



# California Fair Political Practices Commission

May 16, 1991

Robert J. Logan  
152 North Third Street  
Suite 201  
San Jose, CA 95112

Re: Your Request for Advice  
Our File No.: I-91-101

Dear Mr. Logan:

This is in response to your request for advice regarding the "public generally" exception to the conflict of interest provisions of the Political Reform Act (the "Act")<sup>1</sup>. You have requested advice on behalf of eight public officials in your capacity as City Attorney of the City of Brisbane.

### QUESTION

Does the "public generally exception" found in Regulation 18702(c) apply to the following officials in connection with governmental decisions regarding the Brisbane Acres ("the Acres") subdivision:

1. Mayor Steven Waldo
2. Councilmember Clara Johnson
3. Planning Commissioner John Quilter
4. Planning Commissioner Darlene Peterson
5. Parks Commissioner Gary Apotheker
6. Parks Commissioner Lorna Groundwater
7. Parks Commissioner Danette Davis
8. City Manager Robin Leiter

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

### CONCLUSION

The "public generally" exception would apply to all of the above listed officials (the "Brisbane Officials") except Mayor Steven Waldo, City Manager Robin Leiter, and Planning Commissioner John Quilter, for whom the effects of decisions pertaining to the Acres would be dissimilar from the effects of those decisions on a significant segment of the public.

### FACTS

The City of Brisbane is in the early stages of formulating a comprehensive land use plan for an area of the City commonly referred to as the Brisbane Acres (the "Acres"). The Acres include approximately 217 acres of undeveloped land which wraps around the existing western and southern boundaries of the residential area of Brisbane.

Several governmental decisions will be required in planning the land use of the Acres, which comprise almost 42% of the area in Brisbane which is either currently used or potentially available for residential use.

One-third of existing residential property ownership interests in Brisbane are within 300 feet of the boundaries of the Acres. Eight public officials in Brisbane own interests in property within 300 feet of those boundaries. Of those eight (8) officials, five (5) have financial interests only in their residential property in the area located within 300 feet of the Acres boundary. Two officials, Mayor Waldo and City Manager Leiter, have interests both in their residential property and also in investment property within 300 feet of the Acres, and one official, Planning Commissioner Quilter has only an interest in investment property within 300 feet of the boundary.

The standard residential lot frontage in Brisbane is fifty feet, although for a number of years the standard lot frontage was twenty-five feet. The five (5) Brisbane officials whose interests in real property are limited to their residential properties live on residential lots that are either twenty-five or fifty foot lots; for purposes of this letter, either size lot is considered a standard residential lot.

The decisions that will be made in relation to the planning of the Acres will have broad impact on the city, since you contemplate that providing infrastructure needs for 217 acres will necessitate updating existing infrastructure, such as sewer and fire suppression systems, throughout the city.

### ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An 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 or a member of his or her immediate family, or on:

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

#### Section 87103(b)

Each of the eight listed Brisbane officials is a public official under Section 82048 of the Act. Each has a financial interest in real property presumably worth more than \$1000. Accordingly, each is prohibited from participating in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on any of their real property interests.

#### Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner, (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra, at 823.)

Since each of the properties owned by the eight Brisbane officials is within 300 feet of the Acres, it is foreseeable that there will be a financial effect on those properties from any decisions pertaining to land use of the Acres. Consequently, none of the eight may participate in any of those decisions if the effect on their properties is material, unless the effect is indistinguishable from the effect on the public generally.

#### Materiality

Regulation 18702.3 (copy enclosed) sets forth the standards for determining materiality with respect to ownership interests in real property indirectly affected by governmental decisions, and provides, in pertinent part:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

(2) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or substantially improved services.

Since all of the subject properties are within 300 feet of the boundaries of the Acres, under Regulation 18702.3(a), any governmental decision regarding the Acres would have a material effect, unless it resulted in no financial effect or no improved services to the officials' properties. The facts provided indicate that improved services to areas outside the boundaries of the Acres are contemplated as a result of the magnitude of the area to be developed. Therefore, it appears that decisions regarding land use of the Acres will have a material financial effect on the real property interests of the eight (8) Brisbane officials.

#### Public Generally

Regulation 18703 (copy enclosed) provides that if a decision will foreseeably and materially affect real property in which an official has a financial interest, the official may participate in the decision if the effect on his property will be substantially the same as the effect on the public generally.

For this "public generally" exception to apply in the circumstances you have described, a decision must affect an official's interest in substantially the same manner as it would affect a significant segment of the residents of Brisbane. (Regulation 18703; In re Owen, (1976) 2 FPPC Ops. 77 (copy enclosed).)

The facts provided indicate that one-third of the residential property owners of the City of Brisbane live within 300 feet of the boundary of the Acres. One-third of the residential property owners of the city would comprise a significant segment of the total number of residential property owners. The five (5) Brisbane officials (Councilmember Johnson, and Commissioners

Peterson, Apotheker, Groundwater and Davis) whose property interests consist of their residential properties would be subject to the "public generally" exception, since their interests would be affected in substantially the same manner as a significant segment of the public. Hence, they would not be required to disqualify themselves from decisions pertaining to the Acres.

However, the property interests of Mayor Waldo, City Manager Leiter, and Commissioner Quilter would not be affected in the same way as those of the public generally, because the interests of those officials are not limited to their residential properties. The Mayor and City Manager own investment property in addition to their residences, and Commissioner Quilter owns an investment property in the area located within 300 feet of the boundary of the Acres. The effect on those officials with real property interests either larger or different in character from the public generally would not be similar to the effect on persons with only a residential interest, and the exception found in Regulation 18703 would not apply. Thus, Mayor Waldo, City Manager Leiter, and Commissioner Quilter must disqualify themselves from participation in decisions pertaining to the Acres. See Green Advice Letter, A-89-214 (copy enclosed) for further discussion of the "public generally" exception.

I trust the above answers your question. If you require further information, please do not hesitate to call me at (916) 322-5901.

Sincerely,

SCOTT HALLABRIN  
Acting General Counsel



SUSAN L. BOBROW  
Counsel, Legal Division

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Enclosures