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

10
11 In the Matter of:

12 Tom Hammond,

13 Respondent.

FPPC No. 14/1357

14 **STIPULATION, DECISION, AND ORDER**

15
16 **STIPULATION**

17 Complainant Enforcement Division of the Fair Political Practices Commission (“Commission”),
18 and respondent Tom Hammond, hereby agree that this Stipulation will be submitted for consideration by
19 the Fair Political Practices Commission at its next regularly scheduled meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
21 matter and to reach a final disposition without the necessity of holding an additional administrative
22 hearing to determine Hammond’s liability.

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

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

2 It is further stipulated and agreed that Hammond violated the Political Reform Act by making a
3 governmental decision in which he had a material financial interest, in violation of Government Code
4 Section 87100 as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as
5 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

6 Hammond agrees to the issuance of the Decision and Order, which is attached hereto. Hammond
7 also agrees to the Commission imposing an administrative penalty in the total amount of Two Thousand
8 Five Hundred Dollars (\$2,500). Submitted with this Stipulation, was a cashier's check from Hammond
9 in said amount, made payable to the "General Fund of the State of California," as full payment of the
10 administrative penalty that shall be held by the State of California until the Commission issues its
11 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
12 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
13 Commission meeting at which the Stipulation is rejected, all payments tendered by Hammond in
14 connection with this Stipulation shall be reimbursed. Hammond further stipulates and agrees that in the
15 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
16 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
17 disqualified because of prior consideration of this Stipulation.

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20 Dated: _____ Galena West, Acting Chief of Enforcement on behalf of
21 the Enforcement Division of the Fair Political Practices
22 Commission

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25 Dated: _____ Tom Hammond,
26 Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Tom Hammond,” FPPC No. 14/1357,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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1 **EXHIBIT 1**

2 **INTRODUCTION**

3 At all times relevant to this matter, Respondent Tom Hammond was a member of the Lassen
4 County Board of Supervisors (the “Board”).

5 As a public official, Hammond is prohibited by Government Code section 87100 of the
6 Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use his official
7 position to influence any governmental decision in which he knows, or has reason to
8 know, he has a material financial interest. In Hammond’s first meeting as a member of the Board, he
9 made a governmental decision in which he had a material financial interest by voting in support of a
10 resolution approving the sale and exemption of land located within five hundred feet of his own real
11 property.

10 **SUMMARY OF THE LAW**

11 All statutory references and discussions of law pertain to the Act’s provisions as they existed at
12 the time of the violation.

13 **Liberal Construction and Vigorous Enforcement of the Political Reform Act**

14 When the Act was enacted, the people of the state of California found and declared that previous
15 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
16 To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

17 **Conflict of Interest Provisions**

18 The primary purpose of the conflict of interest provisions of the Act is to ensure that, “public
19 officials, whether elected or appointed, perform their duties in an impartial manner, free from bias
20 caused by their own financial interests or the financial interests of persons who have supported them.”³

21 In furtherance of this goal, Section 87100 prohibits a public official from making, participating
22 in making, or in any way attempting to use this official position to influence a governmental decision in
23 which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a
24 public official has a financial interest in a decision if it is reasonably foreseeable that the decision will
25 have a material financial effect on an economic interest of the official. For purposes of Section 87100
26 and 87103, there are six analytical steps to consider when determining whether an individual has a
27 conflict of interest in a governmental decision. The two exceptions to a finding of a conflict of interest –
28 whether the financial effect is indistinguishable from the effect on the public generally and whether the
official’s participation was legally required – are not applicable to this case.

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

² Section 81001, subd. (h).

³ Section 81001, subd. (b).

1 1. Public Official:

2 The individual must be a public official.⁴ Section 82048 defines “public official” to include
3 “every member, officer, employee or consultant” of a local government agency.

4 2. Decisions:

5 The official must make, participate in making, or attempt to use his official position to influence
6 a governmental decision.⁵ Pursuant to Regulation 18702.1, subdivision (a), the making of a
7 governmental decision includes when a public official, acting within the authority of his or her office or
8 position, votes on a matter before his or her local government agency.

8 3. Economic Interests:

9 The official must have an economic interest, as defined in Section 87103, which may be
10 financially affected by the governmental decision.⁶ A public official has an economic interest in any
11 real property in which the official has a direct or indirect interest worth \$2,000 or more.⁷

12 4. Direct or Indirect Financial Effect on Economic Interests:

13 It must be determined if the economic interest of the official is directly or indirectly involved in
14 the decision.⁸ Real property in which a public official has an economic interest is directly involved in a
15 governmental decision if any part of it is located within 500 feet of the boundaries (or the proposed
16 boundaries) of the property which is the subject of the governmental decision.⁹

16 5. Material Financial Effect on Economic Interests:

17 It must be determined if the governmental decision has a material financial effect on the
18 economic interest.¹⁰ In the case of an economic interest that is a directly involved parcel of real property,
19 the financial effect is presumed to be material.¹¹

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21 ⁴ Regulation 18700, subd. (b).

22 ⁵ Id.

23 ⁶ Id.

24 ⁷ Regulation 18703.2, subd. (a).

25 ⁸ Regulation 18704.

26 ⁹ Regulation 18704.2, subd. (a)(1).

27 ¹⁰ Regulation 18700, subd. (b).

28 ¹¹ Regulation 18705.2, subd. (a)(1).

1 6. Forseeability:

2 At the time of the governmental decision, it must have been reasonably foreseeable that the
3 decision would have a material financial effect on the public official's economic interest.¹² Under
4 Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably
5 foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality
6 standards applicable to that economic interest will be met as a result of the governmental decision.¹³

7 **SUMMARY OF THE FACTS**

8 Hammond was elected to the Board in the September 10, 2013 Lassen County Special Election.
9 He was sworn into office on September 24, 2013. At all times relevant to this matter, Hammond owned
10 APN 13-916080-11 located at 447-595 Sierra Street, Herlong, CA. Hammond reported on his 2013
11 statement of economic interests ("SEI") that the fair market value of APN 13-916080-11 was at least
12 \$100,001 and at most \$1,000,000.

13 On October 8, 2013, at Hammond's first meeting as a Member of the Board, he voted to approve
14 Board Resolution 13-041 (the "Resolution"). The Resolution approved the sale of APN 1391609511
15 from Lassen County to Pezzullo & Smith LLC. It also provided for a notice of exemption from CEQA
16 review to be filed with the Lassen County Clerk in connection with the sale of the subject property. APN
17 1391609511 is located within 500 feet of Hammond's real property APN 13-916080-11.

18 Prior to the October 8, 2012 Board meeting, Hammond requested a copy of the request for
19 proposal ("RFP") issued in connection with the sale of APN 1391609511. The RFP provided by the
20 County included maps identifying APN 1391609511 and its distance from Hammond's property.

21 **VIOLATION**

22 Count 1: Conflict of Interest

23 On October 8, 2013, as a member of the Board, Hammond voted to approve the sale and
24 exemption of land located within 500 feet of real property in which Hammond held an interest of \$2,000
25 or more.

26 The relevant analytical steps to consider when determining whether an individual has a conflict
27 of interest in a governmental decision are set forth below.

28 Step One: Hammond was a Public Official as Defined by the Act

As a member of the Board, Hammond was a member of a local governmental agency. Therefore,
he was a public official as defined in Section 82048.

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¹² Regulation 18700, subd. (b).

¹³ In re Thorner (1975) 1 FPPC Ops. 198.

1 Step Two: Hammond Made a Government Decision

2 On October 8, 2013, while acting in his capacity as a member of the Board, Hammond made a
3 governmental decision by voting to approve a resolution approving the sale and exemption of APN
4 1391609511. Thus, Hammond made a governmental decision pursuant to Section 87100 and Regulation
5 18702.

6 Step Three: Hammond had an Economic Interest in APN 13-916080-11

7 At all times relevant to this matter, Hammond held full ownership of APN 13-916080-11 located
8 at 447-595 Sierra Street, Herlong, CA. The fair market value of the real property was in excess of
9 \$100,000. Therefore, Hammond had an economic interest of \$2,000 or more in APN 13-916080-11 for
10 the purposes of Section 87103, subdivision (b).

11 Step Four: Hammond's Economic Interest was Directly Involved in the Decision

12 The governmental decision made by Hammond on October 8, 2013, involved the sale and
13 exemption of APN 1391609511. APN 1391609511 is located within 500 feet of APN 13-916080-11,
14 real property in which Respondent had an economic interest of \$2,000 or more. Therefore, Hammond's
15 real property APN 13-916080-11 was directly involved in the governmental decision.

16 Step Five: Hammond's Decision had a Material Financial Interest on his Economic Interest

17 Because APN 13-916080-11 was directly involved in Hammond's governmental decision, the
18 financial effect of the governmental decision is presumed to be material pursuant to Regulation 18705.2,
19 subdivision (a).

20 Step Six: It was Reasonably Foreseeable that the Applicable Materiality Standard Would be Met

21 The material financial effect on Hammond's economic interest was reasonably foreseeable in
22 this matter. During Hammond's interview with the Enforcement Division, he emphasized the positive
23 economic effect the sale and development of APN 1391609511 would have on the area surrounding the
24 property. Thus, the material financial effect on his real property resulting from his governmental
25 decision was reasonable foreseeable.

26 Therefore, by making a governmental decision in which he had a material financial interest,
27 Hammond committed one violation of Government Code Section 87100.

28 **CONCLUSION**

 This matter consists of one count of violating the Act, which carries a maximum administrative
penalty of five thousand dollars (\$5,000).

 In determining the appropriate penalty for a particular violation of the Act, the Commission
considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the
facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5,

1 subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the
2 voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the
3 Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a
4 pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided
5 amendments to provide full disclosure.

6 The Commission also considers penalties in prior cases involving similar violations. A recent
7 similar case where the respondent made a governmental decision in which he had a material financial
8 interest includes:

- 9 • *In the Matter of Christopher Drop*, FPPC No. 12/101: Drop, in his capacity as the
10 General Manager of the Manila Community Services District, participated in a
11 governmental decision in which he knew he had a financial interest, by presenting and
12 recommending funding of a proposed project whose projected boundaries were within
13 500 feet of his real property to the Manila Community Services District Board. Drop had
14 no prior history of violating the Act, fully cooperated with the investigation and the
15 project underlying his violation was abandoned by the District mitigating the financial
16 effect on his economic interest. On April 17, 2014, the Commission approved a fine of
17 \$2,500 for one count of violating Section 87100.

18 In the present case, Hammond, a public official, voted to approve the sale of land located within
19 500 feet of his own real property. In mitigation, Hammond made the governmental decision at his first
20 meeting as a Member of the Board and before receiving conflict of interest training. Hammond contends
21 that at the time of the decision he had not been informed of the “five hundred foot rule” and would have
22 recused himself had he known. Though unfamiliarity with the law is not a defense under the Act,
23 Hammond’s short tenure on the Board prior making the decision combined with his contention that he
24 did not realize his acts were in violation of the Act, indicate a likelihood that the violation was not
25 intentional. In further mitigation, Hammond has fully cooperated with our investigation in this matter
26 and disclosed the effected economic interest on his 2013 SEI.

27 **PROPOSED PENALTY**

28 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
factors, a penalty of \$2,500 is recommended.

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