



Board of Directors Policies

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Supersedes all other policies of the Lower Columbia River Estuary Program Implementation Committee, and the Lower Columbia River Estuary Partnership and Columbia River Foundation.

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Preface

The Lower Columbia Estuary Partnership

The Lower Columbia Estuary Partnership (Estuary Partnership) is one of 28 estuaries designated by Congress as an “Estuary of National Significance”. National Estuary Programs (NEPs) focus on improving the water quality in the water body and maintaining the *integrity of the whole system*—its chemical, physical, and biological properties, *as well as* its economic, recreational, and aesthetic values.

The Estuary Partnership predecessor, the Bi-State Water Quality Program (Bi-State Program), was convened by the Governors of Oregon and Washington in 1989 and charged with building a body of scientific evidence about the degradation of the lower river. The studies found that water, fish tissue, and sediments were contaminated with a range of toxic and conventional contaminants, specific sites were particularly contaminated, and over 50% of its wetlands had been damaged or destroyed since settlement; negative effects from the entire upper basin compound in the estuary; and human impact and institutional constraints were areas of concern.

As a result of these findings, the Governors nominated the lower Columbia River estuary to the National Estuary Program (NEP) for designation as an “Estuary of National Significance.” They wanted a public entity to focus on the lower river; unite the two states, multiple federal, tribal, and local partners and the private sector; set regional strategies; and build on existing efforts to address the degradation in the lower river. Until that time, there was little focus on the Columbia River below Bonneville Dam. The US Environmental Protection Agency (EPA) accepted the lower river into the NEP in 1995—a distinction that means the water body is both of national significance and has been degraded by human activity. The NEP is administered by the EPA.

National Estuary Program

The National Estuary Program was created by Congress in 1987 amendments to the Clean Water Act. The NEP is authorized in Section 320 of the Clean Water Act (33 USC §1330). (*All references to the NEP statute or authorizing legislation in this section refer to this citation.*) Federal NEP statute and EPA rules provide a framework for how a NEP works.

To become a NEP, the Governor(s) prepare a nomination packet to EPA when EPA calls for nominations to the Program. EPA has done so five times between 1987 when the NEP was created in federal statute and 1995; EPA has not opened a round of nominations since then. We were nominated and selected in 1995, in what EPA refers to as a “Tier V” estuary program. There are two key tests to becoming a NEP: the waterbody is of national significance; and it has been degraded by human activity. The nomination packet provides this justification.

NEP Management Conference

NEP Structure Options

The statute requires each NEP establish a governance structure, what is referred to as the Management Conference. This includes a governing, decision-making policy body and a committee structure and staff to support the governing body. Together this structure – these people -the Management Conference -are the NEP.

Governing Body. Many NEPs opt for a structure that includes a Management Committee to oversee routine operation of the program and a Policy Committee made up of high-level representatives from federal, state, and local government agencies. Several include some form of a Technical Committee to guide technical work and Citizens Committee to represent the interests of estuary user groups and the public. NEPs can form committees that best suit its goals and objectives as defined in Management Plan.

About seven of the 28 NEPs operate as 501(c)(3) nonprofit corporations. A few, including the ***Estuary partnership, are independent nonprofit entities***; a few are associated with a sister entity. These are governed by federal and state laws regulating nonprofit corporations. The other NEPs operate with a host entity, several are hosted and housed within academic institutions, state or local governments, or local water authorities, and one (New York-New Jersey) is housed within and is part of EPA. These are government or university entities; their host agencies govern much of their operational procedures.

The **Estuary Partnership Management Conference** was defined and accepted by the Governors and EPA in May 1996. At that time, we had what is known as a Management Committee and a Policy Committee. The Estuary Partnership now has a Board of Directors as its governing body. Several NEPs have a Management Committee as its governing body. A key distinction between a Management Committee and a Board of Directors is that the Management Committee is advisory and is appointed by another entity or entities. A Board of Directors is a self-appointing, independent self-governing organization.

The **Estuary Partnership Board of Directors has an Executive Committee** that has been authorized by the Board to oversee the finances of the corporation, human resources, and to hire and manage the Executive Director. The Executive Committee is a subset of the Board, it reports to the Board, and only voting members of the Board may be appointed by the Board to serve on the Executive Committee. The Estuary Partnership Board has formed the Science Work Group to guide technical work and the Water Trail Committee to guide paddling programs. Over the years, the Board has had several other standing or ad hoc committees.

Required Composition of a NEP Governing Body. The NEP is designed to engage local community in managing their local water bodies. The NEP authorizing legislation and EPA NEP guidance require that the governing body of each NEP include public and private interests and stakeholders from the local NEP's study area. This requirement applies regardless of the NEP operating structure. The statute requires the governing body to include at a minimum:

- *“each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;*
- *international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;*
- *each interested Federal agency, as determined appropriate by the Administrator;*
- *local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and*
- *affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.”*

The Administrator referred to is the US EPA Administrator.

For the Estuary Partnership, this includes tribal, federal, state, and local government entities, business, industry, fishing, agriculture, recreation, etc. This is codified in the Board Bylaws and Policies. At any one point, the specific representation on the Board is different.

The NEP requirement about composition of the governing body distinguishes NEPs that operation as 501(c)(3) corporations from typical nonprofits. We are regulated by both nonprofit requirements and NEP requirements and have to meld those. One example of this, many nonprofit organizations require Board members to make or secure major donors and Board members often are elected in part for their ability to do so. For a NEP, many Board members are appointed because of the public entity they represent, so the Estuary Partnership has different requirements in appointing Board members and in their duties than many nonprofits would.

Decision Making. NEP governing bodies employ collaborative decision-making. **Most NEPs, including the Estuary Partnership Board of Directors, work by consensus** rather than using more formal voting and parliamentary procedures such as Roberts Rules of Order.

NEPs are apolitical.

Work

NEPs are voluntary; use an ecosystem, watershed approach; are science based; cross jurisdictional boundaries, and as required in EPA guidance focus on improving the water quality in the water body and maintaining the *integrity of the whole system*—its chemical, physical, and biological properties, *as well as* its economic, recreational, and aesthetic values.

Because the NEP is authorized in the Clean Water act, water quality and implementing EPA core water programs (including wetlands protection and reducing toxic and conventional pollutants and stormwater) are high priorities. As noted, EPA requires each local NEP create and implement a Management Plan that addresses water quality, sediment quality, living resources, land use, and water resources.

As a regional body, NEPs gather and advance the knowledge about the study area, identify problems, and common solutions, and build on the capacity of existing entities to create and sustain a regional framework and forum.

The 1987 authorizing statute identified specific tasks for a NEP:

- *“assess trends in water quality, natural resources, and uses of the estuary;*
- *collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;*
- *develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;*
- *develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and*
- *maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;*
- *develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;*
- *monitor the effectiveness of actions taken pursuant to the plan.”*

Annual EPA guidance (and sometimes subsequent amendments or reauthorizations of the NEP) have added various other areas of focus including climate change, blue green algae, air emissions, considering future sustainable commercial activities, etc. These change with different administrative priorities.

Funding

The federal government (EPA and the NEP authorizing legislation) provides a framework and base funding to support the local NEP to develop the Management Plan. Funding continues after the Management Plan is developed to help the NEP implement aspects of actions and to leverage the federal NEP funds to raise other funds to more fully to implement the Management Plan. EPA NEP funding does not cover the cost to meet all the requirements of the statute or the EPA guidance. Each NEP must find additional funding to fully implement its Management Plan.

Program Guidance and EPA Program Evaluation

accompany the annual request for funding and define how the funds will be spent. The EPA NEP guidance defines what the format and contents for the workplan and any specific projects that EPA is requiring of NEPS, such as Climate Change Assessment, and the final annual award amount. Congress appropriates funds to EPA annually for the NEP.

In addition, EPA reviews each NEP about every five years, EPA sets the specific schedule and provides Program Evaluation Guidance at the outset of the review period. This requires compilation of materials and often a site visit for EPA to assess how well the NEP is implementing its Management Plan, leveraging federal NEP funds, and engaging the region. After the review, they issue findings. The NEP must successfully pass this review to receive future NEP funding.

NEP Guiding Document: Comprehensive Conservation Management Plan

Each local NEP is required to create and implement a Comprehensive Conservation Management Plan (Management Plan) that addresses water quality, sediment quality, living resources, land use, and water

resources. EPA provides NEP grants to create the base program. The Management Plan within a specific period after it has been accepted into the NEP program.

Components of the Management Plan must include: a characterization of the water quality and ecosystem problems; priority list of environmental problems; a set of actions to address the problems; and a monitoring plan. Actions must be measurable and specific. Management plans also must include a broad discussion of how the local NEP will implement the plan. Each Management Plan is unique to the local NEP and its environmental conditions and addresses local priorities.

Management Plans are updated on a schedule decided by the local NEP and EPA, and sometimes Congress in NEP reauthorizing legislation. Management Plans are by definition and intent long-range plans. The Estuary Partnership develops six-year implementation strategies to guide more specific objectives. Management Plans are developed with extensive public input. Please see our original Management Plan and our 2011 update.

Association National Estuary Programs

In 1996-97, the directors of the 28 programs formed a non-profit corporation, the Association of National Estuary Programs (ANEP). The corporation is registered in Washington D.C. Each NEP has a seat on the Board of Directors, typically the Director of each of the 28 programs. NEP provides an excellent forum for the 28 local NEPs to share information and ideas and work on common issues. A key purpose of ANEP is to connect the NEPs with the D.C. staff of federal agencies, notably EPA and NOAA, and members of Congress and their staff. To that end, ANEP contracts with a consulting firm to provide a D.C. presence. The NEPs Directors and ANEP's legislative contractor regularly share with members of Congress the impact of their investment in the NEP on their local communities and the nation's water bodies. ANEP usually meets twice a year in person, once usually in D.C. in the spring, to coordinate with the EPA national NEP meeting, which EPA requires all NEP directors to attend, and to coincide with the Congressional appropriation process.

The Estuary Partnership Management Plan

The Management Plan is the governing document for the Estuary Partnership. It guides the six-year implementation plans and biennial workplans developed by the Board. The Management Plan was developed from 1996 to 1999 using extensive scientific research and analysis and historical data.

On October 20, 1999, Governor Kitzhaber of Oregon, Governor Locke of Washington, and EPA Deputy Regional Administrator Findley accepted the Management Plan and signed an agreement to implement it. In 2010, the then Governors and EPA Region 10 Administrator signed an affirmation to support the Estuary Partnership and the Management Plan.

In 2011, the Board updated the actions to incorporate the sixteen years of regional experience implement the Management Plan, incorporate climate change adaptations, set new targets, and streamline actions. The result is a set of 17 actions that give concise direction for the region and provide specific targets.

Management Plan Goals

- ◆ Increase habitat and habitat function for multiple species; restore 25,000 acres of habitat by 2025.
- ◆ Conserve land to protect water quality and habitat; reduce impacts from land use practices; reduce armored shoreline by 10% by 2025; maintain impervious surface at no more than 15%.
- ◆ Reduce or remove contaminants and clean-up contaminated sites to improve water quality.
- ◆ Provide education and engagement activities and provide data and information for a range of audiences; reach 5,000 students each year and host at least ten volunteer events each year.
- ◆ Convene and coordinate partners to enhance regional strategies and partnerships and heighten protection of the lower Columbia River.

Estuary Partnership Mission

The mission of the Estuary Partnership is to preserve and enhance the water quality of the estuary to support its biological and human communities.

Estuary Partnership Guiding Principle

The health of the river will not significantly improve if new problems continually emerge, even as old ones are addressed and solved.

Values

- We value the biological diversity and the economic, social, and aesthetic benefits of the lower Columbia River.
- We value diversity and differences, and our ability to come together to ensure the long-term prosperity and sustainability of the river and each other.
- We are united, as one community, by the river; its flow carries our history, our multiple cultures, our prosperity, and our future.
- We value a common sense of stewardship toward the river by all people.

Organization Principle

The Estuary Partnership operates with a principle of continuous improvement. This means that we always do the best we can, we assess and adapt, and incremental change is as important as major paradigm changes. Continuous improvement organizations use a team structure. The organization itself is one team, and teams form within different programs areas or ad hoc teams can form around specific activities. Continuous improvement organizations believe that the people closest to the point of service delivery have specific perspective and expertise. Depending on the task or work being addressed, teams may include members doing comparable work, or may include a diagonal 'cross' section of the organization. A diagonal team might include the employees doing the particular work, peers in other program areas, managers, decisions makers, and policy makers. Each team member has a specific role and expertise and each recognizes and values the expertise and responsibilities of every team member.

Continuous improvement uses a familiar process: develop a vision ("the way you want the world to be" (desired outcome or desired state)) and articulate the problem, collect data and information from a range of sources, develop an action and a path to achieve the vision, implement that action plan, assess how things are going, gather new information or data, and adapt (continually improve). Actions are SMART: specific, measurable, achievable, responsive, and trackable. The Estuary Partnership used this principle developing the actions in the 1999 Management Plan, see Chapter 3 1999 Management Plan. The Plan, Act, Do, Assess process is very much the same as adaptive management.

Estuary Partnership Governance Structure

The Estuary Partnership is a National Estuary Program operating as an independent 501(c)(3) public non-profit corporation. That description, in that order, is substantive. We were created to be a National Estuary Program and were accepted into the NEP in 1995. Until 1999-2000, we functioned as a two-state quasi-governmental program, housed within the State of Oregon Department of Environmental Quality. In 1998, we formed a 501(c)(3) corporation to facilitate raising funds to match and leverage the EPA NEP funds. In 2000, the two entities merged to function as an independent, voluntary, community-based entity. The governing bodies at the time (see the 1999 Management Plan for the structure and composition) decided after a thorough assessment of options, that we would be more effective and efficient as a nonprofit corporation. This would remove the perception that we were worked only in one state or had regulatory ties or authorities.

Since 1995, the Board has placed a high priority on making sure the Estuary Partnership serves all communities in our study area. Because we are housed in Oregon, the metro region, we can still be perceived as being metro-centric or Oregon-centric in our work. Sometimes project scopes or funding may result in us working in one area more than another for a period of time; that does not diminish our commitment as a two-state entity working in along the lower 146 miles of the Columbia River to work throughout our study area. The NEP defines our mission and our work; the 501(c)(3) status defines how we do our work.

We are the only two-state entity working with the private sector and local, state, federal, and tribal governments to address issues in the lower Columbia River. The Board of Directors includes representatives from the diverse interests and diverse geography of the region to meet its own needs and the requirements of the NEP.

The Estuary Partnership is organized as a nonprofit under Oregon law and adheres to those statutes and rules. The US Department of Treasury through the IRS makes the determination regarding status as a 501(c)(3) entity. The organization must meet specific requirements to retain this designation. A 501(c)(3) is a public charity organized for specific public benefit, the Estuary Partnership organized for scientific and education purposes.

Nonprofit corporations have multiple requirements to ensure financial accountability and structure. The Board of Directors adopts Financial Procedures, Employee Policies, Bylaws, and Board Policies to ensure we meet the letter and intent of the laws. The Board of Directors is the decision-making, policy body for the Estuary Partnership. A Board of Directors operates under specific comprehensive requirements by the State and the IRS in its operations and its structure; it has responsibility for the fiscal health of the organization. The Board of Directors may hire an Executive Director and authorized her/him to hire and manage other employees with a range of expertise as needed to carry out the day to day responsibilities of the organization. The Executive Director of a non-profit reports to and is accountable to the Board of Directors; the employees report to and are accountable to the Executive Director. The Board may delegate specific duties and authorities to its committees and or the Executive Director. Nonprofit organizations that receive more than a specific amount of federal funds, as set by the IRS, must undergo an independent financial audit and what is called an A-133 audit. In addition, EPA places several financial requirements on its grantees and NEPs.

The Estuary Partnership Board of Directors is a policy board, meaning it hires and maintains a professional staff. This is different than what is often referred to as a ‘working board’; in that case Board members play a more direct role in carrying out the day to day operations of the organization.

Study Area

The study area focuses on along the lower 146 miles of the Columbia River, an area of approximately 5,900 square miles from Bonneville Dam to the Pacific Ocean that includes 28 cities, nine counties, and 45 school districts in Oregon and Washington. This geography was designated as part of the Lowe Columbia River NEP nomination materials; which identified the study area as the tidally influenced waters of the mainstem Columbia River.

Responsibilities

The Board of Directors and each employee value all members of the Estuary Partnership and together we provide a safe, congenial work environment to support creativity and teamwork. We appreciate the interdependency of staff members and the contribution each makes to the whole. We each respect the role of the Board of Directors and the role of the Executive Director. We each will act with integrity in all relationships, respect all viewpoints, and foster a sense of collaboration while conducting Estuary Partnership work. We each work as part of the team, taking responsibility for her/his work assignments and taking initiative to advance Estuary Partnership work.

Diversity, Equity, & Inclusion

The Estuary Partnership and all National Estuary Program are local people, solving local problems, in local water bodies. The health of the Columbia River will only be sustained if all communities, all people, are equitably part of its care. Many people are discriminated against because of their race, ethnicity, gender, disabilities, and income, to name only a few, and experience systemic inequity. For the Estuary Partnership, the intersection of our mission to protect the Columbia River and environmental equity brings us to a commitment to change these injustices in how we do our work.

The Estuary Partnership is addressing these inequities and this oppression by including, working with, and amplifying diverse voices and perspectives so we can best protect the Columbia River. We have a responsibility to include all communities in who we are and what we do. We want equity across our organization: in our programs, workforce, policies and organizational culture.



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Part I Roles and Responsibilities

Board of Directors

The Board of Directors has the principal responsibility for fulfillment of the organization's mission and the legal accountability for its operations. Members of a nonprofit Board of Directors are responsible for management of the business and affairs of the corporation. The Board establishes the organizational mission, forms strategic plans to accomplish the mission, oversees and evaluates success, hires an executive director and provides adequate support to that individual, ensures financial solvency of the organization, represents the community to the organization, and adopts policies and procedures for financial and human resource management and its governance.

Members of the Board of Directors are responsible to US EPA as a National Estuary Program (NEP) to implement the Comprehensive Conservation and Management Plan. The Management Plan, completed in 1999 and updated in 2011, serves as the overall long-term plan for the organization. The Board adopts six-year implementation strategies to direct day-to-day operations and activities and it develops biennial workplans and budget.

Members of the Board of Directors have a duty of loyalty to the organization, its staff and other directors. In carrying out their responsibilities, the law imposes on director's specific fiduciary duties of care, loyalty, and obedience to the law.

Board members accomplish their functions through regular meetings and by establishing a committee structure to conduct business with broad input and expertise. Board members arrive at meetings prepared and ready to engage in thoughtful dialogue, and the group process generates and uses the best thinking of its Directors. The Board of Directors is the governing board of the corporation; it is a policy board and engages a professional staff to oversee day-to-day management of the corporation. The Board is open to self-evaluation and regularly reviews its composition to ensure constituent representation, expertise needed by the organization, and Board member expertise and commitment and engagement.

The corporation's bylaws establish the officers of the Board and their duties. No Director has more authority than another, regardless of position held.

The Board recognizes that as a public interest entity and as a National Estuary Program, the Estuary Partnership develops and provides information and data to a range of partners and the Estuary Partnership engages in a variety of ecosystem improvement activities and education programs. In providing information and conducting its activities, the Board, among other things, ensures that the use of that information will not cause harm to or be used to the detriment of the Estuary Partnership.

Membership

The Board's bylaws establish the size and structure of the Board.

The Board encourages Directors to serve as voting Directors and to minimize the number of ex officio Directors. The Board recognizes that each Director may at times have conflicts of interest due to other obligations and therefore may recuse themselves for certain topics.

Ex Officio Directors

As prescribed in the bylaws, the Board may appoint ex officio directors to serve on the Board. Ex officio directors may participate fully in board discussions and deliberations..

Federal agency representatives are selected because of the agency's interest in and relationship to the Estuary Partnership work.

Duties of an Ex Officio, non-Honorary Director is the same as voting members. Participation at regular meetings and in work groups and committees is expected and valued by the corporation.

The Board may appoint Honorary Directors to serve on the Board to recognize the person's commitment and work protecting the lower Columbia River and to the Estuary Partnership. Honorary members duties are minimal

Board Composition

National Estuary Programs require and rely on public and private composition in their governing structure to implement the Management Plan.

A diverse and inclusive organization with a workforce, Board of Directors, and committee membership that reflects the diversity of our communities creates a more robust and resourceful organization. It creates an environment in which everyone is respected and accepted and increases our ability to serve our community. Diversity is a key element in the pursuit of our mission.

Diverse interests and communities serving on the Board of Directors brings a variety of experience and expertise to the Estuary Partnership and keeps the organization connected to the communities it serves.

In its annual appointments, the Board shall assess representation from, but not limited to, tribal government, private industry, labor, agriculture, forestry, recreation, environmental interests, ports, the public, and federal, state, regional and local governments, diverse populations and underserved communities, including communities of color and communities of limited income. In each nomination process, the Board shall consider areas of expertise or geography that would benefit the Board in carrying out its duties.

Board composition, recruitment and appointment process, Board Member duties, and committee structure are all detailed in the Board Development Plan.

Officers

The Estuary Partnership Board of Directors operates with a Chair, Vice Chair, Secretary | Treasurer. All officers shall be members of the Board of Directors.

Terms

The Officers serve one-year terms beginning on the first of July after their appointment and concluding on the following thirtieth of June.

The Officers shall not serve more than two consecutive terms.

The immediate past chair serves a one-year term.

Duties

Chair

Ensure that the Board of Directors adheres to its bylaws and policies, fulfills its responsibilities for the governance of the organization, keeps focused on the organization's mission.

Serve as primary Board liaison to Executive Director, reflects concerns of the Board to the Executive Director and concerns of the Executive Director to the Board or individual members. Confer with the Executive Director at least monthly by phone or in person.

Take an active role in Estuary Partnership activities and functions. Provides leadership to the Board and chairs board meetings.

Serve on the Executive Committee.

Monitor financial planning and financial reports.

Review and approve board and executive committee meeting agendas with the Executive Director.

Chair and preside over meetings of the Board and Executive Committee. Sees that it functions effectively, interacts with management optimally, and fulfills its duties.

Encourage Directors to participate in meetings and activities and recognize their contributions.

Manage the Executive Director to ensure he/she is meeting the obligations of her/his position as outlined in the Executive Director position description and annual goals. Confer with the Executive Director at least monthly by phone or in person. At least annually review performance of the Executive Director with the Vice Chair; authorize salary and benefits as allowed by the Employee Policies.

Act as one of the signing officers for checks and other documents, such as contracts and grant applications.

Review monthly bank and investment statements, in absence of the Treasurer.

Assist the Executive Director in recruiting Board Directors for assignments as needed.

Serve as an alternate spokesperson for the organization.

Vice Chair

Work closely with the Chair and Executive Director to achieve the mission of the Estuary Partnership.

Take an active role in Estuary Partnership activities and functions.

Serve on the Executive Committee.

Review and approve board and executive committee meeting agendas with the Executive Director.

Monitor financial planning and financial reports.

Perform Chair responsibilities when the Chair cannot be available (see Chair Job Description).

Assist Chair as needed.

Encourage Directors to participate in meetings and activities and recognize their contributions.

- Annually review performance of the Executive Director with the Chair; authorize salary and benefits as allowed by the Employee Policies.
- Act as one of the signing officers for checks and other documents, such as contracts and grant applications.
- Review monthly bank and investment statements, in absence of the Treasurer or Chair.

Neither the Chair nor the Vice Chair has the authority to veto Board decisions.

Secretary/Treasurer

Ensure the Executive Director maintains and distributes records of the Board, including meeting records, financial accounting, bylaws, articles of incorporation, Board policies, audit and tax filings and ensures effective management of organization's records.

Be familiar with legal documents (articles, bylaws, IRS letters, etc.) to note applicability during meetings.

Ensure the Executive Director files all necessary financial reports, tax reports and audits.

Sign official documents of the organization as authorized in the Financial Policies.

In the absence of the Chair and Vice Chair, chair Board meeting.

Act as one of the signing officers for checks and other documents, such as contracts and grant applications.

Confer with the Executive Director at least monthly by phone or in person.

Monitor financial planning and financial reports.

- Receive from the Executive Director, at least quarterly a finance report, and provides a finance report no less than quarterly to the Executive Committee.
- Review with the Executive Director a proposed biennial budget and workplan for the Executive Committee approval.
- Review Executive Director's six-year assessments, implementation strategies and finance plans for review with the Executive Committee and Board of Directors.
- Review monthly bank and investment statements.

Qualifications of Officers

Ability to lead a team and use consensus processes.

Strong communication skills.

Knowledge of accounting systems and financial planning.

Knowledge of non-profit organizations and public sector entities.

Has no familial relationship with any member of the staff.

Role of Board of Directors and Role of Executive Director

The Board of Directors has specific duties distinct from those of the Executive Director and staff. The Board oversees and assists the Executive Director in setting policy and developing strategic plans and biennial workplans. The Executive Director is accountable to the Board of Directors on all matters, including all financial matters of the Estuary Partnership. The Executive Director implements these policies and plans. The Board provides counsel to the Executive Director on policy matters. To ensure an efficient and effective organization, day-to-day operations are the responsibility of the Executive Director. The Estuary Partnership staff are professional experienced individuals who are provided flexibility and authority with the accompanying responsibility to carry out objectives of the organization on a day-to-day basis.

Complete duties of the Executive Director are described in the Executive Director position description.

Committee Structure

The Board creates committees and work groups to gain diverse input and expertise to help the Estuary Partnership implement the Management Plan. The Board has three standing committees and work groups: The Executive Committee, Science Work Group and Board Development Committee. The board may appoint ad hoc committees as needed to address a specific issue or task. All committees and work groups of the Estuary Partnership report to the Board of Directors through the Executive Director and staff and work to carry out the tasks identified by the Board in its work plans.

The Committee Structure of the Estuary Partnership, including Committee charters and annual workplans are detailed in the Board Development Plan.

Science Work Group

The Science Work Group provides advice and support to the Board of Directors and Estuary Partnership staff on scientific and technical issues. Its primary role is to oversee and coordinate technically oriented work and implementation of the habitat restoration program, long-term monitoring strategy, and data management efforts. The Science Work Group may establish subcommittees to address specific projects or activities. The work group is staffed by the Estuary Partnership's Director of Technical Programs.

Composition

Participation on the Science Work Group is open to all interested individuals, organizations, businesses, local governments, and state and federal agencies. Members may bring a technical or science expertise or practitioner or policy or expertise working with diverse populations and underserved communities, including communities of color and communities of limited income. Typical representatives include Board of Directors members; tribal, federal, state and local agency representatives; representatives from academe, private sector scientists and interested parties; and non-governmental representatives.

Objectives

Provide advice and support on scientific and technical issues related to the protection and enhancement of the lower Columbia River and estuary ecosystem.

Provide a regular forum for the exchange and collaboration of scientific information about the lower river and estuary.

Assess and advance the current state of knowledge by periodically hosting workshops that showcase current research and identify existing gaps in scientific understanding and use that knowledge to recommend refinements and improvements to Estuary Partnership program implementation.

Identify gaps and provide coordination to ensure projects fit together and enhance the overall understanding of the ecosystem.



Part II: Board Policies

Diversity, Equity and Inclusion

The Estuary Partnership and all National Estuary Program are local people, solving local problems, in local water bodies. The health of the Columbia River will only be sustained if all communities, all people, are equitably part of its care. Many people are discriminated against because of their race, ethnicity, gender, disabilities, and income, to name only a few, and experience systemic inequity. For the Estuary Partnership, the intersection of our mission to protect the Columbia River and environmental equity brings us to a commitment to change these injustices in how we do our work.

Environmental and land use practices and policies, including climate change, unequally harm people of color, Indigenous people, and low-income people. They are exposed to higher levels of contaminated air, soil and water and as a result, they have higher rates of cancer, neurological disorders, infertility, learning disabilities, and other negative health impacts. Disparities in education persist for people of color, Indigenous people, low-income people, and women. This leaves them disadvantaged for academic success, which affects their careers and income. People of color, Indigenous people, low income people and woman have been, and are, disproportionately and systematically excluded from power, representation and decision making.

The Estuary Partnership is addressing these inequities and this oppression by including, working with, and amplifying diverse voices and perspectives so we can best protect the Columbia River. We have a responsibility to include all communities in who we are and what we do. We want equity across our organization: in our programs, workforce, policies and organizational culture. We want our organizational 'table' to include all voices of the lower river. The more and better we work together, the better the river will be for us and future generations.

All employees and members of the Board of Directors join in this commitment.

Confidentiality

Board of Directors shall keep all “Confidential Information” (as defined in this Policy) related to the Lower Columbia Estuary Partnership in strict confidence and handle it in accordance with this Policy, **except as otherwise required by state, federal or tribal law.**

Confidential information shall be marked or noted as confidential when presented to the Board.

Confidential Information may not be used for any purpose other than for the benefit of the Estuary Partnership. Confidential information may not be disclosed to third parties, directly or indirectly, in writing or otherwise, under any circumstances or by any means, without the express written consent of the Estuary Partnership. Confidential Information shall be shared with Estuary Partnership employees or Board of Directors to advance Estuary Partnership business. Without limitation, Confidential Information may not be used for personal gain, to the detriment of the Estuary Partnership, or to aid in the business of any rival concern or entity.

Definition

Grant writing, grant application strategies and the results of research about funding sources;

Financial plans, budgets or funding sources;

Fund-raising techniques, strategies and results;

Techniques, models, data, programs, documentation, processes, know-how, and contact lists;

Workplans or strategies;

Work products created or developed by employees, Board of Directors or the Estuary Partnership contractors;

Employee Personnel Matters;

Other information or knowledge of Estuary Partnership that the Estuary Partnership considers confidential or proprietary; or

Information provided to the Estuary Partnership by a third party that the Estuary Partnership is obliged to keep confidential.

Directors shall exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure, and agree to take steps necessary to ensure the maintenance of confidentiality. Directors shall not copy, transmit, reproduce, summarize, quote, or make any commercial or other use whatsoever of Confidential Information, except as may be necessary to perform duties and tasks prescribed in the Board of Director Policies.

Decision Making

The Board and its committees operate by consensus. If a party is blocking consensus during deliberation, the issue will be worked through until a consensus decision is reached. A block of consensus at a point of discussion does not end the discussion; blocking consensus during deliberation does not give veto authority to a director or committee member.

Board Members Agree:

To operate by consensus. Consensus means that all parties agree that this is the best decision given the range of interests. By agreeing to consensus, each director supports the decision.

In reaching consensus, the Chair will clearly state the issues(s), specifying, as needed, areas of agreement and disagreement. The Chair will call for a consensus after the issue(s) have been fully discussed and clearly stated. Members will state or acknowledge their consent or dissent.

To agree by consensus how to address an impasse, when it occurs, keeping in mind the timelines required to complete the process.

To empower the Chair to determine the means to address an impasse, if it occurs, and a decision is needed at that time.

Conflict of Interest

The Estuary Partnership maintains a strict conflict of interest policy to ensure that the integrity of the organization is not compromised and to ensure fair and equal treatment of all partners. This policy is intended to supplement, not replace, all applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

The Board of Director's Conflict⁴ of Interest policy exists to protect Estuary Partnership interests when it is contemplating entering into a transaction, arrangement or action of the Board that might directly or indirectly benefit the private interest of an employee, Work Group or Committee Member, or members of the Board of Directors of the Estuary Partnership Board of Directors. This policy is intended to supplement, not replace, all applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

Board Appointments

The Board does not wish to create a circumstance that would compromise a member of the Board of Directors or the financial security of the Estuary Partnership. In making appointments to the Board, the Board shall consider circumstances that may place a nominee or existing Director in a potential conflict with their ability to carry out their duties of loyalty and fiduciary responsibilities. The Board shall consider the type of work and activities of the nominee or Director and affiliated business activity that might benefit from information generated by the Estuary Partnership and could be used for private gain and/or against the Estuary Partnership interests.

Procurement

As stipulated in the Finance Polices:

The Estuary Partnership may procure goods or services from an organization to which a member of the Board of Directors, work group or committee member is associated only through a competitive process. Those Board members, work group or committee members whose organizations may be awarded such funds, shall declare the conflict of interest to the Executive Director or Executive Committee and shall recuse themselves from, and not be present for, any deliberations and decisions relevant to the award.

The Estuary Partnership may not procure goods, services or contracts in any amount from individuals or companies that are owned or controlled by an employee, a member of the Board of Directors, or their immediate family members.

Employees and members of the Board of Directors who are engaged in awards to and oversight of projects with Estuary Partnership contractors, subcontractors, or vendors shall exercise care in forming personal relationships with those parties to retain objectivity and remove any question of bias that could arise as a result of such personal relationships. Employees and members of the Board of Directors who have such personal relationships shall disclose the relationship to the Executive Director or the Chair of the Board prior to their involvement in a selection process.

990 Procedure

As stipulated in the Finance Polices:

Beginning in 2008, the Internal Revenue Service requires information from the Estuary Partnership Board of Directors regarding conflict of interest and relationships between board members and the organization. Board members shall complete a Form 990 for all tax years beginning in 2008. The Executive Director shall prepare and send necessary forms to the Board of Directors no later than April to ensure completion for inclusion in the annual corporate audit.

Procedures for Disclosure

1. Members of the Board of Directors, Work Group and Committee members are required by the Estuary Partnership Board of Directors' Bylaws and Oregon statutes to disclose direct or indirect financial or non-financial conflicts of interest. Disclosure should occur prior to consideration and discussion of a transaction, arrangement, or action. Declaration must include full disclosure of the existence and nature

⁴ The Employee Conflict of interest Policy is contained in the Employee Handbook

of his/her financial or non-financial interest to the Board and/or committees/panels considering the proposed transaction or arrangement.

2. Following disclosure of a financial or non-financial conflict of interest, the member of the Board of Directors, Work Group or Committee member must abstain from participating in discussion or voting on the proposed transaction or arrangement and must remove him or herself during discussion of the matter.
 - a. The transaction, arrangement or action can be authorized, approved or ratified if it receives consensus of the Board, Work Group or Committee members who have no direct or indirect interest in the transaction.
 - b. The conflicted member of the Board of Directors, Work Group or Committee member is to be counted in determination of a quorum.
3. The Board or Committee will affirm that the outcome of the transaction, arrangement or action was completed using appropriate disclosure procedures.
4. The Meeting Record of the Board and all Work Groups and Committees shall contain:
 - a. The name of the person(s) who disclosed a direct or indirect financial or non-financial conflict of interest and the nature of the conflict.
 - b. The names of the persons present for discussion and/or voting related to the transaction or arrangement, and a record of any votes taken in connection with related item.

A member of the Board of Directors or their constituent entities may receive funding from the Estuary Partnership in accordance with the Financial Policies and Procedures of the Estuary Partnership and in adherence to conditions of this Conflict of Interest policy.

Violations of the Conflict of Interest Policy

If the Board, Work Group or Committee member has reasonable cause to believe that a member has failed to disclose a conflict of interest, the Board shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose to the Executive Committee who shall determine appropriate action.

Definitions

As established in the Finance Policies:

Any Estuary Partnership employee, contractor, member of the Board of Directors or member work group or Committee who has a direct or indirect financial or non-financial interest has a potential conflict of interest.

Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- an ownership, investment or vested interest in any entity with which Estuary Partnership Board of Directors has a transaction, arrangement or action;
- a compensation arrangement with Estuary Partnership Board of Directors or with any entity or individual with which Estuary Partnership Board of Directors has a transaction, arrangement, or action; or
- a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which Estuary Partnership Board of Directors either has or is negotiating a transaction, arrangement, or action.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

Non-Financial Interest

A person has an interest, directly or indirectly, of a non-financial nature if the person serves as a member of the Board of Directors, trustee, or in some other non-compensated role at an entity with which Estuary Partnership Board of Directors either has or is negotiating a transaction, arrangement or action. Although a non-financial interest is not specifically addressed by statute or bylaws as a conflict of interest, Estuary Partnership Board of Directors shall follow the same practices for both financial and non-financial interest.

Board Members Agree:

to read and comply with the policy;

the policy applies to all Employees, Contractors, Members of the Board of Directors, members of Committees and Work Groups; and

the Estuary Partnership is a charitable organization that must engage primarily in activities that accomplish one or more of its tax-exempt purposes to maintain its exempt status.

Non-Discrimination & Workplace Harassment

Non Discrimination

The Estuary Partnership is an equal opportunity employer. We do not discriminate on the basis of race, color, gender, gender identity or expression, sexual orientation, religion, marital status, national origin, age, disability, physical appearance or genetic information, cultural, socio-economic status, military or veteran status. The Estuary Partnership is a VEVRAA Federal Contractor and values the hiring of protected veterans or individuals with veteran status.

Discrimination is not tolerated at the Estuary Partnership.

The Employee Handbook Part I Section 1, adopted by the Board of Directors, outlines requirements for diversity in hiring and maintaining employees.

The Estuary Partnership complies with all local, state, and federal laws related to fair employment practices. These laws prohibit discrimination on the basis of age, sex, sexual orientation, race, national or ethnic origin, religion, disability, or marital status.

The Estuary Partnership is an equal employment opportunity employer and is committed to an active affirmative action program. All employees of and applicants to the Estuary Partnership shall receive fair consideration in every step of the employment process—interviewing, hiring, promotion, training—without regard to the employee's race, creed, color, national origin, age, religion, sex, gender, gender identity or expression, pregnancy, ancestry, citizenship, marital status, physical or mental disability, medical condition, sexual orientation, special disabled or Vietnam Era veteran status, or other protected group status. The Estuary Partnership guarantees all employees a productive work environment, free from any forms of discrimination. Any employee who engages in such discrimination shall be subject to disciplinary action, up to and including dismissal.

Discrimination is not tolerated at the Estuary Partnership.

The Employee Handbook Part 1 Section 1, adopted by the Board of Directors, outlines requirements for diversity in hiring and maintaining employees.

The Estuary Partnership complies with all local, state, and federal laws related to fair employment practices. These laws prohibit discrimination on the basis of age, sex, sexual orientation, race, national or ethnic origin, religion, disability, or marital status.

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 prohibits employment discrimination on the basis of a disability. The ADA protects qualified applicants and employees from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, and other aspects of employment. The Estuary Partnership complies with the ADA. This includes providing reasonable accommodations on the job to perform the job. It may require the reassignment of some job duties. Confidentiality is required when dealing with a disability. If an employee needs reasonable accommodation to perform her/his job, the Supervisor will determine the feasibility of an accommodation.

The Estuary Partnership shall not discriminate against a qualified individual with a disability in job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; or other terms, conditions, and privileges of employment. Protection from discrimination in employment applies to all employees. Under state and federal laws and guidelines, the Estuary Partnership must act affirmatively to employ and advance the employment of qualified individuals with disabilities. During recruitment, efforts shall be made to attract qualified candidates with disabilities.

Workplace Harassment

Harassment in any form of treatment or behavior that "to a reasonable person" creates an intimidating, hostile, or offensive work environment. The Estuary Partnership has zero tolerance for harassment and prohibits any form of harassment based on an employee's race, creed, color, national origin, age, religion, sex, gender, gender identity or expression, pregnancy, ancestry, citizenship, marital status, physical or mental disability, medical condition, sexual orientation, special disabled or Vietnam Era veteran status, or other protected group status.

Policies and reporting procedures are defined in the Employee Handbook, Part Section 1.

Protocol for Estuary Partnership Comment or Position

Action 17 of the Estuary Partnership Management Plan requires the Estuary Partnership to “Advocate for the interests of the ecosystem, its habitat, water quality and species (including human) of the lower river and estuary.” Commenting on projects, legislation, rules or policies that affect the lower Columbia River is an appropriate role for the Estuary Partnership.

The Board agrees that in assessing the best role for the Estuary Partnership, we first will assist early in the design and development of projects to help ensure that a project is consistent with the goals and actions of the Management Plan. Some projects may proceed better with assistance from the Estuary Partnership during design and development; some may warrant the Estuary Partnership taking more of an advocacy role.

The Estuary Partnership will not comment on all proposed activities or all legislation, rules or policies that may relate to Estuary Partnership goals and activities. The Board recognizes that such work could exceed our capacity is not necessarily the best use of our resources or the best role for a National Estuary Program.

Non-Litigant

The Board agrees that the Estuary Partnership will not engage in litigation around projects and activities.

Identifying Issues or Projects

A member of the Board of Directors or Executive Director may identify an issue or project for potential Estuary Partnership comment or position. The Executive Director prepares a memo for the Board outlining the rationale for commenting. This includes its potential impact on the lower Columbia River and estuary and its relevance to the Management Plan. A staff person who has project or activity for possible comment, brings that to her/his supervisor who brings it to the Executive Director consideration.

Conditions for Comment

The Board agrees the following conditions may be appropriate to comment, but are not limited to:

- Endorsing projects that are consistent with the Management Plan and further the activities and goals of the Management Plan.
- Commenting on projects that would be harmful to the estuary and would be in conflict with the Management Plan.
- Reviewing projects for consistency with the Management Plan.
- Legislation, rules or policies that directly relate to an objective or activity of the Estuary Partnership.
- Informing parties about the Management Plan and its actions and goals.

Criteria to Comment:

- Significance to lower Columbia River water quality; risk to ecosystem health or human health.
- Relevance to Estuary Partnership activities and the Management Plan.
- Visibility and public significance of the project.
- Scope and scale of the project.
- Timeline of the project and the comment period.
- Potential for involved Board of Directors discussion.
- Best means for Estuary Partnership involvement in project.

Projects Outside of the Estuary Partnership Study Area

Projects outside of the Estuary Partnership study area should be considered using the same guidelines as projects within the study area.

Process

If the Board agrees to comment on a particular project or issue, the Board outlines key elements of the Estuary Partnership’s position and directs the Executive Director to draft the initial position or comment and submits the draft to the Board for review. The Board may proceed and finalize the Partnership response, or it may delegate further drafting and or the final language to a standing work group or an ad hoc work group of 5-7 directors,

assisted by the Executive Director who will assist the work group in developing the position or comment. The Board decides if the Board Chair or Executive Director will submit the comment.

The Board of Directors decides which components of the project the Estuary Partnership should comment on, ranging from no aspects of a project to all aspects and the timeframe within which to comment.

Time is of the Essence

If a project or issues arises to the Executive Director and a response is required prior to the next Board meeting, the Executive Director will confer with the Chair who may convene a meeting of the Executive Committee or request the Executive Director draft a potential letter of comment for review by the Executive Committee. If the Executive Committee authorizes comment and reviews and approves the content, once submitted, the Executive Director immediately shall notify the Board of Directors and provide a copy of the comment.

Estuary Partnership Signatory or Presenter

The Board of Directors decides the signatory for the comments or who shall deliver them if they are to be made verbally. Generally, the Estuary Partnership Executive Director is the signatory or the presenter, unless the Board determines otherwise.

Joint Comment Letter

The Board also may consider whether to sign a comment letter with another organization. This decision follows the same procedure and criteria as described above.

Board Member Interest in a Project

Any member of the Board of Directors (or their constituency) who has a conflict of interest in a particular project or who is an applicant or proponent of a project may comment on and participate in the development of the Estuary Partnership position. A Director who is an applicant or proponent of a project cannot block consensus as a veto to block action by the Board.

Board Members with Regulatory Responsibility

Members of the Board of Directors who work for agencies with regulatory jurisdiction over the project under review by the Estuary Partnership may recuse themselves, as guided by their own rules, regulations and policies, from the discussion and comment. Final Estuary Partnership comment will note which parties have recused themselves from the Estuary Partnership discussion and decision.

Acceptance of Supplemental Environmental Projects

Supplemental Environmental Projects

A Supplemental Environmental Project (SEP) is an environmentally beneficial project that a violator voluntarily agrees to fund as part of settlement of an enforcement action. The US Government and States have the authority to incorporate a SEP into the settlement agreement with a company as part of a settlement. All parties involved in the enforcement action agree to the SEP. Environmental penalties typically go to federal or state general funds unless otherwise specified in the settlement agreement. Regulatory agencies established SEPs to help direct some of the funds for environmental improvement. SEPs are typically directed to a third-party entity to clearly show that the “offender” is not doing the environmental restoration. The Estuary Partnership qualifies as a potential SEP recipient. Directing funds to the Estuary Partnership for environmental projects will more directly advance environmental conditions of the lower Columbia River and advance the mission and activities of the Estuary Partnership.

Board Members Agree:

Receipt of SEPs is appropriate for the Estuary Partnership when accepted in accordance with this policy.

The Estuary Partnership employees, voting or non-voting members of the Board of Directors, or contractors will engage in discussions regarding a specific SEP only after the violator and regulatory agency have agreed to the enforcement action and are in discussions about SEPs and projects.

No employee of the Estuary Partnership can have had any role in the enforcement action or the negotiation, other than to provide potential projects.

Any member of the Board of Directors, voting or non-voting, whose entity is involved with the enforcement action must recuse themselves from all discussions relevant to the specific case in which they are involved and must not be present when discussed by the Board or Estuary Partnership employees.

SEP funds must achieve environmental progress in the lower Columbia River and estuary or support Estuary Partnership stewardship goals.

Use of SEP funds must be consistent with and implement the Estuary Partnership Comprehensive Conservation and Management Plan and activities in the Six Year Implementation Strategy.

The violator shall not be given credit or acknowledged in any way by the Estuary Partnership. The Estuary Partnership may acknowledge SEP funding for the project as a funding source, with no reference to the violator.

The Estuary Partnership will maintain a list of projects as potential SEPs that includes habitat restoration, monitoring, and stewardship projects consistent with the Management Plan and Implementation Strategy.

The Estuary Partnership will provide a list of potential SEP projects and a description of the organization capacity to accept SEP monies and implement the projects to the US Attorney, regulatory agencies and others, as appropriate.

The Executive Director is authorized to accept SEP funds pursuant to the Estuary Partnership Finance Policies and Procedures governing acceptance of funds.

The Executive Director or Director of Stewardship and Technical Programs must be involved in all discussions about accepting specific SEP funds.

Project Types Eligible as SEP

Pollution prevention or contaminant reduction

Habitat restoration

Research or monitoring of lower river conditions

Data collection, such as shoreline inventory or landscape classification

Environmental education

Volunteer involvement

Consumer outreach campaigns

Take back programs or collection events

Part III: Guidance Documents

Guidance from the Oregon Attorney General

Roles and Responsibilities of Board of Directors Members

A number of useful documents summarize the basic duties and responsibilities of members of nonprofit Boards of Directors. In its publication, GUIDE TO NONPROFIT Office of the Attorney General, the Oregon Attorney General's office succinctly outlines the 'roles, responsibilities and rights' of Board members. Included here is relevant text taken directly from the GUIDE TO NONPROFIT. It is included to provide general guidance in Board roles and operations.

Understanding Your Role

But whatever the other reasons for service, the principal role of the board member is stewardship. The directors of the corporation are ultimately responsible for the management of the affairs of the charity. This requires active participation. People who do not have the time to regularly participate should not agree to be on a board. The board must ensure that the organization is operated for a charitable/public purpose; it may not be operated for private benefit. Proper stewardship requires that the organization's assets be held "in trust", to be applied to its charitable mission.

One of the most important functions of the board is keeping the resources and efforts focused on the charity's mission. This requires the board to have an adequate understanding of the organization's programs, people and resources available to achieve the organization's goals. As a starting point, every board member should be familiar with the organization's Articles of Incorporation and Bylaws.

The board is not expected to manage the day-to-day activities of the charity. The directors appoint officers so that they, in turn, can carry out the day-to-day activities of the organization. It is the board's responsibility to hire the chief executive officer and to oversee that person's work to see that the charity is fulfilling its mission. The board should periodically review and assess the chief executive's performance. If it becomes necessary, the board has the authority and the responsibility to discharge the CEO.

Understanding Your Rights

In order to carry out your legal responsibilities as a board member, you must be able to make informed judgments about important matters regarding the organization and operations of the charity. The law permits you to reasonably rely on information from the charity's staff, its lawyer, its accountant, outside advisors, and board committees in making those judgments.

Your right to information includes the following: You have the right to reasonable access to management, to have reasonable access to internal information of the organization and to the organization's principal advisors, such as its auditors and lawyers. Senior management must also be willing to facilitate board access to books and records of the charity. The board has the right, if necessary, to engage the services of outside advisors at the charity's expense to assist it with a particular matter.

Understanding Your Responsibilities

In carrying out board responsibilities, the law generally imposes three duties of trust. They are regularly described as the duties of due care, loyalty to the corporation and obedience to the law.

Duty of Due Care

This responsibility generally requires that a director must discharge the duties with the care an ordinary prudent person in a like position would exercise under similar circumstances. ORS 65.357. Directors need not always be right, but they must act with common sense and informed judgment. To exercise this duty properly, boards must pay particular attention to the following

Active Participation

A director must actively participate in the management of the organization including attending periodic meetings of the board, evaluating reports, reading meeting records, and reviewing the performance of the executive director.

Reasonable Inquiry

Directors should request and receive sufficient information so that they may carry out their responsibilities as directors. When a problem exists or a report on its face does not make sense, a director has a duty to inquire into the surrounding facts and circumstances. The director also has a duty to investigate warnings or reports of officer or employee theft or mismanagement.

Duty of Loyalty

Directors have a duty to give their undivided loyalty to the charitable corporation. Decisions regarding the organization's funds and activities must promote the organization's public purpose rather than private interest. Any potential conflict transactions should be scrutinized closely by the board with the realization that the public will predictably be skeptical of such arrangements. There are some general principles which will serve to guide boards faced with conflict of interest situations.

Conflicts in General

While transactions between the charitable corporation and individual board members, their families and businesses they own or operate should be avoided, they are not absolutely prohibited. Under certain circumstances, a contract or transaction, between a nonprofit corporation and its director or an organization in which the director has a material or financial interest is acceptable. However, if the transaction is challenged, the director will have the burden of establishing that the contract or transaction is fair and reasonable, that there was full disclosure of the conflict and that the contract or transaction was approved by members or other directors in good faith. ORS 65.361. The board should only approve the transaction if it is clearly in the best interest of the charity.

Written Policy

The board should establish a written policy for dealing with conflicts of interest. The policy should address disclosure of financial interest and withdrawal from discussion and voting by interested directors. Due to the sensitivity of conflicts of interest, the board may want to require that transactions benefiting a director may be approved only by a greater than majority vote. Also, requiring an annual disclosure by all board members of their business involvement with the nonprofit organization is recommended.

Loans

In general, a charitable corporation may not lend money to an officer or director. There is one statutory exception. The law allows loans for executive relocation expenses under certain circumstances. ORS 65.364.

Corporate Opportunity

Directors of business organizations are under a trust obligation not to divert a corporate business opportunity for their personal gain. A director of a nonprofit corporation is also subject to this duty. This duty means that a director may not engage or benefit from a business opportunity that is available to and suitable for the corporation unless the corporation decides not to engage in the business opportunity and conflicts of interest procedures are followed.

Duty of Obedience

Directors have a duty to follow the organization's governing documents (Articles of Incorporation and Bylaws), to carry out the organization's mission and to ensure that funds are used for lawful purposes. Also, directors must comply with other state and federal laws that relate to the organization and the way in which it conducts its business. For example, directors should be familiar with:

Federal Law

Charitable corporations usually apply to the Internal Revenue Service for exemption as a tax-exempt organization. Corporations which fail to do so may have their income taxed at normal rates, and contributors to the corporate charity may not be able to deduct their contributions on their income tax returns.

State law

In general, charities must register and file an annual financial report with the Attorney General's office. If an organization contemplates using bingo or raffles to raise revenue, it may need to obtain a charitable gaming license from that same office. A nonprofit corporation must also file an annual renewal with the Corporation Division of the Secretary of State's office.

Mission and Procedures

Directors should be familiar with the organization's governing documents and should follow the provisions of those documents. Directors should be sure proper notice is given for meetings, that regular meetings are held, that directors are properly appointed and that the organization's mission is being accomplished.

Other Duties

In addition to the above three general fiduciary duties, there are a number of specific responsibilities which must be observed by nonprofit corporate board directors.

Satisfactory Corporate Documents and Records

A charitable corporation is required to have Articles of Incorporation and Bylaws. You should see that they are updated and consider amendments if they do not reflect the current mission and operating procedures of the organization. The organization is also required to keep records of its board meetings and a record of all actions taken by committees of the board of directors. ORS 65.771.

Adequate Financial Records and Controls

One of the board's responsibilities is to oversee the organization's financial affairs. Make sure that the organization has adequate internal accounting systems and controls. The board should be responsible for approving the organization's annual budget. Board directors should expect the CEO (or other designated staff) to produce timely and adequate income and expense statements, balance sheets and budget status reports, and should expect to receive these in advance of board meetings. With large organizations, the board should employ, either directly or through an audit and finance committee, an independent auditor and review the auditor's annual report at a face-to-face meeting.

Safeguarding Assets

The Board should oversee the effective use of the resources of the organization. Policies should be adopted, and large transactions approved to ensure that the organization's assets are not misapplied or wasted. The board should ensure that the assets are invested prudently, avoiding high risk investments and employing some diversification of investments.

Observing Donor Restrictions

All donations must be used in a manner which is consistent with the organization's stated mission. However, some donors designate that gifts are to be used for a particular purpose. It is important to keep faith with donor intentions. The board is obligated to see that such restricted funds are used for the stated purpose(s).

Responsible Solicitation Activities

Some organizations decide to hire professional fundraisers to conduct or assist in soliciting donations. When hiring a fundraiser, select one who is trustworthy; ask for references. Make sure any contract with a professional fundraiser or consultant, especially the terms for compensation, is fair and reasonable from the charity's perspective. Certain types of contracts require the organization's officers and directors to observe specific procedures. ORS 128.814.

Guidance on the Board's Role and Management's Role

A number of publications discuss the distinction between the role of the Board Directors and that of the Executive Director. Grant Thornton, accountants and management consultants, published a guide for new directors called, Serving on the Board of a Not-for-profit organization. It offers this guidance:

“A not-for-profit organization's board of directors has very specific duties distinct from those of management. Management manages while boards oversee. A board provides counsel to management and should not get involved in the day-to-day affairs of the organization. A board that is overly active in day-to-day management can reduce the organization's effectiveness.”

It goes on to suggest, “The board assists management in policy formation and developing strategic plans. Management primarily develops the plan and is responsible for implementation; the board monitors and renders advice. The board sets standards to measure how well management performs, and initiates actions where necessary to see that management carries out its obligations.”

