



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 2, 2023

Brian A. Pierik
City Attorney
City of Pacific Grove
2310 East Ponderosa Drive - Suite 25
Camarillo, California 93010-4747

Re: Your Request for Advice
Our File No. A-23-021

Dear Mr. Pierik:

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.

QUESTIONS

1. Does the Act prohibit Councilmember Coletti from taking part in decisions regarding a restorative management plan (“Plan”) for George Washington Park (the “Park”) that has been developed for the northernmost three zones where the Plan would be implemented?

2. Does the Act prohibit Councilmember Coletti from taking part in a decision to consider a new skate park that could, among other options, be located at the southernmost zone of the Park and within 500 feet of his residence?

CONCLUSIONS

1. No. Based on the exception to the materiality rules for a decision that “solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar

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.

facilities” in Regulation 18702.2(d)(1), Councilmember Coletti is not prohibited by the Act from taking part in decisions concerning the Plan.

2. Yes. The Act prohibits Councilmember Coletti from taking part in any decisions concerning whether the skate park may be located within 500 feet of his residence because such decisions are presumed to have a reasonably foreseeable and material financial effect on his residence.

FACTS AS PRESENTED BY REQUESTER

You are the City Attorney for the City of Pacific Grove and authorized by Councilmember Luke Coletti to seek this advice pertaining to his real property interest located within 500 feet of the Park. The City is currently considering a restorative management Plan for the Park. While his residence is located within 500 feet of the Park, it is between 500 and 1000 feet from the closest area of the Park covered by the Plan.

The City has a prior approved management plan for the entire Park, which is a rectangular shaped property consisting of four zones in the center of the City. The southernmost zone is developed with a ball field and some other improvements, and the three northernmost zones of the Park consist of open space, trails and natural areas. The northernmost three zones is the area where the proposed Plan is focused. The Plan excludes the southernmost zone, although some routine maintenance work is contemplated there. The Plan is intended to address ongoing maintenance of the Park regarding its health, habitat, trails and to address growing concerns about fire danger.

The City will be considering the Plan for the restorative work at the Park which will include the following elements: tree assessment; vegetation management; wildlife habitat; trails; and fire management. In addition, the final plan will include: a detailed current conditions assessment; recommended maintenance activities for the next five years; detailed maintenance schedule/timeline for plan recommendations; and detailed list of all associated materials and labor necessary to implement and maintain plan recommendations.

You provided the George Washington Park Forest Management Plan prepared by Dudek, which describes the management strategies that the City will take in the approximately 17-acre forested area of the Park over a 5-year period to reduce wildfire hazard and to restore healthy forest conditions to the interior of the Park. It is a 20-acre urban park with a 17-acre Monterey pine forest with an approximately 3-acre developed recreation area covered with well-spaced mature oak trees. However, the forested area of the Park that begins north of the current baseball diamond is “threatened by several factors that are driving the transition from a pine forest to an oak forest, decreasing overall forest health and increasing the risk of destructive wildfire.” In particular, insect infestations and disease infections are having the most significant impact on the Monterey pines and the strategies described in the Plan are intended to help maintain the forested area of the Park in a healthy and safe condition.

No new improvements are proposed to be installed in the Park under the Plan, which is designed to be restorative in nature and for ongoing maintenance of the existing facilities and attributes of the Park.

In a separate process, the City will be considering the location of a skate park, and Councilmember Coletti's residence is located within 500 feet of one of several possible locations for the skate park in the southernmost zone of the Park.

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 includes an interest in any real property in which the official has an interest of \$2,000 or more. (Section 87103(b).) Councilmember Coletti has a real property interest in his residence.

Foreseeability and Materiality

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. (Regulation 18701(a).) Regarding financial interests not explicitly involved in a decision, as here, 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).)

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Regulation 18702.2 defines when a financial effect of a government decision on real property is material.

However, Regulation 18702.2(d)(1) provides an exception for a decision that "solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities." In prior letters, we have applied the exception (in a prior iteration)² in the following cases:

- *Cauble* Advice Letter, No. 1-06-179: We found the exception to apply where a flood control project to remove roots and vegetation from a slough would increase its flood control capacity. The primary purpose of the project was to repair, replace, or maintain the slough's storm drainage capacity as it once existed and that was a "repair or maintenance" activity by the District, notwithstanding the community's secondary desire to use the widened, open channel for boating and other recreational activities.
- *Amo* Advice Letter, No. I-10-042: We concluded the exception could apply to District decisions to allocate funds to a homeowner's association for the upkeep of riding and walking trails,

² While the current language in Regulation 18702.2 differs somewhat from the prior language, the substance of the exception remains the same.

parks, lakes, dams, etc. if the funding was for the maintenance of those areas and not for improvements.

Here, as provided in the facts, the City will consider the Plan for the restorative work in the approximately 17-acre forested area of the Park over a 5-year period to include tree assessment, vegetation management, wildlife habitat, trails and fire management. The Management Plan prepared by Dudek describes the management strategies the City will take that include treating insect infestations and disease infections that are impacting the Monterey pines and to reduce wildfire hazard in order to restore healthy forest conditions to the interior of the Park. No new improvements are proposed to be installed in the Park under the Plan, which is designed to be restorative in nature and for ongoing maintenance of the existing facilities and attributes of the Park. Therefore, the exception under Regulation 18702.2(d)(1) applies to the City's Plan for the Park, and Councilmember Coletti may take part in decisions concerning the Plan.

Skate Park

As a separate matter, the City will consider the location of a new skate park, and Councilmember Coletti's residence is located within 500 feet of one possible locations for the skate park.

As mentioned, Regulation 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Regulation 18702.2(a)(7) provides that 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 decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.³

Here, any decisions concerning whether the skate park may be located within 500 feet of Councilmember Coletti's residence is presumed to have a reasonably foreseeable and material financial effect on his residence, and you have not provided clear and convincing evidence that such decisions would have no measurable impact.

³ Regulation 18702.2(a)(8) provides that 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 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 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(b) provided that the financial effect of a decision a decision involving 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 the governmental decision would have a substantial effect on the official's property.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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