

#33

LATE DISTRIBUTION

DATE 5/12/15

BOS 5/12/15



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Board of Supervisors
FROM: County Counsel *KAM*
DATE: May 11, 2015
RE: Conflict of Interest with regard to the TGPA/ZOU

2015 MAY 11 PM 4:43

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY

The Targeted General Plan Amendments (TGPA) and the Zoning Ordinance Update (ZOU) will be coming to the Board of Supervisors (BOS) for consideration and potential adoption in the coming months. As such, County Counsel would like to take this opportunity to remind each board member that the conflict of interest provisions of the Political Reform Act¹ apply to this decision making process. If a board member has a conflict of interest with regard to a specific decision in the TGPA/ZOU process, that board member is required to recuse himself/herself from participating in any way in that particular decision.

Government Code §87100 prohibits any public official (including county supervisors) from making, participating in making or in any way attempting to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family. (Regulation 18700)

While the TGPA/ZOU consists of general plan amendments, zoning changes and a comprehensive zoning ordinance update, the TGPA/ZOU will be coming to the BOS as a comprehensive package; however, the various general plan amendments, zoning changes and/or ordinance amendments can be separated out for individual discussion, consideration and decision if there is an identified conflict of interest for any supervisor(s) as to any of the various aspects of the TGPA/ZOU. The analysis for conflict of interest purposes is on a decision-by-decision basis and decisions on an overall

¹ The conflict of interest provisions of the Political Reform Act are set forth in Government Code Sections 81000 through 87505. The conflict of interest regulations of the Fair Political Practices Commission (FPPC) are set forth in Sections 18700 through 18709, Title 2, Division 6, of the California Code of Regulations.

project can be segmented out to allow participation by a public official that has a conflict of interest provided that certain conditions are met.²

By way of example, in a recent FPPC advice letter (*Serna* Advice Letter, No. A-14-186 (December 16, 2014)) the FPPC was asked whether Sacramento County Supervisor Phil Serna could participate in board discussions regarding two general plan amendments in connection with the Natomas Joint Vision Plan (JVP) for the development of a substantial portion of land in the Natomas Basin. The amendments involved changes to land use designations and an expansion of the urban services boundary. The decisions could be broken down into two categories, decisions that involve the entire JVP area and decisions that only applied particularly to the North Precinct area. Supervisor Serna owns real property within 310 feet from the boundary of the JVP but his property was 1.4 miles from the nearest boundary of the North Precinct area. The FPPC advice letter analyzed the decisions related to each area, JVP and North Precinct, and concluded that Supervisor Serna had a conflict with regard to the JVP and could not make, participate in making, or influence the decisions concerning the JVP area generally; however, the FPPC also concluded that Supervisor Serna did not have a conflict with regard to decisions relating to the North Precinct. In making this determination regarding the North Precinct, the FPPC discussed segmentation and explained as follows:

Generally, decisions are analyzed independently to determine if there will be a foreseeable material financial effect on an official's financial interest. For example, we have advised that under certain circumstances, some large, complex decisions may be segmented into separate decisions so that even if an official has a disqualifying interest in one component of the

² § 18709. Governmental Decision: Segmentation.

(a) An agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all of the following conditions apply:

(1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

(2) The decision in which the official has a financial interest is segmented from the other decisions;

(3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and

(4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

(b) For purposes of this regulation, decisions are "inextricably interrelated" when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

(c) Budget Decisions and General Plan Adoption or Amendment Decisions Affecting an Entire Jurisdiction: Once all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan.

Comment: This regulation implements the segmentation principle outlined in the Commission's opinion In re Owen (1976) 2 FPPC Ops. 77. Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103, Government Code.

series of decisions, he may still participate in other components in which he has no financial interest. (*Milich* Advice letter, No. I-04-216; *Merkuloff* Advice letter, No. I-90-542) Regulation 18709 provides that for segmentation to be permitted, all of the following must apply:

- (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
 - (2) The decision in which the official has a financial interest is segmented from the other decisions;
 - (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
 - (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.
- (*Serna* Advice Letter, No. A-14-186, pg.5-6)

The FPPC noted that certain decisions may be too interrelated to be considered separately. “In that event, a public official’s conflict of interest in one decision will be disqualifying for the other decision as well. Decisions are inextricably interrelated when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.” (*Serna* Advice Letter, No. A-14-186, pg.5)

If you are concerned about any potential conflicts of interest, you are encouraged to contact County Counsel as soon as possible.