ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

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November 10, 2008
Agenda Item 4.3

Memorandum

DATE: October 29, 2008

TO: Administration and Legislation Committee

FROM: Dick Swanson, Director of Finance and Administration

SUBJECT: Adoption of Conflict of Interest Code

Action Requested

It is recommended that the Board adopt the attached CMA Conflict of Interest Code.

Discussion

The California Political Reform Act ("Act") requires every local governmental agency to review its conflict of interest code biennially to determine if it is accurate or if it should be amended. The CMA's Conflict of Interest Code ("Code") has been reviewed by CMA staff and legal counsel to determine if any changes are required.

Based on this review, we have determined that only minor changes were required to ensure its consistency with the disclosure categories of the Act. For example, the Code was revised to specifically include public officials serving as a Committee alternates, even if they are not members of the CMA Board, within the Code's purview.

After the Board adopts the Code, it will then go to the County Board of Supervisors for final approval. The revised Code will become effective upon approval by the County.

CONFLICT OF INTEREST CODE
OF ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
ORDINANCE #2 REVISED DECEMBER 11, 2008

SECTION 1. Purpose. Pursuant to the provisions of Government Code Section 87300 et. seq. the Alameda County Congestion Management Agency ("CMA") hereby adopts the following Conflict of Interest Code ("Code"). Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974. The provisions of this Code are made pursuant to and in support of Government Code Section 87100 and other laws pertaining to conflicts of interest. Except as otherwise indicated, the definitions contained in said Act and regulations adopted by the Fair Political Practices Commission ("FPPC") pursuant thereto, including California Code of Regulations Title 2, Division 6, Section 18370, are incorporated herein and this Code shall be interpreted in a manner consistent therewith.

SECTION 2. Designated Positions. The positions listed on Appendix "A" are designated positions. Officers, employees, members and consultants holding those positions are designated employees and are deemed to make, or participate in the making of, decisions which may foreseeably have a material effect on a financial interest of the designated employee.

"CMA BOARD member" shall include any Alternate Member who serves on the CMA Board or any standing Committee thereof.

SECTION 3. Statements of Economic Interests. Each designated employee shall file statements of economic interests disclosing that employee's business positions, income, investments, and interest in real property that are reportable pursuant to this Code.

SECTION 4. Reportable Financial Interests. The following financial interests are reportable:

(a) An interest in real property that is owned by the designated employee and which is located within, or within two (2) miles of, the boundaries of Alameda County or which is located within two (2) miles of any land owned by or used by the CMA. Such financial interests are reportable only if their fair market value equals or exceeds Two Thousand Dollars ($2,000.00). This information need not be provided with respect to an interest in real property which is used principally as the residence of the designated employee. A designated employee's interest includes any interest owned by the spouse or dependent children of the designated employee, by an agent on behalf of the designated employee, or by a business entity or trust in which the designated employee, the designated employee's agents, spouse, and dependent children own in aggregate a direct, indirect or beneficial interest of ten percent (10%) or greater.

(b) an investment whose fair market value equals or exceeds Two Thousand Dollars ($2,000.00) and which consists of a financial interest in or security issued by a business entity (which term shall include any organization or enterprise operated for profit) that:

(i) has an interest in real property in Alameda County, is doing business or plans to do business in Alameda County, or has done business in Alameda County at any time within the two (2) years prior to the filling of the statement, and

(ii) is a business in the category described in Exhibit "A".

An investment of a designated employee includes a pro rate share of investments of any business entity, mutual fund or trust in which the designated employee, his or her immediate family, an agent on behalf of a designated employee, or any business controlled by the designated employee owns a ten percent (10%) interest or greater. A business controlled by a designated employee it the designated employee, his or her agents, spouse or dependent children hold more than 50% of the ownership interest in the business.

(c) All "income", as that term is defined in Government Code Section 82030.

"Income" means a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, and proceeds from any sale, gift, or loan. Forgiveness or payment of indebtedness received by the designated employee, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. "Income" also includes a pro rate share of any income of any business entity or trust in which the designated employee or his or her spouse owns directly, indirectly or beneficially a ten percent (10%) interest or greater, Income, other than a gift, does not include income received from any source outside the CMA's jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two (2) years prior to the time any statement is required to be filed under this Code. "Gift" shall include any payment received by a designated employee for whom consideration of equal or greater value was not given, including payment for travel and entertainment. "Gift" shall not include informational material, payments from the designated employee's relatives, devises and inheritances, campaign contributions reportable under this Code, a personalized trophy or plaque valued at less than Two Hundred Fifty Dollars ($250.00), or any payment that, within thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(d) Business positions in any business entity that has an interest in real property in Alameda County, or is doing business or plans to do business in Alameda County, or has some business in Alameda County at any time within the two (2) years prior to the filing of the statement.

SECTION 5. Place and Time of Filing.

(a) All designated employees required to submit a statement of financial interest shall file the original with the Administrative Manager. The Executive Director and CMA Board Members shall submit one original to the Administrative Manager, who shall retain the original and forward a copy to the Clerk of the Alameda County Board of Supervisors which shall be the filing officer. The statements shall be retained for a period of seven (7) years.

(b) A designated employee employed on the effective date of this code, required to submit a statement of financial interest who has not previously done so shall submit an initial statement disclosing all reportable investments and interests in real property, and

business positions, within thirty (30) days after the effective date of this Code and income received during the 12 months prior to the effective date of this Code.

(c) All designated employees shall file Assuming Office Statements within thirty (30) days after assuming the designated position. Assuming Office Statements shall disclose any reportable investments, interest in real property and business positions held on the date of assuming office, and income received during the twelve (12) months prior to the date of assuming office.

(d) Annual statements shall be filed by all designated employees on or before May 1st of each year. Such statements shall cover the period of the preceding calendar year and shall include reportable income, investments, business positions and interests in real property received, made and held during said preceding calendar year, whether or not they are still held at the time of filing.

(e) All designated employees shall file Leaving Office Statements within thirty (30) days after leaving office. Leaving Office Statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(f) A designated employee who is required to file a statement of financial interest with any other agency which is within the CMA's territorial jurisdiction may comply with the provisions of this Code by filing a duplicate copy of the statement filed with the other agency in lieu of an entirely separate document, provided the scope of the statement filed with the other agency is broad enough to cover the items of financial interest that are reportable under this Code. In the event the statement previously filed with the other agency is less inclusive than the statement required by this Code, the designated employee may file with the Administrative Manager a supplemental statement with a copy of the statement filed with the other agency. The duplicate copy or supplemental statement shall be signed and verified by the designated employee as if it were an original.

SECTION 6. Contents of Disclosure Statements. Disclosure statements shall be made on forms supplied by the Administrative Manager, and shall contain the following information:

(a) Contents of Investments and Real Property Reports: When an investment or an interest in real property is required to be reported, the statement shall contain:

(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; and

(3) The address or other precise location of the real property; and

(4) A statement whether the fair market value of the Investment, or interest in real property, exceeds Two Thousand Dollars ($2,000.00), exceeds Ten Thousand Dollars ($10,000.00), exceeds One Hundred Thousand Dollars ($100,000.00), or exceeds One Million Dollars ($1,000,000).

(b) Contents of Personal Income Reports: When personal income is required to be reported, the statement shall contain:

(1) The name and address of each source of income aggregating Five Hundred Dollars ($500.00) or more in value, or Fifty Dollars ($50.00) 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 greater than Five Hundred Dollars ($500.00), greater than One Thousand Dollars ($1,000.00), greater than Ten Thousand Dollars ($10,000.00), or greater than One Hundred Thousand Dollars ($100,000);

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

(4) In the case of a gift, the name, and business activity of the donor and any intermediary through which the gift was made, the amount or value of the gift, a description of the gift, and the date on which the gift was received; and

(5) In the case of a loan, the names and address of each source: whether the highest amount owned to each source, greater than Five Hundred Dollars ($500.00), greater than One Thousand Dollars ($1,000.00), greater than Ten Thousand Dollars ($10,000.00), or greater than One Hundred Thousand Dollars ($100,000); the annual interest rate; and the security, if any, given for each loan.

(c) Contents of Business Entity Income Reports. When income of a business entity is required to be reported, the statement shall contain:

(1) The name, address, and general description of the business activity of the business entity in which the designated employee has a Reportable investment or interest;

(2) The name of every person from whom the business entity received payments if the designated employee's pro rata share of gross receipts from such person was equal to or greater than Ten Thousand Dollars ($10,000.00) during a calendar year.

(d) Details Regarding Business Positions. When business positions are required to be reported, a designated employees shall list the name 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, the business activity in which the business entity is engaged and shall specify the designated employee'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 which was required to be disclosed, and which 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 7. Disqualification. No designated employee may make, participate in the making, or in any way use or attempt to use his or her position in the CMA to influence the

making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any reportable interest of that employee.

SECTION 8. Manner of Disqualification. Any designated employee who is required to disqualify himself or herself shall notify the Executive Directive of the CMA or the Chairperson of the CMA Board in writing of the reason for the disqualification. A copy of this notice shall be filed with the Office Manager. Upon receipt of a designated employee's disqualification statement, the Executive Director shall immediately reassign the responsibly for the matter to another designated employee of the office. In the case of disqualification by a Member of the CMA, that Member shall not participate in any way in the matter before the CMA or any committee of the CMA.

SECTION 9. No Disqualification Required if Participation is Necessary. A designated employee may make or participate in the making of a decision when he or she has a financial interest which would otherwise require disqualification if his or her participation is legally required for the decision to be made as defined in California Code of Regulations Title 2, Division 6, Section 18701. The fact that the vote of a designated employee is needed to break a tie does not make his or her participation legally required for the purposes of this section.

SECTION 10. Campaign Contribution Disclosure. The Levine Act, Government Code Section 84300 et seq., prohibits Board Members of the CMA from accepting, soliciting, or directing contributions (as defined in Government Code 82015) of more than Two Hundred Fifty Dollars ($250.00) from any party who has a financial interest in any proceeding involving a license, permit, or other entitlement for use that is pending before the CMA and for three (3) months following the date a final decision is rendered in the proceeding. A party has a financial effect, distinguishable from its effect on the public generally, on the party, a member of the party's immediate family, or on income, investments, business positions or interest in real property that are described in Section 4 of this Code. For purposes of this Section, "contribution", shall mean a political contribution to a person who is running for or serving as Mayor or City Council Member, member of the Board of Supervisors, Transit Board Member, or any other elective office.

(a) Participants in Proceedings Pending Before the CMA. In the event the CMA staff and/or independent members of a screening committee (which does not include Members of the CMA) evaluates and screens proposal submitted in response to a Request For Proposal or Qualifications and compiles a short list of firms to be considered by the CMA, only the proposals that the staff submits to CMA Board Members for consideration shall be considered a part of a proceeding pending before the CMA. Only persons or entities on the short list will be considered involved in a proceeding before the CMA or any committee of the CMA.

(b) Notice to CMA Board Members. To facilitate compliance with the Levine Act, the CMA staff shall include as part of the CMA Board Member's agenda packets for Board Meetings and committee meeting information describer in i) and ii) of this subsection regarding each application for a license, permit, or other entitlement for use that will be considered by the Board or such committee. "License, permit, or other entitlement for use" shall include all business, professional, trade and land use licenses and permits and all other

entitlements for use, including all entitlements for land use, all contracts for goods or services (other than competitively bid, or labor, or personal employment contracts), and all franchises.

(i) The name of the persons or entities that submitted the application for license, permit or other entitlement for use ("applicant"). The term "applicant" shall include any owner, manager or employee, who acts as an agent of the applicant with respect to the application; and

(ii) To the extent known by staff, the name of each person who actively supports or opposes a decision in the proceeding before the CMA involving a license, permit, or other entitlement for use and who has a financial interest in the decision. Such persons are referred to herein as "participants" in a decision. The term participant" shall include any owner, Lobbying CMA Board Members or staff by direct communication (either in person or in writing), testifying in person before the CMA, or otherwise acting to influence CMA Board Members shall constitute active support of or opposition to a decision pending before the CMA.

In the event the CMA staff and/or independent committee complies a short list of firms, the Proposal Data Form will contain information on only those firms that comprise the short list.

(c) Notice to Applicants and Participants. As part of any Request For Proposal or Qualification, or any other solicitation process, the CMA staff shall provide all applicants and participants a statement that contains the information described in i) and ii) of subsection c). When a close corporation, as defined in Corporations Code Section 158, is an applicant or participant, the majority shareholder is subject to the Levine Act's disclosure and prohibition requirements. Generally, a close corporation is a corporation whose issued shares are owned by not more than ten (10) persons.

(i) All applicants and participants, and their agents, shall notify the CMA, either in writing prior to a proceeding before the CMA involving a license, permit, or other entitlement for use or orally during said proceeding, of any contribution of more than Two Hundred Fifty Dollars ($250.00) made within the preceding twelve (12) months by the applicant or participant, or his or her agent, to any CMA Board Member.

(ii) Applicants and participants, and their agents, shall not make contributions of more than Two Hundred Fifty Dollars ($250.00) to any CMA Board Member during a proceeding involving a license, permit, or other entitlement for use pending before the CMA and for three (3) months following the date a final decision is rendered by the CMA in the proceeding.

(d) Limitations on Receiving Contributions. While a proceeding involving a license, permit, or other entitlement for use is pending before the CMA and for three (3) months following the date a final decision is rendered in the proceeding, CMA Board Members shall not accept, solicit, or direct a contribution of more than Two Hundred Fifty Dollars ($250.00) from any applicant or participant who has a financial interest in the decision. This prohibition shall apply regardless of whether the CMA Board Member accepts, solicits, or directs the contribution for himself, or on behalf of any other CMA Board Member, or on behalf of any candidate for office or on behalf of any committee.

(e) **Disclosure of Conflict.** Before the CMA renders a decision in a proceeding involving a license, permit, or other entitlement for use, each CMA Board Member shall disclose orally at the time of the proceeding, or in a writing delivered to the Administrative Manager at any time prior to the proceeding, any contributions of Two Hundred Fifty Dollars ($250.00) or more that the Member has received within the preceding twelve (12) months from any applicant or participant involved in the proceeding before the CMA.

(f) **Disqualification from Participating in a Proceeding.** No CMA Board Member shall make participate in making, or in any way attempt to use his or her position in the CMA to influence a decision in a proceeding pending before the CMA or committee of the CMA involving a license, permit or other entitlement for use if the CMA Board Member has received a contribution of more than Two Hundred Fifty Dollars ($250.00) within the preceding twelve (12) months from an applicant involved in the proceeding before the CMA or a participant who has a financial interest in the decision.

A CMA Board Member who received a contribution which would otherwise require disqualification may participate in the proceeding if he or she returns the contribution within thirty (30) days from the time the Member knows, or should have known, about both the making of the contribution and the applicant or participant's participation in the proceeding involving the license, permit, or other entitlement for use.

SECTION 11. Violations. This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act of 1974, Government Code Sections 81000-91014. In addition, if a court determines that a violation of the disqualification provisions of this Code has occurred and that the official action might not other wise have been taken or approved, the decision in relation to which a violation has occurred may be set aside as void pursuant to Government Code Section 91003.

SECTION 12. Effective Date. The effective date of the Conflict of Interest Code and the Appendix was October 10, 1991. The initial disclosure statements filed under this Code were filed by the first working day following October 10, 1991. The Effective Date of this Conflict of Interest Code as amended hereby shall be the date that this Code is approved by the Board of Supervisors as the code review body. The disclosure statements required to be filed under this Code as amended are due on April 1, 2009 for all designated employees.

ADOPTED by the Alameda County Congestion Management Agency at a meeting held on Thursday, September 25, 2008 in Oakland, California, by the following vote:

AYES: NOES: ABSTAINED: ABSENT:

SIGNED:

_____

Mark Green, Chairperson

ATTEST:

_____

Gladys V. Parmelee Board Secretary

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APPENDIX A

DESIGNATED EMPLOYEES

The following positions entail the making or participating in the making of decisions which may foreseeably have a material effect on financial interests.

CMA Board Member
Executive Director
Chief Deputy Director
Director of Finance and Administration
Contracts Administrator
Manager of Programming
Manager of Planning
Manager of I-580 Corridor
Manager of Intelligent Transportation Programs
General Counsel
Consultant*

*Consultants, as defined in 2 California Code of Regulations 18700, shall be included in the list of designated employees and shall disclose pursuant to the broadcast disclosure category in this Code subject to the following limitation:

The Executive Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this Code.

The designated employees holding these positions shall disclose the following interest:

A. Reportable investments, business positions and sources of income that fall within the following categories:

1. Public Utilities

2. Energy research, energy development

3. Construction and building materials, construction and building contractors

4. Transportation services, transportation consultants, and transportation equipment

5. Motor vehicle manufactures, distributors, and dealers

6. Office equipment and supplies

7. Petroleum products

8. Real property sales, development, brokerage, and appraisals

9. Engineering services

10. Printing or reproduction services, publications and distributions

11. Legal services

12. Bank, Savings and Loans

13. Audit and/or Accounting

14. Insurance services, including underwriters, agents, solicitors or brokers

15. Computer companies, software and hardware

16. Investment services

B. Interests in real property that are reportable under Section 4(a) of this Code.

C. Investments, business positions, and sources of income form the type which:

1. contracted with CMA to provide services of income from the type which;

2. has filed a claim within the past two (2) years or has a claim pending against the CMA;

3. the CMA is empowered to invest its funds.