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June 10, 2019

Chair Miadich
Commissioner Cardenas
Commissioner Hatch
Commissioner Hayward
Fair Political Practices Commission
102 Q Street, Suite 3000
Sacramento, ca 95811

RE: June 2019 Agenda Item 14 – *Minner* Advice Letter (A-19-032)

Chair Miadich and Commissioners Cardenas, Hatch and Hayward,

As City Attorney of Cupertino, I requested the advice letter under consideration on behalf of Vice Mayor Liang Chao to ensure that her participation in decisions related to development of the Vallco Shopping Mall site (the “Project”) was proper and not a violation of the Political Reform Act’s conflict of interest provisions. I write to you today in support of the recommendation of the Commission’s legal division with respect to this item. Contrary to the claims made by attorneys for the property owner, I believe that the analysis in the *Minner* letter was correct and supported by relevant and accurate facts provided by our office.

The Legal Division’s memorandum dated June 3, 2019 correctly explains why the materiality standard in Regulation 18702.2 for properties located 1,000 feet from the location of the governmental decision does not apply to the public generally analysis. This is supported by Regulation 18700, which provides the step-by-step analysis for public officials to determine whether they can participate in a governmental decision.

(See Regulation 18700(d).) Under that regulation, the public official assesses materiality using the standards in Regulations 18702 through 18702.5. Only if materiality is established does the public official go on to the next step, assessing the public generally exception under Regulation 18703.

Furthermore, Commission staff counsel properly applied the facts to the law in assessing the public generally exception. The significant segment of the public was accurately identified and the correct standard (unique effects) was applied, as detailed further in the Legal Division's memorandum.

I also wish to reiterate my office's confidence in the facts provided in connection with this request. As was already noted by the Legal Division, the original request for advice contained a detailed description of the Project and its impacts. The request also provided links and citations to various documents prepared by the City in connection with the pending applications for the Project as facts for the Commission's staff to consider, including project descriptions and quotations from and citations to the Environmental Impact Report (EIR). The Legal Division's conclusions, summarized on page 3 of its memorandum, that the Project will affect a broad segment of residences in Cupertino, and that impacts will not have a unique disproportionate effect on the Vice Mayor's residence—which is 939 feet from the Project site—is supported by the facts in these documents. For instance, the EIR details traffic impacts on the study area which was larger than the area identified as the significant segment of the public in Cupertino. In addition, the Vice Mayor's property falls outside the area identified with "significant" noise impacts by the EIR. Additional facts about potential impacts on the Vice Mayor's property and the broader surrounding areas are available in the initial request for advice and detailed in the Minner letter.

In addition, the map the City provided was prepared by the City of Cupertino's Geographic Information Systems (GIS) division of the City Planning Department based on official city data. City staff in GIS reviewed and analyzed the data on residential real properties within the City to determine the number required to reach twenty five percent (25%). The map identifies the area around the Project to reach that many residences, and identifies the furthest distance from the Project as 3,800 feet. While the map includes a full 3,800 foot radius as a visual aid for the area covered, only Cupertino addresses were included in the numeric analysis. This is clear from the key describing the information displayed and from the fact that non-Cupertino property is shaded grey. If addresses outside the City of Cupertino's boundaries had been included, the furthest distance from the Project likely would have been much shorter.

For these reasons, I respectfully request that the Commission find there is no reason to withdraw the guidance provided to Vice Mayor Chao in the *Minner* Letter.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. M. Minner", with a stylized flourish at the end.

Heather M. Minner
City Attorney