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

November 18, 2009

Mr. James Spering

REDACTED

Advisory Letter Re. FPPC No. 08/512; James Spering

Dear Mr. Spering:

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 you that alleged that you violated a conflict of interest provision of the Act. Specifically, the complaint alleges that on August 5, 2008, as a Solano County Board of Supervisors member, you voted to approve Resolution No. 2008-183 adopting land use plans and diagrams, which changed land use policy within 500 feet of your real property, in violation of Government Code, section 87100. Also, on November 4, 2008, as a Solano County Board of Supervisors member, you voted to approve Ordinance No. 2008-1694 creating a Special Election to vote on amendments to the 1994 Orderly Growth Initiative as part of the General Plan Initiative, which changed land use policy within 500 feet of your real property, in violation of Government Code, section 87100.

The FPPC has completed its investigation of the facts in this case. Because the selection of the locations for the Neighborhood Agricultural Center/Tourist Center ("NACTC") zones near your property were made by the Suisun Valley Special Study Area ("SVSSA") a decision in which you did not participate nor were you involved with, you did not violate the conflict of interest statute under the Act.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a disqualifying conflict of interest. (Section 87100) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official's economic

[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.

interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest. (Regulation 18700)

In the past, the FPPC has advised that in decisions involving general plans, where the public official has an economic interest, those decisions should be segmented out of the plan and decided separately so that the official may abstain from the decision. "Once general plan decisions in which an official has an economic interest are segregated and resolved without the participation of the disqualified public official, the official may then participate and vote on other decisions regarding adoption of the general plan, including the final vote to adopt the general plan." (*Freilich* Advice Letter, No. A-92-133a.)

Our investigation found that the proposed location for possible NACTC development located within 500 feet of your property was decided by a stakeholder group from Suisun Valley the SVSSA. This group established development priorities and proposed 8 possible locations for the future development of NACTC zones. Their decisions were recorded by the Solano County Department of Resource Management, who organized the meetings and presented SVSSA decisions to the Board of Supervisors. You then voted to adopt those decisions into the Draft General Plan, adopted the maps and general plans reflecting those prior decisions, and voted in the final adoption of the entire General Plan. Because you did not make, participate in making, or influence the SVSSA, who made the specific decisions which affected your economic interest and your role as Supervisor was limited to adoption of SVSSA decisions, as part of the General Plan, no violation of the Act occurred.

Although we have decided not to pursue an enforcement action in this matter, you are advised that your failure to comply with the provisions of the Act in the future could result in an enforcement action.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Ty D. Moore
Commission Counsel
Enforcement Division