



California Fair Political Practices Commission

September 18, 1987

Darrell W. Larsen
County Counsel
County of Sutter
463 Second Street
Yuba City, CA 95991

Re: Your Request for Advice
Our File No. A-87-164

Dear Mr. Larsen:

You have requested advice on behalf of the five members of the Sutter County Board of Supervisors, Allen Eager, Robert Gallagher, Tom Pfeffer, Joe Benatar and Roger Chandler, concerning their duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

The Board of Supervisors of Sutter County is considering whether to place a referendum on the ballot. The proposed referendum would amend the county's general plan to permit five-acre ranchette subdivisions in the unincorporated areas currently designated for agricultural use. You have asked whether any supervisors are disqualified from participating in the decision because of their economic interests.

CONCLUSION

The supervisors must disqualify themselves from participating in the decision to place the referendum on the ballot if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on their economic interests. Similarly, substantive changes in the wording of the referendum may require disqualification of one or more supervisors.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

FACTS

Sutter County's general plan provides for minimum parcel sizes for agriculturally-zoned land. Currently, the minimum parcels are 20 acres for orchards and specialty crops and 80 acres for row crops, field crops and grazing regions.

The Board of Supervisors of Sutter County is considering a referendum proposal which would amend the general plan designation for agriculturally-zoned land in the unincorporated areas of the county. The proposed amendment to the general plan would permit ranchette subdivisions consisting of two or more parcels, each five to ten acres in size and intended for residential use. The proposed general plan amendment would not apply to the Yuba City Urban Area, the Live Oak Urban Area, the Tierra Buena Urban Area, and the Community of Sutter, as designated in the general plan.

In our meeting on June 29, 1987, Supervisors Eager and Gallagher explained that the reason for the proposed amendment is to provide farmers in the county with the option to sell a small amount of land in order to pay off debts. Currently, a farmer can obtain authorization from the county to create a ranchette subdivision. However, each ranchette subdivision currently is considered on a case-by-case basis. The proposed amendment would provide uniform standards for all farmers in the affected areas, giving them some certainty about subdividing and selling a portion of their land for residential use.

Supervisors Eager and Gallagher both agreed that the ability to use agricultural land for ranchette subdivisions would probably make the land more valuable. In other words, the fair market value of five acres of land zoned for a ranchette would be greater than the fair market value of those five acres if zoned for agricultural use. Supervisors Eager and Gallagher also mentioned some negative aspects of the ranchette subdivision proposal for farmers. For example, they noted the potential for conflict between owners of adjacent agricultural and residential parcels over issues such as crop dusting.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the

decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his immediate family, or on:

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

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

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a)-(d).

The five members of the Sutter County Board of Supervisors are all public officials. (Section 82048.) You have asked whether any of the supervisors has a disqualifying financial interest in the decision to place the ranchette subdivision referendum on the ballot. We must first determine whether the decision in question will have a foreseeable effect on real property located in the jurisdiction of the county, on residents of the county, or on business entities doing business in the county.

The Decision to Place a Measure on the Ballot

If the general plan amendment is submitted to the voters, it is the voters, not the supervisors, who are making the final, and intervening, substantive decision. Thus, it has been argued that the mere placement of the measure on the ballot has no foreseeable effect on economic interests in the county. However, in previous advice letters when we considered this type of decision, we concluded that it generally could have a reasonably foreseeable effect on economic interests in the jurisdiction, absent unique facts to the contrary. (Benjamin, No. A-86-061; and Larsen, No. A-86-127, copies

enclosed.) There are no unique facts about the current decision which indicate that we should deviate from this general rule.

Accordingly, we conclude that the current decision could foreseeably affect the interests of the five supervisors. If the proposed referendum is placed on the ballot and subsequently approved by the voters, the actual or permitted use of real property in the county will be affected. While it is not certain that the decision to place the referendum on the ballot will result in an effect on real property or business interests in Sutter County, the conflict-of-interest laws require a reasonably foreseeable effect rather than certainty. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

We next discuss the economic interests of the five supervisors and provide general guidance regarding their ability to participate in decisions to place the proposed referendum on the ballot and to make substantive changes in the referendum.^{2/} Your letter does not mention any pending decision concerning substantive changes in the wording of the proposed ranchette referendum. However, it appears that the wording of the referendum remains subject to change. Each supervisor's situation is analyzed separately.

Supervisor Robert Gallagher

Supervisor Gallagher has an indirect interest in approximately 2,050 acres of agricultural land in the unincorporated area of the county. He also owns 50 acres of land in the unincorporated area devoted to a homesite and agricultural uses. This property would be affected directly by the proposed referendum, as it currently is worded. If decisions to place the referendum on the ballot or to make substantive changes in the wording of the referendum would have a material financial effect on that real property, distinguishable from the effect on the public generally, Supervisor Gallagher must disqualify himself from participating in the decisions. (Section 87103(b).)

Regulation 18702.1 (copy enclosed) provides the effect of a decision is considered material if the decision will

^{2/} We make no comment on whether past decisions about the substance of the proposed referendum presented a conflict of interest for any supervisor. The Commission's policy is to decline to issue formal written advice relating to past conduct. (Regulation 18329(b)(8)(A), copy enclosed.)

foreseeably affect the actual or permitted use of real property in which an official has an interest. (Regulation 18702.1(a)(3).) The proposed referendum would affect the actual or permitted use of Supervisor Gallagher's real property. Therefore, the decision to place it on the ballot or to change the substance of the proposal is considered to materially affect that property and would require Supervisor Gallagher's disqualification, unless the effect on Supervisor Gallagher is substantially the same as the effect on the public generally. (Section 87103; Regulation 18702.1(c)(1).)

Regulation 18703 (copy enclosed) specifies when the "public generally" exception applies. The exception applies only if the decision will affect the official's interest in substantially the same manner as it will affect a significant segment of the public. The jurisdiction of the official's agency determines what group is considered the "general public." In Supervisor Gallagher's case, the residents and property owners of Sutter County are the general public. (See, In re Owen (1976) 2 FPPC Ops. 77, 81; In re Legan (1985) 9 FPPC Ops. 1, 12, copies enclosed.)

Thus, in analyzing a specific decision, we would determine whether a significant segment of Sutter County would be affected by the decision in substantially the same manner as Supervisor Gallagher. For this determination, we would examine the group of persons who, like Supervisor Gallagher, own more than 2,000 acres in the unincorporated area of the county. If this is a large, heterogeneous group, and all members of the group would be similarly affected, the "public generally" exception would apply. If the group is not large and heterogeneous, or if various members of the group would experience dissimilar effects, the public generally exception would not apply. (See, In re Legan (1985) 9 FPPC Ops. 1, 13-14, copy enclosed.)

Regulation 18703 also provides that the "public generally" exception applies for a local elected official, such as Supervisor Gallagher, when a decision affects the official in substantially the same manner as it affects a trade, industry or profession which is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the elected official. Supervisor Gallagher is a farmer. Thus, if farming is a "predominant industry" in Sutter County or in Supervisor Gallagher's district, and the decision in question affects Supervisor Gallagher in substantially the same manner as it affects the entire farming industry in the county or district, Supervisor Gallagher would be permitted to participate in the decision, notwithstanding his financial

interest. Attached for guidance are two advice letters (Roche letter, No. A-83-292 and Holmer letter, No. A-86-051), which provide a more detailed discussion regarding whether an industry is a "predominant industry" in a jurisdiction or district.

In our recent telephone conversation, you indicated that farming is the only major industry in Supervisor Gallagher's district. Based on this information, it appears that the farming industry is a predominant industry for purposes of this analysis. Accordingly, we conclude that Supervisor Gallagher may participate in the decision to place the proposed referendum on the ballot unless the effect of the decision on the farming industry in general differs from the decision's effect on Supervisor Gallagher.

Supervisor Allen Eager

Supervisor Eager has an ownership interest in 60 acres of real property located within the City of Live Oak. This real property is not affected by the referendum, as currently drafted. Therefore, Supervisor Eager may vote to place the referendum on the ballot. However, if the proposed referendum were reworded to affect the general plan designation of Supervisor Eager's real property, the effect on the real property would be considered material. (Regulation 18702.1(a)(3).) Accordingly, Supervisor Eager would be required to disqualify himself from the decision to reword the proposed referendum in that manner and to place it on the ballot, unless the "public generally" exception applies. The discussion of the "public generally" exception above, concerning Supervisor Gallagher's situation, indicates the factors to consider in Supervisor Eager's case.

Supervisor Tom Pfeffer

Supervisor Pfeffer has a 10-percent or greater ownership interest in a real estate development firm. The firm holds 26 acres of real property in the unincorporated area of the county. This property recently was subdivided into 52 lots for single-family residential improvement. The property is zoned for single-family residential development and its general plan designation is low-density residential.

Thus, Supervisor Pfeffer has two economic interests which may be affected by the decision to place the referendum on the ballot or by changes in the language of the referendum: an investment interest in the real estate development firm and an

interest in the real property held by the firm.^{3/} The decision to place the proposed referendum on the ballot will not directly affect the use of Supervisor Pfeffer's real property. However, that decision and possible changes in the substance of the proposed referendum may indirectly affect his real property or real estate development business by increasing the amount of real property available for residential development, thereby increasing competition for Supervisor Pfeffer.

Whether any decision would foreseeably and materially affect the real property in which Supervisor Pfeffer has an interest is governed by Regulations 18702(b)(2) (copy enclosed) and 18702.1(a)(3). Regulation 18702.1(a)(3) would apply to decisions to change the wording of the proposed referendum and place the changed proposal on the ballot. The decision to place the current proposal on the ballot does not affect the actual or permitted use of Supervisor Pfeffer's property, so Regulation 18702.1(a)(3) does not apply to that decision. When Regulation 18702.1(a)(3) applies, the analysis is the same as previously discussed with regard to Supervisors Gallagher and Eager, except that Supervisor Pfeffer is a member of the real estate development industry rather than the farming industry. We do not have any information to support a conclusion that real estate development is a "predominant industry" in the county or in Supervisor Pfeffer's district.

Regulation 18702(b)(2) provides guidelines for determining whether indirect effects on Supervisor Pfeffer's real property interests are considered material. These guidelines vary with the current fair market value of the property. If the property's current fair market value is less than \$200,000, an effect of \$1,000 or more is considered material. (An effect of less than \$1,000 is not material.) If the property's current fair market value is at least \$200,000 but less than \$2,000,000, an effect of one-half of one-percent is considered material. If the current fair market value is \$2,000,000 or more, an effect of at least \$10,000 is considered material.

To determine the effect of the proposed referendum, as currently worded, on Supervisor Pfeffer's real property, we must analyze whether five-acre ranchettes are likely to compete with the one-half-acre parcels Supervisor Pfeffer owns. We do not have sufficient facts to reach a conclusion. However, if five-acre ranchettes would appeal to the same group of buyers

^{3/} A public official who has a 10-percent or greater interest in a business entity also has an interest in real property held by the business entity. (Section 82033.)

who would otherwise purchase the smaller parcels, we would then ask whether it is probable that the market price for Supervisor Pfeffer's parcels would be affected materially, as provided in Regulation 18702(b)(2). If the five-acre ranchettes do not appeal to the same group of buyers who would be likely to purchase the one-half-acre parcels, the decision to place the referendum on the ballot would not appear to materially affect Supervisor Pfeffer's real property. A similar analysis should be conducted if changes in the wording of the referendum are proposed.

Regulation 18702.2 (copy enclosed) provides guidance for determining whether a change in the wording of the proposed referendum will have a material effect on the real estate development firm in which Supervisor Pfeffer has an interest. Regulation 18702.2 contains varying standards, based on the financial size of the business entity in question. We do not have specific information about Supervisor Pfeffer's firm to determine which standard applies; however, Regulation 18702.2(g) contains the materiality standards that typically apply to sole proprietorships, small partnerships and small, closely-held corporations. For purposes of illustration, we will assume that Supervisor Pfeffer's firm falls into one of these categories and apply Regulation 18702.2(g).

Regulation 18702.2(g) provides that the effect of a decision on a small business entity will be considered material if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g)(1)-(3).

Thus, it is necessary to determine whether an effect of the magnitude specified above is reasonably foreseeable as a result of the proposed referendum as currently worded or as a result of a particular decision to change the wording of the proposed referendum.

An effect on Supervisor Pfeffer's real estate development firm is considered reasonably foreseeable if there is a "substantial likelihood" it will occur. (In re Thorner (1975) 1 FPPC Ops. 198.) In Thorner, the Commission applied this test to specific fact situations. In general, the Commission concluded that an effect on a business entity was foreseeable if the business entity had taken a specific step which could allow it to benefit from, or be harmed by, the decision, or if the business entity was planning to take that specific step. The Commission emphasized that an effect which is but a mere possibility is not reasonably foreseeable. Thus, the Commission concluded that if the business entity had not already commenced some action to take the specific step to put it in a position to benefit from a decision, the effect on the business entity was not reasonably foreseeable, even though the business entity might later choose to take that step.

Based on Thorner, it would be necessary for Supervisor Pfeffer's firm to have taken a specific step, or be preparing to take a specific step, which would put it in a position to benefit from, or be harmed by, the adoption of the proposed referendum or a change in wording of the proposed referendum. For example, if the firm were preparing to acquire property for development in an area affected by the referendum, the effect on the firm would be considered reasonably foreseeable. It would then be necessary to determine whether the effect also is considered material and distinguishable from the effect on the public generally, using the standards set forth above. However, if there is only the mere possibility that the firm could acquire the property, but it has no plans to do so, the decision to place the referendum on the ballot would not have a reasonably foreseeable effect on Supervisor Pfeffer's firm.

Supervisor Joe Benatar

Supervisor Benatar is employed as vice-president of Western Title Insurance Company. He does not hold any ownership interest in the title company. Supervisor Benatar also holds one-twelfth of a 50-percent interest in a note and deed of trust on 26 acres of real property in the Rio Oso area. Your letter states that less than \$10,000 remains due on the note.

Supervisor Benatar's pro rata interest in the note is valued at less than \$1,000. Accordingly, his interest in real property, resulting from the deed of trust, is worth less than \$1,000. An interest in real property valued at less than \$1,000 provides no basis for disqualification under the Act. (Section 87103(b).)

Western Title Insurance Company has provided income of \$250 or more to Supervisor Benatar. Consequently, Supervisor Benatar has an economic interest in Western Title Insurance Company which may require his disqualification from certain decisions. (Section 87103(c).)^{4/} Supervisor Benatar must disqualify himself from any decision which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on Western Title.

The preceding discussion of whether a particular decision will foreseeably and materially affect Supervisor Pfeffer's real estate development business applies equally to Supervisor Benatar's situation, except that the appropriate materiality standard in Regulation 18702.2 may differ. We do not have the necessary information about the financial size or organization of Western Title to determine which subsection of Regulation 18702.2 applies.

Supervisor Roger Chandler

Supervisor Chandler is a real estate broker and occasional developer. He holds interests in real property in Yuba County. In addition, his residence is located on a two-acre lot in the unincorporated area of Sutter County.

Supervisor Chandler's business interests (real estate brokerage and real estate development) would present a conflict of interest only if they are "doing business in, planning to do business in, or during the preceding 2 years have done business" in Sutter County. (Section 82034.) Enclosed is a copy of In re Baty (1979) 5 FPPC Ops. 10, which provides guidance on whether a business entity is "doing business in" a particular jurisdiction. If you determine that these business entities are doing business in, planning to do business in, or have done business in Sutter County during the preceding two years, it will be necessary to analyze whether particular decisions will have a reasonably foreseeable material financial effect on the business entities. The preceding discussion regarding effects on Supervisor Pfeffer's real estate development firm applies equally to Supervisor Chandler's situation.

^{4/} Section 87103(d) also provides that Supervisor Benatar's status as an officer and an employee of Western Title is an economic interest which may require his disqualification from decisionmaking. The conflict of interest analysis under Section 87103(c) and Section 87103(d) are the same.

Darrell W. Larsen
September 18, 1987
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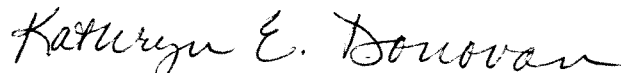
Supervisor Chandler's real property interests located in Yuba County would require conflict-of-interest analysis only if they are located no more than two miles outside of the boundary of Sutter County. Real property located no more than two miles outside of the boundary of a local government agency is considered to be within that agency's jurisdiction. (Section 82035.) If Supervisor Chandler's real property is not situated within this two-mile radius, it is not considered an "interest in real property" for purposes of Section 87103(b). (Section 82033.) If it is located within the two-mile radius, the conflict of interest analysis would be the same as discussed above with regard to Supervisors Eager, Gallagher and Pfeffer.

Supervisor Chandler's two-acre parcel located in Sutter County would not be foreseeably affected by the referendum as currently worded. Therefore, it would not require his disqualification from the decision to place the proposed referendum on the ballot. If substantive changes in the referendum are proposed, Supervisor Chandler should use Regulations 18702(b)(2) and 18702.1(a)(3) to determine whether the effects would be considered material. However, in this situation, the "public generally" exception is likely to apply. The Commission has ruled that residential property owners are considered a significant segment of the general public. (In re Owen (1976) 2 FPCC Ops. 77.) If Supervisor Chandler's residence would be affected in substantially the same manner as most other residences in the county, he may participate in decisions to change the wording of the referendum.

If you have any questions regarding this letter, or if you would like to discuss additional facts regarding the effect of a particular decision on any supervisor's economic interests, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosure

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SUTTER
463 SECOND STREET
YUBA CITY, CALIFORNIA 95991
PHONE 741-7110**

DARRELL W. LARSEN
County Counsel

**RONALD S. ERICKSON
JAMES SCANLON
PAUL M. STARKEY**
Deputy County Counsel

July 23, 1987

Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804

ATTN: Kathy Donovan

Dear Ms. Donovan:

As mentioned to you via telephone, on June 30, 1987 the Sutter County Board of Supervisors directed the County Counsel's office to ask the Fair Political Practices Commission to expand the advice sought in our letter of June 18, 1987 to cover all five board members. That is, the Board wishes the position of each board member reviewed concerning whether any of them have a conflict of interest foreclosing their participation in and voting on a determination by the Sutter County Board of Supervisors to place or not place a "ranchette" referendum on the ballot for a special or general election in this county.

In addition to the information you already have on Supervisors Gallagher and Eager, we have reviewed our files, the records in the County Assessor's office as well as the County Clerk's office and from materials on file provide the following general information with regard to the remaining three supervisors:

1. Supervisor Tom Pfeffer has an interest in a real estate development firm. The only real property presently held by Mr. Pfeffer or his firm in the unincorporated area of Sutter County is a 26 acre parcel which recently has been divided into 52 lots for the purpose of single family residential improvement. The property is zoned R-1 (Single Family Residential) and its general plan designation is low density residential.

2. Supervisor Joe Benatar is an employee and Vice-President of Western Title Insurance Company. His relationship to that company was more completely developed in our letter of October 11, 1982 to the Enforcement Division of the Fair Political Practices Commission and the attachments to that letter. For the sake of expediency, I have included copies of that 1982 correspondence and its attachments. Also attached is a copy of the May 16, 1983

JUL 27 8 50 AM '87

Kathy Donovan
July 23, 1987
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response from Fair Political Practices setting forth their determination that a violation did not occur. We have provided the response from FPPC as an indication of the factors analyzed by FPPC in the past with regard to this issue.

Supervisor Benatar also has a one-twelfth interest of a 50% interest in a note and deed of trust on 26 acres of property in the Rio Oso area, which interest is now paid down to the point that it is worth less than \$10,000.

2. Supervisor Chandler is a real estate broker and occasional developer. While he has interest in certain residential lots in the City of Yuba City and in Yuba County, his real estate holdings in the unincorporated area of Sutter County are restricted to his residence, a two-acre lot.

We hope the foregoing will be of some benefit to you in issuing the requested advice. If you need additional help, please do not hesitate to call upon us.

Very truly yours,



DARRELL W. LARSEN
SUTTER COUNTY COUNSEL

DWL:js

cc: Board of Supervisors w/o encl.
Larry Combs, Administrative Officer w/o encl.

October 11, 1982

Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804

ATTN: Enforcement Division/Attorney Steve Crooks

RE: FILE NO. GC-82/288

Dear Mr. Crooks:

As discussed with you via telephone on October 7, 1982, enclosed please find copies of materials on file in our office as a consequence of an opinion request, yet unanswered, directed to us from Supervisor Benatar. Mr. Benatar was formerly a city councilman and John Sanbrook is the attorney for the city involved and that explains his correspondence addressed to Mr. Benatar. Mr. Benatar was elected Supervisor in November of 1978 and took office in January of 1979. In addition to his letter of May 3, 1979, a copy of which went to the Public Works Director requesting the County no longer do business with his title company, you will also find enclosed minutes of the Board meeting of May 23, 1979. At that meeting an issue arose with regard to the relationship between Mr. Benatar's employer and the developer whose property in turn is involved in the General Plan and Zoning Code amendment placed on the November ballot by the Board of Supervisors on July 27, 1982. You will note from page 26 of the attached minutes that on May 23, 1979, I indicated in response to Mr. Benatar's question that it was my opinion that there was no conflict of interest involved in those cases in which his employer acts as trustee on deeds of trust.

As I mentioned to you during our phone conversation, I have not yet responded to Mr. Benatar's general inquiry concerning conflicts in part because my understanding of the law is that he has no such conflict because he has no vested financial interest in his employer. His relationship to the company is more completely developed in the second paragraph of his letter of May 3, 1979, to this office. Further, I felt relatively secure in my belief that no problem would be presented as a consequence of the telephone conversation I mentioned to you which I had with Dwight Dickerson in your office in January of 1980. I understand you cannot be responsible for anything Mr. Dickerson may have said to me and he in turn made it clear that he was not rendering a formal opinion of your department, nevertheless the distinction which he made was the one upon which I had

Steve Crooks
October 11, 1982
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been relying. It is that so long as the applicant appearing before the board of supervisors is not the title company which employs Mr. Benatar but rather one of its customers and given that Mr. Benatar has no ownership interest in the title company, the likelihood of a financial conflict is very low. It was my understanding then and it continues to be that it would be only in the case of very large transactions that the possibility of impact on Mr. Benatar's employer would be so great as to present a conflict for him. His employer, of course, is a state-wide company and the local transaction would have to be enormous in order for the fee generated from it to be significant given the state-wide volume of his employer's business. This is particularly true in light of the fact that the bulk of the title company's business is handled by its southern California offices.

Also, there has never been a suggestion that any of the customers of Mr. Benatar's employer condition their business on the results of applications they subsequently process before the Board of Supervisors nor that the fees owed the employer by the customer are in any way contingent upon Board action. Accordingly, decisions made by the Board of Supervisors with regard to customers of Mr. Benatar's employer have no bearing on Mr. Benatar's income nor is there any material financial effect on his employer of which I am aware. Additionally, we are dealing with election results here and it seems to me that the foreseeability test of §87103 is not met. As he cannot forecast the consequences of the election it doesn't seem to me that a public official can be charged with knowing or having reason to know what the financial consequences of his decision to refer the matter to an election might be (§87100.)

I find it particularly difficult to believe that participating in a decision to refer to the electorate the ultimate decision which might impact property values is the kind of decision to which Government Code §87100 and §87103 are directed. As the purpose of the Political Reform Act is to ensure that the decisions of public officials are free from bias caused by their own financial interests or those of persons who have supported them (§81001(b),) it wouldn't seem possible to criticize a public official for having implemented the equally salutary principle of citizen expression embodied in the initiative process. This seems particularly true when by to do so, the officials have not made the decision which might effect a financial interest but rather have removed themselves from that process and referred it to the people. The very kind of decision concerning which the voters wished a guarantee of fairness has been turned over to them for determination. How could they then complain of unfairness unless they are also willing to condemn the entire electorate?

Steve Crooks
October 11, 1982
Page Three

I believe the materials enclosed are all of the materials on file in our office relevant to the inquiry you will be conducting. Should you need additional information, I am sure that Mr. Benatar will be glad to provide it to you directly. Possibly he could also inform you of whether his employer had any record or other interest in the subject property on July 27, 1982. If, however, you would like to discuss this matter further with me or I can be of any assistance, please do not hesitate to call upon us. While this office may not agree with your ultimate interpretation of the applicable law and regulations as applied to the particular facts involved, we are eager to cooperate and be as forthright as possible in the interest of making sure you have all the information relevant to your inquiry. We are confident the same is true of Mr. Benatar.

Very truly yours,

DARRELL W. LARSEN
SUTTER COUNTY COUNSEL

DWL:js

Enclosures

cc: Supervisor Joe Benatar

WESTERN TITLE INSURANCE COMPANY



MAY 3 1979
COUNSEL

(916) 673-8844 • 512 SECOND STREET • P.O. BOX 312 • YUBA CITY, CALIFORNIA 95991

May 3, 1979

Darrell Larson
County Counsel of County of Sutter
463 2nd Street
Yuba City, California 95991

Dear Darrell:

A few weeks ago you received a letter from Milt Skaggs, Director of Public Works, regarding the possible conflict which may exist in the County's use of Western Title Insurance Company by reason that I am an employee of the Western Title Insurance Company, and also a member of the Sutter County Board of Supervisors. I also understand one member of the Board of Supervisors has talked to you in this regard.

I personally feel there is no conflict of interest. As you know I am an employee only; and hold no stock in the company. There is a profit sharing pension plan in which I participate, but contributions to the plan are made solely by the company, and nothing is contributed by the employee. Said plan may be dissolved at anytime at the sole option of the company. You do not become completely vested in the plan until 15 years into the plan, and only are able to start receiving compensation for the plan upon retirement, age 65, or upon death.

I also personally feel that Sutter County gets the best Title Insurance expertise from our company, which company, has the only "Complete" title plant in both Yuba and Sutter Counties, and has existed since the 1890's. Incidentally, any service we have provided in the past has not been one in which this company has ever made any great amount of profit, if at all. If you have any questions regarding this comment, please check with Mr. Claude Biddle and he will advise you how much time our Yuba City office has expended in helping the county handle a recent Quiet Title action in which he was involved. In fact, it has been a losing proposition.

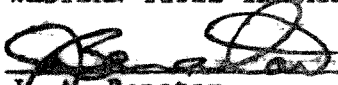
In any event, I hereby request that the County of Sutter refrain from doing any further business with Western Title Insurance Company as long as I am a member of the Board of Supervisors of Sutter County.

If any of the County Departments do request service from Western Title Insurance Company, please be advised that they do so, knowing that I have requested they do not, by reason of the possible conflict of interest question that has been brought to your attention.

Mr. Dan Hewitt, Office Manager of our Yuba City office, has requested me to add that he has been a resident of this County all his life and his father was a former District Attorney for Sutter County. He gets a lot of requests from various County Offices for research and title questions from time to time. He would like to continue this practice. Please be advised Western Title Insurance Company will continue to help in this regard without charge to the County, as it has for the past 80 some odd years.

Very truly yours,

WESTERN TITLE INSURANCE COMPANY


J. A. Benatar
Vice President and County Manager
of Yuba-Sutter Counties

cc: George Garcia, Supervisor
Mary Knapp, Supervisor
Richard Withrow, Supervisor
Wilbur Green, Supervisor
Milt Skaggs, Director of Public Works

EXHIBIT A

May 23, 1979

Honorable Board of Supervisors
Attn: Mr. George Garcia - Chairman

I am appearing this evening to state that I am opposed to above ground waste water disposal as a concept for use in this County - particularly untreated waste water. If this use is allowed, I feel that in years to come this County will pay a price at a later date for what I deem an improper use.

However, I recognize that my view is not the majority view of other persons who have spoken at prior public planning hearings on this matter. Realizing that this type of use is very likely to be implemented in this County, I urge this Board to adopt the zoning amendment as the Planning Commission approved and forwarded it to the Board for final action. If we are to have waste water disposal as a concept - this concept should at least be subject to the minimum standards and conditions as adopted by the Planning Commission.

The matter that I now wish to address I consider to be a very delicate issue. I will emphasize that I am speaking for myself only, and do not represent any other persons. This matter has to do with fiduciary relationships, trusts, and public confidence.

From Webster's Seventh New Collegiate Dictionary I will quote several definitions:

Fiduciary: of, relating to, or involving a confidence or trust: as a) held or founded in trust or confidence b) holding in trust c) depending on public confidence for value or currency

Trust: 1a) assured reliance on the character, ability, strength, or truth of someone or something 1b) one in which confidence is placed 3a) a property interest held by one person for the benefit of another 3b) a combination of firms or corporations formed by a legal agreement

Trust Company: A Corporation and esp. a bank organized to perform fiduciary functions

Trustee: 1a) one to whom something is entrusted 2a) a person to whom property is legally committed in trust 2b) one held to a fiduciary duty similar to that of a trustee

These Webster definitions I believe are very pertinent to some recent property transactions that have occurred in Sutter County that I feel are very directly tied to the zoning issue that this Board is being asked to vote upon this evening.

On December 28, 1978, a deed was recorded - transferring and selling a large block of land along South Butte Road in the Sutter Buttes area. The transfer was from the Frye Family to Sutter Tomato Products, Inc. A trust deed followed the deed - signed by Thomas E. Nevis - President, and a local Title Company is shown as trustee.

On this same date, December 28, 1978, another deed was recorded transferring and selling what is commonly known as the Yuba Plaza or the Sears Shopping Center, from Yuba Plaza Inc. to Nevis Industries, Inc. A trust deed followed signed by Thomas E. Nevis - President, and the same local Title Company is shown as trustee.

On this same date, December 28, 1978, another deed was recorded transferring title of the Yuba Plaza Shopping Center Property, from Nevis Industries, Inc. to the same local Title Company.

It is a known fact that Sutter Tomato Products has a vital interest in the proposed zoning amendment before you this evening. Representatives from Sutter Tomato Products have spoken at prior Public Planning Hearings on this issue.

I am assuming that from viewing public recorded documents, that Mr. Thomas E. Nevis is the President of both Nevis Industries, Inc., and of Sutter Tomato Products, Inc., and that the president of both firms is one and the same person. The local Title Company mentioned in the above property transactions, I believe to be the same Title Company of which Supervisor Benatar is a principal officer.

If this be the case, I believe a dilemma exists. It would seem to me that the local Title Company certainly holds a fiduciary relationship and a position of trust involving multi-million dollar properties with a private party with vital interest on the proposed zoning amendment. On the other hand, County Supervisors as elected public officials hold a position of high public trust. In a situation where a public trust position and a private trust position potentially meet on an important issue such as this zoning amendment, I believe a conflict of interest potentially could occur. I further believe that the issues I have raised are substantially in conformance with the Code of Ethics adopted by this Board on May 1, 1979.

For these reasons I would ask that Supervisor Benatar disqualify himself from discussing or voting on this issue, or at least get an opinion from County Counsel.

I wish to make it clear at this time that I am in no way suggesting that Supervisor Benatar, the Title Company, Sutter Tomato Products, Inc., Nevis Industries, Inc., or Mr. Thomas E. Nevis, have done anything irregular, illegal, immoral, or unethical. I am merely suggesting that in my mind a potential conflict of interest could exist on this zoning matter, and that my request merits the Board's attention prior to voting on this issue.

Respectfully submitted,

Russell B. Mayfield

Russell B. Mayfield
P. O. Box 686
Sutter, Calif.

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

May 16, 1983

Supervisor Joe Benatar
423 2nd Street
Yuba City, CA 95991

RE: FPPC No. GC-82/288, Joe Benatar

Dear Mr. Benatar:

We have completed our investigation of the complaint made against you involving an alleged conflict of interest. (See Government Code Section 87100). Having examined all the facts in this case, we conclude that your actions did not violate the Political Reform Act.

Briefly, you participated in decisions by the Sutter County Board of Supervisors concerning property owned by Sutter Tomato Products, Inc. That company has done business with your employer, Western Title, concerning the same property. Based on the guidelines for determining a conflict of interest in 2 Cal. Adm. Code Sections 18700 and 18702, the revenue amounts the property has generated for Western Title before and after the Board of Supervisors' decision, and the present plans for the property, it does not appear that Western Title's annual gross revenues will be increased by the lesser of \$100,000 or one percent (1%) as a result of the Board's decisions. (2 Cal. Adm. Code Section 18702 (b)(1)(A)). Thus the financial effect of the decisions on Western Title is not deemed material.

Thank you for your cooperation in this matter. If you have any questions, you may contact Steven Crooks at (916) 322-6443.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert D. Blasier, Jr.".

Robert D. Blasier, Jr.
Director
Enforcement Division

SRC:lh

cc: Russ Mayfield

OFFICE OF THE COUNTY COUNSEL

COUNTY OF SUTTER

**463 SECOND STREET
YUBA CITY, CALIFORNIA 95991
PHONE 741-7110**

DARRELL W. LARSEN

County Counsel

RONALD S. ERICKSON

JAMES SCANLON

PAUL M. STARKEY

Deputy County Counsel

F P F
JUN 18 2 20 PM 1987

June 18, 1987

Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804

ATTN: Kathy Donovan--Legal Division

Dear Ladies and Gentlemen:

This office has been authorized and directed by Sutter County Supervisors Allen Eager and Robert Gallagher to request formal written advice from the Commission pursuant to Government Code §83114(b) concerning the following question: Do either of these two supervisors who represent farming areas of our County have a conflict of interest foreclosing their participation in and voting on a determination by the Sutter County Board of Supervisors to place or not place a "ranchette" referendum on the ballot for a special or general election in this County? The text of the proposed ballot measure is attached hereto. Consideration of the referendum matter has been deferred by the Board of Supervisors until June 30, 1987 in order to receive the requested written advice.

To be affected by the ranchette referendum an official would have to own property in the unincorporated area of the County in parcels larger than five acres. Supervisor Eager's holdings, amounting to approximately sixty acres, have all been annexed to the City of Live Oak and therefore will not be the subject of the referendum.

Supervisor Gallagher, along with members of his family, has an indirect, one-half interest in approximately 2,050 acres of agricultural land in the unincorporated area of the County. In addition, he and his wife hold as their sole property fifty acres of land devoted to a homesite and agricultural uses in the unincorporated area of the County.

As the subject matter of this letter is of significant concern to the two elected officials involved they have requested an opportunity to meet with the individual who prepares the response to this letter prior to that response being issued. The reason for the meeting being to ensure that FPPC staff has all the facts and a complete appreciation for the background out of which this request originates.

Fair Political Practices
Commission
June 18, 1987
Page Two

The mailing address for both Supervisors Eager and Gallagher is
County Administrative Building, 463 Second Street, Yuba City,
California 95991.

Very truly yours,



DARRELL W. LARSEN
SUTTER COUNTY COUNSEL

DWL:js

Enclosure

cc: Supervisor Robert Gallagher
Supervisor Allen Eager

DRAFT

RANCHETTE REFERENDUM WORDING

Should Sutter County adopt an ordinance providing that, effective (date), the General Plan of Sutter County, excluding the Urban Area Plans, allows the establishment of "Ranchette Subdivisions", subject to the following criteria:

- a. Each parcel created shall have frontage on a paved, County-maintained road.
- b. Each parcel shall be able to meet applicable development standards for wells, septic systems and storm drainage.
- c. Each ranchette developer shall enter into an agreement with the County providing for participation in a zone of benefit, district, agency or other public entity for the financing of construction and maintenance of road and drainage systems. This agreement shall run with the land and shall be binding on all successors in interest.

Ranchette subdivisions are defined as those divisions of land containing two or more parcels of five to ten acres in size, intended for residential use.

Memorandum

To : File A-87-164

Date : September 23, 1987

From : **FAIR POLITICAL PRACTICES COMMISSION**
Kathy Donovan

Subject : Extension of 21-Working Day Deadline

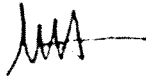
On August 25, 1987, I spoke to Darrell Larsen, the requestor, about an extension of the 21-working day deadline. I informed him that the letter probably would be ready by September 8. I again contacted Mr. Larsen on or about September 11. I informed him that revisions to the letter and the end of the legislative session had delayed our response, but that I expected to send the letter to him by September 18. He agreed to this deadline.

RECEIVED
RECEIVED
JUN 25 1987

June 23, 1987

TO: BOARD OF SUPERVISORS
FROM: MICHAEL J. HARROLD, PLANNING DIRECTOR
SUBJECT: RANCHETTE REFERENDUM, DRAFT WORDING

SUTTER COUNTY JUN 24 1987
COUNTY COUNSEL



COUNTY CLERK
and EX-OFFICIO CLERK
BOARD OF SUPERVISORS
SUTTER COUNTY

BACKGROUND

At the Board meeting of March 17, 1987, Supervisors Gallagher and Eager proposed that a referendum on the "ranchette" issue be scheduled. This referendum would allow the voters of Sutter County to decide if the County's General Plan should be amended to permit the establishment of ranchette subdivisions. The vote would involve all voters of Sutter County, not just those in the unincorporated area.

Based on direction received at that meeting, Staff has developed a draft wording for a referendum (attached), examined the legal requirements, and analyzed the costs for such an action. Attached is a report from Lonna Smith indicating the time frame and cost for a special election in November and the approximate additional cost for the June 1988 primary election.

Ranchette subdivisions are defined in this draft as those divisions of land containing two or more parcels of five to ten acres in size, intended for residential use.

Supervisors Gallagher and Eager had requested this matter be discussed at the June 16 Board meeting. At that meeting, the discussion was continued to the meeting of June 30.

CURRENT PROPOSAL

To consider placing the ranchette issue before the voters on the November 1987 or June 1988 ballot.

ENVIRONMENTAL

A referendum is not subject to CEQA as it is specifically defined by the CEQA Guidelines as not being a project.

IMPACT ON COUNTY RESOURCES

The cost of placing the issue on the June 1988 ballot is estimated at approximately \$2,000. The cost for a special election in November 1987 would be approximately \$34,000.

M.J.H.

MJH:lg

atts.

DRAFT

RANCHETTE REFERENDUM BALLOT LANGUAGE

Shall the ordinance to amend the General Plan of Sutter County, excluding the Yuba City, Live Oak, and Tierra Buena Urban Area Plans, and the General Plan for the Community of Sutter, to allow the establishment of ranchette subdivisions be adopted?

AN ORDINANCE OF THE COUNTY OF SUTTER ENACTING A GENERAL
PLAN AMENDMENT ALLOWING THE ESTABLISHMENT OF RANCHETTE
SUBDIVISIONS

THE PEOPLE OF THE COUNTY OF SUTTER ORDAIN AS FOLLOWS:

GENERAL PLAN AMENDMENT

The land use, conservation, and open space elements of the
General Plan of Sutter County are amended as follows:

A. Policy Number 13 under Plan Policies for Agricultural Land
preservation is added to read as follows:

"13. Notwithstanding any other policies and objectives
set forth elsewhere in this General Plan, ranchette or
small farm subdivisions shall be allowed in any agricul-
tural area of the County, excepting therefrom those areas
designated as the Yuba City Urban Area, Live Oak Urban
Area, Tierra Buena Urban Area, and the Community of Sutter,
subject to the following criteria:

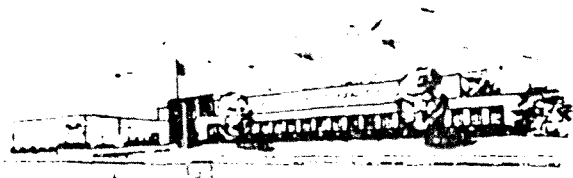
- a. Each parcel created shall have frontage on a
paved County-maintained road.
- b. Each parcel shall be able to meet applicable
development standards for wells, septic systems
and storm drainage.
- c. Each ranchette subdivider shall enter into an
agreement with the County providing for partici-
pation in a zone of benefit, district, agency or
other public entity for the financing or construc-
tion and maintenance of road and drainage systems.
This agreement shall run with the land and shall
be binding on all successors in interest.

'Ranchette subdivision' means a division of land containing
two or more parcels each of five to ten acres in size, in-
tended for residential use."

B. Objective Number 4 under Plan Objectives and Implementation
is added to read as follows:

Objective 4: Amend the County Zoning Ordinance to allow
five to ten-acre parcels for Agricultural-
Residential Use in the UA, A-G, A-2 and A-3
Districts.

Implementation: Preparation and approval of the appro-
priate Zoning Code Amendment by the
Planning Commission and Board of Super-
visors.



COUNTY OF SUTTER

463 SECOND STREET
YUBA CITY, CALIFORNIA
ZIP CODE 95991

LONNA B. SMITH
COUNTY CLERK
CLERK OF SUPERIOR COURT - 741-7120
EX-OFFICIO CLERK OF BOARD OF SUPERVISORS - 741-7106
REGISTRAR OF VOTERS - 741-7122

May 1, 1987

MEMO TO: LARRY COMBS, County Administrator

RE : ESTIMATED COST - SPECIAL ELECTION

Attached hereto please find the following:

1. A breakdown of the approximate cost of a special election in November, 1987;
2. A breakdown of the approximate additional cost if one County-wide measure is added to the June 7th Primary election; and
3. A basic calendar outlining the time-frame for placing a matter on the November ballot.

IF any of the special districts do have an election in November, they would share in the cost of holding the election in their jurisdiction.

The last day to consolidate elections for a measure in the June Primary is March 8, 1987.

This is being furnished to you pursuant to your request. If you have any questions or if I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

LONNA B. SMITH

LBS
Encls.

ESTIMATED COST OF COUNTY-WIDE ELECTION FOR 11-3-87

26,000 Registered Voters
 38 Voting Precincts
 38 Inspectors
 114 Workers
 80 Voting Machines
 1 question on ballot

Delivery & Pickup of machines		\$ 3,000.00
Programming machines		750.00
Envelopes (ID, return and outgoing)		150.00
Mailing Labels		200.00
Roster-Indexes		100.00
Photocopies		150.00
Workers		
Canvass Board	\$ 120.00	
Absentee Board	120.00	
Label workers	300.00	
Poll workers	7,850.00	
Tally Board	<u>150.00</u>	
		8,540.00
Polling place rent		500.00
Postage (Sample ballots & Absentee ballots)		3,000.00
Publications		150.00
Data Processing		3,500.00
Printing (Absentees, samples, etc.)		7,500.00
Miscellaneous Supplies (Digest, etc.)		250.00
Miscellaneous		200.00
Extra office help		<u>500.00</u>
		\$28,490.00
20% overhead		<u>5,698.00</u>
TOTAL		\$34,188.00

ADDED COSTS FOR JUNE PRIMARY, 1988 ELECTION
IF COUNTY-WIDE MEASURE

Estimate 27,000 Registered Voters

Sample Ballot		
Printing	\$ 500.00	(\$15.00 more per 1,000)
Composition	120.00	
Absentee Ballot (10% of RV's - 2,700 ballots)		
Printing	250.00	(\$7.50 more per 100)
Composition	120.00	
Postage	300.00	(1¢ more)
Publications	<u>100.00</u>	
TOTAL	\$1,390.00	

Approximately \$2,000.00 more

Lonna B. Smith
Sutter County Clerk

BASIC CALENDAR
COUNTY-WIDE MEASURE

November 3, 1987

July 13 (E113) to August 7 (E88)	Nomination period
July 28 (E98)	Board to call Special Election
August 4 (E91)	Last day to consolidate
July 31 (E95)	Publication of Notice calling for Arguments (EC 3784)
August 14 (E81)	Ballot arguments to be received by County Clerk (EC 3784)
August 24 (E71)	Rebuttal arguments to be received by County Clerk
August 25 (E70) to September 3 (E61)	Ten day public exam period (EC 3795)
September 4 (E60)	Printer to receive all materials
October 5 (E29) to October 27 (E7)	Absentee voting period
November 3	ELECTION DAY

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF SUTTER, STATE OF CALIFORNIA
PUBLIC HEARING
MAY 23, 1979
7:30 p.m.

The Board of Supervisors of the County of Sutter, State of California, met in special session on the above date at the hour of 7:30 p.m. in the Board of Supervisors' Chambers located at 463 Second Street, Yuba City, California.

MEMBERS PRESENT: Supervisors Wilbur Green, Joseph Benatar, Mary Knapp, George Garcia and Richard Withrow

MEMBERS ABSENT: None

Ronald H. Piorek, County Administrator, present

Darrell W. Larsen, Acting County Counsel, present

PROCESS WATER
DISPOSAL AREAS

This having been heretofore fixed as the date, time and place to hold a continued public hearing relative to an amendment to the zoning Code regarding Process Water Disposal Areas in the AG District, Certificate of Publication being on file in the office of the Clerk to the Board the matter was called to be heard by the Chairman who noted that the proceedings would be recorded.

Mr. Richard P. King, Planning Director, addressed the Board noting that this was a continuation of the amendment to the zoning code for process water disposal areas in the AG District. He stated that on August 13, 1978, Del Monte Corporation filed an application for a text change to provide for disposal of waste water and a detailed text amendment was sent to the Board of Supervisors, which was disapproved in January of 1979. However, he explained, after the Board disapproved the text change, the Board initiated a proposal of their own. The Planning Commission had some concerns about some of the wording in the Board-initiated proposal, and the ordinance amendment that is before the Board this evening was prepared by County Counsel to reflect the Planning Commission's recommendations. He noted the addition of item 'v,' Remote food processing and cannery process water disposal areas."

Chairman Garcia asked whether the City was testing the water at the sewage plant for the BOD content of the process water that goes through that plant.

Mr. King stated that they did. He also noted that the Planning Commission had worked around the Conservation and Open Space Element of the General Plan and included all of the small unincorporated areas that are used for residential areas in Sutter County, as well as, leaving the archeological and other areas such as the wetlands out of the areas suggested for waste water disposal.

Mr. Herbert Stone, representative for Del Monte Corporation Environmental Protection for the Yuba City Area, addressed the Board noting that with a few suggested changes, this ordinance amendment would lower the costs of food processing in Sutter County. He noted that he would request two amendments to the Planning Commission's recommendations:

1. That the two-mile limit be stricken, and each application for waste water disposal be considered and determined by the Board of Supervisors.
2. Delete the reference to soil suitable to tree crops, and identify the soil types in an EIR report process of the Use Permit application.

Mr. Bob Adams, Cannery Workers Union #849, addressed the Board noting his concerns about whether the plant can remain open with the constraints put upon it by this ordinance amendment and what the people will do if the plant closes. He stated that he is in agreement with Mr. Stone, and that a Use Permit application should be made on the basis of fact rather than be predetermined.

Supervisor Withrow noted that there would be a definite odor problem in the areas of waste water disposal.

Mr. Adams stated that there would be, however, he felt that there are ways of correcting this problem.

Supervisor Benatar noted that when the City sewer plant was expanded in 1974 or 1975. Del Monte Corporation was told at that time what the sewage costs would be.

Mr. Adams noted that there was a definite link between the processing plants that have had to close their doors and the cost of waste water disposal.

Mr. Pierre Carr, 8832 Pass Road, Sutter, addressed the Board stating that he was in favor of the ordinance amendment as presented by the Planning Commission, especially the two-mile limit from residential areas.

Mr. Donal Meyer addressed the Board stating that he would like to congratulate the Planning Commission and the Board of Supervisors for not rushing into this ordinance amendment, and he would approve this amendment as it comes from the Planning Commission.

Mr. Michael Steele, 3909 Garden Highway, addressed the Board stating that he was in favor of this ordinance amendment as it is written.

Mr. Dan Putman, Sutter Tomato Products, addressed the Board noting how this ordinance amendment affects Sutter Tomato Products. He noted excerpts that he had presented to the Board on Wastewater Reclamation Criteria; and how they were indicative of several other documents published by the State of California relative to water resources. (Exhibit C)

Supervisor Knapp stated that she would like for Mr. Putman to provide the Board with the entire document as sometimes excerpts do not reflect the intent of the entire document.

Supervisor Withrow noted that it is the policy of the Board to review any documentation before a Board meeting.

Mr. Putman stated that he was essentially in favor of the proposed ordinance except for the two-mile limit, and he would respectfully request that this be changed to a one-mile limit. He also asked whether this ordinance applied to on-site as well as remote.

Chairman Garcia stated that it was for both.

Mrs. Geraldine Lemanager, 3608 Mallott Road, Sutter, addressed the Board stating that she would support the ordinance amendment as prepared, especially with regard to the different soil types and the two-mile limit.

Mr. Russell Mayfield, 7569 Barrow Street, Sutter addressed the Board, reading into the record a prepared statement, which noted that he is opposed to above ground waste water disposal as a concept for use in this County, however, if there has to be above ground waste water disposal, he felt there should be some type of

minimum standards and conditions as adopted by the Planning Commission.

Mr. Mayfield also asked if this applied to remote as well as on-site disposal.

Chairman Garcia stated that it was his understanding that it was for both.

Mr. Darrell W. Larsen, Acting County Counsel, stated that it was his understanding that it was for remote only.

Mr. Mayfield stated that he would like for this issue to be clarified before the ordinance amendment is voted on.

Mr. Larsen stated that it is up to the Board whether they wish the ordinance to reflect both onsite and remote, the problem is soluble, and the words can be made to fit either intention of the Board.

Mr. Mayfield read into the record, his prepared statement.
(Exhibit A)

There was discussion from the Board members whether this was a proper time to present Mr. Mayfield's issue relating to Supervisor Benatar's association with Western Title Insurance Company.

Supervisor Benatar stated that since his intention has been clear from the beginning that he is not in favor of Del Monte pumping wastewater onto the AG areas, he felt that the letter was directed at him for some other intent. He read a letter into the record date May 3, 1979, with regard to a possible conflict of interest that was directed to County Counsel. (Exhibit B)

Chairman Garcia called for a five minute recess.

Chairman Garcia reconvened the meeting noting that during recess he had talked with the Planning Director and it was his philosophy that the ordinance was directed to both remote and on-site disposal systems. He asked for opinions from the Board on this matter.

Supervisor Withrow stated that he was under the impression that they were dealing with only remote water disposal in the AG area.

Supervisor Knapp noted that if this point is not clarified, the public does not know for sure what they are testifying on.

Supervisor Benatar stated that he would like an opinion from

County Counsel as to whether or not he feels there is a conflict of interest with his position as Supervisor and as an executive officer of Western Title.

Mr. Larsen stated that it was his opinion that there was no conflict of interest involved.

Chairman Garcia stated that he would like to poll the Board on the issue of whether they felt they were addressing on-site and remote waste water disposal areas.

Supervisor Knapp stated that it was her interpretation that it was both remote and on-site.

Supervisor Green stated that if it was the Planning Commission's intent to address both on-site and remote disposal then he would abide by this upon the Commission's recommendation.

Chairman Garcia stated that he felt it was both also.

Supervisor Knapp asked whether passage of this ordinance amendment would have any effect on the on the Use Permit issue of Sutter Tomato Products that is being heard in the Court.

Mr. Larsen stated that depending upon the outcome of the Court decision, it could have a definite impact.

Supervisor Knapp stated that she would like to have this hearing continued until after the adjudication of the Sutter Tomato Products case takes place. (Supervisor Knapp made this motion, which was seconded by Supervisor Withrow and was withdrawn after discussion.)

Another motion made by Supervisor Knapp to take action on the remote site waste water disposal tonight with the understanding that the on-site amendment is still alive, which portion would be continued after adjudication of that particular site, died for lack of a second.

Pierre Carr, Geraldine Lemenager, Micheal Steele and Donal Meyer all address the Board noting that they understood that they were discussing on-site as well as off-site disposal.

Supervisor Green noted that with the two-mile limit and the elimination of disposal areas located to avoid upland soils and soils suitable for tree crops, there would be no way for the processor to operate.

Supervisor Withrow concurred with Supervisor Green and noted however, that he had concerns about these areas being adjacent to residential areas.

Mr. King stated that he had prepared a map for Del Monte showing the areas available for waste water disposal which occupies a very small percentage of Sutter County.

Chairman Garcia stated that he felt the section referring to tree crops and soil types should be stricken altogether. He stated that this should come before the Board with a current report from the Agricultural Commissioner as to the production of the soil at the time of the request for a Use Permit to drain wastewater on it is brought before the Board.

Supervisor Withrow stated that he would like to see a continuance of this hearing in order to clarify item one under Section B and do some further checking into the two-mile limitation.

Discussion was held on a possible continuance, with alternatives suggested by the Planning Commission, in order to clarify some of the points raised in this hearing.

A motion made by Supervisor Withrow and seconded by Supervisor Green failed to pass on roll call vote, to deny this amendment to Sections 1500-1430 and adding section 1500-1470 all relating to the zoning code.

AYES: Supervisors Withrow and Green

NOES: Supervisors Knapp and Garcia

ABSENT: None

ABSTAIN: Supervisor Benatar

Supervisor Benatar noted that he was abstaining because Mr. Mayfield felt he had a conflict of interest in this matter.

Chairman Garcia noted that the motion did not carry.

A motion made by Supervisor Knapp and seconded by Chairman Garcia to adopt the amendment to the zoning code with the addition to include both remote and off-site disposal areas in Section 1500-1470 A and B and that B-1 be removed relative to soil types and this to be included on an individual basis rather than all soil types that are listed, failed to pass on roll call vote:

AYES: Supervisors Knapp and Garcia

NOES: Supervisors Green and Withrow

ABSTAIN: Supervisor Benatar

ABSENT: None

A motion made by Supervisor Knapp to continue this hearing died for lack of a second.

Chairman Garcia noted that if this matter is to be brought before the Board again it would have to be initiated by the public requesting an amendment to the Zoning Ordinance.

(Tape 66 - Minute Clock Readings: 217.8 - 360.7--Tape 67 - Minute Clock Readings: .1 - 25.1)

No further business coming before the Board the meeting was adjourned.



CHAIRMAN

ATTEST:

LONNA B. SMITH
Clerk to the Board

By 
Deputy