



FAIR POLITICAL PRACTICES COMMISSION

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September 21, 2009

Ms. Sonia R. Carvalho
Best Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, California 92614

Re: Your Request for Advice
Our File No. A-09-197

Dear Ms. Carvalho:

This letter responds to your request for advice on behalf of City of Azusa Planning Commissioner Sandra Rentschler regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090.

QUESTION

May City of Azusa Planning Commissioner Rentschler participate in decisions regarding proposed changes to a mining project, specifically the CEQA review process and the review of a conditional use permit application, when she owns a home more than 500 feet from the proposed mining site, but less than one mile from the eastern boundary of the portion of the site for which mining is currently entitled? Is the potential impact on the view from Commissioner Rentschler's property sufficient to rebut the presumption that a decision on the site will not have a material effect on the property?

CONCLUSION

Commissioner Rentschler should disqualify herself from participating in the above decisions regarding proposed changes to the Azusa Rock Quarry project. The

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

impact of these decisions about changes to the mining project on the view from Commissioner Rentschler's residential property, which you have described and which is apparent in pictures and maps submitted, is sufficient to rebut the presumption of no material financial effect under Regulation 18705.2(b)(1).

FACTS

The Vulcan Materials Company ("Vulcan") owns a quarry site in the City of Azusa where it has mining entitlements in the eastern portion of the site pursuant to an existing conditional use permit and mining reclamation plan. From the site, Vulcan mines aggregate material – rock, sand and gravel – for use in road and building construction. Vulcan has approached the City with a proposal to revise its conditional use permit and mining reclamation plan in order to "trade" its entitlements for mining in the eastern portion of the site for entitlements for mining in the western portion of the site. Commissioner Rentschler's home is located near the eastern portion of the site.

If Vulcan's proposal is approved, mining activities in the eastern portion of the site will cease, and that portion of the site will remain in its current undisturbed state. If the City does not approve the amended conditional use permit proposal and Vulcan continues to conduct mining activities in the eastern portion of the site pursuant to its existing entitlement, mountain views of homes located in the Mountain Cove residential community will be impacted. Modeling prepared by Vulcan demonstrates that undisturbed ridgelines visible from these residences will be significantly impacted through the mining process, and mining equipment and vehicles working on the site will be visible from the Mountain Cove residences. In addition, an environmental assessment of the potential impacts is being prepared and the City anticipates impacts in the area of air quality, traffic and noise. The extents to which these impacts may or may not be mitigated in accordance with the California Environmental Quality Act are currently not known. As a Commissioner, Ms. Rentschler would be responsible for reviewing the CEQA analysis and certifying the ultimate document.

Commissioner Rentschler owns and resides in one of the single-family residences in Mountain Cove. Her property is located more than 500 feet from the proposed mining site, but less than one mile from the eastern boundary of the portion of the site for which mining is currently entitled. On September 14, 2009, we requested some maps or pictures of the Mountain Cove neighborhood in relation to Vulcan's Azusa Rock Quarry. You provided maps and pictures of the site and impacts sending us the Visual Impact Assessment and referring us to the SaveOurCanyons website.

ANALYSIS

Conflict-of-Interest Prohibition: 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.

A public official has a "financial interest" in a governmental decision within the meaning of the Act, if 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 Commission has adopted a standard eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

Step One: Is Planning Commissioner Rentschler a "public official?"

The conflict-of-interest provisions of the Act pertain only to public officials. A public official includes "every member, officer, employee or consultant of a state or local government agency . . ." (Section 82048; Regulation 18701(a)(1).) Ms. Rentschler is a member of the City of Azusa Planning Commission, and thus a public official subject to the Act's conflict-of-interest provisions.

Step Two: Is Ms. Rentschler making, participating in making, or influencing a governmental decision?

A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official "participates in a governmental decision" when, acting within the authority of his or her position and without significant intervening substantive review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.)

Planning Commissioner Rentschler will "make a governmental decision" if she votes on issues before the City of Azusa Planning Commission involving Vulcan's Azusa Rock Quarry, including Vulcan's proposed revisions to its conditional use permit to trade its existing mining entitlements from the eastern portion of the site for mining entitlements in the western portion. In addition, Planning Commissioner Rentschler would be making a governmental decision reviewing and certifying the CEQA analysis assessing the environmental impacts of the proposed change in Vulcan's mining activities.

Step Three: What are Planning Commissioner Rentschler's economic interests?

A public official has a financial interest in a decision within the meaning of

Section 87103 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, a member of his or her immediate family, or on any one of five enumerated economic interests, including:

1. An economic interest in any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a); Regulation 18703.1(a)); or in any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
2. An economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
3. An economic interest in any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 18703(c); Regulation 18703.3.) "Income" includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Section 82030(a).)
4. An economic interest in any source of gifts to him or her if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
5. An economic interest in his or her personal finances, including those of his or her immediate family. (Section 87103; Regulation 18703.5.)

Planning Commissioner Rentschler owns and resides in a single-family residence in Mountain Cove, and has an interest worth \$2,000 or more in this property. Therefore she has an economic interest in the residential property for purposes of disqualification under Sections 87100 and 87103.

In addition, Planning Commissioner Rentschler also has an economic interest in her personal finances and those of her immediate family. (Section 87103; Regulation 18703.5.) A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets or liabilities of the official or his or her immediate family increasing or decreasing. (Ibid.) Your letter does not mention any impact on Ms. Rentschler's personal finances as the result of the proposed changes to Vulcan's mining entitlements. Therefore, we do not further discuss this basis for disqualification in our analysis.

Step Four: Are her economic interests directly or indirectly involved in the decision?

The general rule is that an official's real property is considered to be *directly involved* in a decision if it meets any of the criteria in Regulation 18704.2(a) (copy enclosed). This regulation states that real property (in which the official has an interest) is directly involved in a governmental decision when it is "located within 500 feet of the

boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision.” (Regulation 18704.2(a)(1).)

Because Ms. Rentschler’s home is not located within 500 feet of the boundaries or proposed boundaries of the property which is the subject of the governmental decision, it is *indirectly involved* in decisions about the proposed change to Vulcan’s mining entitlements. (Regulation 18704.2(a)(1).)

Step Five: What is the applicable materiality standard?

Having identified the economic interest involved, and determined whether the interest is directly or indirectly involved in the decision at issue, it is necessary to identify the applicable materiality standard.

Regulation 18705.2(b)(1) provides the materiality standard for real property interests that are *indirectly involved* in a decision.

“(b) Indirectly involved real property interests.

(1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

(A) The development potential or income producing potential of the real property in which the official has an economic interest;

(B) The use of the real property in which the official has an economic interest;

(C) The character of the neighborhood including, but not limited to, substantial effects on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.”

Regulation 18705.2(b)(1) provides that the financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the official has an interest.

In prior advice, we stated that the materiality presumption may have been rebutted in a case where the effect of a decision would impact traffic patterns and property values with respect to a street extension adjacent to a homeowner's association common area in which two council members held property interests. (*Thorson* Advice Letter, No. A-04-238.) In another case, the governmental decision involving a development project that was one-quarter mile from an official's residence appeared to change the character of the area near the official's home from largely rural to largely residential. (*Herrick* Advice Letter, No. A-04-019.)

Here, Commissioner Rentschler owns a home in Mountain Cove, a community of homes nestled in the San Gabriel mountains. The background views from Mountain Cove include the steep slopes of the canyon and the foothills of the San Gabriel Mountains. If Vulcan's proposal is approved, mining activities in the eastern portion of the site nearest Commissioner Rentschler's home will cease, and that portion of the site will remain in its current undisturbed state. If the City does not approve the amended conditional use permit proposal and Vulcan continues to conduct mining activities in the eastern portion of the site pursuant to its existing entitlement, mountain views of homes located in the Mountain Cove residential community will be impacted. Modeling prepared by Vulcan demonstrates that undisturbed ridgelines visible from these residences will be significantly impacted through the mining process, and mining equipment and vehicles working on the site will be visible from the Mountain Cove residences. In addition, an environmental assessment of the potential impacts is being prepared and the City anticipates impacts in the area of air quality, traffic and noise.

The marked view impact and other possible impacts which you have set forth and which are further described in the Visual Impact Assessment document and the SaveOurCanyons website to which you referred us, constitute special circumstances about the decision under Regulation 18705.2(b)(1)(C) sufficient to rebut the presumption that the decision would not have a material financial effect. Given the marked view impact and other possible impacts on air quality, traffic and noise, under Regulation 18705.2(b)(1)(C), it is apparent that the decisions you described about the Azusa Rock Quarry would have a material financial effect on Commissioner Rentschler's property.

Step 6: Is it reasonably foreseeable that there will be a material financial effect on Planning Commissioner Rentschler's economic interests?

Once a public official has determined the materiality standards applicable to each of his or her economic interests, the next step is determining whether it is "reasonably foreseeable" that the standards will be met. A material financial effect on an economic interest is "reasonably foreseeable" if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision. (Regulation 18706(a).) An effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.) Ultimately, whether a material financial effect is foreseeable at the time a decision is

made depends on facts and circumstances peculiar to each case. (*In re Thorner, supra*, at 198.)

In this case, the decisions about the Azusa Rock Quarry are not speculative; the specific decisions you described are coming before the planning commission. And whether the conditional use permit for changes to the Quarry are either accepted or rejected, there will still be a marked view impact, positive or negative, on Commissioner Rentschler's Mountain Cove home. Therefore, it is reasonably foreseeable that decisions about the Azusa Rock Quarry, involving the CEQA review process and consideration of the conditional use permit, would have a material financial effect on Commissioner Rentschler's property.

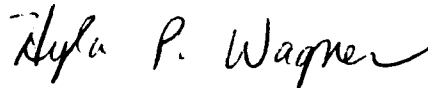
Steps Seven and Eight: Does this governmental decision come within any exception to the conflict-of-interest rules?

Even if an official has a conflict of interest, disqualification is not required if the governmental decision affects the public official's economic interests in a manner that is indistinguishable from the manner in which the decision will affect the public generally. (Section 87103; Regulation 18707(a).) Additionally, in certain rare circumstances, a public official may be called upon to take part in a decision despite the fact that the official may have a disqualifying conflict of interest under the "legally required participation" exception. This exception applies only in certain very specific circumstances where the government agency would be paralyzed from acting. (Section 87101; Regulation 18708.) You have not presented any facts indicating that the "public generally" or the "legally required participation" exceptions are applicable to your circumstances, so we will not address them further.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

Enclosure

HPW:jgl