

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

718



FROM: County Counsel


SUBMITTAL DATE:
June 3, 2014

SUBJECT: Waiver of Conflict of Interest for the law firm of Best Best & Krieger LLP to represent the Coachella Valley Association of Governments (CVAG) with respect to environmental requirements in connection with the Coachella Valley Link Project; All Districts; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors consent to the waiver of conflict of interest and authorize County Counsel to sign the letter of consent for the law firm of Best Best & Krieger LLP to represent CVAG with respect to National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) requirements in connection with the Coachella Valley Link Project.

BACKGROUND:
Summary

Currently, the County retains the law firm of Best Best & Krieger LLP (BBK) as Special Counsel on a number of CEQA and land use matters. BBK was asked to represent CVAG with respect to NEPA and CEQA requirements for the Coachella Valley Link Project, which is a proposed 52 mile recreational trail through the Coachella Valley (Project). (continued on next page)


Michelle Clack, Deputy County Counsel
for Pamela J. Walls, County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input checked="" type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS:	Budget Adjustment:
	For Fiscal Year:

C.E.O. RECOMMENDATION:

APPROVE

BY: Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- Positions Added
- Change Order
- A-30
- 4/5 Vote

Prev. Agn. Ref.: _____ District: ALL Agenda Number:

2-12

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Waiver of Conflict of Interest for the law firm of Best Best & Krieger LLP to represent the Coachella Valley Association of Governments (CVAG) with respect to environmental requirements in connection with the Coachella Valley Link Project.

DATE: June 4, 2014

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BACKGROUND:

Summary (continued)

The exact location of the Project has not been chosen, however, it may cross land within the County's jurisdiction and potentially encroach upon property or facilities owned or operated by the County.

In regards to the Project, BBK would represent CVAG with respect to environmental compliance and other matters related to the Project. BBK would continue representing the County on the other matters set forth above. The request for a conflict of interest waiver by BBK is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part, the following:

- “(C) A member [of the Bar] shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation or more than one client in a matter in which the interests of the clients actually conflict; or
 - (3) Represent a client in a matter and at the same time in separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”

The Office of County Counsel has reviewed the attached waiver of conflict of interest letter and is of the opinion that a conflict of interest would not arise in connection with BBK's representation of CVAG or that the County's interests would be adversely affected by BBK's representation of CVAG in regards to the Project concurrently with advising the County on CEQA and land use matters. In the event a conflict arises, BBK would need to withdraw from representing either one or both parties.

Impact on Citizens and Businesses

The Board's consent to the waiver of conflict of interest does not have a direct impact on citizens or businesses because it just allows Best Best & Krieger to represent another public agency for a transactional legal matter.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

ATTACHMENT:

- A. Conflict of Interest Waiver Request Letter



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May 1, 2014

Pamela J. Walls, County Counsel
Karin Watts-Bazan, Principal
Deputy County Counsel
County of Riverside
3960 Orange Street, Suite 500
Riverside, CA 92501

Re: Informed Written Consent Concerning CV Link Project

Dear Pam and Karin:

As you know, we currently represent the County of Riverside (the "County") as Special Counsel with regard to various California Environmental Quality Act and land use matters. However, we were recently asked to represent the Coachella Valley Association of Governments ("CVAG") with respect to National Environmental Policy Act ("NEPA") and California Environmental Quality Act requirements in connection with the development of the Coachella Valley Link Project, a 52-mile recreational trail through the Coachella Valley (the "Project").

At this time, the exact alignment and location of the Project has not been chosen, nor will it be chosen until the completion of all required environmental review. However, it is anticipated that the Project would generally track the Whitewater River through the Coachella Valley, such that the Project would cross lands under the County's jurisdiction and could potentially encroach upon property or facilities owned or operated by the County. Accordingly, we have to inform you about our proposed representation of CVAG, discuss with you the potential impact of our representation, and obtain your informed written consent.

RULES OF PROFESSIONAL CONDUCT

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

- (C) A member [of the Bar] shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or



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- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.
- (D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

OUR REPRESENTATION

In this matter, we would represent CVAG with respect to environmental compliance and other matters related to the Project. However, we would continue to represent the County as to the other matters identified above.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. It is possible that:

- We may be tempted to favor the interests of one client over the other.
- Our exercise of independent judgment to the County may be impaired or clouded by our relationship with CVAG.
- We may not be able to present the appropriate position, claims or defenses for a client in order to avoid taking adverse positions to the other client.
- We may be restricted from forcefully advocating a client's position for fear of alienating the other client.
- Disputes may arise between both clients regarding tactics, objectives or resolution of this matter because of our joint representation of both clients.
- We may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.
- There may be an appearance of impropriety in our representation of both clients simultaneously.

YOUR CONSENT



BEST BEST & KRIEGER
ATTORNEYS AT LAW

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Karin Watts-Bazan
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If you wish to allow us to represent CVAG in this matter, we need you to sign this consent letter. It is understood that this consent will not waive any protection that you may have with regard to attorney-client communications with us. Those communications will remain confidential and will not be disclosed to any third party without your consent.

I believe that you are familiar with the factual background in this matter, and I have given you a sufficiently-detailed description for obtaining informed written consent. However, if you believe that there is any other information that you or I need to have before such consent can be granted, please let me know immediately.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

I should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter.

If you have any questions, please do not hesitate to call me.

Sincerely,

Michelle Ouellette
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

COUNTY OF RIVERSIDE

By: _____
Pamela J. Walls, County Counsel

Dated: _____