

August 8, 2013

Peter M. Thorson
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071

Re: Your Request for Advice
Our File No. A-13-108

Dear Mr. Thorson:

This letter responds to your request for advice on behalf of Temecula Mayor Naggar and Councilmembers Comerchero and Washington regarding their duties under the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ Please note that other provisions of the law may have some bearing on your situation. The Commission has no jurisdiction to interpret or enforce laws outside the Act.

QUESTIONS²

1. Do Mayor Naggar and Councilmember Washington have an interest in the purchaser of property from a Rancon LLC where they each hold less than a 10% interest in the Rancon LLC selling the property?

2. Do Mayor Naggar, Councilmember Comerchero and Councilmember Washington have a conflict of interest in decisions affecting a Coyne Development Corporation proposal (hereafter “Bella Linda”) when Richmond American previously had an interest in purchasing part of the development? Richmond American has terminated its due diligence and its negotiations for any purchase and sale related to Bella Linda.

3. If it is determined that Mayor Naggar, Councilmember Comerchero and Councilmember Washington, or any combination of them, should not participate in the city

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² We have resequenced your questions in an effort to avoid redundancy in our analysis.

council action on the Bella Linda Project or other city council actions involving merchant builders who have purchased property from a Rancon LLC, can the random selection procedures of Regulation 18708 be invoked to allow the selection of one member to achieve a quorum on those actions?

CONCLUSIONS

1. While under the regulation, Mayor Nagar and Councilmember Washington are deemed to have a potentially disqualifying interest in all the LLCs and the Rancon Group, sources of income to the LLC's are not considered sources of income to Mayor Nagar or Councilmember Washington unless the council members own a 10 percent or greater investment interest in that LLC.

2. Under the facts you described, none of the council members would have a conflict of interest in the Bella Linda proposal.

3. You have not indicated that all three members actually have an interest in the same LLC. Thus, the city council may in many circumstances have a quorum and would not need to apply the Legally Required Participation rule. However, if the city council was unable to achieve a quorum due to conflicts of interest of the majority of the city council, the random-selection method you described in your letter could be utilized, so long as it complies with Regulation 18708.

FACTS

Rancon Group: Mr. Dan Stephenson is a long-time successful real estate developer in Riverside County who develops property under the marketing name of the "Rancon Group." The Rancon Group is not a legal entity but is a marketing name for the real estate development activities of Mr. Stephenson and his investors.

Councilmember Jeff Comerchero is the "President" of the "Rancon Group." Mr. Comerchero is responsible for the administration of the various Rancon LLCs and their efforts in developing their respective properties.

Rancon LLCs: Mr. Stephenson forms a limited liability company which purchases residential and commercial property and then develops it or sells it to a residential merchant builder or commercial builder. He is an investor in the LLC and serves as the managing member of the various LLCs that have been formed to develop property under the Rancon name.

Other people invest in the LLCs of which Mr. Stephenson is a managing member. (The LLCs in which Mr. Stephenson is the managing member will be referred to in this letter as the "Rancon LLCs" or "Rancon LLC" for convenience). Over the course of the last few years, the Rancon LLCs have purchased many residential subdivisions and commercial properties in Riverside County. Each property is owned by an individual Rancon LLC.

- Mr. Comerchero, as the President of the Rancon Group, is responsible for the administration of the various Rancon LLCs and their efforts in developing their respective properties. He is an investor in many, but not all, of the Rancon LLCs. His compensation for this work is paid by each individual Rancon LLC because the “Rancon Group” is not a legal entity. His income from the Rancon LLCs is more than \$500 within the previous 12 months and his investments are more than \$2,000 in each Rancon LLC in which he has an investment.
- Mayor Mike Naggar is an investor in several of the Rancon LLCs. Mayor Naggar is also a real estate consultant to some of the Rancon LLCs and is a real estate consultant and investor in many other development projects in Riverside County in which Mr. Stephenson has no involvement. His income from these LLCs is more than \$500 within the previous 12 months and his investments are more than \$2,000 in each of those Rancon LLCs in which he has an investment.
- Councilmember Washington is an investor in a few of the Rancon LLCs. Mr. Washington is not a consultant to any of the Rancon LLCs. He has no income from these Rancon LLCs and his investments are more than \$2,000 in each of those Rancon LLCs in which he has an investment.

One of the Rancon LLCs is selling its residential subdivision property (the “Selling LLC”). The sale is to Richmond American, a merchant builder of residential properties.

- Councilmember Comerchero has an ownership interest in the Rancon Selling Entity and has administered its business affairs.
- Neither Mayor Naggar nor Councilmember Washington have any investment interests in the Rancon Selling Entity and neither have any income from the Rancon Selling Entity.

Coyne Development Corp: Coyne Development Corporation is proposing to develop a residential project in the City of Temecula at the corner of Pechanga Parkway and Lorna Linda Road known as the Bella Linda Project. The Project has two components -- one is 325 apartment units and the other is 49 lots of detached single-family homes. The Bella Linda Project would require a change of zone and a change in the zoning ordinance through a planned development overlay zone providing specific development standards for the Project. The Project would require city council approval of the zone change, zoning ordinance amendment for the planned development overlay zone, tentative tract map approval and a development plan. No Rancon LLC has any investment or other interest in the Bella Linda Project.

During the Planning Commission hearing on the Project, the Coyne announced that Richmond American was in due diligence to purchase the 49 lots of detached single-family homes. However, on May 6, 2013, Richmond American sent a letter to the Developer notifying

it of Richmond American's termination of its due diligence under a letter of interest for the 49 lots of the Project and that it is ending the negotiations between Richmond American and the Developer for the purchase and sale agreement and its evaluation of the feasibility of the property for construction of the 49 homes. You are not aware of any further involvement of Richmond American in the Bella Linda Project.

In anticipation of applications from the Rancon LLCs coming before the city council, you have proposed the following procedure for the random selection of a council member should you be unable to achieve a quorum due to conflicts of interest.

(1) The random selection process would occur during a public meeting as an agenda item and would provide for the randomly selected council members to participate in all Council actions involving the merchant builder or other entity that has or will purchase property from a Rancon LLC;

(2) The Agenda description would include a statement that the random selection process would be invoked for all Council actions involving the merchant builder or other entity that has or will purchase property from a Rancon LLC;

(3) The Agenda Report on any item in which the randomly selected Councilmembers would participate would include an opinion letter from the city attorney on the conflict questions and an explanation of the random selection process as well as your advice letter;

(4) At the time the random selection is made, the City Clerk will stand in front of the public audience with the Deputy City Clerk as an observer and place the names of Mayor Naggar, Councilmember Comerchero and Councilmember Washington (or those with specific conflicts of interest) on individual pieces of paper into a glass bowl and folded uniformly so that their names are not visible or otherwise identifiable;

(5) The City Clerk will announce that she will draw one name from the bowl and that the person whose name is drawn will be deemed randomly selected to participate in all Council actions involving the merchant builder or other entity that has or will purchase property from a Rancon LLC;

(6) The City Clerk will draw a piece of paper from the bowl and announce the names of the person selected to participate in all Council actions involving the merchant builder or other entity that has or will purchased property from a Rancon LLC; and

(7) The City Clerk will record in the official minutes a description of the process employed and the name of the council members randomly selected to participate in all Council actions involving the merchant builder or other entity that has or will purchased property from a Rancon LLC.

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ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 provides:

"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."

The Commission has adopted an eight-step standard analysis for deciding whether an official has a "financial interest" in a decision. (Regulation 18700(b).) However, you have not asked for a full conflict of interest analysis rather you have asked specific questions that fall under specific steps of the analysis. Thus, we respond to each question in turn.

1. Do Mayor Naggar and Councilmember Washington have a financial interest in the purchaser of property from a Rancon LLC where they each have less than a 10% interest in that Rancon LLC selling the property?

Section 87103 specifies the interests that may result in a conflict of interest under the Act:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- An interest in a source of income to the official, including commission income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An interest in a source of gifts to the official if the gifts aggregate to \$440 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- An interest in the official's personal finances, including those of the official's immediate family. This is known as the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

Your notes indicate the council members have an investment interest in or hold employment with Rancon Group or one or more of the Rancon LLCs, or a combination of these interests.

Rancon Group: Councilmember Comerchero is the President of the Rancon Group, is responsible for the administration of the various Rancon LLCs and their efforts in developing their respective properties. Under Section 87103(d), Councilmember Comerchero has an interest in Rancon Group based on his employment position with Rancon Group. Neither Mayor Nagar nor Councilmember Washington have an interest in Rancon Group.

Rancon LLCs: Councilmember Comerchero is an investor in many, but not all, of the Rancon LLCs. (Section 87103(a).) His compensation for this work is paid by each individual Rancon LLC because the “Rancon Group” is not a legal entity. (Section 87103(c).) His income from the Rancon LLCs is more than \$500 within the previous 12 months and his investments are more than \$2,000 in each Rancon LLC in which he has an investment.

Mayor Mike Naggar is an investor in several of the Rancon LLCs. (Section 87103(a).) Mayor Naggar is also a real estate consultant to some of the Rancon LLCs and is a real estate consultant and investor in many other development projects in Riverside County in which Mr. Stephenson has no involvement. (Section 87103(c) and (d).) His income from these LLCs is more than \$500 within the previous 12 months and his investments are more than \$2,000 in each of those Rancon LLCs in which he has an investment.

Councilmember Washington is an investor in a few of the Rancon LLCs. (Section 87103(a).) Mr. Washington is not a consultant to any of the Rancon LLCs. He has no income from these Rancon LLCs and his investments are more than \$2,000 in each of those Rancon LLCs in which he has an investment.

Otherwise Related Business Entities: In our prior letter to you (*Thorson Advice Letter*, No. A-08-015), we considered the relationships of the various officials and the various LLCs in question. We noted that Mr. Stephenson is the managing partner in and formed all of the Rancon LLCs through his Rancon Group, and markets the development projects of the LLCs through the Rancon Group. Based on these facts we concluded that the Rancon Group and all the LLCs are “otherwise related business entities” as defined in the Act. Generally, the “otherwise related business entity rule” presupposes that an official with an interest in one related entity, has the same investment in all the related business entity.

Dan Stephenson: You stated that Rancon Group is not a “legal entity.” However it would be considered a “business entity” under the Act which is broadly defined as: “any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.” (Section 82005.) In addition, please note that Regulation 18703.3(a)(3) provides:

“In addition to having an economic interest in any business entity from which the official has received income of five hundred (\$500) or more within 12

months prior to the time when the relevant governmental decision is made, the official has a source-of-income economic interest in all of the following:

“(A) Any individual owning a 50 percent or greater interest in that business entity.

“(B) Any individual, regardless of the extent of the individual's ownership interest in that entity, who has the power to direct or cause the direction of the management and policies of the business entity.”

Since Mr. Stephenson owns and/or controls Rancon Group and all the LLCs, each of the council members have an interest in Dan Stephenson as an individual.

Clients of the Rancon LLCs including Richmond American: Where a client pays money to an LLC in which any of the council members has an investment interest of 10 percent or more, pursuant to Section 82030(a), customers who are sources of income to that LLC are also sources of income to the council member to the extent that the council member's pro rata share of the income is \$500 or more. For example, under your facts, Councilmember Comerchero has an investment interest in the LLC that is selling property to Richmond American as well as being employed by the selling LLC and receiving income from it. Should Richmond American have given the LLC income such that Councilmember Comerchero's pro rata share was \$500 or more, Richmond American would be a reportable source of income to Councilmember Comerchero.

In contrast, Mayor Nagar and Councilmember Washington do not have any investment interest in the selling LLC, and do not receive income from it, but do have interests in other Rancon LLCs. You have asked whether, based on the fact that the Mayor Nagar and Councilmember Washington are deemed to have an interest in all of the LLCs as otherwise related business entities, that this “imputed” ownership interest in the other LLCs would trigger the piercing rule of Section 82030. We conclude it would not. While purposes of the Act are served by treating an official's interest in one business entity as also an interest in all otherwise related businesses, taking the fiction further to pierce through other LLCs that the council members hold no legal ownership interest would not be consistent with the language or purposes of Section 82030.

Thus, while under the regulation, Mayor Nagar and Councilmember Washington are deemed to have a potentially disqualifying interest in all the LLCs and the Rancon Group, income to those other LLC's is not considered income to Mayor Nagar or Councilmember Washington unless the council members own a 10 percent or greater investment interest in that LLC.

2. Do Mayor Naggar, Councilmember Comerchero and Councilmember Washington have a conflict of interest in decisions affecting a Coyne Development Corporation proposal (hereafter “Bella Linda”) when Richmond American previously had an interest in purchasing part of the development? Richmond American has terminated its due diligence and its negotiations for any purchase and sale related to Bella Linda.

Having identified the various interest of the council members that may lead to a conflict of interest under the Act, you ask whether any of the council members have a disqualifying conflict of interest with the Bella Linda proposal. As we noted above, if Mayor Naggar, and Councilmember Washington do not have a 10% or greater ownership interest in the selling LLC, they will not receive any portion of Richmond American’s payments and therefore would not have an interest in Richmond American for purposes of this question.

Councilmember Comerchero is an investor in the selling LLC and will receive income from the Richmond American due to Richmond American’s purchase of property from the selling LLC. Thus, Councilmember Comerchero would have a conflict of interest in any decision that will have a foreseeable³ and material financial effect on Richmond American.

However, you stated that Richmond American, while at one time negotiating to purchase property in the Bella Linda project, has since terminated due diligence and all interest in the purchase of the property. We cannot opine on the legal validity of the termination letter under real property law. However, if in fact, the Bella Linda decision will have no effect on Richmond American due to the fact they will not purchase property in the Bella Linda project, no conflict will exist.

3. If it is determined that Mayor Naggar, Councilmember Comerchero and Councilmember Washington, or any combination of them, should not participate in the Council action on the Bella Linda Project or other Council actions involving merchant builders who have purchased property from a Rancon LLC, can the random selection procedures of FPPC Regulation 18708 be invoked to allow the selection of one member to achieve a quorum on those actions?

In anticipation of applications from the Rancon LLCs coming before the city council, you have proposed the following procedure for the random selection of a council member should you be unable to achieve a quorum due to conflicts of interest.

(1) The random selection process would occur during a public meeting as an agenda item and would provide for the randomly selected council members to participate in all city council actions involving the merchant builder or other entity that has or will purchase property from a Rancon LLC;

³ For a material financial effect to be foreseeable on an official’s interest, it need not be certain or even substantially likely that it will happen. However, the financial effect must be more than a mere possibility. (Regulation 18706(a); *In re Thorner* (1975) 1 FPPC Ops. 198.)

(2) The Agenda description would include a statement that the random selection process would be invoked for all city council actions involving the merchant builder or other entity that has or will purchase property from a Rancon LLC;

(3) The Agenda Report on any item in which the randomly selected council members would participate would include an opinion letter from the city attorney on the conflict questions and an explanation of the random selection process as well as your advice letter;

(4) At the time the random selection is made, the City Clerk will stand in front of the public audience with the Deputy City Clerk as an observer and place the names of Mayor Naggar, Councilmember Comerchero and Councilmember Washington (or those with specific conflicts of interest) on individual pieces of paper into a glass bowl and folded uniformly so that their names are not visible or otherwise identifiable;

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(6) The City Clerk will draw a piece of paper from the bowl and announce the names of the person selected to participate in all city council actions involving the merchant builder or other entity that has or will purchased property from a Rancon LLC; and

(7) The City Clerk will record in the official minutes a description of the process employed and the name of the council members randomly selected to participate in all city council actions involving the merchant builder or other entity that has or will purchased property from a Rancon LLC.

So long as your process complies with the requirements of Regulation 18708, as it appears it does, it is a permissible process. In addition, council members that are not legally required to participate must comply with Section 87105 and Regulation 18702.5, which requires that immediately prior to the discussion of the item, the officials: (1) orally identify each type of economic interest involved in the decision as well as details of the economic interest, as discussed in regulation 18702.5(b), on the record of the meeting; (2) recuse himself or herself; and (3) leave the room for the duration of the discussion and/or vote on the item.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl

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LEGAL DIVISION ASSIGNMENT SHEET

Tracking Number:	
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ITEM DESCRIPTION			
Advice Letter No.		Requestor	
Regulation Project No.			
Other (describe)			

Received By FPPC On:		Due Date:	
Assigned To:		Date To Assignee:	

REVIEWERS	Date To Review	1st Approval & Date (Including Regulation Notices)	Date To Review	Final Approval & Date (Incl. Regulation Adoption Memos)
Proofed				
Senior	8/6/13	SH		
TAD Chief (SEI, Campaign, Conflict of Interest Code letters)				
Assistant GC				
General Counsel				
Executive Director (discretion of GC)				
Chair (discretion of GC)				