



# California Fair Political Practices Commission

February 19, 1991

Billie Blanchard  
BAKER & MCKENZIE  
Two Embarcadero Center, 24th Floor  
San Francisco, CA 94111-3909

RE: Your Request for Advice  
Our File No. A-91-017

Dear Ms. Blanchard:

You have requested advice concerning your obligations under the revolving-door provisions of the Political Reform Act (the "Act").<sup>1</sup>

#### QUESTION

You were previously employed as a coastal program analyst for the California Coastal Commission (the "Coastal Commission"). In that position you worked on various projects concerning the Gaviota Interim Marine Terminal (the "Gaviota Terminal"). You are now employed with a law firm representing Chevron in its request for a permit from the Coastal Commission to transport oil via tanker from the Gaviota Terminal. Do the revolving-door provisions of the Act prohibit you from working on Chevron's request?

#### CONCLUSION

The applicable provisions of the Act prohibit working on the same proceeding in which you previously participated as a state administrative official. Under the facts provided by you, the Chevron request is a different proceeding from those you

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

participated in while with the Coastal Commission. Accordingly, the Act does not prohibit you now from working on the Chevron request.

FACTS<sup>2</sup>

From November 1979 to July 1990 you were a Coastal Program Analyst II with the Coastal Commission. While at the Coastal Commission, you were involved in the following projects:

1. You were the Coastal Commission's representative on the Environmental Impact Report Joint Review Panel for the existing Getty marine facility at Gaviota Terminal. Along with other coastal analysts, you reviewed the report for California Environmental Quality Act adequacy.
2. In 1986 and 1987, you were the project manager on the coastal permit and consistency certification for the upgrades to the existing Getty marine facility at the Gaviota Terminal. This certification process has since been concluded.
3. In the fall of 1989, you reviewed and commented on the draft Santa Barbara County Crude Oil Transportation Analysis (the "COTA") and submitted comments on the draft to Santa Barbara County. The COTA discusses technical, operational, economic, and legal issues associated with Point Arguello crude oil transportation issues, including issues concerning the Gaviota Terminal. This document was finalized in February 1990.

In 1989, Santa Barbara County approved a temporary coastal permit to allow Chevron to use tankers through the Gaviota Terminal, instead of a pipeline, to transport oil. The Coastal Commission denied the permit on appeal. In November 1990, the county denied a second permit request. Chevron and the Gaviota Terminal Company appealed the county's decision to the Coastal Commission. Chevron has hired the law firm Baker & McKenzie to assist them on the appeal. You have been a planner/project manager with Baker & McKenzie since July 23, 1990. You have said that the only connection between the tankering appeal and the projects that you worked on while at the Coastal Commission is that the appeal seeks to utilize the Gaviota Terminal for the tankering.

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<sup>2</sup>

These facts are from your letter of December 20, 1990, and our telephone conversations of January 28, and February 4, 1991.



ANALYSIS

Sections 87401 and 87402 set forth the applicable restrictions on your activities after leaving office. Section 87401 provides:

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.

Section 87402 provides:

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.

To determine whether these provisions apply, the following questions should be asked. First, are you a former state administrative official? Second, is the matter in which you now wish to be involved a "proceeding" and one in which you participated in when you were a state administrative official? Third, is the state is a party or does it have a direct and substantial interest in the proceeding? Fourth, will your involvement include representing another person or aiding, advising counseling, consulting or assisting in representing any other person in the proceeding? And finally, will you be performing those tasks for compensation? Only if the response is affirmative to all these questions will these revolving-door provisions apply.

We need only go as far as the first two questions to conclude that these provisions do not apply to you.

A. Are you a former state administrative official?

As a Coastal Program Analyst II with the California Coastal Commission, you were a state administrative official for purposes of these provisions.<sup>3</sup>

B. Is the matter in which you now wish to be involved a "proceeding" and one in which you participated in when you were a state administrative official?

The type of proceedings to be covered by these revolving-door prohibitions are specified in Section 87400(c). They are:

[A]ny 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, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

Section 87400(c).

Chevron's appeal is certainly the type of proceeding that the statute encompasses. The appeal is a request for a ruling or determination and is a particular matter involving specific parties in a state administrative agency.

The Chevron appeal, however, is not a proceeding in which you participated<sup>4</sup> when you were with the Coastal Commission. You believe that any proceeding you may have been involved in at the

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<sup>3</sup> "State administrative official" is defined to include 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).) We have said in the past that coastal program analysts are state administrative officials. (See Evans Advice Letter, No. I-86-117, copy enclosed.)

<sup>4</sup> Section 87400(d) defines "participated" to include involvement personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee.



Coastal Commission is different from the Chevron appeal. From the facts that you have provided to us, we agree. As a general rule, we have interpreted the term "proceeding," in connection with the Coastal Commission, to mean a specific permit application, including all the procedural stages involved in the application. A new permit application, even if it involves the same tract of land or some of the same issues as a prior application, is ordinarily considered a new proceeding. (See Galanter Advice Letter, No. A-82-079, copy enclosed.)

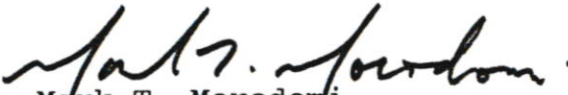
While the Chevron appeal does relate to the Gaviota Terminal in that the tankering will be done through the Gaviota Terminal, the issue in the Chevron appeal appears to be significantly different from the issues determined in the projects you worked on. The projects you worked on at the Coastal Commission concerned review of an environmental impact report, a permit and certification for upgrades at the Gaviota Terminal, and review of COTA analysis. All these projects are since completed. None appear to have addressed or concerned the primary issue on Chevron's appeal, Chevron's request to tanker, or appear to be part of the procedure for the request.

In summary, your assistance of Baker & McKenzie in its representation of Chevron's tankering appeal now before the Coastal Commission would not violate the applicable "revolving-door" provisions of the Act.

If you have any further questions regarding this matter please contact me at (916) 322-5901.

Sincerely

Scott Hallabrin  
Acting General Counsel

  
By: Mark T. Morodomi  
Counsel, Legal Division

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