



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Subrata Basu, Board Member, Miami-Dade Land Acquisition Selection Committee, and Board Member and Secretary, Tropical Audubon Society

FROM: Gilma Diaz-Greco
Staff Attorney

SUBJECT: INQ 20-73, Voting Conflict, §2-11.1(v)

DATE: July 14, 2020

CC: COE Staff; Janet Gil, Program Director, Miami-Dade County Environmentally Endangered Lands Program

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflicts of interest involving your board service on the Miami-Dade Land Acquisition Selection Committee (LASC), and your volunteer service on the board of the Tropical Audubon Society (TAS), and applications submitted to LASC by TAS which will be considered for recommendation to the Board of County Commissioners (BCC) at LASC's July 15, 2020 public meeting.

Background:

LASC, a County advisory board, was established as part of the Environmentally Endangered Lands Program (EEL Program) pursuant to Miami-Dade County Code, Chapter 24, Article IV, Section 24-50 Subsections 1 to 13 (EEL Ordinance). The EEL Program's focus is to acquire, protect, and maintain environmentally endangered lands located in Miami-Dade County for the benefit of present and future generations. The EEL Program is funded by a property tax approved by voters that was collected between 1990 and 1992.¹ The funds are maintained in a Trust administered by the County's Finance Department. The EEL Ordinance establishes LASC² to, among other things, review submitted endangered land parcel applications and make recommendations to the Board of County Commissioners on a list of potential acquisitions by Miami-Dade County of

¹ The EEL Trust Fund balance for land acquisition was estimated to be \$19.5 million as of June 26, 2020.

² Miami-Dade Code § 24-50.6

environmentally sensitive lands. LASC is composed of 7 members and an alternate appointed by the BCC.³

As prescribed by the EEL Ordinance, County Staff evaluates and makes recommendation to LASC on each application for land that is proposed for acquisition based on parameters established by Section 24-50.6 of the ordinance. It is noteworthy that applications under the EEL Program may be submitted by property owners seeking to sell or transfer their property to the County through the EEL Program; but other parties such as private environmental groups like TAS may also submit applications requesting that the County acquire the properties identified in the applications through the EEL Program. LASC then conducts a public hearing to consider the County staff's recommendations and the public's comments and votes on recommendations regarding the applications for each land parcel. These recommendations are forwarded to the BCC.

You are an appointed member of LASC. You also serve on a volunteer, uncompensated basis as Board Member and Secretary for TAS, a not-for-profit organization which focuses on conservation and restoration of South Florida ecosystems.

You have advised that TAS will appear before LASC at its upcoming meeting to present the applications for three land parcels for LASC's review and recommendation to the BCC. The three land parcels are identified as follows: the "Porter Russel Pine Rockland/Brother Milledge Pineland" parcel (the Brother Milledge Parcel); and two other parcels identified as the "Richmond Pineland University of Miami/School Board parcel" and the "Richmond Pineland University of Miami/Coral Reef Retail, LLC" parcel which comprise the "Richmond Pineland Complex" (the Richmond Pineland Parcels). The applications submitted by TAS request that the County acquire all three parcels through the EEL Program.

TAS owns the Brother Milledge Pineland parcel. TAS also submitted applications for the Richmond Pineland Parcels. The parties with ownership interest in the Richmond Pineland Parcels are the University of Miami, the Miami-Dade Schoolboard, and Coral Reef Retail LLC. Although TAS has no ownership interests in the Richmond Pineland Parcels, the EEL Ordinance permits parties other than the owners to file applications under the EEL Program. In this instance, TAS' application seeks to advocate for the acquisition of the Richmond Pineland Parcels by the County in order to preserve these parcels of land which are the largest continuous remnants of pine rocklands remaining in Miami-Dade County outside of Everglades National Park.

³ Pursuant to Miami-Dade Code § Section 24-50.6, LASC is composed of 7 members and 1 alternate member. The County Mayor recommends 16 candidates to the BCC; the BCC chooses from that list to fill the 7 seats and 1 alternate seat. The BCC recommends 4 members and 1 alternate to serve for a term of 2 years – and 3 members to serve for a term of 3 years. LASC has no power or authority to commit the county to any policies, to incur any financial obligations, or to create any liabilities on part of the county. All actions and/or recommendations of the LASC are only advisory. Nothing is binding unless approved by the county or adopted by the BCC.

You advise that have not been involved in any way in the preparation of any of these applications submitted by TAS to LASC, that you will not appear before LASC to represent TAS, and that you do not have any personal, business, financial, or other interests related to the land parcels specified herein. You inquire whether you would have a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code given your service on both the LASC and the TAS boards.

Discussion:

The Ethics Code at Section 2-11.1(v) which addresses voting conflicts for County board members, provides that voting conflicts would occur if: 1) the board member will be directly affected by the action of the board on which the member serves; and 2) The board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor. In order for a voting conflict to exist, both prongs of section (v) must be met. *See RQO 07-49 and INQ 11-14.*

With respect to the application for the Brother Milledge Parcel owned by TAS, there are no facts indicating any involvement on your part in the preparation of the TAS applications for any of these properties. Furthermore, no facts presented to the COE indicate that you have any personal or business financial interest related to this property.

With respect to the applications for the Richmond Pineland Parcels (the “Richmond Pineland University of Miami/School Board parcel” and the “Richmond Pineland University of Miami/Coral Retail, LLC parcel), there also no facts presented that indicate any involvement on your part in the preparation of the TAS applications for any of these properties. Furthermore, no facts presented to the COE indicate that you have any personal or business financial interest related to these properties.

As stated above, a voting conflict under Section (v) of the County Ethics code would arise when the board member has an enumerated relationship with persons or entities appearing before the board on which the member serves and if the board member will be directly affected by the action of the board. In this instance you have an enumerated relationship with TAS which is submitting applications to be considered by the LASC board on which you serve. However, there are no facts indicating that you would be directly affected or that you would benefit from any action of the LASC board related to the vote on the TAS applications.

Opinion:

Based on the facts presented to the Commission on Ethics concerning the applications requesting that LASC vote on recommending to the BCC the acquisition of the Brother Milledge Parcel and the Richmond Pineland Parcels, you would not have a voting conflict under Section 2-11.1(v) of

the County Ethics Code voting on any of these three applications. In order to have a voting conflict, you would have to be directly affected by the vote, as well as have an enumerated relationship, such as officer or director, with the entity coming before the agency. While you serve as an uncompensated, volunteer director on the board of TAS, a voting conflict would occur in this instance at the LASC only if you were to be personally affected in a direct way by the vote. Consequently, given that you are an unpaid director of TAS and there are no facts presented that these matters coming before the board would directly affect you as an individual, you would not have a voting conflict of interest under Section 2-11.1(v) of the Ethics Code. *See* INQ 18-202 and INQ 17-69

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.