

State of California



Fair Political Practices Commission

SUPERSEDED

Def: 93-297

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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(916) 322-5662 322-5660 322-5901 322-6441

October 2, 1984

Clifton E. Reed
City Attorney
City of Imperial Beach
357 Third Avenue
Chula Vista, CA 92010

Re: Your Request for Advice,
Our Advice No. A-84-226

Dear Mr. Reed:

Thank you for your request for advice on behalf of eight officials of the City of Imperial Beach ("City")^{1/} concerning their obligations under the conflict of interest provisions of the Political Reform Act^{2/} regarding the adoption of a Seacoast District Specific Plan ("Specific Plan" or "Plan"). The following advice is intended to address future actions only of the City Council and Planning Commission.

FACTUAL BACKGROUND

In your letter, you stated the facts concerning the decisions pending before the City as follows:

The City of Imperial Beach, in cooperation with the California Coastal Conservancy (Conservancy), is considering establishing a Beachfront Restoration and Development Program.

^{1/} You asked for advice on behalf of Mayor Brian Bilbray; Councilmembers William F. Russell, Henry B. Smith, John B. Bennett and Sharon Spurck; and Planning Commissioners Frank Hafner, William G. Nicholls, and Carl Buchanan, Jr.

^{2/} The Act is contained in Government Code Sections 81000-91014, and all statutory references made are to the Government Code unless otherwise noted.

The Planning Commission (Commission) and City Council (Council) are about to consider for adoption a Seacoast District Specific Plan (Specific Plan). If the Specific Plan is approved by the City, it will be submitted to the Conservancy which is expected to approve the plan as a Beachfront Restoration Plan pursuant to applicable provisions of the Public Resources Code.

The planning area is a rectangular, 32.83 acre parcel of land. The site is bounded by Palm Avenue to the North, Imperial Beach Boulevard to the South, by the Pacific Ocean to the West, and extending one-half block East of Seacoast Drive. A map of the City is attached hereto, marked Exhibit "A". The planning area is depicted on Exhibit "A".

At present, the planning area is partially developed. There are several types of structures currently existing including: single family detached residential dwellings, multi-family attached residential dwellings, retail commercial, transient commercial and public facilities. These structures range in age, quality, and condition. About 35 percent of the land within the planning area is currently undeveloped.

To the North of the planning area is a tract of mostly residential development with some commercial located along Palm Avenue. This tract extends about three blocks to the common border of the Cities of Imperial Beach and Coronado.

South of the planning area is a one block wide, seven block long strip of residential development. Also South of the site is: an auxiliary air station operated by the U.S. Navy, a publicly owned State Wildlife Preserve, and a federally owned estuary of the Tia Juana River which is also a wildlife sanctuary. Another park to the South of the planning area is the Border Field State Park. South of these parks is the border between the United States and the Republic of Mexico.

East of the planning area is the major portion of the City. Along Palm Avenue and Imperial Beach Boulevard are strip commercial developments. Approximately 1.5 miles to the East is the Imperial Beach/San Diego City border.

The City encompasses about 4.3 square miles, about half of which is developed. The other half is devoted to the above-described air station and wildlife preserve and park uses.

The property within the planning area is owned by approximately 140 persons.

A diagram of the land uses to be permitted pursuant to the proposed Specific Plan is attached hereto, marked Exhibit "B".

Within the planning area the "Dunes Park District" is intended to be principally used for publicly owned recreational facilities and public or private parking areas or structures in support of other development within the planning area. But, pursuant to a Development Overlay, the City will also consider allowing medium to high density residential development in conjunction with approximately 10,000 square feet of beach oriented to commercial development.

The "Pier Plaza District" is intended for the development of tourist serving commercial uses such as restaurants and specialty shops.

The "Beachfront Hotel District" is reserved for the development of a beachfront resort hotel of about 450 rooms, together with conference facilities and up to 10,000 square feet of retail restaurant facilities. An experienced hotel developer has expressed strong interest in developing a hotel.

The "Mixed Use District" is intended for a mixture of residential and retail commercial development. But, a "Hotel Overlay District" permits development of up to approximately 120 rooms together with up to 5,500 square feet of development for restaurant and retail uses within the "Mixed Use District."

The Specific Plan does not contain any implementation measures. However, it is obvious that land assembly will have to occur in order for the Plan to be implemented. Toward that end the City and the Conservancy have agreed in principle to form a Joint Powers Agency (JPA) to implement the Plan. It is anticipated that the JPA will form an as yet to be described entity such as a joint venture or limited partnership which would give existing property owners an opportunity to participate in development.

An economic analysis prepared for the City and the Conservancy indicates that the assessed value of property within the planning area is currently \$14,765,288 and is projected to be \$91,323,966 if development occurs as contemplated by the Specific Plan.

It is apparent that the adoption and implementation of the Seacoast Specific Plan will have a significant economic impact on property within the project area. Common sense dictates that the property outside the planning area, but near by, will also be

significantly affected. How far and to what extent this "ripple" effect will extend is speculative.

ANALYSIS

The pertinent sections of the Political Reform Act provide:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

- (a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).
- (b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).
- (c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

Under these sections, several elements must be present before a public official is required to disqualify him or herself from participation in a governmental decision.

1. It must be reasonably foreseeable that the governmental decision will have a financial effect.
2. The anticipated financial effect must be on a financial interest of the official as defined in Sections 87103(a) through (d).
3. The anticipated financial effect must be material.
4. The governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally.

All of the City officials here own their residences in Imperial Beach. In addition, Councilmember John B. Bennett and Planning Commissioner Frank Hafner each own another single family residence for which they receive more than \$250 per year in rent. None of these properties are located in the Seacoast District.

All of these interests are interests in real property within the meaning of Section 87103(b). While it is foreseeable that the adoption and implementation of the Seacoast District Specific Plan will benefit the residential property values in the City, it appears that these benefits will be shared by all of the residential homeowners in the City. Thus the potential effects on the values of the official's residences and single family rental units are indistinguishable from the effects on other homeowners which is a "significant segment" of the public generally. See 2 Cal. Adm. Code Section 18703; Owen Opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976). Accordingly, these interests do not form the basis for disqualification.

Planning Commissioner Frank Hafner has no financial interests in the City other than his home and rental unit. Unless the decisions on the Specific Plan could have an otherwise significant effect on his tenant/source of income, he does not have a financial interest requiring disqualification. The remaining seven officials do have other financial interests, and I will discuss each official's situation separately.

1. Mayor Brian Bilbray

(a) Facts

Mayor Bilbray runs a small income tax business in the City, and it is my understanding that he has not received over \$250 from any

person living or doing business in the City within the past 12 months. Mr. Bilbray is also a beneficiary of a family trust which has assets in the City; I was informed that he does not presently receive any income from the trust.

(b) Discussion

Mayor Bilbray has an investment in his business, and it is a source of income to him within the meaning of Section 87103. Since there are no sources of income to the business in an amount exceeding \$250 during the last 12 months, the only question for analysis is whether the decisions on the Specific Plan could materially affect the gross revenues of the business or its current assets and liabilities.^{3/} It does not appear that the decisions will have any direct or ascertainable effects on his business since it is not the type of business to be significantly or uniquely affected by the adoption of a major land use plan. There may be generally beneficial effects on the business climate in the City, but unless there are facts to indicate that his business would be significantly and directly affected differently from all other businesses in the City, Mayor Bilbray may participate in the City decisions on the Plan.

Mayor Bilbray's beneficial interest in a family trust has also been raised as a potential basis for disqualification in this matter since the trust assets include several pieces of real property in the City. Section 87103 provides that an indirect investment in a business entity or interest in real property includes any investment or interest owned by a trust in which the official owns directly, indirectly or beneficially a 10-percent interest or greater. See Section 82033 and 82034. By regulation, the Commission has determined that an official has direct, indirect or beneficial interest in a trust in which the official is a beneficiary if he or she:

- (A) presently receives income; or
- (B) Has an irrevocable future right to receive income or principal. For purposes of this subsection, an individual has an irrevocable future right to receive income or principal if the trust is irrevocable and:
 - 1. No powers exist to consume, invade or appoint the principal for the benefit of beneficiaries other than the filer or if there are such powers they are limited by an

^{3/} 2 Cal. Adm. Code Section 18702 (copy enclosed) contains monetary guidelines for the determination of materiality.

ascertainable standard relating to the health, education, support or maintenance of said beneficiaries; or

2. Under the terms of the trust, no one else can designate the persons who shall possess or enjoy the property or the income therefrom.

2 Cal. Adm. Code Section 18234(c)(2)

Accordingly, if the trust is revocable and Mayor Bilbray does not receive any income from the trust, he does not have an interest in the real property held by the trust within the meaning of Section 87103. I would like to emphasize that income from the trust includes not only distributions of principal or interest but also any other type of payment such as the reimbursement of expenses, commissions from real estate sales, rents, etc.^{4/}

In summary, based on the above analysis and the given facts, Mayor Bilbray may participate in the City decisions concerning the Seacoast District Specific Plan.

2. Councilmember William F. Russell

(a) Facts

Councilmember Russell operated a restaurant on Imperial Beach Boulevard in the Seacoast District until recently when his lease expired. Mr. Russell's wife is a real estate agent with House of Properties, the sales division of Villa Investment Properties. Villa Investment is totally owned by Councilmember Sharon Spurck and her husband. Its offices are located at 182 Palm Avenue. Mrs. Russell has received over \$500 in sales commissions since she joined the agency in January, 1984.^{5/}

(b) Discussion

Since Mr. Russell no longer has a leasehold interest or any other type of interest in his restaurant business, this could not form the basis for disqualification under the Act. I would note, however, that any source of income to his restaurant of over \$250 during the

^{4/} See Section 82030 for the definition of income.

^{5/} During 1983, Mrs. Russell worked for J. R. Gersten Realty Company and earned over \$10,000 in commissions. This company has closed its residential sales operations, and is no longer doing business in Imperial Beach.

past 12 months could be a financial interest within the meaning of Section 87103 if the proposed decision could foreseeably affect that source of income.

Since House of Properties is a source of income to Mr. Russell of over \$250, he must refrain from participation in the decision on the Specific Plan if it is reasonably foreseeable that the decision could have a material financial effect on the realty company. It is my understanding that Mrs. Russell and House of Properties are involved only in residential property sales. Mrs. Russell has not acted as the agent for, or received any commissions in connection with, the sale of any property in the Seacoast District. Accordingly, if it is unlikely that Mrs. Russell or House of Properties would engage in commercial real estate transactions or commercial property management involving property in and around the Seacoast District, then it is not foreseeable that the increased property values will result in a change in income to House of Properties or to Mrs. Russell. Thus the fact that Mrs. Russell is a real estate agent who works for House of Properties would not require Councilmember Russell's disqualification on the decisions on the Specific Plan unless the decision could significantly affect one of her clients, or would otherwise have a material effect on the assets (such as the value of the leasehold) of House of Properties.

In addition, since House of Properties is wholly owned by Councilmember Spurck and her husband, they as individuals are also sources of income to Councilmember and Mrs. Russell. If the City decisions on the Specific Plan could significantly and directly affect the value of any of their investments or if the decisions could substantially affect the actual amount of income they receive, then Councilmember Russell would have a financial interest under Section 87103 requiring disqualification. We do not have enough facts to determine whether disqualification is required because of an effect on Councilmember Spurck and her husband. Councilmember Russell must make this determination on the basis of the facts available to him.

3. Councilmember Henry B. Smith

(a) Facts

Councilmember Smith holds a note secured by a second trust deed on real property located at 1229-31 Twelfth Street and a note secured by a second deed of trust on real property located at 142 Daisy Avenue.

(b) Discussion

Assuming that Councilmember Smith's interests in the two trust deeds described above exceed \$1,000 each and that he receives in excess of \$250 annually as payments on each of the notes, he has interests in real property within the meaning of Section 87103(b) and sources of income under Section 87103(c) (i.e., the property owners). Accordingly, he must not participate in the decisions on the Specific Plan if it is reasonably foreseeable that the decisions could materially affect the fair market value or income producing potential of either of the properties or if the decisions could otherwise significantly affect the property owners.

The property located on Twelfth Street is not in or near the Seacoast District, so it does not appear that the adoption of the Specific Plan would have any specific or direct effect on the value of the property. Unless there are facts which point to a different conclusion, it appears that the effect on the property would be the same as the effect on the majority of the real property in the City.

However, the property located on Daisy Avenue is within the Seacoast District. It is abundantly clear that the type and magnitude of the projects proposed in the Specific Plan will have significant and direct effects on the value and use of all of the real property located in or adjacent to the Seacoast District. Therefore, because of his interest in the Daisy property, Mr. Smith may not participate in the decisions on the Specific Plan.

4. Councilmember John B. Bennett

(a) Facts

Councilmember Bennett conducts business in the City under the name "J. B. Bennett Realty and Income Tax Service." It is my understanding that he has not received over \$250 in his business from any single source during the past 12 months.

(b) Discussion

Mr. Bennett has an investment in his business, and it is a source of income to him within the meaning of Section 87103. Since there are no sources of income to the business in an amount exceeding \$250 during the last 12 months, the only question for analysis is whether the decision on the Specific Plan could materially affect the gross revenues of the business or its current assets and liabilities.^{6/}

^{6/} See 2 Cal. Adm. Code Section 18702(b)(1).

It does not appear that the decision will have any direct or ascertainable effects on his business since it is not the type of business to directly benefit from the adoption of a major land use plan. There will probably be generally beneficial effects on the business climate in the City, but unless there are facts to indicate that his business would be significantly and directly affected differently from all other businesses in the City, Councilmember Bennett may participate in the City decisions concerning the Seacoast District Specific Plan.

5. Councilmember Sharon Spurck

In your original request for advice, you asked for advice on behalf of Ms. Spurck. However, in your letter to me dated September 1, 1984, you stated that Ms. Spurck had determined that because of her property interests in the City, she could not participate in the Specific Plan decision-making process pursuant to Sections 87100 and 87103. Accordingly, I will not advise her in this letter except in reference to the details and meaning of disqualification. See my analysis below.

6. Planning Commissioner William G. Nicholls

(a) Facts

Planning Commissioner Nicholls owns real property located at 170-176 Date Street in the City for which he recently received City Council approval to develop a nine-unit condominium project. Mr. Nicholls also owns a building contracting business called WGN Construction Company.

(b) Discussion

Planning Commissioner Nicholls' real property on Date Street is located in the Seacoast District. As I discussed earlier with reference to Councilmember Smith's Daisy property, it is clear that the decisions on the Specific Plan will have significant immediate effects on the value and use of all of the property located in or adjacent to the Seacoast District. Unless there are facts which indicate that his value of property will not be enhanced by the adoption and implementation of the Plan, he should not participate in any of the decisions on the Specific Plan.

In addition, if Mr. Nicholls' construction business has a bid pending, or is preparing any bids for new construction projects in the Seacoast District, or it is otherwise foreseeable that the business could be affected by the City Council's decisions on the

Specific Plan, then he should not participate in the decisions on this ground also. See discussion in Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, December 4, 1975).

7. Planning Commissioner Carl Buchanan, Jr.

(a) Facts

Planning Commissioner Buchanan is an architect, and the following situation has arisen. The City has indicated an intent to enter into negotiations with certain developers for the development of the major hotel in the Seacoast District if the Specific Plan is adopted and approved. Mr. Buchanan has known these developers for several years, and he has been invited to participate in their design team for the design of another hotel proposed for the City of Coronado. Without any formal agreement for compensation and without having been paid any compensation, he has been attending preliminary meetings regarding that project since June, 1984. If Mr. Buchanan accepts the employment, he will receive compensation in excess of \$250.

(b) Discussion

Planning Commissioner Buchanan may have a financial interest under Sections 87100 and 87103 based on his relationship with the developer. Section 87103(c) defines "source of income" to include a source of income of \$250 or more promised to the public official. This has generally been interpreted to mean that a legally enforceable promise to pay a sum of \$250 or more to a public official makes the promisor a source of income to the official. In this situation, assuming that Mr. Buchanan has not actually been compensated by the developer, if there is an agreement that he will be compensated for the work that he has done or is doing, or if there is an agreement that he will be an architect on the developer's hotel project, then the developer is clearly a source of promised income to Mr. Buchanan. These agreements may be express or they may be implied from their past business dealings, their conduct, or the standard practices in the industry. On the other hand, if Mr. Buchanan has not been paid, and does not expect to be paid, or to become the architect for the hotel project, then the developer is not a source of promised income to him.

If the developer is a source of income to Mr. Buchanan under the above analysis, then it is clear that he should refrain from participating in the decisions on the Specific Plan since these decisions will affect whether the developer's Imperial Beach hotel project will go forward.

Mr. Clifton E. Reed
October 2, 1984
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GENERAL DISCUSSION

In the Analysis, I concluded that some of the City officials had financial interests in the City decisions on the Specific Plan within the meaning of Sections 87100 and 87103. In addition, some of the other officials may conclude that they also have a financial interest requiring disqualification based upon this letter. These officials may not make, participate in, or use their official positions to influence the City decisions on the Specific Plan. Prohibited actions include voting, public or private negotiations or discussions, direct or indirect contact with any of the City staff and other officials who will be participating in the decisions, chairing public hearings or meetings on the issue, and representing anyone before the City concerning the Specific Plan. See 2 Cal. Adm. Code Section 18700.

Since it is possible that so many City officials may be disqualified from participation in the decisions on the Specific Plan that there will not be a quorum on the Council or on the Planning Commission, it should be noted that the law provides a method for participation by a financially interested public official "to the extent his participation is legally required for the action or decision to be made." Section 87101; see also 2 Cal. Adm. Code Section 18701. The rule of legally required participation has been interpreted by the Commission in the Hudson Opinion, 4 FPPC Opinions 19 (No. 77-007, Feb. 7, 1978). When there are not enough qualified members to make up a quorum, the Commission stated that any equitable means of random selection can be used to bring back enough members to make up a quorum.

Please feel free to contact me if you would like to discuss this letter or if you have any other questions.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:nwm
Enclosures



CITY ATTORNEY
CITY OF IMPERIAL BEACH

CLIFTON E. REED
ATTORNEY AT LAW
357 Third Avenue
Third Avenue at Madrona
Chula Vista, California 92010
(619) 426-4362

Aug 27 2 07 PM '84

August 23, 1984

Executive Director
Fair Political Practices Commission
1100 "K" Street
Sacramento, California 95814

Re: Request for Advice

Dear Sir:

The City Council of the City of Imperial Beach requests a written advice letter pursuant to Government Code Section 83114(b), regarding the matters described below.

BACKGROUND

The City of Imperial Beach, in cooperation with the California Coastal Conservancy [Conservancy], is considering establishing a Beachfront Restoration and Development Program.

The Planning Commission [Commission] and City Council [Council] are about to consider for adoption a Seacoast District Specific Plan [Specific Plan]. If the Specific Plan is approved by the City, it will be submitted to the Conservancy which is expected to approve the plan as a Beachfront Restoration Plan pursuant to applicable provisions of the Public Resources Code.

The planning area is a rectangular, 32.83 acre parcel of land. The site is bounded by Palm Avenue to the North, Imperial Beach Boulevard to the South, by the Pacific Ocean to the West, and extending one-half block East of Seacoast Drive. A map of the City is attached hereto, marked Exhibit "A". The planning area is depicted on Exhibit "A".

At present, the planning area is partially developed. There are several types of structures currently existing including: single family detached residential dwellings, multi-family attached residential dwellings, retail commercial, transient commercial and public facilities. These structures range in age, quality, and condition. About 35 percent of the land within the planning area is currently undeveloped.

To the North of the planning area is a tract of mostly residential development with some commercial located along Palm Avenue. This tract extends about three blocks to the common border of the Cities of Imperial Beach and Coronado.

South of the planning area is a one block wide, seven block long strip of residential development. Also South of the site is: an auxiliary air station operated by the U.S. Navy, a publicly owned State Wildlife Preserve, and a federally owned estuary of the Tia Juana River which is also a wildlife sanctuary. Another park to the South of the planning area is the Border Field State Park. South of these parks is the border between the United States and the Republic of Mexico.

East of the planning area is the major portion of the City. Along Palm Avenue and Imperial Beach Boulevard are strip commercial developments. Approximately 1.5 miles to the East is the Imperial Beach/San Diego City border.

The City encompasses about 4.3 square miles, about half of which is developed. The other half is devoted to the above-described air station and wildlife preserve and park uses.

The property within the planning area is owned by approximately 140 persons.

A diagram of the land uses to be permitted pursuant to the proposed Specific Plan is attached hereto, marked Exhibit "B".

Within the planning area the "Dunes Park District" is intended to be principally used for publicly owned recreational facilities and public or private parking areas or structures in support of other development within the planning area. But, pursuant to a Development Overlay, the City will also consider allowing medium to high density residential development in conjunction with approximately 10,000 square feet of beach oriented to commercial development.

The "Pier Plaza District" is intended for the development of tourist serving commercial uses such as restaurants and specialty shops.

The "Beachfront Hotel District" is reserved for the development of a beachfront resort hotel of about 450 rooms, together with conference facilities and up to 10,000 square feet of retail

restaurant facilities. An experienced hotel developer has expressed strong interest in developing a hotel.

The "Mixed Use District" is intended for a mixture of residential and retail commercial development. But, a "Hotel Overlay District" permits development of up to approximately 120 rooms together with up to 5,500 square feet of development for restaurant and retail uses within the "Mixed Use District".

The Specific Plan does not contain any implementation measures. However, it is obvious that land assembly will have to occur in order for the Plan to be implemented. Toward that end the City and the Conservancy have agreed in principle to form a Joint Powers Agency [JPA] to implement the Plan. It is anticipated that the JPA will form an as yet to be described entity such as a joint venture or limited partnership which would give existing property owners an opportunity to participate in development.

An economic analysis prepared for the City and the Conservancy indicates that the assessed value of property within the planning area is currently \$14,765,288 and is projected to be \$91,323,966.00 if development occurs as contemplated by the Specific Plan.

It is apparent that the adoption and implementation of the Seacoast Specific Plan will have a significant economic impact on property within the project area. Common sense dictates that property outside the planning area, but near by, will also be significantly affected. How far and to what extent this "ripple" effect will extend is speculative.

INTERESTS OF PUBLIC OFFICIALS

As might be expected in a small community, each member of the City Council owns a home within the City. The location of the Councilmembers' homes are as follows:

- a. Mayor Brian Bilbray - 1307 Ninth Street
(R1 on Exhibit "A")^{1/}
- b. Councilmember William F. Russell - 1175 East Lane
(R2 on Exhibit "A")
- c. Councilmember John B. Bennett - 1025 - 10th Street
(R3 on Exhibit "A")

^{1/} Exhibit "A" is a map of the City upon which the location of all properties described in this letter have been identified.

- d. Councilmember Sharon Spurck - 1104 Grove Street
(R4 on Exhibit "A")
- e. Councilmember Henry B. Smith - 1260 California Street
(R5 on Exhibit "A")

Each of the above-described residences are detached single family dwellings similar to the other properties in the neighborhood.

Four of the five members of the Planning Commission also own residences with the City as follows:

Frank Hafner - 930 Arriba Street
(R-10 on Exhibit "A")

Carl Buchanan, Jr. - 1212 Loudon Lane
(R-7 on Exhibit "A")

William G. Nicholls - 1250 - 5th Street
(R9 on Exhibit "A")

The Commissioners reside in single family residences. All of the dwelling units are similar to the other dwelling units in the respective neighborhoods. 2/

It is anticipated that most property in the City will enjoy an increase in value if the proposed Specific Plan is successfully implemented. Obviously, property close to the planning area will increase far more than property on the Eastern edge of the City. But, the increase in value of each Councilmembers' or Commissioners' home will be about the same as other residences in their respective neighborhoods.

Mayor Brian P. Bilbray is a beneficiary of a family trust. The trustors can, at any time, amend the trust to exclude Mayor Bilbray as a beneficiary or may, if they choose to do so, revoke the trust altogether. The consent of Mayor Bilbray is not necessary for the trustors to amend or revoke the trust.

Among the trust assets are the following properties:

194 Ebony Street is a four unit apartment building.
(A-1 on Exhibit "A")

257 Ebony is a single family residential rental property.
(A-2 on Exhibit "A")

2/ One Commissioner, Richard Kuhlemeier, has recognized he has a conflict because of his development activity in the planning area.

169 Evergreen is also a single family residential rental.

(A-3 on Exhibit "A")

266 Daisy Street is a 12 unit apartment building.

(A-4 on Exhibit "A")

829-31 10th Street is developed with a duplex, both units of which are rented.

(A-5 on Exhibit "A")

449 8th Street is a rented single family residence.

(A-6 on Exhibit "A")

The Mayor's beneficial interest in the assets of the revocable trust exceeds \$1,000.00.

Councilmember Sharon Spurck holds a leasehold interest in a condominium unit located at the intersection of Imperial Beach Boulevard and Seacoast Drive (B-1 on Exhibit "A"). The lease contains an option to purchase. The value of the option exceeds \$1,000.00. If the Specific Plan is implemented, the condominium unit will be directly across the street from the proposed hotel and it is likely that all of the condominium units within the project will greatly increase in value. Councilmember Spurck is also a beneficiary of deed of trust against real property developed as a 16 unit apartment building. The property is located at 777 First Street within the planning area (B-2 on Exhibit "A"). The amount of the obligation secured by the deed of trust exceeds \$1,000.00. Mrs. Spurck receives more than \$250.00 per year in payments on the note. If the value of the property subject to the trust deed increases, Mrs. Spurck would only be benefited by having a stronger security interest in the property.

Councilmember John B. Bennett owns a single family residence at 238 Elkwood, about one-block East of the planning area and the site of the proposed hotel. The property is currently rented to a tenant. The property's value exceeds \$1,000.00 and the rent for the house exceeds \$250.00 per year. It can be anticipated that the property will increase in value in about the same manner as other properties in the vicinity (C on Exhibit "A").

The City has indicated an intent to enter into negotiations with a joint venture [Developers] for the development of the major hotel if the Specific Plan is adopted and the JPA formed. Planning Commissioner Carl Buchanan is an architect. Mr. Buchanan has known

the Developers several years. He has been invited by one of the Developers to participate in a design team for the design of a hotel in another city. Without any agreement for compensation and without having been paid any compensation he has been attending preliminary meetings regarding that project since June, 1984. If Mr. Buchanan accepts the employment he will receive compensation in excess of \$250.00 per year. As noted above, the Specific Plan does not contain implementation measures. Mr. Buchanan as a Planning Commissioner will not participate in a decision to form the JPA.

Planning Commissioner William G. Nicholl is a building contractor. He recently received City Council approval to develop a nine unit condominium project on property he owns at 170-176 Date Street, 100 feet East of the planning area (D on Exhibit "A").

Commissioner Frank Hafner owns a single family residence at 215 Carnation. The property exceeds \$1,000.00 in value and he receives more than \$250.00 per year in rent. It can be anticipated that the property will increase in value in about the same manner as other properties in the vicinity (E on Exhibit "A").

The function of the Planning Commission will be to make land use recommendations to the City Council regarding the Specific Plan. The City Council has the authority to approve the Specific Plan, disapprove the Specific Plan or approve the Specific Plan with Council approved changes.

Respectfully submitted,

CLIFTON E. REED
CITY ATTORNEY

CER:jas
Enclosure

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

November 30, 1984

Councilmember Henry B. Smith
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 92032

Re: Advice Letter No. A-84-295

Dear Mr. Smith:

This letter is sent to confirm our telephone conversation. I previously advised you in a letter to Clifton E. Reed, City Attorney of Imperial Beach, that you should not participate in the City Council's decisions on the Seacoast District Specific Plan because of your ownership of a second deed of trust on real property located with the Seacoast District at 142 Daisy Avenue. Advice Letter A-84-226. You informed me in our conversation that you sold the second deed of trust to an individual who has no other financial interests in Imperial Beach, and you asked me whether you must still refrain from participating in Council decisions on the Specific Plan.

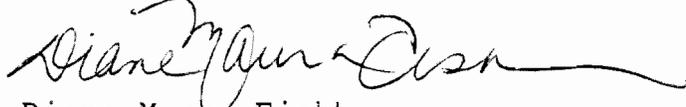
I advised you that, since you no longer had an interest in real property within the meaning of Government Code Section 87103(b),^{1/} the only possible basis for disqualification would be the fact that the present holder of the deed of trust is now a source of income to you. If the City decisions on the Specific Plan could significantly and directly affect the value of the deed of trust, then you would have a financial interest under Section 87103 requiring disqualification. However, absent very unusual circumstances, it seems clear that the decisions on the Specific Plan, while they may affect the value of the underlying property, will not affect the value of the deed of trust. Accordingly, you may participate in the City Council decisions on the Specific Plan.

^{1/} All statutory references are to the Government Code unless otherwise specified.

Councilmember Henry B. Smith
November 30, 1984
Page 2

If I can be of further assistance, please feel free to
contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Mauka Fishburn". The signature is written in black ink and extends across the width of the typed name below it.

Diane Mauka Fishburn
Staff Counsel
Legal Division

DMF:plh
cc: Clifton E. Reed

THE CITY OF
IMPERIAL
BEACH

(619) 423-8300

Oct 15 8 26 AM '84

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 92032



October 9, 1984

Ms. Diane M. Fishburn
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Fishburn:

Reference your advice letter no. A-84-226 of October 2, 1984, I am requesting copies of any correspondence you received from members of the public regarding my personal affairs. I am particularly interested in any written correspondence from Mr. Tom Lindley or Ms. Kathleen Pierce.

Thank you for your cooperation.

Sincerely,

William F. Russell
Vice-Mayor
City of Imperial Beach

WFR:cah

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

September 24, 1984

Thomas A. Lindley
P.O. Box 1
Upland, CA 91786

Re: Advice Request No. A-84-226

Dear Mr. Lindley:

Enclosed please find copies of letters that I have received from Clifton Reed regarding the above advice request. He also sent me a copy of the Seacoast District Specific Plan. Mr. Reed also provided me with information over the telephone concerning the various officials' financial interests.

I hope to send out my response to the advice request by the end of this week. I suggest that, if you have additional information or comments, you contact me by phone at 916/322-5901.

Sincerely,

A handwritten signature in cursive script that reads "Diane Maura Fishburn".

Diane Maura Fishburn
Counsel, Legal Division

DMF:km
Enclosures

cc: Ronald J. Einboden
100⁰ Sunset Blvd.
Los Angeles, CA 90012

*corrected
on envelope*

THE CITY OF
IMPERIAL
BEACH

(619) 426-4362

SEP 21 12 43 PM '84

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 92032



OFFICE OF THE
CITY ATTORNEY
CLIFTON E. REED

Please Reply To:
CLIFTON E. REED
357 Third Avenue
Chula Vista, CA 92010
(619) 426-4362

September 19, 1984

Ms. Diane Fishburne
Fair Political Practice Commission
1100 K Street
Sacramento, California 95814

Re: A-84-226

Dear Ms. Fishburne,

At your suggestion I talked with Mayor Bilbray and Councilmembers Bennett, Smith and Russell regarding information contained in their most recently filed statement of Economic Interests not described in my letter to the Commission of August 23, 1984.

Mayor Bilbray has confirmed my earlier information to you. He received no income from the trust and has not received income of \$250.00 from any client owning property within the City.

Councilmember Smith confirms that he owns a note secured by a second trust deed on property located at 1229-31 Twelfth Street in the City. By reference to the map I previously sent you, you can see that Twelfth Street is quite distant from the project area. The obligation on the note is less than \$2,000.00 but the principal and interest payments do exceed \$250.00 per year.

Councilmember J.B. Bennett confirmed that he has not received a fee of \$250.00 from any client owning property within the City.

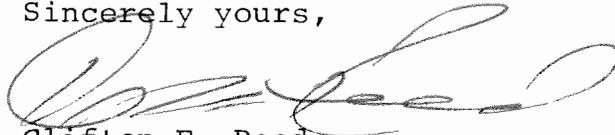
Councilmember Russell's wife is a real estate agent. During the past year she has received income exceeding \$250.00 from the sale of a single family residence in the 1100 block of 11th street in the City.

Ms. Diane Fishburne
September 19, 1984

Page Two

Because the hearing on the Specific Plan is scheduled for October 3, 1984, the earliest possible response to the City's request for an advice letter will be deeply appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Clifton E. Reed". The signature is fluid and cursive, with a large initial "C" and "R".

Clifton E. Reed
City Attorney

CER:mb

September 19, 1984

Ms. Fishburne,

Ignore my 9/17/84 letter. The reference to Mr. Smith's wife real estate activity is in error.

Clifton E. Reed

THE CITY OF
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BEACH

(619) 426-4362

SEP 19 12 35 PM '84

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OFFICE OF THE
CITY ATTORNEY
CLIFTON E. REED

September 17, 1984

Please Reply To:
CLIFTON E. REED
357 Third Avenue
Chula Vista, CA 92010
(619) 426-4362

Ms. Diane Fishburne
Fair Political Practice Commission
1100 K Street
Sacramento, California 95814

Re: A-84-226

Dear Ms. Fishburne,

At your suggestion I talked with Mayor Bilbray and Councilmembers Bennett and Smith regarding information contained in their most recently filed statement of Economic Interests not described in my letter to the Commission of August 23, 1984.

Mayor Bilbray has confirmed my earlier information to you. He received no income from the trust and has not received income of \$250.00 from any client owning property within the City.

Councilmember Smith confirms that he owns a note secured by a second trust deed on property located at 1229-31 Twelfth Street in the City. By reference to the map I previously sent you, you can see that Twelfth Street is quite distant from the project area. The obligation on the note is less than \$2,000.00 but the principal and interest payments do not exceed \$250.00 per year. Mr. Smith has also confirmed that his wife has not received a commission, fee or income of \$250.00 from a client within the past year.

Councilmember J.B. Bennett confirmed that he has not received a fee of \$250.00 from any client owning property within the City.

Because the hearing on the Specific Plan is scheduled for October 3, 1984, the earliest possible response to the City's request for an advice letter will be deeply appreciated.

Sincerely yours,

Clifton E. Reed
City Attorney

CER:mb
cc: City Council

*connected
per phone
conversation
with Reed
9/25/84*

THE CITY OF
IMPERIAL
BEACH

(619) 426-4362



OFFICE OF THE
CITY ATTORNEY
CLIFTON E. REED

SEP 13 1 01 PM '84

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 92032

Please Reply To:
CLIFTON E. REED
357 Third Avenue
Chula Vista, CA 92010
(619) 426-4362

September 11, 1984

Ms. Diane Fishburne
Fair Political Practice Commission
1100 K Street
Sacramento, California 95814

Re: City of Imperial Beach Advice Letter Request

Dear Fishburne:

This will confirm the substance of our conversation on Tuesday, September 11, 1984. Councilwoman Sharon Spurck has re-reviewed her property interests and has independently determined that because of those property interests she cannot participate in the Specific Plan decision making process pursuant to California Government Code Section 87100 and 87103. It will not be necessary to discuss her situation in the requested advice letter.

Sincerely yours,

Clifton E. Reed
City Attorney

CER:mb
cc: City Council

THE CITY OF
IMPERIAL
BEACH

(619) 426-4362

825 IMPERIAL BEACH BOULEVARD • IMPERIAL BEACH, CALIFORNIA 92032



OFFICE OF THE
CITY ATTORNEY
CLIFTON E. REED

Please Reply To:
CLIFTON E. REED
357 Third Avenue
Chula Vista, CA 92010
(619) 426-4362

September 11, 1984

Ms. Diane Fishburne
Fair Political Practice Commission
1100 K Street
Sacramento, California 95814

Re: City of Imperial Beach Advice Letter Request

Dear Ms. Fishburne:

Enclosed is a copy of the requested Specific Plan which is scheduled to be considered at a joint Planning Commission-City Council hearing on October 2, 1984.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Clifton E. Reed".

Clifton E. Reed
City Attorney

CER:mb
enclosure

226

- 1. DUNES PARK
- 1* DEVELOPMENT OVERLAY
- 2. PIER PLAZA
- 3. BEACHFRONT HOTEL
- 4. SOUTH SEACOAST PARK
- 5. CIVIC PLAZA
- 6. MIXED USE
- 6* HOTEL OVERLAY

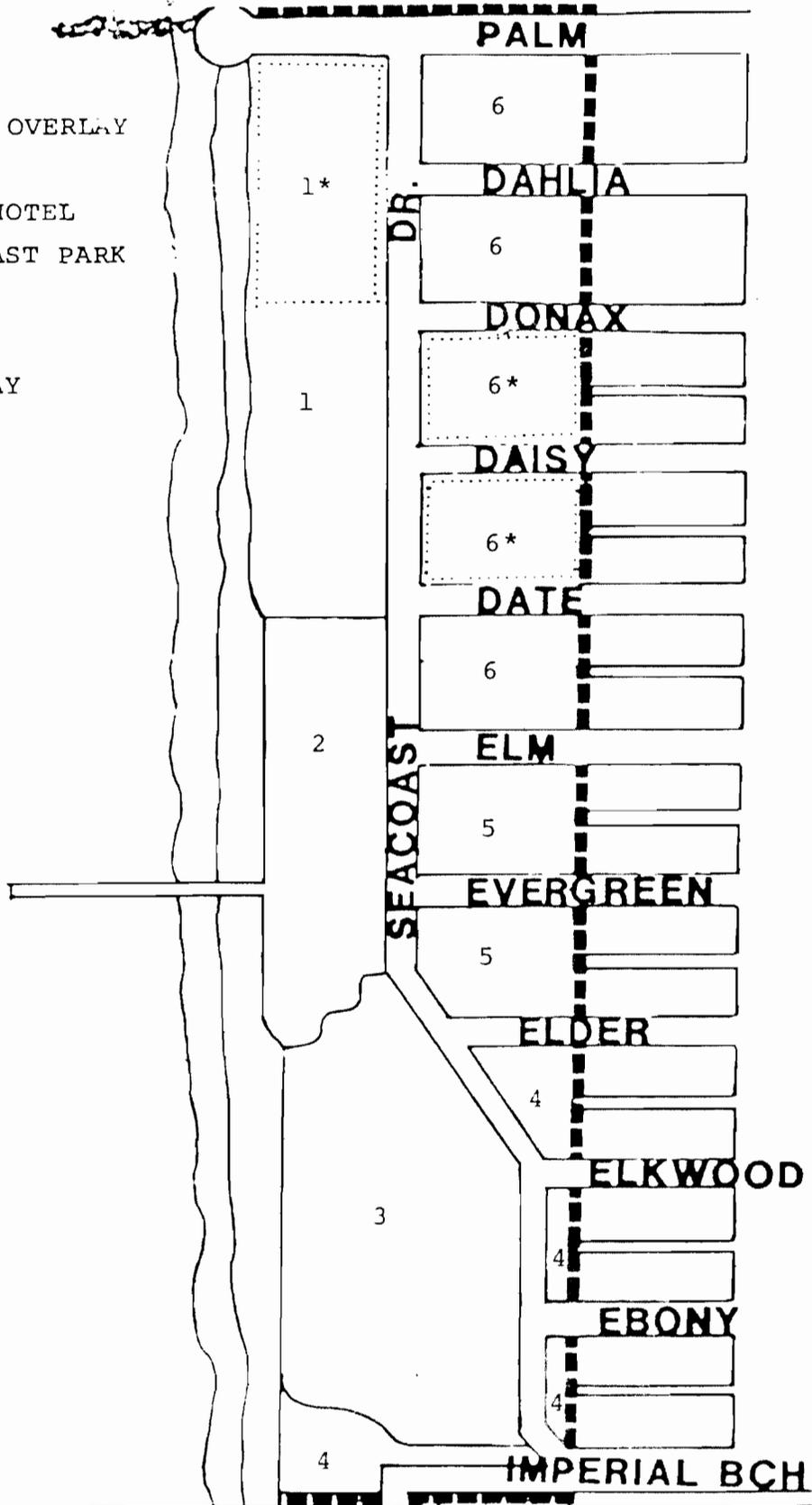


Figure 8. LAND USE DISTRICTS



EXHIBIT B.

**IMPERIAL BEACH
SEACOAST DISTRICT SPECIFIC PLAN**

CITY OF IMPERIAL BEACH/JULY 1984