



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 5, 2025

Serge Stanich
Associate Vice President
HNTB Corporation
2101 Webster, Suite 1400
Oakland, CA 94612

Re: Your Request for Advice
Our File No. A-24-126

Dear Mr. Stanich:

This letter responds to your request for advice regarding the post-government employment provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the post-government employment provisions of the Act. We therefore offer no opinion on the application, if any, of other post government employment laws, such as Public Contract Code Section 10411.

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

As a former Director of Environmental Services for the California High Speed Rail Authority (“CHSRA”), do the Act’s post-governmental employment provisions prohibit you from working for a private firm on environmental impact reports/statements (“EIR/EIS”) on the High Desert Corridor Project administered by the Los Angeles County Metropolitan Transportation Authority (“Metro”) and the High Desert Corridor Joint Powers Authority (“HDC JPA”), which will connect with a CHSRA project on which you previously participated?

CONCLUSION

Because you left state service over twelve months ago, the one-year ban no longer applies to you. The permanent ban prohibits you from participating in proceedings involving the State of

¹ 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.

California, or assisting others in the proceedings, if you previously participated in them while employed by CHSRA. However, because the permanent ban does not apply to a “new” proceeding, you may work on environmental impact studies and reports related to the High Desert Corridor Project, since it involves different parties, a different subject matter, and different factual issues.

FACTS AS PRESENTED BY REQUESTER

Between November 2020 and January 2023, you were the Director of Environmental Services for the CHSRA. During this time, you oversaw the implementation of the environmental program. This included the completion of the Bakersfield to Palmdale high-speed rail line, wherein the EIR/EIS was prepared under a contract between CHSRA and the engineering firm T.Y Lin International. The Bakersfield to Palmdale Project is an approximately 85-mile segment of the 500-mile California High Speed Rail Program and includes the construction of two high-speed rail tracks connecting stations in Bakersfield and Palmdale. The project also includes a number of other facilities such as a light maintenance facility in Lancaster, grade separations, utility relocations and other facilities necessary to the to support this segment as a portion of the larger high-speed rail program. The Palmdale Station is a key element of the larger Bakersfield to Palmdale Project and California High-Speed Rail Program. As the CHSRA Director of Environmental Services, you reviewed the work product of the consultants who prepared the Bakersfield to Palmdale Project EIR/EIS and made policy decisions regarding the adequacy of the document. This work culminated with you presenting the EIR/EIS to the CHSRA Board of Directors at a two-day board meeting in August 2021 where the Board approved the project and certified the EIR/EIS.

In January 2023, you permanently left your employment at CHSRA. Since that time, you began working for HNTB Corporation, an infrastructure consulting firm that serves public sectors clients. HNTB is now pursuing a contract involving the environmental review for the proposed High Desert Corridor high speed rail project (“HDC Project”). The HDC Project is a 50-mile project that will connect the Brightline West High-Speed Rail alignment at Rancho Cucamonga, California, to the California High-Speed Rail alignment at the Palmdale Station. It is not a CHSRA project. The HDC Project contract will be administered by the Metro and the HDC JPA. The HDC has already completed environmental review with an EIR/EIS that was approved by Caltrans in 2016. The HDC JPA is currently conducting a reevaluation of the EIR/EIS due to changes in the project. The Federal Railroad Administration is currently the body that will be certifying the EIR/EIS (known as the “lead agency”), unless that authority is assigned to another agency in the future (see below).

The HDC Project and the CHSRA Bakersfield to Palmdale Project are two separate and distinct projects with different governing contracts. However, the HDC Project will connect with the CHSRA program at the Palmdale Station. Drafting an EIR/EIS for the HDC will therefore involve working with the CHSRA regarding phasing and integration of some station elements such as cross overs to connect the tracks, road realignments, realignments of the existing tracks, and development of station platforms. The HDC is expected to progress through advanced design faster than the CHSRA program.

Your proposed role on the HDC would be to support Metro and the HDCA as the Environmental Manager. You would provide advisory services and permitting oversight on the entire HDC corridor regarding compliance with environmental regulations (such as CEQA, NEPA,

and support environmental permitting with the US Army Corps of Engineers, California Regional Water Quality Control Board, and the Department of Fish and Wildlife), including for the connection with the Palmdale Station. Due to the interface of the HDC project with the CHSRA program at the Palmdale Station, you may be called upon to advise HDC JPA and the CHSRA on environmental compliance matters at the Palmdale Station in the course of preparing the HDC Project EIR/EIS. Both projects have been approved, but subsequent consideration may be required as the HDC Project progresses through advanced and final design.

In addition, the HDC JPA may seek oversight authority from the CHSRA under a federal assignment program, whereby the Federal Railroad Administration can transfer compliance responsibilities for environmental regulations to another agency. Were this to occur, the CHSRA would become the lead agency that will ultimately certify the HDC Project EIR/EIS for the entire 50-mile HDC Project, including but not limited to the Palmdale Station section.

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. Because it has been more than one year since you left state service, the one-year ban² no longer applies to you and we will not consider it further in this advice letter.

The Permanent Ban

The Act prohibits former state administrative officials from “switching sides” and participating, for compensation, in a particular 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, 87402.) Known as the “permanent ban,” this prohibition 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 certain other proceedings in which the official participated while a state employee.

For purposes of the permanent ban, “judicial, quasi-judicial, and other proceedings” to which the ban applies 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).) Participated” means to have taken part personally and substantially through decision, approval, disapproval or rendering advice. (Section 87400(d).) We have previously advised that the preparation and certification of an EIR is a “proceeding” for purposes of the permanent ban.

² Public officials who leave state service are subject to the one-year ban (Section 87406) which prohibits a former state employee from making, for compensation, any formal or informal appearance or making any oral or written communication before the official’s 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 for one year after leaving office or employment.

(*Hildreth* Advice Letter, No. A-11-203 [a former deputy director for the CHSRA may not participate in EIR/EIS processes, which involve specific parties and are in the nature of a contract between the agency and the parties, in which the official previously participated.])

As a former Director of Environmental Services for CHSRA you are subject to the permanent ban. (Sections 87400(b), 87401, and 87402.) Accordingly, you are prohibited from representing, aiding, advising, counseling, consulting, or assisting in representing any person, for compensation, in connection with any EIR/EIS proceeding in which the State of California is a party or has a direct and substantial interest, and in which you participated as an CHSRA official.

However, the permanent ban does not apply to a “new” proceeding, even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A “new” proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings. (*Rist* Advice Letter, No. A-04-187; *Pratt* Advice Letter, No. A-95-386.) For example, we have advised in the context of permits, that a reapplication or amendment to a permit is generally considered a separate proceeding from the initial application, even if it involves the same tract of land, or some of the same issues, as a previous permit. (*Chalfant* Advice Letter, No. A-92-509.) In addition, the application, drafting and awarding of a contract, license or approval is a proceeding separate from the monitoring and performance of the contract, license or approval. (*Anderson* Advice Letter, No. A-86-324.)


Applying these criteria to your situation, the HDC Project EIR/EIS would be considered a new proceeding from your former agency’s Bakersfield-to-Palmdale Project EIR/EIS. It involves different parties from the earlier proceeding in that it is being prepared on behalf of Metro and the HDC JPA for certification by the Federal Railroad Administration as lead agency. The subject matter also concerns a separate high speed rail project. The HDC would connect a non-CHSRA 50-mile line to the Palmdale Station. Although there is some geographic overlap and need for interface between the CHSRA and HDC Project at the Palmdale Station, the specific factual issues under consideration in the HDC Project EIR/EIS concern elements that differ substantially from those in the earlier Bakersfield-to-Palmdale Project EIR/EIS. These changes include the non-CHSRA line’s crossovers to connect the tracks at the Palmdale station, road realignments, realignments of the existing Union Pacific and Metrolink tracks, and development of station platforms, all of which involve different facts from those that were present during the Bakersfield-to-Palmdale Project EIR/EIS. Moreover, even if the the HDC Project’s connection requires changes to the CHSRA Project’s certified EIR/EIS, the changes result solely from the proposed and separate HDC Project.

In the event that CHSRA were to become the lead agency under an assignment program, there would still be substantive difference between the issues being considered under the Bakersfield-to-Palmdale Project EIR/EIS and the HDC Project EIR/EIS making the latter a “new proceeding” for purposes of the permanent ban. The only geographic point of overlap between the two projects would be the Palmdale Station, and as discussed above the issues being considered under the HDC EIR/EIS with regard to the Palmdale Station are not the same as those that were considered under the earlier Bakersfield-to-Palmdale Project EIR/EIS.

If you have other questions on this matter, please contact me at sirussell@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to be 'SR', written over a light gray rectangular background.

By: Simon Russell
Counsel, Legal Division

SR:aja