

DELTA CONVEYANCE DESIGN AND CONSTRUCTION AUTHORITY (DCA)

BOARD POLICY ON ETHICS IN CONDUCTING DCA BUSINESS

PREAMBLE

The most fundamental principle of public service ethics was stated by Henry Clay in 1829: "Government is a trust, and the officers of government are the trustees; and both the trust and the trustees are created for the benefit of the people."

SECTIONS:

1. PURPOSE AND SCOPE
2. RESPONSIBILITIES OF PUBLIC OFFICE
3. FAIR AND EQUAL TREATMENT
4. PROPER USE AND SAFEGUARDING OF DCA PROPERTY AND RESOURCES
5. USE OF CONFIDENTIAL INFORMATION
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12. COMPLIANCE WITH THE BROWN ACT
13. BOARD OF DIRECTORS' ROLES AND DUTIES; EXECUTIVE DIRECTOR'S ROLE AND DUTIES
14. BOARD-EXECUTIVE DIRECTOR RELATIONSHIP
15. BOARD MEETINGS; QUORUM; VOTING
16. BOARD MEETING AGENDA
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SECTION 1. PURPOSE AND SCOPE

The policy of the Delta Conveyance Design and Construction Authority (DCA) is to maintain the highest standards of ethics by its Directors in carrying out their duties to achieve the DCA's mission. The proper operation of the DCA requires decisions and policies to be made in the proper channels of governmental structure, that public office not be used for personal gain, and that all individuals associated with the DCA remain impartial and responsible toward the public. Accordingly, it is the policy of the DCA that Directors and DCA employees maintain the highest standard of personal honesty and fairness in carrying out their duties and to do so in conformity with these DCA Guidelines for operations and procedure. This policy sets forth the minimum ethical standards to be followed by the Board of Directors of the Delta Conveyance Design and Construction

Authority and the manner in which the DCA and the DCA Board of Directors shall operate. The objectives of this policy are:

- (1) to establish uniform guidelines and operating procedures for the Board of Directors;
- (2) to heighten awareness of ethics, values and critical elements in Directors' conduct;
- (3) to provide guidance for dealing with ethical conflict issues; and
- (4) to improve ethical decision-making and values-based management.

SECTION 2. RESPONSIBILITIES OF PUBLIC OFFICE

Directors are public officers, sworn to uphold the Constitution of the United States and the Constitution of the State of California. Directors will comply with applicable laws regulating their conduct, including conflict of interest, financial disclosure and open government laws. Directors will work in cooperation with other public officials unless prohibited from so doing by law or officially-recognized confidentiality of their work.

SECTION 3. FAIR AND EQUAL TREATMENT

Directors will not, in the performance of their official functions, discriminate against or harass any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity, medical condition or disability. A Director will not grant any special consideration, treatment or advantage to any person or group beyond that which is available to every other person or group in similar circumstances.

SECTION 4. PROPER USE AND SAFEGUARDING OF DCA PROPERTY AND RESOURCES

Except as specifically authorized, a Director will not use or permit the use of DCA owned vehicles, equipment, telephones, materials or property for personal convenience or profit. A Director will not ask or require an DCA employee to perform services for the personal convenience or profit of a Director or employee. Each Director must protect and properly use any DCA asset within his or her control, including information recorded on paper or in electronic form. Directors will safeguard DCA property, equipment, moneys and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust.

SECTION 5. USE OF CONFIDENTIAL INFORMATION

A. A Director is not authorized, without approval of the Board of Directors, to disclose information that qualifies as "confidential information" under applicable provisions of law to a person not authorized to receive it, that

- (1) has been received for, or during, a closed session meeting of the Board;

- (2) is protected from disclosure under the attorney/client or other evidentiary privilege; or
- (3) is not required to be disclosed under the California Public Records Act.

B. This section does not prohibit any of the following:

- (1) making a confidential inquiry or complaint to the DCA's General Counsel, district attorney, or Grand Jury concerning a perceived violation of law, including disclosing facts to the DCA's General Counsel, district attorney, or Grand Jury that are necessary to establish the alleged illegality of an action taken by the DCA;
- (2) expressing an opinion concerning the propriety or legality of actions taken by the DCA in closed session, including disclosure of the nature and extent of the allegedly illegal action; or
- (3) disclosing information acquired by being present in a closed session that is not confidential information. Prior to disclosing confidential information pursuant to (1) or (2), above, however, a Director is encouraged to first bring the matter to the attention of either the President of the Board or the Board, in a lawful and appropriate manner, to provide the Board an opportunity to cure an alleged violation.

C. A Director who willfully and knowingly discloses for pecuniary gain confidential information received by him or her in the course of his or her official duties may be guilty of a misdemeanor under Government Code section 1098.

SECTION 6. CONFLICT OF INTEREST

A. A Director will not have a financial interest in a contract with the DCA, or be a purchaser at a sale by the DCA or a vendor at a purchase made by the DCA as prohibited by Government Code section 1090 or other applicable law. A Director will not participate in the discussion, deliberation or vote on a matter before the Board of Directors, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter, as defined in the Political Reform Act, Government Code sections 81000, and following, relating to financial conflicts of interest.

Generally, a Director has a financial interest in a matter if it is reasonably foreseeable that the Board's decision would have a material financial effect:

- (1) on a business entity in which the Director has a direct or indirect investment in an amount as established by the Fair Political Practices Commission (FPPC);
- (2) involving real property in which the Director has a direct or indirect investment interest, in an amount as established by the FPPC;
- (3) involving a source of income of the Director in an amount as established by the FPPC within twelve months before the Board decision;

- (4) involving a source of gifts to the Director in an amount as set or adjusted January 1 of each odd-numbered year by the FPPC, within twelve months before the Board decision; or
- (5) on a business entity in which the Director holds a position as a director, trustee, officer, partner, manager or employee.

The above circumstances would constitute a material financial effect if distinguishable from the effect on the public generally. For additional information or questions, see www.FPPC.ca.gov or contact the FPPC at 1-866-ASK-FPPC, or consult with the DCA General Counsel.

An "indirect interest" means any investment or interest owned by the spouse or dependent child of the Director, by an agent on behalf of the Director, or by a business entity or trust in which the Director, or the Director's spouse, dependent child or agent, owns directly, indirectly or beneficially, a ten percent or greater interest. A Director will not accept gifts that exceed the annual limitations set by the FPPC or honoraria unless an exception applies. Directors will report all gifts, honoraria, campaign contributions, income and financial information as required under the DCA's Conflict of Interest Code and the provisions of the Fair Political Practices Act and the FPPC Regulations.

B. If a Director believes that he or she may be disqualified from participation in the discussion, deliberations or vote on a particular matter due to a conflict of interest, the following procedure will be followed:

- (1) if the Director becomes aware of the potential conflict of interest before the Board meeting at which the matter will be discussed or acted on, the Director will notify the DCA's Executive Director or General Counsel of the potential conflict of interest, so that a determination can be made whether it is a disqualifying conflict of interest;
- (2) if it is not possible for the Director to discuss the potential conflict with either the Executive Director or the General Counsel before the meeting, or if the Director does not become aware of the potential conflict until during the meeting, the Director will immediately disclose the potential conflict during the Board meeting, so that there can be a determination whether it is a disqualifying conflict of interest; and
- (3) upon a determination that there is a disqualifying conflict of interest, the Director:
 - a. will not participate in the discussion, deliberation or vote on the matter for which a conflict of interest exist, which will be so noted in the Board minutes; and
 - b. will leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters, except

that the Director may speak on the issue during the time that the general public speaks on the issue.

C. A Director will not recommend the employment of a relative by the DCA. In addition, a Director will not recommend the employment of a relative to any person known by the Director to be bidding for or negotiating a contract with the DCA.

D. A Director who knowingly asks for, accepts or agrees to receive any gift, reward or promise thereof for doing an official act, except as may be authorized by law, may be guilty of a misdemeanor under Penal Code section 70.

SECTION 7. SOLICITING POLITICAL CONTRIBUTIONS

Directors are prohibited from soliciting political funds or contributions at DCA facilities or from DCA employees. A Director will not accept, solicit or direct a political contribution from DCA vendors or consultants who have a material financial interest in a contract or other matter while that contract or other matter is pending before the DCA. A Director will not use the DCA's seal, trademark, stationery or other indicia of the DCA's identity, or facsimile thereof, in any solicitation for political contributions as per state or federal law.

SECTION 8. INCOMPATIBLE OFFICES

Pursuant to California Government Code Section 1099, it shall be prohibited for any Director appointed or elected to the DCA Board of Directors to simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

- (1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
- (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
- (3) Public policy considerations make it improper for one person to hold both offices.

When two public offices are incompatible, the Director shall be deemed to have forfeited his/her Directorship on the DCA Board upon acceding to the second.

SECTION 8A: POTENTIALLY INCOMPATIBLE POSITIONS

Pursuant to California Government Code Section 53227, active DCA employees may not be sworn into office as a member of the DCA Board of Directors unless he/she resigns as an employee.

Failure to resign shall result in his/her employment automatically terminating upon his/her being sworn into office.

Section 8A, above, generally does not apply to employees of other local agencies whose public offices may be deemed incompatible. However, in the event that the scope and nature of the employment and associated authority is such that any of the factors set forth above are present, then such employment may be deemed incompatible with that of the office of DCA Director.

SECTION 9. DIRECTORS' COMPENSATION AND EXPENSE REIMBURSEMENT

Members of the Board of Directors are subject to the provisions of any DCA Board of Directors' Compensation and Expense Reimbursement Policy, if any.

SECTION 10. VIOLATION OF ETHICS POLICY

Any actual or perceived ethical violation by a Director should be referred to the President of the Board or the Board of Directors for investigation, and consideration of any appropriate action warranted. A violation of this policy may be addressed by the use of such remedies as are available by law to the DCA, including but not limited to:

- (1) adoption of a resolution expressing disapproval of the conduct of the Director who has violated this policy;
- (2) injunctive relief; or
- (3) referral of the violation to the General Counsel or appropriate regulatory authorities.

SECTION 11. IMPROPER ACTIVITIES AND THE REPORTING OF SUCH ACTIVITIES; PROTECTION OF "WHISTLE BLOWERS"

A. The Executive Director has primary responsibility for:

- (1) ensuring compliance with the DCA's policies and procedures and ensuring that DCA staff, assistants, consultants and contractors do not engage in improper activities;
- (2) investigating allegations of improper activities; and
- (3) taking appropriate corrective and disciplinary actions.

B. The Board has a duty to ensure that the Executive Director is managing the DCA according to the law and to the policies approved by the Board. Directors are encouraged to fulfill their obligation to the public and the DCA by disclosing to the Executive Director to the extent not expressly prohibited by law, improper activities within their knowledge.

C. Directors will not interfere with the Executive Director's responsibilities in identifying, investigating and correcting improper activities, unless the Board determines that the Executive Director is not properly carrying out these responsibilities. Nothing in this section affects the responsibility of the Board to oversee the performance of the Executive Director.

D. A Director will not directly or indirectly use or attempt to use the authority or influence of his or her position for the purpose of intimidating, threatening, coercing, commanding or influencing any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Executive Director or the Board any information that, if true, would constitute: a work-related violation by a Director or a DCA employee or contractor of any law or regulation, gross waste of DCA funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of an DCA official or employee, use of an DCA office or position or of DCA resources for personal gain, or a conflict of interest of an DCA Director or DCA employee.

E. A Director will not use or threaten to use any official authority or influence to affect any action as a reprisal against a DCA Director or DCA employee who reports or otherwise brings to the attention of the Executive Director, General Counsel, Board President, Assistant Executive Director, or other legal authority any information regarding the subjects described in this section.

SECTION 12. COMPLIANCE WITH THE BROWN ACT

The members of the Board of Directors will fully comply with the provisions of the State's open and public meeting law applicable to public agencies and public officials (the Ralph M. Brown Act; Government Code sections 54950, *et seq.*).

Interpretation of Brown Act provisions shall be within the purview of the DCA's General Counsel.

SECTION 13. BOARD OF DIRECTORS' ROLES AND DUTIES; EXECUTIVE DIRECTOR'S ROLE AND DUTIES

A. The Board of Directors holds governing authority for the DCA. Its role and responsibilities are:

- (1) Establish policies, procedures and regulations for DCA operations;
- (2) Establish policies for and oversee the DCA's finances and approve budgets;
- (3) Provide the resources needed by management and staff to carry out DCA policies;
- (4) Define the mission of the DCA to be consistent with the Joint Powers Agreement (JPA) and Joint Exercise of Powers Agreement with the Department of Water Resources (JEPA);
- (5) Approve and ensure the development and implementation of the DCA's Strategic Plan to be consistent with the JPA and JEPA; and
- (6) Appoint and evaluate the Executive Director.

B. Directors Individually: Apart from his/her normal function as a part of the Board of Directors, each individual Director's role and responsibilities are as follows:

- (1) Functions only as one member of the Board;
- (2) Has no individual authority unless authorized by the Board;
- (3) Not commit, nor represent that he/she can commit the DCA to any policy, act, or expenditure; and
- (4) Is encouraged to support decisions made by the Board

C. The DCA's Executive Director:

- (1) Has full charge and control of the day-to-day management, operation and administration of the DCA, consistent with DCA policy and other provisions of law;
- (2) Has full power and authority to employ and discharge consultants, contractors, employees and assistants, consistent with DCA policy and other provisions of law;
- (3) Prescribes the tasks and duties of employees, assistants, consultants and contractors, consistent with DCA policy; and
- (4) Fixes and alters the compensation of employees, assistants, contractors and consultants, subject to approval by the Board.

SECTION 14. BOARD-EXECUTIVE DIRECTOR RELATIONSHIP

The Board sets the policy for the DCA under the terms of the JPA. The DCA's Executive Director serves by appointment of the Board. The Board provides policy direction and general instructions to the Executive Director on matters within the authority of the Board by the requisite vote of the Board during duly-convened Board meetings. Members of the Board will address matters within the authority of the Executive Director through the Executive Director and not through other DCA staff. Members of the Board will refrain from making requests directly to DCA employees, contractors or consultants (rather than to the Executive Director) to undertake analyses, perform other work assignments or change the priority of work assignments. A Director's requests for non-confidential, factual information regarding DCA operations should be made through the Executive Director, Treasurer or General Counsel so that the appropriate DCA staff may be assigned to provide the information for the Director(s) in the most efficient and effective manner.

SECTION 15. BOARD MEETING PARLIAMENTARY PROCEDURES

The DCA's Board meetings shall be conducted following the general guidelines of "Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century," League of California Cities, or any updated version thereof.

SECTION 16. BOARD MEETING AGENDAS

Any Director may request items be placed onto the board agenda of upcoming Board meetings by submitting a request to the President of the Board and Executive Director no later than ten (10) business days prior to the scheduled Board meeting at which the item is requested to be considered, a written document explaining the item and offering

recommendations. The Board President and/or the Executive Director shall determine whether such request shall be granted.

Alternatively, Directors may request that items be calendared for future Board agendas during the "Items for Future Agendas" portion of the agenda at a regular meeting of the Board.

DCA staff shall send regular Board meeting agendas and supporting documents to each member of the Board in accordance with the Brown Act. Directors should thoroughly review the agenda and accompanying materials and be prepared to discuss same at the scheduled Board meeting. Any questions regarding the agenda, items contained therein and/or supporting documents and materials, shall be directed to the Executive Director, the Treasurer or the General Counsel at the earliest opportunity.

SECTION 17. BOARD DECORUM AND COMMUNICATIONS WITH THE PUBLIC

Directors shall at all times conduct themselves with the utmost decorum. Members shall afford due respect to one another, DCA staff and the public. Members shall be courteous and shall not engage in personal attacks or make malicious or offensive statements or comments during the conduct of DCA business. In carrying out their duties, Directors shall bear in mind the Board's role, the DCA's mission and the interests of the constituency the Board serves. Director participation shall be relevant to the subject matter at hand and should be expressed in a thoughtful, clear, succinct and articulate manner.

When communicating with members of the public or other public DCA representatives, individual Directors shall refrain from making personal commitments or promises on behalf of the DCA. In addition, when expressing personal views and opinions orally or via social media to third parties concerning matters within the jurisdiction of or affecting the DCA, Directors shall duly qualify them as such to avoid misinterpretation of those views and opinions as those of the DCA or the Board of Directors.

Conversely, when specifically authorized by the Board of Directors to speak on behalf of the DCA at other public agencies' meetings, clearly state that what is said has been approved by the Board or that the Board has no position on an issue.

Directors are encouraged to support DCA policy and avoid personal statements that conflict with Board-adopted policy and decisions. Members shall afford due respect for other Member's differing opinions and viewpoints. When expressing a dissenting view to members of the public, other public agencies, other public officials and/or to the media, to avoid stimulating or inflaming controversy.

**BOARD OF DIRECTORS OF THE DELTA CONVEYANCE
DESIGN AND CONSTRUCTION AUTHORITY
RESOLUTION NO. 21-06**

**Introduced by Director: Sarah Palmer
Seconded by Director: Martin Milobar**

AMENDING THE ETHICS POLICY AND PROTEST POLICY

WHEREAS, the Delta Conveyance Design and Construction Authority (DCA) previously adopted the Board Policy on Ethics in Conducting DCA Business (Ethics Policy) and Protest Policy; and

WHEREAS, the DCA recently updated its bylaws ("Bylaws") to align with the Amended and Restated Joint Powers Agreement Forming the Delta Conveyance Design and Construction Joint Powers Authority; and

WHEREAS, the DCA wishes to update the Ethics and Protest Policies to ensure consistency with the Bylaws and other DCA policies, to update addresses, to incorporate best practices, and to align with applicable law;

Now, therefore, the Board of Directors hereby resolves as follows:

1. RECITALS

The above recitals are incorporated into this Resolution by reference.

2. ETHICS POLICY

The Board Policy on Ethics in Conducting DCA Business is hereby amended to read in full as set forth in the attached Exhibit A, incorporated by this reference.

3. PROTEST POLICY

The Protest Policy is hereby amended to read in full as set forth in the attached Exhibit B, incorporated by this reference.

4. EFFECTIVE DATE

This Resolution is effective upon its adoption.

* * * * *

This Resolution was passed and adopted this 17th day of June 2021, by the following vote:

Ayes: 7
Noes: 0
Absent: 0
Abstain: 0

DocuSigned by:
Richard Atwater 6/23/2021
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Richard Atwater, Board President

Attest:

DocuSigned by:
Martin Milobar 6/23/2021
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Martin Milobar, Secretary