

## DOCKETED

<b>Docket Number:</b>	08-AFC-08A
<b>Project Title:</b>	Hydrogen Energy Center Application for Certification Amendment
<b>TN #:</b>	203882
<b>Document Title:</b>	Fair Political Practices Commission's Default Decision and Order In the Matter of John Martin, FPPC No. 14/426 (Unsigned)
<b>Description:</b>	Describes the Violation and Fine of John Martin, Wasco City Councilman
<b>Filer:</b>	Tom Frantz
<b>Organization:</b>	Association of Irrigated Residents
<b>Submitter Role:</b>	Intervenor
<b>Submission Date:</b>	3/15/2015 11:17:55 AM
<b>Docketed Date:</b>	3/16/2015

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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10

11 In the Matter of

12 JOHN MARTIN,

13 Respondent.

FPPC No. 14/426

14 DEFAULT DECISION AND ORDER

(Gov. Code, §§ 11506 and 11520)

15 Complainant, the Enforcement Division of the Fair Political Practices Commission, hereby  
16 submits this Default Decision and Order for consideration at its next regularly scheduled meeting.

17 Respondent John Martin has been provided advice by an attorney of his choosing as to his rights  
18 to a probable cause conference and administrative hearing under the Political Reform Act,  
19 Administrative Procedure Act, and all other relevant laws, and he has chosen to waive all such rights to a  
20 probable cause conference and administrative hearing and to allow this matter to proceed to a default  
21 decision. (A true and correct copy of Respondent's written waiver is attached to the supporting  
22 declaration of Neal Bucknell as Exhibit A-1.)

23 In this case, Respondent violated the Political Reform Act as described in Exhibit 1 and the  
24 supporting declaration of George Aradi, which are attached hereto and incorporated by reference as  
25 though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this  
26 matter.

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28 ///

This Default Decision and Order is submitted to the Commission to obtain a final disposition of this case as to the above-named Respondent.

Dated: \_\_\_\_\_

Gary S. Winuk, Chief of Enforcement  
Fair Political Practices Commission

## ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of \$4,000 against Respondent John Martin. This penalty is payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chairman of the Fair Political Practices Commission at Sacramento, California.

Dated: \_\_\_\_\_

Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent John Martin is a Wasco City Councilman.

At a meeting of the Wasco City Council, which took place on or about March 18, 2014, one of the agenda items pertained to denial of an appeal filed in connection with a conditional use permit amendment (“CUP” number 489-87). The CUP applicant was Savage Services Corporation. Among other things, the CUP amendment authorized an increase in operating capacity from 900,000 tons of sub-bituminous coal per year to 1,500,000 tons of non-metallic minerals per year. Also, the CUP amendment included a provision for required reconstruction of certain roads “to a Traffic Index (T.I.) of 9 Standard” to “address any adverse impacts caused by the coal trucks on area road conditions.” Additionally, the CUP amendment called for improvements and restrictions at the applicant’s Wasco facility to help mitigate runoff, erosion, drainage problems, noise pollution, and air pollution in the form of fugitive dust. At the time, Respondent had an ownership interest in real property located within 500 feet of Savage Services Corporation’s Wasco facility and within 500 feet of where a portion of the roadway reconstruction was to take place. A motion was made to deny the appeal and uphold the CUP amendment. The motion carried 3 to 2. Respondent was one of the councilmen who voted in favor of the motion.

Under the Political Reform Act (the “Act”)<sup>1</sup>, public officials, including members of local government agencies, are prohibited from making, participating in making, or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

In this case, Respondent violated the Act as follows:

Count 1: On or about March 18, 2014, Respondent John Martin, in his official capacity as Wasco City Councilman, made a governmental decision in which he had a financial interest in violation of Section 87100.

### **WAIVER OF RIGHTS**

Respondent has been informed of the charges set forth herein. Also, he has consulted with an attorney of his choosing about his rights to a probable cause conference and an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. However, Respondent has agreed to waive these rights, and he is aware that

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<sup>1</sup> The 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.

by doing so, the Enforcement Division will proceed with this default recommendation to the Commission. A true and correct copy of Respondent's written waiver is attached to the supporting declaration of Neal Bucknell as Exhibit A-1.

### **NATURE OF DEFAULT PROCEEDINGS**

In this situation, where Respondent has waived his rights to a probable cause conference and an administrative hearing, the Commission may take action based upon Respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subd. (a).)

### **SUMMARY OF THE LAW**

Some of the Regulations respecting conflicts of interest were changed *after* the violation in this case. All statutory references and discussions of law pertain to the Act's provisions as they existed *at the time of the violation* in question—in March 2014.

#### **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that public officials are disqualified from certain matters in order that conflicts of interest may be avoided. (Section 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

#### **Conflicts of Interest**

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, "public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic

interest of the official. For purposes of Sections 87100 and 87103, there are six steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.<sup>2</sup>

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a local government agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has a financial interest in any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Section 87103, subd. (b).) Placing the property into a revocable trust does not shield the official from a conflict of interest. (Regulation 18234, subd. (c).)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.) Real property in which a public official has an economic interest is directly involved in a governmental decision if any part of it is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. (Regulation 18704.2, subd. (a)(1).)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is a directly involved parcel of real property, the financial effect is presumed to be material. (Regulation 18705.2, subd. (a)(1).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

## **SUMMARY OF THE FACTS**

As stated above, Respondent John Martin is a Wasco City Councilman. (See supporting declaration of George Aradi, Ex. B hereto, ¶ 3.)

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<sup>2</sup> The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

## **Count 1**

At a meeting of the Wasco City Council, which took place on or about March 18, 2014, one of the agenda items pertained to denial of an appeal filed in connection with a conditional use permit amendment (“CUP” number 489-87) involving Savage Services Corporation. A motion was made to deny the appeal and uphold the CUP amendment. The motion carried 3 to 2. Respondent was one of the councilmen who voted in favor of the motion. (See Ex. B, ¶¶ 3-5.)

At the time of Respondent’s vote, he held an ownership interest in an 8.92 acre parcel of real property located at 1316 J Street, Wasco, California; the parcel was held in Respondent’s revocable trust, and his interest in the parcel was worth substantially in excess of \$2,000. (See Ex. B, ¶¶ 6 and 8-11.)

The CUP applicant was Savage Services Corporation. Among other things, the CUP amendment authorized an increase in operating capacity from 900,000 tons of sub-bituminous coal per year to 1,500,000 tons of non-metallic minerals per year. Also, the CUP amendment included a provision for required reconstruction of certain roads “to a Traffic Index (T.I.) of 9 Standard” to “address any adverse impacts caused by the coal trucks on area road conditions.” Additionally, the CUP amendment called for improvements and restrictions at the applicant’s Wasco facility to help mitigate runoff, erosion, drainage problems, noise pollution, and air pollution in the form of fugitive dust. Respondent’s above-described parcel was located within 500 feet of Savage Services Corporation’s Wasco facility and within 500 feet of where a portion of the roadway reconstruction was to take place. (See Ex. B, ¶¶ 4 and 7.)

As a member of the Wasco City Council, Respondent was a public official. His vote to uphold the CUP amendment amounted to making a governmental decision that affected his economic interest in real property. His economic interest was directly involved because it was situated within 500 feet of Savage Services Corporation’s Wasco facility (the site of required improvements and restrictions) and within 500 feet of a portion of the roadway reconstruction that was the subject of his vote. In light of the 500-foot rule, there is a presumption that there was a material financial effect. At the time of the vote, it was reasonably foreseeable that the CUP amendment would have a material financial effect on Respondent’s economic interest, especially considering that Respondent was voting in favor of roadway reconstruction near his own property—and in favor of improvements/restrictions to help mitigate nearby noise/air pollution, drainage problems, etc.

In voting as described above, Respondent John Martin committed one violation of Section 87100.

## **CONCLUSION**

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000. (Section 83116, subd. (c).)

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, making a governmental decision in which an official has a financial interest is a serious violation of the Act because it may create the appearance that a governmental decision was made on the basis of a public official's financial interest. One of the most recent default decisions involving this type of violation imposed a penalty in the high range. (See *In the Matter of Shaun Coyne*, FPPC No. 12/768, approved Feb. 20, 2014 [\$4,000 penalty].) The current case warrants a similarly high penalty. Respondent knew or should have known that he had a conflict of interest. Also, the vote only passed 3 to 2—making Respondent a “swing vote.”

A higher penalty is not being sought because Respondent cooperated with the Enforcement Division by waiving his rights to allow this matter to proceed as a default. Also, Respondent does not have a prior record of violating the Act.

### **PROPOSED PENALTY**

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of \$4,000 against Respondent John Martin is justified.



# **EXHIBIT A**

1 GARY S. WINUK  
Chief of Enforcement  
2 NEAL P. BUCKNELL  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA  
10

11 In the Matter of

12 JOHN MARTIN,

13 Respondent.  
14

FPPC No. 14/426

DECLARATION OF NEAL BUCKNELL IN  
SUPPORT OF DEFAULT DECISION AND  
ORDER

(Gov. Code, § 11520)

15 I, Neal Bucknell, declare as follows:

16 1. I am employed by, and I represent the Fair Political Practices Commission ("FPPC" or  
17 "Commission") in my capacity as Senior Commission Counsel for the Enforcement Division. My  
18 business address is 428 J Street, Suite 620, Sacramento, California.

19 2. I am the attorney assigned to this case. If called as a witness, I competently could and  
20 would testify to the following, which is based upon my own personal knowledge.

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3. Attached hereto as Exhibit A-1, is a true and correct copy of Respondent's waiver of his rights to a probable cause conference and administrative hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California, on \_\_\_\_\_, 2015.

NEAL P. BUCKNELL  
Senior Commission Counsel  
Fair Political Practices Commission  
Enforcement Division

## **EXHIBIT A-1**



**FAIR POLITICAL PRACTICES COMMISSION  
ENFORCEMENT DIVISION**

**WAIVER OF RIGHT TO PROBABLE CAUSE  
HEARING AND ADMINISTRATIVE HEARING**

FPPC Case No. 14/426

1. I, the undersigned, have consulted with an attorney of my choosing, and I understand my rights to a probable cause hearing and administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws.

2. I hereby waive my rights to a probable cause hearing and administrative hearing. I understand and agree that this case will proceed to a default recommendation by the Enforcement Division of the Fair Political Practices Commission, and I waive the 15-day notice requirement for defaults. However, this waiver is made with the following conditions:

a. This waiver does not constitute an admission of any kind.

b. The default recommendation by the Enforcement Division shall be for one count under Government Code section 87100 with a recommended penalty of \$4,000.

c. This represents the final and complete resolution of the matter in question.

d. This waiver shall be null and void if any of the foregoing conditions are not met, in which case all payments tendered by the undersigned in connection with this waiver shall be reimbursed. (Should this occur, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of the default recommendation.)

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Martin, Respondent

## **EXHIBIT B**

1 GARY S. WINUK  
Chief of Enforcement  
2 NEAL P. BUCKNELL  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10

11 In the Matter of

12 JOHN MARTIN,

13 Respondent.  
14

FPPC No. 14/426

DECLARATION OF GEORGE ARADI IN  
SUPPORT OF DEFAULT DECISION AND  
ORDER

(Gov. Code, § 11520)

15 I, George Aradi, declare as follows:

16 1. I am a special investigator for the Enforcement Division of the Fair Political Practices  
17 Commission. My business address is 428 J Street, Suite 620, Sacramento, California.

18 2. I am the investigator assigned to this case. If called as a witness, I competently could and  
19 would testify to the following, which is based upon my own personal knowledge and upon my  
20 investigation.

21 3. During the course of my investigation, I reviewed the minutes of the Wasco City Council  
22 meeting of March 18, 2014. The minutes reflect that Respondent was present in his official capacity as a  
23 Wasco City Councilman. Also, the minutes reflect that item 8 of the agenda pertained to denial of an  
24 appeal filed in connection with a conditional use permit amendment ("CUP" number 489-87).

25 4. I obtained a copy of the CUP amendment from the Planning Director of the Wasco  
26 Planning Commission (along with the original CUP). The CUP applicant was Savage Services  
27 Corporation. Among other things, the CUP amendment authorized an increase in operating capacity  
28 from 900,000 tons of sub-bituminous coal per year to 1,500,000 tons of non-metallic minerals per year.

1 Also, the CUP amendment included a provision for required reconstruction of certain roads “to a Traffic  
2 Index (T.I.) of 9 Standard” to “address any adverse impacts caused by the coal trucks on area road  
3 conditions.” Additionally, the CUP amendment called for improvements and restrictions at the  
4 applicant’s Wasco facility to help mitigate runoff, erosion, drainage problems, noise pollution, and air  
5 pollution in the form of fugitive dust.

6 5. The above-described meeting minutes reflect that a motion was made to deny the appeal  
7 and uphold the CUP amendment. The motion carried 3 to 2. Respondent was one of the councilmen  
8 who voted in favor of the motion.

9 6. On his Statement of Economic Interests (“SEI”) filed for calendar year 2013, Respondent  
10 reported an ownership interest in real property located at 1316 J Street, Wasco, California with a fair  
11 market value in excess of \$1,000,000 (and rental income between \$10,001 and \$100,000). Hereafter, this  
12 real property is referred to as “the parcel.” An online search of records maintained by the Kern County  
13 Assessor Recorder revealed the size of the parcel to be 8.92 acres.

14 7. A map of the area surrounding the parcel reflects that a portion of the roadway  
15 reconstruction called for by the CUP amendment was to take place within 500 feet of the parcel, and  
16 Savage Services Corporation’s Wasco facility (located at 1040 H Street) also is within 500 feet of the  
17 parcel.

18 8. When interviewed, Respondent claimed that he gifted the parcel to his son, Jeffrey Martin,  
19 in 2013 (prior to his vote of March 2014). However, this turned out not to be the case.

20 9. The grant deed for the transfer was not recorded until June 27, 2014 (more than three  
21 months after Respondent’s vote). The deed reflects that the transferor was the John H. Martin Revocable  
22 Trust, and the transferee was Jeffrey S. Martin.

23 10. Also, bank records reflect that at least one commercial tenant with a business on the parcel  
24 still was writing monthly rent checks to Respondent as of the time that Respondent voted on the above  
25 motion.

26 11. Additionally, Respondent’s SEI for calendar year 2013 contained a space for information  
27 about any disposition of the parcel that might have occurred in 2013, but the space was left blank.  
28 (Respondent’s SEI was signed under penalty of perjury with a signature date of March 5, 2014—which



1 pre-dates Respondent's vote by about 13 days. The signature date matches the date stamped as received  
2 by the City of Wasco.)  
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4 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
5 true and correct. Executed at Sacramento, California, on \_\_\_\_\_, 2015.  
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10 GEORGE ARADI  
11 Special Investigator  
12 Fair Political Practices Commission  
13 Enforcement Division  
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