



FAIR POLITICAL PRACTICES COMMISSION

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April 26, 1999

Bob Whitney
Brooktrails Township Community Services District
23801 Iris Terrace
Brooktrails Township, California 95490

**Re: Your Request for Advice
Our File No. A-99-077**

Dear Mr. Whitney:

This letter responds to your request for advice about the Political Reform Act (the "Act").¹

I. QUESTION

Do you have a conflict of interest in the Brooktrails Township Community Services District ("BTCSD") Board's upcoming decision regarding a proposed county road access project?

II. CONCLUSION

You have a conflict of interest in this decision, and must disqualify yourself.

III. FACTS

You are an elected member of the Board of Directors of the BTCSD, which is located just northwest of Willits. The Board will soon consider and vote on what is known as the "Second Access" project.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

The Board will consider two options. The first option is access from Brooktrails to Hwy. 20. The proposed route would be one to two miles east of your property. The second option is access from Brooktrails to the proposed Willits Hwy. 101 Bypass. Two proposed routes are to be considered under the second, a "north route" and a "south route."

Both the north and the south routes would pass over property owned by Rich Padula. Mr. Padula is the sole owner of Coastal Forestlands, Ltd., which is a client of your wholly-owned consulting business.

The Board's decision is advisory on this matter; the County will make the final decision as to selection of the route. You have told us that the Board's recommendations have not been influential in the past. You expect that the Board's recommendations will have some small influence on the design of the eventual access route, but little or no impact on the final location.

IV. ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a *financial interest*.

To say that a public official has a "financial interest" in a governmental decision, within the meaning of the Act, is to conclude that it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).)

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18701.) You are a "public official," for purposes of the Act, and the conflict of interest rules apply to you. (Sections 82048, 82041.)

The Act's conflict-of-interest provisions apply only where the public official "make[s], participate[s] in making, or in any way attempts to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.) The Commission has adopted a series of regulations which define "making," "participating in making," and "influencing" a governmental decision, and which provide certain exceptions. (Regulations 18702-18702.4.)

By deliberating and voting in the decisions about the Second Access project, you would be making and participating in making governmental decisions. (Regulations 18702.1, 18702.2.) Even though the Board's decision is ultimately only advisory, the vote, and the deliberations leading up to it, commit your District to a course of action. (Regulation 18702.1(a)(3).) Thus, the Act's conflict of interest rules apply to this situation.

The Act's conflict-of-interest provisions apply only to conflicts arising from *economic interests*. The "economic interests" from which conflicts of interest may arise are defined in Regulations 18703-18703.5. There are five kinds of such economic interests:

- A public official has an economic interest in a *business entity* in which he or she has a direct or indirect *investment*² of \$1,000 or more (Section 87103(a), Regulation 18703.1(a)), or in which he or she is a *director, officer, partner, trustee, employee, or holds any position of management* (Section 87103(d); Regulation 18703.1(b));
- A public official has an economic interest in *real property* in which he or she has a direct or indirect interest of \$1,000 or more (Section 87103(b); Regulation 18703.2);
- A public official has an economic interest in any *source of income*, including *promised income*, which aggregates to \$250 or more within 12 months prior to the decision (Section 87103(c); Regulation 18703.3);
- A public official has an economic interest in any *source of gifts* to him or her if the gifts aggregate to \$300 or more within 12 months prior to the decision (Section 87103(e); Regulation 18703.4); and,
- A public official has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family—this is known as the "personal financial effects" rule (Section 87103; Regulation 18703.5).

² An indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.)

Here, you have an economic interest in Coastal Forestlands because it is a source of income to you, by means of your wholly-owned consulting business. (Sections 87103(c), 82030; Regulation 18703.3.) Since Mr. Padula is the sole owner of Coastal Forestlands, you have an economic interest in him as a source of income as well because he is the dominant force behind Coastal Forestlands. (*In re Nord* (1983) 8 FPPC Ops. 6.)³

Mr. Padula is directly involved in the Second Access project decisions because the property he owns is the subject of the decision. (Regulation 18704.1(a)(2).) That is, the Board's decision about the Second Access project will result in a recommendation that the proposed route pass over his property or not. This, of course, has significant consequences for the property and for him. For example, if the Board votes to recommend that the proposed access route pass over his property, then Mr. Padula will be forced to negotiate the sale of rights-of-way, or defend eminent domain proceedings; if the Board votes the other way, Mr. Padula avoids these consequences.

When a source of income to a public official is directly involved in a decision, *any* reasonably foreseeable effect—even a penny's worth—on the source of income is considered material. (Regulation 18705.3(a).) Unless the Second Access project decision will have no financial effect whatsoever on Mr. Padula (see Regulation 18705(b)(2))—an outcome which seems unlikely—you have a conflict of interest in the Second Access project decision,⁴ and must disqualify yourself.

³ You also have an economic interest in your personal residence. (Section 87103(b); Regulation 18703.2.) However, we do not further mention this economic interest for two reasons. First, your personal residence seems unlikely to give rise to a conflict of interest under these facts. The residence is indirectly involved in the Second Access project decision (see Regulation 18704.2), and is more than 2,500 feet from the proposed Hwy. 20 access. (See Regulation 18705.2(b)(2).) Under these circumstances, a material financial effect is not usually foreseeable. (*Ibid.*) Second, whether or not your personal residence gives rise to a conflict of interest, we advise below that you have a disqualifying conflict arising from Mr. Padula.

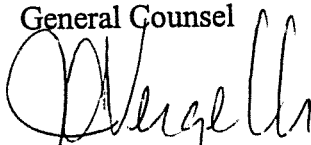
The facts that you have presented do not indicate other economic interests of yours (e.g., other real property, businesses) which may be implicated in the Second Access project.

⁴ It appears very unlikely that the "public generally" exception applies here. (See Regulation 18707.) The exception requires that a "significant segment" of your jurisdiction be affected in "substantially the same manner" as is your affected economic interest—in this case, Mr. Padula. (*Ibid.*) That is, it seems unlikely that the exception would apply because few, if any, persons in your jurisdiction are likely to be affected by the decision in the same manner as is the owner of the property over whether the proposed route will (or will not) go as a result of the decision.

If you have any other questions regarding this matter, please contact me at
(916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: John Vergelli
Staff Counsel, Legal Division

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