



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 10, 2021

John Erickson  
CP, PLS | VP –  
California Surveying Operations  
Continental Mapping Consultants, LLC  
100 QBE Way, Suite 1225  
Sun Prairie, WI 53590

Re: Your Request for Informal Assistance  
**Our File No. I-21-014**

Dear Mr. Erickson:

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

As a retiree of the California Department of Transportation (“Caltrans”), is it permissible to perform your duties as a California Professional Land Surveyor in responsible charge of Caltrans Contract 56A0634 (“Caltrans Contract”) at Continental Mapping Consultants, LLC of Sun Prairie, Wisconsin (“CMC”)?

### CONCLUSION

The provisions of the one-year ban do not generally prevent you from working for CMC on an existing contract with Caltrans. However, you are prohibited, during the one-year period, from making any appearance or communication before Caltrans staff or representatives for the purpose of attempting to influence Caltrans on the issuance, amendment, awarding, or revocation of the existing contract or a new contract, or on the purchase of goods or property. The permanent ban is not at issue if you did not participate in the contract 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 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.

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

## **FACTS AS PRESENTED BY REQUESTER**

You retired from your position as Office Chief, Office of Photogrammetry and Preliminary Investigations in the Division of Engineering Services – Structures Design at Caltrans on June 29, 2020. You began your employment with Continental Mapping Consultants, LLC of Sun Prairie, Wisconsin (“CMC”) on July 6, 2020. Your classification at Caltrans was Supervising Transportation Surveyor. Your duties included coordinating with District Survey Managers and Photogrammetry Coordinators on photogrammetric mapping and aerial LiDAR requirements of transportation projects. Additionally, you monitored quality and project delivery performance of photogrammetry and aerial LiDAR products and services and remediated, as necessary. You also ensured timely delivery of structure foundation plans, bathymetric surveys, and watershed terrain data to meet project delivery goals.

The Caltrans Contract was awarded to CMC on June 30, 2020. While you were employed with Caltrans, you were not engaged in any negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the Caltrans Contract nor were you in a policy-making position in the same general subject area. Your proposed duties at CMC are to be named as the California Professional Land Surveyor in responsible charge of data acquisition methodologies on the Caltrans Contract project along with system validation process, validation site surveys, and to ensure the data accuracy requirements are being met. You will also attend periodic Caltrans and CMC meetings to answer questions about the land surveying activities related to the Caltrans Contract project.

You and CMC Legal have reviewed the regulations and have concluded that you are not precluded from being on the project team for the Caltrans Contract. However, you would like advice from the Fair Political Practices Commission confirming that you are not restricted from performing the duties of the California Professional Land Surveyor in responsible charge of the Caltrans Contract.

## **ANALYSIS**

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act, the one-year ban and the permanent ban. These provisions are commonly referred to as the “revolving door” prohibitions.

### **One-Year Ban**

The “one-year ban” prohibits a former state employee from making, for compensation, any formal or informal appearance, or making any oral or written communication, before his or her former agency for the purpose of influencing any administrative or legislative actions or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. (Section 87406; Regulation 18746.1.)

The one-year ban applies to any employee of a state administrative agency who holds a position that is designated or should be designated in the agency’s conflict-of-interest code. (Section 87406(d)(1); Regulation 18746.1(a)(2).) The ban applies for twelve months from the date

the employee permanently leaves state office or employment. While in effect, the one-year ban applies only when a former employee or official is being compensated for his or her appearances or communications before his or her former agency on behalf of any person as an agent, attorney, or representative of that person. (Regulation 18746.1(b)(3) and (4).)

In contrast to the permanent ban, which only applies to certain matters involving specific parties such as “judicial or quasi-judicial” proceedings, the one-year ban applies to “any appearance or communication made for the purpose of influencing administrative or legislative action or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.” (Regulation 18746.1(b)(5).) An appearance or communication is for the “purpose of influencing” if it is made for the “principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding.” (Regulation 18746.2.) An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (Regulation 18746.2.)

However, during the first year after leaving the agency, a former agency employee may advise others about communications with the agency intended to influence agency action (e.g., reports and other submissions) as long as he or she is not identified in the communication. (*Cook* Advice Letter, No. A-95-321.) We have advised that a former agency official may, without violating the one-year ban, draft proposals on a client’s behalf to be submitted to the agency so long as the former employee is not identified in connection with the client’s efforts to influence an administrative action. (*Cook* Advice Letter, No. A-95-321; *Harrison* Advice Letter, No. A-92-289.) A former agency employee may also advise clients on the procedural requirements, plans, and policies of the former agency as long as the former employee is not identified with the clients’ efforts to influence the agency. (*Newton* Advice Letter, No. A-96-129).

Appearances and communications are prohibited only if they are: (1) before a state agency that the public official worked for or represented; (2) before a state agency “which budget, personnel, and other operations” are subject to the control of a state agency the public official worked for or represented; or (3) before any state agency subject to the direction and control of the Governor, if the official was a designated employee of the Governor’s office during the twelve months before leaving state office or employment. (Regulation 18746.1(b)(6).)

Finally, an appearance or communication before a former state administrative agency employer made as part of “[s]ervices performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement are excluded from the [one-year ban]...provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings.” (Regulation 18746.1(c).)

Your proposed responsibilities at CMC as the California Professional Land Surveyor in responsible charge is to oversee data acquisition methodologies on the Caltrans Contract project along with system validation process, validation site surveys, and to ensure the data accuracy requirements are being met. You will also attend periodic Caltrans and CMC meetings to answer questions about the land surveying activities related to the Caltrans Contract project. These conversations are for the purpose of aiding under an existing contract between CMC and Caltrans.

The application of the one-year ban will depend on the nature of each appearance or communication you make before Caltrans. Generally, the provisions of the one-year ban do not prevent you from working for CMC on an existing contract with Caltrans, for instance you would not be prohibited from reporting compliance with existing contractual terms to Caltrans or seeking clarification of existing terms by Caltrans. We must caution, however, that you are prohibited, during the one-year period, from any appearance or communication before Caltrans staff or representatives for the purpose of attempting to influence Caltrans on the issuance, amendment, awarding, or revocation of the existing contract or a new contract, or on the purchase of goods or property for a period of one year after the date you left state service. Accordingly, you may not make any appearance or communication for the purpose of modifying any of terms in CMC's existing contract or to influence any subsequent contract between CMC and Caltrans.

### Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in certain proceeding involving the State of California and other specific parties or assisting in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401 and 87402; Regulation 18741.1.) The permanent ban applies when an official has permanently left or takes a leave of absence from any particular office or employment. (Regulation 18741.1(a)(1).)

The permanent ban applies to every "state administrative official," which is defined as "every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity." (Section 87400(b).)

The permanent ban is a lifetime ban and applies to any formal or informal appearance or any oral or written communication - or aiding, advising, counseling, consulting, or assisting in representing any other person, other than the State of California, in an appearance or communication - made with the intent to influence any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. "Judicial, quasi-judicial or other proceeding" means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency . . . ." (Section 87400(c).)

Additionally, an official is considered to have "participated" in a proceeding if he or she took part in the proceeding "personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . ." (Section 87400(d).) Further, a former supervisor has "participated" in any proceeding that was "pending" before the official's former agency and that was under his or her supervisory authority. A proceeding is under a supervisor's "supervisory authority" if the supervisor:

- Has duties that include primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted;
- Has direct supervision of the person performing the investigation, review, or other action involved in the proceeding;
- Reviews, discusses, or authorizes any action in the proceeding; or
- Has any contact with any of the participants in the proceeding regarding the subject of the proceeding. (Section 87400(d); Regulation 18741.1(a)(4).)

However, proceedings are not under an official's "supervisory authority," merely because the supervisor is responsible for the general oversight of the administrative actions or functions of a program, where the responsibilities concerning the specific or final review of the proceedings are expressly delegated to other persons in the agency's structure and the supervisor is not involved in the actual proceedings. (Regulation 18741.1(a)(4); see also *In re Lucas* (2000) 14 FPPC Ops. 15.)

The permanent ban is not at issue if you did not participate in the contract decision. However, we caution that we base this conclusion on your statement that you were not engaged in any negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the Caltrans Contract nor were you in a policy-making position in the same general subject area. Note that previous participation in making a contract may include prior involvement in a specific project encompassed by the contract. To the extent that you may have participated in a project encompassed by a contract, the permanent ban may be implicated. If this is the case, you may wish to seek additional assistance describing your involvement in the project.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Katelyn L. Greene*

By: Katelyn L. Greene  
Counsel, Legal Division

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