



California Fair Political Practices Commission

March 11, 1986

Gary L. Berrigan
P.O. Box 618
Blue Lake, CA 95525

Re: Your Request for Advice
Our File No. A-86-045

Dear Mr. Berrigan:

Thank you for your letter requesting advice concerning your duties under the "revolving door" provisions of the Political Reform Act (the Act).^{1/}

FACTS

You have been employed as a Coastal Program Analyst II for the California Coastal Commission in its North Coast District office. You have recently accepted employment with the County of Mendocino as a Planner II. Your duties with the County will involve working on its coastal program. As an employee of the Coastal Commission since 1977, your work involved certain aspects of projects located in Mendocino County.

Under the Coastal Act, there are three district planning 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. From 1977-1981, your duties as a Coastal Commission employee included assisting in the preparation of the Mendocino County land use plan and performing coastal permit analysis for projects along the Mendocino coast. From 1980 to the present, your duties were permit analysis for projects located in Humboldt County, and lead local coastal program planner for the County of Humboldt and the Cities of Trinidad, Arcata, and Eureka in Humboldt

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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County and the City of Fort Bragg in Mendocino County. On occasion during the last two years, you have also performed permit analysis for projects located in Mendocino County.

Mendocino County has hired you to prepare the zoning phase of its local coastal program. You anticipate that you will also have two other areas of responsibility. You will be required to review coastal permit applications to determine whether they are consistent with the County's adopted land use plan. You will also be responsible for a Coastal Conservancy lot consolidation project in the Point Cabrillo area of the Mendocino coast.

QUESTION

You have asked whether, as a former Coastal Commission employee, there will be any restrictions on your participation as an employee of the County of Mendocino, in the following matters:

- (1) The zoning phase of the County's local coastal program.
- (2) Coastal permit applications.
- (3) The Coastal Conservancy lot consolidation project in the Point Cabrillo area of the Mendocino coast.

ANALYSIS

Sections 87401 and 87402 provide:

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 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 both of the following apply:

- (a) The State of California is a party or has a direct and substantial interest.
- (b) The proceeding is one in which the former state administrative official participated.

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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.

Your employment with the Coastal Commission makes you a state administrative official who is subject to the restrictions of Sections 87401 and 87402. Section 87400(b). Therefore, you are prohibited from representing, aiding, advising, counseling, consulting, or assisting in representing any person,^{2/} for compensation, in connection with any proceeding involving specific parties in which you participated as a Coastal Commission employee.

You should note that, for purposes of Sections 87401 and 87402, you "participated" in a proceeding if you took part in the proceeding "personally and substantially through decision, approval, disapproval, formal written investigation, rendering advice on a substantial basis, investigation or use of confidential information" as an employee of the Coastal Commission. This would include any proceeding in which you had only a supervisory role.

It is also necessary to discuss what is a "proceeding" for purposes of Sections 87401 and 87402. Section 87400(c) provides that a "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation charge, accusation arrest or other particular matter involving a specific party or parties in any court or state administrative agency" (emphasis added). Therefore, the restrictions of Sections 87401 and 87402 apply only to matters involving a specific party or parties, rather than matters concerning general rules of applicability.

As a Coastal Commission employee, you participated in analysis of specific coastal permit applications for projects in Mendocino County, the land use plan phase of the County's coastal program, and the land use plan, related zoning ordinances, and specific coastal permit applications for the

^{2/} "Person" is broadly defined under the Act to include any organization or group of persons acting in concert. Section 82047. Accordingly, Sections 87401 and 87402 restrict your ability to represent either individuals or the County in certain proceedings.

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City of Fort Bragg in Mendocino County. You also participated in a preliminary meeting, in 1978, on a lot consolidation project in the Point Cabrillo area. You have informed us that the lot consolidation project was dropped and you have had no involvement with that project since 1978. We shall now discuss whether your participation in any of these activities was participation in a "proceeding" covered by Sections 87401 and 87402.

The specific coastal permit application is the type of matter which most clearly is a "proceeding" for purposes of Sections 87401 and 87402, in that it affects a specific party or parties. Therefore, you may not represent or assist the County of Mendocino, or any other person, in a coastal permit application proceeding in which you participated as a Coastal Commission employee. However, if a party to a coastal permit application proceeding in which you participated appears before the County with regard to that permit application after the Coastal Commission has approved the permit application, or if the party has filed a new permit application, Sections 87401 and 87402 would not prohibit you from participating in the permit application proceedings. Under these circumstances, the permit proceedings would be new proceedings, and not a proceeding in which you participated as a Coastal Commission employee.^{3/}

With regard to the Mendocino County land use plan, it is not clear from your letter whether the Coastal Commission has made a final decision to approve that plan. If you participated in any aspect of that plan which is still pending before the Coastal Commission, and that aspect of the plan affects only a specific party or parties, rather than a significant segment of the properties within the jurisdiction of the plan, you may not represent the County or assist the County on that aspect of its land use plan. We note that the land use plan usually consists of rules of general applicability; however, we are concerned that certain conditions or modifications which have not yet been approved by the Coastal Commission may affect only a specific party or parties. Therefore, if your responsibilities as a County employee involve the approval of the County's land use plan by the Coastal Commission, you should ask yourself (1) Did I participate in the aspect of the land use plan in question?

^{3/} I have enclosed a copy of the Galanter letter (No. A-82-079), which discusses situations in which a new permit application would, or would not, be considered a new proceeding.

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and (2) Does that aspect of the plan affect only a specific party or parties? If the answer to both questions is yes, then you must refrain from representing or assisting the County on that matter. If the answer to either question is no, you may represent or assist the County on the matter.

Your participation in the County's land use plan does not restrict your ability to participate in the second phase of the County's local coastal program, the zoning phase.^{4/} In our opinion, the zoning phase is a proceeding separate from the land use plan. See Gorman letter, A-80-105 (December 4, 1986), at page 4. Therefore, Sections 87401 and 87402 do not affect your ability to participate in the zoning phase of the County's coastal program.

These same basic principles would apply with respect to your ability to participate on behalf of the County or any other person in matters affecting the local coastal program for the City of Fort Bragg. You may not represent or assist the County or any other person in a proceeding before the Coastal Commission affecting specific parties in which you participated as an employee of the Coastal Commission. You may represent the County or other persons in new proceedings, however.

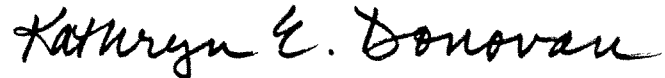
Finally, with regard to your ability to participate in the lot consolidation project in the Point Cabrillo area, it is not clear from your letter whether the lot consolidation project currently contemplated is a new proceeding or the continuation of a proceeding which has been pending since at least 1978. You stated that you attended a "pre-project" meeting in 1978, but the project was "dropped" and you have had no involvement since. Accordingly, it is not clear whether any proceeding was ever pending before the Coastal Commission in 1978. Alternatively, the current lot consolidation project may be a new proceeding, initiated since 1978. If there was no proceeding pending in 1978, or if the current proceeding is a new proceeding, then Sections 87401 and 87402 do not affect your ability to participate as a County employee in the lot consolidation project. However, before we can provide you with specific advice on this question, we will need more information

^{4/} Based on your letter, we assume that you have had no involvement as a Coastal Commission employee in any aspect of the zoning phase of the County's coastal program. This advice is predicated on that assumption.

Gary L. Berrigan
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from you. Please contact me at (916) 322-5901 if you wish specific advice on this question.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh

P.O. Box 618
Blue Lake, CA.
95525

February 4, 1986

FEB 7 8 57 PM '86

John Keplinger, Executive Director
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA. 95804

Dear Mr. Keplinger:

I am a Coastal Program Analyst II employed by the California Coastal Commission in its North Coast District office. I have accepted employment with the County of Mendocino as a Planner II. My duties with the County will involve working on its coastal program. I would like to know what duties, if any, I would be restricted from performing for the County based upon my work with the Coastal Commission.

I have been employed with the Coastal Commission since 1977. My primary duties from 1977-1981 were performing coastal permit analysis for projects along the Mendocino coast. [During this period I also provided some assistance in the preparation of the Mendocino County Land Use Plan (LUP), the first part of its Local Coastal Program (LCP) which consists of a Land Use Plan and a Zoning Ordinance. My involvement with the LUP is discussed below.] My duties from 1980 to the present have been permit analysis for projects located in Humboldt County, and lead LCP planner for the County of Humboldt and the cities of Trinidad, Arcata and Eureka in Humboldt County, and the City of Fort Bragg in Mendocino County. Due to staff reductions in the past two years, I have, on occasion, been assigned permit analysis for projects located in Mendocino County.

The Mendocino County LUP was prepared by a consultant hired by the Coastal Commission in 1978. I provided some assistance to the consultant when he was first hired during this stage of the LCP process, but I was not the lead LCP planner. The consultant completed the LUP in July 1980, and it was submitted to the County in November 1980. From June 1981, to August 1982, the LUP underwent public hearings before the Mendocino County Planning Commission. I represented the Coastal Commission in 1981, at one of the 52 public hearings held on the LUP before the Planning Commission. The Planning Commission adopted the LUP in August 1982, and forwarded it to the Mendocino County Board of Supervisors for further public hearings. The Board of Supervisors adopted the LUP in August 1983, and submitted it to the Coastal Commission for approval. The Coastal Commission denied the LUP as submitted in May 1985, and approved the LUP with suggested modifications in October 1985. My last involvement with the LUP was with my one appearance before the Planning Commission in 1981. I did not participate in any review or analysis of the LUP when it was before the Commission.

The County has hired me to prepare the zoning phase of its LCP. I will be a full-time County employee, and not under contract as a consultant. I anticipate additional duties will involve reviewing coastal permit applications to determine their consistency with the County's adopted

LUP. The last area of my new responsibilities will be for a Coastal Conservancy lot consolidation project in the Pt. Cabrillo area of the Mendocino coast. I attended one pre-project meeting in 1978, as a Commission employee, but the project was dropped and I have had no involvement with it since.

As stated above, I have been the lead LCP planner for the City of Fort Bragg, located in Mendocino County, since 1980. I directed the work of Commission-hired consultants who prepared the LUP and zoning ordinances that were submitted to the City. I participated in City Planning Commission hearings, City Council hearings, and Coastal Commission hearings on the Fort Bragg LCP. I have been totally involved in this LCP to the present, including monitoring coastal permits issued by the City, and reviewing amendments to its LCP.

I would like to know what activities, if any, I would be restricted from performing in my new position with the County of Mendocino based upon my prior duties with the Coastal Commission. Are there any restrictions upon my representing the County in public hearings before the Coastal Commission? How does my involvement with Fort Bragg's LCP effect my future activities with the County of Mendocino? I am attaching a 1980, letter from Robert Stern, General Counsel of the FPPC, to Roy Gorman, Chief Counsel of the Coastal Commission, addressing some of these issues, and background information from the Coastal Commission staff report regarding the Mendocino County LUP.

Thank you for your attention to this matter. Please send your response to my home address noted above.

Sincerely,



Gary L. Berrigan



California Fair Political Practices Commission

February 7, 1986

Gary L. Berrigan
P.O. Box 618
Blue Lake, CA 95525

Re: 86-045

Dear Mr. Berrigan:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean
Counsel
Legal Division

JGM:plh

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

631 HOWARD STREET, 4TH FLOOR

SAN FRANCISCO, CA 94105

(415) 543-8555

January 22, 1986



TO: Commissioners and Interested Parties

FROM: Ed Brown, District Director; Noah Tilghman,
Wayne Woodroof, Richard Rayburn, Coastal Planners;
Mary Hudson, Staff Counsel

SUBJECT: Public Hearing on Revised Findings for Certification of the
Mendocino County Land Use Plan Subject to Suggested Modifications.

PREVAILING SIDE: King, MacElvaine, Malcolm, McInnis, McMurray, Wornam,
Wright, and Nutter.

SYNOPSIS

Area Description: The Mendocino Coast is a three-hour drive north of San Francisco. Small, turn-of-the-century towns such as Elk, Albion, Mendocino, Caspar and Westport dot its 130 mile coastline. The rocky coves, open headlands, dense redwood forests, and estuarine rivers continue to support traditional economic activities such as fishing, farming, and forestry which spawned 19th century European settlement. This blend of cultural history and the natural environment has created a special ambience of statewide and national interest.

Background: In July 1978, the Mendocino County Board of Supervisors requested that the Commission prepare their Land Use Plan (LUP). A completed plan was transferred to the County in 1980. The LUP was submitted to the Commission and filed in August, 1984. The resolution accompanying the submittal requested suggested modifications from the Commission if the LUP was not certifiable as submitted. The Commission denied certification of the LUP on May 8, 1985 but continued the hearing on the suggested modifications. On September 26 the continued hearing was completed and the Commission took action by approving suggested modifications proposed in large part by the County of Mendocino. The findings proposed in support of the Commission's action are based largely on those prepared for the staff's reports for the Commission's May 8 and September 26 hearing. Where the Commission's action varied from the approach proposed in those staff reports, the findings have been revised to reflect the Commission's action.

Staff previously prepared proposed findings, dated November 8, 1985, for Commission considerations. These findings were not adopted. In the findings which follow, changes from those November 8, findings are indicated with additions underlined, and deletions are ~~covered by diagonal lines~~.

Preliminary Staff Recommendation: The staff recommends that the Commission adopt the following findings for certification of the Mendocino County Land Use Plan subject to suggested modifications.

Further Information: For further information on the LUP or the proposed revised findings, please contact the North Coast District office at the above address. Please mail Commissioner correspondence to the same address.

BACKGROUND SUMMARYA. HISTORY OF LAND USE PLAN DEVELOPMENT IN MENDOCINO COUNTY AND PUBLIC PARTICIPATION

On June 9, 1978, Mendocino County submitted its issue identification and work program for Commission review and action. Prior to Commission review, the Mendocino Board of Supervisors exercised its option to request by resolution that the Commission prepare the LUP. Because Federal grant restrictions would not allow Commission staff to be funded for preparing an LUP, it was decided to contract this LUP to a private consulting firm. The firm of John Blayney and Associates (later called Blayney-Dyett, Urban and Regional Planners) was selected by the Commission in consultation with the County. The Coastal Act calls for the "widest opportunity for public participation" in coastal planning. Four Citizens Advisory Committees were assisted by the Coastal Commission, the consultant, and the County, as public advisory groups. They worked diligently on both the countywide General Plan and the Coastal Element, developing their own position papers, writing specific comments on the consultant's working papers, and preparing sketch plans with supporting text. The consultant preparing the Hearing Draft participated in regularly scheduled public meetings with each of the coastal CACs. The Regional Coastal Commission and the County Planning Department also attended these and many other CAC meetings. Sketch plans prepared by the CACs and those prepared by the consultant were discussed at noticed meetings in May and June of 1980, and plan maps were placed at convenient public locations along the coast with a request for additional public comment. Comments written on the consultant's maps, CAC plans, statements, and the many letters and written comments received from individuals were considered and frequently incorporated by the consultant in a "Hearing Draft, Land Use Plan," which was dated August, 1980. However, the consultant's judgment as to what was in compliance with the Coastal Act, was open to debate by the CACs, the County Planning Commission, the Board of Supervisors and the Coastal Commission. The Coastal Commission staff consequently prepared comments and suggested changes it believed would be necessary to bring the Hearing Draft into legal conformance with the California Coastal Act. These comments were presented to the Board of Supervisors in written form on November 17, 1980, along with the draft of the LUP. Simultaneously, nearly 500 copies of the Hearing Draft were distributed by the Coastal Commission to interested persons, public agencies, public libraries and private organizations for public review. They were then able to compare the Hearing Draft with Coastal Commission staff's response to understand some of the possible inconsistencies of the LUP with the Coastal Act. To evaluate and consolidate its position on the Hearing Draft and associated maps, the Board of Supervisors appointed a CAC-Technical Advisory Committee (CAC-TAC) prior to the Planning Commission public hearings. This committee, comprised of two members and one alternate from each of the four coastal CACs, met with County and State coastal planning staff to reconsider material presented in the Hearing Draft of the LUP. On April 10, 1981, the Coastal Commission's staff submitted a document to the County that contained both staff comments and CAC comments regarding the Hearing Draft. This, plus the consultant's Hearing Draft constituted the Commission's prepared plan.

The Mendocino County Planning Commission began its LUP public hearings on June 15, 1981. A total of 52 public hearings were held in which 339 people participated and 1,929 comments were submitted. In May, 1982 the Hearing Draft was republished reflecting the changes made during the public hearing process with the Planning Commission. Additional changes, suggested by a subcommittee of the Planning Commission, County planning staff, and Coastal Commission staff, were shown as added underlined language. Lined-out language was suggested for deletion by the subcommittee. The Planning Commission began reviewing the new document on July 12, 1982. A final hearing was held on August 11, 1982, when the Planning Commission adopted its version of the County's LUP and associated land use maps. Prior to the Board of Supervisor's public hearings, Coastal Commission staff met with County staff and the Board to inform the County of the type and scope of Coastal Commission concerns that would be raised at future hearings. The Board of Supervisors requested that Coastal Commission staff, the County Planning staff, and County Counsel meet and confer on the Coastal Commission staff's concerns and develop an Addendum to the Planning Commission's recommended plan that would bring the plan closer to being certifiable. On November 15, 1982, the Coastal Commission staff provided the County with a comprehensive document of major concerns with the plan to enable the County to thoroughly understand the Coastal Commission staff's position. On December 31, 1982, a document was sent to the County containing two attachments: Attachment A summarized Coastal Commission staff's major concerns with various portions of the Coastal Element; Attachment B addressed specific concerns, upon which Coastal Commission staff and County staff were unable to reach agreement. The Mendocino County Board of Supervisors began its public hearings on the LUP Hearing Draft as adopted by the Planning Commission on January 13, 1983. The Board of Supervisors adopted an LUP on August 17, 1983, after three major public hearings and a total of 26 public meetings. On August 13, 1984, the County submitted the LUP to the Coastal Commission, which filed it on August 17, 1984.

All of the meetings and hearings held were noticed through articles in the local newspapers and through notification to interested parties using the standardized mailing list. The notices used and the minutes prepared are available at the Commission's district office in San Francisco and at the Mendocino County Department of Planning and Building Services.

On May 8, 1985, the Coastal Commission met in Ukiah to review the LUP submittal. Following public testimony, the Commission found substantial issue with the LUP and voted to deny its certification. Following the request of the Mendocino County Board of Supervisors, the Commission voted to continue the hearing on the Suggested Modification portion of its staff's recommendation for at least 90 days.

On May 14, 1985, the Board of Supervisors referred the Coastal Commission Summary Analysis & Suggested Modifications from the April 21, staff report to a special Subcommittee of the Board. The Subcommittee's responsibility was to consider the recommendations of the Commission staff and the testimony

received at a May 8, public hearing, and develop recommendations to the Board of Supervisors for modifications to the Land Use Plan in order to achieve consistency with the Coastal Act.

The Subcommittee prepared and distributed a report (dated June 13) to the public prior to the Board of Supervisors' first advertised public hearing on June eighteen. Subsequent public hearings were held on June 24 and 25 and July 2 and 3, where the public testimony was received and considered. The result of the Board's action is the report titled "Proposed Modifications in Response to April 21, 1985, Staff Report to the Coastal Commission, dated July 3, 1985."

In forwarding this material to the Commission, the County chose not to resubmit the entire land use plan, but instead proposed only to change the suggested modifications found in the April 24, 1985, staff report on this LUP. The material sent by the County included its pages of "clean-up language." Also transmitted by the County were proposed Land Use Map changes which reflect a reduction of approximately 1,400 potential new parcels. Additionally, new Highly Scenic Areas were added as well as areas where tree removal and/or thinning would be accomplished to enhance the public views of the coast. Several new accessways were added to increase public access to the shoreline.

On September 26 the Commission held a hearing in San Francisco, and following approximately seven hours of public testimony voted to approve Mendocino County's LUP and adopt, with several changes, the County's proposed modifications as "suggested modifications." The proposed findings which follow were prepared to explain and support that September 26, 1985, action of the Coastal Commission.

B. AREA DESCRIPTION

The County of Mendocino has a relatively long coastline of 130 miles. The area included within the coastal zone varies in width from 1,000 yards north of the Ten Mile River to 2,000 yards for much of the area south of Fort Bragg to Point Arena. On the south coast the boundary runs along the first coastal ridge, one to four miles inland. Exceptions to this general description are found at the major rivers where the boundary swings inland along environmentally sensitive areas.

Lying wholly or partly within the coastal zone are the communities of Westport, Fort Bragg, Caspar, Mendocino, Albion, Elk, Irish Beach, Manchester, Point Arena, Anchor Bay, and Gualala. Point Arena and Fort Bragg are incorporated cities which have separately prepared and certified local coastal programs. The historic town of Mendocino is an area recognized by the Commission as a special community containing unique natural and cultural resources. The physical characteristics exhibited by the town's architecture are the most visible and outward symbols of the qualities of Mendocino. The

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95311

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-3662 322-3660 322-5901 322-6441 322-6444

December 4, 1980

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

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

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COASTAL COMMISSION

December 4, 1980

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.

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.

December 4, 1980

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.

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.

December 4, 1980

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.

December 4, 1980.

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 land-holdings 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

Robert M. Stern
General Counsel

RMS:nc