

# State of California



## Fair Political Practices Commission

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December 4, 1980

Roy Gorman  
Coastal Commission  
631 Howard Street, 4th Floor  
San Francisco, CA 94105

A-80-12-105

Dear Roy:

Thank you for the letter from William Boyd, former Chief Counsel of the Commission, asking us for several interpretations of AB 1048 (Maxine Waters) which will become effective January 1, 1981. Your staff and our staff have had several telephone conversations about the scope of the bill and the operations of your agency. Several of your employees have expressed concerns about the provisions of AB 1048 and have indicated that they may leave your agency prior to the effective date of the bill.

AB 1048, which was sponsored by the Commission, is a very narrowly drawn bill which attempted to remedy a situation which we believe is not widespread throughout state government. The bill was drafted to apply to state employees who while working on a governmental matter which affects a specific party leave state service to work for the same party on that same matter. The bill was not intended to be a broad "revolving door" law such as the one adopted by Congress which covers federal employees. Thus, there are no prohibitions restricting a former employee from lobbying his or her former agency on regulations, on matters outside of the employee's scope of employment while in state service, or on matters which have arisen since the employee has left.

Turning to your specific questions, we offer the following advice:

A. Permit Analyst:

1. The permit analyst may not accept employment with a permit applicant which would require the analyst to represent or advise the applicant in further proceedings before the Commission on that permit.

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Government Code Section 87401 and 87402 clearly forbid such activity since the analyst would be working on the same proceeding on which he or she participated while a state employee. 1/

2. The permit analyst may accept employment with a permit holder to represent or advise the permit holder in carrying out the development. This assumes that the coastal commission is finished with its review of the permit and that there is no further involvement by the Commission on the project. An employee may not work on the project if the permit holder has to appear before the Commission or its staff on that project, and the former employee will either represent or advise him on the appearance.

Further, if the permit applicant received conditional approval of a development from the Coastal Commission and the Commission has approved some but not all of the conditions, the former employee may work for the permit applicant on the conditions which have been approved by the Commission. On the conditions which are still pending before the Commission, the former employee is prohibited from appearances before the Commission as well as assisting the permit applicant as to those pending conditions.

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1/ 87401. No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof:

(a) By making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if;

(b) The State of California is a party or has a direct and substantial interest; and

(c) If the proceeding is one in which the former state administrative official participated.

87402. No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

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3. The permit analyst may accept employment with a former permit applicant on future permit applications or hearings before the Commission on different developments. AB 1048 does not restrict former employees from appearing before their former agency on matters on which they did not participate while employees.

The employees can represent the permit applicant on a new permit hearing after the original permit has lapsed.

4. A former employee may represent permit applicants who apply for permits which have been affected by decisions on which the employee has worked while with the Commission if those decisions were not specifically related to the employer. The bill prohibits only working on the same matters which were before the Commission while the employee was on the state payroll, not future matters which could be affected by the decisions of the employee.

B.1. The answers are the same as above for employees who participated in supervising or advisory roles provided that such employees were involved personally and substantially on the specific decisions. Government Code Section 87400(d). 2/ There are no restrictions on employees not involved personally and substantially even though the decisions were made by the Commission while the employees were working for the Commission.

### Planning

You have outlined the planning process by which the Coastal Commission adopts local coastal plans and asked us questions relating to this aspect.

Under the Coastal Act, there are three distinct phases which are subject to the jurisdiction of the Coastal Commission: the land use plan, the approval of zoning pursuant to the provisions of the general plan and specific coastal development permit approval.

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2/ 87400(d) "Participated" means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.

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The land use plan under your statute is very specific. Public Resources Code Section 30108.5 defines the "Land Use Plan" as meaning "the relevant portions of a local government's general plan, or local coastal elements which are sufficiently detailed to indicate the kinds, location and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions."

Thus, when considering a land use plan, the Commission is not only considering general rules of applicability, such as access to the beach, but also specific rules applicable to specific pieces of property.

Either the regional commissions or the state commission must approve the land use plan and following the approval of a land use plan, the Coastal Act requires that zoning decisions be made in conformance with the land use plan. The local government must approve the zoning ordinance although these ordinances are subject to review by the regional commission and the state commission. Public Resources Code Section 30513. In some instances, both the land use plan and the zoning ordinance may be before the Commission or regional commission at the same time.

Finally, approvals of permits are based both on the land use plan and the zoning. After the local coastal program has been approved, coastal development permits are obtained from the local government although in some instances, the regional commission or the Commission also has authority to review the local government decisions if appealed. Public Resources Code Section 30600 and 30603. In limited cases, coastal permits must also be obtained from the regional commission or Commission. Public Resources Code Section 30601.

We believe that each part of the overall approval process is a different proceeding. Each has a distinct element of decision-making and different types of review. The land use plan is approved by the regional or state commission following submission by the local government, the zoning ordinances are approved by the local government (subject to review by the regional or state commission) and the coastal development permit are approved by the local government subject to review by the Commission.

Finally, AB 1048 applies only to proceedings before a state agency and thus the decisions by the local governments do not come within the scope of the bill.

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The questions you have raised under the Planning Section are not easily answered without more specific facts about the particular plan which is before the Commission.

Generally, much of your planning activities would appear to be a proceeding affecting a large number of persons and thus exempt from the provisions of AB 1048. However, you indicate that occasionally a land use plan for large landholdings becomes a kind of planned unit development similar to a conditional use permit. In such a situation, the matter would become a matter affecting a specific party. Where you are making a decision which would impact upon a specific party or a specific property, you are engaged in an action which would be subject to the bill.

Thus, if the plan imposes specific conditions on a party owning a specific piece of property, the former employee may not work for that party on that plan. On the other hand, if the plan is imposing specific conditions on many property owners within the jurisdiction of the plan, the former employee may work on the plan. We understand that the latter situation is more common than the former.

A.1. A planner may accept employment from a local government to work on the implementation of the land use plan on which the planner worked while at the Commission.

2. and 3. A planner may accept employment from a landowner to work on coastal development permits under a land use plan on which the planner worked while at the Commission. Since we have determined that approval of a coastal development permit is a different proceeding than the approval of a land use plan, AB 1048 does not prohibit such activity on the part of a former employee. The fact that a landowner owns a "significant" amount of land in the jurisdiction and was involved in discussions with the planner during the formation of the land use plan does not alter our answer.

B. As to other professionals, our answer is the same as above. The employees must have worked on the matter personally and substantially before the provisions of the bill are applicable to them.

Finally, you have also asked us whether the provisions of AB 1048 apply to commissioners as well as employees. Government Code Sections 87401 and 87402 apply their terms to "state administrative officials." The term "state administrative official" is defined in Government Code Section 87400(b) as:

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(b) "State administrative official" means every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.

We believe that this definition applies to commissioners and that they are covered by the terms of the bill.

We understand that you may have more questions about the applicability of the bill to your agency. We look forward to assisting you in every way.

Sincerely,

*Robert M. Stern*

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General Counsel

RMS:nc

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September 15, 1980

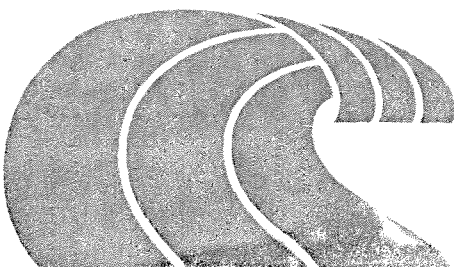
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Dear Bob:

As we have discussed in recent conversations between Peter Douglas, you and me, the possible applications of AB 1048, Government Code Sections 87400-87405, are of serious concern to our agency. Because of the potentially broad application of the statute, a number of our planners and other professionals are considering leaving the agency to avoid the personal impact of what may be viewed as overly restrictive interpretations of the statutory purposes of the new law. It does not appear to our legal staff that the statute was intended to have such a broad application that any involvement in Coastal Act work would preclude private sector employment. However, in view of the varied nature of our planning and permit work, the statute is sufficiently ambiguous to raise doubts. Since your agency will be implementing and enforcing these provisions, a written interpretation from your agency would clarify the situation for our staff. In view of the rapidly approaching effective date of the statute, we would appreciate a response as soon as possible.

To set the stage for your interpretation, I would like to set out some of the staff activities which might arguably fall within the new statute. First, the Commission grants permits for virtually all development activities in the coastal zone. In connection with such permit activities, staff members meet with developers, developers' representatives (consultants, lawyers, architects), local and state governmental agencies, and other interested parties. Generally, one staff person, a permit analyst, is assigned to review the project and make a report and recommendation to the Commission. Frequently, the chief of the permit staff will review the analyst's work in-house, and occasionally will meet with the applicant or opponents. Occasionally the executive and/or deputy director, or another professional (geologist, planner, mapper, etc.) will also review the project and contribute opinions, analysis, and recommendations to the project analyst. Finally, after the project is reviewed and acted upon by the Commission, there are frequently post-permit conditions which must be met which require substantive or procedural review by planners, attorneys and others on the staff.

In connection with these permit activities, then, the following questions are raised:



A. Permit Analyst (Person with primary responsibility for a project)

1. May a permit analyst accept employment with a permit applicant which would require that the individual represent or advise the applicant in further proceedings before the Commission on that permit (an amendment, extension, et.)?

2. May a permit analyst accept employment with a permit holder which would require the analyst to represent or advise the permit holder in connection with carrying out the development authorized by the permit?

3. May a permit analyst accept employment with a former permit applicant or permit holder which would require the analyst to represent or advise the employer in connection with future permit applications or other hearings before the Commission involving different developments, or new permit hearings on the original development (assuming the original permit has lapsed)?

4. May a permit analyst accept employment with employers who intend to apply for permits which may be affected by other permits which the employee has worked on while at the Commission, but which are not directly related to the employer (e.g. a permit analyst has worked on permits which might set a precedent for the subsequent permits of the employer)?

B. Professional Staff/Chief of Permits

1. Do the answers to the questions above change if the Commission employee participated in the original decision in a professional capacity other than permit analyst, and acted only in a supervisory or advisory role on the project?

PLANNING

Even more difficult questions are raised by our planning process, although these questions may be dealt with rather simply if the F.P.P.C. takes the position that AB 1048 applies only to permit activities, which are quasi-adjudicative, and not to planning activities, which are quasi-legislative. During the planning process, staff members analyze various proposed land uses for local jurisdictions in light of the policies of the Coastal Act. Generally, a planner is assigned to the local jurisdiction both at the regional and at the state office. Various technical experts, including attorneys, geologists, mappers, and others are called into comment and/or set in on discussions and negotiations with the affected local governments and private landowners. Although the land use plan generally covers a broad range of landowners and land uses, occasionally the land use plan for large landholdings becomes a kind of planned unit development similar to a conditional use permit (including meetings and negotiations with individual landowners) although technically still part of the land use plan. Eventually, the land use plan, as adopted by the local jurisdiction, after extensive public hearings, is presented directly to the Commission in public hearings, along with a staff report prepared by the planner which presents the staff's analysis and recommendations for approval or conditions. These planning activities, unlike the permit proceedings, frequently extend over a period of several years.

The Commission's planning activities raise the following questions:

A. Planners

1. May a planner accept employment from a local government to work on planning or implementation efforts for the land use plan on which the planner worked while at the Commission?

2. May a planner accept employment from a landowner to work on development permits under a land use plan on which the planner worked while at the Commission?

3. Does the answer to number 2 change if the landowner owns a "significant" amount of land in the jurisdiction and was involved with discussions with the planner during the formation of the land use plan?

4. What constitutes a "proceeding" for purposes of our planning activities?

B. Other Professionals

Do the answers to the questions above change if the employee's role was limited to supervisory or advisory participation, or if the employee made, or was extensively involved in making decisions determining the staff recommendation?

Your early written responses to these questions will be much appreciated. If you conclude that there need to be clarifications either by regulation or amending legislation, an indication from you that the FPPC intends to seek such clarification would also be most helpful.

Thank you for your consideration and cooperation in this matter.

Sincerely,

*Bill Boyd*

WILLIAM BOYD  
Chief Counsel

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