



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Kevin Whelan, PhD, Board Member, Miami-Dade Land Acquisition Selection Committee, and Terrestrial Team Ecologist, South Florida/Caribbean Inventory and Monitoring Network, National Park Service

FROM: Gilma Diaz-Greco
Staff Attorney

SUBJECT: INQ 20-86, Voting Conflict, §2-11.1(v)

DATE: August 10, 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 employment at the National Park Service (NPS), and an application submitted to LASC by several local citizen and other environmental groups which will be considered for recommendation to the Board of County Commissioners (BCC) at LASC's upcoming 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 citizens groups, environmental groups like The Audubon Society (TAS), or individuals 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 are also employed by the National Park Service's (NPS) South Florida/Caribbean Inventory and Monitoring Network as a Terrestrial Team Ecologist. Your job duties include monitoring natural resources for South Florida and U.S. Virgin Island Federal National Parks such as Biscayne National Park, Everglades National Park, Dry Tortugas National Park, and 3 National Parks in the US Virgin Islands. Your job duties also include serving as a Volunteer Coordinator for the local National Park Service volunteers.

Cutler Bay Homeowners Association, Inc. and Old Cutler Glen Homeowners Association (CC and CG HOAs) submitted an application requesting that LASC recommend to the BCC the acquisition of a land parcel under the EEL Program. The subject parcel consists of 9.475 acres of land located at 18551 Old Cutler Road (the Cutler Bay property).⁴ The Cutler Bay Property is owned by Cutler Properties, LLC which would be the recipient of any proceeds from the sale of the Property.⁵ TAS and The Concerned Citizens of Cutler Bay submitted letters in support of the application.⁶

To the east of the Cutler Bay property is a 150-acre Biscayne Bay Coastal Wetlands (BBCW) restoration project. This restoration project is being executed pursuant to the Comprehensive Everglades Restoration Plan (CERP).⁷ The South Florida Water Management District (SFWMD)

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.

⁴ Land Folio Number 36-6003-001-0013.

⁵ The Cutler Bay Property is currently zoned for residential/conservation use.

⁶ Other citizen's groups such as the "Livable Cutler" Facebook group have also expressed support for this application.

⁷ The Comprehensive Everglades Restoration Plan (CERP), 33 U.S.C. § 1251-1387 (2000), was authorized by Congress as a plan to "restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection." With a 35+ year timeline, this is the largest hydrologic restoration project ever undertaken in the United States. CERP provides for a Federal/State partnership

owns the 150-acre restoration parcel (the SWFMD Property) which is adjacent to Biscayne National Park. To the south and west of the Cutler Bay Property are residential developments.⁸ The application before LASC proposes that the Cutler Bay property be acquired for use as a recreational area and to support Phase II of the BBCW CERP.

You advise that four or five years ago the U.S. Fish and Wildlife Service awarded a grant to a consortium to perform restoration work on the SWFMD Property. The NPS was a member of the consortium. However, you were not involved in obtaining the grant and the grant was not used to pay any of your salary. As part of this restoration effort, in your role as Volunteer Coordinator, you organized the NPS Volunteers who attended community restoration planting events at the SWFMD property, and you helped in the community group restoration volunteer efforts by helping plant native plants at this site. You advise that your current job duties do not directly involve potential CERP restoration activities that are or may occur on the Cutler Bay Property or the adjacent SWFMD property. Furthermore, to your knowledge your future employment duties will not require any CERP activities associated with the Cutler Bay Property or the adjacent SWFMD.

Additionally, you have informed us that you have no affiliation with any of the applicants, TAS, or any other citizen group which has expressed support for the application, nor with Cutler Bay Properties, LLC, the owner of the Cutler Bay Parcel. You also advise that neither you nor any immediate family members have any property interest in the residential land which borders the Cutler Bay Property.

NPS will not appear before LASC to represent any NPS interest, and you do not have any personal, business, financial, or other interests related to the Cutler Bay Parcel. 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 the LASC and your employment at NPS.

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.

In this instance you do not have an enumerated relationship with the HOAs submitting application to be considered by the LASC board on which you serve. You also do not have an enumerated

and guides the interagency plan to ensure that the mission of the National Park Service to protect Biscayne National Park, Big Cypress Preserve, and Everglades National Park so that resources are unimpaired for future generations.

⁸ To the north of the Cutler Bay Property is a sewer utility station.

relationship with those entities supporting the application. Although you are an employee of NPS, NPS will not be appearing before LASC. Likewise, 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 application.

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. With respect to the subject application, there are no facts indicating any relation with any of the parties appearing before LASC regarding the application for the Cutler Bay Property. Furthermore, no facts presented to the COE indicate that you have any personal or business financial interest related to this property.

Opinion:

Based on the facts presented to the Commission on Ethics concerning the application requesting that LASC vote on recommending to the BCC the acquisition of the Cutler Bay Parcel, you would not have a voting conflict under Section 2-11.1(v) of the County Ethics Code voting on this application. 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 an entity appearing before LASC. Consequently, given that NPS will not be appearing before the board; that you do not have any enumerated relationships with any of the other parties appearing before the board; and that 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.