



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 26, 2019

Heather L. Stroud  
1901 Lisa Maloof Way, Ste. 300  
South Lake Tahoe, CA 96150

Re: Your Request for Advice  
**Our File No. A-19-135**

Dear Ms. Stroud:

This letter responds to your request for advice on behalf of Mayor Pro Tempore Jason Collin for the City of South Lake Tahoe (“City”) 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.

### QUESTION

May Mayor Pro Tempore Collin participate in City decisions related to the US Highway 50 South Shore Revitalization Project (“Project”) where he has participated in an earlier related lawsuit and he has an ownership interest in two real property parcels adjacent to the Project site?

### CONCLUSION

Mayor Pro Tempore Collin may not participate in the City eminent domain policy, acceptance of the abandoned US 50 and design of a “Main Street” area, and Project-related housing decisions, where his parcels are located within 500 feet of the US 50 Project, and the Project-related decisions will have a reasonably foreseeable and material financial impact on this interest. Due to

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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.

his multiple real property interests, three rental units and a vacant lot, the financial effect is unique to Mr. Collin, and not shared by a significant segment of the public.<sup>2</sup>

## FACTS PRESENTED BY REQUESTER

### *The Project*

The Tahoe Transportation District (TTD) US 50 South Shore Community Revitalization Project is a bi-state community development project that includes realigning U.S. Highway 50 (US 50) and redeveloping substantial portions of the northeastern side of the City, as well as Stateline, Nevada.<sup>3</sup> The Project is expected to transform the area and stimulate local economic development and tax revenue.

The Project plans to realign US 50 between Pioneer Trail and Lake Parkway away from the South Lake Tahoe tourist core area, to instead flow through the “Rocky Point” neighborhood off Pioneer Trail. In its place, a pedestrian-oriented “Main Street” will be created, through the middle of the existing tourist core. The Project includes transportation options to calm traffic alongside neighborhood improvements. These improvements include a new pedestrian bridge, bike lanes, trail connections, a park, green space, street lighting, signage, and noise mitigation. The new Main Street seeks to promote access to mountain and lake amenities, lodging, retail, and entertainment by foot, bike, or transit. The Main Street would be reduced to one travel lane in each direction, with landscaped medians, and left-turn pockets at major intersections and driveways. This Project involves acquiring private property southeast of the existing US 50. To offset the loss of 76 housing units in this neighborhood, the Project includes 109 new housing units, with 102 units deed restricted to low-income and seven units to moderate-income housing.

In November 2018, the Tahoe Regional Planning Agency certified its portion of the final joint environmental document (EIR/EIS) and issued a conditional permit for the Project. Since then, the TTD convened a stakeholder group including representatives from the City to provide input on the design for the new Main Street area. Now that the Project is nearing final design phase, the City is engaging in the process. The City previously reviewed and endorsed the proposal in 2013. On March 5, 2019, the City Council received a presentation from the lead agencies on the Project and no actions were taken.

To date the City Council has adopted a resolution stating that the City will be an active partner in the development, planning, and construction of the Project, and a resolution that it will not commit any general City revenues otherwise available for delivery of core services towards the Project. The City hosted two community meetings to solicit input on the Project on March 14 and

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<sup>2</sup> In response to your request regarding legal fees paid on Mr. Collin’s behalf prior to his election in 2016, we note that disqualification under the Act is limited to those interests specified in Section 87103. At this time the payments for legal fees, made prior to Mr. Collin’s election in 2016, are not potentially disqualifying interests under the Act’s conflict of interest provisions.

<sup>3</sup> The Tahoe Transportation District (TTD) is the main project proponent for the Project, in cooperation with the Federal Highway Administration, California Department of Transportation (Caltrans), and Nevada Department of Transportation (NDOT).

April 30, 2019, both of which were attended by members of City Council. Mr. Collin recused himself from these discussions.

Currently, the City Council is considering a resolution stating the City's general policy on eminent domain, which relates to the Project. The City Council will have decision-making authority over accepting the abandoned US 50, and City representatives are currently on a stakeholder group to design the new Main Street. On the affordable housing issue, the City would like to have some influence over the affordable housing sites, and recently approved a Memorandum of Understanding to that end with the TTD and developers. The City anticipates a vote to authorize affordable housing grant applications and may vote on a transfer of City property as a site for affordable housing. The City does not have decision-making authority on the Project or on items related to the Project such as the widening of Pioneer Trail, or which parcels must be acquired for the Project.

Mr. Collin has real property interests exceeding \$2,000 in two parcels of adjacent real property within 500 feet of the Project boundary:

- 3830 Pioneer Trail, a residential property containing three A-frame cabins, each of which is rented to a long-term tenant. The gross income received from the rent is between \$10,000 and \$100,000 per year, and
- 1007 Shepherds Drive, a vacant, non-income producing parcel zoned for residential use.

These parcels are owned by the Collin Family Trust, of which Mr. Collin and his spouse own a greater than 10 percent interest. The two parcels are located outside, but within 500 feet of, the Project boundary. The parcels are located within 500 to 1,000 feet of the Rocky Point neighborhood that is scheduled to be demolished and replaced by the new leg of US 50. You note that the "heart of the Project" is over 1,000 feet from the two parcels. The US 50 area to be abandoned, and subject to acceptance by the City for a new, designed with City input, Main Street is over 1,000 feet away. The City property potentially for transfer is also over 1,000 feet from the parcels. Some of the new housing sites may fall within 1,000 feet of the parcels, but the majority of the new housing will be located over 1,000 feet away.

## ANALYSIS

The Act's conflict of interest provisions prohibit any 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. (Section 87100.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 defines a financial interest as follows:

- (a) Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more; or is a director, officer, partner, trustee, employee, or holds any position of management.

(b) Any real property in which the public official has a direct or indirect interest worth \$2,000 or more.<sup>4</sup>

(c) Any source of income, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any donor, or intermediary or agent for a donor, of gift(s) aggregating \$500 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Mr. Collin has a business interest (including the business as a source of income) in his rental business and a real property interest in the parcels located adjacent to the Project Site. He has a source of income interest in his tenants.

You have identified future decision areas coming before the City: a resolution expressing the City's policy on the use of eminent domain for the Project (but not on a specific parcel or use of eminent domain), acceptance of US 50 right-of-way to be abandoned by Caltrans for use as a City street, and design input for the new Main Street area, and housing-related decisions.

#### *Foreseeability and Materiality*

A financial effect is presumed reasonably foreseeable where the official's financial interest is explicitly involved as a named party in, or subject of, the decision. (Regulation 18701(a).) Where the financial interest is not explicitly involved in the decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. None of the identified City decisions related to the Project explicitly involve his real property interests, and the latter standard applies.

#### *Materiality: Real Property Interest*

Regulation 18702.2(a)(7) states that the reasonably foreseeable financial effect of a government decision on a real property parcel is material where the decision "involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property." The City decisions at issue relate to the City's involvement in the US 50 Project, which encompasses an area within 500 feet of Mr. Collin's parcels. It is a realistic possibility that these decisions, which affect the Project's implementation, traffic, tourism, housing and amenities in the area will have a financial effect on his properties. The facts do not establish that the decisions will "not have any measurable impact" on his properties, but rather show that the decisions seek to address long-standing traffic and housing issues, relate to a massive construction project, and seek to greatly improve the amenities in

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<sup>4</sup> Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Section 82033.)

the immediate area of his parcels. Therefore, Mr. Collin has a prohibitive financial interest in the City's decisions.<sup>5</sup>

### *Public Generally*

You have raised the issue as to whether the enormity of the Project and its anticipated impacts on the region make the financial impacts on Mr. Collin indistinguishable from the effects on the public. A public official that has a reasonably foreseeable and material financial interest in a decision may still participate if the official demonstrates that the financial effect is (1) not unique to the official and (2) shared by a significant segment of the jurisdiction. (Section 87103, Regulation 18703.) A unique effect on the official's financial interest(s) includes a disproportionate effect on any of the following:

- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- (2) An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
- (3) An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.

A significant segment of the public includes at least 25 percent of: all businesses within the official's jurisdiction; or all real property, commercial real property, or residential real property; or all individuals within the official's jurisdiction. (Regulation 18703(b).)

The facts indicate that the decisions in question will have a unique effect on Mr. Collin's interests due to the cumulative effect on his multiple real property interests and possible effect on the development potential of his properties. (Regulation 18703(c)(1) and (3).) Unlike most members of the public, Mr. Collin has a business and real property interest in the three rental units and vacant lot upon which the decisions are found to have a reasonably foreseeable and material financial effect. The facts do not establish that a significant segment of the City's businesses or real property will be likewise affected by the City decisions. Therefore, Mr. Collin has a prohibitive financial interest in the City decisions and may not participate.

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<sup>5</sup> Segmentation of the decisions, which would allow Mr. Collin to participate once the threshold decision implicating the financial interest is determined, is not applicable here. (Regulation 18706.) It appears that each decision is inextricably related to the implementation of the Project, and its impacts on his financial interest. A decision is inextricably related where the result of one decision will effectively determine or alter the result of another decision. We recommend Mr. Collin seek advice regarding his participation once these threshold Project-related issues are determined.

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

Sincerely,

Dave Bainbridge  
General Counsel

A handwritten signature in black ink, appearing to read "L. K. Harrison" followed by a stylized flourish that looks like "aja".

By: L. Karen Harrison  
Senior Counsel, Legal Division

LKH:aja