

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



3-6

The above referenced Item is deleted from the agenda for Tuesday, March 12, 2013.

AGENDA NO.
3-6

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

619



FROM: County Counsel

SUBMITTAL DATE:
February 28, 2013

SUBJECT: Waiver of Conflict of Interest for the law firm of Best Best & Krieger LLP to represent the Inland Empire Resource Conservation District (IERCD) regarding a potential conservation easement over real property located at Smith Creek District 5/District 5

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 IERCD regarding a potential conservation easement over real property located at Smith Creek proposed to be granted in favor of IERCD by the County of Riverside.

BACKGROUND: Currently, the County retains the law firm of Best Best & Krieger LLP (BBK) to represent the County's interest in a number of environmental transactions and California Environmental Quality Act litigation.

Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

BY:
Denise C. Harden

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

Departmental Concurrence

- Consent
- Policy
- Consent
- Policy

Dept's Recomm.:
Per Exec. Ofc.:

BACKGROUND (continued):

BBK also desires to now represent IERCD regarding a potential conservation easement over real property located at Smith Creek. In this matter, BBK plans to represent IERCD in reviewing a conservation easement as well as advising IERCD on any issues relevant to negotiating and finalizing the conservation easement real estate transaction. In the event that conflicts arise concerning the transaction between the County and IERCD, BBK would need to withdraw from representing either one or both parties.

The request for a conflict of interest waiver by the law firm of BBK is prompted by Rule 3-310 of the California Rules of Professional Conduct, which 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
- (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.”

County Counsel and Economic Development Agency staff have reviewed the attached waiver of conflict of interest letter and are of the opinion that a conflict of interest would not arise in connection with the firm’s representation of IERCD or that the County’s interests would be adversely affected by the firm’s representation of IERCD in this matter concurrently with representing and advising the County on CEQA issues and litigation.

Attachment:
Conflict of Interest Waiver Request Letter



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February 15, 2013

Pamela J. Walls
County Counsel
County of Riverside
3960 Orange Street, Suite 500
Riverside, CA 92501

Re: Informed Consent For The EDA Smith Creek Conservation Easement

Dear Pam:

Best Best & Krieger LLP ("BBK") serves as General Counsel to the Inland Empire Resource Conservation District ("IERCD"). IERCD has asked us to review a conservation easement covering property located at Smith Creek near the Banning Correctional Facility that potentially will be granted in favor of the District by the Economic Development Agency of the County of Riverside ("County EDA"). The representation will include reviewing other documentation related to the acceptance of the conservation easement. The purpose of the donation is to satisfy mitigation requirements for impacts related to a County project to stabilize the north bank of Smith Creek with grouted rip-rap.

Currently, BBK is serving as Special Counsel to County EDA on another, unrelated matter. As a result of our relationships with both IERCD and County EDA, there is a potential that IERCD's interests and County EDA's interests could conflict, creating a conflict of interest for BBK. When a potential or actual conflict of interest exists, a law firm must disclose the conflict to the clients and obtain their waiver and written consent to continue with the representation.

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



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- (2) Accept or continue representation of 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 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; or
- (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.
- (E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

OUR REPRESENTATION

In this matter, BBK plans to represent IERCD in reviewing the conservation easement and in reviewing other documentation related to the acceptance of the conservation easement. BBK will not represent County EDA in this matter.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. It is possible that future, as yet not existing, conflicts between the IERCD and County EDA could develop into contentious disputes and result in litigation. At this point, BBK would need to withdraw from representing either one or both parties. Furthermore:

- We may be tempted to favor the interests of one client over the other.
- 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.
- 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.



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- There may be an appearance of impropriety in our representation of both clients simultaneously.

YOUR CONSENT

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.

A copy of this letter is enclosed for your files. If you have any questions, please do not hesitate to call.

Sincerely,



Mark Easter

of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: _____

Dated: _____