



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 15, 2018

Damien Brower, Esq.  
Brentwood City Attorney  
150 City Park Way  
Brentwood, CA 94513

Re: Your Request for Advice  
Our File No. A-18-032(a)

Dear Mr. Brower:

This letter responds to your request for advice on behalf of City of Brentwood Councilmembers Karen Rarey, Bailey Grewal, and Claudette Staton, as well as Planning Commissioners John Fink regarding the conflict of interest provisions of the Political Reform Act ("Act").<sup>1</sup> Please note that Fair Political Practices Commission staff are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as under the common law or Section 1090.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); 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. In addition, the Commission does not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

### QUESTION

Do either Councilmembers Rarey, Grewal, Staton, or Commissioner Fink have a disqualifying conflict of interest in making, participating in making, or influencing decisions concerning a Shadow Lakes/Deer Ridge golf course consolidation project?

### CONCLUSION

The project will not have a reasonably foreseeable material effect on the officials' respective interests. Therefore, the officials are not disqualified from taking part in the decision to the extent

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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.

that the decision regarding the locations of the housing projects are final and that any future decisions would not affirm, nullify, or alter this decision.

### FACTS AS PROVIDED BY REQUESTOR

You have asked that we consider whether additional information affects the conclusion reached in response to your previous request for advice, *Brower* Advice Letter, No. A-18-032. While the pertinent facts have not been more fully detailed in the previous letter, you have provided the following additional facts:

- The Shadow Lake/Deer Ridge golf course consolidation project includes a proposed zoning amendment. The zoning for Deer Ridge and Shadow Lakes governs both the golf courses and the associated residences. Shadow Lakes is governed by Planned Development 18, while Deer Ridge is governed by Planned Development 20.
- The project will require zoning amendments to both PD-18 and PD-20 in order to allow the construction of the applicant's requested uses. These zoning amendments, which the City calls a "rezone," will not change the zoning from one zoning district to another, but rather, will amend the nature and extent of uses allowed within the respective Planned Developments.
- The requested amendments will include a reduction in the number of holes on the golf courses and the repurposing of closed holes for recreational uses, as well as allowing a range of living facilities for seniors and those needing memory care.
- The real property interests of Councilmembers Rarey, Grewal, Staton, and Commissioner Fink are within the borders of PD-18 and PD-20. However, none of the proposed changes to either PD-18 or PD-20 will change the zoning of the Councilmembers' parcels or change the nature or extent of the uses allowed for those parcels.

### ANALYSIS

As provided in the *Brower* Advice Letter, No. A-18-032, a conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interest is material. (Section 87100.) The standard for foreseeability differs depending on whether an interest is explicitly involved in the decision. (Regulation 18701.) An interest is explicitly involved in a decision if the interest is a named party in, or the subject of, the governmental decision. (Regulation 18701(a).) An interest in real property is also explicitly involved in the decision whenever the decision affects a real property interest as described in Regulation 18702.2(a)(1)-(6). As pertinent to this analysis, Regulation 18702.2(a) provides that a real property interest is explicitly involved in a decision if the decision:

"(2) Determines the parcel's zoning or rezoning..."


In this case, the determinative issue is whether the additional facts provided change the analysis that the officials' interests are not explicitly involved in the decisions. You have indicated that the zoning governs both the golf course and associated residences and that the rezoning will amend the nature and extent of uses allowed within the respective Planned Developments. However, you have also provided the fact that the "rezoning" will not change the zoning of the Councilmembers' parcels or change the nature or extent of the uses allowed for those parcels.

Because the "rezoning" will not change the zoning of the parcels or the nature or extent of the uses allowed for those parcels, the additional facts do not change the conclusion reached in the *Brower* Advice Letter, No. A-18-032. The Councilmembers' interests do not appear to be explicitly involved in the decision, and barring additional facts, the officials are not disqualified from taking part in the decision to the extent that the decision regarding the locations of the housing projects are final and that any future decisions would not affirm, nullify, or alter this decision. We affirm our prior conclusion through this letter.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Ryan P. O'Connor  
Counsel, Legal Division

RPOC:jgl