

1 GARY S. WINUK  
Chief of Enforcement  
2 ZACHARY W. NORTON  
Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5660

5 Attorneys for Complainant  
6  
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
11

12 In the Matter of ) FPPC No. 12/159  
13 PHILIP HARVEY )  
14 Respondent. ) STIPULATION, DECISION and  
15 ) ORDER  
16 )  
17 )

18 Complainant, the Fair Political Practices Commission, and Respondent Philip Harvey agree that  
19 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next  
20 regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge  
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Philip Harvey violated the Political Reform  
4 Act by attempting to use his official position to influence a governmental decision in which he had a  
5 financial interest, in violation of Government Code Section 87100 (2 counts). These counts are  
6 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth  
7 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount  
10 of Six Thousand Dollars (\$6,000). A cashier's check from Respondent in said amount, made payable to  
11 the "General Fund of the State of California," is submitted with this Stipulation as full payment of the  
12 administrative penalty, to be held by the State of California until the Commission issues its decision and  
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this  
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission  
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with  
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the  
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission  
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be  
19 disqualified because of prior consideration of this Stipulation.

20  
21 Dated: \_\_\_\_\_  
22 Gary S. Winuk, Chief of Enforcement  
23 Fair Political Practices Commission

24 Dated: \_\_\_\_\_  
25 Philip Harvey Respondent  
26  
27  
28

1 **DECISION AND ORDER**

2           The foregoing Stipulation of the parties “In the Matter of Philip Harvey,” FPPC No. 12/159,  
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
4 Practices Commission, effective upon execution below by the Chair.

5  
6           IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_   
Joann Remke, Chair  
Fair Political Practices Commission

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT 1**

**INTRODUCTION**

Respondent Philip Harvey was a member of the Sacramento Planning Commission at all times relevant to this complaint. As member of the Planning Commission, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act<sup>1</sup> (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent used his official position to impermissibly influence the making of a governmental decision in which he had a financial interest, by communicating with planning commission staff, concerning the preparation of an addendum to a Negative Declaration and the terms of a tree removal proposal, in connection with the Curtis Park Village project.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: In December of 2010 and January of 2011, as a member of the Sacramento Planning Commission, Respondent Philip Harvey attempted to use his official position to influence a governmental decision in which he had a financial interest, by communicating with planning commission staff, concerning the preparation of an addendum to a Negative Declaration in connection with the Curtis Park Village project on behalf of his employer, in violation of Section 87100 of the Government Code.

COUNT 2: On January 31, 2011 and February 2, 2011, as a member of the Sacramento Planning Commission, Respondent Philip Harvey attempted to use his official position to influence a governmental decision in which he had a financial interest, by communicating with City of Sacramento employees, stating that certain conditions of the removal proposal (Draft Conditions v.2) were unacceptable, and that Tree #108 would not be treated as a heritage tree or subject to tree removal mitigation requirements, in connection with the Curtis Park Village project on behalf of his employer, in violation of Section 87100 of the Government Code.

---

<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 18109 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.

## SUMMARY OF THE LAW

### Conflicts of Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.<sup>2</sup>

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.3, subdivision (a), a public official attempts to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (c), a public official has a financial interest in any source of income of \$500 or more.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1, subdivision (a)(2), a person, including sources of income, is directly involved in a decision before an official's agency when that person, either directly or by an agent is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Fifth, under Regulation 18705.3, subdivision (a), any financial effect of a governmental decision on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is presumed to be material. This presumption may be

---

<sup>2</sup> Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the source of income.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

### **SUMMARY OF THE FACTS**

Respondent Philip Harvey was a member of the Sacramento Planning Commission at all times relevant to this complaint. Respondent Harvey was also Vice President of Petrovich Development Company (“Petrovich”) at all times relevant. Petrovich is responsible for the Curtis Park Village project, which involved environmental remediation of a former rail yard as a part of a mixed-use commercial and residential redevelopment project.

The Sacramento Planning Commission does not employ its own staff. Rather, members of the Planning Commission are assisted by various City of Sacramento (the “City”) employees, some of whom work for the City of Sacramento Community Development Department.

In December 2010, a City of Sacramento Senior Planner contacted Respondent in his capacity as an employee of Petrovich concerning an addendum to a Negative Declaration in connection with the Curtis Park Village project. The Senior Planner who initiated this contact with Respondent was at all relevant times an employee in the Environmental Planning Services Division of the Community Development Department. Although the Senior Planner had previously staffed matters before the Planning Commission during the time Respondent was a member of the Planning Commission, her contact with Respondent concerning the addendum was made solely in the performance of her duties for the Environmental Services Division.

During her December 2010 telephone call with Respondent, the Senior Planner informed Respondent that the addendum was a necessary prerequisite for the Urban Forest Services Division of the City of Sacramento Department of Transportation to process a tree removal permit related to the Curtis Park Village project. The Senior Planner explained that Petrovich had two options for preparation of the addendum. First, Petrovich could have a third party (i.e., a private consultant/vendor) prepare the addendum and submit it to the Urban Forest Services Manager at the City Department of Transportation. Review of the addendum would be performed by the City Attorney’s office on behalf of Urban Forest Services. Alternatively, the Senior Planner informed Respondent that Petrovich could choose to have the Environmental Planning Services staff in the City of Sacramento Community Development Department prepare the addendum. The Senior Planner informed Respondent that Environmental Planning Services staff would begin preparing the addendum and associated materials after Petrovich provided a deposit based on a cost estimate of 20 hours of work at an hourly rate of \$140, plus a 0.8% technology fee.

During the same December 2010 telephone call initiated by the Senior Planner, Respondent questioned whether City staff's work on the addendum could not be completed in 10 hours rather than 20 hours. The Senior Planner thereafter revised the cost estimate to be based 10 hours instead of 20 hours, but only upon the condition that Petrovich agree to pay the City for any additional time actually spent by City staff to prepare the addendum. This understanding was memorialized in a December 3, 2010 letter sent by the Senior Planner to Respondent, which stated in relevant part: "If additional time [beyond 10 hours] is needed to complete the Addendum, we will provide you with the reason and continue work. Full payment is due upon completion of the task."

After spending 10 hours on the addendum, the City informed Petrovich that an additional 10 hours of work was required to complete the addendum. Ultimately, Petrovich paid the City for a total of 20 hours of work to prepare the addendum.

Respondent was in contact with city staff concerning various aspects of the tree removal permit process. In an email to city staff dated January 31, 2011, Respondent communicated to a city employee that certain conditions of the removal proposal (Draft Conditions v.2) were unacceptable. On February 2, 2011, Respondent Philip Harvey communicated with City of Sacramento employees, concerning revisions to a draft heritage tree removal application. The revised application stated that Tree #108 would not be treated as a heritage tree or subject to tree removal mitigation requirements.

### **COUNT 1**

#### **ATTEMPTING TO USE AN OFFICIAL POSITION TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST**

1. **Respondent Was a Public Official as Defined by the Act**

As a member of the Sacramento Planning Commission, in December of 2010 and January of 2011, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against attempting to use his official position to influence a governmental decision in which he has a financial interest under Section 87100.

2. **Respondent Attempted to Use His Official Position to Influence a Governmental Decision**

In December of 2010 and January of 2011, Respondent Harvey contacted a City of Sacramento Senior Planner, stating that he believed the cost and time estimate for the preparation of the Addendum by the city was too high, and that the work should be completed in half the time. Consequently, Respondent attempted to use his official position to influence a governmental decision for purposes of Regulation 18702.3, subdivision (a).

3. **Respondent Had an Economic Interest**

At the time of the governmental decisions, Respondent served as Vice President of Petrovich Development Company. At the time of the decision, Respondent had an economic interest in Petrovich as a source of income of \$500 or more, for the purposes of section 87103, subdivision (c).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Petrovich had initiated the Curtis Park Village redevelopment project, and was a party to the subject of the proceedings involving the Planning Commission. Therefore, the governmental decision made in December of 2010 and January of 2011 concerning the costs of preparation of the Addendum to the Negative Declaration directly involved Respondent Harvey's economic interest under Regulation 18704.1, subdivision (a)(1) and (2).

5. Applicable Materiality Standard

Because Respondent's source of income was directly involved in the governmental decision, any financial effect of the decisions on his source of income is presumed to be material. (Regulation 18705.3(a))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

The governmental decision which respondent attempted to influence in December of 2010 and January of 2011 concerned the time the city would spend on preparation of the Addendum to the Negative Declaration, as well as the hourly preparation costs that the city would bill Petrovich. It was reasonably foreseeable at the time the attempt to influence the governmental decision occurred that the fewer hours the city spent on preparation of the Addendum, the lower the final cost would be; causing a financial effect on Respondent's source of income.

By attempting to use his official position to influence a governmental decision in which he had a financial interest, Respondent Harvey violated section 87100 of the Act.

**COUNT 2**

**ATTEMPTING TO USE AN OFFICIAL POSITION TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH THE PUBLIC OFFICIAL HAS AN INTEREST**

1. Respondent Was a Public Official as Defined by the Act

As a member of the Sacramento Planning Commission, in January and February of 2011, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against attempting to use his official position to influence a governmental decision in which he has a financial interest under Section 87100.

2. Respondent Attempted to use his Official Position to Influence a Governmental Decision

According to written correspondence provided by the City of Sacramento, on January 31, 2011 and on February 2, 2011, Respondent Harvey contacted City of Sacramento staff, concerning various aspects of the tree removal permit process stating that certain conditions of the removal proposal (Draft Conditions v.2) were unacceptable, and that Tree #108 would not be treated as a heritage tree or subject to tree mitigation requirements. Consequently, Respondent attempted to use his official position to influence a governmental decision for purposes of Regulation 18702.3, subdivision (a).

3. Respondent Had an Economic Interest

According to Respondent Harvey's Statements of Economic Interests ("SEIs") filed with the Sacramento City Clerk, at the time of the governmental decision, Respondent served as Vice

President of Petrovich Development Company. At the time of the decision, Respondent had an economic interest in Petrovich as a source of income of \$500 or more, for the purposes of section 87103, subdivision (c).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Petrovich had initiated the Curtis Park Village redevelopment project, and was a party to the subject of the proceedings involving the Planning Commission. Therefore, the governmental decisions Respondent used his official position in an attempt to influence on January 31, 2011 and February 2, 2011 concerning conditions of the tree removal proposal (Draft Conditions v.2) and whether Tree #108 would be treated as a heritage tree or subject to tree mitigation requirements directly involved Respondent Harvey's economic interest under Regulation 18704.1, subdivision (a)(1) and (2).

5. Applicable Materiality Standard

Because Respondent's source of income was directly involved in the governmental decision, any financial effect of the decisions on his source of income is presumed to be material. (Regulation 18705.3(a))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

The governmental decision which respondent attempted to influence on January 31, 2011 concerned the conditions for soil testing and removal of trees at the Curtis Park Village redevelopment project site. It was reasonably foreseeable at the time the attempt to influence the governmental decision occurred that any changes to requirements for soil analysis and tree removal requirements would impact the cost of the redevelopment project; causing a financial effect on Respondent's source of income.

**CONCLUSION**

This matter consists of two counts of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Respondent Harvey should have known of the conflict of interest requirements pertaining to directly involved sources of income. In mitigation, Respondent did not initiate the contact that gave rise to the violation of the Act, the governmental decision he sought to influence was not a matter the Planning Commission considered or voted on, and there is no history of prior violations of the Act by Respondent. Respondent contends he has consistently recused himself from

participating in/voting on all Planning Commission decisions that concern the Curtis Park Village project and that the violations were unintentional.

Attempting to use an official position to influence a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

Other similar cases regarding a violation of Section 87100 that have been recently approved by the Commission include:

*In the Matter of Tim Ward*, FPPC Case No. 05/652, had a similar fact pattern; involving a municipal design review commission member and architect, who recommended approval of a client's project to fellow commission members, despite the existence of an obvious conflict. The agreed upon penalty in that case, approved by the Commission on June 12, 2008, was \$3,000.

Another similar case, *In the Matter of Harold Griffith*, FPPC No. 12/192, had a similar fact pattern; involving the President of the Rancho Adobe Fire Protection District, who attempted to use his official position to influence a governmental decision in which he had a material financial interest, by testifying before the City of Cotati Design Review Committee regarding the proposed roadway modification component of the Old Redwood Highway rehabilitation project, adjacent to his real property and business. The agreed upon penalty in that case, approved by the Commission on December 13, 2012, was \$3,000 for the count.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000) per count for a total penalty of Six Thousand Dollars (\$6,000).

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division recommends the imposition of the agreed upon penalty of of Six Thousand Dollars (\$6,000).