



California Fair Political Practices Commission

October 7, 1988

John F. Lawson
City Attorney
City of Duarte
1600 Huntington Drive
Duarte, CA 91010

Re: Your Request For Advice
Our File No. I-88-287

Dear Mr. Lawson:

You have requested advice on behalf of Ginny Joyce about application of the Political Reform Act (the "Act")^{1/} to her duties on the City Council and Redevelopment Agency of the City of Duarte.

Because you have not asked for advice about a specific pending decision, we consider your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

Ms. Joyce and her husband own a real estate business in the City of Duarte. The business is situated in a leased building

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

in one of 11 separate, noncontiguous segments of the Rancho Duarte Phase III Redevelopment Project Area.

May Ms. Joyce participate in decisions concerning project areas separate from the project area in which her real estate office is situated?

CONCLUSION

Ms. Joyce would be disqualified from participating in a decision about any segment of the project area which would have a foreseeable and material financial effect, different from the effect on the general public, on her economic interests. For example, Ms. Joyce would be disqualified from participating in a decision that would foreseeably and materially increase the value of the property where her real estate business is located. In addition, Ms. Joyce would be disqualified from participating in decisions that would foreseeably and materially affect persons who have promised or paid \$250 or more in commission income to Ms. Joyce or to her real estate business.

Once Ms. Joyce determines that a decision will have no foreseeable nor material financial effect on an economic interest, she will be able to participate in that decision.

FACTS

Ginny Joyce is a member of the City Council of the City of Morgan Hill. The entire city council also sits as the redevelopment agency. The Rancho Duarte Phase III Project Area is made up of 11 separate, noncontiguous segments. The 11 segments are numbered consecutively from east to west and extend along the central east-west corridor of the city. Segment 1 is about 9500 feet east of segment 11. Segment 10 is about 75 feet to the east and across the street from segment 11.

Most project area segments contain commercial property. Segment 3 is the only section that contains residential property. The city owns 80 percent of the property in segment 3, will buy the rest, and does not plan to sell the property in segment 3. Property with single-family homes abuts parts of segments 2, 4, 8, and 9. Property with apartment buildings borders segment 10 on the northwest. Some single-family homes are situated across the street to the northwest of segment 11.

Ms. Joyce and her husband own a real estate business. The business leases office space in the eastern part of segment 11. The monthly rent for the space is \$1,200. The lease will expire in May 1990. Ms. Joyce specializes in selling

single-family homes. About fifty percent of her sales are in Duarte and the other half is in Glendora. She has not sold and does not expect to sell property in any segments of the project area because the segments contain mostly commercial property.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or in any way attempting to use his or her official position to influence a governmental decision in which the official has a financial interest.

An official has a disqualifying financial interest in a decision if the decision will have a reasonably foreseeable and material financial effect, different from the effect on the general public, on the official or a member of his immediate family or on the following:

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

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$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.

Section 87103(a)(b) and (c).

Ms. Joyce is a public official. (Section 82048.) To determine if disqualification is required, Ms. Joyce should first determine whether the decision will have a foreseeable and material financial effect on any of her economic interests.

Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood that it will occur. An effect does not have to be certain to be foreseeable. But if an effect were a mere possibility, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

In your letter you asked whether decisions concerning a redevelopment project made up of several noncontiguous project areas would be treated differently from decisions about a contained project area, such as the one in Downey Cares v. Downey Community Development Commission (1987) 196 Cal.App.3d 983, 991. The fact that a redevelopment area has contained or separated project areas does not determine whether a decision will have a foreseeable effect.

In Downey Cares, supra, the court concluded that redevelopment foreseeably results in increased property values in a redevelopment area. In turn, increased property values in the Downey Cares case would have a foreseeable and material financial effect on the property and business owned by a city councilmember. Nevertheless, the court also recognized that the Commission has no per se rule requiring disqualification from a decision about a redevelopment project area. (Downey Cares, supra at 991.) Instead, while it is reasonable to infer that redevelopment will increase property values and a realtor's income, an official must examine each decision to determine whether its financial effect will be foreseeable and material. An analysis of foreseeability does not hinge on whether the redevelopment project area is contained or separated.

Therefore, Ms. Joyce still must examine each redevelopment decision and ascertain whether it will have a foreseeable material financial effect on her economic interests.

Material Financial Effect On An Investment Interest

Ms. Joyce and her husband own a real estate business. The business is an investment interest for Ms. Joyce if it is worth \$1,000 or more. The Commission has developed regulations with guidelines for evaluating whether an effect on a business entity is material.

On July 26, 1988 the Commission adopted new regulations for determining whether an effect is material. We anticipate that Regulations 18702 through 18702.6 (copies enclosed) will become effective in November 1988. For this reason, advice requestors presently should not rely on the new regulations. Guidelines in the new regulations, however, are more precise than in present regulations. In some situations it may be helpful to consult the new regulations. Therefore, we will refer to the new regulations where appropriate.

Ms. Joyce should use the guidelines in Regulation 18702.2 (copy enclosed) to determine if a decision will have a material financial effect on her business. For example, if we assume

the real estate business is a small, closely-held business, the effect of a decision that would be likely to increase or decrease gross revenues of the business for a fiscal year by \$10,000 or more would be material.^{3/} (Regulation 18702.2(g)(1).) Ms. Joyce would be disqualified from a decision that would have such an effect on her business.

As mentioned before, often a redevelopment agency decision may have a financial effect on the value of real property in a redevelopment area because a major goal of a redevelopment plan is to increase property values. (In re Oglesby (1975) 1 FPFC Ops. 71, 80, copy enclosed.) In turn, increased property values will have a foreseeable and material financial effect on a real estate business because increased property values increase the amount of real estate commissions. (Oglesby, supra at 80.)

Ms. Joyce, however, sells only single-family homes. Only segment 3 of the project area contains residential property. The other segments contain commercial property. Ms. Joyce has not sold and has no plans to sell any property in the project area. Therefore, a decision that would increase property values within a project area segment only may not have a foreseeable and material financial effect on Ms. Joyce's business. She will be able to participate in a decision that would increase property values within only a segment of the project area if the decision will not have a material financial effect on her business.

Nevertheless, it is possible that a decision that increases property values within a segment of the project area also would increase property values of adjoining property outside the boundaries of a project area. Those increased property values may have a foreseeable effect on Ms. Joyce's business in the adjoining neighborhood. How can she evaluate whether such a redevelopment decision would have a material financial effect on her business?

The Commission has not yet formulated standards for assessing whether this type of decision will have a material financial effect on Ms. Joyce's real estate business. If this situation arises, Ms. Joyce may request additional advice concerning the specific decision.

^{3/} Please contact us if you have different information about the financial size of Ms. Joyce's business.

Material Financial Effect On Interest In Real Property

An interest in real property includes any leasehold held by a business entity in which a public official owns an investment interest of 10% or more. (Section 82033.) Because Ms. Joyce owns her real estate business, she has an interest in the property where her business is located. Regulation 18729 (copy enclosed) provides that the value of a leasehold interest is the amount of rent owed during a 12-month period or the fair market value of the leasehold during that time if the rent owed is less than \$1,000. Therefore, because the monthly rent for the office space is \$1,200, the value of Ms. Joyce's leasehold interest is \$14,400. Accordingly, Ms. Joyce has an interest in real property valued at \$1,000 or more.

Present Regulation 18702(b)(2)(A) (copy enclosed) provides guidelines for evaluating whether an effect on an official's leasehold interest is material. Newly adopted Regulation 18702.4 provides more precise guidance. If we consult Regulation 18702.4, an effect that foreseeably would increase or decrease the amount of rent by \$250 or 5 percent, whichever is greater, during any 12-month period would be material. For example, Ms. Joyce would be disqualified from a decision that foreseeably would increase or decrease the amount of rent by \$720 during a 12-month period. We multiplied \$14,400 by 5 percent to get \$720.

Material Financial Effect On A Source Of Income

The real estate business owned by Ms. Joyce and her husband is a source of income to Ms. Joyce. (Section 82030(a).) Any client of the real estate business who has paid or promised to pay the business \$250 or more within 12 months before the decision also is a source of income to Ms. Joyce. In addition, any person who has paid or promised to pay Ms. Joyce \$250 or more in commission income during the preceding 12 months is a source of income to Ms. Joyce. (Regulation 18704.3; Christiansen Advice Letter, No. I-87-049, copies enclosed.) Ms. Joyce would be disqualified from participating in a redevelopment agency decision about any segment of the project area, which would have a foreseeable and material financial effect on a source of income to Ms. Joyce.

For example, suppose Ms. Joyce sells a house for someone who also owns commercial property in segment 8 and the sale for the house is in escrow. The client is a promised source of income to Ms. Joyce because the client owes Ms. Joyce a commission of more than \$250. (Felts Advice Letter, No. A-85-130, copy enclosed.) During escrow the redevelopment agency takes up a decision concerning segment 8, which

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foreseeably will result in an increase in the value of the client's commercial property consistent with Regulation 18702(b)(3).^{4/} Ms. Joyce would be disqualified from participating in the decision about segment 8.

In summary, each decision about a segment of the project area must be examined to determine whether the decision will have a foreseeable and material financial effect on Ms. Joyce, her husband, her business, the business' lease or a source of income to Ms. Joyce. The fact that the project areas are noncontiguous does not entirely eliminate the potential for a conflict of interest for a realtor. If the decision would have a foreseeable and material financial effect, different from the effect on the general public, on any of the preceding economic interests, Ms. Joyce would be disqualified from participating in the decision.

I hope this letter provides enough guidance for Ms. Joyce to recognize the decisions from which she is disqualified. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel



By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures

^{4/} Again, you also may consult recently adopted Regulations 18702.3 and 18702.6(b) for additional aid in determining whether a decision will have a material effect.



City of Duarte

Sixteen Hundred Huntington Drive, Duarte, California 91010 - (818) 357-7931

August 30, 1988

John F. Lawson
City Attorney

Law Offices Mosely and Leach
11001 East Valley Mall, Suite 200
El Monte, California 91731
(818) 443-0061 (213) 686-2068

California Fair Political Practices Commission
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Attention: Attorney Margarita Alta Marena

Re: Requested Advise Letter No. 88-287

Dear Margarita:

Pursuant to our recent conversation, I am providing the following information to assist you in preparing the requested advise letter.

First off, the distances between the eleven different segments of the Rancho Duarte Phase III Redevelopment Plan are as follows and all distances indicated are from segment number eleven to the other numbered segments starting with segment number one through ten, as follows: segment number one 9,480 feet, segment number two 9,180 feet, segment number three 6,900 feet, segment number four 6,420 feet, segment number five 7,020 feet, segment number six 6,060 feet, segment number seven 5,500 feet, segment number eight 3,600 feet, segment number nine 2,800 feet and segment number ten 75 feet. If the distances are to be measured to the actual real estate office occupied by Mrs. Joyce, then add 200 feet to each of the distances given above as each of these distances is measured from the Westerly most point of segment number eleven within which Mrs. Joyce's office is located.

As to whether or not any residential properties are located within any of the eleven segments included in this redevelopment plan, only segment number three contains residential lots, and most of those are already owned by the city. Negotiations are preceding for the purchase of the remaining few.

California Fair Political Practices Commission
August 30, 1988
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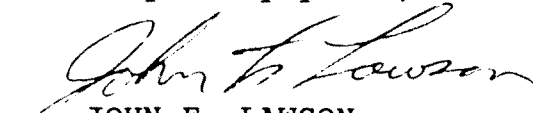
The next question was whether or not any of the segments in this redevelopment plan abutted residential properties. The north side of segment number eleven is across a street from some residential lots. The north and westerly sides of segment number ten abut the back side of some apartments. The south side of segment nine abuts residential properties. The westerly side of the northern half of segment eight abuts the back of residential properties and the north side of segment number two abuts a couple of residential properties.

Another question that you had asked was whether or not Mrs. Joyce conducts any business in the project area. To this date, she has not conducted any business with regards to properties within any of the eleven segments of this redevelopment plan, nor has she sold any of the abutting properties to these segments. She estimates that about 50% of her business is with the sale of residential properties located in the City of Duarte and about 50% is derived from residential sales outside the City of Duarte.

The only other question that I recall you having with regards to the city and Mrs. Joyce's situation was to the percentage of the city that is not included on the map that you received from me. That is estimated to be about 35% of the city.

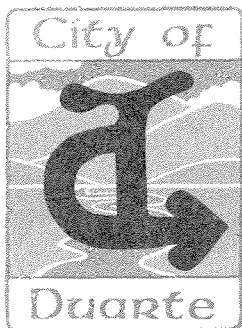
If there is any other information that you need in this regard, please do not hesitate to call me. Thank you very much.

Very truly yours,



JOHN F. LAWSON
City Attorney

JFL/as



City of Duarte

Sixteen Hundred Huntington Drive, Duarte, California 91010 - (818) 357-7931

August 30, 1988

John F. Lawson
City Attorney

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Sacramento, CA 95804-0807

SEP 2 0 11 1988

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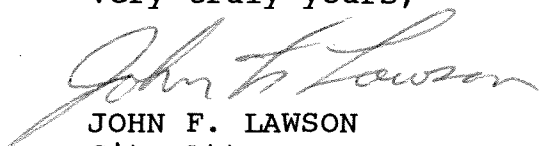
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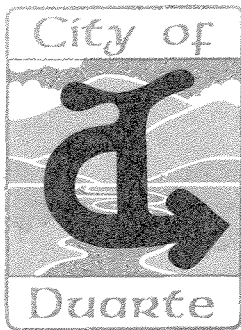
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If there is any other information that you need in this regard, please do not hesitate to call me. Thank you very much.

Very truly yours,


JOHN F. LAWSON
City Attorney

JFL/as



City of Duarte

Sixteen Hundred Huntington Drive, Duarte, California 91010 - (818) 357-7931
July 19, 1988

John F. Lawson
City Attorney

Law Offices Mosely and Leech
11001 East Valley Mall, Suite 200
El Monte, California 91731
(818) 443-0061 (913) 686-2068

Calif. Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Attention: General Counsel

Re: Request for Formal Written Advice

Gentlemen:

Written advice is requested as to whether a redevelopment agency/city council member may participate in decisions affecting a redevelopment project area as a whole and/or only a part thereof where the project area consists of numerous noncontiguous properties and the agency/council member has a leasehold interest in a real estate office located in only one of those properties.

Duarte City Council member and Redevelopment Agency member Ginny Joyce has a lease on a real estate office located within one of eleven noncontiguous segments of property which jointly have been adopted as the Rancho Duarte Phase III Project Area. These eleven segments are spread out along the City's central east-west corridor over a distance of approximately four miles. A partial Duarte city map is attached hereto showing those eleven segments.

Council member Joyce's leasehold interest is in the property segment at the easterly most end of the City designated as segment No. 11. The monthly rental on the lease is \$1,200.00 and the lease will expire in May of 1990.

At the time the project area was adopted, for Ms. Joyce's protection, it was assumed that the leasehold interest had a value of at least \$1,000.00. It was, therefore, determined that a financial interest existed under Government Code Section 87103(b). As a result, Ms. Joyce declared a conflict and withdrew from the project area adoption proceedings. Ms. Joyce does, however, wish to participate in all actions pertaining to the project area except where prohibited from doing so.

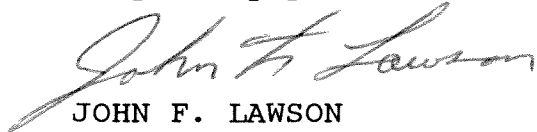
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The question posed is whether Ms. Joyce may participate in matters affecting any or all of the property segments within which she does not have the leasehold interest?

It is noted in Downey Cares v. Downey Community Development Commission, 196 Cal. Ap. 3d 983, 242 Cal. Rptr. 272 at page 277, that "the commission [F.P.P.C.] draws reasonable inferences that redevelopment will result in increased property values in the redevelopment area ... and that a real estate business will foreseeably benefit thereby." However, the project area in the "Downey Cares" case was one contiguous area. The Duarte project area is highly noncontiguous. Does this distinction provide Ms. Joyce with any opportunity to participate in matters affecting any one or all of the property segments Nos. 1 through 10?

Your assistance in resolving this question would be greatly appreciated.

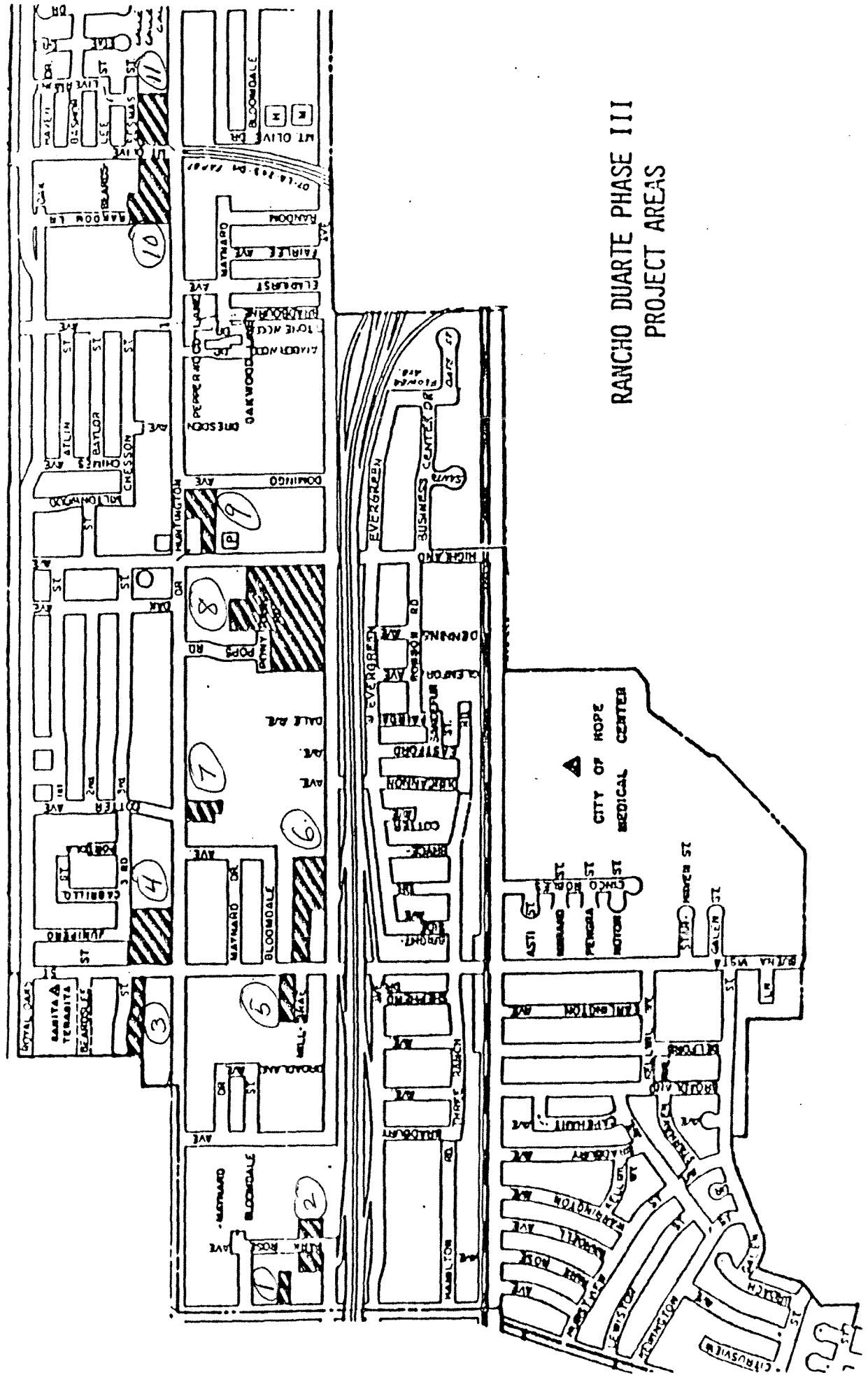
Very truly yours,



JOHN F. LAWSON
Duarte City Attorney

JFL/as

RANCHO DUARTE PHASE III PROJECT AREAS





California Fair Political Practices Commission

July 22, 1988

John F. Lawson
City Attorney
1600 Huntington Drive
Duarte, CA 91010

Re: 88-287

Dear Mr. Lawson:

Your letter requesting advice under the Political Reform Act was received on July 21, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh