



# TOWN OF DISCOVERY BAY CSD

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## Board Members

President-Ray Tetreault  
Vice President-Mark Simon  
Director-David Piepho

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## MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE TOWN OF DISCOVERY BAY CSD

WEDNESDAY, September 30, 2009 at 6:00p.m.  
1800 Willow Lake Road, Discovery Bay, California  
Website address: [www.townofdiscoverybay.org](http://www.townofdiscoverybay.org)

### SPECIAL MEETING at 6:00p.m.

#### A. ROLL CALL

General Manager Koehne called roll. President Tetreault, Vice-President Simon and Director Piepho were present.

#### B. REQUEST FOR BOARD CONSIDERATION

1. **Discuss and Give Direction Concerning the Recent Vacancy of Two (2) Board Member Positions**  
The Board is Requested to Give Direction as to Choice of Appointment or Special Election (Koehne) Legal counsel gave out a copy of an email he had written to General Manager Koehne regarding the procedure to use when a director resigns. He then read through the procedures required that were listed in the email and attachment. President Tetreault asked for clarification about the three postings. Legal counsel responded that they have to be posted, stuck on walls. President Tetreault stated that he felt that the board should appoint not go out to election since it would be fiscally irresponsible to spend that kind of money and that the board has always appointed in the past when a vacancy came up between terms and that the board would be crippled in the meantime if one director was not able to attend, there would not be a quorum. Director Piepho asked for a specific cost of a special election for future information. He commented that other boards have deadlocked on their choices of new directors and had to go out to election. There was further discussion about how to handle the postings, interviews, and appointments. Vice-President Simon motioned to fill the vacancies by appointment of the board. Director Piepho 2<sup>nd</sup> the motion. He commented that he understood that all actions of the board have to be unanimous at this time. The motion passed. (3 ayes, 0 nos, 0 abstain) General Manager Koehne clarified that staff would post at three locations in Discovery Bay, and also put in the newspaper and website. Legal Counsel asked what date the board wished to consider the appointments. There was discussion about the timeframe. General Manager Koehne recommended that the cut off for applications be October 28, 2009 so that it could be on the November 4, 2009 meeting. He then gave the board and audience a copy of a draft application form. He commented that in the posting staff will ask that they contact the Town office and be given the application to fill out so everyone will be on the same level field. There was discussion about the

requirement of filling out the application. Director Piepho commented that he did not feel the bottom section "for Board Use Only" was needed. General Manager Koehne commented that in order to apply for a board position you have to be 18 years old, a resident of the District and a registered voter. Director Piepho made a motion to amend the draft notice so it reflects the two vacancies, also adopt October 28, 2009 as the cut off date, and November 4, 2009 as the date for the meeting to make the appointments and then to accept this form and use this form as an option to be handed out to applicants, to also be inclusive of the minimum qualifications to apply. Vice-President Simon 2<sup>nd</sup> the motion. Jeff Barber asked for clarification that all matters coming before the board have to be unanimous. Legal Counsel responded that it was his opinion that the CSD law states that the vote is a majority of the membership and the membership of the board is five. Jeff Barber asked if the board was going to pre-interview the applicants or interview and make the decision at the same board meeting. It was responded that the interviews and appointment will be held during the same meeting. The motion passed. (3 ayes, 0 nos, 0 abstain)

- C. **Announcement of facts and circumstances concerning potential litigation (agenda item D).** Legal Counsel explained that the board will be going into a Close Session in accordance with agenda item D and that the facts and circumstances regarding that Closed Session are that Mr. Richardson has submitted a follow-up letter in which he has accused the board of violating the Brown Act with respect to Government Code 54956.8 and 54957.7. The first of which requires a public identification before going into Closed Session concerning real property negotiations of the negotiator who is entitled to negotiate on behalf of the board. He further stated that the second of which requires a reference to the agenda or a reading of the Closed Session item before going into Closed Session. He stated that Mr. Richardson has demanded that we cure under the Section 54960.1 of the Government Code and the board is required to either do nothing or tell him we will cure and tell him we are not going to cure. He passed out copies of Mr. Richardson's letter and then requested that the board go into Closed Session in accordance with agenda item D.

D. **CLOSED SESSION:**

Conference with Legal Counsel

Potential litigation, Government Code Section 54956.9(b) (1)

One (1) potential case

E. **Return to open session; report on closed sessions.**

Legal Counsel reported that present in the Closed Session was President Tetreault, Director Simon and Director Piepho. He reported that the board has voted, each of the directors voting yes, to write a letter to Mr. Richardson informing him that it is not going to cure or correct the challenged action.

F. **ADJOURNMENT**

The meeting was adjourned at 6:44 pm to the next Regular meeting of October 7, 2009.