

**TOPIC:** University of Maryland, College Park: Business Entity – State Ethics Law Review

**COMMITTEE:** Finance

**DATE OF COMMITTEE MEETING:** September 7, 2017

**SUMMARY:** On April 27, 2017, the Board of Regents approved the creation of Terrapin Development Company, LLC (“TDC”), a business entity whose primary responsibilities are real estate strategy, acquisition, development, leasing, management and sales with a particular focus on “placemaking,” a people-centered approach to the planning, design and management of public spaces, local economic vitality, and indirectly creating the housing options, stores, restaurants and green spaces that will enhance the University’s recruitment and retention of the world’s best faculty, staff and students. In the Agenda Item approved by Board of Regents, it was provided that TDC would have an internal conflict of interest policy and that this policy “shall be reviewed and approved by the State Ethics Commission with the input of the Office of the Attorney General.”

Subsequently, the State Ethics Commission (the “Ethics Commission”) and the Office of Attorney General have determined that the Ethics Commission lacks authority to review or approve the conflict of interest policy of a private business entity. Notwithstanding, the Ethics Commission recognized that TDC directors who are employees of the University below the level of vice president are already subject to the conflict of interest policy of the University, which policy has been reviewed and approved by the Ethics Commission. For those employees, no additional action is required.

However, noting that TDC’s operating agreement requires that persons holding the positions of Vice President for Administration and Finance and the Vice President for University Relations (the “Requisite Directors”) serve, ex officio, as TDC board members, the Ethics Commission and the Office of Attorney General have requested a threshold factual determination by the Board of Regents. For the Requisite Directors, the State Ethics Law provides that such an official may serve on the TDC board only if the governing board of the educational institution [here the Board of Regents] determines that “participation by, and the financial interest or employment of, the official is necessary to the success of the research or development activity.” Specifically, to allow participation on the TDC board by the Requisite Directors, the Board of Regents must determine (i) that service of the two Requisite Directors (both current incumbents and any of their successors who may serve ex officio) on the TDC board is necessary to the success of the development activity of TDC, and (ii) that the conflict of interest can be managed consistent with the purposes of the State Ethics Law.

Facts supporting such a determination follow: Participation of the Requisite Directors is necessary to, and will enhance, the development activity of TDC based on the expertise and institutional knowledge of the University that each bring to TDC. In essence, the TDC Board members appointed by the University are acting as designees of the University President. The two Requisite Directors, by virtue of their senior positions and oversight functions, have direct and frequent communications and meetings with the President. In addition, the Requisite Directors are responsible for core functions central to TDC’s mission and also to the University’s mission. The Vice President for Administration and Finance is responsible for University business and planning operations, including its real estate and capital projects. In that capacity, this University official is in the best position to be aware of campus and local real estate needs and trends and to ensure that TDC’s plans and goals complement those of the

University. The Vice President for University Relations is responsible for fundraising, donor relations, marketing and communications. In that capacity, this official is in the best position to ensure that TDC's activity is consistent with the University's marketing and messaging. Also, this official is best positioned to articulate the economic and community development goals being advanced by TDC to the campus and alumni communities. Finally, the Vice President for University Relations is the University official with the closest connection to the University's Foundation (TDC's second member), which builds a synergy of goals for the University community.

With respect to the ability to manage conflicts of interest, the Office of Attorney General has reviewed and approved TDC's conflict of interest policy. The Requisite Directors will, at all times, be obliged to conform to TDC's and the University's conflict of interest policies, as well as the State Ethics Law.

Therefore, the University respectfully requests that the Board of Regents make the determinations that (i) service on the TDC board by the two Requisite Director vice presidents (both current incumbents and any of their successors who may serve ex officio) is necessary to the success of the development activity of TDC, and (ii) the conflict of interest can be managed consistent with the purposes of the State Ethics Law. These determinations will fully satisfy the ethics review and input provided for in the April 27, 2017 Agenda Item.

**ALTERNATIVE(S):** TDC will continue to operate, but neither its board nor the University's President would have the benefit of the input and stewardship of the two Requisite Directors.

**FISCAL IMPACT:** There is no fiscal impact.

**CHANCELLOR'S RECOMMENDATION:** That the Finance Committee recommend that the Board of Regents make the determinations that (i) service on the TDC board by the two Requisite Director vice presidents (both current incumbents and any of their successors who may serve ex officio) is necessary to the success of the development activity of TDC, and (ii) the conflict of interest can be managed consistent with the purposes of the State Ethics laws.

---

COMMITTEE RECOMMENDATION:	DATE:
BOARD ACTION:	DATE:

---

SUBMITTED BY: Joseph F. Vivona (301) 445-1923

---