

# **SALMON DRIFT CREEK WATERSHED COUNCIL CONFLICT OF INTEREST POLICY**

## **Policy guidelines to respond to Conflicts of Interest for the Board of Directors and Insiders**

Conflicts of interest, real or perceived, have the potential to undermine the Salmon Drift Creek Watershed Council's (the "corporation's") ability to gain and retain community support for its mission. "Conflict of Interest" as defined in state and federal laws occurs whenever a board member and the corporation engage in a transaction involving a common interest. A conflict of interest does not necessarily mean that the person or persons with the conflict is gaining 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;
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 insider of the corporation or might result in a possible excess benefit transaction; 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.

#### **Insider**

Insiders generally include board members, past board members, executive directors, substantial contributors and those related to these individuals. An insider includes "disqualified persons" as defined by Internal Revenue Code (IRC) section 4958. A "disqualified person" is generally 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). Related parties are defined by the IRC to include spouse, siblings, spouses of siblings, ancestors, children, grandchildren and great-grandchildren and spouses of all such children.

#### **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 "insider") 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 an insider and the corporation where the value of the economic benefit provided exceeds the value of consideration (including the performance of services.)

## **BOARD PROCEDURES**

### **BOARD MEMBER'S CONFLICTS OF INTEREST**

#### **1. Duty to Disclose**

In case of any actual, possible, or perceived conflict of interest, a board member must disclose the existence of the 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. Conflict Not Financial**

If the board decides that the board member has a conflict but it is not a financial conflict of interest, this board member may take part in any discussion about the transaction, but shall not vote on such transaction. The transaction may be approved, authorized or ratified by the board if it receives the affirmative vote of a majority of the members on the board who have no direct or indirect interest in the transaction. 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.

#### **4. Procedures for Addressing a Financial Conflict of Interest**

- a. A board member may make a presentation to the board, but after the presentation, he or she should recuse himself or herself and not be present during the discussion of, and the vote on, the transaction involving the financial conflict of interest.
- b. 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 Insiders.
- c. 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.
- d. If the board makes the determination in the affirmative, the board may enter into the transaction with the board member.
- e. 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 INSIDERS**

#### **Purpose**

The purpose of this procedure is for the board to avoid an excess benefit transaction which could result in excise taxes. The board will follow this procedure whenever it engages in a financial transaction with an insider (which includes a board member).

#### **Compensation**

The board will follow the procedures in Attachment 1, Compensation Checklist, whenever it pays any compensation to an insider.

#### **Property**

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

#### **Other Financial Transactions**

If a transaction with an insider involves a financial exchange other than compensation or property, such as a loan between the corporation and an insider, 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 an insider 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 (1) whether a financial conflict of interest existed or (2) the result of the vote of a transaction that was not a financial conflict of interest; or
- The name of the insider 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; or
- 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.