



California Fair Political Practices Commission

June 10, 1986

Peter F. Xander
Vail Speck Associates, Inc.
3140 Red Hill Avenue, Suite 270
Costa Mesa, CA 92626

Re: Your Request for Advice
Our File No. A-86-162

Dear Mr. Xander:

Thank you for your letter requesting advice concerning your duties under the conflict of interest provisions of the Political Reform Act (the Act).^{1/}

QUESTIONS

You are a former employee of the California Coastal Commission. While employed by the Coastal Commission in 1985, you reviewed the resubmittal of the Land Use Plan for the Bolsa Chica Local Coastal Program. In connection with its review of the Bolsa Chica Local Coastal Program, the Coastal Commission created a unique additional review process known as "Confirmation Review". You have asked:

(1) Under Government Code Sections 87400-87405, is the "Confirmation Review" process considered a different proceeding from certification of the Land Use Plan and implementation of the plan?

(2) Would you be precluded from participating in meetings with officials from State agencies as a member of a firm which is under contract to the County of Orange to provide land planning assistance in technical matters on the Confirmation Review process?

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

CONCLUSION

(1) If any aspect of the Bolsa Chica Land Use Plan included any aspect which affected only a specific party or parties, and if the Confirmation Review involves that same aspect of the plan, the Land Use Plan and the Confirmation Review are part of the same proceeding.

(2) If the Bolsa Chica Land Use Plan and the Confirmation Review are part of the same proceeding, you are precluded from representing or assisting the County of Orange in proceedings before the Coastal Commission on the Confirmation Review.

ANALYSIS

From May, 1980 until September 30, 1983, and from April 24, 1984, until May 2, 1986, you were an employee of the California Coastal Commission in the Long Beach Office. You left State service for employment with Vail Speck Associates ("VSA") of Costa Mesa, California. VSA is a land use planning consulting firm which, among other things, represents the County of Orange in matters pertaining to the County's Local Coastal Program for the Bolsa Chica Planning Area.

In November, 1984, the Coastal Commission denied the Land Use Plan for the Bolsa Chica Local Coastal Program and certified it with suggested modifications. One major decision made by the Coastal Commission was the creation of a unique additional review process for Bolsa Chica, known as the "Confirmation Review." In all other Local Coastal Programs for coastal jurisdictions in California, the local government in question prepares a Land Use Plan, then zoning ordinances to implement the Land Use Plan, then post-certification procedures which govern implementation of the entire program.

The "Confirmation Review" phase is a separate process established by the Coastal Commission and occurs between the Land Use Plan phase and the implementation phase. The Land Use Plan determined the kinds, intensities, and locations of proposed development. However, major studies were needed from the U.S. Army Corps of Engineers and others on the feasibility of a navigable ocean entrance, the feasibility of major wetland restoration efforts, and other decisions which had to be deferred for more information. The studies primarily relate to lands owned by a single landowner.

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You reviewed the Land Use Plan in 1985 (involving incorporation of many changes in policy language), which was certified by the Coastal Commission.

Sections 87401 and 87402 provide:

87401. No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

87402. No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

You are clearly a "former state administrative official." Section 87400(b). Accordingly, you are prohibited from representing, aiding, advising, counseling, consulting, or assisting in representing any person,^{2/} for compensation, in connection with any proceeding in which you participated as an employee of the Coastal Commission.

^{2/}"Person" is broadly defined in the Act to include any organization or group of persons acting in concert. Section 82047. Accordingly, Sections 87401 and 87402 restrict your ability to represent either individuals or the County in certain proceedings. (See, Witt Opinion, 1 FPPC 1, No. 75-044, February 21, 1975, copy enclosed.)

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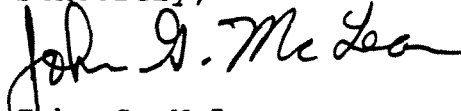
Section 87400(c) provides that a "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency" (emphasis added.)

Generally, the land use plans which are considered by the Coastal Commission involve rules of general applicability which affect a large number of persons. Under these circumstances, the land use plans are not considered to constitute a "proceeding" within the meaning of Sections 87401 and 87402. However, some land use plans include aspects which affect only a specific party or parties, rather than a significant segment of the properties within the jurisdiction of the plan. Under these circumstances, the aspect of the plan which affects a specific party or parties is considered to be a "proceeding" within the meaning of Sections 87401 and 87402.

Therefore, you should determine the following: (1) While employed at the Coastal Commission did you participate in any aspect of the Bolsa Chica Land Use Plan which affected only a specific party or parties? and (2) Does the "Confirmation Review" involve that same aspect of the plan? If the answer to both questions is yes, then you may not represent or assist the County on the Confirmation Review. If the answer to either question is no, you may represent or assist the County on the matter.

I trust this answers your questions. If you have any further questions, please feel free to contact me at (916) 322-5901.

Sincerely,



John G. McLean
Counsel
Legal Division

JGM:sm
Enclosures



Vail Speck Associates, Inc.

3140 Red Hill Avenue • Suite 270
Costa Mesa, California 92626
714/641-6676

May 8, 1986

John H. Larson, Chairman
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95804

Dear Mr. Larson:

I would like to receive advice from the FPPC regarding any applicability of §§ 87400-87405 of the Government Code to my current employment situation. From May, 1980 until September 30, 1983, and from April 24, 1984, until May 2, 1986, I was an employee of the California Coastal Commission in the Long Beach office. I left State service for employment with Vail Speck Associates ("VSA") of Costa Mesa, California. VSA is a land use planning consulting firm which, among other things, represents the County of Orange in matters pertaining to the County's Local Coastal Program for the Bolsa Chica Planning Area.

In November, 1984, the Coastal Commission denied the Land Use Plan for the Bolsa Chica Local Coastal Program and certified it with suggested modifications. One major decision made by the Coastal Commission was the creation of an unique additional review process for Bolsa Chica, known as the "Confirmation Review." In all other Local Coastal Programs for coastal jurisdictions in California, the local government in question prepares a Land Use Plan, then zoning ordinances to implement the Land Use Plan, then post-certification procedures which govern implementation of the entire program. In prior FPPC communications I have seen -- most notably, a December 4, 1980 memo to Roy Gorman of the Commission from Robert M. Stern, General Counsel for the FPPC -- each part of the overall approval process has been determined to be a different proceeding, as are permit proceedings. That prior opinion also stated, on Page 5, that "a planner may accept employment from a local government to work on the implementation of the land use plan on which the planner worked at the Commission," and that "a planner may accept employment from a landowner to work on coastal development permits under a land use plan on which the planner worked while at the Commission."

The "Confirmation Review" phase is a separate process established by the Commission in between the Land Use Plan phase and the implementation phase. As was mentioned earlier, the Land Use Plan was certified with the establishment of this process. The Land Use Plan determined the kinds, intensities, and locations of proposed development. However, major studies were needed from the U. S. Army Corps of Engineers and others on the feasibility of a navigable ocean entrance, the feasibility of major wetland restoration efforts, and other decisions which had to be deferred for more information. I was then assigned to review the resubmittal of the Land Use Plan in 1985 (involving incorporation of many changes in policy language), which was certified by the Commission. My questions are two:

- (1) Is the "Confirmation Review" process considered a different proceeding from certification of the Land Use Plan and of implementation, since approval by the Coastal Commission is required prior to the County proceeding to the next phase of planning; and
- (2) Would I be precluded from participating in meetings with officials from State agencies

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as a member of a firm which is under contract to the County of Orange to provide land planning assistance in technical matters on the Confirmation Review process?

Thank you for your consideration and assistance on these questions. Should you desire more information, please call me.

Sincerely,

Peter F. Xander

A handwritten signature in cursive script that reads "Peter F. Xander". The signature is written in dark ink and includes a long, sweeping horizontal stroke at the end.

VAIL SPECK ASSOCIATES, INC.



California
Fair Political
Practices Commission

May 14, 1986

Mr. Peter F. Xander
Vail Speck Associates, Inc.
3140 Red Hill Avenue, Suite 270
Costa Mesa, CA 92626

Dear Mr. Xander:

Thank you for your letter of May 8, 1986. I have referred the request to my Legal Division. They will respond at their earliest possible time.

If you have any further questions, please don't hesitate to contact me or Robert Leidigh at (916) 322-5901.

Yours truly,

John H. Larson
Chairman

JHL:sf