



San Bernardino County

Legislation Text

File #: 5491, Agenda Item #: 32

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

February 8, 2022

FROM

TOM BUNTON, County Counsel

SUBJECT

Consent to Concurrent Representation

RECOMMENDATION(S)

1. Approve a consent to concurrent representation arising out of the representation of BNSF Railway Company by Meyers Nave in connection with Meyers Nave's provision of specialized legal services to the County with respect to the West Valley Logistics Center project and the proposed Bloomington Business Park development project.
 2. Authorize the County Counsel to execute any required documentation to consent to the concurrent representation of BNSF Railway Company by Meyers Nave.
- (Presenter: Tom Bunton, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

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

BACKGROUND INFORMATION

The law firm of Meyers Nave provides outside legal counsel services to San Bernardino County and other Board of Supervisors' governed entities on matters that require specialized legal services, including, but not limited to, environmental and litigation matters. More specifically, the County has used and intends to continue to use Meyers Nave on the West Valley Logistics Center project and intends to use Meyers Nave on the proposed Bloomington Business Park development project (collectively referred to as the "Land Use Matters"). In addition, the County is utilizing the services of Meyers Nave as special counsel with respect to the Renewal of a Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permit (NPDES Matter) and environmental and natural resources law services, including, but not limited to, the systemwide maintenance permit project, the First Line of Defense basin maintenance permit, the implementation agreement for the Upper Santa Ana River Wash Plan Habitat Conservation Plan administrative actions and civil actions (and the threat of same), and such other matters as may be assigned (Environmental Matters).

Meyers Nave currently represents BNSF Railway Company (BNSF) in connection with several land use and

related environmental matters in California. Meyers Nave currently advises BNSF with regard to public agency administrative review under the California Environmental Quality Act, the National Environmental Policy Act, and other local, state and federal environmental laws and regulations, and the California High Speed Rail Authority's proposed Los Angeles to Anaheim Project Section, which includes, as project components, a BNSF intermodal rail yard at Colton, California, and BNSF staging tracks at Lenwood, California. Additionally, Meyers Nave currently advises BNSF concerning compliance with local, state and federal environmental laws and regulations potentially affecting BNSF operations and property and rail infrastructure throughout the County in and around and adjacent to railroad mainlines at and near the City of Barstow, the City of Victorville, the City of San Bernardino, and the City of Fontana, California. Collectively, Meyers Nave's work for BNSF is referred to as "BNSF Matters."

To the best of Meyers Nave's knowledge, however, it does not believe the interests of the County and BNSF are adverse to each other in the Land Use Matters. However, it is possible that at some point in the future, the BNSF Matters could include the need to obtain permits or authorizations from the County or otherwise affect the County. Therefore, in an abundance of caution, Meyers Nave has made a disclosure in order to fulfill Meyers Nave's duties under the California Rules of Professional Conduct, specifically Rule 1.7, paragraphs (a) and (b), and asks that the County provide written consent for Meyers Nave's concurrent representation of BNSF in the BNSF Matters.

If the County grants its consent to Meyers Nave's concurrent representation of BNSF, Meyers Nave will not disclose to BNSF any confidential information it has acquired or acquires at any time in the present or future as a result of its lawyer-client relationship with the County. Meyers Nave will likewise not disclose to the County any confidential information it acquires as a result of its lawyer-client relationship with BNSF. The County also agrees in writing that it will not seek to disqualify Meyers Nave, or any expert witness, based on the concurrent representation of both BNSF and the County.

Counsel has reviewed the consent to concurrent representation and believes there would be minimal risk to the County's interests in the Land Use Matters and it would be appropriate for the Board of Supervisors (Board) to approve the concurrent representation document. On June 22, 2021 (Item No. 40), the Board previously approved a consent to concurrent representation arising out of the representation of BNSF by Meyers Nave with respect to the NPDES Matter and Environmental Matters. Upon Board approval of this item, County Counsel will execute any required documentation to consent to the concurrent representation of BNSF Railway Company by Meyers Nave.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Supervising Deputy County Counsel, 387-5455) on January 27, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on January 24, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on February 25, 2022.