



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 10, 2018

Michael C. Ghizzoni  
County Counsel  
County of Santa Barbara  
105 E. Anapamu Street, Suite 201  
Santa Barbara, CA 93101

Re: Your Request for Advice  
**Our File No. A-17-250**

Dear Mr. Ghizzoni:

You are the County Counsel for the County of Santa Barbara (“County”) and this letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”) on behalf of Santa Barbara County First District Supervisor Das Williams (“Supervisor Williams”).<sup>1</sup> As County Counsel you are also legal advisor to the Santa Barbara County Association of Governments (“SBCAG”). Please note that we are only providing advice under the conflict of interest provisions of the Political Reform Act (the “Act”), and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

Also, note that we are 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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

In regard to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General’s Office and the Santa Barbara County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

## QUESTIONS

1. Under the Act, may Supervisor Williams participate in decisions before the SBCAG involving Segment 4A of Phase 4 of the HOV Project when he owns real property located within 500 feet of a portion of Highway 101 that will be affected by the project?

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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.

2. Under Section 1090 may Supervisor Williams participate in making any decisions before SBCAG involving ongoing litigation or settlement agreements related to the HOV project?

### CONCLUSIONS

1. No. Supervisor Williams may not participate in decisions before the SBCAG involving Segment 4A because there is a reasonably foreseeable material financial effect upon his financial interest under the Act, the decisions cannot be segmented and the public generally exception does not apply.
2. Section 1090 does not apply to Supervisor Williams for purposes of litigation involving the HOV project. However, he is disqualified from taking part in the decisions under the Political Reform Act.

### FACTS

Supervisor Williams is a First District County Supervisor and is also a member of SBCAG's Board of Directors. He took office for both positions on January 3, 2017. SBCAG sits as the Regional Transportation Agency, airport Land Use Commission, Local Transportation Authority and Metropolitan Planning Organization for the County.

Supervisor Williams's family owns a residence on about 0.15 acres of land, in the City of Carpinteria, California. The South Coast 101 HOV Project ("HOV Project") proposes to add on high occupancy vehicle lane in each direction from south of the City of Carpinteria to the City of Santa Barbara, resulting in a six-lane freeway for that stretch of highway. Phase 4 of the HOV Project is 10.9 miles in length. Supervisor William's property line is approximately 163 feet from the nearest on-ramp for Highway 101 and approximately 130 feet from the edge of Caltrans right of way for Highway 101. Caltrans is the lead agency for the HOV Project. The County of Santa Barbara and SBCAG are project partners with Caltrans, and the County is a permitting authority for the portion of the HOV Project.

The HOV Project is divided into four phases. Phase One (Milpas Street exit to Hot Springs exit) and Phase Two (Mussel Shoals to Carpinteria) have already been completed. Phase Three (Linden Pass to Casitas Pass in Carpinteria) is currently being constructed. Phase Four (Carpinteria to Santa Barbara) is not fully permitted or funded yet. There are five segments of Phase Four: 4A, 4B, 4C, 4D and 4E. Segment 4A, is the segment closest to Supervisor Williams' residence.

Although no application has been submitted to the County yet, Caltrans will need a Coastal Development Permit from the County of Santa Barbara for a portion of Phase 4, but not Segment 4A. although not the initial decision maker on the permit, the Coastal Development Permit would be appealable to the Board of Supervisors.

Over the course of the remainder of the HOV Project, the SBCAG Board will be making decisions regarding funding, shared work and responsibilities with Caltrans and construction. SBCAG is a significant funding source for the HOV project, planning to spend approximately \$140

million in "Measure A" funding to support the project. SBCAG has already contributed approximately \$10.87 million of the total \$54.62 million required to construct Phase 4 of the HOV Project.

Caltrans prepared an Environmental Impact Report for Phase 4 of the HOV project. In 2014 two lawsuits were brought against Caltrans as Respondent and SBCAG and the County as Real Parties in Interest. (See *Grassini. Et al. v. California Department of Transportation, et al* (Case No. 1468955) and *Transportation Futures Committee, et. al. v. California Department of Transportation et al.* (Case No. 1468969). The *Grassini* case is now concluded, however the *Transportation Futures Committee* litigation is ongoing.

## ANALYSIS

### The Act

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A conflict of interest may arise only when it is reasonably foreseeable that the decision will have a material financial effect on the official or his or her immediate family that is distinguishable from its effect on the public generally. (Section 87103.)

At issue here is Supervisor Williams' financial interest in residential real property located within 500 feet of the nearest on-ramp for Highway 101.<sup>2</sup>

For a financial interest that is not explicitly involved in a decision (such as Supervisor Williams' property), Regulation 18701(b) states that a financial effect can be reasonably foreseeable where it is a realistic possibility under ordinary circumstances.

Regulation 18702.2(a) sets the materiality standard for real property interests and provides a list of circumstances to consider. As relevant to your facts, the financial effect will be material if the decisions:

"(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;

"(11) Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property... Notwithstanding this

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<sup>2</sup> Under the Act, any real property in which the public official has a direct or indirect interest of at least \$2,000, including a leasehold interest (other than a term of one month or less) held directly by an official or an official's spouse or by any business entity in which the official or the official's spouse own an interest of 10 percent or more can give rise to a potential conflict. (Section 87103(b).) You have stated that Supervisor Williams' family owns the real property that is the subject of this request. We assume for purposes of our analysis that either Supervisor Williams or his spouse's interest in this property meets this threshold.

prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property; or

“(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.” (Regulation 18702.2(a).)

In this case, a new high occupancy lane will be added in each direction on Highway 101. Addition of a new lane in each direction will alter traffic levels along this stretch of highway and access to this lane is within 500 feet of Supervisor Williams' home. Because of the proximity of Supervisor Williams home to this project a reasonably prudent person, using care and consideration under the circumstances would believe that decisions related to funding, necessary permits and other decisions necessary to move the project forward would have an effect upon Supervisor Williams' property. Moreover, as described, there are insufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the property.

#### **Can the governmental decisions be segmented?**

You also inquire as to whether governmental decisions at issue can be segmented so that Supervisor Williams can vote on items that do not relate specifically to Segment 4A, the segment closest to his home. Regulation 18709(a) sets forth the requirements for segmentation of a decision:

“(a) An agency may segment a decision in which a public official has a financial interest to allow participation by the official, provided all of the following conditions apply:

“(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

“(2) The decision in which the official has a financial interest is segmented from the other decisions;

“(3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and

“(4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.”

Subdivision (b) of Regulation 18709 further states that “decisions are ‘inextricably interrelated’ when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.”

In this case, there will be an entire new lane added in each direction on Highway 101 should the project move forward as planned. It is not realistic to assume that Segment 4A is distinct and separate from the rest of the project because this is one stretch of highway and the new lanes will run across all segments. Approvals for each segment affect the next segment. Therefore, the decisions related to the Highway 101 HOV project are inextricably interrelated.

### **Public Generally Exception.**

An official only has a conflict of interest if the decision’s effect on the official’s interest is distinguishable from the effect on the public generally. (Section 87103.) Commonly referred to as the “public generally” exception, Regulation 18703(a) sets forth the general rule:

“A governmental decision’s financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.”

Therefore, to invoke the exception, the official must establish that a significant segment of the public is affected and the effect on his or her interest is not unique compared to the effect on the significant segment. For purposes of the exception, a “significant segment of the public” consists of at least 25 percent of (1) the businesses or nonprofit entities; (2) the real property, commercial or residential; or (3) the individuals within the official’s jurisdiction. (Regulation 18703(b).)

In this case, it does not appear that the public generally exception applies. Due to the proximity of his property to the freeway exit, the Supervisor will be uniquely affected as compared to the significant segment affected by the decision. Under Regulation 18703(c)(3), a unique effect includes a disproportional effect on the official’s real property interest resulting from the proximity of the project.

### **Section 1090**

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies

regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

Here, the decisions at issue involve ongoing litigation that SBCAG is involved with. As a rule, an agreement to settle a lawsuit is treated as a contract. (See, e.g., *T. M. Cobb Co. v. Superior Court* (1984) 36 Cal. 3d 273, 280; *Weddington Productions, Inc. v. Flick*, (1998) 60 Cal. App. 4th 793, 810. However, the pertinent issue is whether Supervisor Williams has an interest in the litigation involving the HOV project for purposes of Section 1090.

Previously, for purposes of a highway project, we have found that an official does not have an interest in a contract involving the highway project for purposes of Section 1090 merely because the official has a property or a business adjacent to or in close proximity to the project. (*Bordson* Advice Letter, No. 17-059.) Likewise, Section 1090 does not apply to the Supervisor Williams for purposes of the litigation, although he is disqualified from taking part in the decisions under the Political Reform Act.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Sukhi K. Brar  
Senior Counsel, Legal Division

SKB:jgl