FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 12, 2010

Rosanne Foust
REDACTED

Advisory Letter Re: FPPC Case No. 10/568, Rosanne Foust

Dear Ms. Foust:

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. As you are aware, the Commission was investigating whether you were in violation of the conflict of interest provisions of the Act when you voted on decisions regarding the Saltworks development application. (GC § 87100.)

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that you violated the conflict-of-interest provisions of the Act. The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, public officials perform their duties in an impartial manner, free from bias caused by their own financial interests. (GC § 81001, subdivision (b).) In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use her official position to influence a governmental decision in which the official knows, or has reason to know, that she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official.

As council member, you are public official as defined by Section 82048. When you voted on May 24, 2010, to approve the firm of Hauge Brueck for the environmental services to review the Saltworks project, you made a governmental decision in your capacity as a public official. (Regulation 18702.1, subdivision (a)(1).) An official has an economic interest in any

[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.

source of income, including promised income, totaling $500 or more within 12 months prior to the decision. (GC § 87103(c); Regulation 18703.3.) The nonprofit San Mateo County Economic Development Association ("SAMCEDA") is a source of income to you. On January 19, 2010, the SAMCEDA Board voted to endorse the Saltworks project.

Regulation 18705.3, subdivision (c), prescribes the applicable materiality standard that must be applied in any decisions in which there is a nexus between the duties owed to an official's private source of income and to the official's public employer.

> Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.
>
> (Regulation 18705.3, subdivision (c).)

If the nexus rule applies, if the reasonably foreseeable effect of a decision includes any financial gain or loss to SAMCEDA, however small it may be, the reasonably foreseeable financial effect on SAMCEDA is deemed to be "material." The nexus rule is considered to apply to decisions where goals of SAMCEDA overlap with your decisionmaking authority as a city council member. These are decisions where your employer's goal or purpose is directly aided by a decision from your agency. (*Cook* Advice Letter, I-09-091.) The rationale for the nexus test is that when an employee earns a salary to accomplish a purpose that may be advanced by what she does as a public official, we presume that the employer is benefiting from the actions of the employee in her official capacity. (*Nagel* Advice Letter, I-08-017; *Yarnell* Advice Letter, No. A-00-161.) Typically, a "nexus" is found in situations where the official is also a high-level employee with direct influence and control over her employer's management or policy decisions. (*Moser* Advice Letter, No. A-03-147; *Low* Advice Letter, No. A-99-304.)

It must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

Ultimately, whether a material financial effect is foreseeable at the time a decision is made depends on facts and circumstances peculiar to each case. (*In re Thorner,* (1975) 1 FPPC Ops. 198, at 198.) Your actions violated the Act because it was reasonably foreseeable that your vote to hire an environmental firm to review the Saltworks project, a vote that moved the project along on its path toward potential approval, could affect SAMCEDA, a self-described advocacy group per its website that describes its mission as participating in issues that could affect its member companies. SAMCEDA was so interested in the Saltworks project it held a vote to endorse the project and has sent its employees as advocates on the Saltworks project to the Redwood City council's meetings. Further, the developer applicants on the Saltworks project are dues-paying members to SAMCEDA. Under these particular facts, it is reasonably foreseeable that other developers, encouraged that

projects endorsed by SAMCEDA are successfully moving forward, will join SAMCEDA as dues-paying members. Likewise, if your vote were against moving the Saltworks project forward, it would be reasonably foreseeable that dues paying members might withdraw their financial support of SAMCEDA. The reasonable foreseeability of so much as a penny's worth of increased dues revenue to SAMCEDA because of the advancement or non-advancement of the Saltworks project should have disqualified you from your decision regarding the environmental review.

You consulted with the interim Redwood City attorney on this matter and he, after reviewing FPPC advice letters regarding nexus, advised you that you did not have a conflict of interest. Since our previous advice letters had not been presented with facts that constituted reasonable foreseeability, the attorney's advice was understandable and reasonable.

Because of this, even though your conduct violated the Act, we are issuing this advisory letter to guide both your future conduct and that of others with regarding to closely examining specific factual circumstances as they relate to reasonable foreseeability under the nexus test.

If you have questions regarding this matter, please contact Adrianne Korchmaros at (916) 322-8241.

Sincerely,

REDACTED

Gary S. Winuk, Chief
Enforcement Division

GSW:AK:ak

cc: Andrew Cohen
Roy Abrams, Former Interim City Attorney for Redwood City