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7  
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

FPPC No. 09/438

12 DENDRA DENGLER,

STIPULATION, DECISION AND ORDER

13 Respondent.  
14

15 **STIPULATION**

16 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,  
17 and Respondent Dendra Dengler hereby agree that this Stipulation will be submitted for consideration by  
18 the Fair Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
20 matter and to reach a final disposition without the necessity of holding an additional administrative  
21 hearing to determine the liability of Respondent.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at  
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Dendra Dengler, in  
2 her capacity as President of the Board of Directors for the Manila Community Services District, made a  
3 governmental decision in which she had a financial interest, in violation of Government Code section  
4 87100 (1 count).

5 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,  
6 is a true and accurate summary of the facts in this matter.

7 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and  
8 Respondent agrees to the Commission imposing upon her an administrative penalty in the amount of  
9 \$4,000. A cashier's check or money order from Respondent totaling said amount, made payable to the  
10 "General Fund of the State of California," is submitted with this Stipulation as full payment of the  
11 administrative penalty and shall be held by the State of California until the Commission issues its  
12 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to  
13 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the  
14 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in  
15 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and  
16 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the  
17 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
18 shall be disqualified because of prior consideration of this Stipulation.

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20 Dated: \_\_\_\_\_

\_\_\_\_\_  
Roman G. Porter, Executive Director  
Fair Political Practices Commission

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23 Dated: \_\_\_\_\_

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Dendra Dengler, Respondent

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Dendra Dengler,” FPPC No. 09/438,  
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
4 Practices Commission, effective upon execution below by the Chairman.

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6 IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_ Dan Schnur  
Chairman

## EXHIBIT 1

### INTRODUCTION

At all relevant times, Respondent Dendra Dengler was a member of the Board of Directors for the Manila Community Services District.

Under the Political Reform Act (the “Act”)<sup>1</sup>, public officials, including members of local governmental agencies, are prohibited from making, participating in making, or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

For purposes of this Stipulation, Respondent’s violation of the Act is set forth as follows:

COUNT 1: On approximately July 27, 2006, Respondent Dendra Dengler, in her capacity as President of the Board of Directors for the Manila Community Services District, made a governmental decision in which she had a financial interest, in violation of Section 87100.

### SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

#### Conflicts of Interest

The primary purpose of 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).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has 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 an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps

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<sup>1</sup> The 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.

to consider when determining whether an individual has a conflict-of-interest in a governmental decision.<sup>2</sup>

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include a member of a 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. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has a financial interest in any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Section 87103, subd. (b).)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.) Real property in which a public official has an economic interest is directly involved in a governmental decision if any part of it is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. (Regulation 18704.2, subd. (a)(1).)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is a directly involved parcel of real property, the financial effect is presumed to be material. (Regulation 18705.2, subd. (a)(1).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

### **SUMMARY OF THE FACTS**

As stated above, at all relevant times, Respondent Dendra Dengler was a member of the Board of Directors for the Manila Community Services District (the “District”).

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<sup>2</sup> The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

### **Count 1: Conflict of Interest**

On approximately July 27, 2006, Respondent Dendra Dengler, acting in her capacity as President of the Board of Directors for the District, voted to approve the purchase of certain real property, which is hereafter referred to as the Celestre parcel.

The Celestre parcel—located in the unincorporated area of Humboldt County—was within 500 feet of real property owned by Respondent in that it was adjacent to Respondent’s home. In purchasing the property, the Board of Directors determined that the property was appropriate for use in the District’s Parks and Recreation Program and for wildlife conservation and habitat restoration purposes.

As a member of the Board of Directors for the District, Respondent was a public official. Her vote to approve the purchase of the Celestre parcel amounted to making a governmental decision that affected her economic interest in real property where she resided. Her economic interest was directly involved because it was adjacent to the Celestre parcel that was the subject of her vote. At the time of the vote, it was reasonably foreseeable that the District’s purchase of the Celestre parcel would have a material financial effect on Respondent’s economic interest, especially considering: (i) the District’s determination that the Celestre parcel was appropriate for use in the District’s Parks and Recreation Program and for wildlife conservation and habitat restoration purposes; and (ii) the Celestre parcel was adjacent to Respondent’s residence.

During the many months leading up to the ultimate acquisition of the Celestre parcel, Respondent engaged in discussions about and voted in favor of numerous other agenda items that paved the way for the District to purchase the Celestre parcel. Also, there were related house-keeping votes that followed the vote described above. Although Respondent generally voted in furtherance of acquisition when these matters came up, in virtually every case, the votes were unanimous.

In voting as described above, Respondent Dendra Dengler committed one violation of Section 87100.

### **CONCLUSION**

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;

(3) Whether the violation was deliberate, negligent or inadvertent;

(4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);

(5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that a governmental decision was made on the basis of a public official's financial interest.

Administrative penalties for violations of the Act vary depending upon the specific facts of each case. In this case, the following aggravating and mitigating factors are present.

#### **Factors in Aggravation**

The Celestre parcel was adjacent to Respondent's residence, and she should have known that she had a conflict of interest.

Respondent's vote to acquire the Celestre parcel was the culmination of many votes and discussions on her part, which took place over many months, and there was ample opportunity for Respondent to reflect and realize that she had a conflict of interest.

#### **Factors in Mitigation**

Respondent cooperated with the Enforcement Division of the Fair Political Practices Commission during all phases of the investigation and by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held.

Respondent does not have a history of violating the Act, and she was not a "swing" vote with respect to the acquisition of the Celestre parcel.

Respondent maintains that the District never informed her that she might have a conflict of interest, and the District's interest in acquiring the Celestre parcel pre-dated her becoming a member of the Board of Directors.

Respondent maintains that she first received ethics training in June 2006, which did not cover conflicts involving personal residences, and that consequently she was unaware of any conflict during the time period of the acquisition of the Celestre property in question.

Respondent further maintains that she repeatedly inquired of District staff as to the propriety of her voting on the acquisition and was assured that there was no conflict.

**Penalty**

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of an agreed upon penalty of \$4,000.