0323

# County Of Santa Cruz

**GENERAL SERVICES DEPARTMENT**
701 OCEAN STREET. SUITE 330, SANTA CRUZ, CA 95060-4073
(831) 454-2210 FAX: (831) 454-2710 TDD: (831) 454-2123
**BOB WATSON, DIRECTOR**

October 28, 2004 Agenda: November 9, 2004

Board of Supervisors
701 Ocean Street
Santa Cruz, CA 95060

**Energy Commission: Conflict of Energy Code**

Members of the Board:

The Government Code requires that government agencies review their Conflict of Interest Codes biennially to determine if the code is accurate or needs amending. In conducting this review recently, the Energy Commission determined that even though they currently file Economic Disclosure forms as commissioners, the Commission does not have an adopted Conflict of Interest Code.

Section 2.38.270 of the Santa Cruz County Code stipulates when and which County commissions and committees are required to develop Conflict of Interest Codes. Commissions are required to develop Conflict of Interest Codes when they have decision making authority. One of the definitions of decision making authority is whether the commission "makes substantive recommendations which are, and over an extended period of time, have been regularly approved without significant amendment or modification by another public official or government agency." As the ordinance is currently written, the Energy Commission is not designated as a decision-making authority.

The Energy Commission believes that the Commission falls under the above definition and at their meeting of October 27, 2004 voted to approve the attached Conflict of Interest Code and to request that your Board adopt it per County procedures. The format for the Code is adopted from other County agencies and has been reviewed and approved to form by County Counsel. Adoption of this Conflict of Interest Code also requires that Section 2.38.270 be amended to include the Energy Commission as one of the County's commissions with decision making authority. A copy of such an amendment is attached for your Board's consideration.

It is therefore **RECOMMENDED** that your Board,

1. Approve the attached proposed ordinance amending Section 2.38 in concept and place it on your next agenda of November 16,2004 for final action: and
2. Adopt the attached Conflict of Interest Code for the Energy Commission.

Sincerely,

Bob Watson
Director, General Services

Approved:

Susan A. Mauriello
County Administrative Officer

cc: Energy Commission

Attachments: Conflict of Interest Code of the Santa Cruz County Energy Commission
Ordinance Amending Section 2.38 of the County Code

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0323 - **Revised**

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Ordinance Amending Section 2.38 of the County Code

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# CONFLICT OF INTEREST CODE
# OF THE
# SANTA CRUZ COUNTY ENERGY COMMISSION

SECTION 100. **Purpose.** Pursuant to the provisions of Government Code Sections 87300, et seq., the **Santa Cruz County Energy Commission,** (hereinafter called "commission"), hereby adopts the following Conflict of Interest Code. Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code Section 81000 et seq.). The provisions of this Code are in addition to Government Code Section 87100 et seq. and other laws pertaining to conflicts of interest.

It is the purpose of this code to provide for the disclosure of assets and income of designated commissioners which may be materially affected by their official actions, and, in appropriate circumstances, to provide that designated commissioners shall be disqualified from acting in order that conflicts of interest may be avoided.

SECTION 200. **Designated Positions.** The positions listed on Exhibit "A" are designated positions. Officers and commissioners holding those positions are designated commissioners and are deemed to make or participate in the making of decisions which may foreseeably have a material effect on a financial interest.

SECTION **300. Disclosure Statements.** A designated commissioner shall be assigned to one or more of the disclosure categories set forth on Exhibit "B". Each designated commissioner shall file an annual statement disclosing that commissioner's interest in investments, real property, and income designated as reportable under the category to which the commissioner's position is assigned in Exhibit "A".

SECTION 400. **Place and Time of Filing.**

(a) **Filing Originals.** All designated commissioners required to submit a statement of financial interests shall file the original with this commission.

(b) **Filing Copies.** This commission shall make and retain a copy and forward the originals of these statements to the County Clerk.

(c) **Initial Statements − After Code Adoption.** A designated commissioner required to submit an initial statement of financial interest shall submit the statement within 30 days after the effective date of this code.

(d) **Initial Statements − Other Commissioners − Assuming Designated Position.** All other commissioners appointed to designated positions shall file initial statements not less than ten days before assuming office (or if subject to confirmation, ten days before being confirmed) unless an earlier assumption of office is required by emergency circumstances, in which case the statement shall be filed within 30 days thereafter.

(e) **Annual Statements.** Annual statements shall be filed by all designated commissioners during the month of January, disclosing reportable investments in

business entities, interests in real property, and income held or received in the period since the closing date of the commissioner's previously filed statement and the succeeding December 31st.

(f) **Leaving Office Reports.** Each person who leaves a designated position specified in Exhibit " Ashall file a leaving of office statement within 30 days after leaving.

SECTION 500. **Contents of Disclosure Statements.**

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

(1) **Contents of Investment and Real Property Reports.**

When an investment, or an interest in real property, is required to be reported, the statement shall contain:

**(A)** **A** statement of the nature of the investment or interest;

(B) 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;

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

(D) **A** statement whether the fair market value of the investment, or interest in real property, exceeds $10,000, and whether it exceeds $100,000. This information need not be provided with respect to an interest in real property which is used principally as the residence of the filer.

(2) **Contents of Personal Income Reports.**

When personal income is required to be reported, the statement shall contain:

**(A)** The name and address of each source of income aggregating $250 or more in value, or *$25* or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(B) **A** statement whether the aggregate value of income from each source was greater than $1,000, and whether it was greater than $10,000.

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

(D) In the case of a gift, the value thereof, and the date on which the gift was received.

**(3) Contents of Business Entity Reports.**

When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

**(A)** The name, address, and a general description of the business activity of the business entity;

**(B)** In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the filer's pro rata share of fees from such person was equal to or greater than $1,000;

(C) In the case of a business entity not covered by paragraph (B), 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 during a calendar year.

**(4) Contents of Management Position Reports.**

When management positions are required to be reported, designated commissioners shall list the name of each business entity not specified above in which he is a director, officer, partner, trustee, commissioner, or in which he holds any position of management.

(b) **Contents of Initial Statement.**

The initial statement filed by an commissioner appointed to a designated position shall disclose any reportable investments and interests in real property.'

(c) **Contents of Annual Statements.**

The annual statement filed by a designated commissioner shall disclose any reportable investments, interests in real property, and income during the period since the previous statement was filed. [1]

(d) **Contents of Leaving Office Statements.**

The leaving office statement filed by designated commissioners shall disclose reportable investments, interests in real property, and income during the period since the closing date of the previous statement filed pursuant to this Code. The statement shall include any investments in business entities, interests in real property, and income held or received at any time during the period covered by the statement, whether or not they are still held at the time of filing.

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When disclosure of management positions is required, disclosure of such positions shall be made upon filing initial, annual and leaving office statements.

(e) **Acquisition or Disposal During Reporting Period.**

In the case of a statement filed under Sections 500(c) and (d), if the investment, or interest in real property, was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal shall be given.

SECTION 600. **Disqualification.** Designated commissioners must disqualify themselves from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on any reportable interest of that commissioner (except sources of gifts less than $25) or upon any business entity in which the designated commissioner holds a position of management or is a director, officer, partner, trustee, or commissioner. No designated commissioner shall be prevented from making or participating in the making of any decision to the extent his or her participating is legally required for the decision to be made.

SECTION 700. **Manner of Disqualification.**

A designated commissioner required to disqualify himself or herself shall give notice of disqualification at the meeting during which consideration of the decision takes place and shall be made part of the official record of the commission. The member shall then refrain from participating and shall attempt in no way to use his or her official position to influence any other person with respect to the matter.

SECTION 800. **Definition of Terms.** Except as otherwise provided, the definitions contained in the Political Reform Act of 1974 (Government Code §81000 et seq.), the Regulations of the Fair Political Practices Commission, and any amendments to the Act or Regulations, shall be incorporated into this Conflict of Interest Code.

SECTION 900. **Effective Date of Code − Violations.** This Conflict of Interest Code shall become effective 30 days after approval by the Board of Supervisors. Designated commissioners violating this Code are subject to the sanctions provided in Chapter 11 of the Political Reform Act of 1974 (Government Code, Section 91000, et seq.).

SECTION 1000. **Statute of Limitations.** No action based on a disqualification provision of this Code shall be brought pursuant to Government Code Section 91003(b) to restrain the execution of or to set aside official action of this commission unless commenced within 90 days following the official action.

# Exhibit "A"

| Designated Positions | Categories |
|---|---|
| 1. Commissioners | 1 |
| 2. Staff * | 1 |

* Staff who file disclosure statements as part of their employment with the County of Santa Cruz need not file an additional disclosure statement. Staff providing clerical support are not required to file a disclosure statement.

# Exhibit "B"

**Disclosure Categories.**

An interest in real property, income, or investment is reportable if the interest in real property, the income or source of income, or the interest in real property may foreseeably be affected materially by any decision made or participated in by the designated commissioner by virtue of the commissioner's position.

"Interest in Real Property" means any interest therein, including any leasehold, beneficial or ownership interest or option to acquire such interest in real property, if the fair market value of the interest is greater than $1,000. Such interests of an individual include a business entity's share of interest in real property or any business entity or trust in which the designated commissioner or his or her spouse owns, directly, indirectly, or beneficially, a 10% or greater interest.

"Income" received from a public commission need not be disclosed. For purposes of exemption, the term "income from a public commission" includes commission or County salary and income derived from publicly operated schools for teaching or consulting activities.

"Investments" include: (1) 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 interest or other ownership interest; and (2) A pro rata share of investments of any business entity or trust in which the designated commissioner or his or her spouse owns, directly, indirectly, or beneficially, a 10% interest or greater.

"Investments" do not include: (1) A time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government commission; or (2) Assets whose fair market value is less than $1,000.

Designated commissioners in the following category or categories must report:

CATEGORY 1. **Interests in Real Property, Income, Investments and Management Positions Held by Designated Commissioner. All** interests in real property, income, and investments, and any business entity in which the designated commissioner is a director, officer, partner, trustee, commissioner, or holds any position of management. Financial interests are reportable only if located within or subject to the jurisdiction of the commission or if the business entity is doing business or planning to do business in the jurisdiction or has done business within the jurisdiction at any time during the two years prior to the filing of the statement.

CATEGORY 2. **Interests in Contractors With Commission.**

(a) **Investments, Income - Contractors With Commission.** Investments in and income from any business entity which, within the last two years, has contracted or subcontracted, or in the foreseeable future may contract or subcontract with this

commission to provide services, supplies, materials, machinery or equipment to this commission.

(b) **Management Position With Commission.** His or her status as a director, officer, partner, trustee, commissioner, or holder of a position of management in any business entity, which, within the last two years, has contracted or subcontracted with this commission to provide services, supplies, materials, machinery or equipment to this commission.

CATEGORY **3. Interests in Real Property.** All interests in real property within the jurisdiction of the commission.

CATEGORY **4. Income.** All income (including gifts) from any source located or doing business within the jurisdiction of the commission.

CATEGORY **5. Investments.** All investments in business entities located in or owning real property within the jurisdiction of the commission.

CATEGORY 6. **Real Estate, Building and Construction Industry.** All investments in and any income from sources engaged in selling or buying real estate or engaged in the construction or building industry within the jurisdiction of the commission.

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2.38
TO THE SANTA CRUZ COUNTY CODE RELATING TO BOARDS, COMMISSIONS, COMMITTEES AND DEPARTMENT ADVISORY GROUPS GENERALLY

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 2.38.270 of the Santa Cruz County Code is hereby amended to read as follows:

2.38.270 Conflict of interest code adoption required when.

A. Those boards, commissions and committees referred to in this chapter which possess decision-making authority shall develop and adopt a conflict of interest code in accordance with the Political Reform Act of 1974, which shall take effect upon approval by the board of supervisors.

B. A commission or committee possesses decision-making authority whenever (2 California Administrative Code Section 18700):

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 which may not be overridden; or

3. It makes substantive recommendations which are, and over an extended period of time, have been regularly approved without significant amendment or modification by another public official or governmental agency.

C. For the purposes of this section, the following boards, commissions and committees shall be deemed to possess decision-making authority:

1. Boards:

a. Assessment appeals board,
b. Building appeals board;

2. Commissions:

a. Agricultural policy advisory commission,
b. Arts commission,
c. Civil service commission,
d. Fish and game advisory commission,
e. Nuisance abatement appeals commission,
f. Parks and recreation commission,
g. Planning commission,
h. Private industry council,

i. Human resources commission,
j. Santa Cruz-Monterey managed medical care commission,
k. Children and families commission.
l. **Energy commission**

3. Committees: environmental review committee. (Ord. 4573 § 1 (part), 1999: Ord. 4541 § 1, 1999: Ord. 3495 § 1, 1984; prior code § 3.01.085; Ord. 2195, 10/21/75; Ord. 2398, 3/1/77; Ord. 2455, 7/12/77; Ord. 2677, 5/15/79)

SECTION II

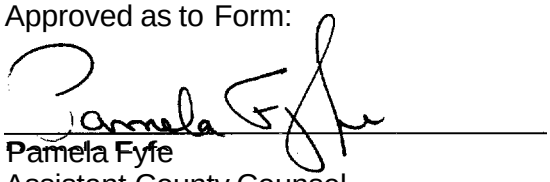
This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this _____ day of _____, 2004, by the Board of Supervisors of Santa Cruz County by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Attest: _____ _____
Clerk of the Board Chair of the Board of Supervisors

Approved as to Form:



Pamela Fyfe
Assistant County Counsel

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Approved as to Form:

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Assistant County Counsel