

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW

10 RIVER PARK PLACE EAST, SUITE 240
FRESNO, CALIFORNIA 93720-1534
(559) 225-6700

FAX (559) 225-3416
WWW.AALRR.COM

CERRITOS
(562) 653-3200

IRVINE
(949) 453-4260

MARIN
(628) 234-6200

PASADENA
(626) 583-8600

PDenno@aalrr.com
(559) 221-2877

PLEASANTON
(925) 227-9200

RIVERSIDE
(951) 683-1122

SACRAMENTO
(916) 923-1200

SAN DIEGO
(858) 485-9526

OUR FILE NUMBER
006317.00025
29244248.3

September 9, 2020

VIA E-MAIL

MEMORANDUM

TO: Michael Safranski, President of the Board; Members of the District Board
Trabuco Canyon Water District

FROM: Atkinson, Andelson, Loya, Ruud & Romo; Peter E. Denno, Esq.; Robert E.
Anslow

RE: Trabuco Canyon Water District – Information Item - Outline of Major Conflict of
Interest Categories

At the request of the of the Board President, we have prepared this memo to briefly discuss the topic of conflicts of interest for members of the Board of Directors (“Board”) of the Trabuco Canyon Water District (“District” or “TCWD”). Please note that this memo is intended for discussion and informational purposes. Individual circumstances may vary and the application of the laws and regulations should be considered on a fact-specific basis.

The referenced guidelines and the attached flowchart are intended to assist Board members in complying with conflict of interest laws set forth by the Political Reform Act and Government Code sections 1090 et seq. They are also intended to help Board members determine whether they have, or may have, a conflict under those laws requiring recusal from participation, discussion and/or involvement with a particular Board agenda or District business item. We suggest that a Board member who believes they may have a conflict should follow the steps set forth below:

- A Board member who believes they may have a conflict of interest with regard to a particular matter can refer to the attached flowchart for initial review, and shall use his or her best judgment in following the process described herein.
- If an obvious conflict is present, the Board member should advise the General Manager and recuse themselves from any participation, discussion and/or action on that matter.

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- If the conflict seems questionable or unclear, the Board member can work through the General Manager to get a legal opinion from District counsel.
- If the legal opinion recommends recusal and the Board member does NOT agree with such recommendation(s), he or she may meet with the General Manager and District counsel for further clarification and may consider seeking advice (a guidance letter) from the Fair Political Practices Commission (FPPC) as appropriate.
- If a Board member has a conflict of interest with regard to a particular matter, and such interest does not qualify under the non-interest or remote interest exceptions¹ and the rule of necessity does not otherwise apply, the Board may not be permitted to take the relevant action(s) if the Board member participates.
- Circumstances involving Government Code Section 1090 may render a contract void (see below).

Additional Considerations:

Financial Conflicts of Interest Under the Political Reform Act

Public officials are generally disqualified from making, participating in making, or using his or her official position to influence the making of any governmental decision in which they have a financial interest.

This law does *not* prevent public officials from owning, acquiring, or possessing financial interests that conflict with their official duties.

A four-step approach should be used to determine whether an official has a financial interest disqualifying him or her from participating in making a governmental decision:

- Will the governmental decision result in “reasonably foreseeable” financial effects on any of the public official’s financial interests?
- Will the reasonably foreseeable financial effect be material?

¹ There are limited statutory exceptions to the general prohibition against conflicts of interest in contracts. If a Board member’s interest can be classified as either a “non-interest” or “remote interest,” the Board may be permitted to enter into the contract if certain conditions are fulfilled. (See attached flowchart for examples.)

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- Is the financial effect on the public official different than the effect on the “public generally”?
- Will the official be “making, participating in the making of, or using their position to influence” the decision that will cause those effects?

However, if an official has a financial interest in a governmental decision, the public body or board may still take action on an item if the official strictly complies with the law’s abstention procedures, which include: (a) public identification of the financial interest giving rise to the conflict or potential conflict in sufficient detail for the public to understand it; (b) recusal from discussing or voting on the matter; and (c) leaving the room until discussion, voting, and any other disposition of the matter has concluded.

Conflicts of Interest in Contracts Under Government Code Section 1090 et seq.

Public officials and employees are prohibited from making a contract in which they are “financially interested.” If a board member has a financial interest in a contract, unless an exception applies, section 1090 prohibits the body or board from making, or entering into, the contract. However, if an *employee* has a financial interest in the contract, the agency may enter into the contract if the employee plays no role whatsoever in the contracting process. The statutory prohibition does distinguish between a member of a legislative body (elected official) and an employee for such purposes.

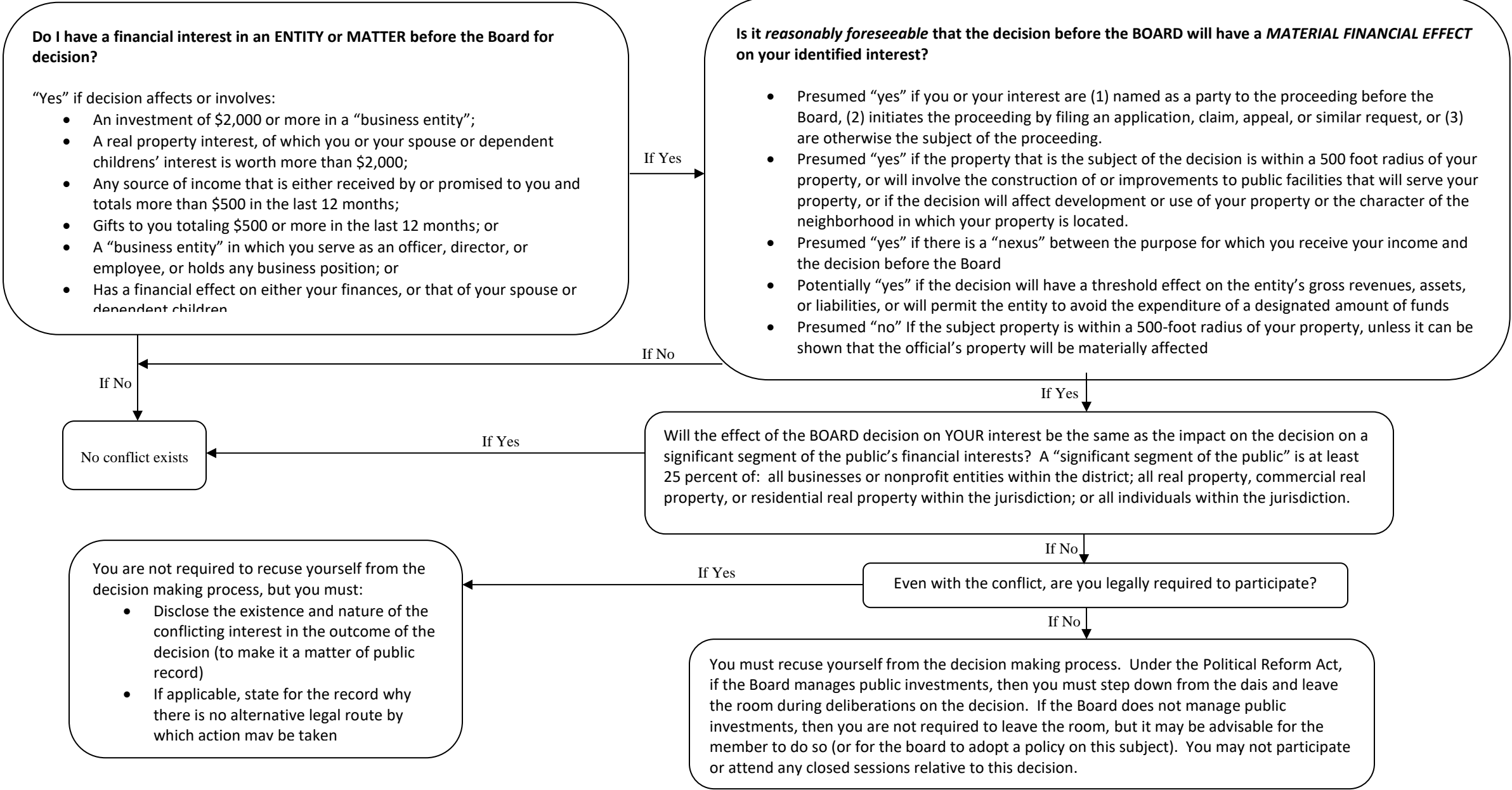
The term “financial interest” is construed very liberally. A financial interest can be direct or indirect, and may involve the prospect of pecuniary gain or the avoidance of loss.

Any participation in the process by which the contract is developed, negotiated, and/or executed constitutes a violation. A contract made in violation of section 1090 is void and unenforceable.

**TRABUCO CANYON WATER DISTRICT BOARD MEMBER
CONFLICTS OF INTEREST UNDER THE POLITICAL REFORM ACT AND GOVERNMENT CODE SECTIONS 1090 ET SEQ.**

I. POLITICAL REFORM ACT (Government Code §§ 87100 et seq.)

Public officials are generally disqualified from making, participating in making, or using his or her official position to influence the making of any governmental decision in which they have a financial interest.



II. CONFLICTS OF INTEREST IN CONTRACTS

Public officials are prohibited from making a contract in which they are “financially interested.” The term “financial interest” is construed very liberally. A financial interest can be direct or indirect, and may involve the prospect of pecuniary gain or the avoidance of loss.

