



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

June 6, 2023

Karl H. Berger  
Partner  
444 South Flower Street, Suite 2400  
Los Angeles, CA 90071-2953

Re: Your Request for Advice  
**Our File No. A-23-087**

Dear Mr. Berger:

This letter responds to your request for advice 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

Is it reasonably foreseeable under the Act that Mayor Pro Tempore, Thomas Wong’s (“Mayor Pro Tem Wong”) participation in deciding whether to approve the new application for discretionary land use approvals (“New Project”) might have a material financial effect on Southern California Edison (“SCE”), prohibiting Mayor Pro Tem Wong from taking part in the decision-making process regarding the New Project?

### CONCLUSION

Based on the facts provided, it is not reasonably foreseeable under the Act that Mayor Pro Tem Wong’s participation in deciding whether to approve the New Project would have a material financial effect on SCE as a source of income interest. Accordingly, Mayor Pro Tem Wong is not prohibited from taking part in the discussions and decisions related to the New Project.

---

<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. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS AS PRESENTED BY REQUESTER

### *The Market Place Development Project*

In 2012, the City Council approved the “Monterey Park Market Place” development (“Market Place Development”), which was intended to redevelop an approximately 64-acre brownfield site to help stimulate the local economy and create jobs while preserving the environment and public safety of the area. The Market Place Development was originally approved through a Precise Plan. Phase 1 of the Market Place Development has been built, but Phases 2 and 3 remain unbuilt. Phase 2 of the Market Place Development involves road construction, while Phase 3 would involve the development of the vacant western portion of the project site. Ten parcels make up the project site, with current commercial development anchored by a Costco and Home Depot, which are accompanied by several other businesses, including restaurants.

On April 5th and 19th, 2023, the Monterey Park City Council (“City Council”) considered a land use application related to the Market Place Development, submitted by Monterey Park Retail Partners, LLC (“Applicant”). The Applicant proposed amending the development agreement between itself and the City, along with adopting a specific plan that would supersede the precise plan governing the Market Place Development and involve re-zoning the entire project site. California law requires that these two regulatory documents be adopted via ordinances. If adopted, the ordinances will grant land use approvals altering permissible Phase 3 development within the Market Place Development.

The Applicant requests that the City Council approve Zoning Code Amendment to adopt a Specific Plan to address the eventual build-out of the Market Place; it would supersede the existing Precise Plan. The Specific Plan would be identified within the Monterey Park Municipal Code and the entire Market Place Development project site would be re-zoned from the Regional Specialty Center with Planned Development Overlay, to the Specific Plan. Further, the amended and restated development agreement between the City and the Applicant (“Amended Development Agreement”) would help ensure that the eventual build-out of the Project will provide a public benefit to the community.

Contained within the Specific Plan are development standards permitted within the Market Place Development project site, including the additional development of Phase 3 to allow for uses which were not previously permitted or contemplated. As identified in the Specific Plan, the uses listed below for Phase 3 of the project may include:

- Construction of a last mile distribution center of up to 97,000 square feet of floor area;
- Construction of a warehouse of up to 175,000 square feet of floor area;
- Construction of an automobile dealership with a collision or service center totaling up to 100,000 square feet of floor area; or
- Construction of up to 150,000 square feet of floor area for retail uses.

When previously approved, the anticipated build-out of Phase 3 included retail uses, which remains on the list of development options. However, as the commercial and retail market has changed in the last 10 years, the developer’s ability to build out with retail uses has become less

easily achieved. The additional uses of a last-mile distribution center, a warehouse, or an automobile dealership are proposed alternate uses. The proposed MPSP sets up the framework to allow the above-listed uses.

*Mayor Pro Tem Wong and Southern California Edison*

Mayor Pro Tem Wong is a Public Affairs Manager on the Policy Engagement Team in Local Public Affairs at SCE. He manages engagement with external stakeholders, primarily business associations and community-based organizations. You have provided that SCE's earnings for the First Quarter of 2023 exceeded \$300 million. According to its 2022 annual report that you provided in a follow-up email on May 16, 2023, SCE's assets were \$78 billion.

As mentioned in your request for advice, SCE owns real property interests in land abutting the vacant Phase 3 portion of land on the western side of the Market Place Development project site. These property interests are congruent with the areas designated by the Monterey Park Land Use Element ("LUE") as "public utilities" (the "SCE Property"). You stated that the SCE Property is the location of the Mesa Substation. The SCE project overview pamphlet you have provided in a follow-up email on May 16, 2023 states that the "SCE [built] the Mesa Substation Project to ensure that the electric grid will continue to serve the needs of its customers in the region." As provided, Mayor Pro Tem Wong's position with SCE does not directly relate to the Mesa Substation or specific infrastructure projects in the area.

The Applicant owns several easements totaling approximately 2.5 acres across the SCE Property that may be utilized for "access, roads, parking, landscaping, slopes, walls, shopping center and tenant identification signage, storage tanks, and related improvements necessary for the remediation of, and development and operation of a retail shopping center project" (the "Parking Easement"). Some of the easement areas are adjacent to Phase 3 but are located outside of the proposed Specific Plan area that is subject to the Amended Development Agreement. Thus, neither the Specific Plan nor the Amended Development Agreement would authorize development or use of these areas as permitted under the easements. As provided in your May 30, 2023 follow-up email, the Applicant also has not provided any information indicating it would likely exercise the easement; any such exercise would require additional City land use approvals. There is no specific development proposal at this time (nor does the Specific Plan or Amended Development Agreement specify one); however, it is uncertain whether the Applicant will in the future exercise its easement rights by seeking separate City land use approvals.

In an abundance of caution and to avoid any appearance of impropriety, Mayor Pro Tem Wong declared a conflict of interest and recused himself from considering the agenda items related to the Market Place Development at the City Council meetings held on April 5th and April 19th.

While the ordinances needed to approve the Project were introduced on April 5 by a 4-0 vote (Mayor Pro Tem Wong recused), on April 19th the City Council voted 2-1 (with one abstention) to adopt the ordinances (Mayor Pro Tem Wong was again recused). Because ordinances require three affirmative votes to be adopted, the ordinances were not adopted. Consequently, the Project was not approved.

The City is informed that the Applicant will file a new application for discretionary land use approvals that are substantially like those previously considered by the City Council in April. As detailed in the Staff Report, the New Project is an important part of the City's economic health and, if approved, will complete a commercial development that was approved a decade ago. Accordingly, the City Council's full participation in considering the New Project is of vital public interest.

## ANALYSIS

Under Section 87100 of the Act, "[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the public official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family," or on a specified economic interest, including any source of income aggregating five hundred dollars (\$500) or more in value provided or promised to or received by the official within 12 months prior to the time when the decision is made. (Section 87103(c).) All public officials have an economic interest in their personal finances and those of their immediate family. (Section 87103.)

Pertinent to these facts, Mayor Pro Tem Wong has a source of income interest in SCE as a result of his employment.

### Foreseeability and Materiality

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency." It further provides that a financial 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 financial interest.

Where, as here, an official's economic interest is not explicitly involved in the governmental decision, as you have provided here, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides:

A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.

Regulation 18702.3 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's source of income interest. With respect to an effect on an official's interest in a business, which is a source of income to the official and not explicitly involved in the decision, Regulation 18702.3(a)(4) provides that materiality is determined pursuant

to Regulation 18702.1. Under this regulation, a decision's reasonably foreseeable financial effect on an official's interest in a business not explicitly involved in the decision, including a source of income interest, is material if:

(2) The decision may result in an increase or decrease of the business's annual gross revenues, or the value of the business's assets or liabilities, in an amount equal to or more than \$1,000,000, or five percent of the business's annual gross revenues and the increase or decrease is at least \$10,000;

(3) The decision may cause the business to incur or avoid additional expenses or to reduce or eliminate expenses by equal to or more than \$250,000, or one percent of the business's annual gross revenues and the change in expenses is at least \$2,500; or

(4) The official knows or has reason to know that the organization has an interest in real property and there is clear and convincing evidence the decision would have a substantial effect on the property.

(Regulation 18702.1(a)(2)-(4).)

There are no facts indicating that the gross revenue of SCE would meet the financial thresholds of Regulation 18702.1(a)(2)-(3); however, under Regulation 18702.1(a)(4), a decision's effect is material if the official knows or has reason to know that the organization has an interest in real property and there is clear and convincing evidence the decision would have a substantial effect on the property. You have provided that SCE owns the property that abuts the Project Site. However, the facts state that the entitlements requested by the New Project will not alter the zoning or use of the SCE property; will not expand the use or scope of the easements the Applicant already owns; and nothing about the New Project will alter SCE's property rights. In your follow-up email on May 30, 2023, you have provided that neither the Specific Plan nor the Amended Development Agreement would authorize development or use of these areas as permitted under the easements. The Applicant also has not provided any information indicating it would exercise the easement across the SCE Property. Additionally, although the Specific Plan and Amended Development Agreement could lead to development that may, for example, impact the view or noise levels at the SCE Property, similar development is already permissible under the current Development Agreement.

Given the nature of the SCE Property and its use for public utility purposes, it is not clear the governmental decisions would have a substantial impact on the SCE Property. Thus, there is no clear and convincing evidence the New Project would have a substantial impact the SCE Property.

### Nexus Test

In addition to the materiality standards for a source of income as described above, there is another rule for materiality, which is the "Nexus Test," where any reasonably foreseeable financial effect on a source of income to a public official is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).) The rationale for the "Nexus Test" is that, when an employee earns a salary to accomplish a purpose that may be advanced by what he or she

does as a public official, we presume that the private employer is benefiting from the actions of the employee in his or her official capacity. (*Garza* Advice Letter, No. A-17-207; *Tran* Advice Letter, No. A-16-024; *Maltbie* Advice Letter, No. A-15-243.) Typically, a “nexus” is found in situations where the official is also a high-level employee with direct influence and control over their employer’s management or policy decisions. (*Tran* Advice Letter, *supra*; *Moser* Advice Letter, No. A-03-147; *Low* Advice Letter, No. A-99-304.)

As a Public Affairs Manager on the Policy Engagement Team in Local Public Affairs with SCE, Mayor Pro Tem Wong’s responsibilities explicitly involve him in SCE’s policy decisions. Accordingly, a nexus exists, and a material financial effect may occur, if a particular governmental decision Mayor Pro Tem Wong is asked to participate in would also achieve, defeat, aid or hinder a policy, purpose, or goal of SCE. (*see Nack* Advice Letter, No. A-01-121; *Lucas* Advice Letter, No. A-96-248.) In your May 30, 2023 follow-up email you stated that Mayor Pro Tem Wong’s duties do not directly relate to the SCE Mesa Substation or specific infrastructure projects in the area, which was built to ensure that the electric grid will continue to serve the needs of its customers in the region. In addition, you provided that the easements across the SCE Property are not part of the New Project and any development of these easements will need to be considered as separate land use applications. You have not provided any facts indicating SCE has a policy, purpose, or goal supporting or opposing the Applicant’s proposed development or the related governmental decisions. Therefore, it does not appear that this particular governmental decision Mayor Pro Tem Wong is asked to participate in would achieve, defeat, aid or hinder a policy, purpose, or goal of SCE.

Based on the information provided, it is not reasonably foreseeable that the decision will have a material financial effect on SCE. Accordingly, based on the facts provided, Mayor Pro Tem Wong is not prohibited from taking part in the discussions and decisions related to the New Project.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Katelyn L. Baeta-Orick  
Counsel, Legal Division

KBO:aja