

CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

RECORD PACKET COPY

DATE: April 20, 1997

TO: Commissioners and Interested Persons

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel *DD*
Ann Cheddar, Staff Counsel

SUBJECT: **Commission Authorization to Commence the Process to Amend the Commission's Conflict of Interest Code**

SUMMARY:

On July 19, 1996, the Fair Political Practices Commission ("FPPC") approved amendments to the Commission's Conflict of Interest Code contingent on the Commission's submittal within one year of another amendment package to address further changes identified by the FPPC. On September 11, 1996, the Commission acknowledged that the FPPC's approval was contingent on the Commission's commitment to adopt and submit those additional changes. Staff now requests the Commission's authorization to begin a process to amend the Commission's Conflict of Interest Code as required by the FPPC and previously acknowledged by the Commission.

The proposed amendments to the disclosure categories of the Commission's Conflict of Interest Code would affect the staff's disclosure obligations under the Political Reform Act (Government Code, section 81000, *et seq.*). (Commissioners and the Executive Director would not be affected by the proposed changes because their disclosure requirements are set forth by statute, rather than in the Code, and already require disclosure from all sources regardless of location.) The FPPC has requested that the Commission make two changes in order to bring the Code into compliance with the FPPC's current interpretation of the Political Reform Act. First, the FPPC has required that the Commission revise its Conflict of Interest Code to provide that gifts must be reported regardless of the geographic location of the source of the gift. The second change mandated by the FPPC is that investments, income, real estate, and business positions must be reported if located anywhere in the state, rather than in the coastal zone as is currently provided in the Code. In light of the breadth of the amendments required by the FPPC, the staff is investigating whether to propose additional changes to limit the gifts that a designated employee must report by limiting the types of sources that would be reportable.

DISCUSSION:

As a state agency subject to the Political Reform Act, the Commission is required to adopt a Conflict of Interest Code. (Govt. Code, section 87300, *et. seq.*) The Commission has adopted such a Code, which has been incorporated by reference into the Commission's regulations. (14 Cal. Code Regs., section 13040.) All Conflict of Interest Codes must designate those agency positions which involve the making of, or participation in the making of decisions which may foreseeably have a material effect on any financial interest. (Govt. Code, section 87302.) Such agency positions are termed "designated positions," while a specific employee working at a designated position is termed a "designated employee." (Govt. Code, sections 82019 and 87302.) These individuals are required to file statements of economic interests and to disqualify themselves when conflicts of interest occur. The agency's Conflict of Interest Code also specifies the types of personal economic interests that designated employees must disclose on their statement of economic interests. The Commission's current disclosure categories are attached. (Attachment A.)

Disclosure Category b(1) of the Coastal Commission's Conflict of Interest Code requires, in part, that a gift be reported by a designated employee if it is received from a source doing business in the Commission's jurisdiction. It states:

Income, including a gift, is reportable only if it is received from a source doing business within the Commission's jurisdiction, planning on doing business within the Commission's jurisdiction or has done business within the Commission's jurisdiction during the two years prior to the time any statement is required under this code. [Emphasis added.]

However, the Government Code generally prohibits a designated employee from accepting most gifts over \$290.00 if they are reportable under the agency's Conflict of Interest Code, and provides that the agency's code must require that gifts be reported, regardless of the jurisdiction from which the gift was received. (Govt. Code, sections 89503, 82028, and 82030.) The FPPC has advised that the phrase "including a gift" in Disclosure Category b(1) must be removed because the law makes no provision for limiting the reporting or receipt of gifts by jurisdictional boundaries. The proposed amendments would delete the phrase "including a gift" and make statutorily defined gifts reportable from specified sources within as well as outside the State of California.

In addition, Disclosure Category b indicates that disclosure is restricted to investments in entities and income from sources located in or doing business in the Coastal Commission's jurisdiction, and real property which is located in the Commission's jurisdiction or within two miles of the Commission's jurisdiction. (See Attachment A.) The code goes on to state that the Commission's "jurisdiction" is limited to the coastal zone as provided in Public Resources Code section 30000, *et seq.* However, Government Code section 82035 provides that jurisdiction under the Political Reform Act means the state with respect to a state agency. Therefore, the FPPC has advised that the Commission's code must be amended to delete all references to the Commission's "jurisdiction" as well as the reference to Public Resources Code section 30000, *et seq.* The

proposed amendments would make specified sources of income (except gifts) reportable throughout the State of California, including the coastal zone.

PROCEDURE:

If the Commission directs the staff to commence the amendment process, the staff would submit to the Office of Administrative Law a copy of the notice of the proposed amendments. Staff would also file a copy of the 1997 Biennial Report and notice of the proposed regulation changes with the Fair Political Practices Commission. Copies of the notice and the proposed amendments would also be distributed to all affected Commission staff. Following a public comment period of at least 45 days, the staff would bring the proposed amendments back to the Commission for adoption. After Commission adoption of the amendments, the amendments would be sent to the FPPC for approval. The amendments would then be sent on to the Secretary of State for filing. The amendments would become effective 30 days after that filing.

The Commission is required to review its Conflict of Interest Code every other year and file a biennial report with the FPPC indicating whether its code needs amending. If the Commission authorizes the commencement of rulemaking, staff will file the 1997 Biennial Report with the FPPC acknowledging that the Conflict of Interest Code will be amended within 90 days as described above to (1) conform the geographic scope of reporting requirements to the FPPC's current interpretation of the law and (2) clarify the sources of gifts which a designated employee would be required to report on a Statement of Economic Interest form.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

Resolution:

The Commission hereby directs the staff to commence a process to amend the Commission's Conflict of Interest Code.


Attachment

conflict.doc

CONFLICT OF INTEREST CODE FOR THE CALIFORNIA COASTAL COMMISSION

The Political Reform Act (Govt. Code, section 81000, *et seq.*) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of Title 2 of the California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the **CALIFORNIA COASTAL COMMISSION**.

Designated employees shall file their statements with the **CALIFORNIA COASTAL COMMISSION** who will make the statements available for public inspection and reproduction. (Gov. Code, section 81008.) Upon receipt of the statement(s) of the **COMMISSION MEMBER ALTERNATES AND THE EXECUTIVE DIRECTOR** the agency shall make and retain a copy and forward the original of these statement(s) to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

EXHIBIT NO. A
APPLICATION NO. CURRENT CCC
CONFLICT OF INTEREST CODE
 California Coastal Commission

APPENDIX A

Designated positions:

Disclosure Category:

Commission Members

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Alternate Commission Members
Executive Director

a

Chief Deputy Director
Deputy Director
District Director
Deputy Director for Land Use
Assistant Deputy Director for Land Use
Chief Counsel
Senior Staff Counsel
Staff Counsel
Legal Counsel
Graduate Legal Assistant
Senior Engineer
Associate Civil Engineer
Geologist
Biologist
Coastal Program Manager
Coastal Program Analyst I, II, III
Environmental Specialist I, II, III and IV
Graduate Student Assistant
Intern
Student Assistant

b

Contracts and Grants Coordinator
Contracts and Grants Manager
Chief of Administrative Services
Information Officer
Librarian

c

Consultant or Special Project Employee

d

*Persons in this category report pursuant to Article 2, Chapter 7 of the Political Reform Act of 1974. These positions appear in this conflict of interest code on an informational basis only; additional disclosure is not required by the Coastal Commission Members.

APPENDIX B DISCLOSURE CATEGORIES

- a. Persons in this category shall report all sources of income, interests in real property, and investments and business positions in business entities.
- b. Persons in this category shall report all investments, business positions, interests in real property, and sources of income with any business entity subject to the following limitations:
 - (1) Income, including a gift, is reportable only if it is received from a source doing business within the Commission's jurisdiction, planning on doing business within the Commission's jurisdiction, or has done business within the Commission's jurisdiction during the two years prior to the time any statement is required under this code.
 - (2) An interest in real property is reportable only if property or any part of it is located within or not more than two miles outside the boundaries of the Commission's jurisdiction.
 - (3) Investments are reportable only if the business entity has an interest in real property in the Commission's jurisdiction, or does business, or plans to do business in the Commission's jurisdiction at any time during the two years prior to the time any statement is required under this code.
 - (4) Business entities are reportable for purposes of business position disclosure, only if the business is doing business, or plans to do business in the Commission's jurisdiction at any time during the two years prior to the time any statement is required under this code.
- c. Persons in this category shall disclose any investment, and business position, in a business entity or income from a source which is of the type that contracts with the Coastal Commission to provide goods, services, materials or facilities to the Coastal Commission.
- d. Persons in this category are considered designated employees. They are bound by the disclosure and disqualification requirements of this code. The Executive Director, however, may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of this code.

EXCEPTION TO DEFINITION OF "JURISDICTION" CONTAINED IN THE
POLITICAL REFORM ACT:

"Jurisdiction" is limited to the Coastal Zone as described in Public Resources Code
Section 30000, *et seq.*

NOTE: Authority cited: Section 30333, Public Resources Code, Section 87306,
Government Code.

Reference: Sections 87300-87302, Section 87306, Government Code.

This is the last page of the conflict of interest code for
California Coastal Commission.



CERTIFICATION OF FPFC APPROVAL

Pursuant to Government Code Section 87303, the conflict of
interest code for the California Coastal Commission was approved
on July 19, 1996.

A handwritten signature in cursive script, reading "Steve Churchwell", is written over a horizontal line.

Steven G. Churchwell
General Counsel
Fair Political Practices Commission

Pursuant to Government Code Section 11346.2:

Secretary of State filing date: _____

Effective: _____