



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 22, 2019

Lynn Compton, Supervisor, 4th District  
San Luis Obispo County  
1055 Monterey Street  
San Luis Obispo, CA 93408

Re: Your Request for Advice  
**Our File No. 19-072**

Dear Ms. Compton:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act") and Government Code Section 1090 ("Section 1090.")<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.

### QUESTION

Do the conflict of interest provisions of the Act prohibit you, as a supervisor of San Luis Obispo County (the "County") and an appointed member of the San Luis Obispo Council of Governments (the "SLOCOG"), from taking part in decisions affecting an intersection and potentially re-routing of traffic near your residence?

### CONCLUSION

No. Your property is located approximately 20,000 feet or more from the 101/El Campo intersection that the County may modify and approximately 8,000 feet from the Los Berros/Thompson/101 ("Los Berros") intersection, which will be the alternate route to Highway 101. Your property is also 0.9 miles (approx. 4,752 feet) from N. Dana Foothill Road, where most traffic will be flowing from. Giving the distance to the project, it is not reasonably foreseeable that the effect of the decision concerning the modification of the intersection and the re-routing of traffic

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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.

to the Los Berros intersection is material under applicable conflict of interest regulations. Therefore, you are not prohibited from taking part in the County and SLOCOG's decisions in question.

### **FACTS AS PRESENTED BY REQUESTER**

You are a County Supervisor for the Fourth District in San Luis Obispo and you seek advice regarding your participation in a decision that will be made by the County and SLOCOG to modify and/or close the stop signed controlled intersection at 101/El Campo 6.3 miles (approx. 20,000 feet) from your real property line, which appears to be valued over \$2,000. The possible modification would potentially re-route traffic through the Los Berros intersection, which is 2.2 miles (approx. 8,000 feet) from your real property line and a primary access point to Highway 101. Any changes in traffic levels caused by the modified 101/El Campo intersection would be limited to traffic flowing from N. Dana Foothill Road, then to Sheehy Road, and to the Los Berros intersection. N. Dana Foothill Road, based on the facts and the maps you provided, is 0.9 miles (approx. 4,752 feet) away from your real property line and is the primary route you use to access Highway 101. The intersection modification could potentially increase the traffic at the Los Berros intersection by several hundred cars per day, which is already a heavily used intersection.

### **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.) A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Interests from which a conflict of interest may arise are defined in Section 87103.

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. Based upon the facts provided, the only interest identified is your interest in real property, which appears to be valued over \$2,000. Accordingly, we must determine whether there will be a reasonably foreseeable and material financial effect on your real property interest as a result of the decisions involving the intersection modification.

#### *Foreseeability and Materiality*

Generally, a financial effect is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) An interest "is the subject of a decision 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)." If the interest is "not explicitly involved" in the decision, a financial effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. (Regulation 18701(b).) Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be

material depending on the nature of the interest. (Regulation 18702.) The materiality standards for any particular interest are provided in Regulations 18702.1 through 18702.5.

Regulation 18702.2 provides a list of circumstances under which a reasonably foreseeable effect on the interest is material. As most pertinent to the facts provided, a foreseeable effect will be material under Regulation 18702.2(a) if the decision:

“(1) Involves the adoption of or amendment to a development plan or criteria applying to the parcel; ...

(6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services; ...”

Additionally, Regulation 18702.2(b) provides:

“(b) The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official’s property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official’s property.”

You seek advice regarding your potential participation in a decision to modify and/or close the stop signed controlled intersection at 101/El Campo, which is approximately 20,000 feet from where your real property parcel lies. While this decision likely involves the adoption or amendment of a development plan or criteria, there is no indication that the plan or criteria would apply to your parcel.

Further, while the modification of an intersection would involve the construction of, or improvement to, streets, or other similar facilities, there is no indication that your real property would receive new or improved services that provide a benefit or detriment disproportionate to other properties in the area. Accordingly, your property is not explicitly involved in the decision, and there is no reasonably foreseeable material effect under either Regulation 18702.2(a)(1) or (6).

As your property is not explicitly involved in the decision a financial effect is reasonably foreseeable only if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. Based upon the facts provided, the facts indicate the 101/El Campo intersection is approximately 20,000 feet from your property line, the Los Berros intersection is approximately 8,000 feet from your property line, and N. Dana Foothill Road is 0.9 miles (approx. 4,752 feet) from your property line. All of the roads implicated in the County’s decision are well over 1,000 feet from your property line. As a result, the financial effect is presumed not to be material absent clear and convincing evidence the governmental decision would have a substantial effect on your property. In this case, there are no specific facts indicating a reasonably foreseeable and substantial effect on your real property interest such as a change in the nature or use of your real property interest or substantial traffic concerns in a closer proximity to your real property.

Accordingly, barring additional facts, the conflict of interest provisions of the Act do not prohibit you from taking part in the decisions.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Katelyn Greene  
FPPC Counsel, Legal Division

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