



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:** February 11, 2020  
**Placement:** Administrative  
**Estimated Time:** N/A  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Department Michael C. Ghizzoni (805) 568-2950  
Director(s):  
Contact Info: Teresa M. Martinez (805) 568-2950

**SUBJECT:** Waiver of Potential Conflict of Edward Yates regarding the Strauss Wind Energy Project

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**County Counsel Concurrence**

As to form: Yes

Other Concurrence: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:** That the Board of Supervisors:

- a) Receive a request for the attached Conflict Waiver (Attachment A) that would allow Edward Yates, a Santa Barbara County Deputy County Counsel from 2007 – 2012, to represent the California Native Plant Society on the Strauss Wind Energy Project pursuant to California Rules of Professional Conduct, Rules 1.9 and 1.11;
- b) Receive County Counsel's determination that while employed with the Office of County Counsel, Mr. Yates did not personally or substantially participate in matters substantially related to the Strauss Wind Energy Project, including the Lompoc Wind Energy Project, and does not hold the County's confidential information that would impact his proposed representation of the California Native Plant Society;
- c) Approve and authorize the Chair to execute the Conflict Waiver (Attachment A) to allow Mr. Yates to represent the California Native Plant Society on the Strauss Wind Energy Project pursuant to California Rules of Professional Conduct, Rules 1.9 and 1.11; and
- d) Determine that the above action is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15378(b)(5) of the CEQA guidelines, as organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

**Summary Text:** This item is on the Board's agenda to obtain the Board's approval of a waiver of potential conflict of Edward Yates for his representation of the California Native Plant Society regarding the Strauss Wind Energy Project (SWEP) pursuant to the California Rules of Professional Conduct, Rules 1.9 and 1.11. Mr. Yates previously worked at Santa Barbara County Counsel's Office from 2007 to 2012. During his employment with the County, Mr. Yates did not work or consult on the SWEP or the similar Lompoc Wind Energy Project (LWEP), which was located on the same site as the SWEP but never constructed. Therefore, our office believes that Mr. Yates has not participated personally or substantially on either project and we believe that Mr. Yates does not have any confidential information that would impact his proposed representation of the California Native Plant Society.

**Background:** The LWEP was approved by the Board in 2009 and then challenged in Santa Barbara Superior Court between 2009 and 2012. The LWEP, however, was never constructed. In 2016, Strauss Wind, LLC applied for permits to develop a wind energy facility on the same site as the LWEP. The Planning Commission approved the SWEP on November 20, 2019. That decision was appealed to the Board by three appellants, one of which was the California Native Plant Society. On January 28, 2020, the Board denied the three appeals and granted *de novo* approval of the SWEP.

Mr. Yates is an attorney who was employed at the County of Santa Barbara Office of County Counsel from 2007 to 2012. Mr. Yates is currently employed with the Law Office of Edward E. Yates. He has requested that the Board of Supervisors give its informed written consent for him to represent the California Native Plant Society regarding the SWEP. Mr. Yates states in the Conflict Waiver (Attachment A) that his representation of the California Native Plant Society would not be a violation of Rule 1.9 or 1.11 of the Rules of Professional Conduct because he did not personally and substantially represent the County in the LWEP or litigation over the LWEP on behalf of the County.

Under the California Professional Rules of Conduct, Rule 1.9 (formerly Rule 3-310), after termination of the attorney-client relationship, attorneys have continuing duties to former clients. An attorney may not: (i) do anything that will injuriously affect the former client in any matter in which the attorney represented the former client; or (ii) use against the former client knowledge or information acquired by virtue of the previous relationship. (Rule 1.9, Comment [1].) Rule 1.11 prohibits a former public employee from representing a client in connection with a matter in which the attorney participated personally and substantially as a public employee unless the government agency gives its informed written consent to the representation. Additionally, an attorney who was a public employee who during that employment obtained information that the attorney knows is confidential government information may not use that information to the material disadvantage of the government entity. (Rule 1.11, subdiv. (c).)

"Personal" participation includes direct participation or supervision of a subordinate's participation and "substantial" participation requires that the attorney's involvement be of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. (Rule 1.11, Comment [3].)

In the present case, Mr. Yates was not assigned to work on the LWEP or litigation over the LWEP on behalf of the County. Additionally, the Deputy County Counsels who worked on the LWEP did not consult with Mr. Yates on the LWEP or its subsequent litigation. Mr. Yates reports that he did not acquire confidential information related to the LWEP while he was employed by the Office of County Counsel. Therefore, County Counsel recommends that the attached Conflict Waiver be approved and executed by the Chair.

**Performance Measure:**

Not applicable.

**Contract Renewals and Performance Outcomes:**

Not applicable.

**Fiscal and Facilities Impacts:**

Budgeted: Not applicable **Fiscal Analysis:**

Not applicable

**Key Contract Risks:**

Not applicable

**Special Instructions:** Please email one (1) complete executed letter and one (1) minute order to [teresamartinez@co.santa-barbara.ca.us](mailto:teresamartinez@co.santa-barbara.ca.us).

**Attachments:**

Attachment A: Conflict Waiver

**Authored by:**

Teresa M. Martinez, Deputy County Counsel