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AND

CITY OF OAKLAND



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January 17, 2006

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HONORABLE CITY COUNCIL
Oakland, California

Subject: Resolution Approving A Conflict of Interest Waiver of Richard Roos-Collins and Natural Heritage Institute

Dear President De La Fuente and Members of the City Council:

SUMMARY

Richard Roos-Collins of the Natural Heritage Institute (“NHI”), local co-counsel for the City of Oakland in environmental litigation, has requested that the City Attorney’s Office seek the City Council’s waiver of any conflict of interest that might arise in connection with NHI’s service as legal counsel for Millsmount Homeowners Association (“MHA”) in regulatory proceedings related to the DeSilva Gates Leona Quarry Project. While the interests of the City and of MHA potentially are adverse, there is no apparent conflict at the present time and the concurrent representation of the City and a potentially adversarial homeowners’ organization does not constitute a violation of the Rules of Professional Conduct.

FISCAL IMPACTS

The City’s interests are represented in this matter by NHI without cost.

BACKGROUND

Since August, 2002, NHI has represented the City of Oakland as local co-counsel in *Friends of the Earth et. al. v. Watson*, (N.D. Cal. Civ. No. 02-4106 [JSW]) (“Friends litigation or case”). This case challenges the federal government’s practice of providing financial support for overseas energy and construction projects without requiring environmental review in violation of the National Environmental Protection Act (“NEPA”). Since October, 2004, NHI has represented MHA’s interest in Chimes Creek in the use permit and regulatory proceedings related to the DeSilva Gates Leona Quarry

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Project ("Leona Quarry"). The City approved the final subdivision maps in February, 2005.

KEY ISSUES AND IMPACTS

There is a possibility that MHA may seek judicial relief with respect to the adequacy of the City's established Conditions of Approval to protect Chimes Creek. However, MHA has no interest in the Friends case and NHI has not obtained any confidential information in its representation of the City in the Friends litigation that would be material to the Leona Quarry/Chimes Creek matter.

NHI represents several other plaintiffs in the Friends case, and the City has benefited by having its interests in this matter capably represented without cost. The fact of NHI's concurrent representation of the City and of MHA in distinguishable matters appears to be of no benefit to the City's adversaries. Even so, the Council may decide, as it has a right to, that NHI can not continue representing the City unless it terminates representation of MHA.

RECOMMENDATION

Although the differing interests of the City and MHA in the Leona Quarry/Chimes Creek matter may elevate to litigation, there appears to be no benefit or advantage that MHA can receive by having the same counsel that represents the City in a substantively different matter. Accordingly, the City Attorney's Office recommends the Council grant the requested waiver of any conflict of interest that now exists or may occur in the future as a consequence of the concurrent legal representation provided by NHI to the City of Oakland in the Friends litigation and to the MHA in the Leona Quarry/Chimes Creek matter.

Respectfully submitted,

for 
JOHN A. RUSSO
City Attorney

Attorney Assigned:
Izetta C.R. Jackson

OFFICE OF THE CITY CLERK
OF OAKLAND

Approved as to Form and Legality

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Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER

A RESOLUTION APPROVING A CONFLICT WAIVER FOR THE NATURAL HERITAGE INSTITUTE TO PERMIT IT TO CONTINUE TO REPRESENT THE MILLSMOUNT HOMEOWNERS ASSOCIATION IN MATTERS RELATED TO CHIMES CREEK AND THE DESILVA GATES LEONA QUARRY PROJECT

WHEREAS, the Natural Heritage Institute ("NHI") has represented the City of Oakland *pro bono* (without charge) in environmental litigation, to wit, *Friends of the Earth et.al. v. Watson*, (N.D. Cal. Civ. No. 02-4106 [JSW]) since August, 2002, and;

WHEREAS, NHI has represented the Millsmount Homeowners Association ("MHA") interest in Chimes Creek in the use permit and regulatory proceedings related to the DeSilva Gates Leona Quarry Project ("Leona Quarry") since October, 2004, and;

WHEREAS, Richard Roos-Collins of NHI has requested that the City waive any conflict of interest that might arise in the course of NHI's continued representation of MHA, and;

WHEREAS, NHI has not obtained any confidential information in its representation of the City that would be material to the interests of MHA in the Leona Quarry/Chimes Creek matters and the matter in which NHI currently represents the City would not give NHI access to any confidential or privileged information that would give the firm or MHA an advantage in dealing with the City, and; now, therefore, be it;

RESOLVED, That the City Council hereby waives any conflict of interest that the National Heritage Institute may have by virtue of serving as legal counsel to the Millsmount Homeowners Association;

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,
CHANG, AND PRESIDENT DE LA FUENTE

NOES –
ABSENT –
ABSTENTION –

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California