



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

October 3, 2018

Thomas E. Montgomery  
County Counsel  
Office of County Counsel  
1600 Pacific Highway, Room 355  
San Diego, CA 92101

Re: Your Request for Advice  
**Our File No. A-18-184**

Dear Mr. Montgomery:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</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.

### QUESTIONS

1. Do the Act's conflict of interest provisions prohibit Supervisor Bill Horn from participating in a decision involving a proposed amendment to the County's General Plan to increase the density by 253 potential dwelling units in an area identified as VC7+?
2. Notwithstanding Supervisor Horn's conflict of interest in the Lilac Hills Ranch (LHR) project, may he nonetheless participate in the general plan amendment of batched projects using the segmentation provisions of Regulation 18709?

### CONCLUSIONS

1. No. As explained below, it is not reasonably foreseeable that the decision concerning a proposed amendment to the General Plan will have a material financial effect on any of Supervisor Horn's interests.

---

<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. Yes. The segmentation provisions of Regulation 18709 may be utilized to allow Supervisor Horn to participate in the general plan amendment under the procedures outlined below as long as the segmented decisions meet the conditions applicable under the regulation.

### FACTS

You are Assistant County Counsel for the County of San Diego seeking advice on behalf of Supervisor Bill Horn. The County will be hearing multiple development project applications requesting General Plan Amendments over the course of the next few months. The development projects will consist of a variety of project approvals, such as tentative maps, use permits, and zoning ordinances, along with an environmental document for each development project.

Government Code Section 65358 limits the number of times any General Plan mandatory element can be amended to four times per year. Mandatory General Plan elements include: the Regional Land Use Element (Land Use Element), Mobility Element, Conservation and Open Space Element, Housing Element, Safety Element and Noise Element. Each time an amendment is made, it may include more than one change to the General Plan. Each of these upcoming specific development projects includes updates to mandatory elements of the General Plan, usually involving changes to density in the land use element and revisions to the mobility element.

Because of the statutory limit on annual amendments to the General Plan mandatory elements, the County has initiated a "batch" approach to bundle together projects proposing General Plan changes as one General Plan Amendment. All projects in a batch are included as a single agenda item to the Board of Supervisors for consideration. Each project is listed as a sub-item in a single Board letter and presented at a noticed public hearing. Each individual project included in the batch is presented separately to the Board for discussion. Each project is individually allotted time for public participation. Each individual project will have a staff presentation, public testimony and discussion by the Board.

At the conclusion of discussion of each individual project, the Board will take a preliminary or tentative vote on that project. The preliminary or tentative vote for each project can be for approval, modification, denial, or remand back to staff or Planning Commission with direction for further evaluation. After all the projects in the batch are heard, the Board will vote to affirm their earlier tentative votes as final votes on the individual projects and to adopt the resolution approving the General Plan Amendment.

Two upcoming approvals that require General Plan Amendments raise conflict of interest issues for which you seek advice: 1) the Lilac Hills Ranch (LHR) project and, 2) the Property Specific Requests ("PSR") project. With respect to the LHR project, the Commission has already advised in the *Horn* Advice Letter, No. A-15-185, that Supervisor Horn cannot participate in that matter. The decision on the LHR project is proceeding to the Board later this fall. The Board of Supervisors will be asked to approve it by certifying an environmental impact report under CEQA and approving a site plan, major use permit, tentative map, rezone, and specific plan. In addition to these permits and tentative map required to approve the project, the applicant is requesting a General Plan Amendment, a decision in which Supervisor Horn would like to participate.

The PSR project is a General Plan Amendment comprised of 41 areas across the County in which property owners are seeking to change the land use designation to their parcels by increasing density. These are areas where members of the public requested changes to the land use designation during the hearings for the most recent comprehensive General Plan update in 2011, but the changes were not adopted by the Board of Supervisors at that time. The Board requested that staff review and analyze these areas for consistency with the County General Plan, ordinances, codes, and policies.

The PSR area at issue in this matter is identified as VC7+, an area which overlaps in part and is adjacent to the LHR project. The VC7+ area includes 233 parcels, over 1,465 acres, which are located in the Valley Center Community Plan Area. The density requested would change these properties from Semi-Rural (SR)-4 to SR-2, which would increase the density from 366 allowable potential dwelling units to 619 potential units (an increase of 253 units).

The western edge of VC7+ is located ½ mile east of Interstate 15 (“I-15”), and the northern edge is 2.5 miles south of State Route 76 (“SR-76”). Public road access to VC7+ is via West Lilac Road, along the northern and eastern edges of the analysis areas. The analysis prepared for the PSRs assumed the potential for 10 average daily trips per additional single family dwelling, and the traffic study assumed a potential increase of 2,530 average daily trips associated with the VC7+ area.

The existing zoning use regulations in this area are consistent with either SR-4 or SR-2, so no changes to zoning are required for this analysis area. This matter, if approved, will not authorize a development project. The effect of an approval would be a change in land use designation in the General Plan and in the Zoning Code, which would result in a change in density.

Supervisor Horn’s real property, which includes his residence and a farming operation, is located on West Lilac Road approximately ¾ mile from the southeastern border of VC7+.<sup>2</sup> The value of the Property, including the farming operation and his residence is approximately \$3.5 million. The farming operation, which involves selling various crops wholesale, generates an average income of approximately \$50,000 per year.

## ANALYSIS

### Conflicts of Interest

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has a financial interest specified in Section 87103. A public official has a “financial interest” in a government decision, within the meaning of the Act, 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.) Of the interests recognized under the Act, Supervisor Horn has the following interests:

---

<sup>2</sup> His real property is approximately 1.3 miles from the southeastern border of LHR project, which as indicated, overlaps in part and is adjacent to the VC7+ area. In addition, the LHR project includes offsite improvements (street and sewer) that would be approximately eight-tenths of a mile from Supervisor Horn’s real property.

- Real property worth \$3.5 million, through ownership of his residence and farm. (Section 87103(b).)
- A business entity consisting of farming operations on his property, in which he has a direct or indirect investment of \$2,000 or more. (Section 87103(a).) His business is a source of income to him as well as an investment interest. (Section 87103(c).)
- Sources of income to his business. Income of an individual includes a pro rata share of the income of a business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82030(a).) Therefore, customers or clients who are sources of income to the business are considered sources of income to the extent his share of the income will be \$500 or more.

*Foreseeability:*

In this case, neither Supervisor Horn's real property interests nor his business entity interests are explicitly involved in decisions regarding the VC7+ area. Accordingly, the foreseeability standard is provided in Regulation 18701(b), which states:

A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.

*Materiality:*

Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. 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.

[¶] ... [¶]

(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."

Instructive here is the *Horn* Advice Letter, No. A-15-185, where the Commission determined that the Lilac Hills Ranch project (LHR project) would have a reasonably foreseeable

material financial effect on the same interests of Supervisor Horn at issue in the present situation. The LHR project, which you state overlaps in part and is adjacent to the VC7+ area at issue here, proposed adding 1,746 dwelling units and 90,000 square feet of retail and commercial space, which would result in a substantial increase in population. The LHR project would develop approximately 600 acres and require street and sewer improvements well within a mile of Supervisor Horn's real property. The LHR project also proposed a school, parks, fire station, recycling facility, a water reclamation facility, and other supporting infrastructure. The additional traffic on the portion of West Lilac Road that services Supervisor Horn's real property would remain at Level A or free vehicular flow with few conflicts or interruptions.<sup>3</sup>

The LHR project would require amending the General Plan Designation of Semi-Rural to Village Residential and Village Core Mixed Use, as well as amending the General Plan to include a specific plan over the project boundaries. The LHR project would also require rezoning from Limited Agriculture and Rural Residential designations to Single Family Residential and General Commercial-Residential designations. Although the Commission determined that Supervisor Horn's use and enjoyment of real property would likely be unaffected by the Project because it was sufficiently distant to be buffered from noise, pollution, air quality, and visual effects of the development, it ultimately determined that "such a major development in a relatively undeveloped, rural area would have a reasonably foreseeable material financial effect on the market value of [his] real property."

Here, by contrast, the proposed rezoning of the VC7+ area from Semi-Rural (SR)-4 to SR-2 would only allow for an additional 253 potential dwelling units. The extra dwelling units allowed in the VC7+ area would be spread over 1,465 acres, which represents a significantly larger area than the 600-acre development proposed by the LHR project. And unlike the LHR project, which would require rezoning from Limited Agriculture and Rural Residential designations to Single Family Residential and General Commercial-Residential designations, the existing zoning use regulations in VC7+ are consistent with SR-4 or SR-2 so no changes to the zoning would be required.

With respect to additional traffic, the *Horn* Advice Letter stated the traffic study for the Lilac Hills Ranch Project indicated the existing average daily trips for the section of West Lilac Road that services Supervisor Horn's real property is 1,170 (22% of Level A). There, the traffic study estimated that Lilac Hills Project would increase the average daily trips for the same section of West Lilac Road to 2,470 (47% of Level A). The letter concluded, therefore, that the traffic on the portion of West Lilac Road that services Supervisor Horn's real property would remain at Level A or free vehicular flow with few conflicts or interruptions.

In the present situation, the analysis prepared for the VC7+ area assumed the potential for 10 average daily trips per additional single family dwelling, and the traffic study assumed a potential increase of 2,530 average daily trips associated with the entire VC7+ area, not just the section of West Lilac Road that services Supervisor Horn's real property. Even assuming an increase of the entire 2,530 average daily trips on that portion of road, traffic there would still remain at Level A or free vehicular flow with few conflicts or interruptions.

---

<sup>3</sup> The County road standards define "Level of Service A" as "'free' vehicular flow with few conflicts or interruptions."

Lastly, there is no suggestion from the facts that the increase in density in the VC7+ area would substantially alter the view, privacy, noise levels, or air quality in connection with Supervisor Horn's real property such that the market value would be affected.

Unlike the LHR project, it does not appear a reasonable inference can be made that Supervisor Horn's participation in the VC7+ decision will have a reasonably foreseeable material financial effect on the market value of his real property.<sup>4</sup> Accordingly, he may participate in the VC7+ decision.

### Segmentation

Notwithstanding Supervisor Horn's conflict of interest in the LHR project, you have asked whether he may nonetheless participate in the general plan amendment of batched projects using a modified version of the segmentation procedure set forth in the Commission's *White, Murphy* and *Porter* advice letters.<sup>5</sup> Assuming the LHR project is batched with other development projects, but not the PSRs, you propose the following procedure:<sup>6</sup>

(1) The General Plan Amendment agenda item will be called. There will be a brief staff presentation on the process for approving the specific project approvals and the approval of a General Plan Amendment to make the General Plan consistent with the project approvals.

(2) LHR will be the first sub-item presented, and Supervisor Horn's conflict of interest will be stated on the record and he will leave the room.

(3) A public hearing will be conducted on the LHR which will include a staff presentation and public comment. The hearing will be closed, and the remaining supervisors will discuss and decide whether to certify the project's EIR and approve the project components (a site plan, major use permit, tentative map, rezone, and specific plan) except for the General Plan Amendment. These approvals will require approval of the General Plan Amendment to be effective. This vote will be final.

(4) Supervisor Horn will then be invited back into the chambers for public hearings on the other development projects. Votes will be taken on all required project approvals, including the project-specific environmental review documents. No votes will take place on the General Plan Amendment.

---

<sup>4</sup> In addition, for the same reasons set forth in the *Horn* Advice Letter, *supra*, the decision related to the VC7+ area will not have a reasonably foreseeable material financial effect on Supervisor Horn's interest in his farming operations as a business entity. And here, as was the case in the prior letter, we only focus on his business and real property interests because you have not identified sources of income to his business. However, if he receives income from sources of \$500 or more, they may also be the basis of a conflict of interest.

<sup>5</sup> A-09-079, A-07-031 and A-12-147, respectively.

<sup>6</sup> We are considering only one of the options you provided because the other options presuppose Supervisor Horn has a conflict of interest with respect to the VC7+ area.

(5) After the projects are approved, approved with modified conditions, remanded, or denied, the entire Board will be presented with the General Plan Amendment decision for the batched projects. The Supervisors will be unable to change the prior project approvals for the LHR project. A vote will then be taken on the overall General Plan Amendment with all supervisors participating, including Supervisor Horn.

FPPC Regulation 18706 permits an agency to segment a decision in which a public official has a financial interest, to allow participation by the official, provided the following conditions are satisfied:

- (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.<sup>7</sup>

Under the process you have outlined, the County will “segment” decisions involving the LHR project from the overall General Plan amendment. The LHR decisions will be considered before the decision to adopt the General Plan amendment, with Supervisor Horn leaving the room and not participating in the discussion or decision concerning the LHR project for which he has a conflict of interest. Only after all decisions concerning the LHR project have been resolved will Supervisor Horn return to consider adoption of the General Plan amendment.

To the extent that the County makes a final decision on the LHR project and a final decision that the general plan will be amended to encompass the LHR project prior to, and regardless of, the further deliberations on the general plan, the proposed process meets each of the criteria outlined in Regulation 18709, and we conclude that Supervisor Horn, notwithstanding his conflict of interest in the LHR project decisions “segmented” as you describe, may participate in discussion and voting on the General Plan amendment at the conclusion of this process.

---

<sup>7</sup> For purposes of this regulation, decisions are “inextricably interrelated” when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision. (Regulation 18706(b).)

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

Sincerely,

Dave Bainbridge  
General Counsel

By:  Jack Woodside  
Senior Counsel, Legal Division