

Law Offices of

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HAGEL &

FISHBURN

LLP

November 3, 2008

**VIA FACSIMILE AND REGULAR MAIL**

Supervisor Khatchik Achadjian  
County Government Center  
San Luis Obispo, CA 93408

**RE: Potential Conflicts of Interest in Pending Board Decisions  
concerning Santa Margarita Ranch LLC's Vesting Tentative Tract  
Map and Conditional Use Permit**

Dear Supervisor Achadjian:

I am writing to you at the request of my client, Santa Margarita Area Residents Together (SMART), concerning the upcoming Board of Supervisors' decisions on the Santa Margarita Ranch project scheduled for the meeting of November 4, 2008.

Our firm specializes in providing advice and representation in all matters arising under the Political Reform Act including the financial disclosure and disqualification requirements of the law. I was asked to review your financial interests and the pending matter before the Board based on these requirements.

In summary, it is my view that you have a conflict of interest within the meaning of the Political Reform Act (Gov. Code section 87100 et seq.), and the law therefore requires you to make a determination whether you have a disqualifying conflict of interest. I have reviewed the advice letter which you received from the Fair Political Practices Commission last week concerning this matter. However, the FPPC only addressed the question of whether your membership in the board of a bank where one of the developers was also a board member constituted a conflict of interest. I would urge you to return to the FPPC and disclose all of the facts concerning your financial interests and concerning the interests of Santa Lucia Bank in particular.

On your 2007 Annual Statement of Economic Interests, you have disclosed an investment interest in Santa Lucia Bank with a value between \$100,000 and \$1 million. In addition, you have disclosed that you are a director of the bank, and that you have received a salary and expense reimbursements from the bank between \$10,001 and \$100,000. You have also disclosed an investment interest in Mission Community Bank valued between \$2,000 and \$10,000.

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It is also known that one of the three developers involved in the Santa Margarita Ranch project, Doug Filliponi, is also a director with Santa Lucia Bank. The other two developers in the project, Robin Rossi and Karl Wittstrom are directors of Mission Community Bank.

We have reviewed certain public filings made by Santa Lucia Bank with the Securities and Exchange Commission, and the Bank has disclosed that the bank has granted loans to certain executive officers, directors and the businesses with which they are associated. The filings do not identify the officers or directors, or their businesses, who have received loans from the Bank. However, it does certainly raise the question of whether the Bank is involved in any way in either the direct financing of the Santa Margarita Ranch project, or whether it is involved in supporting other businesses of Doug Filliponi or the other developers. I understand that you have stated that Santa Lucia Bank does not have any direct interest in the Santa Margarita Ranch project. However, a conflict can still arise if there are other business arrangements between the Bank and other businesses in which the developers have an interest. It is also unknown whether Mission Community Bank is involved in any way with the financing of the project or the financing of any other business ventures by the Santa Margarita Ranch developers.

Under the law, a public official is prohibited from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. (See Gov. Code section 87100.) An official has a financial interest in a governmental decision in which it is reasonably foreseeable that the decision will have material financial effect on one or more of the official's economic interests. In relevant part, economic interests include interests in a business entity in which the official has a direct or indirect investment of \$2,000 or more, a source of income to the official of \$500 within the 12 months preceding the decision, a business entity in which the official is a director, officer, partner, trustee, employee or holds any position of management; and the official's interest in her or her personal finances, including those of his or her immediate family. (See Gov. Code section 87103.)

Based on your interests in Santa Lucia Bank and Mission Community Bank, if either bank had any direct or indirect interest in the Santa Margarita Ranch project, you would be required to disqualify yourself from participating in any decisions concerning the project. It may be that the Banks do not have any such interest in the project. However, even if this is the case, then the inquiry cannot stop there given your interests and the extensive business interests of the three developers, and the broad scope of the disqualification requirements over all potential financial effects, both direct and indirect.

The FPPC has adopted a comprehensive set of regulations in the area of conflicts of interest, and issued numerous opinions and advice letters which address the many complexities and nuances in the determination of a conflict of interest, and which would need to be consulted to determine whether you in fact have a conflict of interest in this matter. I would draw your attention to the following specific provisions.

First, in determining the potential effects of the decision on the Santa Margarita Ranch project on the bank, assuming that the bank is not directly involved in the financing of the project, it is important to consider whether the decision to approve or disapprove the project might affect other businesses or projects of the same developers in which the bank has provided financing and thus have an indirect effect on the bank. For example, the financing for other business ventures may be dependent on, or secured by, the developers' interests in the Santa Margarita Ranch project. The mere fact of the existence of any other financing arrangements between the Banks and any of the other developers creates the possibility that the bank could be affected by any Board decisions which affected any of the developers' business activities. The effect may be indirect, but if the effect is foreseeable and material, then the statute would require disqualification.

Second, and related to the first point, as a director of the bank, you are under an obligation to promote and serve the interests of the bank, and the bank is also a "source of income" to you. Under the FPPC's "nexus" test, you would not be permitted to participate in a decision of the Board if you could be deemed to be receiving income from the Bank to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the Board's decision. (See FPPC Regulation 18705.3(c).) Moreover, if a decision might result in any change to the bank's finances by, for example, changing the probability of recovery on existing loans or requiring the restructuring of other loans, this could also affect your personal finances directly which would be a separate basis for the disqualification requirement.

For example, in a 2005 advice letter, the FPPC told a Planning Commissioner who was also an employee of a bank that he could not participate in Planning Commission decisions involving customers of the bank (Wilson Advice Letter, FPPC File No. I-05-040, 5/27/2005.) based on any of the following: (1) the decision would have a reasonably foreseeable financial effect on the bank, (2) if there was a "nexus" between the Planning Commission decision and his activities with the Bank, or (3) the decision would result in an increase or decrease in the bank's performance figures which were used to calculate his bonus.

Third, in determining the potential effects on a business entity, the law requires that you determine not only the direct and indirect effects on the business in which you have an interest, but also the effects on any "otherwise related" business entity. (See Government Code section 82034 and FPPC Regulation 18703.1.) I do not know all of the relationships the banks or your other business interests may have, but you must consider whether any of these businesses are related in any way to any businesses which will be affected by the project. If there will be a foreseeable and material financial effect on any of these businesses, then disqualification would be required.

Supervisor Khatchik Achadjian

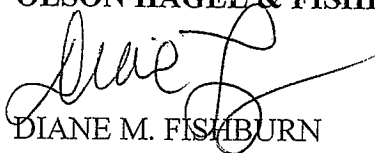
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In conclusion, I would urge you to make a complete disclosure of all of the facts concerning your financial interests to the FPPC so that the FPPC may analyze the complete situation for potential conflicts of interests, and you can then make a fully informed determination prior to your participating in any decisions on the project.

Very truly yours,

**OLSON HAGEL & FISHBURN LLP**



DIANE M. FISHBURN

DMF:alg

cc: County Counsel Warren Jensen

John Beccia, President, SMART

Valentina Joyce, Counsel, Fair Political Practices Commission

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