



**MUNICIPALITY OF ANCHORAGE**  
**Board of Ethics**

Date: October 13, 2023

To: John Thornley, Chair, Municipality of Anchorage Geotechnical Advisory Commission

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2023-01

Dear Mr. Thornley:

This advisory opinion responds to the above Request for Advisory Opinion (the “Request”). You have asked the Board of Ethics (the “Board”) to consider whether your ongoing participation as Chair of the Municipality of Anchorage Geotechnical Advisory Commission (the “GAC”) creates a conflict of interest pursuant to Municipal Code<sup>1</sup> in light of the GAC’s role in recommending seismic standards applicable to work at the Port of Alaska, while you continue to also serve as the geotechnical engineer of record for WSP USA, which, in turn, is one-half of the joint venture which serves as the designer of record for the Port of Alaska Modernization Program.

This advisory opinion constitutes the findings and conclusions of the Board, based on the information you provided in your written request and in person during the August 10, 2023, meeting of the Board. If material facts were not disclosed or were misrepresented, the opinion is without force or effect.

**SUMMARY OF THE OPINION**

The Board finds that your ongoing service as the Chair of the GAC and participation in official action which concerns seismic standards for the Port of Alaska Modernization Project does not present an unmanageable conflict with your work for WSP USA at the Port of Alaska, provided you:

- (1) Disclose your private interest in WSP USA to the GAC for consideration and recommendation pursuant to AMC 1.15.060E prior to participating in any official action (defined to include “any participation in a process, including deliberation, in which a decision of recommendation is reached”<sup>2</sup>) which would have any impact (positive or negative) on the financial<sup>3</sup> or personal<sup>4</sup> interests of WSP USA; and

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<sup>1</sup> See AMC 1.15.060.

<sup>2</sup> AMC 1.15.060C.

<sup>3</sup> Defined as “the receipt or expectation of receipt of a pecuniary benefit.” AMC 1.15.060B.1.

<sup>4</sup> Defined as “the receipt or expectation of the receipt of a benefit, including but not limited to a special privilege, contractual relationship, or promotion of a business or political interest.” AMC 1.15.060B.2.

- (2) Do not take any official action with respect to any matter in which WSP USA has a substantial financial or personal interest.<sup>5</sup>

## FACTS OF THE REQUEST

Pursuant to AMC 21.02.080, the Municipality of Anchorage Geotechnical Advisory Commission's mission is to "serve as a technical advisory board in the municipality." The Commission is called upon to "act in an advisory capacity to the assembly, the mayor, boards, commissions, and heads of municipal departments and agencies" with respect to "geotechnical engineering issues," "natural hazards risk mitigation," and "proposed development located in high or moderate snow avalanche hazard zones, in areas designated with high or very high susceptibility to seismically induced ground failure, and in areas susceptible to other natural hazards."<sup>6</sup> With respect to the Port of Alaska Modernization Program (the "PAMP"), the GAC has been called upon to recommend seismic standards to the Assembly, which in turn determines whether to direct the PAMP's designer of record to utilize those standards.<sup>7</sup> Per Municipal Code, the GAC's recommendations are "purely advisory," but the Board understands that the Anchorage Assembly tends to adhere closely to GAC's advice.<sup>8</sup>

You explained to the Board that you are an Assistant Vice President of WSP USA.<sup>9</sup> WSP USA is, in turn, one half of the joint venture group which serves as the designer of record for the PAMP.<sup>10</sup> This work is being completed pursuant to a lump sum contract.<sup>11</sup> With respect to the PAMP project, you serve, specifically, as WSP USA's geotechnical engineer-of-record.<sup>12</sup> In this role, the engineering work for the project is done under your direction, and final plans are stamped by you.<sup>13</sup>

The joint venture's concept for the cargo docks portion of the PAMP has already been reviewed by the GAC.<sup>14</sup> The GAC also participated in defining proactive standards for the PAMP prior to the bid process for the project.<sup>15</sup> However, ongoing changes to standards and requirements applicable to the PAMP have recently and will continue to come before the GAC for review and recommendation.

One recent question which came before the GAC concerned a request from the Port of Alaska for a GAC recommendation regarding an update to seismic standards applicable to the PAMP.<sup>16</sup> You represented to the Board that this request would have no impact on WSP USA's costs or profits.<sup>17</sup>

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<sup>5</sup> See AMC 1.15.060D.2 ("A public servant shall not participate in an official action in which the public servant has a substantial private interest.").

<sup>6</sup> AMC 21.02.080.

<sup>7</sup> Notes from Board discussion with John Thornley, August 10, 2023.

<sup>8</sup> Notes from Board discussion with John Thornley, August 10, 2023.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See Request for Advisory Opinion 2023-01.

<sup>17</sup> Notes from Board discussion with John Thornley, August 10, 2023.

The Board further understands that you disclosed your role with WSP USA prior to the question coming before the GAC, and that the GAC followed the procedures set by AMC 1.15.060E to assess the possibility of a substantial conflict and to provide you with direction with respect to participation.<sup>18</sup>

## DISCUSSION

The Board's consideration of this issue addressed both the GAC's recent review of the requested change in seismic standards applicable to the PAMP, and the broader question of your continued participation in official action which concerns seismic standards for the PAMP.

With respect to the GAC's review of the recently requested change in seismic standards, the facts before the Board are as outlined above:

- The request was presented to the GAC by the Port of Alaska;
- Neither the immediate nor the downstream impact of the change would have any effect on WSP USA's financial or personal interests;
- You disclosed the potential for a conflict to the GAC prior to participation in any official action concerning the request; and
- You stepped down from your role as Chair to allow the GAC to consider and rule on the potential conflict of interest pursuant to the process set out in AMC 1.15.060E.<sup>19</sup>

Based upon these facts, the Board concludes that your subsequent participation in consideration of this change to seismic standards did not violate the Municipal Code of Ethics.

With respect to the broader question of your ongoing service as the Chair of the GAC and participation in official action which concerns seismic standards for the PAMP, the Board concludes that there remains a significant but manageable possibility for conflicts of interest to arise, that must be addressed in accordance with the Municipal Code of Ethics.

Pursuant to the Municipal Code of Ethics,<sup>20</sup> “[a] public servant shall not participate in an official action in which the public servant has a substantial private interest.” Official action is defined to mean “participation in a process, including deliberation, in which a decision or recommendation is reached.”<sup>21</sup> “Public servants are understood to possess their own interests as well as those of . . . organizations in which the public servant . . . serves as a director, officer, or employee.”<sup>22</sup> Private interests include both a “financial interest” (“the receipt or expectation of the receipt of a pecuniary benefit”) and a “personal interest” (“the receipt or expectation of the receipt of a benefit, including but not limited to a special privilege, contractual relationship, or promotion of a business or political interest”).<sup>23</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> AMC 1.15.060D.2.

<sup>21</sup> AMC 1.15.060C. Note that pursuant to Ethics Code, “official action” does not include clerical or ministerial action on a matter, or “[a]ction on a matter that does not substantially evaluate or impact the merits of the recommendation or decision.”

<sup>22</sup> AMC 1.15.060B.

<sup>23</sup> AMC 1.15.060B.

In situations in which a public servant possesses “a potential conflict of interest,” the public servant has the duty to disclose the interest for “appropriate evaluation,”<sup>24</sup> by the body on which they serve, in accordance with the process set forth in AMC 1.15.060E.

Per the above-outlined provisions of Code, the Board advises you to be aware that the Code explicitly considers the private interests of WSP USA to be coextensive with your own; that is, if WSP USA has a potential financial or private interest in an official action, the code deems you to share that interest. Further, the Board advises you to review the recently revised provisions of AMC 1.15.060, specifically the procedural requirements of AMC 1.15.060E. This section of Code was updated by the Assembly to include newly detailed direction regarding the disclosure and consideration of conflicts of interest.

Finally, the Board advises you to be cautious and thoughtful in your consideration of when the GAC’s review of a seismic standard could give rise to potential beneficial or adverse impacts for WSP USA. For example, if a seismic standard before the GAC would have the effect of either increasing or decreasing WSP USA’s operational costs (and, thus, under a lump sum contract, either increasing or decreasing WSP USA’s profit from the PAMP), the Code would consider this to be an impact on WSP USA’s financial interests which must be explicitly disclosed and considered by the GAC pursuant to AMC 1.15.060E prior to your participation in any relevant official action.

## CONCLUSION

The Board advises that your ongoing service as the Chair of the GAC and participation in official action which concerns seismic standards for the Port of Alaska Modernization Project does not present an unmanageable conflict with your work for WSP USA at the Port of Alaska, provided you comply with the disclosure and recusal requirements set forth in AMC 1.15.060.

Respectfully submitted,

Municipality of Anchorage Board of Ethics



Rebecca Windt Pearson, Chair  
Kelly Moghadam, Vice Chair  
Terrence Kelly  
Patrick Teagarden

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<sup>24</sup> AMC 1.15.060E.