



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Roberto Torres, Environmentally Endangered Land Acquisition Consultant, The Nature Conservancy; and Proposed Board Member, Miami-Dade Biscayne Bay Watershed Management Advisory Board

FROM: Gilma Diaz-Greco
Staff Attorney

SUBJECT: INQ 2021-127 , County Board Member Conflicts of Interest, §§2-11.1 (m), (g), (h) and (v)

DATE: September 15, 2021

CC: COE Staff; Janet Gil, Program Director, Miami-Dade County Environmentally Endangered Lands Program; Abbie Schwaderer-Raurell, Assistant County Attorney, Office of Miami-Dade County Attorney

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest involving your prospective appointment to the Miami-Dade Biscayne Bay Watershed Management Advisory Board (“BBWMAB”), and your employment with The Nature Conservancy (“TNC”) as a field consultant providing real estate negotiation and environmental preservation expertise to support Miami-Dade County in the acquisition of environmentally endangered lands for the Miami-Dade Environmentally Endangered Land Program (“EEL”).

Background:

BBWMAB, a County advisory board, was created by newly enacted Article CLXIV of Chapter 2, Sections 2-2420 to 2-2426 of the Miami-Dade Code as a permanent board established to advise the Board of County Commissioners (“BCC”) and the County Mayor on issues related to Biscayne Bay, including, but not limited to, (1) the long-term management of Biscayne Bay, (2) health of the marine community, (3) run-off and other impacts to water quality, (4) marine debris, (5) education and outreach, (6) economic development and vitality related to Biscayne Bay, and (7) how conditions in Biscayne Bay may affect residents and property owners. The board will be responsible for making recommendation to the BCC on Biscayne Bay-related future County action, future County projects, and possible changes to the County Code based on a new

management plan and prioritized projects for the Bay. Article CLXIV also provides for the composition of the board which will include, among others, “Two representatives from environmental groups, one recommended by The Nature Conservancy (“TNC”).” Miami-Dade Code § 2-2421(a)(i)13.

You are employed by TNC as a Field Consultant assigned to EEL pursuant to a contract between TNC and EEL. Your employer, TNC, is also recommending you as the TNC representative for the newly created board, the BBWMAB.

TNC is a global environmental nonprofit founded in 1951. TNC’s mission is to conserve the lands and waters. Originally, TNC’s main focus was on the purchase of endangered lands. Over time, it has expanded its operations to include addressing climate change, protecting land and water, providing food and water sustainably, and building healthy cities. TNC is funded through private contributions, public grants, and compensation for its environmental consulting/negotiation services.¹

TNC is involved in several projects in the Miami-Dade Area. One project arises out of the services contract between EEL and the TNC. It is our understanding that TNC does not have any other contracts with Miami-Dade County. The other two projects in Miami-Dade County, one for the City of Miami Beach and the other for the City of Miami, do not involve compensation to TNC under service contracts. Instead, these are projects for which TNC is providing funding.²

The source of funding for your TNC position is from the EEL contract with TNC and TNC general funds (which TNC refers to as “unrestricted funds”). Your job duties under the TNC/EEL contract include providing environmental expertise and negotiating the acquisition of the lands that are included on a list of environmentally endangered lands. The EEL Ordinance establishes LASC³ to, among other things, review submitted endangered land parcel applications and make recommendations to the BCC on a list of potential acquisitions by Miami-Dade County of environmentally sensitive lands. Upon LASC recommendation and BCC approval, a list of endangered lands was created about 10 years ago for acquisition by the County (EEL List). The EEL program then works to make offers and negotiate with landowners to acquire these lands. The purchase of EEL lands is funded by a property tax approved by voters that was collected between

¹ Information on The Nature Conservancy Funding can be found in their annual reports and filings. https://www.nature.org/content/dam/tnc/nature/en/documents/TNC_2020AnnualReport_Eng.pdf ; <https://www.nature.org/content/dam/tnc/nature/en/documents/TNC-Financial-Statements-FY20.pdf> ; https://www.nature.org/content/dam/tnc/nature/en/documents/TNC_FY20_2019_990.pdf

² In the City of Miami Beach, TNC is providing funding with the support of NextEra Energy Foundation in the amount of \$150,000 to support implementation of a living shoreline project at Brittany Bay Park. In the City of Miami, TNC with support of the Chub Charitable Foundation, is providing funding (up to \$120,000) to support 30% design on a nature-based coastal resilience project at Morningside Park. Email dated 8/23/21 from Roberto Torres.

³ Miami-Dade Code § 24-50.6.

1990 and 1992. The funds are maintained in a Trust administered by the County's Finance Department. Upon your successful negotiation for the purchase of land on the EEL list under the EEL/TNC service contract, TNC also provides additional legal services to complete the purchase of the land.

The EEL list is reviewed periodically. It is our understanding that another review of the list will be undertaken soon, and that additional lands might be added to the EEL list for recommended acquisition. This may require TNC to provide additional services under its contract with EEL.

Issue:

Whether the County Ethics Code prohibits your service as a board member on the BBWMAB where your employer, TNC, is a County vendor under a services contract with the Miami-Dade County EEL Program.

Discussion and opinion:

Several Sections of the County Ethics Code must be considered in order to address possible conflicts of interest in your service as a board member of the BBWMAB.

- Section 2-11.1(m)(2) of the County Ethics code prohibits County board members from appearing before the County board or agency on which he serves, either directly or through an associate, and make a presentation on any license, contract, ruling, decision, opinion, or other benefit sought by the third party.
- Section (g) of the County Ethics Code prohibits board members from using their official position to secure special privileges or exemptions for themselves *or others*.
- 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.*

Thus, while the County Ethics Code would not prohibit you from serving on the BBWMAB, you must abide by the limitations enumerated above. In this instance, Section (m)(2) would prohibit you from representing the TNC or another party or entity before the BBWMAB in any capacity, either directly or through an associate. "In effect, if the TNC or TNC client were to seek a benefit from the BBWMAB you would not be able to appear before or participate in a vote if the benefit

sought by a TNC client is connected to the work you or TNC are expected to perform under the agreement between TNC and the County.” *See* INQ 17-76 and INQ 03-76. Based on the facts that you have presented, it does not appear that Section (m)(2) of the County Ethics Code would prohibit your service as a board member on the BBWMAB because there are no facts that have been presented to us indicating that TNC would appear before BBWMAB in any capacity, either directly or through an associate.

Section 2-11.1(g), Exploitation of official position, prohibits a board member from using his board position to secure special privileges or exemptions for himself or others. In this instance, while a board member may share his or her knowledge and expertise in the area of Biscayne Bay, you would be prohibited from taking any actions as a BBWMAB member to secure special benefits or privileges for yourself or for your employer TNC. *See* INQ 2021- 01 and INQ 2021-121.

Regarding voting conflicts, Section (v) of the County Ethics code states that conflicts 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. You should recuse yourself from participating in any recommendations by the BBWMAB board which would directly or indirectly impact TNC revenue due to an increase or extension of contractual services TNC provides under current or future contracts between TNC and the County or the municipalities within the watershed area. Similarly, you should also recuse yourself from participating in recommendations that may directly impact funding for your position because they would likely indicate that you would be directly affected or that you would benefit from the recommendation. *See* INQ 20-74.

While you are not prohibited from serving on the board, you would not be permitted to vote on matters coming before the board that involve you or TNC and its clients. *See* RQO 98-07; INQ 03-76; INQ 13- 07. Based on the facts provided, nothing has been shown that would establish a voting/participation concern at this time because this is a new board that is not yet formed and has taken no action. However, in the event a situation arises where your personal or financial interests may be affected by the board’s action, we would recommend that recuse yourself from voting or seek an opinion from this office. *See* INQ 20-74, INQ 20-85, and INQ 16-219.

Finally, we advise that Section 2-11.1(h), Confidential information, prohibits a board member from disclosing confidential information acquired by reason of his board position, and that Section 2-11.1(i), Financial disclosure, requires board members to file either a County Source of Income Statement or a State Form 1 by July 1st of each year for the preceding calendar year, including the year following the last year of service on the board. Please also review COE memorandum titled “Ethical issues for potential Advisory Board Members” located on the COE website.

For the reasons detailed above, the County Ethics Code does not prohibit your service as a board member on the BBWMAB provided that you comply with the requirements enumerated herein. In the event that a situation arises where, in your role as BBWMAB board member, your personal or financial interests may be affected by the Board's action and/or the board member's relationship with a third party appearing before the Board falls into one of the prohibited relationships described herein, we recommend you seek an opinion from this office. *See* RQO 07-49; INQ 16-219.

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.