

## EXHIBIT 1

### INTRODUCTION

Respondent Gregory Fox (“Respondent Fox”) has been a member of the Saratoga Cemetery District Board of Trustees since 2004. At all relevant times, Respondent Fox owned real property in the City of Saratoga, located within 500 feet from the proposed boundaries of a cemetery development project site. In this matter, Respondent Fox failed to disclose his ownership interest in undeveloped properties, APN 517-13-021 and APN 517-13-022, on his annual statements of economic interests (“SEI”) for the years 2006, 2007, 2008, and failed to timely disclose his ownership interest in these properties on his 2009 SEI. Further, Respondent Fox participated in and made governmental decisions on several occasions to develop an undeveloped parcel, referred to as the Sister’s parcel, owned by the Saratoga Cemetery District (“SCD”), which is located within 500 feet of Respondent Fox’s undeveloped property, APN 517-13-021, in violation of Government Code section 87100 of the Political Reform Act (the Act),<sup>1</sup> which prohibits public officials from making, participate in making, or attempting to use their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. This case arose from a complaint.

For the purposes of this Stipulation, Respondent’s violations are stated as follows:

COUNT 1: As a member of the Saratoga Cemetery District Board of Trustees, Respondent Gregory Fox was required to and failed to disclose all required information on his 2006 Annual Statement of Economic Interests, in violation of Government Code sections 87300 and 87302.

COUNT 2: As a member of the Saratoga Cemetery District Board of Trustees, Respondent Gregory Fox was required to and failed to disclose all required information on his 2007 Annual Statement of Economic Interests, in violation of Government Code sections 87300 and 87302.

COUNT 3: As a member of the Saratoga Cemetery District Board of Trustees, Respondent Gregory Fox was required to and failed to disclose all required information on his 2008 Annual Statement of Economic Interests, in violation of Government Code sections 87300 and 87302.

COUNT 4: As a member of the Saratoga Cemetery District Board of Trustees,

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

Respondent Gregory Fox was required to and failed to timely disclose all required information on his 2009 Annual Statement of Economic Interests, in violation of Government Code sections 87300 and 87302.

COUNT 5: On May 14, 2008, as a member of the Saratoga Cemetery District Board of Trustees, Respondent Gregory Fox participated in making a governmental decision in which he had a financial interest, by suggesting that the Saratoga Cemetery District develop the Sister's parcel, located within 500 feet of his real property, in violation of Government Code section 87100.

COUNT 6: On September 1, 2009, as a member of the Saratoga Cemetery District Board of Trustees, Respondent Gregory Fox made a governmental decision in which he had a financial interest, when the Saratoga Cemetery District Board of Trustees, including Respondent Fox, agreed to develop the Sister's parcel, located within 500 feet of his real property, in violation of Government Code section 87100.

COUNT 7: On January 27, 2010, as a member of the Saratoga Cemetery District Board of Trustees, Respondent Gregory Fox made a governmental decision in which he had a financial interest, when the Saratoga Cemetery District Board of Trustees, including Respondent Fox, voted to approve the Concept Plan for the development of the Sister's parcel, located within 500 feet of his real property, in violation of Government Code section 87100.

## **SUMMARY OF THE LAW**

### Statement of Economic Interests

An express purpose of the Act, as set forth in section 81002, subdivision (c), is to ensure that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, so that conflicts of interest may be avoided. In furtherance of this purpose, section 87300 requires every local agency to adopt and promulgate a conflict of interest code.

Section 82019, subdivision (a), defines "designated employee" to include any member of any agency whose position is "designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." Additionally, section 87302, subdivision (a), provides that an agency's conflict of interest code must specifically designate the positions within the agency that are required to file statements of economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income. Thus, designated employees must file statements of economic interests under the Act.

Section 87302, subdivision (b) provides that an agency’s conflict of interest code must require each designated employee of the agency to file an annual statement of economic interests at the time specified in the Agency’s Conflict of Interest Code, disclosing investments, income, business positions, and interests in real property, held or received at any time during the previous calendar year.

The Conflict of Interest Code for the Saratoga Cemetery District (“SCD Conflict of Interest Code”),<sup>2</sup> required that each designated employee file an annual statement of economic interests in the month of March each year. Pursuant to the Conflict of Interest Code, a member of the Saratoga Cemetery District Board of Trustees was a designated position. Further, in relevant part, the Conflict of Interest Code required that real property is a reportable interest if it is located within 2 miles of the boundaries of the local agency. Additionally, the Conflict of Interest Code, in relevant part, states “An interest in real property which is used principally as the residence of the designated employee making the filing is not a reportable interest.

Section 87300 declares that the requirements of an agency’s conflict of interest code shall have the force of law, and any violation of those requirements shall be deemed a violation of the Act.

### Conflict of Interest

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have 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 a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps seven and eight of the standard step by step analysis are exceptions to the Act and the respondent has the responsibility to provide facts and evidence that support the use of these exceptions. (Regulations 18707, 18708.) Because the facts and evidence do not indicate that either of the exceptions are applicable to this case, these exceptions are not discussed. The six relevant steps of the analysis follow below.

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include members of a state or 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 18702.1, subdivision (a) (1), a public official “makes a governmental decision” when the official votes on a matter. Under Regulation 18702.2, subdivision (b)(2), a public official participates in making a governmental decision when, acting within the authority of his position, the official advises or makes

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<sup>2</sup> The Saratoga Cemetery District Conflict of Interest Code was last updated in 2003. This SCD Conflict of Interest Code was effective for all years referred to in this document.

recommendations to the decisionmaker either directly or without significant substantive review, by preparing or presenting any report, analysis, opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose is to influence a governmental decision.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (b), an economic interest of a public official includes any real property in which the public official has a direct or indirect interest worth \$2,000 or more.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.2, subdivision (a)(1), real property in which a public official has an economic interest is directly involved if the real property is located within 500 feet of the boundaries or proposed boundaries of the property which is the subject of the governmental decision.

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.2, subdivision (a), if real property is directly involved in a governmental decision, the financial effect of a governmental decision is presumed to be material. For real property directly involved in a governmental decision, any financial effect, even “one penny,” is presumed to be material. (Regulation 18705.2, subdivision (a)(1).) This is known as the “one penny” rule. The official may rebut this presumption with proof that the financial effect on his or her real property interest is not a reasonably foreseeable result of the decision.

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.)<sup>3</sup>

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent’s economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency. (Regulation 18706, subd. (b).)

## SUMMARY OF THE FACTS

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<sup>3</sup>The *Thorner* opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

Respondent Fox has been a member of the SCD Board of Trustees since 2004. The SCD is governed by a five member Board of Trustees appointed by the Santa Clara County Board of Supervisors. At all relevant times, Respondent Fox owned a vacant lot (APN 517-13-021) in the City of Saratoga, which was located within 500 feet from the Sister's parcel owned by SCD. Additionally, at all relevant times, Respondent Fox owned the adjacent vacant lot (APN 517-13-022), located further than 500 feet from the Sister's parcel owned by SCD.

Respondent Fox acquired parcel number 517-13-020 and 517-13-021 on September 1, 1978. Parcel number 517-13-020 is a 17.36 acre parcel where his home is located and would not have been reportable real property. Further, his home is farther than 500 feet from the SCD Sister's parcel and is not a source of the conflict of interest violations. However, parcel number 517-13-021 is a 1.27 acre parcel that is located about 200 feet from the undeveloped SCD Sister's parcel, is the source of the conflict of interest violations, and is reportable real property. In addition, Respondent Fox acquired parcel number 517-13-022 on November 21, 1986. Parcel number 517-13-022 is a 1 acre parcel, is farther than 500 feet from the SCD Sister's parcel, but is reportable real property.

Counts 1-4  
Statement of Economic Interests

According to the SCD Conflict of Interest Code, an Annual SEI was required to be filed in the month of March each year by each designated employee. According to the SCD Conflict of Interest Code, all members of the SCD Board of Trustees were designated employees and were required to disclose all reportable interests. The reportable interests, in relevant part, include the disclosure of "real property to which the interest pertains is located in part or in whole within 2 miles of the boundaries of the local agency." The residence of the designated employee is not reportable.

According to the Office of the Clerk of the Santa Clara County Board of Supervisors, on or about April 4, 2007, Respondent Fox filed his 2006 Annual SEI, reporting "No reportable interests on any schedule." On or about April 1, 2008, Respondent Fox filed his 2007 Annual SEI, reporting "No reportable interests on any schedule." On or about March 30, 2009, Respondent Fox filed his 2008 Annual SEI, reporting "No reportable interests on any schedule." On or about August 16, 2010, Respondent Fox filed his 2009 Annual SEI, reporting "No reportable interests on any schedule." However, on or about March 23, 2011, Respondent Fox filed an amendment for the 2009/2010 Annual SEIs, reporting parcel numbers 517-13-021 and 517-13-022 as properties that he owns with a fair market value of between \$10,000 and \$100,000.

In an interview with Respondent Fox, he stated that he considered his residence and the two separate parcels as part of his residence. Additionally, he filed an Assuming Office SEI at the end of 2003, disclosing his real property interest in his residence, his interest in his dental practice, and an interest in an investment. According to Respondent Fox, he was told that these interests were not required to be disclosed. He did not disclose these interests thereafter. However, he did not disclose his interest in his two undeveloped parcels in 2003.

Therefore, Respondent Fox was required to disclose his ownership interest in APN 517-13-021 and APN 517-13-022 on his Annual SEI's for the years 2006, 2007, 2008, and 2009. Respondent did file an amendment to his 2009/2010 SEI, reporting these real property ownership interests. By failing to disclose his reportable ownership interest in real property on his Annual 2006 SEI, Annual 2007 SEI, Annual 2008 SEI, and failing to timely disclose his reportable ownership interest in real property on his Annual 2009 SEI, Respondent committed four violations of Government Code sections 87300 and 87302.

Counts 5-7  
Conflict of Interests

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

Step One: Respondent Was a Public Official as Defined By the Act

As a member of the Saratoga Cemetery District Board of Trustees, Respondent Fox was a public official as defined in Section 82048.

Step Two: Respondent Participated In and Made Three Governmental Decisions

Count 5

On May 14, 2008, at an SCD Board of Trustees meeting, the Board discussed developing one of the vacant, undeveloped parcels owned by SCD. Respondent Fox suggested that the SCD develop the Sister's parcel, located within 500 feet of Respondents Fox's undeveloped parcel number 517-13-021.

Count 6

At the September 1, 2009 SCD Board of Trustees meeting, the SCD Board of Trustees, including Respondent Fox, agreed that the next area that would be developed would be the Sister's parcel.

Count 7

At the January 27, 2010 SCD Board of Trustees meeting, the SCD Board of Trustees, including Respondent Fox, voted to approve the Concept plan for the development of the Sister's parcel, which would be used for the request of bids from landscape architects.

Therefore, Respondent Fox participated in and made governmental decisions on three separate occasions, on May 14, 2008; September 1, 2009; and January 27, 2010.

Step Three: Respondent Had an Economic Interest

At all relevant times, Respondent Fox had an ownership interest in undeveloped parcel APN 517-13-021 located within 500 feet from the undeveloped SCD Sister's parcel. As

Respondent Fox had a direct interest in the real property worth \$2,000 or more, Respondent had an economic interest in real property for the purposes of Section 87103, subdivision (b).

Step Four: Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's real property was located within 500 feet from the undeveloped SCD Sister's parcel that was being designed and developed. Therefore, the real property was directly involved in the governmental decision. (Regulation 18704.2, subd. (a)(1).)

Step Five: Applicable Materiality Standard

Since the Respondent's real property was directly involved in both governmental decisions, any financial effect of the governmental decisions on his real property is presumed to be material. (Regulation 18705.2, subd. (a).)

Step Six: It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, and not just a mere possibility, that the applicable materiality standard will be met as a result of the governmental decision at issue. (Regulation 18706, subd. (a).)

Respondent Fox's participation in and making of governmental decisions on May 14, 2008; September 1, 2009; and January 27, 2010, ultimately determined that the Sister's parcel would be the next parcel that would be developed and approved the Concept plan, determining what would be included in the development.

The SCD owned two parcels that could have been developed, but Respondent Fox wanted the SCD Sister's parcel developed, which was the only SCD parcel located within 500 feet of his undeveloped parcel number 517-13-021. There were members of the community that wanted the cemetery to sell this property. Other members of the community were concerned about what this property would become if that were to occur. In an interview with Respondent Fox, he stated that he wanted to move the project forward because once the site was a cemetery it would not be used for another purpose. Further, at the SCD Board of Trustee meetings, there were multiple discussions about approaching people in the area to sell their property for the future use of the cemetery. The area around the cemetery is largely residential. While Respondent Fox's parcel located at APN 517-13-021 is undeveloped and would need a substantial amount of work in order for the cemetery to use it, it is located in close proximity to the SCD Sister's site. If the Sister's site was developed, then the location of Respondent Fox's parcel would make it more desirable for the SCD to purchase to accommodate future use.

In an interview with Respondent Fox, he stated that he did not believe he could have a conflict by developing and designing gravesites. He stated that he did not realize that his property was within 500 feet from the Sister's parcel, since he could not "see it, hear it, or feel it" from his property. However, the development of the Sister's parcel ensured the parcel would remain a cemetery and potentially made his property more desirable for the SCD to purchase to

accommodate future use.

Accordingly, in light of Respondent Fox's participation and making of governmental decisions, it was reasonably foreseeable that the participation and making of governmental decisions would have a material financial impact on Respondent's real property interest.

In summary, by participating in and making three governmental decisions in which he had a financial interest, Respondent Fox committed three violations of Government Code section 87100.

## CONCLUSION

This matter consists of seven counts, which carries a maximum possible administrative penalty of Thirty-Five Thousand Dollars (\$35,000).

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

Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

### SEI Disclosure: Counts 1 through 4

Regarding the failure to disclose real property interests on an SEI in Counts 1 through 4, the typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties concerning SEI disclosure violations include:

**In Re: Michael Rubio, FPPC No. 07/293 (Approved January 28, 2011).** Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interests provisions of the Act.



**In Re: William G. Horn, et al., FPPC No. 05/212 (Approved September 12, 2007).** San Diego county Supervisor failed to disclose, on his 2004 and 2005 SEIs, 25 tenants/individuals who paid his business trust \$10,000 or more in rent annually. Also, he failed to disclose on the 2004 SEI a source of income from the sale of a property interest in a residence. While he was an experienced officeholder, there was no evidence to show that he participated in or made any decisions regarding these tenants. The approved stipulated settlement was \$1,500 for each reporting period.

In an interview with Respondent Fox, he stated that he considered his residence and the two parcels as part of his residence. Additionally, he filed an Assuming Office SEI at the end of 2003, when he disclosed his real property interest in his residence, his interest in his dental practice and an interest in an investment. According to Respondent Fox, he was told that he did not have to disclose these interests. He did not disclose these interests thereafter. However, he did not disclose the two undeveloped parcels on his Assuming Office SEI. Further, one of the undisclosed properties was the source of the conflict of interests.

As such and based on the above prior cases, imposition of a \$1,000 penalty for each count is recommended.

**Conflict of Interest: Counts 5 through 7**

The conduct of participating in and making a governmental decision in which an official has a financial interest is a serious violation of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial interest. The typical administrative penalty for the conflict of interest violation has ranged from the middle to high penalty range, depending upon the facts of the case. Recent prior penalties concerning conflict of interest violations include:

**In Re: Michael Rubio, FPPC No. 07/293 (Approved January 28, 2011).** As discussed above. The approved stipulated settlement was \$2,500 for the conflict of interest violation.

**In Re: Jerry "Pat" Maguire, FPPC No. 10/114 (Approved January 28, 2011).** As the Director of the El Camino Irrigation District, Maguire impermissibly made 2 governmental decisions by voting on irrigation plans concerning real property located within 500 feet from his property. The stipulation states the he maintained that he was unaware of the 500 foot rule, had no prior history and was cooperative. The approved stipulated settlement was \$3,500 for each violation.

In an interview with Respondent Fox, he stated that he did not believe he could have a conflict by developing and designing gravesites. He stated that he did not realize that his property was within 500 feet from the Sister's parcel, since he could not "see it, hear it, or feel it" from his property. However, Respondent Fox participated and made governmental decisions on the development of the Sister's parcel over a period of multiple years, which is located within 500 feet of his real property. During this time, Respondent Fox attended conflict of interest training, the SCD Board of Trustees was given advice from the Santa Clara County Counsel regarding the 500 foot rule, and another member of the SCD Board of Trustees was prosecuted for the September 1, 2009 vote. Respondent Fox continued to participate and vote after receiving information regarding conflicts of interests and failed to disclose his reportable real

property interest in APN 517-13-021, which was the source of the conflict. Further, the development of the Sister's parcel ensured the parcel would remain a cemetery and potentially made his property more desirable for the SCD to purchase to accommodate future use. As such and based on the above prior cases, imposition of a fine of \$3,000 for Counts 5 through 7 is recommended.

### **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 Thirteen Thousand Dollars (\$13,000).