



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
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June 19, 2018

Jim Hill  
Mayor, City of Arroyo Grande  
329 Rodeo Drive  
Arroyo Grande, Ca 93420

Re: Your Request for Advice  
**Our File No. A-18-092**

Dear Mr. Hill:

This letter responds to your request for advice 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 the Act prohibit you, the Mayor of the City of Arroyo Grande, from taking part in governmental decisions relating to the selection of a site for northbound U.S. Highway 101 ("U.S. 101") on and off-ramps under the Brisco Road Interchange Project given that each of the sites under consideration is within approximately 2,600 feet of your residence?

### CONCLUSION

Yes. The Act prohibits you from taking part in those decisions because they would have a reasonably foreseeable material financial effect on your real property interest in your residence.

### FACTS AS PRESENTED BY REQUESTOR

The Brisco Road Interchange Project began in the late 1990s. The purpose of the Project is "to investigate, identify, and propose potential modifications to the on and off-ramps at Brisco Road in order to alleviate traffic congestion at peak travel times." The Project is a joint venture between the City of Arroyo Grande and the California Department of Transportation ("Caltrans"). With

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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 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.

respect to the Project, the City is responsible for design, technical documents and environmental review, and Caltrans is the lead agency under the federal National Environmental Policy Act.

The City will soon decide between the following three options for the design of the Project:

- **Option 1:** The City would close the existing northbound U.S. 101 on and off-ramps at Brisco Road, complete improvements at the intersections of Camino Mercado and U.S. 101 and Grand Avenue and U.S. 101, and complete the widening of the U.S. 101 overpass at Grand Avenue. The estimated cost of this option is \$14,000,000.
- **Option 2:** The City would relocate the northbound U.S. 101 on and off-ramps at Brisco Road to Rodeo Drive, complete improvements at the intersections of Rodeo Drive and Grace Lane and Grand Avenue and U.S. 101. The estimated cost of this option is \$23,000,000.
- **Option 3:** There would be “no build,” and there is no cost indicated for this option.

Your residence is located on Rodeo Drive in a neighborhood of large, single-family residences within the City, east of U.S. 101. Your residence is approximately 2,600 feet from the existing U.S. 101 on and off-ramps at Brisco Road; approximately 2,100 feet from the potential replacement location for those on and off-ramps at the intersection of Rodeo Drive and U.S. 101; and approximately 920 feet from the intersection of Rodeo Drive and Grace Lane. The next closest northbound U.S. 101 on and off-ramps are at Oak Park Boulevard to the north, approximately 6,250 feet from your residence, and at Grand Avenue to the south, approximately 2,550 feet from your residence.

## ANALYSIS

The Act prohibits a public official from taking part in a governmental decision if that decision will have a reasonably foreseeable material financial effect on one or more of the official's financial interests distinguishable from the effect on the public generally. (Sections 87100 and 87103.) An official's interests that may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103. Of those interests, the facts presented indicate that you have a real property interest in your residence, assuming you have an interest in the residence worth \$2,000 or more, and an interest in your personal finances and those of immediate family members, with respect to the decisions relating to the Brisco Road Interchange Project.

### Foreseeability and Materiality

Regulation 18701(a) sets forth the foreseeability standard applicable to an official's interest that is explicitly involved in the decision at issue. This regulation provides that a decision's effect on an official's interest is presumed reasonably foreseeable if the interest is a named party in, or the subject of the decision. Under Regulation 18701, an interest is the subject of a proceeding if the decision involves any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

Regulation 18702.2 sets forth the materiality standards applicable to a decision's effect on an official's real property interest. Paragraph (6) of subdivision (a) of that regulation provides that a decision's effect on an official's real property interest is material if the decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the official will receive a disproportionate benefit or detriment as a result of the decision.

The decisions relating to the Project involve the construction of, and improvements to, U.S. 101 on and off-ramps and street intersections nearby your residence. On and off-ramps are similar facilities to streets. Therefore, at issue is whether you will receive a disproportionate benefit or detriment as a result of those decisions.

### Option 1

The City would close the existing northbound U.S. 101 on and off-ramps at Brisco Road if it selects Option 1. Those on and off-ramps are approximately 2,600 feet southwest of your residence. The purpose of the Project is "to alleviate traffic congestion at peak travel times." If the City closes the Brisco Road on and off-ramps, you will receive the benefit of reduced traffic immediately southwest of your residence during peak travel times. The next closest northbound U.S. 101 on and off-ramps to the south are at Grand Avenue, approximately 2,550 feet away from your residence, and to the north at North Oak Park Boulevard, approximately 6,250 feet away. If the City closes the existing on and off-ramps at Brisco Road, you will receive the detriment of having to travel farther to access northbound U.S. 101. Therefore, you will receive both a disproportionate benefit and detriment as a result of the decisions at issue if the City selects Option 1.

### Option 2

If the City selects Option 2, it would relocate the northbound U.S. 101 on and off-ramps at Brisco Road to Rodeo Drive, and complete improvements to the intersection of Rodeo Drive and Grace Lane. Your residence is located on Rodeo Drive, approximately 2,100 feet away from the potential Rodeo Drive on and off-ramps, and approximately 920 feet away from its intersection with Grace Lane. You would receive the benefits of an improved intersection within 920 feet of your residence and a shorter route to northbound U.S. 101. You would also receive the detriment of substantially increased traffic congestion during peak travel times on Grace Lane and Rodeo Drive, the two roads closest to your residence. Therefore, you will also receive a disproportionate benefit and detriment as result of the decisions at issue if the City selects Option 2.

### Option 3

There would be "no build" if the City selects Option 3. Based on the facts presented, this option maintains the status quo. However, selection of this option would also result in your receipt of both a disproportionate benefit or detriment because it would foreclose the ability of the City to pursue Options 1 or 2, and because it would eliminate the potential for nearby construction impacts inherent to the other options.

Thus, the decisions relating to the Brisco Road Interchange Project would have a reasonably foreseeable material financial effect on your real property interest in your residence under Regulation 18702.2(a)(6). As detailed above, those decisions involve the construction of, or

improvements to, streets or similar facilities, and you would receive a disproportionate benefit or detriment as a result of those decisions.<sup>2</sup>

### Segmentation

The final issue to be determined is whether the decisions relating to each of the various options for the Project may be segmented pursuant to Regulation 18706. In some cases, large, complex decisions may be segmented into separate decisions so that even if an official has a disqualifying interest in one component of the series of decisions, that official may still participate in the other components in which he does not have a disqualifying interest. (*Borger* Advice Letter, No. I-15-110; and *Whitman* Advice Letter, No. A-14-186.) However, where a decision in which an official has a disqualifying interest is “inextricably interrelated” to the other decisions that comprise the series of decisions, the official is disqualified from taking part in all of those decisions. (*Mattas* Advice Letter, No. A-16-113.) Regulation 18706(b) provides that “decisions are ‘inextricably interrelated’ when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.”

The decisions relating to the Project are a series of decisions relating to the three options for the design of the Project. These three design options are “inextricably interrelated” because the result of a decision on one of the options would “effectively determine, affirm, nullify, or alter” the result of the decisions on the other options. In other words, the approval of any one option necessarily entails the rejection of the two remaining options. Therefore, the decisions regarding the three alternative design options for the Project are not capable of segmentation. Accordingly, the Act prohibits you from taking part in any of those decisions.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Matthew F. Christy  
Counsel, Legal Division

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<sup>2</sup> We do not further analyze your interest in your personal finances or those of immediate family members because we have already determined that the decisions relating to the Project will have a disqualifying effect on your real property interest in your residence.