



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 1/24/2017

Agenda Placement: 60

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

---

**TO:** Board of Supervisors

**FROM:** Minh Tran - County Counsel  
County Counsel

**REPORT BY:** Jeffrey Richard, Chief Deputy County Counsel - 253-4234

**SUBJECT:** Waiver of potential conflict of interest in County Counsel's ongoing representation of Circle Oaks County Water District on certain conditions

---

### **RECOMMENDATION**

County Counsel requests approval of and authorization for the Chair to sign a memorandum consenting to County Counsel's continued representation of the Circle Oaks County Water District and waiver of potential conflict of interest relating to that representation, as long as certain conditions are met.

### **EXECUTIVE SUMMARY**

With the Board of Supervisors' approval in February 2006, the County entered into an agreement with Circle Oaks County Water District ("Circle Oaks" or "District") for Napa County Counsel to provide legal services to the District. In recent months, the County approved an erosion control application for a vineyard development project known as Walt Ranch ("Project"). At one or more public hearings held on the Project, a representative of the District voiced its opposition to approval of the Project, which is planned for an area that includes or may affect properties served by the District. The District did not consult with County Counsel on the Project but instead hired independent outside counsel to advise its Board in relation to the Project.

In the meantime, however, County Counsel continues to provide general legal services to the District on matters unrelated to the Project. And County Counsel provides advice and representation to the County, the Board, and PBES regarding the Project. If the District were to file or participate in a legal challenge to the Project and to the County's approval, this would constitute an actual conflict of interest between the County and the District. Thus, a potential conflict now exists due to the concurrent representation by County Counsel of the County and of the District, who may become adversaries in connection with the Project.

County Counsel has established and will maintain an ethical wall between the attorneys who represent the County on the Project and the attorneys who represent the District on its matters that are unrelated to the Project. The

ethical wall will avoid any communication between the two sets of attorneys on matters relating to the Project or on matters related to the District, and will prevent either set of attorneys from having access to the files of the other set of attorneys relating to the District or to the Project.

As explained in more detail in the Background below, County Counsel is required by the Rules of Professional Conduct and by ethical standards in general to obtain the fully informed, written consent of the two clients to County Counsel's continued, concurrent representation of them on unrelated matters. On January 11, 2017, the District's governing board approved the conflict waiver and authorized a conflict waiver and consent to be signed. That consent and waiver letter has been executed by the District.

For the sake of efficient use of public funds -- through the continued representation of the District by County Counsel, rather than requiring the District to expend funds necessary to retain outside counsel for such services -- County Counsel requests and recommends that the Board approve the Chair's execution of a conflict waiver memo that sets forth the terms described in the Background section below.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

County Counsel is the primary legal advisor to Napa County. With the Board of Supervisors' approval, County Counsel has also historically provided select legal services to special districts within the County, including the Circle Oaks County Water District ("Circle Oaks" or "District"). On February 28, 2006, the County and Circle Oaks entered into an agreement for County Counsel to provide certain legal services to Circle Oaks ("Agreement"). As part of this Agreement, as amended in 2008, Circle Oaks acknowledged County Counsel's representation of the County and a long list of other special districts within the County's jurisdictional boundaries. As stated in the Agreement, County Counsel "endeavor(s) to minimize the potential for conflict by assigning separate attorneys in the office of the Counsel to advise and represent District and any other represented entity having potentially conflicting interests, and such assigned attorneys shall endeavor to deal with each other as independent counsel in the representation of their assigned interests."

The California Rules of Professional Conduct ("RPC") are the primary set of rules that govern the conduct of lawyers engaged in the practice of law in California. RPC 3-310(C) provides in relevant part as follows:

"(C) A member 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."

On December 20, 2016, the Board of Supervisors took final action to approve the Walt Ranch Vineyards Agricultural Erosion Control Plan No. P11-00205-ECPA filed by Hall Brambletree Associates, LP (the Applicant) and to certify the related Environmental Impact Report (EIR) (State Clearinghouse No. 201202046) (collectively the "Project"). Circle Oaks voiced its opposition to the Project during proceedings before the Board. While it is unknown to County Counsel's Office whether Circle Oaks intends to file or participate in any legal challenge the County's approval of the Project (as County Counsel has neither represented nor advised Circle Oaks in connection with their concerns with the Project), a challenge by Circle Oaks would constitute an actual conflict between the County and Circle Oaks.

Pursuant to RPC 3-310 and related ethics rules applicable to attorneys, County Counsel is seeking the informed written consent of both the governing board of Circle Oaks and the County to permit (1) County Counsel's ongoing representation of the County in any matter connected to the Project or the County's approval of the Project, and in all other matters, and (2) County Counsel's ongoing representation of Circle Oaks on all matters that are unrelated to the Project. Among the concerns giving rise to the requirement that County Counsel obtain such consent is the potential appearance of divided loyalties that may arise from representation of both the County and Circle Oaks, even if on unrelated matters.

County Counsel has established an ethical wall between the attorney and back-up attorney assigned to represent Circle Oaks, on the one hand, and those attorneys in the office, including County Counsel Tran, who represent the County in connection with the Project and related matters (the "Current Matter"), on the other hand. County Counsel has not obtained any confidential information related to the Current Matter from Circle Oaks. Circle Oaks obtained special outside counsel specifically to advise it in connection with the Current Matter. County Counsel has not participated in the communications with outside counsel and has not been privy to their analysis, advice, or communication. And any prior representation by County Counsel of Circle Oaks under the Agreement has not pertained to the issues involved in the Current Matter.

In light of the foregoing, County Counsel requests that the Board authorize the Chair to sign a conflict waiver memorandum setting forth the following terms:

1. If any actual conflict may arise between the County and Circle Oaks in relation to the Current Matter, the County Counsel's office will represent only the County and will not act as counsel for Circle Oaks in connection with the Current Matter.
2. The County Counsel's office, including those attorneys specifically assigned to represent the District, will also remain able to represent the County and the other entities referenced in the Agreement on other unrelated matters not involving the District, without the need for further written consent of the District.
3. The County Counsel's office will ensure that the attorneys in the office who have represented the District do not participate in the representation of the County in connection with the Current Matter and no confidential information of the District will be shared with the attorneys representing the County in the Current Matter, and vice versa.
4. County Counsel's files and confidential information of the County obtained in the course of representing the County shall not be subject to disclosure to the District. Likewise, County Counsel's files and confidential information of District obtained in the course of representing the District shall not be subject to disclosure to the County.
5. The County Counsel's office will also maintain the ethical wall between its attorneys who will be representing the County on the Current Matter and its attorneys who will be representing the District to ensure the preservation of privileges and to protect confidential information.

The governing board of Circle Oaks approved the conflict waiver on these terms at its meeting on January 11, 2017, and the District executed a written waiver and consent thereafter.

**SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Helene Franchi