



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 17, 2016

Kevin G. Ennis, Esq.  
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355 South Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-16-143 and A-16-152**

Dear Mr. Ennis:

This letter responds to your request for advice on behalf of San Juan Capistrano Mayor Pam Patterson and City Councilmember Derek Reeve regarding their duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because the requests concerning the two officials involve the same project we have merged our response.

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. In addition, note that we are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. Moreover, if the facts underlying these these decisions should change, or if future decisions regarding the project come before the officials that are based on different facts, you should contact us for additional advice.

## QUESTIONS

1. For the purpose of applying Regulation 18702.2, may Councilmember Reeve measure from the boundary of his property to the boundary of a proposed development (as opposed to the boundary of the entire parcel on which the development is situated)?

2. Do Councilmember Reeve and Mayor Patterson have conflicts of interest that preclude them from participating in the City Council's deliberations and decisions regarding the proposal to amendment of the General Plan designation for the Vermeulen Ranch property or to approve a Specific Plan?

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<sup>1</sup> 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.

## CONCLUSIONS

1. So long as the development application specifies the boundaries of the 34-acre project, the councilmember may measure from the project boundaries (not the parcel boundaries).

2. No. Neither official has a disqualifying conflict of interest in the decisions in question. However, if the facts should change regarding the project you should seek additional advice.

## FACTS

The City Council will consider a request to initiate an amendment to the General Plan designation for approximately a 34-acre project called The Farm on Del Obispo (hereafter the "Project"). The Project is located on a larger 43-acre parcel, the Vermeulen Ranch property, however the remaining approximately nine acres of Vermeulen Ranch are not a part of the Project. The application seeks to change the Project site's General Plan designation from AgriBusiness to Specific Plan.

The change in General Plan designation would allow the property owners to subsequently seek a Specific Plan to redevelop the 34-acre portion of the property from what is a currently vacant lot into a residential and commercial development. Although the 34 acres are currently vacant, they were formerly used for a variety of agricultural uses.

On August 5, 2016, you further clarified that up until the summer of 2015, the Project site was developed with an active business – a commercial nursery and distribution center consisting of several greenhouses, growing areas, storage sheds, office space for employees, and other associated facilities. The nursery's plants consisted of typical residential landscape plants and are contained in above-ground pots and pallets; no plants were grown in the soil. The site was used for the purpose of growing plant material for distribution to the Armstrong retail chain in the region. The adjacent Armstrong Growers Nursery retail store is located on the portion of the Vermeulen Ranch property that is not part of the Project. That retail store is similar in nature to a Home Depot/Lowes where customers shop and purchase plants, trees, mulch, pots, small fountains, and other landscape products at the location. The retail store operation remains open for business.

More specifically, the applicant's current proposal envisions dividing the 34-acre site into two planning areas:

(1) An approximate 30-acre residential area for up to 180 single family homes. The residential neighborhoods will be developed at a density of approximately six homes per acre, would be located on the southern and eastern portions of the site and may include several types of homes. The precise type of homes has not been specified and it is uncertain whether all of them will be detached single family homes or whether some will be attached units (duplexes, triplexes or townhomes). The current applicant has asked for flexibility in the land use plan to allow a future home builder to choose the specific housing type to be built in each of the three neighborhood sections of the residential development, including single family detached homes and potentially some attached homes such as townhomes, duplexes or other low density attached housing types in which common walls are shared with one or more other units. The eventual land use plan to be

provided in the Specific Plan would most likely specify permissible type of single family homes for each neighborhood of the project.

(2) A smaller area of approximately 4 acres for limited commercial development that would include a restaurant and artisan retail space totaling approximately 40,000 square feet. The retail and restaurant uses would be located along Del Obispo Street on the northwestern edge of the development site.

#### *Mayor Patterson*

Mayor Patterson resides in a single-family residence that is located on a small residential cul-de-sac approximately 955 feet from the northeastern boundary of the Project. Mayor Patterson does not own the home. The home is owned by her husband as separate property. The home is two stories, contains approximately 5,357 square feet in floor area, and is located on its own lot that is approximately 14,520 square feet in size. The Mayor believes the home is valued at an amount above \$2 million and is currently on the market for sale. Neither Mayor Patterson nor any member of her immediate family has any other financial interest that is potentially affected or involved in the decision.

You stated that the proposed Project proposes an average density of six homes per acre (one home for each 7,260 square feet). The home the Mayor reside in is on a lot approximately twice the size (14,520 square feet) and contains substantially more floor area (approximately 5,357 square feet) than the homes that are likely to be developed on the smaller lots in the proposed development. Even if some portion of the 180 units proposed are eventually specified as being detached single family homes similar to the Mayor's residence, the impact of those homes on the market value of existing homes is uncertain because the City has a population of approximately 36,454 people and contains approximately 12,302 existing housing units. The addition of 180 housing units would constitute a 0.14% (less than 21 leth of one percent) increase in the number of housing units in the City.

*View:* The 34-acre development site is generally described as being in a small valley surrounded by hills. Mayor Patterson's residence is uphill from, and northeasterly of, the development site. Mayor Patterson's residence does not have a view from either the first or second floors of the small valley in which the proposed development would be located or of the development site.

*Traffic and Intensity of Use:* Mayor Patterson's residence is located on a small, residential cul-de-sac in a neighborhood northwest of the main thoroughfare, Del Obispo Street. The proposed development is located southeast of Del Obispo Street. Mayor Patterson's street is not a through-street. It is used only to access a few residential homes in the neighborhood. While the traffic along Del Obispo Street may generally increase as a result of the development of the 34-acre portion of the Vermeulen Ranch property, you do not have any evidence that the project's development would alter traffic levels on the residential street on which the Mayor lives.

As noted above, the southwest corner of the Project site is already developed with existing retail businesses, including a commercial building that contains retail stores, restaurants, and art galleries. A nursery/garden center also exists on that western portion of the site. The project

proposal would not affect that already-developed corner of the site. Moreover, the commercial portion of the proposed development would be located across Del Obispo Street from the Mayor's neighborhood, along the eastern side of the street and would not alter the intensity of Mayor Patterson's neighborhood to the west of Del Obispo Street.

The remainder of the project site currently/recently became vacant. Under the current project proposal, the northeasterly portion of the development site would be developed as retail and restaurant uses, while the remaining eastern and southern portions would be developed as single family homes at a density of approximately six dwelling units per acre. Although the proposal would convert the site into a residential neighborhood and retail area, the proposal is generally consistent with surrounding land uses. The area just to the north of the project site includes church uses and single-family homes. The area directly to the south of the property includes athletic fields, an elementary school, and farmlands on the eastern portion. The area to the east of the project site, across Alipaz Street, also includes residential neighborhoods.

*Noise and Odors:* Given the distance between the development site and the Mayor's home and the proposed uses in the development, we also do not anticipate that any noise or odors from the development would affect her property.

#### *Councilmember Reeve*

Councilmember Reeve owns a townhome condominium unit that is located off of a small residential street approximately 538 feet from the western boundary of the larger Vermeulen Ranch property but 846 feet from the Project. He and his immediate family have no other financial interests that are potentially affected or involved in the decision.

*View, Noise and Odor:* Councilmember Reeve's townhome is uphill from, and west of, the development site. Councilmember Reeve has a 180-degree view from his back patio. In the left side of his view is much of the City, including the valley below and the development site. In the right side of his view are other portions of the City and a view of the Pacific Ocean. Councilmember Reeve estimates that approximately 5 to 10 percent of his view is comprised of the project site. If the proposed development is approved, the vacant site in his view would be replaced with a view of low-rise retail development and a two-story residential neighborhood but, because of the development site's lower elevation and relative low height, it is not anticipated to intrude upon or block a predominant scenic view or visual landmark from his townhome. Already, however, much of the Councilmember's view includes retail sites and residential neighborhoods. Specifically, the view already includes the existing retail developments on the southwest portion of the Vermeulen Ranch property, which are closer than the project site and would not be altered by the project proposal. Given the distance between the development site and the Councilmember's home and the proposed uses in the development, you also do not anticipate that any noise or odors from the development would affect his property.

*Traffic and Intensity of Use:* Councilmember Reeve's townhome is located on a small, residential street that extends west from the main thoroughfare, Del Obispo Street. The proposed development is located east of Del Obispo Street. Councilmember Reeve's street is not a through-street. It is used only to access the residential homes in the neighborhood. While the traffic along Del Obispo Street may generally increase as a result of the Project, you do not believe that the

project's development would alter traffic levels on the residential street on which Councilmember Reeve lives.

In addition, you do not anticipate that decisions regarding the project would change the character of the Councilmember's residence by substantially altering the intensity of use of properties surrounding the residence. Although the project site is currently undeveloped, the southwest corner of the site is already developed with existing retail businesses, including a commercial building that contains retail stores, restaurants, and art galleries. A nursery/garden center also exists on that portion of the site. The project proposal would not affect that already-developed southwest corner of the site, which is the portion of the larger Vermeulen Ranch property that is closest to the Councilmember's townhome.

The remainder of the project site is currently vacant. Under the current project proposal, the northeasterly portion of the development site would be developed as retail and restaurant uses, while the remaining southern and eastern portions would be developed as single family homes at a density of approximately six dwelling units per acre. Although the proposal would convert a vacant site into a residential neighborhood and retail area, the proposal is generally consistent with surrounding land uses. The area just to the north of the project site includes church uses and single-family homes. The area directly to the south of the property includes athletic fields, an elementary school, and farmlands on the eastern portion. The area to the east of the project site, across Alipaz Street, also includes residential neighborhoods. Furthermore, the proposed project would not alter the intensity of Councilmember Reeve's neighborhood to the west of Del Obispo Street.

## ANALYSIS

Section 87100 of the Act prohibits a 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 if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's interests. (Section 87103.)

The only financial interests at issue for both officials is their respective real property interests in their homes. (Section 87103(b).) You noted that in the case of Mayor Patterson, the real property that serves as her residence is owned by her spouse. However, as you correctly state, Section 87103(b) provides: "Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." An indirect interest in real property means an interest owned by the spouse or dependent child of the official. Therefore, the Mayor has a financial interest in the real property interest owned by her spouse.

*Foreseeability:* To give rise to a conflict of interest under the Act, the effects of decision on a public official's financial interests must be both foreseeable and material. (Section 87103.) Generally, a financial effect is presumed to be reasonably foreseeable if the interest is explicitly involved in the decision. Regulation 18701(a) provides:

"A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial

interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”<sup>2</sup>

None of the standards set forth above apply to your facts. If the real property interest is “not explicitly involved,” as here, a financial effect is only reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).) Based upon the facts provided, a financial effect is reasonably foreseeable because it is a realistic possibility and more than hypothetical or theoretical.

*Materiality:* Regulation 18702.2(a) uses 12 different standards (including the standards in Regulation 18702.2(a)(1) - (6) set forth above) to determine if an effect on an interest in real property is material. The factors applicable to your facts are:

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

\* \* \*

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

*Mayor Patterson*

*View, Noise and Odors:* You stated that the Mayor’s property interest is uphill from, and northeasterly of, the development site and does not have a view from either the first or second floors of the small valley in which the proposed development would be located or of the development site. Moreover, the distance between the Project site and the Mayor’s property interest suggests that the Mayor will not experience noise or odors from the site.

*Traffic or Intensity of Use:* Mayor Patterson property is located on a small residential cul-de-sac approximately 955 feet from the northeastern boundary of the Project. The Mayor street is not a through-street. It is used only to access a few residential homes in the neighborhood. Based on these facts, the project would not alter traffic levels in the Mayor’s neighborhood or affect her parking.

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<sup>2</sup> Regulation 18702.2(a)(1) – (6) identifies that decisions that explicitly involve an official’s real property, including the adoption of or amendment to a general or specific plan that would include the official’s property, zoning or rezoning the official’s property, or imposing or modifying a tax on the property.

In addition, although the project site is currently undeveloped, up until the summer of 2015, the Project site was used as an active commercial nursery and distribution center consisting of several greenhouses, growing areas, storage sheds, office space for employees, and other associated facilities. Moreover, the adjacent Armstrong Growers Nursery retail store is located on the portion of the Vermeulen Ranch property that is not part of the Project, already draws traffic to the project area. Finally, the area around the site is already developed with existing retail businesses (including a commercial building that contains retail stores, restaurants, and art galleries and a nursery/garden center), churches, single-family neighborhoods, an athletic field, and farmlands. Thus, the project would not substantially alter the intensity of use in or around the Mayor's neighborhood.

*Councilmember Reeve*

*View, privacy, noise levels, or air quality:* The councilmember's home is located approximately 846 feet from the project site. The areas surrounding the home are built out. Given the distance between the development site and the Councilmember's home and the proposed uses in the development, you also do not anticipate that any noise or odors from the development would affect his property nor do you anticipate any other substantial impacts.

With respect to view, you stated that Councilmember Reeve estimates that approximately 5 to 10 percent of his view is comprised of the project site and if the proposed development is approved, the vacant site in his view would be replaced with a view of low-rise retail development and a two-story residential neighborhood. However, much of the Councilmember's view already includes retail sites and residential neighborhoods that are closer than the project site. Moreover, due to the lower elevation of the development site it is not anticipated that the development will intrude into or block Councilmember Reeve's scenic view. Thus, the project would not substantially alter the councilmember's view.

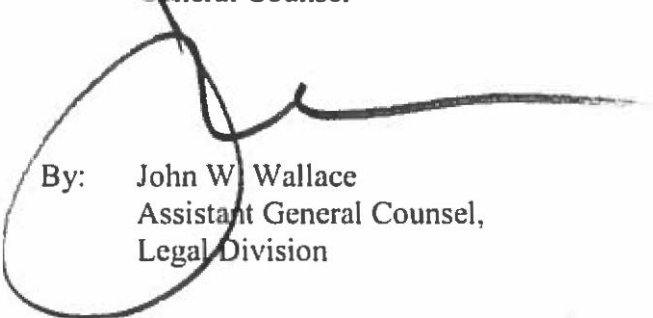
*Traffic and intensity of Use:* Councilmember Reeve's street is not a through-street and is used only to access the residential homes in the neighborhood. While the traffic along Del Obispo Street may generally increase as a result of the development of the 34-acre portion of the Project, you do not believe that the project's development would alter traffic levels in the Councilmember's neighborhood or affect his parking. For these and the same reasons set forth above applied to Mayor Patterson's interest in real property, we conclude that the Project will not materially affect the Councilmember's real property.

Consequently, based on these facts, the foreseeable effect of the project will not be material and both officials may participate in the amendment of the General Plan and approval of the Specific Plan. However, if the facts should change regarding the project you should seek additional advice.

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

Sincerely,

Hyla P. Wagner  
General Counsel



By: John W. Wallace  
Assistant General Counsel,  
Legal Division

JWW:jgl