



California Fair Political Practices Commission

January 9, 1989

Robert G. Boehm
Chico City Attorney
196 E. Fifth Street
P.O. Box 3420
Chico, CA 95927

Re: Your Request for Advice
Our File No. I-88-400

Dear Mr. Boehm:

You have requested advice regarding application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to various public officials in the City of Chico. Because your request does not involve a specific decision or a specific set of facts, we consider your request to be for informal assistance.^{2/}

QUESTIONS

The City of Chico and the Chico Redevelopment Agency are currently considering adopting a Chico urban area redevelopment project which may comprise a majority of the incorporated area of the City of Chico and a large portion of the unincorporated area of Butte County. Each member of the city council, planning commission and city staff owns real property within the proposed boundaries of the project.

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

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

May these persons participate in an informal study of the feasibility of proceeding with the project or in the formal proceedings leading to the adoption of the project? *

CONCLUSION

These public officials may participate in decisions which materially affect their economic interests if the effect is similar to the effect on a significant segment of the public.

FACTS

The City of Chico has within its boundaries a redevelopment agency for which the Chico City Council serves as the board. The city manager serves as the agency executive director. The city attorney serves as the agency counsel. The finance officer is the agency treasurer and the city clerk is the agency secretary. The city and the redevelopment agency are currently considering adopting a Chico urban area redevelopment project which may comprise a majority of the incorporated area of the City of Chico and a large portion of the unincorporated area of the County of Butte which surrounds the city.

Although the initial feasibility study for this project area will be conducted by an outside consultant, city council members and city staff will participate in the process. If the feasibility study determines that formation of the Chico urban area redevelopment project is appropriate, the city and the redevelopment agency may proceed with the formal proceedings under California's Community Redevelopment Law to establish such a redevelopment project. If formal proceedings are commenced, members of the city council, planning commission and certain city staff members would participate in the proceedings.

It appears that each member of the city council, planning commission, and city staff owns real property within the proposed boundaries of the project in the form of a personal residence, and some individuals own additional real property within the proposed project area. You believe it is impossible at this stage to determine how formation of the redevelopment project would affect the value of any such real property.

In our recent telephone conversation, you indicated that 94% of the residences in the City of Chico would be in the redevelopment project area.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision that will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a 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(a)-(e).)

In the present situation, you have expressed concern over the possibility that ownership of their residences may require public officials to refrain from participating in decisions regarding the redevelopment project. Obviously, the statute lists other economic interests which may give rise to disqualification. However, your main concern is whether ownership of residences may result in disqualification of a large number of public officials.

The public officials you have referred to may not make or participate in making any governmental decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their residence. (Section 87103(b).) Undoubtedly, many of the decisions regarding the redevelopment project will have a material financial effect on the residences owned by these public officials. For example, Commission regulations provide that a decision is material with respect to an official's interest in real property if:

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(Regulation 18702.1(a)(3)(D).)

The question becomes whether the effect of such a decision on the official's economic interest will be similar to the effect on the public generally.

Public Generally

Regulation 18703 provides:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

In the present situation, the "public" may include all persons in the City of Chico as well as a substantial number of persons in unincorporated areas of Butte County. (See In re Legan (1985) 9 FPPC Ops. 1, 12, copy enclosed.) From the facts you have provided, it is clear that a significant segment of the residences in that area will be in the redevelopment project area. Accordingly, these public officials may participate in decisions which have a material financial effect on their personal residences unless the effect will be

Robert G. Boehm
January 9, 1989
Page 5

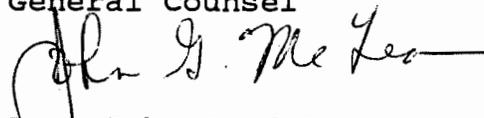
different than the effect on other homeowner's residences in the redevelopment project area. (See, In re Owen (1976) 2 FPPC Ops. 77, 81; and Brown Advice Letters, Nos. A-86-297 and A-86-297A; copies enclosed.)

You have also pointed out that some individuals may own additional real property within the proposed project area. With regard to these individuals, it should be noted that if an individual owns commercial property or owns several residences which are used as rental properties, decisions affecting those properties may be considered to affect those individuals interests in a manner which is different from the effect on the public generally. (See, In re Owen, supra; and In re Ferraro (1978) 4 FPPC Ops. 62, 63; copies enclosed.)

Obviously, this advice is general in nature. If you would like to discuss specific issues further, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:ld

Enclosure

August , 1993

Robert G. Boehm
Chico City Attorney
Office of the City Attorney
P. O. Box 3420
Chico, CA 95927

Gregory P. Einhorn
Deputy County Counsel
County of Butte
25 County Center Drive
Oroville, CA 95965

Re: Your Request for Advice
Our File No. A-92-477

Dear Mr. Boehm and Mr. Einhorn:

You have requested advice regarding application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to certain public officials in the City of Chico and the County of Butte concerning their participation in proceedings leading to formation of a joint city/county redevelopment project area.

Please note that our advice is prospective in nature and we do not comment on past conduct.

QUESTION

A number of city and county public officials own residential property in the Chico sphere of influence, which is currently served by a septic system. Under the Act, does the "public generally" exception apply to these officials, thereby allowing them to participate in the formation of 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 Code of Regulations Section 18000 et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

The "public generally" exception does not apply to the city and county officials who own residential property in the Chico sphere of influence which is currently served by a septic system. These officials may not participate in the formation of the redevelopment project area since they will benefit more than the property owners whose property is already on the sewer system.

FACTS

The City of Chico and the County of Butte are working on the formation of a joint city/county redevelopment project area ("the proposed project area"). As you advised, this is not a joint powers authority. Since your previous requests for advice from the Commission (Advice Letter Nos. I-88-400 and I-90-151), the boundaries of the proposed project area have been redrawn, reducing the total amount of property, population and the number of single-family dwelling units within the boundaries of the project area.

A focus of the proposed project area will be the elimination of groundwater contamination caused by the discharge of wastewater from septic tanks and the elimination of surface water contamination caused by the discharge of untreated storm water.

The entire Chico sphere of influence² is subject to a cease and desist order issued by the Regional Water Quality Control Board for the Central Valley Region which prohibits further use of most septic tanks after July 1995. The septic tanks will be abandoned and the property formerly served by septic tanks will be connected to the city sewer system, resulting in considerable cost to the owners of such property.

It is foreseeable that a portion of the cost of the sewer mains, sewer laterals and other facilities necessary to connect property to the city sewer system will be funded with tax increment revenues derived from the proposed project area. This will result in a substantial savings to all owners of such property located within the boundaries of the proposed project area and within the Chico sphere of influence. Therefore, you stated that all city and county officials who would be called upon to participate in project area formation proceedings are likely to receive a financial benefit from the project if they own residential property within the Chico sphere of influence; and those owning residential property served by septic tank are likely to benefit more.

² The Chico sphere of influence is an area for eventual urban development which includes portions of the Chico city limits both within and outside existing redevelopment project areas and unincorporated areas not within an existing or proposed redevelopment project area.

The city and county also envision funding a portion of the cost of storm drainage facilities with tax increment revenues derived from the proposed project area. This will result in a considerable savings to all owners of residential property within the boundaries of the proposed project area as well as other portions of the Chico sphere of influence.

You also informed us that the proposed project area is 5,835 acres, with a population of 29,000 and with 25,000 residential units. Approximately 15,000 residential units are on a septic system and 10,000 residential units are on the sewer system. The Chico sphere of influence is comprised of 24,400 acres, with a population of 82,500 and with 37,000 residential units. Approximately 18,500 residential units are on a septic system and 18,500 residential units are on the sewer system.

You have identified all residential property owned by city and county officials who are likely to participate in project formation proceedings, indicating the proximity to the proposed project area and whether their residences are served by a septic or sewer system.

ANALYSIS

This letter incorporates by reference the analysis regarding materiality and public generally provided in Advice Letters Nos. I-88-400 and I-90-151. Where an official has a financial interest that will be financially affected by a governmental decision, the official may still participate in the decision if the effect on the official's interest is not distinguishable from the effect on the public generally. (Section 87103; Regulation 18703.)

You have inquired whether the "public generally" exception may be applied to the city and county officials who may be called upon to participate in the project formation proceedings. The "public generally" exception is based on the premise that an official's economic interest is affected in substantially the same manner as the public or a significant segment of the public. For example, residential home owners may constitute a significant segment of the population whose interests may be affected in a substantially similar manner by decisions made concerning a redevelopment plan. (In re Owen (1976) 2 FPCC Ops. 77).

City of Chico

Those participating in decisions regarding the proposed project area include members of the city council, the planning commission and city staff. As you were previously advised, the "public" includes all persons in the City of Chico as well as a substantial number of persons in the unincorporated areas of Butte County. (Boehm Advice Letter, No. I-88-400.) Since a substantial number of persons in the unincorporated areas of Butte County are

within the Chico sphere of influence and will be impacted by the decisions, they are included in the city's jurisdiction. (In re Legan (1985) 9 FPPC Ops. 1, 12.)

Therefore, to apply the "public generally" exception, any decision which will materially affect the property of the council members, planning commission or city staff would have to affect a significant segment of the population of the city and the unincorporated areas around the city in a substantially similar way.

Butte County

Those participating in decisions regarding the proposed project area include members of the Board of Supervisors, the county planning commission and county staff. As previously advised, the "public" is the County of Butte. (Marsh Advice Letter, No. I-90-151.) Therefore, to apply the "public generally" exception, any decision which will materially affect the property of the supervisors, planning commission or county staff would have to affect a significant segment of the population of the County of Butte in a substantially similar way.

Public Generally

The city and county envision paying for the connections to the city sewer system with tax increment revenues derived from the proposed project area. This will result in a financial benefit to all residential property owners within the sphere of influence; however, the owners of property served by septic tank are likely to benefit more.

Since tax increment revenues from the proposed project area will result in a substantial financial benefit to the owners of residential property which is currently served by a septic system, the "public generally" exception does not apply to any city or county official who owns a residence which is currently on a septic tank.³ They will uniquely benefit from the tax increment revenues from the proposed project area which will be used to fund the sewer system conversion.

In addition, the city and county also envision funding a portion of the cost of storm drainage facilities with tax increment revenues derived from the proposed project area. This will result in savings to all residential property owners in the proposed project area and in the sphere of influence, however, no residential property owner will be uniquely affected. Thus, the public generally exception will apply since all residential property owners will be affected in a substantially similar way.

³ Please note that the Commission is currently in the process of adopting a regulation to more specifically define the term "public generally" for purposes of the Act.

I trust this answers your question.

Sincerely,

Wayne Ordos
Executive Director

By: Jill Stecher
Counsel, Legal Division

WO:JS:ak



OFFICE OF THE
CITY ATTORNEY

196 E. Fifth Street
P.O. Box 3420
Chico, CA 95927
(916) 895-4825

FPPC

OCT 14 12 35 PM '88

October 13, 1988
CA/PEND/20:34-5

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

Attention: Legal Assistance Division

This is a request for an opinion on the propriety of members of the City Council, Planning Commission and certain members of the City staff participating in:

(i) an informal study of the feasibility of proceeding with a Chico urban area redevelopment project which may comprise a majority of the incorporated area of the City of Chico as well as a significant portion of the unincorporated area of the County of Butte surrounding the City, and

(ii) the formal proceedings leading to the adoption of such a redevelopment project if the same is determined to be appropriate pursuant to the feasibility study described above.

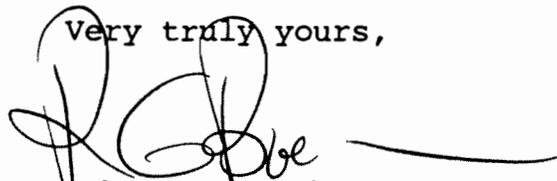
The City of Chico has within its boundaries a redevelopment agency for which the Chico City Council serves as the board. The City's City Manager serves as the agency executive director, the City Attorney serves as the agency counsel, the Finance Officer is the agency treasurer and the City Clerk is the agency secretary. The City and the Redevelopment Agency are currently considering adopting a Chico urban area redevelopment project which may comprise a majority of the incorporated area of the City of Chico and a large portion of the unincorporated area of the County of Butte which surrounds the City. (See attached map.) Although the initial feasibility study for this project area will be conducted by an outside consultant, City Council members and City staff will participate in the process. If the feasibility study determines that formation of the Chico urban area redevelopment project is appropriate, the City and the Redevelopment Agency may proceed with the formal proceedings under California's Community Redevelopment Law to establish such a redevelopment project. If formal proceedings are commenced, members of the City Council, Planning Commission and certain City staff members would participate in the proceedings. It appears that each member of the City Council, Planning Commission, and City staff owns real property within the proposed boundaries of the Chico urban area redevelopment project in the form of a personal residence, and some individuals may own additional real property within the proposed project area. It is impossible at this stage to determine how formation of the Chico

urban area redevelopment project would affect the value of any such real property. These facts raise the following questions:

1. Is it a conflict for members of the City Council, Planning Commission, or City staff to participate in either the feasibility study or the formal proceedings leading to the formation of the Chico urban area redevelopment project, given the fact that it would be virtually impossible now to determine how formation of the project area would affect the value of any real property owned by such individuals?
2. Would participation by members of the City Council, Planning Commission and staff in either the feasibility study or the formal proceedings leading to formation of the Chico urban area redevelopment project affect their interests in substantially the same manner as a "significant segment of the public generally," pursuant to California Administrative Code §18703, and thus not constitute a conflict of interest?
3. If members of the City Council and Planning Commission are not subject to the exemption of California Administrative Code §18703, is it correct to assume that a quorum of the City Council and Planning Commission would be required to participate in decisions regarding the Chico urban area redevelopment project pursuant to the mandatory participation provisions of Government Code §87101, and if so, what method should be employed to select the Councilmembers and Planning Commissioners who would be allowed to participate?
4. If City staff members are not subject to the exemption of California Administrative Code §18703, and if there are no other qualified persons available on the City staff to work on the Chico urban area redevelopment project, must the City have independent staff to perform such functions?

Thank you for your assistance in this matter.

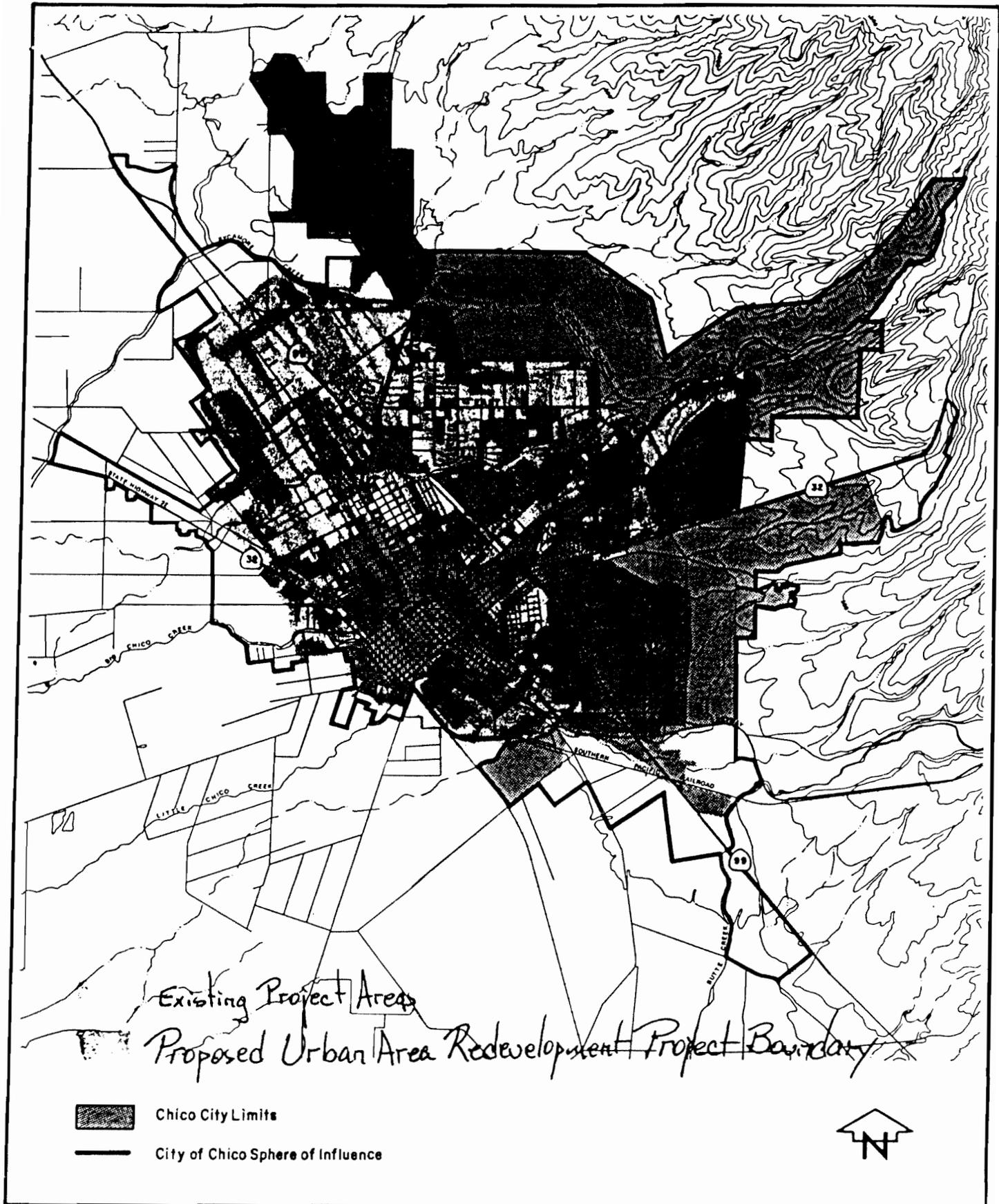
Very truly yours,



Robert G. Boehm
City Attorney

EEM:sg
Attachment

cc: City Council
City Manager
City Clerk
Community Services Director
Finance Officer



Existing Project Areas
 Proposed Urban Area Redevelopment Project Boundary

Chico City Limits
 City of Chico Sphere of Influence



CITY OF CHICO

PLANNING OFFICE

CHICO CITY LIMITS AND
 SPHERE OF INFLUENCE

DRAWN BY RA CHECKED BY _____
 DATE July 01, 1987 SCALE 1"=1 mile
 APPROVED BY *Alpha Sellers*
PLANNING DIRECTOR



California Fair Political Practices Commission

October 24, 1988

Robert G. Boehm
City Attorney
P.O. Box 3420
Chico, CA 95927

Re: 88-400

Dear Mr. Boehm:

Your letter requesting advice under the Political Reform Act was received on October 14, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Diane M. Griffiths
General Counsel

DMG:plh



OFFICE OF THE
CITY ATTORNEY

196 E. Fifth Street
PO Box 3420
Chico, CA 95927
(916) 895-4825

FPFC

OCT 14 12 35 PM '88

October 13, 1988
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428 "J" Street, Suite 800
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(ii) the formal proceedings leading to the adoption of such a redevelopment project if the same is determined to be appropriate pursuant to the feasibility study described above.

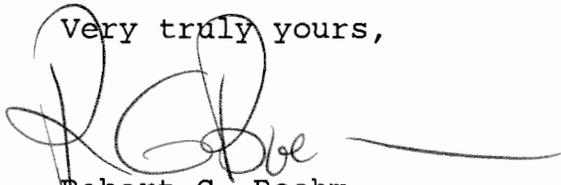
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urban area redevelopment project would affect the value of any such real property. These facts raise the following questions:

1. Is it a conflict for members of the City Council, Planning Commission, or City staff to participate in either the feasibility study or the formal proceedings leading to the formation of the Chico urban area redevelopment project, given the fact that it would be virtually impossible now to determine how formation of the project area would affect the value of any real property owned by such individuals?
2. Would participation by members of the City Council, Planning Commission and staff in either the feasibility study or the formal proceedings leading to formation of the Chico urban area redevelopment project affect their interests in substantially the same manner as a "significant segment of the public generally," pursuant to California Administrative Code §18703, and thus not constitute a conflict of interest?
3. If members of the City Council and Planning Commission are not subject to the exemption of California Administrative Code §18703, is it correct to assume that a quorum of the City Council and Planning Commission would be required to participate in decisions regarding the Chico urban area redevelopment project pursuant to the mandatory participation provisions of Government Code §87101, and if so, what method should be employed to select the Councilmembers and Planning Commissioners who would be allowed to participate?
4. If City staff members are not subject to the exemption of California Administrative Code §18703, and if there are no other qualified persons available on the City staff to work on the Chico urban area redevelopment project, must the City have independent staff to perform such functions?

Thank you for your assistance in this matter.

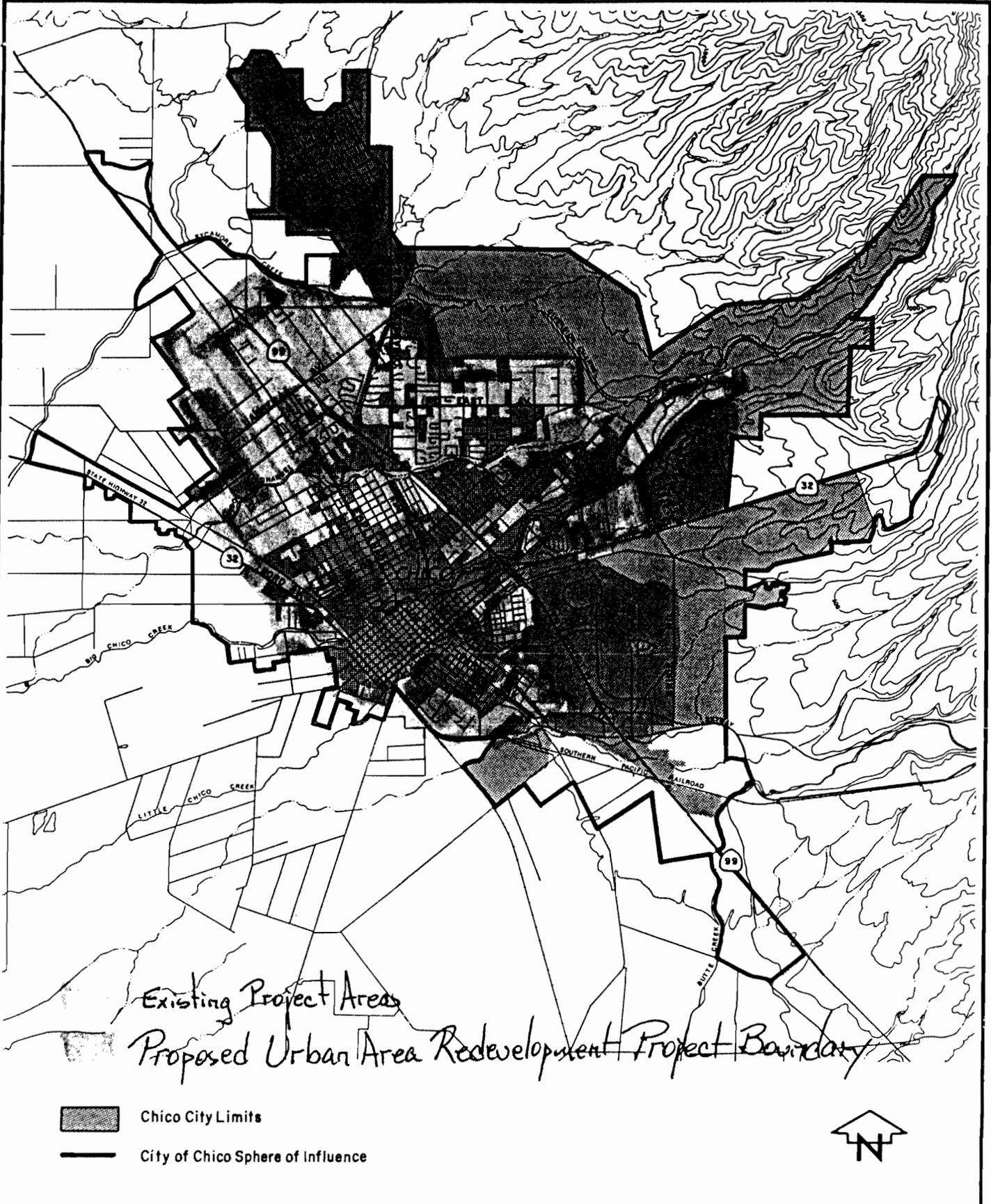
Very truly yours,



Robert G. Boehm
City Attorney

EEM:sg
Attachment

cc: City Council
City Manager
City Clerk
Community Services Director
Finance Officer



CITY OF CHICO

PLANNING OFFICE

**CHICO CITY LIMITS AND
SPHERE OF INFLUENCE**

DRAWN BY RA CHECKED BY _____
 DATE July 01, 1987 SCALE 1" = 1 mile
 APPROVED BY *Cliff Sellers*
 PLANNING DIRECTOR