

COASTAL CONSERVANCY

Staff Recommendation
June 16, 2005

CONFLICT-OF-INTEREST CODE AMENDMENTS

File No.
Project Manager: Marcia Grimm

RECOMMENDED ACTION: Amend the Conservancy's Conflict-of-Interest Code to add a new position to the list of designated employees who are required to file disclosure statements.

LOCATION: Statewide

PROGRAM CATEGORY: Conservancy Administration

EXHIBITS

Exhibit 1: Notice of Intention to Amend Conflict-of-Interest Code

Exhibit 2: Conservancy Conflict-of-Interest Code (as amended)

Exhibit 3: Written Comments

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31000 *et seq.* of the Public Resources Code and Section 87306 of the Government Code:

“The State Coastal Conservancy hereby amends its Conflict-of-Interest Code, 14 California Code of Regulations Section 13800, in the manner shown in Exhibit 2 of the accompanying staff recommendation.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. Amendment of the Conservancy's Conflict-of-Interest Code to add a new position to the list of designated employees is necessary to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code; and is authorized by section 87306 of the Government Code and section 31102 of the Public Resources Code.
2. No alternative would be more effective in carrying out the purpose for which the amendment is proposed or would be as effective and less burdensome to affected persons than the proposed amendment.”

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PROJECT SUMMARY:

Staff is recommending that the Conservancy amend its Conflict-of-Interest Code to add a new position, that of Senior Information Systems Analyst, to the list of “designated employees” required to disclose personal financial interests that may be affected by agency decisions that such employees participate in making.

The Political Reform Act of 1974, Government Code Section 87100 *et seq.*, was established as a mechanism to disclose assets and income of public officials which may be materially affected by their official actions. The Act also mandates, in appropriate circumstances, that public officials be disqualified from acting in order that conflicts of interest may be avoided. Disclosure provisions of the Act, Government Code Sections 87200 *et seq.*, apply to all officials and employees who foreseeably may materially affect private economic interests through the exercise of their public duties. Other than certain high-ranking officials specified in the Code, officials and employees who make or participate in the making of decisions are covered by agency conflict-of-interest codes adopted pursuant to Government Code Sections 87300-87313.

The Act also requires every state agency to review its conflict-of-interest code biennially to determine whether the code accurately reflects the current organization of the agency and the job duties of the various positions listed in the code. If the code needs amending, amendments must be submitted to the Fair Political Practices Commission (FPPC) within 90 days after the completing this review.

Conservancy staff reviewed the existing conflict-of-interest code for the agency and determined that, since the last biennial report was submitted in 2003, one new staff position has been added which should be listed as a designated employee. The Senior Information Systems Analyst administers and maintains the Conservancy’s computers and network operating systems, and has responsibility for recommending other technology-related acquisitions, systems and products for the agency. The Senior Information Systems Analyst is involved or participates in the making of decisions with regard to the provision of goods, services, materials or facilities to the Conservancy which may have a material financial effect on any financial interest of that employee. Therefore, staff recommends that the Conservancy amend its Conflict-of-Interest Code to add the Senior Information Systems Analyst to the list of designated employees, to reflect the current organizational structure of the Conservancy.

In compliance with legal procedures applicable to the amendment of a conflict-of-interest code, staff has prepared a Notice of the proposed regulatory action (Exhibit 1) which was published in the California Notice Register on April 1, 2005. A copy of the Conservancy’s Conflict-of-Interest Code showing the proposed amendment in strikeout/underline format, is attached as Exhibit 2. Pursuant to the Conservancy’s Notice, a written comment period was established ending on the date of today’s public hearing; as of the date of publication of this recommendation, no comments have been received. If any comments are received prior to the hearing they will be added to Exhibit 3 of this staff recommendation. The Notice was filed with the Office of Administrative Law and the Fair Political Practices Commission, and provided to employees of the Conservancy who would be affected. The Conservancy must conduct a public hearing on the proposed amendment if an interested party so requests. Upon adoption of the regulation, the Conservancy’s Executive Officer must submit a declaration to the FPPC stating that the Conservancy Code specifically enumerates each of the positions within the agency that involve the making or participation in the making of decisions that

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may foreseeably have a material effect on any financial interest, and that the agency has satisfied the requirements applicable to formulation of the Code.

PROJECT HISTORY:

The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) which contains the terms of a standard conflict-of-interest code and which can be incorporated by reference in an agency's code. The Conservancy's adopted Conflict-of-Interest Code, which incorporates the terms of the FPPC regulation by reference, is found at 14 California Code of Regulations Section 13800; it designates officials and employees for the Conservancy and establishes categories of information they are required to disclose. Pursuant to the Act and the Conservancy regulation, Conservancy members, the Executive and Deputy Executive Officers, and staff members identified as "designated employees" report on financial interests they are required to disclose each year. (The Chair of the California Coastal Commission discloses pursuant to Government Code Section 87200 *et seq.* rather than the Conservancy Conflict-of-Interest Code. Ex-officio members of the Conservancy who represent other agencies (Resources Agency and Department of Finance) need not make disclosures under the Conservancy Code if they are designated in the conflict-of-interest code of the other agency, so long as the geographical jurisdiction of the Conservancy is wholly included in the jurisdiction of the other agency, the disclosure assigned in the code of the other agency is the same as that required under Government Code Section 87200, and both agencies require filing with the FPPC.) Designated employees for the Conservancy include Conservancy Project Development Analysts, Staff Counsels, consultants, and various administrative and business services staff involved in contracting and procurement of goods, services, materials or facilities for the Conservancy.

PROJECT FINANCING:

Apart from the administrative costs of preparing and obtaining approvals for the amendment, this project would not impose any costs on the Conservancy.

Under regulations established for the adoption or amendment of agency conflict-of-interest codes, the Conservancy is also required to make certain determinations with regard to potential costs or cost savings that might result from the amendment (2 CCR §18750(c)(3)(J) and (K)). Accordingly, Conservancy staff has determined that the proposed amendment:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any state agency.
3. Imposes no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In adopting the amendment, the Conservancy must determine that no alternative considered by

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the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendment. Since all employees who are involved or participate in making decisions that may affect their financial interests are required by law to make these disclosures, there is no alternative to the proposed amendment, and staff recommends that the Conservancy make this determination.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This amendment would be adopted pursuant to Public Resources Code Section 31102, which states that the Conservancy shall adopt its own regulations; and pursuant to Government Code Section 87306, which states that every agency shall amend its conflict-of-interest code when change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to section (a) of Section 87302. Government Code Section 87302(a) requires that every conflict-of-interest code contain specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and, for each enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. This amendment would bring the Conservancy Conflict-of-Interest Code into compliance with section 87302.

COMPLIANCE WITH CEQA:

The addition of a new employee position to the list of designated employees required to disclose their financial interests pursuant to the Political Reform Act has no potential for resulting in any foreseeable direct or indirect change in the environment, and thus is not a "project" for purposes of CEQA, as defined in 14 California Code of Regulations Section 15378.
