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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

FPPC No. 14/611

12 SUSAN PETERS,

STIPULATION, DECISION AND ORDER

13 Respondent.
14

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Susan Peters hereby agree that this Stipulation will be submitted for consideration by the
18 Fair Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of Peters, pursuant to section 83116 of the Government Code.

22 Peters understands, and hereby knowingly and voluntarily waives, any and all procedural rights
23 set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at her
26 own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses
27 to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
28

1 hearing officer, and to have the matter judicially reviewed.

2 It is further stipulated and agreed that Peters violated the Political Reform Act as set forth in
3 Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated by
4 reference as though fully set forth herein.

5 Peters agrees to the issuance of the Decision and Order, which is attached hereto. Also, Peters
6 agrees to the Commission imposing against her an administrative penalty in the amount of \$9,500. A
7 cashier’s check or money order from Peters totaling said amount, made payable to the “General Fund of
8 the State of California,” is submitted with this Stipulation as full payment of the administrative penalty
9 and shall be held by the State of California until the Commission issues its Decision and Order regarding
10 this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it will
11 become null and void, and within fifteen (15) business days after the Commission meeting at which the
12 Stipulation is rejected, all payments tendered by Peters in connection with this Stipulation must be
13 reimbursed to them. Peters further stipulates and agrees that in the event the Commission rejects the
14 Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any
15 member of the Commission, nor the Executive Director, shall be disqualified because of prior
16 consideration of this Stipulation.

17
18 Dated: _____

Galena West, Enforcement Chief,
on behalf of the Fair Political Practices
Commission

19
20
21 Dated: _____

Susan Peters, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Susan Peters,” FPPC No. 14/611,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 _____
10 Joann Remke, Chair
11 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Susan Peters has been a Member of the Sacramento County Board of Supervisors (Board) since 2005. At all relevant times, Peters has owned real property located within 500 feet from the boundary of the Mather Field Airport. The Political Reform Act (Act)¹ prohibits a public official from making, participating in making, or attempting to use her official position to influence a governmental decision in which the official knows or has reason to know she has a financial interest.

Peters violated the conflict of interest provisions of the Act by voting on the following: 1) Abatement and Demolition project and 2) conveyance of land from the U.S. Air Force.

SUMMARY OF THE LAW

The primary purpose for the conflict of interest provisions of the Act is to ensure that “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”²

CONFLICTS OF INTERESTS

All law referred to is the law that was in effect at the time of the violations. Peters signed a tolling agreement, effectively tolling the statute of limitations in all votes referred to in this settlement agreement.

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest.³ 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 a recognized economic interest of the official.⁴ The six relevant steps of the analysis follow below.

First, the individual must be a public official as defined by the Act. A “public official” includes members of a state or local governmental agency.⁵

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Section 81001, subd. (b).

³ Section 87100.

⁴ Section 87103.

⁵ Section 82048.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. A public official “makes a governmental decision” when the official votes on a matter.⁶

Third, the official must have an economic interest that may be financially affected by the governmental decision. An economic interest of a public official includes any real property in which the public official has a direct or indirect interest worth \$2,000 or more.⁷

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Real property in which a public official has an economic interest is directly involved if the real property is located within 500 feet of the boundaries or proposed boundaries of the property which is the subject of the governmental decision.⁸

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. If real property is directly involved in a governmental decision, the financial effect of a governmental decision is presumed to be material.⁹

For real property that is indirectly involved, the financial effect of a governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:

- (A) The development potential or income producing potential of the real property in which the official has an economic interest;
- (B) The use of the real property in which the official has an economic interest;
- (C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.¹⁰

Sixth, 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. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision.¹¹

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent’s economic interest there are several factors that may be

⁶ Regulation 18702.1, subd. (a) (1).

⁷ Section 87103, subd. (b).

⁸ Regulation 18704.2, subd. (a)(1), effective 09/09/04-5/30/14.

⁹ Regulation 18705.2, subd. (a).

¹⁰ Regulation 18705.2, subd. (b)(1), effective 02/01/01-05/30/14.

¹¹ Regulation 18706.

considered. These factors include the scope of the governmental decision in question, and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.¹²

SUMMARY OF THE FACTS

Peters is currently a Member of the Board and has been since 2005. At all relevant times, Peters has had a real property interest over \$2,000 in real property within 500 feet from the boundary of the Mather Field Airport. The real property includes a 17-acre vacant lot and a lot with two large office buildings.

COUNT 1: Abatement and Demolition: Direct Effect

Peters violated the Act by voting on three separate occasions regarding the demolition of abandoned buildings, including three buildings located within 500 feet of one of Peters' properties.

According to the staff report for the Board, since the U.S. Air Force Base was closed in 1993, there were many structures left in varying stages of disrepair and decay, including mold, mildew and wood rot from leaking roofs and siding. The buildings had been vandalized as well. As a Member of the Board, Peters voted to demolish 15 buildings on June 21, 2011. Three of the listed buildings were located within 500 feet from Peters' property, the lot with office buildings.

Peters approved the Abatement and Demolition contract with W.C. Maloney, and voted twice, on February 7, 2012 and July 17, 2012, to amend the number of buildings to be demolished in the contract and to increase the budget for the project.

Peters has a property interest over \$2,000 in real property within 500 feet of three properties included in the contract during all relevant votes. In fact, these buildings were demolished. As such, Peters' property was directly involved in these decisions. Since Peters' property was directly involved in the decisions, the financial effect of the governmental decisions is presumed to be material.

As a result, Peters violated the Act by voting on three separate occasions regarding the demolition of abandoned buildings, including three buildings located within 500 feet of one of Peters' properties.

COUNT 2: Conveyance of Land from U.S. Air Force; Direct and Indirect Effects

Peters violated the Act by voting twice regarding the conveyance of land from the U.S. Air Force to the Sacramento County Board of Education (SCOE) through Mather Field and from the U.S. Air Force to the Sacramento County (County) through the same process, which included the conveyance of a property that is located within 500 feet from one of Peters' properties. In this matter, the U.S. Air Force had intended to convey property to the SCOE through a Public Benefit Conveyance (PBC) procedure, which the U.S. Air Force recommended because the alternative the

¹² Regulation 18706, subd. (b).

U.S. Air Force and SCOE had planned for nearly 20 years, would have been delayed for 30 additional years. Peters approved two Economic Development Conveyances (EDC), allowing property to be transferred from the U.S. Air Force to SCOE through the County, with less restrictive environmental land use conditions which will allow for more development.

According to the staff report for the Board, the U.S. Air Force intended to convey property located at both Mather Field and McClellan Park to the SCOE through a PBC. The PBC transfer restricted the land use and required timely environmental clean up to the property, which had stopped the PBC process. The PBC process would restrict the land for 30 years and prohibit selling or leasing portions of the property for development. The alternative was for the EDC process to pass the property through the County to the SCOE.

As a Member of the Board, on June 19, 2012, Peters voted to authorize the County to accept and convey property to SCOE through the EDC process. Additionally, Peters voted to convey Parcels P to SCOE through the County with the EDC, one of which properties is located within 500 feet from one of Peters' properties.

Further, as a Member of the Board, Peters voted to convey Parcels M and G from the U.S. Air Force to the County on December 11, 2012, which conveyed approximately 742 acres to the County with less restrictions on development. Although the vote on June 19, 2012 included a parcel within 500 feet from one of Peters properties, both Parcels M and G in this conveyance were farther than 500 feet from Peters' properties. The Parcel M property is the location of Mather Veteran's Village, a large project to provide disabled, homeless veterans with transitional and permanent supportive housing that was able to move forward with less restrictions on the property.

As a result, Peters violated the Act by voting twice regarding conveyance of land through the EDC process, with less restrictive environmental land use conditions on development. It was reasonably foreseeable that these votes would have a material financial effect on the area as a whole and on her real property by conveying land through a process that substantially reduced the restrictions on development in the area.

MITIGATING FACTORS

Peters has no prior history of enforcement action by the Commission. Peters cooperated with the Enforcement staff to answer questions about the original complaint as well as issues that developed during the investigation. Peters has recused herself from voting on individual items concerning the Mather Airport Master Plan and specific projects related to Mather Airport since her election to the Sacramento County Board of Supervisors in 2005. According to Peters, she consulted regularly with three successive county counsels who served during her tenure about conflict of interest matters related to the massive Mather Airport project.

Regarding Count 1, Peters contends she voted on these matters in the mistaken belief that the demolition projects were repairs or maintenance projects exempt from the direct effect materiality standard under Regulations 18704.2, subd. (b), and 18705.2, subd. (b) and she did not intend to violate the conflict of interest rules. While a material effect is presumed because the properties were within 500 feet of Peters' properties, no development was scheduled at the time of

the vote on the airport property where the 3 buildings were demolished. Peters concedes that even a small material financial effect triggers application of the statute.

Regarding Count 2, Peters contends that she believed the no cost transfer recommended by the U.S. Air Force to allow the U.S. Air Force to transfer properties to the County to pass through to SCOE, which had been contemplated since the 1993 base decommissioning, had no financial effect. Her belief was mistaken, but she contends she did not intend to violate the conflict of interest rules. SCOE had occupied and used its properties since 1994 and its use continues unchanged today. Additional votes on the development of Parcel M and Parcel G, both of which were farther than 500 feet from Peters' properties and were packaged in the U.S. Air Force to Sacramento County transfer with the SCOE transfers, are not at issue in this Stipulation. Peters contends that she has consistently recused herself from participating in votes concerning prospective development of Parcels M and G.

AGGRAVATING FACTORS

The impact of the decisions in Count 1 are aggravated by the fact that the demolishing of numerous decaying and blighted buildings included three buildings within 500 feet of Peters' lot with office buildings. These decisions cleaned up the area close to her office buildings and removed buildings being vandalized in close proximity to her property.

The decision in Count 2 to convey the properties resulted in less restrictive environmental land use conditions. Peters' vote moved the project forward located at Parcel M, which allowed Mather Veteran's Village to advance, a large project to provide disabled, homeless veterans with transitional and permanent supportive housing.

CONCLUSION

This matter consists of two counts of violating the Act, and carries a maximum administrative penalty of Five Thousand Dollars (\$5,000) per violation.

The conduct of making a governmental decision in which an official has a financial interest is a serious violation of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial interest. The typical administrative penalty for a conflict of interest violation has ranged from the middle to high penalty range, depending upon the facts of the case.

A stipulation with similar violations imposed a mid to high range penalty. *In the Matter of John Martin*, FPPC No. 14/426 (approved Feb. 19, 2015), where a penalty in the amount of \$4,000 was imposed against a city councilman for a vote involving a conflict of interest. The current case warrants a higher penalty as multiple votes were involved in each count.

It is respectfully submitted that an imposition of a total administrative penalty of Nine Thousand Five Hundred Dollars (\$9,500) is justified.