

September 21, 2012

Sara Wan  
22350 Carbon Mesa Rd.  
Malibu, CA 90265

Re: Your Request for Advice  
**Our File No. A-12-139**

Dear Ms. Wan:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the “Act”).<sup>1</sup> This advice is based on the facts provided in your request. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice.

### **QUESTION**

When you were seated on the California Coastal Commission, you voted on a Local Coastal Program (“LCP”) over-ride request which was approved by the Commission and later overturned by the Courts. As a former California Coastal commissioner, does the Act's permanent ban prohibit you from advising for compensation the Santa Monica Mountains Conservancy concerning a Public Works Plan that will come before the California Coastal Commission?

### **CONCLUSION**

Since you will be advising another State agency, the permanent ban does not prohibit you from advising the Santa Monica Mountains Conservancy on their Public Works Plan that will come before the California Coastal Commission.

### **FACTS**

Until May 20, 2011 you were a California Coastal Commissioner. In that position you voted on an LCP over-ride request from the Santa Monica Mountains Conservancy

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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.

("Conservancy") to allow for the development of camping sites on State property within the City of Malibu. The over-ride was approved by the Coastal Commission and the City of Malibu brought suit to overturn the Coastal Commission's decision. The decision has been overturned by the Courts. You are currently a Board member of the Santa Monica Mountains Conservancy, which is preparing a Public Works Plan that allows camping on its property within Malibu and will come before the California Coastal Commission. You would like to advise the Conservancy on this project.

### **ANALYSIS**

The Act imposes three types of restrictions on state agency public officials relating to post-governmental employment: (1) the one-year ban (Section 87406); (2) the permanent ban on "switching sides" (Sections 87400-87405); and (3) the ban against influencing prospective employment (Section 87407).

Because your question relates only to the one-year ban and the permanent ban, we limit our discussions to those areas.

#### **One-Year Ban**

The Act prohibits designated state employees, for one year after leaving state service, from being paid to communicate with or appear before their former agency for the purpose of influencing any administrative or legislative action, or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or goods or property. (Section 87406.)

As it has been over one year since you left your position as a commissioner for the California Coastal Commission the one-year ban is not applicable to your situation.

#### **The Permanent Ban**

The Act contains a permanent prohibition on a former state official's involvement in certain proceedings in which they participated while working for the state, commonly known as the prohibition on "switching sides" or the "revolving door."

Sections 87401 and 87402 provide:

"No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

“(a) The State of California is a party or has a direct and substantial interest.

“(b) The proceeding is one in which the former state administrative official participated.”

“No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.” (Section 87402.)

The California Coastal Commission is a State agency, thus, the permanent ban applies to any judicial, quasi-judicial or other proceedings in which you participated while a Commissioner, including proceedings in which you participated, but which were not concluded, at the time you left state employ. However, Sections 87401 and 87402 only prohibit your representation of a person “other than the State of California.” The permanent ban does not restrict you from representing or advising for compensation another State agency. The Santa Monica Conservancy is a State agency, thus, although the Public Works Plan will go before the Coastal Commission, as long as your work is limited to the Conservancy, the permanent ban does not apply.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Harjeet Gidha  
Intern, Legal Division

HG:jgl