

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ERIN B. CHALMERS
Attorney
chalmers@smwlaw.com

October 19, 2015

Via E-Mail

Mr. Thomas Montgomery
County Counsel
County of San Diego
1600 Pacific Highway
San Diego, CA 92101
thomas.montgomery@sdcounty.ca.gov

Re: Supervisor Bill Horn's Conflict of Interest With Regard to
Lilac Hills Ranch

Dear Mr. Montgomery:

This firm represents the Cleveland National Forest Foundation ("CNFF") on matters related to the Lilac Hills Ranch project ("Project"). I am writing to urge the County, and Supervisor Horn, to abide by the Fair Political Practices Commission's ("FPPC") recent advice letter, which unequivocally advised Supervisor Horn that "you have a conflict of interest in decisions involving the Project and you must recuse yourself from participating in these decisions."

I understand that Supervisor Horn does not like the advice he received in response to his request. According to his public statements, Supervisor Horn claims to be concerned that the FPPC advice chips away at democracy, disenfranchises his constituents, and will cause virtually every Board of Supervisors decision to be questioned and overturned. I also understand that he may—with apparent County support—ask the FPPC to reconsider its advice in light of alleged new facts.

Supervisor Horn's concerns have no basis in reality. Likewise, there is no reason for the FPPC to provide different advice based on "new facts" that I believe Supervisor Horn may provide. I urge you to advise Supervisor Horn to recuse himself from all discussions and decisions concerning the Lilac Hills Ranch Project. In addition, if Supervisor Horn writes to the FPPC to seek new advice, I request that you advise him

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to include all relevant information concerning the development potential of his property. If he withholds relevant facts from the FPPC and obtains advice based on those incomplete facts, the County could be exposed to liability if a County resident later files a complaint with the FPPC or brings suit to overturn a Board decision in which Supervisor Horn wrongly participated. See Government Code § 91003(a), (b).

The Narrowly Drawn FPPC Advice Letter Protects Public Trust and Upholds Democracy.

In public statements, Supervisor Horn has called the FPPC advice letter “outrageous” and a “clear case of state overreach.” He claims it undermines democracy and “chip[s] away at the foundation of what we as Americans believe.” He even claims that Board members will no longer be able to vote on any land use projects under this broad precedent. Nothing could be further from the truth.

First, the FPPC’s advice letter does not undermine democracy; on the contrary, it protects public faith in our democratic government. In 1974, California voters passed an initiative that enacted the California Political Reform Act. The objectives of the law—to inform the electorate and prevent corruption of the political process—are carried out in part by the FPPC, which is a non-partisan, objective agency. It is far preferable to have an impartial agency such as the FPPC decide whether public officials have a conflict of interest rather than leave it to each official to decide for himself. One can hardly expect Supervisor Horn or any other official to have an unbiased view regarding their own interests. This is the purpose of the FPPC, and it has carried out its duties admirably in this instance.

Second, the advice letter is not overly broad, but is narrowly tailored. The FPPC recognized that Supervisor Horn owns nearly 37 acres of land located just 1.3 miles from the proposed Lilac Hills Ranch development. It described how this proposed project would “add 1,746 dwelling units and 90,000 square feet of retail and commercial space . . . a K-8 school, public and private parks, [] other recreational amenities, as well as recycling and water reclamation facilities.” The huge project and its infrastructure improvements “would also likely change the development potential and the income producing potential of nearby or surrounding real property.”

Far from implying that all Supervisors will be barred from voting on any new developments in their districts, the advice letter carefully describes why *this* particular project, in *this* particular location, creates a conflict of interest for Supervisor Horn. It states that “[t]here are currently very few housing tracts within the Valley

Center community, and few retail and commercial developments. The Project, with 1,746 dwelling units and 90,000 square feet of retail and commercial space, would be by far the largest, and among the densest developments in the Valley Center area.” It even contrasts the situation with other proposed developments that include only 207 – 366 units.

There is no reason for Supervisor Horn or the County to be alarmed at the FPPC’s advice, which provides a narrow, fact-based analysis of Supervisor Horn’s particular situation in this instance. The FPPC nowhere implies that other Supervisors in other situations will also have to recuse themselves in decisions involving smaller developments, or developments in more built-up areas. Likewise, the situation might be different if a Supervisor merely owned a home nearby a proposed development, and did not own developable land, as Supervisor Horn does. In any event, Supervisors concerned about potential conflicts in the future may always seek the FPPC’s advice, as Supervisor Horn did here.

Supervisor Horn’s Property Is Highly Developable.

Supervisor Horn claims that the Lilac Hills Ranch project cannot increase the value of his property because it is currently under a Williamson Act contract and contains many steep, allegedly undevelopable slopes. While it is true that his land is currently protected by a Williamson Act contract, the FPPC has already described why this fact is not relevant. Specifically, such contracts are subject to termination, which would allow Supervisor Horn or successors in interest to develop the property.

Notably, the County’s environmental impact report for the Lilac Hills Ranch project states that the project is slated to take at least ten years to develop. Thus, the Williamson Act contract could expire just as the project is being built out and the surrounding land becomes more profitable for development. In addition, developers often “bank” land even if it is not currently developable. Thus, approval of the project would *immediately* increase the value of Supervisor Horn’s property, even if it could not be developed for a number of years.

The topography of Supervisor Horn’s property also does not preclude it from being developed. His land used to be zoned to allow 1 housing unit per 10 acres, but was recently upzoned to allow 1 unit per 2 acres. The maximum yield on his property is therefore 18 units. Although Supervisor Horn claims that steep slopes would prevent him from developing his land (he does not say whether it would prevent all development or just some development), this is incorrect. The County recently adopted a Conservation

Subdivision Ordinance that allows landowners such as Supervisor Horn to achieve the maximum development potential of their land by clustering new homes on smaller lots while protecting steep slopes and agricultural land on the rest of the property.

The County's website explains how its Conservation Subdivision Program:¹

- reduces otherwise applicable lot size and design restrictions,
- “allow[s] additional encroachment within steep slopes when projects sufficiently conserve other sensitive lands,”²
- allows for Planned Residential Developments, which “allow for reductions in lot size and other design restrictions when a certain percentage of open space is provided,”
- allows for “lot area averaging[, which] allows for flexibility in lot sizes provided the overall density is maintained”

Last, it is noteworthy that Supervisor Horn and the County have previously acted under the belief that his property *is* developable and that he must abstain from participating in, or voting on, decisions that may affect the development potential of his property. In 2003, Supervisor Horn recused himself from considering and voting on changing the zoning of his property to SR-2 designation, and thereby allowing greater development. There would have been no need for this recusal if steep slopes on his property prevented the rezoning from actually allowing greater development on Supervisor Horn's parcels. Evidence of this recusal is attached as Exhibit A.

¹ See generally <http://www.sandiegocounty.gov/pds/advance/conservationsubdivision.html> (explaining Conservation Subdivision Program)

² See <http://www.sandiegocounty.gov/pds/advance/conservationsubdivision.html>; see also Resource Protection Ordinance, § 86.604(e)(2)(cc) (“Additional encroachment into steep slopes may be permitted for tentative maps and tentative parcel maps which propose a Planned Residential Development, lot area averaging, conservation subdivision or cluster development when design considerations include encroachment into steep slopes in order to avoid impacts to significant environmental resources that cannot be avoided by other means.”).

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In conclusion, there is no basis for Supervisor Horn to ask the FPPC to reconsider its advice that he has a disqualifying conflict of interest with regard to the Lilac Hills Ranch development. But if Supervisor Horn requests new advice, it is imperative that he present accurate and complete information to the FPPC regarding the development potential of his property. His failure to do so would undermine public trust, subvert our democratic system, and expose himself and the County to liability.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Erin B. Chalmers

cc:

Supervisor Bill Horn
William Witt, Deputy County Counsel
Hyla P. Wagner, FPPC General Counsel
Emelyn Rodriguez, FPPC Senior Commission Counsel

Exhibits:

- A) County Board of Supervisors Statement of Proceedings, Wednesday, May 21, 2003

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