

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

September 17, 1984

Stan T. Yamamoto  
Deputy City Attorney  
801 - 11th Street  
Modesto, CA 95353

Re: Your Request for Advice,  
Our Advice No. A-84-207

Dear Mr. Yamamoto:

Thank you for your request for advice on behalf of Modesto City Mayor Peggy Mensinger and City Councilmembers Carol Whiteside and John Sutton. This letter adds to the advice contained in my letter of July 30, 1984 (A-84-183). It is based upon the facts provided in your letters, in our telephone conversations, in the transcripts of City meetings and in City publications. It addresses only the future actions of the individuals in question. If, at any time, you become aware of any facts which would alter the advice in this letter, you should contact me so that we can determine whether additional written advice is necessary.

### FACTS PRESENTED

#### Redevelopment Areas:

The members of the Modesto City Council serve as the board of the Modesto Redevelopment Agency. The board has designated two redevelopment areas:

1. Area A is located in downtown Modesto in an area bound by L, K, 8th and 11th Streets. The area comprises 15.6 acres and the agency's plans for the area include a conference center, forum, lobby, park, large and small theater, hotel, office building and five-level parking garage.

Area A is to be developed in phases. The first phase will include a:

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Conference Center - The proposed conference center will include a main hall that is 16,000 square feet and meeting rooms totaling 4,000 square feet. The center will be the setting for community meetings, trade fairs, meetings, dances and other functions. The estimated cost for the center is \$6.2 million in mid-1985. It will be located in the middle of the redevelopment project area, in line with 10th Street (see Attachment A).

Forum - The proposed forum is a small (4,000 square feet) multi-purpose room which will be used as an exhibition space, rehearsal hall, small theater, etc. The estimated cost is \$1.65 million in mid-1985. The forum is located adjacent to the conference center (see Attachment A).

Exhibition Lobby - The proposed exhibition lobby links together the entire complex and provides an area for public displays and social activities (see Attachment A). The cost is included in the cost estimates for the conference center and the forum.

Park Plaza - The proposed park will include a lake, canal, bridges across the canal and a small outdoor theater. The estimated cost for the portion of the park to be constructed in the first phase is \$3.3 million in 1985. The park will be on K Street, between 9th and 11th Streets (see Attachment A).

The future phases will include a:

Large Theater - The proposed large theater will seat 2,500. It will be located at the corner of 11th and L Streets (see Attachment B).

Small Theater - The proposed small theater will seat 500. It will be located at the corner of 11th and L Streets (see Attachment B).

Office Building - The proposed office building will be built with private funds. It will be located at the corner of 9th and K Streets. A parking garage will be constructed on the property adjacent to this building (see Attachment B). The remaining portion of the Park Plaza will also be constructed.

Within Area A, there are two parcels of property that the City of Modesto needs to acquire in order to construct its redevelopment project: 1) the Trailways Bus System Terminal at 1112 - 10th Street, which is owned by Virginia Trailways Realty

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Corporation<sup>1/</sup>; and 2) a parcel of property located between K and L Streets, and between 9th Street to within 16 feet of the Southern Pacific railroad tracks. This property is owned by Southern Pacific Transportation Company and there is currently a business located on the property (at the corner of 9th and L Streets).<sup>2/</sup>

The City Council and the Redevelopment Agency board must also determine whether to: 1) approve or modify schematic design studies and architectural plans showing the site and floor plans, elevations and specifications for the conference center; 2) approve the demolition of the buildings in Area A and decide who should be awarded the contract; and 3) approve the preparation of geological and environmental studies and decide who should be awarded the contracts. The Council and board must also negotiate and finalize an agreement for a private hotel and office development for Area A.

2. Area B comprises 12.4 acres and is bound by 17th Street, I Street, Downey Avenue, Burney Street and H Street (see Attachment C). The City of Modesto has acquired title to all of Area B, except for a residential parcel located on the westerly corner of the intersection of H and 19th Streets and a parcel in the northeasterly section of Area B. Activity is underway to secure title to both of these parcels. The area is currently zoned for residential and commercial uses. In the past, Area B was strongly considered as a site for the conference center.

On September 18, 1984, the City Council will begin making decisions affecting the property in Area B. The Council's actions will include:

1. Deliberations and decisions regarding the appropriate land uses for Area B. This will include such decisions as whether to zone the property so that it produces maximum revenues.

2. Deliberations and decisions on whether to lease or sell all, or a part, of Area B to private developers. The revenues

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<sup>1/</sup> City staff is currently negotiating with the Trailways Corporation for the acquisition of this property and the relocation of the bus terminal.

<sup>2/</sup> The business would be relocated upon the acquisition of the property.

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from the use or sale of this property may be used to help finance the development of Area A. The City's Finance Manager, Peter Brock, at the February 28, 1984, City Council meeting identified two "viable alternatives" for financing the community center. These are:

a. A "pay-as-you-go" approach. Under this alternative, the City will acquire much of the initial financing that it needs from existing sources of revenue. One source of revenue is the sale of Area B. Peter Brock stated that the amount of money to be gained by this sale is conservatively estimated at "a couple of million" dollars (see Attachment D, pp. 35-38).

b. The issuance of revenue bonds. Under this alternative, the Redevelopment Agency would acquire the land, float a bond issue, construct the facility and then lease it back to the City. The City's lease payments will be paid, in part, from the revenues raised by leasing the Area B property (see Attachment D, pp. 35-58).

You stated that the Council has not made any decision on how the project will be financed.

3. Deliberations and decisions on whether to transfer title to the Area B property from the City to the Redevelopment Agency. Currently, the Redevelopment Agency board must hold hearings and decide on recommendations to be made to the City Council concerning Area B. The City Council must then, separately, hold hearings and approve the recommendations of the board.<sup>3/</sup> Thus, the title transfer will greatly streamline the decisionmaking process with regard to Area B.

Mayor Peggy Mensinger:

Mayor Mensinger has an investment interest in American Lumber Company, which is also her husband's employer. She and her husband and four other couples, through American Lumber Company Properties, own the 1200-1300 block of 9th Street in Modesto, which is across the street from Area A (see Attachment E, #1). American Lumber Company rents part of this property (1231 - 9th Street) for a retail lumber and hardware store. Wells Fargo loaned the money for the purchase of the property

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<sup>3/</sup> Although the City Council and Agency board have the same members, they are two separate legal entities.

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and the debt remains outstanding. Wells Fargo occupies several offices across the street from Area A (see Attachment E, #2).

Councilwoman Carol Whiteside:

Councilwoman Whiteside's husband is a partner in the law firm of Ulrich & Whiteside. Mr. Whiteside has a 50% investment interest in the firm. The firm specializes in business law, family law, probate, real estate law and civil litigation. The firm rents space, on a month-to-month basis, in a building 1124 - 11th Street, across the street from Area A (see Attachment A, #3). The firm pays \$900 per month plus one-half of the utilities. Mr. Ulrich, individually, owns a one-half, undivided interest in the building at 1124 - 11th Street. The other one-half interest is owned by two couples. The law firm does not represent any individuals or entities which have any interest in the redevelopment project.

Councilman John Sutton:

Councilman Sutton has the following interest in the vicinity of Area A:

1. A one-half ownership interest in a lot at the corner of 12th and J Streets (see Attachment E, #4). In 1960, a bank leased the land for thirty years and constructed a building on the property. In 1990, the bank will have the option of entering into two additional ten-year extensions of the lease. In 1990 and in 2000, the rental amount will be renegotiated. If the parties are unable to reach an agreement on the rental amount, the contract contains an arbitration clause. If, at any time, Mr. Sutton sells his interest in the property, the sale will be conditioned upon the continued existence of the lease.

2. An investment interest in Pacific Valley Bank that is worth more than \$1,000 and a position on the bank's board of directors. Pacific Valley Bank has an office at 1302 J Street (see Attachment E, #5).

3. An investment interest in Center State Bank worth over \$1,000. The bank is located at 9th and H Streets (see Attachment E, #6).

Councilman Sutton's Statement of Economic Interests states that he has an investment interest in Modesto Banking Corporation which is located across the street from Area A (see

Attachment E, #7). Mr. Sutton indicated that on or about July 26, 1984, he transferred his interest in the stock to his six grandchildren as a gift. Their parents will exercise any voting rights and any income from the stock will go to the grandchildren.

QUESTIONS PRESENTED

Peggy Mensinger:

May Mayor Mensinger, as Mayor and as the Chairwoman of the Modesto Redevelopment Agency, participate in deliberations and decisions concerning:

1. The land uses suitable for Area B;
2. The lease or sale of all, or portions, of Area B; and
3. The transfer of the title to the Area B property from the City of Modesto to the Redevelopment Agency?

Councilmembers Whiteside and Sutton:

May Councilmembers and Redevelopment Agency board members Whiteside and Sutton participate in deliberations and decisions concerning:

1. The acquisition of the property owned by Virginia Trailways Realty Corporation and the relocation of the business;
2. The acquisition of the property owned by Southern Pacific Railroad and the relocation of the business;
3. The approval or modification of schematic design studies and architectural plans showing site and floor plans, elevations and specifications for the conference center;
4. The demolition of the buildings in Area A and the awarding of demolition contracts;
5. The preparation of geological and environmental studies and the awarding of the contracts;
6. The negotiation and finalization of a private hotel and office development agreement; and

7. The vacating and abandoning of 10th Street between K and L Streets and the two alleys in Blocks 58 and 66, and the relocation of the public utilities facilities on this property?

May Councilmembers and Redevelopment Agency board members Whiteside and Sutton participate in the decisions regarding Area B, described above?

#### DISCUSSION

Government Code Section 87100<sup>4/</sup> prohibits a public official from making, participating in the making, or in any way attempting to use his official position to influence<sup>5/</sup> a governmental decision in which he knows or has reason to know he has a financial interest. An 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,<sup>6/</sup> distinguishable from the effect on the public generally,<sup>7/</sup> on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than \$1,000.

(b) Any real property in which the public official has a direct or indirect interest worth more than \$1,000.

(c) Any source of income ... aggregating \$250 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

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<sup>4/</sup> Hereinafter all statutory references are to the Government Code, unless otherwise indicated.

<sup>5/</sup> See the enclosed copy of 2 Cal. Adm. Code Section 18700 which defines the terms "making," "participating," and "using your official position to influence."

<sup>6/</sup> See the enclosed copy of 2 Cal. Adm. Code Section 18702 which defines the term "material financial effect."

<sup>7/</sup> See the enclosed copy of 2 Cal. Adm. Code Section 18703 which explains the "public generally exception."

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103.)

Mayor Peggy Mensinger:

Mayor Mensinger has an investment interest in American Lumber Company<sup>8/</sup> and it is a source of income to her.<sup>9/</sup> She owns, through American Lumber Company Properties, a real property interest (10%) in the 1200-1300 block of 9th Street.<sup>10/</sup> In addition, Wells Fargo is a source of income to her because it loaned American Lumber Company Properties money to purchase the 9th Street land and 10% of the loan is treated as personal income to Mayor Mensinger.<sup>11/</sup>

Because of the proximity of Mayor Mensinger's financial interests to Area A, she has been disqualifying herself on decisions affecting this area. She now asks whether she can participate in decisions concerning Area B.

Currently, there is a strong possibility that revenues generated from the sale or lease of Area B will be part of the financing arrangements for the Area A development. The decisions concerning the appropriate land uses for the area, and

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<sup>8/</sup> The investment interest is held by the Mayor's husband, but, under the Act, Mayor Mensinger's investment interests include those of her husband (Section 82034). The Mayor owns less than 10% of American Lumber Company.

<sup>9/</sup> Mayor Mensinger has a community property interest in her husband's salary.

<sup>10/</sup> Interests in real property of an individual include a pro rata share of interests in real property of any business entity in which the individual owns a 10% interest or greater (Section 82033). Mayor Mensinger owns 20% of American Lumber Company Properties.

<sup>11/</sup> The term "income" includes loans. Income of an individual includes a pro rata share of any income of any business entity in which the individual owns a 10% interest or greater (Section 82030).

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the sale or lease of the property, will affect when, and how much, money will be generated by the property. Mayor Mensinger must disqualify herself from these decisions until such time as Area B ceases to be a potential funding source for the Area A development.<sup>12/</sup> She must also disqualify herself on the decision regarding the transfer of the title to the property if this decision will significantly speed up the development of Area A by streamlining the decisionmaking process.

Councilman Sutton:

Councilman Sutton has a one-half ownership interest in a parcel of land at the corner of 12th and J Streets which is located one block to the northeast and one block to the southeast of the corner of 11th and K Streets. The land is leased by First Interstate Bank which is a source of income to Councilman Sutton. The lease amount will be renegotiated in 1990, which is two years after the estimated completion date of the project.

The construction of the proposed redevelopment project will dramatically alter the currently "blighted" condition of Area A. The benefits from this improvement will extend beyond the project area's boundaries. As the Commission stated in its Oglesby Opinion 1 FPPC Opinions 71 (No. 75-083, July 2, 1975):

One of the major goals of a redevelopment plan is increasing property values, in particular within the project area and less directly within the entire community. In redeveloping the blighted areas of the community, all property becomes more valuable, particularly that which has been redeveloped. With regard to the specific plan under consideration... [the replacement of an abandoned lumber shed with a civic center], the creation of a new civic center will undoubtedly increase the value of property located nearby.

(At p.10.)

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<sup>12/</sup> You advised me on the telephone that the Council and board are committed to building the proposed project on the Area A site. Therefore, in my analysis, I have not considered Area B as an alternative site for the proposed project, but merely as a potential revenue source.

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Similarly, the Modesto redevelopment project is expected to favorably impact on the area surrounding the project area. City Councilman Lang, at the February 28, 1984, Council meeting, stated that "the project will provide a broad dimension of renaissance in the downtown area" (see Attachment E, p.31). City staff member, Mike Herrero, at a June 4, 1984, meeting of the Culture Commission, stated that "one goal [of the project] is to establish a new environment in the area" (see Attachment F, p.5).

Because Councilman Sutton's property is located within only a one-block radius of the project area, it must be presumed that the construction of the project will materially affect his real property interest by significantly increasing both the fair market value of the property and its income producing potential (2 Cal. Adm. Code Section 18702(b)(2), copy enclosed).<sup>13/</sup> Thus, Councilman Sutton must disqualify himself on decisions which are necessary to, or which will have a significant impact on, the completion of the project.

The acquisition of the land owned by Virginia Trailways Realty Corporation and Southern Pacific Railroad, and the relocation of the businesses on the properties, are necessary to the completion of the project and Councilman Sutton must disqualify himself on the decisions on whether to purchase and relocate. Once these policy decisions have been made, Councilman Sutton will be allowed to participate in the technical decisions concerning the purchase and relocation as long as the decisions will not have a significant impact on the project. For example, Councilman Sutton may participate in choosing a relocation site as long as this choice will not have a significant impact on the Area A development.

The decisions on whether to approve or modify the schematic design studies and architectural plans for the conference center will require Councilman Sutton's disqualification if the decision will affect whether the project goes ahead, or if the decision will significantly affect the timing of the project.

The policy decisions on whether to demolish the buildings in the project area, and whether to have environmental and

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<sup>13/</sup> Because the project will materially affect Councilman Sutton's real property interest, it is unnecessary to determine whether the project will materially affect any of his other financial interests.

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geological studies prepared are necessary steps in the completion of the project and require Councilman Sutton's disqualification. However, he is not required to disqualify himself on the decisions on who should be awarded the contracts.

The negotiation and finalization of a private hotel and office agreement is vital to the project's completion and Councilman Sutton must disqualify himself.

The policy decisions to abandon the right-of-way on 10th Street and the alleys in Blocks 58 and 66, and to relocate the public utilities, are necessary to the completion of the project and require disqualification. Councilman Sutton will be able to participate in technical decisions concerning the abandonment and relocation if the decisions will not have a significant impact on the project.

Councilman Sutton is also required to disqualify himself on the decisions concerning Area B to the same degree that Mayor Mensinger is required to disqualify herself (see above discussion).

Councilwoman Whiteside:

Under the Political Reform Act Councilwoman Whiteside has financial interests in:

1. Her husband's law practice.
2. Certain clients of the law firm.<sup>14/</sup>
3. Her husband's law partner, Carl Ulrich, Jr.<sup>15/</sup> (see Nord, No. 84-004, Oct. 4, 1984, ftn 16 at page 8, copy enclosed).

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<sup>14/</sup> Her sources of income include those clients who pay her husband's firm sufficient fees such that her community property interest in his pro rata share of the fees (50%) amounts to \$250 or more.

<sup>15/</sup> This is based upon the fact that, where a business has two controlling general partners, control is shared between the partners, with each having full legal authority to bind the firm by his actions and each having the ability to negate or stymie the others actions. Consequently, each partner invests in the skill of the other partner.

4. The business entity which owns the building at 1124 - 11th Street, because it is an "otherwise related business entity" to the law firm of Ulrich and Whiteside. It is an "otherwise related business entity" because Carl Ulrich owns a controlling interest in both businesses (see Nord and 2 Cal. Adm. Code Sections 18236 and 18706, copies enclosed).

5. A real property interest worth more than \$1,000 in the property rented by Ulrich and Whiteside at 1124 - 11th Street across from the redevelopment project. This real property interest exists because the firm of Ulrich and Whiteside rents, on a month-to-month basis, space in the building at 1124 - 11th Street for \$900 per month. Because the firm has a reasonable expectation of staying in the rental space for at least 3 months with a cumulative rental amount of \$2,700, Mr. Whiteside's share (50%) of the value of the rental space equals at least \$1,350, which exceeds the \$1,000 threshold for real property interests. Councilwoman Whiteside possesses the same real property interests as her husband. (See the enclosed copy of the Commission's Overstreet Opinion, 6 FPCC Opinions 12 (No. 80-010, March 2, 1984).

Councilwoman Whiteside must disqualify herself on decisions materially affecting any of her financial interests. The completion of the redevelopment project will materially affect the fair market value of the property at 1124 - 11th Street<sup>16/</sup>, with a resulting material effect on the business entity owning the building. It will also materially affect her real property interest in the space rented by Ulrich and Whiteside by significantly increasing the fair market value of the rent that can be charged for the space. Therefore, Councilwoman Whiteside must disqualify herself on decisions which are integral to the completion of the redevelopment project (see the earlier discussion regarding the decisions concerning Areas A and B).<sup>17/</sup>

Finally, if Councilmembers Whiteside and Sutton are disqualified from a decision, they are disqualified in their capacities as Councilmembers, Redevelopment Agency board members, or Special Projects Committee members.

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<sup>16/</sup> As stated earlier, this building is located across the street from the redevelopment project.

<sup>17/</sup> It is unnecessary to determine whether any of Councilwoman Whiteside's other financial interests will be materially affected by the project.

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The advice contained in this letter is based solely on the provisions of the Political Reform Act. If you have any questions regarding this letter, or if you need advice on future matters, please feel free to contact me at (916) 322-5901.

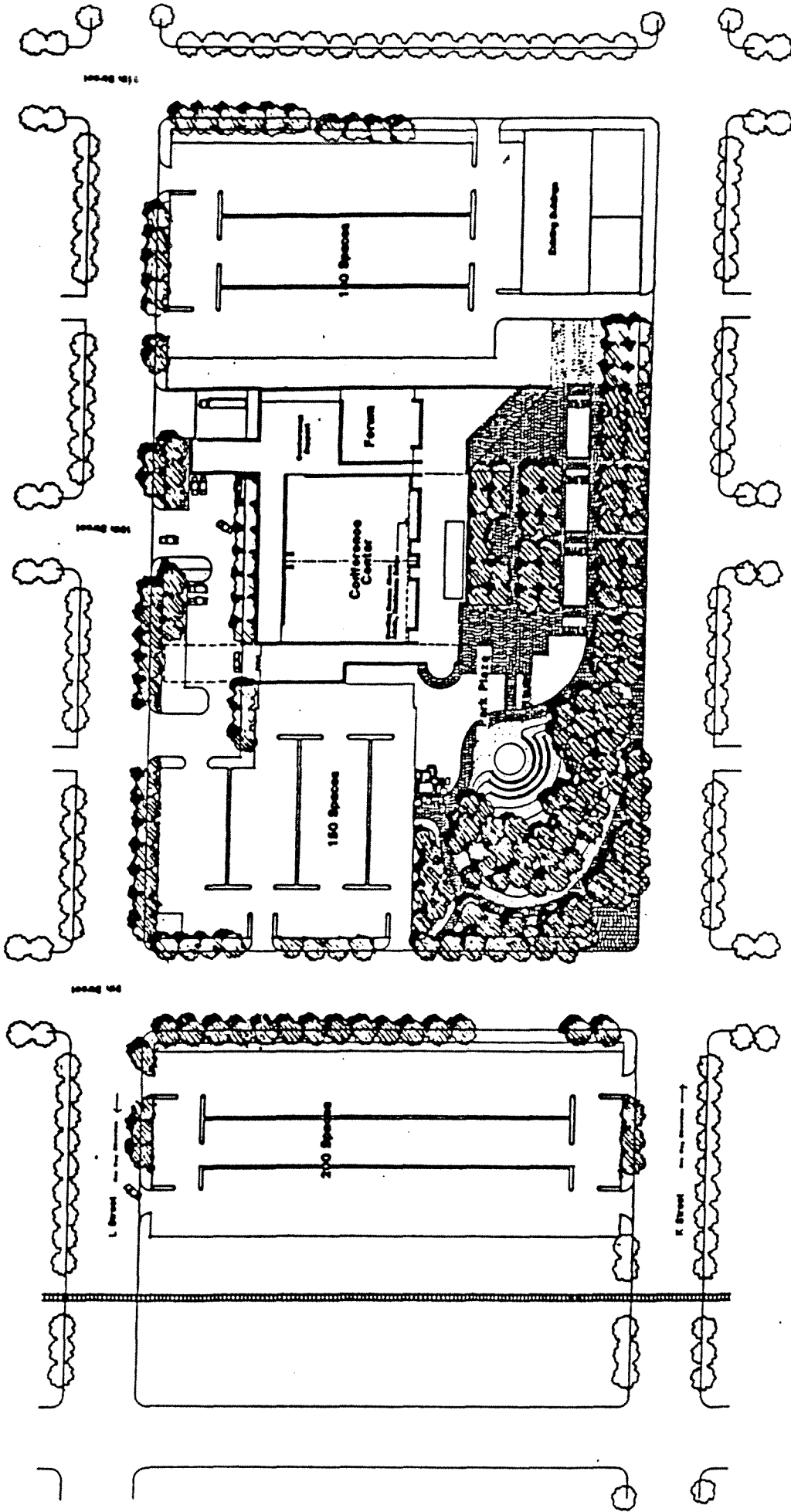
Very truly yours,

*Janis Shank McLean*  
Janis Shank McLean  
Staff Counsel

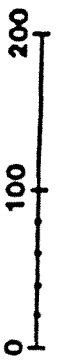
JSM:km  
cc: John H. Hodgson  
Enclosures

ATTACHMENT A

# MODESTO COMMUNITY CENTER



Phase 1 Site Plan

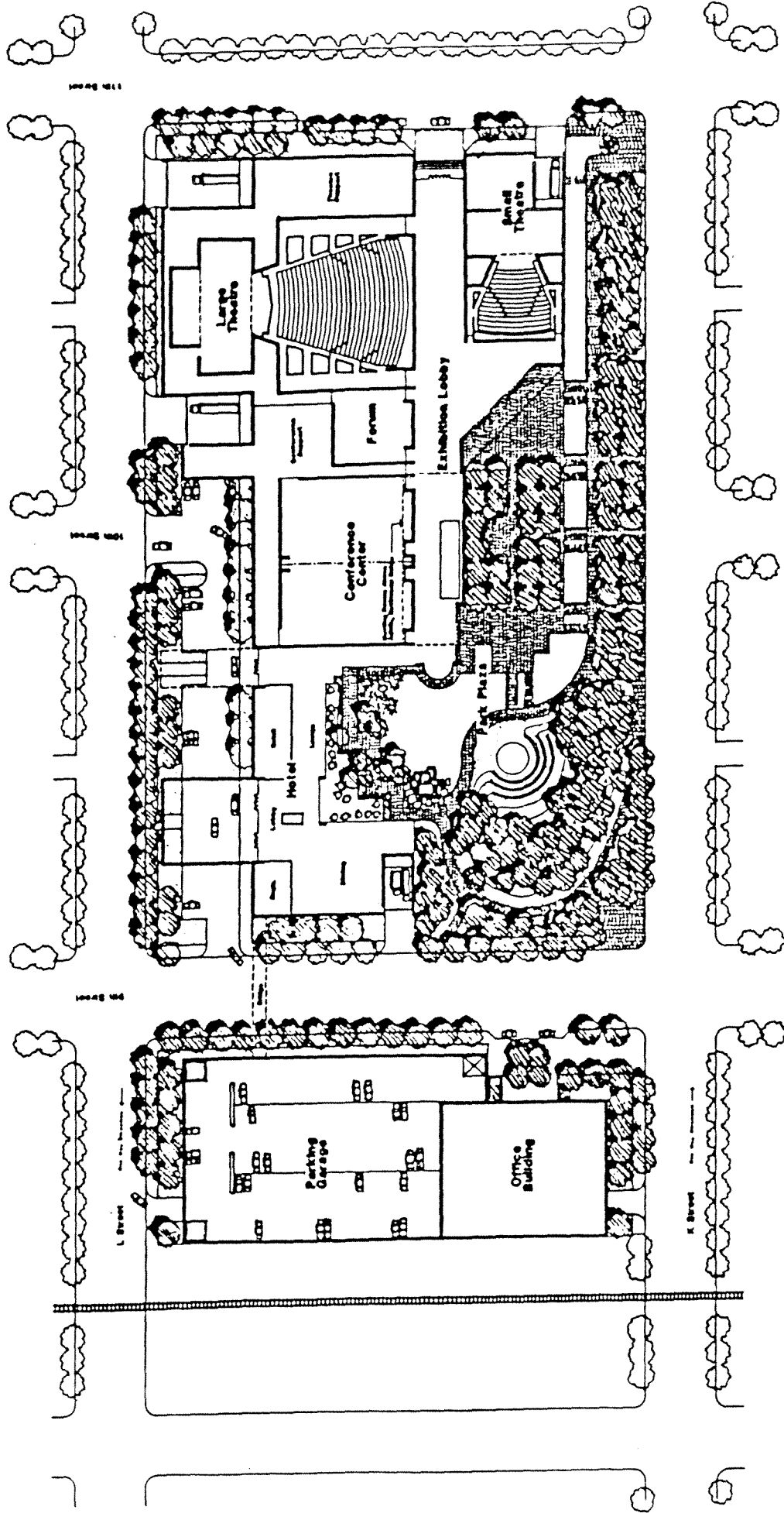


## DRAFT

Hall Goodhue Haisley & Bomker  
Architects and Urban Designers

ATTACHMENT B

# MODESTO COMMUNITY CENTER



Site Plan



Hall Goodhue Haisley & Barker  
Architects and Urban Designers

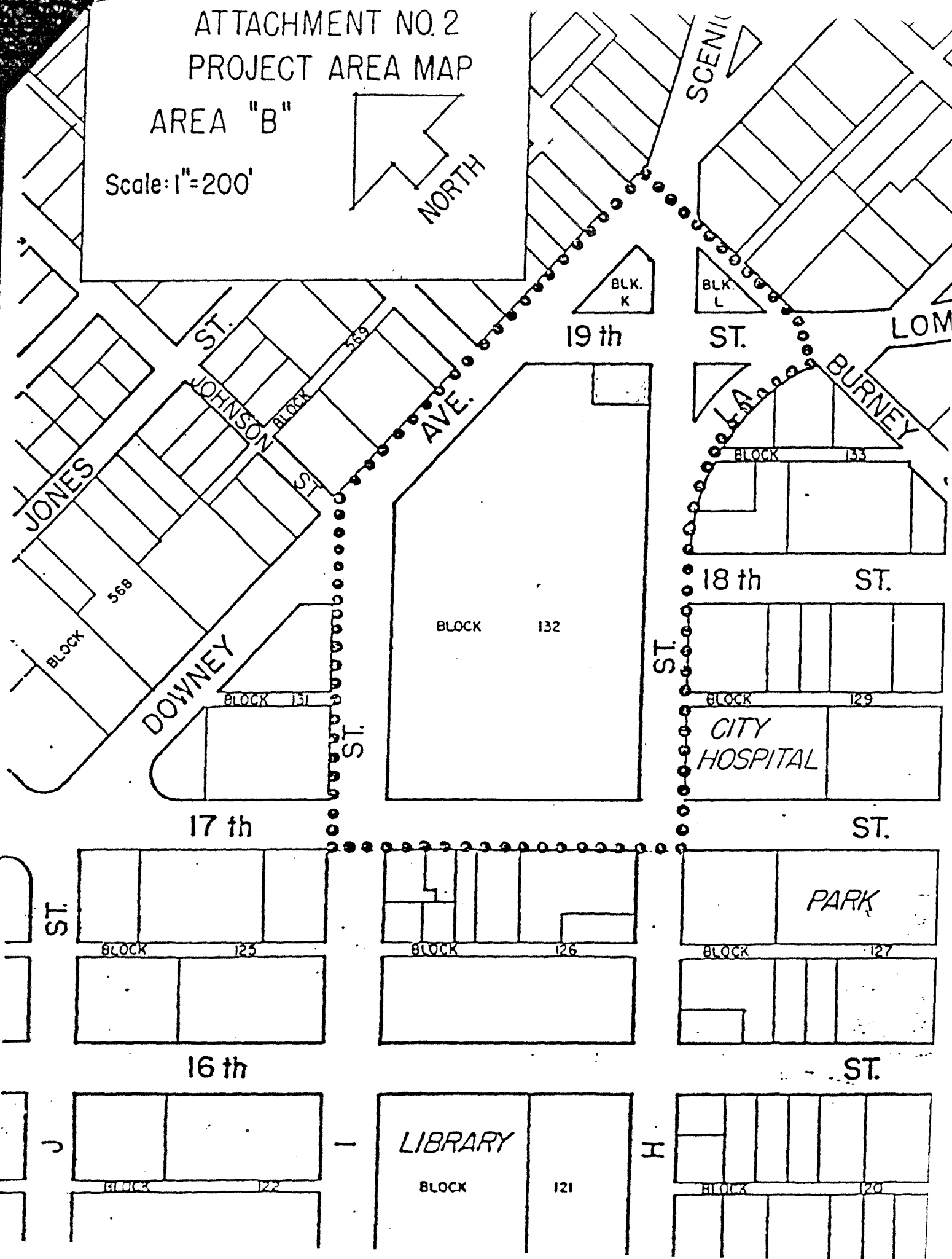
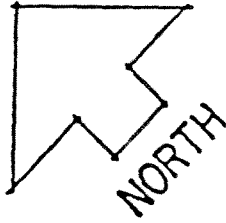
# DRAFT

ATTACHMENT C

ATTACHMENT NO. 2  
PROJECT AREA MAP

AREA "B"

Scale: 1"=200'



BLK. K

BLK. L

19 th

ST.

LOM

LA BURNEY

BLOCK 133

18 th

ST.

BLOCK 132

ST.

BLOCK 129

CITY HOSPITAL

ST.

17 th

ST.

BLOCK 125

BLOCK 126

BLOCK 127

PARK

16 th

ST.

J

BLOCK 122

LIBRARY

BLOCK 121

H

BLOCK 120

ATTACHMENT D

community should could vote on this thing. We vote on it before, we voted on it before and I think they turned it down. 1974 or some time back there, I can't remember. I think Frank knows when we voted on it.

Muratore: Probably '65 Al.

Cosentino: All right, '65 but anyway I'm against closing 10th Street whether Lang is for it or not, I'm against it and I think the majority of people in this town are against it. But, I think you'd better get the monkey off your back and put it on the ballot in November. Thank you very much.

Bright: Thank you, Al. Are there others? If not, we will open it up for Council discussion. Councilmember Lang.

Lang: Thank you, Vice Mayor Bright. Not being a member of this prestigious Special Projects Committee who have taken a little heat this evening, I thought I might, number one, give them a lot of richly deserved support for their efforts. I thought it was just a, a tremendous thing that they've done. I'll keep my comments very brief, Vice Mayor Bright. Two things I do want to mention, however. We'll be sitting here tonight, five years from tonight, ten years from tonight and 20 years from tonight, we'd have people who would oppose the project. We will never never achieve total acceptance. I understand it, I appreciate and respect the expressions of concern provided by many, but I, what I told Larry Bontrager today at noon, and I hold him in immense respect in his concerns and expressions, but I, for the last seven years I've got a, what I thought was a very clear read of the community needs and the community support of this project and it's still there in my judgment. And I'll continue to believe that. The point is, is we're not going to get total community acceptance. And I understand that. For seven years I have supported this project. I think no one denies the need. I think the City can now move in a visionary direction to initiate a project that will ultimately ah provide a broad dimension of renaissance in the downtown core

area. It will create jobs, Mrs. Braden. Exactly your concern that you were trying to address. Moving in this direction will create some jobs. It's a realistic beginning and I totally support the Committee's recommendation and will support its passage.

Bright: Thank you, Mr. Lang. Councilmember Patterson.

Patterson: Good evening, everyone. No, a real long day and unlike a number of other individuals and things that have been shared tonight, I, working with these individuals, understand and appreciate beyond a shadow of a doubt the amount of energy and time that this Special Projects Committee has put in, into trying to decipher and come up with the recommendations that are put before us tonight. I also appreciate and recommend and understand strongly the effort and energy that the staff on a likewise basis has put into what has been recommended to the Council tonight. But unlike either group, the Special Projects Committee or the staff, I'm not as well informed; I'm not as overburdened, I guess, with the volumes of material, maybe, that they've gone through. A lot of the questions that I have in my mind that aren't necessarily answered by this document and by these recommendations, maybe they have answers in their 24 meetings. But for me a number of those questions have not been answered and in some cases there have been communications but from a practical standpoint, the amount of time even to just absorb and think about this information has not necessarily been what I would consider appropriate for a decision of this magnitude, by myself. I'm not speaking for anyone else on the Council. I'm just speaking for myself. I think that, like some of the other people, I, I wholeheartedly support, again, the potential and need for a community center. If anyone has observed my remarks and comments during the last two years that we've been working with Mr. Grant on this project and trying to dream together as a Council and as a private developer, the enthusiasm of looking forward to a private development helping

pay for public facilities, I've constantly, for almost 2-1/2, years solicited the need for us to try and develop as a City Council a Plan B. And in eight and a half weeks we get a Plan B. And I'm concerned that the ability to come up with an alternative in eight and a half weeks on a decision with the impact that this decision has, to take any kind of variables that are involved in this type of decision and basically to put ourselves as a City Council in the role of being a developer. That is not one of the most envious professions in Modesto to have right now. And as a City Council, for whatever reason, we've got a crystal ball and we've got, and I'm not really trying to be emotional about it, I'm just trying to look at it as if if I were seating here as a businessman and two days ago someone gave, or yesterday someone gave me a report and today they asked me to make a decision on that report that's going to commit the kind of dollars, and impact the City budget in the manner that this decision is going to impact the budget. At the same time, even as a person ultimately responsible for the decision, I'm not provided with whether, if we do this, you won't be able to do this. If we, I, I can't weigh. I don't know what I'm giving up in order to be able to feel that dream that everyone feels is so important to feel. And I'm not opposed to helping participate in that process, but under the circumstances, I'm finding it awful difficult to participate in that process at this point in time, with the information that I have, and with a number of questions that not only impact on this particular project, but what its long-term impact will have on us as a City. Now I've got probably a couple of other things that I could share and I think the other one that I think is really important is I asked that initial question of Mr. Herrero. Is this to be considered a Capital Improvement Project? It is a Capital Improvement Project. Last night the Planning Commission sat in this same room trying to make decisions about our Capital Improvement Budget for 84-85 and make recommendations that they were for to

the City Council later on this year. This was not an issue or item that they were given an opportunity to weigh with the other choices. Now maybe, now maybe we, we make the rules, we can do what we want to with them. But again, not having the benefit of, of their insight and their observations on how to proceed, you know, does not necessarily increase the odds of being successful. I'm not saying we're not going to be successful if they take the vote tonight. They'll move on ahead. We may be successful. But how do we increase the odds of being successful. And that's my concern. I think, in closing, I would just like to read from an item that was on the consent agenda tonight that was prepared by our Finance Director and it was the subject, was 83-84 budget outlook, budget update outlook for 84-85. And I'm just going to start at the end of a paragraph where he says "On top of this with relatively modest inflation rate, inflation rate that will probably behave for awhile, we should begin to see some relief on the expenditure side of the ledger. Until conditions stabilize, however, I would caution that prudence be exercised regarding the expansion of operating programs which involve long-term dollar commitments." Now, Councilman Lang, you just mentioned that it was a a cheap shot. Now, would you please, sir, explain to me what you mean by that? And, it's right there in writing. And I'm just suppose to just disassociate myself from this information when I make a decision about \$9 million? I'm not trying to embarrass. I'm not trying to be emotional. I'm not trying to be against the project. I'm just saying that, are we doing the right thing and do we understand totally what we're involving ourselves in? And if we feel that we do, then that's how people vote, I have no problem with that. I will go to sleep tonight, I'll feel great when I wake up in the morning and the world will keep on moving. Thank you.

Bright: Thank you Richard. Are there others that would like to comment on this matter? Councilmember Sutton.

Sutton: Decisions come hard for all of us. For 50 years, we've had studies and input, recommendations. People from all walks of life have participated in their contribution to the decision that we're building up to tonight. We have a choice to either do something or continue as the decades before us. This Council has specifically established priorities for this community which we think continue to make it the very best community possible. The Committee feels that the going forward with the Conference Center would be an important tool to enhance our economic and cultural life. Our City has an enviable record of fiscal prudence and careful, thorough decision-making. And I assure you this philosophy is unchanged. But I think it is the time that we stand up and be counted. This community is ready and I, I am behind it with all of my resources and capabilities.

Bright: Thank you very much, Councilmember Sutton. Are there others that would like to comment on the Council?

Whiteside: Mr. Bright, maybe if we could ask Mr. Brock to respond a little to some of the concerns without, we're not making decisions on finances tonight but I think, perhaps, it would be appropriate for you to to make some comments about what the possibilities might be.

Bright: Mr. Brock.

Brock: We discussed that there were two alternatives. There are more. But there are two viable alternatives for financing the Community Center. One of course is the cash and carry approach that we've used traditionally for many years in this community and that was during the good old times, as you recall, particularly in the late '70s, early '80s, boom times that we had then, sales tax was rolling in, revenue sharing was present and we had sufficient dollars to do that. There was no need to acquire debt. If you will check our financial statement, you will find that we carry no debt and that's rare for a city of our size, the 20th largest in California. I'd like to perhaps

underscore what Councilmember Sutton said. This Council and the ones previous to it have made very prudent fiscal decisions as witness our ability to pass through the recession of the last two years relatively unscathed. In my interim update on the current year's budget, I indicated, as I do almost every year and has, have Finance Directors before me, that we should always be cautious, irrespective of how good or how bad times may be, and that's that perennial reinforcement, that idea. When I indicated that we should be cautious in taking on commitments or obligations that involve long-term commitments this year, I specifically addressed that remark to going out, and now that times were looking better, and they are, acquiring staff for which we have a continuing obligation and which carries with them a substantial fringe benefit requirement. And that's what I was specifically concerned about. We had a rough time during the last recession. Ah, practicing what I thought was severe cutback management, retaining all our staff and we did, and I'm proud to say that as a City even during the bad times, we didn't have to lay off any of our employees. But to return to the two options that are available to us for financing, certainly there is the pay-as-you-go and if you look now you'll see that we have presently \$2 million reserved for this purpose. There's another million blocked aside in the CIP making \$3 million. Conservatively, the sale of the Lincoln School site, should we pursue that, would raise a couple million. Five million, that's more than 50% of the amount that we need to begin with. There are devices that we haven't had to use in the past involving certain internal fund borrowings that we could do and that many other cities do. We don't normally do that but our own cash is available to us for that purpose and if the, there is the public and political will to see through this project, then we will do it as other cities have done. There is a consensus view even among the most bearish economists these days, and I heard one today, Crocker Bank Chief Economist, and he foresees the economy

cooking through '84, to use his words, and probably through '85 without any severe leveling off. He projects retail sales in this state next year to, to increase by about 13% and applying that to our own sales tax, that in itself would raise close to a million dollars. There are, there is, there are dollars in other funds that can be drawn upon. We receive money for purposes, street capital improvements, that can also be used to maintenance and by applying this to maintenance we can release other discretionary money in the General Fund to meet this requirement. Revenue sharing, of course, is still available to us and by phasing this project over two years we can apply another increment of revenue sharing next year as well, which we've done for the last two years. So if we want to go cash-and-carry, we can certainly do that. Not that it wouldn't be without some strain. It's difficult for anyone to raise \$9 million without some strain but it be, it could be done and it would certainly not jeopardize our financial capacity. The other approach is to use lease revenue bonds and this is preferable, I think, to paying for the project out of pocket because by using this vehicle, this tax exempt vehicle, we can buy money for 9%, perhaps less, and we can invest our own for 11%. It doesn't make good sense to me to spend our own dollars for this purpose when we can buy it more cheaply than what we can earn on our own investments. The plan is simple. It's used by by many other cities and that is the Redevelopment Agency would acquire the land, float a revenue bond issue, construct the facility and then lease it back to the City and the City's lease payments then would serve as the debt. The streams of revenue to retire that annual debt service would actually accumulate over time. Like I say, there is sufficient dollars now to meet the the the bond schedule requirements over 26 years and if this facility, and it might well provide, not that we don't need it in and of itself, but if it can provide the catalyst to attract the private development we need from the lease payments, upon the office tower and the

hotel, we will create a stream of revenue again to help retire the debt. By using this plan and not having to sell the Lincoln School site, that too can be converted to some beneficial purpose. Rather than selling, it can be leased and another stream of revenue can flow from that site. Both of these are viable alternatives for financing this Center. Now if Council has any questions, I'll be happy to address them.

Bright: Councilmember Patterson.

Patterson: You mean, in responding to, I guess, what people was my low blow in, in terms of your statement regarding being prudent, your initial statement was the fact that you have, primarily referring to increased staff. Now, if you have a 44,000 square foot community center, who's going to run it, and what is that going to do.

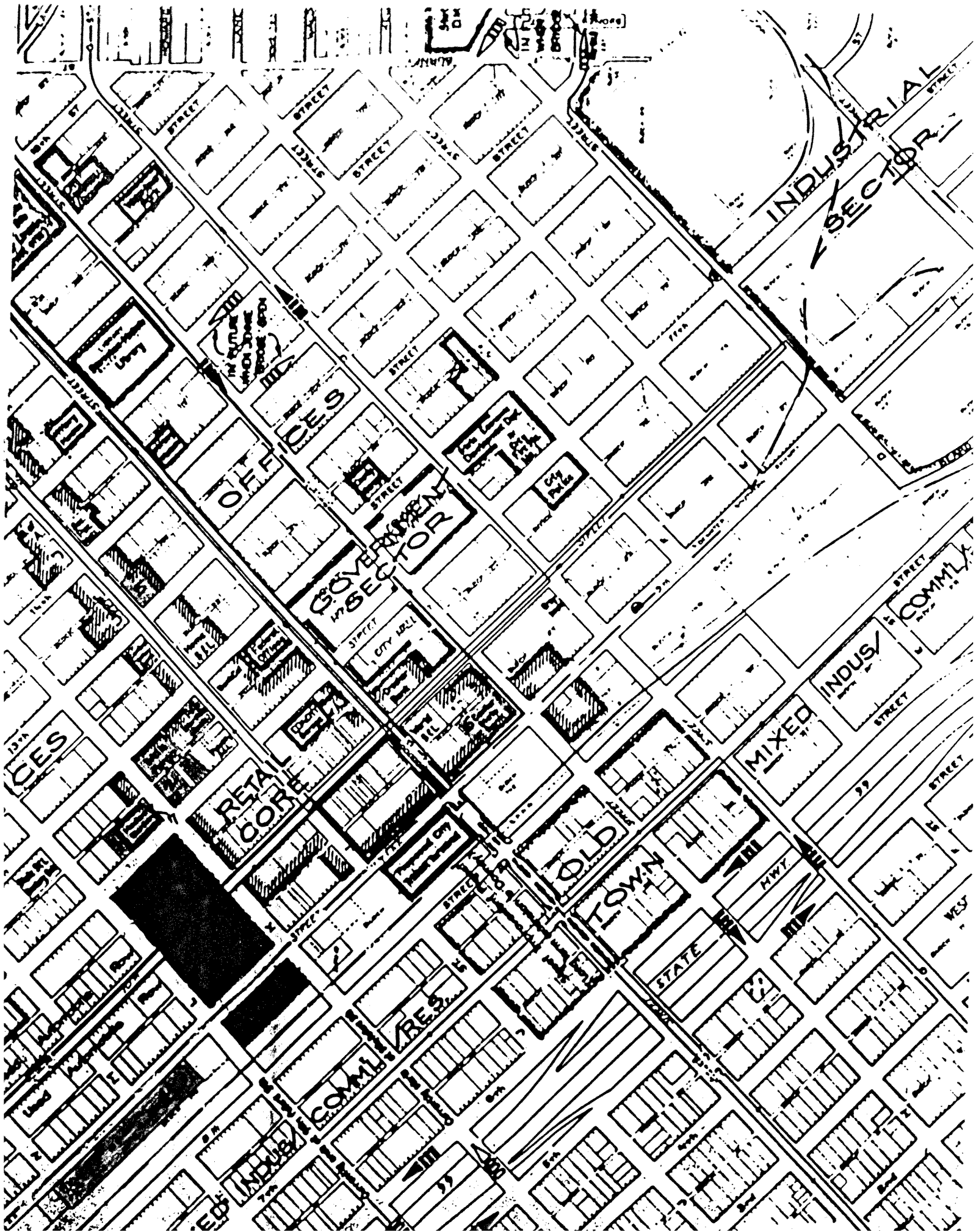
Brock: I'm gonna share this with with Mary but,

Lipsky: It's certainly up to the Council to what extent you want to get into operational costs. We've made efforts for a number of years, going back at least the last eight or nine, to determine what the operational costs for such a facility would be. There will be operational costs. Certainly there'll be an effort made to recover as much as possible in terms of revenue for the utilization of the facility, those operational costs. There is a possibility, as we've raised with the Council in the past, that the revenue coming in for the use of the facility will not cover all the operational costs.

Patterson: What's the projected deficit then, as a result of what you just said?

Lipsky: Mary, I don't know if you recall the last projection we made in terms of the operational costs which I think were for the entire complex and not just the conference center, and I don't know if we've got it broken down by, by facility in terms of the conference center, small theater, large theater, multi-forum.

ATTACHMENT E



ATTACHMENT F

MINUTES OF SPECIAL MEETING  
OF THE  
CULTURE COMMISSION AND CHAMBER OF COMMERCE

June 4, 1984, - 3:00 PM - Chamber of Commerce Office

CULTURE COMMISSION MEMBERS PRESENT: Chairperson, Dick Belt; Matt Kehoe;  
Ken Savage; Ruth Smith; Bette Belle  
Smith

CITY STAFF PRESENT: Jerry Ferrera, Mike Herrero

CHAMBER OF COMMERCE STAFF PRESENT: (Refer to Signature Roster Attached)

I. The meeting was called to order at 3:00 PM by Chamber President, Dennis Wilson. (This is an adjourned meeting of the Culture Commission.) Dennis Wilson asked everyone to introduce themselves.

II. Dick Belt introduced Mike Herrero, Assistant to City Manager, and asked him to give an explanation of the graphics displayed on the wall. Mike explained that the purpose of the meeting is to give an opportunity for discussion of the plans. He went over the two phases of the project. Estimated cost of Conference Center and Forum buildings as of July, 1985: \$2.8 million for Conference Center and \$1.6 million for Forum.

III. Questions:

1. Dennis Wilson: What was reasoning for relocating office in that position, given the loss of parking?

Answer: Just compensated by adding another level of parking.

2. Dennis Wilson: Wouldn't it make more sense to locate the office building at another location rather than backing it up to the railroad tracks?

Answer: There is some skepticism and concern. As opposed to going to another block with the office, feel we should just leave it there and see how it works out.

3. Dave Kilby: What is the time line or game plan? Is the canal and park and location of everything pretty much set or if changes come up during these meetings, can they be implemented?

Answer: Trying to get as much feedback as possible during these meetings. The Culture Commission will be having a formal hearing on June 13. Hope on the 26th of June to make some decisions on the site plan as to whether will have a park, the location of the buildings, and determine whether the parking is ample.

4. Dave Kilby: Has there been any concern expressed about the lack of an arena?

Answer: The Council has indicated its decision not to build an arena at this time.

5. Bette Belle Smith: Didn't we talk about the Modesto Junior College facility being too large?

Answer: Took a close look at the Fresno facility for comparisons. They do have an arena. It is part of the money-making part of the center.

6. Jan Smith: Parking is far from the theatres (thinks it might discourage use of the theatre facility). Any comment?

Answer: To get around that would have to go underground with parking at a higher cost but would be inconvenient. Will have to provide some on-site parking for hotel. Some valet drop-off sites are planned for.

7. Keith Vogt: For evening events the bank may allow use of their parking lot as well as other lots and street parking.

8. Keith Vogt: Who owns property next to Strand?

Answer: City owns it.

9. Keith Vogt: How many spaces in the Strand lot?

Answer: Just a single row (30 or 35 spaces).

10. R. J. Jalli: Isn't a shuttle a viable option during some big events?

Answer: At a handicapped meeting they indicated some interest.

11. R. J. Jalli: What is overall plan of the levels?

Everything you see on the plan is not at the same level. Trying to move buildings so that the big, bulky buildings are off the street. Trying very hard to avoid there being a back side to the project.

12. Bette Belle Smith: Where is the food service area for the Conference Center?

Answer: Not shown. Exact location of that space will be shown in the next phase of the architect's work.

13. Stan Hodges: Often the theatres are not the money makers. And the office building is set off by itself as though it was a second thought.

14. Keith Vogt: How realistic is it that we will be able to get the tracks off 9th Street?

Dennis Wilson: The money is pretty much guaranteed for the removal of the tracks. Indications are that the railroad people can be dealt with. Consultants are working on it.

15. Keith Vogt: If tracks are removed, would it be feasible to expand and have a second or third level going over 9th Street with parking, etc?

Answer: You could do that.

16. Mike Mensinger: Why is office building in that area? Has the block where Strand theatre parking is being considered for the office building?

Answer: These blocks are within the redeveloped project area. Would have a lot of problems trying to go outside this area.

17. Mike Mensinger: How big is office complex going to be?

Answer: 12 or 15 stories (200,000 sq. ft.).

18. Dennis Wilson: Regarding seating capacity in the Conference Center, the Sportsmen of Stanislaus can seat 1,000 people for a meal.

Answer: If you did that in the Conference Center, could get twice as many as at the Sportsmen of Stanislaus. Architects were using 14 sq. ft. per person for seating. Are sticking with 12 1/2 sq. ft. per person for seating (which some experts think is crowding it somewhat).

19. Dennis Wilson: Noticed that loading facility entries are not too feasible.

Answer: These entrances are very infrequently used. For large trucks would still have to back up.

20. What do you foresee as financing plan for the roughly \$11.15 million to build Park Plaza, the Conference Center, and the Forum?

Answer: If the Council says to add the Forum to Phase I, it will be \$11.15 million. Will be talking about that on Thursday at 3:00 PM during budget session.

21. Regarding line through Conference Center?

Answer: Really just one room but shows that it could be divided (just symbolic). How many times to be divided is yet to be determined.

22. What is projected maintenance cost of Forum building on a yearly basis?

Answer: Net operating deficit of first phase is about \$125,000 a year based on the experience of the center in Sacramento.

23. What type of gross income was that based on?

Answer: Does not have the information with him.

24. What is community participation on this project?

Answer: A formal request has been made for their participation and will be hearing from them soon.

25. Bette Belle Smith: Haven't they formed a committee?

Answer: Nor sure.

26. Dennis Wilson: Was any thought given to rather than a Forum building a large conference facility?

Answer: Could do that. Depends on what you want to achieve. The Forum building can be used as a conference facility use or multi-facility use.

27. Concern is that we don't have enough square footage per person to achieve 2,000 person capacity. Talking about 2,500 seats versus 2,000.

Answer: With that figure may be able to accommodate without too much change.

28. Dennis Wilson: Feels we should be prepared for growth and expansion of community.

29. Keith Vogt: Isn't one of the reasons for including Forum in the first phase that a lot of small groups could use that building before the Conference Center is built?

Answer: Yes.

30. Mike Mensinger: Why can't we enlarge the Conference Center and have flexible sizing and why does the Forum have to be a building by itself? In other words, why not make the Conference Center flexible for the Forum? Is it possible to put in a movable partition between the Forum building and the Conference Center?

Answer: That's something to think about.

31. What kinds of crowds would we be attracting for 2,500 groups?

Answer: Dennis Wilson gave a few examples. They have a book showing various conventions available throughout the United States.

32. Has there been any type of study done on the demand for the two theatres in this area?

Answer: A projection was made on the use of all these buildings and was presented in the 1977 Schoettler report.

33. Mike Mensinger: Wondering about the feasibility of small theatre instead of using the other local theatres available.

Answer: Small theatre works with Conference Center. There is a point where the costs will have to be re-evaluated.

34. Working with limited space overall and a lot of land dedicated to park atmosphere aspect.

Answer: About 2 1/2 acres dedicated to park area but depends on what the goal is.

35. Will the park create a place where people will tend to loiter, etc. (i.e., undesirable types)?

Keith Vogt: Parks are a big thing in Modesto. People in downtown area seem to be reacting positively to a new park area.

Mike Herrero: One goal is to establish a new environment in the area.

36. What population base will this site program support throughout future years? How does it lend itself to the future growth?

Answer: Size is more directly related to number of seats needed to attract performers. Boils down to size of Conference Center.

37. Does it help to know how it relates to the size of the other centers, such as Fresno?

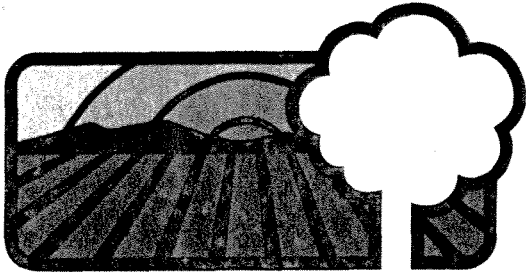
Answer: They have an exhibit hall at least twice that size.

38. R. Patterson: In terms of our defining it as economic development in the City, what number of jobs do you foresee for the community?

Answer: Does not see it as a strong major job generator. Looking at office and hotel as direct job developers.

- IV. Dick Belt asked Chamber of Commerce President, Dennis Wilson, for a summary of the Chamber's recommendations on the Community Center project.

- V. Dick Belt adjourned the meeting at 4:15 PM until Friday, June 8, at 3:00/PM in the City Council Chambers.



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## **CITY of MODESTO**

**Office of City Attorney:** 801 11th Street, P.O. Box 642, Modesto, CA 95353, (209) 577-5284

August 15, 1984

Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Attention: Mrs. Barbara Milman, General Counsel

Re: Modesto Councilmember Carol Whiteside

Dear Mrs. Milman:

In accordance with Ms. Janis McLean's suggestion noted in Advice Letter No. A-84-183 and section 83114(b) of the Political Reform Act of 1974, I am again requesting the FPPC's advise on behalf of Modesto City Councilmember and Modesto Redevelopment Board member Carol Whiteside. Your advice is sought with respect to the question of whether Mrs. Whiteside may participate in the deliberations and decisions affecting the real property within the portion of the Modesto Redevelopment Project which is designated as "Area A" on the attached map which is marked as Exhibit "A". The financial interests of Councilmember Whiteside were set forth in detail in my previous letter to the FPPC dated July 12, 1984, and accordingly, that information is not repeated at length herein.

As you may now be aware, the Modesto Redevelopment Project is comprised of two physically separate areas of land. (See Exhibit "D".) Area A is approximately 15.6 acres in area and is bounded by L, K, 8th and 11th Streets (See Exhibit "A"). From its closest point it is located some six city blocks to the west and two city blocks to the north of Area B, a distance of approximately 3300 feet. Area B is approximately 12.4 acres, as shown on the attached map marked as Exhibit "B".

The proposed plan for redevelopment of Area A was described at length in my previous letter of July 12, and referred to in your Advice Letter No. A-84-183. As indicated in that letter, much of the property of Area A has been purchased for a hotel/office/theater complex as part of a community-conference center. The area continues to have both vacant and occupied commercial properties. Also within Area A are two sets of railroad tracks which operate through its western-most sector between K and L Streets. The Union Pacific Railroad track runs parallel to and down the center of 9th Street. The Southern Pacific Railroad track runs parallel to 8th and 9th Streets, and is some 210 feet to the west of 9th Street.

Within Area A are two pieces of property which the City of Modesto desires to acquire. One is owned by the Virginia Trailways Realty Corporation which encompasses an area of approximately 18,500 square feet and is located at 1112 10th Street, as marked in red on Exhibit "A". It is from this location that the corporation operates its local Trailways Bus System Terminal. Staff of the City of Modesto is currently negotiating with the Trailways Corporation for the acquisition of the property and relocation of the bus terminal. The second piece of property is owned by the Southern Pacific Transportation Company and encompasses an area of approximately 70,400 square feet. It extends from K to L Streets and from 9th Street to within 16 feet of the Southern Pacific Railroad tracks, as indicated in blue on Exhibit "A". Currently, the property has one operating business upon it located on the southwest corner of 9th and L Streets, which would be relocated by the City of Modesto upon acquisition. Councilmember Whiteside does not have any financial interest in Virginia Trailways Corporation Southern Pacific Transportation Company, or the businesses being operated on the above-described properties.

In light of the foregoing circumstances, the question posed is:

1. May Carol Whiteside as a member of the Modesto City Council and Modesto Redevelopment Agency participate in the deliberations and decisions concerning the acquisition of the Trailways Corporation and Southern Pacific Railroad properties and the relocation of the businesses thereupon?

In addition to the acquisition of the above-described properties, of immediate need is decision-making by the City Council and Redevelopment Agency of the following: approval or modification of schematic design studies and architectural plans showing site and floor plans, elevations, and specifications to fix and illustrate the size and character of the community-conference center; awarding of demolition contracts; contracting for geological and environmental studies; and the negotiation and finalization of a private hotel and office development agreement for the center.

Therefore:

2. May Carol Whiteside as a member of the Modesto City Council and the Modesto Redevelopment Agency participate in the deliberations and decisions described above?

Finally, pursuant to section 8320 et seq. of the Streets and Highways Code, a legislative body of a local agency may initiate proceedings by which public rights-of-way may be vacated. With respect to Area A, the plans for the development of the community-conference center call for the vacating and abandoning of 10th Street and the two alleys in Block 58 and 66, all of which are located between K and L Streets, as indicated in yellow on the map

attached hereto marked as Exhibit "C". In addition, it is anticipated that certain public utilities facilities located within the abandoned rights-of-way will be relocated. Councilmember Whiteside does not have any financial interest in the utility companies whose facilities are to be relocated.

Therefore:

3. May Carol Whiteside as a member of the Modesto City Council and the Modesto Redevelopment Agency participate in the deliberations and decisions concerning the vacating and abandoning of 10th Street and the two alleys in Block 58 and 66 pursuant to Streets and Highways Code section 8320, et seq.?

The financial statement of Councilmember Carol Whiteside has been a matter of public record and her financial interests have been previously articulated in FPPC Advice Letter No. A-84-183. With respect to that letter, it was the opinion of Ms. Janis McLean that Councilmember Whiteside's interests include: a 50 percent investment interest in her spouse's law practice as well as income generated thereby; an income interest in clients of the law firm which provide a pro rata share of income to her of \$250 or more; an investment interest in her spouse's law partner, Mr. Carl E. Ulrich, Jr.; and apparently an investment interest in the business entity owning the building renting space to the Ulrich-Whiteside law firm. I say "apparently" as that concept was included but without analysis or conclusory language.

As set forth in Advice Letter No. A-84-183, the test for Councilmember Whiteside's disqualification is whether a redevelopment decision will foreseeably have a material effect on any of her financial interests distinguishable from the effect on the public generally (Government Code section 87103). In determining whether a material effect may exist, four objective criteria are set forth in section 87103(a)(b)(c)(d):

- (a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1000).
- (b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1000).
- (c) Any source of income...aggregating \$250 or more in value, provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee or holds any position of management.

It has previously been disclosed and reported by Councilmember Whiteside that the law firm of Ulrich and Whiteside is a source of income to her. While it is foreseeable that any decision to be made regarding the law firm would have a material financial effect, it has consistently been the opinion of this office that the redevelopment project will have no material financial effect on the firm or Councilmember Whiteside. This conclusion is shared by Mr. Carl E. Ulrich, Jr. (see attached declaration).

As to the conclusion that no investment is held in Mr. Ulrich, neither Councilmember Whiteside nor her spouse have invested anything of value, and particularly of a value beyond \$1000, in Mr. Carl E. Ulrich, individually. Nor does Mr. Ulrich, individually, provide any income to Councilmember Whiteside or her spouse. And, while John Whiteside is a partner in the law firm, Councilmember Whiteside stands in no business relationship with Mr. Ulrich as provided in section 87103(d). Moreover, it should be emphasized that Councilmember Whiteside is neither an employee nor in a position of management with the law firm, and that she is, in fact, barred from holding any directorship, office, partnership, etc. within the firm as she is not a duly licensed attorney. Finally, neither Councilmember Whiteside nor her spouse has a direct or indirect interest valued at more than one thousand dollars in any real property owned by Mr. Ulrich. Therefore, to find that Councilmember Whiteside has any investment interest in Mr. Carl E. Ulrich, Jr., individually, or any of his other business ventures, requires a strained interpretation of the Political Reform Act of 1974.

As to the "related business entity" investment interest theory identified in FPPC Advice Letter No. A-84-183, it is apparent that a parallel was drawn with the situation identified in FPPC Opinion No. 84-004, October 4, 1983 (Nord). In that situation a city attorney questioned whether he might invest as a limited partner in a real estate venture. There the opinion held that the city attorney would be required to disqualify himself under the investment rule and the "otherwise related business entity" theory. However, upon close examination it becomes clear that the situation of Nord and Councilmember Whiteside are distinguishable.

Under the investment rule, it was found that in a limited partnership, the limited partner was investing in the skill of the general partner.

"The limited partner entrusts his or her capital to the management of the general partner. In doing so, the limited partner is really investing in the general partner."

As stated above, Councilmember Whiteside is legally precluded from investing in the legal practice of Mr. Carl E. Ulrich and has not engaged in any other investments with Mr. Ulrich.

With respect to the "otherwise related business entity concept", which had its genesis in the Nord opinion, it was held that where a party was a general partner or controlling shareholder of two business entities, a limited partner (Nord) of one entity would be disqualified as to decisions reasonably and foreseeably having a material financial effect on the "otherwise related business entity." The difficulty with the parallel drawn in Advice Letter No. A-84-183, is that it belies the rationale of Nord. In Nord, the nexus between the two business entities was the tracing of the limited partner's investment, through the skill or ability of the general partner or controlling stockholder, to other ventures. In the Whiteside situation, the investment does not materialize in the ownership of a building by Mr. Ulrich individually. The only possible nexus existing between the law partnership and the business entity owning the building of which the law firm is a tenant is in the person of Mr. Carl E. Ulrich, Jr.

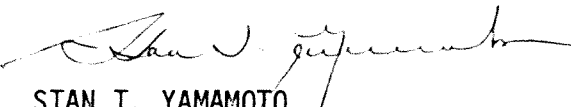
In review of both the investment and related business entity rules outlined in the Nord opinion, it would appear that the analysis there would not apply to the situation outlined herein.

Again, your expeditious attention to this matter will be greatly appreciated as it is anticipated that the above-described matters will be before the City Council at its meeting of September 18, 1984. If there is any further information or clarification which you believe necessary, please feel free to call upon me.

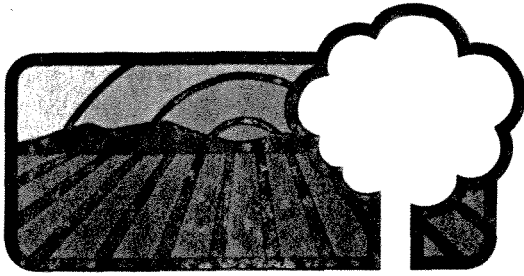
Thank you in advance for your consideration and cooperation.

Very truly yours,

ELWYN L. JOHNSON, City Attorney

  
STAN T. YAMAMOTO  
Deputy City Attorney

STY/swn  
Attachment



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# CITY of MODESTO

Office of City Attorney: 801 11th Street, P.O. Box 642, Modesto, CA 95353, (209) 577-5284

August 15, 1984

HAND DELIVERED

Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Attention: Mrs. Barbara Milman

Re: Modesto City Councilmember John Sutton

Dear Mrs. Milman:

In accordance with Ms. Janis McLean's suggestion noted in Advice Letter No. A-84-183 and section 83114(b) of the Political Reform Act of 1974, I am again requesting the FPPC's advice on behalf of Modesto City Councilmember and Modesto Redevelopment Board member John Sutton. Your advice is sought with respect to the question of whether Mr. Sutton may participate in the deliberations and decisions affecting the real property within the portion of the Modesto Redevelopment Project which is designated as "Area A" on the attached map which is marked as Exhibit "A". The financial interests of Councilmember Sutton were set forth in detail in my previous letter to the FPPC dated July 12, 1984, and accordingly, that information is not repeated at length herein.

As you may now be aware, the Modesto Redevelopment Project is comprised of two physically separate areas of land (see Exhibit "D"). Area A is approximately 15.6 acres in area and is bounded by L, K, 8th and 11th Streets (see Exhibit "A"). From its closest point it is located some six city blocks to the west and two city blocks to the north of Area B, a distance of approximately 3300 feet. Area B is approximately 12.4 acres, as shown on the attached map marked as Exhibit "B".

The proposed plan for redevelopment of Area A was described at length in my previous letter of July 12, and referred to in your Advice Letter No. A-84-183. As indicated in that letter, much of the property of Area A has been purchased for a hotel/office/theater complex as part of a community-conference center. The area continues to have both vacant and occupied commercial properties. Also within Area A are two sets of railroad tracks which operate through its western-most sector between K and L Streets. The Union Pacific Railroad track runs parallel to and down the center of 9th Street. The Southern Pacific Railroad track runs parallel to 8th and 9th Streets, and is some 210 feet to the west of 9th Street.

Within Area A are two pieces of property which the City of Modesto desires to acquire. One is owned by the Virginia Trailways Realty Corporation which encompasses an area of approximately 18,500 square feet and is located at 1112 10th Street, as marked in red on Exhibit "A". It is from this location that the corporation operates its local Trailways Bus System Terminal. Staff of the City of Modesto is currently negotiating with the Trailways Corporation for the acquisition of the property and relocation of the bus terminal. The second piece of property is owned by the Southern Pacific Transportation Company and encompasses an area of approximately 70,400 square feet. It extends from K to L Streets and from 9th Street to within 16 feet of the Southern Pacific Railroad tracks, as indicated in blue on Exhibit "A". Currently, the property has one operating business upon it located on the southwest corner of 9th and L Streets, which would be relocated by the City of Modesto upon acquisition. Councilmember Sutton does not have any financial interest in the Virginia Trailways Corporation or the Southern Pacific Transportation Company.

In light of the foregoing circumstances, the question posed is:

1. May John Sutton as a member of the Modesto City Council and the Modesto Redevelopment Agency participate in the deliberations and decisions concerning the acquisition of the Trailways Corporation and Southern Pacific Railroad properties and the relocation of the business thereupon?

In addition to the acquisition of the above-described properties, of immediate need is decision-making by the City Council and Redevelopment Agency of the following: approval or modification of schematic design studies and architectural plans showing site and floor plans, elevations, and specifications to fix and illustrate the size and character of the community-conference center; awarding of demolition contracts; contracting for geological and environmental studies; and the negotiation and finalization of a private hotel and office development agreement for the center.

Therefore:

2. May John Sutton as a member of the Modesto City Council and the Modesto Redevelopment Agency participate in the deliberations and decisions described above?

Finally, pursuant to section 8320 et seq. of the Streets and Highways Code, a legislative body of a local agency may initiate proceedings by which public rights-of-way may be vacated. With respect to Area A, the plans for the development of the community-conference center call for the vacating and abandoning of 10th Street and the two alleys in Block 58 and 66, all of which are located between K and L Streets, as indicated in yellow on the map attached hereto marked as Exhibit "C". In addition, it is anticipated that certain public utilities facilities located within the abandoned rights-of-way will be relocated. Councilmember Sutton does not have any financial interest in the utility companies whose facilities are to be relocated.

Therefore:

3. May John Sutton as a member of the Modesto City Council and the Modesto Redevelopment Agency participate in the deliberations and decisions concerning the vacating and abandoning of 10th Street and the two alleys in Block 58 and 66, pursuant to Streets and Highways Code sections 8320, et seq.?

Councilmember John Sutton's financial interests have been a matter of public record and are further described in FPPC Advice Letter No. A-84-183, dated July 30, 1984. Each of those particular interests are identified in Exhibit "D", and marked in green. As to the specific areas subject to deliberations described above, it is readily apparent that Councilmember Sutton's financial interests are not in close proximity to those areas. Moreover, he is not aware of nor does he have any information to believe that his financial interests will be materially effected by any decision set forth above.

Again, your expeditious attention to this matter will be greatly appreciated as it is anticipated that the above-described matters will be before the City Council at its meeting of September 18, 1984. If there is any further information or clarification which you believe necessary, please feel free to call upon me.

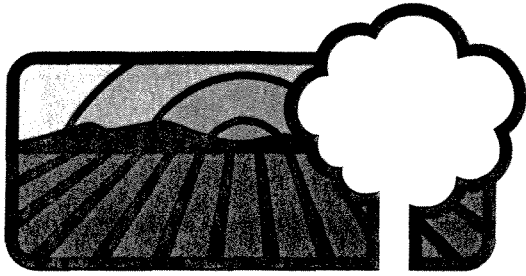
Thank you in advance for your consideration and cooperation.

Very truly yours,

ELWYN L. JOHNSON, City Attorney

  
STAN T. YAMAMOTO  
Deputy City Attorney

STY/dks



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## **CITY of MODESTO**

**Office of City Attorney:** 801 11th Street, P.O. Box 642, Modesto, CA 95353, (209) 577-5284

August 15, 1984

HAND DELIVERED

Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Attention: Mrs. Barbara Milman, General Counsel

Dear Ms. Milman:

In follow up to FPPC Advice Letter No. A-84-183, dated July 30, 1984, and in accordance with section 83114(b) of the Political Reform Act of 1974, I am requesting the FPPC's advice on behalf of Modesto Mayor Peggy Mensinger. Your advice is sought with respect to the question of whether Mayor Mensinger, as a member of the Modesto City Council and the Modesto Redevelopment Agency may participate in the deliberations and decisions affecting the real property within that portion of the Modesto Redevelopment Project which is designated as Area B on the attached map, marked as Exhibit "B".

The Modesto Redevelopment Project is comprised of two physically separate areas of land, as shown in blue on the map attached as Exhibit "C". Area A encompasses approximately 15.6 acres bounded by L, K, 8th and 11th Streets, as shown on the attached map marked as Exhibit "A". Areas A and B are non-contiguous pieces of land as permitted by the Community Redevelopment Law; moreover, the uses to be developed on the respective areas and their disposition are to be determined separately, although both together comprise one redevelopment project for other purposes, e.g. the use of tax increments and other sources of revenues.

Area B encompasses approximately 12.4 acres, and is currently zoned for commercial and residential use. The City of Modesto has acquired title to most of Area B over the course of the past fifteen years, except for a residential parcel located on the westerly corner of the intersection of H & 19th Streets, as shown in red, and the parcel noted as "Block K" on the attached map marked as Exhibit "B" located in the northeasterly section of Area B. Activity is underway to secure title to both of these parcels.

In reference to Area B, Area A from its closest point is located some six city blocks to the west and two city blocks to the north a distance of some 3300 feet, and is across from American Lumber Company, (marked in yellow on Exhibit "C"), which has for 62 years been operated as a family business by the Mensinger family. As pointed out in my July 30, 1984 request letter, Mayor Mensinger has consistently disqualified herself on matters relating to Area A due to the proximity of her husband's business to Area A. Additionally, Wells Fargo Bank (indicated on Exhibit "C"), is located approximately three city blocks to the north and four city blocks to the west of Area B, a distance of some 2700 feet at its closest point. In 1975, Wells Fargo Bank made a loan to American Lumber Properties, which is composed of 10 members of the Mensinger family. That loan was obtained by American Lumber Properties to finance the purchase of the land on which American Lumber Company is located; that loan is still outstanding.

Existing uses within Area B consist of an auto upholstery business on Block K, a costume shop on Block L (see Exhibit "B"), a rental residential unit, a public parking lot, an area leased to Modesto City Hospital (see Exhibit "B"), and used as a parking lot, and a horticultural/agricultural garden area leased to the University of California, all of which are located upon Block 132, as indicated on Exhibit "B". The neighborhood surrounding Area B consists of a mixture of land uses which include a senior citizens apartment complex, a pharmacy, a car wash, a hospital, professional offices, and residential dwellings.

In light of the above-described circumstances, three specific and distinct questions are thus posed:

1. May Mayor Mensinger as Mayor and Chairperson of the Modesto Redevelopment Agency participate in deliberations and decisions identifying the types of land use suitable for Area B although she has consistently disqualified herself from deliberations and decisions affecting Area A?
2. May Mayor Mensinger as Mayor and Chairperson of the Modesto Redevelopment Agency participate in deliberations and decisions concerning the lease or sale of all or portions of Area B by the Redevelopment Agency to private developers (with whom she has no disqualification) for development in accordance with the selected land uses although she has consistently disqualified herself from deliberations and decisions affecting Area A?
3. May Mayor Mensinger as Mayor and Chairperson of the Modesto Redevelopment Agency participate in deliberations and decisions concerning the transfer of fee title to Area B from the City of Modesto to the Modesto Redevelopment Agency although she has consistently disqualified herself from deliberations and decisions affecting Area A?

I will not belabor you with the history of Mayor Mensinger's financial records as they have been previously covered in my request letter of July 12, 1984, and your advice letter No. A-84-183. I would, however, state that neither Mayor Mensinger nor her husband have any direct or indirect financial interest in the real property yet to be acquired as described above, Modesto City Hospital, the University of California, or adjacent or neighboring properties or businesses.

Fair Political Practices Commission  
August 15, 1984  
Page Three


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Again, your expeditious attention to this matter will be greatly appreciated as it is anticipated that the above described matters will be before the Modesto City Council at its meeting of September 18, 1984. If there is any further information or clarification which you believe necessary, please feel free to call upon me.

Thank you in advance for your consideration and cooperation.

Very truly yours,

ELWYN L. JOHNSON, City Attorney

By   
STAN T. YAMAMOTO  
Deputy City Attorney

ELJ/STY/dks