



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 19, 2024

Ales Tomaier  
Fire Chief  
Mammoth Lakes Fire Protection District  
Post Office Box 5  
3150 Main Street  
Mammoth Lakes, CA 93546

Re: Your Request for Informal Assistance  
**Our File No. I-24-044**

Dear Mr. Tomaier:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because your request for advice is general in nature, we are treating your request as one for informal assistance.<sup>2</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

Under the Act, may you, in your capacity as Fire Chief for the Mammoth Lakes Fire Protection District, take part in governmental decisions, as detailed below, concerning the development of land owned by your spouse’s employer?

### CONCLUSION

No, the Act generally prohibits you from taking part in the decisions identified because your spouse’s employer is the subject of the decisions and it is reasonably foreseeable the decisions would have a material financial impact on your interest in the employer as a source of income.

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

<sup>2</sup> Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## FACTS AS PRESENTED BY REQUESTER

You serve as Fire Chief for the Mammoth Lakes Fire Protection District (“District”) in Mammoth Lakes, California. The District is separate from the Town of Mammoth Lakes and does not directly benefit from revenue in the same manner that the Town does. This creates challenges due to the District’s limited administrative capacity. The District only has seven full-time employees with multiple responsibilities, with six of those employees serving in emergency operation roles in addition to administrative duties. Often, you tend to have some level of involvement on most larger District programs and projects.

Mammoth Mountain Ski Area (“MMSA”), a resort owned by Alterra Mountain Company (“Alterra”), is by far the largest economic factor in the community. Your spouse works for MMSA as the Director of Events, Sponsorship, and Athletes.

MMSA is currently in the planning stages for a significant project, Mammoth Main Base Redevelopment Project (“Project”). You included a link to a Town of Mammoth Lakes webpage detailing the Project. The Project involves a land exchange that occurred in 2020, in which two parcels (“Parcels A and B”) comprising 35 acres of federal land were transferred to another subsidiary of Alterra, Mammoth Main Lodge Redevelopment LLC (“MMSR”). The goal of the land exchange is for redevelopment of the 35 acres to enhance the economic and community needs within Mammoth Lakes and Mono County. The Town of Mammoth Lakes has jurisdiction over the redevelopment of Parcels A & B, but some aspects of redevelopment will also require approval from other government agencies, such as the U.S. Forest Service. The proposed redevelopment of Parcels A & B would include the construction of 250 hotel rooms, 209 resort residential units, 95,000 square feet of commercial space, a “Pedestrian Plaza,” and a wastewater treatment facility. MMSA and MMSR are collectively referred to as the “applicant” in Project planning documents.

You state that the Project is likely the largest project in the region for multiple generations and will have significant impacts from a public safety perspective. Based on your wife’s employment with MMSA, you have thus far excluded yourself from participating in the planning meetings and decision-making for the Project. This is a challenge due to the District’s staff capacity, and you are therefore seeking clarification on whether your recusal is required under the Act with respect to the Project, as well as with less impactful governmental decisions involving or affecting MMSA.

In a follow-up email, you confirmed that the District is not under the budgetary or appointive authority of the Town of Mammoth Lakes. The two agencies have a close working relationship. You also clarified that the Fire District passes an ordinance that introduces its authority to enforce and permit Fire Code regulations that it believes are appropriate for the District. The ordinance goes before the Town Council for ratification prior to taking effect. The Fire District would provide permits for the Project. Additionally, a larger project such as this would likely warrant either support or noting of areas of concern that would be brought to the process via comments from the District. This would likely occur during the California Environmental Quality Act (“CEQA”) process and at any potential hearing before the Town Planning and Economic Development Commission and the Town Council. You indicated the District should provide subject matter experts with a responsibility for public safety.

## ANALYSIS

### *General Rule*

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 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 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 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).) In other words, if a governmental decision would have a reasonably foreseeable, material financial effect on a financial interest of yours, you are generally prohibited from taking part in that decision in any of the manners described above.

### *Economic Interests*

“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 certain specified economic interests. (Section 87103.) These economic interests include “[a]ny source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” (Section 87103(c).) “Income” includes any community property interest in the income of a spouse. (Section 82030(a).) Accordingly, you have an economic interest in MMSA/MMSR as a source of income.

### *Reasonable Foreseeability*

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. 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, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

The reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a source of income is material if the source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.3(a)(4).)

### *Materiality*

Most often, when a public official has an economic interest in a source of income that is a business entity, the materiality of a governmental decision’s financial effect on the source of income is determined under Regulation 18702.1, pertaining to business entity interests. (Regulation 18702.3(a)(4).)<sup>3</sup>

Regulation 18702.1 contains numerous provisions for determining whether a governmental decision will have a material financial effect on a business entity, such as when the business entity is explicitly involved in the decision or when the business entity is not explicitly involved in the decision but would be indirectly affected. Relevant to your questions regarding decisions concerning the Project, the reasonably foreseeable financial effect of a governmental decision on an official’s financial interest in a business entity is material if the entity is a named party in, or the subject of, the decision, including any decision in which the entity “[i]nitiates the proceeding by filing an application, claim, appeal, or other request for action concerning the entity with the official’s agency;” “[a]pplies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the agency;” “[i]s the subject of any inspection, action, or proceeding under the regulatory authority of the agency;” or “[i]s subject to an action taken by the agency that is directed at the entity.” (Regulation 18702.1(a)(1)(A), (E)-(G).)

### *Decisions Concerning the Project*

In your follow-up email, you clarified that the District’s involvement with the Project would involve decisions such as: (1) adopting an ordinance introducing the District’s authority to enforce and permit Fire Code regulations it believes are appropriate for the District—an ordinance that would thereafter be ratified by the Town Council before taking effect; (2) providing permits for the Project; and (3) providing comments supporting aspects of the Project or noting areas of concern, and providing subject matter expertise, during the CEQA process and at various Town meetings.

As stated above, you have an economic interest in MMSA as a source of income. Accordingly, you are generally prohibited from taking part in governmental decisions if it is reasonably foreseeable the decision would have a material financial effect on MMSA. Moreover, it is reasonably foreseeable the decision would have a material affect on MMSA if MMSA is the subject of the proceeding. Under the facts provided you have indicated potential involvement in various decisions including (1) adoption of ordinance, (2) providing permits for the project, and (3) acting a subject matter expert for decisions involving the project. In each of the matters, MMSA

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<sup>3</sup> A governmental decision is alternatively determined to have a material financial effect on a source of income “if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official’s spouse receives or is promised the income for achieving the purpose or goal.” (Regulation 18702.3(b).)

would be the subject of the decisions. (See Regulation 18438.1(a)(1).) Accordingly, under applicable Commission regulations, it is reasonably foreseeable the decisions you have identified will have a material financial effect on MMSA and you are generally prohibited from taking part in the decisions and may not contact or appear before any official of the Town on Mammoth Lakes in your role of Fire Chief to influence the decisions.<sup>4</sup>

If you have questions regarding future governmental decisions, please seek additional advice. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

By:



Kevin Cornwall  
Senior Counsel, Legal Division

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<sup>4</sup> We note that the advice contained herein is general in nature based on the various decisions identified. While there is currently no indication that an exception to the Act's conflict of interest provisions apply to the decisions identified, all future decisions must be analyzed on a case-by-case basis. In limited circumstances the Act provides exceptions for decision that effect the official's interest in the same manner as the public (Regulation 18703) and decisions that can be segmented from the decision in which the official has an interest (Regulation 18706.) If you need additional assistance determining if an exception applies to any specific decision, you should seek additional advice identifying the decision.