

COASTAL CONSERVANCY

Staff Recommendation
October 29, 2009

CONFLICT-OF-INTEREST CODE AMENDMENTS

File No. 09-018-01
Project Manager: Jonathon Gurish

RECOMMENDED ACTION: Amend the Conservancy's Conflict-of-Interest Code to reflect the current staff positions required to file disclosure statements.

LOCATION: Statewide

PROGRAM CATEGORY: Conservancy Administration

EXHIBITS

Exhibit 1: [Conservancy Conflict-of-Interest Code \(as amended\)](#)

Exhibit 2: [Spreadsheet Identifying Reasons for Changes](#)

RESOLUTION AND FINDINGS:

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

“The State Coastal Conservancy hereby amends its Conflict-of-Interest Code, 14 California Code of Regulations § 13800, in the manner shown in Exhibit 1 to 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 reflect the current staff composition is necessary to implement the requirements of §§ 87300 through 87302, and § 87306 of the Government Code; and is authorized by § 87306 of the Government Code, § 31102 of the Public Resources Code and 2 Cal. Code of Regs. § 18752.
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 reflect changes in title to existing staff positions within the agency. Each of these employees designated either provide staff recommendations to the Conservancy for consideration or are involved in contracting on behalf of the agency.

The Political Reform Act of 1974, (Government Code §§ 87100, *et seq.*), requires public officials to disclose assets and income which may be materially affected by their official actions. The Act also requires, in appropriate circumstances, that public officials may be disqualified from acting in order that conflicts of interest be avoided. The disclosure provisions of the Act, codified at Government Code § 87200 *et seq.*, apply to all officials and public employees who foreseeably may materially affect their private economic interests through the exercise of their public duties. Each agency is required to develop and keep current its Conflict-of-Interest Code to identify those interests which may create a conflict. Other than certain high-ranking officials specified in the Government Code, officials and employees who make or participate in the making of decisions are covered by agency Conflict-of-Interest Codes adopted by the agency.

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. (Govt. Code § 87306). If the code needs amending, amendments must be submitted to the Fair Political Practices Commission (FPPC). Conservancy staff have reviewed the existing Conflict-of-Interest Code for the agency and determined that, since the last biennial report submitted in 2005, several staff titles have changed and information technology staff has expanded by two persons, necessitating their identification in an amended Code (Exhibit 1). Therefore, staff recommends that the Conservancy amend its Conflict-of-Interest Code to reflect the current organizational structure of the Conservancy.

In compliance with legal procedures applicable to substantive amendment of a Conflict-of-Interest Code, staff has prepared a statement by the Executive Officer indicating the current code reflects all of the employees who are involved in recommending and carrying forward the Conservancy's authorizations, and has provided the Executive Director of the FPPC with a copy of the proposed changes to the code. A copy of the Conservancy's Conflict-of-Interest Code is attached as Exhibit 1. Staff has prepared a Notice of the proposed regulatory action) which was published in the California Regulatory Notice Register on August 7, 2009. Pursuant to the Conservancy's Notice, a written comment period was established ending on September 22, 2009; no comments were received. The Notice was filed with the Office of Administrative Law and the FPPC. The Conservancy must conduct a public hearing on the proposed amendment if an interested party so requests; however, no such request was received. A chart which maps the old and new positions is attached as Exhibit 2 to this staff recommendation.

PROJECT HISTORY:

The FPPC has adopted a regulation (2 California Code of Regulations § 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 incorporates the terms of the FPPC regulation by reference, and is referenced at 14 California Code of Regulations § 13800. Pursuant to the Act and the Conservancy regulation, Conservancy members, the Executive and Deputy

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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 § 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’s 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 § 87200, and both agencies require filing with the FPPC. Designated employees for the Conservancy include deputy executive officers, public land managers, conservancy project development analysts, staff counsel, consultants, and various administrative and business services staff involved in the 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 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, as reflected in the proposed findings, above.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This amendment would be adopted pursuant to Public Resources Code § 31102, which states that the Conservancy shall adopt its own regulations; and pursuant to Government Code § 87306, which states

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that every agency shall amend its Conflict-of-Interest Code when change occurs by the creation of new positions which must be designated pursuant to section (a) of § 87302. Government Code § 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. Section 87306 requires each agency to amend its code when there are relevant changes in the duties assigned to existing positions within the agency. The proposed amendments would bring the Conservancy's Conflict-of-Interest Code into compliance with these sections of the Government Code.

COMPLIANCE WITH CEQA:

The modification of 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. Agency activities that involve continuing administrative or maintenance activities, such as general policy and procedure, are not a “project” for purposes of the California Environmental Quality Act. [14 California Code of Regulations § 15378(b)].