

# State of California



# Fair Political Practices Commission

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April 23, 1981

Georgene G. Barnes  
Deputy County Counsel  
County of Humboldt  
Eureka, CA 95501

A-81-04-108

Dear Georgene,

This letter is in response to your request for advice concerning the conflict of interest provisions of the Political Reform Act. Specifically, you asked whether it is necessary for any of the Humboldt County Planning Commissioners to disqualify themselves from voting on issues relating to the Local Coastal Plan (LCP).

### Background

An LCP is a local government's land use plan, its zoning ordinances and other actions which, when combined, implement the provisions of the Coastal Act. The LCP covers only the parts of the city or county within the Coastal Zone. The Coastal Zone extends three miles seaward and varying distances inland. In order to insure that the LCP is consistent with Coastal Act policies and to achieve maximum input as to local conditions, public hearings are held at the local, regional and state levels before an LCP is certified. All programs must be certified by the California Coastal Commission by July 1, 1981.

Humboldt County has divided its Coastal Zone into six areas: North Coast, Trinidad, McKinleyville, Eel River, Humboldt Bay and South Coast. The City of Eureka has its own LCP. The procedure for adopting coastal plans in Humboldt County is as follows.

The Board of Supervisors appointed a 15-member Citizens Advisory Committee (CAC) to draft policies and six area plans. The LCP policies were drafted first and organized into the Coastal Land Use Policies and Standards (CLUPS) document which was reviewed in a series of public meetings before the Planning Commission and the Board of Supervisors.

George G. Barnes  
April 23, 1981  
Page Two

Both the Planning Commission and the Board of Supervisors made changes, then CLUPS was reviewed by the Regional and State Coastal Commissioners as a directive guide for the development of each of the six Area Plans. CLUPS was adopted by the Coastal Commission on September 8, 1979.

After CLUPS was adopted the CAC began to develop individual area plans. After CAC prepares a draft area plan, the Board of Supervisors adopts the draft as a hearing draft and a six-week public comment period opens. The Planning Commission then holds hearings on the draft, makes revisions and requests the Board of Supervisors to approve the revised plan. The Board also holds hearings and makes revisions. The revised Area Plan is then sent to the Regional Coastal Commission for review. The Regional Commission also holds hearings and makes revisions. After the County has an opportunity to respond to these further revisions, the document is sent to the State Commission. The State Commission also reviews and revises the plan and returns it to the county.

Presently, the six area plans are in various stages of the review process. The North Coast area plan has completed county processing, has been reviewed by the Regional and State Commissions and returned to the county with a list of conditions which must be met before this plan can be certified. The McKinleyville area plan has also completed county processing, been reviewed by the Regional Commission and returned to the county for additional work. The Eel River plan is the one currently under consideration by the Planning Commission. It has passed through most of the county processing, but the Planning Commission has elected to suspend its deliberations pending advice from us. The hearing draft for the South Coast area plan has been prepared by the CAC, but it has not yet come up for formal review. The Humboldt Bay and Trinidad area plans are still being written by the CAC.

The specific advice in this letter will be limited to the Eel River Plan since that is the area currently under consideration by the Planning Commission. However, to the extent that the principles discussed are applicable to other LCPs this letter should also provide guidance for resolution of future issues.

#### Issues

It is my understanding that the following issues are those which are currently under consideration by the Planning Commission.

### Farmed Wetlands

Farmed wetlands are lands which were previously under water but are now diked to permit agricultural use. These lands are most frequently used as pasture for sheep, cattle and dairy cows. The Regional Coastal Commission estimates that over 90 percent of the Eel River Planning Area is agricultural land and about 30 percent of this is farmed wetlands; approximately 50 persons own all of the property classified as farmed wetlands.

### Riparian Vegetation

The areas of riparian vegetation in the Eel River Planning Area are unusual because they often extend far beyond stream-side. Riparian habitat is essential to the rich bird life of the area and provides erosion control, but can create problems for farmers when it encroaches on agricultural lands. Approximately 100 property owners will be directly affected by riparian policies.

### Access

The California Constitution, and the Coastal Act require maximum public access to navigable waterways and coastal beaches. The requirement of maximum access may have an adverse impact on property owners, agriculture, timber or industrial uses. There are 23 discrete access points in the Eel River area of which 14 are privately owned.

### Analysis

The conflict of interest provisions of the Political Reform Act, are contained in Government Code Sections 87100 and 87103,<sup>1/</sup> which provide that:

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.

#### Section 87100.

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

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise stated.

financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

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

(c) Any source of income, 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.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

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 public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

Under these sections a public official must not participate in a governmental decision if:

1. It is reasonably foreseeable that the decision will have a financial effect on the official, and
2. The anticipated financial effect is on a financial interest of the official, and
3. The financial effect is material, and
4. The effect is distinguishable from its effect on the public generally or on a significant segment of the public generally.

### Foreseeability

The Fair Political Practices Commission has discussed the foreseeability requirement as follows:

In general, that which a reasonable person would predict, anticipate, or expect beforehand ... the term requires the application of reasonable judgment to assess the degree of likelihood that a decision made or participated in will affect a financial interest. Where the likelihood is sufficiently great that a reasonable person would predict or anticipate an effect on a financial interest, the effect of a decision is foreseeable.

FPPC Statement of Policy Document 4,  
page 3, October 1976.

The statute does not require that a financial effect be certain, only that it be foreseeable. Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822.

### Financial Interest

Financial interest is defined in Section 87103, supra.

### Materiality

2 Cal. Adm. Code Section 18702 (attached) sets forth guidelines for determining whether a foreseeable financial effect is also material. Subsection (a) of that regulation provides general guidelines while subsection (b) includes specific monetary tests for materiality. Where the exact financial impact of a decision is difficult or impossible to calculate, the general test in subsection (a) is the appropriate measure of materiality. Most of the issues we are here addressing deal with the financial impact of certain land use decisions on real property. To the extent that it is difficult to calculate the effect of these decisions in precise dollar amounts, the general test of materiality should be applied. Under this test, the effect of a decision is material if it has a significant effect on an official's financial interest.

Classification of property as "farmed wetlands" will generally have a significant effect on that property because this classification affects the way in which the property may be used. No diking is permitted on farmed wetlands

beyond that already in existence. There are also stringent building restrictions on farmed wetlands. These and other restrictions may make it difficult or impossible to increase the income generating potential of the property. For the most part there will be a material effect only when the official's particular property or property adjacent to it is under consideration. If, however, it is foreseeable that broad policy decisions or decisions on other property would result in a limitation of the use of an official's property and/or a change in the value of the property, then the effect may be material on the official's property as well.

Generally, decisions on riparian vegetation will also have a significant effect on a piece of property. The riparian vegetation issue revolves around questions of removal of vegetation, designation of a riparian corridor, designation of protected areas and road construction through riparian areas. These decisions are likely to have a significant effect on real property because they involve limitations on the use of that property. Restrictions on the use of property are often translated into an increase or decrease in the value of that property. The riparian issue is of special concern to the owners of farmland whose livelihood depends on being able to limit the encroachment of riparian vegetation on their farmlands. The official should be sensitive to the fact that decisions directly concerned with a parcel of land are not the only ones which may have a significant effect on the land. Decisions on adjacent property as well as broad policy decisions may also foreseeably affect the way riparian vegetation is used or protected on the official's property.

Finally, decisions affecting whether the public will have access through a piece of property will usually have a significant affect on that property and probably on adjacent property as well. Dedication for public access amounts to a right-of-way through the property. Access may present landowners and neighbors with problems of trespass, vandalism, increased vehicular traffic, illegal fishing, sanitary and waste disposal problems among others. Access may decrease the value of the property in the same way that property with an easement may have a different value than that same property without the easement. Therefore, in most cases a decision which will affect whether property is dedicated for public access will have a significant effect on the property. The same may be true of neighboring or adjacent property owned by the official.

Public Generally

As I previously pointed out in my letter of March 19, 1981, the "public generally doctrine" is the only exception to the rule that public officials must not make or participate in making decisions in which they have a material financial interest. This doctrine provides that a public official need not disqualify himself or herself from making or participating in the making of a decision which will affect his or her financial interest in a manner which is not distinguishable from its effects on the public generally or a significant segment thereof. See Section 87103 and 2 Cal. Adm. Code Section 18703.

The term "public generally" means the persons subject to the jurisdiction of the agency in question. See Owen opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1976). In this case, since the jurisdiction of the Planning Commission is Humboldt County, the public generally is comprised of the entire population of the County.<sup>2/</sup> In order for any decision of the Planning Commission to fall within this narrow exception, the effect of that decision on the official's financial interest must be indistinguishable from its effect on the people of Humboldt County, or a significant segment of the county population.

Therefore, in light of the small number of people who foreseeably will be affected by decisions on Access, Farmed Wetlands and Riparian Vegetation, these decisions cannot be said to equally affect all of the public or any significant segment of the public. In the instant case, only a handful of people in the county own property within the Coastal Zone which could be dedicated for public access to the shoreline; which might be designated farmed wetlands; or which consists of riparian vegetation. Likewise, a relatively small number of people or businesses within the County have income which would be significantly affected by the outcome of these issues.

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<sup>2/</sup> The jurisdiction of the Planning Commission is the entire county despite the fact that it is considering matters which affect only the Coastal Zone. The LCPs will eventually be incorporated into the county's General Plan.

Georgene G. Barnes  
April 23, 1981  
Page Eight

Since the public generally exception is not applicable, if a Planning Commissioner has a financial interest which will be materially affected by a decision on any of the three issues, that official cannot make or participate in making a decision on that issue.<sup>3/</sup>

#### Discussion

The following is an analysis of the disqualification provisions of the Political Reform Act as applied to the financial interests of the Humboldt County Planning Commissioners and decisions related to the major issues of the Eel River Plan.

#### Jerry Exeley - Tom Grundman

These are two new members of the Planning Commission. Since I have no information as to the financial interests of either Commissioner Exeley or Commissioner Grundman, I cannot advise you as to their obligations under the Act. However, it is probable that the general discussion of the law and its application to other Planning Commissioners will give you adequate guidelines for advising Commissioners Exeley and Grundman.

#### Jim Alford - Judith Longshore

Neither Commissioner Alford nor Commissioner Longshore appear to have any financial interest which would be affected by a decision on any of the three issues. If that is the case, they can fully participate in coastal planning decisions on these issues.

#### J. Michael Brown

Commissioner Brown has an investment in Pacific Lumber Co., a corporation with financial interests in the Coastal Zone; an investment in the law firm of Falk, Buxton and

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<sup>3/</sup> Moreover, if a public official has a source of income (e.g., a client) who has real property which foreseeably will be affected materially by a decision, the public official should generally disqualify himself or herself from making or participating in the making of that decision.

Brown in which he is also a partner and which does business in the Coastal Zone; and income from clients with financial interests in the Coastal Zone.

According to a blue-line map of the Eel River area, Pacific Lumber Co. owns a strip of land along the shore which is partially designated farmed wetlands and a part of which contains riparian vegetation. Because of its location, there may also be an issue of public access to the shore. These facts indicate that decisions on farmed wetlands, riparian vegetation and access could foreseeably have a material financial effect on Pacific Lumber Co. Commissioner Brown should not participate in making any of these decisions if they will have a significant effect on Pacific Lumber Co.

If Commissioner Brown has a 10 percent or greater interest in his law firm, all clients who provide the firm with income in which Commissioner Brown's pro rata share is \$250 or more are a source of income to him. Sections 87103(c) and 82030(a). We have no information as to whether any of Commissioner Brown's clients own property or derive income which would be affected by decisions on the three issues we are here addressing. Assuming that Brown has clients who would be so affected, and assuming that these clients are a source of income to him, 2 Cal. Adm. Code Sections 18702(a) and (b)(3) set forth guidelines for determining whether the financial effect on a client is material.

In examining 2 Cal. Adm. Code Section 18702(b)(3), Commissioner Brown should pay special attention to subsections (B) and (D). Under subsection (B) he is prohibited from influencing a governmental decision if there is a nexus between the decision and his functions as an attorney. This regulation prohibits him from accomplishing as an official what he has been paid to do as an advocate. Subsection (D) requires disqualification if the decision will have a significant effect on a client who is not a business entity. Therefore, Brown would probably have to disqualify himself from making or participating in decisions on access through a client's property, riparian areas on a client's property, and/or farmed wetlands on a client's property.

In summary, Commissioner Brown cannot make or participate in decisions on farmed wetlands, access or riparian vegetation to the extent that any of those decisions will have a significant affect on the law firm of Falk, Buxton & Brown, on the clients of the law firm, or on Pacific Lumber Company.

Joe Russ IV

Joe Russ IV has a number of financial interests in the Coastal Zone: investments in and income from the Bank of Loleta; an investment in Fern Cottage, Inc.; income from Humboldt Creamery; and interests in real property in Coffee Creek Ranch and Zane Ranch. He also receives income from the Humboldt Auction Yard, but the information provided to us does not indicate whether the auction yard is in the Coastal Zone.

According to a blue-line map of the Eel River Wetlands, Fern Cottage, Inc., contains both farmed wetlands and riparian vegetation. Decisions on farmed wetlands and riparian areas impact most heavily on agricultural lands; Fern Cottage, Inc., consists of 600 acres of agricultural land. These facts indicate that Fern Cottage, Inc., will probably be significantly affected by decisions on farmed wetlands and riparian policies.

We have no definite information as to whether any of the other financial interests of Commissioner Russ will be affected by any of the Planning Commission decisions on the issues in question. However, if real property owned by Commissioner Russ, his sources of income or business entities in which he has an investment will be affected by decisions on farmed wetlands, access or riparian vegetation, Commissioner Russ will probably be required to disqualify himself.

Gene Senestrero

According to the information provided to us Commissioner Senestrero owns a number of parcels of real property, some of which also may represent investments and/or sources of income. To the extent that his interests will be affected by decisions of the Planning Commission on farmed wetlands, public access or riparian vegetation, Commissioner Senestrero will probably have to disqualify himself. Since Commissioner Senestrero owns 100 percent of Sea Mist Farms, he must disqualify himself from any decisions affecting its two major customers, McColl's Dairy and Foremost-McKesson Dairy.

Conclusion

We hope the general analysis set forth at the beginning of this letter and the discussion of each Commissioner's potential areas of conflict will be helpful in resolving your current question on disqualification as well as future

Georgene G. Barnes  
April 23, 1981  
Page Eleven

questions which may arise. As you know, discussions regarding disqualification for conflicts of interest are extremely fact intensive and involve a degree of prediction about future events and the effects of decisions. We therefore encourage officials seeking advice to provide us with as much information as possible about their financial interests, the specific governmental decision in question and its potential effects on the official's interests.

All Commission advice is rendered upon the assumption that the material facts given are true and that no material facts have been omitted which would call for a different result. These are also the conditions for the immunity granted by Section 83114.

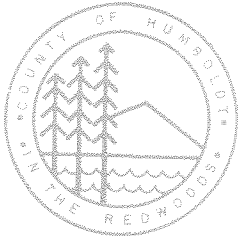
Please call me at (916) 322-5901 if I can be of further assistance to you in this matter.

Sincerely,



Stella Connell Levy  
Counsel  
Legal Division

SCL:kp  
Enclosure  
cc: John Cook  
Jim Alford  
Regional Coastal Commission



8/108

COUNTY COUNSEL  
**COUNTY OF HUMBOLDT**  
EUREKA, CALIFORNIA 95501    PHONE (707) 445-7236

January 28, 1981

Fair Political Practices Commission  
Post Office Box 807  
Sacramento, California 95814

Dear Sir:

The Humboldt County Planning Commission has asked me to request directions from your office for future Planning Commission action on the Local Coastal Program.

Humboldt County lies on the coast about 250 miles north of San Francisco. The population in the unincorporated areas of the County is about 60,000. About 70% of these people live between the towns of Trinidad and Fortuna. Public Resources Code Sections 3050 et seq. requires counties to develop specific plans for the coastal zone. These plans are amendments to the County General Plan within the meaning of Government Code Section 65300. Like other general plan documents, they establish policies on which land use regulations and decisions are based.

Each local government devises its own method for drafting Coastal Plans. Humboldt County divided its coastal zone into six areas--North Coast, Trinidad, McKinleyville, Humboldt Bay, Eel River and South Coast. The Board of Supervisors appointed a 15-member Citizens Advisory Committee to draft the policies and area plans. This body reviewed ten technical studies and developed coastal area plan policies and statements. Their recommendations were organized into the Coastal Land Use Policies and Standards (CLUPS) document, circulated and reviewed in a series of public meetings for the Planning Commission and the Board of Supervisors. Both the Planning Commission and the Board of Supervisors made a number of changes in the document. It was reviewed and approved by the Regional and State Coastal Commissions as a directive guide for the development of each of the six Area Plans. CLUPS was adopted September 18, 1979. From October 1979, to the present, the CAC has developed individual Area Plans. So far the North Coast Area Plan and the McKinleyville Area Plan have completed County processing. The North Coast Area Plan has been reviewed by the Regional and State Coastal Commissions and returned to the County with a list of conditions which the Regional and State Coastal Commissions want

Fair Political Practices Commission  
January 28, 1981  
Page Two

included in the Area Plans before they can be certified under Public Resources Code Sections 30510 et seq.

The procedure for adopting Coastal Plans in Humboldt County is as follows: The CAC prepares a draft Area Plan. The Board of Supervisors adopts the draft as a hearing draft and a six week public comment period opens. The Planning Commission then holds a public hearing on the hearing draft. Typically, this hearing is continued from meeting to meeting so that three to six sessions are spent taking testimony and making revisions to the hearing draft at the Planning Commission level. The Planning Commission then requests the Board of Supervisors to approve its revised plan. The Board of Supervisors also holds public hearings and makes revisions in the Area Plan.

The Board of Supervisors forwards the revised Area Plan to the Regional Coastal Commission for its review. The Regional Commission holds hearings, suggests changes and returns the document to the County. After the County reacts to the Regional Coastal Commission's suggested changes, the document is sent to the State Coastal Commission. The State Commission also suggests changes in the Plan and returns the document to the County. The North Coast Area Plan has been through the entire State proceeding and is now being returned to the County. By terms of a Resolution, the Board of Supervisors will return the revised document to the Planning Commission for its report prior to acting on the Regional and State Coastal Commission suggestions.

The McKinleyville Area Plan has been approved by the County and sent to the Regional Coastal Commission. The Regional Coastal Commission recently held a hearing on the McKinleyville Plan, and is returning the Plan to the County for additional work.

The Planning Commission has been working on the Eel River Plan. The Eel River Planning Area includes the entire Eel River delta and extends approximately 17 miles inland from the coast. This land has been used for dairying, grazing and other agricultural pursuits since it was cleared.

In addition, former tidelands in the Eel River basin, the Elk River basin, between the Cities of Eureka and Arcata, and north of Arcata in the Mad River basin are extensively used for agriculture.

Most of the agricultural land in the South Coast Planning Area is grazing land. In addition, there is some timber land within the Humboldt County Coastal Zone.

Fair Political Practices Commission  
January 28, 1981  
Page Three

The Humboldt Bay and Trinidad Area Plans are still being written by the CAC.

The Planning Commission consists of seven members. One is appointed for each of the five Supervisors' districts and two are appointed at large.

Gene Senestraro, Chairman of the Commission, is a dairy rancher. Joe Russ, IV, is the Dean of the Commission, having served 14 years. He was appointed to represent agriculture at a time when the law required that the Planning Commission contain a representative for agriculture. Commissioner Lewis is a contract logger, Commissioner Norberry is a stock broker, Commissioner Longshore is a part-time Geology teacher at Humboldt State University, Commissioner Alford is a former fish buyer who has switched to political survey work, and Commissioner Brown is an attorney.

At a meeting of the Board of Supervisors held December 23, 1980, the Chairman referred to this office a request from the League of Women Voters which reads in pertinent part:

"Our request of you today is simply that you determine if the reason for this seeming inability to move the Plan [Eel River Local Coastal Plan] forward might have to do with any possible conflict of interest on the part of members of the Planning Commission.

The law and League position come together at the point where the law requires all Commissioners to file disclosure statements listing all areas of interest.

We ask that the Board of Supervisors consider this matter and instruct County Counsel to review these disclosure statements to determine if there are any potential legal violations. And we appreciate this opportunity to bring our concern to you."

The Planning Commission met at a special afternoon session on January 8, 1981, to complete its consideration of the Eel River Local Coastal Plan. After discussion of the Board referral, however, the Commissioners voted six to one to discontinue any Planning Commission consideration of any Coastal Plan until they had received specific instructions from the Fair Political Practices Commission as to who could vote on what. The Planning Commission has long had an ethics section in their rules which provide as follows:

"No member of the Commission shall vote upon any matter in which he knowingly may have a personal or financial interest, in which case he may disqualify himself. Furthermore, no member may act for petitioner or appellant in any case before the Commission either as attorney or witness."

In the summer of 1980, the Planning Commission adopted, with the approval of the Board of Supervisors, a Conflict of Interest Code. A copy of their code is attached for your convenience.

Commissioner Senestraro is a dairyman. He owns several parcels of property in the unincorporated area of the County outside of the Coastal Zone and obtains his income from McColls Dairy of Redding and Foremost-McKesson Dairy in Loleta. The entire town of Loleta, including the dairy, is in the Eel River portion of the Coastal Zone. Like other dairymen in the community, Mr. Senestraro's income is based upon the percentage of butterfat in the milk he delivers to the dairy.

Mr. Senestraro also owns about 40 acres of land in the Humboldt Bay Planning Area of the Coastal Zone. It is diked, former tideland used for grazing purposes. Its continuing use for agriculture depends on the ability of Mr. Senestraro or his tenant to keep up the dike and tide gates. The land is traversed by a slough which contains virtually no vegetation. It is adjacent to lands zoned R-1, single family residential.

Commissioner Russ has substantial land holdings in the County, however, only one 105 acre parcel, the Coffey Creek Ranch, is within the Coastal Zone. This is a ranch he owns in shares with his father. It is approximately 15 miles from the coast in the Eel River basin. It did flood in the great flood of 1964, but does not ordinarily flood. It is neither diked, former tideland nor riparian habitat. It is affected by the general agricultural policies in the Eel River basin. Although Mr. Russ's Bunker Hill Ranch is subject to an agricultural preserve contract, the Coffey Creek Ranch is not.

Mr. Russ is a director of the Bank of Loleta, a State bank with three branches in Humboldt County. The Loleta office is within the Coastal Zone. The bank is a commercial lender which makes loans in the ordinary course of its business. Although Mr. Russ owns shares in the bank, his interest is less than ten percent of the shares outstanding.

Mr. Russ also obtains income in excess of \$1,000 a year from Humboldt Creamery in Fernbridge, California. The rent on some lands owned by him and leased for dairying purposes is paid

Fair Political Practices Commission  
January 28, 1981  
Page Five

through the Creamery. This Creamery also pays the dairyman on a butterfat basis. The dairy pays a certain portion of this to Mr. Russ as rent from the dairyman. The Humboldt Creamery is located in Fernbridge which is in the Coastal Zone in the Eel River Valley. The proposed Eel River Plan will make no changes in the use of this land.

Commissioner Norberry has several commercial holdings within the Coastal Zone. However, all are within the city limits of the City of Eureka.

Commissioner Longshore and her husband are both employed by Humboldt State University. She teaches Geology part-time and he is a Geology professor. The University has various holdings within and without the Coastal Zone. Their most important holding in the Coastal Zone is their marine laboratory in Trinidad. The Longshore's reside in the City of Arcata.

Commissioner Alford resides outside the Coastal Zone in McKinleyville, a heavily populated, unincorporated area within the County. In a statement of economic interest filed May 27, 1980, he indicated that he was a fish buyer for Eureka Fishery at Trinidad pier. In addition, he does legal and political research. His most recent statement of economic interests has deleted the reference to fish buying. When employed, his wife works for the Federal Government.

Commissioner Brown owns no property within the Coastal Zone. However, several of his clients do. In the Eel River Planning Area, he represents a couple of small land owners. One owns 60 acres but leases much more and has a thousand head dairy herd.

He has two clients in the South Coast Zone. One holding of grazing and timberland is presently in probate. When the estate is closed, the land will pass to a trust. He represents both the estate and the trust. In addition, he represents a partnership which owns a large ranch on the Mattole River. It is sheep and timber country with some riparian habitat. The ranch is in excess of a thousand acres. Mr. Brown also represents a timber company. However, any holdings they have within the Coastal Zone are governed by the California Division of Forestry policies rather than the Coastal Plan policies.

It should be noted that there is no pressure and no plans to develop for other purposes agricultural lands in the Eel River and South Coast portions of the Humboldt County Coastal Zone. There is very little pressure to develop in the North

Fair Political Practices Commission  
January 28, 1981  
Page Six

Coast portion of the Coastal Zone. Much of the land in the North Coast portion is owned by State and National parks.

Much of the land in the South Coast, and some of the land in the McKinleyville and Trinidad areas is also in public ownership. Most of the pressure for development within the Coastal Zone is in the Humboldt Bay and McKinleyville Planning Areas.

As you know, the adoption of a General Plan or any element thereof is a legislative act. As such we think that the effect of adopting a General Plan Element, such as a Coastal Plan, is the same on a Planning Commissioner with business interests in the planning area as it has on the public generally. Certainly a Planning Commissioner should not vote on a permit which directly affects his land. That has been our advice and practice. However, it is the job of the Planning Commission to recommend land use policies to the Board of Supervisors.

I do not think it was the intention of the people of California when they adopted the Political Reform Act of 1974 nor the Legislature when it revised that Act, to prevent a legally appointed official from performing his legislative duty because he is wealthy. Disqualification because of land ownership removes from land owners the right to participate in government as surely as a property requirement for suffrage prohibited tenants from participating in government. I hope you will agree with our analysis and that we may advise the Planning Commission that all Commissioners may vote on all issues relating to all Coastal Plans.

Very truly yours,



Georgene G. Barnes  
Deputy County County of  
Humboldt County

GGB:sa  
cc: Planning Commissioners  
Planning Department

CONFLICT OF INTEREST CODE FOR THE  
HUMBOLDT COUNTY PLANNING COMMISSION

RECEIVE

JAN 29 1981

COUNTY COUNSEL  
COUNTY OF HUMBOLDT

FEB 3 8 54 AM '81

Section 1. Introduction

In compliance with the Political Reform Act of 1974, California Government Code Section 81000, et seq., and specifically with Section 87300 et seq., the Planning Commission adopts this Conflict of Interest Code which shall be applicable to all Commissioners. The requirements of this Code are in addition to other requirements of the Act such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and to any other state or local laws pertaining to conflicts of interest.

Section 2. Definition of Terms

The definitions contained in the Political Reform Act of 1974, the regulations of the Fair Political Practices Commission (2 Cal. Adm. Code Sections 18100 et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

Section 3. Commissioners

Commissioners make or participate in the making of decisions which may foreseeably have a material effect on their personal financial interests.

Section 4. Place of Filing

Commissioners shall file the original copy of their statements of economic interests with the County Clerk.

Section 5. Time of Filing

a. Initial Statements. All Commissioners on the effective date of this Code shall file statements annually on March 1.

b. A newly appointed Commissioner shall file a disclosure within ten days after assuming office.

c. Leaving Office Statements. Commissioners shall file leaving office statements within thirty days after leaving office.

Section 6. Disclosure Statements

Commissioners must disclose their personal income. The financial interests set forth in a Commissioners disclosure statement are the types of financial interests which he or she foreseeably can affect materially through the conduct of his or her office. Each Commissioner shall file statements of economic interests disclosing his or her financial interests as required by this conflict of interest code.

a. Contents of Initial Statements. Initial statements shall disclose any reportable investments and interests in real property and management positions held on the effective date of the Code.

b. Assuming Office Statements. Assuming office statements shall disclose any reportable investments and interests in real property and management positions held on the date of assuming office.

c. Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, and income and management positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later.

d. Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, and income and management positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

### Section 7. Manner of Reporting

Disclosure statements shall be made on forms supplied by the County Clerk and shall contain the following information:

a. Contents of Investment and Real Property Reports. Interests in real property in the unincorporated areas of Humboldt County must be reported. The report must include:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property exceeds one thousand dollars (\$1,000), exceeds ten thousand dollars (\$10,000), or exceeds one-hundred thousand dollars (\$100,000).

b. Contents of Personal Income Reports. Personal income statements shall contain:

1. The name and address of each source of income aggregating two-hundred and fifty dollars (\$250) or more in value, or twenty-five dollars (\$25) or more in value if the income was a gift; and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name and address of the donor, a description of the gift, the amount or value of the gift, and the date on which the gift was received.

c. Contents of Business Entity Income Reports. Business entity income including income of a sole proprietorship, is required to be reported. The statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the filer's pro rata share of fees from such person was equal to or greater than ten thousand dollars (\$10,000);

3. In the case of a business entity not covered by paragraph (2), the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

d. Contents of Management Position Reports. Management positions shall be reported. A Commissioner shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the Commissioner's position with the business entity.

e. Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

Section 8. Disqualification. Commissioners must disqualify themselves from making, participating in the making or using their official positions to influence the making of any governmental decision which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on:

a. Any business entity in which the Commissioner has a direct or indirect investment worth more than ten thousand dollars (\$10,000);

b. Any real property, in the unincorporated areas of Humboldt County, in which the Commissioner has a direct or indirect interest worth more than one thousand dollars (1,000);

c. Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two-hundred fifty dollars (\$250) or more in value received by or promised to the Commissioner within twelve months prior to the time when the decision is made; or

d. Any business entity in which the Commissioner is a director, officer, partner, trustee, employee, or holds any position of management.

No Commissioner shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that a designated employee's vote is needed to break a tie does not make his or her participation legally required for purposes of this section.

Section 9. Manner of Disqualification. In the case of a Planning Commissioner, notice of disqualification shall be given at the meeting during which consideration of the decision takes place and shall be made part of the official record of the commission.

**CITY OF EUREKA**



P.O. BOX 1018 - EUREKA, CALIFORNIA 95501 6th and K STREETS - 707-443-7331

March 6, 1981

Fair Political Practices Commission  
P. O. Box 807  
1100 K Street  
Sacramento, CA 95814

Dear Commissioners:

RE: Request for Opinion Concerning Participation of City  
Officials in the Development of a Local Coastal Plan  
for the City of Eureka.

The Eureka City Council has asked me to request directions from your office for future council action concerning the development and adoption of the local coastal program for the City of Eureka. Specifically can the officials mentioned in this attachment participate in and/or vote on the Eureka Local Coastal Plan and Ordinances?

The local coastal plan in the City of Eureka will consist of amendments to the Eureka General Plan and will consist of certain zoning ordinances which will implement that plan. The local coastal plan for the City of Eureka is being developed at this time by the Northcoast Regional Coastal Commission. Upon its completion, it will be submitted to the Planning Commission and to the City Council for its adoption after the requisite public hearings. The content and shape of the local coastal plan is not yet known and will not be until it is adopted. However, a work program has been developed which is attached hereto as Appendix 2. The work program identifies the issues that will be addressed in the local coastal plan. The area affected by the Eureka Coastal Plan is shown as an exhibit to that work program. Unlike the coastal plans to be adopted by the County of Humboldt or by other jurisdictions, the Eureka Coastal Plan will be presented as one comprehensive document.

Your prompt attention and reply to this request would be appreciated. Inasmuch as a majority of the Council has some interest in business or property located within the Coastal Zone, the Council has found itself unable to proceed with local coastal

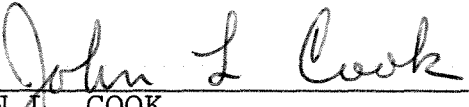
Fair Political Practices Commission  
March 6, 1981  
Page Two

planning in the City of Eureka for fear of violating the conflicts provisions. Consequently, until your opinion is received, the City of Eureka will not be in a position to proceed with its local coastal plan.

Inasmuch as the local coastal plan and subsequent zoning implementation will be done on a city-wide basis and will affect countless properties, it is felt that any financial effect of the coastal plan on interest of city officials will not be distinguishable from its effect on the public generally. In accordance with your regulation Section 18703, it is suggested that each of the city officials should be permitted to fully participate in the local coastal planning program for the City of Eureka. In my opinion the fact that the officials have disclosed for the record their interests in the Coastal Zone is sufficient protection of the public interest in precluding self dealing. Copies of the disclosure statements on file are attached. Your opinion should reflect an awareness that local entities are required to adopt comprehensive general plans and comprehensive zoning. See Government Code Section 65000 et. seq. In adopting a comprehensive City general plan, every piece of real property in the City is affected with respect to its land use and consequently its value. Were you to rule other than as suggested, it would require the disqualification of the entire City Council and the entire City Planning Commission.

Until the local coastal plan for the City of Eureka and its implementing zoning ordinances are adopted, it is not possible at this point in time to identify what, if any, financial effect the plan will have on the properties of the individual members.

Very truly yours,

  
\_\_\_\_\_  
JOHN L. COOK  
CITY ATTORNEY

JLC:cr  
Attachments

cc: Mayor & City Council  
Interim City Manager  
Director of Community Development

F P P COUNTY OF HUMBOLDT

81-108

JUN 29 9 00 AM '81 In-office Memo

DATE: May 28, 1981  
TO: Humboldt County Planning Commission  
FROM: County Counsel  
RE: Advice on Potential Conflicts of Interest

I have been authorized to help you analyze potential conflicts of interest which you may face as Planning Commissioners. However, the personal liabilities imposed by the Fair Political Practices Act are such that you may wish to consult with your personal attorney or the Fair Political Practices Commission as well.

*Georgene G. Barnes*

Georgene G. Barnes  
Deputy County Counsel

GGB:sa

*Whoops!*

*Alford  
1905 Elm  
McKinleyville  
9552*