



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 23, 2023

Cara E. Silver  
Town Attorney  
Town of Portola Valley  
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1100 Alma St., Suite 210  
Menlo Park, CA 94025-3392

Re: Your Request for Advice  
**Our File No. A-22-131(a)**

Dear Ms. Silver:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is being issued at your request, to supplement previous *Silver* Advice Letter, No. A-22-131 and to further clarify the application of Regulation 18706(c), should there be a final vote on the amendment of the Portola Valley General Plan. 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

Under the Act, may Portola Valley Town Councilmember Judith Hasko take part in decisions involving the Town’s mandatory Housing Element update, given that she lives within 1,000 feet of three parcels, Parcels 1, 2, and 9, that would be affected by the decisions?

### CONCLUSION

Under the Act, Councilmember Hasko is generally disqualified from taking part in decisions involving the three parcels within 1,000 feet of her residential real property. However, under

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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.

Regulation 18706, Councilmember Hasko may take part in Housing Element decisions to the extent they are properly segmented from decisions pertaining to Parcels 1, 2, and 9.

### FACTS AS PRESENTED BY REQUESTER

The Town of Portola Valley (“Town”), is required to adopt a General Plan consisting of at least seven elements, including a Housing Element. State law specifies the topics that the Housing Element must address and requires it be updated every eight years. Once a local government has received its Regional Needs Housing Allocation, it must revise its Housing Element to show how it plans to accommodate its portion of the region’s housing need. The Town is currently updating its Housing Element for the 2023 to 2031 planning period, or sixth cycle.

The Town currently has a population of 4,607. The topography is characterized by steep canyons and gullies with dense vegetation. The Town is located in a Wildland Urban Interface area with large swaths of habitat for wild animals and plants. Much of the Town consists of open space preserve owned and controlled by Midpeninsula Regional Open Space District. The Town is bisected by the San Andreas fault and wildfire hazards are present due to the deep vegetation, canyons, and autumn winds. Many of the existing housing units are accessed by narrow private streets with only one route of ingress/egress. The steep geologic setting and hazardous terrain constrain the amount and type of housing development. Most of the Town is zoned for single family residences and open space with a few areas zoned for commercial.

The Town is updating the Housing Element in response to the first round of Department of Housing and Community Development Comments. The Town’s draft Housing Element includes several proposed programs to rezone to allow residential use and/or change the allowed density of residential use on specific sites identified in the draft’s Sites Inventory.

The draft Housing Element proposes the following changes to specific parcels:

- **Parcel 1 (4394 Alpine):** Rezone a vacant 1.18-acre parcel from the Administrative-Professional (A-P) designation to Multi-Family with an allowable density of 20 residential units per acre and an anticipated capacity of 23 total units.
- **Parcel 2 (4370 Alpine):** Rezone a 2.4-acre office site currently zoned as A-P to a Mixed-Use designation which will allow a mix of commercial and residential uses with an allowable density of six residential units per acre and an anticipated capacity of nine total residential units.
- **Parcel 3 (Glen Oaks):** Rezone 4-acres of a site currently put to equestrian and business use and zoned Open Area/Residential Estate to Multi-Family with an allowable density of 4 residential units per acre and an anticipated capacity of 16 total units.
- **Parcel 4 (Ladera Church):** Rezone 0.5 acres of an existing church site currently zoned Residential Estate to a Multi-Family designation with an allowable density of 20 residential units per acre and an anticipated capacity of 10 total units.
- **Parcel 5 (Dorothy Ford Field/Gateway Project):** Adopt a Housing Element program to develop 50 units on a portion of a 2.48-acre parcel currently used as a park and open space. The existing baseball field would be preserved (or relocated elsewhere on site) and a plan for open space, tree preservation and emergency evacuation would be incorporated into the overall design. Development would be delayed for at least two years to see if other

programs in the Housing Element would serve to decrease or eliminate the projected housing yield.

- **Parcel 6 (The Sequoias):** Allow additional development at an existing Affiliated Housing Site (part of a program that allows multi-family residential development for schools, churches, and other institutions seeking to provide on-site housing for persons affiliated with the institution) at an allowable density of 8 residential units per acre with an anticipated capacity of 23 new units.
- **Parcel 7 (Christ Church):** Create a new Affiliated Housing Site on a 1-acre parcel with an allowable density of 6 residential units per acre and an anticipated capacity of 6 total units.

Additionally, the draft Housing Element anticipates the completion of one “pending” and one “pipeline” project within the Planning Cycle:

- **Parcel 8 (Stanford Wedge):** A pending application to develop approximately 7 acres of a 75-acre site owned by Stanford University to be used as faculty and workforce housing, proposed to result in 39 total residential units, including 27 single family homes and 12 affordable workforce housing units.
- **Parcel 9 (Willow Commons):** A permitted but not yet constructed project to redevelop a 1.2-acre parcel formerly developed with an office building as a multi-family supportive housing site with 13 total residential units.

In addition to rezoning or allowing greater residential development on the above 9 sites, the draft Housing Element also proposes to institute an “opt-in rezoning” program that would allow parcels larger than 1 acre that are currently zoned for single-family use to request and receive a zoning change to allow up to four dwelling units. Parcels eligible to opt-in to this rezoning program are scattered throughout the Town. While the Town understands there is interest in the proposed program, the draft Housing Element does not designate any specific sites that the Town expects to be rezoned under this program. The draft Housing Element does, however, anticipate that 12 additional housing units will be created under this program during the planning cycle (i.e., 3 parcels are expected to opt-in).

In total, the draft Housing Element anticipates 293 new residential units to be created during the Planning Cycle, which includes 92 accessory dwelling units to be constructed under existing zoning, and the balance 201 units being generated by the Sites Inventory parcels (Parcels 1 through 9).

According to the Initial Study/Mitigated Negative Declaration, the Housing Element update would have no impact or a less than significant impacts on Town aesthetics, energy, hydrology and water quality, land use and planning, and agricultural, biological, forest, and mineral resources, parks and recreation, population and housing, public services, transportation, utilities and service systems, and wildfires. The Housing Element update would also have no impact or less than significant impacts on air quality, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, noise, and tribal cultural resources with mitigation efforts incorporated.

Parcels 1, 2, and 9 are adjacent to one another and located on Alpine Road. Parcel 1 is on the southwest end of that block of parcels and sits adjacent to one of the Town’s two commercial centers, which currently includes a grocery store, a salon, a hardware store, a gas station and auto

repair shop, offices, and a restaurant. Parcel 7, the new Affiliated Housing site, is not adjacent to but is within several hundred feet of the Town's only other area zoned for commercial use. None of the other parcels listed on the Sites Inventory (Parcels 3, 4, 5, 6, and 8) are near areas zoned for commercial uses.

Judith Hasko was elected as a Portola Valley Town Councilmember on November 8, 2022 and assumed office on December 14, 2022. Councilmember Hasko owns a single-family home on Applewood Lane, which is more than 500 feet but less than 1,000 feet from Parcels 1, 2, and 9. To access the frontage of Parcels 1, 2, or 9 on Alpine Road from Councilmember Hasko's residence, you would move approximately 560 feet downhill on the circular Applewood Lane around two neighboring downhill parcels, which leads to the rear corner of Parcel 2. You would then travel along the side of Parcel 2 an additional 503 feet along Nathhorst Avenue before reaching Alpine Road. The design of the expected project has not been completed, but it is possible that there may be an entry point for Parcel 2 along this stretch of Nathhorst Avenue.

Applewood Lane dead-ends near Hasko's residence and therefore allows no through traffic. Hasko's house is set back approximately 225 feet from the property line at Applewood Lane and in the opposite direction from Parcels 1, 2, and 9, and sits atop the hill that ascends up Applewood Lane. That setback area is densely landscaped and the area around Applewood Lane is heavily wooded with large trees. Therefore, the likelihood of the developments contemplated in the draft Housing Element at Parcels 1, 2, and 9 being visible from Hasko's property is minimal.

There are 1,829 parcels within the Town. Sixty-eight of those parcels, or 3.7% of the Town, are located within 1,000 feet of Parcels 1, 2, and/or 9 on Alpine Road. There are 464 unique parcels, or just over 25% of the Town, located within 1,000 feet of one or more of the sites listed on the Sites Inventory (Parcels 1 through 9).

## ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use [their] official position to influence a governmental decision in which [the official] knows or has reason to know he has a financial interest." "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 his or her immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests is "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103(b).) Councilmember Hasko has a real property interest in her residence.

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. It states, "[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. A financial 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 financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6)."

Where, as here, an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[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."

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, and the decision would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Under this standard, it is reasonably foreseeable that approval of the draft Housing Element would have a material financial effect on Councilmember Hasko's real property by, at a minimum, changing the property's market value. Parcels 1, 2, and 9 would experience an anticipated capacity of approximately 45 new housing units within 1,000 feet of Councilmember Hasko's residence. The proximity of these new housing units, in combination with the relatively low number of lots within the Town, make it reasonably foreseeable the draft Housing Element and its introduction of dozens of nearby housing units would impact the market value of Councilmember Hasko's real property. Accordingly, the Act generally prohibits Councilmember Hasko from taking part in governmental decisions pertaining to Parcels 1, 2, and 9 unless an exception applies.

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of the official's interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes "[a]t least 25 percent of . . . all real property, commercial property, or residential real property within the official's jurisdiction . . . ." (Regulation 18703(b)(1)(B).) Where the official's only interest is their primary residence, a significant segment includes at least 15 % of the residential real property within the official's jurisdiction. (Regulation 18703(b)(1)(C).)

Here, only 3.7% of the Town's lots are located within 1,000 feet of Parcels 1, 2, and 9, as Councilmember Hasko's property is located. Although 25% of the Town's lots are located within 1,000 feet of Parcels 1 through 9, it is not clear that the potential impacts to the neighboring real

property of each identified Parcel is interchangeable. For example, it is not clear that real property located within 1,000 feet of Parcel 7—which would create a new Affiliated Housing Site and have an anticipated capacity of 6 total housing units—would experience a change in market effect, let alone to the same extent as Councilmember Hasko, who lives within 1,000 feet of multiple parcels that would combine for an anticipated capacity of 45 new housing units. Accordingly, the official has not established that that a significant segment is affected and the public generally exception does not apply in these circumstances.

In general, the Act disqualifies Councilmember Hasko from taking part in governmental decisions that would have a reasonably foreseeable, material financial effect on her real property—that is, governmental decisions pertaining to Parcels 1, 2, and 9. However it is possible that the Town Council could segment certain decisions related to the draft Housing Element, such that Councilmember Hasko may take part in decisions to a limited extent. Under Regulation 18706, Councilmember Hasko would be permitted to take part in Housing Element decisions to the extent that the following segmentation procedure is adhered to:

- (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.

(Regulation 18706(a).)

Regulation 18706(c) further provides, “[o]nce all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency’s budget or to adopt, reject, or amend the general plan.”

Accordingly, to the extent that any governmental decisions involving Parcels 1, 2, and 9 are segmented and considered first, with a final decision reached without Councilmember Hasko’s participation in any way, Councilmember Hasko may take part in the remaining decisions, as long as any such decision does not reopen the prior decisions regarding the parcels. Moreover, to the extent there is a single final vote to amend the general plan to encompass all the separate decisions related to the plan general previously finalized, Councilmember Hasko may take part in the vote to amend pursuant to Regulation 18706(c). However, we caution this exception applies only to participating in the final vote and does not extend to discussions of reopening any of the previously finalized decisions or any discussions occurring if the amendment is rejected.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Counsel, Legal Division

KMC:aja