



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

December 13, 2023

Margaret Gossett
316 Valdez Ave, Half
Moon Bay, CA 94019

Re: Your Request for Advice
Our File No. A-23-165

Dear Ms. Gossett:

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.

QUESTION

Under the Act, as a member of the Half Moon Bay Planning Commission, may you take part in governmental decisions relating to the development of a teacher housing project that would introduce 60 additional housing units within 1,000 feet of your residence?

CONCLUSION

Yes, the Act permits you to take part in such decisions because, for reasons discussed below, the project would not change your real property’s development potential, income producing potential, highest and best use, character, or market value.

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.

FACTS AS PRESENTED BY REQUESTER

The Cabrillo Unified School District (“the District”) is the lead agency on a proposed teacher housing project adjacent to Hatch Elementary School (“the Project”) in Half Moon Bay. The District is the lead agency on the Project and will directly oversee compliance with CEQA via an anticipated environmental impact report (EIR). The City of Half Moon Bay will be the responsible agency and rely on the District’s EIR once it is certified by the District Board.

A project plan included with your request for advice provides additional details regarding the Project. The Project would involve construction of teaching housing units on the northern and southern sides of Hatch Elementary School—the “Kelly Ave. Site” and “Central Ave. Site,” respectively. The Kelly Ave. Site would involve the construction of 42 housing units ranging from one to three bedrooms each. The Central Ave. Site would involve the construction of 18 housing units—that is, 6 one-bedroom units and 12 three-bedroom units. The Project would also involve construction of 95 residential parking spaces, as well as common areas, such as a lounge and a multipurpose room. The Project would also involve significant landscaping, such as the construction of a playground and open space landforms, as well as the installation of benches, bike racks, and various lights. Construction of the Project would also involve the demolition of several existing District school buildings and landscape components at the Kelly Ave. Site. Construction at the Central Ave. Site would occur on a portion of the school’s existing grass play field. More specifically, the eastern side of the Central Ave. Site would be developed to include the housing units described above, and the western side of the Central Ave. Site would be a landscaped grass play field.

Construction will be limited to existing schools and district used property and the area in which the school is located is fully developed. Moreover, based on the maps provided, the neighborhoods to the North, South, and West of the school, including the neighborhood in which your home is located, consist almost entirely of existing residential properties, while the area to the East is separated by Highway 1.

You are a member of the Half Moon Bay Planning Commission. The proposed housing project would be located 950 feet from your residence, which you own, but the majority of the housing is outside of the buffer area on the north side of the project site. More specifically, your residence is within 1,000 feet of the landscaped portion of the Central Ave. Site. In a follow-up email, you stated:

Impacts to our personal real estate should be minimal as both construction and future housing traffic would be directed away from our home. Our home is west of the site, closer to the ocean and near a dead end street. There could be neighborhood traffic impacts due north, south and east of the project beyond 1000 feet from my home. There is potential for noise during construction.

Your request for advice included a 1,000-foot buffer zone map created by City staff.

You are seeking advice on whether you may:

- Take part in future study sessions regarding the proposed teacher housing project;

- Submit written comments to City staff regarding the EIR and other documents circulated for public comment;
- Contact other agencies (including members of the City Council and the City Manager) as a private citizen to comment on aspects of the EIR and subsequent documents that may be circulated for public comment; and
- Participate in the public hearing to issue a Coastal Development Plan.

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 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.) 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).)

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 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, other than a leasehold 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 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).)

Given Regulation 18702.2(a)(8)'s reference to "the property line of the parcel," the relevant distance between a public official's real property and the real property at issue in a governmental decision, for purposes of the Act, is the distance measuring directly from parcel to parcel or "as the crow flies." In limited instances where the decision affects only a clearly defined, specific and isolated site, such as a particular building on a large tract of land, we have advised that the parcel to parcel measurement would not be the appropriate distance to determine materiality. (See, for example, *Leishman* Advice Letter, No. A-21-154.) Here, although the more extensive construction will occur further than 1,000 feet from your real property, construction will occur across the entire parcel, including landscaping within 1,000 feet of your property. Accordingly, the relevant distance to be considered here is from parcel to parcel, as is the usual case.

Nonetheless, it does not appear that the Project would have a reasonably foreseeable, material financial effect on your real property. There is no indication the Project would possibly affect the development potential or highest and best use of your real property. Likewise, based on the information available, there is no indication the Project would change the character of your real property. Although the Project would foreseeably impact nearby traffic levels and noise levels, it appears these impacts would largely be temporary (i.e., limited to the construction phase of the Project) and, in any case, mitigated by the distance between the Project site and your real property.

The remaining questions are whether the Project would change your real property's income producing potential or market value. In some cases, the introduction of a significant number of new housing units could impact the income producing potential or market value of your real property. We have advised on multiple occasions that the Act's conflict of interest provisions prohibit a city councilmember from taking part in decisions relating to a proposed large residential development project located on undeveloped real property between 500 and 1,000 feet from the official's residence because it is reasonably foreseeable that those decisions would have a material financial effect on the market value of the official's real property interest in a residence under Regulation 18702.2(a)(8)(E).² Here, however, the Project at issue: (1) is smaller in scale; (2) located approximately 950 away; (3) would involve re-development of school property rather than development of an empty parcel; (4) the new housing would be limited to a narrow population (the District's workforce), and (5) is consistent with the current use of the surrounding residential neighborhoods. Given these factors, we think the Project is distinguishable from those considered in other advice letters and it would not have a reasonably foreseeable, material financial effect on your

² See, e.g., *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]; *Wisinski* Advice Letter, No. A-20-085 [councilmember disqualified from decisions relating to proposed residential project consisting of 510 units on undeveloped real property located 703 feet from councilmember's residential real property interest]; *Minner* Advice Letter, No. A-20-072 [councilmember disqualified from decisions relating to proposed mixed-use project including up to 620 residential units on largely vacant real property located 939 feet from councilmember's residential real property interest]; see also *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].

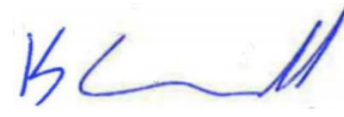
real property. Therefore, you are not prohibited from taking part in governmental decisions regarding the Project based on your real property interest.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

KMC:aja