FAIR POLITICAL PRACTICES COMMISSION
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June 24, 2010

James C. Harrison
Remcho, Johansen & Purcell, LLP
REDACTED

Re: FPPC No. 08/239 Jim DeMartini, 08/276 Jeff Grover, and 08/277 Thomas Mayfield

Dear Mr. Harrison:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),[1] found in Government Code Section 81000, et seq. This letter is in response to a complaint filed against your clients Stanislaus County Board of Supervisors Jim DeMartini, Jeff Grover and Thomas Mayfield ("Supervisors") by the Building Industry Association of Central California ("Association") on April 2, 2008. The complaint alleged that these Supervisors violated the Political Reform Act's conflict-of-interest provisions when they participated in a Stanislaus County Board of Supervisors vote to approve the Agricultural Element Update to the County's General Plan, which included Farmland Mitigation Program Guidelines, during the December 18, 2007 Board of Supervisors meeting due to economic interests they owned which included farmland in the jurisdiction as well as other business interests.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that the County Board of Supervisors acted in good faith prior to participating in the December 18, 2007 vote by first consulting with County Counsel about their eligibility to participate in the vote. Just before the Supervisors participated in the vote, they were advised by the County Counsel that they could legally participate in the decision because the public generally exception found at Regulations 18700, 18707, and 18707.1 applied to them. Without

[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.

addressing the applicability of the public generally exception in this matter, we have determined that at the time that the Supervisors participated in the vote, it was not reasonably foreseeable that the Supervisors' participation in the vote would have had a material financial effect upon any of their economic interests, therefore the evidence does not support prosecution in this matter.

Specifically, the Act provides that "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.) In order for an economic interest to be material under the Act it must be reasonably foreseeable that the official's participation in a governmental decision will have a financial effect upon an official's economic interests. Whether the financial consequences of a governmental decision are reasonably foreseeable at the time the decision is made depends on the facts surrounding the decision. A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

The Farmland Mitigation Program approved at the December 18, 2007 Board of Supervisors meeting required developers who sought to develop agricultural land in the jurisdiction into residential property to purchase equivalent agricultural land in the jurisdiction (or purchase easements on existing agricultural land requiring the land to remain agricultural land) at a 1:1 ratio. The complaint alleged that the passage of the Farmland Mitigation Program would increase the demand for agricultural properties in the jurisdiction because developers would be looking for agricultural land to purchase in order to mitigate development upon existing agricultural land. The complaint further stated that because of this speculated increase in demand, the value of the Supervisors' agricultural land would increase. However, there was insufficient evidence available at the time the vote was taken to know if the Farmland Mitigation Program would have had any effect upon the value of agricultural land in the jurisdiction or land owned by any of the Supervisors specifically. For instance, though it was possible that developers would have been encouraged to develop existing agricultural land at a greater rate as a result of the Farmland Mitigation Program, it was also possible that some developers would be discouraged from doing so due to the additional restrictions and costs associated with such development. Therefore, there was not enough evidence to establish a reasonably foreseeable material financial effect upon the Supervisor's properties as a result of the Farmland Mitigation Program vote. Any material financial effect upon the Supervisors' business economic interests was also speculative as these business interests were not directly involved in the decision before the Supervisors.

Additional allegations were also submitted against Supervisor DeMartini in a supplemental complaint filed on May 12, 2008. On March 25, 2008, the Stanislaus County

Board of Supervisors, in Resolution 2008-215, placed the first agricultural easement under the newly adopted Farmland Mitigation Program. The supplemental complaint stated that the parcel that was the subject of this easement was incorporated as Menghetti Ranch, Inc., which was owned by Peter Menghetti who also owned "Menghetti Farms." The complainant noted that Supervisor DeMartini voted in this decision despite the fact that Supervisor DeMartini reported income/loans of over $10,000 from Menghetti Farms on his Statement of Economic Interest for the year 2007. After investigation of this issue, we have found no violation of the Act on the part of Supervisor DeMartini.

The Act prohibits public officials from making governmental decisions that involve certain types of sources of income to them, but only when the source of income has provided income to the official within 12 months prior to when the governmental decision is before the official. The income from Menghetti Farms reported on Supervisor DeMartini's Statement of Economic Interests signed by Supervisor DeMartini on February 28, 2007, did in fact list Menghetti Farms as a source of income, however, that statement covered income received in the year 2006. Therefore, because this income was received by Supervisor DeMartini more than 12 months prior to his participation in the governmental decision on March 25, 2008, Supervisor DeMartini was not in violation of the Act when he participated in the vote.

Another allegation raised against Supervisor DeMartini in the supplemental complaint alleged that he violated Section 84308 by accepting a campaign contribution of more than $250 from an entity and then participated in a governmental decision as part of the Agricultural Advisory Board that involved that same entity. The decision involved an approval of the Agricultural Element Update by the Stanislaus County Agricultural Advisory Board. Specifically, the complaint described that Supervisor DeMartini received a campaign contribution of $400 from Menghetti Properties on August 29, 2007, and then on October 1, 2007, participated in a decision before the Agricultural Advisory Board to approve the Agricultural Element Update (which included the Farmland Mitigation Program) that was then forwarded to the County Planning Commission. Supervisor DeMartini served as the Board of Supervisors' non-voting representative to the Agricultural Advisory Board at the time. The complainant alleged that because Menghetti was interested in obtaining easements under the new Farmland Mitigation Program, Supervisor DeMartini was in violation of Section 84308 when he was present as a non-voting member of the Agricultural Advisory Board when that board made the decision to approve the Agricultural Element Update because he received a campaign contribution from Menghetti Properties.

Though Supervisor DeMartini may have had a part in influencing the other voting members of the Agricultural Advisory Board even as a non-voting member in the governmental decision at issue, in order for there to have been a violation of Section 84308 the entity from which Supervisor DeMartini received a campaign contribution must have been a party to or a

participant in the proceeding that was before the Agricultural Advisory Board. Neither Peter Menghetti nor the other Menghetti entities were parties or participants in the governmental decision made at the October 1, 2007 proceeding, therefore, Supervisor DeMartini did not violate Section 84308 with respect to the contribution received by him from Menghetti Properties.

The Commission has completed a review of the foregoing allegations and closed this case without finding a violation. Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

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Sukhi K. Brar
Commission Counsel
Enforcement Division

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