



c/o State Coastal Conservancy  
1515 Clay Street, 10th Floor  
Oakland, CA 94612

(510) 286-7193

[sfbayrestore.org](http://sfbayrestore.org)  
[info@sfbayrestore.org](mailto:info@sfbayrestore.org)

## Memorandum

**Date:** October 30, 2017

**To:** Governing Board  
San Francisco Bay Restoration Authority

**From:** Amy Roach, Counsel

**Subject:** Amendments to San Francisco Bay Restoration Authority Conflict-of-Interest Code

### Recommendation

Staff recommends adoption of Resolution 35 to approve amendments to the Restoration Authority's conflict-of-interest code and to authorize the Executive Officer to finalize the amendments following completion of a 45-day comment period.

### Background

The Political Reform Act of 1974, Government Code §§ 81000, *et seq.* (the Act), requires public officials to disclose assets, income and other financial interests that could be materially affected by the decisions they make or participate in making. (Govt. Code §§ 87300 *et seq.*). Certain public officials, including elected officials and officials who manage public investments, are required by statute to disclose all financial interests. (Govt. Code § 87200). Other public officials, including employees and consultants, are required to disclose in accordance with their entity's conflict-of-interest code. (Govt. Code §§ 82019, 87300). Each public entity is required to develop its own conflict-of-interest code to identify the types of financial interests that might be affected by the entity's decisions and the positions that make or participate in making those decisions. (Govt. Code §§ 87300-87313). Public entities must amend their conflict-of-interest code when necessary to accurately reflect the positions that perform duties that can affect financial interests. (Govt. Code § 87306).

The Restoration Authority's conflict of interest code was adopted in 2009. At that time, the Restoration Authority's only staff were the executive officer, treasurer and counsel for the Association of Bay Area Governments ("ABAG"), who acted as interim staff to the Restoration Authority. The Restoration Authority's code requires disclosure of all financial interests within the Restoration Authority's jurisdiction.

In October 2016, after obtaining voter approval to impose a special parcel tax through-out the

nine-county Bay Area, the Restoration Authority entered into a joint powers agreement (“JPA”) with the State Coastal Conservancy (“Conservancy”) and ABAG pursuant to which the Conservancy and ABAG provide staffing for the Restoration Authority. On May 30, 2017, the Metropolitan Transportation Commission (“MTC”) and ABAG entered into a Contract for Services (“CS”) under which MTC assumed staff functions for ABAG. As of July 1, 2017, ABAG employees transitioned to MTC employees, and all MTC employees now constitute MTC consolidated staff. Pursuant to the CS, MTC will fulfill the staff obligations assigned to ABAG in the JPA. Because Conservancy and MTC staff serve in a staff capacity for the Restoration Authority and participate in making governmental decisions, they qualify as “consultants” to the Restoration Authority as that term is defined in the Fair Political Practices Commission (“FPPC”) regulations. (2 Cal. Code Regs. § 18700.3).

### Proposed Amendments

The Restoration Authority’s conflict of interest code needs to be revised to reflect that Conservancy and MTC employees are performing work as consultants for the Restoration Authority and to set forth disclosure categories for them. The code also needs to be revised to require disclosure of only those types of financial interests that can be affected by the Restoration Authority’s decisions.

The proposed amendments identify that Conservancy and MTC staff are serving as consultants to the Restoration Authority. If these staff hold positions that require disclosure of financial interests pursuant to the conflict-of-interest codes of their employer agencies, they must also disclose on behalf of the Restoration Authority. The amendments also set forth disclosure categories for the consultants. These disclosure categories replace the requirement to disclose all financial interests with a more narrowly tailored lists of financial interests that can be affected by Authority decisions.

The amendments also reflect that the Restoration Authority Governing Board members and the MTC Chief Financial Officer qualify as “public officials who manage public investments” within the meaning of the FPPC regulations. Accordingly, these individuals are required to report all financial interests within the Restoration Authority’s jurisdiction pursuant to Government Code § 87200.

### Process

Staff has obtained preapproval of the conflict of interest code amendments from the FPPC and has initiated the public comment period for the amendments. Upon approval of the amendments by the Authority and completion of the 45-day comment period, the Executive Officer will finalize the amendments. If any substantial changes to the amendments are proposed during the remainder of the public comment period, staff will bring the amendments back to the Restoration Authority for consideration of those comments. If the public comment period results in no changes to the amendments or only insubstantial changes, the Executive Officer will finalize the amendments and certify the code as reflecting the relevant positions and duties within the agency. Staff will forward the comments and final code to FPPC. The amendments will become final 30 days after approval by the FPPC.