Draft – Final Code with Regulation and Updated Addendum

Attachment 3

FINAL CODE W/ REGULATION AND UPDATED ADDENDUM FOR BINDER

(Remove all old portions of code from binder and replace with attached)

FINAL 30 DAYS AFTER APPROVAL BY COUNTY

LAW OFFICES OF
BEST BEST & KRIEGER LLP

CONFLICT OF INTEREST CODE

OF THE

LOCAL AGENCY

FORMATION COMMISSION

COUNTY OF SAN BERNARDINO

BBK – June 2012

CONFLICT OF INTEREST CODE
OF THE
LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency's code. After public notice and hearing the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, regulation and the attached Appendix designating positions and establishing disclosure categories, shall constitute the conflict-of-interest code of the **Local Agency Formation Commission – San Bernardino County ("LAFCO").**

All Officials and designated positions required to submit a statement of economic interests shall file their statements of economic interests with the **Project Manager** as LAFCO's Filing Officer. The **Project Manager** shall make and retain a copy of all statements filed by Members of the Commission, and the Executive Officer, and shall forward the originals of such statements to the County Board of Supervisors of the County of San Bernardino. The **Project Manager** shall retain the originals of the statements filed by all other officials and designated positions and make all statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX

CONFLICT OF INTEREST CODE

OF THE

LOCAL AGENCY FORMATION COMMISSION

- COUNTY OF SAN BERNARDINO

(Amended September 15, 2004[1])

EXHIBIT "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

LAFCO Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to LAFCO's Code, but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments[2]:

Members of the Commission and their Alternates

Executive Officer

Financial Consultants

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1 Titles updated and clarifying language added as provided by the Fair Political Practices Commission in July 2012.

2 Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
Project Manager	1, 2
Assistant Executive Officer	1, 2
General Counsel	1, 2
Consultant and New Positions[3]	

3 Individuals providing services as a consultant as defined in Regulation 18701 or in a new position created since this Code was lasted approved that make or participate in making decisions shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regs 18219 and 18734.) The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

EXHIBIT "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the Designated Position must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in or own real property within the jurisdiction of the District.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of LAFCO.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of LAFCO.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by LAFCO.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Position's department, unit or division.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict-of-Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict-of-interest code within the meaning of Section 87300 or the amendment of a conflict-of-interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict-of-interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict-of-interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict-of-interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict-of-interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict-of-interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.1[i]

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories

are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict-of-interest code.[2]

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making

of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the

previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

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.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property[3] is required to be reported,[4] the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property equals or exceeds $2,000, exceeds $10,000, exceeds $100,000, or exceeds $1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,[5] the statement shall contain:

1. The name and address of each source of income aggregating $500 or more in value, or $50 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, or in the case of a loan, the highest amount owed to each source, was $1,000 or less, greater than $1,000, greater than $10,000, or greater than $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, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,[6] the statement shall contain:

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

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than $10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the 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 an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of $420.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than $420 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars ($500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she

vacates office, receive a personal loan of $500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of $100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than $250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect,

distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth $2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth $2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating $500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $420 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

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

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any

governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value $1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. 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, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

[1]Designated employees who are required to file statements of economic interests under any other agency's conflict-of-interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

[2]See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

[3]For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

[4]Investments and interests in real property which have a fair market value of less than $2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

[5]A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

[6]Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In

addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.

2. Editorial correction (Register 80, No. 29).

3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).

4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).

5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).

6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).

7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).

8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).

10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).

11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.

12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).

13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).

14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).

15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).

16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative

5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

LAW OFFICES OF
BEST BEST & KRIEGER LLP

ADDENDUM

REFERENCE DEFINITIONS

FOR

CONFLICT OF INTEREST CODE

This Addendum of Definitions is provided for convenience of reference only and is not to be relied on as authority. The areas of law involving conflicts of interest are complex. When issues or problems arise, it is strongly recommended that you seek guidance and legal advise from your agency counsel.

BBK – January 2012

(New language underlined in red; repealed language ~~lined out~~)

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DEFINITIONS

1. **"Other Public Officials Who Manage Public Investments":**

(a) As used in the Agency's Conflict of Interest Code and the Act, this term means:

(1) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(2) High-level officers and employees of the Agency who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This definition shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(3) Individuals who, pursuant to a contract with the Agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in this definition.

(b) The following definitions shall apply to this Section:

(1) *"Public Investments"* means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(2) *"Public Moneys"* means all moneys belonging to, received by, or held by the Agency, or by an officer thereof acting in his or

her official capacity, and includes the proceeds of all bonds and other evidence of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which the Agency is a party.

(3) ***"Management of public investments"*** means the following non-ministerial functions:

(A) Directing the investment of public moneys;

(B) Formulating or approving investment policies;

(C) Approving or establishing guidelines for asset allocations; or

(D) Approving investment transactions.

(c) Those public officials coming within the definition contained in Subsection (a) above are subject to the conflict-of-interest disclosure requirements of Article 2, Chapter 7 of the Political Reform Act and must file a Statement of Economic Interests accordingly. [2 Cal. Code of Regs. § 18701(b)]

2. "Designated Employee": Any officer, employee, member or consultant of the Agency whose position is so designated in the Appendix of the Agency's Conflict of Interest Code. The Appendix sets forth those positions which entail the making or participation in the making of decisions which may foreseeably have a material effect on financial interests, but does not include any unsalaried member of any board or commission which serves a solely advisory function, or any public official specified in Government Code Section 87200.

(a) For purposes of Section 82019 the term "designated employee" includes a consultant as defined under Regulation 18701(a)(2) and an employee in a newly created position that makes or participates in the making of decisions and whose specific position is not yet listed in an agency's conflict-of-interest code. [Gov. Code § 82019; 2 Cal. Code of Regs. § 18219.]

3. "Public Official": Any natural person who is a member, officer, employee or consultant of the Agency. The term "*public official*" also includes individuals who perform the same or substantially the same duties as an individual holding an office or a position listed in Government Code Section 87200 or the Conflict of Interest Code including "***other public officials who manage public investments***" as defined in Definition No. 1, above.

(a) *"Member"* shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decision-making authority. A committee, board or commission possesses decision-making authority whenever:

(1) It may make a final governmental decision;

(2) It may compel a governmental decision, or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(3) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or the Agency.

(b) A committee, board, or commission does not possess decisionmaking authority under subsection (a) if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.

(c) ***"Consultant"*** means an individual who, pursuant to a contract with the Agency:

(1) **Makes a governmental decision** whether to:

(A) Approve a rate, rule, or regulation;

(B) Adopt or enforce a law;

(C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

(D) Authorize the Agency to enter into, modify, or renew a contract provided it is the type of contract which requires Agency approval;

(E) Grant Agency approval to a contract which requires Agency approval and in which the Agency is a party or to the specifications for such a contract;

(F) Grant Agency approval to a plan, design, report, study, or similar item;

(G) Adopt, or grant Agency approval of, policies, standards, or guidelines for the Agency, or for any subdivision thereof; or

(2) Serves in a staff capacity with the Agency and in that capacity participates in making a governmental decision as defined in Definition 5, below, or performs the same or substantially all the same duties for the Agency that would otherwise be performed by an individual holding a position specified in the Agency's Conflict of Interest Code. [Gov. Code § 82048; 2 Cal. Code of Regs. § 18701(a)]

4. "Making Governmental Decisions": A public official "*makes a governmental decision*," except as provided in Definition 5(b) herein, when the official, acting within the authority of his or her office or position:

(a) Votes on a matter;

(b) Appoints a person;

(c) Obligates or commits the Agency to any course of action;

(d) Enters into any contractual agreement on behalf of the Agency;

(e) Determines not to act, within the meaning of Subsections (a), (b), (c), or (d), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official's financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.

When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the Agency, board or committee and the official remains on the dais or in his or her designated seat

during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.

During a closed meeting of the Agency, board or committee, a disqualified official shall not be present when the decision is considered, or obtain or review a recording or any non-public information regarding the governmental decision. [2 Cal. Code of Regs. § 18702.1]

5. "Participating in the Making of Governmental Decisions":

(a) A public official ***"participates in the making of a governmental decision,"*** except as provided in Subsection (b) of this definition, when the official, acting within the authority of his or her office or position:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding a decision to:

(A) Approve a rate, rule, or regulation;

(B) Adopt or enforce a law;

(C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

(D) Authorize the Agency to enter into, modify, or renew a contract provided it is the type of contract which requires Agency approval;

(E) Grant Agency approval to a contract which requires Agency approval and in which the Agency is a party, or to the specifications for such a contract;

(F) Grant Agency approval to a plan, design, report, study, or similar item;

(G) Adopt, or grant Agency approval of, policies, standards, or guidelines for the Agency, or for any subdivision thereof; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision as referenced in Subsection 5(a)(1) above; or

(B) Preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision as referenced in Subsection 5(a)(1), above. [2 Cal. Code of Regs. § 18702.2]

(b) *"Making"* or *"participating in making"* a governmental decision shall not include:

(1) Actions of officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before the Agency or another agency in the course of its

prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Definition 6(c), below [2 Cal. Code of Regs. § 18702.4(b)(1)]; or

(3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract. In the case of public officials who are "*consultants,*" as defined in Definition 3(b), above, this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the Agency, so long as they are acting in their private capacity. [2 Cal. Code of Regs. §§ 18702.2, 18702.4(a)]

6. <u>"Using or Attempting to Use Official Position to Influence":</u>

(a) With regard to a governmental decision which is within or before the Agency, or an agency appointed by or subject to the budgetary control of the Agency, an official is attempting to use his or her official position to influence a decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the Agency or any other agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) With regard to a governmental decision which is within or before an agency not covered by Subsection (a), above, the official is attempting to use his or her official position to influence the decision if, for the purpose influencing the decision, the official acts or purports to act on behalf of, or as the

representative of, the Agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery. [2 Cal. Code of Regs. § 18702.3]

(c) Notwithstanding Subsections (a) and (b) of this definition, an official is not attempting to use his or her official position to influence a governmental decision of the Agency if the official:

(1) Appears in the same manner as any other member of the general public before the Agency or any other agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "*personal interests*" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family;

(B) A business entity wholly owned by the official or members of his or her immediate family; or

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

(2) Communicates with the general public or the press.

(3) Negotiates his or her compensation or the terms and conditions of his or her employment contract.

(4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a

proceeding before the Agency or any other agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.

(5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

(A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;

(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner. [2 Cal. Code of Regs. § 18702.4(b)]

7. "**Public Identification of a Conflict of Interest for Section 87200 Filers**":

(a) Government Code Section 87105 and 2 California Code of Regulations Section 18702.5 apply when a public official who holds an office specified in Government Code Section 87200 has a financial interest in a decision within the meaning of Government Code Section 87100, and the governmental decision relates to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Gov. Code §§ 11120 et seq.) or the Brown Act (Gov. Code §§ 54950 et seq.).

(b) **Content & Timing of Identification:** The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:

(1) The public official shall publicly identify:

(A) Each type of economic interest held by the public official which is involved in the decision and gives rise to the conflict of interest.(i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and

(B) The following details identifying the economic interest(s):

(i) if an investment, the name of the business entity in which each investment is held;

(ii) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity;

(iii) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;

(iv) if income or gifts, then identification of the source; and

(v) if personal financial effect, then identification of the expense, liability, asset or income affected.

(2) **Form of Identification:** If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.

(3) **Recusal/Leaving the Room:** The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and (b)(2) of 2 California Code of Regulations Section 18702.5 is made. He or she shall not be counted toward achieving a quorum while the item is discussed.

(c) **Special Rules for Closed Session:** If the governmental decision is made during a closed session of a public meeting, the public identification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his or her recusal is because of a conflict of interest under Government Code Section 87100. The declaration shall be made part of the official public record. The public official shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(d) **Exceptions**:

(1) **Uncontested Matters:** The exception from leaving the room granted in Government Code Section 87105(a)(3) for a "matter [that] has been placed on the portion of the agenda reserved for uncontested matters" shall mean agenda items on the consent calendar. When the matter in which the public official has a financial interest is on the consent calendar, the public official must comply with subdivisions (b)(1) and (b)(2) of 2 California Code of Regulations Section 18702.5, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.

(2) **Absence:** If the public official is absent when the agenda item subject to subdivision (a) of 2 California Code of Regulations Section 18702.5 is considered, then Government Code Section 87105 and

this regulation impose no public identification duties on the public official for that item at that meeting.

(3) **Speaking as a Member of the Public Regarding an Applicable Personal Interest:** When a personal interest found in 2 Cal. Code of Regs. § 18702.4(b) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of 2 California Code of Regulations Section 18702.5, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion of the matter with the members of the public. [2 Cal. Code of Regs. § 18702.5]

8. "Financial Interest": An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth $2,000 or more;

(b) Any real property in which the public official has a direct or indirect interest worth $2,000 or more;

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating $500 or more

in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made;

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

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts by this subdivision shall be adjusted biennially by the FPPC.

(f) **"Indirect Investment or Interest":** Any investment or interest owned by the spouse or dependent child of a public official, held or owned by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse and dependent children own directly, indirectly or beneficially, a 10% interest or greater. [Gov. Code § 87103]

9. "Investment": Any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property within the jurisdiction, or does business or plans to do business within the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other

action is required under the Agency's Conflict of Interest Code. No asset shall be deemed an investment unless its fair market value equals or exceeds $2,000.

Investments of an individual include a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10% interest or greater.

The term "*investment*" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, or any bond or other debt instrument issued by any government or government agency.

The term "investment" does not include a fund, including an exchange traded fund (ETF), closed-end fund or fund held in a plan qualified under Sections 401(k), 403(b), 457 or similar provision of the Internal Revenue Code (qualified plan), that is substantially similar to a "diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940" if all the following are met:

(a) The fund is a bona fide investment fund that pools money from more than 100 investors and invests the money in stocks, bonds, or other securities.

(b) The fund holds securities of more than 15 issuers.

(c) The public official did not influence or control the decision to purchase or sell the specific fund on behalf of his or her agency during the applicable reporting period.

(d) The public official does not influence or control the selection of any specific investment purchased and sold on behalf of the fund.

(e) The fund does not have a stated policy of concentrating its holdings in the same industry or business.

For purposes of subdivisions (a) and (b), an ETF, closed-end fund or qualified plan is presumed to have more than 100 investors and hold securities of more than 15 issuers.

[Gov. Code § 82034; Reg. 18237.]

10. "Doing Business in the Jurisdiction": A person is "doing business in the jurisdiction" if that person has business contacts on a regular or substantial basis with a person who maintains a physical presence in the jurisdiction of a public official. "Business contacts" include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. "Business contacts" do not include marketing via the Internet, telephone, television, radio, or printed media. [2 Cal. Code of Regs. § 18230]

11. "Interest in Real Property": Includes any leasehold, beneficial or ownership interest, or an option to acquire such an interest in real property located within the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars ($2,000) or more. Interests in real property of an individual include a

pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10% interest or greater. [Gov. Code § 82033]

12. "Real Property Within the Jurisdiction": Jurisdiction is the region, county, city, district, or other geographical area in which the Agency has control. Real property shall be deemed to be "*within the jurisdiction*" if the property or any part of a parcel of real property is located within or not more than two miles outside the boundaries of the jurisdiction of the Agency or within two miles of any land owned or used by the Agency. [Gov. Code § 82035]

13. "Income":

(a) *"Income"* means, except as provided in Subsection (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds of any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by filer, 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 income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10% interest or greater.

(b) *"Income,"* other than a gift, does not include:

(1) Income received from any source outside the 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 years prior to the time any statement or other action is required;

(2) Campaign contributions required to be reported under Chapter 4 of the Political Reform Act of 1974;

(3) Salary and reimbursement for expenses or per diem, social security, disability, or other similar benefit payments received from a state, local or federal government agency, and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(4) Any devise or inheritance;

(5) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;

(6) Dividends, interest or any other return on a security which is registered with the Securities & Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures;

(7) Redemption of a mutual fund;

(8) Alimony or child support payments;

(9) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status;

(10) Any loan from or any payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph;

(11) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status;

(12) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(13) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser. [Gov. Code § 82030]

14. "Salary and Reimbursement for Expenses or Per Diem Received":

(a) *"Salary"* means any and all payments made by a government agency to a public official, or accrued to the benefit of a public official, as consideration for the public official's services to the government agency. Such payments include wages, consultants' fees, pension benefits, health and other insurance coverage, rights to compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and similar benefits.

(b) *"Per Diem"* from an agency means payment of a fixed sum of money, accruing daily to a public official when the public official is required to incur increased daily living expenses.

(c) *"Reimbursement for Expenses"* received from an agency means a payment to a public official, in compensation for otherwise uncompensated actual expenses incurred or to be incurred within 60 days by the public official in the course of his or her official duties. [2 Cal. Code of Regs. § 18232]

15. "Gift":

(a) ~~Except as provided in Subsection (b), below, a gift is any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official~~

~~status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. [Gov. Code § 82028]~~Basic Rule. A gift is a payment made by any person of any thing of value, whether tangible or intangible, real or personal property, a good or service that provides a personal benefit to an official when the official does not provide full consideration for the value of the benefit received. A gift includes the forgiveness of a debt or obligation and a rebate or a discount in the price of anything of value unless the rebate or discount is offered in the ordinary course of business without regard to official status. (See Sections 82028, 82044, and 82047.) A gift may be reportable by the official under Sections 87200, 87202, 87203, and 87204 or Sections 87300 and 87302; subject to limits under Sections 89503 and 86203 and Regulation 18940.2; result in a disqualifying conflict of interest for the official under Sections 87100 and 87103 and Regulation 18703.4; and/or require the filing of an activity expense report by a lobbyist, lobbying firm, or lobbyist employer, or person who directly or indirectly makes payments to influence legislative or administrative action of $5,000 or more in any calendar quarter as defined in Section 86111.

(b) **Exceptions:** Certain payments that otherwise meet the Act's definition of gift, are excepted from the definition of gift as provided by statute and these regulations. (See Section 82028(b) and Regulation 18942.) These payments are neither a gift nor income. Certain payments that do not meet the Act's definition of gift may be considered income.

(c) Valuation. Generally, the value of a gift is determined by its fair market value. (Regulation 18946, exceptions are provided in Regulations 18946.1 through 18946.6.) An official must report gifts received from a source subject to disclosure if the cumulative value is $50 or more within a reporting period. (Section 87207(a)(1).) With certain exceptions (See Wedding Gifts, Regulation 18946.3; Travel Payments, Section 89506) if a gift is reportable under the Act, it is prohibited if the value is more than the amount specified in the gift limits identified in Regulation 18940.2 (Section 89503(c) or Section 86203.) Whether or not a gift is reportable, if an official receives any gift(s) from one source with a cumulative value that meets the amount specified in Regulation 18940.2 within 12 months before the making or participating in the making of a governmental decision, the official has an economic interest in that source pursuant to Regulation 18703.4, and the official may have a conflict of interest with respect to that source under the Act's conflict of interest provisions (Sections 87100, 87103)(e).)

(d) Disclosure. For officials required to disclose under Section 87200 of the Act ("statutory filers"), any gift, or combination of gifts, received from any source is reportable by the official if the value of the gift, or the cumulative value of multiple gifts, received from the source in the reporting period is $50 or more. For officials required to disclose under an agency conflict of interest code ("code filers") the gift, or combination of gifts valued at $50 or more is only reportable by the official if received from a source identified in the disclosure category under which the official files pursuant to the official's agency conflict of

interest code. For those making gifts required to be disclosed under Section 86113 (Lobbyists), 86114 (Lobbying Firms), and 86116 (Lobbyist Employers), and $5,000 filers, any gift, or combination of gifts, of any amount must be disclosed by the donor to the extent required under Section 86111. **[See BB&K's gifts update publication for exceptions.]**

~~None of the following is a gift and none is subject to any limitation on gifts: Informational material which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or the duties of the elective office he or she seeks. Informational material may include:~~

~~(1)Books, reports, pamphlets, calendars, periodicals, audio or video recordings, or free or discounted admission to informational conferences or seminars;~~

~~(A)Scale models, pictorial representations, maps, and other such items, provided that where the item has a fair market value in excess of the gift limit amount, the burden shall be on the recipient to demonstrate that the item is informational material;~~

~~(2)On-site demonstrations, tours or inspections~~

~~(A) designed specifically for the purpose of assisting the official in the performance of his or her official duties or the duties of the elective office he or she seeks.~~

~~No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in connection therewith, shall be deemed "*informational material*"~~

~~except insofar as such transportation is not commercially available. [Gov. Code § 82028(b)(1); 2 Cal. Code of Regs. § 18942.1]~~

~~(3)Except for passes and tickets as provided in Regulation 18946.1, a gift that is not used and that, within 30 days after receipt, is returned or donated pursuant to Regulation 18943, or for which reimbursement is paid pursuant to said Regulation 18943.~~

~~(4)A gift from an individual's spouse; child; parent; grandparent; grandchild; brother; sister; parent-in-law, brother-in-law, sister-in-law; nephew; niece; aunt uncle; or first cousin, or the spouse of any such person, unless the donor is acting as an agent or intermediary for any person not identified by this paragraph.~~

~~(A)~~

~~(5)Campaign contributions required to be reported under Chapter 4 of the Act.~~

~~(6)Any devise or inheritance.~~

~~(7)Personalized plaques or trophies with an individual value of less than $250.~~

~~(8)The cost of hospitality (including food, beverages, or occasional lodging) provided to an official by an individual in the individual's home when the individual is present, unless one of the following provisions applies:~~

~~(A)Any part of the cost of the hospitality is paid directly or reimbursed by another person.~~

~~(B)Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.~~

~~(C)There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home~~

~~(D)In determining the applicability of this "hospitality" exemption, the following apply:~~

~~(a)The cost of providing hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.~~

~~(b)An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.~~

~~(c)Gifts exchanged between an individual who is required to file a statement of economic interests and another individual, other than a lobbyist, on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value.~~

~~For purposes of this subdivision, and notwithstanding Regulation 18946.2(b), "gifts exchanged" includes food, beverages, entertainment, and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event.~~

~~(9)Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position. This shall not include donations of cash.~~

~~(10)Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if such payments are available to members of the public without regard to official status.~~

~~(11)Free admission, and refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and transportation and any necessary lodging and subsistence that is exempt under Regulation 18950.3. These items are not payments and need not be reported by any filer.~~

~~(12)The transportation, lodging, and subsistence specified by Regulation 18950.4 (in connection with campaign activities).~~

~~(b)The following items, if they are otherwise gifts, are exempt from the limitations on gifts described above:~~

~~(1)Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Government Code Section 89506 and Regulation 18950, et seq.~~

~~(2)Wedding gifts.~~

16. "Honorarium":

(a) *"Honorarium"* is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

(b) In addition to the exceptions contained in Definition 15(b), above, (2 Cal. Code of Regs. § 18942), the term *"honorarium"* does not include:

(1) Earned income for personal services which are customarily provided in connection with the practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(2) Any honorarium which is not used and, within 30 days after receipt is either returned to the donor or delivered to the Agency for donation to the Agency's general fund or equivalent without being claimed

as a deduction from income for tax purposes. [Gov. Code § 89501; 2 Cal. Code of Regs. § 18932]

17. "Economic Interests": The term "economic interest" includes interests in business entities, real property, source of income, source of gifts, and personal financial effect. For purposes of disqualification, see these terms defined below:

(a) **Economic Interest - Business Entities:** A public official has an *economic interest* in a business entity if any of the following are true:

(1) The public official has a *direct* or *indirect* investment worth $2,000 or more in the business entity.

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

(3) An official has an *economic interest* in a business entity which is a *parent or subsidiary of, or is otherwise related to*, a business entity in which the official has one of the interests defined in this Definition. [See 2 Cal. Code of Regs. § 18703.1(d) for definition of "*Parent, Subsidiary, Otherwise Related Business Entity.*"]

(4) Although a public official may not have an *economic interest* in a given business entity pursuant to Subsections (1)-(3), above, the public official may nonetheless have an *economic interest* in the business entity if it is a source of income to him or her.

(b) **Economic Interest - Real Property:** A public official has an *economic interest* in any real property in which the public official has a direct or indirect interest worth $2,000 or more in fair market value. [See Definition 11, above, for detailed definition of *interest in real property*.]

(c) **Economic Interest - Source of Income:** A public official has an *economic interest* in any person from whom he or she has received income, including commission income and incentive compensation as defined in 2 Cal. Code of Regs. § 18703.3, aggregating $500 within 12 months prior to the time when the relevant government decision is made. For purposes of Government Code Sections 87100 and 87103(c), a public official's *income* includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income. [See 2 Cal. Code of Regs. § 18703.3 regarding related business entities, former employers, sources of commission income to brokers, agents and salespersons, and sources of incentive compensation.]

(d) **Economic Interest - Source of Gifts:** A public official has an *economic interest* in any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. [See Definition 15, above, for detailed definition of *Gift*.]

(e) **Economic Interest - Personal Finances:** A public official has an *economic interest* in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic

interest if the decision will result in the personal expenses, income, assets, or liabilities of the official, or his or her immediate family increasing or decreasing. [See Definition 13, above, for detailed definition of *income* and see Definition 23, below, for detailed definition of *immediate family*.] [2 Cal. Code of Regs. §§ 18703 - 18703.5]

18. "Directly or Indirectly Involved": In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision. If a public official's economic interest is not directly involved in a governmental decision, it is indirectly involved.

(a) **Business Entities, Sources of Income, Sources of Gifts:** A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request, or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code of Regs. § 18705.1(a), 18705.3(a) or 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code of Regs. § 18705.1(b), 18705.3(b), or 18705.4(b), respectively.

(b) **Interest in Real Property:** Real property in which a public official has an economic interest is directly involved in a governmental decision if that real property is the subject of the governmental decision, or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision. Real property is the "subject of the governmental decision" if:

(1) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting such real property. For purposes of this Section, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land designation on the subject real property. The terms "zoning" and "rezoning" shall NOT refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all

other properties designated in that category, which shall be analyzed under 2 Cal. Code of Regs. § 18705.2(b).

(2) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such real property.

(3) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such real property.

(4) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area. For purposes of this Section, real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

(5) The governmental decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property will receive new or improved services. As

used in this Section, "new or improved services" does NOT include repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(6) Real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:

(A) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under 2 Cal. Code of Regs. § 18705.2(b).

(B) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(C) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

(i) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official, or by a person

representing either the public official or an economic interest of the public official.

(ii) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

(iii) The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and economic interests of the official are not singled out.

(iv) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning

variance, land use ordinance, or specific plan or its equivalent.

(v) The following definitions apply to this subsection.

a. A decision "*solely concerns the adoption or amendment of a general plan*" when the decision, in the manner described in Government Code Sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement of development policies, maps, diagrams, and texts, or any other component setting forth objectives, principles, standards, and plan proposals, as described in Government Code Sections 65402 and 65303.

b. "*General Plan*" means "general plan" as used in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 5, sections 65300, et seq.

c. "*Specific plan or its equivalent*" means a "specific plan" or any equivalent plan adopted by the jurisdiction to meet the purposes described in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 8, sections 65450, et seq.

(vi) Determining the applicable materiality standard

a. If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations Section 18705.2(a).

b. If a real property interest is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations Section 18705.2(b).

(c) **Economic Interest in Personal Finances:** A public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family. [2 Cal. Code of Regs. §§ 18704 - 18704.5]

19. "Materiality Standards":

(a) **Specific Rules.** In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material:

(1) For governmental decisions which affect economic interests in business entities -- apply 2 Cal. Code of Regs. § 18705.1;

(2) For governmental decisions which affect economic interests in real property -- apply 2 Cal. Code of Regs. § 18705.2;

(3) For governmental decisions which affect economic interests in sources of income -- apply 2 Cal. Code of Regs. § 18705.3;

(4) For governmental decisions which affect economic interests in sources of gifts -- apply 2 Cal. Code of Regs. § 18705.4;

(5) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his or her immediate family (personal financial effect) apply 2 Cal. Code of Regs. § 18705.5.

(b) **General Rule.** Whenever the specific provisions of 2 Cal. Code of Regs. § 18705.1 through 18705.5, inclusive, cannot be applied, the following general rule shall apply:

The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official.

(c) **Special Rules.** Notwithstanding 2 Cal. Code of Regs. § 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if:

(1) Although a conflict of interest would otherwise exist under 2 Cal. Code of Regs. § 18705.1 through 18705.4, inclusive, and 18706, the decision will have no financial effect on the person or business entity who appears before the official, or on the real property in which the

official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family. [2 Cal. Code of Regs. § 18705]

20. "Public Generally": Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the governmental decision affects the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally, as set forth in 2 Cal. Code of Regs. 18707 - 18707.9.

(a) To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth above, apply Steps One through Four below:

(1) **Step One:** Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.

(2) **Step Two:** For each person or real property identified in Step One, determine the applicable "significant segment" rule according to 2 Cal. Code of Regs. § 18707.1(b).

(3) **Step Three:** Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two-part test set forth in Section 18707.1(b) is

not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.

(4) **Step Four:** Following the provisions of 2 Cal. Code of Regs. § 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in 2 Cal. Code of Regs. § 18707.2 - 18707.9 applies to each person or real property triggering the conflict of interest. [2 Cal. Code of Regs. § 18707]

21. <u>"Determining Whether a Material Financial Effect is Reasonably Foreseeable":</u>

(a) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision.

(b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as

defined in subsection (a) above, the following factor should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:

(1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;

(2) The market share held by the official or the official's source of income in the jurisdiction;

(3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;

(4) The scope of the governmental decision in question; and

(5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

(c) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable. [2 Cal. Code of Regs. § 18706]

22. **"Business Entity":** Any organization or enterprise operated for profit, including but not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. [Gov. Code § 82005]

23. **"Immediate Family":** Immediate Family means the spouse and dependent children.

24. **"Spouse":** The term "spouse" shall include domestic partners registered with the California Secretary of State's Office and recognized by California State Law. [2 Cal. Code of Regs. § 18229; Fam. Code § 297]