

**AGENDA**  
**PERFORMANCE AND ENGAGEMENT COMMITTEE**  
**WEDNESDAY, APRIL 4, 2018**  
**MONARCH PASS CONFERENCE ROOM**  
**1290 Broadway**  
**→ 5:30 p.m.\* ←**

1. Call to Order

**CONSENT AGENDA**

2. Move to Adopt the Consent Agenda
  - March 7, 2018 summary  
(Attachment A)

**ACTION ITEM**

3. Discussion of Board Collaborative Assessment  
(Attachment B) Jerry Stigall, Director, Organizational Development

**INFORMATIONAL ITEMS**

4. Discussion of Conflict of Interest Policy  
(Attachment C) Douglas W. Rex, Executive Director
5. Discussion of Board workshop agenda  
(Attachment D) Douglas W. Rex, Executive Director

**ADMINISTRATIVE ITEMS**

6. Report of the Chair
7. Report of the Executive Director

**\*The start time for this meeting is approximate. The meeting will begin at the end of the Board Work Session**

Persons in need of auxiliary aids or services, such as interpretation services or assisted listening devices, are asked to contact DRCOG at least 48 hours in advance of the meeting by calling (303) 480-6701.



**ADMINISTRATIVE ITEMS (cont.)**

8. Other Matters by Members
9. **Next Meeting – May 2, 2018**
10. Adjourn

**ATTACH A**

SUMMARY  
PERFORMANCE AND ENGAGEMENT COMMITTEE  
Wednesday, March 7, 2018

Members Present:

John Diak, Chair  
David Beacom  
Steve Conklin  
Ron Rakowsky  
Colleen Whitlow

Parker  
Broomfield  
Edgewater  
Greenwood Village  
Mead

Others present: Doug Rex, Executive Director, and DRCOG staff.

Chair Diak called the meeting to order at 4:00 p.m. with a quorum present.

Move to adopt the consent agenda

Director Rakowsky **moved** to adopt the consent agenda. The motion was **seconded** and **passed** unanimously.

Items on the consent agenda included:

- Summary of the January 3, 2018 Performance and Engagement Committee meeting.

Move to Elect Vice Chair

Ron Rakowsky nominated David Beacom to serve as Vice Chair. No other nominations were proposed.

Director Rakowsky **moved** to elect David Beacom as Vice Chair. The motion was **seconded** and **passed** unanimously.

Move to select John V. Christensen Award recipient

Members discussed the individuals proposed for the award.

Director Rakowsky **moved** to select a John V. Christensen Award recipient. The motion was **seconded** and **passed** unanimously.

It was noted the name of the award recipient should remain secret until the awards event.

Move to select Distinguished Service Award recipients

Members discussed the individuals proposed for receiving Distinguished Service Awards.

Director Conklin **moved** to select the slate of individuals submitted by staff to receive Distinguished Service Awards. The motion was **seconded** and **passed** unanimously.

## Performance and Engagement Committee Meeting Summary

March 7, 2018

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### Discussion of Board workshop

Members were provided with the results of a survey conducted after the 2017 workshop. Members noted they would like to have the social hour and the dinner held in two separate spaces.

Sample topics for the workshop were discussed:

- Housing, water, workforce development, economic development
- Presentation by the state demographer
- Metro Vision measures
- Citizen's academy curriculum
- Mobility Choice
- Affordable Healthcare Communities

Staff will draft a sample agenda for committee review.

### Presentation on employee survey

Jerry Stigall, Director of Organizational Development, provided an overview of the employee survey results.

### Report of the Chair

No report was provided.

### Report of the Executive Director

Mr. Rex provided members an update on the building relocation.

### Other Matters by Members

No other matters were discussed

### Next Meeting

The next meeting is scheduled for April 4, 2018.

The meeting adjourned at 5:09 p.m.

# ATTACH B

To: Chair and Members of the Performance and Engagement Committee

From: Douglas W. Rex, Executive Director  
303-480-6701 or [drex@drcog.org](mailto:drex@drcog.org)

Meeting Date	Agenda Category	Agenda Item #
April 4, 2018	Action	3

#### SUBJECT

DRCOG Board Director Collaboration Assessment - 2018

#### PROPOSED ACTION/RECOMMENDATIONS

Staff recommends administering the Board Director Collaboration Assessment in April 2018 using the methodology described below.

#### ACTION BY OTHERS

N/A

#### SUMMARY

The DRCOG Board Collaboration Assessment is a feedback mechanism that allows Board Directors to voice their opinions about their experience at DRCOG as it relates to Board Director collaboration and the achievement of desired results.

In May 2017, the collaboration assessment was administered, and results were reviewed and analyzed by Dr. Carl Larson. A report was provided to Performance & Engagement Committee members for an initial review and then provided to all Board Directors.

#### PREVIOUS DISCUSSIONS/ACTIONS

N/A

#### PROPOSED MOTION

Move to administer the DRCOG Board Collaboration Assessment in April 2018.

#### ATTACHMENT

DRCOG Board Collaboration Assessment

#### ADDITIONAL INFORMATION

If you have any questions, please contact Douglas W. Rex, Executive Director, at 303-480-6701 or [drex@drcog.org](mailto:drex@drcog.org); or Jerry Stigall, Director of Organizational Development, at [jstigall@drcog.org](mailto:jstigall@drcog.org) or 303-480-6780.



## DRCOG Board Collaboration Assessment - 2017

### Introduction

The Board Collaboration Assessment is a continuous improvement tool to help the DRCOG Board refine their governance process using input exclusively from its own Board Directors. The assessment will be administered yearly to provide Board Directors feedback and recommended actions for improving collaboration. Individual responses are not revealed and only aggregated results will be shared with all Board Directors.

### Comments

A comments box is provided after each section of the assessment. To improve the assessment results, please take time to complete the "comment" section and provide specific examples and situations that impacted your evaluation. The comments are essential in evaluating the assessment results. We value your insights, experience and help in improving DRCOG.

The survey administrator, Jerry Stigall, is the only person who has access to responses from individual Board Directors. Verbatim comments will be provided to all Board directors in the final report but the individual Board Director providing comments will not be noted in the report.

### Instructions

The estimated time to complete is 15-20 minutes. All questions require a response and you will not be able to submit without answering each question. Please review the items in each section and rate them to the best of your knowledge. Many are broadly stated to include any and all examples you may have knowledge of from attending Board meetings and reading Board Director information provided by DRCOG.

**The assessment site will remain open until midnight June 1.**

**Note:** The terms collaborative, members, and group used in this assessment refer to the Board as a whole in their role as a policy-setting and decision-making body. Reference to 'the process' in some survey items relates to Board Director deliberations and the decision making process in general.

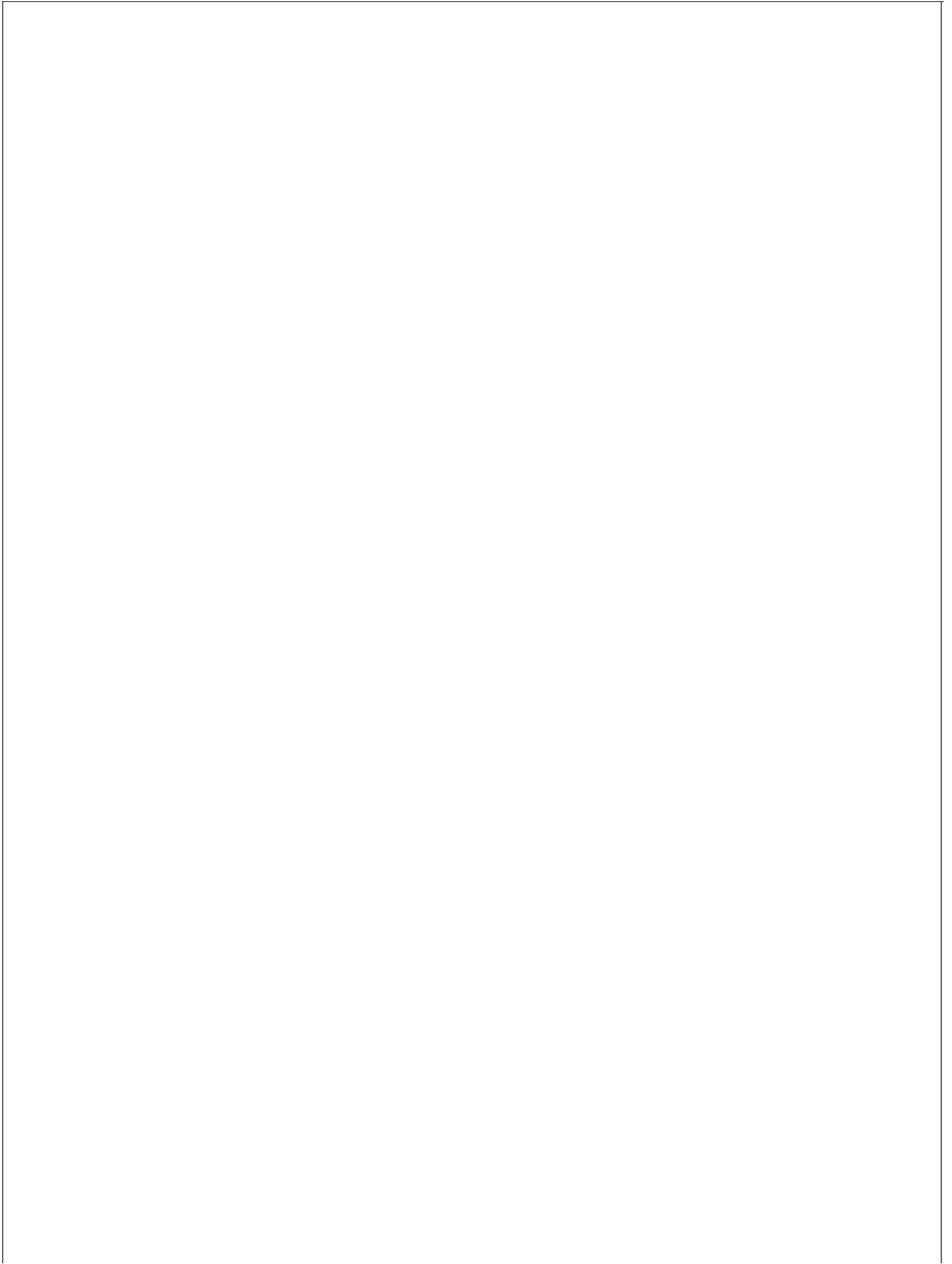
The results of the assessment will be presented in the June Board meeting. The Executive Committee would appreciate full participation in this assessment. An Executive Committee member may contact you if you have not completed the assessment as the deadline approaches.

Thank you for your participation!

DRCOG Board Executive Committee

Contact Jerry Stigall at DRCOG for assistance.





**\* I have been a DRCOG Board Director for:**

- ☐ Less than 1 year
- ☐ 1-2 years
- ☐ 3-5 years
- ☐ 6+ years

**Our Mission**

The Denver Regional Council of Governments is a planning organization where local governments collaborate to establish guidelines, set policy and allocate funding in the areas of:

- Transportation and Personal Mobility
  - Growth and Development
- Aging and Disability Resources

**Our Vision**

Our region is a diverse network of vibrant, connected, lifelong communities with a broad spectrum of housing, transportation and employment, complemented by world-class natural and built environments.

**\* I. Structural Integrity refers to how Board Directors perceive the fairness of the collaborative process. A process that has high structural integrity applies criteria for making decisions and allocating resources in a fair and consistent manner, treats all members equitably, and allows sufficient opportunity for members to challenge and revise decisions.**

	True	More True than False	More False than True	False	Don't know/Not applicable
The people involved in the process usually are focused on broader goals (outcomes) of the region, rather than individual agendas.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The process is free of favoritism.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In the process, everyone has an equal opportunity to influence decisions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The process responds fairly to the needs of its members.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Decisions made in the process are based on fair criteria.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	True	More True than False	More False than True	False	Don't know/Not applicable
The allocation of resources is decided fairly.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>The criteria for allocations are fairly applied.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In the process, there is sufficient opportunity to challenge decisions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>The decisions made in the process are consistent.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Decisions are based on accurate information.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Structural Integrity section in the space below.

**\* II. Authenticity refers to the extent Board Directors perceive the collaborative process is free from undue outside influence. An authentic process is one where members are confident the group has the power to make independent judgments and evaluations of the issues, and can make decisions on how to respond to those issues that will be respected by all members as well as those in positions of authority.**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>The process gives some people more than they deserve, while shortchanging others.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In the process, some people's opinions are accepted while other people are asked to justify themselves.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>In the process, strings are being pulled from outside Board discussions which influence important decisions.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In discussions about decisions or procedures, some people are discounted because of the organizations/jurisdictions that they represent.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Authenticity section in the space below.

**\* III. Strong Leadership reflects the perception the Board has an effective organizing/ coordinating body and, is led by committed and effective leaders. The role of the organizing/ coordinating body is to provide a convening location, collaborative environment and relevant information for Board Director deliberation and decision-making.**

**Note: The first item below regarding Organizer/coordinator refers to DRCOG's role as the convener/convening location. The second item refers to Board Director leadership.**

**Our collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>...has an effective organizer/coordinator.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...is led by individuals who are strongly dedicated to the Mission and Vision of DRCOG.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Strong Leadership section in the space below.

**\* IV. Members refers to how Board Directors perceive other Director's capacity to collaborate: Are they willing to devote their efforts to furthering the goals of the collaborative rather than simply garner additional resources for their individual programs? Will they support the ideas that have the most merit even at the expense of their own interests? And, do they think there is sufficient trust among members to honestly share information and feedback?**

**Members...**

	True	More True than False	More False than True	False	Don't know/Not applicable
...are effective liaisons between their home organizations and our group.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...trust each other sufficiently to honestly and accurately share information, perceptions, and feedback.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...are willing to let go of an idea for one that appears to have more merit.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
...are willing to devote the effort necessary to achieve Metro Vision Outcomes.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Members section in the space below.

\* **V. Structure** refers to the clarity members have about the scope of the Board's authority and the roles and responsibilities assigned to its Directors.

**Note:** This section also pertains to Board Committees. Please use the space below to provide comments on committees as they relate to (Board) Structure.

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>Our group has set ground rules and norms about how we will work together.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We have a method for communicating the activities and decisions of the group to all members.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>There are clearly defined roles for group members.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Structure section in the space below.

\* **VI. General Success** reflects the perceived level of success achieved by the collaborative and assesses the extent to which members accomplished the objectives set out for the most recent performance period. The term objectives in this section refers to for example; Reduce VMT, Improve Air Quality, Reduce GHG, etc. as opposed to 'outcomes' that describe an end state or destination point.

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>has accomplished its specific objectives</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has achieved more than its original objectives.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has led to new projects or efforts.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has achieved extraordinary success.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the General Success section in the space below.



**\* VII. Community Involvement & Collaboration refers to the extent to which the collaborative has engaged a wider or more diverse set of partners, or has stimulated greater commitment to collaboration among communities/jurisdictions.**

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>has led to broader and more meaningful engagement of diverse partners.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has resulted in the emergence of new leaders committed to collaboration.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has helped improve the way our participating jurisdictions work together.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has increased my knowledge of resources outside of my agency/organization.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has increased my access to resources outside of my agency/organization for my community.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Community Involvement & Collaboration section in the space below.

**\* VIII. Outcomes refer to the extent to which members believe the collaborative has had an impact on the outcomes it is targeting. For example an outcome is; The built environment accommodates the needs of residents of all ages, incomes, and abilities; Development patterns are easy to navigate, enhance multimodal connectivity, and maximize the ability for all people to access opportunities. (Metro Vision 2035)**

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>is committed to a “no wrong door” approach where any idea can be considered.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has had an impact on the outcomes it is targeting.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has resulted in improved outcomes for the population served.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Outcomes section in the space below.

**\* IX. Quality of Services assesses members' perceptions about the level of improvement in the quality of services for the population served, in areas such as access to needed services, navigating the system of services, time to obtain services, etc.**

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>has improved the quality of services for the population served.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has resulted in more streamlined service provision across participating jurisdictions/organizations.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has resulted in the creation of a system that is easier for the population served to navigate.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has resulted in a system that makes it easier for population served to access needed services.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has resulted in improved quality of services within my agency/organization due to our participation on the DRCOG Board.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has reduced the cost of delivering services for the population served by my agency/organization that are also served by DRCOG.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Quality of Services section in the space below.

**\* X. Fragmentation of Services refers to the extent to which members of the collaborative perceive a reduction in the fragmentation of services for the population served. This reduced fragmentation may result from increased availability of continuous and uninterrupted services, greater integration of services, more comprehensive service plans, or other improvements.**

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
has increased the availability of continuous and uninterrupted services for the population served by DRCOG, regardless of the funding source.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has generally led to the creation of more comprehensive services plans for the population served by participating jurisdictions/organizations.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Fragmentation of Services section in the space below.

\* **XI. Duplication of Services** refers to two qualities of duplication: a reduction in the duplication of services; and a reduction in the number of professionals providing services for the population served by DRCOG.

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
<b>has led to a reduction in the duplication of overlapping services across all participating jurisdictions/organizations when serving the region's population.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has led to a reduction in the number of professionals providing overlapping services for the population served.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has increased the availability of continuous and uninterrupted services for the population served, regardless of the funding source.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has resulted in greater integration of services for the population served.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>has generally led to the creation of more comprehensive services plans for the population served.</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Duplication of Services section in the space below.

\* **XII. Costs** refers to the extent to which members view the collaborative as reducing costs, either by reducing the costs of delivering services to the population served or by promoting a sharing of costs between jurisdictions/organizations participating in the collaborative.

**Our Collaborative...**

	True	More True than False	More False than True	False	Don't know/Not applicable
has reduced the costs of delivering services to the population served.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
has resulted in the sharing of costs between jurisdictions/organizations participating in the collaborative.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Costs section in the space below.

\* **Membership Value**

	True	More True than False	More False than True	False	Don't know/Not applicable
My community receives value from being a member of DRCOG.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide comments for the Membership Value section in the space below.

Please provide additional comments in the section below.

**ATTACH C**

To: Chair and Members of the Performance and Engagement Committee

From: Douglas W. Rex, Executive Director  
303-480-6701 or [drex@drcog.org](mailto:drex@drcog.org)

Meeting Date	Agenda Category	Agenda Item #
April 4, 2018	Informational	4

**SUBJECT**

Discussion of expanding the Ethical Conduct section of DRCOG's Board of Directors Rules of Conduct

**PROPOSED ACTION/RECOMMENDATIONS**

N/A

**ACTION BY OTHERS**

N/A

**SUMMARY**

At the February Board meeting, during the action establishing the slate of DRCOG Board officers for 2018, it was suggested that the P&E Committee add to its work plan an item to consider enhancing the Board of Directors Rules of Conduct. Specifically, the section (highlighted in Attachment 1) pertaining to ethics and conflicts of interest to provide additional guidance for any DRCOG board member regarding when disclosure and recusal is needed.

For your information, staff has attached a white paper (Attachment 2) presented at the Association of Metropolitan Planning Organizations (AMPO) Annual Conference in 2015 highlighting best practices related to standards of professionalism and ethics. While the white paper does not specifically speak to Colorado law, it does provide a broad survey of how other MPOs are handling the issue.

At the April P&E Committee meeting, DRCOG staff would like to initiate a conversation about how the Committee would like to proceed with this important topic.

**PREVIOUS DISCUSSIONS/ACTIONS**

N/A

**PROPOSED MOTION**

N/A

**ATTACHMENT**

1. DRCOG Board of Directors Rules of Conduct
2. White Paper

**ADDITIONAL INFORMATION**

If you have any questions, please contact Douglas W. Rex, Executive Director, at 303-480-6701 or [drex@drcog.org](mailto:drex@drcog.org).



**DENVER REGIONAL COUNCIL OF GOVERNMENTS  
BOARD OF DIRECTORS RULES OF CONDUCT  
Adopted February 15, 2017**

These Denver Regional Council of Governments (“DRCOG”) Board of Directors Rules of Conduct (“Rules”) are designed to establish reasonable expectations for member representative conduct and describe the manner in which member representatives should treat one another, DRCOG staff, constituents, and others they come into contact with while representing DRCOG. *For ease of reference the term “member” is used in these Rules to refer to any member representative or designated alternate.*

## **RULES OF CONDUCT**

### **Members’ Ethical Conduct**

Members are expected to comply with applicable laws governing ethical conduct, including those requiring avoidance of conflicts of interest, prohibiting receipt of unauthorized gifts, and prohibiting unauthorized use or disclosure of confidential information belonging to DRCOG. Members shall not engage in any activities constituting malfeasance in appointed office.

### **Members’ Conduct with Each Other in Public Meetings**

Members are individuals who, with their member jurisdictions, hold a wide variety of values, positions, and goals. Despite this diversity, all have been appointed as DRCOG member representatives to serve their respective jurisdictions’ interests in furthering mutual, regional cooperation. In all cases, this common goal should be acknowledged even though individuals and member jurisdictions may not agree on every issue.

#### *(a) Honor the role of the chair in maintaining order*

It is the role of the chairs of the DRCOG Board and committees to keep the comments of members on track during meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair’s actions, those objections should be voiced politely and with reason, following DRCOG’s parliamentary procedures.

#### *(b) Practice civility and decorum in discussions and debate*

Difficult questions, rigorous challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate. However, free debate does not require or justify, and members are expected to avoid making, any intentionally intimidating, slanderous, threatening, abusive, or disparaging comments or attacks.

#### *(c) Avoid personal comments that could offend other members*

If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a “point of personal privilege” that challenges the other member to justify or apologize for the language used. The chair controls the discussion.

## **Members' Conduct with the Public in Public Meetings**

Making the public feel welcome is an important part of the public meeting process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

### *(a) Be welcoming to speakers*

While questions of clarification may be asked, the member's primary role during public comments is to listen.

### *(b) Respect for speaker's testimony*

Members should be conscious of their activity while others are speaking and avoid facial expressions, comments or other actions that could be interpreted as smirking, disbelief, anger or boredom.

### *(c) Ask for clarification, but avoid debate and argument with the public*

Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask to be recognized to pose questions of clarification and can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

## **Members' Conduct with DRCOG Staff**

Governance of DRCOG relies on the cooperative efforts of members, who set policy, and DRCOG staff, who advise the Board and DRCOG committees and implement and administer DRCOG's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual.

### *(a) Treat all DRCOG staff as professionals*

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Unprofessional behavior towards DRCOG staff is not acceptable.

### *(b) Never publicly criticize an individual DRCOG staff member*

Members should never express concerns about the performance of an individual DRCOG staff member in public, to the staff member directly, or to the staff member's manager. Comments about DRCOG staff performance should only be made to the Executive Director through private correspondence or conversation. If the concern regards the Executive Director, it should be expressed within and through the established Executive Director performance evaluation meetings and procedures, within appropriate Board or committee discussions, to the Board Chair, or to the chair of the Performance & Engagement Committee.

### *(c) Avoid individual involvement in administrative functions*

Members acting in their individual capacity must not attempt to unduly influence DRCOG staff on the making of appointments, awarding of contracts, hiring of employees, selecting of consultants, processing of applications, or granting of DRCOG approvals or authorizations.

*(d) Do not solicit political support from DRCOG staff*

Members should not solicit any type of political support from DRCOG staff. DRCOG staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

## **Non-discrimination and Workplace Safety**

DRCOG is committed to providing a workplace free from discrimination, harassment and retaliation. It is also DRCOG's policy and practice to assure equal employment opportunity in all personnel transactions, without regard to age (40 and over), race, sex, color, religion, creed, veteran status, national origin, ancestry, disability, genetic information, sexual orientation, gender identity, or any other status protected by applicable federal, state or local law, and to promote a safe working environment free from workplace violence. All DRCOG officials and staff, including members, are responsible for and expected to conduct themselves in accordance with DRCOG's policies prohibiting discrimination, harassment, retaliation and workplace violence. Members shall not engage in harassing, hostile or threatening behavior that violates such policies. Member violations of these policies are subject to compliance actions under these Rules.

## **COMPLIANCE**

*(a) Behavior and Conduct*

These Rules express standards of appropriate conduct expected for members, and members themselves have the primary responsibility to assure that expectations for appropriate conduct are understood and met. The chairs of the Board and committees have the additional role of intervening when actions of members that appear to be in violation of the Rules are brought to their attention.

Members who intentionally and repeatedly disregard the Rules, or who commit a serious infraction of the Rules, may be reprimanded, censured, have the matter reported to the designating governing body or elected official that designated the member to the DRCOG Board, with or without a request that the member be replaced, or subject to other sanctions.

Individual members should point out to the offending member perceived infractions of the Rules. If the offenses continue or if an offense constitutes a serious infraction, then the matter should be referred to the vice chair of the Performance & Engagement Committee in private, except that if such vice chair is unavailable or is the individual whose actions are being questioned, then the matter should be referred to the chair of the Performance & Engagement Committee.

*(b) Review of Complaints*

It is the responsibility of the vice chair of the Performance & Engagement Committee, upon his or her receipt of a written complaint of violation, to promptly notify the chair of the Executive Committee of the filing of the complaint, and to initiate the process for review of such complaint. In accordance with the Articles of Association of the Denver Regional Council of Governments, the vice chair of the Performance & Engagement Committee, along with two members of such Committee selected by the vice chair, shall comprise a review panel to review the complaint. Members of the Committee shall be selected for the

review panel on an ad hoc basis for each complaint, and may serve on more than one panel. However, if the complaint concerns the vice chair or the vice chair is unavailable, the chair of the Committee shall initiate the process for review of such complaint and shall select three members of the Committee, excluding the vice chair, who shall comprise the review panel for such complaint.

The panel shall promptly review the complaint and upon completion of its review, the panel shall provide a recommendation to the Executive Committee of the Council for its review and action, which recommendations and actions may include, without limitation, issuing a letter of reprimand, reporting the matter to the designating governing body or elected official, with or without a request that the member be replaced, or adopting a finding of no violation. All actions taken will require a majority vote of the entire membership of the Executive Committee. Anonymous complaints will not be considered, but the review panel and Executive Committee shall have the power to maintain information relating to a complaint as confidential to the extent possible and to the extent appropriate under applicable laws.

*(c) Investigation, Voting & Other Reporting*

When deemed warranted, the Board Chair or the vice chair (or chair) of the Performance & Engagement Committee may call for an investigation of member conduct, and may obtain the assistance of the DRCOG Executive Director or the DRCOG attorney, or with the consent of the Board Chair or DRCOG Executive Director, the assistance of third parties, to investigate the allegations and report the findings.

No member representative may exercise a vote or grant or withhold any consent pursuant to these Rules for any matter concerning the member representative's own conduct.

The compliance provisions herein are not a substitute for any remedies for violations of state or federal law, and nothing herein prohibits the reporting of violations of state or federal law to the appropriate governmental authorities.

## **IMPLEMENTATION**

The Rules are intended to be self-enforcing and an expression of the standards of conduct for members expected by DRCOG. It therefore becomes most effective when members are thoroughly familiar with these Rules and embrace their provisions.

For this reason, the Rules are distributed to members at orientation and other training opportunities, and are included in the regular member resource materials. By accepting appointment as a member, members are expected to adhere to the Rules. In addition, the Rules shall be periodically reviewed and updated by DRCOG Board, after review by the Performance & Engagement Committee.

**STANDARDS OF PROFESSIONALISM AND ETHICS FOR**  
**MEMBERS OF METROPOLITAN PLANNING ORGANIZATIONS:**  
**BEST PRACTICES**

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Ben Apple  
Beveridge & Diamond, P.C.

Association of Metropolitan Planning Organizations Annual Conference  
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## INTRODUCTION: THE OBLIGATIONS OF MPOs TO THE PUBLIC<sup>1</sup>

Metropolitan planning organizations (“MPOs”) are responsible for planning the development of safe, efficient, and effective multimodal transportation systems to meet the regional transportation and development needs in their respective metropolitan planning areas. *See* 23 U.S.C. §§ 134(a), 134(h); 49 U.S.C. §§ 5303(a), 5303(h). The end goals of this planning process include mobility, economic development, well-managed growth, energy conservation, environmental health, and overall quality of life. *Id.*

The process for achieving these goals consists of three major steps. First, an MPO develops a transportation plan—with input from federal, state, and local governments and the general public—that describes the MPO’s vision for transportation development and a strategy for achieving it over a 20-year period. 23 U.S.C. § 134(i); 49 U.S.C. § 5303(i). Second, an MPO prepares a state-approved transportation improvement program (“TIP”) that identifies a list of feasible transportation projects that would accomplish its transportation plan’s goals. 23 U.S.C. § 134(j); 49 U.S.C. § 5303(j). And third, the MPO implements the TIP projects as allowed by available funding. *Id.*

The people behind this process are the members of an MPO’s board and its advisory committees. These MPO members must collaborate with other governments and the general public to realize regional projects that often span many years from initial planning to completion. Accordingly, the success of the MPO depends on the working relationships between its members and the other major players in regional transportation. In turn, these relationships hinge on the integrity and credibility of the MPOs’ members.

To help ensure the integrity and credibility of MPO members, this paper presents some best practices for maintaining proper standards of professional and ethical conduct. These best practices can help safeguard the stature of MPO members so that they may credibly operate the MPO and advocate for the products of its planning process without undue distrust and disruption.

The guide is divided into a section on professionalism, a section on ethics,<sup>2</sup> and a section on related federal requirements. The professionalism section discusses two broader problems faced by MPO members that do not fit squarely within the more black-and-white world of ethics. The ethics section lays out best practices for a number of key areas relevant to MPO members (e.g., bribery, conflicts of interest, public disclosure). And the federal requirements section goes through applicable federal requirements triggered by federal funding. Finally, some examples of MPO codes of ethics are provided in the Appendix, along with relevant information pulled from those codes and their hyperlinks.

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<sup>1</sup> This white paper is not legal advice. For legal or ethical advice, please consult an attorney or an otherwise qualified individual in the relevant jurisdiction.

<sup>2</sup> Hyperlinks to the cited MPO ethics codes are provided in the Appendix.

## **I. TO WHOM DO THE PROFESSIONAL AND ETHICAL STANDARDS APPLY?**

Professional and ethical standards should apply, at least, to all MPO members who meaningfully participate in the planning and decision-making processes. This means that members of advisory and technical committees should also be concerned with these standards. Accordingly, this white paper refers generally to “MPO members” with the understanding that “members” often includes more than Board members, i.e. members of technical and advisory committees.

That said, state ethics laws may extend beyond MPO members to MPO employees as well. *See, e.g.,* Tex. Transp. Code § 472.034 (applying ethics policy to all MPO employees). And in the absence of clear rules, MPOs have the discretion to limit or widen the scope of their ethics obligations. For instance, the Southern California MPO applies some disclosure requirements to members, employees, *and* consultants. *See* S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST POLICY at 2.6.6 (citing Cal. Gov't Code §§ 87100 *et seq.*).

## **II. PROFESSIONAL INTEGRITY**

MPOs operate in a collaborative framework where the success of their work product depends on the approval of the relevant state governor and the cooperation of the federal government. *See* 23 U.S.C. §§ 134(i)(7), 134(j)(1)(D); 49 U.S.C. §§ 5303(i)(7), 5303(j)(1)(D).<sup>3</sup> Accordingly, MPOs must be able to persuade the state and federal authorities that their plans are objective, accurate, and worthy of being funded. An MPO is only as effective as its members are credible. In this context, it is imperative that MPO members maintain the utmost professional integrity.

MPO members may face two broad categories of professional conflicts that they must navigate. The first stems from the fact that most MPO members are elected local government officials who have been appointed to a more regionally-focused MPO. MPOs' ethics codes generally do not address this potential conflict between local and regional interests. This may be intentional. As regional decision-making bodies, MPOs are designed to bring together various local interests to reach consensus on transportation planning. Nonetheless, MPO members with local allegiances must still remain open and honest about whose interests they represent and how those interests influence their decision-making.

The second conflict stems from an MPO's opposing roles as (1) an objective evaluator of regional data on expected demand for various transportation options and (2) a zealous advocate for the region and its chosen projects. The most prevalent example of this conflict between objective and subjective roles is the potential for biased forecasting of future transportation demands.<sup>4</sup> Opponents of MPO plans have routinely argued that a given MPO member or

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<sup>3</sup> Note that Transportation Management Areas in fact *require* the certification of the federal government to implement their proposed projects. 23 U.S.C. § 134(k)(5); 49 U.S.C. § 5303(k)(5).

<sup>4</sup> A 2005 Transportation Research Board (“TRB”) study concluded that the phenomenon of transportation over-forecasting was a common problem and had not lessened despite investigations of the problem and improved forecast modeling techniques. TRANSPORTATION RESEARCH BOARD, SPECIAL REPORT 288, METROPOLITAN TRAVEL FORECASTING AT 81-84 (2007). Indeed, a 2003 Federal Transit Administration study found that of nineteen rail projects examined, only eight achieved eighty percent of the forecasted ridership, suggesting prevalent over-forecasting. *Id.*



members may have unduly influenced “objective” transportation forecasting in order to justify favored projects.<sup>5</sup>

In the face of likely challenges to the integrity of MPOs and their members, the following ethics standards, *see* Section III, can play a large role in combating the appearance of impropriety. However, professional integrity requires more than just following the ethical rules; it requires MPOs to proactively identify grey areas where the potential for impropriety remains and to respond with appropriate measures—in the case of forecasting, full disclosure and explanation of how modeling results were produced and some type of credible peer or regulatory review.

### III. ETHICAL STANDARDS

Ethical standards are meant to protect the individuals who follow them, the organizations for which those individuals work, and the interests that those organizations serve. This section lays out all of the major ethical standards that are applicable to MPOs. The Atlanta Regional Commission’s Standards of Ethical Conduct provides an excellent summary of what ethics requires of MPO members:

“Board members, Committee members, and employees will avoid any action, whether or not specifically prohibited in the following sections, which might result in, or create the appearance of:

1. Using public office for private gain.
2. Giving preferential treatment to any organization or person.
3. Impeding governmental efficiency or economy.
4. Making decisions outside official channels.
5. Losing independence or impartiality of action.
6. Denying any citizen or group access to the decision making process of the Commission, and
7. Affecting adversely the confidence of the public in the integrity of the Commission.”<sup>6</sup>

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<sup>5</sup> As an example, some of the 2015 controversy surrounding the forecasting for the Purple Line in suburban Maryland outside of Washington, D.C. stemmed from larger increases in ridership forecasts after a new administration entered state office in 2008. *See* Katherine Shaver, *How Many People Will Ride the Purple Line?*, Sept. 26, 2015, WASHINGTONPOST.COM, *available at* [https://www.washingtonpost.com/local/trafficandcommuting/how-many-people-will-ride-the-purple-line/2015/09/26/5c2da4ec-51ac-11e5-8c19-0b6825aa4a3a\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/how-many-people-will-ride-the-purple-line/2015/09/26/5c2da4ec-51ac-11e5-8c19-0b6825aa4a3a_story.html).

<sup>6</sup> ATLANTA REG’L COMM’N, STANDARDS OF ETHICAL CONDUCT at 1 (2014). The Atlanta Regional Commission provides the caveat that its Standards of Ethical Conduct “must be interpreted and understood so as not to deny unreasonably the persons covered by these standards, the opportunities available to all other citizens to acquire and maintain private interests not in conflict with their Commission duties and responsibilities.” *Id.*

## A. State Ethics Laws

Many states have statutes and commissions on ethics. Before drafting any type of ethics code, MPOs should determine whether any state ethics laws apply to their activities. Some examples of relevant ethics statutes are available in the following states:<sup>7</sup>

- California
  - Prohibition on making decisions when a conflict of interest exists (Cal. Gov't Code §§ 87100 *et seq.*);
  - Disclosure of financial and business interests (Cal. Gov't Code §§ 87200 *et seq.*).
- Florida
  - Prohibition on bribery and doing business with one's agency (F.S. § 112.313);
  - Disclosure of financial interests and clients represented before agencies, (F.S. § 112.3145; Fla. Comm'n on Ethics, Advisory Op. 78-69);
  - Prohibition on gifts from interested parties (F.S. § 112.3148).
- Georgia
  - Disclosure of financial interests (O.C.G. § 21-5-50);
  - Prohibition on contracting with a business in which an employee has an interest (O.C.G. §§ 50-8-61, 50-8-62);
  - Disclosure of transactions with local governments by employees of center or family members (O.C.G. § 50-8-63).
- North Carolina
  - Prohibition on decision-making when a conflict of interest exists; Disclosure of conflicts of interest; Disclosure of economic interests; Confidentiality (N.C.G.S. § 136-200.2(g)-(k)).
- Oregon
  - Prohibition on gifts from interested parties (O.R.S. § 244.025);
  - Disclosure of economic interests (O.R.S. §§ 244.050-115);
  - Disclosure of conflicts of interest and prohibition on decision-making when one exists (O.R.S. §§ 244.120-135);
  - Prohibition on nepotism (O.R.S. §§ 244.175-.179).
- Texas
  - Prohibition on gifts or bribery; Confidentiality; Prohibition on conflicts of interest; Requirement that MPO have ethics code in bylaws (Tex. Transp. Code § 472.034);
  - Disclosure of conflicts of interest and prohibition on decision-making when one exists (Tex. Local Gov't Code chapter 171);
  - Disclosure of conflicts of interest with vendors who apply for contracts with the public entity (Tex. Local Gov't Code chapter 176).

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<sup>7</sup> Note that the applicability of state ethics codes may depend on whether the MPO members are elected and whether they are considered state or local officials. If MPOs happen to be part of or housed within state or local entities, ethics codes may apply despite not being otherwise applicable to MPOs.

## **B. Avoiding Even the Appearance of Impropriety or Favoritism**

MPO members should not only avoid all unethical acts; as a general rule, they should avoid even the appearance of unethical acts. Indeed, the appearance of impropriety alone can erode the public's trust in an MPO and thus lastingly discredit the MPO and disrupt, if not derail, its planning processes. While Sections C to E, below, focus on specific best practices to create an atmosphere of transparency and to avoid impropriety, it is also paramount that MPO members be aware of the potential for the mere appearance of impropriety, given their major role in regional transportation planning. Instituting codes of ethics and ensuring that MPO members are familiar with their obligations is a crucial first step in avoiding even the appearance of improper conduct and in insulating MPO members from undue accusations of unethical conduct. *See, e.g., ATLANTA REG'L COMM'N, STANDARDS OF ETHICAL CONDUCT* at 1 (2014).

## **C. Transparency**

### **1. *Public Access to the MPO Decision-Making Process***

MPOs should provide the public with full access to its decision-making process. *See* 23 U.S.C. §§ 134(i)(6)-(7) (requiring development of public participation plan and an opportunity for public comment); 49 U.S.C. § 5303(i)(6)-(7) (same). First, *all* meetings should be public, unless privacy is necessary (e.g., strategizing contract negotiations, consulting with legal counsel).<sup>8</sup> *Ex parte* communications only obscure the deliberation process and illegitimately exclude interested parties.

Second, MPOs should provide adequate notice of all meetings and major decisions so that the public can prepare to attend and participate.<sup>9</sup>

Third, under Title VI of the Civil Rights Act of 1964, MPOs must ensure that people are not excluded as a result of their race, color, or national origin. This includes environmental justice (i.e., low-income) communities and communities with limited English proficiency. *See* Section IV.A, below.

Fourth, MPOs should comply with all applicable laws regarding the release of public information. (For instance, the state of Virginia has a certification process for its MPOs and has cited at least one MPO for failure to comply with open meeting and notification requirements under federal and state law.<sup>10</sup>)

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<sup>8</sup> *See e.g.,* N. Carolina G.S. § 143-318.10 (“All official meetings of public bodies open to the public”). Florida’s Sunshine Law goes so far as prohibiting two officials on the same board from speaking at the same event as they could potentially speak *ex parte* about official matters. *See* MIAMI-DADE COMM’N ON ETHICS AND PUB. TRUST, ETHICS TRAINING (2015) (citing F.S. § 286.011), *available at* <http://miamidademp.org/library/presentations/Citizens-Transportation-Advisory-Committee/government-in-the-sunshine-law-2015-01-28.pdf>.

<sup>9</sup> *See, e.g.,* N. Carolina G.S. § 143-318.12 (“Public notice of official meetings”).

<sup>10</sup> HAMPTON ROADS MPO, MPO COMMITTEE REPORT at 1, June 18, 2008, *available at* [http://www.hrtpo.org/uploads/docs/MPO\\_09\\_Comm\\_Report\\_061608.pdf](http://www.hrtpo.org/uploads/docs/MPO_09_Comm_Report_061608.pdf).

Finally, MPOs should maintain a public website and post all official documents in an organized manner for the public to review.<sup>11</sup>

## **2. *Full Disclosure***

MPO members should disclose annually all of their economic and financial interests, including ownership of or significant investments in businesses, employment or contracts with businesses, and interests in real property.<sup>12</sup> This disclosure prevents any oversights of conflicts of interest, avoids any appearance of hiding information (should questions about motives arise), and keeps the public informed about the members' relevant interests.

MPO members should also disclose conflicts of interest when they arise. For instance, under the Ethics Policy of Houston-Galveston's Transportation Policy Council and pursuant to Texas law, if a decision arises that implicates material economic or financial interests of a member, that member must disclose the conflict in writing and abstain from further participation unless his or her participation is legally required.<sup>13</sup>

Beyond requiring disclosure by its members, it is recommended that MPOs require disclosure of the persons who are bidding on the MPOs' projects and their consultants and subcontractors. The Southern California MPO offers an example. *See* S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST POLICY at 1 (2000); S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST FORM, *available at* [http://www.scag.ca.gov/Documents/SCAG\\_COI\\_Form.pdf](http://www.scag.ca.gov/Documents/SCAG_COI_Form.pdf).

## **D. Conflicts of Interest**

### **1. *Generally***

A conflict of interest exists when it is reasonably foreseeable that a MPO decision will have a material effect, distinguishable from its effect on the general public, on an MPO member's financial or real property interests, the interests of his or her immediate family, the interests of an employer, business associate, or a principle customer or client, or a business in which the member holds a substantial interest.<sup>14</sup>

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<sup>11</sup> *See, e.g.*, Tex. Local Gov't Code § 176.009 (requiring posting of conflict of interest disclosures on public websites of MPOs if they maintain one).

<sup>12</sup> ATLANTA REG'L COMM'N, STANDARDS OF ETHICAL CONDUCT at 6 (citing O.C.G.A. § 21-5-50); CHARLOTTE REG'L TRANSP. PLANNING ORG., BYLAWS at 2 (2014) (citing N.C.G.S. chapter 138A); N. Carolina G.S. § 136.200.2; METRO (PORTLAND, OR), CODE OF ETHICS FOR METRO OFFICIALS AND REQUIREMENTS FOR LOBBYISTS at 2.17.050 (2011) (citing O.R.S. § 244.060); S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST POLICY at 2.6.6 (2000) (citing Cal. Gov't Code §§ 87100-87210).

<sup>13</sup> TRANSP. POL'Y COUNCIL FOR THE HOUSTON-GALVESTON TRANSP. MGMT. AREA, BYLAWS AND OPERATING PROCEDURES at 8 (2013) (citing Texas Transportation Code § 472.034; Local Government Code chapters 171, 176).

<sup>14</sup> MPOs have defined "substantial interest" differently. For instance, Houston-Galveston's MPO defines it as either owning 10% of the voting stock, owning 10% or \$15,000 of the value of the business, or

Conflicts of interest do not arise from the interests of an MPO member that stem from another public position that the member holds. As mentioned above in Section II, MPOs are designed to balance local interests against one another.

## **2. *Incompatible Employment***

An MPO member should not—and, in some MPOs, may not—take employment:

- that might reasonably be expected to impair the member’s independence of judgment in the performance of official duties;
- that otherwise might create a conflict of interest; or
- that might reasonably be expected to require or induce the member or employee to disclose confidential information acquired by reason of the official position.<sup>15</sup>

## **3. *No Business with MPO Members***

An MPO should not do business with its members or any businesses in which members have substantial interests unless (1) doing so is in the best interests of the MPO, (2) the involved member was not part of the related decision-making process, and (3) the potential for the appearance of favoritism is outweighed by the benefits.<sup>16</sup>

## **4. *When Do You Recuse Yourself?***

MPO members should recuse themselves from all decisions, and discussions thereof, that implicate or appear to implicate a conflict of interest.<sup>17</sup> They should also disclose the conflict in an official document, which should be made available to the public.

# **E. Gifts & Bribery**

MPO members should not accept substantial gifts<sup>18</sup> from persons: who desire a contract with the MPO; who desire to have plans, projects or environmental reports reviewed by the MPO; who have interests that would be affected by the MPO’s decisions; or who otherwise seek to influence the decision-making process of the MPO. Portland, Oregon’s Metro is particularly methodical about this. It requires all lobbyists to register with Metro, and prohibits the acceptance of all admission to entertainment events and the acceptance of any meals worth more than approximately fifty dollars. METRO (PORTLAND, OR), CODE OF ETHICS FOR METRO OFFICIALS AND REQUIREMENTS FOR LOBBYISTS at 2.17.060, 2.17.110 (2011).

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receiving income from the business that exceeds 10% of the member’s gross income. Atlanta’s MPO defines it as owning five percent or more of a business or taking an active part in its management.

<sup>15</sup> See TRANSP. POL’Y COUNCIL FOR THE HOUSTON-GALVESTON TRANSP. MGMT. AREA, BYLAWS AND OPERATING PROCEDURES at 7; ATLANTA REG’L COMM’N, STANDARDS OF ETHICAL CONDUCT at 4.

<sup>16</sup> See, e.g., METRO (PORTLAND, OR), CODE OF ETHICS at 2.17.090.

<sup>17</sup> See, e.g., TRANSP. POL’Y COUNCIL FOR THE HOUSTON-GALVESTON TRANSP. MGMT. AREA, BYLAWS AND OPERATING PROCEDURES at 7-8; CHARLOTTE REG’L TRANSP. PLANNING ORG., BYLAWS at 2.

<sup>18</sup> Gifts of \$75 or \$50 or less are usually exempted by MPO ethics codes. Meals, travel, entertainment, and other in-kind benefits generally constitute gifts.

Moreover, MPO members should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed the official duties in favor of another.

#### **F. Revolving Door**

MPOs should not do business with former MPO members for at least twelve months after the former member left the MPO.<sup>19</sup> This prohibition includes the former member acting as a consultant or lobbyist to a person attempting to do or doing business with the MPO. This rule helps to prevent the former member from being unfairly advantaged through confidential information or relationships with remaining MPO members, it prevents undue influence on the remaining MPO members who knew the former member, and it avoids the appearance of favoritism.

#### **G. Confidentiality**

MPO members should not “directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of his position or employment with the [MPO].”<sup>20</sup>

#### **H. Ethics Advisor**

MPOs should have ethics advisors to consult when ethical questions arise. For instance the Chicago Metropolitan Agency for Planning provides:

“The administrative principal is designated as the Ethics Advisor for CMAP. The Ethics Advisor shall provide guidance to the officers and employees of CMAP concerning the interpretation of and compliance with the provisions of the ethics policy and the State ethics laws. The Ethics Advisor shall perform such other duties as may be delegated by the CMAP executive director or board of directors.”<sup>21</sup>

### **IV. FEDERAL REQUIREMENTS TOUCHING ON ETHICS AND PROFESSIONALISM**

#### **A. Title VI, Environmental Justice, and Limited English Proficiency**

As recipients of federal funds, MPOs must comply with Title VI of the Civil Rights Act of 1964 and the Executive Orders (“EO”) regarding environmental justice (“EJ”) communities and limited English proficient (“LEP”) persons, EO #12898 and EO #13166, respectively. As explained by the Federal Highway Administration (“FHWA”) and the Federal Transit Administration (“FTA”):

Title VI states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be

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<sup>19</sup> See, e.g., S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST POLICY at 2.7.

<sup>20</sup> ATLANTA REG'L COMM'N, STANDARDS OF ETHICAL CONDUCT at 4.

<sup>21</sup> CHICAGO METRO. AGENCY FOR PLANNING, ETHICS POLICY at 4 (2007).

subjected to discrimination under any program or activity receiving Federal financial assistance.” It bars intentional discrimination as well as disparate impact discrimination (i.e., a neutral policy or practice that has a disparate impact on protected groups).

The [EJ] Orders further amplify Title VI by providing that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>22</sup>

Under this FHWA and FTA guidance, MPOs must develop programs to ensure adequate inclusion and consideration of the interests of persons covered under Title VI and the EJ EO.<sup>23</sup>

With regard to LEP persons, MPOs must “take reasonable steps to ensure meaningful access to their programs and activities.”<sup>24</sup> Department of Transportation guidance provides the following four factors to use when evaluating what those reasonable steps should be:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the recipient to people's lives; and
4. The resources available to the recipient and costs.<sup>25</sup>

## **B. Standards of Conduct during Procurement**

The federal procurement regulations require MPOs, as federal grantees, to “maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.” 2 C.F.R. § 200.318(c). Thus, not only may a code of ethics be required by state law and not only is it highly recommended as a matter of best practices, but it is required by federal law with regards to the awarding of contracts.

## **C. Federal Procurement Procedure**

Federal procurement regulations also require MPOs to administer a fair and competitive bidding process for all contracts awarded using federal funds. *See* 2 C.F.R. part 200

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<sup>22</sup> FHWA & FTA, *Memorandum: Implementing Title VI Requirements in Metropolitan and Statewide Planning*, Oct. 7, 1999, available at [http://www.fhwa.dot.gov/environment/environmental\\_justice/facts/ej-10-7.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/facts/ej-10-7.cfm).

<sup>23</sup> *Id.*; *see also Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements*, FHWA.DOT.GOV, <http://www.fhwa.dot.gov/civilrights/programs/tvi.cfm>.

<sup>24</sup> Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons, 70 Fed. Reg. 74087, 74091 (Dec. 14, 2005).

<sup>25</sup> *Id.* at 74091-93.

(particularly, 2 C.F.R. §§ 200.317-200.326). These regulations prohibit the acceptance or solicitation of gifts from bidding contractors, and they prohibit any person with a conflict of interest to award such a contract.<sup>26</sup> *See* 2 C.F.R. §§ 200.318(c).

#### **D. No Lobbying with Federal Funds**

Under federal law, a recipient of federal funds may not use such funds to lobby or otherwise attempt to influence an employee or officer of a federal agency, a Member of Congress, an employee of a Member of Congress, or an employee of Congress in connection with the awarding of a federal grant, loan, or contract or in connection with a cooperative agreement. The recipient must also certify that it will not violate this law and must file a disclosure of the use of all non-appropriated funds for lobbying that would otherwise be prohibited if federal funds. Violation of this law is punishable by a civil fine between \$10,000 and \$100,000. *See* 49 C.F.R. part 20.

#### **E. Other Federal Requirements Triggered by Federal Funds**

- No discrimination in the workplace (42 U.S.C. § 2000e-2);
- Posting requirements regarding equal opportunity, safety, and fair labor standards, and disability accommodations in the workplace;<sup>27</sup>
- Auditing requirements (2 C.F.R. §§ 200.501-200.520).

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<sup>26</sup> Under 2 C.F.R. § 200.318, a conflict of interest occurs when a person (here, an employee or officer of the local government), that person's immediate family or partner, or any organization that employs or will employ any of the aforementioned has a financial or other interest in the firm selected for award. Section 1.33 of Title 23 of the CFR provides a similar conflict of interest prohibition on procuring contracts.

<sup>27</sup> *Poster Requirements*, DOL.GOV, <http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm>.



**APPENDIX: EXAMPLES OF MPO CODES OF ETHICS  
AND RELEVANT EXCERPTS**

**CONTENTS**

1. ATLANTA REG'L COMM'N, STANDARDS OF ETHICAL CONDUCT (2014) (citing O.C.G.A. §§ 50-8-63, 21-5-50), *available at* [http://www.atlantaregional.com/File%20Library/About%20Us/BYLAWS/ARC\\_StandardsEthicalConduct\\_2014.pdf](http://www.atlantaregional.com/File%20Library/About%20Us/BYLAWS/ARC_StandardsEthicalConduct_2014.pdf).
2. CHARLOTTE REG'L TRANSP. PLANNING ORG., BYLAWS at 2 (2014) (citing N.C.G.S. chapter 138A), *available at* [http://www.crtpo.org/PDFs/MPO\\_Bylaws.pdf](http://www.crtpo.org/PDFs/MPO_Bylaws.pdf).
3. CHICAGO METRO. AGENCY FOR PLANNING, ETHICS POLICY (2007), *available at* <http://www.cmap.illinois.gov/documents/10180/160510/PolicyEthics04-04-07.pdf/1a2b9566-c5e8-423e-9b7e-461926193162>.
4. CORPUS CHRISTI METRO. PLANNING ORG., BYLAWS & OPERATION PROCEDURES at 9-10 (2012) (citing Tex. Transp. C. § 472.034; Local Gov't Code chapter 171), *available at* [http://www.corpuschristi-mpo.org/02\\_about\\_bylaws.html](http://www.corpuschristi-mpo.org/02_about_bylaws.html).
5. METRO (PORTLAND, OR), CODE OF ETHICS FOR METRO OFFICIALS AND REQUIREMENTS FOR LOBBYISTS (2011) (citing O.R.S. §§ 244 *et seq.*), *available at* [http://www.oregonmetro.gov/sites/default/files/chap217clean\\_eff\\_041311.pdf](http://www.oregonmetro.gov/sites/default/files/chap217clean_eff_041311.pdf).
6. METRO. TRANSP. COMM'N (SAN FRANCISCO BAY AREA), CONFLICT OF INTEREST CODE (2015) (citing 2 Cal. Code Regs. § 18730), *available at* [http://apps.mtc.ca.gov/meeting\\_packet\\_documents/agenda\\_2366/2f\\_Res\\_1058.pdf](http://apps.mtc.ca.gov/meeting_packet_documents/agenda_2366/2f_Res_1058.pdf).
7. S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST POLICY (2000) (citing Cal. Gov't Code §§ 87100-87210), *available at* <http://www.scag.ca.gov/search/pages/Results.aspx?k=conflict%20of%20interest%20policy>.
8. TRANSP. POL'Y COUNCIL FOR THE HOUSTON-GALVESTON TRANSP. MGMT. AREA, BYLAWS AND OPERATING PROCEDURES at 7 (2013) (citing Tex. Transp. Code § 472.034; Tex. Local Gov't Code chapters 171, 176), *available at* <https://www.h-gac.com/taq/committees/TPC/docs/TPC%20Bylaws%20Amended%201-25-13.pdf>.

1. ATLANTA REG'L COMM'N, STANDARDS OF ETHICAL CONDUCT (citing O.C.G.A. §§ 50-8-63, 21-5-50), *available at* [http://www.atlantaregional.com/File%20Library/About%20Us/BYLAWS/ARC\\_StandardsEthicalConduct\\_2014.pdf](http://www.atlantaregional.com/File%20Library/About%20Us/BYLAWS/ARC_StandardsEthicalConduct_2014.pdf).

## STANDARDS OF ETHICAL CONDUCT

### A. Declaration of Policy

Board members, Committee members, and employees will avoid any action, whether or not specifically prohibited in the following sections, which might result in, or create the appearance of:

1. Using public office for private gain.
2. Giving preferential treatment to any organization or person.
3. Impeding governmental efficiency or economy.
4. Making decisions outside official channels.
5. Losing independence or impartiality of action.
6. Denying any citizen or group access to the decision making process of the Commission, and
7. Affecting adversely the confidence of the public in the integrity of the Commission.”

### B. Definitions

[Text omitted from this section and those below.]

“Interest” means any direct or indirect material pecuniary benefit, which will or may accrue to a person as a result of a contract or transaction. A material pecuniary benefit is a benefit, which in the view of most members of the general public would have more than insignificant or incidental value. Unless otherwise provided, the term interest does not include a remote interest. For the purpose of this article, a Board member, committee member or employee may be deemed to have an interest in a contract or transaction in which any of the following have an interest:

- a. Any person in his immediate family.
- b. His employer, business associate, or a principal customer or client.
- c. A business in which he owns five percent or more of the ownership interests or in which he takes an active part in the management of the business.
- d. A business in which he is a creditor, whether secured or unsecured.

### C. Gifts and Favors

### D. Incompatible Employment

An employee shall not engage in any outside employment, which might result in a conflict, or apparent conflict, between the private interest of the employee and his official Commission duties and responsibilities. For the purpose of this article, the employment of a consultant by another client involving matters unrelated to any contract or transaction by or with the Commission shall not be deemed incompatible with such consultant’s official duties.

### E. Acquiring an Interest

### F. Confidential Information

A Board member, or Committee member, or employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of his position or employment with the Commission.

G. Review by Ethics Committee

H. Disclosure of Prior Position

Each Member at Large of the Commission, within 30 days of his or her appointment to the Commission and no later than January 31st of each year in which he or she is a member of the Commission, shall file with the Georgia Government Transparency and Campaign Finance Commission, an annual affidavit swearing that the director or member did not take any official action from which he or she derived personal gain in the previous calendar year. Each Public Member of the Commission shall file the required Personal Financial Disclosure Statement with the Georgia Government Transparency and Campaign Finance Commission on an annual basis. This annual filing may be done no earlier than January 1st and no later than July 1st each year. (O.C.G.A. § 21-5-50).

I. Disqualification

J. Contracts With Board Members, Committee Members, and Employees

K. Contracts Involving Former Board Members, Committee Members, and Employees.

L. Disclosure of Business Transactions with Local Governments.

M. Ethics Committee.

N. Disclosure of Financial Interests

O. Key Contact

P. Severability

2. CHARLOTTE REG'L TRANSP. PLANNING ORG., BYLAWS at 2 (2014) (citing N.C.G.S. chapter 138A), *available at* [http://www.crtpo.org/PDFs/MPO\\_Bylaws.pdf](http://www.crtpo.org/PDFs/MPO_Bylaws.pdf).

## BYLAWS

### Section 4 – NC State Government Ethics Act

Every voting member shall comply with the State Ethics Act as per Chapter 138A of the NC General Statutes. This includes the affirmative duty to (a) annually file a Statement of Economic Interest, (b) biennially attend mandatory training on ethics, (c) report potential conflicts, and (d) recuse from voting or discussing issues on which the attending member has an identified conflict of interest.

### Section 5 – Agenda

[Text omitted.]

The MPO and all sub-committees shall conduct their business in compliance with the State of North Carolina's Open Meetings Law.

### Section 7 – Public Comment Procedures:

- Each MPO agenda shall provide a public comment period.

- An individual speaker's time to address the MPO shall be limited to three (3) minutes.
  - The public comment period shall be limited to 20 minutes.
  - Organizations wishing to make presentations to the MPO must contact the Secretary at least 10 days prior to meeting. The procedures can be found in Section 5 of this Article.
  - The Chairman has the discretion to modify the above rules
3. CHICAGO METRO. AGENCY FOR PLANNING, ETHICS POLICY, *available at* <http://www.cmap.illinois.gov/documents/10180/160510/PolicyEthics04-04-07.pdf/1a2b9566-c5e8-423e-9b7e-461926193162>.

## ETHICS POLICY

### Statement of Policy:

Individuals acting on behalf of CMAP have a general duty to conduct themselves in a manner that will maintain and strengthen the public's trust and confidence in the integrity of CMAP.

### Statement of Purpose:

This policy is to establish guidelines for professional conduct by those acting on behalf of CMAP and to ensure that all CMAP employees work with integrity and effectiveness. It is not intended to define specifically what one should and should not do, but to communicate CMAP's expectations of proper conduct and what professional conduct CMAP values.

### Statement of Procedure:

#### Conduct

With regard to professional conduct, those acting on behalf of CMAP should practice:

1. Integrity by maintaining an ongoing dedication to honesty and responsibility;
2. Trustworthiness by acting in a reliable and dependable manner;
3. Evenhandedness by treating others with impartiality;
4. Respect by treating others with civility and decency;
5. Stewardship by exercising custodial responsibility for CMAP and resources;
6. Compliance by following state and federal laws and regulations and CMAP policies related to their duties and responsibilities;
7. Confidentiality by protecting the integrity and security of CMAP information such as personnel records, employee files, and contract negotiation documents."

#### Conflicts of Interest

[Text omitted from this section and those below.]

#### Prohibited Political Activities

#### Prohibited Offer or Promise

#### Ban on Gifts from Prohibited Sources

#### Revolving Door

#### Ethics Advisor

The administrative principal is designated as the Ethics Advisor for CMAP. The Ethics Advisor shall provide guidance to the officers and employees of CMAP concerning the interpretation of and compliance with the provisions of the ethics policy and the State ethics laws. The Ethics Advisor shall perform such other duties as may be delegated by the CMAP executive director or board of directors.

4. CORPUS CHRISTI METRO. PLANNING ORG., BYLAWS & OPERATION PROCEDURES at 9-10 (citing Tex. Transp. C. § 472.034; Local Gov't Code chapter 171), *available at* [http://www.corpuschristi-mpo.org/02\\_about\\_bylaws.html](http://www.corpuschristi-mpo.org/02_about_bylaws.html).

#### CONFLICT OF INTEREST:

The Transportation Policy Committee members will conduct business in compliance with Chapter 472 of the Texas Transportation Code and Chapter 171 of the Texas Local Government Code. Pursuant to Section 472.033 of the Texas Transportation Code, a Transportation Policy Committee member is considered to be a local public official for purposes of Chapter 171 of the Texas Local Government Code.  
[Text omitted.]

5. METRO (PORTLAND, OR), CODE OF ETHICS FOR METRO OFFICIALS AND REQUIREMENTS FOR LOBBYISTS (citing O.R.S. §§ 244 *et seq.*), *available at* [http://www.oregonmetro.gov/sites/default/files/chap217clean\\_eff\\_041311.pdf](http://www.oregonmetro.gov/sites/default/files/chap217clean_eff_041311.pdf).

#### CODE OF ETHICS FOR METRO OFFICIALS AND REQUIREMENTS FOR LOBBYISTS

##### 2.17.010 Purpose and Policy

- (a) The Metro Council hereby declares that the purpose of this Chapter is to ensure that Metro serves the public and informs the public fully concerning its decision making. In accordance with such purposes, this Chapter establishes a Code of Ethics for Metro and requirements for lobbyists appearing before Metro.
- (b) In adopting this Chapter, the Metro Council intends:
  - (1) To be consistent with and to add to current public policy established by the Oregon Legislative Assembly;
  - (2) To require Metro officials to operate under high ethical standards;
  - (3) To require Metro officials to treat their offices and positions as a public trust whose powers and resources are to be used for the benefit of the public and not for any personal benefit; and
  - (4) To require individuals and entities appearing before Metro to identify themselves and the interests they represent.
- (c) It is the policy of Metro that all Metro officials and employees strictly comply with the Code of Ethics contained in ORS 244.040.

##### 2.17.020 Definitions

[Text omitted from this section and those below.]

##### 2.17.030 Giving and Receiving Gifts Prohibited by Lobbyists Registered with Metro

##### 2.17.040 Whistleblowing

#### 2.17.050 Financial Reporting Requirements

- (a) Elected officials shall comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Chief Operating Officer at the time of filing with the appropriate state agency.
- (b) All Department Directors and Metro commissioners shall file annually with the Chief Operating Officer a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060.
- (c) In addition, the Statement of Economic Interest shall disclose the ownership of any real property outside the Metro boundary and within Multnomah, Clackamas or Washington County.

#### 2.17.060 Restrictions on Meals and Entertainment

- (a) No Metro official shall solicit or receive entertainment from any lobbyist or employer of a lobbyist registered with Metro.
- (b) No lobbyist or employer of a lobbyist registered with Metro shall furnish to a Metro official admission to entertainment.
- (c) Metro officials shall not solicit or receive meals from any lobbyist or employer of a lobbyist registered with Metro if the cost of the meal exceeds the amount allowed by the United States Internal Revenue Service as a deductible business travel expense.
- (d) No lobbyist or employer of a lobbyist registered with Metro shall furnish a Metro official meal if the cost of the meal exceeds the amount allowed by the United States Internal Revenue Service as a deductible business travel expense.
- (e) However, subject to the limits of ORS Chapter 244, Metro officials may attend fundraising events benefiting non-profit tax exempt entities as guests of lobbyists or employers of lobbyists registered with Metro. Lobbyists or employers of lobbyists registered with Metro may pay the cost of Metro officials attending such fundraising events.

#### 2.17.070 Reimbursement for Attendance at Events

#### 2.17.090 Prohibition Against Doing Business With Metro Officials

- (a) Except as provided for in subsections (b) and (c), Metro may not do business with any Metro official while the official is in office or within one year after the Metro official ceases to be a Metro official if the official had authority to exercise official responsibility in the matter. Any contract entered into in violation of this provision is void.
- (b) Upon the request of the Chief Operating Officer or a Metro commission, the Council may waive the effect of the prohibition contained in subsection (a) upon making written findings that:
  - (1) It is in the best interests of Metro to do business with the Metro official.
  - (2) The Metro official took no action while in office that directly related to the preparation of the terms and conditions in the contract documents that may give an appearance of impropriety or favoritism.
  - (3) Other factors exist which are explicitly found by the Council to benefit Metro that outweigh the policy considerations of ensuring that no appearance of favoritism exists in the award of Metro contracts.
- (c) This section applies only to Metro officials who first take office or are re-elected or re-appointed to an office after September 7, 1995. This section shall not be construed to

permit any activity that is otherwise prohibited by any other statute, rule, ordinance, or other law.

#### 2.17.110 Registration of Lobbyists

(a) Within three (3) working days after exceeding the limit of time specified in Code Section 2.17.120(a)(5), each lobbyist shall register by filing with the Metro Council a statement containing the following information:

(1) The name and address of the lobbyist.

(2) The name and address of each person or agency by whom the lobbyist is employed or in whose interest the lobbyist appears or works, a description of the trade, business, profession or area of endeavor of that person or agency, and a designation by each such person or agency that the lobbyist is officially authorized to lobby for that person or agency.

(3) The name of any member of the Metro Council who is in any way employed by the lobbyist employer designated in paragraph (b) of this subsection or who is employed by the lobbyist or whether the lobbyist and member are associated with the same business. Ownership of stock in a publicly traded corporation in which a member of the Metro Council also owns stock is not a relationship which need be stated.

(4) The general subject or subjects of the legislative interest of the lobbyist. (b) The designation of official authorization to lobby shall be signed by an officer of each such corporation, association, organization or other group or by each individual by whom the lobbyist is employed or in whose interest the lobbyist appears or works.

(c) A lobbyist must revise the statements required by subsection (a) of this section if any of the information contained therein changes within 30 days of the change.

(d) (1) Except as provided in subsection (d)(2), a lobbyist registration expires on January 31 of the next odd-numbered year after the date of filing or refiling.

(2) A lobbyist registration filed on or after July 1 of any even-numbered year expires on January 31 of the second odd-numbered year after the date of filing or refiling.

#### 2.17.120 Exemptions to Lobbyist Registration Requirements

#### 2.17.130 Statements of Lobbying Expenses

#### 2.17.140 Employers of Lobbyists Expense Statements

#### 2.17.150 Verification of Reports, Registrations and Statements

#### 2.17.160 Public Nature of Reports, Registrations and Statements

#### 2.17.170 Sanctions for Violations

#### 2.17.180 Pending Enforcement by Oregon Government Standards and Practices Commission (repealed Ord. 06-1112 §5)

6. METRO. TRANSP. COMM’N (SAN FRANCISCO BAY AREA), CONFLICT OF INTEREST CODE (citing 2 Cal. Code Regs. § 18730), *available at* [http://apps.mtc.ca.gov/meeting\\_packet\\_documents/agenda\\_2366/2f\\_Res\\_1058.pdf](http://apps.mtc.ca.gov/meeting_packet_documents/agenda_2366/2f_Res_1058.pdf).

#### CONFLICT OF INTEREST CODE FOR THE METROPOLITAN TRANSPORTATION COMMISSION

[Text omitted.]

Individuals holding designated positions shall file their statements of economic interest with [the Metropolitan Transportation Commission (“MTC”)], which will make the statements available for public inspection and reproduction. (Government Code Sec. 81008.) Upon receipt of statements for the MTC Commissioners and from the Executive Director, MTC shall make and retain copies and forward the originals to the Fair Political Practices Commission. All other statements will be retained by MTC.

7. S. CAL. ASSOC. OF GOV'TS, CONFLICT OF INTEREST POLICY (citing Cal. Gov't Code §§ 87100-87210), *available at* <http://www.scag.ca.gov/search/pages/Results.aspx?k=conflict%20of%20interest%20policy>.

## CONFLICT OF INTEREST POLICY

The Regional Council of the Southern California Association of Governments hereby adopts a conflict of interest policy in order to provide comprehensive and clear rules of conduct for its members, employees and consultants. The purpose of this policy is to further ensure that each Association member, employee and consultant is guided in the interest of the Association, rather than by personal interests. This policy shall incorporate and supplement existing state and federal conflict of interest laws and regulations.<sup>1</sup> In order to implement this policy, all persons or firms, including subcontractors, seeking contracts or purchase orders of \$25,000 or more, are required to complete the “SCAG Conflict of Interest Form.”

### Section 1: Persons Covered and Definitions

[Text omitted from this section and those below.]

### Section 2: Prohibitions

#### 2.1 Gifts

#### 2.2 Outside Employment

#### 2.3 Political Activity

#### 2.4 Private Gain or Advantage

#### 2.5 SCAG Policy Statements

### Subsection 2.6: Participation in SCAG Contracts and Decisions

#### 2.6.1 Federal Contracts

#### 2.6.2 Subregional Consultants

#### 2.6.3 SCAG Advisory Committee members

#### 2.6.5 Other Contracts

#### 2.6.5 Participation in SCAG Decisions

#### 2.6.6 Disclosure

Association members, employees and consultants subject to the requirements of the Political Reform Act, Cal. Gov. Code Section 87100 et seq., are required by the SCAG Conflict of Interest Code to file an annual Statement of Economic Interests. Such disclosure statements shall be filed with the Executive Assistant to the Regional Council, pursuant to Cal. Gov. Code Sections 87200- 87210. Under the Conflict of Interest Code for SCAG, revised in 1996, Regional Council members, the Executive Director and other designated employees and consultants are required to disclose “all investments, interests in real property, income, and business positions.” SCAG Legal Counsel shall provide guidance in meeting disclosure requirements.



#### 2.6.7 Disqualification

#### 2.6.8 Exception

#### 2.6.9 Procedures for Disqualification from Participation in a SCAG Decision

### Subsection 2.7: One (1) Year Bans

#### 2.7.1 One (1) Year Prohibition on Involvement with SCAG Contracts:

8. Association member, employee, or consultant shall or attempt to influence any SCAG decision directly relating to any contract where the former member, employee or consultant knows or has reason to know terms not available to members of the public.

- (a) Former, non-voting committee members are subject to this prohibition to the extent that the business of the committee on which the non-voting member served, was related to subject matter of the proposed contract or other agreement between the non-voting member and SCAG.

- (b) This prohibition shall apply for one (1) year from the time the member's term expires; one (1) year from the time the former SCAG employee is terminated; or one (1) year from the time a consultant's contract or other agreement expires.

#### 2.7.2 One (1) Year Prohibition on Consulting and Bidding

No former Association member or employee shall for compensation participate in bidding on SCAG contracts, including providing consulting services to a bidder on a bidding process involving SCAG, and from participating in consultant work funded by SCAG or through SCAG.

- (a) This prohibition shall apply for one (1) year from the time the member's term expires or one (1) year from the time the employee is terminated.

- (b) This prohibition is limited only to Regional Council members, Policy Committee members, and SCAG employees.

#### 2.7.3 One (1) Year Prohibition on Lobbying

No former Association member, employee or consultant for one year from the time the member's term expires, shall for compensation act as an agent or attorney for, or otherwise represent, any other person than SCAG in any formal or informal appearance before, or, with the intent to influence a decision, make any written or oral communication on behalf of any person other than SCAG to any court or any agency officer, employee, member, board or commission in connection with any proceeding, application, request for ruling or other determination, contract, claim, controversy, legislation, or other particular matter pending before such court or before such officer, member, employee, board or commission if both of the following apply:

- a. SCAG is a party or has a direct and substantial interest.
    - b. The proceeding is one in which the member, employee or consultant participated.

#### 2.7.4 Exemptions:

The prohibitions contained in Sections 2.7.1, 2.7.2, 2.7.3 shall not apply:

- a. to prevent a former member, employee or consultant from making or providing a statement or contract which is based on the former employee's

own special knowledge in the particular area that is the subject of the statement or contract, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses or contractors; or

b. to communications and contracts made solely for the purpose of furnishing information by a former member, employee or consultant if a court or state, federal or local administrative agency to which the communication is directed or with or for which a contract is made, makes findings in writing that:

1. the former member, employee or consultant has outstanding and otherwise unavailable qualifications;
2. the former member, employee or consultant is acting with respect to a particular matter which requires such qualifications; and
3. the public interest would be served by the participation of the former member, employee or consultant; or

c. with respect to appearances or communications in a proceeding or contracts to which a court or the Regional Council gives its consent by determining that:

1. the public interest would not be harmed.

### Section 3: Penalties

8. TRANSP. POL'Y COUNCIL FOR THE HOUSTON-GALVESTON TRANSP. MGMT. AREA, BYLAWS AND OPERATING PROCEDURES at 7 (citing Tex. Transp. Code § 472.034; Tex. Local Gov't Code chapters 171, 176), *available at* <https://www.h-gac.com/taq/committees/TPC/docs/TPC%20Bylaws%20Amended%201-25-13.pdf>.

### ETHICS POLICY

The Transportation Policy Council is committed to conducting its business in an ethical and open manner. To ensure ethical conduct by members of the Transportation Policy Council and its employees, the following rules have been adopted:

#### Transportation Code Requirements [Tex. Transp. Code § 472.034]

- No policy board member or employee of the MPO may accept or solicit any gift, favor or service that might reasonably tend to influence the member or employee in the discharge of official duties or that the member or employee knows or should know is being offered with the intent to influence the member's or employee's official conduct.
- No policy board member or employee of the MPO may accept other employment or engage in a business or professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the official position.
- No policy board member or employee of the MPO may accept other employment or compensation that could reasonably be expected to impair the member's or employee's independence of judgment in the performance of official duties.

- No policy board member or employee of the MPO may make personal investments that could reasonably be expected to create a conflict between the member's or employee's private interest and the public interest.
- No policy board member or employee of the MPO may intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed the official duties in favor of another.

#### Chapter 171, Local Government Code Requirements

- If a policy board member has a substantial interest in a business entity or in real property, the policy board member shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:
  - (1) in the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
  - (2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.
- If a policy board member is required to file and does file an affidavit, the policy board member is not required to abstain from further participation in the matter requiring the affidavit if a majority of the policy board members are likewise required to file and do file affidavits of similar interests on the same official action.
- The policy board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the policy board has a substantial interest. Except as provided in the preceding paragraph, the member may not participate in that separate vote. The member may vote on a final budget if:
  - (1) the member has complied with Chapter 171, Local Government Code, and
  - (2) the matter in which the member is concerned has been resolved.
- A person has a substantial interest in a business entity if:
  - (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
  - (2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
- A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- A policy board member is considered to have a substantial interest if a person related to the policy board member in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest.
- A county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter related to that business entity.
- A policy board member may not act as surety for a business entity that has work, business or a contract with the Transportation Policy Council.

#### Chapter 176, Local Government Code Requirements

- A policy board member shall file a conflicts disclosure statement in the form prescribed by the Texas Ethics Commission with respect to a person who enters or

seeks to enter into a contract with the Transportation Policy Council or with respect to the agent of a person who enters or seeks to enter into a contract with the Transportation Policy Council if:

- (1) the person enters into a contract with the Transportation Policy Council or the Transportation Policy Council is considering entering into a contract with the person; and
- (2) the person:
  - (A) has an employment or other business relationship with the policy board member or a family member of the policy board member that results in the member or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the policy board member becomes aware that:
    - (i) a contract described by (1) above has been executed; or
    - (ii) the Transportation Policy Council is considering entering into a contract with the person; or
  - (B) has given to the policy board member or a family member of the policy board member one or more gifts that have an aggregate value of more than \$250 in the 12-month period preceding the date the policy board member becomes aware that:
    - (i) a contract described by (1) above has been executed; or
    - (ii) the Transportation Policy Council is considering entering into a contract with the person.

- A policy board member is not required to file a conflicts disclosure statement in relation to a gift accepted by the member or a family member of the member if the gift is:
  - (1) given by a family member of the person accepting the gift;
  - (2) a political contribution as defined by Title 15, Election Code; or
  - (3) food, lodging, transportation, or entertainment accepted as a guest.
- A policy board member shall file the conflicts disclosure statement with the records administrator of the Transportation Policy Council not later than 5 p.m. on the seventh business day after the date on which the policy board member becomes aware of the facts that require the filing of the statement.
- The Transportation Policy Council may extend the requirements of Chapter 176 to any employee of the MPO who has the authority to approve contracts on behalf of the Transportation Policy Council. The Transportation Policy Council shall identify each employee made subject to Chapter 176 and shall provide a list of the identified employees on request to any person.
- The Transportation Policy Council shall provide access to the disclosure statements and questionnaires required to be filed under Chapter 176 on its website, if it has a website.
- Agent means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person.
- Business relationship means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(1) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;  
(2) a transaction conducted at a price and subject to terms available to the public;  
or

(3) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

- Contract means a written agreement for the sale or purchase of real property, goods, or services.
- Family member means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Section 573.024(b), Government Code.
- Goods means personal property.
- Investment income means dividends, capital gains, or interest income generated from:
  - (1) a personal or business checking or savings account, share draft or share account, or other similar account;
  - (2) a personal or business investment; or
  - (3) a personal or business loan.

**ATTACH D**

To: Chair and Members of the Performance and Engagement Committee

From: Douglas W. Rex, Executive Director  
303-480-6701 or [drex@drcog.org](mailto:drex@drcog.org)

Meeting Date	Agenda Category	Agenda Item #
April 4, 2018	Informational	5

**SUBJECT**

Discussion of 2018 Board Workshop topics.

**PROPOSED ACTION/RECOMMENDATIONS**

N/A

**ACTION BY OTHERS**

N/A

**SUMMARY**

The 2018 Board Workshop is scheduled for August 24-25. At the April meeting, staff would like to discuss possible workshop topics. Staff has prepared a list of possible topics for your consideration:

- **Smart Region Initiative:**

Working to develop a Smart Region is about more than just smart mobility. An intelligent transportation network that incorporates plans to accommodate Mobility as a Service (MaaS), autonomous vehicles and other technological advances are certainly a key component. But a Smart Region is built on other aspects, as well. Connectivity, Safety and Security, and Resiliency are all important aspects of a smart region. DRCOG staff considering undertaking a Smart Region initiative.

- **Regional Growth Initiative**

*Metro Vision* recognizes the importance of identifying local growth priorities and aspirations with an eye toward how observed, expected and planned growth influence the region's ability to achieve our shared outcomes. In 2017, DRCOG staff worked with planners representing dozens of member governments to draft initial ideas for a portfolio of potential initiatives designed to facilitate a collaborative approach to planning for growth. An initial proposal was shared with the Board in November 2017. At that time, the Board requested staff create a detailed proposal.

DRCOG staff will share an updated proposal at the May 2018 Work Session. At the Board Workshop in August, staff will seek Board input on key initiatives associated with the regional growth initiative, including regional and small-area scenario analysis, regional population and employment forecasts and collaborative efforts to understand and respond to the impacts of growth throughout the region.

- **Regional Leadership Academy:**

DRCOG has been having informal discussions with regional partners about the potential for establishing a Regional Leadership Academy for the Denver region. The

effort would focus on the elected leadership within the DRCOG region and depend heavily on the insights and experience of DRCOG Board members to help inform and design the Academy. It has been pointed out that there are several city-directed leadership academies within the region, and there are efforts directed at the private sector. However, there is not any current effort to provide leadership training at the regional level. DRCOG staff would like feedback on whether the region would be well-served to create its own Leadership Academy.

- **Demographics: They are a changin'**

Last month, P&E discussed the possibility of DRCOG staff doing a joint presentation with the state demographer on the changing demographics within the Denver region. The presentation would include a discussion of the rapid growth of the region's senior population, the pressures placed on housing, employment, as well as the growing concerns around gentrification and displacement. The presentation would also include a peer-region comparison.

PREVIOUS DISCUSSIONS/ACTIONS
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March 2018 P&E Meeting: initiated discussion about expectations and possible workshop topics

PROPOSED MOTION
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N/A

ATTACHMENT
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N/A

ADDITIONAL INFORMATION
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If you have any questions, please contact Douglas W. Rex, Executive Director, at 303-480-6701 or [drex@drcog.org](mailto:drex@drcog.org).