



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: County Counsel  
Department No.: 013  
For Agenda Of: May 18, 2010  
Placement: Administrative  
Estimated Tme:  
Continued Item: No  
If Yes, date from:  
Vote Required: 4/5

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TO: Board of Supervisors

FROM: Department Dennis A. Marshall, County Counsel, 568-2950  
Director(s)  
Contact Info: Michael C. Ghizzoni, Chief Assistant, 568-3377

SUBJECT: **Outside Counsel Contract To Enforce Restrictive Covenant At Elings Park South**

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**County Counsel Concurrence**

As to form: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:** Authorize the Chair to execute an Agreement for Professional Legal Services between County of Santa Barbara and the law firm of Rutan & Tucker, LLP, specifying a not-to-exceed amount for services of \$100,000, for litigation to enforce a restrictive land use covenant at Elings Park South, in Santa Barbara.

**Summary Text:** In 1996 and 1998 County of Santa Barbara awarded Coastal Resource Enhancement Fund ("CREF") grants of \$175,000 and \$350,000 to the Las Positas Park Foundation -- which changed its name in 1999 to Elings Park Foundation -- to help fund purchase of a 130-acre property now known as Elings Park South. County awarded that \$525,000 through two grant contracts and a restrictive covenant. The restrictive covenant restricts use of the entire 130-acre property, including a restriction that the use of 120 acres of the 130 acres "shall be restricted to passive recreation and the preservation of wildlife habitat. This portion of Property cannot be used for active recreation without the prior written approval of County Board of Supervisors."

County Staff has received and investigated complaints from neighbors of Elings Park South that some uses at Elings Park South violate the restrictive land use covenant, including:

- A 3-day Bicycle Festival, which is scheduled to occur again this year during June 5-7;
- Alteration of the natural land for installation of a "pump track;" and
- Bicycle jumping events using temporary ramp structures.

County Staff's efforts to resolve these violations without litigation have not been successful.

Eling Park Foundation has informed County Staff that its planned 2010 Bike Fest will include four races at Elings Park South, with a total of 530 to 550 more bicycle racers. (Elings Park Foundation also manages Elings Park North, which it leases from the City of Santa Barbara, but which is not subject to CREF restrictions.)

On May 11, 2010 the Board of Supervisors decided in Closed Session to initiate litigation to enforce County's restrictive covenant at Elings Park South and directed County Counsel to agendize an Open Session item for consideration of a contract with Outside Counsel.

After interviewing several law firms, County Counsel recommends that your Board contract with the law firm of Rutan & Tucker, LLP for litigation of this matter. Rutan & Tucker has provided transactional and litigation counsel to local governments throughout Southern California, which has included litigation of numerous real property actions on behalf of local governments.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:** The \$100,000 cost will be funded by the County Counsel Litigation Designation Fund; Department 013, Fund 0001, Account 7650, Program 1000.

**Staffing Impacts:** Proposed service level reductions at Office of County Counsel for Fiscal Year 2010-2011, plus staff reductions from June 30, 2008 until now reduced County Counsel by 5.625 FTE attorneys and 4.75 FTE support staff. Contracting for Outside Counsel will provide the needed legal services.

**Special Instructions:** Staff will "late docket" the Agreement for Professional Legal Services prior to May 18, 2010. County Counsel has coordinated with Auditor-Controller and Risk Manager for their review of the Agreement for Professional Legal Services before the agreement is docketed.

**Attachments:** Agreement for Professional Legal Services

**Authored by:** Chief Assistant County Counsel Michael C. Ghizzoni

**cc:** Planning and Development Director