



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 26, 2025

Erin Weesner-McKinley
Deputy City Attorney
City of Long Beach
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

Re: Your Request for Advice
Our File No. A-25-125

Dear Ms. Weesner-McKinley:

This letter responds to your request for advice on behalf of Laura Doud, the City Auditor for the City of Long Beach (the “City”), regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

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. Under the Act, may City Auditor Doud, whose residence is within 500 feet of the Long Beach Tidelands, participate in any governmental decisions regarding the Long Beach Tidelands?
2. Under the Act, may City Auditor Doud participate in governmental decisions regarding the Long Beach Tidelands excluding the projects tied to the area of the Long Beach Tidelands within 500 feet of her residence?
3. Under the Act, may City Auditor Doud’s staff conduct the audit of the City’s Tideland Funds without the direction or participation of the City Auditor?

¹ 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 18104 through 18998 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.

4. May the City Auditor communicate with the public, City staff, and the City Council about the City Tideland Funds' audit, and inquiries, issues, and questions regarding the same?

CONCLUSION

1. No. City Auditor Doud may not make, participate in, or in any way attempt to use her official position to influence governmental decisions regarding the audit of the City's Tideland Funds because of the material financial effect on her residence within 500 feet of the Tidelands.

2. Under Regulation 18706, a decision may be segmented when the decisions in which the official is disqualified are not inextricably interrelated to the segmented decisions, provided the decisions in which the official is disqualified are considered first and cannot be reopened. To the extent the City wishes to remove property within 500 feet of the City Auditor's residence from the proposed audit to potentially segment the decision, we advise you to seek further assistance identifying the nature and scope of the remaining audit and decisions.

3. Yes. City Auditor Doud's staff may conduct the audit of the City's Tideland Funds without the direction or participation of the City Auditor because the Act only prohibits City Auditor Doud from taking part in the decision. The Act does not disqualify her office from conducting the audit, provided she recuses herself from the decision.

4. As concluded above, City Auditor Doud is prohibited from taking part in any City decisions regarding the audits, and this includes a broad prohibition against any communications with City officials, including her staff, for the purpose of affecting the decision. To the extent City Auditor Doud engages in communications with the public or the media, we note that she may generally communicate with the public and the media about the City's Tideland Funds audit under the public speaking exception, provided that the communications do not otherwise involve communicating with any City officials, including her staff.

FACTS AS PRESENTED BY REQUESTER

Under the City's Charter, the City Auditor is the general auditor of the City and of every department, commission, and office thereof. The City's Charter allocates to the City Auditor the authority to conduct performance audits of City departments, boards, commissions, and offices. Performance audits are defined as "independent assessments of programs, functions, operations, or management designed to enhance performance, cost savings, efficiency or service improvements." Through the audit process, the City Auditor and her staff work with City staff to understand the underlying facts and evaluate recommendations. At times, members of the City Council and the public will reach out to the City Auditor to discuss questions or concerns related to published audits. Audits completed by the City Auditor are communicated to the public, City staff, and City Council. The City Council votes to adopt the City's budget and makes contractual and policy commitments. City Auditor Doud does not exercise a vote on the City Council. Her role is to provide an independent review of the City's finances and performance, and she is not involved in policy decisions, funding allocation, or the award of contracts for the City.

The Long Beach Tidelands are sovereign lands between mean high tide and mean low tide, which include filled and unfilled lands, bordering upon, under, or situated below the mean high tide line of the Pacific Ocean, or of any harbor, estuary, bay or inlet, which are within the corporate limits of the City. Tidelands along the Pacific Ocean in Long Beach are identified by a fixed boundary to the North known as the Chapter 138 line pursuant to a 1964 statute. The City's Tideland Funds includes the Tideland Operating Fund, the Tideland Oil Revenue Fund and the Subsidence Fund, collectively, the "Tideland Funds". The Tideland Operating Fund is used to account for operations, programs, maintenance, and development of the marinas, beaches, and waterways; the Convention Center; the Queen Mary and adjacent properties; the Aquarium of the Pacific; and Rainbow Harbor Area. Operations include marina management, police, fire and lifeguards, beach and marina maintenance, lease management, parking operations, and support functions. The Tideland Oil Revenue Fund is used to account for the proceeds from oil operations within the Tidelands areas. The Subsidence Fund is used to account for the acclimation of funds to be used to minimize and remedy future land sinkage (subsidence) due to oil operations.

On February 4, 2025, the City Council voted to request the City Auditor to conduct an audit of the Tidelands Fund Group. The City Auditor's office is evaluating and planning the audit of the City's Tideland Funds. To date, City Auditor Doud has not participated in or communicated with staff about the presentation of the item to the City Council or the proposed audit of the Tideland Funds. The audit of the City's Tideland Funds would review major capital projects funded by the Tideland Funds. Two of the major capital projects that the audit could include or omit are the Naples Seawall Repair project and the Sorrento Trail project.

The Naples Seawall Repair project was approved in 2013 by the California Coastal Commission. The project involves installing 18-inch wide steel sheet-piles on the water side of the existing vertical concrete seawalls along both sides of the Rivo Alto Canal and new guardrails, landscape beds, sidewalks, and streetlights at 95-166 Rivo Alto Canal, Naples Island, Long Beach, Los Angeles County. City Auditor Doud's residence is not located within 500 feet of this project. However, a key component of the California Coastal Commission's approval of phase one of the Naples Seawall Repair project was the approval of a compromise to work with residents through an extensive community input process to design a public walkway within the fifteen-foot-wide public right-of-way that runs along the northwestern shoreline of Naples Island along the waterside of Sorrento Drive. This capital project is called the Sorrento Trail project and is funded by the Tideland Funds. The Sorrento Trail project also includes sidewalk and street improvements, safety improvements for vertical access ways, and accessibility improvements for some residences. A map of the Site Context and Project Scope is attached to the request for advice and labeled as Attachment B for reference. City Auditor Doud owns and resides in a residence (the "Property") located within 500 feet of the Long Beach Tidelands and within 500 feet of the Sorrento Trail project.

ANALYSIS

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." A public official makes a decision if the official "authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action,

or enters into any contractual agreement on behalf of the official's agency." (Regulation 18704(a).) A public official participates in a governmental decision when "the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Regulation 18704(b).) Under Regulation 18704(c), a public official uses their official position to influence a governmental decision when the official "contacts or appears before any official in the official's agency", or an agency that is subject to the authority or budgetary control of the official's agency, for the purpose of affecting a decision. If the decision is before a different agency, a public official uses their official position to influence a governmental decision when the official contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts, or purports to act, within the official's authority or on behalf of the official's agency in making the contact with an official from another government agency. However, communications made "by a public official to the general public or media" are not considered making or participating in a governmental decision. (Regulation 18704(d)(4).)

"A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family," or on certain specified economic interests. (Section 87103.) Certain specified economic interests include any real property which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).) Here, City Auditor Doud has a financial interest because she has a direct interest worth at least \$2,000 in the Property.²

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. "A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency." (Regulation 18701(a).)

Where, as here, an official's financial interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable." A realistic possibility that is more than hypothetical or theoretical is enough. However, if the financial effect cannot be expected without extraordinary circumstance outside of the control of the public official, it is not reasonably foreseeable. (Regulation 18701(b).)

Under Regulation 18702.2(a)(7), the financial interest in real property is material when the governmental decision involves property located 500 feet or less of the property line of the official's real property unless otherwise proven by clear and convincing evidence the decision will not have any measurable impact on the official's property.

Here, the City Council has asked for an audit of the Tideland Funds' major capital projects. This audit will assess how the Tideland Funds are allocated and spent and evaluate whether the City

² Although the facts did not explicitly provide that City Auditor Doud's interest in her residence is at least \$2,000 or more, we will assume so for purposes of this analysis.

has a comprehensive strategic plan to guide and prioritize future spending. Based on the facts provided, the continual maintenance of the City's Tidelands could have a measurable impact on the Property, given its location less than 500 feet from the Tidelands. (See also *Kenyon* Advice Letter A-25-076 [the value of nearby properties could be affected by decisions relating to the town's ability to maintain an historic property].) Also, the Sorrento Trail project, located within 500 feet of City Auditor Doud's residence, includes sidewalk and street improvements, safety improvements for vertical access ways, and accessibility improvements for some residences in addition to construction of a walkway guaranteed by approval of the first phase of the Naples Seawall project.

As the Property is within 500 feet of the Tidelands and the Sorrento Trail project, it is presumed under Regulation 18702.2(a)(7) that the financial effect on City Auditor Doud's interest is material unless there is clear and convincing evidence that would not have any measurable impact on the property. However, there have been no facts provided of mitigating factors to indicate that there would not be a measurable impact on her property as a result of the audit. Accordingly, City Auditor Doud is prohibited from making, participating in making, or using her position to influence decisions regarding the audit of the Tideland Funds.

Segmentation

Under Regulation 18706(a), an agency can segment a governmental decision that an official has a financial interest in if 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.

Here, you have asked whether City Auditor Doud could take part in the decisions if the projects within 500 feet of her residence were no longer part of the decision. Ultimately, we cannot determine whether the decisions could be segmented to allow City Auditor Doud to take part in the decisions based upon the facts provided, because the answer would depend on the specific nature of the remaining decisions once all decisions regarding property within 500 feet of the Property have been made. To the extent that City Auditor Doud needs additional assistance regarding segmentation, you should seek additional advice specifically describing the scope of the remaining audit and decisions.

Turning to the question of whether City Auditor Doud can make communications about the audit of the Tideland Funds, Regulation 18704 defines conduct that constitutes making or participating in a decision or using an official's position to influence a decision. City Auditor Doud is prohibited from taking part in any City decisions regarding the audits, and this includes a broad prohibition against any communications with City officials, including her staff, for the purpose of affecting the decision. Nonetheless, Regulation 18704(d)(4) clarifies that a public official who is disqualified from taking part in a governmental decision is not prohibited from speaking to the general public or the media about it. In interpreting this regulation, we have previously advised that an official is free to discuss a project with the press, friends, neighbors, or other members of the community, even if the official does so to rally support or opposition of an action, unless those individuals are members, officers, employees, or consultants of the official's agency. (See *Mizrahi* Advice Letter, No. A-12-036.) Therefore, while City Auditor Doud may be prohibited from taking part in decisions surrounding the Tideland Funds, she would not be prohibited from talking about it with members of the public, provided there are no members, officers, employees, or consultants of City Auditor Doud's agency present.

If you have other questions on this matter, please contact me at mroeckl-navazio@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

By: *Margaret L. Roeckl-Navazio*

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Counsel, Legal Division

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