California
Fair Political
Practices Commission

August 3, 1987

Gordon C. Phillips
City Attorney
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Re: Your Request for Advice
Our File No. A-87-166

Dear Mr. Phillips:

You have requested advice on behalf of six city officials in Redondo Beach concerning their duties under the conflict of interest provisions of the Political Reform Act (the "Act").[1] Your request is on behalf of City Councilmembers Kay Horrell, Ronald Cawdrey and Archie Snow, Planning Commissioners William Czueleger and Julia Takahashi, and yourself, the city attorney. This letter confirms telephone advice I provided to you on July 17, 1987.

QUESTION

May Councilmembers Horrell, Cawdrey and Snow, Planning Commissioners Czueleger and Takahashi, and City Attorney Phillips participate in decisions to create a redevelopment project area consisting of several commercial corridors of the City of Redondo Beach?

CONCLUSION

Planning Commissioners Czueleger and Takahashi must disqualify themselves from the redevelopment project area decisions because of their real property and investment interests located in or near the proposed redevelopment project area. The other city officials may participate in the decisions to create the redevelopment project area.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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Whether any of these city officials must disqualify themselves from participation in future decisions concerning specific redevelopment projects within the project area depends on facts not yet available.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars ($1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars ($1,000) or more.

(c) Any source of income, other than gifts and 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.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts 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.

Section 87103.

The decision in question is the creation of a redevelopment project area which would run through several of the commercial

corridors of Redondo Beach. Currently, there are no decisions pending which concern specific projects within the proposed project area.

The purpose of redevelopment is to stimulate business and increase real property values in and around the redevelopment project area. Therefore, the Commission has previously concluded that it is foreseeable that there will be a general increase in business profits and real property values as a result of redevelopment projects. (In re Oglesby (1975) 1 FPPC Ops. 71, copy enclosed.) In Oglesby, the Commission concluded that the effects of a redevelopment project will be most noticeable as to properties and businesses located in and near the redevelopment project area. (In re Oglesby, supra at p. 80.) The Commission also, in certain instances, has distinguished between the effects on homeowners and owners of other residential property, and the effects on businesses and owners of commercial property, as a result of redevelopment and similar decisions. (In re Owen (1976) 2 FPPC Ops. 77.)

We now discuss the economic interests of each of the six city officials and their duties under the conflict of interest provisions of the Act.

Councilmember Kay Horrell

Ms. Horrell has an ownership interest in rental property located near the proposed project area. The property is developed with a single-family residence. Ms. Horrell's interest in the property exceeds $1,000. The property is outside of the proposed project area. However, there are only three homes between Ms. Horrell's property and the boundary of the proposed project area.

The purpose of redevelopment is to stimulate business and property values in and around the redevelopment project area. It is therefore foreseeable that Ms. Horrell's property will increase in value as a result of the redevelopment of nearby areas. Regulation 18702(b)(2) (copy enclosed) contains guidelines for determining whether an effect on the value of an official's real property is considered material. Arguably, because of the proximity of Ms. Horrell's real property to areas where significant increases in property values are likely to occur, a material effect on the value of Ms. Horrell's real property is reasonably foreseeable.

Even if the reasonably foreseeable effects on Ms. Horrell's real property would be material, her disqualification from decisions is not required if the decision to create the

proposed project area will affect Ms. Horrell's property in the same manner as it will affect the public generally. We conclude that this is the case here for the reasons we discuss next.

The boundary of the proposed project area is very irregular, apparently because the project area was designed to encompass most of the commercial centers within the city. The map you enclosed with your letter indicates that there is substantial residential property located directly outside the boundary of the proposed project.

The effect of a decision is distinguishable from the effect on the public generally if the decision affects all members of the public or a significant segment of the public in substantially the same manner. (Regulation 18703, copy enclosed.) In In re Owen, supra, the Commission considered the effects of a downtown "core area" plan for the City of Davis on a home owned by a planning commissioner and situated next to the proposed "core area." The Commission concluded that residential homeowners within the immediate vicinity of the "core area" constituted a "significant segment" of the public. The Commission emphasized that there was no evidence that any portion of the plan would have a peculiar impact on the value of the planning commissioner's property in comparison to other residential property. Thus, the Commission concluded that the planning commissioner could participate in the "core area" plan decisions. The Commission also stated that if further evidence of a unique effect on the planning commissioner's real property should emerge, the planning commissioner could be required to disqualify himself from participating in the "core area" plan decisions. (In re Owen, supra at p. 81.)

Based on Regulation 18703 and the Commission's reasoning in Owen, we conclude that the creation of the proposed project area will not affect Ms. Horrell's real property in a manner distinguishable from the effect on the public generally. However, if future plans for improvement or development of the project area would have a unique impact on Ms. Horrell's real property, she may be required to disqualify herself from participating in those decisions.

Councilmember Ronald Cawdrey

Mr. Cawdrey is an employee of General Telephone. General Telephone owns or leases property adjacent to the project area boundary. A General Telephone facility is located on that property.

Mr. Cawdrey may participate in the redevelopment decisions unless there will be a reasonably foreseeable material financial effect on General Telephone. (Section 87103(c) and (d).) The General Telephone facility will not be included in the redevelopment project area, but it is foreseeable that the property could indirectly benefit from the redevelopment of adjacent areas. Therefore, we must determine whether the creation of the redevelopment project area will materially affect the General Telephone property.

Regulation 18702.2 (copy enclosed) contains guidelines for determining whether the effect of a decision on a business entity is considered material. These guidelines vary with the financial size of the business entity. General Telephone is a Fortune 500 company; accordingly, the effect of a decision will be material only if it is reasonably foreseeable that value of the real property will increase or decrease by $1,000,000 or more as a result of the decision. (Regulation 18702.2(c)(3).)

Because the General Telephone facility is located outside of the proposed project area, and because the property already is developed with a large facility, we conclude that the creation of the proposed redevelopment project area will not foreseeably increase or decrease by $1,000,000 the value of the property where the General Telephone facility is located. Thus, Mr. Cawdrey may participate in the decisions to create the redevelopment project area. Mr. Cawdrey's participation in future decisions as to specific redevelopment projects will depend on the location of the project and its foreseeable effects on General Telephone.

Councilmember Archie Snow

Mr. Snow's personal residence is located near the proposed boundary of the redevelopment project area. The above analysis concerning Ms. Horrell's real property also applies to Mr. Snow's residence. Accordingly, we conclude that the decision to create the proposed project area will affect Mr. Snow in substantially the same manner as it will affect the public generally. Therefore, Mr. Snow may participate in those decisions. However, if future decisions concerning specific projects would have a special effect on Mr. Snow's residence, he may at that time be required to disqualify himself from the redevelopment decisions.

Planning Commissioner William Czueleger

Mr. Czueleger has the following real property interests:[2]

(1) A residential court consisting of six single-family residences located outside, but within approximately one block of the boundary of the proposed project area.

(2) Two residential units located approximately one block outside the boundary of the proposed project area.

(3) A family residence located approximately one block outside the boundary of the proposed project area.

(4) Rental units located approximately five blocks outside the boundary of the proposed project area.

Like Ms. Horrell and Mr. Snow, Mr. Czueleger owns residential real property located near the boundaries of the proposed project area. However, unlike Ms. Horrell and Mr. Snow, Mr. Czueleger owns three parcels of real property which are near the proposed project area. Because Mr. Czueleger owns three parcels which are likely to be affected by the creation of the redevelopment project area, we conclude that the effect on his interests will be distinguishable from the effect on the public generally. (See In re Legan (1985) 9 FPPC Ops. 1.)

If the foreseeable effects of the redevelopment decisions on Mr. Czueleger's real property interests would be material, Mr. Czueleger must disqualify himself from participating in the decisions. Regulation 18702(b)(2) contains monetary guidelines for determining whether an effect on the value of real property is considered material. We do not have sufficient information to apply these guidelines to Mr. Czueleger's interests. However, in In re Oglesby, supra at p.81, the Commission

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[2] You have also informed us that Mr. Czueleger's adult nephews have a hardware and marine supply store located within the proposed project area. The economic interests of Mr. Czueleger's adult nephews are not considered to be Mr. Czueleger's economic interests. (See Sections 82029 and 82034.) The analysis would be different if Mr. Czueleger had an investment interest in the store, received income form either the store or his nephews, held an interest in the real property where the store is located, or was employed by the store. (See Section 87103.)

concluded that a combination of effects on a public official's various economic interests was sufficient to require the official's disqualification, even if it could not be determined whether any particular interest would be materially affected by a redevelopment decision. Based on that reasoning in Oglesby, we conclude that the creation of the proposed project area would be likely to materially affect Mr. Czueleger's real property interests. Thus, Mr. Czueleger must disqualify himself from participating in those decisions. If you or Mr. Czueleger believe that the effect would not be material, you may submit additional factual material on this issue for our consideration.

Whether Mr. Czueleger may participate in future decisions concerning particular redevelopment projects will depend on the specific facts of the situation. For example, projects which are located in the vicinity of Mr. Czueleger's real property interests will probably require his disqualification, but projects which are located a considerable distance away may not.

Planning Commissioner Julia Takahashi

Ms. Takahashi has the following interests which could be affected by the redevelopment decisions:

(1) Ms. Takahashi's husband has a partnership interest in an automotive repair business within the proposed project area. The interest in the partnership exceeds $1,000. The partnership has a leasehold interest in the real property where the business is located and an option to renew the lease for an unknown period.

(2) Ms. Takahashi conducts an architectural business in leased office space located within the proposed project area. Her interest in the business presumably is valued at $1,000 or more.

(3) Ms. Takahashi owns stock in Exxon Corporation valued at more than $1,000. An Exxon service station is located in the proposed project area.

As discussed above, the purpose of redevelopment is to stimulate business and increase real property values in and around the redevelopment project area. Ms. Takahashi's architectural business and her husband's automotive repair business both are located in the proposed project area and thus both stand to benefit directly from the city's redevelopment plan. In addition, the value of the real property in which these businesses hold leasehold interests may be significantly

affected by redevelopment decisions. Accordingly, we conclude that Ms. Takahashi must disqualify herself from participating in the decision to create the redevelopment project area. She also may be disqualified from future decisions to implement the redevelopment plan. Because of our conclusion as to these interests, we need not address whether this decision will have a reasonably foreseeable material financial effect on Exxon.[3/]

City Attorney Gordon Phillips

Mr. Phillips' personal residence is located near the boundary of the proposed project area. Based on the analysis of Ms. Horrell's interests, we conclude that Mr. Phillips may participate in the decisions to create the proposed project area. Whether Mr. Phillips may participate in future decisions to implement specific projects will depend on the location of the project and whether it will have a unique effect on the value of Mr. Phillips' residence.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures

3/ Regulation 18702.2(c) contains the guidelines for determining whether the effect of a decision on Exxon, a Fortune 500 company, is considered material.

GORDON C. PHILLIPS
CITY ATTORNEY

TELEPHONE
(213) 372-1171

CITY OF REDONDO BEACH
CALIFORNIA

415 DIAMOND STREET
REDONDO BEACH, CALIFORNIA 90277

June 18, 1987

Fair Political Pratices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Gentlemen:

On behalf of the individuals named herein, I am requesting an advice letter and opinion to determine if any of them have a financial conflict of interest under the Fair Political Practices Act.

PRELIMINARY FACTS

The City of Redondo Beach has a Redevelopment Agency (agency) which is composed of the members of the City Council. The agency and the council are considering imposing a redevelopment plan through several of the commercial corridors of the city. Very little, if any, residential housing, is within the proposed project area. A map of the proposed project area is enclosed, with the names and locations of disclosed financial interests within the city. This request is made only for those individuals who have interests in or near the project area.

WILLIAM CZUELEGER

Mr. Czueleger is a member of the Planning Commission.

ITEM NO. 1. A residential court consisting of six single-family residences located at 204-211 S. Broadway. Mr. Czueleger's interest exceeds $1000.

ITEM NO. 2. Two residential units located at 628-628 1/2 Esplanade. Mr. Czueleger's interest exceeds $1000.

ITEM NO. 3. Family residence at 630 Esplanade. Mr. Czueleger's interest exceeds $1000.

ITEM NO. 4. Rental units at 707-707 1/2 Elvira. Mr. Czueleger's interest exceeds $1000.

ITEM NO. 5. Adult nephews own interest in hardware and marine supply stores. Their interest exceeds $1000. This is within the proposed plan.

KAY HORRELL

Ms. Horrell is a member of the City Council.

ITEM NO. 6. A Single family rental located at 428 S. Broadway. (There are three homes between the property line and the proposed plan.) Mrs. Horrell's interest exceed $1000.

RONALD CAWDREY

Mr. Cawdrey is a member of the City Council.

ITEM NO. 7. A General Telephone facility, which is either leased or owned by that corporation. Mr. Cawdrey is an employee of General Telephone Company.

ARCHIE SNOW

Mr. Snow is a member of the City Council.

ITEM NO. 8. The personal residence of Mr. Snow located at Firmona. Mr. Snow's interest exceeds $1000.

JULIA TAKAHASHI

Mrs. Takahashi is a Planning Commissioner.

ITEM NO. 9. Mrs. Takahashi's husband has a partnership interest in an automotive repair business within the proposed plan, and the partnership also has a lease with an option to renew for an unknown period on the property on which the business is conducted. The interest in the partnership exceeds $1000. The business is within the proposed plan.

ITEM NO. 10. Item No. 10 is an Exxon service station. Mrs. Takahashi owns shares of stock in Exxon Corporation in excess of $1000.

ITEM NO. 11. Mrs. Takahashi has a leasehold interest and conducts an architectural business at 310 South Catalina. The business is within the proposed plan.

GORDON PHILLIPS

Mr. Phillips is City Attorney and General Counsel for the Redevelopment Agency.

ITEM NO. 12. The personal residence of Mr. Phillips. Mr. Phillips interest is in excess of $1000.

Please note that Item numbers 11 and 12 are the personal residence of Councilman Cawdrey and Councilperson Marsha Martin, and appear not to be affected by the plan. If, upon examination, you feel these interests should be analyzed, please assume their respective interests exceed $1000.

The addresses of each person who is subject to the advice letter and opinion are attached hereto.

If you are able to expedite your opinion it would be greatly appreciated.

Very truly yours,

Gordon C. Phillips
City Attorney

Enclosure

William F. Czuleger
630 Esplanade
Redondo Beach, Ca 90277

Julia de Lacey Takahashi
c/o Ambienti
310 South Catalina Avenue
Redondo Beach, CA 90277

Councilmember Kay Horrell
412 South Irena Avenue
Redondo Beach,CA 90277

Councilmember Archie Snow
1814 Firmona Avenue
Redondo Beach, Ca 90278

Councilmember Ron Cawdrey
2617 Graham Avenue
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June 25, 1987

Fair Political Practices Commission
420 J Street - Suite 800
Sacramento, Ca 95814

Re: 87-166

Gentlemen:

On June 18, 1987 I sent to your office a request for advice letter and opinion concerning a possible conflict of interest of certain planning commissioners and councilmen.

That portion of the redevelopment plan which was submitted to you has been modified to eliminate the GTE property. Accordingly, it will not be necessary to analyze any issues with respect to Councilman Ronald Cawdrey.

Sincerely,

Gordon C. Phillips
City Attorney

GCP:sr