

CALAPOOIA WATERSHED COUNCIL CONFLICT OF INTEREST POLICY

Policy guidelines to respond to Conflicts of Interest for the Board of Directors and Others with Substantial Influence

"Conflict of Interest" as defined in state and federal laws occurs whenever a board member and the nonprofit corporation engage in a transaction involving a common interest. Federal law is also concerned about any transactions between the nonprofit corporation and someone who may have, real or perceived, substantial influence in the board's decision-making.

Conflicts of interest, real or perceived, have the *potential* to undermine the Calapooia Watershed Council's (the "corporation") ability to gain and retain community support for its mission. A conflict of interest, however, does not necessarily mean that the person or persons with the conflict or influence is gaining excessively or personally from the transaction. Board members, employees and others can provide excellent opportunities for advancing the interests of the corporation. This Policy is not intended to diminish those opportunities nor inhibit such persons from holding positions of authority with the corporation.

This Policy is designed to help board members to:

1. Identify situations that present potential conflicts of interest and substantial influence;
2. Protect the corporation's legal interest when it enters into a transaction that might benefit the private interest of a board member and/or any "disqualified person" or might result in a possible excess benefit transaction and a penalty tax; and
3. To provide a procedure for validating transactions when they are fair and reasonable and in the best interest of the corporation.

DEFINITIONS

Board Member

A current member of the board of directors of the corporation is a board member.

Disqualified Person--One with Substantial Influence

The Internal Revenue Code (IRC) section 4958 defines a disqualified person as any person who exercises substantial influence over the corporation within a five year period ending on the date of the transaction in question and this person's family members or others connected to this person through business and/or investment (certain 35% controlled entities). Family members are defined by the IRC to include spouse, siblings, spouses of siblings, ancestors, children, grandchildren and great-grandchildren and spouses of all such children. Disqualified persons generally include board members, past board members, executive directors/administrators, substantial contributors and those related to these individuals.

Board Member's Conflict of Interest Defined

A board member's conflict of interest is a transaction with the corporation in which a board member has a direct or indirect interest.

For the purposes of this section, a board member has an indirect interest in a transaction if:

- (a) another entity in which the board member has a material interest or in which the board member is a general partner is a party to the transaction; or
- (b) another entity of which the board member is a member of the board of directors, officer or trustee is a party to the transaction, and the transaction is or should be considered by the board.

Financial Conflict of Interest

A board member has a direct or indirect *financial* conflict of interest if the board member, or through the board member's family, business, or investment (as described at "disqualified person") has or is negotiating a financial transaction with the corporation.

Financial Transaction

A financial transaction is any agreement or relationship involving the sale or purchase of goods, services, property (real and personal) or rights of any kind, the providing or receipt of a loan or grant, or the establishment of any other type of pecuniary relationship, including employment and paying compensation. Financial transactions include land-related and business transactions. The making of a gift is not a financial transaction.

Excess Benefit Transaction

An excess benefit transaction is any financial transaction between a disqualified person and the nonprofit corporation where the value of the economic benefit provided by the corporation exceeds the value of the benefit (including the performance of services) by the disqualified person (including board members and the executive director).

BOARD PROCEDURES

Board Member's Conflicts of Interest

1. Duty to Disclose by Board Member

In case of any actual, possible, or perceived conflict of interest by a board member, a board member must disclose the existence of his or her interest and be given the opportunity to disclose all material facts to the board.

2. Determining Whether a Conflict Exists

After a board member discloses the possible conflict of interest and all material facts, and after any discussion with the board, the remainder of the board will determine if a conflict of interest exists and if it is a financial conflict of interest.

3. Procedures for Addressing a Conflict of Interest Prior to Transaction

A board member may make a presentation to the board, but after the presentation, he or she should recuse him or herself and not be present during the discussion of, and the vote on, the transaction involving the conflict of interest.

If the conflict of interest involves paying compensation to a board member or a transfer of property between the board member and the corporation, the board will follow the procedures described below under Transactions with Disqualified Persons.

The board will determine by majority vote of the disinterested board members whether the transaction is in the corporation's best interest and benefit, and whether the transaction is fair and reasonable, with the use of comparable data, where appropriate.

If the board makes the determination in the affirmative, the board may enter into the transaction with the board member.

The quorum requirements are not applicable if this process is followed provided that the transaction is approved by more than one member on the board.

TRANSACTIONS WITH DISQUALIFIED PERSONS

Purpose

The purpose of this procedure is for the board to avoid an excess benefit transaction which could result in excise (or penalty) taxes. The board will follow this procedure before it engages in a financial transaction with a disqualified person (which includes a board member (see above) and the executive director, including payment of compensation to the executive director).

Compensation

The board will follow the procedures in Attachment 1, Compensation Checklist, whenever it pays any compensation to a disqualified person.

Property

The board will follow the procedures in Attachment 2, Property Checklist, whenever the board engages in transactions with disqualified persons involving real and personal property.

Other Financial Transactions

If a transaction with a disqualified person involves a financial exchange other than compensation or property, such as a loan between the corporation and a disqualified person, the board may enter into such transaction provided that it documents that the transaction is not an excess benefit by using comparable data and following a process similar to the checklists noted above. The corporation, however, shall not make a loan nor guarantee an obligation to or for the benefit of a board member.

MINUTES TO RECORD PROCEEDINGS

The minutes of the board when entering into a transaction with a board member and/or a disqualified person will contain:

The name(s) of the board member(s) who disclosed a conflict of interest; the nature of the interest; and discussion and vote by the board as to whether a financial conflict of interest existed; or

The name of the disqualified person and the nature of the financial interest.

Reference to the appropriate Checklist, and Checklist is attached to minutes for the cases involving compensation and/or property; and

Discussion and decision as to whether it is in the corporation's best interest and for its own benefit, and whether it is fair and reasonable (including comparable data, if appropriate) and the votes taken in connection with the proceedings.