



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

September 13, 2023

Quinn M. Barrow  
350 South Grand Avenue  
37th Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-23-135**

Dear Mr. Barrow:

This letter responds to your request for advice on behalf of City of Calimesa Mayor William Davis 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 City of Calimesa Mayor Davis have a prohibited financial interest in the proposed Overlay District Ordinance decision where he owns ranch properties, including a parcel located within 695 feet of one property of a total of 36 properties subject to the proposed Overlay District, and more than 1,000 feet from the remaining 35 properties?

### CONCLUSION

Yes. Under Regulation 18702.2(a)(8), it is reasonably foreseeable that the Overlay District Ordinance decision to increase the allowed density for housing on 36 properties will have a material effect on Mayor Davis’s parcel located within 695 feet of a property subject to the decision. Based on the facts provided, his parcel is undeveloped land and the high density proposed on the nearby

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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.

undeveloped property may change the development and income producing potential of the Mayor's parcel, as well as the parcel's market value. However, it appears a decision regarding the property within 695 feet of the Mayor's parcel may be segmented in accordance with Regulation 18706 to remove this particular property from the decision on the remaining 35 properties. If properly segmented, Mayor Davis would not have a prohibited financial interest in the decision regarding the remaining 35 properties, as it does not appear reasonably foreseeable that the decisions would affect his interests in his ranch as a business entity and source of income, or his property interests.<sup>2</sup> Regarding the property interests, there is no clear and convincing evidence that the segmented decision would have a substantial effect on the official's parcels as the remaining 35 parcels are all more than 3,000 feet from the Mayor's parcel and separated by existing neighborhoods and topography.

### **FACTS AS PRESENTED BY REQUESTER**

Mayor Davis is a member of the City Council for the City of Calimesa ("City") and is currently serving as Mayor, a rotational position. He was first elected in 2004 and has been on the City Council since then after a series of re-elections. His current term ends in November 2024. In his private capacity, Mayor Davis and his wife own and live on property on Singleton Road in the City. This is an "assemblage of land" - nine parcels, amounting to 80-plus acres, which are used as a ranch, and in addition to his primary residence, includes various accessory buildings, a business shop, and a rental residence. You confirmed that his northern parcels are zoned residential low and the more southern parcels, including the parcel with his residence, are zoned residential low/medium. which allow for 2-4 and 4-7 dwelling units per acre, respectively. Also, housing developments exist around the outer borders of most of the parcels, with some topographical separation.

Pursuant to the City's draft 6th cycle Housing Element, City staff drafted a zoning overlay district also known as the "Residential Infill Priority Area Overlay Zone" which it is presenting as an ordinance to allow "up-zoning" on 36 parcels within the City ("Overlay District Ordinance") on September 18, 2023. If adopted by the City Council, the Overlay District Ordinance will place a zoning overlay on the 36 properties located throughout the City, currently zoned for residential low development (2-4 dwelling units per acre), to increase the allowable maximum density of each parcel to 35 residential uses per acre. It would permit multifamily residential uses,<sup>3</sup> by right, on the 36 parcels in the City at the increased density level. The "Notice of Availability" document provided with the request states that under existing land use or zoning a total of 397 units could be developed. Under the proposed Overlay District Decision, a total of 2,156 units could be developed for an increase of 1,759 units. Based on Census data, you understand there are currently 3653 households in the City.

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<sup>2</sup> As noted below, no information was provided regarding the decision's impact on any client or tenant of his businesses; therefore, we do not analyze these interests. To the extent a client or tenant of his businesses may be affected by the decision, the Mayor should seek further advice.

<sup>3</sup> Such as duplexes, townhomes, condos, and a limited number of apartments.

The draft Environmental Impact Report (“EIR”) analyzed environmental impacts in the City if the 36 lots were developed consistent with the Overlay District and concluded that there would be impacts on air quality, greenhouse gas emissions, noise, population, and housing which cannot be mitigated to below a level of significance. You state that the air quality impacts relate to both short-term impacts during construction and operational impacts. Depending on airflow and winds, poor air quality caused by construction and subsequent increased residential use might migrate to Mayor Davis’s parcels.

One of the 36 properties included in the proposed Overlay District is a single lot located approximately 695 feet from the northern boundary of one of the Mayor’s parcels. The portion of the Mayor’s land that is 695 feet from the subject property contains “physical barriers” in the form of a combination of steep hillside and manufactured slopes, that currently exist as functional open space. This topography is shown in the maps provided. The site would require significant grading to be developed. Singleton Road to the south provides access to the Mayor’s properties. By contrast, Buena Mesa Drive, a road to the north, provides access to the closest property subject to the Overlay Ordinance. In a follow-up email, you clarified that the closest property and the Mayor’s nearest parcel are separated by City-owned open space and that it is not likely that a road could connect the properties due to the dramatic grade changes and manufactured slopes in the area. None of the mains and utility connections would be shared. City staff has not done a viewshed analysis, but they are certain that, due to the topography, any development on the closest property subject to the decision will not be visible from Mayor Davis’s residence, located on one of the Mayor’s further parcels. None of the other 36 properties proposed to be included in the Overlay District is within 1000 feet of his parcels. Mayor Davis’s house, located on a parcel further south, is located at least 2,500 feet from the closest proposed property subject to the Overlay District Ordinance. The maps provided indicate that the 35 additional properties subject to the decision are further north of the Mayor’s parcels than the property off Buena Mesa Drive and also do not share a common access road with the Mayor’s parcels. The maps further indicate that these 35 properties are all more than 3,000 feet from the Mayor’s closest parcel.

## 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 include:

- A business entity interest, where an official has a direct or indirect investment of \$ 2,000 or more in a business entity (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- Any real property in which the official has a direct or indirect interest worth more than \$ 2,000 or more. (Section 87103(b)).

- An interest in a source of income, aggregating five hundred dollars (\$ 500) or more in value provided or promised to, received by, the official within 12 months prior to the time when the decision is made. (Section 87103(c).)

Mayor Davis has identified real property interests related to the Overlay District Decision in his nine parcels that make up his ranch property. He has identified two business and source of income interests, one related to his ranch, and the second to his rental property business.

We note that he will also have a source of income interest in any client of his business or rental tenant who pays or promises to pay \$ 500 or more in value within 12 months of the decision; however, none were identified in regard to this decision. Because the facts do not provide information regarding any specific client or tenant of his businesses, we do not analyze these interests. To the extent a client or tenant of his businesses may be affected by the decision, outside of the potential effect on the Mayor's interests in his businesses and properties, the Mayor should seek further advice identifying the client or tenant and the potential effect of the decision on the client or tenant.

### **Foreseeability and Materiality**

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).” There is no indication from the facts that Mayor Davis’s real property or business interests are explicitly involved in the decision under any of these factors.

Regarding financial interests not explicitly involved in a decision, 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 defines when a financial effect of a government decision on real property is material. Relevant to these facts, the reasonably foreseeable effect of a decision is material 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, and 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).)

Because Mayor Davis’s parcel is within 695 feet and undeveloped land, it appears that the decision has the potential to change the Mayor’s parcel’s development and income producing potential as well as the parcel’s highest and best use, in that it will allow higher density residential

development on the nearby undeveloped property. We note that this impact would likely be shared by his additional parcels that make up the ranch, due to the fact that the ranch parcels are adjacent to one another and largely surrounded by housing developments. Because the approval or disapproval of the decision to greatly increase the by-right development density could change the market value of undeveloped land in the area, we find that it may change the market value of Mayor Davis's parcel as well.<sup>4</sup> Therefore, we advise that it is reasonably foreseeable that the Overlay District Decision will have a material financial effect on his real property interest, and Mayor Davis is prohibited from taking part in the decision except to the extent the decisions can be segmented as analyzed below.

### **Public Generally Exception**

In your request for advice, you specifically inquired whether Mayor Davis may participate despite a financial interest under the "public generally" exception; i.e., under a finding that the decision's financial effect on his interest is indistinguishable from its effect on the public generally. (See Section 87103.) In general, an effect on an official's interest is indistinguishable from its effect on the public generally if a significant segment of the public is affected and the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).)

Where an official has a financial interest in a decision other than that in their primary residence, as we have here, a "significant segment of the public" is at least 25 percent of all real property, commercial real property, or residential real property within the official's jurisdiction. (Regulation 18703(b).) However, we need not further consider whether a significant segment is affected, because the facts indicate that the decision will have a "unique" effect on Mayor Davis's interests. Applicable to these facts, a "unique effect" on a public official's financial interest exists if a decision will have a disproportionate effect on: the developmental potential or use of the official's real property or its income producing potential; the official's interests in real properties resulting from the cumulative effect of the official's multiple interests that is substantially greater than the

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<sup>4</sup> We have advised on multiple occasions that it is reasonably foreseeable that decisions relating to a large residential development project located on undeveloped real property between 500 and 1,000 feet from the official's real property interest would have a material financial effect on the market value of the official's real property interest under Regulation 18702.2(a)(8)(E).<sup>4</sup> While the property affected that is closest to the official's parcel is a single lot, we note that the decision will increase the current residential units allowed on the properties from 397 to 2,156, for a City that currently has 3653 households. See for example, *Roberto* Advice Letter, No. A-21-043 [interim city manager prohibited from taking part in decisions relating to a proposed 130-unit residential development project located on 16 acres of vacant land about 600 feet from her residence based on its potential to protect or increase the market value of neighboring property]; *Diaz* Advice Letter, No. A-20-113 [councilmember disqualified from taking part in decisions to eliminate 45.17 acres of vacant property between 500 and 1000 feet from his residence in favor of 103 high-end and low-density single-family homes] and *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residences of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes].

effect on a single interest; or the official's interest in real property resulting from the official's substantially larger real property size. (Regulation 18703(c).)

The City maps provided indicate that the Mayor's parcel is much larger than a typical residential housing lot (it is one parcel of nine that makes up the 80-plus acre ranch) in an area that largely consists of low to low/medium density residential housing. The public generally exception will not be applicable under the facts presented, due to the unique effect of the Overlay District Decision on the large acreage of Mayor Davis's parcel in comparison to a significant segment, likely made up of residences on individual developed lots, and the fact that his largely undeveloped parcel will be disproportionately affected in terms of development and income producing potential compared to this group.

### **Segmentation**

You have indicated that the Overlay District Decision may be broken down into different decisions. Under Regulation 18706, Mayor Davis would be permitted to take part in Overlay District 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).)

Applying segmentation to the facts provided, only one lot involved in the Overlay District Decision is within 695 feet of one of the Mayor's parcels, the remaining 35 properties are located well over 1,000 feet from Mayor Davis's group of parcels. Maps provided indicate the remaining 35 properties are all over 3,000 feet from the Mayor's parcels and separated by existing neighborhoods and topography. As pertinent to these properties, Regulation 18702.2(b) provides the materiality standard where the decision affects property over 1,000 feet from the official's real property parcel(s). Under this standard, the financial effect of the decision on the official's parcel(s) that involves property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property.

Here, there is no clear and convincing evidence that the decision to place the 35 properties, located over 3,000 feet away, in the Overlay District to allow higher density development by right would have a substantial effect on Mayor Davis's parcels. The 35 properties are located far north of his parcels, and separated by existing residential development, open space, and the closer residential development containing the single property. While the City's air quality will be impacted, and additional housing, population and noise are anticipated with the additional density, there is no indication that this will substantially affect Mayor Davis's parcels located over 3,000 feet from the properties and with road access and open space separation. The facts note that the parcel containing his residence is 2,500 feet away from the nearest property subject to the decision, and the properties subject to the decision will not be visible from his residence. Therefore, we advise that it is not reasonably foreseeable that the decision regarding the 35 remaining properties would have a material financial effect on Mayor Davis's real property interests.

Turning to his interests in his businesses, Regulation 18702.1 provides the materiality standard for an official's interest in a business, including an interest in the business as a source of income. Here, Mayor Davis has indicated he has a business interest in his ranch, and in his rental property business. For a business, not explicitly involved in a decision, as is presented here, Regulation 18702.1(a)(2) requires the examination of whether the decision would impact three areas for the business: annual gross revenues and assets/liabilities, expenses, and impacts on a business' real property interests.

Specifically, the financial effect of the decision is material if the decision may result in an increase or decrease of the business's annual gross receipts, or the value of its assets or liabilities, in an amount equal to or greater than \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is at least \$10,000. (Regulation 18702.2(a)(2).) The financial effect of the decision is also material if the decision may cause the business to incur or avoid additional expenses, or to reduce or eliminate expenses, in an amount equal to or greater than \$250,000; or one percent of the business' annual gross receipts and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).) Lastly, the financial effect of the decision is material if the businesses have an interest in real property and the property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.1(a)(4).) Based on the facts provided, there are no indications that the Overlay District Decision regarding the 35 remaining properties would have a material financial effect on these interests.

Barring additional facts, Mayor Davis would not be prohibited from taking part in decisions regarding the remaining 35 properties provided the Overlay District Decision is segmented as specified in Regulation 18706. More specifically, any decision regarding the property within 695 feet of his parcels must be considered first, without the Mayor's involvement, and the decisions regarding the remaining 35 properties may not reopen this decision.<sup>5</sup> We also caution that if there are additional facts known or that become known regarding a potential effect of the decisions

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<sup>5</sup> We note that Mayor Davis must recuse himself from the decision as specified under Regulation 18707. Under this regulation, the Mayor's interest must be publicly identified, and the Mayor must leave the room for the duration of the discussion and decision.

regarding the remaining 35 properties on the Mayor's businesses, he should seek additional advice providing this information.

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

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
Senior Counsel, Legal Division

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