

rec'd 9/20/07
GPA

Humboldt Watershed Council

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September 11, 2007

Board of Supervisors
County of Humboldt
825 5th Street
Eureka, CA 95501

Re: Request for Recusal of Commissioner Herman

Dear Supervisors,

The Humboldt Watershed Council requests that Commissioner Tom Herman recuse himself from any and all discussions and/or decisions of land-use designations and policies for timberlands in Humboldt County as a part of the General Plan Update.

This request takes no issue with Mr. Herman's past employment or relationship with Pacific Lumber Company, nor do we make any assertion as to his fairness or competency as a Commissioner. Rather, this request is made due to evidence that Mr. Herman has a current and ongoing financial relationship with Pacific Lumber, consulting with or representing the company on real estate and environmental issues.

This fact was made public in an affidavit filed with the bankruptcy court in Corpus Christi, wherein Mr. Herman states:

"The Firm... have represented and advised Pacific Lumber Company as counsel with respect to real estate and environmental matters."

And:

"The Pacific Lumber Company has requested, and the Firm has agreed to continue to represent and advise the debtors... with respect to such matters."

The letter goes on to state that Commissioner Herman's firm has rendered services which have not yet been billed in the amount of \$1,677.89.

California Government Code, Section 87100 states:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

The State of California defines an 8-step test to determine whether an official has a conflict of interest. Those points are:

Step One: Are you a "public official" within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

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Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the "public generally" exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

All of these considerations clearly apply in this instance. On the first two points, Commissioner Herman is clearly a public official, and is clearly participating in making and/or influencing a governmental decision.

On the third point, a guidance document by the Secretary of State's office defines, among other sources of income:

You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned.

As noted above, Mr. Herman has a currently outstanding bill to PL for over \$1,600. The third test is clearly met.

On the fourth point, the policies and land-use designations being discussed for timberlands as a part of the General Plan will undeniably have an impact one way or another on timberland owners, and so the test is met.

The fifth point is an important one: What kinds of financial impacts are considered important enough to trigger a conflict of interest? These hearings have been filled with comments about the sweeping impact that new policies could have on our industrial timberland owners. In this particular case, development potential for PL's lands could have the most significant impact possible, ultimately affecting the company's valuation and thus determining whether PL and its parent company hold on the land or not. We believe that the materiality standard is met.

Step seven is the "public generally" exception. This is an important point that shapes the scope of this request for recusal. The County is considering an Industrial Timberland designation as a part of its suite of timber policies. This designation would apply only to a very few land owners in Humboldt County, with PL being one of them. This issue will clearly not apply to the vast majority of the general public, and so its impact upon PL will be categorically different than its impact on the public generally.

The last step is the question of whether the official's participation is legally required. The Planning Commission has enough members that Mr. Herman's recusal will still allow for a quorum, and so his participation is not required, and thus all 8 points of the test are met.

It must here be noted that one of the other few landowners to be affected by this zoning is Barnum Timber, who Commissioner Herman has told us is also a client of his. At a previous Planning Commission hearing, Mr. Herman openly used information gleaned from his inside

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relationship to guide his discussion and decision-making on these policies. It appears that Commissioner Herman represents 2 of the 4 landowners likely to be affected by these policies. The 'public generally' exception could not be more clear.

Though Commissioner Herman's conflict is most stark on the Industrial Timber Policies, those policies cannot be reasonably separated from the suite of timber policies as a whole, and so I believe it would be appropriate for Commissioner Herman to recuse himself on all timber policy discussions, for clarity sake.

In discussing conflicts of interest, it is important to point out that having a conflict of interest is not, in any way, an indictment against that person's character or integrity. Rather, a conflict of interest is simply a statement of recognition that that person has responsibilities or interests in the issue at hand which may run counter to their official duties. These kinds of conflicts arise as a simple matter of consequence for persons in elected or appointed decision making positions. Having a conflict is neither good nor bad, it is merely a situation.

I would like to point out that Commissioner Kelly recuses himself often at these hearings, due to his professional conflicts, and we appreciate that. Again, there is no shame in having a conflict.

In raising this issue, I wish to point out that this conflict is only based on those of Mr. Herman's clients of whom we are aware. We cannot know if there are other conflicts which we may not be aware of. For clarity sake, and in the interest of good governance, I would ask that Commissioner Herman and all of the Planning Commissioners be forthcoming in disclosing any potential conflicts.

In closing, the Humboldt Watershed Council requests that the Board of Supervisors and consult with County Counsel on this matter, and take appropriate action.

Respectfully,

Mark Lovelace
Humboldt Watershed Council

Cc:

Ralph Faust, Humboldt County Counsel
Laura Nikolas, Chief Administrative Officer
Kirk Girard, Director of Community Development
Humboldt County Planning Commission
Kevin Bundy, Shute, Mihaly and Weinberger

Attachments:

Affidavit of Tom Herman