateo County.^{3/}

^{3/} In our telephone conversation of March 23, 1987, Mr. Murphy advised me that the specific decisions which were pending at the time of your letter, including those involving the PAD and other zoning areas, had proceeded more quickly than expected and had been acted upon by the planning commission by March 11th. Our answers with respect to Mr. Muzzi's PAD interests should provide sufficient general guidance as to disqualification issues. We will not specifically address the other interests in light of the fact that the decisions which could affect them are no longer pending.

There are 204,649 separate assessor's parcels within the county, totaling approximately 298,000 acres. Of the total parcels, approximately 179,419 are in the incorporated area of the county and 25,230 are in the unincorporated area of the county.

The unincorporated rural area of the San Mateo County Coastal Zone is divided into three zoning districts: The PAD, containing 55,684 acres; the Resource Management/Coastal Zone District (RM/CZ), containing 13,150 acres; and the Timberland/Coastal Zone District (TPZ/CZ), containing 7,787 acres. The exact number of parcels in each of these districts is unknown. However, an unofficial count performed by the county in 1980 did identify 873 separate assessor's parcels zoned PAD. There has been no significant rezoning or subdivision of such land since 1980, so this figure is still fairly accurate. Although there was no similar count for parcels zoned RM/CZ and TPZ/CZ, reasonable estimates based on the average size of similarly zoned parcels countywide indicate that there are approximately 470 separate parcels in RM/CZ and 37 separate parcels in the TPZ/CZ zone.

ANALYSIS

The Act provides that no public official shall make, participate in making, or in any way attempt to use his official position to influence any governmental decision in which he has a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect upon the public generally, on the official, a member of his immediate family, or on:

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

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, 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.

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

Section 87103(a) - (d).

Mr. Muzzi has several interests in real property. He is also an officer and an owner of a business entity. The business is presumably a source of income. (Section 87103(a), (b), (c) and (d).) Mr. Muzzi is also trustee of a trust. It is unclear from the facts given if he has an ownership interest in the trust or receives income as trustee, or whether the trust is a business entity. Consequently, we are unable to fully analyze the effect of the trust on Mr. Muzzi's duties under the Act.^{4/}

As sole owner of certain parcels, Mr. Muzzi has a direct interest in that real property. The same is true for the parcels which he owns in joint tenancy. As an owner of less than 10 percent of Certosa, Inc., Mr. Muzzi does not have an indirect interest in real property owned by the company. (Section 82033.) However, he clearly has an investment in Certosa, Inc., and is an officer of that business entity. Consequently, he must disqualify himself as to decisions materially affecting that entity.

Mr. Muzzi is a 50-percent owner of Pigeon Point Prospectors, which has among its assets a three-acre parcel of property located in the RM/CZ area. Mr. Muzzi thus has a one-half interest in the real property owned by Pigeon Point Prospectors as well as a one-half ownership interest in the businesses operated on that property by Pigeon Point Prospectors. In addition, because Mr. Muzzi owns more than 10 percent of Pigeon Point Prospectors, sources of income to Pigeon Point Prospectors will be sources of income to Mr. Muzzi on a pro rata basis. (Section 82030(a).)

Mr. Muzzi is a public official within the meaning of the Act. (Section 82048.) Consequently, he may not make, participate in making, or use his official position in any way to attempt to influence the making of any governmental decision which will have a reasonably foreseeable material financial effect upon any of his various interests, provided that the effect will be distinguishable from the effect of the decision on the public generally. (Sections 87100, 87103.)

^{4/} For instance, if Mr. Muzzi has a beneficial interest in the trust of 10% or more, he will have an indirect interest in the real property held by the trust. (Section 82033.)

Public Generally.

Questions 1, 2 and 3.

You have asked whether the fact that the San Mateo County Planning Commission has planning jurisdiction over the unincorporated areas of the county, while the various cities have jurisdiction within their borders, makes a difference in determining what constitutes the "public generally" for purposes of analyzing Mr. Muzzi's duties. This question was answered in the Commission's opinion in In re Legan, 9 FPPC Ops. 1, No. 85-001 (copy enclosed). The Commission rejected the contention that the "public generally" consists of the unincorporated area of the county in light of the planning/land use jurisdiction of the board of supervisors. The Commission held that for county agencies such as the board of supervisors (and planning commission), the general public is the entire county, not just the unincorporated area. This is in accord with the Commission's earlier opinion, In re Owen, 2 FPPC Ops. 77, No. 76-005 (copy enclosed).

In Legan, the Commission also held that the interests of a few, large land owners in the unincorporated area are different from the interests of the public generally. The same conclusion applies to Mr. Muzzi's situation. He has interests in substantial land holdings within the PAD area which will be affected by various zoning decisions. They will be affected in a manner which is distinguishable from the effect of those zoning decisions on the vast number of land owners in San Mateo County. Legan and Owen are dispositive of your "public generally" questions.^{5/}

Reasonably Foreseeable Material Financial Effect.

Questions 4 and 5.

Given that Mr. Muzzi has real property interests which may become the subject of various planning commission decisions, you have inquired regarding the appropriate application of

^{5/} This does not mean that there may never be a land use decision affecting Mr. Muzzi's real property interests in a manner which is substantially the same as the decision affects the interests of the public generally. However, as a general rule, given his extensive interests, it is unlikely that this will be the case. Obviously, the answer would be the same with respect to Mr. Muzzi's interests in the smaller RM/CZ and TPZ/CZ areas.

James P. Fox
April 9, 1987
Page 8

Regulation 18702.1. Specifically, you have asked about subdivision (a)(3), which provides:

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

* * *

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more....

(Emphasis added.)

You have specifically inquired with regard to subdivision (c)(3) of Regulation 18702.1, which provides:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

* * *

(3) Although disqualification would otherwise be required under subsection (a)(1), (a)(2), or (a)(3) the decision will have no financial effect on the person or business entity who appears before the official, or on the real property.

(Emphasis added.)

Your questions relate to the terms "no financial effect" as used in that subdivision. You have asked first whether the term "financial effect" means "material financial effect." We conclude that it does not.

Subdivision (a)(3) specifies that the effects of zoning, annexation or similar decisions on an official's real property interests will be considered to be material when those interests are the direct subject of the proceedings. Where the

James P. Fox
April 9, 1987
Page 9

effects will only be indirect, a different regulation governs the determination of materiality (Regulation 18702(b)(2).)

However, if there will be no financial effect upon the official's property at all, then subdivision (c)(3) would exempt the official from disqualification. While such decisions as zoning, purchase or annexation normally will have significant financial effects upon the property which is the subject of those decisions, there may be circumstances where this is not the case. In those unusual situations, where the effects of the direct decision on the official's property will be so negligible that the effects cannot be quantified, there will be "no financial effect" within the meaning of subdivision (c)(3). In those situations, disqualification is not required.

You have also asked whether the concept of foreseeability is also implicit in the language of subdivision (c)(3). We conclude that it is. It must be reasonably foreseeable that there will be no measurable or discernible financial effect in order for subdivision (c)(3) to operate to permit participation. A remote possibility that there will be no financial effect upon the official's real property interests is not enough. The effect need not be a certainty, but it must be a substantial probability. For further discussion on the topic of foreseeability, I enclose a copy of In re Thorner, 1 FPPC Ops. 191, No. 75-089.

Making or Participating in Making Decisions.

Question 6.

You have asked if the fact that a particular planning or land use decision must go to the board of supervisors, which may well modify or reject the planning commission's recommendation, makes a difference in terms of disqualification. Your question assumes that a planning commissioner has an otherwise disqualifying interest in the matter under consideration.

Whether the planning commission is the final decision-maker on a particular matter or is making recommendations to the board of supervisors, its decisions are governmental decisions. Even if its recommendations were not considered governmental decisions, they would constitute participation in a governmental decision within the meaning of Section 87100. (See, Regulation 18700(b), copy enclosed.)

Planning commissions are recognized as very important decision-making bodies in the governmental process. That is why planning commissioners are enumerated among those high ranking public officials who are statutorily required to make

full financial disclosure. (Section 87200.) Only those high ranking public officials enumerated in Section 87200 are required to file a Form 721 disclosure statement. All other public officials file Form 730 statements and then only if they are designated in their agency's conflict of interest code. Their disclosure statements include only those disclosures specifically assigned to their particular job category. The drafters of the Act recognized that certain high level officials who make and participate in making the most important decisions should have broader disclosure requirements because their decisions may affect a greater array of interests. A county planning commissioner is one of these officials.

Using Official Position to Influence.

Question 7.

You have asked whether a disqualified planning commissioner may still participate in the same manner as any other member of the public. Your question seeks an interpretation of Regulation 18700.1, which reads in pertinent part:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) Notwithstanding subsection (a) an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by subsection (a) if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

Regulation 18700.1(a) and (b)(1).
(Emphasis added.)

Subdivision (a) precludes any participation, including lobbying of agency staff and fellow planning commissioners, unless the provisions of subdivision (b) are applicable. Your question focuses on subdivision (b)(1). This provision applies only when the official is representing solely his or her own interests or interests which the official holds jointly with a member or members of his or her immediate family. The term "immediate family" is defined to include only the official's spouse and dependent children. (Section 82029.) Mr. Muzzi is barred from any participation unless subdivision (b)(1) applies. (See enclosed advice letters to David M. Kennedy, No. A-86-026 and Michael D. Martello, No. A-85-190.)

Consequently, subdivision (b)(1) of Regulation 18700.1 would only come into play as to some of Mr. Muzzi's interests. It would apply in the case of the PAD parcels which he owns solely. It would not apply as to the PAD parcels which he holds in joint tenancy unless the joint tenant is his spouse or a dependent child. It probably would not apply to decisions affecting Certosa, Inc., or to decisions affecting Pigeon Point Prospectors, unless the only other owners are his spouse or a dependent child.

As to those interests to which Regulation 18700.1(b)(1) applies, Mr. Muzzi may participate in the limited manner permitted by the regulation. He may "appear" during the course of the proceedings in the same manner as any other member of the public. After first stating that he is disqualifying himself from official participation in the matter, Mr. Muzzi may address the planning commission, representing only his own interests, from the podium or audience, whichever is used, in the same manner as any other member of the public. In addition, he may submit written comments which are of the type

James P. Fox
April 9, 1987
Page 12

which other members of the public submit and which will be made a part of the public record in the proceedings. In so doing, Mr. Muzzi may not use official stationery or make reference to his official position as a member of the planning commission. (Regulation 18700.1(c).)


If contacted by the planning staff, during the normal course of its staff work on a matter, Mr. Muzzi may respond to staff questions. The staff should memorialize these contacts in writing and also make them a part of the public record in the matter. Mr. Muzzi may not communicate orally or in writing regarding the matter to other members of the planning commission. Nor may he orally contact the planning staff on the matter, except in response to contacts initiated by them. Closed session meetings with planning staff are not permitted. (See, Advice Letter to Robert Gross, No. A-84-208, copy enclosed.)

When the matter goes before the board of supervisors, Mr. Muzzi is restricted only by the provisions of subdivision (c) of Regulation 18700.1. Consequently, he may appear before the board and may call or write to them, so long as he does not use official stationery or his title of office to do so. (Regulation 18700.1(c).)

I trust that this letter has satisfactorily responded to your questions. Should you have questions regarding this letter, I may be reached at (916) 322-5901. When Mr. Muzzi has specific questions regarding pending decisions in the future, do not hesitate to contact us in advance of those decisions so that we may provide specific advice.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosures

James P. Fox, District Attorney



COUNTY OF SAN MATEO

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I-87-064
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February 20, 1987

Diane Griffiths
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428 J Street, Suite 800
Sacramento, CA 95814

Re: Request for Advice (Vincent A. Muzzi)

Dear Ms. Griffiths:

Pursuant to Government Code section 83114(b) and 2 Cal. Admin. Code section 18329, this office requests formal written advice on the questions set forth below. We have been authorized to submit this request by Vincent A. Muzzi, Planning Commissioner for the County of San Mateo. Mr. Muzzi's mailing address is 1766 El Camino, Suite C, Burlingame, CA 94010.

BACKGROUND

Vincent A. Muzzi is a recently appointed member of the San Mateo County Planning Commission, which exercises general land use planning jurisdiction throughout unincorporated San Mateo County. There are 204,649 separate assessor's parcels within the County, totaling approximately 298,000 acres. Of the total parcels, 179,419 are in the largely urbanized incorporated area, and 25,230 are in the unincorporated area of the County. Approximately 76,620 acres of largely undeveloped rural land lies in the unincorporated San Mateo County Coastal Zone. The unincorporated rural area of the San Mateo County Coastal Zone is divided into three zoning districts: The Planned Agricultural District (PAD) containing 55,684 acres, the Resource Management/Coastal Zone District (RM/CZ) containing 13,150 acres, and the Timberland/Coastal Zone District (TPZ/CZ) containing 7,787 acres. The exact number of parcels in each of these zoning districts is unknown. An unofficial count performed by the County in 1980 did identify 873 separate assessor's parcels zoned PAD. There has been no significant rezoning or subdivision of

Diane Griffiths
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Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 2.

such lands since 1980 so that this figure is fairly accurate. Although there is no similar count for parcels zoned RM/CZ and TPZ/CZ, reasonable estimates based on the average size of similarly zoned parcels Countywide indicate that there are approximately 470 separate assessor's parcels in RM/CZ and 37 separate assessor's parcels in the TPZ/CZ.

On November 4, 1986, the San Mateo County electorate enacted Measure A, making certain procedural and substantive changes to policies of the Land Use Plan of the San Mateo County Local Coastal Program (LCP), which constitutes the General Plan for the coastal zone. A copy of Measure A is attached as Exhibit A. In order to ensure consistency with the provisions of Measure A, amendments have been proposed to zoning regulations which implement the policies of the LCP. The proposed amendments are before the Planning Commission, which must make a recommendation to the Board of Supervisors. In general, the zoning regulations are more detailed than the policies of the LCP. Although the wording of the policies set forth in Measure A are, in many cases, very explicit, the Planning Commission may still exercise some limited discretion in determining the specific language of the zoning ordinances to be recommended to the Board of Supervisors. In certain instances (e.g., the amendment with respect to the definition of prime agricultural land) there is virtually no discretion in the decisionmaking process. The Board, after consideration of the recommendation and other evidence presented at a public hearing, must make its own independent determination and is not bound by the recommendation of the Planning Commission, although significant changes from the recommendation may require referral to the Planning Commission for a report. Historically, amendments to the County's LCP (including implementing ordinances) have undergone intense scrutiny and revision of both the Planning Commission and Board levels. After final action by the Board, the amendments must be certified by the California Coastal Commission, which is empowered to approve, deny or approve with modifications in order to ensure consistency with the California Coastal Act.

The proposed amendments fall into four categories:
(1) amendments to zoning regulations applicable in the PAD (Exhibit B, pp. 4-20); (2) amendments to zoning regulations

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 3.

applicable in the RM/CZ (Exhibit B, pp. 20-22); (3) amendments to zoning regulations applicable in the TPZ/CZ (Exhibit B, pp. 22-24); and (4) an amendment to the Coastal Development (CD) District, which is a permit district overlaying all lands within the coastal zone (Exhibit B, pp. 1-4). Seven amendments affect the PAD. Three proposed amendments affect the RM/CZ. Two of the proposed amendments affect the TPZ/CZ. The remaining proposed amendment affects the CD District.^{1/} The zoning regulations applicable to a given zone are applied uniformly on all parcels within the zone. These amendments are summarized as follows:

(1) Amendments to PAD regulations. A number of changes are proposed to PAD zoning ordinances to achieve consistency with Measure A. Most of the changes are wording or format changes not affecting the substance of existing policies or implementing zoning ordinances. Seven substantive changes have been identified which are relevant to the requested analysis:

(a). Definition of Prime Agricultural Land (Section 6351). Measure A revises the definition of Prime Agricultural Land (LCP Policy 5.1) such that additional land may be designated as prime land. This change could result in a decrease in the development potential of a given parcel of property since prime land is assigned the lowest development density in the PAD. The proposed ordinance amendment reflects this change (Exhibit B, p. 4).

(b). Permitted Uses in Agricultural Areas (Section 6351-6353). Measure A adds to the list of agriculturally related uses on agricultural land (LCP Policy 5.5-5.6). On prime land new uses include: (1) Uses ancillary to agriculture,

^{1/}There are other changes being proposed to the language of the affected zoning provisions. These changes reflect terminology used in Measure A. The changes discussed herein are the only substantive changes which require analysis. Existing language which would be deleted by the proposed amendments is shown as being stricken while new language which would be added is underlined.

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 4.

(2) permanent roadside stands for sale of produce; (3) facilities for processing, storing, packaging and shipping of agricultural products, and (4) commercial woodlots and temporary storage of logs. On lands suitable for agriculture new uses include: (1) Storage of logs, (2) facilities for processing, storing, packaging and shipping of agricultural products, and (3) permanent roadside stands for the sale of produce. Also, sixteen uses which presently require a PAD use permit when located on "other lands" would no longer require such a permit. The proposed ordinance amendment reflects these changes (Exhibit B, pp. 7-11).

(c). Criteria for Conversion of Prime Agricultural Land (Section 6355D). Measure A expands the criteria for conversion of prime agricultural land to other uses (LCP Policy 5.8) to require that findings be made that: (a) no alternative site for permitted uses exists on the property, (b) clearly defined buffer areas are provided, and (c) agricultural productivity/viability will not be diminished. Present PAD provisions require only a finding that no alternative site exists on the property. The proposed amendment would reflect the additional criteria (Exhibit B, p. 12).

(d). Maximum Density of Development (Section 6356). Section 6356 presently contains criteria for determination of non-agricultural development density of PAD lands. This criteria is based on size and other environmental factors. This section presently equates 630 gallons/day of water to one density credit in the case of public and commercial recreational uses, and 315 gallons/day to one density credit in the case of all other uses, including residential. Policy 1.8(c) of Measure A contains specific language providing that water use is to be calculated based on best available information and shall include all appurtenant uses, e.g. landscaping, swimming pool, etc. Present regulations are silent on this point. An amendment to section 6356 is being proposed to reflect this change. The proposed amendment does not, and cannot because of the strict provisions of Measure A, affect either the gallonage which is equivalent to one density credit, or the density credit calculation criteria set forth in section 6356 (Exhibit B, p. 14).

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 5.

(e). Density Bonus and Transfer (Section 6357). Measure A clarifies that when calculating bonus density for consolidation of contiguous parcels (LCP Policy 5.11), the density bonus shall be granted only once regardless of the number of parcels or merger actions involved. Present PAD provisions are silent on this matter. Measure A also establishes a bonus density and transfer program for the development of agricultural water storage facilities (Table 1.3k) and a density transfer program for parcels completely covered by Prime Agricultural land (LCP Policy 5.11e). Proposed zoning amendments would incorporate the consolidation bonus limitation and set up a procedure for transferring credits (Exhibit B, pp. 16-18).

(f). Parcel Size (Sections 6360 and 6361). Measure A establishes five acres as the maximum parcel size for residentially developed, non-agricultural parcels (LCP Policy 5.13). Present PAD provisions require that non-agricultural parcels be as small as possible to meet minimum well water and sanitation requirements. The existing provisions do not establish a quantitative parcel size standard, or distinguish between residential and other non-agricultural uses. Measure A also clarifies existing clustering requirements to encourage grouping of development into a single cluster rather than multiple clustered arrangements. Amendments are proposed to incorporate the five acre parcel size limitation and the single cluster requirement (Exhibit B, p. 19).

(g). Agricultural Easement (Section 6361). Measure A provides that when granting an agricultural easement as a condition of project approval (LCP Policy 5.16), the County shall accept the offer. An amendment is proposed to specifically incorporate this requirement (Exhibit B, p.20).

(2) Amendments to RM/CZ Regulations. There are three substantive changes proposed to RM/CZ ordinances:

(a) Section 6906.1 of County zoning regulations presently require, as a condition of approval of a land division in the RM/CZ, that the applicant grant a conservation easement to the County. Measure A specifically includes a provision requiring the County to accept such an easement. This provision would

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 6.

only apply to land which could be subdivided. An amendment to section 6906.1 of the County's implementing zoning ordinances is proposed to reflect that change (Exhibit B, p. 22).

(b) Section 6906 of County zoning regulations presently sets forth the criteria for determination of development density of RM/CZ lands based on size and other environmental factors. This section presently equates 630 gallons/day of water to one density credit in the case of public and commercial recreational uses, and 315 gallons/day to one density credit in the case of all other uses, including residential. Policy 1.8(c) of Measure A contains specific language providing that water use is to be calculated based on best available information and shall include all appurtenant uses, e.g. landscaping, swimming pool, etc. Present regulations are silent on this point. An amendment to section 6906 is being proposed to reflect this change. The proposed amendment does not, and cannot because of the strict provisions of Measure A, affect either the gallonage equivalent to one density credit, or the density credit calculation criteria set forth in section 6906 (Exhibit B, pp. 20-22).

(c) Table 1.3(k) and Policy 5.11(e) of Measure A introduce a density transfer mechanism which allows certain density credits to be transferred from PAD lands to other lands in the coastal zone. Receiver sites would have to be approved by the Planning Commission on a case by case basis. An amendment is being proposed to section 6906 of the zoning regulations to reflect this change by providing that transferred density credits are not subject to the density matrix criteria generally applicable in this zone. This amendment would recognize that sites located in the RM/CZ could be considered as potential receiver sites for transferred density credits (Exhibit B, p. 21).

(3) Amendments to TPZ/CZ Regulations. There are two substantive changes proposed to TPZ/CZ Regulations:

(a) Section 6979 of County zoning regulations presently sets forth the criteria for determination of development density of TPZ/CZ lands based on size and other environmental factors. This section presently equates 630

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 7.

gallons/day of water to one density credit in the case of public and commercial recreational uses, and 315 gallons/day to one density credit in the case of all other uses, including residential. Policy 1.8(c) of Measure A contains specific language providing that water use is to be calculated based on best available information and shall include all appurtenant uses, e.g. landscaping, swimming pool, etc. Present regulations are silent on this point. An amendment to section 6979 is being proposed to reflect this change. The proposed amendment does not, and cannot because of the strict provisions of Measure A, affect either the gallonage equivalent to one density credit, or the density credit calculation criteria set forth in section 6979 (Exhibit B, pp. 22-23).

(b) Table 1.3(k) and Policy 5.11(e) of Measure A introduce a density transfer mechanism which allows certain density credits to be transferred from PAD lands to other lands in the coastal zone. Receiver sites would have to be approved by the Planning Commission on a case by case basis. An amendment is being proposed to section 6979 of the zoning regulations to reflect this change by providing that transferred density credits are not subject to the density matrix criteria generally applicable in this zone. This amendment would recognize that sites located in the TPZ/CZ could be considered as potential receiver sites for transferred density credits (Exhibits B, p. 23).

(4) Amendment to CD District Regulation. The proposed change to the CD District regulations is intended to implement Section 6 of Measure A, which provides that no exceptions or exemptions to the policies in Section 3 of Measure A, other than those contained in the Local Coastal Program as it existed on March 25, 1986, shall be permitted except to the extent otherwise provided by Measure A. Section 6 further provides that existing exceptions and exemptions may be deleted or restricted by the Board of Supervisors, but may not be increased, expanded, or otherwise altered. New exemptions can, however, be added if approved by a vote of the people as an amendment to Measure A. Section 6328.5 of the CD District Regulations lists projects which are exempt from the requirement to obtain a Coastal Development Permit. The mechanism by which the County may introduce new exemptions under the Coastal Act is through a categorical exclusion, as outlined in Subdivision (e) of Section

Diane Griffiths
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Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 8.

6328.5. In order to conform with Measure A, a proposed amendment to Section 6328.5(e) would provide that no new categorical exclusions could be enacted without a vote of the people. The proposed amendment does not, and cannot at this time, either add or delete any exemptions from the requirement to obtain a Coastal Development Permit (Exhibit B, p. 3).

QUESTIONS

1. Mr. Muzzi has sole ownership of nine parcels consisting of approximately 293 acres of land located in PAD, ranging in size from 2 to 50 acres. These parcels are valued in excess of \$100,000 (assessed value of land and improvements is \$213,701). He has a joint tenancy interest in four parcels consisting of an additional 222 acres of PAD lands, ranging in size from 40 to 59 acres. These parcels are valued in excess of \$100,000 (assessed value of land and improvements is \$181,651). He is the trustee of an estate which includes among its assets three parcels consisting of approximately 10 acres of land (1 acre, 2 acres, and 7 acres in size) located in the PAD and valued in excess of \$100,000 (assessed value of land and improvements is \$144,291). He is president of Certosa, Inc. which has among its assets six parcels consisting of 78 acres of land located in the PAD, ranging in size from .06 to 43 acres. These parcels are valued in excess of \$100,000 (assessed value of land and improvements is \$183,631). Mr. Muzzi has an ownership interest of seven percent (7%) in Certosa, Inc., and owns 75% of the voting stock. Mr. Muzzi also has a non-exclusive right to use water from a water system consisting of a series of lakes, small dams, flumes, and an open stream channel, located on PAD lands and fed by runoff and a diversion of water from Little Butano Creek (Exhibit C). The water is used to support agricultural operations on PAD lands in which Mr. Muzzi has an interest.

Is Mr. Muzzi disqualified from participating in the PAD zoning amendment deliberations by virtue of one or more of the proposed PAD zoning amendments? In responding, we request that the following sub-issues be addressed:

a. With respect to actions taken by the San Mateo County Planning Commission, whose jurisdiction is limited to the unincorporated area of San Mateo County:

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 9.

i. Is the "public generally" considered the population of the entire County, including incorporated and unincorporated areas?

ii. Alternatively, is the "public generally" only considered the population of the unincorporated portion of San Mateo County?

b. Do persons having a direct or indirect interest in real property zoned PAD constitute a significant segment of the general public?

c. Will the effect on Muzzi be distinguishable from the effect on the public generally or on a significant segment of the general public?

d. 2 Cal.Admin. Code § 18702.1(a)(3) requires disqualification of a public official if a proposed decision concerns, among other things, the zoning or rezoning of real property in which the official has a direct or indirect interest of \$1,000 or more. Section 18702.1(c) provides that disqualification is not required if "the decision will have no financial effect on the person or business entity who appears before the official, or on the real property." Govt. Code §§ 87100 et. seq. require disqualification "if it is reasonably foreseeable that the decision will have a material financial effect." (Govt. Code § 87103).

i. Does the term "financial effect" as set forth in section 18702.1(c)(3) include a requirement that such effect be material?

ii. Does the term "financial effect" as used in section 18702.1(c)(3) include a requirement that such effect be reasonably foreseeable?

e. Is it reasonably foreseeable that one or more of the proposed PAD amendments will have a financial effect on lands in which Muzzi has a financial interest? In responding to this subissue, we request that you consider whether or not the nature of the amendments proposed render determination of the financial

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 10.

effect (either positive or negative) and the magnitude of any such effect too speculative as to Mr. Muzzi's individual interests to require disqualification.

f. Are the determinations reached with respect to the matters addressed above affected in any way by either or both of the following:

i. A rezoning decision made by the Planning Commission consists of a recommendation to the Board of Supervisors which the Board is not legally bound to follow. The Board makes its own independent determination after considering the Commission's recommendation and other evidence presented at a public hearing, and may adopt either the language recommended by the Planning Commission or its own revised language. Significant changes from the Planning Commission's recommendation may have to be referred to the Commission for a report.

ii. Every zoning decision involving property in the coastal zone which is made by the Board of Supervisors is subject to review and certification by the California Coastal Commission pursuant to Public Resources Code sections 30000 et seq. The Coastal Commission may approve, deny, or approve with modifications such zoning decisions. Historically, the Coastal Commission has denied or approved with modifications on many occasions.

g. May a disqualified planning commissioner who "appears in the same manner as any other member of the public before an agency in the course of its prescribed governmental function", pursuant to 2 Cal. Admin. Code § 18700.1, discuss matters of financial interest to the commissioner with Planning Commission staff outside of the public hearing (in the same manner as other members of the general public) so long as there is no contact with other Planning Commissioners?

2. Mr. Muzzi is President of Pigeon Point Prospectors, Inc., a corporation which has among its assets a three acre parcel of property located in the RM/CZ. The property is worth in excess of \$100,000 (land and improvements are currently assessed at \$260,000). Muzzi holds an ownership interest in Pigeon Point

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 11.

Prospectors of fifty percent (50%). The property is surrounded by lands zoned PAD. The property is presently developed with a building containing a restaurant/bar and apartment, a gas station, a repair shop, a barn, two sheds, and a trailer. These uses are allowed without consideration of the water use criteria contained in section 6906 because the uses preexisted present RM/CZ zoning. The property is served by an existing water well which produces ten gallons per minute. Six other wells drilled on the property have come up dry. Due to minimum parcel size requirements in the RM/CZ, the property cannot be subdivided.

Is Mr. Muzzi disqualified from participating in the RM/CZ zoning amendment deliberations by virtue of one or more of the proposed RM/CZ zoning amendments? In responding, we request that the sub-issues set forth above with respect to the PAD zoning amendments be addressed with respect to the RM/CZ zoning amendments.

3. Mr. Muzzi has a non-exclusive right to use water from a water system which consists of several lakes, dams, flumes, and an open stream channel. The system is shown in red on the attached Exhibit C. The system begins at a diversion point on Little Butano Creek. An easement and state license to remove water from the creek is held by Emma Muzzi, Mr. Muzzi's mother. The system also collects water through most of its length from surface and subsurface drainage. The diversion point from the creek is located in the PAD. The water is transported by a flume which passes through PAD property and through about 1000 feet of property zoned TPZ/CZ. The portion of the flume which passes through the TPZ/CZ is enclosed pipe. The water eventually empties into Lake Lucerne. This water is used to support agricultural operations on PAD lands in which Mr. Muzzi has an interest. There are approximately 200 acres of land, more or less, zoned TPZ/CZ which is located within the watershed for Little Butano Creek, outlined in blue on Exhibit C and which drains into Little Butano Creek.

Is Mr. Muzzi disqualified from participating in the TPZ/CZ zoning amendment deliberations by virtue of one or more of the proposed TPZ/CZ zoning amendments? In responding, we request that the sub-issues set forth above with respect to the PAD zoning amendments be addressed with respect to the TPZ/CZ zoning amendments.

Diane Griffiths
Legal Counsel
Fair Political Practices Commission
Sacramento, CA 95814
February 20, 1987
Page 12.

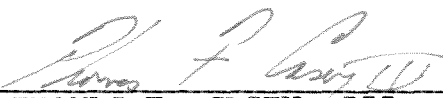
4. Is Mr. Muzzi disqualified from participating in consideration of the proposed amendment to the CD District regulations? In responding, we request that the sub-issues set forth above with respect to the PAD zoning amendments be addressed with respect to the proposed amendment.

Thank you for your consideration of this request. Please contact this office if additional information is required.

Very truly yours,

JAMES P. FOX, DISTRICT ATTORNEY

BY:


THOMAS F. CASEY, III,
Chief Civil Deputy

TFC:MPM:jmm

Enclosures

cc: Vincent A. Muzzi, Esq.



California Fair Political Practices Commission

February 25, 1987

James P. Fox
District Attorney
San Mateo County
County Government Center
Redwood City, CA 94063

Re: 87-064

Dear Mr. Fox:

Your letter requesting advice under the Political Reform Act was received on February 25, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Vincnt A. Muzzi, Planning Commissioner