



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 10, 2024

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Re: Your Request for Advice  
**Our File No. A-24-117**

Dear Mr. Garcia:

This letter responds to your request for advice on behalf of City of Glendale City Councilmembers Dan Brotman, Ara Najarian, and Vartan Gharpetian regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Does the Act prohibit Councilmembers Brotman, Gharpetian or Najarian from taking part in the decision to approve a contract with a consultant to prepare a Master Plan and Environmental Impact Report for the development of the Verdugo Wash given they each have real property interests within 1,000 feet of the Wash?<sup>2</sup>

### CONCLUSION

As explained below, it is reasonably foreseeable that the decision will have a material financial effect on the real property interests of Councilmembers Gharpetian and Najarian, and they may not take part in the decision. In addition, while it is reasonably foreseeable the decision will have a material financial effect on Councilmember Brotman’s real property interest, the “public generally” exception applies to allow him to take part in the decision.

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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 18104 through 18998 of Title 2 of the California Code of Regulations. Unless otherwise indicated, all regulatory references are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Note that for convenience we have consolidated your three separate requests into this advice letter.

## FACTS AS PRESENTED BY REQUESTER

The City of Glendale (“City”) is located in Los Angeles County, bordering to the northeast of the City of Los Angeles. It has a population of 191,586 and has a total area of 30.6 square miles.

### Verdugo Wash Master Plan and Environmental Impact Report

The Verdugo Wash (“Wash”) is a 9.5-mile-long flood control channel that interfaces with 15 distinct neighborhoods throughout the City. The Wash allows for the flow of water and debris without causing significant flooding events. The City is evaluating the Wash as a potential linear park with bicycle and pedestrian paths that would serve as a multi-dimensional connection that links the region physically, hydrologically, and ecologically, while ensuring that the channel continues to serve its primary function as flood control infrastructure. A consultant for the City completed the Verdugo Wash Visioning Study in 2022 (“Visioning Study”), and the City subsequently issued a request for proposals (“RFP”) for a consultant to prepare a master plan document (“Master Plan”) and an environmental impact report (“EIR”), subject to the City Council’s approval.

Functionally, the current concept to support construction of a linear park on the Wash would include a raised platform that would allow water to flow under the Wash during a typical rain condition. During more significant rain events, the platform and all additional elements would be able to withstand the flow and be submerged by water. With the elevated platform, deep planting wells would be created to support significantly enhanced vegetation. The platform height could be calibrated in a number of ways in response to local conditions. The pathways for pedestrians and cyclists could be set at different heights appropriate for its surrounding context. In areas where it is predominately single-family residential, the pathways could be set lower to respect privacy of the surrounding land uses, and the planting wells and vegetation could be located to create a buffer between the pathways and surrounding development patterns. In more urban and commercial areas, the pathways could be set at a higher elevation to promote access and interface with the surrounding land uses.

The City has not identified access points into the Wash for the proposed linear park as that would occur as part of the master planning process. The Master Plan will evaluate the Wash’s existing conditions including its configuration, performance as flood control infrastructure, and the built and natural environmental surroundings of each Wash segment to determine feasibility and to prepare design concepts. The Wash takes on different physical characteristics and neighborhood contexts throughout its course. The Master Plan will identify up to three different, context-appropriate interventions for each Wash segment and will include phases for implementation. Thus, the location of particular improvements within the Wash have not yet been specifically identified, but instead would occur as part of the master planning process. Additionally, the Master Plan will contain historic, cultural, educational and public art components.

The consultant hired to prepare the Master Plan will address the following major objectives and focus areas:

- Existing Conditions Evaluation including baseline hydrology, connectivity and access, spatial character, ecology, existing operations, and maintenance, including

a market study and cost benefit analysis. This task will also include an evaluation of the planning context and history; vision; design alternatives; mobility and connectivity; placemaking; the environment (ecology and sustainability); and cost and phasing analysis.

- Community Engagement and Outreach culminating in a multilingual outreach plan to engage residents, property owners, and other stakeholders both in-person and virtually.
- Draft Verdugo Wash Master Plan including a transportation study, construction plan with construction ready design alternatives, a proposed operations and maintenance plan including programming and funding opportunities, and a signage and wayfinding kit that will be unique to the Wash. Community Engagement and Outreach culminating in a multilingual outreach plan to engage residents, property owners, and other stakeholders both in-person and virtually.
- Environmental Review of all potential environmental impacts, as required by the California Environmental Quality Act (“CEQA”).
- Public Art Master Plan that enhances the Wash through art, historical and cultural educational opportunities, and exploration of ecological topics.

According to the Visioning Study, the “quintessential Wash experience feels heavily engineered with its strict rectangular geometries and hard, sterile concrete floor and walls. Nearly 60-acres in size, the Wash feels inhospitable lacking human scale, being sunk an average of 12-ft from the adjacent city fabric and any other human activity, and secured on all perimeters by chain link fencing.” (Visioning Study at p. 43.) The project will assist in transforming the Wash from a concrete flood control channel into a significant part of the City’s overall character and amenities by developing new pedestrian and cycling trails that will allow the Wash to serve as a multi-modal transportation spine and creating meaningful public open space such as parks above or adjacent to the Wash.

The costs of a full buildout of a linear park on the Wash are not quantified at this time. The Master Plan will include a financial evaluation that will assess the costs for construction as well as ongoing maintenance and operations costs and will identify both short-term and long-term funding opportunities so that the City can prepare for and prioritize implementation. Suffice it to say that the engineering and construction costs to develop the Wash into a linear park as described in the Visioning Study would make the project a significant public works project in the City’s history. The proposed cost to prepare the Master Plan components described above is \$5,762,370.

Preparation and ultimate approval of the Verdugo Wash Master Plan, if that were to occur, would not ensure that the development of the Wash into a linear park space, as the City would need to take further actions to build out the space including obtaining financing/funding, issuing specifications or proposals, awarding bids, and making future decisions as to whether to move forward with the project or any component of it.

Additionally, the approval of other government agencies will be necessary to build the Verdugo Wash into a linear park. Specifically, the City must obtain permits from the U.S. Army Corps of Engineers and the Los Angeles County Flood Control in order to undertake construction on the Wash. The permits from these other government agencies to implement the Wash project would follow a decision by the City Council to approve an EIR and the Master Plan, likely during “construction, maintenance, and activation” phase.

The City cannot build a linear park on the Wash without developing a Master Plan and studying the environmental effects of such an endeavor under the California Environmental Quality Act. Thus, if the Council were to deny approval for a Master Plan and EIR Consultant, the project could not likely move forward.

#### Councilmember Najarian

Councilmember Najarian's spouse owns a single-family residential property that is within 500 feet of, and abuts, the Wash. The residential real property is owned exclusively by his spouse who acquired the property prior to their marriage. Also prior to their marriage, Councilmember Najarian and his spouse entered into a prenuptial agreement whereby he agreed the property was his spouse's separate property and waived any future community property interest in the property through commingling or otherwise. The property does not serve as Councilmember Najarian's primary address and it is not used as a rental property.

#### Councilmember Brotman

Councilmember Brotman owns a single-family residential property that is 846 feet from the Wash. His property is three blocks away from the Wash, separated by houses and two streets, including a major arterial (Canada Blvd.). The residential real property is his primary residence.

#### Councilmember Gharpetian

Councilmember Gharpetian owns three single-family residential properties within 500 feet of the Wash. The properties are directly down the street and to the west of the Wash. The Councilmember uses one of the properties as his primary residence while the other two are currently used as rentals.

According to the City's GIS calculations, there are 40,697 residential real properties in the City and 2,962 residential real properties (7.28 percent) are within 500 feet of the Wash while 6,170 residential real properties (15.16 percent) are within 1,000 feet of the Wash.

### **ANALYSIS**

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 defines financial interests to include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more. (Section 87103(a).)

- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).)
- An interest in a source of income to the official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)

Here, all three Councilmembers have an interest in real property.<sup>3</sup> In addition, Councilmember Gharpetian leases two of his three properties so he would have a business entity interest and source of income interest in his rental property business, as well as a potential source of income interest in his tenants.

### **Foreseeability and Materiality**

Regulation 18701(a) provides that a decision's effect on an official's interest is presumed to be reasonably foreseeable if the interest is explicitly involved in the decision as a named party in, or the subject of the decision. An interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the interest.

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision, as here, and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Regulation 18702.2 defines when a financial effect of a government decision on real property is material. The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)

Here, the financial effect of the governmental decision concerning the Wash within 500 feet of the real property interests of Councilmembers Najarian and Gharpetian is presumed material under Regulation 18702.2(a)(7) unless there is clear and convincing evidence that the decision at issue would not have any measurable impact on each of their residential properties. According to the Visioning Study, the current Wash "experience feels heavily engineered with its strict rectangular geometries and hard, sterile concrete floor and walls ... the Wash feels inhospitable lacking human scale ... and secured on all perimeters by chain link fencing." (Visioning Study at p.

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<sup>3</sup> Note that Section 82033 states that an economic interest in real property includes interests "owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family...." The term "immediate family" means the spouse and dependent children of an official. (Section 82029.) Thus, Councilmember Najarian has an interest in real property owned by his spouse regardless of their prenuptial agreement.

43.) Therefore, the Wash project seeks, among other things, to transform its role from simply a flood control channel into a central part of the City's fabric with continuous biking and walking paths along the length of the Wash and public open spaces such as parks above or adjacent to the Wash. Based on these facts, the decision concerning the Wash Master Plan and EIR involves substantial improvements to the Wash and there is an absence of "clear and convincing evidence that the decision will not have any measurable impact" on her residence under Regulation 18702.2(a)(7). Therefore, Councilmembers Najarian and Gharpetian are disqualified from the decision to approve a contract with a consultant to prepare a Master Plan and Environmental Impact Report related to the Wash, unless an exception applies.

Councilmember Brotman owns his primary residence located 846 feet from the Wash. The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential; income producing potential; highest and best use; character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or market value. (Regulation 18702.2(a)(8).) As discussed above, the governmental decision concerning the Wash project will likely increase the income producing potential and market value of his residence. Therefore, it is reasonably foreseeable that the decision will have a material financial effect on Councilmember Brotman's real property interest and he may not take part in the decision related to the Wash unless an exception applies.

### **Public Generally Exception**

Commonly referred to as the "public generally" exception, Regulation 18703(a) permits a public official to take part in a governmental decision that affects one or more of his or her interests if the decision's financial effect on the interest is indistinguishable from its effect on the public generally. (See Section 87103.) In general, an effect on an official's interest is indistinguishable from its effect on the public generally if a significant segment of the public is affected and the effect on the official's interest is not unique when compared to the effect on the significant segment of the public. (Regulation 18703(a).) A significant segment of the public includes 25 percent of all residential real property within the official's jurisdiction. (Regulation 18703(b)(1)(B).) However, a significant segment of the public includes at least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. (Regulation 18703(b)(2).) A unique effect is defined to include a disproportionate effect on an interest in real property resulting from the proximity of a project. (Regulation 18703(c).)

According to the City's GIS calculations, there are 40,697 residential real properties in the City and 2,962 residential real properties (7.28 percent) are within 500 feet of the Wash while 6,170 residential real properties (15.16 percent) are within 1,000 feet of the Wash.

Councilmember Brotman is the only official who will fall under the 15 percent standard since the only interest he has in the decision is his primary residence located 846 feet from the Wash. He would meet the significant segment standard because 15.16 percent of the residential real properties are within 1,000 feet. Moreover, because there is no indication from the facts that the

decision will have a disproportionate effect on his real property as compared to the other real properties in the significant segment, the “public generally” exception will apply and he may take part in the decision.<sup>4</sup>

Councilmembers Najarian and Gharpetian both have real property interests within 500 feet of the Wash, and both will fall under the 25 percent standard since Councilmember Najarian’s real property interest in the decisions is not his primary residence, and Councilmember Gharpetian has interests in the decision other than his primary residence. Because only 7.28 percent of the residential real properties in the City are within 500 feet of the Wash and only 15.16 percent of the residential real properties in the City are within 1,000 feet, there is no indication based on the facts provided that a significant segment of the public will be met for purposes of Councilmembers Najarian and Gharpetian.

Accordingly, Councilmember Brotman may take part in the decision to approve a contract with a consultant to prepare a Master Plan and Environmental Impact Report related to the Wash while Councilmembers Najarian and Gharpetian are prohibited under the Act from participating in the decision.<sup>5</sup> Under the recusal requirements in Regulation 18707, Councilmembers Najarian and Gharpetian must publicly identify their financial interests that give rise to the conflict prior to consideration of the item, leave the room, and refrain from any participation in the decision before the City Council.

### **Making, Participating in Making, or Influencing a Decision**

You have asked whether, if disqualified from participating in the decision at issue, Councilmembers Najarian and Gharpetian may nonetheless express their views about the decision to the City Council.

In general, a public official disqualified from a governmental decision based on a conflict of interest is not merely prohibited from voting on the item. Rather, the official is prohibited from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.) Regulation 18704 includes definitions for “making a decision,” “participating in a decision,” and “using an official position to influence a decision.” “A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual

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<sup>4</sup> We note that this conclusion is limited to the specific decision to approve the contract with a consultant to prepare a Master Plan and Environmental Impact Report related to the Verdugo Wash. As location specific improvements are proposed, decisions related to the improvements could have a unique effect on Councilmember Brotman’s property interest. Accordingly, to the extent subsequent location specific improvement may affect Councilmember Brotman’s property differently than other properties within the significant segment, the Councilmember may wish to seek additional advice prior to taking part in the decisions.

<sup>5</sup> We do not further analyze the effect of the decisions Councilmember Gharpetian’s other financial interests at issue because we have already determined that the decisions would have a disqualifying financial effect on his real property interests. We note that you have also inquired whether the exception to the Act’s conflict of interest provisions for general plan decisions in Regulation 18702.2(d)(2) may apply. However, based on the facts provided, there is no indication that this exception applies.

agreement on behalf of the official's agency." (Regulation 18704(a).) "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."

(Regulation 18704(b).) 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. (Regulation 18704(c).)

Because Councilmembers Najarian and Gharpetian have a disqualifying conflict of interest, any conduct by them that meets the above definitions is prohibited. Note, however, that the Act does not prohibit them from appearing before the City Council at a public meeting, as a member of the general public, if they are appearing solely with regard to real property owned entirely by them and/or members of their immediate families, a business entity owned entirely by them and/or members of their immediate families, or a business entity under their and/or members of their immediate families' full direction and controlled. However, to the extent either official speaks as a member of the general public regarding one of these specified interests, we caution that the official must limit comments to the potential effect the decision will have on the official's real property and/or business entity. (Regulation 18704(d)(2)(A)-(C).)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

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