

ST. MARY'S COUNTY ETHICS COMMISSION

ADVISORY OPINION # 19-02

DATES HEARD:

November 18, 2019 and January 6, 2020

**Mr. Willenborg, Mr. Russell, Mr. Crabtree,
Ms. Hansen, and Ms. McClernan-Walz**

DATE SIGNED: January 29, 2020

Pleadings

A St. Mary's County Government employee ("the Requester") seeks a St. Mary's County Ethics Commission ("Commission") Advisory Opinion as to whether her participation in the Mattapany Rural Legacy Area represents a conflict of interest.

Open Hearing

An open hearing was conducted on November 18, 2018 at 6:00 p.m. at the St. Mary's County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. On that date, the Requester gave a brief overview of her request, but the request was tabled until the January 6, 2020 meeting. On January 6, 2020, an open hearing was conducted at the same time and location.

Factual Background

I. The Rural Legacy Program and Mattapany Rural Legacy Area.

The Rural Legacy Program is managed by the Maryland Department of Natural Resources ("DNR") and provides funding to preserve local farms and prevent future development by purchasing conservation easements from willing landowners. The Mattapany Rural Legacy Area, the subject of this Advisory Opinion, is located in the southern portion of St. Mary's County and was designated as part of the Rural Legacy Program in 2006. The Mattapany Rural Legacy Area was established to mitigate the impacts of growth on the Chesapeake Bay and its tributaries, maintain the rural character of the region, protect water quality and endangered species, and minimize conflicts between development and military activities at Patuxent River Naval Air Station and Webster Outlying Field ("Webster Field").

Southern Maryland Resources Conservation and Development ("RC&D"), a 501(c)(3) non-profit organization and land trust, administers the Rural Legacy Program in the Mattapany Rural Legacy Area. To purchase conservation easements in the Mattapany Rural Legacy Area,

RC&D receives grant funding from DNR, St. Mary's County through a dedicated Capital Improvement Project ("CIP"), and the Department of Defense Readiness and Environmental Protection Integration ("REPI") Program. As Patuxent River Naval Air Station and Webster Field are operated by the United States Navy, the Navy manages REPI Program funding in the Mattapany Rural Legacy Area. The amount of funding from these sources varies for the purchase of each easement—and RC&D may choose from which funding source(s) they use for each easement purchase—but the Navy is the largest funding partner and typically contributes fifty percent of the easement cost, while the remaining fifty percent is often divided equally between state and county sources.

The following summarizes the lengthy process by which RC&D purchases a conservation easement on an interested landowner's property. First, an interested landowner approaches RC&D. RC&D then reviews whether an interested landowner's property is within the Mattapany Rural Legacy Area and eligible for the program. If eligible, RC&D submits grant applications to the funding partners, which prioritize the parcels to be included in the grant applications. After state grant awards are approved, RC&D executes the grant agreement with DNR. RC&D then works on the easement applications that were funded by the DNR grant agreement. RC&D, *inter alia*, conducts a full title search and environmental analyses and assessments and finalizes the agreement of sale with the landowner. The Navy again prioritizes the list of properties to which they may contribute funding under the REPI Program. Of note for this Advisory Opinion, St. Mary's County has little input on the Navy's prioritization. RC&D submits the easement applications to the Navy and DNR, which review the applications and perform their due diligence on the properties. RC&D then receives the grant funds from DNR and the St. Mary's County Capital Improvement Project budget, both of which are held in escrow until closing. Finally, the

Navy performs a final site inspection, executes the deed for the conservation easement, and sends REPI funds to the settlement attorney for closing. The entire process takes roughly twenty-four to thirty-six months.

II. The Requester and Her Property.

The Requester is employed with the St. Mary's County Department of Economic Development in the Agriculture and Seafood Division. In that capacity, the Requester has been involved with the Mattapany Rural Legacy Area since its inception. Specifically, the Requester helps prepare the Capital Improvement Project budget for all agricultural land preservation programs in St. Mary's County, including the Mattapany Rural Legacy Area. Though the Requester is not involved in the decision-making of which parcels are funded or purchased, it has been described that the Rural Legacy Program in St. Mary's County would not run without the Requester's involvement.

The Requester owns 68 acres in St. Inigoes, Maryland in the Mattapany Rural Legacy Area and within Webster Field airspace. She seeks to sell a conservation easement to RC&D under this program, and her property has been identified by RC&D as a proposed fiscal year 2020 acquisition. Given the Requester's involvement in the Capital Improvement Project budget, one of the three funding sources for the Mattapany Rural Legacy Area, she has submitted a request for an Advisory Opinion from this Commission to determine whether her participation in the program is a conflict of interest under the St. Mary's County Public Ethics Ordinance.

The St. Mary's County Public Ethics Ordinance

The St. Mary's County Public Ethics Ordinance ("the Ordinance") provides that a St. Mary's County Government employee may not participate in "any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official

or employee has an interest.” Ordinance § 158-5(a)(1)(i). However, the Ordinance provides two exceptions. First, if the employee’s participation constitutes an “exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter.” *Id.* Second, and relevant here, when “permitted by Commission regulation or opinion.” *Id.* § 158-5(a)(1).

Decision

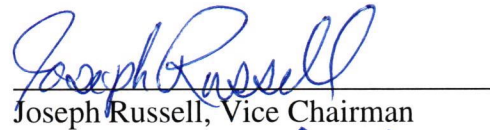
The Requester’s participation in the Mattapan Rural Legacy Area constitutes a conflict of interest under the St. Mary’s County Public Ethics Ordinance. The Requester is a St. Mary’s County employee whose role, in part, is to prepare the budget for a major source of funding for a program in which she seeks to participate. Moreover, she has longstanding professional familiarity with the personnel managing the Mattapan Rural Legacy Area, and her selection for the program—or even the speed with which her application is processed—has, at the very minimum, the appearance of a conflict. Each of these, alone or in tandem, is enough to warrant that an employee obtains an Advisory Opinion from this Commission.

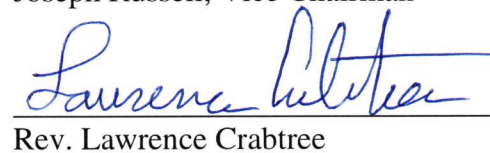
Her conflict of interest is not irreparable, however. Rather, the Requester proposed, and this Commission agrees, that she may participate in the Mattapan Rural Legacy Area with a number of conditions. The following conditions, the Commission believes, are sufficient to remove the conflict of interest and permit the Requester to participate in the program. Should the Requester perform all of these conditions, she may participate in the Mattapan Rural Legacy Area free from a conflict of interest. First, RC&D shall use no county funds to purchase an easement on the Requester’s property. Second, the Requester is to remove herself from all professional responsibilities that require her involvement with the Mattapan Rural Legacy Area. This includes, but is not limited to, her involvement in the preparation of the Capital Improvement Project budget when the Mattapan Rural Legacy Area is concerned. As a result, another

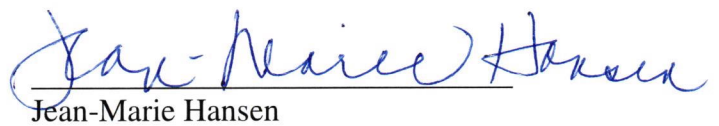
individual in Department of Economic Development besides the Requester must be used for all Mattapany Rural Legacy Area matters. Presuming that her parcel is selected, these prohibitions shall last throughout the duration of her application process until the closing of the Requester's easement sale.

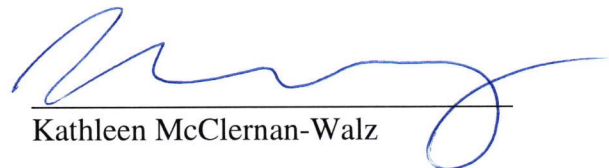
Date: January 29, 2020


David Willenborg, Chairman


Joseph Russell, Vice Chairman


Rev. Lawrence Crabtree


Jean-Marie Hansen


Kathleen McClernan-Walz