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May 3, 2022

VIA E-MAIL ONLY

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**Re: Old Arcata Road Rehabilitation and Pedestrian/Bikeway Improvements
Coastal Development Permit; Bayside Area; Record Number PLN-2022-1764
(filed 2/28/2022)
Meeting Date: May 5, 2022 at 6 p.m.**

Objection Based Upon Conflict of Interest

Dear Members of the Humboldt County Planning Commission:

On behalf of Bayside Cares, we are writing to request that the Humboldt County Planning Commission deny approval of a Coastal Development Permit for the above-referenced Project because all the contracts which led to its preparation, including the contract for preparation of the necessary environmental documents, the contract for the Project's design and the contract for the Project's construction are **void**, because **a public official in the City of Arcata** had a **financial interest** in all of them, and participated in the making of all of the contracts.

The public official or officer was Joshua Wolf, active member of the Arcata Traffic Safety Committee-- and an engineer who was at all times an employee of GHD.

GHD entered contracts with the City of Arcata: (1) for GHD to perform the Charette Study; (2) for GHD to prepare the Initial Study, to design the Project, to prepare the Mitigated Negative Declaration, to prepare the Draft Environmental Impact Report; (3) for GHD to draft the Final Environmental Impact Report; and (4) for GHD to actually construct the Project.

Joshua Wolf, an engineer employee of GHD, was on the Arcata Traffic Safety Committee. As a member of that Committee, Wolf helped Arcata City staff prepare the staff

report which recommended the Project to the City Council at its December, 2017 meeting. The Project was approved at the December, 2017 meeting and staff was authorized to seek funds to design and construct it.

Joshua Wolf, as an employee of GHD, actually designed the Project. Joshua Wolf is also the project manager and the person who did the drafting check for the Project, pursuant to GHD's contract with the City of Arcata.

Before this, Joshua Wolf, as an employee of GHD, worked under contract with the City of Arcata to do all the environmental work and documents., and the City has contracted with GHD to construct the Project.

CFR Tit. 2 §18700(a) states:

(a) Basic Rule: A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use the official's position to influence a governmental decision when the official knows or has reason to know the official has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or the official's immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103.)"

Because he was a member of the Arcata Traffic Safety Committee, Joshua Wolf was and is, a "public official" prohibited from participating in or influencing decisions in which he has or had a disqualifying "financial interest." This is because the Arcata Traffic Safety Committee: "makes substantive recommendations [to the Arcata City Council] and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency [the Arcata City Council]." CCR Tit. 2 §18700 (c)(2)(A).

Although the Arcata Traffic Safety Committee is technically advisory, its members are bound by the conflict of interest law because their recommendations are regularly followed by the decision maker, (the Arcata City Council); it makes no difference whether members of the Traffic Safety Committee are salaried or non-salaried. (Com. on Cal. State Gov. Org. & Econ. v. Fair Political Practices Com. (1977) 75 Cal.App.3d 716; *see also* In re Rotman (1987) 10 FPPC Ops. 1 [redevelopment committees].)

Joshua Wolf had and has a disqualifying "financial interest" because he receives his salary, as an employee, from GHD. A public official has a "financial interest" if the public official receives income over \$500 from a company that contracts with the government entity, i.e., if he is an employee of the company.

2 Cal. Code Regs. § 18703.1 states:

“A public official has an economic interest in a business entity if “[t]he public official is a director, officer, partner, trustee, **employee**, or holds any position of management in the business entity...”

At all times mentioned, Joshua Wolf, an engineer employed by GHD, also known as Omni Means, is, and has been, a member of the Arcata Traffic Safety Committee, active and participating in its recommendation of the Project to City staff and the City Council, and participating in preparation of the Staff Report to the City Council, while at the same time being a full-time employee of GHD.

The Traffic Safety Committee had meetings through 2016, 2017, 2018, 2019 and 2020 concerning the Project, and Joshua Wolf never once recused himself. He also attended all City Council meetings concerning the Project and appeared before the City Council concerning the Project. As a member of the Traffic Safety Committee, he worked with City staff in preparing a report to the City Council recommending the Project. The City Council accepted the recommendation and approved the Project, as they almost always accept the recommendations of staff reports. Joshua Wolf of GHD personally recommended the Project, (which is the alternative including a roundabout), to City staff and to the City Council and has been an advocate for the Project.

Joshua Wolf legally “participated” in the City’s decision to approve the Project and to enter into contracts with GHD to provide design of the Project, construction of the Project, and all environmental compliance for the Project, and is project manager and designer of the Project.

Cal. Code Regs., tit. 2, § 18702.3 defines “participating in a decision”:

“(b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

(c) Using Official Position to Attempt to Influence a Decision. A public official uses an official position to influence a governmental decision if the official:

(1) Contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision; or

(2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact.”

Cal. Code Regs., tit. 2, § 18704

Preparation of a staff report regarding a Board's ultimate decision constitutes participating in a governmental decision. (*See, e.g.*, Johnson Advice Letter, No. A-09-221.)

The Arcata Traffic Safety Committee assisted staff in preparing the report recommending the Project to the City Council. Joshua Wolf was on the Committee, and also contacted and appeared before the City Council to influence its decision to approve the project.

Government Code Section 1090 prohibits contracts where a public official has a conflict of interest:

“Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

Joshua Wolf, as a member of the Arcata Traffic Safety Committee, was a “public officer” prohibited by *Government Code* § 1090 from participating in contracts between the City and GHD, because, as a GHD employee, he had and has a “financial interest” in these contracts. Joshua Wolf violated Section 1090 because, as a member of the Arcata Traffic Safety Committee, he participated in the making of all the City's contracts with GHD through the Committee's advisory function. (*City Council v. McKinley* (1978) 80 Cal.App.3d 204; 82 Ops Atty. Gen. 126 (1999).)

And all of the contracts regarding the Project were between the City of Arcata and GHD, with GHD employee, Joshua Wolf, through his participation in the Traffic Safety Committee, actively advising the City Council to pursue the Project and with Joshua Wolf, as a GHD employee, actively performing each of the contracts on behalf of GHD.

The 2017 Charrette report was produced by Omni Means.
<https://www.cityofarcata.org/DocumentCenter/View/10558/SHN-2017-Community-Charrette>

Omni Means was the lead consultant, as can be seen in the footer of the report:

943 Reserve Drive | Suite 100 | Roseville, CA 95678 | p. 916.782.8688 | omnimeans.com

Napa | Redding | Roseville | San Luis Obispo | Visalia | Walnut Creek

The entire consultant group that created this report was highlighted in the Charrette Report as follows:

Although funding for transportation and community planning is limited, the City recognized the need for a thorough community process to develop potential safety improvements along Old Arcata Road. The City was able to budget a portion of its internal Measure G funding, intended for public safety improvements, to embark on a community planning process to address the need for improved access and safety for all modes of travel along Old Arcata Road.

The team selected by the City to lead this project included SHN Consulting Engineers (SHN), Redwood Community Action Agency (RCAA), Streamline Planning (Streamline), Omni-Means, and DMZ Consulting (DZC). City staff provided regular direction to the project team and were responsible for much of the community outreach efforts. The TSC provided general recommendations to the project team and also participated in the community events.



Omni Means and GHD are the same corporation. They had merged at the time that the Charrette Report was done.

<https://www.ghd.com/en/news/omnimeans-officially-adopts-ghd-name-and-brand-following-merger-completion.aspx>

“GHD, one of the world’s leading engineering, environmental, and construction services companies, **merged with Omni-Means, Ltd. (Omni-Means), in February 2017.** The merger increased both firm’s capacity to meet client and market demands for transportation services across the western United States. Since the merger, GHD added more than 60 people to their team, expanding its network of California offices.”

The City then contracted with GHD to do the design of the Project, and to do all the CEQA and NEPA compliance work, including the Initial Study, the Mitigated Negative Declaration, the Draft EIR, the Final EIR, the Partially Recirculated EIR, the amended Final EIR, and contracted with GHD to construct the Project.

Joshua Wolf of GHD, and of the Arcata Traffic Safety Committee, has had and has, an active and leading role in every one of these contracts, and is the designer and project manager of the Project. GHD is the only company submitting a bid to construct the Project, and its bid was accepted.

Because Joshua Wolf participated in Arcata’s making of its contracts with GHD to do the Charrette study, the Initial Study, the DEIR, the FEIR, the design of the Project and construction of the Project, and because he was and is financially interested in all of these contracts, as all his income came from his employment by GHD, all of these contracts are in violation of *Government Code* § 1090 and are void.

Government Code § 1092 states that these contracts, made in violation of *Government Code* § 1090 are voidable. However, case law has held these contracts are *void* not merely voidable. (Thomson v. Call (1985) 3 Cal.3d 633; Carson Redevelopment Agency v. Padilla (2006)140 Cal.App.4th 1323; People ex rel. State of Cal. v. Drinkhouse (1970) 4 Cal.App.3d 931.) Therefore, the Project cannot go forward, as the contract pursuant to which it was designed, the contract pursuant to which it is to be constructed, and the contracts for environmental compliance are all void.

Conclusion

Bayside Cares respectfully requests that, because the Project is the result of a conflict of interest, and because all the contracts entered with GHD with respect to the Project are void because of this conflict of interest, that the Humboldt County Planning Commission refuse to approve the application for a Coastal Development Permit for this Project.

Very truly yours,

STOKES, HAMER, KIRK & EADS, LLP

Chris Johnson Hamer

By: _____
Chris Johnson Hamer

CJH/ja