



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

February 18, 2026

Diana Nuricumbo
City of Calexico
608 Heber Avenue
Calexico, CA 92231

Re: Your Request for Advice
Our File No. A-25-151

Dear Ms. Nuricumbo:

This letter responds to your request for advice 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

Where you own and reside in a home in the Hearthstone Community Facilities District, may you participate in the following decisions, as a member of the Calexico City Council relating to:

1. Undertaking a forensic audit of a Special Tax Bond (the “Bond”) enacted to fund infrastructure within the Hearthstone Community?
2. Proposing to construct a main entrance to the Hearthstone Community?
3. Foreclosure proceedings related to the undeveloped portion of the subdivision (“Foreclosure Property”) so that funds may be applied to repayment of a bond that funded infrastructure in your subdivision?

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 you communicate with constituents about these issues in the event you have a conflict that prevents your participation in decisions.

CONCLUSIONS

1. Yes. Based on the facts provided, the financial effect of the proposed decision concerning an audit of the Bond on your real property interest is nominal, inconsequential, or insignificant, and you may take part in the decision.

2. Yes. Based on the facts provided, the proposed decision concerning the construction of the main entrance to your subdivision involves improving traffic controls, reducing public nuisance, and ensuring public safety. As analyzed below, the Limited Neighborhood Effects Exception permits you to take part in this decision, notwithstanding any potential financial effect on your real property interest.

3. No. It is reasonably foreseeable that a decision to proceed with foreclosure proceedings of the Foreclosure Property, which would allow the sale of the undeveloped land to facilitate repayment of the bond, would have a material financial effect on your interest in your real property. The sale of the undeveloped land would result in the development of this property for residential use, affecting the character of your property by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, and would also change your real property's market value.

4. Yes. As explained below, you are not prohibited from discussing these matters with members of the public, provided that no members, officers, employees, or consultants of the City are present.

FACTS AS PRESENTED BY REQUESTER

You reside in a Community Facilities District within the City of Calexico ("Hearthstone CFD," or "the CFD"). The CFD was established in 2006. You purchased your home in 2011. The Hearthstone CFD residential development was never fully completed due to the 2007 market crash and the developer's subsequent bankruptcy. Only half of the development, 246 homes, were built. The Special Tax Bond ("Bond") was issued for \$14.7 million for the entire project, to be repaid by the homeowners. The Bond Indenture and covenants were executed in July of 2006 (18 years before you were elected to be a Councilmember).

Over the past 18 years, because the developer declared bankruptcy and did not complete the residential project, the homeowners from the CFD have asked the City Council to take the following three actions: a forensic audit of the CFD Bond, construction of the main entrance to your subdivision, and foreclosure on the undeveloped portion of your subdivision.

Forensic Audit

The proceeds of the Bond were to be used to finance public facilities and capital improvements with the CFD, including fees for fire, police, sewer, water, and traffic impacts, as

well as improvements to the roads providing access to Hearthstone. It also allocated \$6 million to the Calexico Unified School District (“CUSD”) in the form of Impact Fees. However, CUSD alleges it only received \$3 million. Prior to your election to the City Council, another council member requested a forensic audit in 2016. However, in a follow-up email, you confirmed that no action was taken, and no audit was ever performed. You also state that it is unknown whether the City would need to hire an outside auditor, or whether the City Finance Department could perform the audit. You would like to propose that the City conduct a forensic audit to determine where the unaccounted-for \$3 million from the Bond was spent, as it is unknown whether the funds should have been used for infrastructure improvements, City services, and/or the CUSD.

Specifically, this CFD is authorized to levy an annual special tax to pay, in whole or in part, the approved costs associated with the Bond, which include interest on the Bond and administrative costs and other incidental expenses of the CFD. Currently, residential parcels will pay a facilities special tax of \$1,849 to \$3,019 per dwelling unit, depending on the residence's square footage.

Construction of Main Entrance

There is currently only one entrance/exit for 246 homes at Meadows Road on the Eastern boundary of the subdivision: the back entrance that was built in 2007.² Prior to your election to office, the Imperial County Civil Grand Jury performed an investigation in 2016-17. You provided a link to the Grand Jury report in a follow-up email, which included documentation of the poor conditions of infrastructure within the Hearthstone CFD, including damage to streets and sidewalks, and an obstructed fire hydrant, as well as the single entrance and incomplete main entrance. The Grand Jury report specifically recommended that the City obtain bids and make the necessary repairs to the Hearthstone CFD, including the unfinished entrance, to remedy these safety issues. However, the City never followed through with the Grand Jury's recommendation. This year alone, the homeowners have not been able to enter or leave their homes on two occasions: during a re-pavement project of the crossroad to the only entrance/exit of the residential development, and during Tropical Storm Mario, when the only entrance/exit was flooded, and vehicles could not cross through. You would like to propose that the City construct a main entrance by completing construction of La Jolla Palms Boulevard, a street running north/south located within your subdivision, to connect it with Cole Rd. a major east/west street to the south of La Jolla Palms Boulevard, something that was a part of the original subdivision plans, but never constructed due to the developer's bankruptcy.

In a follow-up email, you also stated that the location where the main entrance is to be located, where La Jolla Palms Boulevard meets the intersection of Cole Road and Rancho Frontera Avenue, is .4 miles as the “crow flies,” which translates to 2,112 feet from your property. You also confirmed that you are elected at large.

² We note that your residence is located on a cul-de-sac, and would not experience an increase or decrease in through traffic as a result of any changes to the main entrance.

Foreclosure

The Hearthstone development project anticipated four phases of construction over 75 acres located within the City. Phases 1 and 2 were approved and built. However, Phases 3 and 4 were not completed. These undeveloped portions comprise the Foreclosure Property.

The financing bonds issued by the CFD anticipated annual CFD levy revenues from all four project development phases to meet the CFD's annual debt service obligation. Each year, the CFD approves a levy across all taxable property within the CFD, both developed and undeveloped, but has only received approximately half of the anticipated levy revenues from developed parcels, while the other half of revenue collections from the undeveloped parcels (the Foreclosure Property) is levied but delinquent. As a result, approximately half of the annual bondholder debt service obligations are being paid. The City, as administrator of the CFD, has a fiduciary responsibility to the bondholders to continue to operate the CFD as established in its formation documents and to continue to adopt the annual parcel levy and to maintain cash flow for the bond debt service. The bond is in default, and the principal is not being retired as originally planned.

In a telephone call and follow-up emails, you explained that each homeowner within the CFD is liable for paying a set amount of debt and interest. The potential City decision to move forward with foreclosure proceedings would not alter the amount of the special use tax, principal or interest that you, or the other homeowners, will pay under the existing Bond. The City is ultimately liable to pay off the entire debt. At the end of the original 30-year period, the City will be liable as a whole for the remainder of the Bond. Only in the event that the City were to refinance the Bond at the end of the original 30-year period to extend the repayment period would you, and the other homeowners within the subdivision, incur any obligation for additional interest payments on the debt. You also confirmed that your residence is located approximately 920 feet from the Foreclosure Property. You stated that the City has initiated the foreclosure proceedings and will make future decisions concerning this process.

ANALYSIS

Under Section 87100, a public official may not make, participate in making, or use the official's position to influence a governmental decision in which the official has a financial interest. 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 on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 identifies interests from which a conflict of interest may arise, including, as relevant to these facts, "any real property in which the public official has a direct or indirect interest worth more than two thousand dollars (\$2,000) or more." (Section 87103(b)).

You have a real property interest in your residence, located within the Calexico CFD, as well as an interest in your personal finances. At issue is whether it is reasonably foreseeable that the potential decisions will have a material financial effect on your real property interest or your personal finances.

The standard for foreseeability and for materiality are dependent on whether an interest is explicitly involved in the decision. Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is "explicitly involved" as a named party in, or "the subject of," the decision, as is the case with the decision to undertake an audit of the Bond. An interest is the "subject of" a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the interest, including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6).

Where an official's financial interest is not explicitly involved as a named party or subject of the decision(s), as is the case with the decisions concerning the construction of the main entrance and the foreclosure of the undeveloped property, the financial effect is "reasonably foreseeable" if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b)).

Forensic Audit

We first examine whether you would have a financial interest in a City Council decision to initiate a forensic audit of Bond finances. Regulation 18702.2 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's real property interest. However, under 18702(b), a decision's financial effect on an official's financial interest is not material "if it is nominal, inconsequential, or insignificant." In this case, an audit would be necessary to determine whether funds have been properly spent, including whether funds should have been used for infrastructure improvements, City services, and/or additional payments to the CUSD. However, the audit will merely determine whether the funds have been properly spent, and without further action by the City Council, the audit itself will not result in allocations to the CUSD or additional amounts owed by, or payments due, to individual homeowners. Therefore, the effect of the decision to initiate the audit on your real property interest is nominal, inconsequential, or insignificant, and you may take part in the decision. We note however, that this conclusion applies only to the decision to initiate the audit. It does not apply to subsequent decisions arising from the audit. If you need additional assistance regarding any audit-related decision, other than the decision to initiate the audit, you should seek additional advice identifying the specific decision.

Construction of Main Entrance

We next examine the decision to construct a main entrance to the Hearthstone subdivision at La Jolla Palms Boulevard. There is now only one entrance/exit for the 246 homes in your subdivision, and this year alone, homeowners have been unable to enter or leave their homes on two occasions: once during a pavement replacement project and once during a tropical storm that caused flooding. You state that the location where the main entrance would be constructed is 2,112 feet from your property.

As your property is located more than 1,000 feet from the location where the main entrance would be built, the applicable standard is found in Regulation 18702.2(b), which provides that, whenever the governmental decision involves property 1,000 feet or more from the

official's property, the financial effect of the decision is presumed to not be material as to the official's property, unless rebutted with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property. Because the entrance is more than 1,000 feet from your residence, the presumption is that the effect is not material unless there is clear and convincing evidence to rebut this presumption. While there is some evidence of a financial effect, we need not determine if it is clear and convincing because, as discussed below, the Public Generally Exception for Limited Neighborhood Effects applies, even assuming evidence of a financial effect.

Public Generally Exception: Limited Neighborhood Effects

Despite your potentially disqualifying interest in the decision to construct a main entrance, under what is known as the Public Generally Exception, a financial effect on an official's financial interest is only disqualifying if the decision's effect on that interest is "distinguishable from its effect on the public generally." (Section 87103.) Specific rules govern the application of the Public Generally Exception to special circumstances. One specific rule, which applies to limited neighborhood effects, found in subdivision (e)(3) provides as follows:

(e) Specific Rules for Special Circumstances. The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

(3) Limited Neighborhood Effects. The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances³ that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

Thus, under the Limited Neighborhood Effects Rule, an otherwise disqualified official may take part in a decision as a matter of public policy where there is sufficient evidence supporting the public purpose for the action, the action applies to a specific location, and there is no unique effect on the official. (*Yu* Advice Letter, No. A-20-073; *Gibson* Advice Letter, No. A-17-188.)

Decisions relating to the construction of the main entrance affect residential real property limited to a specific location, the Hearthstone development, and the 246 homes located within the subdivision. Based on the facts provided, the main entrance is necessary to improve public safety, as noted in the Grand Jury report, and by the fact that the lack of the entrance has

³ See the *Garibaldi* Advice Letter, No. A-15-0 83, where we concluded that the public generally exception for limited neighborhood effects does not require a formal ordinance where the same result can be implemented by a less formal action, and the use of the word "ordinance" in the regulation was not intended to require a formally adopted ordinance but was intended to encompass any city rule or ordinance meeting the other requirements of the regulation.

prohibited ingress and egress during flooding and road construction. Further, there is no evidence of a unique effect, as the facts do not suggest that the addition of a second entrance would increase or decrease through traffic on the cul-de-sac on which your home is located. Therefore, the Limited Neighborhood Effects Exception permits you to take part in decisions relating to the construction of the main entrance.

Foreclosure

Finally, we examine a decision to move forward with foreclosure proceedings so that the funds collected from the sale of the Foreclosure Property may be used to pay down the Bond. In a telephone call and follow-up emails, you explained that each homeowner within the CFD is liable for paying a set amount of debt and interest. The potential City decision to move forward with foreclosure proceedings would not alter the amount of either principal or interest that you, or the other homeowners, will pay under the existing bond. If the delinquent payments are not collected from the Foreclosure Property, the City will be liable for repayment of this portion of the debt at the end of the 30-year period. However, if the City were to refinance the Bond at the end of the original 30-year period to extend the repayment period, you, and the other homeowners with the subdivision, may incur an obligation to pay the additional interest payments on the debt.

Applicable to these facts, where the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, Regulation 18702.2(a)(8) states that the reasonably foreseeable effect of a decision is material if the decision would do any of the following: change the parcel's development potential; income producing potential; highest and best use; character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or market value. (Regulation 18702.2(a)(8)(A)-(E).)

Here, the Foreclosure Property is zoned for residential development, but has been left vacant since the developer's bankruptcy, leaving the subdivision in which your residence is located only half completed. The decision to take action on the Foreclosure Property would result in the sale of the Foreclosure Property and allow for its development, replacing the vacant portion of the 75-acre subdivision with residential development, as originally planned when the Hearthstone development was approved. This would alter the character of your property located approximately 920 feet from the Foreclosure Property, by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, and air quality. Moving forward with the foreclosure to proceed with the development of the subdivision would also affect your real property's market value. Therefore, you may not participate in the decisions regarding the Foreclosure Property.

Appearance as a Member of the Public

Regulation 18704(d)(2)(A) provides a limited exception for certain appearances before the official's agency as a member of the public. Under this exception, an official may appear at a public meeting of the governing board as a member of the public to address matters related solely to the official's interest in real property owned entirely by the official or the official and

members of the official's immediate family. Your interest will fall under this exception if you (or you and members of your immediate family) own the real property residence in its entirety. However, we caution that this is a narrow exception and allows only for public comments regarding the implications of the decisions, specifically those related to your interest in your residence. The exception does not allow presentations of a general nature where you have a conflict of interest in the decision.

To invoke the exception, you must follow the recusal procedures set forth in Regulation 18707(a)(3). Specifically, you must publicly identify your real property interest that gives rise to the disqualifying conflict of interest. The identification must be made after the announcement of the agenda item, but before the discussion or vote commences. You must then recuse yourself from the matter, leave the dais to speak from the same area as the members of the public, and limit your remarks solely to your real property interest. Furthermore, the exception will only apply if you make it clear that you are not acting in your official capacity when you appear as a member of the general public. (*Willkins* Advice Letter, A-18-227.) You may listen to public discussion and deliberations on the matter from the same area as other members of the public. (*Ibid.*) If you will not exercise this exception, you must follow the recusal procedures outlined above (identify that you have a real property financial interest in the decision and identify the property) and you must leave the room. (Regulation 18707.)

Communications to the General Public or Media

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 that decision. 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, although you are prohibited from taking part in decisions concerning the foreclosure proceedings, you would not be prohibited from discussing this matter with members of the public, provided that no members, officers, employees, or consultants of the City are present.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division