

November 14, 2017

Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811

Attention: Jodi Remke, Chair  
Commission Members Audero, Hatch and Hayward

Dear Chair Remke, Member Audero, Hatch and Hayward,

I am writing as an elected city councilmember to share with you my recent experience navigating through the enforcement process following a conflict of interest complaint that was filed against me nearly 2 years ago on January 29, 2016. The case was just closed and no action taken on November 7, 2017 for which I am extremely grateful. However, I believe it is important for the commission to understand the impact this nearly 2 year wait has had on me personally, the community of Novato, and possibly other jurisdictions. I have provided much detail below, but here are three key takeaways that I encourage the commission to consider which could have greatly reduced the impact:

1. Please consider amending your regulations back to a specified distance radius for conflict of interest matters. I have been a councilmember in Novato for 6 years. Under the previous rules, it was much simpler for elected officials as well as city staff and attorneys to determine if a conflict of interest existed. Under the amended rules, I have to request formal written advice on most matters within a ½ mile radius of real property.
2. If the regulations cannot be amended, I highly encourage the commission and enforcement division to resolve cases in months instead of years. As you will read below in my case, the complaint that was filed effectively sidelined me from participating in a key vote 15 months after the complaint was submitted.
3. Finally, I ask the commission to provide clear direction to the advice and enforcement division with regards to providing individuals advice on unrelated projects while a complaint is pending. On two occasions, while I was waiting for my case to be resolved, I asked for advice on two different projects which were completely unrelated to the complaints that were filed and both times the advice department declined to give advice because the subject property was the same.

Furthermore, my case was resolved with a “closure” letter from the Enforcement Division. Again I am grateful the case has ended. However, the letter said it was not an exoneration letter, but it wasn’t a warning letter or advisory letter. The letter in essence said I had a conflict of interest, but they were closing the case. My understanding is that this is very unusual and perhaps unprecedented. If the Enforcement Division made a finding that the law was violated, then I should have been sent a warning letter. A warning letter would give me the right to contest the finding that I had a conflict of interest, which I would have done. This letter did not give me the ability to contest the letter. I find it fundamentally unfair that such a finding could be made without my right to due process. I encourage the Commission to review the policies regarding these letters and ensure that the right to challenge findings by the Enforcement Division is included.

The details of my particular situation are as follows:

- On January 20, 2016, I asked the FPPC for informal advice on an upcoming vote that was to take place at the Novato City Council on January 26, 2016 (see Attachment 1, page 4). The upcoming decision was whether or not to commit funding to construct a stop/platform for the upcoming SMART Train in our Downtown. My property was roughly 1,000 feet away from the platform. I had previously been given positive informal phone advice over the past several months on this project and given the distance from the project, it was never communicated to me that I should get formal written advice. In the past, I had always received informal advice via email. As the vote was coming up and the agenda packet had been finalized, I then requested informal advice so I would have something in writing. Unfortunately, I was informed that not even informal advice could be provided in writing even though I had previously received it over the phone. In deciding whether or not to participate, I had to rely on past advice as well as research from other advice letters.
- On January 26, 2016, I participated in the vote to fund Phase I of the project, which ended up being a 3-2 vote.
- On January 29, 2016, a complaint was filed against me claiming conflict of interest (see Attachment 2, page 6)
- On March 7, 2016, I was finally informed by the FPPC that the complaint had been filed. It was communicated to me via email that although the complaint was sent in late January, it wasn't processed by the FPPC as a complaint until March 7<sup>th</sup>.
- Following the notification, I recused myself on every future vote related to the Downtown SMART Station while the complaint was being evaluated.
- On June 30, 2016, I was notified of another complaint regarding the same matter had been filed. That complaint was added to the same investigation FPPC No. 16/284 (see Attachment 3, page 16).
- As months went on, I continually reached out to the FPPC about the case and expeditiously responded to all questions and requests. I was often told that there were other cases that were higher priorities.
- On December 26, 2016, I requested advice on upcoming follow-up votes related to the Downtown Station (see Attachment 4, page 53).
- On January 9, 2017, my advice request was denied. This was expected, as the complaint was still outstanding (see Attachment 5, page 55).
- On May 9, 2017 (15 months) after the initial complaint, the city council weighed the final funding that would actually complete the station. As the initial complaint was still outstanding, I couldn't receive advice. My options were to participate without the benefit of advice or recuse myself. I chose to recuse myself. This was a critical council decision and it was very difficult to explain to our entire community why after 15 months, the issue was still outstanding. The council ended up moving forward with the final funding on a 3-1 vote without my participation.
- On September 13, 2017, I requested advice for a totally unrelated project in the opposite direction of the Downtown SMART Station (see Attachment 6, page 56). This project was over 1,000 feet away to the North.
- On September 15, 2017, I was denied the benefit of advice (see Attachment 7, page 58). It was communicated that the reason for denial was because of the outstanding complaint. I asked the FPPC to reconsider, thinking it was a mistake and maybe they thought I was asking for advice on the same case. The staff reviewed and once again came back and denied providing advice.
- On October 14, 2017, I requested advice on another totally unrelated project also in the opposite direction of the Downtown SMART station (see Attachment 8, page 59). This project was 1,700 feet away.
- On October 19, 2017, I was also denied the benefit of advice on that request (see Attachment 9, page 61)
- On November 7, 2017, I received a case closure letter and was informed that no action would be taken on the complaints (see Attachment 10, page 62).

While I am extremely relieved that the case has finally been brought a close, the 2-year process that has lasted nearly half my term has not been an easy one. The two individuals who filed complaints have regularly posted in online forums that I was being investigated by the FPPC and have publicly stated that I had a conflict. I understand that is a part of local politics, but the long time frame certainly did not help the situation.

Furthermore, our community was left wondering why the issue took as long as it did. Unfortunately, many in our community believe that the complaint process, with or without merit, can now be used to hinder local government decision making. I hope that my experience can lead to some potential changes to prevent a similar situation from occurring in another jurisdiction. If you have any questions, I look forward to discussing some solutions moving forward.

Sincerely,



Eric Lucan  
Councilmember  
City of Novato



Eric Lucan &lt;eric@ericlucan.com&gt;

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**Informal Advice on Upcoming Vote - Please reply by 1/26/15**

1 message

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**Eric Lucan** <eric@ericlucan.com>  
To: advice@fppc.ca.gov

Wed, Jan 20, 2016 at 10:46 AM

Dear FPPC-

I am writing to request advice on an upcoming vote on Tuesday, January 26th. I am a councilmember in the City of Novato and on the 26th we will be voting on whether or not to spend city funds to invest in a Downtown Station for the SMART Train. SMART is a commuter railway currently being constructed in Marin and Sonoma County.

The council will decide whether or not to make the investment.

I currently own a rental property (duplex - 1014 Machin Avenue, Novato) that is approximately 800ft away parcel to parcel and 1000ft away from where the station platform would actually be built (see attached images).

Under the old rule, since I am more than 500ft away, I know there would be no potential conflict, but was hoping to get some guidance under the new rule.

Below is my own research:

In considering other formal advice letters, I have looked at Regulation 18702.2(a) to determine if the decision would have a reasonably foreseeable financial effect with regards to the two following clauses:

*“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.”*

*“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”*

Parking - considering the distance and hourly parking restrictions nearby my property, it is unlikely that traffic from train users would spill over and impact parking near my property.

Intensity of Use - the duplex is situated in the historic downtown area of Novato which is predominately built out.

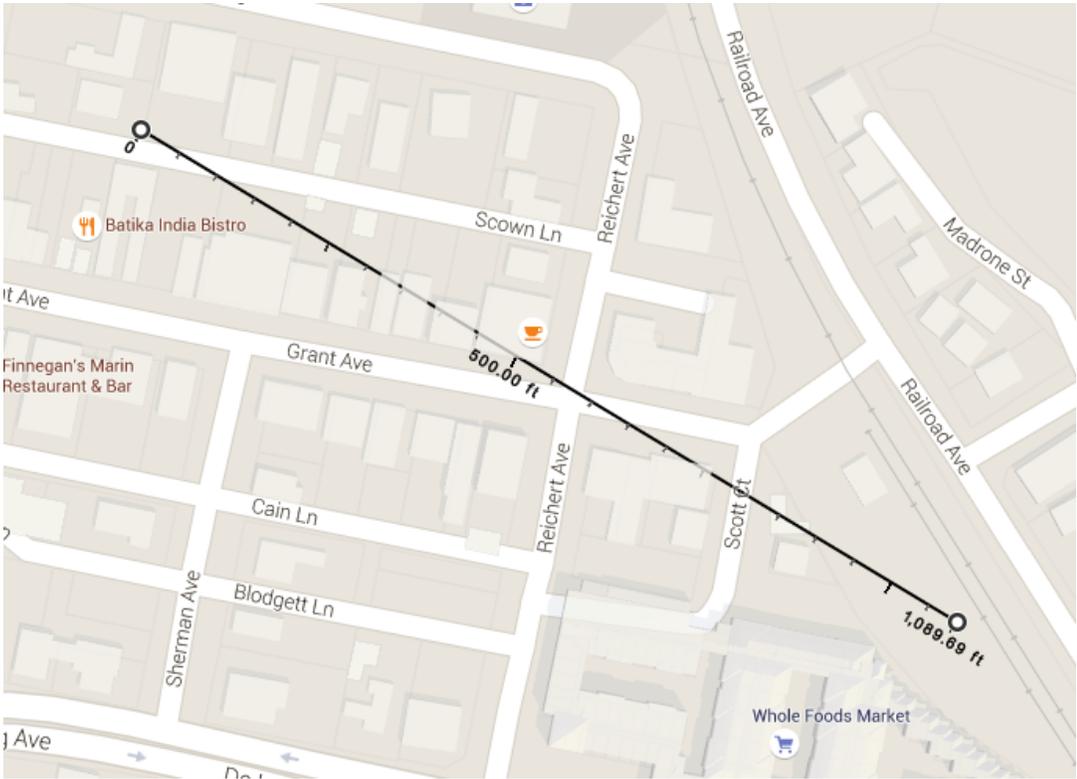
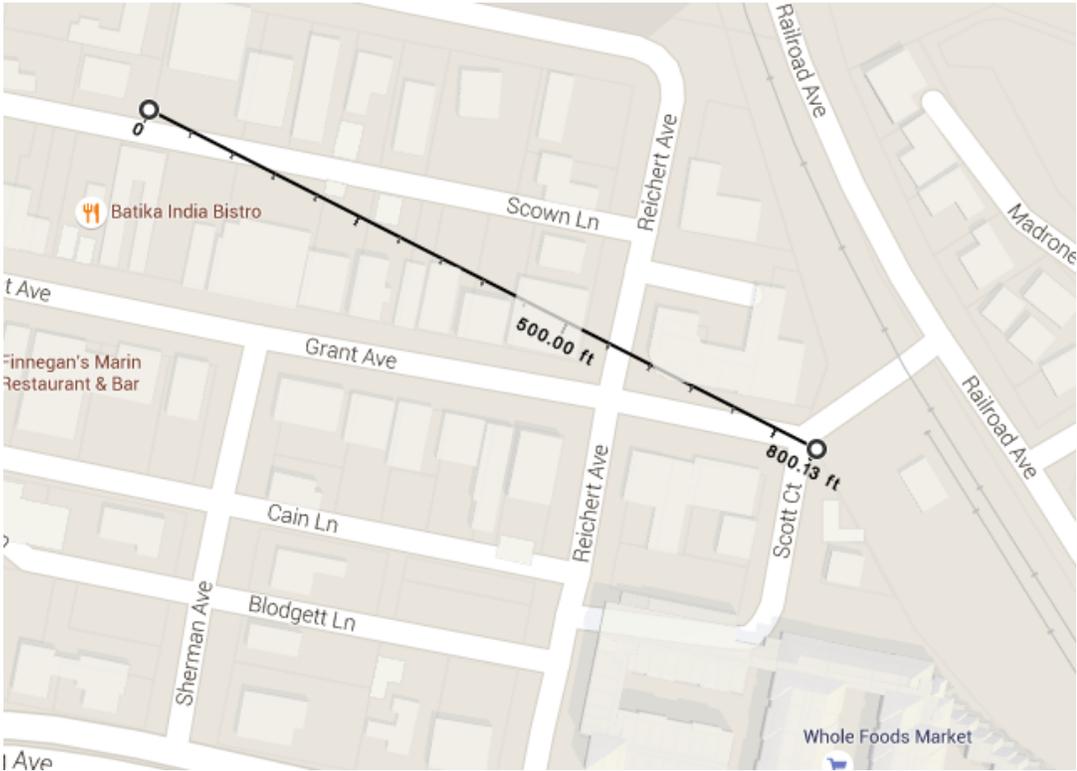
Traffic - considering the distance again, the fact that my property is separated diagonally, and that it is located on an "alley street" as opposed to main thoroughfare, it is unlikely that traffic would be affected

View - the downtown station cannot be viewed from my property

Privacy, Noise & Air Quality - with or without the station, the train will still pass through the location so the noise and air quality impacts would still exist. The main difference would be that the train would make stops at the location, but given the distance of over 1,000 feet from where the train would stop to my property, I do not see it having an impact.

Thank you for reviewing my request and I look forward to your response by January 26th. If you have any questions, feel free to reach out to me directly.

Eric Lucan  
Councilmember  
City of Novato  
[415-272-3265](tel:415-272-3265)





**Person(s) Who Allegedly Violated the Political Reform Act: (If there are multiple parties involved, attach additional pages as necessary.)**

Last Name: Lucan

First Name: Eric

Committee Name: Novato City Council  
*(only if applicable)*

Street Address: Rental Property: 1014 Machin

City: Novato State: CA Zip: 94945

Telephone: (415 ) 272 -3265

Fax: ( ) -

E-mail: elucan@novato.org

**Describe, With as Much Particularity as Possible, the Facts Constituting the Alleged Violation(s) and How You Have Personal Knowledge that it Occurred.\***

~~I believe City Council Member Eric Lucan violated the financial conflict of interest regulations when he participated in a city council vote to install a third SMART station in Old Town Novato. Mr. Lucan owns property within a quarter mile of the SMART station. He purchased the property in 2014 at a great reduction in price because the building is in such poor condition and the downtown area has no other signs of increasing in value. Mr. Lucan also serves on the SMART Board. He is responsible for the City of Novato revisiting the decision to install an a 3rd SMART station in Old Town. When this decision was originally made the 2 stops were placed near areas that would draw commuters. The plan Mr. Lucan approved will increase the value of property within a half mile radius of the station costing the city and its residents \$5,550,000 and the ongoing maintenance of the platform. City Staff, the Measure F Committee and even the Editorial Board at the Marin IJ all recommended against the purchase because the city is already in a precarious financial position with \$37Million in unfunded pension debt, an ongoing structural deficit and a reduction in city staff and services to create a leaner budget. Mr. Lucan's actions provide a direct financial benefit to Mr. Lucan and his wife. He should have recused himself from this vote.~~

**\*IMPORTANT! Attach copies of any available documentation that is evidence of the violation, (for example, copies of checks, campaign materials, minutes of meetings, etc., if applicable to the complaint.) Note that a newspaper article is NOT considered evidence of a violation.**

**Provision(s)/Section(s) of the Political Reform Act Allegedly Violated and When the Violation(s) Occurred: (If specific sections are not known, please provide a brief summary)**

~~During the January 12 and 26 City Council Meetings, the 3rd SMART station was discussed from the perspective of downtown businesses and property owners, all of whom wanted to add a third station which would create an economic benefit within a half mile radius of the stop. During deliberations, Mr. Lucan made no mention of owning property within a quarter mile of the station or asking the City Attorney if his vote represented a conflict of interest. I find this lack of action on Mr. Lucan's part deceptive and dishonest. The 3rd SMART station will not be in the city's control. It will only operate when the one of the other two stations is dormant.~~

~~Under sections 18700, 18701, 18702.2 and 18702.3 Mr. Lucan's ownership of rental property within a quarter mile of the new SMART station represents a financial conflict of interest that is 1) Reasonably Forseeable; 2) Material; 3) Specific to the Geographic Location in which the Property is held; and 4) Will not provide a benefit to the community at large but rather incur a debt that is a danger to the financial management of the city per the recommendations of the City Manager, the Measure F Finance Committee and the testimony of residents and two City Council Members. Mr. Lucan's actions in bringing this issue back for a "popular" vote were deceptive and misleading because he did not recuse himself as a result of his ownership of rental property within a quarter mile radius of the 3rd SMART stop.~~

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**Name and Addresses of Potential Witnesses, Other than Yourself, if Known:**

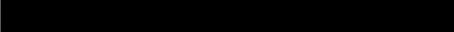
Last Name: Boorstein

First Name: Trish

Street Address: 131 Maestro

City: Novato State: CA Zip: 94947

Telephone: 

Fax: 

E-mail: 

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address:  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

###

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address:  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

\_\_\_\_\_

(Signature)

January 29, 2016

(Date)

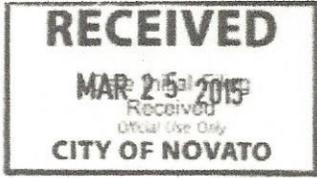
Tina G McMillan

(Please Print Your Name)

Clear Page

Print Page

STATEMENT OF ECONOMIC INTERESTS  
COVER PAGE



Please type or print in ink

NAME OF FILER (LAST) (FIRST) (MIDDLE)  
Lucan Eric A

1. Office, Agency, or Court

Agency Name (Do not use acronyms)

City of Novato

Division, Board, Department, District, if applicable

Your Position

Councilmember

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: \_\_\_\_\_ Position: \_\_\_\_\_

2. Jurisdiction of Office (Check at least one box)

- State
- Multi-County \_\_\_\_\_
- City of Novato
- Judge or Court Commissioner (Statewide Jurisdiction)
- County of \_\_\_\_\_
- Other \_\_\_\_\_

3. Type of Statement (Check at least one box)

- Annual: The period covered is January 1, 2014, through December 31, 2014.  
-or- The period covered is \_\_\_\_\_ through December 31, 2014.
- Assuming Office: Date assumed \_\_\_\_\_
- Candidate: Election year \_\_\_\_\_ and office sought, if different than Part 1: \_\_\_\_\_
- Leaving Office: Date Left \_\_\_\_\_ (Check one)
  - The period covered is January 1, 2014, through the date of leaving office.
  - The period covered is \_\_\_\_\_ through the date of leaving office.

4. Schedule Summary

Check applicable schedules or "None."

► Total number of pages including this cover page: 4

- Schedule A-1 - Investments - schedule attached
- Schedule A-2 - Investments - schedule attached
- Schedule B - Real Property - schedule attached
- Schedule C - Income, Loans, & Business Positions - schedule attached
- Schedule D - Income - Gifts - schedule attached
- Schedule E - Income - Gifts - Travel Payments - schedule attached
- or-  
 None - No reportable interests on any schedule

5. Verification

MAILING ADDRESS (Business or Agency Address Recommended - Public Document) STREET CITY STATE ZIP CODE  
26 Truman Drive Novato CA 94947  
DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS  
( 415 ) 272-3265

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 3/22/15 (month, day, year) Signature \_\_\_\_\_

Name \_\_\_\_\_

**SCHEDULE B**  
**Interests in Real Property**  
(Including Rental Income)

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS  
1014 Machin Ave

CITY  
Novato

FAIR MARKET VALUE  
 \$2,000 - \$10,000  
 \$10,001 - \$100,000  
 \$100,001 - \$1,000,000  
 Over \$1,000,000

IF APPLICABLE, LIST DATE  
09 / 30 / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                      DISPOSED

NATURE OF INTEREST  
 Ownership/Deed of Trust       Easement  
 Leasehold \_\_\_\_\_       \_\_\_\_\_  
Yrs remaining                      Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED  
 \$0 - \$499       \$500 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.  
 None  
 \_\_\_\_\_  
 \_\_\_\_\_

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS  
\_\_\_\_\_

CITY  
\_\_\_\_\_

FAIR MARKET VALUE  
 \$2,000 - \$10,000  
 \$10,001 - \$100,000  
 \$100,001 - \$1,000,000  
 Over \$1,000,000

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                      DISPOSED

NATURE OF INTEREST  
 Ownership/Deed of Trust       Easement  
 Leasehold \_\_\_\_\_       \_\_\_\_\_  
Yrs remaining                      Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED  
 \$0 - \$499       \$500 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.  
 None  
 \_\_\_\_\_  
 \_\_\_\_\_

\* You are not required to report loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER\* \_\_\_\_\_

ADDRESS (Business Address Acceptable) \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER \_\_\_\_\_

INTEREST RATE                      TERM (Months/Years)  
 \_\_\_\_\_ %       None      \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD  
 \$500 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000  
 Guarantor, if applicable

NAME OF LENDER\* \_\_\_\_\_

ADDRESS (Business Address Acceptable) \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER \_\_\_\_\_

INTEREST RATE                      TERM (Months/Years)  
 \_\_\_\_\_ %       None      \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD  
 \$500 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000  
 Guarantor, if applicable

Comments: \_\_\_\_\_

**SCHEDULE C**  
**Income, Loans, & Business**  
**Positions**  
 (Other than Gifts and Travel Payments)

**CALIFORNIA FORM 700**  
 FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

**1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME  
 Mike's Bikes

ADDRESS (Business Address Acceptable)  
 55 Leveroni Ct, Novato

BUSINESS ACTIVITY, IF ANY, OF SOURCE  
 Bike Shop / Retailer

YOUR BUSINESS POSITION  
 Chief Marketing Officer

GROSS INCOME RECEIVED  
 \$500 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED  
 Salary     Spouse's or registered domestic partner's income  
 (For self-employed use Schedule A-2.)

Partnership (Less than 10% ownership. For 10% or greater use Schedule A-2.)

Sale of \_\_\_\_\_  
 (Real property, car, boat, etc.)

Loan repayment

Commission or     Rental Income. list each source of \$10,000 or more  
 \_\_\_\_\_  
 (Describe)

Other \_\_\_\_\_  
 (Describe)

**1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME  
 Trust for Public Land

ADDRESS (Business Address Acceptable)  
 101 Montgomery St #900, San Francisco

BUSINESS ACTIVITY, IF ANY, OF SOURCE  
 Conservation

YOUR BUSINESS POSITION  
 Donor Relations Manager

GROSS INCOME RECEIVED  
 \$500 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED  
 Salary     Spouse's or registered domestic partner's income  
 (For self-employed use Schedule A-2.)

Partnership (Less than 10% ownership. For 10% or greater use Schedule A-2.)

Sale of \_\_\_\_\_  
 (Real property, car, boat, etc.)

Loan repayment

Commission or     Rental Income. list each source of \$10,000 or more  
 \_\_\_\_\_  
 (Describe)

Other \_\_\_\_\_  
 (Describe)

**2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

\* You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER\* \_\_\_\_\_

ADDRESS (Business Address Acceptable) \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD  
 \$500 - \$1,000  
 \$1,001 - \$10,000  
 \$10,001 - \$100,000  
 OVER \$100,000

INTEREST RATE \_\_\_\_\_%     None

TERM (Months/Years) \_\_\_\_\_

SECURITY FOR LOAN  
 None       Personal residence

Real Property \_\_\_\_\_  
 Street address \_\_\_\_\_  
 City \_\_\_\_\_

Guarantor \_\_\_\_\_

Other \_\_\_\_\_  
 (Describe)

Comments: \_\_\_\_\_

# SCHEDULE A-1

## Investments

### Stocks, Bonds, and Other Interests

(Ownership Interest is Less Than 10%)

Do not attach brokerage or financial statements.

CALIFORNIA FORM **700**

FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

▶ NAME OF BUSINESS ENTITY  
Applied Micro Circuits

GENERAL DESCRIPTION OF THIS BUSINESS  
semiconductors

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_  
(Describe)  
 Partnership       Income Received of \$0 - \$499  
    Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE  
\_\_\_\_/\_\_\_\_/14      \_\_\_\_/\_\_\_\_/14  
ACQUIRED      DISPOSED

▶ NAME OF BUSINESS ENTITY  
Google

GENERAL DESCRIPTION OF THIS BUSINESS  
search

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_  
(Describe)  
 Partnership       Income Received of \$0 - \$499  
    Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE  
\_\_\_\_/\_\_\_\_/14      \_\_\_\_/\_\_\_\_/14  
ACQUIRED      DISPOSED

▶ NAME OF BUSINESS ENTITY  
Facebook

GENERAL DESCRIPTION OF THIS BUSINESS  
social media

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_  
(Describe)  
 Partnership       Income Received of \$0 - \$499  
    Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE  
\_\_\_\_/\_\_\_\_/14      01/30/14  
ACQUIRED      DISPOSED

▶ NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF THIS BUSINESS

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_  
(Describe)  
 Partnership       Income Received of \$0 - \$499  
    Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE  
\_\_\_\_/\_\_\_\_/14      \_\_\_\_/\_\_\_\_/14  
ACQUIRED      DISPOSED

▶ NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF THIS BUSINESS

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_  
(Describe)  
 Partnership       Income Received of \$0 - \$499  
    Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE  
\_\_\_\_/\_\_\_\_/14      \_\_\_\_/\_\_\_\_/14  
ACQUIRED      DISPOSED

▶ NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF THIS BUSINESS

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_  
(Describe)  
 Partnership       Income Received of \$0 - \$499  
    Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE  
\_\_\_\_/\_\_\_\_/14      \_\_\_\_/\_\_\_\_/14  
ACQUIRED      DISPOSED

Comments: \_\_\_\_\_

## Property Detail Report

### Subject Property

**1014 Machin Ave**  
**Novato, CA 94945**  
**Marin County**

#### Owner Info:

Owner Name : <b>Lucan Eric</b>	Tax Billing Zip+4 : <b>4460</b>
Owner Name 2 : <b>Lucan Kiley</b>	Recording Date : <b>10/01/2014</b>
Tax Billing Address : <b>26 Truman Dr</b>	Annual Tax : <b>\$6,493</b>
Tax Billing City & State : <b>Novato CA</b>	County Use Code : <b>Multi Family Resid</b>
Tax Billing Zip : <b>94947</b>	Universal Land Use : <b>Multi Family Dwelling</b>

#### Location Info:

School District : <b>Novato San Jose</b>	Carrier Route : <b>C095</b>
Census Tract : <b>1022.03</b>	

#### Tax Info:

Tax ID : <b>153-045-20</b>	Total Assessment : <b>\$425,000</b>
Tax Year : <b>2015</b>	% Improv : <b>41%</b>
Annual Tax : <b>\$6,493</b>	Tax Area : <b>10220</b>
Assessment Year : <b>2015</b>	Lot Number : <b>48-51</b>
Land Assessment : <b>\$250,000</b>	Block ID : <b>J</b>
Improved Assessment : <b>\$175,000</b>	

#### Characteristics:

Lot Sq Ft : <b>6,090</b>	Heat Type : <b>Furnace</b>
Patio Type : <b>Deck/Patio</b>	Lot Acres : <b>.1398</b>
Garage Type : <b>Garage</b>	Garage Sq Ft : <b>231</b>
Building Sq Ft : <b>1,214</b>	Quality : <b>Average</b>
Total Units : <b>2</b>	Bedrooms : <b>2</b>
Year Built : <b>1949</b>	Total Baths : <b>2</b>
Effective Year Built : <b>1970</b>	Full Baths : <b>2</b>

#### Last Market Sale:

Recording Date : <b>10/01/2014</b>	Owner Name : <b>Lucan Eric</b>
Sale Price : <b>\$425,000</b>	Owner Name 2 : <b>Lucan Kiley</b>
Document No : <b>40856</b>	Seller : <b>Federal Natl Mtg Assn</b>
	<b>Fnma</b>
Deed Type : <b>Grant Deed</b>	

#### Sales History:

Recording Date : <b>10/01/2014</b>	<b>12/09/2010</b>
Sale Price : <b>\$425,000</b>	<b>\$589,087</b>
Buyer Name : <b>Lucan Eric &amp; Kiley</b>	<b>Federal Natl Mtg Assn</b>
	<b>Fnma</b>
Seller Name : <b>Federal Natl Mtg Assn</b>	<b>Wolf Firm</b>
	<b>Fnma</b>
Document No : <b>40856</b>	<b>63732</b>
Document Type : <b>Grant Deed</b>	<b>Trustee's Deed</b>

#### Mortgage History:

Mortgage Date : <b>05/21/2015</b>	<b>10/01/2014</b>
Mortgage Amt : <b>\$344,900</b>	<b>\$344,998</b>

# Client Detail Report

Listings as of 01/29/16 at 10:20am

Sold 10/01/14 Listing # 21401527 1014 Machin Ave #A & B Novato, CA 94945 Listing Price: \$469,900  
 County: Marin Cross St Grant Map: Original Price: \$659,900



See Additional Pictures

Directions: Redwood, right on Grant, left on Machin  
 Marketing Remarks: Duplex conveniently located near quaint Old Town Novato, close to great restaurants and shops! Units have been well kept with some updates, both are 1 bedroom and 1 bathroom. Private front and backyards for each unit. Additional parking to the east of the duplex.

Selling Price \$425,000 Selling Date 10/01/14 Pending Date 09/30/14  
 Original Price 659,900 SP % OP 64.40

Property Type	Multi Unit 2-4	Property Subtype	Multi Unit 2-4
Area	Novato	Approx Square Feet	1214 Realist Public Rec
Year Built	1949	Price/Sq Ft	\$350.08
APN	153-045-20	Lot Sq Ft (approx)	6090 (Realist Public Rec)
DOM/CDOM	249/249	Lot Acres (approx)	0.1398

New Construct/Resale	Resale	Probate Sale	No
# of Buildings	1	Fireplace	No
Pool	No	View	No
Year Built Source	Realist Public Rec	Est Management	\$1000.00
Est. Misc. Expenses	\$0.00	Est Maintenance Exp	\$1000.00
Est. Taxes	\$200.00	Est. Utilities Exp.	\$0.00
Est. Insurance Exp.	\$0.00	Gross Scheduled Inc	\$19440.00
Projected or Actual	Projected	Cap Rate	%4.14
Est Total Annual Exp	\$2200.00	Monthly Expenses	\$183.33
Monthly Income	\$1620.00	Est Ann Net Income	\$17240.00
Unit 1 Lease Term	Month to Month	Unit 1 Approx SqFt	607.0
Unit 1 SqFt Source	Not Measured	Unit 1 Bedrooms	1
Unit 1 Baths Full	1	Unit 1 Half Baths	0
Unit 1 Total Rooms	4.0	Unit 2 Lease Term	Month to Month
Unit 2 Approx SqFt	607.0	Unit 2 SqFt Source	Not Measured
Unit 2 Bedrooms	1	Unit 2 Baths Full	1
Unit 2 Half Baths	0	Unit 2 Total Rooms	4.0
# of Units	2	Common Int Dev	No
Planned Unit Develop	No	TIC	No
Operating Exp Inc	Insurance, Maintenance, Miscellaneous, Taxes/Assessments	Tenant Pays	Electricity, Garbage, Gas, Water
Type	Duplex	Style	Traditional
Exterior	Wood Siding	Foundation/Construct	Concrete Perimeter
Floors	Part Carpet, Tile, Other	Gar/Pk	Attached
Laundry Appliance	Other	Unit 1 Includes	Wall Furnace
Unit 2 Includes	Wall Furnace	Roof	Composition
Lot Description	Level	Water Source	Water-Public
Sewer/Septic	Sewer Public	Utilities	Water-Public PG&E
Sale Conditions	REO		

Presented By: Toni Shroyer  
 Lic: 01876201  
 Primary: 415-640-2754  
 Secondary:  
 Other:

Bradley Real Estate-San Rafael  
 Office Lic.: 01319623  
 851 Irwin St, Suite 104  
 San Rafael, CA 94901  
 415-459-1010  
 Fax: 415-259-2889



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

June 30, 2016

Albert Dugan  
19 Los Cedros Drive  
Novato, CA 94947-3764

Re: FPPC No. 16/284; Eric Lucan

Dear Mr. Dugan:

This letter is to notify you that the Enforcement Division of the Fair Political Practices Commission will investigate the allegation(s), under the jurisdiction of the Commission, of the sworn complaint you submitted in the above-referenced matter. This complaint has been added to the open investigation and noted by the case number listed above. You will next receive notification from us upon final disposition of the case. However, please be advised that at this time we have not made any determination about the validity of the allegation(s) you have made or about the culpability, if any, of the person(s) you identify in your complaint.

Thank you for taking the time to bring this matter to our attention.

Sincerely,



Galena West, Chief  
Enforcement Division

GW/tr

cc. Eric Lucan (w/copy of complaint)

RECEIVED  
FAIR POLITICAL  
PRACTICES COMMISSION

**SWORN COMPLAINT FORM**  
(Form May Be Subject to Public Disclosure)\*

16 JUN 27 PM 3:25

**AS REQUIRED BY GOVERNMENT CODE SECTION 83115**, please complete the form below to file a sworn complaint with the Fair Political Practices Commission.

Mail the complaint to:

**Enforcement Division  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814**

***NOTE:*** The Fair Political Practices Commission does not enforce or address violations of the Brown Act, the content of campaign communications, residency requirements, the inappropriate use of public funds or resources (including use of uniforms or equipment), placement of campaign signs or materials on public property, or violation of a local campaign rule or campaign ordinance.

---

**Person Making Complaint**

Last Name:

DUGAN

First Name:

AL

Street Address:

19 LOS CEDROS DR

City:

NOVATO

State:

CA

Zip:

94947

Telephone:

Fax:

E-mail:

---

**\*IMPORTANT NOTICE**

Under the California Public Records Act (Gov. Code Section 6250 and following), this sworn complaint and your identity as the complainant may be subject to public disclosure. Unless the Chief of Enforcement deems otherwise, within three business days of receiving your sworn complaint we will send a copy of it to the person(s) you allege violated the law.

In some circumstances, the FPPC may claim your identity is confidential, and therefore not subject to disclosure. A court of law could ultimately make the determination of confidentiality. If you wish the FPPC to consider your identity confidential, do not file the complaint before you contact the FPPC to discuss the complaint at (916) 322-5660 or toll free at (866) 275-3772.

Person(s) Who Allegedly Violated the Political Reform Act: (If there are multiple parties involved, attach additional pages as necessary.)

Last Name: LUCAN

First Name: ERIK

Committee Name: NOVATO CITY COUNCIL  
(only if applicable)

Street Address: 922 MACNIN AVE

City: NOVATO State: CA Zip: 94945

Telephone: (415) 272 3265

Fax: ( ) -

E-mail: ELUCAN@NOVATO.ORG

Describe, With as Much Particularity as Possible, the Facts Constituting the Alleged Violation(s) and How You Have Personal Knowledge that it Occurred.\*

MR. LUCAN IS A NOVATO CITY COUNCIL MEMBER AND IS THE CITY APPOINTED MEMBER TO SMART. MR. LUCAN HAS BEEN THE PRIME ADVOCATE TO BUILD A THIRD SMART STATION IN NOVATO DOWNTOWN. SMART PLAN FOR ONLY TWO NOVATO SMART STATIONS. SMART ALSO CAN NOT ASSURE ANY TRAIN SERVICE AT THIS PROPOSED STATION; AT BEST IT WILL BE ALTERNATING SERVICE WITH ANOTHER STATION. NOVATO WILL HAVE TO PAY THE FULL COST AND HAS ALREADY APPROVED \$2.5M, DESPITE THE CITY MANAGER AND STAFF RECOMMENDED NO PROJECT ~~AND~~ IN THEIR STAFF REPORT

**\*IMPORTANT!** Attach copies of any available documentation that is evidence of the violation, (for example, copies of checks, campaign materials, minutes of meetings, etc., if applicable to the complaint.) Note that a newspaper article is NOT considered evidence of a violation.



Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address:  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

###

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address:  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**



(Signature)

6/22/10  
(Date)

ROBERT F. DUBAN

(Please Print Your Name)

## Sworn complaint by Al Dugan of Novato Description and Facts

I am a citizen in Novato and often attend city council meetings and always closely follow the decisions and actions of the Novato City Council. I attended the city council meetings on January 6, 2016 and the January 26, 2016 when this violation occurred.

I am filing this complaint due to the preponderance of evidence of a conflict of interests as the financial impact or effect is foreseeable, and the financial impact is significant enough to be considered material.

Eric Lucan is a city council member in Novato and is also the appointed representative of Novato to the SMART board of directors.

Mr. Lucan was the primary advocate to place on the agenda adding a third SMART station in downtown Novato. SMART and the city of Novato had already decided the location for the two SMART stations in Novato, being fully paid for by SMART. These third Novato station in downtown Novato will have to be paid 100% by the city of Novato. SMART also cannot assure any trains will use this station as they have a critical commute schedule that does not allow a third Novato station. At best, this station will only have a few trains per day alternating with another Novato station.

The Novato staff produced the attached report that clearly indicated their recommendation not to build this proposed SMART station. (See attached.) Novato also has a deficit budget that is being backfilled by a recently passed tax increase and can ill afford this project. The city has approved the first \$2.5M of the estimated \$5.5M cost of this project.

Mr. Lucan bought a duplex property, in marginal condition in 2014 very close to the time he began advocating for this SMART station. (See attached 700 filing.)

MTC adopted Resolution 3434 Transit Oriented Development (TOD) Policy for Regional Transit Expansion Projects on July 27, 2005. This resolution clearly outlines the new housing requirements necessary for funding. For a commuter rail like SMART this is 2,200 housing units within a half mile of the station. Thus, Mr. Lucan had clear knowledge that the property he purchased by in 2014 would have direct beneficial value increase by his vote for this station. This is directly

the result of his role as a Novato city council member and the appointed representative to SMART.

At the time this was voted by the Novato City Council Mr. Lucan's vote was the margin of victory, with a vote of three to two.

Sworn statement of Al Dugan regarding Eric Lucan, City Council Member and SMART Board member FPPC violation

Mr. Lucan bought a duplex property, in marginal condition in 2014 that was in foreclosure, very close to the time he began advocating for this SMART station. (See attached 700 filing.)

The Novato completed a detailed review of this proposed third SMART station in downtown Novato. The conclusion of this detailed 71 page staff report stated:

“Although is supportive of a downtown SMART station, with the combination of other city priorities, uncertainties and the costs as detailed in the discussion, staff finds it is not able to recommend moving forward with construction of a station (Option 1 or 2) at this time.”

MTC adopted Resolution 3434 Transit Oriented Development (TOD) Policy for Regional Transit Expansion Projects on July 27, 2005. This resolution clearly outlines the new housing and zoning requirements necessary for funding. For a commuter rail like SMART this is 2,200 housing units within a half mile of the station. Thus, Mr. Lucan had clear knowledge that the property he purchased by in 2014 would have direct beneficial increase in value and zoning that will increase density by his vote for this station. This is directly the result of his role as a Novato city council member and the appointed representative to SMART.

At the time this was voted by the Novato City Council Mr. Lucan's vote was the margin of victory, with a vote of three to two.

**STATEMENT OF ECONOMIC INTERESTS  
 COVER PAGE**

**RECEIVED**  
 MAR 25 2015  
 RECEIVED  
 CITY OF NOVATO

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)  
 Lucan Eric A

**1. Office, Agency, or Court**

Agency Name (Do not use acronym)

City of Novato

Division, Board, Department, District, if applicable

Your Position

Councilmember

▶ If filing for multiple positions, list below or on an attachment. (Do not use acronym)

Agency \_\_\_\_\_

Position \_\_\_\_\_

**2. Jurisdiction of Office (Check at least one box)**

State

Judge or Court Commissioner (Statewide Jurisdiction)

Multi-County \_\_\_\_\_

County of \_\_\_\_\_

City of Novato

Other \_\_\_\_\_

**3. Type of Statement (Check at least one box)**

Annual: The period covered is January 1, 2014 through December 31, 2014

-OR-

The period covered is \_\_\_\_\_ through December 31, 2014

Leaving Office: Date Left \_\_\_\_\_ (Check one)

The period covered is January 1, 2014, through the date of leaving office

Assuming Office: Date assumed \_\_\_\_\_

The period covered is \_\_\_\_\_ through the date of leaving office

Candidate: Election year \_\_\_\_\_ and office sought, if different than Part 1 \_\_\_\_\_

**4. Schedule Summary**

Check applicable schedules or "None."

▶ Total number of pages including this cover page: 4

Schedule A-1 - Investments - schedule attached

Schedule C - Income, Loans, & Business Positions - schedule attached

Schedule A-2 - Investments - schedule attached

Schedule D - Income - Gifts - schedule attached

Schedule B - Real Property - schedule attached

Schedule E - Income - Gifts - Travel Payments - schedule attached

-OR-

None - No reportable interests on any schedule

**5. Verification**

MAILING ADDRESS (Please use Agency Address Recommended - Public Document) STREET CITY STATE ZIP CODE  
 26 Truman Drive Novato CA 94947  
 PARTIAL TELEPHONE NUMBER E-MAIL ADDRESS  
 ( 415 ) 272-3265

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 3/22/15

Signature \_\_\_\_\_

[Redacted Signature]

**SCHEDULE B**  
**Interests in Real Property**  
 (Including Rental Income)

ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS  
1014 Machin Ave

CITY  
Novato

FAIR MARKET VALUE  
 \$0 - \$10,000  
 \$10,001 - \$100,000  
 \$100,001 - \$1,000,000  
 Over \$1,000,000

IF APPLICABLE, LIST DATE  
09/30/14 / 14 / 14  
 ACQUIRED / DISPOSED

NATURE OF INTEREST  
 Ownership/Good of Trust  
 Leasehold  
 Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED  
 \$0 - \$499  
 \$500 - \$1,000  
 \$1,001 - \$10,000  
 \$10,001 - \$100,000  
 OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.  
 None

ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS  
 \_\_\_\_\_

CITY  
 \_\_\_\_\_

FAIR MARKET VALUE  
 \$0 - \$10,000  
 \$10,001 - \$100,000  
 \$100,001 - \$1,000,000  
 Over \$1,000,000

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 ACQUIRED / DISPOSED

NATURE OF INTEREST  
 Ownership/Good of Trust  
 Leasehold  
 Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED  
 \$0 - \$499  
 \$500 - \$1,000  
 \$1,001 - \$10,000  
 \$10,001 - \$100,000  
 OVER \$100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.  
 None

\* You are not required to report loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows.

NAME OF LENDER: \_\_\_\_\_

ADDRESS (Business Address Acceptable): \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER: \_\_\_\_\_

INTEREST RATE: \_\_\_\_\_ %  
 TERM (Month/year): \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD  
 \$0 - \$1,000  
 \$1,001 - \$10,000  
 \$10,001 - \$100,000  
 OVER \$100,000

Guarantor, if applicable

NAME OF LENDER: \_\_\_\_\_

ADDRESS (Business Address Acceptable): \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER: \_\_\_\_\_

INTEREST RATE: \_\_\_\_\_ %  
 TERM (Month/year): \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD  
 \$0 - \$1,000  
 \$1,001 - \$10,000  
 \$10,001 - \$100,000  
 OVER \$100,000

Guarantor, if applicable

Comments: \_\_\_\_\_

**SCHEDULE C**  
**Income, Loans, & Business**  
**Positions**  
 (Other than Gifts and Travel Payments)

**CALIFORNIA FORM 700**  
 FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME  
Mike's Bikes

ADDRESS (Business Address Acceptable)  
55 Leveroni Ct, Novato

BUSINESS ACTIVITY IF ANY OF SOURCE  
Bike Shop / Retailer

YOUR BUSINESS POSITION  
Chief Marketing Officer

GROSS INCOME RECEIVED  
 \$0 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED  
 Salary       Spouse's or registered domestic partner's income  
 (For self-employed use Schedule A-2.)

Partnership (Less than 10% ownership; For 10% or greater use Schedule A-2.)

Sale of \_\_\_\_\_ (Real property use Schedule A-2.)

Loan repayment

Commission or  Rental Income (For each source of \$10,000 or more)

Other \_\_\_\_\_

**▶ 1. INCOME RECEIVED**

NAME OF SOURCE OF INCOME  
Trust for Public Land

ADDRESS (Business Address Acceptable)  
101 Montgomery St #900, San Francisco

BUSINESS ACTIVITY IF ANY OF SOURCE  
Conservator

YOUR BUSINESS POSITION  
Donor Relations Manager

GROSS INCOME RECEIVED  
 \$0 - \$1,000       \$1,001 - \$10,000  
 \$10,001 - \$100,000       OVER \$100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED  
 Salary       Spouse's or registered domestic partner's income  
 (For self-employed use Schedule A-2.)

Partnership (Less than 10% ownership; For 10% or greater use Schedule A-2.)

Sale of \_\_\_\_\_ (Real property use Schedule A-2.)

Loan repayment

Commission or  Rental Income (For each source of \$10,000 or more)

Other \_\_\_\_\_

**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

\* You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER: \_\_\_\_\_

ADDRESS (Business Address Acceptable) \_\_\_\_\_

BUSINESS ACTIVITY IF ANY OF LENDER \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD

\$0 - \$1,000  
 \$1,001 - \$10,000  
 \$10,001 - \$100,000  
 OVER \$100,000

INTEREST RATE \_\_\_\_\_  None

TERM (Months/Years) \_\_\_\_\_

SECURITY FOR LOAN

None       Personal residence

Real Property \_\_\_\_\_ (Street address) \_\_\_\_\_ City \_\_\_\_\_

Certificate \_\_\_\_\_

Other \_\_\_\_\_ (Describe) \_\_\_\_\_

Comments: \_\_\_\_\_

**SCHEDULE A-1**  
**Investments**  
**Stocks, Bonds, and Other Interests**  
 (Ownership Interest is Less Than 10%)  
 Do not attach brokerage or financial statements

Name \_\_\_\_\_

▶ NAME OF BUSINESS ENTITY  
Applied Micro Circuits

GENERAL DESCRIPTION OF THIS BUSINESS  
semiconductors

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_ (Describe)  
 Partnership     Income Received of \$0 - \$499  
                                   Income Received of \$500 or More (Report on Schedule D)

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                                  DISPOSED

▶ NAME OF BUSINESS ENTITY  
Google

GENERAL DESCRIPTION OF THIS BUSINESS  
Search

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_ (Describe)  
 Partnership     Income Received of \$0 - \$499  
                                   Income Received of \$500 or More (Report on Schedule D)

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                                  DISPOSED

▶ NAME OF BUSINESS ENTITY  
Facebook

GENERAL DESCRIPTION OF THIS BUSINESS  
social media

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_ (Describe)  
 Partnership     Income Received of \$0 - \$499  
                                   Income Received of \$500 or More (Report on Schedule D)

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      01 / 30 / 14  
 ACQUIRED                                  DISPOSED

▶ NAME OF BUSINESS ENTITY  
 \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS  
 \_\_\_\_\_

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_ (Describe)  
 Partnership     Income Received of \$0 - \$499  
                                   Income Received of \$500 or More (Report on Schedule D)

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                                  DISPOSED

▶ NAME OF BUSINESS ENTITY  
 \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS  
 \_\_\_\_\_

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_ (Describe)  
 Partnership     Income Received of \$0 - \$499  
                                   Income Received of \$500 or More (Report on Schedule D)

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                                  DISPOSED

▶ NAME OF BUSINESS ENTITY  
 \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS  
 \_\_\_\_\_

FAIR MARKET VALUE  
 \$2,000 - \$10,000       \$10,001 - \$100,000  
 \$100,001 - \$1,000,000       Over \$1,000,000

NATURE OF INVESTMENT  
 Stock       Other \_\_\_\_\_ (Describe)  
 Partnership     Income Received of \$0 - \$499  
                                   Income Received of \$500 or More (Report on Schedule D)

IF APPLICABLE, LIST DATE  
 \_\_\_\_\_ / \_\_\_\_\_ / 14      \_\_\_\_\_ / \_\_\_\_\_ / 14  
 ACQUIRED                                  DISPOSED

Comments: \_\_\_\_\_

## Property Detail Report

### Subject Property

**1014 Machin Ave  
Novato, CA 94945  
Marin County**

#### Owner Info:

Owner Name :	Lucan Eric	Tax Billing Zip+4 :	4460
Owner Name 2 :	Lucan Kiley	Recording Date :	10/01/2014
Tax Billing Address :	26 Truman Dr	Annual Tax :	\$6,493
Tax Billing City & State :	Novato CA	County Use Code :	Multi Family Resid
Tax Billing Zip :	94947	Universal Land Use :	Multi Family Dwelling

#### Location Info:

School District :	Novato San Jose	Carrier Route :	C095
Census Tract :	1022.03		

#### Tax Info:

Tax ID :	153-045-20	Total Assessment :	\$425,000
Tax Year :	2015	% Improv :	41%
Annual Tax :	\$6,493	Tax Area :	10220
Assessment Year :	2015	Lot Number :	48-51
Land Assessment :	\$250,000	Block ID :	J
Improved Assessment :	\$175,000		

#### Characteristics:

Lot Sq Ft :	6,090	Heat Type :	Furnace
Patio Type :	Deck/Patio	Lot Acres :	.1398
Garage Type :	Garage	Garage Sq Ft :	231
Building Sq Ft :	1,214	Quality :	Average
Total Units :	2	Bedrooms :	2
Year Built :	1949	Total Baths :	2
Effective Year Built :	1970	Full Baths :	2

#### Last Market Sale:

Recording Date :	10/01/2014	Owner Name :	Lucan Eric
Sale Price :	\$425,000	Owner Name 2 :	Lucan Kiley
Document No :	40856	Seller :	Federal Natl Mtg Assn Fnma
Deed Type :	Grant Deed		

#### Sales History:

Recording Date :	10/01/2014	12/09/2010
Sale Price :	\$425,000	\$589,087
Buyer Name :	Lucan Eric & Kiley	Federal Natl Mtg Assn Fnma
Seller Name :	Federal Natl Mtg Assn	Wolf Firm Fnma
Document No :	40856	63732
Document Type :	Grant Deed	Trustee's Deed

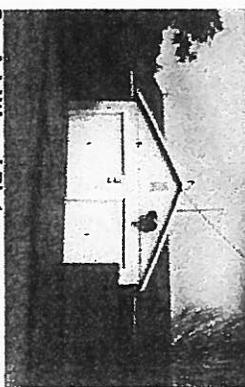
#### Mortgage History:

Mortgage Date :	05/21/2015	10/01/2014
Mortgage Amt :	\$344,900	\$344,998

# Client Detail Report

Listings as of 01/29/16 at 10:20am

Sold 10/01/14 Listing # 21401527 1014 Machin Ave #A & B Novato, CA 94945 Listing Price: \$469,900  
 County: Marin Cross St: Grant Map: Multi Unit 2-4 Original Price: \$659,900



See Additional Pictures

Directions Redwood, right on Grant, left on Machin  
 Marketing Remarks Duplex conveniently located near quaint Old Town Novato, close to great restaurants and shops! Units have been well kept with some updates, both are 1 bedroom and 1 bathroom. Private front and backyards for each unit. Additional parking to the east of the duplex.

Selling Price \$425,000 Selling Date 10/01/14 Pending Date 09/30/14  
 Original Price 659,900 SP % OP 64.40

Property Type	Multi Unit 2-4	Property Subtype	Multi Unit 2-4
Area	Novato	Approx Square Feet	1214 Realist Public Rec
Year Built	1949	Price/Sq Ft	\$350.08
APN	153-045-20	Lot Sq Ft (approx)	6090 ((Realist Public Rec))
DOM/CDOM	249/249	Lot Acres (approx)	0.1398

Property Type	Multi Unit 2-4	Property Subtype	Multi Unit 2-4
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Year Built	1949	Price/Sq Ft	\$350.08
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Presented By: **Toni Shroyer** Lic: 01876201  
 Primary: 415-640-2754  
 Secondary: [blank]  
 Other: [blank]

**Bradley Real Estate-San Rafael**  
 Office Lic: 01319623  
 851 Irwin St, Suite 104  
 San Rafael, CA 94901  
 415-459-1010  
 Fax: 415-259-2889

## STAFF REPORT

DATE: January 26, 2016

TO: City Council

FROM: Cathy Capriola, Interim City Manager  
Russ Thompson, Public Works Director

PRESENTER: Russ Thompson, Public Works Director

SUBJECT: **CONSIDERATION OF AND DIRECTION REGARDING FUNDING  
CONSTRUCTION OF A DOWNTOWN SMART TRAIN STATION**



THE CITY OF  
NOVATO  
CALIFORNIA

922 Machin Avenue  
Novato, CA 94945  
(415) 899-8900  
FAX (415) 899-8213  
[www.novato.org](http://www.novato.org)

## REQUEST

1. Consider three options relating to the funding of the construction of a downtown SMART train station on Grant Avenue at Railroad Avenue ("the project"):
  - a. Option 1 – Fund construction of a full station,
  - b. Option 2 – Fund construction of only an initial phase of the station, or
  - c. Option 3 – Do not fund a downtown station at this time.
2. In conjunction with Options 1 or 2, if chosen, provide staff direction on the following items:
  - a. Method in which to pay for anticipated project costs, i.e. one-time payment, debt financing, or hybrid; and,
  - b. Key components for negotiation of the Reimbursement Agreement (as outlined in the staff report) that will need to be approved by the City and the SMART Board.
3. If Council gives direction to move forward with Options 1 or 2, direct staff to return on February 9, 2016 with the following action items:
  - a. Options and recommendation regarding funding sources and strategy (one-time funds and/or debt);
  - b. Resolution with funding direction, making findings that the project is consistent with the requirements of the California Environmental Quality Act (CEQA), and approving and authorizing execution of a Reimbursement Agreement .
4. If the Council gives direction on Option 1 or 2 on January 26th, then authorize SMART to utilize the remaining funds from the original \$100,000 feasibility study to begin refinements of costs in order to keep this project moving forward while the implementation actions are being finalized and brought forward to the Council and SMART.

## RECOMMENDATION

Although City staff is supportive of a downtown SMART station, with the combination of other

city priorities, uncertainties and the costs as detailed in the discussion, staff finds it is not able to recommend moving forward with construction of a station (Option 1 or 2) at this time. Staff understands that this is a policy issue for the Council's decision and that the City Council may have a longer term view and goals for the city that might take precedence over the staff's recommendation.

## **DISCUSSION**

Between August 2001 and April 2009, the City of Novato was actively engaged in the process of evaluating and selecting the two current Sonoma-Marin Area Rail Transit (SMART) Station locations. On April 14, 2009, the City Council voted to recommend to the SMART Board that the two stations in Novato be located at the Novato North – San Marin Station, and the Novato South – Hamilton Station. The April 2009 action by the City Council requested that the Downtown Station be designated as a priority site when and if SMART considered additional stations. On April 28, 2009 the City Council unanimously agreed to send a letter to SMART (*see Attachment 1*) urging them to consider the Downtown Station as a “*priority site*” should additional stations be considered in the future.

Based on this Council decision, SMART moved forward the two approved stations (Novato North – San Marin and Novato South – Hamilton). SMART did not own the property on which proposed stations were to be built. In 2013, City Council approved agreements negotiated between SMART and the City for the transfer of City properties at the locations of the two proposed Novato stations to SMART and the transfer of the Depot Lot (site of a potential downtown station not included in the project) to the City. The terms of the agreement included SMART retaining sufficient Right-of-Way in the vicinity of the Downtown Property to build a station ramp. There are no terms in the agreement requiring SMART to construct the ‘station ramp’ or any other station improvements at or near the Depot Lot. The staff report stated:

*‘SMART retains sufficient right-of-way to allow a future transit use at the Downtown Novato Depot site. This would allow SMART and the City to consider constructing a ‘whistle-stop’ station should there be a future opportunity to provide rail service to downtown Novato.’*

The boundary of the depot parcel was adjusted to accommodate a wider right-of-way as described above.

At the City Council meeting of September 1, 2015, a Councilmember requested that the City Council consider agendaing for a future council meeting a discussion about pursuing approval of a SMART station downtown. Whether to agendaize the discussion was at the discretion of Council and required a majority vote. At the September 15, 2015 City Council meeting, staff was requested to agendaize the City Council's consideration of funding a feasibility study for a Downtown SMART Train Station. The requested hearing occurred on October 6, 2015 and Council directed staff to expend up to \$100,000 in reimbursing SMART and their consultants for a feasibility study (focusing on the associated service, cost and engineering issues). This information would be used by the City to investigate the opportunity for a Downtown SMART Station to be paid for by the City. The final results of the feasibility study were available in early January.

### **Feasibility Study Results**

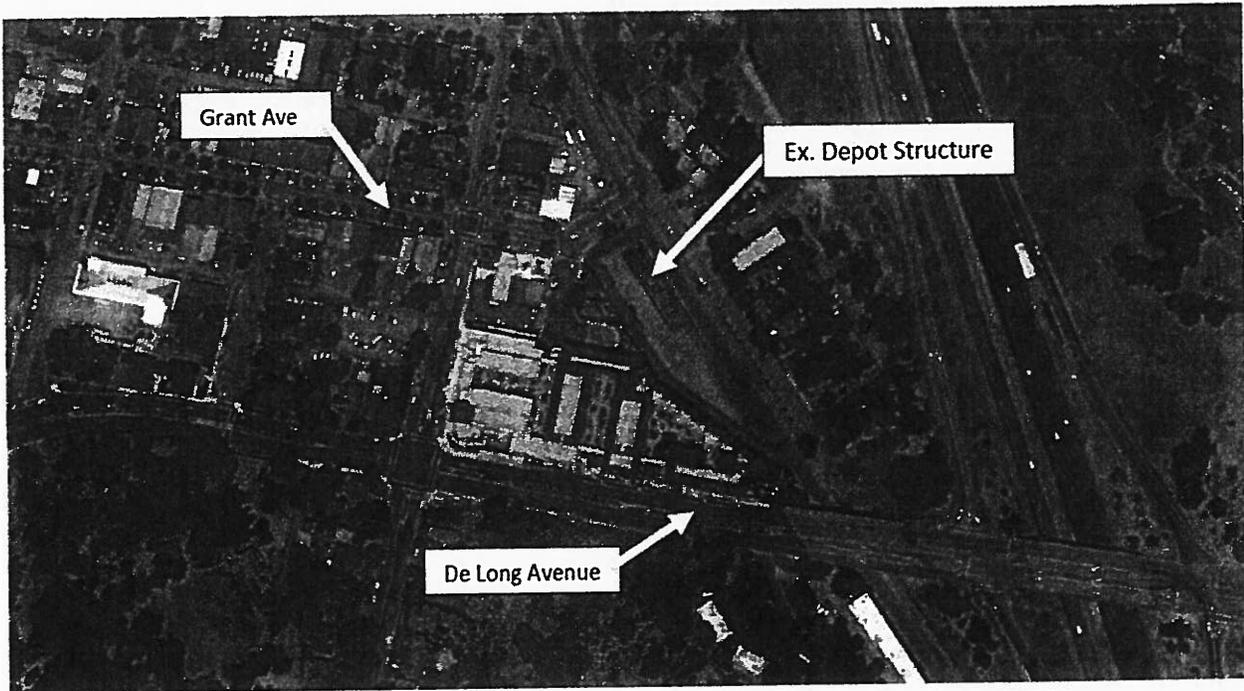
On January 12, 2016, the City Council conducted a public workshop to review the SMART feasibility study on operational considerations and construction costs of a downtown station in Novato (*see Attachment 2*). The key components of the presented SMART study are as follows:

1. It is operationally possible to serve a downtown station; however, it is not possible for a train to stop at both the downtown station and the Novato North – San Marin Station on the same trip and maintain the proposed transit coordinated schedule.
2. The estimate of project cost prepared by SMART associated with the SMART portions of a fully operational downtown station, if constructed today, prior to rail service starting, is \$5.0 million. This cost is for construction of the same station design as is being constructed elsewhere in the system. In addition, the City would also be responsible to construct the parking lot, driveway, site flatwork, and landscaping and irrigation for an additional \$500,000.
3. All costs for the project would be the responsibility of the City, including engineering and contingency allowances.
4. Construction costs would escalate significantly after the start of rail service, and a Phase 1, or reduced project, was presented including only the critical infrastructure sensitive to completion prior to the start of rail service, at a total cost, inclusive of engineering and contingencies of \$2.4 million. This would install the necessary rail infrastructure, gauntlet track and the station platform.
5. SMART's overall project timeline is such that action on a downtown station needs to be made by the end of January in order to have station construction completed before the start of rail service.

City and SMART staff received questions at the workshop from the City Council and public regarding the proposed project's cost, scheduling, environmental impacts, financial feasibility, and the relative importance with respect to other City needs. Staff provided answers to questions where information was at hand, but in some cases, additional research was required, and staff committed to returning to Council with additional information.

### **Site Location**

The proposed downtown station would be located at Grant and Railroad Avenue adjacent to what is informally called the "Depot Lot" (outlined in red below) in recognition of the historic depot building that stands on the site. The right-of-way on which the station is proposed is owned by SMART. The adjacent parcel (Depot Lot) on which the parking improvements would be made is owned by the City.



**Overview of the Options**

Below is a summary of the three options and costs under consideration as presented at the workshop. Table A is a high level summary of the costs for each option. Attachment 3 provides a more detailed cost break down for SMART's submitted costs.

**TABLE A - Options / Cost Table**

	<b>Option #1 Full Station</b>	<b>Option #2 Phased Station (Phase 1)</b>	<b>Option #3 No Station</b>
City costs to reimburse SMART	\$5,050,000	\$2,450,000	\$50,000
Additional City Costs	\$ 500,000	\$0	\$0
Total	\$5,550,000	\$2,450,000	\$50,000

\*\*See Financial Considerations section for additional cost information.

The completed project under either Option 1 or 2 (excluding the parking improvements on the adjacent city-owned lot) would be SMART-owned. The tracks and platform within SMART's right-of-way would be designed and built by SMART, and would become SMART's property even if funded in whole or in part by the City. Options 1 and 2 include the City reimbursing SMART for the full costs of the station work within their right-of-way at the estimated cost of \$5 million or \$2.4 million, respectively, with City funds. With completion of the Option 1 project, the station would be owned and operated by SMART in the same manner as if they had funded the improvement themselves. Similarly, the incomplete Option 2 project would be owned by SMART and would then be operated by SMART as a station only upon completion of the Phase 2 work. The City's funding of the improvements does not include any City ownership or other rights in the completed work.

Option #1 – Full Downtown Station – \$5.5 million

This would complete all improvements within the SMART right-of-way for a full station available for passenger boarding and alighting, including a parallel gauntlet track, signals and communication infrastructure, platform, shelter/amenities, and a walkway, plus it includes other City improvements on the adjacent depot lot such as a driveway, turn-around, parking, landscaping and lighting. The multi-use path adjacent to the site is a separate project, and not included in this discussion.

Based on information available to SMART from similar recently completed and on-going work, SMART prepared an estimate for the subject improvements. The estimate includes all components within the SMART right-of-way required to complete a fully functioning station, including design and construction management, along with a 30% contingency allowance to account for the preliminary nature of the estimate. This total cost is estimated to be \$5 million. City staff estimates the cost of the other City improvements (parking lots, etc.), to be located on adjacent City property, to be approximately \$500,000. This figure includes a 25% contingency resulting in a total estimated project cost of \$5.5 million for the full station option.

Option #2 – Phased Rail Infrastructure Project – \$2.4 Million

Given that construction costs would increase significantly once SMART is operational on the adjacent tracks, SMART staff produced an estimate for a phased project. This alternative includes a two phase approach, where the design and permitting would be completed now, but actual improvements would be limited to those likely impacted the most by track operation, and therefore subject to higher costs if deferred. These improvements include the addition of the parallel (gauntlet) tracks and associated switches, and the concrete platform. The platform finish work, and the bulk of the signal and control equipment, would be deferred to a second phase.

This phased approach would result in a completed Phase 1 installation that could not be used in any manner for boarding and alighting, but would be available as the foundation for station development at a time when funds were available to construct Phase 2. The most likely result is a partially completed concrete structure, fenced for safety and security.

The cost of the first phase is estimated at \$2.4 million, inclusive of engineering and contingencies. The Phase 2 cost would be the \$2.6 million (remainder of the \$5 million total) plus \$500,000 cost of the adjacent site improvements. The Phase 2 cost will likely be higher, however, due to the proximity of the operating rail service, construction cost increases which will likely occur over time, and the reduction of efficiencies from not completing all of the work in one contract. These anticipated cost increases are unknown at this time, and given the inclusion of the 30% contingency allowance, the \$2.6 million is an appropriate figure to start with.

Option #3 – No Downtown Station.

This is the no project or 'do nothing at this time' alternative relating to the downtown station. The City would not enter into any agreement with SMART and their project would continue with no accommodations for a downtown station. There is no City cost associated with this option beyond the funds already invested in the feasibility study, which expense is common to all three options.

This option does not necessarily mean there will never be a downtown SMART station. This option means there will not be a downtown station when rail service starts. The cost of constructing the downtown station in the future will likely be significantly higher primarily due to the added costs of performing the work identified in Option 2 while SMART and freight trains are

operating on the tracks. The potential future costs are not known, but SMART staff indicated that it would be realistic to estimate that the cost would double.

### **Common Elements of the Options**

Under all options, SMART will continue with their system-wide track and station improvements, including the two other Novato stations. SMART has included mobilization costs in their estimates to account for additional design team and contractor resources to ensure that other components of the overall project are not compromised.

None of the above stated costs include any allowance for improvements to the historic Depot Building. The proposed improvements do not directly connect with, nor do they physically conflict with, the Depot Building and staff has assumed the final use and level of improvement of the Depot Building would be determined in a separate process at a later date. The 2008 Supplemental EIR prepared and certified by SMART includes a mitigation measure requiring the preparation of an historical assessment of the former Depot Building, which could result in modifications to the proposed station design or construction methods if the structure is determined to be eligible for listing on the National Register of Historic Places. The project cost estimates include funding for this analysis, but not for any project modifications that might be required as a result of the study.

### **ANALYSIS**

Following staff's public workshop presentation on January 12<sup>th</sup>, a number of questions were raised by both the City Council and the public. Included in each section below is a listing of the questions and staff's response to them, arranged by topic. In addition to direct answers to questions, some topics include additional information, not directly related to a posed question, but relevant to the discussion, and not previously known or included in the workshop staff report. The analysis and background information is organized into the following categories.

- Project Timing and Process
- SMART Parameters
- SMART Operations and Ridership
- Fiscal Considerations
- CEQA Information and Issues
- Reimbursement Agreement
- Public Outreach

### **Project Timing and Process**

As discussed at the workshop, this decision is time-constrained. SMART staff has indicated they need a decision by the end of January to reasonably assure that the station can be constructed for the costs presented and in time for use at the start of service or shortly thereafter. However, staff needs additional time and direction from the Council on implementation documents that are not available at the January 26<sup>th</sup> meeting. If the City should opt to proceed with the construction of either Option 1 or 2, the following updated timeline has been reviewed with SMART and City staff.

**January 26:** Council direction

**February 9:** Council meeting to take action on final funding, resolution with CEQA findings, and reimbursement agreement.

**February 17:** SMART Board meeting for approval of reimbursement agreement and direct SMART staff to move forward with a change order.

Given the time sensitive nature of the project, should Council decide to move forward with either Option 1 or 2, staff would propose that SMART start immediately on the design work. SMART has indicated that some of the construction items have a long lead time, and two weeks saved at the initiation of the project could be instrumental in completing work before service impacts are created. Since the reimbursement agreement requires further review and approval by both the City Council and SMART board, which would likely not be complete until at least three weeks from the time of Council's decision, staff proposes modifying the existing agreement between SMART and the City under which the feasibility study was performed. There is a remaining balance on that agreement of approximately \$50,000 that could be used to fund the design work undertaken prior to execution of the reimbursement agreement. The Council would need to include direction to authorize the Interim City Manager to amend the existing scope to fund design work should the Council wish to do so.

### **Questions & Answers from Workshop: "PROJECT TIMING"**

**Q** *If the Council was interested in moving forward, what does the timeline look like?*

**A** *If the City Council decides to move forward with either a full station or a phased station, follow up Council and SMART board approval of the agreement would occur in February, up to two months for design and contractor pricing, followed by construction starting in late spring and finishing in winter.*

### **SMART Parameters**

The City Council's policy discussion of whether to fund a SMART station in downtown, if moved forward, will result in a request to the SMART Board to enter into a reimbursement agreement with the City and create a change order to construct a station in downtown Novato. SMART is a willing partner in a potential downtown station, however, there are some parameters that SMART has articulated to the City.

1. SMART is supportive of adding stations and is open to constructing a facility if the City is interested – at no cost to SMART.
2. If a downtown station is added, the train would stop on a given run at either the North Novato - San Marin station or the Downtown Station – not both – in order to retain SMART's overall schedule.
3. All costs for a potential Downtown Station would be the responsibility of the City. SMART will provide the City with cost invoices for financial accountability.
4. SMART will not assume any responsibility or liability associated for the decision to construct the station. Any costs to transfer risk to the contractor relating to the construction will be included in the construction costs to be reimbursed by the City.
5. No operational assurances will be provided by SMART as to the number of stops or the schedule between weekday or weekend service. As with all stations, SMART needs to retain operational control to determine what is in the best interest of riders and the system as a whole. If and when the downtown station is fully built at the City's

expense and becomes operational, the City will be able to provide suggestions to SMART for their consideration regarding service.

### **SMART Operations / Ridership**

At the January 12<sup>th</sup> workshop, there were a variety of questions regarding ridership and operations. Staff has attempted to respond to the questions based on the information available on SMART's web site. Estimates of ridership and the potential impacts to foot traffic downtown are contained within the environmental documents for the project. SMART provided no updated information.

Projected ridership numbers for SMART service were developed for and published in the project's 2006 Final Environmental Impact Report (FEIR.) Adjustments or modifications to some of these numbers were published in the 2008 Supplemental Environmental Impact Report (SEIR) and the 2014 Environmental Assessment (EA).

The 2006 FEIR studied the contemplated SMART service from Cloverdale to Larkspur including two Novato stations; one at the current Novato North – San Marin location, and one at Roblar Drive. The FEIR included a model-based ridership projection of 5,050 passenger trips on an average weekday in year 2025. The 5,050 trips includes an estimated 175 boardings and 189 alightings at the Novato North – San Marin Station, and 93 boardings and 94 alightings at the Roblar Station.

The 2008 SEIR was completed to analyze environmental impacts of four changes to the project, including the addition of weekend service and alternate Novato station locations to the Roblar Drive location, including both the selected Novato South - Hamilton Station and the Downtown Station site.

The SEIR estimated a Saturday and Sunday ridership range of 1,820 to 2,020 and 1,160 to 1,260 passenger trips respectively. These weekend numbers were developed by application of a reduction factor to the 2006 FEIR weekday numbers, and not by development of a new model.

Similarly the analysis of alternate stations in the SEIR did not involve a new ridership model as it was not deemed appropriate for the detailed station to station comparison analysis required. In addition, the SEIR ridership numbers contemplated a Downtown Station instead of the Roblar Drive Station, and not in place of the Novato North – San Marin Station. The SEIR included an estimate of 160 to 180 boarding passengers per typical weekday in 2025 at the downtown station.

The 2014 EA examined the proposed rail extension from San Rafael to Larkspur. The EA included an estimate of 5,449 passenger trips on an average weekday in year 2035. There was no information provided in the EA regarding individual station boardings and alightings at any of the considered Novato stations.

### **Questions & Answers from Workshop: "SMART OPERATIONS / RIDERSHIP"**

**Q What is the time schedule of stops? Will the downtown stop be used weekdays? Weekends?**

**A SMART anticipates that there will be thirty trips per day with thirty minute headways on**

commute days. Headway is the time between trains. The thirty trips represents fifteen southbound and fifteen northbound for a total of thirty. A sample weekday schedule was included in the EIR. There was no weekend schedule in the EIR, nor has SMART published any weekend schedules.

**Q What control does the City have as to how, when or how frequently the Downtown Station will be used if it is built?**

A The operational schedule of the train will be the responsibility of SMART and SMART has stated that they will provide no operational assurances regarding the Downtown Station. SMART has stated that the train will stop at either the Novato North – San Marin station or at the Downtown station, but not at both on the same trip.

**Q What happened to the concept of downtown being a “whistlestop”?**

A Staff is still researching some history of the Council’s discussion of “whistlestop”.

**Q What if ridership is low for the Downtown Station? Are there any guarantees from SMART regarding continued utilization of the station?**

A SMART will not provide any ‘guarantees of service’ for any specific station as they are responsible for the system as a whole. They are willing to talk with the City in the event that ridership becomes an issue that would lead to consideration of schedule changes. It is also important to remember that the City has a permanent seat on the SMART Board of Directors and has an active voice in SMART policy decisions.

**Q What is the impact on the North Novato - San Marin station of having a Downtown station?**

A With the short timeframe for decision making regarding the downtown station, it is not possible to make an evaluation of the impact. As SMART has stated, a train cannot stop at both the Novato North – San Marin station and the Downtown Station on the same trip, and as such any downtown stop will result in elimination of a stop at Novato North – San Marin. This could negatively impact the Novato North – San Marin station, however there is also no current information regarding potential ridership of a downtown station.

### **California Environmental Quality Act**

If the City Council makes a decision to fund project construction, it will need to make CEQA findings. SMART originally prepared and certified an environmental impact report (EIR) on the development of the originally proposed rail corridor project in 2006 which analyzed the potential environmental impacts of proposed Novato station locations at San Marin/Atherton and on Roblar Drive near Nave Drive.

Document link: [http://www.sctainfo.org/pdf/smart/final/final\\_eir.pdf](http://www.sctainfo.org/pdf/smart/final/final_eir.pdf).

Subsequent to the certification of this EIR, SMART chose to analyze numerous additional modifications to the original proposal, including consideration of three alternative station locations to the proposed Roblar Drive site, one of which included a downtown station at the Grant Avenue location. SMART prepared and certified a Supplemental EIR for these possible project modifications in 2008.

Document link: <http://www2.sonomamarintrain.org/index.php/docs/eir/#FSEIR> (click on link, choose Documents/Environmental Documents/ and then, under CEQA Documents, choose Final Supplemental Environmental Impact Report.)

An excerpt from this document describing and assessing potential environmental impacts of a Downtown Station is attached (*see Attachment 4*). The analysis identified six potentially significant impacts in the areas of traffic, parking, and cultural (historic) resources, and the proposed mitigation measures that would be needed to address each.

If the City Council makes a decision to fund project construction, it could rely upon the previously certified Supplemental EIR under provisions of Section 15162 of the CEQA Guidelines if it finds that there is no new information or changed conditions applicable to the project since preparation of the Supplemental EIR that would indicate new environmental impacts. Based on a review of the 2008 documents, staff's opinion is that the Supplemental EIR is sufficient for such a Council action since:

- The project analyzed in the Supplemental EIR is essentially physically the same as that considered in 2008,
- The noise analysis considered the location of residential units at the Millworks project which was under construction at that time,
- Traffic counts in the vicinity are not appreciably different today than in 2008 due to the lack of development which occurred during the intervening years of economic recession, and
- The current proposal is for occasional use of the station compared with the impact analysis in 2008 which assumed full daily use of the station which therefore would result in less daily impacts than those previously analyzed.

The Supplemental EIR contained four mitigation measures placing requirements on the project which relate to future traffic impacts and potential effects on the historic depot building and the former freight building, summarized as follows:

1. SMART shall pay a proportional share of the cost of signalization if warranted in the future of the intersections of Grant Avenue/Railroad Avenue and Grant Avenue/Reichert Avenue;
2. The City may restrict parking on nearby streets to discourage station-related parking;
3. SMART shall prepare an analysis for determination by the State Historic Preservation Officer of the eligibility of the former Depot building for listing on the National Register of Historic Places, and if eligible, any alterations of the Depot building or station construction shall comply with the Secretary of the Interior's Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings;
4. An Extended Phase I archeological study is recommended in areas where ground disturbance is planned for the station improvements;

SMART has indicated that funding for these mitigation measures would be the responsibility of the City. The costs of the historic and archeological investigations for Measures 3 and 4 above have been included in the project cost estimates, although any subsequent costs that may result from determinations of the studies have not been factored in.

Regarding Measure 1 above, the City's traffic model does not indicate the need to signalize these intersections due to current demands or based on future projected growth, so the likelihood of needing to add traffic signals in the foreseeable future is remote. Measure 2 is discretionary, and the 2008 SEIR did not take into account the availability of the City's adjacent Depot Lot for public parking.

### *Questions & Answers from Workshop: "CEQA"*

**Q Who will pay for the EIR mitigation measures outlined for the Downtown station?**

**A** The 2008 Supplemental EIR, which examined the Downtown Station as an alternative, identified three potentially significant impacts and identified associated mitigation measures. These mitigation measures would:

1. Require that SMART pay a proportional share of the costs of any future signalization of the intersections of Grant Avenue/Railroad Avenue and Grant Avenue/Reichert Avenue. The City's traffic model does not indicate the need to signalize these intersections due to current demands or based on future projected growth, so the likelihood of needing to add traffic signals in the foreseeable future is remote.
2. Require an evaluation of the qualifications of the former depot building for listing on the National Register of Historic Places, and if deemed eligible, consider the impacts of the station design and construction on the historicity of the depot building and make recommendations to reduce such potential impacts.
3. Require an archeological evaluation of historic or prehistoric artifacts in the vicinity of the former freight building. Again, this investigation may result in recommendations to reduce such potential impacts.

SMART has stated that all costs for the downtown station, including the costs associated with the three mitigation measures summarized above, are the responsibility of the City based on the arrangement that is being discussed. Staff estimates that the historic and archeological studies called for would cost between \$10,000 and \$40,000. It is unknown at this time if the studies would identify any necessary modifications to the station design or construction measures, or the ultimate costs that such modifications might engender.

### **FISCAL CONSIDERATIONS**

There are a number of fiscal considerations for Council to consider.

#### *Cost of Feasibility Study*

The City authorized \$100,000 on October 6, 2015, for SMART to perform a feasibility study for a downtown SMART station. SMART estimates that it has spent approximately \$50,000 of the original \$100,000. The City will be billed in the near future when SMART's contractors submit invoices to SMART.

#### *Available Funding Sources for Project*

In considering whether or not to fund a project such as the downtown station, the City could consider two funding options – either one-time funds or some form of debt financing. The City could also consider a combination of those two options.

*One-Time Funds*

The City has some one-time dollars available that could be used for the downtown station. While the City's General Fund Reserve (i.e. Emergency and Disaster Response Reserve) would normally be a primary available option, current reserve levels are right at the 15% minimum policy level and staff would not recommend drawing those reserves down further at this time. Resources do exist in Measure F and other funding categories. The City Council historically has set aside money from time-to-time for specific purposes into separate accounting funds and it is the Council's prerogative to re-visit those designations as it chooses. However, any decision to re-appropriate previously-set-aside funds would mean a shift in priorities away from those projects for which funding was already allocated.

Funding options could be classified into several major categories, as highlighted in the table below.

<b>Fund Description</b>	<b>Approximate Amount Available</b>
<b>Currently available and unallocated one-time funds</b>	
Unspent, Unallocated Measure F funds	\$5,500,000
Novato Public Financing Authority fund (previous General Fund money deposited into the NPFA fund; plus proceeds from the lease of the Carlile House)	\$600,000
<b>Currently allocated one-time funds</b>	
Measure F Risk Mitigation Reserve	\$3,000,000
Other previously allocated funds (Includes a variety of funds for which Council has previously set project priorities; examples include Measure F technology funding, excess equipment replacement funding, and others)	\$2,000,000 - \$3,000,000
<b>Funds that could be available soon (2016)</b>	
Buck Trust Development Agreement	\$1,000,000
Hamilton Hospital Sale Agreement	\$2,000,000
Hamilton Cottage Sale Agreement (Senior Housing Triangle)	\$500,000
<i>Notes:</i>	
<i>Redevelopment Lawsuit – The City may obtain resolution during 2016 on its lawsuit over \$5.2 million in former redevelopment funds. If the City is successful, these funds may become available for use. However, due to the unknown outcome of the litigation at this time, staff would not recommend considering committing these funds at this time.</i>	

Debt Financing

The City may have some options to issue debt to finance a portion or all of the downtown station project. These options spare the City from using one-time money now at the expense of paying interest costs in future years to repay the debt.

A key consideration for a debt issuance of this type is whether or not the provisions of Novato's 1987 Measure D apply. Measure D was a voter-approved initiative that limited the City's ability to issue debt to acquire real property and/or major capital improvements to real property above a certain dollar limit (currently the limit is \$2,231,843). However, because the SMART station

improvements lie completely in the SMART right of way and the City does not gain title to or usage of any real property or improvements, staff and legal counsel believe that Measure D most likely does not apply to a debt issuance for purposes of funding a SMART station.

In recognition of the Measure D limit and the ambiguities around some of the Measure D language, staff has provided several example debt financing scenarios in the table below. Some scenarios keep the debt amount issued below the \$2.2 million limit while others fully fund each project option. The scenarios below are intended to be illustrative in nature only; the actual amount financed, interest rates, length of term, source of financing, etc., would be determined later based on Council direction.

**Debt Financing Example Scenarios**

	<b>Scenario A</b>	<b>Scenario B</b>	<b>Scenario C</b>	<b>Scenario D</b>	<b>Scenario E</b>
<b>Project Funded</b>	Phased	Phased	Phased	Full Station	Full Station
<b>Total Cost</b>	\$2,400,000	\$2,400,000	\$2,400,000	\$5,000,000	\$5,000,000
<b>Amount to be Cash-Funded</b>	\$200,000	\$0	\$1,000,000	\$2,800,000	\$0
<b>Amount to be Debt-Financed</b>	\$2,200,000	\$2,400,000	\$1,400,000	\$2,200,000	\$5,000,000
<b>Assumed Interest Rate</b>	5%	5%	5%	5%	5%
<b>Term of Financing</b>	20 Years				
<b>Approximate Annual Debt Service</b>	\$177,000	\$193,000	\$112,000	\$177,000	\$441,000
<b>Total Interest Cost of Debt</b>	\$1,300,000	\$1,400,000	\$850,000	\$1,300,000	\$3,000,000

*Potential Impact to other City Projects*

A second consideration, in addition to besides where the funding would come from, is what other projects or needs exist that would have fewer funding opportunities due to the City's expenditure of one-time funds on the downtown station. Rather than provide a laundry list of projects, below are just a few examples of current capital improvement projects that are not fully funded at this time:

- Hill Field / MTSC / Hill Recreation Area Master Plan
- Sherman Avenue Streetscape / Enhanced Civic Green
- North Redwood Streetscape Improvements
- Dogbone Meadow Improvements
- Other City initiatives

**Questions & Answers from Workshop: "FISCAL CONSIDERATIONS"**

**Q Has the Measure F Oversight / Citizens Finance Committee weighed in on the downtown station and funding options?**

**A** The Measure F Oversight / Citizens Finance Committee met on January 21, 2016 to discuss the downtown station. Staff presented known information and answered a variety of questions from the Committee. On a unanimous vote of the members present (1 was absent), the Committee recommended to the City Council that no City funds be used to construct a downtown station; in particular, the Committee further recommended that no Measure F or Measure C funds be used to do so.

**Q Can Staff provide a cost/benefit analysis of the options for Council consideration?**

A Staff does not have a cost/benefit analysis to provide to the Council. A cost/benefit analysis would require updated ridership projections and a fiscal impact analysis. This work is estimated to require six months to complete, and would not be available in time to provide any guidance prior to the City having to commit funds under Options 1 and 2.

**Q How much would the Downtown Station cost if it were to be built later after SMART is operational?**

A At the January 12<sup>th</sup> work session, SMART Chief Engineer Bill Gamlen stated that it is difficult to say, but that once revenue service starts, the available windows are greatly reduced and costs could easily double.

**Q Is there a way to reduce the costs for the Phased Station option?**

A There are infinite ways to phase a project, but SMART chose the phasing limits after an analysis of work requirements and restrictions. Reducing the Phase 1 project to include fewer improvements results in a higher overall cost, as it pushes service-sensitive work to the future when the track will be in service. SMART does not recommend any reduction in the Phase 1 scope.

**Q When the City combined the redevelopment project area between Hamilton and Downtown, there was an upfront amount of money used to improve downtown by redoing Grant Avenue. Was there a commitment by the City at that time that future money would be spent in Hamilton?**

A Staff is still researching what if any formal or informal "commitments" may have been discussed or made regarding the allocation of funds within the consolidated redevelopment area in the past.

**Q What are the total costs of both options including reimbursement costs to SMART for construction and separate City costs to create a complete station?**

A SMART has stated that all costs associated with this station, including design and construction, are the responsibility of the City at this time. SMART would not contribute any funds towards to completion of either the Option 1 or Option 2 projects. The total estimated cost of the full station is \$5.5M, including work on the adjacent City depot lot, while the cost of the phased construction is estimated at \$2.4M for the first phase, exclusive of adjacent depot lot improvements. These two costs would be completely the responsibility of the City per the contemplated agreement.

### **Reimbursement Agreement**

SMART and the City have had very preliminary discussions regarding a "Reimbursement Agreement". Staff has represented the discussions and feedback from SMART below. Should Council decide to move forward with either Option 1 or 2, SMART and City staff will work on finalizing an agreement and return with the draft final document for Council approval at the February 9<sup>th</sup> City Council meeting. In the event that Council approves moving forward with either Option 1 or 2, direction should include feedback on the key components of the reimbursement agreement so that staff has some direction regarding these discussions with SMART. The following are key points:

### **Opt Out**

SMART and the City both see the need for an "opt out" provision if construction costs exceed a pre-determined amount (set by the City Council). The "opt out" may include a provision that permits the City to terminate the agreement if SMART's construction estimates at the time of the contract exceed \$5,000,000 (or \$2,400,000 for the phased approach).

The opt-out opportunity would occur at the completion of bid solicitation following completion of final plans. If estimated costs exceed that agreed upon amount, the City would be given the opportunity to reconsider funding the project, and would be responsible for project costs incurred to date, most likely limited to design costs which could be up to 20% of project costs. This provides the City with a final veto opportunity based on refined cost estimates.

If direction is provided to move forward with either station construction option, the agreement would be considered by SMART Board by February 17<sup>th</sup>. Final design and procurement of bids is anticipated to take 60 days, resulting in a likely opt-out date of mid-April. The opt-out decision, if triggered, would be brought to Council at the next available City Council meeting for discussion and action. Should the opt-out provision not be triggered, construction would begin as soon as practicable thereafter with no additional City input. Under this scenario, the City would be responsible for all costs even if they exceed the \$5,000,000 estimate.

### **Exit Provision**

In addition to the "opt out" relating to potential costs, staff also recommends an "exit provision" which would include the ability to terminate the agreement due to other unforeseen circumstances which could increase costs, result in significant delays or otherwise render the project impossible. The City would be responsible for all costs incurred by SMART up to the point where the "exit provision" was invoked.

### **Service Guarantee**

SMART has stated that they will not provide any guarantee of service at the downtown station. Staff would like to see some form of guarantee based on the City's financial investment, but recognizes that SMART is the operator of the train service and as such needs to be free to determine routes and schedules based on their own judgment. That said, if and when the downtown station is fully built at the City's expense and becomes operational, SMART is open to hearing suggestions from the City for their consideration regarding service. This is the only service guarantee for which SMART has expressed support to date.

### **Insurance, Bonding and Indemnity**

Staff believes these agreements should require that the contractor obtain insurance and bonds and indemnify the City as the funder of the project so that the City's interests are protected. Staff recognizes that the cost for this should be part of the construction budget and charged back to the City. Staff also recommends that the indemnity provision be clear that each party indemnifies each other for each party's actions, decisions, etc.

### **Maintenance of the Facility**

SMART has agreed that SMART is the owner of the facility on their property and will be

responsible for all ongoing maintenance thereof. This should be stated in the agreement.

### **Accounting**

As with all funding agreements, staff recommends that a provision be added to provide an accounting to the City of all monies spent toward the project for which SMART will be receiving reimbursement.

The improvements are proposed for SMART's right-of-way and require no City permits or oversight. The design-build nature of the work reduces, but does not eliminate, change order potential. Under the agreement, the City has no input into the design or construction of the project.

The downtown station construction would proceed in a similar manner to the other Novato stations, other than that the City would be reimbursing SMART for their project costs under the terms of the agreement.

### **Public Outreach**

Recognizing the short window of opportunity for outreach, staff developed a public outreach effort immediately following the January 12<sup>th</sup> Council meeting. As staff stated at the meeting, adequate outreach and public engagement requires a thoughtful process and is difficult to achieve – and be effective – in less than ten days. However, to provide the community with as much time as possible to give input, staff provided a variety of options to allow the community to comment and ask questions. Background information, including the project options and fiscal considerations, were provided on the City's website and on Open Novato – where the community was encouraged to go for more information and to provide feedback.

To encourage feedback from various demographics represented in Novato and make it convenient to provide feedback, the City offered a number of options to give input:

- **Visit our online forum and weigh-in:** [novato.org/opennovato](http://novato.org/opennovato)
- **E-mail us:** [city@novato.org](mailto:city@novato.org)
- **Drop-off a note to us or mail-in your comments/questions:**  
City Administrative Offices  
Attn: SMART project  
[922 Machin Ave.](#)  
[Novato, CA 94945](#)
- **Come to the City Council meeting:**  
Tuesday, January 26, 2016 at 6:30pm  
Novato City Hall  
[901 Sherman Avenue](#)

To inform the community of the proposed project and options to provide input, City outreach efforts included:

- ¼-page ads in the Marin IJ and Novato Advance. The IJ ad ran five times in its print edition through Tuesday, 1/26 and will have received a minimum of 40,000 impressions on [marinij.com](http://marinij.com) (see Attachment 5).
- A landing page on our website which can be accessed directly: [www.novato.org/SMART](http://www.novato.org/SMART), as a news item from our homepage, and under our "Hot Topics" section.

- E-notification from the City, announcing that the Council will consider this item on 1/26 and providing info and links to the webpage and feedback options.
- Public noticing – approximately 1200' radius from property boundary (this reaches to Redwood Boulevard).
- Sent information to the Chamber and Downtown Novato Business Association to disseminate electronically to their members, as well as to the City's committees, commissions, and boards.
- Created an Open Novato ([novato.org/opennovato](http://novato.org/opennovato)) page which included the project background, fiscal considerations, and a question that asks participants which option they prefer and why. As of January 21, approximately 220 individuals have provided feedback—which is equivalent to nearly 11 hours of public testimony @ 3 minutes per person at a City Council/public meeting.
- Collected feedback via the City's e-mail ([city@novato.org](mailto:city@novato.org)), NextDoor and Facebook accounts. As of January 21, approximately 33 individuals provided feedback. A spreadsheet detailing all feedback received as of January 21, is attached to this staff report.
- Distributed flyers at City facilities, both libraries, and displayed in the Downtown kiosks.
- Prepared our front desk to collect any feedback dropped off at or mailed to City offices
- Posted information on NextDoor, Hamilton Forum, the Novato Patch, and on the City's Facebook pages and Twitter feed.
- Posted information on Novato Community Television

Attached is the public feedback that had been collected as of the publishing date for this report (*Attachment 6*). Additional public input that is received after the publication of this staff report up to the Council meeting will be accumulated and provided to the Council separately and posted on the City's website.

## **CONCLUSION**

The vision of an active SMART station in the downtown is compelling. One can envision future commuters and visitors discovering Downtown Novato, increased foot traffic and commerce, and the spin-off of other private sector investments. Investing in a downtown SMART station can be an economic development boost to our downtown, and our City. With this view, the Novato Council has advocated for a downtown station for many years – seeking a SMART presence in our downtown.

Unfortunately, given the City's current circumstances and constraints, staff is recommending that the City not to move forward with the construction of a Downtown SMART station at this time. The key factors that have led to this recommendation include: (1) the projected costs for either construction option are much higher than was envisioned and would take significant financial resources from a limited pool of City funds; (2) there are too many uncertainties regarding the project and sufficient time for further analysis and research is not currently possible, and (3) the City has limited financial resources and an investment in SMART means less funding available for other City projects and priorities. More specifically, while the City's overall budget is better with the passage of Measure C, the recent ¼ cent sales tax measure, we still face a structural deficit in future years in addition to unmet infrastructure needs and community desires for other quality of life improvements. Additionally, City investments may still be required for the two existing Novato SMART stations to ensure that vehicle, bus, pedestrian, and bicycle traffic are integrated with City infrastructure and neighborhoods.

Given the community feedback over the last week, we recognize that there is a strong community interest in a downtown SMART station. This interest confirms the City Council's 2009 advocacy to have the Downtown Station be considered as a "priority site" should additional stations be considered in the future. If Council chooses to not move forward at this time, the City and SMART should continue conversations and see if there is a way to make this happen in the future for the Novato community, with a potential for a public-private partnership or other funding options.

Staff recognizes that this policy decision by the City Council with long-term implications and respects that the Council may have different views or a longer term vision for Novato.

### **ATTACHMENTS**

1. Staff Report for April 28, 2009 City Council Meeting, including letter to SMART Board dated April 28, 2009 regarding designation of the Downtown Station as a priority.
2. January 4, 2016 SMART Memorandum titled "*Evaluation of a Downtown/Grant Avenue Station*"
3. Cost Estimate Sheet
4. Excerpts from SMART's 2008 Final Supplemental Environmental Impact Report
5. Copy of Newspaper Advertisement of January 26, 2016 City Council meeting.
6. Results from Public Outreach Efforts

**MTC RESOLUTION 3434 TRANSIT-ORIENTED DEVELOPMENT (TOD) POLICY  
FOR REGIONAL TRANSIT EXPANSION PROJECTS**

Adopted July 27, 2005

**1. PURPOSE**

The San Francisco Bay Area — widely recognized for its beauty and innovation — is projected to grow by almost two million people and one and a half million jobs by 2030. This presents a daunting challenge to the sustainability and the quality of life in the region. Where and how we accommodate this future growth, in particular where people live and work, will help determine how effectively the transportation system can handle this growth.

The more people who live, work and study in close proximity to public transit stations and corridors, the more likely they are to use the transit systems, and more transit riders means fewer vehicles competing for valuable road space. The policy also provides

support for a growing market demand for more vibrant, walkable and transit convenient lifestyles by stimulating the construction of at least 42,000 new housing units along the region's major new transit corridors and will help to contribute to a forecasted 59% increase in transit ridership by the year 2030.

This TOD policy addresses multiple goals: improving the cost-effectiveness of regional investments in new transit expansions, easing the Bay Area's chronic housing shortage, creating vibrant new communities, and helping preserve regional open space. The policy ensures that transportation agencies, local jurisdictions, members of the public and the private sector work together to create development patterns that are more supportive of transit.

**TABLE 1: Resolution 3434 Transit Extension Projects Subject to Corridor Thresholds**

PROJECT	SPONSOR	TYPE	THRESHOLD IS MET WITH CURRENT DEVELOPMENT?
BART East Contra Costa Rail Extension	BART/CCTA	Commuter Rail	No
BART — Downtown Fremont to San Jose/Santa Clara (a) Fremont to Warm Springs (b) Warm Springs to San Jose/Santa Clara	(a) BART (b) VTA	BART extension	No
AC Transit Berkeley/Oakland/San Leandro Bus Rapid Transit: Phase 1	AC Transit	Bus Rapid Transit	Yes
Caltrain Downtown Extension/Rebuilt Transbay Terminal	TJPA	Commuter Rail	Yes
MUNI Third Street Light Rail Transit Project Phase 2 — New Central Subway	MUNI	Light Rail	Yes
Sonoma-Marin Rail	SMART	Commuter Rail	No
Dumbarton Rail	SMTA, ACCMA, VTA, ACTIA, Capitol	Corridor Commuter Rail	No
Expanded Ferry Service Phase 1: Berkeley, Alameda/Oakland/Harbor Bay, and South San Francisco to San Francisco (Note 1)	WTA	Ferry	No
Expanded Ferry Service Phase 2: Alameda to South San Francisco, and Hercules, Antioch, Treasure Island, Redwood City and Richmond to San Francisco (Note 1)	WTA	Ferry	No

Note 1: The WTA Ferry Expansion "Corridor" for the purposes of the TOD policy consists of all new terminals planned in Phase 1 and Phase 2.

There are three key elements of the regional TOD policy:

- (a) Corridor-level thresholds to quantify appropriate minimum levels of development around transit stations along new corridors;
- (b) Local station area plans that address future land use changes, station access needs, circulation improvements, pedestrian-friendly design, and other key features in a transit-oriented development; and
- (c) Corridor working groups that bring together CMAs, city and county planning staff, transit agencies, and other key stakeholders to define expectations, timelines, roles and responsibilities for key stages of the transit project development process.

## 2. TOD POLICY APPLICATION

The TOD policy only applies to physical transit extensions funded in Resolution 3434 (see Table 1). The policy applies to any physical transit extension project with regional discretionary funds, regardless of level of funding. Resolution 3434 investments that only entail level of service improvements or other enhancements without physically extending the system are not subject to the TOD policy requirements. Single station extensions to international airports are not subject to the TOD policy due to the infeasibility of housing development.

## 3. DEFINITIONS AND CONDITIONS OF FUNDING

For purposes of this policy “regional discretionary funding” consists of the following sources identified in the Resolution 3434 funding plan:

- FTA Section 5309- New Starts
- FTA Section 5309- Bus and Bus Facilities Discretionary
- FTA Section 5309- Rail Modernization
- Regional Measure 1- Rail (bridge tolls)
- Regional Measure 2 (bridge tolls)
- Interregional Transportation Improvement Program
- Interregional Transportation Improvement Program- Intercity rail
- Federal Ferryboat Discretionary
- AB 1171 (bridge tolls)
- CARB-Carl Moyer/AB434 (Bay Area Air Quality Management District)\*

These regional funds may be programmed and allocated for environmental and design related work, in preparation for addressing the requirements of the TOD policy. Regional funds may be programmed and allocated for right-of-way acquisition in advance of meeting all requirements in the policy, if land preservation for TOD or project delivery purposes is essential. No regional funds will be programmed and allocated for construction until the requirements of this policy have been satisfied. See Table 2 for a more detailed overview of the planning process.

**TABLE 2: Regional TOD Policy Implementation Process for Transit Extension Projects**

TRANSIT AGENCY ACTION	CITY ACTION	MTC/CMA/ABAG ACTION
<i>All parties in corridors that do not currently meet thresholds (see Table 1) establish Corridor Working Group to address corridor threshold. Conduct initial corridor performance evaluation, initiate station area planning.</i>		
Environmental Review/ Preliminary Engineering/ Right-of-Way	Conduct Station Area Plans	Coordination of corridor working group, funding of station area plans
<b>Step 1 Threshold Check:</b> <i>the combination of new Station Area Plans and existing development patterns exceeds corridor housing thresholds .</i>		
Final Design	Adopt Station Area Plans. Revise general plan policies and zoning, environmental reviews	Regional and county agencies assist local jurisdictions in implementing station area plans
<b>Step 2 Threshold Check:</b> <i>(a) local policies adopted for station areas; (b) implementation mechanisms in place per adopted Station Area Plan by the time Final Design is completed.</i>		
Construction	Implementation (financing, MOUs) Solicit development	TLC planning and capital funding, HIP funding

\* The Carl Moyer funds and AB 434 funds are controlled directly by the California Air Resources Board and Bay Area Air Management District. Res. 3434 identifies these funds for the Caltrain electrification project, which is not subject to the TOD policy.

#### 4. CORRIDOR-LEVEL THRESHOLDS

Each transit extension project funded in Resolution 3434 must plan for a minimum number of housing units along the corridor. These corridor-level thresholds vary by mode of transit, with more capital-intensive modes requiring higher numbers of housing units (see Table 3). The corridor thresholds have been developed based on potential for increased transit ridership, exemplary existing station sites in the Bay Area, local general plan data, predicted market demand for TOD-oriented housing in each county, and an independent analysis of feasible development potential in each transit corridor.

- Meeting the corridor level thresholds requires that within a half mile of all stations, a combination of existing land uses and planned land uses meets or exceeds the overall corridor threshold for housing (listed in Table 3);
- Physical transit extension projects that do not currently meet the corridor thresholds with development that is already built will receive the highest priority for the award of MTC's Station Area Planning Grants.
- To be counted toward the threshold, planned land uses must be adopted through general plans, and the appropriate implementation processes must be put in place, such as zoning codes. General plan language alone without supportive implementation policies, such as zoning, is not sufficient for the purposes of this policy. Ideally, planned land uses will be formally adopted through a specific plan (or equivalent), zoning codes and general plan amendments along with an accompanying programmatic Environmental Impact Report (EIR) as part of the overall station area planning process. Minimum densities will be used in the calculations to assess achievement of the thresholds.
- An existing end station is included as part of the transit corridor for the purposes of calculating the corridor thresholds; optional stations will not be included in calculating the corridor thresholds.

- New below-market housing units will receive a 50 percent bonus toward meeting the corridor threshold (i.e. one planned below-market housing unit counts for 1.5 housing units for the purposes of meeting the corridor threshold. Below market for the purposes of the Resolution 3434 TOD policy is affordable to 60% of area median income for rental units and 100% of area median income for owner-occupied units);
- The local jurisdictions in each corridor will determine job and housing placement, type, density, and design.
- The Corridor Working Groups are encouraged to plan for a level of housing that will significantly exceed the housing unit thresholds stated here during the planning process. This will ensure that the Housing Unit Threshold is exceeded corridor-wide and that the ridership potential from TOD is maximized.

#### 5. STATION AREA PLANS

Each proposed physical transit extension project seeking funding through Resolution 3434 must demonstrate that the thresholds for the corridor are met through existing development and adopted station area plans that commit local jurisdictions to a level of housing that meets the threshold. This requirement may be met by existing station area plans accompanied by appropriate zoning and implementation mechanisms. If new station area plans are needed to meet the corridor threshold, MTC will assist in funding the plans. The Station Area Plans shall be conducted by local governments in coordination with transit agencies, Association of Bay Area Governments (ABAG), MTC and the Congestion Management Agencies (CMAs).

Station Area Plans are opportunities to define vibrant mixed use, accessible transit villages and quality transit-oriented development – places where people will want to live, work, shop and spend time. These plans should incorporate mixed-use developments, including new housing, neighborhood serving retail, employment, schools, day care centers, parks and other amenities to serve the local community.

**TABLE 3: Corridor Thresholds Housing Units — Average per Station Area**

Project Type	BART	Light Rail	Bus Rapid Transit	Commuter Rail	Ferry
Housing Threshold	3,850	3,300	2,750	2,200	750

Each corridor is evaluated for the Housing Threshold. For example, a four station commuter rail extension (including the existing end-of-the-line station) would be required to meet a corridor-level threshold of 8,800 housing units.

Threshold figures above are an average per station area based on both existing land uses and planned development within a half

At a minimum, Station Area Plans will define both the land use plan for the area as well as the policies—zoning, design standards, parking policies, etc.—for implementation. The plans

## **6. CORRIDOR WORKING GROUPS**

The goal of the Corridor Working Groups is to create a more coordinated approach to planning for transit-oriented develop

shall at a minimum include the following elements:

- Current and proposed land use by type of use and density within the half-mile radius, with a clear identification of the number of existing and planned housing units and jobs;
- Station access and circulation plans for motorized, non-motorized and transit access. The station area plan should clearly identify any barriers for pedestrian, bicycle and wheelchair access to the station from surrounding neighborhoods (e.g., freeways, railroad tracks, arterials with inadequate pedestrian crossings), and should propose strategies that will remove these barriers and maximize the number of residents and employees that can access the station by these means. The station area and transit village public spaces shall be made accessible to persons with disabilities.
- Estimates of transit riders walking from the half mile station area to the transit station to use transit;
- Transit village design policies and standards, including mixed use developments and pedestrian-scaled block size, to promote the livability and walkability of the station area;
- TOD-oriented parking demand and parking requirements for station area land uses, including consideration of pricing and provisions for shared parking;
- Implementation plan for the station area plan, including local policies required for development per the plan, market demand for the proposed development, potential phasing of development and demand analysis for proposed development.

The Station Area Plans shall be conducted using existing TOD design guidelines that have already been developed by ABAG, local jurisdictions, transit agencies, the CMAAs and others. MTC will work with ABAG to provide more specific guidance on the issues listed above that must be addressed in the station area plans and references and information to support this effort. MTC is conducting an analysis of parking policies that will be made available when complete, and shall be considered in developing local parking policies for TODs.

coordinated approach to planning for transit-oriented development along Resolution 3434 transit corridors. Each of the transit extensions subject to the corridor threshold process, as identified in Table 1, will need a Corridor Working Group, unless the current level of development already meets the corridor threshold. Many of the corridors already have a transit project working group that may be adjusted to take on this role. The Corridor Working Group shall be coordinated by the relevant CMAAs, and will include the sponsoring transit agency, the local jurisdictions in the corridor, and representatives from ABAG, MTC, and other parties as appropriate.

The Corridor Working Group will assess whether the planned level of development satisfies the corridor threshold as defined for the mode, and assist in addressing any deficit in meeting the threshold by working to identify opportunities and strategies at the local level. This will include the key task of distributing the required housing units to each of the affected station sites within the defined corridor. The Corridor Working Group will continue with corridor evaluation, station area planning, and any necessary refinements to station locations until the corridor threshold is met and supporting Station Area Plans are adopted by the local jurisdictions.

MTC will confirm that each corridor meets the housing threshold prior to the release of regional discretionary funds for construction of the transit project.

## 7. REVIEW OF THE TOD POLICY

MTC staff will conduct a review of the TOD policy and its application to each of the affected Resolution 3434 corridors, and present findings to the Commission, within 12 months of the adoption of the TOD policy.

### FOR MORE INFORMATION

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Valerie Knepper • vknepper@mtc.ca.gov • 510.817.5824



METROPOLITAN  
TRANSPORTATION  
COMMISSION

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Eric Lucan <eric@ericlucan.com>

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## Formal Written Advice

1 message

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Eric Lucan <elucan@novato.org>  
To: advice@fppc.ca.gov

Mon, Dec 26, 2016 at 10:54 AM

TO WHOM IT MAY CONCERN:

I am a councilmember for the City of Novato and I am also a member of the Board of Directors of the Sonoma-Marín Area Rail Transit district ("SMART"). I am writing to request formal written advice from the Fair Political Practices Commission ("FPPC") pursuant to Cal. Gov't Code sec. 83114(b) and 2 Cal. Code Regs. Sec. 18329 with respect to the following question.

The City Council has previously approved the establishment of, the construction of and the funding for a train station for the SMART train in Downtown Novato. It is likely that in the future the Novato City Council will be asked to make additional decisions concerning this Downtown SMART station, including whether to fund the remaining infrastructure work necessary to complete the platform/stop. Additionally, the SMART Board of Directors will likely be asked whether to add train service to this new, Downtown Novato train station.

I currently own (100% interest) a rental property (1014 Machin Avenue, Novato – a duplex) that is over 1000ft away from the future platform for this Downtown SMART station (see image below). The value of my interest in said rental property exceeds \$2,000.00. Does my interest in said rental, real property disqualify me from participating in governmental decision-making concerning said Downtown train station?

I should also mention that as a councilmember I previously participated in a vote by the Novato City Council to start the infrastructure work at the Downtown Novato station location. My participation in that vote resulted in a resident filing a complaint with the FPPC in January 2016. I am still waiting for the FPPC's decision concerning that complaint. Please be clear, however, that the instant request is not seeking advice pertaining to that previous participation by me.

Below is my own research:

In considering other formal advice letters, I have looked at Regulation 18702.2(a) to determine if the decision would have a reasonably foreseeable financial effect with regards to the two following clauses:

*"(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest."*

*"(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property."*

**Parking** - considering the distance and hourly parking restrictions nearby my property, it is unlikely that traffic from train users would spill over and impact parking near my property. In fact, given that the property is located on an alley street with no public parking permitted on either side, there should be no impact on parking in the immediate vicinity of the duplex.

**Intensity of Use** - the duplex is situated in the historic downtown area of Novato which is predominately built out. It would be speculation to assume that the establishment of the station and its use by SMART will result in development in the Downtown area. And it would be further speculation that any such development might affect the value of my duplex. For example, within a 500 feet radius of my duplex, only a few parcels remain undeveloped at all.

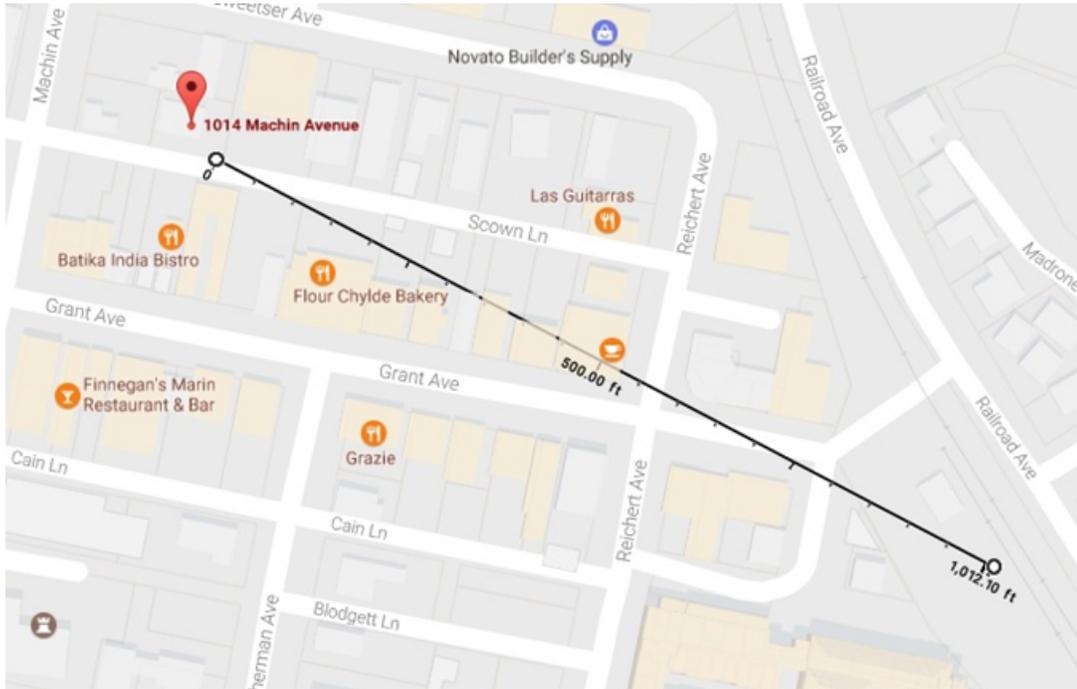
**Traffic** - considering the distance again, the fact that my property is separated diagonally, and that it is located on an "alley street" as opposed to main thoroughfare, it is unlikely that traffic along the regular routes would be affected in a way that would materially affect the transit patterns of the renters of my duplex.

**View** - the downtown station cannot be viewed from my property

**Privacy, Noise & Air Quality** - with or without the station, the train will still pass through the location where the Downtown station is proposed so the noise and air quality impacts would still exist. The main difference would be that if the station is fully funded and built and the SMART Board of Directors agrees to have the SMART train stop at the station, the train would make stops at the station, but given the distance of over 1,000 feet from where the train would stop to my property, I do not see it having a distinguishably different impact on privacy, noise or air quality.

Thank you for your time and I look forward to hearing from you shortly.

Eric Lucan  
Councilmember  
City of Novato  
[415-272-3265](tel:415-272-3265)





STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

January 9, 2017

Eric Lucan  
Councilmember, City of Novato  
26 Truman Drive  
Novato, CA 94947

Re: Your Request for Advice  
Our File No. W-17-003

Dear Mr. Lucan:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

The Act requires the Commission to provide written advice to any person whose duties under the Act are in question or to that person's authorized representative. (Section 83114(b); Regulation 18329(a).) However, the Commission will decline to give advice where the question concerns conduct that has already occurred.

After a careful review of the facts you provided, we decline to provide written advice to you at this time. Since your question concerns the same (or very similar facts) to a prior decision that is subject to a pending complaint, we are unable to advise.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

  
John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## Advice Request

1 message

Eric Lucan <elucan@novato.org>  
To: advice@fppc.ca.gov

Wed, Sep 13, 2017 at 5:37 PM

TO WHOM IT MAY CONCERN,

I would like to formally request advice whether or not I have a conflict of interest to participate in discussions and votes with regards to upcoming North Redwood Corridor project(s) in Novato.

I have a real property interest (1014 Machin Ave, a rental property) that is 1,160ft away from the project as shown in the image below.

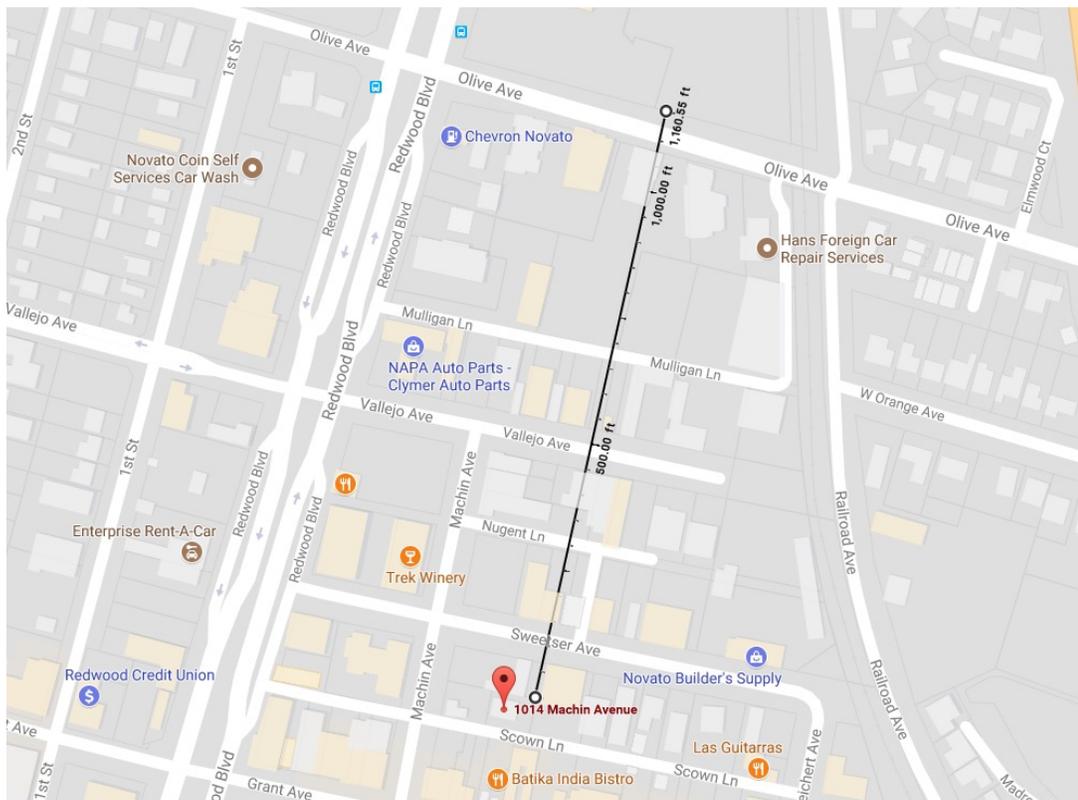
Several years ago, Novato conducted community design charettes to set a vision for the area / parcels involved. Recently, we have begun receiving applications and interest from various private developers for the parcels in the area. One developer is proposing a hotel and some retail (<http://novato.org/government/community-development/planning-division/planning-projects/residence-inn-novato>) on the northern end of the area. On the parcel closer to me, there appears to be some interest in a mixed use development of housing and retail that would be up to 3 stories.

Nothing has come before the council yet on either project, but I would like to confirm that there would be no conflict of interest for me to participate.

I don't believe the project would change the character of my property by substantially altering traffic levels or intensity of use, parking, view, privacy, noise, air quality, etc.

I am separated from the project by 4 and a half city blocks. My property is immediately adjacent to our historic downtown which is predominantly built out so there would be no impact on intensity of use.

Thank you for your time in looking into this matter. If you have any questions, please reach out to me directly.



Eric Lucan  
Councilmember  
City of Novato  
[415-272-3265](tel:415-272-3265)



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

September 15, 2017

Eric Lucan  
Councilmember, City of Novato  
26 Truman Drive  
Novato, CA 94947

Re: Your Request for Advice  
**Our File No. W-17-224**

Dear Mr. Lucan:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

The Act requires the Commission to provide written advice to any person whose duties under the Act are in question or to that person's authorized representative. (Section 83114(b); Regulation 18329(a).) However, the Commission will decline to give advice where the question concerns conduct that has already occurred.

After a careful review of the facts you provided, we decline to provide written advice to you at this time. Since your question concerns the same (or very similar facts) to a prior decision that is subject to a pending complaint, we are unable to advise.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,



Zachary W. Norton  
Senior Counsel  
Legal Division

ZWN:jgl

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## Advice Request

1 message

Eric Lucan <elucan@novato.org>  
To: advice@fppc.ca.gov

Sat, Oct 14, 2017 at 3:19 PM

TO WHOM IT MAY CONCERN,

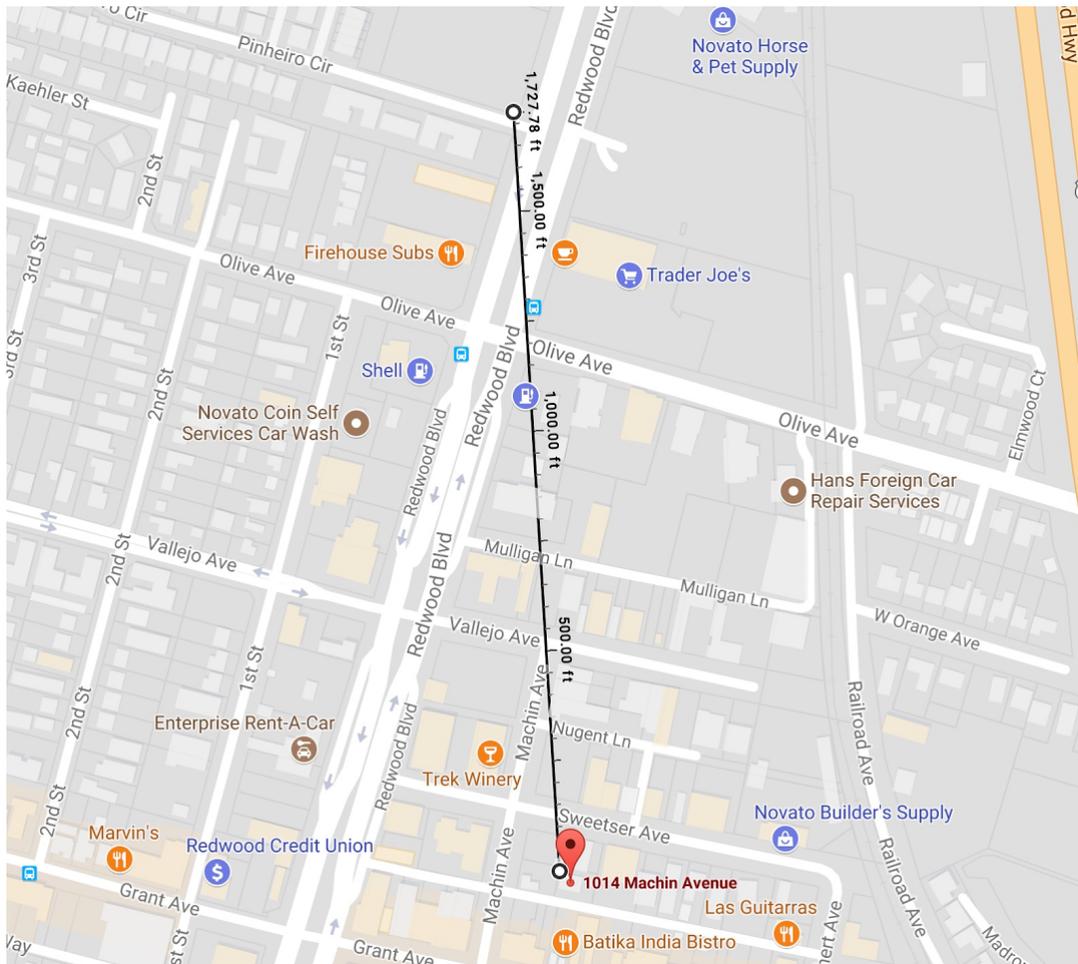
I would like to formally request advice whether or not I have a conflict of interest to participate in upcoming discussions and decisions regarding a Master Plan Amendment and Precise Development Plan Amendment for the Atherton Place project in Novato (<http://novato.org/government/community-development/planning-division/planning-projects/atherton-place>)

I have a real property interest (1014 Machin Ave, a rental property) that is 1700+ feet away from the project as shown in the image below.

I don't believe the project would change the character of my property by substantially altering traffic levels or intensity of use, parking, view, privacy, noise, air quality, etc.

I am separated from the project by 5 large city blocks and diagonally separated by Redwood Boulevard which is the old Highway 101 and a significant divide. My property is immediately adjacent to our historic downtown which is predominantly built out so there would be no impact on intensity of use.

Thank you for your time in looking into this matter. If you have any questions, please reach out to me directly. My home address is 26 Truman Drive, Novato CA 94947.



Eric Lucan  
Councilmember  
City of Novato  
[415-272-3265](tel:415-272-3265)



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

October 19, 2017

Eric Lucan  
Councilmember, City of Novato  
26 Truman Drive  
Novato, CA 94947

Re: Your Request for Advice  
**Our File No. W-17-247**

Dear Mr. Lucan:

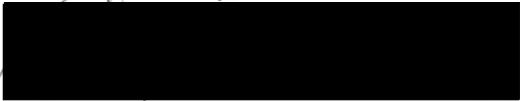
This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

The Act requires the Commission to provide written advice to any person whose duties under the Act are in question or to that person's authorized representative. (Section 83114(b); Regulation 18329(a).) However, the Commission will decline to give advice where the question concerns conduct that has already occurred.

After a careful review of the facts you provided, we decline to provide written advice to you at this time. Since your question concerns the same (or very similar facts) to a prior decision that is subject to a pending complaint, we are unable to advise. You may wish to consult with your city attorney about the matter.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

  
John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.



## FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3000 • Sacramento, CA 95811

November 7, 2017

Councilmember Eric Lucan  
City of Novato  
[elucan@novato.org](mailto:elucan@novato.org)

**Re: FPPC Case No. 16/284**

Dear Mr. Lucan:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act.<sup>1</sup> This letter arises from two sworn complaints, which allege that you—in your capacity as a Novato City Councilmember—had a conflict of interest in January 2016 when you voted on funding in connection with construction of a downtown SMART train station.<sup>2</sup> After investigation, the Enforcement Division is closing its file on this matter with this letter as discussed below.

The Act and its regulations are amended from time to time. All legal references and discussions of law pertain to the Act's provisions as they existed at the time of your vote in January 2016.

No public official at any level of state or local government may make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.<sup>3</sup> This type of violation commonly is referred to as a conflict of interest.

Various financial interests may give rise to a conflict of interest, including any real property in which the public official has a direct or indirect interest of at least \$2,000.<sup>4</sup> Based on our investigation, it appears that in January 2016, you owned a residential duplex on Machin Avenue in the City of Novato. On your Statement of Economic Interests for calendar year 2015, you reported that the property had a fair market value somewhere in the range of \$100,001 to

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<sup>1</sup> The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in California Code of Regulations, title 2, sections 18110 through 18997. Unless otherwise noted, all statutory references are to the Government Code, and all regulatory references are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> SMART is an acronym for Sonoma-Marín Area Rail Transit.

<sup>3</sup> Section 87100.

<sup>4</sup> Section 87103; and Regulation 18700, subdivision (c)(6)(B).

\$1,000,000—and you reported rental income from this property in the range of \$10,001 to \$100,000.

On January 26, 2016, at a meeting of the Novato City Council, one of the agenda items was: “CONSIDERATION OF AND DIRECTION REGARDING FUNDING CONSTRUCTION OF A DOWNTOWN SMART TRAIN STATION.”

The proposed location for the train station was near the intersection of Grant and Railroad Avenue. According to Google Maps, the walk from your rental property to this intersection takes about four minutes. (Parcel to parcel, you indicated the distance is about 800 feet.)

The agenda item involved consideration of the following options:

- Option 1 – Fund construction of a full station.
- Option 2 – Fund construction only of an initial phase of the station.
- Option 3 – Do not fund a downtown station at this time.

The staff report for this agenda item included the following recommendation: “Although City staff is supportive of a downtown SMART station, with the combination of other city priorities, uncertainties and the costs as detailed in the discussion, staff finds it is not able to recommend moving forward with construction of a station (Option 1 or 2) at this time.”

At the meeting, you made a motion in favor of Option 2. The motion received a second and carried three to two—making your vote a deciding vote.

One element of a conflict of interest is reasonable foreseeability, but a financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.<sup>5</sup> In this regard, one consideration is: “[w]hether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.”<sup>6</sup>

Another element of a conflict of interest is a material financial effect. This may be found to exist if voting “[w]ould cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”<sup>7</sup>

It is unclear how much of an effect your vote might have on the value of your property and your rental income, but tenants and buyers may consider the presence of a nearby SMART station to be an attractive convenience.

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<sup>5</sup> See Regulation 18701, subdivision (b).

<sup>6</sup> Regulation 18701, subdivision (b)(6).

<sup>7</sup> Regulation 18702.2, subdivision (a)(12).

However, you have been recusing yourself from subsequent, related agenda items. Also, you requested advice via email before your January 2016 vote (albeit only six days before voting, which was not enough time for a response). Additionally, on your Form 700 filing for calendar year 2014, you reported that you acquired your rental property on September 30, 2014—which was a time when the conflict of interest regulations were being amended.

Under these circumstances, we are not pursuing this matter. Please note, however, that this is not a letter of exoneration, and you may wish to request advice before casting any related votes in the future. If you do request advice, bear in mind that there are specific rules about how many days may be required to provide a meaningful response—and six days may not be enough time.<sup>8</sup> For more information, please visit our website at: [www.fppc.ca.gov/advice.html](http://www.fppc.ca.gov/advice.html).

The information gathered in this case will be retained and may be considered in the future should an enforcement action become necessary due to newly discovered information or failure to comply with the Act in the future. Failure to comply with the Act in the future may result in the imposition of administrative or civil penalties against you by the Commission—and certain violations of the Act may be prosecuted by law enforcement agencies as criminal offenses.

Thank you for your attention to this matter. Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. Please do not hesitate to call if you have any questions.

Very truly yours,



Neal P. Bucknell  
Senior Commission Counsel  
Enforcement Division  
[nbucknell@fppc.ca.gov](mailto:nbucknell@fppc.ca.gov)  
(916) 323-6424

cc: Ms. Tina McMillan, Sworn Complainant;  
Mr. Al Dugan, Sworn Complainant

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<sup>8</sup> For example, Section 83114, subdivision (b), provides: “Any person may request the Commission to provide written advice with respect to the person’s duties. . . . Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the Commission . . . if the requester, at least 21 working days prior to the alleged violation, requested written advice from the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the Commission to provide advice within 21 days of the request or such later extended time.”