

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

April 17, 1985

Ralph B. Jordan
County Counsel
County of Kern
Administration and Courts
Building, Fifth Floor
1415 Truxtun Avenue
Bakersfield, CA 93301

Re: Your Request for Advice
Our No. A-85-069 -1

Dear Mr. Jordan:

You have requested that our agency review your office's memorandum regarding the economic interests of Mr. Randall L. Abbott and Mr. Steven G. Ladd, Planning Director and Deputy Planning Director, respectively, of the County of Kern. Your request is made with their concurrence and they have reviewed and approved the factual statement in your memorandum as to its accuracy. You have graciously agreed to a two-day extension on the time period for our response pursuant to Government Code Section 83114(b).

Our review and advice is general in nature and will not comment upon any past actions taken by these two gentlemen. I will set forth below the facts as stated in your office's memorandum and then I will comment on the conclusions reached in the memorandum, by number, and I incorporate the memorandum in its entirety as a part of this letter, rather than restate all its contents.

FACTS

Randall L. Abbott, Planning Director, and Steven G. Ladd, Deputy Director, with their wives purchased one Jay Carter Model 25 wind turbine on December 9, 1982. That turbine is designated as Tower

141, Generator #160, and located in Row 2, Site 12, in the Oak Creek Energy Systems Wind Park near Tehachapi. The purchase price of \$80,000 (plus \$4,800 sales tax) for the turbine was financed by a \$40,000 loan from Sierra National Bank of Tehachapi, a loan of \$25,000 from Oak Creek Energy Systems, Inc., secured by the wind turbine, and cash for the balance paid in June of 1983 by buyers (approximately \$5,000 by each of the four). The loan from Oak Creek Energy Systems, Inc., is evidenced by a Collateral Promissory Note (Without Recourse) dated December 9, 1982, and provides for the loan and repayment of \$25,000 due on December 8, 2002, payable quarterly in the amount of \$934.75 with interest at the rate of 14% per annum.

Mr Abbot and Mr. Ladd with their wives executed a Wind Turbine Sales and Management Agreement on December 9, 1982, which provides for the sale, installation, maintenance, and management of the system. Costs of management were included in the sales price for 1982, but thereafter would be 2 1/2% of gross. The same parties executed a Site Ground Lease with Oak Creek Energy Systems, Inc., for a term of 20 years commencing on December 9, 1982, for a monthly rental of 7 1/2% of gross sales for each site leased for a wind generating machine. "Gross sales" are defined in the lease agreement as the total selling price of all merchandise or services sold or rendered in, on, or from the premises, specifically proceeds from all sales of electricity to Southern California Edison from the wind generating machines owned and operated by lessee on the premises leased. For the quarter ending September 30, 1984, Wind Machine #2-12 owned by Abbott and Ladd generated revenues of \$696.24 from 7736 kilowatts. At 7 1/2% these revenues resulted in lease fees of \$52.22 for the quarter. On an annual basis the land lease has an undiscounted value of \$208.88 and over 20 years, the term of the lease, \$4,177.60. These figures are projections and altogether dependent on the gross revenues generated quarterly.

In addition a Maintenance and Servicing Agreement was executed on December 9, 1982 between Mr. Abbott and Mr. Ladd with their wives and Wind Maintenance, Inc. for a term of seven (7) years with an option to renew for thirteen (13) years. The cost of

maintenance and repairs will be cost plus ten percent (10%) not to exceed ten percent (10%) of the owner's proceeds from the exploitation of the system.

Mr. Abbott and Mr. Ladd filed the requisite Statements of Economic Interest on February 8, 1983, and February 1, 1984, disclosing the wind turbine ownership and associated loans. The site lease was not disclosed and was not required to be disclosed pursuant to 2 Cal. Adm. Code Section 18233(c).

REVIEW OF CONCLUSIONS

1. This is an accurate statement of the law. However, under Government Code Section 87100^{1/} all public officials are subject to that section's disqualification requirements, whether or not they are designated employees in their agency's Conflict of Interest Code.

2. Section 1126 is outside the Political Reform Act^{2/} and, hence, beyond the purview of this agency. You may wish to consult with the Attorney General's Office with regard to this issue.

3. Based upon the valuation which you have provided, your analysis is correct. See Section 82033, and the Commission's Overstreet Opinion, 6 FPPC Opinions 12 at 16.

4. An outstanding loan is income, Section 82030(a), unless it meets one of the exclusions in Section 82030(b)(8), (9) or (10). Neither the loan from Seirra National Bank (a commercial lending institution, but more than \$10,000) nor the note from Oak Creek Energy Systems (not a commercial lending institution) meets the criteria for exclusion. Consequently, each loan is reportable income to the two gentlemen. However, because Sierra National Bank is a commercial lending institution, as long as the loan is "made in the regular course of business on terms available to the public without regard to official status," Sierra National Bank is not an economic interest under Section 87103(c). Because Oak Creek Energy Systems is not a commercial

^{1/} All statutory references are to the Government Code unless otherwise stated.

^{2/} Sections 81000-91015.

Ralph B. Jordan
April 17, 1985
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lending institution, it is, as you have concluded, a source of income of \$250 or more as defined in Section 87103(c).

5. Your conclusion is correct as long as it is remembered that each disqualification situation must be resolved on the particular facts involved and a blanket rule should not be applied.^{3/}

6. Your conclusion is correct as to those decisions for which it is reasonably foreseeable that the effect of the decision on Oak Creek Energy Systems will be material as to Oak Creek. We have no information upon which to reach a conclusion as to materiality. Consequently, you will need to examine the facts carefully. This will remain the case so long as the outstanding balance for each gentleman is \$250 or more and for a period of 12 months following the point in time where the balance is reduced below that level.

7. As stated previously, we cannot comment on past conduct.

8. Your conclusion is correct, subject to the caveat contained in my comments, above, to numbers 4, 5 and 6.

9. As you have pointed out, the Political Reform Act does not require divestiture, only disqualification on a transactional basis. Beyond that, we cannot comment.

In terms of the Analysis portion of your office's memorandum, the reference to "influencing legislative or administrative action" is misplaced. The focus should be on our regulation, 2 Cal. Adm. Code Section 18700 (copy enclosed), for determining what activities are proscribed.^{4/} With this exception, the Analysis is correct with respect to its discussion of the provisions of the Political Reform Act. Again, we cannot comment on past actions or on the Section 1126 issue.

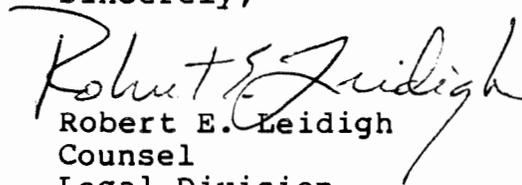
^{3/} However, this may change in the future. See enclosed proposed regulation 2 Cal. Adm. Code Section 18702.1.

^{4/} See also the enclosed copy of our Advice Letter, No. A-84-057, to Mayor Dianne Fienstein which discussed what constitutes "participation" in a decision.

Ralph B. Jordan
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I trust that this letter has provided you with the assistance which you sought. Should you have any questions, please do not hesitate to contact me at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

OFFICE OF THE

COUNTY COUNSEL

Fifth Floor
Administration and Courts Building
1415 Truxtun Avenue
Bakersfield, California-93301



RALPH B. JORDAN
County Counsel

COUNTY OF KERN

STATE OF CALIFORNIA

Telephone (805) 861-2326
861-2640

March 11, 1985

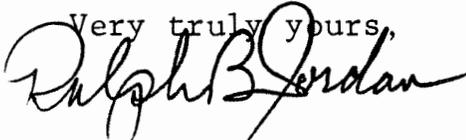
Fair Political Practices Commission
Attn: Bob Leidigh, Attorney
1100 "K" Street
Sacramento, California 95814

Re: Request for Written Review

Dear Sirs:

Attached you will find a copy of a report by this office on a possible conflict of interest on the part of Randall L. Abbott and Steven G. Ladd arising from ownership of a wind machine in Oak Creek Energy Systems Wind Park near Tehachapi, California. The report sets forth the facts in the case available to us and our tentative conclusions. A copy of this report has been reviewed by Mr. Abbott and Mr. Ladd for accuracy of facts stated therein, and they concur in this request for review by your agency.

We request that you review this matter and send your response directly to this office. Please let us know if you need additional information. We appreciate and thank you for your assistance.

Very truly yours,


RALPH B. JORDAN
County Counsel

Enc.
RBJ:aa

MEMORANDUM

to: Ralph B. Jordan

DATE: February 28, 1985

FROM: Bernard C. Barmann

SUBJECT: Report on Possible Conflicts of Interest on the Part of Randall L. Abbott and Steven G. Ladd Arising from Ownership of Wind Machine in Oak Creek Energy Systems Wind Park

Pursuant to your request I have reviewed the question of possible conflicts of interest arising from Mr. Abbott's and Mr. Ladd's ownership of a wind machine near Tehachapi. I began with their memorandum of May 4, 1984, to each Supervisor and obtained additional background materials from Mr. Abbott on January 29, 1985, which included copies of the agreements with Oak Creek Energy Systems, Inc., and the quarterly statement of cash balances as of September 30, 1984, as reported by Haws, Theobald & Auman, Certified Public Accountants.

I have reviewed the facts of the case as I understand them to be and have made an examination of the applicable law as found in the Fair Political Practices Act of 1974 (Govt. Code §§87100 et seq.). I have also contacted an attorney with the Fair Political Practices Commission in order to clarify the Commission's interpretation and application of the Act.

FACTS

Randall L. Abbott, Planning Director, and Steven G. Ladd, Deputy Director, with their wives purchased one Jay Carter Model 25 wind turbine on December 9, 1982. That turbine is designated as Tower 141, Generator #160, and located in Row 2, Site 12, in the Oak Creek Energy Systems Wind Park near Tehachapi. The purchase price of \$80,000 (plus \$4,800 sales tax) for the turbine was financed by a \$40,000 loan from Sierra National Bank of Tehachapi, a loan of \$25,000 from Oak Creek Energy Systems, Inc., secured by the wind turbine, and cash for the balance paid in June of 1983 by buyers (approximately \$5,000 by each of the four). The loan from Oak Creek Energy Systems, Inc., is evidenced by a Collateral Promissory Note (Without Recourse) dated December 9, 1982, and provides for the loan and repayment of \$25,000, due on December 8, 2002, payable quarterly in the amount of \$934.75 with interest at the rate of 14% per annum.

Mr. Abbott and Mr. Ladd with their wives executed a Wind Turbine Sales and Management Agreement on December 9, 1982, which provides for the sale, installation, maintenance, and management of the system. Costs of management were included in the sales price for 1982, but thereafter would be 2½% of gross. The same parties executed a Site Ground Lease with Oak Creek Energy

Systems, Inc., for a term of 20 years commencing on December 9, 1982, for a monthly rental of 7½% of gross sales for each site leased for a wind generating machine. "Gross sales" are defined in the lease agreement as the total selling price of all merchandise or services sold or rendered in, on, or from the premises, specifically proceeds from all sales of electricity to Southern California Edison from the wind generating machines owned and operated by lessee on the premises leased. For the quarter ending September 30, 1984, Wind Machine #2-12 owned by Abbott and Ladd generated revenues of \$696.24 from 7736 kilowatts. At 7½% these revenues resulted in lease fees of \$52.22 for the quarter. On an annual basis the land lease has an undiscounted value of \$208.88 and over 20 years, the term of the lease, \$4,177.60. These figures are projections and altogether dependent on the gross revenues generated quarterly.

In addition a Maintenance and Servicing Agreement was executed on December 9, 1982 between Mr. Abbott and Mr. Ladd with their wives and Wind Maintenance, Inc. for a term of seven (7) years with an option to renew for thirteen (13) years. The cost of maintenance and repairs will be cost plus ten percent (10%) not to exceed ten percent (10%) of the owner's proceeds from the exploitation of the system.

Mr. Abbott and Mr. Ladd filed the requisite Statements of Economic Interest on February 8, 1983, and February 1, 1984, disclosing the wind turbine ownership and associated loans. The site lease was not disclosed and was not required to be disclosed pursuant to 2 Cal.Admin. Code Section 18233(c).

CONCLUSIONS

1. Mr. Abbott and Mr. Ladd are designated employees pursuant to Section 2 of the Conflict of Interest Code of the Planning Department, approved by the Board of Supervisors on February 4, 1983. As such they may not make, participate in making or in any way attempt to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest pursuant to Government Code Section 87100.

2. The provisions of Government Code Section 1126 preclude Mr. Abbott and Mr. Ladd from engaging in any activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to their duties as planning director and deputy director.

3. Under the terms and conditions of the site ground lease of December 9, 1982, Mr. Abbott and Mr. Ladd have a direct and indirect interest (spouses' interests) in real property worth \$1,000 or more as defined in Government Code Section 87103(b). Each holds a direct and indirect interest of 50% in a leasehold with an estimated and undiscounted value of \$4,177.60.

4. By reason of the Collateral Promissory Note and loan of \$25,000 on December 9, 1982, Mr. Abbott and Mr. Ladd have a direct and indirect interest in a source of income from Oak Creek Energy Systems, Inc., in excess of \$250 as defined in Government Code Section 87103(c).

5. Though the facts of each case must be carefully reviewed and are controlling on the issue of an actual conflict of interest, it is reasonably foreseeable that decisions of the County of Kern involving or affecting the Oak Creek Energy Systems Wind Park near Tehachapi will have a material financial effect on the direct and indirect real property or leasehold interest of Mr. Abbott and Mr. Ladd (noted in paragraph 3 above). Accordingly, because of this financial interest Mr. Abbott and Mr. Ladd must refrain from participating in making, or in any attempt to use their official positions to influence any such governmental decisions involving, directly or indirectly, their leased parcel in the Wind Park.

6. It is reasonably foreseeable that decisions of the County of Kern involving or affecting Oak Creek Energy Systems, Inc., will have a material financial effect on the direct and indirect interest in the loan source of income (noted in paragraph 4 above). Thus, because of this financial interest Mr. Abbott and Mr. Ladd must refrain from participating in making or in any attempt to use their official positions to influence any such governmental decisions involving Oak Creek Energy Systems, Inc., so long as the balance due on the loan from that corporation exceeds \$500 (\$250 in Mr. Abbott's and Mr. Ladd's direct and indirect interests).

7. Participation by Mr. Abbott and Mr. Ladd in the amendment of Zoning Map. No. 198 (Zone Change Case No. 16) approved by the Board of Supervisors on September 26, 1983, could have been in violation of the conflict of interest laws of this state if such amendment had a material financial effect on Oak Creek Energy Systems, Inc.

8. Under current law Mr. Abbott and Mr. Ladd must continue to disclose their interests and arrange for non-participation in departmental handling of any matters involving Oak Creek Energy Systems, Inc., as such and the Oak Creek Energy Systems Wind Park that affect their leased parcel. They can have no part in any recommendations, planning, reporting, or supervising employees in the department (including telephone calls and meetings) when such items are involved. They must disqualify themselves on a transactional basis.

9. Sections 87100 and 1126 of the Government Code do not require divestiture of interests or resignation of a public employee. Yet if abstention would be required on a major portion

Ralph B. Jordan
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of the matters or on certain critical issues coming into the Planning Department because of Mr. Abbott's and Mr. Ladd's interests in Oak Creek Energy Systems, Inc., and the Wind Park, divestiture might become necessary under such circumstances.

ANALYSIS

Whether Mr. Abbott and Mr. Ladd have a conflict of interest or duties requires an analysis of the facts in the context of Sections 87100 and 1126 of the Government Code (See, 63 Ops.Cal.Atty.Gen. 916, 918 [1980]).

The Fair Political Practices Act of 1974 (Govt. Code §81000 et seq.) provides in Section 87100 as follows:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Emphasis added.)

Government Code Section 82032 clarifies what "influencing legislative or administrative action" means:

Promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses.

"Financial interest" for purposes of conflicts of interest law is defined in Government Code Section 87103 as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

. . . .

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business

on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

. . . .
For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of the official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent child own directly, indirectly, or beneficially a 10 percent interest or greater. (Emphasis added.)

"Interest in real property" is defined in Government Code Section 82033 as including "any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official . . . if the fair market value of the interest is one thousand dollars (\$1,000) or more." The land lease fee for Wind Machine #2-12 for the quarter ended September 30, 1984, was \$52.22 or approximately \$209 per annum over a twenty-year lease (\$4,178 undiscounted). Thus the leasehold interest in question comes within the ambit of Section 87103(b).

The foregoing interpretation finds precedent in the Fair Political Practices Commission's Opinion (No. 80-010) in Overstreet (6 FPPC Opinions 12). The Commission noted at 16 that its regulations concerning the value of leasehold interests, 2 Cal.Admin. Code Section 18233, provides that for purposes of disclosure, the value may be computed as the total amount of rent owed by the filer during the period covered by the statement being filed. In the instant case that total does not exceed \$209. The Commission goes on to point out that the disclosure standard does not address value for purposes of disqualification, which involves a determination of the value of an official's interest at the particular point in time at which the official is called upon to make or participate in making a decision. The Commission was dealing with a month-to-month tenancy and concluded that the \$237.50 per month rent was worth at least \$1,000 based on the reasonable expectancy that the official would continue to rent for several months. So in this case there is a reasonable expectancy that Mr. Abbott and Mr. Ladd will continue to lease the parcel in question for the 20-year term and that the value of their respective interests in the leasehold currently does exceed \$1,000.

Government Code Section 87103(c) provides that any source of income, including loans from other than commercial lending institutions, aggregating \$250 or more in value received by the public official within 12 months prior to the time the decision is made, constitutes a possible financial interest. Oak Creek Energy Systems, Inc., a private lender, loaned Mr. Abbott and Mr. Ladd with their spouses \$25,000 on December 9, 1982. From December 9, 1982, up to and including December 10, 1983, Mr. Abbott and Mr. Ladd were thereby precluded from influencing any decision affecting that source of income, namely, Oak Creek Energy Systems, Inc., if that decision would have had a material financial effect on that corporation.

The Board of Supervisors on September 26, 1983, approved an amendment of Zoning Map No. 198 (Zone Change Case No. 16) for the applicant Oak Creek Energy Systems, Inc. The Board Resolution (No. 83-537) adopting the requested amendment notes that the Planning Department recommended the amendment and that the Planning Director or his representative explained the amendment during a hearing. Such participation by the Planning Department in the zone change without the disqualification and non-participation of Mr. Abbott raises further questions. At this time we have no information as to their part or specific roles in the zone change other than what is recited in the Board's Resolution.

The Fair Political Practices Commission goes beyond the twelve (12) months of Government Code Section 87103(c) in its handling of loans. According to its interpretation of the law, so long as there is an outstanding loan balance in excess of \$500 (\$250 in Mr. Abbott's and Mr. Ladd's respective interests) due on the \$25,000 loan in question, the officials have a financial interest as defined in Section 87103(c). This interpretation is based on the definition of "income" in Government Code Section 82030. Subdivision (a) provides that "income also includes an outstanding loan." Subdivision (b) (8) and (10) provide that a loan balance in excess of \$10,000 from a commercial lender and part of a retail installment or credit card transaction is income. Sections 87103(c) and 82030 must be read together. Thus we concur in the Commission's interpretation of the law. So long as there is an outstanding balance in excess of \$500 on the \$25,000 loan from Oak Creek Energy Systems, Inc., Mr. Abbott and Mr. Ladd hold a financial interest that is subject to scrutiny under the material financial effect standard of Section 87103(b).

We note that the "rule of necessity" contained in Section 87101 of the Government Code does not permit Mr. Abbott and Mr. Ladd to disclose fully the conflict involved and then to participate in decisions affecting the Wind Park or Oak Creek Energy Systems, Inc. That rule only applies if there is no alternative source of decision and if failure to act would necessarily result in a failure of justice. No such necessity exists with respect to the advisory and planning functions of Mr. Abbott and Mr. Ladd. 3 FPPC Opinions 107, 115 (1977).

Ralph B. Jordan
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Government Code Section 1126 proscribes incompatible activities of public officers and employees. The section concerns a conflict of duties and not a personal conflict of interest. A conflict of duties arise between an employee's outside activities and his duties to his local agency. In the case before us the issue involves a possible conflict between Mr. Abbott's and Mr. Ladd's duties as planning director and deputy director and matters involving Oak Creek Energy Systems, Inc., and the leased parcel in the Oak Creek Energy Systems Wind Park.

Sections 1126 and 87100 of the Government Code require Mr. Abbott and Mr. Ladd to disqualify themselves from influencing certain decisions on a transactional basis. As applied here, these principles would not require resignation of the public officials or divestiture of their interests unless such interests are such that abstention would be required in all or a major portion of the matters coming into the Planning Department because of Mr. Abbott's and Mr. Ladd's interests in Oak Creek Energy Systems, Inc., and the Wind Park. No doubt it will be difficult for the Planning Department staff to function without the supervision and input of its Director and Deputy Director on matters involving Oak Creek Energy Systems, Inc., and the leased parcel in the Wind Park. In the event that the administration of the department is adversely and seriously affected to the extent that it cannot carry out its proper functions, then divestiture may be a reasonable resolution, especially if matters involving Oak Creek Energy Systems, Inc., continue to arise with any frequency or involve critical planning or policy issues which cannot be resolved without a decision or recommendation from the Director.

BERNARD C. BARMANN

B.B.

BCB:fd

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

July 2, 1985

Randall L. Abbott
Planning Director
Kern County Planning Department
1103 Golden State Avenue
Bakersfield, CA 93301-2499

Re: Your Letter Regarding Advice
Letter No. A-85-069

Dear Mr. Abbott:

I have received your letter and reviewed the materials which you forwarded as well as Advice Letter No. A-85-069, of which your situation was the subject. As I advised you over the telephone on June 17, the information furnished by you would not alter our advice to Mr. Jordan, the County Counsel. A lender is a source of income within the meaning of Section 87103(c) unless two conditions are met: (1) the lender is a commercial lending institution, i.e., a bank, savings and loan, credit union, etc.; and (2) the loan was made in the regular course of business on terms available to the public without regard to the official's status as a public official.

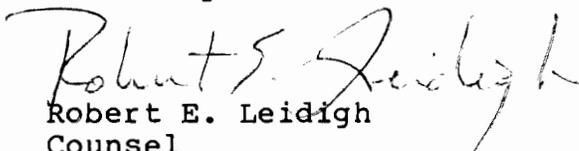
Your letter argues that the second of these two conditions applies to the purchase money loan from Oak Creek Energy Systems, but provides no facts to indicate that the first condition is met. As a result we continue to be of the opinion that Oak Creek is a source of income to you within the meaning of Section 87103(c), which requires your disqualification as to planning decisions which will have a reasonably foreseeable material financial effect upon Oak Creek Energy Systems.

Turning to your basic complaint that the County Counsel sought our advice on your behalf without your knowledge or consent, as I advised you on the telephone, we have just recently (since the subject letter was sent) revised our regulation governing the advice letter process. A copy of the revised regulation, 2 Cal. Adm. Code Section 18329, is enclosed. One of the specific concerns addressed by the regulation was that of advice which is requested ostensibly on

Randall L. Abbott
July 2, 1985
Page 2

behalf of an official who, in fact, has not authorized the request to be made. Our new regulation now requires that the requestor specifically state that the advice is requested with the authorization of the public official and that we obtain the official's address and send to the official a copy of the acknowledgment letter stating that we have received the request and which staff member is working on it. Hopefully this new procedure will eliminate the kind of misunderstanding which you feel occurred in your situation.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure
cc: Ralph B. Jordan
Bernard C. Barmann

KERN COUNTY PLANNING DEPARTMENT

RANDALL L. ABBOTT
PLANNING DIRECTOR

JUN 17 12 49 PM '85

1103 GOLDEN STATE AVENUE
BAKERSFIELD, CALIFORNIA 93301-2499
TELEPHONE (805) 861-2615



June 10, 1985

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Attn: Robert E. Leidigh, Counsel
Legal Division

Gentlemen:

On last Thursday, June 6, 1985, I was informed by a reporter for The Bakersfield Californian of the existence of your letter of April 17, 1985, to Ralph B. Jordan, County Counsel, County of Kern, regarding Mr. Jordan's request for advice. We subsequently learned that your letter was received in the office of the County Counsel on April 22, 1985. We were, however, never informed by Counsel of your reply.

In your letter of April 17 to Mr. Jordan, you apparently agree with Mr. Barmann's conclusion that "Mr. Abbott and Mr. Ladd must refrain from participating in making or in any attempt to use their official positions to influence any such governmental decisions involving Oak Creek Energy Systems, Inc." I want you to understand from the very start that neither Mr. Ladd nor I have any objection whatsoever in following this recommendation. (I enclose a copy of my June 10, 1985, memorandum to staff for your information.) In addition, it is a matter of fact that Mr. Ladd, who is Deputy Director - Administration (not Deputy Director as stated by Mr. Barmann), does not now have, and never during his eight years of employment by this office has had, any authority or responsibility in making or recommending decisions in any case involving Oak Creek Energy Systems, Inc., or any other permit processing by this office. Mr. Ladd has been responsible for the administrative aspects of the Planning Department.

I have carefully reviewed past actions relating to this matter and I have carefully reviewed your letter of April 17 to Mr. Jordan. Important facts were not communicated to your office and other information was incorrectly represented to your office.

In your letter of April 17 to Mr. Jordan, you state, "Your request is made with their [Abbott and Ladd's] concurrence and they have reviewed and approved the factual statement in your memorandum as to its accuracy." This statement is not true. Mr. Abbott concurred with the request subject to prior review and approval of the request, which review and approval did not occur, as will be explained further. Mr. Ladd was never asked for his review or concurrence with the request. Your statement apparently follows from Mr. Jordan's statement in his March 11, 1985, letter to you that "A copy of this report has been reviewed by Mr. Abbott and Mr. Ladd for accuracy of facts stated therein, and they concur in this request for review by your agency." As a matter of fact, the report had

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June 10, 1985
Page 2

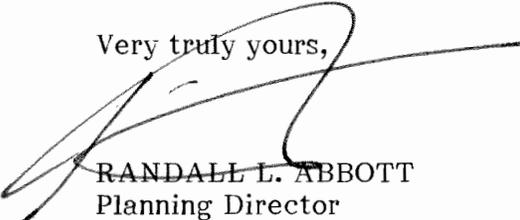
been reviewed briefly by me prior to March 11, 1985. Mr. Jordan read the report to me over the telephone on March 6 or March 7 and at that time I informed Mr. Jordan that I disagreed with the report and that I objected to the fact that Mr. Barmann had made no attempt to discuss the matter with me or with Mr. Ladd to obtain complete and accurate information. I did agree to ask for the opinion of your office subject to my review and approval of the report. On March 8, 1985, I received a copy of Mr. Barmann's report. On March 12 or March 13, I again informed Mr. Jordan that I disagreed with Mr. Barmann's report and that I would respond fully in writing as quickly as possible. I was not informed by Mr. Jordan that he had, in fact, already sent the request and Mr. Barmann's report to you without my or Mr. Ladd's approval. By memorandum to Mr. Jordan of March 14, 1985, I responded to Mr. Barmann's February 28 report. I did not learn of Mr. Jordan's request to your office or of your April 17 reply until a reporter from The Bakersfield Californian asked me for comment on June 6, 1985.

I have enclosed a copy of my March 14, 1985, memorandum to Mr. Jordan. I request that you review this additional information, particularly that relating to the loan from Oak Creek Energy Systems, Inc., to Mr. Ladd and me. This loan was part of a public offering and was, to quote your letter at Page 3, Review of Conclusion 4, "made in the regular course of business on terms available to the public without regard to official status." The public offering made by Oak Creek Energy Systems, Inc., was a registered public offering and a total of 180 machines, including the one now owned by Mr. Ladd and me, were sold to the public in general under the same terms and conditions.

In summary, I believe that the information presented to you was incomplete and the situation on the whole was represented to you in an unfair and totally inappropriate manner. I will appreciate your review of this matter at your earliest opportunity and look forward to receiving an early reply. If you wish to discuss this or require additional information, please call me at (805) 861-2615. I am available to discuss this at your convenience.

Thank you.

Very truly yours,



RANDALL L. ABBOTT
Planning Director

SGL:gmm

Enclosures

cc: Supervisor Roy Ashburn (Encs)
Supervisor Ben Austin (Encs)
Supervisor Pauline Larwood (Encs)
Supervisor Trice Harvey (Encs)
Supervisor Mary K. Shell (Encs)
Glenn Cole, Foreman, Kern County Grand Jury (Encs)
R. S. Holden, County Administrative Officer (Encs)
Ralph B. Jordan, County Counsel

Office Memorandum • KERN COUNTY

TO : EACH DIVISION HEAD, Planning Department

DATE: June 10, 1985

FROM : RANDALL L. ABBOTT, Planning Director

Telephone No. 2615

SUBJECT: OAK CREEK ENERGY SYSTEMS, INC.

As you probably know, the State Fair Political Practices Commission has recently recommended that neither Steve Ladd nor I participate in any business of this office that pertains to Oak Creek Energy, Inc. The recommendation is based upon what the Commission perceives to be a potential conflict of interest because of our ownership of a Carter 25 wind turbine. Although I question the accuracy of the information that was presented to the Commission, I have every intention of implementing their recommendation.

Therefore, from this date forward, neither Steve Ladd nor I will participate in any activity of this office that pertains to any Oak Creek Energy project, either existing or proposed. Glenn Barnhill, Principal Planner, Plan Implementation Division, is herewith assigned all those responsibilities pertaining to Oak Creek Energy Systems, Inc., that under normal departmental procedures would be that of the Planning Director.

If any of you have questions or desire additional information, please see me at any time.

gmm

cc: Supervisor Ashburn
Supervisor Austin
Supervisor Larwood
Supervisor Harvey
Supervisor Shell
Oak Creek Energy Systems, Inc.

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March 14, 1985
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documents and after discussions with Mr. Ladd and me, the Administrative Officer concluded that no conflict existed and that no further action was required.

By memorandum of May 4, 1984, Mr. Ladd and I again informed the Board of our ownership of the machine and provided information regarding the purchase and associated financing. A copy of this memorandum was provided to you and to the County Administrative Officer. I would have again expected that you would have informed me at that time if you believed that a problem existed.

Mr. Ladd and I also filed the requisite Statements of Economic Interests in February 1985, disclosing the wind turbine ownership and associated financing. The site lease was not disclosed and was not required to be disclosed.

The "FACTS" should also inform the reader of the report that the project in which Mr. Ladd and I purchased a wind turbine was approved by the Board of Zoning Adjustment on December 3, 1981 (Conditional Use Permit Case No. 8, Zoning Map No. 198). Approval of this project was given one year before Mr. Ladd and I purchased a wind turbine from Oak Creek Energy Systems.

The "FACTS" should also provide complete and pertinent information on Zone Change Case No. 16, Zoning Map No. 198, referred to in Mr. Barmann's report at Item 7 under "DISCUSSION." Zone Change Case No. 16, Zoning Map No. 198, was heard and approved by the Board of Supervisors on September 27, 1983. Counsel was present at the hearing and received a copy of the Board Resolution following the hearing. This action was after our discussions in April 1983 regarding our wind turbine ownership and, again, I would have expected you to inform me at that time if you believed that a conflict existed.

Zone Change Case No. 16, Zoning Map No. 198, was a change of zone from E-7 to A W-E for a parcel of 9.4 acres owned by Hal and Gladys Dunyon. This was an extremely minor expansion of the existing Oak Creek site of approximately 900 acres. This action could have no impact upon the financial interests of Mr. Ladd or myself. If Mr. Barmann had made any attempt to discover the nature of this zone change, he could have better understood the situation.

Now I would like to comment on the "DISCUSSION." We believe that the report presents the discussion in an incomplete and unbalanced manner, that it tends to lead the reader to an implication of wrongdoing on the part of Mr. Ladd and myself, and that it makes statements and draws conclusions which are not correct.

It is not reasonably foreseeable that decisions of the County of Kern involving or affecting the Oak Creek Energy Systems Wind Park near Tehachapi will have a material financial effect on the direct and indirect real property or leasehold interest of Mr. Abbott and Mr. Ladd (Item 5). It is not reasonably foreseeable that decisions of the County of Kern involving or affecting Oak Creek Energy Systems, Inc., will have a material financial effect on the direct and indirect interest in the loan source of income (Item 6).

The facts of the matter are simply these: First, the income generated by the wind turbine and paid by Southern California Edison determines the amount of the lease payments to Oak Creek, and second, the terms of the loan (\$25,000 principal, 14% interest, 20-year period) are fixed by contract. No decision of the County of Kern can affect the income generated, the terms of the lease, or the terms

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of the loan. No decision of the County of Kern can have a material financial effect, distinguishable from its effect on the public generally (Mr. Barmann ignores this important phrase throughout his discussion) on the direct and indirect interests of Mr. Ladd and myself in any aspect of our business relationship with Oak Creek Energy Systems, Inc.

In summary, we do not believe that any conflict now exists or ever has existed. We also believe that you would have informed us at any of the various enumerated opportunities if a conflict existed. We would, of course, have followed the appropriate course of action recommended by you at the time.

If you do not agree with our position in this matter and you no longer believe that problems do not exist in this regard, I would appreciate being informed by you personally and immediately so that we may consider retaining independent legal counsel if necessary.

We also expect a specific recommendation on dealing with future cases involving Oak Creek Energy Systems, Inc. We will take whatever steps necessary to arrange for nonparticipation in such cases if you so advise.

gmm

bcc: County Administrative Officer

72'00

FILE

JUN 12 2 50 PM '85

A85-069

CLERK
BD SUPERVISOR KERN CO. CAL.
BY _____

KERN COUNTY GRAND JURY

INTERIM REPORT RE:

WIND ENERGY IN KERN COUNTY

JUN 20 5 40 AM '85

As seen by the 1984-1985 Kern County Grand Jury

Per your request.
Your No. A-85-069

BB:
See pages
27 + 29.

Bernie Baumann
Kern County
6-19-85

WIND ENERGY IN KERN COUNTY

PURPOSE:

The Grand Jury undertook examination of complaints concerning the rapid growth of wind parks in Kern County. Primary concern was the appearance that the Planning Director routinely accepted singular negative declarations in lieu of environmental impact reports. These actions reportedly encouraged and contributed to a rapid disorderly development of the wind energy industry.

Attention was directed also to the alleged conflict of interest relative to the Kern County Planning Director and Deputy Planning Director having joint ownership of a wind turbine.

INTRODUCTION:

The prime concern of the Grand Jury was to address the numerous complaints by Tehachapi residents and conservation groups.

The importance of this investigation is emphasized when one considers that the land encompassing present and future wind parks in the Tehachapi area totals approximately ten thousand acres. The Grand Jury did not evaluate the merits of wind energy nor take a position regarding its benefits (economical or philosophical).

Regarding joint ownership of a wind turbine by the Planning Department Director and his deputy, questions arose concerning a conflict of interest because that department makes recommendations for zone changes and variances to the Board of Supervisors for final disposition.

During this eleven-month investigation, the Grand Jury has heard testimony from many concerned citizens from the Tehachapi/Mojave areas. In addition, there were interviews with the Planning Director, Director of Public Works, Assessor, personnel from other county departments, personnel from Southern California Edison, Department of Urban and Regional Planning, California State Polytechnic University at San Luis Obispo and Caltrans. Many personal property tax bills also were reviewed.

The topography of this region was studied through the use of aerial maps, infrared photographs, video tapes and field trips. The landscape architect who oversees the reseeding program was also interviewed. Jurors meticulously reviewed the correspondence between wind park operators and interested agencies, negative declarations, and ultimate decisions on variances passed by the Board of Supervisors.

Information derived from this investigation prompted the Grand Jury to request an opinion from County Counsel concerning possible conflict of interest. An additional opinion was requested and received from the Fair Political Practices Commission on the same subject matter.

The Grand Jury considered the above activities were necessary in order to address and comment on the complaints raised.

MATTERS INVESTIGATED / AREAS OF CONCERN:

All matters regarding wind parks are interrelated. Among the concerns investigated were:

1. Use of the Negative Declaration
2. Ordinance Compliance
3. Abandonment Measures
4. Conflict of Interest

USE OF THE NEGATIVE DECLARATION

After reviewing many negative declarations and evaluating them in terms of the California Environmental Quality Act (CEQA) guidelines, it appears there is overwhelming evidence supporting the need for comprehensive Environmental Impact Reports (E.I.R.) on wind park developments.

In the negative declarations reviewed, soil erosion, terrain, seismic fault zones, noise pollution and visual impact invariably have been reported as being within the tolerance of mitigating measures. Unfortunately, these mitigating measures, in most instances, were inadequate and/or have not been complied with.

Routinely the Planning Department asks for comment on a proposed project from interested public agencies. There have been numerous requests for an Environmental Impact Report.

As far as the Grand Jury can determine, the Planning Department consistently has kept with the negative declaration and, as a result, has received public criticism.

The Grand Jury directs your attention to the excerpts from the California Environmental Quality Act Guidelines which follow. This is a mandatory element that the Planning Department is required to follow.

EXCERPTS FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

GUIDELINES

(CEOA)

"#15003--POLICIES

- A. The E.I.R. is the heart of CEOA.
- R. The E.I.R. serves not only to protect the environment but also to demonstrate to the public that it is being protected.

#15064--DETERMINING SIGNIFICANT EFFECT

- A. Determining whether a project may have a significant effect plays a critical role in the CEOA process.
 - 1. When a lead agency determines that there is substantial evidence that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.
- B. The determination of whether a project may have a significant effect on the environment calls for CAREFUL JUDGMENT on the part of the public agency involved, based to the extent possible on scientific and factual data. AN IRON CLAD DEFINITION OF SIGNIFICANT EFFECT IS NOT POSSIBLE because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.
- C. In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected. If the lead agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse the lead agency shall regard the effect adverse. Before requiring the preparation of an E.I.R., the lead agency must still determine whether environmental change itself might be substantial."

Although it is argued that CEQA Guidelines are subject to interpretation, the logical conclusion to establish public confidence is that an Environmental Impact Report should be required.

A sampling of negative declarations and of documents supporting the concept of an Environmental Impact Report, based on professional opinion and public concern are to be found at the end of this report marked "Support Documents."

ORDINANCE COMPLIANCE

INTRODUCTION:

In October, 1984, the Grand Jury recommended that the Board of Supervisors put into effect a moratorium on all wind energy projects in the county. This request was based on evidence of unabated soil erosion resulting from wind machine installation and concern for proper enforcement to decrease the potential for flood damage.

A moratorium was not declared and the new ordinance for wind energy development was adopted with strengthened enforcement authority vested in the Public Works Department. Compliance with grading specifications and erosion control requirements were made essential for continued wind machine construction.

FINDINGS:

Since October, 1984, the Director of Public Works periodically has advised the Board of Supervisors and the Grand Jury with compliance status reports and actions proposed for developers in violation of the ordinance. These communications and Board responses are a matter of public record.

The Grand Jury believes that an effective administration of the new ordinance could have contributed to a more orderly development and provided the public a greater assurance of protection from potential soil erosion damage.

However, since the adoption of the ordinance in October, 1984, the Board of Supervisors has circumvented substantially the conformance efforts of the Public Works Department regarding grading specifications and erosion control compliance. It is the concern of the Grand Jury that the far-reaching impact of wind parks necessitates crossing the lines of supervisorial districts and should not be considered a unilateral determination.

ABANDONMENT

A major concern to the public is abandonment. To date - certain windparks have ceased operations for unknown reasons. What will happen to them? This is a viable issue. Abandonment has yet to be addressed by county officials.

Ninety five percent (95%) of all wind turbine owners reside outside of Kern County. Turbines are bought individually and, in our opinion, the primary incentives are for the attractive tax credits. There is no provision in the ordinance for forcing owners to remove abandoned wind energy equipment and returning the land to its original condition if this venture fails.

Answers must be found to these questions:

1. Will the county expend public funds to dismantle and clear away the debris after abandonment?
2. Will the county be forced to bear the liability for land scarred by the wind parks?
3. Will the county be saddled with continued road maintenance as a result of the construction of wind parks?

CONFLICT OF INTEREST

Following is the written opinion from the Kern County Counsel's Office and the state of California Fair Political Practices Commission.

MEMORANDUM

to: Ralph B. Jordan

DATE: February 28, 1985

SUBJECT: Report on Possible Conflicts of Interest on the Part of Randall L. Abbott and Steven G. Ladd Arising from Ownership of Wind Machine in Oak Creek Energy Systems Wind Park

Pursuant to your request I have reviewed the question of possible conflicts of interest arising from Mr. Abbott's and Mr. Ladd's ownership of a wind machine near Tehachapi. I began with their memorandum of May 4, 1984, to each Supervisor and obtained additional background materials from Mr. Abbott on January 29, 1985, which included copies of the agreements with Oak Creek Energy Systems, Inc., and the quarterly statement of cash balances as of September 30, 1984, as reported by Haws, Theobald & Auman, Certified Public Accountants.

I have reviewed the facts of the case as I understand them to be and have made an examination of the applicable law as found in the Fair Political Practices Act of 1974 (Govt. Code §§87100 et seq.). I have also contacted an attorney with the Fair Political Practices Commission in order to clarify the Commission's interpretation and application of the Act.

FACTS

Randall L. Abbott, Planning Director, and Steven G. Ladd, Deputy Director, with their wives purchased one Jay Carter Model 25 wind turbine on December 9, 1982. That turbine is designated as Tower 141, Generator #160, and located in Row 2, Site 12, in the Oak Creek Energy Systems Wind Park near Tehachapi. The purchase price of \$80,000 (plus \$4,800 sales tax) for the turbine was financed by a \$40,000 loan from Sierra National Bank of Tehachapi, a loan of \$25,000 from Oak Creek Energy Systems, Inc., secured by the wind turbine, and cash for the balance paid in June of 1983 by buyers (approximately \$5,000 by each of the four). The loan from Oak Creek Energy Systems, Inc., is evidenced by a Collateral Promissory Note (Without Recourse) dated December 9, 1982, and provides for the loan and repayment of \$25,000, due on December 8, 2002, payable quarterly in the amount of \$934.75 with interest at the rate of 14% per annum.

Mr. Abbott and Mr. Ladd with their wives executed a Wind Turbine Sales and Management Agreement on December 9, 1982, which provides for the sale, installation, maintenance, and management of the system. Costs of management were included in the sales price for 1982, but thereafter would be 2½% of gross. The same parties executed a Site Ground Lease with Oak Creek Energy

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Systems, Inc., for a term of 20 years commencing on December 9, 1982, for a monthly rental of 7½% of gross sales for each site leased for a wind generating machine. "Gross sales" are defined in the lease agreement as the total selling price of all merchandise or services sold or rendered in, on, or from the premises, specifically proceeds from all sales of electricity to Southern California Edison from the wind generating machines owned and operated by lessee on the premises leased. For the quarter ending September 30, 1984, Wind Machine #2-12 owned by Abbott and Ladd generated revenues of \$696.24 from 7736 kilowatts. At 7½% these revenues resulted in lease fees of \$52.22 for the quarter. On an annual basis the land lease has an undiscounted value of \$208.88 and over 20 years, the term of the lease, \$4,177.60. These figures are projections and altogether dependent on the gross revenues generated quarterly.

In addition a Maintenance and Servicing Agreement was executed on December 9, 1982 between Mr. Abbott and Mr. Ladd with their wives and Wind Maintenance, Inc. for a term of seven (7) years with an option to renew for thirteen (13) years. The cost of maintenance and repairs will be cost plus ten percent (10%) not to exceed ten percent (10%) of the owner's proceeds from the exploitation of the system.

Mr. Abbott and Mr. Ladd filed the requisite Statements of Economic Interest on February 8, 1983, and February 1, 1984, disclosing the wind turbine ownership and associated loans. The site lease was not disclosed and was not required to be disclosed pursuant to 2 Cal.Admin. Code Section 18233(c).

CONCLUSIONS

1. Mr. Abbott and Mr. Ladd are designated employees pursuant to Section 2 of the Conflict of Interest Code of the Planning Department, approved by the Board of Supervisors on February 4, 1983. As such they may not make, participate in making or in any way attempt to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest pursuant to Government Code Section 87100.

2. The provisions of Government Code Section 1126 preclude Mr. Abbott and Mr. Ladd from engaging in any activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to their duties as planning director and deputy director.

3. Under the terms and conditions of the site ground lease of December 9, 1982, Mr. Abbott and Mr. Ladd have a direct and indirect interest (spouses' interests) in real property worth \$1,000 or more as defined in Government Code Section 87103(b). Each holds a direct and indirect interest of 50% in a leasehold with an estimated and undiscounted value of \$4,177.60.

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4. By reason of the Collateral Promissory Note and loan of \$25,000 on December 9, 1982, Mr. Abbott and Mr. Ladd have a direct and indirect interest in a source of income from Oak Creek Energy Systems, Inc., in excess of \$250 as defined in Government Code Section 87103(c).

5. Though the facts of each case must be carefully reviewed and are controlling on the issue of an actual conflict of interest, it is reasonably foreseeable that decisions of the County of Kern involving or affecting the Oak Creek Energy Systems Wind Park near Tehachapi will have a material financial effect on the direct and indirect real property or leasehold interest of Mr. Abbott and Mr. Ladd (noted in paragraph 3 above). Accordingly, because of this financial interest Mr. Abbott and Mr. Ladd must refrain from participating in making, or in any attempt to use their official positions to influence any such governmental decisions involving, directly or indirectly, their leased parcel in the Wind Park.

6. It is reasonably foreseeable that decisions of the County of Kern involving or affecting Oak Creek Energy Systems, Inc., will have a material financial effect on the direct and indirect interest in the loan source of income (noted in paragraph 4 above). Thus, because of this financial interest Mr. Abbott and Mr. Ladd must refrain from participating in making or in any attempt to use their official positions to influence any such governmental decisions involving Oak Creek Energy Systems, Inc., so long as the balance due on the loan from that corporation exceeds \$500 (\$250 in Mr. Abbott's and Mr. Ladd's direct and indirect interests).

7. Participation by Mr. Abbott and Mr. Ladd in the amendment of Zoning Map. No. 198 (Zone Change Case No. 16) approved by the Board of Supervisors on September 26, 1983, could have been in violation of the conflict of interest laws of this state if such amendment had a material financial effect on Oak Creek Energy Systems, Inc.

8. Under current law Mr. Abbott and Mr. Ladd must continue to disclose their interests and arrange for non-participation in departmental handling of any matters involving Oak Creek Energy Systems, Inc., as such and the Oak Creek Energy Systems Wind Park that affect their leased parcel. They can have no part in any recommendations, planning, reporting, or supervising employees in the department (including telephone calls and meetings) when such items are involved. They must disqualify themselves on a transactional basis.

9. Sections 87100 and 1126 of the Government Code do not require divestiture of interests or resignation of a public employee. Yet if abstention would be required on a major portion

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of the matters or on certain critical issues coming into the Planning Department because of Mr. Abbott's and Mr. Ladd's interests in Oak Creek Energy Systems, Inc., and the Wind Park, divestiture might become necessary under such circumstances.

ANALYSIS

Whether Mr. Abbott and Mr. Ladd have a conflict of interest or duties requires an analysis of the facts in the context of Sections 87100 and 1126 of the Government Code (See, 63 Ops.Cal.Atty.Gen. 916, 918 [1980]).

The Fair Political Practices Act of 1974 (Govt. Code §81000 et seq.) provides in Section 87100 as follows:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Emphasis added.)

Government Code Section 82032 clarifies what "influencing legislative or administrative action" means:

Promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses.

"Financial interest" for purposes of conflicts of interest law is defined in Government Code Section 87103 as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

. . . .

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business

on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

. . . .

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of the official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent child own directly, indirectly, or beneficially a 10 percent interest or greater. (Emphasis added.)

"Interest in real property" is defined in Government Code Section 82033 as including "any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official . . . if the fair market value of the interest is one thousand dollars (\$1,000) or more." The land lease fee for Wind Machine #2-12 for the quarter ended September 30, 1984, was \$52.22 or approximately \$209 per annum over a twenty-year lease (\$4,178 undiscounted). Thus the leasehold interest in question comes within the ambit of Section 87103(b).

The foregoing interpretation finds precedent in the Fair Political Practices Commission's Opinion (No. 80-010) in Overstreet (6 FPPC Opinions 12). The Commission noted at 16 that its regulations concerning the value of leasehold interests, 2 Cal.Admin. Code Section 18233, provides that for purposes of disclosure, the value may be computed as the total amount of rent owed by the filer during the period covered by the statement being filed. In the instant case that total does not exceed \$209. The Commission goes on to point out that the disclosure standard does not address value for purposes of disqualification, which involves a determination of the value of an official's interest at the particular point in time at which the official is called upon to make or participate in making a decision. The Commission was dealing with a month-to-month tenancy and concluded that the \$237.50 per month rent was worth at least \$1,000 based on the reasonable expectancy that the official would continue to rent for several months. So in this case there is a reasonable expectancy that Mr. Abbott and Mr. Ladd will continue to lease the parcel in question for the 20-year term and that the value of their respective interests in the leasehold currently does exceed \$1,000.

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Government Code Section 87103(c) provides that any source of income, including loans from other than commercial lending institutions, aggregating \$250 or more in value received by the public official within 12 months prior to the time the decision is made, constitutes a possible financial interest. Oak Creek Energy Systems, Inc., a private lender, loaned Mr. Abbott and Mr. Ladd with their spouses \$25,000 on December 9, 1982. From December 9, 1982, up to and including December 10, 1983, Mr. Abbott and Mr. Ladd were thereby precluded from influencing any decision affecting that source of income, namely, Oak Creek Energy Systems, Inc., if that decision would have had a material financial effect on that corporation.

The Board of Supervisors on September 26, 1983, approved an amendment of Zoning Map No. 198 (Zone Change Case No. 16) for the applicant Oak Creek Energy Systems, Inc. The Board Resolution (No. 83-537) adopting the requested amendment notes that the Planning Department recommended the amendment and that the Planning Director or his representative explained the amendment during a hearing. Such participation by the Planning Department in the zone change without the disqualification and non-participation of Mr. Abbott raises further questions. At this time we have no information as to their part or specific roles in the zone change other than what is recited in the Board's Resolution.

The Fair Political Practices Commission goes beyond the twelve (12) months of Government Code Section 87103(c) in its handling of loans. According to its interpretation of the law, so long as there is an outstanding loan balance in excess of \$500 (\$250 in Mr. Abbott's and Mr. Ladd's respective interests) due on the \$25,000 loan in question, the officials have a financial interest as defined in Section 87103(c). This interpretation is based on the definition of "income" in Government Code Section 82030. Subdivision (a) provides that "income also includes an outstanding loan." Subdivision (b) (8) and (10) provide that a loan balance in excess of \$10,000 from a commercial lender and part of a retail installment or credit card transaction is income. Sections 87103(c) and 82030 must be read together. Thus we concur in the Commission's interpretation of the law. So long as there is an outstanding balance in excess of \$500 on the \$25,000 loan from Oak Creek Energy Systems, Inc., Mr. Abbott and Mr. Ladd hold a financial interest that is subject to scrutiny under the material financial effect standard of Section 87103(b).

We note that the "rule of necessity" contained in Section 87101 of the Government Code does not permit Mr. Abbott and Mr. Ladd to disclose fully the conflict involved and then to participate in decisions affecting the Wind Park or Oak Creek Energy Systems, Inc. That rule only applies if there is no alternative source of decision and if failure to act would necessarily result in a failure of justice. No such necessity exists with respect to the advisory and planning functions of Mr. Abbott and Mr. Ladd. 3 FPPC Opinions 107, 115 (1977).

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Government Code Section 1126 proscribes incompatible activities of public officers and employees. The section concerns a conflict of duties and not a personal conflict of interest. A conflict of duties arise between an employee's outside activities and his duties to his local agency. In the case before us the issue involves a possible conflict between Mr. Abbott's and Mr. Ladd's duties as planning director and deputy director and matters involving Oak Creek Energy Systems, Inc., and the leased parcel in the Oak Creek Energy Systems Wind Park.

Sections 1126 and 87100 of the Government Code require Mr. Abbott and Mr. Ladd to disqualify themselves from influencing certain decisions on a transactional basis. As applied here, these principles would not require resignation of the public officials or divestiture of their interests unless such interests are such that abstention would be required in all or a major portion of the matters coming into the Planning Department because of Mr. Abbott's and Mr. Ladd's interests in Oak Creek Energy Systems, Inc., and the Wind Park. No doubt it will be difficult for the Planning Department staff to function without the supervision and input of its Director and Deputy Director on matters involving Oak Creek Energy Systems, Inc., and the leased parcel in the Wind Park. In the event that the administration of the department is adversely and seriously affected to the extent that it cannot carry out its proper functions, then divestiture may be a reasonable resolution, especially if matters involving Oak Creek Energy Systems, Inc., continue to arise with any frequency or involve critical planning or policy issues which cannot be resolved without a decision or recommendation from the Director.