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

December 2, 2009

Mr. Jerry Hanson

REDACTED

Advisory Letter Re: FPPC No. 05/264

Dear Mr. Hanson:

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 alleging that you violated the Act, specifically in relation to your involvement in the City of Desert Hot Spring's approval of the StoneRidge development project (the "project"), the planning of corresponding offsite improvements, and possible violations of disclosure requirements as part of your annual Statement of Economic Interest filing.

The FPPC has completed its investigation of the facts in this case. The FPPC found insufficient evidence to support the allegations that you violated the Act.

Section 87100 of the Act states 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."

The Act further provides the definition of financial interest. Sections 87103 and 87103(a) state that, "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official … or [a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more."

[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 18109 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.

Regulation 18704.2 clarifies when a governmental decision directly impacts an interest in real property. Among other situations, a government official's real property will be considered to be directly involved in a government decision if "[t]he real property ... is located within 500 feet of the boundaries ... of the property which is the subject of the governmental decision" or if "[t]he decision involves construction of, or improvements to, streets ... and the real property in which the official has an interest will receive new or improved services."

Sections 87105(a)(1) through (3) of the Act provide for the manner in which an official must recuse himself or herself, assuming such recusal is required. "A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: (1) Publicly identify the financial interest ... (2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100. (3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters."

Further. the Act specifies which types of public officials are subject to disclosure requirements. Specifically, Section 87200 provides that, "This article is applicable to ... city managers." Section 87203 requires that, "Every person who holds an office specified in Section 87200 shall, each year at a time specified by Commission regulations, file a statement disclosing his investments, his interests in real property and his income during the period since the previous statement filed under this section ..."

With regard to the alleged conflicts of interest, the FPPC has determined that the any benefit conferred on the two properties in which you have an interest as part of the complaint against you is too attenuated to constitute a violation of the Act. Without the required evidence of economic benefit, the FPPC is not able to pursue action for the allegations that you did not properly recuse yourself and that you improperly influenced governmental decisions in which you had a material economic interest.

As City Manager, you were required to file various disclosure statements. However, the FPPC does not have sufficient evidence to demonstrate that you failed to properly disclose your economic interests.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act and provides guidance regarding your obligations over the telephone and through written advice. If you need assistance, please call the Commission's Technical Assistance Division at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED

GARY S. WINUK
Chief, Enforcement Division