EXHIBIT 1

INTRODUCTION

Respondent David Cole ("Respondent Cole") was a member of the Pinole City Council and as such, was also a board member of the Pinole Redevelopment Agency in Pinole, CA, from 2000 to 2007.

At all relevant times, Respondent Cole owned and operated Pinole Valley Landscape (PVL) with his wife, Susan Cole. PVL provided services to and received substantial income from The Kivelstadt Group (TKG), a real estate developer and property management company active in the City of Pinole, whose projects included Pinole Valley Shopping Center, Pinole Vista Shopping Center, and Pinole Gateway. The evidence obtained during investigation revealed that Respondent Cole, through PVL, earned $253,353 from TKG from 2003 through 2006.

In this case, Respondent Cole made numerous decisions as a member of the Pinole City Council and of the Pinole Redevelopment Agency in which TKG either initiated or was the subject of the proceedings in violation of Government Code Section 87100 of the Political Reform Act (the "Act"),[1] which prohibits public officials from making any governmental decision in which they know or have reason to know they have a financial interest. As shown in this Exhibit, each of TKG's projects (Pinole Valley Shopping Center, Pinole Vista Shopping Center, and Pinole Gateway) was involved in the governmental decisions Respondent Cole made. For example, Respondent Cole voted to authorize the Pinole Redevelopment Agency Executive Director to enter into an Exclusive Negotiating Agreement with TKG Gateway Project, LLC, a subsidiary of TKG, regarding the Gateway Project, a medical office building complex; Respondent Cole voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Predevelopment Consulting Fee Agreement with TKG Gateway Project, LLC, a subsidiary of TKG, in which a fee of $564,000 was to be paid to TKG; and Respondent Cole voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Loan Guarantee of a $4.425 Million credit line for TKG Pinole Valley, LLC, a subsidiary of TKG, to continue funding the Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of TKG.

Furthermore, PVL contracted with TKG to provide commercial cleaning services for the Pinole Valley Shopping Center and the Pinole Vista Shopping Center. Thus, Respondent Cole personally benefitted from the decisions involving the Pinole Valley Shopping Center and the Pinole Vista Shopping Center because he had contracts for the same projects on which he made governmental decisions. Additionally, Respondent Cole failed to disclose his income from and

[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.

business position with PVL, and he failed to disclose TKG as a source of income to PVL on his statements of economic interests for calendar years 2003, 2004, and 2005.

On July 23, 2007, after Respondent Cole's misconduct became public through the local media, Respondent Cole fled by enlisting in the United States Army for a four year enlistment. On August 27, 2007, Respondent Cole resigned his position as a member of the Pinole City Council. Pursuant to the Servicemembers Civil Relief Act, the applicable statutes of limitations in this matter were tolled during Respondent Cole's active duty military deployments from July 2007 – July 2011.

For the purposes of this Default Decision and Order, Respondent's violations are stated as follows:

COUNT 1: Respondent David Cole, on October 21, 2003, as a Pinole City Council member, and as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to approve a Disposition and Development Agreement, Ground Lease and Declaration of Covenants, Conditions and Restrictions between the Pinole Redevelopment Agency and TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 2: Respondent David Cole, as a member of the Pinole City Council, failed to disclose his income from and business position with Pinole Valley Landscape in his 2003 annual statement of economic interests, filed on or about February 3, 2004, in violation of Government Code Sections 87207, subdivision (b) and 87209.

COUNT 3: Respondent David Cole, as a member of the Pinole City Council, failed to disclose The Kivelstadt Group as a source of income to him through Pinole Valley Landscape in his 2003 annual statement of economic interests, filed on or about February 3, 2004, in violation of Government Code Section 87207, subdivision (b)(2).

COUNT 4: Respondent David Cole, on November 16, 2004, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the Pinole Redevelopment Agency Executive Director to execute an extension to the construction loan on behalf of the Pinole Redevelopment Agency as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, regarding the development of a medical office

building at Pinole Gateway West, in violation of Government Code Section 87100.

COUNT 5: Respondent David Cole, on January 18, 2005, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to approve three tenants for the Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 6: Respondent David Cole, as a member of the Pinole City Council, failed to disclose his income from and business position with Pinole Valley Landscape in his 2004 annual statement of economic interests, filed on or about February 16, 2005, in violation of Government Code Sections 87207, subdivision (b) and 87209.

COUNT 7: Respondent David Cole, as a member of the Pinole City Council, failed to disclose The Kivelstadt Group as a source of income to him through Pinole Valley Landscape in his 2004 annual statement of economic interests, filed on or about February 16, 2005, in violation of Government Code Section 87207, subdivision (b)(2).

COUNT 8: Respondent David Cole, on April 19, 2005, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize TKG Pinole, LLC, which was a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, to execute a lease with a potential tenant of the Pinole Vista Shopping Center, in violation of Government Code Section 87100.

COUNT 9: Respondent David Cole, on May 3, 2005, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to accept lease termination terms for a retail lease at Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 10: Respondent David Cole, on August 2, 2005, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the Pinole Redevelopment Agency Executive Director to enter into an Exclusive Negotiating Agreement with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group, which was a source of

income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 11: Respondent David Cole, on November 15, 2005, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the Pinole Redevelopment Agency Executive Director to execute a Predevelopment Consulting Fee Agreement with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 12: Respondent David Cole, on February 21, 2006, as a Pinole City Council member, made a governmental decision in which he had a financial interest, by voting to consent to the approval by the Pinole Redevelopment Agency of an Amended and Restated Ground Lease by and between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 13: Respondent David Cole, on February 21, 2006, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to approve Amendments to an existing Ground Lease for the Pinole Valley Shopping Center between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in order to incorporate certain property into the ground lease, and other changes to the ground lease; approve the execution of the Amended and Restated Ground Lease and authorize the negotiation and execution of a purchase and sale agreement for 2690 Pinole Valley Road; and approve reimbursement of $225,000 to TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in costs incurred for redevelopment activities at 2690 and 2810 Pinole Valley Road, in violation of Government Code Section 87100.

COUNT 14: Respondent David Cole, as a member of the Pinole City Council, failed to disclose his income from and business position with Pinole Valley Landscape in his 2005 annual statement of economic interests, filed on or about March 17, 2006, in violation of Government Code Sections 87207, subdivision (b) and 87209.

COUNT 15: Respondent David Cole, as a member of the Pinole City Council, failed to disclose The Kivelstadt Group as a source of income to

him through Pinole Valley Landscape in his 2005 annual statement of economic interests, filed on or about March 17, 2006, in violation of Government Code Section 87207, subdivision (b)(2).

COUNT 16: Respondent David Cole, on March 21, 2006, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the expenditure of an amount not to exceed $330,000 in calendar year 2006 to fund the Pinole Redevelopment Agency's 60% pro-rata share of the operating deficits of Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 17: Respondent David Cole, on March 21, 2006, as a Pinole City Council member, and as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to approve the execution of an Amended and Restated Ground Lease for Pinole Valley Shopping Center between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, and approving reimbursement to TKG Pinole Valley, LLC, in an amount not to exceed $827,650, in violation of Government Code Section 87100.

COUNT 18: Respondent David Cole, on July 18, 2006, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the Pinole Redevelopment Agency Executive Director to execute a Loan Guarantee of a $4.425 Million credit line for TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, to continue funding Pinole Valley Shopping Center, in violation of Government Code Section 87100.

COUNT 19: Respondent David Cole, on November 21, 2006, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the Pinole Redevelopment Agency Executive Director to execute a two-year extension to the construction loan documents on behalf of the Pinole Redevelopment Agency as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, regarding the development

of a medical office building at Pinole Gateway West, in violation of Government Code Section 87100.

COUNT 20: Respondent David Cole, on January 16, 2007, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to amend the existing Ground Lease relating to the Pinole Valley Shopping Center between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, to incorporate certain mutually negotiated agreements, in violation of Government Code Section 87100.

COUNT 21: Respondent David Cole, on January 16, 2007, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to approve *Trader Joe's* as the proposed new anchor tenant in the Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, in violation of Government Code Section 87100.

COUNT 22: Respondent David Cole, on January 16, 2007, as a board member of the Pinole Redevelopment Agency, made a governmental decision in which he had a financial interest, by voting to authorize the Pinole Redevelopment Agency Executive Director to negotiate and execute a Reciprocal Easement Agreement with TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, which was a source of income to Respondent Cole, regarding the Pinole Valley Shopping Center, in violation of Government Code Section 87100.

COUNT 23: Respondent David Cole, as a member of the Pinole City Council, failed to disclose his business position with Pinole Valley Landscape in his 2006 annual statement of economic interests, filed on or about January 30, 2007, in violation of Government Code Sections 87209.

THE RESPONDENT

Respondent David Cole ("Respondent Cole") was a member of the Pinole City Council and as such, was also a board member of the Pinole Redevelopment Agency in Pinole, CA, from 2000 to 2007. On July 23, 2007, Respondent Cole enlisted in the United States Army for a four year enlistment. During his active duty military service, Respondent Cole was primarily deployed overseas, however, he was stationed at Fort Carson in Colorado in late 2009 and early 2010. Respondent returned to the United States in the summer of 2011.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practices Commission (the "Commission") determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the "APA").[2] (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. <u>Initiation of the Administrative Action</u>

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

[2] The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A–1 through A–13, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving him with a Report in Support of a Finding of Probable Cause (the "Report") by certified mail, return receipt requested,[3] on May 22, 2010. (Certification, Exhibit A–1.) Therefore, the administrative action commenced on May 22, 2010, the date Respondent was served the Report, and the five year statute of limitations was effectively tolled on this date.[4]

As required by Section 83115.5, the packet served on Respondent contained a cover letter and a memorandum describing Probable Cause Proceedings, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A–2.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

B. <u>Ex Parte Request for a Finding of Probable Cause</u>

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter, on June 14, 2010. (Certification, Exhibit A–3.) Respondent was sent copies of these documents. (Certification, Exhibit A–4.)

On June 14, 2010, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A–5.)

C. <u>The Issuance and Service of the Accusation</u>

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

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[3] Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

[4] Pursuant to the Servicemembers Civil Relief Act, the applicable statutes of limitations in this matter were also tolled during Respondent Cole's active duty military service from July 2007 – July 2011. See discussion below.

> A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On June 14, 2010, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter.

In accordance with Section 11505, the Enforcement Division attempted personal service of the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7, and a cover letter dated December 27, 2010, on Respondent Cole, only to discover that he had again been deployed overseas.

In July 2011, the Enforcement Division had reason to believe that Respondent Cole and his family had returned to Pinole, CA. Thereafter, Respondent Cole was personally served by substitute service upon his spouse at their residence on July 26, 2011. (Certification, Exhibit A–6.)

In accordance with California Code of Civil Procedure section 415.20, subdivision (b), the Enforcement Division mailed a copy of the Accusation and accompanying information to the Cole residence in Pinole, CA, on October 11, 2011. (Certification, Exhibit A–7.) Therefore, service was deemed completed on October 21, 2011.

Along with the Accusation, the Enforcement Division served Respondent with a "Statement to Respondent" which notified him that he could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, he would be deemed to have waived the right to a hearing. The October 11, 2011 cover letter enclosed with the Accusation and accompanying information specifically stated that Respondent Cole needed to request a hearing within the statutory time period, which would end on November 5, 2011.

On September 29, 2011, the Enforcement Division received a voicemail message from Respondent Cole indicating that his "estranged" wife had received documents from the Enforcement Division, and he requested a return call, leaving a Northern California telephone number. Senior Commission Counsel Angela J. Brereton and Special Investigator León Nurse-Williams of the Enforcement Division placed four return calls to Respondent Cole between October 3 and 11, 2011, leaving voicemail messages on each occasion. Respondent Cole did not respond to these messages.

On October 11, 2011, Special Investigator Nurse-Williams sent a letter to Respondent Cole extending an invitation to Respondent Cole to make a statement regarding the facts of this case, or to provide any mitigating information. (Certification, Exhibit A–8.) Additionally, Special Investigator Nurse-Williams sent an email in this regard to Respondent Cole's military email address. (Certification, Exhibit A–9.)

At approximately 6:40 p.m., on October 12, 2011, Special Investigator Nurse-Williams received a return call from Respondent Cole and briefly interviewed him. Respondent Cole indicated that he was currently on active duty with the U.S. Army, holding the rank of Sergeant, and stationed in Fort Carson, CO. He was presently undergoing training in which he did not have telephone and internet access, but he explained to his leadership that this was a special circumstance, and his leadership allowed him five minutes to return Special Investigator Nurse-Williams' call.

Respondent Cole indicated that he wanted to respond to the Accusation and to tell his side of the story. He stated that his current training course would last through October 22, 2011, and he would be available for an interview after that date. He explained that he and his wife were estranged and have not spoken for four years. She forwarded documents to him from the Enforcement Division, but he had not yet reviewed the contents. He is currently living in an apartment in Colorado Springs, CO, and Respondent Cole provided his current address.

As a courtesy, on October 17, 2011, the Enforcement Division mailed a copy of the Accusation and accompanying material to Respondent's Colorado Springs, CO address, and again advised Respondent Cole that he needed to respond to the Accusation by November 5, 2011. (Certification, Exhibit A–10.)

On October 19, 2011, Special Investigator Nurse-Williams called Respondent Cole and left him a detailed voicemail message indicating that he wanted to schedule an interview with Respondent Cole as soon as possible after he was done with training, and sent a follow-up letter to Respondent Cole in this regard to his Colorado Springs, CO address. (Certification, Exhibit A–11.)

On October 24, 27 and 31, 2011, Special Investigator Nurse-Williams left detailed voicemail messages for Respondent Cole, indicating that he wanted to schedule an interview with him, and reminded Respondent Cole that he needed to respond to the Accusation by November 5, 2011.

On October 31, 2011, Respondent Cole left a voicemail message for Special Investigator Nurse-Williams indicating that he would be available for an interview on the morning of November 3, 2011. On November 1, 2011, Special Investigator Nurse-Williams left Respondent Cole a return message, stating that he would contact Respondent Cole on November 3, 2011 for the interview.

On November 3, 2011, Special Investigator Nurse-Williams placed several telephone calls to Respondent Cole, but Respondent Cole did not answer. Special Investigator Nurse-Williams left messages requesting that Respondent Cole return his call to proceed with the interview or to reschedule.

At 4:24 a.m. PST, on Friday, November 4, 2011, Respondent Cole left a voicemail message for Special Investigator Nurse-Williams. Respondent Cole apologized regarding the previously scheduled time for interview, explaining that he has been having some issues with his blood pressure and spent the day in the hospital. He further stated that he was back to work, he should be off duty around 5:00 – 6:00 p.m., and he would call again. Respondent Cole left another voicemail message at 4:02 p.m. PST, stating that he was calling to conduct the interview and requested a call back.

Special Investigator Nurse-Williams received Respondent Cole's messages on Monday, November 7, 2011. He placed a call to Respondent Cole, and left him a detailed voicemail message informing him that he was in receipt of his voicemail messages left recently, and that he would be in the office all day to conduct the interview. Special Investigator Nurse-Williams also left detailed voicemail messages for Respondent Cole on November 8 and 14, 2011. To date, Respondent Cole has not returned Special Investigator Nurse-Williams' most recent telephone calls, and an interview with Respondent Cole has not occurred.

Respondent Cole did not file a Notice of Defense in this matter by November 5, 2011.

As a result, on November 16, 2011, Senior Commission Counsel Angela J. Brereton sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for December 8, 2011. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A–12.)

SUMMARY OF THE LAW

Conflicts of Interests

The primary purpose for the conflict of interest provisions of the Act is to ensure that "public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001, subd. (b).)

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps seven and eight of the standard step by step analysis are exceptions to the Act, and the respondent has the responsibility to provide facts and evidence that support the use of these exceptions. (Regulations 18707, 18708.) Because the facts and evidence do not indicate that either of the exceptions are applicable to this case, these exceptions are not discussed. The six relevant steps of the analysis follow below.

First, the individual must be a public official as defined by the Act. Section 82048 defines "public official" to include members of a state or local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a) (1), a public official "makes a governmental decision" when the official votes on a matter.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (c), an economic interest of a public official includes any source of income aggregating five hundred dollars ($500) or more in value provided to, or received by, the public official within 12 months prior to the time when the decision is made.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1, subdivision (a), a person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent 1) initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or; 2) is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.3, subdivision (a), if a source of income is directly involved in a governmental decision, *any* reasonably foreseeable financial effect on the source of income to a public official is deemed material.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)[5]

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent's economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question, and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency. (Regulation 18706, subd. (b).)

Duty to Disclose Income, Business Positions, and Sources of Income

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, which may be materially affected by their official actions, be disclosed so that conflicts of interests may be avoided.

Article 2 of the Act, found at Sections 87200 to 87210, requires every person who holds an office specified in Section 87200, including members of city councils, to file periodic statements disclosing their reportable economic interests. Under Section 87203, members of city councils are required to file an annual statement of economic interests ("SEI") each year at a time specified by Commission regulations, disclosing their investments, interests in real property, and sources of income and gifts. The SEI must include all economic interests the filer held during the preceding calendar year, whether or not they are still held at the time of filing.

Section 82030 defines "income" of an individual to include a pro rata share of any income of any business entity doing or planning on doing business in the jurisdiction in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater.

Pursuant to Section 87207, subdivision (b)(1), when a filer's pro rata share of income to a business entity is required to be reported, the statement shall contain the name, address, and a general description of the business activity of the business entity. Pursuant to Section 87207,

[5] The *Thorner* opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

subdivision (b)(2), the statement shall contain the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than $10,000 during a calendar year. A filer must disclose each source of income to the business entity if the filer's pro-rata share of the spouse's gross income from a single source was $10,000 or more during the reporting period. When a spouse is the sole owner of a business entity, a filer's community property interest in a spouse's share of income to the business entity must be disclosed when the spouse's pro-rata share of the gross income to the business entity from a single source was $20,000 or more during the reporting period.

Servicemembers Civil Relief Act

Pursuant to the Servicemembers Civil Relief Act[6], the period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns. (50 USCS Appx § 526.) The term "military service" means active duty. (50 USCS Appx § 511, subd. (2).)

SUMMARY OF THE EVIDENCE

Respondent David Cole ("Respondent Cole") was a member of the Pinole City Council and as such, was also a board member of the Pinole Redevelopment Agency in Pinole, CA, from 2000 to 2007.

At all relevant times, Respondent Cole owned and operated Pinole Valley Landscape (PVL) with his wife, Susan Cole. PVL provided services to and received substantial income from The Kivelstadt Group (TKG), a real estate developer active in the City of Pinole, whose projects included Pinole Valley Shopping Center, Pinole Vista Shopping Center, and Pinole Gateway. Each of these projects was involved in the governmental decisions Respondent Cole made, as detailed below. Furthermore, PVL contracted with TKG to provide commercial cleaning services for the Pinole Valley Shopping Center and the Pinole Vista Shopping Center. Thus, Respondent Cole personally benefitted from those decisions because he had contracts for the same projects on which he made governmental decisions.

On July 23, 2007, after Respondent Cole's misconduct became public through the local media, Respondent Cole fled by enlisting as a Private First Class in the United States Army for a four year enlistment. On August 27, 2007, Respondent Cole resigned his position as a member of the Pinole City Council. Pursuant to the Servicemembers Civil Relief Act, the applicable statutes of limitations in this matter were tolled during Respondent Cole's active duty military service from July 2007 – July 2011.

[6] The Servicemembers Civil Relief Act is contained in Title 50 Appendix of the United States Code Service Sections 501 et seq.

Counts 1, 4 – 5, 8 – 13, and 16 – 22
(Made Governmental Decisions in Which the Public Official Had a Financial Interest)

The relevant analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision are set forth below.

Step One: Respondent Was a Public Official as Defined By the Act

At all relevant times, Respondent Cole was a member of the Pinole City Council in Pinole, CA, and the Pinole City Council, including Respondent Cole, sat as the Pinole Redevelopment Agency. As a member of the Pinole City Council, Respondent was a member of a local government agency, namely, the City of Pinole, and therefore he was a public official as defined in Sections 82041 and 82048. Additionally, as a de facto member of the board for the Pinole Redevelopment Agency, Respondent was also a member of a local government agency. Therefore, Respondent was also a public official as defined in Sections 82041 and 82048 in his capacity as a board member of the Pinole Redevelopment Agency.

Step Two: Respondent Made Governmental Decisions

As a member of the Pinole City Council (PCC), and/or as a board member of the Pinole Redevelopment Agency (PRDA), Respondent made the following governmental decisions:

Count	Date of Decision	Body	Governmental Decision
1	10/21/2003	PCC and PRDA	Voted to approve a Disposition and Development Agreement, Ground Lease and Declaration of Covenants, Conditions and Restrictions between the Pinole Redevelopment Agency and TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, to construct an office building on Gateway parcels 401-220-028 and 401-410-012.
4	11/16/2004	PRDA	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute an extension to the construction loan on behalf of the Pinole Redevelopment Agency (PRDA) as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, regarding the development of a medical office building at Pinole Gateway West. TKG Pinole Gateway, LLC, requested a one-year extension.
5	01/18/2005	PRDA	Voted to approve three tenants for the Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. TKG Pinole Valley, LLC, proposed the following tenants: *Happy Sashimi*, *Papa John's Pizza*, and *Sign a Rama*.

Count	Date of Decision	Body	Governmental Decision
8	04/19/2005	PRDA	Voted to authorize TKG Pinole, LLC, which was a subsidiary of The Kivelstadt Group, to execute a lease with *Beverages and More!* as a potential tenant of the Pinole Vista Shopping Center. *Beverages and More!* would occupy the building formerly occupied by *The Good Guys*.
9	05/03/2005	PRDA	Voted to accept lease termination terms for a retail lease at Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. The retail lease was funded by the Pinole Redevelopment Agency (PRDA) for an Art Gallery for the Pinole Valley High School Conservatory of the Arts. However, due to funding cuts and budget restraints, the Conservatory Board voted to discontinue the Art Gallery, and requested that the lease terminate two years early. PRDA staff contacted TKG Pinole Valley, LLC, which agreed to terminate the lease.
10	08/02/2005	PRDA	Voted to authorize the Pinole Redevelopment Agency Executive Director to enter into an Exclusive Negotiating Agreement (ENA) with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group, regarding the Gateway Project. To allow the Pinole Redevelopment Agency (PRDA) and TKG to continue working together on the Gateway Project, an amended and restated ENA was prepared by PRDA staff for PRDA Board approval. The duration was increased from 12 months in the original ENA to 18 months. Other terms included: 1) Negotiation of the terms of a Disposition and Development Agreement (DDA); 2) Submission of an updated conceptual plan for the Gateway properties acceptable to the PRDA; 3) Provision of updated preliminary development schedules reasonably acceptable to the PRDA; 4) Provision of reasonable evidence of project equity commitments and financing; and 5) Retention of all studies and reports (if legally possible) prepared for the proposed development by the PRDA if a DDA is not entered into or if the Developer defaults.

Count	Date of Decision	Body	Governmental Decision
11	11/15/2005	PRDA	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Predevelopment Consulting Fee Agreement with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group. Pursuant to the Exclusive Negotiating Agreement between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Gateway Project, LLC (TKG), TKG performed various work in connection with the predevelopment of the Gateway East parcels, over the previous several years. In consideration of this work, and the consummation of the Purchase and Sale Agreement with Kaiser Permanente, a fee of $564,000, to be paid to TKG upon the close of escrow, was negotiated. The fee is to be paid from the proceeds of the sale.
12	02/21/2006	PCC	Voted to consent to the approval by the Pinole Redevelopment Agency of an Amended and Restated Ground Lease by and between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group regarding the Pinole Valley Shopping Center. The Amended and Restated Ground Lease includes two former gas station sites into the ground lease for the shopping center, which added 0.75 acres to the shopping center.
13	02/21/2006	PRDA	Voted to adopt Resolution 06-2006, approving Amendments to an existing Ground Lease for the Pinole Valley Shopping Center between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, in order to incorporate certain property owned by PRDA located at 2810 Pinole Valley Road into the ground lease, and to incorporate 2690 Pinole Valley Road into the ground lease, and to make certain other changes to the ground lease; approving the execution of the Amended and Restated Ground Lease and authorizing the negotiation and execution of a purchase and sale agreement for 2690 Pinole Valley Road; and approving reimbursement of $225,000 to TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, in costs incurred for redevelopment activities at 2690 and 2810 Pinole Valley Road. PRDA staff proposed the following transactions: 1) Enter into a purchase and sale agreement with TKG Pinole Valley, LLC, to purchase 2690 Pinole Valley Road (former Shell gas station site) for $602,650; 2) Enter into an Amended and Restated Ground Lease between PRDA and TKG Pinole Valley, LLC, that includes the addition of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) into the ground lease for the Pinole Valley Shopping Center, as well as other amendments; and 3) Reimbursement of

Count	Date of Decision	Body	Governmental Decision
			an amount not to exceed $225,000 for costs in the acquisition, demolition and holding of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) by TKG Pinole Valley, LLC, or related entities between 2004 and 2006.
16	03/21/2006	PRDA	Voted to authorize the expenditure of an amount not to exceed $330,000 in calendar year 2006 to be used exclusively to fund The Pinole Redevelopment Agency's 60% pro-rata share of the operating deficits of Pinole Valley Shopping Center (the "Center"), which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. One provision of the Amended and Restated Ground Lease approved on February 21, 2006, was how operating deficits at the Center in the absence of Albertson's, the Center's anchor tenant, would be handled. Pinole Redevelopment Agency (PRDA) staff recommended that the PRDA select the option to fund any deficit on a 60/40 split with TKG Pinole Valley, LLC, and this expenditure would fund the PRDA's share of any deficit in CY2006 based on staff projections.
17	03/21/2006	PCC and PRDA	Voted to approve the execution of an Amended and Restated Ground Lease for Pinole Valley Shopping Center between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, and approving reimbursement to TKG Pinole Valley, LLC, in an amount not to exceed $827,650. These are additional modifications to the Ground Lease which was amended and restated at the 02/21/2006 Pinole Redevelopment Agency Board Meeting. PRDA staff proposed the following transactions: 1) Enter into an Amended and Restated Ground Lease between PRDA and TKG Pinole Valley, LLC, that includes the addition of 2810 Pinole Valley Road (former Beacon gas station site) into the ground lease for the Pinole Valley Shopping Center, as well as the addition of 2690 Pinole Valley Road (former Shell gas station site), when remediated, into the ground lease, with an option for PRDA to purchase the site for $1 at any time during the term of the ground lease, with additional amendments; and 2) Reimbursement of an amount not to exceed $827,650 for costs in the acquisition, demolition and holding of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) by TKG Pinole Valley, LLC, or related entities between 2004 and 2006.

Count	Date of Decision	Body	Governmental Decision
18	07/18/2006	PRDA	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Loan Guarantee of a $4.425 Million credit line for TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, to continue funding the Pinole Valley Shopping Center. In order to facilitate the redevelopment of the Pinole Valley Shopping Center, Mechanics Bank offered a $4.425 million line of credit for 18 months. That line of credit carried the Pinole Valley Shopping Center through its re-tenanting and redevelopment. The loan was secured by the Pinole Valley Shopping Center's real estate, by TKG, by Tom Angstadt and Nancy Kivelson (both of TKG) individually, and by the Pinole Redevelopment Agency.
19	11/21/2006	PRDA	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a two-year extension to the construction loan documents on behalf of the Pinole Redevelopment Agency as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, regarding the development of a medical office building at Pinole Gateway West. TKG Pinole Gateway, LLC, requested a two-year extension. As part of the extension agreement, interest costs, closing costs, anticipated architectural and engineering fees, and reimbursement of TKG's out of pocket expenses related to the project would be rolled into the loan, bringing the loan amount to $2.0 million.
20	01/16/2007	PRDA	Voted to adopt Resolution 05-2007 to amend the existing Ground Lease previously amended and restated on 03/29/2006, between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, relating to 2690 – 2810 Pinole Valley Road, known as the Pinole Valley Shopping Center, in order to incorporate certain mutually negotiated agreements between PRDA and TKG Pinole Valley, LLC. The Amendment provided the foundation needed to accomplish the redevelopment of the Pinole Valley Shopping Center and provided the mechanism for the return of the public investment over time. The key components of it are: 1) The PRDA will invest an additional $3,500,000 into the shopping center as equity in order to enable TKG Pinole Valley LLC to attract sufficient construction and permanent financing to complete the project; 2) The current ownership split of 60% RDA and 40% TKG will change and the RDA will have 80% ownership versus 20% for TKG; 3) TKG may repurchase interest in the Center in $100,000 increments per 1% of ownership, up to a maximum of 40% total interest. The repurchase of 20% would

Count	Date of Decision	Body	Governmental Decision
			return $2,000,000 of the Agency's investment; 4) Future permanent refinancing of the Center, as increases in value allow for further debt, will be used to payback at least 50% of the RDA's remaining investment; 5) Even if the RDA's investment is fully repaid at some future date, the RDA will own 60% of the Center.
21	01/16/2007	PRDA	Voted to approve *Trader Joe's* as the proposed new anchor tenant in the Pinole Valley Shopping Center, which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Pinole Valley Shopping Center had been without an anchor tenant since January 2006.
22	01/16/2007	PRDA	Voted to authorize the Pinole Redevelopment Agency Executive Director to negotiate and execute a Reciprocal Easement Agreement with TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, regarding the Pinole Valley Shopping Center. The Pinole Valley Shopping Center consisted of four lots which did not enjoy common ownership. The Pinole Redevelopment Agency (PRDA) owned lots 1, 2 and 4. TKG Pinole Valley, LLC, owned lot 3. To facilitate the redevelopment of the Pinole Valley Shopping Center, a Reciprocal Easement Agreement was needed. This allowed for sites such as 2810 Pinole Valley Road (former Beacon gas station site), not currently part of the Pinole Valley Shopping Center due to environmental contamination, to be included in its uses. Clearance was received from the regulatory bodies overseeing that site for it to be graded and paved, thus allowing it to be used for parking for the Pinole Valley Shopping Center.

Step Three: Respondent Had an Economic Interest in The Kivelstadt Group (TKG)

At all relevant times, Respondent Cole owned and operated Pinole Valley Landscape (PVL) with his wife, Susan Cole. PVL provided steam cleaning and other exterior cleaning services for buildings and shopping centers.

On August 16, 2003, Susan Cole, on behalf of PVL, entered into three contracts entitled "Agreement For Maintenance Services," one with TKG Pinole Valley, LLC, one with TKG Pinole, LLC, and one with Jordex Management, Inc., which was the "agent" of both TKG Pinole Valley, LLC, and TKG Pinole, LLC. TKG Pinole Valley, LLC, and TKG Pinole, LLC, were subsidiaries of TKG. The details of these three contracts were as follows:

Site/Location	Owner(s)/ Property Managers	Summary of Services Provided	Compensation	Billing Cycle

Site/Location	Owner(s)/ Property Managers	Summary of Services Provided	Compensation	Billing Cycle
Pinole Valley Shopping Center	Property Owned by TKG Pinole Valley, LLC, and the Pinole Redevelopment Agency Property Manager: Jordex Management, Inc.	Steam clean storefronts, wash windows, sweep asphalt, clean corners, walkways and curbs, provide on-grounds maintenance staff and supplies, empty and realign receptacles, garbage collection, pick up litter, return shopping carts to stores, wipe down pay phones and mailboxes, remove graffiti, spot clean as needed.	**$1,467** (Site Work) **$694** (Day Porter)	Monthly
Pinole Vista Shopping Center	Property Owned by TKG Pinole, LLC, and the Pinole Redevelopment Agency Property Manager: Jordex Management, Inc.	Steam clean storefronts, wash windows, sweep asphalt, clean corners, walkways and curbs, provide on-grounds maintenance staff and supplies, empty and realign receptacles, garbage collection, pick up litter, return shopping carts to stores, wipe down pay phones and mailboxes, remove graffiti, spot clean as needed.	**$3,892** (Site Work) **$2,255** (Day Porter)	Monthly
Pinole Vista Shopping Center Restaurant Phase	Property Owned by the Pinole Redevelopment Agency Property Manager: Jordex Management, Inc.	Steam clean storefronts, sweep asphalt, clean corners, walkways and curbs, provide on-grounds maintenance staff and supplies, empty and realign receptacles, garbage collection, pick up litter, return shopping carts to stores, wipe down pay phones and mailboxes, remove graffiti, spot clean as needed.	**$853** (Site Work) **$520** (Day Porter)	Monthly
		Total Contracted Monthly Compensation	**$9,681**	

Between October 19, 2003, and February 28, 2006, PVL received the following income from TKG:

Count	Dates of Governmental Decisions	Total Amount Received from TKG w/in 12 months of Dates of Decisions
1	10/21/2003	$7,547.39
4	11/16/2004	$108,789.10
5	01/18/2005	$115,986.66
8	04/19/2005	$123,165.72
9	05/03/2005	$123,165.72
10	08/02/2005	$114,740.08
11	11/15/2005	$102,135.41

Count	Dates of Governmental Decisions	Total Amount Received from TKG w/in 12 months of Dates of Decisions
12, 13	02/21/2006	$74,763.54
16, 17	03/21/2006	$68,782.65
18	07/18/2006	$45,569.85
19	11/21/2006	$17,938.24
20, 21, 22	01/16/2007	$8,582.62

In total, Respondent Cole, through PVL, received $253,353 from TKG.

Accordingly, at all relevant times, Respondent Cole had an economic interest in TKG because he received well above five hundred dollars ($500) from TKG within 12 months prior to the time when each of the relevant governmental decisions was made. Thus, Respondent had an economic interest in TKG for the purposes of Section 87103, subdivision (c).

Step Four: Respondent's Economic Interest Was Directly Involved in the Decisions

TKG was directly involved in each of the relevant governmental decisions because, either directly or by an agent, TKG either initiated or was the subject of the proceeding concerning the decision before the Pinole City Council and/or the Pinole Redevelopment Agency, as detailed below:

Count	Governmental Decision	How is TKG Involved?
1	Voted to approve a Disposition and Development Agreement, Ground Lease and Declaration of Covenants, Conditions and Restrictions between the Pinole Redevelopment Agency and TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, to construct an office building on Gateway parcels 401-220-028 and 401-410-012.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
4	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute an extension to the construction loan on behalf of the Pinole Redevelopment Agency (PRDA) as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, regarding the development of a medical office building at Pinole Gateway West. TKG Pinole Gateway, LLC, requested a one-year extension.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
5	Voted to approve three tenants for the Pinole Valley Shopping Center, which was managed and operated under contract by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Under the contract, TKG Pinole Valley, LLC, must obtain approval of all proposed tenants from the Pinole Redevelopment Agency Board. TKG Pinole Valley, LLC, proposed the following tenants: *Happy Sashimi*, *Papa John's Pizza*, and *Sign a*	Directly –TKG initiated proceeding.

Count	Governmental Decision	How is TKG Involved?
	Rama.	
8	Voted to authorize TKG Pinole, LLC, which was a subsidiary of The Kivelstadt Group, to execute a lease with *Beverages and More!* as a potential tenant of the Pinole Vista Shopping Center. *Beverages and More!* would occupy the building formerly occupied by *The Good Guys*.	Directly –TKG initiated proceeding.
9	Voted to accept lease termination terms for a retail lease at Pinole Valley Shopping Center, which was managed and operated under contract by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Under the contract, TKG Pinole Valley, LLC, must obtain approval of all proposed lease terminations from the Pinole Redevelopment Agency Board. The retail lease was funded by the Pinole Redevelopment Agency (PRDA) for an Art Gallery for the Pinole Valley High School Conservatory of the Arts. However, due to funding cuts and budget restraints, the Conservatory Board voted to discontinue the Art Gallery, and requested that the lease terminate two years early. PRDA staff contacted TKG Pinole Valley, LLC, which agreed to terminate the lease.	Directly –TKG initiated proceeding.
10	Voted to authorize the Pinole Redevelopment Agency Executive Director to enter into an Exclusive Negotiating Agreement (ENA) with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group, regarding the Gateway Project. To allow the Pinole Redevelopment Agency (PRDA) and TKG to continue working together on the Gateway Project, an amended and restated ENA was prepared by PRDA staff for PRDA Board approval. The duration was increased from 12 months in the original ENA to 18 months. Other terms included: 1) Negotiation of the terms of a Disposition and Development Agreement (DDA); 2) Submission of an updated conceptual plan for the Gateway properties acceptable to the PRDA; 3) Provision of updated preliminary development schedules reasonably acceptable to the PRDA; 4) Provision of reasonable evidence of project equity commitments and financing; and 5) Retention of all studies and reports (if legally possible) prepared for the proposed development by the PRDA if a DDA is not entered into or if the Developer defaults.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
11	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Predevelopment Consulting Fee Agreement with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group. Pursuant to the Exclusive Negotiating Agreement between the Pinole Redevelopment Agency (PRDA) and TKG	Directly – TKG was the subject of the proceeding – approval of contract with TKG.

Count	Governmental Decision	How is TKG Involved?
	Pinole Gateway Project, LLC (TKG), TKG performed various work in connection with the predevelopment of the Gateway East parcels, over the previous several years. In consideration of this work, and the consummation of the Purchase and Sale Agreement with Kaiser Permanente, a fee of $564,000, to be paid to TKG upon the close of escrow, was negotiated. The fee is to be paid from the proceeds of the sale.	
12	Voted to consent to the approval by the Pinole Redevelopment Agency of an Amended and Restated Ground Lease by and between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group regarding the Pinole Valley Shopping Center. The Amended and Restated Ground Lease includes two former gas station sites into the ground lease for the shopping center, which added 0.75 acres to the shopping center.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
13	Voted to adopt Resolution 06-2006, approving Amendments to an existing Ground Lease for the Pinole Valley Shopping Center between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, in order to incorporate certain property owned by PRDA located at 2810 Pinole Valley Road into the ground lease, and to incorporate 2690 Pinole Valley Road into the ground lease, and to make certain other changes to the ground lease; approving the execution of the Amended and Restated Ground Lease and authorizing the negotiation and execution of a purchase and sale agreement for 2690 Pinole Valley Road; and approving reimbursement of $225,000 to TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, in costs incurred for redevelopment activities at 2690 and 2810 Pinole Valley Road. PRDA staff proposed the following transactions: 1) Enter into a purchase and sale agreement with TKG Pinole Valley, LLC, to purchase 2690 Pinole Valley Road (former Shell gas station site) for $602,650; 2) Enter into an Amended and Restated Ground Lease between PRDA and TKG Pinole Valley, LLC, that includes the addition of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) into the ground lease for the Pinole Valley Shopping Center, as well as other amendments; and 3) Reimbursement of an amount not to exceed $225,000 for costs in the acquisition, demolition and holding of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) by TKG Pinole Valley, LLC, or related entities between 2004 and 2006.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.

Count	Governmental Decision	How is TKG Involved?
16	Voted to authorize the expenditure of an amount not to exceed $330,000 in calendar year 2006 to be used exclusively to fund The Pinole Redevelopment Agency's 60% pro-rata share of the operating deficits of Pinole Valley Shopping Center (the "Center"), which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. One provision of the Amended and Restated Ground Lease approved on February 21, 2006, was how operating deficits at the Center in the absence of Albertson's, the Center's anchor tenant, would be handled. Pinole Redevelopment Agency (PRDA) staff recommended that the PRDA select the option to fund any deficit on a 60/40 split with TKG Pinole Valley, LLC, and this expenditure would fund the PRDA's share of any deficit in CY2006 based on staff projections.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
17	Voted to approve the execution of an Amended and Restated Ground Lease for Pinole Valley Shopping Center between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, and approving reimbursement to TKG Pinole Valley, LLC, in an amount not to exceed $827,650. These are additional modifications to the Ground Lease which was amended and restated at the 02/21/2006 Pinole Redevelopment Agency Board Meeting. PRDA staff proposed the following transactions: 1) Enter into an Amended and Restated Ground Lease between PRDA and TKG Pinole Valley, LLC, that includes the addition of 2810 Pinole Valley Road (former Beacon gas station site) into the ground lease for the Pinole Valley Shopping Center, as well as the addition of 2690 Pinole Valley Road (former Shell gas station site), when remediated, into the ground lease, with an option for PRDA to purchase the site for $1 at any time during the term of the ground lease, with additional amendments; and 2) Reimbursement of an amount not to exceed $827,650 for costs in the acquisition, demolition and holding of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) by TKG Pinole Valley, LLC, or related entities between 2004 and 2006.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
18	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Loan Guarantee of a $4.425 Million credit line for TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, to continue funding the Pinole Valley Shopping Center. In order to facilitate the redevelopment of the Pinole Valley Shopping Center, Mechanics Bank offered a $4.425 million line of credit for 18 months. That line of credit carried the Pinole	Directly – TKG was the subject of the proceeding – approval of contract with TKG.

Count	Governmental Decision	How is TKG Involved?
	Valley Shopping Center through its re-tenanting and redevelopment. The loan was secured by the Pinole Valley Shopping Center's real estate, by TKG, by Tom Angstadt and Nancy Kivelson (both of TKG) individually, and by the Pinole Redevelopment Agency.	
19	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a two-year extension to the construction loan documents on behalf of the Pinole Redevelopment Agency as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, regarding the development of a medical office building at Pinole Gateway West. TKG Pinole Gateway, LLC, requested a two-year extension. As part of the extension agreement, interest costs, closing costs, anticipated architectural and engineering fees, and reimbursement of TKG's out of pocket expenses related to the project would be rolled into the loan, bringing the loan amount to $2.0 million.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.
20	Voted to adopt Resolution 05-2007 to amend the existing Ground Lease previously amended and restated on 03/29/2006, between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, relating to 2690 – 2810 Pinole Valley Road, known as the Pinole Valley Shopping Center, in order to incorporate certain mutually negotiated agreements between PRDA and TKG Pinole Valley, LLC. The Amendment provided the foundation needed to accomplish the redevelopment of the Pinole Valley Shopping Center and provided the mechanism for the return of the public investment over time. The key components of it are: 1) The PRDA will invest an additional $3,500,000 into the shopping center as equity in order to enable TKG Pinole Valley LLC to attract sufficient construction and permanent financing to complete the project; 2) The current ownership split of 60% RDA and 40% TKG will change and the RDA will have 80% ownership versus 20% for TKG; 3) TKG may repurchase interest in the Center in $100,000 increments per 1% of ownership, up to a maximum of 40% total interest. The repurchase of 20% would return $2,000,000 of the Agency's investment; 4) Future permanent refinancing of the Center, as increases in value allow for further debt, will be used to payback at least 50% of the RDA's remaining investment; /// 5) Even if the RDA's investment is fully repaid at some future date, the RDA will own 60% of the Center.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.

Count	Governmental Decision	How is TKG Involved?
21	Voted to approve *Trader Joe's* as the proposed new anchor tenant in the Pinole Valley Shopping Center, which was managed and operated under contract by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Under the contract, TKG Pinole Valley, LLC, must obtain approval of all proposed tenants from the Pinole Redevelopment Agency Board. Pinole Valley Shopping Center had been without an anchor tenant since January 2006.	Directly –TKG initiated proceeding.
22	Voted to authorize the Pinole Redevelopment Agency Executive Director to negotiate and execute a Reciprocal Easement Agreement with TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, regarding the Pinole Valley Shopping Center. The Pinole Valley Shopping Center consisted of four lots which did not enjoy common ownership. The Pinole Redevelopment Agency (PRDA) owned lots 1, 2 and 4. TKG Pinole Valley, LLC, owned lot 3. To facilitate the redevelopment of the Pinole Valley Shopping Center, a Reciprocal Easement Agreement was needed. This allowed for sites such as 2810 Pinole Valley Road (former Beacon gas station site), not currently part of the Pinole Valley Shopping Center due to environmental contamination, to be included in its uses. Clearance was received from the regulatory bodies overseeing that site for it to be graded and paved, thus allowing it to be used for parking for the Pinole Valley Shopping Center.	Directly – TKG was the subject of the proceeding – approval of contract with TKG.

Therefore, TKG was directly involved in the above governmental decisions either because TKG initiated the proceeding, or TKG was the subject of the proceeding. (Regulation 18704.1, subd. (a).)

Step Five: Applicable Materiality Standard

Since TKG was directly involved in each of the relevant governmental decisions, the financial effect of each of the governmental decisions is presumed to be material. (Regulation 18705.3, subd. (a).)

Step Six: It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, and not just a mere possibility, that the applicable materiality standard will be met as a result of the governmental decision at issue. (Regulation 18706, subd. (a).) Factors that may be considered in making this determination include the extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction, the scope of the governmental decision in question and the extent to which the

occurrence of the material financial effect is contingent upon intervening events. (Regulation 18706, subd. (b).)

The material financial effects on TKG of Respondent Cole's relevant governmental decisions were reasonably foreseeable, as follows:

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
1	Voted to approve a Disposition and Development Agreement, Ground Lease and Declaration of Covenants, Conditions and Restrictions between the Pinole Redevelopment Agency and TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, to construct an office building on Gateway parcels 401-220-028 and 401-410-012.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a contract with TKG wherein TKG could construct an office building. This decision would affect TKG's income earning capacity because once constructed, TKG would lease the office space for compensation. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
4	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute an extension to the construction loan on behalf of the Pinole Redevelopment Agency (PRDA) as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, regarding the development of a medical office building at Pinole Gateway West. TKG Pinole Gateway, LLC, requested a one-year extension.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to authorize the extension of TKG's construction loan for the office building at the Gateway Project. This decision would affect TKG's income earning capacity because once constructed, TKG would lease the office space for compensation, and the extension gives TKG more time to do so. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
		that the decision would have a material financial impact on TKG.
5	Voted to approve three tenants for the Pinole Valley Shopping Center, which was managed and operated under contract by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Under the contract, TKG Pinole Valley, LLC, must obtain approval of all proposed tenants from the Pinole Redevelopment Agency Board. TKG Pinole Valley, LLC, proposed the following tenants: *Happy Sashimi*, *Papa John's Pizza*, and *Sign a Rama*.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve three tenants for the Pinole Valley Shopping Center. This decision would affect TKG's income earning capacity because TKG managed, operated and partially owned Pinole Valley Shopping Center, and thus earned income from the leased spaces. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
8	Voted to authorize TKG Pinole, LLC, which was a subsidiary of The Kivelstadt Group, to execute a lease with *Beverages and More!* as a potential tenant of the Pinole Vista Shopping Center. *Beverages and More!* would occupy the building formerly occupied by *The Good Guys*.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a potential tenant for the Pinole Vista Shopping Center. This decision would affect TKG's income earning capacity because TKG managed, operated and partially owned Pinole Vista Shopping Center, and thus earned income from the leased spaces. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. /// Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
9	Voted to accept lease termination terms for a retail lease at Pinole Valley Shopping Center, which was managed and operated under contract by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Under the contract, TKG Pinole Valley, LLC, must obtain approval of all proposed lease terminations from the Pinole Redevelopment Agency Board. The retail lease was funded by the Pinole Redevelopment Agency (PRDA) for an Art Gallery for the Pinole Valley High School Conservatory of the Arts. However, due to funding cuts and budget restraints, the Conservatory Board voted to discontinue the Art Gallery, and requested that the lease terminate two years early. PRDA staff contacted TKG Pinole Valley, LLC, which agreed to terminate the lease.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve the termination of one retail lease for the Pinole Valley Shopping Center. This decision would affect TKG's income earning capacity because TKG managed, operated and partially owned Pinole Valley Shopping Center, and thus earned income from the leased spaces. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
10	Voted to authorize the Pinole Redevelopment Agency Executive Director to enter into an Exclusive Negotiating Agreement (ENA) with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group, regarding the Gateway Project. To allow the Pinole Redevelopment Agency (PRDA) and TKG to continue working together on the Gateway Project, an amended and restated ENA was prepared by PRDA staff for PRDA Board approval. The duration was increased from 12 months in the original ENA to 18 months. Other terms included: 1) Negotiation of the terms of a Disposition and Development Agreement (DDA); 2) Submission of an updated conceptual plan for the Gateway properties acceptable to the PRDA; 3) Provision of updated preliminary development schedules reasonably acceptable to the PRDA; 4) Provision of reasonable evidence of project equity commitments and financing; and 5) Retention of all studies and reports (if	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a contract with TKG wherein TKG could design and construct an office building and lease the office space. This decision would affect TKG's income earning capacity because once constructed, TKG would lease the office space for profit. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
	legally possible) prepared for the proposed development by the PRDA if a DDA is not entered into or if the Developer defaults.	
11	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Predevelopment Consulting Fee Agreement with TKG Gateway Project, LLC, a subsidiary of The Kivelstadt Group. Pursuant to the Exclusive Negotiating Agreement between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Gateway Project, LLC (TKG), TKG performed various work in connection with the predevelopment of the Gateway East parcels, over the previous several years. In consideration of this work, and the consummation of the Purchase and Sale Agreement with Kaiser Permanente, a fee of $564,000, to be paid to TKG upon the close of escrow, was negotiated. The fee is to be paid from the proceeds of the sale.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a fee of $564,000, to be paid to TKG in connection with various work performed by TKG related to the Gateway Project. This decision would obviously affect TKG's income. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
12	Voted to consent to the approval by the Pinole Redevelopment Agency of an Amended and Restated Ground Lease by and between the Pinole Redevelopment Agency and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group regarding the Pinole Valley Shopping Center. The Amended and Restated Ground Lease includes two former gas station sites into the ground lease for the shopping center, which added 0.75 acres to the shopping center.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote consenting to the approval of a contract with TKG wherein TKG could manage and operate the Pinole Valley Shopping Center. This decision would affect TKG's income earning capacity because TKG would manage and operate Pinole Valley Shopping Center for compensation. The Pinole City Council decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. /// Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
13	Voted to adopt Resolution 06-2006,	Not only was TKG engaged in business

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
	approving Amendments to an existing Ground Lease for the Pinole Valley Shopping Center between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, in order to incorporate certain property owned by PRDA located at 2810 Pinole Valley Road into the ground lease, and to incorporate 2690 Pinole Valley Road into the ground lease, and to make certain other changes to the ground lease; approving the execution of the Amended and Restated Ground Lease and authorizing the negotiation and execution of a purchase and sale agreement for 2690 Pinole Valley Road; and approving reimbursement of $225,000 to TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, in costs incurred for redevelopment activities at 2690 and 2810 Pinole Valley Road. PRDA staff proposed the following transactions: 1) Enter into a purchase and sale agreement with TKG Pinole Valley, LLC, to purchase 2690 Pinole Valley Road (former Shell gas station site) for $602,650; 2) Enter into an Amended and Restated Ground Lease between PRDA and TKG Pinole Valley, LLC, that includes the addition of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) into the ground lease for the Pinole Valley Shopping Center, as well as other amendments; and 3) Reimbursement of an amount not to exceed $225,000 for costs in the acquisition, demolition and holding of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) by TKG Pinole /// Valley, LLC, or related entities between 2004 and 2006.	activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a contract with TKG wherein TKG could manage and operate the Pinole Valley Shopping Center. This decision would affect TKG's income earning capacity because TKG would manage and operate Pinole Valley Shopping Center for compensation. The Pinole Redevelopment Agency decision was not contingent upon intervening events other than the consent of the Pinole City Council, which was composed of the same members as the Pinole Redevelopment Agency, and the City Council's consent was given prior to this decision being made. Thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
16	Voted to authorize the expenditure of an amount not to exceed $330,000 in calendar year 2006 to be used exclusively to fund The Pinole Redevelopment Agency's 60% pro-rata share of the operating deficits of Pinole Valley Shopping Center (the "Center"), which was managed and operated by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. One provision of the Amended and Restated Ground Lease approved on February 21, 2006, was how operating deficits at the Center in the absence of Albertson's, the Center's anchor tenant, would be handled. Pinole Redevelopment Agency (PRDA) staff recommended that the PRDA select the option to fund any deficit on a 60/40 split with TKG Pinole Valley, LLC, and this expenditure would fund the PRDA's share of any deficit in CY2006 based on staff projections.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to authorize the expenditure of an amount not to exceed $330,000 in calendar year 2006 to be used exclusively to fund The Pinole Redevelopment Agency's 60% pro-rata share of the operating deficits of Pinole Valley Shopping Center, as provided by the Amended and Restated Ground Lease between the Pinole Redevelopment Agency (PRDA) and TKG. This decision would affect TKG's income earning capacity because TKG managed, operated and partially owned Pinole Valley Shopping Center, and this decision allowed the PRDA to share the operating deficit burden with TKG. The PRDA decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
17	Voted to approve the execution of an Amended and Restated Ground Lease for Pinole Valley Shopping Center between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, and approving reimbursement to TKG Pinole Valley, LLC, in an amount not to exceed $827,650. These are additional modifications to the Ground Lease which was amended and restated at the 02/21/2006 Pinole Redevelopment Agency Board Meeting. PRDA staff proposed the following transactions: 1) Enter into an Amended and Restated Ground Lease between PRDA and TKG Pinole Valley, LLC, that includes the addition of 2810 Pinole Valley Road	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a contract with TKG wherein TKG could manage and operate the Pinole Valley Shopping Center and approved a $827,650 reimbursement to TKG. This decision would affect TKG's income earning capacity because TKG would manage and operate Pinole Valley Shopping Center for compensation, and the reimbursement part of the decision would obviously affect TKG's income. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
	(former Beacon gas station site) into the ground lease for the Pinole Valley Shopping Center, as well as the addition of 2690 Pinole Valley Road (former Shell gas station site), when remediated, into the ground lease, with an option for PRDA to purchase the site for $1 at any time during the term of the ground lease, with additional amendments; and 2) Reimbursement of an amount not to exceed $827,650 for costs in the acquisition, demolition and holding of 2690 Pinole Valley Road (former Shell gas station site) and 2810 Pinole Valley Road (former Beacon gas station site) by TKG Pinole Valley, LLC, or related entities between 2004 and 2006.	substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
18	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a Loan Guarantee of a $4.425 Million credit line for TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, to continue funding the Pinole Valley Shopping Center. In order to facilitate the redevelopment of the Pinole Valley Shopping Center, Mechanics Bank offered a $4.425 million line of credit for 18 months. That line of credit carried the Pinole Valley Shopping Center through its re-tenanting and redevelopment. The loan was secured by the Pinole Valley Shopping Center's real estate, by TKG, by Tom Angstadt and Nancy Kivelson (both of TKG) individually, and by the Pinole Redevelopment Agency.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to authorize a Loan Guarantee of a $4.425 Million credit line for TKG to be used to facilitate redevelopment of the Pinole Valley Shopping Center. This decision would affect TKG's income earning capacity because TKG managed, operated and partially owned Pinole Valley Shopping Center, and any redevelopment of the Pinole Valley Shopping Center would likely increase revenue from the Pinole Valley Shopping Center. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
19	Voted to authorize the Pinole Redevelopment Agency Executive Director to execute a two-year extension to the construction loan documents on behalf of the Pinole Redevelopment Agency as the guarantor of the construction loan obtained by TKG Pinole Gateway, LLC, a subsidiary of The Kivelstadt Group, regarding the development of a medical office building at Pinole Gateway West. TKG Pinole Gateway, LLC, requested a two-year extension. As part of the extension agreement, interest costs, closing costs, anticipated architectural and engineering fees, and reimbursement of TKG's out of pocket expenses related to the project would be rolled into the loan, bringing the loan amount to $2.0 million.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to authorize the extension of TKG's construction loan for the development of a medical office building at the Gateway Project. This decision would affect TKG's income earning capacity because once constructed, TKG would lease the office space for compensation, and the extension gives TKG more time to do so. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
20	Voted to adopt Resolution 05-2007 to amend the existing Ground Lease previously amended and restated on 03/29/2006, between the Pinole Redevelopment Agency (PRDA) and TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group, relating to 2690 – 2810 Pinole Valley Road, known as the Pinole Valley Shopping Center, in order to incorporate certain mutually negotiated agreements between PRDA and TKG Pinole Valley, LLC. The Amendment provided the foundation needed to accomplish the redevelopment of the Pinole Valley Shopping Center and provided the mechanism for the return of the public investment over time. The key components of it are: 1) The PRDA will invest an additional $3,500,000 into the shopping center as equity in order to enable TKG Pinole Valley LLC to attract sufficient construction and permanent financing to complete the project; 2) The current	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a contract with TKG wherein TKG could manage and operate the Pinole Valley Shopping Center and approved a $3,500,000 investment by the Pinole Redevelopment Agency into the Pinole Valley Shopping Center in order to enable TKG Pinole Valley LLC to attract sufficient construction and permanent financing to complete the project. This decision would affect TKG's income earning capacity because TKG would manage and operate the Pinole Valley Shopping Center for compensation, and any redevelopment of the Pinole Valley Shopping Center would likely increase revenue from the Pinole Valley Shopping Center. Additionally, this decision affects the TKG's ownership share of the Pinole Valley Shopping Center. The

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
	ownership split of 60% RDA and 40% TKG will change and the RDA will have 80% ownership versus 20% for TKG; 3) TKG may repurchase interest in the Center in $100,000 increments per 1% of ownership, up to a maximum of 40% total interest. The repurchase of 20% would return $2,000,000 of the Agency's investment; 4) Future permanent refinancing of the Center, as increases in value allow for further debt, will be used to payback at least 50% of the RDA's remaining investment; 5) Even if the RDA's investment is fully repaid at some future date, the RDA will own 60% of the Center.	Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
21	Voted to approve *Trader Joe's* as the proposed new anchor tenant in the Pinole Valley Shopping Center, which was managed and operated under contract by TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt Group. Under the contract, TKG Pinole Valley, LLC, must obtain approval of all proposed tenants from the Pinole Redevelopment Agency Board. Pinole Valley Shopping Center had been without an anchor tenant since January 2006.	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to approve a new anchor tenant for the Pinole Valley Shopping Center. This decision would affect TKG's income earning capacity because TKG managed, operated and partially owned Pinole Valley Shopping Center, and thus earned income from the leased spaces. Additionally, the addition of a new anchor tenant would help increase revenue for the Center by increasing demand for other retail spaces offered. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.
22	Voted to authorize the Pinole Redevelopment Agency Executive Director to negotiate and execute a Reciprocal Easement Agreement with TKG Pinole Valley, LLC, a subsidiary of The Kivelstadt	Not only was TKG engaged in business activity in Pinole, the governmental decision at issue here involved TKG's business activity in Pinole. The governmental decision was a vote to

Count	Governmental Decision	Material Financial Effect is Reasonably Foreseeable
	Group, regarding the Pinole Valley Shopping Center. The Pinole Valley Shopping Center consisted of four lots which did not enjoy common ownership. The Pinole Redevelopment Agency (PRDA) owned lots 1, 2 and 4. TKG Pinole Valley, LLC, owned lot 3. To facilitate the redevelopment of the Pinole Valley Shopping Center, a Reciprocal Easement Agreement was needed. This allowed for sites such as 2810 Pinole Valley Road (former Beacon gas station site), not currently part of the Pinole Valley Shopping Center due to environmental contamination, to be included in its uses. Clearance was received from the regulatory bodies overseeing that site for it to be graded and paved, thus allowing it to be used for parking for the Pinole Valley Shopping Center.	approve a contract with TKG wherein TKG could manage and operate the Pinole Valley Shopping Center and approved a $3,500,000 investment by the Pinole Redevelopment Agency into the Pinole Valley Shopping Center in order to enable TKG Pinole Valley LLC to attract sufficient construction and permanent financing to complete the project. This decision would affect TKG's income earning capacity because TKG would manage and operate the Pinole Valley Shopping Center for compensation, and any redevelopment of the Pinole Valley Shopping Center would likely increase revenue from the Pinole Valley Shopping Center. Additionally, this decision affects the TKG's ownership share of the Pinole Valley Shopping Center. The Pinole Redevelopment Agency decision was not contingent upon intervening events and, thus, it was substantially likely that the vote would have resulted in the financial impact on TKG as described above. Accordingly, it was reasonably foreseeable that the decision would have a material financial impact on TKG.

Thus, by making the above governmental decisions in which he had a financial interest, Respondent Cole committed 16 violations of Government Code Section 87100.

Counts 2 – 3, 6 – 7, 14 – 15 and 23

(Failure to Disclose Income, Business Positions, and Sources of Income on Annual Statements of Economic Interests)

Pursuant to Section 87200, as a member of the Pinole City Council, Respondent Cole was obligated to report all economic interests he held during each preceding calendar year in his annual statements of economic interests (SEI). Respondent Cole filed the following annual SEIs:

Count	Statement of Economic Interests	Date Original Statement Filed
2 and 3	2003 Annual	02/03/2004
6 and 7	2004 Annual	02/16/2005
14 and 15	2005 Annual	03/17/2006
23	2006 Annual	01/30/2007

In calendar years 2003, 2004, 2005, and 2006, Respondent Cole owned, operated and received income from Pinole Valley Landscape (PVL). However, Respondent Cole failed to disclose any income from PVL in calendar years 2003, 2004 and 2005, and in calendar years 2003, 2004, 2005, and 2006, Respondent Cole failed to disclose his business position with PVL.

Additionally, in calendar years 2003, 2004, 2005, and 2006, Respondent Cole, through PVL, earned income from TKG as follows:

Calendar Year	Year-End Total
2003	**$28,057.55**
2004	**$126,145.90**
2005	**$90,566.63**
2006	**$8,582.62**
Total	**$253,352.70**

Respondent Cole failed to disclose any income from TKG in his statements of economic interest for calendar years 2003, 2004 and 2005.

On January 30, 2007, in response to several newspaper articles, Respondent Cole filed amended statements of economic interests for calendar years 2003, 2004 and 2005 to include income from PVL and TKG. However, these amendments did not include his business position with PVL, and Respondent Cole did not amend his 2006 annual statement of economic interests.

By failing to disclose income from and his business position with Pinole Valley Landscape, in his statements of economic interests for calendar years 2003, 2004, 2005, and 2006, filed as indicated above, Respondent Cole committed three violations of Government Code Sections 87207, subdivision (b), and four violations of Government Code Section 87209. By failing to disclose income from TKG, in his statements of economic interests for calendar years 2003, 2004 and 2005, filed as indicated above, Respondent Cole committed three violations of Government Code Section 87207, subdivision (b)(2).

CONCLUSION

This matter consists of 23 counts of violating the Act, each carrying a maximum administrative penalty of $5,000, for a total maximum administrative penalty of $115,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

1. The seriousness of the violations;
2. The presence or lack of intent to deceive the voting public;
3. Whether the violation was deliberate, negligent, or inadvertent;

4. Whether the Respondent demonstrated good faith in consulting with Commission staff;
5. Whether there was a pattern of violations; and
6. Whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Respondent Cole engaged in a pattern of violations from 2003 through 2007 in which he repeatedly made governmental decisions involving a significant source of income to him through his privately owned business. For calendar years 2003 – 2006, Respondent Cole's business, Pinole Valley Landscape (PVL), earned $253,352.70 from The Kivelstadt Group (TKG). In conjunction, he failed to disclose income from PVL, his business position with PVL, and TKG as a source of income to PVL on his statements of economic interests for 2003 – 2006.

Furthermore, PVL contracted with TKG to provide commercial cleaning services for the Pinole Valley Shopping Center and the Pinole Vista Shopping Center, two of TKG's projects which were involved in 11 of the 16 conflicts of interests violations in this matter. Thus, Respondent Cole personally benefitted from those decisions because he had contracts for the same projects on which he made governmental decisions. Thus, Respondent Cole's actions, taken as a whole, show an intent to deceive the voting public, and his actions appear to have been deliberate. Additionally, Respondent Cole fled rather than face his troubles – shortly after the local media ran several stories regarding his misconduct, Respondent Cole enlisted in the United States Army, and resigned his position on the Pinole City Council. Moreover, Respondent Cole never responded in any way to communications regarding this case from the Enforcement Division.

In mitigation, Respondent has no prior history of violating the Act.

For Counts 1, 4 – 5, 8 – 13, and 16 – 22, the conduct of participating in a governmental decision in which an official has a financial interest is a serious violation of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial interest. For Counts 2 – 3, 6 – 7, 14 – 15 and 23, failure to disclose income, business positions, and sources of income in statements of economic interests is also a serious violation of the Act as disclosure omissions create an appearance of impropriety. Recent prior stipulated enforcement actions approved by the Commission involving violations of the same Government Code sections as in this Default are as follows:

Conflicts of Interests:

- **In the Matter of Louie Martinez; FPPC No. 09/261.** – Respondent, as a Senior Project Manager for the City of Irvine, used his official position to influence a governmental decision in which he had reason to know that he had a financial interest by inspecting civic center landscaping work performed by Artistic Maintenance, Inc., which was a source of gifts of $390 or more to Respondent, and based upon this inspection, he approved an invoice for payment of approximately $86,000 to Artistic Maintenance, Inc. Penalty per relevant count: $4,000. Approved by Commission June 2011.

- **In the Matter of Dendra Dengler, FPPC No.09/438** – Respondent made a governmental decision in which she had a financial interest in her capacity as president of the board of directors for the Manila Community Services District by voting to approve the District's purchase of real property which was adjacent to real property she owned and used as her personal residence. Penalty per relevant count: $4,000. Approved by Commission January 2011.

- **In the Matter of Lawrence Franzella, FPPC No. 04/004.** – Respondent, as mayor of the City of San Bruno, made a governmental decision, which had a material financial effect on his real property, by voting to approve a plan to relocate the train station that was within 500 feet of rental real property owned by Respondent. Penalty per relevant count: $5,000. Approved by Commission December 2008.

Statements of Economic Interests – Non-Disclosure:

- **In the Matter of Wayne Virag, FPPC No.06/339** – Respondent failed to disclose all investments, real property and income on two of his SEIs. Penalty per relevant count: $1,000. Approved by Commission December 2009.

- **In the Matter of Martha M. Escutia, FPPC No. 04/407.** – Respondent, while a member of the State Senate, failed to disclose sources of income of $20,000 or more to her spouse's solely-owned business entity on her initially-filed 2002 and 2003 annual statements of economic interests. Penalty per relevant count: $1,000. Approved by Commission August 2008.

- **In the Matter of William G. Horn, FPPC No. 05/212** – Respondent failed to disclose sources of income on his SEI over a two year period. Penalty per relevant count: $1,500. Approved by Commission September 2007.

The penalties recommended for the conflicts of interests counts are consistent with the agreed upon penalties in the comparable cases named above. The maximum fine amount is appropriate here because of the deliberate nature of the violations in this case, and because of a complete lack of cooperation with this administrative action.

However, significantly higher penalties are warranted for the SEI non-disclosure counts in this case than was agreed upon in the comparable cases above. Here, Respondent Cole failed to disclose the exact sources of income which were directly affected by the decisions he made as a public official. Additionally, Respondent did not cooperate with the investigation of this case, and he attempted to avoid prosecution of these transgressions by enlisting in the U.S. Army. Respondent amended three of the four SEI's in question, but several years after they were due, and only after media reports surfaced regarding his sources of income. Thus, taken as a whole, Respondent's actions show an intent to deceive the voting public, and his actions appear to have been deliberate.

RECOMMENDED PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of a penalty of One Hundred Eleven Thousand Five Hundred Dollars ($111,500). Five Thousand Dollars ($5,000) each for Counts 1, 4 – 5, 8 – 13, and 16 – 22, and Four Thousand Five Hundred Dollars ($4,500) each for Counts 2 – 3, 6 – 7, 14 – 15 and 23.

* * * * *