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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 12/192
13 HAROLD GRIFFITH)
14 Respondent.) STIPULATION, DECISION and
15) ORDER
16)
17)

18 Complainant, the Fair Political Practices Commission, and Respondent Harold Griffith agree that
19 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
20 regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Harold Griffith violated the Political Reform
4 Act by when, on October 20, 2011, he attempted to use his official position to influence a governmental
5 decision in which he had a financial interest, in violation of Government Code Section 87100 (1 count).
6 This count is described in Exhibit 1, which is attached hereto and incorporated by reference as though
7 fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Three Thousand Dollars (\$3,000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

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21 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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23
24 Dated: _____

Harold Griffith, Respondent

EXHIBIT 1

INTRODUCTION

Respondent Harold Griffith was President of the Rancho Adobe Fire Protection District (“District”) at all times relevant to this complaint. As President of the District, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent impermissibly attempted to use his official position to influence the making of a governmental decision in which he had a financial interest, by testifying before the Cotati Design Review Committee meeting on October 20, 2011.

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

COUNT 1: On October 20, 2011, Respondent Harold Griffith, President of the Rancho Adobe Fire Protection District, attempted to use his official position to influence a governmental decision in which he had a financial interest, by testifying before the Cotati Design Review Committee regarding proposed roadway modifications that are a component of the Old Redwood Highway rehabilitation project, which is within 500 feet of his real property, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

Conflicts of Interest

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, subdivision (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 to

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 18109 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.

consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. 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. Under Regulation 18702.3, subdivision (b), a public official attempts to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (b), a public official has a financial interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. Pursuant to Section 82035, real property is deemed to be within the jurisdiction with respect to a local government agency if the property, or any part of the property, is located within or not more than two miles outside of the boundaries of the jurisdiction, or within two miles of any land owned or used by the local governmental agency.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.2, subdivision (a)(1), real property in which a public official has an economic interest is directly involved in a governmental decision if “the real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision.” Under Regulation 18704.2, subdivision (d), if the real property is “directly involved” in a governmental decision, the materiality standards in regulation 18705.2, subdivision (a) apply.

Fifth, under Regulation 18705.2, subdivision (a), any financial effect of a governmental decision on the public official’s real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

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 that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. An effect of a decision on real property is considered “reasonably foreseeable” if there is a substantial likelihood that it will

² Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

affect property values, either positively or negatively, or will alter or change the use of the property in some manner. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

Respondent Griffith was President of the Rancho Adobe Fire Protection District (“District”) at all times relevant to this complaint. Respondent Griffith owns real property, (8045 Old Redwood Highway) within 500 feet of the Old Redwood Highway rehabilitation project, in Cotati, California.

Respondent gave public testimony before the Design Review Committee meeting on October 20, 2011. Respondent identified himself as President of the District and owner of Rancho Realtors when he objected to a proposal to install roundabouts; stating they would impede the passage of fire trucks and that if off street parking were removed, he would have to close his business.

The Old Redwood Highway rehabilitation project consists of two proposals. The “Village Main Street” option would convert Old Redwood Highway into a two lane roadway with two traffic circles. The “City Boulevard” option would create a widened, four lane roadway, which would require an additional 18 feet of right-of-way (9 feet on ether side of the widened road) for the entire length of the project. Respondent’s property abuts Old Redwood Road, and would lose 9 feet of frontage from his property, space which is currently utilized as a parking lot for the business, upon implementation of this option.

COUNT 1

ATTEMPTING TO USE AN OFFICIAL POSITION TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. **Respondent Was a Public Official as Defined by the Act**

As President of the Rancho Adobe Fire Protection District, on October 20, 2011, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against attempting to use his official position to influence a governmental decision in which he has a financial interest under Section 87100.

2. **Respondent Attempted to Use His Official Position to Influence a Governmental Decision**

At the October 20, 2011 Design Review Committee meeting, Respondent Griffith, President of the Rancho Adobe Fire Protection District, testified before the committee, stating that he opposed the proposed alternatives for the redesign of Old Redwood Highway. Consequently, Respondent attempted to use his official position to influence a governmental decision for purposes of Regulation 18702.3, subdivision (b).

3. Respondent Had an Economic Interest in Real Property

At the time of the governmental decisions, Respondent owned real property (8045 Old Redwood Highway) in Cotati, California. As the real property is worth \$2000 or more, Respondent had an economic interest in real property for the purposes of section 87103, subdivision (b).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's real property is within 500 feet of the Old Redwood Highway rehabilitation project. Therefore, the governmental decision made on October 20, 2011 to oppose the design proposals for the improvement project directly involved Respondent Griffith's economic interest in real property under Regulation 18704.2, subdivision (a)(1).

5. Applicable Materiality Standard

Because Respondent's real property was directly involved in the governmental decision, any financial effect of the decisions on his real property is presumed to be material. (Regulation 18705.2(a)(1))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

The governmental decision which respondent attempted to influence on October 20, 2011 concerned approval of design proposal for a highway improvement project on a section of commercial roadway which passed through the center of the City of Cotati, and would have involved either the installation of roundabouts or the widening of the roadway. It was reasonably foreseeable at the time the attempt to influence the governmental decision occurred that the project would impact traffic on the roadway where Respondent's property was located and that the "City Boulevard" option would result in the loss of nine feet of right-of-way, property currently utilized for off street parking, for the widening of the Old Redwood Highway; and would have some financial effect on his real property.

By making a governmental decision in which he had a financial interest, Respondent Griffith violated section 87100 of the Act.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total 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 context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Respondent Griffith should have known of the conflict of interest requirements pertaining to directly involved real property. There is no evidence that Respondent intended to deceive the public or the design review committee. There is no history of prior violations of the Act by Respondent.

Attempting to use an official position to influence a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

Other similar cases regarding a violation of Section 87100 that have been recently approved by the Commission include:

In the Matter of Tim Ward, FPPC Case No. 05/652, had a similar fact pattern; involving a municipal design review commission member and architect, who recommended approval of a client's project to fellow commission members, despite the existence of an obvious conflict. The agreed upon penalty in that case, approved by the Commission on June 12, 2008, was \$3,000.

Another similar case, *In the Matter of Mark Goines*, FPPC NO. 09/683, involved a Los Altos School District board member who used his official position to influence a governmental decision by testifying before the city council, on behalf of the Los Altos School District, regarding a proposed retirement home expansion project, within 500 feet of his real property. The agreed upon penalty in that case, approved by the Commission on February 11, 2010, was \$3,000 for the count.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division recommends the imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).