



California Fair Political Practices Commission

October 23, 1990

Ariel Pierre Calonne
City Attorney
250 Hamilton Avenue
Palo Alto, CA 94301

Re: Your Request for Advice
Our File No. A-90-292

Dear Mr. Calonne:

This letter is in response to a request for advice submitted to this office by Mr. Anthony C. Bennetti, former acting city attorney for the City of Palo Alto, regarding the duties and responsibilities of the members of the Sand Hill Corridor Joint Policy Committee (the "committee") under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Our response takes into consideration your letters of August 24, 1990, and August 31, 1990, endorsing Mr. Bennetti's request for advice, along with the additional information you have submitted for our consideration.

QUESTION

1. The Sand Hill Corridor Joint Policy Committee is composed of representatives of the Cities of Palo Alto and Menlo Park along with representatives of Stanford University, a private landowner. The committee will act as an advisory body to the city councils of the two cities involved in the project. Can each of two governmental agencies allow less than a quorum of their members to form a committee with a private landowner to consider recommendations to the governing bodies of those local agencies without being subject to the disclosure and disqualification provisions of the Act?

2. Has the Sand Hill Corridor Joint Policy Committee reached the point where its decisions are routinely accepted by the city council without substantial amendment or modification such that it should adopt a conflict-of-interest code or its non-elected

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.

members be added to the City of Palo Alto conflict-of-interest code?

CONCLUSIONS

1. The Act does not govern the membership of advisory committees. However, when an advisory committee makes substantive recommendations to a governmental agency and these recommendations are regularly approved without significant modification, the members of the committee are public officials subject to the disclosure and disqualification provisions of the Act. Moreover, Palo Alto and Menlo Park Councilmembers who are also members of the committee continue to be subject to the conflict-of-interest provisions of the Act and may not influence governmental decisions in which they have financial interests.

2. The Sand Hill Corridor Joint Policy Committee has made certain recommendations which the Palo Alto city council has adopted. However, in each instance, these recommendations have been adopted or amended after public hearings and extensive deliberations by the city council. The city council has analyzed and debated the issues presented by the committee, requested advice from staff, and directed the committee to proceed according to guidelines provided by the city council. Thus, the members of the committee are not public officials subject to the disclosure and disqualification provisions of the Act at this time.

FACTS

Sand Hill Road runs roughly east-west from Interstate Highway 280 through the City of Menlo Park (Menlo Park) in San Mateo County and on through the City of Palo Alto (Palo Alto) in Santa Clara County to its intersection with Arboretum Road and thence on by a circuitous route to El Camino Real by way of the parking lot of Stanford Shopping Center which is privately owned by the Trustees of Leland Stanford, Jr. University (Stanford). Stanford owns a majority of the land immediately adjacent to the north and south of the road along the entire length in question, much of it undeveloped. Over the years there have been various discussions and proposals under a variety of names and sponsorships for extending Sand Hill Road in some manner to connect more directly with El Camino Real. The proposals have generally been controversial and no improvement project has been successfully implemented.

In 1987, Palo Alto, Menlo Park, and Stanford formulated a proposal for the Sand Hill Corridor Joint Policy Committee. Two Palo Alto councilmembers, two Menlo Park councilmembers, and two officials from Stanford met to discuss a "charter" and a procedural framework for the committee. The charter and the procedural framework were referred to the city councils of Palo Alto and Menlo Park for approval. The councils of both cities

approved the proposals and the committee began meeting from time to time.

You indicate in your letter of August 31, 1990, that the committee partially fulfills the early public consultation provisions of the California Environmental Quality Act, Public Resources Code Section 21000, et seq. and the State CEQA Guidelines, California Code of Regulations, Title 14, Sections 15000, et seq. By providing for public input at the early stages of a project, the committee fulfills important state policies calling for public participation in the environmental review process.

Additionally, attached to your office's request for advice is a memorandum from your office to the Palo Alto City Manager dated January 30, 1990. The document discusses the history and status of the committee as of January, 1990, and includes a copy of the charter. The Palo Alto City Attorney has concluded that the Sand Hill Corridor Joint Policy Committee does not possess decision-making authority within the meaning of Regulation 18700 (copy enclosed).

The charter defines the role of the committee as follows:

During the first part of the project the Committee will represent the jurisdictions in the discussions with the consultant. The Committee will review the work of the consultant and recommend to their respective jurisdictions whether or not to proceed as called for in the "Framework".

In addition, the Committee will have the following responsibilities:

1. The Committee will serve as a liaison to the governing body of the respective jurisdictions.
2. The Committee will identify policy level decisions that should be referred to the governing bodies for acceptance.
3. The committee will provide a forum for the presentation of views from the public, as the project moves into the later stages.
4. The Committee will monitor the progress of the project and be responsible for coordinating the timing of various stages.
5. The Committee will review and recommend financing plans for the project.²

² Charter, Sand Hill Corridor Joint Policy Committee, June 3, 1987.

In subsequent correspondence you have submitted to our attention minutes of meetings of the Palo Alto City Council and staff reports pertinent to the activities of the committee. Information contained in these materials indicates that since the January memorandum of the city attorney, the committee has considered the proposals of environmental impact report consultants, which were screened by City of Palo Alto staff, and is ready to make a recommendation regarding the environmental impact report to the city councils of Palo Alto and Menlo Park.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. In furtherance of the prohibitions of Section 87100, each state or local government agency must adopt a conflict-of-interest code. (Section 87300.) Conflict-of-interest codes are required to identify "designated employees" and assign to those designated positions appropriate categories of financial disclosure. Each conflict-of-interest code is required to specifically enumerate the positions within the agency which involve making or participating in making governmental decisions which may foreseeably have a material financial effect on any economic interest. (Section 87302.) The City of Palo Alto is a local government agency and it has adopted a conflict-of-interest code.

We now proceed to determine whether members of the committee are designated employees who should be included in the city's conflict-of-interest code. The term "designated employee" is defined in Section 82019 to specifically exclude unsalaried members of boards or commissions which serve a solely advisory function. Regulation 18700(a)(1) provides guidelines in determining whether a board or commission is "solely advisory" or has decision-making authority. It provides:

"Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

"Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by

reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1).

Applying this regulation to your facts, we conclude that the committee does not possess decision-making authority, because it does not make substantive recommendations which are regularly approved without significant modification by the city council of the City of Palo Alto. In general, the role of the committee has been to recommend a procedural framework work plan for implementation of the project.

The committee's charter states, inter alia, that the committee will review and recommend financing plans for the project and identify policy level decisions to be referred to the city councils for acceptance. The purpose of the committee is to adopt a framework which will constitute the work plan for the project. Pursuant to the provisions of its charter, the committee has, at the direction of the city council, contracted for the services of a consultant selected and recommended by city staff. Under the direction of the committee, this consultant has developed procedural guidelines for the project. At all times, the recommendations of the committee have been subject to extensive deliberation by the City Council of the City of Palo Alto. The public has been afforded ample opportunity to comment on each recommendation. The committee does not make, compel, or prevent any final decisions. (See In re Rotman (1987) 10 FPPC Ops. 1, copy enclosed.) It is merely analyzing alternatives for completion of the project and submitting its findings to the Palo Alto City Council for consideration.

So far, all the recommendations of the committee have been approved by the city council of the City of Palo Alto upon submission. However, as the minutes of the Palo Alto City Council indicate, prior to adoption of a recommendation as submitted by the committee, there has been extensive debate, input from the public, and, with one exception, modifications and amendments to the committee's recommendations prior to adoption. For example, on November 12, 1987, the committee reviewed and adopted a procedural framework work plan developed by staff. The purpose of the document is to identify and describe a process to be followed for the completion of the Sand Hill Corridor project. This procedural framework was approved, in amended form, by the city council of the City of Palo Alto on January 4, 1988, and by the city council of the City of Menlo Park on February 2, 1988.

On May 16, 1988, the committee reviewed the staff recommendation of a consultant to develop the procedural framework for the Sand Hill Project. The contract was submitted to the Palo Alto city council for approval. It appears that the Palo Alto City Council approved the recommendation of the committee without modification.

On December 12, 1988, the Palo Alto City Council held study sessions on conceptual alternatives for possible Sand Hill Road extensions. The committee had identified seven possible alternatives for implementing the project and other alternatives were under consideration. No decisions had yet been made as to which alternatives to pursue or implement. The Palo Alto City Council endorsed three conceptual alternatives for future EIR evaluation, directed the committee and the consultant to proceed with Part B of the Procedural Framework Work Program, and approved outlined procedures for a possible Sand Hill Road Extension EIR and preliminary design phase. As recommended by staff, the Palo Alto City Council also approved a budget amendment increasing funding for the procedural framework and approved modification to the consulting services agreement expanding the scope of work in part B of the Procedural Framework.

On March 13, 1989, the Palo Alto City Council conducted a public hearing and discussed the recommendations submitted by the committee. The consulting agreement for the procedural framework was approved as amended by the city council. The consulting agreement was amended once again on April 10, 1989, and on December 4, 1989.

We conclude, based upon the information submitted to us, that the committee is at present solely advisory in nature and its members are not subject to the conflict-of-interest provisions of the Act. The committee has submitted various recommendations to the Palo Alto City Council, but these recommendations have been scrutinized and amended prior to approval. While it is a close case, we believe, on balance, that the committee has not established a record sufficient to show that the committee is a decision-making body pursuant to Regulation 18700(a)(1)(C). Because the committee does not have decision-making authority, its members are not subject to the conflict-of-interest provisions of the Act.

We note, however, that this advice is subject to change as the project develops. According to the information provided, some recommendations of the committee have been approved without significant amendment or modification. If a pattern of such approval occurs, it is likely that the committee would become a decision-making body for purposes of the Act. For example, if the purpose of the committee is to provide input in the initial stages, the committee would not be considered a decision-making body. However, if the committee continues to exist as the project develops and its input constitutes an on-going process, then the committee would be considered a decision-making body for purposes

of the Act. In this event, the committee would be required to adopt a conflict-of-interest code and its members would be subject to the conflict-of-interest provisions of the Act.

Moreover, as stated above, Section 87100 prohibits any public official from making, participating in, or attempting to use his or her official position to influence any governmental decision in which he or she knows, or has reason to know, he or she has a financial interest. At the present time, being a member of the Sand Hill Corridor Joint Policy Committee does not in and of itself make one a "public official" for purposes of the Act. However, it must be remembered that members of the Palo Alto City Council are public officials and continue to be subject to the conflict-of-interest provisions of the Act. Thus, members of the Palo Alto City Council who are also members of the committee must refrain from making, participating in, or attempting to use their official position to influence any governmental decision in which they have a financial interest.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

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Enclosures