



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 1, 2017

Brian Briggs  
Deputy County Counsel  
P.O. Box 7191  
Spreckles, CA 93962

Re: Your Request for Advice  
Our File No. I-17-294

Dear Mr. Briggs:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your question is general in nature, we are treating your request as one for informal assistance.<sup>2</sup> 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.

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.

### QUESTION

Does the Act prohibit you from purchasing a home in the East Garrison subdivision in Monterey County, given that you are employed as a Deputy County Counsel and work on aspects of the East Garrison Development process?

### CONCLUSION

Nothing in the Act would prohibit you from purchasing a home in the East Garrison subdivision. However, once you own a home there, you will have a "financial interest" in real property that could lead to a conflict of interest in the event that you make, participate in making, or use your official position to influence a governmental decision that has a material, foreseeable financial effect on your real property financial interest.

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## FACTS

You are currently employed as a Deputy County Counsel for the County of Monterey ("County") in the Land Use Division. You have been employed by the County since January 2017. Currently your duties involve regulatory review, advice, approval, and processing of various aspects of the East Garrison Development. You do not anticipate that your duties will change in the near future.

The East Garrison Development originated in 2005 through a Disposition and Development Agreement ("Agreement") between the former Redevelopment Agency of the County and a third-party developer. The Project was to be developed in three phases, including approximately 1,400 homes (multifamily and single family residential) a fire station, sheriff's substation, historic district, and town center.

In 2011, when the Dissolution Act came into effect, the former Redevelopment Agency ceased to exist and the County became the Successor Agency to the Redevelopment Agency ("SARA"). Your duties require you to advise SARA on all matters, including its duties with respect to the East Garrison Project under the Agreement. Topics arising which may require advice include but are not limited to: drafting agreements (indemnification, assumption and assignments, etc.) and approving those agreements as to form; inclusionary, moderate, and workforce housing agreements; and SARA and/or third party compliance with the Agreement. Due to the fact that your employment began in 2017, you were not involved in the execution of the Agreement or any of the subsequent enabling documents.

You also advise SARA on Recognized Obligation Payments Schedule ("ROPS") under the Dissolution Act, which include requests for distributions related to the East Garrison Project. To that end, you are currently lead counsel on a matter which specifically involves payments SARA requested under ROPS submitted to the Department of Finance for obligations related to the East Garrison Project.

You also have additional duties related to East Garrison. You currently act as counsel to the East Garrison Community Services District, which is charged with management of all parks and some open space within the project boundaries. You advise the East Garrison Public Financing Authority, which has previously issued bonds to finance public infrastructure improvements at the project, and may issue additional bonds in the future.

## ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that 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 public official's interests. Section 87103 also sets forth the interests from which a conflict of interest may arise under the Act. Under Sections 82033 and 87103(b), an official has an interest in any real property owned directly, indirectly, or beneficially by the public official, or his or her immediate family, if the interest has a fair market value of \$2,000 or more.


Nothing in the Act would prohibit you from purchasing a home in the East Garrison subdivision. Acquiring a real property financial interest from a third party does not involve a "government decision." However, once you own a home there, you will have a financial interest in real property that could lead to a conflict of interest in the event that you make, participate in making, or use your official position to influence a governmental decision that has a material, foreseeable financial effect on your real property financial interest.

Accordingly, if you purchase a home in the East Garrison subdivision, it is likely that you will need to recuse yourself from future decisions implicating the subdivision. If you would like additional advice upon purchasing a home, you should seek additional advice providing a description of the specific governmental decision in question.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel

By:   
Zachary W. Norton  
Senior Counsel, Legal Division

ZWN:jgl