



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 2/2/2010  
Agenda Placement: 7M

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Westmeyer, Robert - County Counsel  
County Counsel  
**REPORT BY:** Susan Ingalls, Paralegal - 259-8152  
**SUBJECT:** Amendment No. 12 to Agreement No. 3881 with Miller, Starr & Regalia

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### **RECOMMENDATION**

County Counsel requests approval of and authorization for the Chair to sign Amendment No. 12 to Agreement No. 3881 with the law firm of Miller, Starr & Regalia amending the following paragraphs of the Agreement:

1. Paragraph 2, Scope of Services, to include legal representation of the County in the matter of *Sierra Club v. Board of Supervisors*, and
2. Paragraph 3, Compensation, adding a new subparagraph (e), Adjustments in Rates, enabling County Counsel to authorize normal annual adjustments in the firm's hourly rates for legal services, with no change to the Agreement's maximum.

### **EXECUTIVE SUMMARY**

Miller, Starr & Regalia (MSR) has been providing legal services relating to various land use matters for the County with great success. MSR is currently defending the County in the case of *Vendrilla v. County*. Because the recently filed case of *Sierra Club v. County of Napa* and the *Vendrilla* case both have as their principal issue whether or not successive lot line adjustments are permitted as a matter of State law, it will be cost effective to also have MSR defend the County in the *Sierra Club* case. County Counsel recommends approval of Amendment No. 12 to the Agreement with Miller, Starr & Regalia.

### **FISCAL IMPACT**

Is there a Fiscal Impact?            Yes  
Is it currently budgeted?            Yes

Where is it budgeted?	County Counsel
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Miller, Starr & Regalia provides specialized legal services within the land use area when the volume of work cannot be accommodated internally. Funding is included in the County Counsel's adopted FY 09-10 budget for such purposes. Due to the extent of litigation currently being experienced, an augmentation to the budget may be requested during the FY 2009/2010 Mid-year Review.
Is the general fund affected?	Yes
Future fiscal impact:	The annual maximum of this Agreement will continue to be \$130,000; the Agreement includes a provision for automatic annual renewal. This amount was increased from \$100,000 to \$130,000 in 2001. Despite inflation in the ensuing years, it is not recommended that the amount be further increased at the present time. There is no future financial impact since the contract does not guarantee any particular level of compensation; it only establishes the maximum compensation that may be paid the contractor without further Board action. Actual compensation is limited to work requested by County Counsel and actually rendered by the contractor. In FY 2004/2005, for example, only \$8,647 was expended pursuant to this Agreement. No County General Fund monies have been expended since 2005. While it is possible that the types of extraordinary expenses the County is currently incurring will recur in the near future, it is not likely, since these litigation "peaks" tend to occur infrequently.
Consequences if not approved:	The Sierra Club case will have to be taken over by County Counsel staff, which in turn will result in legal support provided to other departments being significantly reduced while the litigation proceeds, since litigation is always given top priority.
Additional Information:	None

## **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**

Since November of 1996, the County of Napa has contracted with Miller, Starr & Regalia (MSR) to provide legal services relating to various land use matters with great success. Recently, the case of *Vendrilla v. County of Napa* was filed, and MSR was retained by the County to defend that action. The costs of this litigation are paid through the insurance pool.

Even more recently, the case of *Sierra Club v. County of Napa* was filed. The principal issue in both cases is whether or not successive lot line adjustments are permitted as a matter of State law. Because MSR is handling the *Vendrilla* case, it will be cost effective to also retain them in the *Sierra Club* case, since they will be able to utilize the same research and pleadings for the *Sierra Club* case that they are developing for use in *Vendrilla*.

Insofar as the CEQA issues that are raised in the Sierra Club case are concerned, Deputy County Counsel Laura Anderson will be conducting most of the research and preparing the pleadings to reduce the costs of outside counsel to the maximum extent possible. This approach worked well in the Beringer Use Permit litigation a few years ago, and thus continuing this approach to cost containment continues to be recommended. County Counsel recommends approval of Amendment No. 12 to Agreement No. 3881 with the law firm of Miller, Starr & Regalia.

**SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Lorenzo Zíalcita