



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 14, 2019

Heather Minner, Esq.
City Attorney of Cupertino
396 Hayes Street
San Francisco, CA 94102

Re: Your Request for Advice
Our File No. A-19-109

Dear Ms. Minner:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act ("Act")¹ on behalf of City of Cupertino Mayor Steven Scharf. Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other prohibitions such as common law conflict of interest or Government Code 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.

QUESTION

Does City of Cupertino Mayor Steven Scharf have a disqualifying conflict of interest in participating in decisions regarding the Regnart Creek Trail Project, including decisions regarding design, environmental review, funding, alternative trail routes, and ultimately construction?

CONCLUSION

No. It is not reasonably foreseeable that the effect of project-related decisions will have any measurable impact on the Mayor's property.

FACTS AS PRESENTED BY REQUESTER

According to the City's August 2018 Regnart Creek Trail Feasibility Study:

The Regnart Creek Trail is a planned facility which would provide a safe and convenient off-street alternative for bicyclists and pedestrians to access nearby

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 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.

destinations including Cupertino Civic Center, Cupertino Public Library, Wilson Park, Creekside Park, nearby schools and residential neighborhoods. Under agreement with the Santa Clara Valley Water District, the project would utilize an existing maintenance road along the bank of Regnart Creek in the City of Cupertino. The project would extend along the existing creek alignment from Pacifica Drive to East Estates Drive where it would connect to the existing trail into Creekside Park. The project would include two upgraded roadway crossings at South Blaney Avenue and East Estates Drive.

The Feasibility Study includes a recommended trail alignment and trail features. The study also considers five different route alternatives.

- Alternative 1 is the recommended trail alignment.
- Alternative 2 routes the segment of the trail from South Blaney Avenue to East Estates Drive along Hall Court, through Wilson Park and then along Vicksburg Drive rather than along Regnart Creek.
- Alternative 3 routes the segment of the trail from South Blaney Avenue to East Estates Drive along Regnart Creek, then through Wilson Park and then along Vicksburg Drive.
- Alternative 4 significantly changes the route removing it entirely from the Regnart Creek alignment making it an on-street route along Pacifica Drive, South Blaney Avenue and La Mar Drive.
- Alternative 5 also removes the route entirely from the Regnart Creek alignment making it mostly an on-street route along Rodrigues Avenue, Parkside Lane, then through Wilson Park and along Vicksburg Drive.

The Mayor owns his home, which is located 290 feet from the nearest edge of the Regnart Creek Trail Project. The home is valued well over the threshold for a financial interest in real property.

Mayor Scharf's residence is a single-family dwelling unit on a 7,200-square foot parcel. The dwelling is a 1,937-square foot conventional two-story wood-frame house built in 1963. The home is located on Somerset Drive in a residential subdivision, a subset of the South Blaney neighborhood, in the eastern portion of Cupertino. The neighborhood—bounded by Regnart Creek on the west and north, South Blaney Avenue on the east, and Pacifica Drive on the south—is homogenous with roughly several hundred similar homes extending in all directions. There are no commercial uses in the immediate neighborhood blocks surrounding the property. However, to the west of the neighborhood, approximately 500 feet from the proposed project, is the Cupertino Civic Center Plaza, which includes City Hall, a library, and recreational playing fields.

The proposed Regnart Creek Trail Project route is located to the west and north of the Mayor's residence and runs along Civic Center Plaza. Additionally, the Mayor's property is not adjacent to the proposed route. The Mayor's property and the closest proposed route are separated by the fifty-five-foot wide Regnart Creek, two residences, and Farallone Drive.

ANALYSIS

Under Section 87100, a conflict of interest exists whenever a public official makes, participates in making, or uses his or her position to influence a governmental decision which has a reasonably foreseeable material financial effect on one or more of the official's financial interests.

Section 87103(b) provides that an official has a financial interest in "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." Furthermore, Section 87103 states that a public official also has an interest in his or her "personal finances, including those of his or her immediate family, also known as the 'personal financial effects' rule."²

Because the Mayor owns his residence worth more than two thousand dollars, he has a real property interest that warrants analysis under the Act's conflict of interest provisions.

Foreseeability:

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).) Under the facts you have provided, the official's residence is not explicitly involved in the decisions. Thus, as applied to Mayor Scharf interest, Regulation 18701(b) provides: "[i]n general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable."

Materiality:

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. Regulation 18702.2 provides that the financial effect of the decisions on the official's real property interest is material if 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. Moreover, an effect is not material if it is nominal, inconsequential, or insignificant. (Regulation 18702(b).)

Based upon the facts provided, it does not appear that implementation of any of the alternatives will affect the property value of the Mayor's residence. Trail users would not be able to access the Mayor's neighborhood due to their positioning on the far side of the creek bed. Neighborhood traffic and parking levels would not be affected either considering that automobiles are not permitted on the trail, and the Mayor's home is not in proximity to a trail head.

The first three out of the five alternatives, including the Feasibility Study's recommended route, involve development of one point of the trail approximately 290 feet from the Mayor's

² Effects on an official's personal finances are not considered separately from the effect on an official's interest in a business entity or real property. (Regulation 18702.5(c).) Thus, we do not consider the personal financial effects rule further.

residence. This part of the trail alignment runs parallel and adjacent to the existing Civic Center Plaza parking lot and recreation playing field, which is already accessible by the public and used for recreational purposes. Significantly buffering the Mayor's residence from the trail are the fifty five-foot wide Regnart Creek, the residences along Farallone Drive, the street itself, and the residence adjacent to the Mayor's home. Given these physical barriers, the trail will not be visible from the residence. The barriers would likely prevent a noise increase from impacting the residence. To the extent a volume change was discernable, it would likely be indistinguishable from the existing ambient noise created during recreational sports at the adjacent recreation field.

Accordingly, there is clear and convincing evidence that there will be no measurable impact on the Mayor's property, and any potential effect of Regnart Creek Trail decisions on the Mayor's residence is nominal, inconsequential, or insignificant. (Regulation 18702(b).)

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "Ryan O'Connor /aja".

By: Ryan O'Connor
Counsel, Legal Division

RPOC:aja