

Brower, Damien

From: Ryan O'Connor <roconnor@fppc.ca.gov>
Sent: Tuesday, July 11, 2017 9:39 AM
To: Brower, Damien
Cc: Lysons, Martin E.
Subject: RE: Follow-Up Question to Brentwood Advice Letter (File No. A-17-131)

Good morning, Damien –

Thank you for the thorough email. I look forward to receiving your request for formal advice in the future.

Best,

Ryan

From: Brower, Damien [mailto:dbrower@brentwoodca.gov]
Sent: Monday, July 10, 2017 5:16 PM
To: Ryan O'Connor <roconnor@fppc.ca.gov>
Cc: Lysons, Martin E. <mlysons@brentwoodca.gov>
Subject: RE: Follow-Up Question to Brentwood Advice Letter (File No. A-17-131)

Hi Ryan,

Thank you for your quick response. Martin is out of the office this afternoon and asked if I could reply to your email. You are correct that tomorrow evening the City Council is going to consider a contract for an environmental consultant and is not being asked to decide whether an EIR will be required. The latter decision is routinely made by staff on behalf of the City and the Council. In this case, staff and the applicant agree that an EIR is necessary under CEQA, and the best way to move forward given the scope of the proposed project.

I have attached for your information the agenda and staff report for tomorrow night's meeting. If the attachments are too big, the agenda and staff report may be accessed at the following web address:

<http://brentwoodca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=1999&Inline=True>

The item is C.1 and starts on page 141 of 177.

Based on your email below, we will advise Councilmember Staton that she may participate on the item tomorrow evening. On a related note, in the near future Martin or I will send a formal request regarding Councilmember Staton's ability to participate in matters associated with the overall development proposal based on this new information.

Thank you again for your assistance.

Damien

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From: Ryan O'Connor [<mailto:roconnor@fppc.ca.gov>]
Sent: Monday, July 10, 2017 3:17 PM
To: Lysons, Martin E.
Cc: Brower, Damien
Subject: RE: Follow-Up Question to Brentwood Advice Letter (File No. A-17-131)

Hi Martin –

Was I accurate in the letter in stating that the specific EIR consultant decision does not involve whether to conduct an EIR but rather which consultant to be awarded the contract? If the decision to undertake an EIR has already been made, most decisions stemming from it will be implementation decisions by nature. Councilmember Staton may partake in implementation decisions regardless of having a conflict.

Please write in for formal advice regarding the Councilmember's ability to participate in the overall development of the proposal.

Best,

Ryan

From: Lysons, Martin E. [<mailto:mlysons@brentwoodca.gov>]
Sent: Monday, July 10, 2017 11:53 AM
To: Ryan O'Connor <roconnor@fppc.ca.gov>
Cc: Brower, Damien <dbrower@brentwoodca.gov>
Subject: Follow-Up Question to Brentwood Advice Letter (File No. A-17-131)

Hello, Ryan:

First, I'd like to thank you for your advice letter regarding potential City Councilmember, Planning Commissioner, and City Manager conflicts of interest on the proposed golf course replacement development in Brentwood. Your advice has allowed the Council to consider the hiring of an EIR consultant for the project.

We now have a new potential conflict regarding Councilmember Staton. As you may recall, your letter (File No. A-17-131) found that Councilmember Staton could participate in the decision to approve or deny the project, based on the fact that her residence is 3,850 feet from the Project site, 425 feet outside the Shadow Lakes subdivision, and 575 feet from the nearest portion of the remaining golf course. By extension, she may also participate in the agenda item pertaining to the hiring of the EIR consultant. However, with the item regarding the consultant hiring on the Council's agenda for tomorrow's meeting, it has now come to light that Councilmember Staton may have a potential conflict unrelated to her own residence.

Councilmember Staton is a real estate agent. She manages a rental unit within the Shadow Lakes subdivision, located at 665 Ashford Drive. (Please see the attached map.) She does not own the unit, but she is paid by the owner to manage the property and the rental. Councilmember Staton receives a payment of \$1,200 per year for providing these management services. There is a written contract for these services, and the contract does not specify an expiration date.

Regarding Councilmembers' participation in the consultant hiring matter, you advised the City as follows:

Generally, an official who is disqualified from a decision is not also disqualified from subsequent implementation decisions.

Implementation decisions merely carry out decisions already made. (*Boga* advice letter, No. A-03-067.)

The specific decision you contemplate is not whether to prepare an EIR, but instead to whom to award the consultant contract to perform the task.

Therefore, consistent with our advice in *Athan*, this is likely an implementation decision. (*Athan* advice letter, No. A-86-094.)

The most pressing question at this time is whether Councilmember Staton may still participate in the implementation decision to hire the EIR consultant, given this new potential conflict. The property is roughly 300 feet from the entrance to the Alternate Site, and about 1,200 feet from the proposed Shadow Lakes project site.

I would be happy to send you a formal opinion request letter for Councilmember Staton's ability to participate in the overall development proposal; but if at all possible, it would be most helpful to get an opinion from you as to whether Councilmember Staton should recuse herself from EIR consultant item, which is on tomorrow evening's agenda.

Please contact either me, or City Attorney Damien Brower should you require additional information. Thank you again for all the time and effort you have put into this matter.

Martin



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