STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 13, 2015

Bill Horn, Chairman
Supervisor, 5th District
County of San Diego
1600 Pacific Highway, RM 335
San Diego, CA 92101-2470

Re: Your Request for Advice
Our File No. A-15-185

Dear Mr. Horn:

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.

QUESTION

Under the Act, may you participate in decisions regarding the proposed Lilac Hills Ranch project ("Project") considering you own 36.8 acres of property 1.3 miles away?

CONCLUSION

No. You have a conflict of interest because the decisions will have a reasonably foreseeable material financial effect on your real property interest.

FACTS

You have been the County Supervisor for San Diego Supervisory District No. 5 for twenty-one years.[2] Supervisors are elected by district-wide election. You own approximately 36.8 acres in Valley Center located in north San Diego County ("Property"). The Valley Center area is characterized by its "unique topographic features, its agricultural activities and its predominance of

[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 18110 through 18997 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.

[2] District 5 covers nearly 1,800 square miles of North San Diego County, four cities and a combined population of nearly 619,992.

estate residential development. The rural character of the community results from the low population density and the prevalence of large areas of open space provided by agriculture."[3]

Your Interests: The Property has a street address on West Lilac Road. The Assessor Parcel Numbers for the Property are APN 129-03-081 and APN 129-27-037. Your residence is located on the Property. The value of the Property, including the farming operation and your residence is approximately $3.5 million. You stated the following:

- The farming operation generates an average annual income of approximately $50,000 per year. You grow avocados, Valencia oranges and tangelos on the Property. You sell the crops wholesale.

- Product grown on the Property is shipped by truck. You use Mission Produce and Sundance Natural Foods to ship the products. The trucks come to the Property a couple times a year. Five or six trucks are needed to carry the product. There are no trucking fees. The Project will not affect the ability of the trucks to access the Property, nor will it affect access to interstate and state highways from your property.

- You do not sell anything grown on the Property to retail customers. No retail or wholesale customers come to the Property to purchase any agricultural products.

You have actively farmed the Property since 1972. The Property is under a Williamson Act[4] contract that you entered into in 1975, which first became effective on February 29, 1976. This contract is entered into between landowners and local governments. It voluntarily restricts development on parcels for a ten-year period. The Williamson Act is a means to restrict the uses of agricultural and open space lands to farming and ranching uses during the length of the contract period. The Williamson Act Program was also envisioned as a way for local governments to integrate the protection of open space and agricultural resources, as well as promotion of efficient urban growth patterns.[5]

Under the agreement, landowners receive substantially reduced property tax assessments based upon generated income as opposed to potential market value of the property. The contract renews automatically each year on January 1 unless it is affirmatively

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[3] Valley Center Community Plan, San Diego County General Plan. The Valley Center Community Plan Area ("CPA") is comprised of approximately 94 square miles in the unincorporated area of northern San Diego County. The Community Plan states that land uses and lot sizes "have considerable influence on the rural characteristics of the community, as well as the visual aspects of the community." There are currently "very few housing tracts within the CPA…." Estimates for population and housing in the CPA identify a population of 17,582 with 6,573 housing units, according to the 2010 San Diego Association of Governments (San Diego's Regional Planning Agency).

[4] Williamson Act (Cal. Gov't Code Sections 51200 et seq.).

[5] "That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments." (Cal. Gov't Code Section 51220(d), Legislative findings.)

rescinded. There are three methods to terminate a Williamson Act contract.[6] The landowner may give notice of nonrenewal, in which case automatic renewal will cease and the contract expires at the end of its remaining term.[7] Alternatively, the landowner may petition the county for cancellation of the contract, and the county may approve the petition upon finding that cancellation is in the public interest or is consistent with the purposes of the Williamson Act.[8] Finally, the government may institute eminent domain proceedings, which nullifies the contract.[9]

The Project: Your Property is located southeast of the proposed development. The nearest boundary of the Property to the proposed development is approximately 1.3 miles.[10] The nearest offsite improvement (street and sewer improvements) that the developer would be required to make as part of the development would be approximately eight-tenths of a mile from the nearest boundary of the Property. You state that the Project is not visible from the Property or its vicinity. The section of West Lilac Road between Lilac Road and Circle R Drive that runs along the front of your Property is a semi-rural two-lane road that is approximately 1.9 miles long.

The proposed Lilac Hills Ranch Project would develop approximately 600 acres of land in Valley Center with 1,746 homes, retail and commercial buildings. The proposed Project site contains 59 parcels and currently consists of mostly agricultural lands and 16 homes with various accessory structures. The developer would be required to make offsite improvements including street and sewer improvements. The County Board of Supervisors would need to agree to rezone the property, to allow a higher density, in order to develop the property in the manner proposed by the developer. A vote on this matter will likely occur in mid-October 2015.

According to the Draft Final Environmental Impact report ("EIR"), the Project would consist of a mix of residential, commercial, and institutional uses, along with parks and open space. Specifically, the project would include: 90,000 square feet of commercial, office, and retail, including a 50-room country inn; 903 traditional single-family detached homes; 164 single-family attached homes; 211 residential units within the commercial mixed-use areas; and 468 single-family detached age-restricted residential units within a senior citizens neighborhood; necessary facilities and amenities to serve the senior population (including a senior community center, group care facility, and a memory care facility); and a 2.0-acre Community Purpose Facilities area that could be comprised of a private recreational facility and civic fire station, with the total area of both not to exceed 40,000 square feet. The project also proposes a school site to accommodate K-8 students, public and private parks, and other recreational amenities. Also planned within the project site are a

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[6] *Friends of East Willits Valley v. County of Mendocino* (2002) 101 Cal.App.4th 191, 195.

[7] Cal. Gov't Code Sections 51245-51246. Property tax rates gradually increase during the nonrenewal period, until they reach normal (i.e., non-restricted) levels upon termination of the contract.

[8] Contract cancellation, involves a review and approval process, and the payment of a fee by the landowner equal to 12.5 percent of the full market value of the property in question. (Cal. Gov't Code Sections 51280-51282.)

[9] Cal. Gov't Code Section 51295.

[10] The driving distance from the entrance to the Property on West Lilac Road to the nearest boundary of the proposed development via the most direct route is approximately 2.0 miles.

recycling facility, a water reclamation facility, and other supporting infrastructure. The mixed-use, commercial, and civic uses, with parks, would form a town center and two neighborhood centers, to which residents can walk for various social and commercial needs. Open space would retain some of the existing citrus and avocado groves, sensitive biological/wetland habitat, and cultural resources totaling 104.1 acres. The project would be built over a period of approximately 10 years.

The Project would require amending the General Plan Designation of Semi-Rural to Village Residential and Village Core Mixed Use, as well as amending the General Plan to include a specific plan over the project boundaries. The Project would also require rezoning from Limited Agriculture and Rural Residential designations to Single Family Residential and General Commercial-Residential designations. Other decisions include: amending the Valley Center and Bonsall Community Plans to include a new village and a description of the Project; amending the mobility element road classification of a section of West Lilac Road from Main Street (western roundabout) to a planned new road (Running Creek Road) from a "Light Collector with Intermittent Turn Lanes" to a "Light Collector with Reduced Shoulder;"[11] and amending Table M-4 of the General Plan to add segments of West Lilac Road and Old Hwy 395 to the list of accepted road classifications with "Level of Service E/F."

The traffic study for the Lilac Hills Ranch Project also indicates that the existing average daily trips ("ADT") for the section of West Lilac Road that services the Property is 1,170 (22% of Level A).[12] The traffic study estimates that after full buildout of all five phases of the Lilac Hills Project the ADT for the same section of West Lilac Road would increase to 2,470 (47% of Level A and 31.67% of Level D.) The traffic on that portion of West Lilac Road that services the Property is currently, and would remain, Level A or free vehicular flow with few conflicts or interruptions.

Aside from the Project, there are several other proposed developments in the Valley Center/Bonsall area but none would require a General Plan amendment. However, there is another project several miles to the south of the Lilac Hills Ranch project on the other side of Interstate 15 that would require a general plan amendment before it could be approved.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. Section 87103 defines interests from which a conflict of interest may arise and includes among those interests:

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[11] This segment of West Lilac Road is approximately 2.8 miles driving distance from the Property.

[12] The County road standards defines "Level of Service A" as "'free' vehicular flow with few conflicts or interruptions." Because this section of West Lilac Road does not meet all of the requirements for a road designated as a "Light Collector w/ Reduced Shoulder," the traffic study reduced the maximum number ADT's by ten percent from 5,800 to 5,220 before the "Level of Service" increases to Level B. In addition, utilizing the County road standards, as modified by the traffic study, no mitigation of the traffic impacts is necessary until the ADTs reach Level D, which is more than 7,800 ADTs.

- Any real property in which the public official has a direct or indirect interest worth $2,000 or more. (Section 87103(b).)

- Any business entity in which the public official has a direct or indirect investment worth at least $2,000 (Section 87103(a).)

- Any source of income amounting to a total of at least $500, provided or promised to, and received by the public official within 12 months before the decision is made. (Section 87103(c).)

- Your personal finances, including those of your immediate family, also known as the "personal financial effects" rule. (Section 87103.)

Your Interests:

Based on the information you provided, you have the following interests:

- Real property worth $3.5 million, through ownership of your residence and farm. (Section 87103(b).)

- A business entity[13] consisting of farming operations on your property, in which you have a direct or indirect investment of $2,000 or more. (Section 87103(a).) Your business is a source of income to you as well as an investment interest. (Section 87103(c).)

- Sources of income from your business. Income of an individual includes a pro rata share of the income of a business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10 percent interest or greater. (Section 82030(a).) Therefore, customers or clients of your business who are sources of income to your business are also considered sources of income to you to the extent that your share of the income will be $500 or more.

You have not identified sources of income to your business. However, if you receive income from sources of $500 or more, they may also be the basis of a conflict of interest. For purposes of this analysis, we focus on your business and real property interests.

Foreseeability: A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. Under your facts, neither your real property interests nor your business entity interests are explicitly involved in the decisions to approve the Lilac Hills Ranch development. In these cases, the foreseeability standard that applies is: "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."

[13] Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

Materiality:

Business Entity: Regulation 18702.1(b) provides that an effect on a business entity (including a business entity that is a source of income) is material as follows:

> "[The] financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of a privately-held business entity."

Examples of decisions that may affect the value of a privately held business entity include decisions to:

- Make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives.

- Decide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project.

The Project is considered a major development. It will develop approximately 600 acres of land in Valley Center with 1,700 homes, retail and commercial buildings. The Project is expected to increase traffic and parking demand in surrounding areas, as well as draw customers to the project area due to the development of new retail and commercial facilities. However, none of these changes will likely impact your agricultural business as you "do not sell anything grown on the Property to retail customers" nor do any retail or wholesale customers come to the Property to purchase any agricultural products. In addition, you state that the Project would not affect your ability to get the crops to your wholesale buyers. Your crops are picked up by "[f]ive or six trucks" that "come to the Property a couple times a year." Your facts indicate that the Project will not affect the ability of the trucks to access the Property, nor will it affect access to interstate and state highways from your property.

While there may be some traffic delays getting to and from your property due to the additional residents the development will add to the area and increased highway and road use, the occasional trucking trips to your property and the limited number of vehicles needed suggest that this will not be a major impact on your farming operations.

Your facts indicate it is not reasonably foreseeable that the Project's financial effect (whether negative or positive) would contribute to a change in the value of your privately held business entity. Therefore, your business and investment interests do not give rise to a conflict of interest in the Project decisions.

Real Property: Regulation 18705.2(a) provides a list of circumstances under which the reasonably foreseeable financial effect of a governmental decision on real property in which an official has a financial interest is material. As applicable to your facts, the financial effect will be material if the decisions:

- Would change the development potential of the parcel of real property; (Regulation 18702.2(a)(7).)

- Would change the income producing potential of the parcel of real property; (Regulation 18702.2(a)(8).)

- Change the highest and best use of the real property in which the official has an interest; (Regulation 18702.2(a)(9).)

- Change the character of the parcel of real property by substantially altering traffic levels intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest; (Regulation 18705.2(a)(10).)

- Cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property. (18705.2(a)(12).)

As proposed, the Project will add 1,746 dwelling units and 90,000 square feet of retail and commercial space. Also planned within the project site are a K-8 school, public and private parks, and other recreational amenities, as well as recycling and water reclamation facilities. The EIR for the Project indicates that there will be increased road and freeway traffic, noise, pollution, and decreased air quality and significant and unavoidable effects on the view in the immediate and nearby areas surrounding the Project.

The Project would also likely change the development potential and the income producing potential of nearby or surrounding real property. The current site of the Project is largely agricultural and there is currently insufficient infrastructure (street and sewer improvements) to support a housing development. The placement of a residential community in this undeveloped area would likely affect the development potential and market value of parcels in close proximity. Under these facts, a reasonably prudent person would conclude these impacts would result in a substantial change in the character of the immediate vicinity.

Your real property is 1.3 miles from the nearest boundary of the Project. Your use and enjoyment of the property will likely be unaffected by the Project because your property is sufficiently distant to be buffered from noise, pollution, air quality, and visual effects of the development.

Your property is also under a Williamson Act contract, which restricts development on the property for a ten-year period. Generally, it is assumed that the permitted use of land is an actual potential use, absent a showing to the contrary.[14] However, we note this is a temporary contract, and in some circumstances, can be terminated before the effective end date. Even if you intended to continue agricultural uses of the property for the duration of the Williamson contract, this is not an appropriate factor to consider in our analysis. The Commission held in *In re Legan, supra*: "The intended or probable use for property potentially benefited or harmed by a decision is not considered in the analysis of the reasonably foreseeable effects of a decision. The decision's effect upon the property's current fair market value is the appropriate test."[15]

The proposed plan is a major development in Valley Center area where your property is located. Your facts indicate that the Project would affect the rural character and development potential of nearby parcels.

Valley Center has maintained its rural character through strict restrictions on land uses and lot sizes. Such factors "have considerable influence on the rural characteristics of the community, as well as the visual aspects of the community." There are currently very few housing tracts within the Valley Center community, and few retail and commercial developments. The Project, with 1,746 dwelling units and 90,000 square feet of retail and commercial space, would be by far the largest, and among the densest developments in the Valley Center area.[16] The project would also result in a substantial increase in population.

Under these facts, a reasonable inference can be made that the financial effect of such a major development in in a relatively undeveloped, rural area would have a reasonably foreseeable material financial effect on the market value of your real property. Therefore, you have a conflict of interest in decisions involving the Project and you must recuse yourself from participating in these decisions.

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[14] "In arriving at the value of the land, as well as other interests in realty, it is generally proper to take into consideration every use to which it is naturally adapted and that will enhance its value in the estimation of persons generally, purchasing in the open market. The question is not what its value is for a particular purpose, but its value in view of all the purposes to which it is naturally adapted. All elements must be considered that combine to establish its market value. All the land's capabilities, or the uses to which it is adapted, should be taken into consideration, not merely the owner's current use. The highest and most profitable use is to be considered, however, only to the extent that the prospect of that use affects the market value of the land, and uses that are not reasonably probable should be excluded." (*In re Legan* (1985) 9 FPPC Ops. 1.)

[15] In *Legan*, County Supervisor Legan's employer (Kaiser) insisted that it would not utilize the increased permissible housing density that would be available for its Hillside property but rather intended to keep this property as an undeveloped buffer zone for its quarry and cement plant operations. In refusing to adopt Supervisor Legan's approach as to what was the reasonably foreseeable effect of the governmental decision on Kaiser's real property holdings, the Commission stated: "There are several problems with considering such an approach. First, we must look at the objective effect upon the value, not whether the owner will act to realize the increased value by selling or developing the property. The second problem is that there is no guarantee that Kaiser won't change its use of the property once the decision has been made and the benefit conferred . . .. Consequently, Councilmember Hall's intentions with respect to the future use of his property cannot be taken into consideration in determining the reasonably foreseeable financial effect of the decision on his real property holdings."

[16] By contrast, the Rancho Lilac development, included 1,069 acres and 262 single-family homes, and the Woods Valley Ranch development included 437 acres, with 207 homes in three residential neighborhoods. Orchard Run development included 118.2 acres with 366 maximum dwelling units.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Emelyn Rodriguez
Senior Commission Counsel,
Legal Division

ER:jgl