

April 11, 2007

*Sent By Electronic and Interoffice Mail*

Re: AO-07-26

You inquired whether you may serve on the board of the Bay Lands Trust, formerly known as the Bay Ridge Trust, a non-profit land preservation organization. You are employed by the county as a planner II, in the research and GIS division of the office of planning and zoning. In that capacity, you are developing a parcel layer that will more accurately identify parcel locations than the existing tax maps. You are also involved in accurately quantifying the number of apartment units in the county and determining the various facilities and amenities provided in these apartments. You joined this division recently; for many years you were involved in critical area and environmental policy planning. In that capacity, you acted as a liaison to various land trust organizations, providing them with information they needed to acquire preservation easements.

The Bay Lands Trust, like other land trust organizations, is a private entity that was created by citizens, with the assistance of the Maryland Environmental Trust (MET). According to the MET's website<sup>1</sup>,

The Maryland Environmental Trust's Local Land Trust Assistance Program helps citizen groups in forming and operating local land trusts for the preservation of open space, farmland, woodland, and other natural and historic areas. Funding is from the Coastal Zone Management Program within the Department of Natural Resources. Land trusts are not-for-profit corporations designed to protect land from development, using conservation easements, gifts or purchases of land, limited development, conservation buyers, or promotion of existing local, state, or Federal easement programs.

The Bay Lands Trust encourages and assists property owners in participating in preservation easement programs. It may purchase property and hold the property in fee simple, or it may hold only the conservation easement on the property. It also helps find buyers for properties that are subject to preservation easements. It raises private funds for these purposes, and may also apply for and receive grants from the county's conservation trust funds. Applications for these funds are submitted for consideration to a committee, historically consisting of the land use officer and two other employees of the land use office. Now that the land use office has been eliminated, the committee that will review these grant applications is being reorganized, but will include the environmental planning administrator, an employee of the planning and zoning office. If the grant is approved, the land trust organization enters into a grant agreement with the county. To date, the conservation fund appropriated by the county has always been sufficient to meet the needs of all its applicants- competition between land trust organizations has been non-existent.

---

<sup>1</sup> <http://www.dnr.state.md.us/met/landtrustsasst.html>

Section 7-5-102(a), concerning secondary employment, prohibits an employee from being employed by an entity that is negotiating or has entered into a contract with the county that is administered by the same county agency in which the employee works. While a volunteer board member would not be an “employee” of the Land Trust in the technical sense of the word, a director on the operational board of a non-profit organization has an even greater duty of loyalty to the organization than does an employee or contractor. The ethics commission has consistently advised that “voluntary, non-compensated membership on the board of directors of a private corporation can be considered to be secondary or outside employment. See ethics commission advisory opinions: 99-175, 99-197, 99-17, 99-9, 96-111.)” Similarly, the ethics law, §7-1-101 defines “employee” to include volunteers to boards and commissions, regardless of whether they are compensated, presumably because volunteers as well as compensated employees, have a duty of loyalty to the county. Because of this employment relationship, §7-5-102(a)(ii) would bar you from serving on the Land Trust board if the board is negotiating or is party to any grant agreement with the county.

However, under §7-5-102(b), the ethics commission may allow the “employment” if “the employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest; and the employment or financial interest is disclosed.” In this case, subject to certain limitations on participation in official duties, the commission concludes that your service on the board would not constitute a conflict of interest or the appearance of a conflict of interest between your official duties and your volunteer duties.

If you do accept a position on the board of the land trust, §7-5-104 would prohibit you from “assisting or representing ” the Trust before any county employee or governmental unit of the county, or in any matters in which the county has an interest. With this restriction, you could still work with private property owners and you could assist with private fund raising, but you would not be able to assist in any matter pertaining to county grants or agreements. Subject to this limitation, the commission advises that you may serve on the board of the Bay Lands Trust while you are an employee in the research and GIS division of the office of planning and zoning.

Thank you for your inquiry.

Sincerely,

Betsy K. Dawson  
Executive Director

