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December 2, 2014

Board of Supervisors  
County of El Dorado  
330 Fair Lane  
Placerville, CA 95667

Re: Revisions to the El Dorado County Conflict of Interest Code

Honorable Board:

SUBJECT: Revisions to County Conflict of Interest Code

RECOMMENDATION: County Counsel recommends that the Board adopt the attached Resolution which adopts a revised conflict of interest code.

REASON FOR RECOMMENDATION: State Law requires that the County periodically update its local conflict of interest code. County Counsel has reviewed the present code and recommends certain changes in order to bring it into conformance with law. The attached Resolution incorporates the recommended changes.

FISCAL IMPACT: None.

ACTION TO BE TAKEN FOLLOWING APPROVAL: Board adoption of the attached Resolution enacts the revised code. No further action by the Board is necessary. The Elections Department will circulate the appropriate disclosure forms to the affected employees.

DISCUSSION: The Political Reform Act, Government Code §81000 et seq., contains several sections dealing with conflicts of interest of public officials, including a prohibition on participating in a decision in which the official has a financial interest, a requirement that the official disclose certain economic interests, and a prohibition on receiving gifts and honoraria.

State law also requires that each local public entity adopt its own local conflict of interest code, which must contain certain specified provisions, including a designation of specific employment positions with the public entity that make decisions which may have an effect on economic interests, and a description of the type of economic interest each designated employee must disclose on his or her statement of economic interest.

In order to simplify the process for local public entities, state law (Government Code §87302) permits a local public entity to adopt a particular state regulation, Title 2, California Code of Regulations, §18730, as its conflict of interest code, and attach to it an appendix of designated employees plus an appendix of disclosure categories for each of the designated employees. The incorporation of the state regulation into a county's code means that the code is automatically updated if the regulation is changed in the future. The County has taken advantage of this process and has adopted the state regulation as the County's conflict of interest code.

The County code must be updated periodically to account for changes in employment positions and job duties. Government Code §87306. El Dorado County staff has completed its review of the current County conflict of interest code, and presents a revised code to the Board of Supervisors for its consideration and adoption. Attached are:

- (1) a proposed Resolution which adopts the revised conflict of interest code,
- (2) the revised Appendix of Designated Positions and Disclosure Categories, and
- (3) a copy of the state regulation that the code incorporates, 2 CCR §18730, updated to include the latest changes.

Several of the recurring issues concerning the County's conflict of interest code are addressed in detail below.

1. §87200 Filers.

Persons holding specific positions with the County are required to file Statements of Economic Interest by state law, Government Code §87200. These positions are: members of the Board of Supervisors, members of the Planning Commission, the District Attorney, the County Counsel, the Treasurer/Tax Collector, the Chief Administrative Officer, and "other public officials who manage public investments." Because people in these positions are already required to file by state law, the positions are not listed in the Appendix of Designated Employees to the county conflict of interest code. Government Code §82019; 2 CCR 87302(a). This means that the county code imposes no new disclosure obligation on the positions designated in §87200, but does impose other obligations, such as the restriction on loans to elected officers of a local government (see 2 CCR §18730 subparts (8.2) and (8.3)).

2. Elected Officials.

State law requires that the Appendix of Designated Employees include the elected County officers who are not required to file under Government Code §87200. Government Code §82019(b)(2). In El Dorado County, these positions are: Auditor/Controller, Assessor, Recorder/Clerk, Sheriff, and Surveyor. The County conflict of interest code complies with this

Recorder/Clerk, Sheriff, and Surveyor. The County conflict of interest code complies with this mandate and lists these positions in the Appendix of Designated Positions. The persons occupying these elected positions are covered by all provisions of the conflict of interest code.

3. Designated Positions.

State law requires a county to list employment positions in its Appendix of Designated Employees if “the position entails the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest.” Government Code §82019(c). Each operative word in this statute is further defined in state regulations, too numerous to mention here.

As a part of the updating process, the Elections Department asked each Department Head to review the current list of designated employees in his or her department, and to indicate whether the list should be changed to take into account positions eliminated, positions created, or a change in job duties since the code was last adopted. Each Department Head was also asked to review the disclosure categories for each designated employee in their department and to advise if the disclosure category should be changed. The revised conflict of interest code incorporates the changes requested by the Department Heads.

Members of LAFCO had been previously listed in the County’s Appendix, but were eliminated several years ago after LAFCO adopted its own conflict of interest code. Members of the Grand Jury had been listed on the County’s Appendix in years past, but an opinion from the FPPC indicated that grand jury members should not be listed in the Appendix to county codes. Rather, as a local entity, the grand jury could adopt its own code and send it to the county for review.

4. Members of Boards and Commissions.

State law requires that a local conflict of interest code cover any “officer, employee, member, or consultant,” except for “any unsalaried member of any board or commission which serves a solely advisory function.” Government Code §82019. Thus, members of boards or commissions which do not have decision-making authority do not have to be listed in the county’s Appendix of Designated Positions. This exclusion is governed by 2 CCR §18701(a)(1) which reads as follows:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decision-making authority.

(A) A committee, board or commission possesses decision-making authority whenever:

(i) It may make a final governmental decision;

(ii) 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

(iii) 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 governmental agency.

County staff has considered the many county boards and commissions, and has determined that most of them are either purely advisory in capacity, or that their functions do not involve making final decisions which would foreseeably have a material effect on any financial interest. The members of these boards and commissions are not designated in the conflict of interest code.

However, there are several County boards and commissions which do have some final decision making authority that foreseeably would have a material effect on a financial interest, and these are listed in the Appendix of Designated Employees. Prior codes have designated members of the Agricultural Commission, the Civil Service Commission and the Assessment Appeals Board, which are continued in this revision. Several years ago, members of the Child Abuse Prevention Council (CAPC) were added to the County Appendix since that body had been given the duties of the Children's Trust Fund Commission, which makes advisory recommendations concerning expenditures from the Children's Trust Fund which have been consistently followed by the Board of Supervisors for a sufficient period of time that it fell within the definition of a decision-making body under Regulation 2 CCR §18701(a)(1)(C) quoted above.

#### 5. Consultants.

State law requires that a local conflict of interest code include any "consultant" whose position "entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." Government Code §82019. "Consultant" is further defined in 2 CCR §18701(a)(2) as follows:

(2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
  - (i) Approve a rate, rule, or regulation;
  - (ii) Adopt or enforce a law;
  - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
  - (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
  - (v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
  - (vi) Grant agency approval to a plan, design, report, study, or similar item;
  - (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 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 under Government Code §87302.

Most of the consultants which the County routinely hires do not meet the above definition, because they serve an advisory function only, and do not replace regular county staff who would otherwise be designated. Publications by the FPPC recognize the fluid nature of the retention of consultants, and indicate that it is permissible for a local conflict of interest code to have a general provision which leaves it up to a county official to make a case-by-case determination about whether or not a particular consultant meets the definition or not. The proposed conflict of interest code contains such a generic provision concerning consultants. Consultants do not have to file a statement of economic interests unless the County contract administrator in charge of that consultant's contract determines that they do, and notifies the CAO who can make a final determination.

I trust that the above explanation answers any questions you may have.

Very Truly Yours,

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By:   
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