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**Mono County Grand Jury 2013-2014  
Town of Mammoth Lakes  
Proposed Materials Recovery Facility (MRF)  
Case #1314.02**

**Summary:**

On April 22, 1992, Glenn Thompson, then-Town Manager for the Town of Mammoth Lakes, wrote the following to Bill Mayer, Mono County's Chief Administrative Officer: "I have informed Council that I consider solid waste issues and costs to be the 'ticking time bomb' with the potential to unravel the fiscal safety nets of all local governments. I think it very important that we work to make the situation known to our citizens. ... I really believe we have a tiger by the tail and we need to be both aggressive and cautious."

That time bomb is still ticking, and the tiger still being held by the tail. And, after more than 20 years, information about solid waste issues facing the Town and the County is not generally known. In this report, we examine allegations relating to secretive planning of solid waste solutions by the Town of Mammoth Lakes and find that responsibility for the lack of public knowledge and participation lies, in large part, with Town government.

Since the early 1990s, the Town of Mammoth Lakes has considered building a Materials Recovery Facility (MRF) to enhance its ability to meet state law requirements for diverting solid waste from landfills. Sometime after 2007, discussions about a potential MRF took a turn away from the public eye, and were conducted instead in closely-guarded business negotiations and closed sessions of Town Council — closed sessions which, while noticed for apparently appropriate purposes, exceeded the limited scope of what's legally permissible under the Brown Act. These two issues, lack of transparency and Brown Act violations, are the subject of this report.

**The Complaint:**

The Grand Jury received two citizen complaints, both alleging in essence that the Town of Mammoth Lakes (TOML), through its Town Council and staff, pursued a secret plan with Waste Connections Inc., the Town's exclusive franchisee for solid waste disposal, to use "public trust" monies collected in trash bills to purchase real property for the purpose of expanding the Solid Waste Transfer Station in the Industrial Park, including plans to build and operate a Materials Recovery Facility (MRF). The gist of both complaints was that, in so doing, the Town allegedly violated the Brown Act, which requires California public agencies to conduct business in open and public meetings.

**The Method of Study:**

The investigation began in November, 2013, with interviews of the two complainants as well as a staff member associated with the Town of Mammoth Lakes.

The Grand Jury then obtained thousands of pages of documents from the Town by means of a subpoena and requests under the California Public Records Act. The documents produced included agreements, correspondence, emails, memoranda, Town Council agendas and minutes,

flyers, consultants' reports, and handwritten notes, all relating to solid waste issues. We also obtained documents from other sources, including minutes of meetings of the Mono County Board of Supervisors and the Mono County Solid Waste Task Force. The Grand Jury then summarized the documents in chronological order, creating a listing approximately 100 pages in length that spanned the time period from 1991 through the present. With that, we were better equipped to grasp in context the complex series of events that the documents depicted.

Thereafter, we interviewed nine additional witnesses, all associated with the Town of Mammoth Lakes in one capacity or another, including all members of Town Council. We were unable to obtain much information of substance from most of the Town Council members. We did not conclude that they deliberately withheld information, but rather that they had failed to retain, understand, and recollect information that would allow us to be confident of informed decisions on solid waste issues. The staff members we interviewed, both current and past, generally seemed to be more well-informed. But given the recent reductions and turnover in staff, "institutional memory" has been damaged.

Based on the information derived from these sources, we then made findings, as discussed below.

### **Discussion:**

In 1989, AB 939 became law in California, requiring cities and counties to divert at least 25% of all solid waste from landfills by 1995 and 50% by the year 2000. At least as early as 1992, the Town of Mammoth Lakes began making efforts to comply, adopting a Source Reduction and Recycling Element in the Town's General Plan. Historically, however, the Town has had difficulty in complying with state waste diversion mandates.

Mammoth Disposal has been the Town of Mammoth Lakes' exclusive franchisee for solid waste disposal for many years. In February, 1992, the Town entered into a 10-year exclusive franchise agreement that, among other things, called for Mammoth Disposal to build, operate, and maintain a MRF to help with diversion efforts. To date, however, the only MRF that has ever been built — if it can even be called a MRF — is capable only of removing cardboard from the waste stream and baling it for export to market. Programs are also in place for recycling of aluminum, plastic and glass, E-waste, and used oil and batteries, but not as part of a MRF.

By way of background, a MRF is a facility designed to receive, separate, and prepare recyclable materials for marketing to end-users (manufacturers). MRFs support communities in their efforts to protect the environment by diverting recyclable materials from landfill disposal, recapturing and reusing resources. A MRF can enhance a community's efforts to comply with waste diversion mandates imposed by California law.

There are at least two types of MRFs — "dirty" and "clean." By our understanding, a "dirty" MRF would include a single-stream operation, in which all garbage/trash — including food waste, other refuse, and recyclables — is disposed of in one receptacle, which is then transported to the MRF, where it is separated by hand, mechanical means, or both, in order to recover recyclable materials before disposing of the remainder in a landfill. A "clean" MRF, on the other hand, would not accept all garbage/trash, but rather only recyclable materials that have been separated at the source from other forms of solid waste. It may well be that there are gradations between "clean"

and “dirty,” as even recyclable materials could be soiled before separation at the source. According to the Town, the MRF at issue in this investigation was intended to be a “clean” MRF, although that is subject to some dispute.

In June, 1999, Waste Connections, Inc., purchased Mammoth Disposal and thereafter operated it as a subsidiary. At that time, Town Council approved transfer of the exclusive franchise agreement to the parent corporation. Although set to expire in 2002, Council later adopted a resolution extending the agreement through May 31, 2007. After that, several shorter-term extensions were approved in order to afford time to complete negotiations on a successor franchise agreement, which remains in force to this day. There will be more on that agreement later in this discussion.

In 2000, the Town commissioned SCS Engineers to evaluate the feasibility of constructing a MRF. The report, dated September 26, 2000, concluded that a MRF was not feasible at that time because the Town’s waste stream did not include the types and quantities of recyclable materials that would make it financially viable.

On September 7, 2005, with an eye toward the May 2007 expiration of the exclusive franchise agreement with Mammoth Disposal, Town Staff presented Council with an agenda bill explaining the need to consider expanded recycling facilities for the Town in light of AB 939 diversion requirements. The bill also identified several policy issues to be considered in providing for trash collection and sought Council’s direction on whether to pursue renewal, extension, or replacement of the solid waste franchise agreement with Mammoth Disposal. In response, Council directed staff to establish an *ad hoc* Solid Waste Committee to study the issues and report back.

The Solid Waste Committee issued a report to Council dated March 23, 2006, covering the issues discussed in the September 7, 2005 agenda bill. Among other things, the Committee indicated its belief that all solid waste customers should share in the cost of complying with State solid waste diversion requirements, a process that would be complicated by having multiple trash haulers operating in the Town. The members also recommended continuing the practice (established in 1998) of having a single, secure solid waste transfer station located in the Industrial Park, offering residential self-hauling along with optional curbside pickup (in lieu of the previous system of multiple drop-off points located throughout Town, which had resulted in undesirable conditions).

In addition, the Solid Waste Committee examined whether the Town should subject solid waste franchise agreements to a competitive bidding process, or perhaps even grant franchises to multiple haulers. The report notes, however, that Mammoth Disposal owns the land on which the Solid Waste Transfer Station (SWTS) is situated, and it would therefore have a significant advantage in any bidding process. Other bidders would be forced to incorporate the added cost of either leasing the SWTS from Mammoth Disposal or acquiring an alternative site. The Solid Waste Committee also believed that having multiple trash haulers would also result in increased truck traffic and the possibility of increased trash and litter, with haulers “cherry picking” plum accounts and remaining customers being forced to shoulder increased costs. Under these circumstances, the Committee recommended that the Town maintain an exclusive franchise system until such time as it could acquire ownership of the Solid Waste Transfer Station site owned by Mammoth Disposal, as well as an adjacent parcel for expansion. As such an acquisition would require a significant capital outlay, the Committee unanimously recommended making the purchase through a renegotiated and extended franchise agreement with Mammoth

Disposal, which would allow for the costs to be spread out over a number of years and also foster an orderly transition upon its expiration, when the franchise could be subjected to a meaningful competitive bid process.

The Solid Waste Committee also looked specifically at whether the Town should build a MRF. Committee members reviewed the 2000 report prepared by SCS Engineers, which concluded that the Town's waste stream was insufficient for a MRF to be economically viable. The Committee's report also cites staff visits to MRFs located in Truckee and South Lake Tahoe, where they learned that the facilities' "solid waste volumes ... do not financially support those operations." The Committee acknowledged that future increases in mandatory solid waste diversion rates might someday require that a MRF be built in the Eastern Sierra, but did not foresee such increases in the near-term. Thus, based on an informal cost/benefit analysis, the Committee recommended against proceeding with a Town-sponsored MRF at that time, adding that if inclusion of a MRF provision were required in the solid waste franchise agreement, all costs and financial risks of construction and operation should be borne by the franchisee.

Council accepted the Solid Waste Committee's report on April 23, 2006. On September 6, 2006, the issue came before Council again, with Council at that time authorizing staff to move forward with negotiations toward a new long-term exclusive solid waste franchise agreement with Mammoth Disposal based on the recommendations in the Solid Waste Committee's report. In support of this authorization, Council explicitly found that it was infeasible for a solid waste provider other than Mammoth Disposal to acquire or provide the land necessary to accommodate construction of another solid waste transfer station, nor was it practical to have more than one solid waste provider given the financial and logistical barriers to entry. This finding, along with a finding of jeopardy to public health, safety and welfare, formed the legal basis for dispensing with a competitive bid process, which ordinarily would have been required under Town Ordinance Section 12.40.090.

Negotiations between the Town and Mammoth Disposal began shortly thereafter, and continued for more than three years. Late in that interim, with the expectation that a final agreement would be reached by July 1, 2009, the Town Manager sought Mammoth Disposal's signature to a "Deal Points" commitment letter outlining certain terms that the parties expected would affect customer rates. With the deal points nailed down, the Town could then proceed with satisfying legal requirements for a public hearing on increased solid waste disposal rates in sufficient time to finalize the franchise agreement by July 1, as anticipated.

Both parties signed the "Deal Points" letter and, on March 31, 2009, the Town mailed formal notices to solid waste disposal customers and parcel owners of the proposed increases, which would be the subject a public hearing on May 20, 2009. The Notice of Public Hearing disclosed generally that the proposed increases would "cover the costs of the services to be provided, and the cost of acquiring land for the transfer station, including, costs of labor, utilities, supplies, equipment, gasoline, land, facilities, and franchise fees."

The agenda bill for the May 20, 2009, public hearing expanded on the information given in the Notice, summarizing the key points of the "Deal Points" letter as follows:

1. The Town will offer a five year franchise agreement to Waste Connections, Inc. The Town will pursue acquisition of the transfer station land through a purchase option during the five year agreement and will extend the agreement another twenty (20) years if the option is exercised. The Town will issue debt to acquire ownership and spread out the payments in the rate structure over the term of the agreement. The acquisition price of the transfer station site has been locked in at current appraised value.
2. The Town will pursue acquisition of the Mammoth Firewood parcel adjacent to the transfer station site. This acquisition is necessary to expand the transfer station site to accommodate future growth of trash and recycling in the Town of Mammoth Lakes. The Town will issue debt to acquire ownership and spread out the payments in the rate structure over the term of the agreement.
3. The transfer station site will be torn down eventually and rebuilt to increase efficiencies and to accommodate future growth in trash disposal and recycling services. This would be a Town project and would be publicly financed with the costs passed through in the rate structure.

Ultimately, the citizens of the community will own hard assets including the transfer station land and facilities and the Town will have control of our own destiny with respect to all solid waste and recycling programs, including the ability to competitively bid out future franchise agreements. It is critical to note that this entire project is focused on the long-term realities the Town faces with future solid waste and recycling management and requirements from the State of California.

The minutes of the May 20, 2009, public hearing reflect that Michael Grossblatt, former Personnel Director and Assistant to the Town Manager, publicly outlined the information in the agenda bill, noting that the new franchise agreement itself would come forward for approval at a later meeting. After a discussion, which included “whether the Town takes possession of the parcel on which the facilities are and will be constructed,” the item was opened to public comment. According to the minutes of the meeting, only one member of the public spoke: “Martin Orrick asked if the increases would be less in the event the proposed parcel is not purchased; Mr. Grossblatt responded that they would be less, and that another public hearing would be conducted.”

The minutes further reflect that nine protest letters had been submitted by members of the public. A review of these letters shows that none of the protestors commented on the proposed purchase of real property. In addition, a tenth letter was submitted, not to protest the rate increase, but rather to request certain service improvements (e.g., a payment drop box, improved lighting, etc.).

The Town Clerk reported that the rate protests did not constitute a majority. After further discussion, Council adopted Resolution 09-27, approving the rate increases as proposed. There is no mention of a proposed MRF for the site in any of these documents.

By December 16, 2009, the Town had completed negotiations with Mammoth Disposal on the terms of a new franchise agreement. On that date, Council held a public hearing to consider Resolution 09-79, authorizing the Mayor to execute the new “Waste Collection Franchise

Agreement Between the Town of Mammoth Lakes and Mammoth Disposal Company” (hereafter, the “Franchise Agreement”). The Resolution passed, and the Franchise Agreement went into effect on January 1, 2010. While initially set to expire on December 31, 2014, the agreement afforded Mammoth Disposal the option to extend the term for an additional five years. Mammoth Disposal exercised this option early in 2014 and, thus, the Franchise Agreement is now set to expire on December 31, 2019.

The agenda bill prepared by staff for the December 16, 2009, Town Council hearing provides an extensive review of the Franchise Agreement’s major terms and, because it is written in plain English and provides information about the meaning and intent of rather complex contractual provisions, it bears inclusion here.

Section 8 of the Franchise Agreement contemplates two real property acquisitions: (1) the Expansion Parcel (sometimes called the Mammoth Firewood Lot); and (2) the Transfer Station site itself, owned by Mammoth Disposal. The agenda bill explains this section as follows:

The existing transfer station is at or close to capacity and, in coming years, may become unable to accommodate the Town’s waste management and recycling needs. This was the core issue of the Solid Waste Committee’s summary report. To this end, the Town and Mammoth Disposal mutually agree that an improvement and expansion of the transfer station is needed and the parties have agreed upon a preliminary improvement plan which will demolish and replace the current transfer station site. In order to accomplish this goal, staff has been negotiating for over a year with the owners of the adjacent Mammoth Firewood (“Expansion Parcel”) property for purchase of that property for the expansion process. Rate increases to pay for the acquisition of the Expansion Parcel have already been approved by the Town Council (as discussed in Article 10 of the proposed agreement and as approved by Resolution 9-27) assuming a deal can be reached on the parcel. Section 8.02 in the proposed agreement outlines the Town’s acquisition of the Expansion Parcel.

Another stated goal of the Solid Waste Committee’s summary report was the recommendation of eventual Town ownership of the existing two acres currently owned by the Franchisee to allow for the future bidding of the franchise agreement down the road. This was the most contentious issue negotiated between the Town and Waste Connections for the past three years. Section 8.03 outlines the terms and conditions of the Town’s option to purchase these premises. As stated earlier in this agenda bill, the Town retains the right to purchase the premises at a pre-determined price of \$2,273,000. This price was based on an independent appraisal in December 2008. The Town retains an option to purchase the premises during the first five years of the proposed Franchise Agreement through December 31, 2014. If the Town forgoes this option and purchases the premises during the five year extension period, the price of the two acres will be set by a new appraisal. Before the purchase of the premises can be completed, the Town will have [to] schedule a new Proposition 218 hearing before the Town Council [can] implement new rate increases for this purchase. If this transaction goes through, the term of the proposed Franchise Agreement will be extended for twenty years (20) to pay off and

amortize the property acquisition. Transfer of title, however, will pass to the Town of Mammoth Lakes upon the close of escrow.

Article 8 is the cornerstone of this proposed Franchise Agreement and should be viewed as an investment in the Town's future with respect to the provision of solid waste and recycling services to the Mammoth Lakes community.

Section 10 of the Franchise Agreement, "Franchisee Compensation and Rate Adjustments," addresses financing for acquisition of the Expansion Parcel, among other things. The agenda bill explains:

Section 10.02(b)(3) discusses the impending rate increases allocated toward the anticipated debt payment for the Expansion Parcel acquisition. In essence, the Franchisee will make an annual payment of \$180,000 in quarterly installments to the Town of Mammoth Lakes. These monies have been approved in the Proposition 218 hearing back on May 20. If the Expansion Parcel is not acquired, the Town has the option to forgo the rate increases associated with the \$180,000.

In other words, the rate increases that were approved by Council in May 2009 included an upward adjustment to be paid by consumers. Under this provision of the Franchise Agreement, Mammoth Disposal would pass this part of the increase through to the Town, at \$180,000 annually, paid in quarterly installments.

Again, there is no mention of a MRF in any of the documentation — not in the Franchise Agreement, not in the agenda bill, not in the Notice of the Meeting, and not in the Meeting Minutes. Even so, Town records show that a MRF had long been on the radar screen. For example, the Town at one point identified a MRF program as part of a Plan of Correction it submitted to CalRecycle. In a letter to the Town dated January 31, 2007, a CalRecycle official pointed this out and warned that if the Town's reported diversion rates fell below the mandated 50% level, the lack of the promised MRF would be considered in deciding whether to initiate a Compliance Order process.

The Town responded on March 5, 2007, informing CalRecycle that it didn't actually intend to build a MRF *per se*, as it had previously commissioned a study that concluded that a MRF wasn't economically feasible. However, it had secured support from Mammoth Disposal and intended to expand the current Solid Waste Transfer Station's "capacity with additional acreage and a new baler," along with "a site plan with a better traffic flow and increased capacity for receiving and storing recyclables and divertible material. Plans are to purchase the site (totaling 3 acres), finalize an agreement with Mammoth Disposal, and commence environmental review and permitting."

These plans never materialized. As noted in a 2010 Solid Waste Program Evaluation conducted by HDR, a consulting firm, for Mono County, "[T]he Town staff discussed with HDR that they have already studied installing MRF components at the [Mammoth Disposal Transfer Station] and determined them to be too costly at the scale of operations involved."

Eventually, renewed discussions of a MRF were jumpstarted when, on February 23, 2011, CalRecycle notified the Town of its intention to conduct a review to determine whether the Town was complying with diversion mandates. The review would include looking at the Town's

programs as well as evaluating the materials actually being disposed. If found to be out of compliance, the letter warned, the next step would be to consider a compliance order against the Town, with the potential for penalties of up to \$10,000 per day.

Throughout this time, and going back to 2006, Town staff had been negotiating the proposed purchase of the Expansion Parcel (Firewood Lot), as well as the Transfer Station site itself. Council was updated on progress of the negotiations from time to time in closed sessions and provided staff with further direction toward these efforts. These meetings were noticed in Town Council meeting agendas under the Brown Act exception for real property negotiations. One of these closed sessions took place on December 16, 2009, the meeting in which Town Council authorized the Mayor to sign the Franchise Agreement. Many others followed.

## THE BROWN ACT

As discussed in the California Attorney General's pamphlet, *The Brown Act, Open Meetings for Local Legislative Bodies*, the Brown Act (California Government Code section 54950, *et. seq.*) governs meetings conducted by local legislative bodies, including Town Council. Its purpose is to facilitate public participation in local government decisions and to curb misuse of the democratic process through secret legislation, while at the same time striking a balance with legitimate needs for confidential candor, debate, and information gathering. While the Act confers a presumption in favor of public access, it also provides specific exceptions to open meeting requirements where the government has established a need for confidentiality. Courts have construed these exceptions narrowly. Where matters are not subject to a closed meeting exception, the Brown Act has been interpreted to mean that all of the deliberative processes by legislative bodies, including discussion, debate, and acquisition of information, be open and available for public scrutiny.

One of the Brown Act's exceptions authorizes closed meetings for real property negotiations. Under this exception, a local body may meet in closed session to advise its negotiator concerning the "price" and "terms of payment" in connection with a specific transaction. Court decisions have indicated that the intent of this exception reflects the realities of the commercial marketplace and the need to prevent the person(s) with whom the local government is negotiating from sitting in on the session at which the negotiating terms are developed.

Any such closed session must be preceded by an open session in which the body orally announces the matter to be discussed, identifying the real property in question, the individual who will act as its negotiator, and the persons with whom its negotiator may negotiate. These same items must be disclosed in a properly noticed written meeting agenda as well. Under safe harbor provisions of the Brown Act, the property in question should be identified by a street address, or if no street address exists, a parcel number or other unique reference.

According to witnesses, Town Council members received training on the requirements of the Brown Act upon taking office, usually through the League of California Cities and the Town Attorney. All Council members acknowledged having received such training. Only one current Council member (as of April 2014) appeared to have any real knowledge or understanding of the Brown Act's intent or provisions. Most stated that they relied on the Town Attorney for guidance as he attends all closed sessions, usually in person but occasionally by telephone.

Our review of agendas and minutes for Town Council meetings at which closed sessions took place under the real property negotiations exception raised several concerns about Council's compliance with the Brown Act. These concerns were confirmed through witness testimony. First, despite the fact that a street address for the Expansion Parcel is readily available, it was never described by reference to street address in meeting agendas. Instead, it was at times described as the Mammoth Firewood lot, or by reference to the names of its owners, or by parcel number. Second, Council repeatedly held closed sessions prior to regular meetings, sometimes as early as 4:00 p.m. before the public normally arrived and before those who work normal business hours would be able to attend. In many cases, there was no oral announcement of the matter in an open meeting before Council went into closed session, as the Brown Act requires. Both of these irregularities, it seems, militated against public awareness and discussion of the agenda items at issue — purchase of the Expansion Parcel in particular.

Moreover, the evidence we reviewed leads us to conclude that, to the extent that Council gathered information about, established policy, and gave direction on proposed plans for a MRF, those discussions took place in closed sessions that were noticed for the purpose of real property negotiations. Again, the Town Attorney attended each of these meetings, usually in person, but occasionally by telephone.

For example, the February 2, 2011 Town Council Agenda noticed closed sessions, both at the beginning and end of the agenda. The closed session at the end of the meeting included at least eight separate matters, all of which are lumped together in a single paragraph, as is typically the case in Town Council agendas. This makes them difficult to separate. The third item concerns real property negotiations relating to APN-200-050, which (by reference to County records) we identified as 59 Commerce Drive, which is the site of the Solid Waste Transfer Station and Mammoth Disposal. Buried further down in the paragraph, after several other items, the closed session agenda notes that there will be discussion relating to acquisition of "Mammoth Firewood, APN 37-200-08." Oddly, with regard to the Transfer Station parcel, the agenda identifies a Town official as the representative for the "prospective seller" and a County official as the "prospective buyer," even though the Town did not own the property — Mammoth Disposal did.

We found nothing in the thousands of pages of documents the Town produced, and received no oral evidence, to indicate that the Town ever actively negotiated with the County over a purchase/sale of the Transfer Station, although we saw reams of documentation about the negotiations between the Town and the Mammoth Firewood lot owners. There are neither written meeting minutes nor video/audio recordings made during closed session, so we cannot know with certainty what was actually discussed in the closed session on February 2, 2011. However, we find it unlikely that it was restricted to the price and terms of payment of the Town's sale to the County of land it did not own. Consequently, this item appears to be questionable given the Brown Act limitations on the scope of real property negotiations.

Notwithstanding the lack of minutes and recordings of closed sessions, the Grand Jury received oral testimony from several witnesses indicating that MRF plans and other matters relating to solid waste were repeatedly discussed in closed session, purportedly under the real property negotiation exemption in conjunction with the price and terms of payment for the proposed purchase of the Expansion Parcel and the Transfer Station. According to one witness, whom we found credible, when purchase of the Expansion Lot was on the closed session agenda, it was essentially always about the MRF.

This testimony is supported by documentary evidence that shows Town Council on more than one occasion exceeded the scope of the Brown Act exception for real property negotiations during closed sessions. One example is a confidential memorandum dated March 6, 2013, prepared by staff for a closed session noticed in the agenda for that day's Town Council meeting at 4 p.m. (an hour before the regular Council meeting) under the Brown Act exception for real property negotiations on the Expansion Parcel. The memorandum, bearing the subject line, "Mammoth Firewood Acquisition," includes handwritten notes by a staff member, who acknowledged having made them during the closed session. These notes make clear that the memorandum's contents were fully discussed, and that the discussion exceeded the limits of the Brown Act real property negotiation exception.

The memorandum first reviews negotiating terms for the Expansion Parcel, including the price to be offered, with a handwritten notation indicating that Council directed staff to offer a lower purchase price than had initially been sought.

The memorandum then continues with a discussion of "Long Term Solutions for Trash" and "Parcel Fees for Mono County." According to the handwritten notes, the discussion included MRF facility costs, possible alternatives to Benton Crossing Landfill, and parcel fees paid by Mammoth Lakes property owners to support Mono County's solid waste disposal program. These matters, while perhaps tangentially related (at best) to a purchase of the Expansion Parcel, fall outside the narrow exception for real property negotiations. They could have and should have been the subject of discussion at a public meeting so that Mammoth Lakes residents could be informed of and provide input on the overall scope of solid waste issues facing the Town, as well as the County.

In addition, a staff email dated December 11, 2012, states, "During the Council closed session meeting last Wednesday, December 5, 2012, the Council made clear that the Town's plans for a Transfer Station/MRF remains a priority and they are interested in moving the project forward." This provides further written corroboration of the fact that discussions of a MRF took place in closed sessions.

In fact, between 2007 and July 2013, we found only one discussion of a MRF that took place in a noticed open session of Town Council. That discussion occurred on May 16, 2012, when Town staff sought Council's approval of a letter to CalRecycle seeking an extension of time for the Town to comply with State-mandated diversion requirements. At that time, CalRecycle's compliance review of the Town was well under way and the Town was awaiting the results. In addition, AB 341 had been signed into law, and within a short time, would increase diversion rates to a *goal* of 75% by 2020. Council approved the letter to CalRecycle (which was later sent off bearing a date of June 27, 2012), thereby committing to a timeline for, among other things, finalizing a MRF plans and construction schedule by Winter 2012, and beginning construction by Spring 2013.

CalRecycle delivered its Staff Report and Evaluation of the Town's compliance efforts on November 2, 2012, recommending a good faith finding of compliance based on the Town's reasonable efforts, despite the fact that commercial and residential recycling programs remained problematic at that time. The report notes Mono County's expressed concerns that a MRF in Mammoth Lakes would have long-term, irreparable impacts on the County's solid waste program. The report also recommended that "CalRecycle consider conducting an interim review of the Town's recycling efforts toward the end of 2013. This will allow the town adequate time to fully

implement the Commercial Recycling Program and evaluate the existing residential recycling program.” The report also noted that “Staff will continue to monitor the progress of the potential construction and operation or potential use of a MRF in the Town’s annual progress reports to CalRecycle.” Thereafter, CalRecycle’s Board adopted the Staff Report’s recommendations and notified the Town accordingly on December 6, 2012.

On November 14, 2012, Town staff discussed its plans for a MRF in a meeting of the Planning Commission, as part of an informational item following up on the results of the CalRecycle compliance review. In a memorandum prepared for the occasion, staff described the MRF in general terms as “a purpose-built, state-of-the-art facility that can more effectively intake, handle and process recyclable materials” and said the Town generates approximately 80 percent of the total waste stream of Mono County, a balance not likely to change in the future. “Because of this, Town staff has strongly recommended that the MRF be built where the most waste is generated, to maximize convenient access [to] the facility for waste generators and haulers, and to minimize resources spent trucking waste to a more distant location. CalRecycle agrees with this and supports this proposal viewing the construction of the MRF as a critical step for the Town in meeting its compliance efforts.”

The memorandum also described the Town Council’s approval of the June 27, 2012, letter to CalRecycle seeking an extension of time for compliance, citing it as a “firm commitment to build the MRF within Town Limits.” The Grand Jury notes that, while the letter may be taken as a commitment to build a MRF, there is no mention in the letter that a MRF is to be built “within Town Limits.”

Continuing, the staff memo also states: “There has been some concern from the County regarding the financial impact to the landfill with diversion of waste to a location inside the Town Limits. The landfill is set to close in 2023 and DWP, who owns the land on which the landfill is located, has indicated that there will be no extensions to this timeframe. However, options for the Town to effectively address its twelve-year history of non-compliance, without implementing the MRF in the location proposed, are very limited. It may be necessary to proceed, despite the County’s concerns, in order to avoid more serious potential enforcement actions, including significant financial penalties, being imposed by the State. There may also be a need, and an opportunity for the Town to take a lead in helping to address broader regional solid waste issues.”

In the oral discussion that followed, staff reiterated the County’s concerns and acknowledged them as valid, but emphasized that the Town is committed to pursuing a MRF. They also discussed the idea of regional participation in the MRF plans, noting that it would make sense to have partners. At the end of the discussion, staff emphasized that the Town is “up against the timeline with the State now.” Citing a need to move aggressively, staff said, “We’re sticking to the timeline set in the letter,” and that they would update the Planning Commission as matters progressed.

Even so, as of late 2012, revived discussions with the Expansion Parcel's owners were unsuccessful, resulting in delays. (In fact, the parties have not reached agreement as of the date of this report.) As of March 31, 2014, Town records reflect a balance of \$622,516.27 collected from customers under the Franchise Agreement to finance this purchase. These funds are being held by the Town "in trust" for this specific purpose. The Grand Jury reviewed accounting records, and the Town Manager confirmed by email dated April 24, 2014, that there have been no expenditures to date from this fund.

In addition, correspondence with CalRecycle indicates that the Town regarded the award of a new solid waste franchise agreement as a "critical component of funding for the development and operation of the MRF," and thus expected to begin negotiations with Mammoth Disposal early in 2013, before proceeding with the MRF. This, too, has resulted in delay, as negotiations have yet to be completed.

Finally, despite the fact that proposed plans for the MRF had to that point proceeded largely outside public view, Mammoth Lakes residents became better informed as a result of events leading up to and culminating in a July 5, 2013 meeting of the homeowners association for The Trails, a housing development located within close proximity to the Transfer Station and Expansion Parcel. At that meeting, opponents of the project presented information about the proposed MRF, some of which Town staff later contended was inaccurate. (Although staff had initially agreed to attend and participate in the meeting, they were unable to do so for personal reasons.) A meeting of the Town/County Liaison group followed on July 11, at which the MRF was discussed publicly, with a staff report prepared by employees of the Town and the County. The report essentially recommended that the Town's plans for a MRF be placed on hold while stakeholders pursued a regional solution. At that meeting, there was an announcement that Town Council would hold a closed session at its regular meeting on July 24, 2013, to again discuss purchase of the Expansion Parcel.

Before the July 24 closed session, the Town received approximately 16 letters from members of the public, primarily homeowners in The Trails, protesting the location of the MRF and purchase of the Expansion Parcel. After the closed session, one of the Council members announced that no action had been taken, and that there would be an extensive public process regarding the MRF regardless of the Town's decision or timing on the Expansion Parcel.

Thereafter, in a regular meeting of Town Council on December 18, 2013, there was a properly agenzized discussion of solid waste issues, without specific mention of a MRF. After 45 minutes of discussion, including staff presentations and public comment, Council directed staff to complete an analysis to evaluate sites with capacity to accommodate larger scale recycling and a solid waste transfer station, including costs of improvement and impacts to disposal rates. The information was to be brought back to Council in early 2014.

The matter of solid waste reappeared on Town Council's agenda for April 2, 2014, with a presentation of five potential sites for a MRF/transfer station in close proximity to the Town. A sixth alternative would locate a MRF in Inyo County, but would still require a transfer station site close to Town. After staff presentations, public comment, and discussion, Council gave consensus for staff to move forward with further research.

## **Findings and Recommendations:**

1. **Finding:** Between 2009 and July 2013, there was only one discussion of the proposed MRF in an open session of Town Council, although Town staff were actively working on a proposed project during portions of that time. Aside from this single discussion, Council as a whole held other discussions relating to the MRF and other solid waste issues in closed sessions, purportedly under the Brown Act exception for real property negotiations. Such discussions should have been limited to the price and terms of payment to be negotiated for purchase of the Expansion Parcel or the Solid Waste Transfer Station, in accordance with the notice given in the agenda. Discussions that went beyond this limited scope, including whether and where to build a MRF, broader solid waste issues (e.g., Mono County parcel fees), and long-term solutions, violated the Brown Act because they were, at best, only tangentially-related to the proposed transactions. They were and are the public's business. They could have and should have been discussed in open Council meetings where the public could participate.

## **Recommendations:**

1. Closed sessions of Town Council should be recorded. Recordings should be kept for a period of at least three years. The recordings would not, of course, be released except as authorized by law. Recording closed sessions will heighten Council's awareness of the Brown Act's limitations. It will also allow for subsequent follow-up to ensure that Council adheres to the law.
2. All Town Council members and managerial staff should be required to attend regular periodic training on the Brown Act, the Public Records Act, and the public's right to information about what their government is doing — the people's business. In light of our findings, particular attention should be given to the Brown Act requirements for closed Council sessions, including the scope of permissible discussions under the various exceptions and their narrow construction by California courts. Such training should be documented. In addition, the Town Attorney should consider taking a more active role in advising Council on the proper scope of closed session discussions as the discussions occur, perhaps by reviewing agenda bills in advance and by actively advising Council members if and when a discussion may be heading beyond legal limits.
3. While the proposed purchase of real property, including the Expansion Parcel, its financing through a rate increase, and the planned use of the Solid Waste Transfer Station/Expansion Parcel to expand the Town's solid waste operations, was minimally disclosed in public notices and hearings in 2009, we found only one explicit mention of the proposed MRF thereafter during a public Town Council meeting (*i.e.*, the June 2012 letter to CalRecycle seeking an extension of time to comply and setting out a timeline for construction of a MRF). There was little evidence presented demonstrating that information about any MRF proposal was ever actively disseminated to the public. The consequences of this lack of public discussion became evident by July 2013, as rumor and speculation had been circulating about the project and its anticipated cost. At

about that time, and based on information that may or may have not been accurate, concerned citizens made their opinions known. Thereafter, following the closed session on July 24, 2013, Council announced that any further MRF plans would proceed publicly. At the present time, it appears Council has been and will continue to adhere to this commitment. As Council knows, it is engaged in the people's business. Effective government depends on public trust. Such trust is undermined when governmental officials (elected or otherwise) withhold, or appear to withhold, information about the people's business. Thus, we recommend that Council adhere not only to the letter of the Brown Act, but to its spirit as well, and actively foster the principle of open government. Questions will no doubt arise in the future about the propriety of particular issues for closed session discussion. When they do, we recommend that Council choose always to err on the side of public disclosure, participation, and discussion.

4. In the future, citizens who are concerned about possible Brown Act violations by Town Council may immediately contact the Mono County District Attorney for assistance. The DA's office has assured the Grand Jury that it is prepared to investigate and resolve such matters expeditiously. Making a citizen's complaint to the Grand Jury remains an alternative, of course, but we believe a more prompt investigation and resolution through the DA's office could better serve the public interest in open government.

2. **Finding:** Despite the fact that a street address for the Expansion Parcel was readily available, it was never described in the closed session portion of Town Council agendas by reference to such an address. Instead, it was at times described as the Mammoth Firewood lot, or by reference to the names of its owners, or by Assessor's Parcel Number.

**Recommendation:** Real property should always be identified in closed session notices in such a way that it may be readily identified by the public. Doing otherwise could be construed as an attempt to avoid public interest and discussion. (See Recommendation 3, Finding No. 1.) Using the Assessor's Parcel Number, for example, when a street address is available, should be avoided.

3. **Finding:** Council repeatedly held closed sessions prior to regular meetings, sometimes as early as 4:00 p.m. In many cases, there was no oral announcement of the matter in an open meeting before Council went into closed session, which the Brown Act requires.

**Recommendation:** While Finding No. 3 may be viewed as a technicality, we think that, in the interest of building and maintaining public trust, Council should be scrupulous in following the requirements of applicable law. In addition, the minutes of any such Council meeting should always accurately reflect that a public meeting was properly opened and the required announcement made before Council went into closed session, even if members of the public were not then present. Following the law fosters public trust. Doing otherwise can serve only to discourage public attendance, awareness, and discussion. We also recommend that Council seek to schedule meetings at times that maximize the opportunity for public participation.

4. **Finding:** In pursuing this investigation, we were unable to obtain much information of substance from most Town Council members. We did not conclude that these witnesses deliberately withheld information, but rather that they had failed to retain, understand, and

recollect information that would allow us to be confident of informed decisions on solid waste issues or, in fact, other issues, in the future.

**Recommendation:** It is understood that service on Town Council is part-time, poorly compensated from a financial standpoint, and that most Council members engage in other full-time employment during their terms in office. The Grand Jury offers no remedy for this situation. We are concerned, however, because lack of time and preparation by these officials does not bode well for the prospect of informed policy and decision-making. Staff members, on the other hand, generally seemed to be more well-informed. But given the recent reductions and turnover in staff, “institutional memory” has been damaged. Under these circumstances, it is all the more important for Council to foster full public participation in local policy and decision-making. We recommend that, moving forward, Town Council and staff rededicate themselves to working openly and in partnership with the people they serve. Council should also take full advantage of current staff’s knowledge by directing the Town Manager to ensure that Council is fully informed of all reasonable solutions, alternatives, and consequences to issues under their consideration.

5. **Finding:** Town Council agendas for closed sessions typically lump multiple matters into a single paragraph. This makes them difficult to read and understand.

**Recommendation:** Agendas for closed sessions of Town Council should list each item separately. We note that this is the Mono County Board of Supervisors’ practice.

The Mono County Grand Jury closed the investigation of this matter on June 10, 2014.