



## FAIR POLITICAL PRACTICES COMMISSION

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March 25, 2004

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**Re: Your Request for Informal Assistance**  
**Our File No. I-04-076**

Dear Ms. Doi:

This letter is in response to your request on behalf of the City of Benicia for informal assistance regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

For the purpose of determining whether the "public generally" exception applies, you have asked the following questions:

1. If one person owns two parcels, is the person counted as two "property owners?"
2. Does a person have to have a certain (percentage) ownership interest in a property to be counted as a "property owner?"
3. Where a parcel is owned by a trust, is the trust considered the "property owner" or is each person who has an ownership interest in the trust counted as a property owner?
4. May an official count parcels of property rather than property owners?

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<sup>1</sup> Government Code sections 81000 – 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## CONCLUSIONS

1. The Commission counts each person who owns property as one "property owner." A person who owns multiple properties counts only as one property owner. In comparison, if two persons (whether individuals or entities) together own one parcel of property, the two persons would count as two "property owners."
2. A "property owner" is a person who owns real property regardless of what percentage of ownership in the property the person possesses.
3. Each person with an ownership interest in such a trust can be counted as a property owner for purposes of the "public generally" exception.
4. If an official wishes to use parcel data to determine whether the "public generally" exception applies, he or she must assess whether the property ownership in his or her jurisdiction is such that 10% of parcels affected equates to 10% or more of all property owners or all homeowners affected in the official's jurisdiction or district, or 5,000 property owners or homeowners affected in the official's jurisdiction. However, the official may not merely "count parcels" instead of property owners (persons).

## FACTS

The City of Benicia includes a Downtown Historic Conservation District ("Downtown District"). Three out of five members of the Benicia City Council own residential or commercial property within the Downtown District or within a 500-foot radius of the Downtown District. The Benicia Community Development Department expects to present to the city council proposed amendments and updates to the downtown conservation plan to improve land use controls for protecting historic properties. These proposals, if adopted, may affect the property value of the land within and adjacent to the Downtown District. The city is attempting to determine if the three city council members may participate in decision-making affecting the Downtown District under the "public generally" exception.

The Solano County Assessor's records show a total of 11,162 separately owned parcels within Benicia's city limits. The Downtown District and the 500-foot radius surrounding the Downtown District contain 1,301 separately owned parcels.<sup>2</sup>

The city seeks advice as to whether it is permissible to count each separately owned parcel as one "property owner" for purposes of implementing the "public generally" exception. If the city cannot merely "count" parcels, the city would have to

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<sup>2</sup> You have identified parcels within 500 feet of the Downtown District. Please note that while it may be reasonable to assume that all property owners within a defined geographical area will be affected in substantially the same manner by a particular decision, typically distance alone does not determine whether an effect will be substantially similar in manner. (*Derleth* Advice Letter, No. A-03-148.)

review the ownership records for each individual parcel at a given point in time to ascertain the names of the owner or owners of the parcel and believes this would be burdensome.

### ANALYSIS

Your request for informal assistance pertains to the “public generally” exception to the conflict-of-interest analysis (Step 7) as applied to an official’s interest in real property. Under this exception, even if a public official determines that his or her economic interest will experience a material financial effect as a result of a particular decision, he or she may still participate if the “public generally” exception applies to the economic interest triggering the conflict of interest. (Regulation 18707(b)(4).) Regulation 18707.1 provides the requirements for the general exception:

“(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official’s economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

(b) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a ‘significant segment’ of the public generally if any of the following are affected as set forth below:

¶...¶

(B) Real Property. For decisions that affect a public official’s real property interest, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official’s agency.

¶...¶

(2) Substantially the Same Manner: The governmental decision will affect a public official’s economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation.”

Subdivisions (b)(1)(B) and (b)(2) of this regulation are relevant to your questions relating to real property.

### Meaning of "Property Owner"

Neither the Act nor the Commission's regulations specifically define the term "property owner." However, we have previously advised as follows concerning the definitions of "property owner" and "homeowner":

"Since these terms are not defined in the regulation, we must assume that the Commission intended for the terms to have their plain meaning. Therefore, a 'property owner' generally refers to a person who owns improved or unimproved real property (commercial, governmental or residential). A 'homeowner' appears to mean an individual who owns residential property that is his or her domicile or principal place of residence. Thus, 'homeowner' excludes a person who owns a non-owner occupied residential dwelling or commercial structure." (*Furth* Advice Letter, No. A-99-035; *Nerland* Advice Letter, No. I-02-059.)

Therefore, each person who owns property as a "property owner" is counted. A "person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

Because owning two parcels, for example, does not make one person become two persons, the Commission only counts as one property owner a person who owns multiple properties. Note that, for purposes of applying the "public generally" exception, if two individuals jointly own a home that is their domicile or principal place of residence, they count as two "homeowners." (*Furth, supra; Nerland, supra.*) Also, if two persons (whether individuals or entities) own one parcel of property, the two persons would count as two "property owners."

### Pro-rata Ownership

Section 82033 defines an "interest in real property" for purposes of the Act's obligations imposed on public officials (or other filers) and provides that:

"Interest in real property' includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially *by the public official, or other filer*, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially,

a 10-percent interest or greater.” (Section 82033. Emphasis added.)

Please note that this section pertains to the real property held by an official or other filer and not to property held by other persons. Consequently, section 82033 may provide guidance for purposes of regulation 18707.1, but the section does not control the interpretation of “property owner” as used in the regulation. Because neither the Act nor the Commission’s regulations contain a “10% rule,” or a \$2,000 threshold rule (see section 87103(b)), for the “public generally” exception, any person who owns real property is a “property owner” under regulation 18707.1, regardless of the person’s ownership percentage.<sup>3</sup>

#### Real Property Held in a Trust

Since there are no “percentage of ownership” requirements under regulation 18707.1, a person who possesses an ownership interest in a trust owning one or more parcels can be counted as a “property owner.”

#### Counting Parcels

You have asked whether the City of Benicia may count parcels of property, rather than property owners, to determine whether the “public generally” exception applies. The exception as provided in regulation 18707.1 requires that subdivision (b)(1)(B) be met for real property interests. Subdivision (b)(1)(B) requires that the decision affect either: ten percent or more of all “property owners” or all “homeowners” in the official’s jurisdiction or district, or 5,000 property owners or homeowners in the official’s jurisdiction. The subdivision does not permit an alternate rule based on the number of parcels affected by the decision. Rather subdivision (b)(1)(B) refers to the number of “persons” affected by the decision, as discussed above. This is because this “public generally” exception is meant to address the situation where a decision materially affects an official who owns real property but also materially affects a significant number of other property owners (persons) too. The number of parcels affected is not determinative as to the number of property owners affected by a decision since one property owner can own two, twenty parcels, or 100 parcels, for example. Therefore, the parcels cannot be counted in lieu of property owners.

You have mentioned the *Dietrick* Advice Letter, No. I-02-325. With regard to a particular official, this letter states:

“According to the facts you provided, there are 4,658 lots in the jurisdiction and 594 will be affected by the decision. Therefore, roughly 13% of the property owners in the jurisdiction would be affected by the decision. Since this number is greater than the required 10% of property owners

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<sup>3</sup> This conclusion is consistent with both the *Furth* and *Nerland* letters. (See *Furth, supra*; *Nerland, supra*.)

in the jurisdiction, the decision also affects a significant segment of the real property owners in the jurisdiction....”

This letter’s conclusion that the decision affected a “significant segment” was based on the fact assumed that the decision affected 10% of property owners in the jurisdiction. If the decision, in fact, would not have affected 10% of property owners, the exception would not apply. As noted in the letter:

“The Commission does not act as a finder of fact in its advice-giving capacity (In re Oglesby (1975) 1 FPPC Ops. 71), and our advice is applicable only to the extent that facts provided to us are correct and that all of the material facts have been disclosed.”

As a result, whether 10% of the property owners are affected is *always* a factual determination to be made by the official. Therefore, if an official wishes to use parcel data to determine whether the “public generally” exception applies, he or she must assess whether the property ownership in his or her jurisdiction is such that 10% of parcels affected equates to 10% or more of all property owners or all homeowners affected in the official’s jurisdiction or district, or 5,000 property owners or homeowners affected in the official’s jurisdiction. The official may not merely “count parcels” instead of property owners (i.e., persons) to determine whether the exception applies. However, the official is free to use any reasonable and objective method to determine whether a significant segment is affected by the decision so long as the method is consistent with the applicable regulatory provisions. (See discussion below.) For example, to be consistent with the regulation, an official must count “persons” rather than merely count parcels, as discussed above, when applying the exception for a conflict of interest arising from an official’s real property.

#### Sources of Information

With regard to determining the financial effect of a decision, we have advised that, because the Commission is not a finder of fact, the official must make a good faith effort to assess the effect of the decision by using some reasonable and objective method of valuation. (*Moock* Advice Letter, No. A-01-150.) Such a good faith effort may require that additional information regarding the potential financial effect of the decision be gathered; a public official is not required to but may choose to utilize professional services, such as those of a professional appraisal, to assist in assessing the financial effect of a decision for conflict-of-interest purposes. (*Ho* Advice Letter, No. A-00-241.)

This same standard of good faith applies to an official’s analysis of whether the financial effect of the decision affects a “significant segment” of the public in “substantially the same manner” under the “public generally” exception. Specifically, the official must make a good faith effort to assess whether the “public generally” exception applies using some reasonable and objective method consistent with the applicable regulatory provisions. The Commission’s regulations do not impose procedural

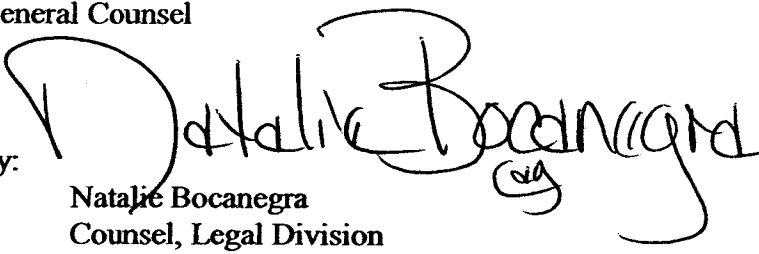
requirements mandating a particular method of data-gathering. The official may, if he or she wishes, review ownership records as you have described provided the method meets this good faith standard.

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

Sincerely,

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General Counsel

By:

  
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