



Buildout Reduction Program Citizens' Committee (BRPCC)

REGULAR MEETING
Tuesday, July 12, 2016 - 3:00 PM
2850 Burton Drive Cambria CA 93428

AGENDA

1. OPENING

- A. CALL TO ORDER
- B. ESTABLISH QUORUM
- C. CHAIRMAN'S REPORT

2. PUBLIC COMMENT

Members of the public may now address the Committee on any item of interest within the jurisdiction of the Committee but not on its agenda today. In compliance with the Brown Act, the Committee cannot discuss or act on items not on the agenda. Each speaker has up to three minutes. Speaker slips (available at the entry) should be submitted to the District Clerk.

3. REGULAR BUSINESS

- A. Consideration to Approve the Minutes from the Regular Meeting held on June 28, 2016
- B. Consideration to Ratify Additions to Subcommittees
- C. Discussion of Progress Regarding Historical Background of BRP
- D. Discussion of Progress Toward Identifying Undeveloped Lots
- E. Discussion on Progress of Identifying All Outstanding Active Service Commitments and Inactive Service Commitments
- F. Discussion of Financing Alternatives

4. FUTURE AGENDA ITEMS

5. ADJOURN



Buildout Reduction Program Citizens' Committee (BRPCC)

REGULAR MEETING
Tuesday, June 28, 2016 - 10:00 AM
2850 Burton Drive Cambria CA 93428

MINUTES

1. OPENING

A. CALL TO ORDER

Chairman Siegler called the meeting to order at 10:03 a.m.

B. ESTABLISH QUORUM

Committee Members Present:

Ted Siegler, Crosby Swartz, Mel McColloch, Mark Rochefort, Bob Sfarzo, Laura Swartz, Cindy Steidel

Committee Members Absent:

Allison Groves, Greg Hunter, Sue Robinson

Staff Present:

Haley Dodson, Confidential Administrative Assistant

Ex-Officio Members Present:

None

C. CHAIRMAN'S REPORT

Chairman Siegler announced that the CCSD Board of Directors voted to increase the size of the Committee to ten members. The former alternates are welcome to join the committee and the quorum will now be six members.

Chairman Siegler stated that Glenn Lajoie is working on the Environmental Impact Report and he would like to include an executive summary report from the Buildout Reduction Program. Chairman Siegler stated he will follow up with Glenn to see what he would like in the report, and he will draft and circulate the report to the Committee.

Chairman Siegler stated he will be attending a meeting with Committee Member Rochefort, and Annie Aguinina who works for the State of California, regarding what we are doing as a Buildout Reduction Committee. He's hoping the state can offer guidance on retiring properties.

2. PUBLIC COMMENT

Public Comment: None

3. REGULAR BUSINESS

A. Consideration to Approve the Minutes from the Regular Meeting held on June 14, 2016

Committee Member McColloch motioned to approve the minutes.

Committee Member Steidel seconded the motion.

Motion was approved: 7-Ayes, 0-Nos

B. Discussion of Progress Regarding Historical Background of BRP

Committee Member Steidel stated she met with Committee Member Groves to review the development of the background data for the Buildout Reduction Report. She handed out the Discussion of Progress in Formulating Background Section for the Buildout Reduction Report (attached). The report has points of discussion or areas in which there may be information that may mature and end up in the report.

C. Discussion of Progress Toward Identifying Undeveloped Lots

Committee Member McColloch stated he met with Committee Member Hunter, Airlin Singewald and other County staff to get information on developed and undeveloped lots. Committee Member Hunter is working on adding the information to a spreadsheet.

Committee Member McColloch said he is working with Mary Webb, the President of Green Space, on the number of lots Green Space owns.

Chairman Siegler stated he met with Committee Member Laura Swartz, Monique Madrid and Haley Dodson, regarding the difficulties of understanding the 2006 BRP report to the current data provided by the CCSD. The CCSD staff will be working on putting together documents to move forward. In order to reconcile to 2006, we need the source data.

Committee Member Crosby Swartz would like to address what are buildable lots vs. unbuildable lots.

Committee Member McColloch stated the County will recognize CCSD's fifty foot lot frontage, and he'd like to see the County not give variances for grading.

D. Discussion on Progress of Identifying All Outstanding Active Service Commitments and Inactive Service Commitments

Committee Member Rochefort stated to Chairman Siegler that in addition to finding the current number for active and inactive service commitments, the subcommittee needs to track the activity between the initial report and the current report.

E. Discussion Regarding Property Rights and Water Service

Committee Member Rochefort discussed property rights and water service. He suggested to appoint a subcommittee consisting of himself, Chairman Siegler and Committee Member Crosby Swartz. He would like to meet with President Gail Robinette, Director Greg Sanders, and the District Counsel regarding CCSD's EIR AD HOC Committee to make certain we are operating under the same assumptions as the legal obligations the district has.

Committee Member McColloch motioned to approve the subcommittee.

Motion was seconded by Committee Member Steidel.

Motion was approved: 7-Ayes, 0-Nos

F. Discussion of Financing Alternatives

Committee Member Laura Swartz asked if the County was going to cooperate with the BRP when they acquire new lots through the delinquency of taxes.

Chairman Siegler stated he talked to Bruce Gibson in May and they might be willing to retire lots acquired through tax forfeitures. .

Committee Member Steidel said it will be beneficial to define what are the requirements satisfied as a funding alternative. We have certain constraints that have to be considered; Prop 218 and Section 66. Chairman Siegler stated anything we propose has to be something that can be implemented. There are at least two dimensions that need to be considered; legality and acceptable by the community.

Chairman Siegler stated water rates can't be used for financing.

Chairman Siegler asked each Committee Member to brainstorm and bring their top three financing alternates to the next meeting.

G. Discussion Regarding Process for Resolving Conflict of Interest Questions

Chairman Siegler stated he received a call from the District Counsel's associate regarding discussing Conflict of Interest and the potential for individual liability. They stated it is not the proper for the community to be discussing or giving advice. If you have any questions, please contact the Fair Political Practices Commission. Chairman Siegler distributed the Fair Political Practices Commission pamphlet regarding Recognizing Conflicts of Interest (attached). Chairman Siegler stated if you are concerned about a Conflict of Interest, you can get a judgement from the FPPC over the phone, but it's an individual responsibility to do so.

4. FUTURE AGENDA ITEMS

Consensus was reached to hold the next meeting on Tuesday, July 12, at 3:00 p.m.

Chairman Siegler stated he would like to keep items A, B, C, D, and F on the next agenda.

5. ADJOURN

Committee Member Crosby Swartz motioned to adjourn the meeting at 12:03 p.m. Committee Member Rochefort seconded the motion.

Motion was approved: 7-Ayes, 0- Nos

Date: June 27, 2016

To: Build Out Reduction Committee
From: Cindy Steidel and Allison Groves, Background Sub Committee
Subject: Agenda Item 3 B – Discussion of Progress in Formulating
Background Section for BRP Report

Allison Groves and I met to review draft formats and information in development of the Background data for the Build Out Reduction Report.

The draft information developed to date is attached for reference. Areas of the narrative which are in *italic* are intended to be points of information or reference which may be incorporated as the BRP findings mature.

Feedback from committee members is welcome.

DRAFT

Cambria Build Out Reduction Program (BRP)

BACKGROUND

Purpose

Define why review/update is being performed – legal obligations, assessment of current infrastructure support capacities, emergence of priority considerations such as fire mitigation

What is out of alignment in the basis of assumptions due to maturity of original findings and recommendations (i.e., those items which cannot be implemented and unavailable funding mechanisms previously recommended)

Importance of plan/constituency benefit and quality of life.

Make it clear that this update represents the best data available at the time and that the plan should be reviewed and updated on a regular basis.

Alignment and Historic Basis for establishing the Buildout Reduction Plan

The build out reduction effort is in alignment with an earlier Coastal Commission recommendation made during a 2001 Periodic Review of the San Luis Obispo County Local Coastal Program. The CCSDs goal of not exceeding a total of 4650 existing and outstanding residential connections is also in alignment with the county's Environmental Impact Report (EIR) on the "Cambria and San Simeon Acres Community Plans of the North Coast Area Plan".

A primary purpose for reducing build out potential in Cambria is to maintain a balance between potential growth and the sustained availability of public services.

Water is a limited resource within Cambria, and the CCSD is planning to develop a desalination project to protect against future droughts, and to secure a reliable long-term water supply.

Recent Actions for Maintaining Water Resource Capability for the Existing Population

The CCSD Board of Directors declared a Stage 3 Water Shortage Emergency January 30, 2014 and authorized emergency contracting procedures to complete an Emergency Water Supply Project. An Emergency Coastal Development Permit (E-CDP) was obtained May 15, 2014, from the county of San Luis Obispo, to construct and operate an Emergency Brackish Water Supply Project. The project was begun May 20, 2014 and completed November 14, 2014. Testing and commissioning the completed facility began in early December, completing on January 20, 2015 when project operations began.

Assumptions of the 2005/06 Report Requiring Review

- CCSD Plan to develop a desalination project
 - Focus for a desalination project remains but has not progressed significantly since the 2005 BTP status/declarations and needs to reflect more recent status.
- Acquisition of specifically defined lots was determined to be a method to address the question of lot ownership where the lot was not on the Water Wait List.
 - Need to expand on the legal framework for addressing how inability to build would relate to potential loss of value for the lot owner
- Due to problematic implementation, or legal limitations (e.g. Proposition 218 and SLO County Government Code Sections 66000) potential revenue streams for lot acquisition need to be reevaluated. Lot acquisition funding was identified from several sources:
 - Additional fees for new water connections
 - Special water rate increases
 - Additional fees for remodel
 - Sale of some unallocated water connections that fall within the 4650 existing and future connections cap.
 - Local land trusts would sell three unallocated water connections a year of the projected 22 year life of the program and use proceeds to purchase and retire potential building sites.
 - ***A rationale for pursuing the acquisition/retirement of lots could be found under CCSDs authority to acquire real property in connection with its park and recreation activities (perhaps by donation and tax write off by lot owners).***
 - ***An alternative position could be that some mitigation measures, for acquiring properties to reduce growth, should reside with another agency that has land use authority to control growth. Potential resource access through the county.***
- The Monterey pine is defined as a significant resource
 - There is insufficient consideration for fire mitigation needs and requirements in the initial BRP recommendations. Recent drought conditions have significantly increased the need to weight this issue more heavily in the BRP review.
 - ***The CCSD is authorized to designate fire risk zones with the CCSD (Government Code Section 51175). The area is to be based on recommendations from State Director of Forestry and Fire Protection. Land within a very high fire severity zone is subject to certain development and maintenance constraints. CCSD has a copy of the states map designating very high fire hazard severity zones with the CCSD. This map could be used by the CCSD to show area of land within the CCSD that contain such development constraints. In turn, those potential identified development constraints may need to be considered by the BRP in its recommendations for revenue streams for lot retirement.***
- The timeline used to accomplish the plan for retirement/merger of identified lots was based on the SLO county growth rate for Cambria (1%) resulting in a 22 year horizon (as of 2005).

- Due to unprecedented drought conditions in the county as a whole, and a level 3 water emergency status imposed in Cambria, the imposed growth rate has been 0% since 2001. This has left the basis of assumptions out of alignment with remaining time horizon.
- The lot merger program has been very successful lots since 2005 and needs to be reanalyzed in the overall lot status.

CEQA Requirements/Implications

The Buildout Reduction Program is intended to address potential growth-inducing impacts of the CCSD's Water Master Plan and projects tiered off the original Water Master Plan Environmental Impact Report (EIR). Under the California Environmental Quality Act (CEQA), potential environmental impacts (including growth impacts) are classified as being either non-mitigatable (Class 1 impacts) or mitigatable (all other impacts). While a Buildout Reduction program could mitigate the potential effects of a growth-inducing water project, it is beyond the scope of this committee to determine whether the program would sufficiently mitigate any specific impacts of future projects. It will be up to the CCSD Board of Directors to determine whether growth impacts of any future projects are non-mitigatable or mitigatable. It will also be up to the Board to determine whether the Buildout Reduction Program creates sufficient mitigation of any impacts to satisfy the requirements of CEQA and the CEQA guidelines

SUMMARY FINDINGS

Overview of findings and recommendations of the committee

TOPICS THAT NEED TO BE DISCUSSED

- ***How does the implementation of the BRP affect the constituency?***
 - ***Established Residences (Lots Built Upon)***
 - ***Business/Commerce Entities***
 - ***Lot owners on Water Wait List***
 - ***Lot owners Not on Water Wait List***
- ***Impact of Monterey Pine/Forestation/fire mitigation***
 - ***State wide and county wide issue***
 - ***What are current requirements for lot owners in all categories of ownership***

Recognizing Conflicts of Interest

A Guide to the Conflict of Interest Rules of the Political Reform Act

Fair Political Practices Commission

August 2015



This guide is provided by the Fair Political Practices Commission (FPPC) as a general overview of a public official's obligations under the conflict of interest rules provided for in the Political Reform Act (the Act).¹ It is intended to help the user spot situations and issues that may give rise to a conflict. The guide will provide answers to some of the more common questions:

- What is a conflict of interest under the Act?
- Who must be vigilant about conflicts of interest?
- What precautions can be taken to prevent conflicts?
- A conflict of interest exists, what now?
- Where to go for help?

A word of caution - officials should not rely solely on this guide to ensure compliance with the Act, but should also consult the statutes of the Act, the FPPC's regulations, and if necessary, seek legal advice.

What is a conflict of interest under the Act?

In 1974, the voters enacted the Political Reform Act.² In adopting the Act, the voters recognized that conflicts of interest in governmental decision-making by public officials posed a significant danger.

“The people find and declare ...

- a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;
- b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them....”³

Under the Act, a public official will have a statutory conflict of interest with regard to a particular government decision if it is foreseeable that the outcome of the decision will have a financial impact on the official's personal finances or other financial interests.⁴ In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. In fact, preventing conflicts of interest was of such vital importance to the voters that the Act not only prohibits actual bias in decision-making but also “seeks to forestall ... the appearance of possible improprieties.”⁵

Who must be vigilant about conflicts of interest?

Public Officials: The reach of the Act's conflict of interest rules is commonly misunderstood or understated. The Act applies to all "public officials," which is defined as "every member, officer, employee or consultant of a state or local government agency."⁶

It is universally recognized that certain elected public officials, such as city councilmembers, city managers and city attorneys, must refrain from decision-making where a conflict of interest exists. These persons hold high-level positions of trust in government. However, the Act's conflict of interest prohibition reaches much further than high-level state and local officials. The Act's conflict of interest disclosure and disqualification rules apply to thousands of local and state public employees and officials working throughout California.

The Public: The Act relies on individual citizens to monitor the decision-making of their elected and appointed representatives to identify whether they have a conflict of interest with respect to a specific decision. Much of the enforcement of the Act's conflict of interest provisions is based on citizen complaints.⁷

What precautions can be taken to prevent conflicts of interest?

In order to prevent a conflict of interest, a public official should: 1) identify and fully disclose the financial interests that may cause a conflict; 2) understand the different types of financial interests that may be the basis for a conflict; and 3) consider whether the decision's effect on the official's financial interest is reasonably foreseeable and material. Each step is discussed in greater detail below.

1. Identify and fully disclose the financial interests that may cause a conflict.

Public Officials: The most important thing an official can do to comply with this law is to recognize the types of interests from which a conflict of interest can arise. By learning to recognize these interests, an official will be able to spot potential problems and seek help from the agency's legal counsel or from the FPPC.

In fact, officials can take steps to protect themselves and the public from conflict of interest decisions well in advance of making a specific governmental decision. The Act requires that public officials annually disclose their financial interests on a Form 700 (Statement of Economic Interests). This is a requirement because the voters who enacted the law recognized that an important purpose of the Act was to ensure adequate disclosure:

“Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.”⁸

The financial interests disclosed include many of the interests that form the basis for a conflict and require disqualification under the Act. No one has a conflict of interest under the Act on general principles or because of personal bias regarding a person or subject – conflicts under the Act are based on financial interests. By thoroughly completing the Form 700, the official is on notice of the type of financial interests he or she holds that may cause a conflict of interest. If the official has no interests that governmental decisions can financially affect, the official will not have a conflict of interest.

The Public: Requiring officials to publicly disclose their financial interests allows the general public to monitor an official’s conduct. In other words, any individual citizen can obtain a copy of the Form 700 filed by their local or state official to determine whether the official has a conflict of interest with respect to a specific decision. This serves as an important enforcement mechanism for the Act’s disqualification requirements.

2. Understand the different types of financial interests that may be the basis for a conflict.

There are five types of interests⁹ that may result in disqualification:

- ***Business Investment, Employment or Management.*** An official has a financial interest in a business entity in which the official, or the official’s spouse, registered domestic partner, or dependent children or an agent has invested \$2,000 or more.¹⁰ An official also has a financial interest in a business entity for which the official is a director, officer, partner, trustee, employee, or holds any position of management.
- ***Real Property.*** An official has a financial interest in real property in which the official, or the official’s spouse, registered domestic partner, or dependent children, or an agent has invested \$2,000 or more, and also in certain leasehold interests of terms of more than a month (excluding a month-to-month lease and leases for terms of less than a month).¹¹
- ***Sources of Income.*** An official has a financial interest in anyone, whether an individual or an organization, from whom the official has received (or from whom the official has been promised) \$500 or more in income within 12 months prior to the decision. A “source of income” includes a community property interest in the spouse’s or registered domestic partner’s income. Therefore, a person from

whom the official's spouse or registered domestic partner receives income of \$1,000 or more, such that the official's community property share is \$500 or more, may also be a source of a conflict of interest.¹²

In addition, if the spouse, registered domestic partner or dependent children own 10 percent or more of a business, the official is considered to be receiving "pass-through income" from the business's clients. In other words, under such circumstances, the business's clients may be considered sources of income to the official as well.

- **Gifts.** An official has a financial interest in anyone, whether an individual or an organization, who has given gifts to the official that total \$460 or more¹³ within 12 months prior to the decision.
- **Personal Finances.** An official has a financial interest in decisions that affect the official's personal expenses, income, assets, or liabilities, as well as those of the official's immediate family. This is known as the "personal financial effects" rule.

Quick Tip:

Not all of the financial interests that may cause a conflict of interest are disclosed on a Form 700. A good example is an official's home. It is common for financial effects on an official's home to trigger a conflict of interest. Officials are not, however, required to disclose their home on the Form 700.¹

3. Consider whether the decision's effect on the official's financial interest is reasonably foreseeable and material.

The next steps all focus on the specific governmental decision in question. At the heart of deciding whether an official has a conflict of interest in a specific decision is determining whether an effect on the financial interest is reasonably foreseeable (might realistically happen or is too remote a possibility) and is material (financially important enough). Determining whether a decision's effects are foreseeable and material will depend on the nature of the specific decision and the relationship of the official's interest to the effects of the governmental decisions.

IS IT REASONABLY FORESEEABLE?¹⁴

Is it a realistic possibility that the decision will actually affect the official's financial interest or is it too remote or theoretical? Two alternative tests answer this question depending on whether an interest is explicitly involved in a decision.

<p><u>An Interest is Explicitly Involved in a Decision If:</u></p> <ol style="list-style-type: none"> 1) The interest is a named party in or the subject of a governmental decision, or 2) The decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest, or 3) The decision affects the real property of the official as described in Regulation 18702.2(a)(1)-(6). 	<p style="text-align: center;"><u>Then</u></p> <p>It is reasonably foreseeable that the decision will have a material financial effect on the interest.</p>
<p><u>If Not Explicitly Involved in the Decision</u></p> <p>All other decisions, other than those above, are considered not explicitly involved in the decision.</p>	<p style="text-align: center;"><u>Then</u></p> <p>If an interest is not explicitly involved in a decision, the financial effect on the interest is reasonably foreseeable only if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. However, if the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.</p>

Quick Tip:

For purposes of being vigilant to avoid conflict of interest decisions, keep the general rule in mind – if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.

IS IT MATERIAL?

The FPPC has adopted various rules (general and specific) for deciding what kinds of financial effects are important enough to trigger a conflict of interest. Generally, for each of the five interests set forth above, a separate materiality standard exists. The following charts reflect the materiality standards that apply to each type of interest.

Interests in Business Entities¹⁵

(Including investments in, employment or positions with, or income from business entities)

If Business Explicitly Involved = Financial Effect Assumed to be Material	⊗ Not Assumed Material if Business Not Explicitly Involved
<p>A material financial effect is assumed if the business:</p> <ol style="list-style-type: none">1) Initiates the proceeding by filing an application, claim, appeal, or request for other government action;2) Offers to make a sale of a service or a product to the official's agency;3) Bids on or enters into a written contract with the official's agency;4) Is the named manufacturer in a purchase order of any product purchased by the official's agency or the sales provider of any products to the official's agency that aggregates to \$1,000 or more in any 12-month period;5) Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement that the official's agency is authorized to issue;6) Is the subject of any inspection, action, or proceeding subject to the regulatory authority of the official's agency; or7) Is otherwise subject to an action the official's agency takes, the effect of which is directed solely at the business entity in which the official has an interest. <p>NOTE: In all other circumstances, the business is considered not explicitly involved in the decision and the financial effect is not assumed to be material.</p>	<p>In all other cases, a financial effect is material <i>if</i> a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the entity's publicly traded stock, or the value of a privately-held business entity.</p>

Interests in Real Property¹⁶

NOTE: There are different materiality standards depending on whether it is an ownership or leasehold interest.

Ownership Interests in Real Property

<p>A material financial effect is assumed if...</p>	<p>The decision:</p> <ol style="list-style-type: none">1) Involves adopting or amending a general or specific plan, that includes the official's property;2) Determines the property's zoning or rezoning, annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries (other than a zoning decision applicable to all properties designated in that category);3) Imposes, repeals, or modifies any taxes, fees, or assessments that apply to the property;4) Authorizes the sale, purchase, or lease of the property;5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on it; <p>NOTE: For a financial effect resulting from a governmental decision regarding permits or licenses issued to the official's business entity when operating on the official's real property, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.</p> <ol style="list-style-type: none">6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or the official will otherwise receive a disproportionate benefit or detriment by the decision.
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<p>Unless it is nominal, inconsequential or insignificant, a material financial effect is also assumed if...</p>	<p>The decision:</p> <ol style="list-style-type: none"> 1) Changes the development potential of the real property; 2) Changes the income-producing potential of the real property; <p>NOTE: If the real property contains a business entity, including rental property, and the nature of the business entity remains unchanged, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.</p> <ol style="list-style-type: none"> 3) Changes the highest and best use of the parcel of real property in which the official has a financial interest; 4) Changes the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest; 5) Affects real property value located within 500 feet of the official's property line. However, if the real property is commercial property and contains a business entity, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead;¹⁷ 6) Causes a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.
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Leasehold Interests in Real Property¹⁸

<p>A material financial effect is assumed if...</p>	<p>The decision:</p> <ol style="list-style-type: none"> 1) Changes the termination date of the lease; 2) Increases or decreases the potential rental value of the property; 3) Increases or decreases the rental value of the property, and official has right to sublease it; 4) Changes the official's actual or legally allowable use of the real property; or 5) Impacts the official's use and enjoyment of the real property.
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Sources of Income

NOTE: There are different standards depending if income is for goods and services or the sale of personal or real property.

Income Received for Goods and Services Provided in the Ordinary Course of Business, including a Salary¹⁹

A material financial effect is assumed if...	The source of income is: <ol style="list-style-type: none">1) A claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;2) An individual and the individual will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to those financial interests in Regulation 18702.1 or 18702.2, respectively;3) A nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a real property interest in Regulation 18702.2; or4) A business entity and the business will be financially affected under the standards applied to a business interest in Regulation 18702.1.
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Income from the Sale of Personal or Real Property of the Official or the Official's Spouse if Community Property²⁰

A material financial effect is assumed if...	The official knows or has reason to know that the source of income: <ol style="list-style-type: none">1) Is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;2) Has an interest in a business entity that will be financially affected under the standards applied to a financial interest in Regulation 18702.1; or3) Has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2.
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Sources of Gifts²¹

(Including Gifts from Individuals, Nonprofits, and Business Entities)

A material financial effect can be assumed if...	The source is: <ol style="list-style-type: none">1) A claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;2) An individual who will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to those interests in Regulation 18702.1 or 18702.2, respectively;3) An nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.5; or4) A business entity will be financially affected under the standards in Regulation 18702.1.
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Interests in Personal Finances²²

(Including the Personal Finances of Immediate Family Members)

The financial effect is material if...	The official or the official's immediate family member will receive a measurable financial benefit or loss from the decision unless it is nominal, inconsequential, or insignificant.
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Quick Tip:

There are many rules and many exceptions (so numerous we can't discuss them all here). At a big picture level, remember:

- In most cases, if the financial interest is directly or explicitly involved in the decision, the materiality standard is met. This is because an interest that is directly or explicitly involved in a governmental decision presents a more obvious conflict.
- On the other hand, if the financial interest is not directly or explicitly involved, the materiality standard is generally based on a reasonable person standard.

4. Consider whether an exception applies.

Once an official has determined that he or she has a conflict of interest in a particular decision, the official can examine if an exception permits the official's participation despite the conflict. Not all conflicts of interest prevent the official from lawfully taking part in the government decision.

- *The Public Generally Exception:*²³ Even if an official otherwise has a conflict of interest, the official is not disqualified from the participating in the decision if the "public generally" exception applies. This public generally exception applies when the financial effect on a public official or the official's interests is indistinguishable from its effect on the public generally.

NOTE: The "public generally" exception must be considered with care. An official may not just assume that it applies. There are rules for identifying the specific segments of the general population with which the official must compare the official's financial interest, and specific rules for deciding whether the financial impact will uniquely affect the public official as compared to the public generally. Again, officials should contact their agency counsel or the FPPC concerning these specific rules.

- *Legally Required to Participate:*²⁴ Even if an official has a disqualifying conflict of interest, is the participation legally required? In certain rare circumstances, an official may be called upon to take part in a decision despite the fact that the official has a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which the government agency would be paralyzed or unable to act. The FPPC or the agency's counsel must generally make this determination and will instruct the official on how to proceed.

A conflict of interest exists, what now?

Once an official determines that they have a conflict of interest and that an exception does not apply, the official must disqualify from all of the following:²⁵

- *Making the governmental decision.* A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

- *Participating in making the governmental decision.* A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- *Influencing the governmental decision.* A public official uses his or her official position to influence a governmental decision if he or she: contacts or appears before (1) any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (2) any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

Certain officials (including city council members, planning commissioners, and members of the boards of supervisors) have a mandated manner in which they must disqualify from a decision.²⁶ They must publicly identify in detail the interest that creates the conflict, step down from the dais, and must then leave the room. The official must identify the interest following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

If the decision is to take place during a closed session, the identification of the financial interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The financial interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any nonpublic information regarding the decision.

There are limited exceptions that allow a public official to participate even when a conflict is present, such as participating as a member of the general public, speaking to the press, or discussing one's own governmental employment. The exceptions are limited and fact-specific, and may require advice from the agency's counsel or the FPPC.

Final thoughts

Generally speaking, here are the keys for public officials to meet their obligations under the Act's conflict of interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, that result from the financial interests of the decision-makers.
- Learn to spot potential trouble early. Understand which financial interests could give rise to a conflict of interest.

- Understand the “big picture” of the rules. For example, know why the rules distinguish between explicitly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether an official has a disqualifying conflict of interest depends just as much - if not more - on the facts of the particular situation as it does on the law.
- Don’t try to memorize all of the specific conflict of interest rules. The rules are detailed, and the penalties for violating them are significant. Rather, look the rules up or ask about the particular rules applicable to a given case.
- Ask for advice. It is available from the agency’s legal counsel and from the FPPC.

Where to go for help?

Email Advice (informal)	<u>advice@fppc.ca.gov</u>
Written Advice (formal and informal)	Fair Political Practices Commission 428 J Street, Suite 620 Sacramento, CA 95814

¹ The Political Reform Act is contained in Government Code §§ 81000 - 91014, and all statutory references are to this code. The FPPC regulations are contained in §§ 18110 - 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Enacted through Proposition 9 at the June 4, 1974 Primary Election.

³ § 81001.

⁴ § 87100.

⁵ *Witt v. Morrow* (1977) 70 Cal. App. 3d 817 at 822–823: “Morrow asserts it is unconstitutional to automatically disqualify a public official from participating in decisions which may affect the investments of an entity which pays him However, the whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed.”

⁶ § 82048.

⁷ § 83115.

⁸ § 81002(c).

⁹ § 87103.

¹⁰ Under § 87103, an official has an "indirect interest" in real property owned by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater.

¹¹ § 82033.

¹² § 82030.

¹³ The Commission adjusts the gift threshold on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index.

¹⁴ Regulation 18701.

¹⁵ Regulation 18702.1

¹⁶ Regulation 18702.2(a).

¹⁷ Particular facts can rebut this presumption depending on advice given by the FPPC.

¹⁸ Regulation 18702.2(b).

¹⁹ Regulation 18702.3(a).

²⁰ Regulation 18702.3(b).

²¹ Regulation 18702.4.

²² Regulation 18702.5.

²³ Regulation 18703.

²⁴ § 87101 and Regulation 18705.

²⁵ Regulation 18704.

²⁶ § 87105 and Regulation 18707 applicable to persons holding positions specified in § 87200.