



MEMO

TO: Governing Board
San Francisco Bay Restoration Authority

FR: Kenneth K. Moy
Legal Counsel

RE: FPPC – Conflict of Interest Code (COIC)

DT: April 13, 2009

BACKGROUND AND ANALYSIS

The statute creating the San Francisco Bay Restoration Authority (Authority) explicitly subjects the members of the Governing Board to the Political Reform Act of 1974 (Act).¹ One aspect of the Act requires a government agency subject to the Act adopt a conflict of interest code (COIC). Another requires individuals with the ability to materially influence the agency's actions to file a Form 700 disclosing their financial interests. Both are done so one can identify when a decision that is before the government agency has the potential to materially affect one's personal financial interest. One is then obligated to evaluate the potential impact and to take the appropriate action under the Act, e.g. recusal from discussions of, or voting on, a particular matter.

Over the past thirty years, the agency responsible for implementing the Act, the Fair Political Practices Commission (FPPC) has promulgated a significant body of regulations, opinion letters and advisory materials. Consequently, adoption of a COIC is now a matter of form. The following have been furnished by the FPPC for use by the Authority in adopting its COIC.

- ◇ Notice of intention to adopt a conflict of interest code
- ◇ Proposed conflict of interest code for the Authority²
- ◇ Appendix A [FPPC Version] to the COIC listing those required to file a Form 700

As the materials indicate, the substantive provisions of the COIC are contained in a regulation promulgated by the FPPC. The only decision before the Governing Board is designating who is required to file a Form 700 in Appendix A. Please note that the Appendix A provided by the FPPC does not list Governing Board members, or the Director or the Treasurer of the Authority. This conforms to standard FPPC practice.

¹ CA Govt Code Sec. 66703.1

² In the interests of conserving resources, I have not furnished a hard copy version 2 Cal. Code of Regs. Sec. 18730. This section can be viewed online at this location:

http://weblinks.westlaw.com/result/Default.aspx?cnt=Document&db=CA-ADC-TOC%3BRVADCCATOC&docname=2CAADCS18730&findtype=W&fn=_top&ifm=NotSet&rlt=CLID_FQRLT11943495112134&rp=%2FSearch%2Fdefault.wl&rs=WEBL9.03&service=Find&spa=CCR-1000&vr=2.0

One copy will be available at the meeting. I will send an electronic version (pdf) upon request to kennethm@abag.ca.gov or 510.464.7914.



MEMO

My office has been engaged in a six month long discussion with staff of the FPPC regarding whether this form and practice are appropriate for ABAG and three joint powers agencies affiliated with ABAG. ABAG and each of the affiliated joint powers agencies are regional entities. The FPPC's version of Appendix A assumes that if a person files a Form 700 for one government agency, there is no need for that person to file a second Form 700 for a second government agency. This is not accurate in the cases of ABAG and its affiliated joint powers agency. It is also not accurate in the case of the Authority.

A councilmember or supervisor filing a Form 700 may list all financial interests that could be affected by an action of the city or county. That Form 700 may not disclose a financial interest that could be affected by the actions of a regional entity with a geographical jurisdiction different than the city's or county's. The most apparent example is real property located outside a city or county but within the ABAG region.

Consequently, ABAG and each of its affiliated joint powers agencies have filed COICs with an Appendix A that includes members and alternates of their governing boards, program directors, finance officers and legal counsels. This exceeds FPPC requirements but ensures that filers of Form 700 disclose and, more importantly, are aware of, potential conflicts arising out the regional reach of those agencies. I am recommending that the Authority follow the same procedure. See Appendix A [Recommended Version].

If the discussions with the FPPC cause a change in that recommendation and approach, the Governing Board will be notified and a new recommendation submitted.

Each recipient of this memorandum should consider the copy of the 'Notice of Intent to Adopt a Conflict-of-Interest Code' included in this memorandum as the official service of the Notice as required by the FPPC.

RECOMMENDED ACTION:

- ◇ Adopt of Resolution 2
- ◇ Authorize staff to submit forms to FPPC, including Appendix A [Recommended Version]

Cc: Henry L. Gardner
Herbert L. Pike
Kenneth K. Moy