



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 12, 2025

Kitty Moore
Cupertino Vice Mayor
Cupertino City Hall
10300 Torre Ave.
Cupertino, CA 95014

Re: Your Request for Formal Advice
Our File No. A-25-084

Dear Ms. Moore:

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, may you, as a member of the Cupertino City Council, take part in governmental decisions relating to the acquisition and development of a vacant parcel of land (the “Finch Parcel”) that would create a new City Park located approximately 600 feet from your residence?

CONCLUSION

No, given the scope of the decision, which involves the replacement of a currently fenced, vacant parcel with a new City park, and the proximity to your property, it appears that the decisions relating to the acquisition of the Finch Parcel, and its subsequent development, would impact the market value and income-producing potential of your property. Therefore, it is reasonably

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.

foreseeable that decisions relating to the acquisition and development of the Finch Parcel may have a material financial effect on your property and the Act prohibits you from taking part in the decisions.

FACTS AS PRESENTED BY REQUESTER

You are the Vice Mayor of the City of Cupertino. The City will soon consider the potential purchase of a vacant property from the Cupertino Union School District for a potential park. The property in question is a vacant lot adjacent to, but fenced off from, Sedgwick Elementary School, a public pre-5th grade school. In a follow up email, you stated that the parcel is approximately 1.48 acres. A portion of the lot would likely be vacated to align the street with the rest of Phil Lane and allow for on street parking adjacent to the site. The school district purchased the property several years ago, tore down the existing home, did environmental cleanup, and has left it fenced off.

You state that the vacant property is located slightly more than 600 feet from your home. You also note that, to access the property, due to permanent barriers (homes, fences, school), you would need to travel a minimum of 1,500 feet to get to the vacant parcel.

You state that there is no foreseeable impact to traffic, noise, air quality, or view from your home because the Finch Parcel is on a separate street from the elementary school, with on-street parking and a parking lot, and that your view of the Finch Parcel is blocked by houses and mature trees. You also note that your home is near Hyde Middle School with open fields and track, Sedgwick Elementary, Creekside Park with soccer fields and playgrounds, and Cupertino High School.

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."

With respect to a potential change to the character of your real property, you state that you do not believe the acquisition of property and the creation of a new park in place of a vacant parcel could foreseeably impact traffic levels, noise, air quality, or view from your home. While these are factors in determining whether a decision may affect the character of your property, they are not the only factors that must be considered. Based on the facts you have provided, it is unnecessary to reach a conclusion regarding whether the decisions would change the character of your real property, given the potential impact on market value and income-producing potential.

More specifically, the decisions at issue would involve the acquisition of a vacant parcel for the construction of a new 1.48-acre City park, a decision made even more significant by the fact that the proposal would involve the redevelopment of a parcel that has been vacant and fenced off for several years. Considering these facts and the proximity to your property, it appears that the replacement of a vacant, fenced-off parcel with a new neighborhood amenity in the form of a 1.48-acre public park would impact the market value and income-producing potential of your real property. Therefore, it is reasonably foreseeable that the decision to acquire the Finch Parcel, may have a material financial effect on your real property, and the Act prohibits you from taking part in the decision.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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