



# California Fair Political Practices Commission

October 13, 1993

Lyle Lopus  
City of Fremont  
City Attorney's Office  
39100 Liberty Street  
P.O. Box 5006  
Fremont, CA 94537

Re: Your Request for Advice  
Our File No. A-93-373

Dear Mr. Lopus:

This letter will confirm the advice provided to you on October 7, 1993, regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

You stated the facts as follows: The city's planning staff is currently considering a land use proposal affecting property that is across the street from your residence. (See Sections 87100 and 87103(b).) You have abstained from participation in the decision in your official capacity based on the proximity of your property to the property subject to the decision. You have asked to what extent you may participate in your private capacity.

As we discussed, Regulation 18700.1(b)(1) expressly provides an exception where an otherwise disqualified official appears in the same manner as any other member of the general public before his or her own agency in the course of its prescribed governmental function to represent his or her personal interests in real

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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.

property, provided the property is wholly owned by the official or members of his or her immediate family.<sup>2</sup> The basis for the original exception was the Commission's concern with the free speech implications of a prohibition that would limit an official's ability to act to protect his or her own interests. (Tait Advice Letter, No. A-76-08-198.)

The language of the exception does not limit its application to public meetings. However, this exception has historically been narrowly applied. You have asked whether the regulation precludes your contacting the planning department as a private citizen outside of a public hearing, or whether these contacts would constitute appearing before your own agency "in the course of its prescribed governmental function."

According to your facts, the city was legally required to serve notice on those persons owning property adjacent to the site. (Pub. Res. Code Sections 21091 and 21092.) The rationale for the notice requirement is that a land use decision that has a substantial effect on the "property rights of owners of adjacent parcels may constitute 'deprivations' of property within the context of procedural due process." (Horn v. County of Ventura (1979) 24 Cal.3d 605, at 615.) "Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of significant property interest." (Horn v. County of Ventura, supra, at 612.)

In light of these constitutional concerns, we advised that you are not precluded from contacting the planning department as a private citizen outside of a public hearing under the following circumstances:

(1) You received official notice of a pending governmental land use decision that may have a substantial effect on your property rights.<sup>3</sup>

(2) You will contact your own agency in the course of its prescribed governmental function only to represent your personal interests as set forth in Regulation 18700.1(b).

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<sup>2</sup> In addition, Regulation 18700.1(b)(2) provides that where a public official communicates with the general public or the press, the official is not attempting to use his or her official position to influence a governmental decision.

<sup>3</sup> We note that other persons who receive or request notice about a land use decision may not be substantially affected by the decision. The conclusion in this letter is not based on the mere receipt of notice, but on the fact that your property is adjacent to the subject property and its use substantially affected by the decision.

(3) You will contact your agency in the same manner as any other member of the general public, as set forth in the notice.

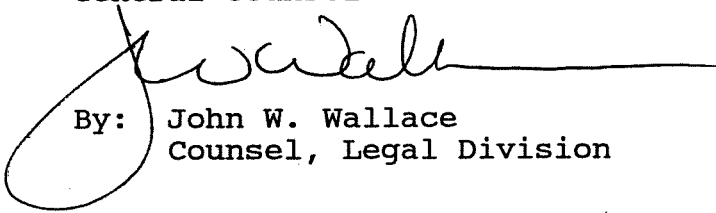
(4) You will in no way attempt to use your official position to influence the city or city staff with respect to the decision.

Under such circumstances, the contact would be considered appearing before your own agency in the course of its prescribed governmental function and would not be prohibited.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>4</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

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<sup>4</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.