



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: August 28, 2018
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director: Michael C. Ghizzoni, County Counsel
Contact Info: Ashley Flood , Deputy County Counsel, (805) 568-2950
SUBJECT: Authorize County Counsel's Association of California (CCAC) to Use the County's Copyrighted Public Law Training Guide for Educational Purposes

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

County Counsel recommends that the Board of Supervisors:

- a. Authorize the County Counsels' Association of California (CCAC) to use the Eaglet's Guide to Public Law (Eaglet's Guide), for which the County of Santa Barbara owns the copyright, to create a derivative work for educational and not-for-profit purposes to assist CCAC in the statewide training of Deputy County Counsel attorneys in California.
- b. Authorize County Counsel to execute a copyright licensing agreement with CCAC to reflect the above.
- c. Find that the recommended authorizations are not a "project" under CEQA Guideline 15378(b)(5), in that this does not involve a commitment to any specific project which may result in a potentially significant impact to the environment.

Summary Text:

The County of Santa Barbara's Office of County Counsel previously created, researched and wrote a Santa Barbara County Office of County Counsel's Eaglet's Guide to Public Law (Eaglet's Guide). The Eaglet's Guide was written by County Counsel attorneys as part of their County duties, primarily under the direction of former County Counsel Steven Shane Stark. As such, the County of Santa Barbara owns the

copyright of the Eaglet’s Guide, which was first copyrighted in 2005 and has received updates and condensing since then.

The County Counsels’ Association of California (CCAC) is scheduled to present statewide training for deputy county counsels at CCAC’s September 27, 2018 “Boot Camp” in Ontario, California (Boot Camp). CCAC holds a boot camp every two years with the purpose of providing training to new deputy county counsels on government law specific to advising California counties, such as ethics, conflicts of interest, ordinances and resolutions, and land use.

CCAC has requested to use the Eaglet’s Guide at this year’s Boot Camp to assist in training deputy county counsels on county-specific government law.

Background:

The County Counsel’s Association of California’s Requested Use of Copyrighted Training Material

CCAC is a California nonprofit mutual benefit corporation. Some of the specific purposes for which CCAC was formed include: to provide for the continuing education of its members and others in the field of governmental law; to foster and maintain the highest ethical and professional standards of all persons engaged in local governmental law; and to develop proper and adequate incentive to encourage lawyers to enter and remain in governmental law.

Specifically, CCAC will create a derivative work based on the Eaglet’s Guide, which will be an updated and abbreviated California public law handbook. In addition, CCAC will reproduce this derivative work for distribution to Boot Camp participants and CCAC members, display portions of this derivative work during the Boot Camp training, and display this derivative work on its confidential members-only website. CCAC will use the Eaglet’s Guide solely for educational training purposes, and not commercial purposes.

In addition to being copyrighted, the Eaglet’s Guide is confidential and exempt from public disclosure pursuant to the attorney work product doctrine and attorney-client privilege. CCAC will keep the Eaglet’s Guide and any derivative work it creates from the Eaglet’s Guide confidential and share it only with CCAC members and participants of the Boot Camp. The Boot Camp is not open to the public, but only to members of CCAC and their legal staff. CCAC requires that all participants of the Boot Camp agree to keep the materials and information obtained through the Boot Camp confidential.

Copyright Law Background

Copyright protection in the United States is based in Article I, Section 8, of the United States Constitution, which empowers Congress to provide authors with certain exclusive rights in their writings for a limited time. (U.S. Const. art. I, § 8, cl. 8.) Exercising this power, Congress has crafted a comprehensive statutory scheme governing the existence and scope of “[c]opyright protection” for “original works of authorship fixed in any tangible medium of expression”—the Copyright Act. (17 U.S.C. § 102(a).) This scheme gives copyright owners “the exclusive rights”—with specified statutory exceptions—to distribute, reproduce, prepare derivative works, and publicly display their works. (§ 106.)

A derivative work is a transformation or adaptation of one or more preexisting works. (§ 101.) In a derivative work, the earlier work or works are recast, transformed, or adapted. (*Id.*) A work consisting

of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work.” (*Id.*)

A copyright owner may exercise all or any of these rights itself, transfer them to others, or license them on an exclusive or non-exclusive basis. Under the Copyright Act, each exclusive right stands on its own, allowing the copyright owner to retain and exploit certain rights, while transferring or licensing other rights. Fair use is a widely applicable limitation on a copyright owner’s exclusive rights. Fair use includes the reproduction of a copyrighted work for purposes of teaching, scholarship, research, criticism, comment, and news reporting. (§ 107.)

Performance Measure:

Not applicable.

Fiscal and Facilities Impacts:

None.

Fiscal Analysis:

No impact.

Key Contract Risks:

None.

Staffing Impacts:

None.

Special Instructions:

None.

Attachments:

None.

Authored by:

Ashley Flood, Deputy County Counsel