



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 3, 2021

Greg Gillott  
County Counsel  
Amador County Counsel  
810 Court Street  
Jackson, CA 95642

Re: Your Request for Advice  
**Our File No. I-20-160**

Dear Mr. Gillott:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”).<sup>1</sup> Because your question seeks general guidance and is not limited to a specific governmental decision, we are treating your request as one for informal assistance.<sup>2</sup> Please note that we are only providing advice under the Act, not under other general conflict of interest prohibitions such as Government Code section 1090 or common law conflict of interest. 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

Do the conflict of interest provisions of the Act prohibit Supervisor Brian Oneto from taking part in negotiations between the County and the Ione Band of Miwoks regarding an Intergovernmental Agreement intended to mitigate offsite impacts of the casino and to provide compensation for various public services provided in connection with the casino?

### CONCLUSION

Yes. As explained below, the Act’s conflict of interest provisions prohibit Supervisor Oneto from taking part in the negotiations. Based on the facts provided, a financial effect on the abutting mining claim is reasonably foreseeable and presumed material.

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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 are Amador County Counsel seeking advice on behalf of Amador County Supervisor Brian Oneto. You are requesting this advice to follow up on advice previously issued by the Commission in the *Oneto* Advice Letter, No. I-08-044a, that concluded Supervisor Oneto was prohibited, based on his real property interests, from taking part in any decisions related to efforts by the Ione Band of Miwoks (the “Tribe”) to take land into trust for the construction of a proposed casino.

Since the issuance of that letter, you state his real property interests remain relatively unchanged to include: (1) a home/ranch consisting of approximately 416.79 acres, which is located approximately one-half mile from the casino property; (2) mineral rights on land in the City of Plymouth located more than one-half mile from the casino property; (3) a grazing lease costing \$113.40 per year on lands owned by the Federal Bureau of Land Management (“BLM”) abutting the casino property; and (4) a mining claim valued at \$5,500 on the same BLM lands abutting the casino property.

With respect to his home/ranch property, the letter concluded that it was “foreseeable that a project the magnitude of a casino located approximately one-half mile from your home/ranch will affect the character of the neighborhood including, but not limited to, substantial effects on the ‘view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighbor,’ as well as lights, crime levels, and property values within the vicinity of the casino.” (See *Oneto* Advice Letter, *supra*.) As for the mining claim, the letter concluded that the financial effect was presumed to be material because the property is within 500 feet of the property subject to the governmental decision. (*Ibid.*)<sup>3</sup>

You state that the federal government has now taken the proposed casino property into trust, and the Tribe has entered into a Compact with the State of California that authorizes a casino on the property. Although the Tribe prepared a full Tribal Environmental Impact Statement (“TEIS”) over a decade ago in connection with the Fee to Trust transfer of the land, many things have changed since then, and they have indicated that the eventual project will be much smaller than described in the TEIS. The Compact will likely require additional environmental review, but exactly what will be required is unclear because there are different paths laid out in Section 11 of the Compact depending on the size of the eventual Project.

Currently, you have no information regarding what the Tribe’s revised project may entail. However, it appears that the Compact sets out two different paths for the analysis and mitigation of off-reservation impacts depending on the size of the Tribe’s project – the County would have less involvement with smaller projects than it would with larger projects. For example, if the project involves 349 gaming devices or less, the Tribe will likely prepare a Tribal Environmental Impact Document (“TEID”), which is only required to address certain potential impacts. (Section 11.6.)<sup>4</sup>

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<sup>3</sup> The letter also noted his potential interests in any business entity and/or source of income related to his ranching or mining operations as well as his personal finances. However, in light of the conclusion, it was unnecessary to consider those potential interests.

<sup>4</sup> The TEID must address, at a minimum, the impacts of the Project on the following: (i) air quality; (ii) water resources; (iii) traffic; (iv) public services; (v) hazardous materials; and (vi) noise.

During the Tribe's preparation of the draft TEID, the County would have an opportunity to comment on its adequacy and to consult with the Tribe regarding mitigations. After review of the comments on the draft TEID, the Tribe will prepare a final TEID, and will subsequently prepare a "Report and Decision" (Section 11.7), which will identify the mitigation of off-reservation environmental impacts and mitigation of effects on public safety and public services. If the State determines that the TEID is appropriate, the Tribe and State will enter into a Mitigation Agreement that obligates the Tribe to perform the mitigations and any other obligations identified in the Report and Decision. The County would not be a party to that agreement.

If the project involves 350 or more gaming devices, the Tribe will likely prepare a Tribal Environmental Impact Report ("TEIR") as described in Section 11.11. Similarly, the Tribe will prepare a draft and final TEIR, on which the County may comment. Eventually the Tribe will certify a final TEIR. Again, there is a process by which the County can challenge the adequacy of the TEIR by asking the State to review.

Unlike with a TEID for smaller projects, following the completion of the final TEIR, the Tribe and the County would move on to the negotiation of the Intergovernmental Agreement with the Tribe as provided in Section 11.15, which states that no later than the issuance of the final TEIR, the Tribe must attempt to negotiate an agreement with the County with respect to mitigation of any significant effect as described in Off-Reservation Environmental Impact Analysis Checklist in Appendix B of the Compact. According to the checklist, potential significant impacts could include adverse effects on a scenic vista, air quality, noise levels, population growth and traffic. You believe that process would involve a discussion between the County and Tribe of both whether an impact exists, and the extent of the necessary mitigation or compensation.

Your request appears to assume a project that will involve 350 or more gaming devices, thus requiring an Intergovernmental Agreement between the County and the Tribe. Therefore, you seek advice as to whether Supervisor Oneto may take part in negotiations between the County and Tribe to reach an enforceable agreement related to the mitigation of the casino's impacts.

## ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he 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 his or her immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests is "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." Therefore, as was the situation in the previous letter, Supervisor Oneta has real property interests in his home/ranch located approximately one-half mile from the proposed casino as well as his grazing lease<sup>5</sup> and mining claim abutting the proposed casino.

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<sup>5</sup> In light of our conclusion regarding disqualification based on the mining claim, it is unnecessary to further consider disqualification based upon the grazing lease. Accordingly, we do not discuss it further.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest. Where, as here, the official's interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b), which 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 18702.2 provides materiality standards for determining when a reasonably foreseeable effect on an interest in real property is material. Regulation 18702.2(a)(7) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. Regulation 18702.2(a)(8) provides that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's development potential, income producing potential, highest and best use, character (by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value. Lastly, Regulation 18702.2(b) provided that the financial effect of a decision a decision involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.

### Home/Ranch

The governmental decisions at issue will involve efforts by the County to reach an enforceable agreement related to the mitigation of the casino's impacts. As analyzed in our previous advice, *Oneto* Advice Letter, *supra*, these decisions could affect whether significant impacts to areas surrounding the proposed casino (off-reservation) exist, and the extent of any necessary mitigation. However, we note that Regulation 18702(b), which provides the material standard for a property interest more than 1,000 feet from a decision, has been revised since our initial advice. Nonetheless, we do not have the occasion to reconsider the advice because the question is moot in light of the conclusion below that Supervisor Oneto is disqualified from the decision as a result of his abutting mining claim.

### Mining Claim

Pursuant to Regulation 18702.2(a)(7), the reasonably foreseeable financial effect on Supervisor Oneto's interest in his mining claim is presumed to be material because the property is within 500 feet of the casino property, which is the subject of the governmental decisions at issue. In addition, based on the limited facts provided there is no clear and convincing evidence that the decisions will not have any measurable impact on the mining claim.

Accordingly, based on the current facts, Supervisor Oneto may not participate in negotiations between the County and the Tribe related to an Intergovernmental Agreement intended to mitigate offsite impacts of the casino project.<sup>6</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

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<sup>6</sup> We recommend that you seek further advice once a TEIR has been prepared so that we can analyze the specific environmental impacts of the casino project with respect to Supervisor Oneto's interests.