



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 10, 2022

Megan K. Garibaldi  
BEST BEST & KRIEGER LLP  
City Attorney  
City of Goleta  
18101 Von Karman Avenue, Suite 1000  
Irvine, CA 92612

Re: Your Request for Advice  
**Our File No. A-22-107**

Dear Ms. Garibaldi:

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.

### QUESTION

Does the Act prohibit two councilmembers from taking part in decisions regarding a multipurpose path for biking and walking given the nearest point of the path will be within 500 feet of their residences?

### CONCLUSION

The two councilmembers are not disqualified from taking part in decisions concerning the multipurpose path because there is clear and convincing evidence that the path will not have a measurable impact on their residences.

### FACTS AS PRESENTED BY REQUESTER

The San Jose Creek Multipurpose Path has been in the Goleta-area’s Capital Improvement Program before the City’s incorporation twenty years ago. The proposed Path runs along much of the San Jose Creek – and specifically, the western edge of the creek. If approved, the Path will

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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 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.

create a walkable and bikeable 1.5 mile path running from Calle Real commercial and residential areas north of the U.S. Route 101 down through the Goleta Old Town area to the University of California, Santa Barbara (“UCSB”).

Councilmembers Kyriaco and Richards (the “Councilmembers”) each live in condominium units on Dearborn Place in Goleta. They each own their units, which are respectively, 360 feet and 190 feet as the crow flies from the tip of the nearest point of the Path. From their units, the Councilmembers can neither directly access nor see the Path.

As noted above, the Path will run along the western edge of the creek, and the Councilmembers’ respective units are located on the east side of the creek. Dense riparian vegetation runs along the eastern boundary of the creek which includes trees, brush, and ground cover vegetation. None of this vegetation will be removed as part of the Path construction. Even if the Councilmembers were able to make it through the vegetation, they would have to then cross through the San Jose Creek itself to access the Path. Moreover, the Path will have a split-rail wooden fence separating it from the Creek. Therefore, there is no direct connection to the Path from the Councilmembers’ residences, nor is it visible due to the dense vegetation blocking the Path’s view. Rather, the Councilmembers would need to travel significantly further on City streets in order to make it to the nearest access point.

With respect to accessing the Path from either of the Councilmembers’ respective residences, the City’s Senior Project Manager for the Path project provided the following calculations of the travel distance to the nearest access point of the Path, as planned: From Councilmember Kyriaco’s residence, the total travel distance to the nearest access point on the San Jose Creek Bike Path Northern Segment is approximately 2,590 feet. From Councilmember Richards’s residence, the total travel distance to the nearest access point on the San Jose Creek Bike Path Northern Segment is approximately 3,000 feet.

To access the Path from either residence, it would be necessary to travel to Dearborn Place Road and head south (approximately 2,080 feet from Councilmember Richards’s residence and 1,600 feet from Councilmember Kyriaco’s residence) to Hollister Avenue and travel west on that street approximately 570 feet to the Kellogg Avenue. From there, one would travel north approximately 180 feet to the parking lot of Jonny D. Wallis Park. The access point for the Path would be approximately 300 feet through the parking lot.

With respect to impacts as analyzed in the Mitigated Negative Declaration (“MND”), because the access points of the Path are not near the Councilmembers’ residences, the MND identified no anticipated traffic impact on their respective streets, in their respective neighborhoods, or in the immediate vicinity of their homes. The MND also analyzed noise impacts for the entire Path, and found no significant impacts, given the nature of the proposed use. With respect to construction noise for the entire Path, there is no anticipated adverse noise impacts because such construction will occur in accordance with Caltrans Standards which limit construction hours to daylight hours only, and use control measures like newer equipment with improved muffling to mitigate ambient noise.

Specifically, as to the Councilmembers’ residences, the noise impacts are likely to be minimal or imperceptible. The Councilmember residences are near major thoroughfares and heavier land uses (i.e., a concrete batch plant that generates a large amount of noise is also immediately

adjacent to the proposed Path) that will likely drown out any noise from the Path, including noise generated during construction.

The Path will not impact the development potential of the Councilmembers' residences because it involves no change in zoning rules applicable to the property of the Councilmembers but is instead an isolated project for the benefit of the community as a whole.

On September 20, 2022, the City Council of Goleta was set to consider approval of a Mitigated Negative Declaration and Development Plan for the Path. Approval of the Mitigated Negative Declaration is required by CEQA, and the Development Plan is a conceptual plan describing how environmental effects will be mitigated. Prior to the item being heard at the Council meeting, both Councilmembers recused themselves from this decision.

## ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) The financial interests that may give rise to an official's disqualifying conflict of interest under the Act are set forth in Section 87103 and includes an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) Councilmembers Kyriaco and Richards have a real property interest in their respective residences.

### **Foreseeability and Materiality**

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).) Regarding financial interests not explicitly involved in a decision, as here, 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. (Regulation 18701(b).)

Regulation 18702.2 provides that the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material under certain enumerated circumstances. The regulation provides that the effect is material whenever the governmental decision "[i]nvolves 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." (Regulation 18702.2(a)(7).) Additionally, Regulation 18702(b) provides that "the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant."

As provided in the facts, the proposed mile and a half multipurpose Path would run from Calle Real commercial and residential areas through the Goleta Old Town area to UCSB. Councilmembers Kyriaco and Richards own condominium units that are 360 feet and 190 feet, respectively, from the nearest point on the Path. However, their condominiums are separated from

the Path by the San Jose Creek, which has dense riparian vegetation that includes trees, brush, and ground cover running along the side of the creek adjacent to the condominiums. As a result, the Councilmembers would not be able to directly access or see the Path from their units even though both residences are located within 500 feet of the Path measured by map in a direct line.

Further, it is significant that the nearest access point is more than 2500 feet from both of their residences. According to the MND, there are no anticipated traffic or noise<sup>2</sup> impacts in the immediate vicinity of their homes. Based on these facts, while this has been a long-awaited project in the entire area, it is rather unlikely that the Path will have more than nominal, inconsequential, or insignificant effect on either of the Councilmembers' residences.

Accordingly, Councilmembers Kyriaco and Richards are not prohibited from taking part in decisions regarding the Path.

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

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

JW:aja

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<sup>2</sup> You also state that noise from the Path would not be an issue because it would be drowned out by the major thoroughfares and concrete batch plant located near the Councilmembers' residences.