

HARBOR DIVISION
425 S. PALOS VERDES ST.
P.O. BOX 151
SAN PEDRO, CA 90733-0151

FACSIMILE
(310) 831-9778
(310) 732-3750



OFFICE OF THE CITY ATTORNEY
MICHAEL N. FEUER
CITY ATTORNEY

JANNA B. SIDLEY
GENERAL COUNSEL
JOY M. CROSE
ASSISTANT GENERAL COUNSEL
CHRISTOPHER B. BOBO
ESTELLE M. BRAAF
BRIAN DALUIO
JOHN T. DRISCOLL
JUSTIN HOUTERMAN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. MCCLOSKEY
ESTHER S. OLSEN
STEVEN Y. OTERA
MINAH PARK
HELEN J. SOK

**RECOMMENDATION APPROVED;
RESOLUTION 19-9527 ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS**

SEPTEMBER 5, 2019

AMBER M. KLESGES
Board Secretary

DATE: AUGUST 27, 2019

FROM: OFFICE OF THE CITY ATTORNEY

SUBJECT: RESOLUTION NO. 19-9527 WAIVING THE POTENTIAL CONFLICT FOR BEVERIDGE & DIAMOND'S REPRESENTATION OF NUSTAR ENERGY

SUMMARY:

The Office of the City Attorney ("Office") requests approval of a conflict waiver for the law firm of Beveridge & Diamond ("B&D") to represent a party in a transaction with the Harbor Department. B&D has requested a conflict waiver so that the law firm may represent NuStar Energy ("NuStar") in its proposal to repair and make improvements to its leased wharf at the Port of Los Angeles, and that it may continue to represent the City of Los Angeles in connection with issues related to biosolids and related litigation. This decision has no financial impact on the Harbor Department.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act ("CEQA") under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Formally waive any potential conflict that might arise from Beveridge & Diamond's representation of NuStar in its proposal to repair and make improvements to its leased wharf at the Port of Los Angeles and that it may continue to represent the City of Los Angeles in connection with issues related to biosolids and related litigation;
3. Authorize the Office of the City Attorney to execute a written conflict waiver;

DATE: AUGUST 27, 2019

PAGE 2 OF 3

SUBJECT: WAIVING THE POTENTIAL CONFLICT FOR BEVERIDGE
& DIAMOND'S REPRESENTATION OF NUSTAR ENERGY

4. Adopt Resolution No. 19-9527; and
5. Authorize and direct the Board Secretary to transmit the conflict waiver to the City Council for its approval.

DISCUSSION:

B&D has requested a waiver of potential conflict of interest so that it may represent NuStar Energy ("NuStar") in its proposal to repair and make improvements to its leased wharf at the Port of Los Angeles ("project"), and that it may continue to represent the City of Los Angeles in connection with issues related to biosolids and related litigation.

B&D's role will be limited to assisting NuStar with any environmental review that may be necessary under the California Environmental Quality Act ("CEQA") related to the project. The Harbor Department will be the "lead agency" under CEQA for the project, meaning that the Harbor Department will be providing the discretionary approvals to conduct the project, and will also be responsible for preparing and certifying any related environmental review documents under CEQA.

In its August 16 letter requesting the conflict waiver (attached as Transmittal 1), B&D states that:

"...a conflict between NuStar and the Port is unlikely because NuStar and the Port would likely be aligned in defending any discretionary approvals or the environmental review necessary for the project. Nevertheless, there is a potential for a conflict of interest between NuStar and the Port should there be a disagreement regarding either the discretionary approvals or the environmental review, thus giving rise to a need for this waiver."

B&D also advises that it is seeking waiver from NuStar, which has agreed to "(i) waive any conflicts related to this matter; (ii) not object to B&D's continued advice to and representation of the City regarding biosolids and related issues; and (iii) should there be litigation related to the Port project between NuStar and the City, B&D will not represent NuStar. NuStar will be signing a waiver letter memorializing these terms."

To ensure separation of the two matters, B&D has agreed to create an ethical screen between B&D attorneys who work on City biofuels/litigation matters and those who will be undertaking the NuStar representation regarding the project at the Port.

Internally, the Office of the City Attorney has approved B&D's continued representation of the City in the issues regarding biosolids and related litigation, subject to the Board's approval of the conflict waiver as to B&D's representation of Nustar on the Harbor Department project as described above and B&D's letter. Our office therefore recommends the Board approve this request for conflict waiver.

DATE: AUGUST 27, 2019

PAGE 3 OF 3

SUBJECT: WAIVING THE POTENTIAL CONFLICT FOR BEVERIDGE
& DIAMOND'S REPRESENTATION OF NUSTAR ENERGY

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a proposed waiver of any potential conflict that might arise from Beveridge & Diamond's representation of NuStar, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action is for the approval of a resolution which will grant a waiver to B&D so that the firm may represent NuStar, a Port of Los Angeles permittee, while continuing to represent the Port of Los Angeles in connection with issues related to biosolids and related litigation. So long as the described ethical screen whereby B&D attorneys who work on City biofuels/litigation matters and those who will be undertaking the NuStar representation regarding the project is upheld, approval of the proposed resolution is not anticipated to have a financial impact on the Harbor Department.

CITY ATTORNEY:

The Office of the City Attorney has reviewed B&D's request for waiver of potential conflict of interest and finds the Board can make the decision for the Harbor Department matter and the City Council can make the decision for the City matter,,which this Office shall execute following their respective approvals.

TRANSMITTAL:

1. Conflict Waiver Request


JOY M. CROSE
Assistant City Attorney


FIS Approval: 

CA Approval: 

APPROVED:

By 
JANNA B. SIDLEY
General Counsel, Harbor Department

APPROVED:

By 
EUGENE D. SEROKA
Executive Director