



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

July 12, 2023

Sky Woodruff
Meyers Nave
1999 Harrison Street, 9th Floor
Oakland, California 94612

Re: Your Request for Advice
Our File No. A-23-063

Dear Mr. Woodruff:

This letter responds to your request for advice on behalf of El Cerrito Mayor Lisa Motoyama regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, *et seq.*¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict-of-interest prohibitions such as common law conflict of interest. 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.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Contra Costa County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

QUESTIONS

1. May Mayor Motoyama participate in City Council discussions and decisions related to placing a measure on the ballot seeking voter approval for funding a new library in one of the Plaza BART Project affordable housing buildings if she does not participate in other decisions involving the agreement between the City and the Development Team or BART to acquire the property for the library?
2. If the City acquires the necessary property for the library from BART and the necessary funds upon the approval of the related ballot measure, may Mayor Motoyama participate in City

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.

Council decisions related to the design of the new library in one of the Plaza BART Project affordable housing buildings, including agreements with consultants and architects contracting directly with the City, design of surrounding public open spaces, and contracting for interior construction and equipping of the library and contracting for improvements to surrounding public open spaces.

3. May Mayor Motoyama participate in City Council decisions related to the formation of an enhanced infrastructure financing district (“EIFD”) and inclusion of the Plaza BART Project property in the district?

4. May Mayor Motoyama participate in City Council decisions involving the City’s on-street parking program in the vicinity of the Plaza BART Project?

CONCLUSIONS

1. Under Section 1091(b)(1), Mayor Motoyama has a financial interest in contracts related to the Plaza BART Project resulting from her remote interest in her nonprofit employer, when a client of her nonprofit firm is also a member of BART’s Development Team. Accordingly, she is prohibited from participating in decisions related to the City’s potential contract with BART including City Council decisions related to the ballot measure seeking voter approval for funding for a new library, an essential preliminary step in reaching an agreement with the Development Team or BART to acquire property for a new library. However, the City Council may still make decisions regarding the ballot measure so long as Mayor Motoyama’s interest is disclosed and noted in the City Council’s records, and she properly recuses herself from the proceedings.

2. So long as Mayor Motoyama does not participate in City Council decisions for the acquisition of property for the library, once the City acquires the property and the agreement has been finalized, she would not be prohibited from subsequent participation in City Council decisions related to the design and construction of the new library and the surrounding public open spaces under either Section 1090 or the Act.

3. So long as the decisions related to the formation of the EIFD are made independently from any negotiations and discussions between the City and BART or the Development Team, Mayor Motoyama would not be prohibited from taking part in the decisions under Section 1090 as the decisions would not involve a contract.² Moreover, under the Act it is not foreseeable that the formation of the EIFD would have a material financial effect on the Mayor Motoyama’s economic interests.

4. Yes. So long as the decisions regarding on-street parking in the vicinity of the Plaza BART Project are made independently from any negotiations and discussions between the City and BART or the Development Team, Mayor Motoyama would not be prohibited from taking part in

² We caution, however, that if the impetus for the formation of the EIFD was a proposal by BART or the Development Team, or if the formation of the EIFD has been the subject of negotiations between BART or the Development Team, Section 1090 may apply and Mayor Motoyama should seek additional advice identifying the prior discussions before taking part in any decision involving the formation of the EIFD.

the decisions under Section 1090 as the decisions would not involve a contract.³ Moreover, under the Act it is not foreseeable that the on-street parking decisions would have a material financial effect on the Mayor Motoyama's economic interests.

FACTS AS PRESENTED BY REQUESTER

Ballot Measure for Library Funding

City staff, the Development Team, and BART have held discussions regarding the possibility of the City acquiring an interest in the ground floor of one of the affordable buildings in the Plaza BART Project and using the space for a new City library. The details of the arrangement are still being negotiated, but acquisition of the space will likely require City payments to the Development Team or BART or both, potentially totaling millions of dollars. The City is presently researching options for obtaining the necessary funding. Two options are a general obligation bond or a parcel tax. City staff plan to present their research to the City Council during the summer of 2023.

Both a general obligation bond and a parcel tax would require approval from City voters. City staff presently plan to seek a final decision by the City Council regarding funding options in the fall of 2023 so that the ballot measure can be presented to voters at the March 2024 Presidential Primary election. Between now and the time of a City Council decision to seek voter approval of bond or tax funding of a new library, the City Council will receive an update from staff regarding their research on options. The City Council will then deliberate on the options and provide direction to staff regarding which one to pursue. To place a measure on the ballot, the City Council will have to take action on one or more pieces of local legislation, such as a resolution or ordinance or both. The City Council's actions, however, would all be subject to voter approval.

Library and Public Open Space Design and Related Consultant Services

If the City, Development Team, and BART are able to reach agreement on City acquisition of an interest in the ground floor of one of the affordable housing buildings in the Plaza BART Project, and voters approve funding for the library, the City Council will likely take the following related actions:

- Retaining its own consultants and an architect to develop designs for the exterior appearance and the internal design of the library.
- Contracting for build out of the interior of the library and procuring equipment and furniture, and potentially contracting for construction of elements of the exterior of the library.

³ We also caution that, if the impetus for the on-street parking decisions was a proposal by BART or the Development Team, or if the on-street parking decisions have been the subject of negotiations between BART or the Development Team, Section 1090 may apply and Mayor Motoyama should seek additional advice identifying the prior discussions before taking part in the on-street parking decisions.

- Retaining consultants to develop designs for surrounding public open spaces, including street frontage improvements and improvements to and connections with the Ohlone Greenway, a multi-modal public pathway adjacent to the Plaza BART Project.
- Contracting for public open space improvements.

The City does not anticipate any agreements between the City and the Development Team or BART related to these issues, other than the overarching agreement for City acquisition of an interest in one of the buildings for the library. Moreover, there is no indication that Mayor Motoyama's nonprofit employer, Community Economics, Inc. ("CEI"), or its client, Satellite Affordable Housing Associates ("SAHA") would be candidates for future consulting or construction contracts related to the library. In a follow up email, you confirmed that SAHA is a developer for affordable residential housing of various types and manages some affordable housing developments. The consultants that the City would retain for work related to the library include engineers, planners, architects, and library design specialists, and also a contractor to do any construction required for the City. SAHA does not have those specialties in house and must contract for them on its projects. So, it would not be in a position to offer those services to the City, and the City would not award them any of that work, even if SAHA submitted a proposal.

Formation of an Enhanced Infrastructure Financing District

The City remains interested in forming an EIFD to fund infrastructure needs related to new development. The City would potentially include the Plaza BART Property in an EIFD. Formation of the EIFD would not require an agreement with BART or the Development Team. Tax increment from the EIFD would potentially be expended on public infrastructure within the vicinity of the Plaza BART Project, but would not be pursuant to any agreements with BART or the Development Team.

In a follow up email, you stated that EIFD's are a partial replacement for redevelopment financing. Similar to redevelopment, EIFD's are funded through property tax increment, not through special assessments or special taxes. Once a district is formed, each public agency (except school districts) may voluntarily contribute a portion of the increase in property tax revenue generated by properties within the district. The idea is that, as property within the EIFD is developed, the assessed value of the property will increase, resulting in increased property tax revenue. The increment between the baseline tax revenue before formation of the EIFD and the increased revenue resulting from the higher assessed value is eligible to be directed to the EIFD.

As proposed for the Plaza BART Project, the City would form an EIFD and include the BART properties, as well as other properties in the City anticipated to be developed. As each apartment building in the Plaza BART Project was completed, the owner of the building would have to pay property tax. (Currently, because the property is owned by BART, no property tax is paid for the properties.) The City would be entitled to a share of the property tax paid for each building. The City could direct up to 100% of its share of the tax increment to the EIFD. The EIFD could then use that dedicated revenue for pay-as-you-go funding or to fund bonds.

The EIFD would not change the underlying tax rates. Without the EIFD, the City's share of tax increment from newly developed properties would go into the City's general fund. With the EIFD, up to 100% of the City's share of tax increment could be directed to the EIFD.

You also state that the City has no plans for infrastructure improvements around the Plaza BART Project's residential developments that would directly benefit or alleviate any obligations of the Project's proponents. In the future, the City's plans include the possibility of additional bicycle and pedestrian infrastructure in that part of El Cerrito, but not exclusively around the Plaza BART property. If the EIFD were formed, it is likely that those types of improvements would be eligible for use of EIFD funding, and if built, residents at the Plaza BART Project would benefit from them. Since the EIFD generates revenue from property tax increment, it would only start receiving funds after development has occurred.

The EIFD would not be used to fund any part of the library. The Plaza BART Project development schedule requires the City to be in a position to make a financial commitment for the construction of the library by Fall 2024. The City reviewed options and determined that the EIFD would not be able to generate sufficient revenue in that timeframe.

On-Street Parking Program

El Cerrito currently has three residential parking permit zones, one of which includes streets within a one-half mile radius of the El Cerrito Plaza BART station. Within the zone near the El Cerrito Plaza BART station, street parking is restricted to four hours between 7:00 a.m. and 6:00 p.m. on weekdays.

The current El Cerrito Plaza BART station includes large surface parking lots with approximately 740 parking spaces. It is currently anticipated that the Plaza BART Project will include no more than 150 additional parking spaces for BART riders. Because BART patrons will continue to park on City streets, the City plans to update its residential parking program to include managing demand for street parking around the station.

A parking demand management program around the Plaza BART station will likely be incorporated into the city-wide parking program and require changes to the program as a whole. Development of an on-street parking management program will require City Council consideration and approval. The new parking program would potentially implement new systems for managing street parking in the vicinity of the El Cerrito Plaza station.

Financial Interest

Mayor Motoyama was first elected to the Council in 2020. She is employed by and receives a salary from CEI, a nonprofit corporation⁴ located in Oakland, California with approximately six employees. Her current title is Senior Affordable Housing Finance Consultant, which is not an executive or officer position in the organization.

⁴ In a follow-up email, you confirmed that CEI is 501(c)(3) nonprofit under the Internal Revenue Code and a nonprofit public benefit corporation under California law.

CEI's services include technical assistance to nonprofit developers in the development and financing of affordable housing projects. Developers enter into a separate agreement with CEI for each project and are generally charged a flat fee for each project. CEI bills hourly on each project until the point that the project obtains construction financing. At that point, it bills the remaining balance of the flat fee. CEI does not adjust the fee amount in a contract.

Satellite Affordable Housing Associates ("SAHA") is a client of CEI. Over the last five years, payments by SAHA to CEI for services have never accounted for more than 4% of CEI's gross receipts. In a follow-up email, you provided more detailed information on how much revenue CEI actually received from SAHA, as well as the number of total projects where CEI provided work for SAHA, over the past five years. The revenue received and number of projects are as follows: \$60,898.75 and 15 projects in 2022; \$50,420.00 and 11 projects in 2021; \$33,012.50 and 8 projects in 2020; \$29,000.00 and 11 in 2019, and \$32,000.00 and 10 projects in 2018.

You have confirmed that Mayor Motoyama's title is Senior Affordable Housing Finance Consultant. For 2023, she will be working 80 percent time to allow for her mayoral responsibilities. Further, you state that Mayor Motoyama played no role in forming CEI. CEI was formed in 1976, and Mayor Motoyama began working for CEI in 2018.

BART has selected SAHA as a member of the affordable housing developer team for the Plaza BART Project. Although CEI has contracts with SAHA for developments in other cities, CEI has no business relationship with SAHA as to the Plaza BART Project. In a follow up email, you stated that CEI will not accept a contract from SAHA for the Plaza BART Project because of the potential conflict of interest issues. You have also stated that the affordable housing development team for the Plaza BART Project is preparing to seek State financial assistance for the Project. The development team has shared that information with the City as part of the request for the predevelopment loan.

Mayor Motoyama noted that, in light of the timeline for submitting the State funding application, the development team must already be working with a different company that does the same work as CEI.

ANALYSIS

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Therefore, "the test is whether the officer or employee participated in the making of the contract in (their) official capacity." (*People v. Gnass*, (2002) 101 Cal.App.4th 1271, 1292 quoting *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 236-237.)

To determine whether a contract is involved in the decision, one may look to general principles of contract law (84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234 (1995).) However, "specific rules applicable to Sections 1090 and 1097 require that we view the transactions in a broad manner and avoid narrow and technical definitions of 'contract.'" (*People v. Honig* (1996) 48 Cal.App.4th 289, 351 citing *Stigall v. Taft* (1962) 58 Cal.2d 565, 571.)

In a 2003 Attorney General Opinion, the board of a redevelopment agency anticipated entering into contracts with business firms intending to locate or expand their offices in a certain redevelopment project area. (86 Ops.Cal.Atty.Gen. 187 (2003).) Several of those businesses were clients of one of the board member's promotional products company. (*Ibid.*) In determining that the board member would have a financial interest in any contracts between the redevelopment agency and those businesses, the Opinion stated:

The board member would have a "financial interest" in the contracts due to his business relationship with the contracting parties as a supplier of goods or services. (See 85 Ops.Cal.Atty.Gen. 176, 177-179 (2002); 85 Ops.Cal.Atty.Gen. 34, 35-37 (2002).) In this regard, the board member could be influenced by the prospect of future business opportunities directly related to the contracts or by a desire to maintain favorable ongoing relationships with the contracting parties. The Legislature has made clear that ongoing business relationships may represent financial interests for purposes of section 1090. (See, e.g., § 1091, subd. (b)(5), (b)(6), (b)(8).) The purpose of section 1090 "is to remove or limit the possibility of any personal influence, either directly or indirectly, which might bear upon an official's decision. . . ." (*Stigall v. City of Taft* (1962) 58 Cal.2d 656, 569; *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 579-580; *Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655, 659; *Frazer-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 215.)

(86 Ops.Cal.Atty.Gen. at p. 188.)

As in the situation just described, there is a practical concern that Mayor Motoyama could be influenced by a desire to "maintain ongoing relationships" with SAHA. This is the type of indirect interest Section 1090 attempts to thwart. (See, e.g., 88 Ops.Cal.Atty.Gen. 106, 107 (2005) citing *Frazer-Yamor Agency, supra*, 68 Cal.App.3d at pp. 214-215 [California courts strictly enforce Section 1090, and have consistently voided contracts where they find the public officer has an indirect interest in the contract; indeed, even though an officer may not directly benefit from the terms of the contract, it is significant that the contract will contribute to the financial health of the contracting party with which the officer is associated].)

As we concluded in our prior letter, A-22-121, Mayor Motoyama would have a conflict under Section 1090 involving contractual agreements between the City and Development Team or BART, where a client of CEI is serving on BART's development team. This prohibition necessarily includes any contract between the City and the Development Team or BART to acquire an interest in the ground floor of one of the buildings in the Plaza BART Project for the library.

The Act

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he 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 his or her immediate family," or on certain specified economic interests. (Section 87103.) Among those

specified economic interests is “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c).)

Councilmember Motoyama has an economic interest in her personal finances, as well as a source of income interest in her employer, CEI, a 501(c)(3) nonprofit organization. As such, she will be disqualified from governmental decisions that would have a reasonably foreseeable, material financial effect on her personal finances or CEI.

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, as here, 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.”

Under Regulation 18702.5, a governmental decision’s reasonably foreseeable financial effect on a public official’s financial interest in his or her personal finances or those of immediate family, also referred to as a “personal financial effect,” is material if the decision may result in the official or the official’s immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision. (Regulation 18702.5(a).)

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a source of income is material if the source is a nonprofit organization and the decision may result in an increase or decrease of the organization’s annual gross receipts, or the value of the organization’s assets or liabilities, in an amount equal to or greater than \$1,000,000, or five percent of the organization’s annual gross receipts and the increase or decrease is equal to or greater than \$10,000. (Regulation 18702.3(a)(3)(A).) The financial effect is also material if the decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000, or one percent of the organization’s annual gross receipts and the change in expenses is equal to or greater than \$2,500. (Regulation 18702.3(a)(3)(B).)

Ballot Measure for Library Funding

As previously concluded, Mayor Motoyama is prohibited for participating in any contract between the City and BART or the Development Team regarding the Plaza Bart Project. For purposes of Section 1090, participation is defined broadly as any act involving preliminary

discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae, supra*, at pp. 237.) Accordingly, the determinative question is whether the ballot measure for library funding constitutes a preliminary discussion or decision regarding the City's potential contract with BART or the Development Team.

Based on the facts provided, any agreement to acquire an interest in property from the Development Team will require payment by the City potentially totaling millions of dollars. Moreover, securing the funding necessary to facilitate this agreement is necessary for the library project to be completed. While either a general obligation bond or parcel tax must be approved by voters, the City Council must initially decide on a funding mechanism and approve a measure to submit the funding decision to voters. Thus, the City Council's discussion and decisions regarding the ballot measure are an essential preliminary step in the process by which any agreement on the library will be reached and therefore a preliminary discussion or decision, for purposes of Section 1090, regarding the library project and potential contract.

Consequently, Section 1090 prohibits Mayor Motoyama from participating in the City Council decisions to place a measure on the ballot to seek voter approval for funding for a new library in one of the Plaza BART Project affordable housing buildings. However, as discussed in our prior letter, the remote interest exception of Section 1091(b)(1) applies to allow these decisions, provided the Mayor discloses her interest, it is noted in the City Council's records, and she properly recuses herself from the proceedings.

Library And Public Open Space Design and Related Consultant Services

Once an agreement is made for City acquisition of an interest in one of the buildings for the library, you do not anticipate any further agreements between the City and the Development Team or BART concerning the library. At this time, the City anticipates retaining consultants, an architect, and contractors for the design and construction of the library. The City may also retain consultants and contractors to develop designs and construct improvements to the surrounding public open spaces.

You state that SAHA is a developer of affordable residential housing, while the consultants the City would retain for library-related work include engineers, planners, architects, and library design specialists, as well as a contractor for any related construction. SAHA does not have those specialties in house and would not be in a position to offer those services to the City.

To the extent the City has a finalized agreement with BART and the Development Team, the decisions at issue involve agreements with consultants and architects contracting directly with the City. They would not involve a contract with either SAHA or the Development Team in which Mayor Motoyama would have a financial interest. Accordingly, provided a final agreement has first been made between the City and BART and the Development Team, Section 1090 would not prohibit Mayor Motoyama from taking part in these subsequent decisions. Moreover, to the extent the agreement with BART and the Development Team is finalized, you have provided no facts suggesting that Mayor Motoyama would have a prohibited financial interest in the subsequent decisions regarding the design and construction of the library under the Act's conflict of interest provisions.

Formation of an Enhanced Infrastructure Financing District

The City is interested in forming an EIFD to fund infrastructure needs related to new development and would potentially include the Plaza BART Property in an EIFD. Formation of the EIFD would not require an agreement with BART or the Development Team. Tax increment from the EIFD would potentially be expended on public infrastructure within the vicinity of the Plaza BART Project but would not be pursuant to any agreements with BART or the Development Team.

The City's plans include possible additional bicycle and pedestrian infrastructure in that part of El Cerrito, but not exclusively around the Plaza BART property. Although future residents at the Plaza BART Project would benefit from these improvements, they are not improvements that necessarily result in a significant benefit to BART or the Development Team, much less SAHA as a member of the Development Team or CEI. This is bolstered by the fact that the EIFD generates revenue from property tax increment, and the EIFD would only start receiving funds after development has occurred and SAHA had finished its work on the Project.

Further, the creation of an EIFD would not change the existing tax rate for future property owners. It would merely allocate the funds to the improvement or maintenance of the general vicinity as opposed to allocating the funds to the City's general fund. Accordingly, to the extent that decisions regarding the formation of the EIFD are made independently from and outside of any negotiations and discussions between the City and BART or the Development Team, the decision would not implicate a contract between the City and BART or the Development Team and Section 1090 would not apply.

Turning to the Act, it does not appear reasonably foreseeable that decisions relating to the formation of the EIFD would have a material financial effect on CEI, which based on the facts provided, has no business relationship with SAHA as to the Plaza BART Project. Nor would the decisions result in an increase or decrease of the annual gross revenues, or the assets or liabilities, of CEI, which would be material under Regulation 18702.3(a)(3)(A), or a change in the organization's expenses meeting the materiality threshold of Regulation 18702.3(a)(3)(B). While the decisions may provide additional funds for improvements and maintenance in the vicinity of the Plaza BART Project, additional funds are not earmarked for the Project and will not be available until after the Project is completed. Additionally, even to the extent there may be an effect on BART relating to the Plaza BART Project, it is only hypothetical or theoretical that the decisions may financially affect CEI merely because SAHA, a client of the nonprofit organization, is a member of BART's Development Team. Therefore, it is not reasonably foreseeable the decisions related to the formation of the EIFD would have a material financial effect on Mayor Motoyama's interest in her source of income. For the same reasons, it is not reasonably foreseeable the decisions would have a material financial effect on Mayor Motoyama's personal finances. Based on the information presented, the Act's conflict of interest provisions do not prohibit her from taking part in decisions relating to the formation of the EIFD.

On-Street Parking Program

The City currently has a residential parking permit zone that includes streets within a one-half mile radius of the El Cerrito Plaza BART station, in which on-street parking is restricted to four hours between 7:00 a.m. and 6:00 p.m. on weekdays.

The current El Cerrito Plaza BART station includes large surface parking lots with approximately 740 parking spaces. It is currently anticipated that the Project will include no more than 150 additional parking spaces for BART riders. Because BART patrons will continue to park on City streets, the City plans to update its residential parking program to include managing demand for street parking around the station. While the City's parking management program might provide access to BART patrons above what can be accommodated on the Project, any benefit to BART is more speculative, much less a benefit to the SAHA as a member of the Development Team or CEI. Similar to decisions regarding the formation of the EIFD, to the extent that on-street parking decisions are made independently from and outside of any negotiations and discussions between the City and BART or the Development Team, the decision would not implicate a contract between the City and BART or the Development Team and Section 1090 would not apply.

Moreover, it does not appear reasonably foreseeable a decision relating to the on-street parking program would have any financial effect on CEI, which has no business relationship with SAHA as to the Plaza BART Project. Nor would the decision result in an increase or decrease of the annual gross revenues, or the assets or liabilities, of CEI, which would be material under Regulation 18702.3(a)(3)(A), or a change in the organization's expenses meeting the materiality threshold of Regulation 18702.3(a)(3)(B). While the on-street parking may have some effect on BART patrons, and possibly an effect on BART and its operations, any financial effect on CEI merely because a client, SAHA, is a member of BART's Development Team is hypothetical or theoretical. Therefore, it is not reasonably foreseeable the on-street parking decisions would have a material financial effect on Mayor Motoyama's interest in her source of income. For the same reasons, it is not reasonably foreseeable the decisions would have a material financial effect on Mayor Motoyama's personal finances. Based on the information provided, the Act's conflict of interest provisions do not prohibit her from taking part in decisions relating to the on-street parking program.

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

Sincerely,

Dave Bainbridge
General Counsel

Brian G. Lau

Brian G. Lau
Assistant General Counsel

For

ZWN:aja

By: Zachary W. Norton
Senior Counsel, Legal Division