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## ***BOARD OF DIRECTORS AGENDA REPORT***

MEETING DATE: **APRIL 28, 2022** ITEM: **8C**

SUBJECT: **Review of Reporting Wrongdoing Policy 2.05 and Vote on Recommended Amendment**

DATE: April 22, 2022

FROM: Michele Richards, CEO & Governance Committee:  
Directors Cervantes and Rubalcava-Garcia,

PRESENTATION BY: Michele Richards, CEO

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### *Action Item*

### **BACKGROUND**

The Reporting Wrongdoing Policy 2.05 was adopted by the Board of Directors on February 27, 2020. The purpose of the policy is to provide clear guidance to the 32<sup>nd</sup> DAA Personnel about their responsibility to report any unethical behavior or wrongdoing related to the 32<sup>nd</sup> DAA.

The policy not only includes information and procedures for filing a complaint of wrongdoing using the State of California Whistleblower Hotline, but also calls for the establishment of a separate Ethics Hotline administered by an independent third party and overseen by the Board. This policy was adopted right before the pandemic shut down operations at OCFEC and the separate Ethics Hotline was never set up.

During its annual review of Board Governance Policies, the Governance Committee, along with staff, noted that including a separate Ethics Hotline actually duplicates the purpose and process of the State Whistleblower Hotline and may present a conflict of interest by being overseen by the Board of Directors.

In order to avoid this potential conflict of interest, and eliminate the costly and inefficient duplication of the State Whistleblower Hotline, the committee and staff are recommending the elimination of the separate Ethics Hotline in the policy.

### **RECOMMENDATION**

The Governance Committee and staff recommend amending the Reporting Wrongdoing Policy 2.05 to eliminate the separate Ethics Hotline.

Reporting Wrongdoing Policy 2.05 attached.

32<sup>nd</sup> District Agricultural Association  
**Board Policies**

**Board Policy 2.05: Reporting Wrongdoing**

*Date Adopted/Last Revised: February 27, 2020*

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*Note: Capitalized terms not otherwise defined in this Board Policy have the meanings set forth in the Definitions section of Board Policy 1.01. Should any provision in this policy contradict any provision of California law, California law shall control.*

**Purpose**

The 32nd DAA Code of Ethics (*Board Policy 2.02*) requires all 32nd DAA Personnel to meet the highest standards of ethical conduct and behavior. This Board Policy is designed to provide clear guidance to 32nd DAA Personnel about their responsibility to report any unethical behavior or wrongdoing related to the 32nd DAA.

*Note: This Board Policy supplements but does not replace any whistleblower protections provided for under California law, including but not limited to, the California Whistleblower Protection Act.*

**If any provision contained in this Board Policy conflicts with any provision of California law, the provision of California law shall govern and control.**

**Policy**

All 32nd DAA Personnel are required to immediately file a report when they observe or otherwise become aware of any illegal and/or unethical behavior, including any violations of law, Board Policies, other 32nd DAA policies, or California State rules or regulations, including with respect to fraud, waste, and abuse (collectively, “Wrongdoing”). Any use of these reporting procedures in bad faith or in a false or frivolous manner is a serious violation of the 32nd DAA’s commitment to ethical behavior.

The 32nd DAA maintains an anonymous ethics hotline (the “Ethics Hotline”) for employees, Board Members, and community members to report anonymously allegations of Wrongdoing. The Ethics Hotline is administered by an independent third party and is overseen by the Board.

## **Retaliation and Whistleblower Protections**

A whistleblower as defined by this policy is an employee of the 32nd DAA who reports an activity that the employee considers in good faith to be Wrongdoing. Whistleblower protections are provided in two important areas—confidentiality and retaliation.

### *Confidentiality*

Consistent with California law, the 32nd DAA will make every effort to protect the reporter’s identity. Information provided in a hotline report may be the basis of an internal or external investigation by the 32nd DAA into the issue. It is possible that as a result of the information provided, a reporter’s identity may become known during the course of the investigation.

### *Retaliation*

The 32nd DAA will not retaliate, or permit any retaliation, against a whistleblower who makes a report in good faith. This includes, but is not limited to, protection from retaliation in the form of any adverse employment action such as termination, compensation decreases, demotion, poor work assignments, threats of physical or reputational harm, bullying, harassment, interfering with job responsibilities, and/or any other form of retaliation. 32nd DAA Personnel are strictly prohibited from engaging in unlawful retaliation. Violations of this prohibition will be treated as serious misconduct. Any whistleblower who believes they are being retaliated against should immediately report that information in accordance with the reporting procedures below. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and found to have occurred.

## **Procedure**

### **Reporting Procedure**

32nd DAA employees may report allegations of Wrongdoing by other employees to their direct supervisor, to the CEO, to the Director of Human Resources, or to the [Ethics Hotline.] 32nd DAA employees may report allegations concerning potential Wrongdoing by the CEO, CEO

Direct Reports, or a Board Member to the Board Chair (or, if the allegation involves the Board Chair, to the Board Vice Chair) to the Ethics Hotline. Individuals reporting to the Ethics Hotline have the option to remain anonymous. If possible, reporters should provide evidence or documentation in their report to provide supporting information critical to a potential investigation.

Board Members should report allegations of Wrongdoing to the Board Chair (or, if the allegation involves the Board Chair, to the Board Vice Chair).

Employees or Board Members may file a complaint with the California State Auditor's Office under the California Whistleblower Protection Act. The State Auditor is authorized to accept complaints from state employees and members of the public who wish to report an improper governmental activity and protects every state employee who files a complaint from suffering any retaliation by his or her state employer for having made the complaint.

A complaint may be filed by contacting the Whistleblower Hotline at (800) 952-5665, faxed to (816) 322-2603, or sent by mail to:

Investigations  
California State Auditor  
P.O. Box 1019  
Sacramento, CA 95812

An electronic complaint form and on-line Whistleblower Complaint Submission form are available at the State Auditor's website: <https://www.auditor.ca.gov>

## **Response Procedures**

Responses to whistleblower reports will depend on the nature of the issue.

### *Allegations Against Employees Other than the CEO or a CEO Direct Report*

All whistleblower reports involving allegations of Wrongdoing by employees other than the CEO or a CEO Direct Report shall be referred directly to the CEO. The CEO will perform an initial review and consult with other applicable government agencies (e.g., CalHR, CDFA, etc.), and determine appropriate follow-up actions. The CEO may consult with and delegate responsibility for follow-up action to other Executives and/or the Director of Human Resources. The CEO shall, in his/her reasonable judgment, inform the Board Chair and Board Vice Chair of

any significant allegations of Wrongdoing or of allegations that suggest a pattern of Wrongdoing or systemic issues.

*Allegations Against Board Members, the CEO, or a CEO Direct Report*

All whistleblower reports involving allegations of Wrongdoing by the CEO, a CEO Direct Report, or a Board Member shall be referred directly to the Board Chair and Board Vice Chair. If the allegation involves the Board Chair, the report shall be referred directly to the Board Vice Chair and the Board Member currently serving as chair of the committee responsible for overseeing the 32nd DAA's response to its annual CDFA audit and compliance review (the "Audit Chair"). If the allegation involves the Board Vice Chair, the report shall be referred to the Board Chair and the Audit Chair. The Board Chair and Board Vice Chair (or Audit Chair, if applicable) will perform an initial review, consult with the Office of the Attorney General and/or other applicable government agencies (e.g., CDFA, CalHR, Office of the Governor), and determine appropriate follow-up actions.