

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

September 12, 2023

FROM

TOM BUNTON, County Counsel

SUBJECT

Consent to Concurrent Representation and Waiver of Conflict of Interest

RECOMMENDATION(S)

1. Approve a consent to concurrent representation and waiver of conflict of interest arising out of the representation of Cadiz, Inc., Chino Basin Watermaster, and Arien Pauls by Brownstein Hyatt Farber Schreck, LLP, in connection with litigation related to the approval of the Bloomington Business Park Specific Plan and associated entitlements.
2. Authorize the County Counsel or Principal Assistant County Counsel to execute any required documentation to consent to the concurrent representation of Cadiz, Inc., Chino Basin Watermaster and Arien Pauls by Brownstein Hyatt Farber Schreck, LLP, and waiver of conflict of interest.

(Presenter: Tom Bunton, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

On November 15, 2022 (Item No. 111), the Board of Supervisors (Board) approved the Bloomington Business Park Specific Plan (Specific Plan). The Specific Plan established an industrial business park for approximately 213 acres located within the Bloomington area. The adoption of the Specific Plan included an amendment to the Land Use Category designation from Very Low Density Residential to Special Development and Land Use Zoning District designation from Single Residential to Industrial/Business Park for the Specific Plan area.

Concurrently, the Board approved the upzone of a 24-acre site from Single Residential to Multiple Residential to offset the loss of potential residential capacity within the Bloomington area in compliance with the requirements of Senate Bill 330. Associated Board actions included the certification of an Environmental Impact Report, including the adoption of a Statement of Overriding Considerations, approval of a Memorandum of Understanding for public benefit contributions to the community of Bloomington, and approvals of various land use entitlements related to the future construction of high cube warehouse buildings and a truck and trailer parking lot (collectively, the Project Approvals).

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On or about December 16, 2022, various petitioners filed a petition and complaint against San Bernardino County (County) and the project developer in the San Bernardino Superior Court, Case No. CIVSB 2228456, challenging the Project Approvals as violating the California Environmental Quality Act (CEQA), the Duty to Affirmatively Further Fair Housing, the Fair Employment and Housing Act and the Housing Crisis Act (Action).

The law firm of Brownstein Hyatt Farber Schreck, LLP (Brownstein) specializes in the defense of counties, cities, private developers and business interests in an array of CEQA-driven real estate and development litigation. Given their expertise in CEQA and housing related litigation, Brownstein has been asked to represent the County in the Action but has requested a waiver from the County with regard to a conflict of interest involving Brownstein's concurrent representation of Cadiz, Inc. (Cadiz), Chino Basin Watermaster (CBWM) and Arien Pauls (Pauls) (collectively Other Clients).

The Action is not related to Brownstein's work for the Other Clients. Brownstein represents Cadiz in a variety of legal matters, including various development and water matters in which the County is involved as the permitting agency. Additionally, Brownstein will continue to accept engagements by Cadiz in future matters in which the County may be involved or become involved as an adverse party. Separately, Brownstein represents CBWM in a variety of legal matters, including the administration of the Judgment entered in Chino Basin Municipal Water District v. City of Chino (Judgment) for which the County is a party to the Judgment. Lastly, Brownstein represents Pauls in certain legal matters, including assistance with vacating non-violent charges incurred in the County.

The concurrent representation of the County in the Action while representing the Other Clients constitutes a conflict of interest under the applicable Rules of Professional Conduct and requires the consent of both clients to agree to the proposed representation after being adequately informed of the relevant circumstances and the material ways that the conflict could have adverse effects on their interests.

County Counsel has reviewed the consent to concurrent representation and waiver of conflict of interest and given the expected duration of the Action believes there would be minimal risk regarding Brownstein's representation of the Other Clients, and it would be appropriate for the Board to approve the waiver of the conflict of interest and authorize County Counsel or a Principal Assistant County Counsel to execute the waiver of conflict of interest.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on August 22, 2023; Finance (Carl Lofton, Administrative Analyst, 387-5404) on August 25, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on August 27, 2023.

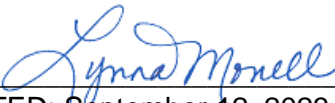
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: September 12, 2023



cc: File – County Counsel
CCM 09/18/2023