## Mendocino County Tourism Commission

**Conflict of Interest Policy1**

**including Fiduciary Responsibility**

## For Directors and Officers and

**Members of a Committee with Board Delegated Powers Article I -- Purpose**

1. The purpose of this Board conflict of interest policy is to protect the Mendocino County Tourism Commission (hereafter MCTC) interests when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer or director of MCTC or might result in a possible excess benefit transaction.
2. This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

## Article II -- Definitions

1. **Interested person** -- Any director, officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
2. **Financial interest** -- A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
   1. An ownership or investment interest in any entity with which MCTC has a transaction or arrangement,
   2. A compensation arrangement with MCTC or with any entity or individual with which MCTC has a transaction or arrangement, or
   3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which MCTC is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board decides that a conflict of interest exists, in accordance with this policy.

1 This policy is based on the IRS model Conflict of Interest policy, which is an attachment to Form 1023. It adds information needed to allow MCTC to assess director independence in order to answer questions on Form 990.

## Article III -- Procedures

1. **Duty to Disclose --** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board.
2. **Recusal of Self –** Any director may recuse himself or herself at any time from involvement in any decision or discussion in which the director believes he or she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.
3. **Determining Whether a Conflict of Interest Exists --** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.

## Procedures for Addressing the Conflict of Interest

* 1. An interested person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
  2. The Chairperson of the Board shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
  3. After exercising due diligence, the Board shall determine whether MCTC can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
  4. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in MCTC's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

## Violations of the Conflicts of Interest Policy

* 1. If the Board has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
  2. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## Article IV – Records of Proceedings

The minutes of the Board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## Article V – Fiduciary Responsibilities

Under the fiduciary responsibilities, the core concepts are the duty of:

1. **Duty of Care**

California Corporate Code 7231 indicates board directors must perform duties “in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances”

1. **Duty of Inquiry**
   * 1. Part of acting in good faith requires that a director conduct reasonable inquiries when the situation indicates the need for such an inquiry. Directors must also be free of any knowledge that would cause reliance on data received from others to be unwarranted.
     2. Right to rely on information or statements of specified others
        + Corporate officers and employees believed to be reliable and competent
        + Attorneys and accountants
        + Committees on which the director does not serve
2. **Duty of Loyalty**
   * 1. A director must act in a manner that the director believes to be in the best interests of the corporation, and must administer his or her corporate powers for the common benefit.
     2. The overriding objective of a nonprofit is to advance and achieve the corporation’s purposes as stated in its governing documents. Directors are obligated to champion the best interests of their organization, rather than personal interests.
     3. The duty of loyalty gives rise to the Corporate Opportunity Doctrine
        + If a director becomes aware of an opportunity or a transaction that would be of interest or benefit to the corporation, the director must disclose the opportunity to the corporation and permit it to take advantage of the opportunity if it so desires.
        + Basis of this component of the Duty of Loyalty is the unfairness of a director’s taking personal advantage of an opportunity that should rightfully accrue to the corporation.

## Article VI – Annual Statements

Each director, and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

* 1. Has received a copy of the conflict of interest policy,
  2. Has read and understands the policy,
  3. Has agreed to comply with the policy, and
  4. Understands MCTC is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

1. If at any time during the year, the information in the annual statement changes materially, the director shall disclose such changes and revise the annual disclosure form.

The End

Revision History by the MCTC Board

Initial Conflict of Interest policy adopted:   
Restated:

**Director and Officer**

**Annual Conflict of Interest Statement**

1. Name: Date:
2. Position:

Are you a voting Director? Yes No Are you an Officer? Yes No

If you are an Officer, which Officer position do you hold:

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1. I affirm the following:

I have received a copy of the MCTC Conflict of Interest Policy. (initial) I have read and understand the policy. (initial)

I agree to comply with the policy. (initial)

I understand that MCTC is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of tax-exempt purposes. (initial)

1. Disclosures:
   1. Do you have a financial interest (current or potential), including a compensation arrangement, as defined in the Conflict of Interest policy with MCTC? Yes No
      1. If yes, please describe it:
      2. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy? Yes No
   2. In the past, have you had a financial interest, including a compensation arrangement, as defined in the Conflict of Interest policy with MCTC? Yes No
      1. If yes, please describe it, including when (approximately):
      2. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy? Yes No

Date:

Signature of director

Date of Review by Committee: