

County Counsel



RECOMMENDED BUDGET & STAFFING SUMMARY & BUDGET PROGRAMS CHART

Operating	\$ 9,519,900
Capital	\$ 0
FTEs	41.0



County Counsel

MISSION STATEMENT

By statute, County Counsel is the legal adviser to the Board of Supervisors. We advance and defend the County's civil policies and actions by: looking ahead; advising and providing options; and litigating. We work closely with the Board of Supervisors and other County Officers to maintain the civil legal integrity of the County of Santa Barbara.

DEPARTMENT DESCRIPTION

We defend or prosecute all civil litigation in which the County, or its officers or employees in their official capacities, are parties. This regularly includes: federal civil rights and state tort cases; "dependency" actions to protect minor children; property tax assessment appeals; land use actions; statutory financial cases, by or against the Auditor-Controller or Treasurer; defense against State audits; mental health commitments and conservatorships; cases involving contracts; employment cases; and motions and writs for the Sheriff's Office.

We provide civil legal advice and services to: the Board of Supervisors, other County Officers, Departments, Boards, Commissions, Committees, and Special Districts. This legal advice involves many subjects, including: land use, public works, real property, contracts, public safety, regulatory, financial, elections, social services, housing, healthcare and personnel.

All of this advances the County's public service objectives, while helping to protect the County from loss and risk.

HIGHLIGHTS OF 2019-20 OBJECTIVES

- Litigate: 1) \$2.8 billion of property tax assessment appeals, where the potential about 1% tax impact for the General Fund and County Fire totals about \$6.3 million; 2) against Southern California Edison to recover the County's unreimbursed damages in excess of \$15 million from the Thomas Fire and January 9th debris flow and defend against SCE's cross-complaint; 3) \$1.75 million of costs disallowed by State Medi-Cal audits; 4) class action lawsuit about the Main Jail's "conditions of confinement;" 5) 48 other civil rights, tort, employment, property rights, and "land use" cases, with 8 already set for trial; 6) construction claims and litigation from the Northern Branch Jail project; 7) against manufacturers and distributors of prescription opioids to recover County's damages from addressing opioid misuse in the County's population; and 8) weekly court calendars of conservatorships and child protection.
- Legal support, concurrently, to major programs: 1) long-term Thomas Fire disaster recovery; 2) cannabis ordinance amendments, permitting and enforcement; and 3) water issues: Contract amendment, extension, or potential assignment of State Water Supply Agreement; comments and consultation on Groundwater Sustainability Plans; and negotiation of renewal of the Water Service Contract – the "Cachuma Project" – which otherwise expires in 2020.
- Legal support, concurrently, to more than \$325 million of capital projects: 1) Northern Branch Jail; 2) Revised Tajiguas Resource Recovery Project; 3) Main Jail's "conditions of confinement" improvements; and 4) Laguna County Sanitation District Plant Upgrade project.

County Counsel

HIGHLIGHTED RENEW '22 INITIATIVES

Already Underway

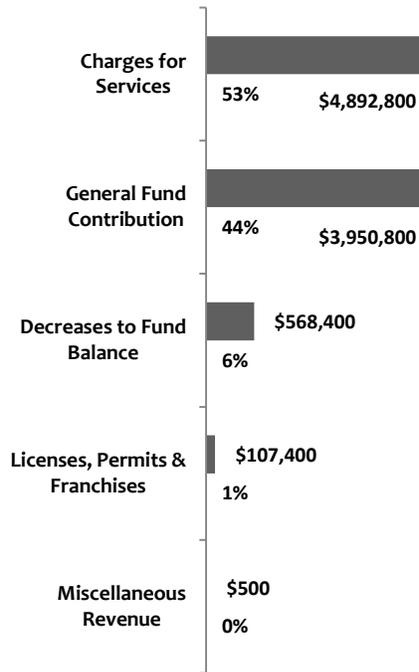
Limited delegation of litigation settlement authority to County Counsel, not to exceed \$50,000. Compared to taking every litigation case to Closed Session this could:

- Save time working up even small cases for Closed Session; and
- Increase the County's agility with small litigation cases.

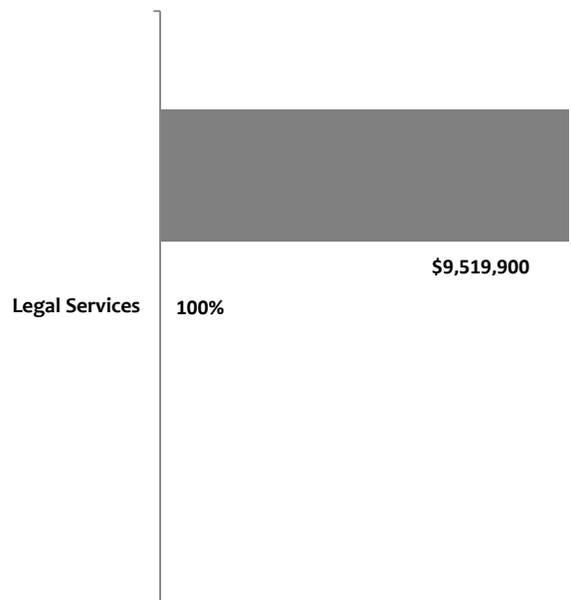
County Counsel

RECOMMENDED SOURCES & USES OF FUNDS

Source of Funds - \$9,519,900

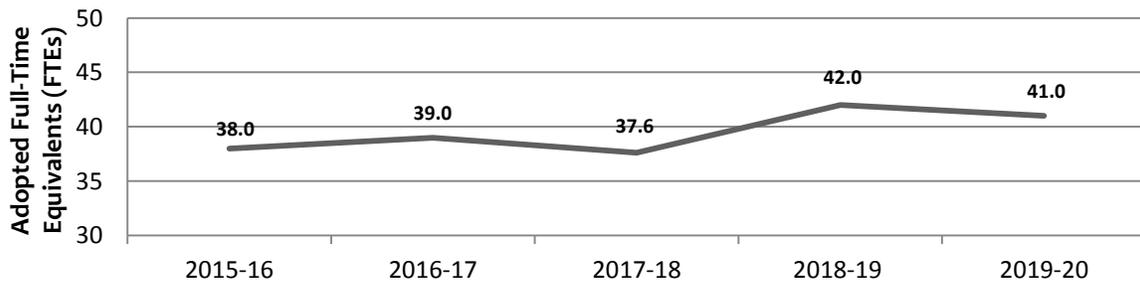


Use of Funds - \$9,519,900



STAFFING TREND

FTE counts include regular staff only, and do not include extra help and contractors-on-payroll.



County Counsel

BUDGET OVERVIEW

Staffing Detail By Budget Program	2017-18 Actual	2018-19 Adopted	2018-19 Estimated Actual	2019-20 Recommended	Change From FY18-19 Ado to FY19-20 Rec
Legal Services	38.04	42.00	42.00	41.00	(1.00)
Total	38.04	42.00	42.00	41.00	(1.00)
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Budget By Budget Program					
Legal Services	\$ 8,380,787	\$ 9,374,400	\$ 9,314,700	\$ 9,519,900	\$ 145,500
Total	\$ 8,380,787	\$ 9,374,400	\$ 9,314,700	\$ 9,519,900	\$ 145,500
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Budget By Categories of Expenditures					
Salaries and Employee Benefits	\$ 7,704,665	\$ 8,645,600	\$ 8,594,100	\$ 8,673,500	\$ 27,900
Services and Supplies	487,968	514,400	514,400	625,800	111,400
Other Charges	188,154	214,400	206,200	220,600	6,200
Total Operating Expenditures	8,380,787	9,374,400	9,314,700	9,519,900	145,500
Increases to Fund Balances	10,000	-	-	-	-
Fund Balance Impact (+)	-	-	245,700	-	-
Total	\$ 8,390,787	\$ 9,374,400	\$ 9,560,400	\$ 9,519,900	\$ 145,500
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Budget By Categories of Revenues					
Licenses, Permits and Franchises	\$ -	\$ 102,300	\$ 102,300	\$ 107,400	\$ 5,100
Charges for Services	4,334,105	4,601,100	4,787,100	4,892,800	291,700
Miscellaneous Revenue	2,405	500	500	500	-
Total Operating Revenues	4,336,510	4,703,900	4,889,900	5,000,700	296,800
Decreases to Fund Balances	311,370	856,300	856,300	568,400	(287,900)
General Fund Contribution	3,742,907	3,814,200	3,814,200	3,950,800	136,600
Total	\$ 8,390,787	\$ 9,374,400	\$ 9,560,400	\$ 9,519,900	\$ 145,500

FTE counts include regular staff only, and do not include extra help and contractors-on-payroll.

County Counsel

CHANGES & OPERATIONAL IMPACT: 2018-19 ADOPTED TO 2019-20 RECOMMENDED

Staffing

- For FY 19/20, there will be a 1.0 FTE decrease in one-time unfilled attorney staffing due to:
 - Deleting one-time funding for an unfilled 1.0 FTE attorney to fund a Contractor on Payroll attorney, and an increase in the Outside Counsel Fees to support Northern Branch Jail construction litigation.

Expenditures

- Net operating expenditure increase of +\$145,500 due to:
 - +27,900 increase in Salaries and Employee Benefits due to increases in retirement costs, health insurance costs and employee salaries.
 - +\$111,400 in Services and Supplies primarily driven by the increase in funding for Outside Counsel Fees to support Northern Branch Jail construction litigation.
 - +\$6,200 in Other Charges primarily driven by an increase in Liability Insurance premiums.

These changes result in Recommended operating expenditures of \$9,519,900 and non-operating expenditures of \$0.

Revenues

- Net operating revenue increase of +\$296,800 due to:
 - -\$124,800 decrease in Legal Services from the anticipated loss of BeWell Audit revenue, and ending legal services to the Local Agency Formation Commission.
 - +\$5,100 increase in Cannabis revenues from Cannabis Permitting driven by Salary & Benefits increase over the Adopted Budget.
 - +92,000 increase in Property Tax Administration fees as a result of the increased resources spent on Assessment Appeals Support.
 - +324,500 increase due to an expected increase in overall Risk billings to support the Thomas Fire and Debris Flow litigation.
- Net non-operating revenue decrease of -\$151,300 primarily due to:
 - -\$293,000 decrease in Decreases to Committed fund balances, after the end of one-time funding provided to the department for Assessment Appeals Support for complex cases.
 - +\$136,600 increase in Ongoing General Fund.

These changes result in Recommended operating revenues for FY2019-20 of \$5,000,700 and non-operating revenues of \$4,519,200, resulting in total revenues of \$9,519,900. Non-operating revenues primarily include General Fund Contribution and Decreases to Committed fund balances.

RELATED LINKS

For more information on the County Counsel's Office, refer to the Web site at <http://countyofsb.org/counsel/>

County Counsel

PERFORMANCE MEASURES

Description	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Estimated Actual	FY 2019-20 Recommend
The percentage of litigated cases which resolve at 85% or less than the amount reserved by Risk: Target=85%.	85% 17/20	76% 16/21	91% 21/23	94% 30/32
The percentage of litigated cases resolved without payment to plaintiff: Target=60%.	67% 20/30	67% 16/24	58% 15/26	70% 21/30
Percent of departmental Employee Performance Reviews (EPRs) completed by the due date.	97% 36/37	87% 33/38	85% 35/41	100% 41/41

County Counsel

LEGAL SERVICES BUDGET PROGRAM

Through this single Budget Program, the Office of County Counsel: 1) provides civil law legal advice to statutory clients, including the Board of Supervisors; and 2) defends or prosecutes all civil litigation in which the County, or its officers or employees in their official capacities, are parties.

Staffing

Staffing Detail By Budget Program	2017-18 Actual	2018-19 Adopted	2018-19 Estimated Actual	2019-20 Recommended	Change From FY18-19 Ado to FY19-20 Rec
COUNTY COUNSEL	1.00	1.00	1.00	1.00	-
CHIEF ASST COUNTY COUNSEL	1.00	1.00	1.00	1.00	-
CHIEF DEPUTY	1.00	1.00	1.00	1.00	-
PROG/BUS LDR-ATTY	-	-	-	1.00	1.00
DEPUTY COUNTY COUNSEL SR	12.54	13.00	13.00	11.00	(2.00)
DEPUTY COUNTY COUNSEL SR-RES	1.00	1.00	1.00	1.00	-
DEPUTY COUNTY COUNSEL	10.35	13.00	13.00	13.00	-
LEGAL OFFICE PRO	1.27	2.00	2.00	3.00	1.00
BUSINESS MANAGER	1.00	1.00	1.00	1.00	-
COMPUTER SYSTEMS SPEC	1.00	1.00	1.00	1.00	-
LEGAL OFFICE PRO SR-RES	7.88	8.00	8.00	7.00	(1.00)
Total	38.04	42.00	42.00	41.00	(1.00)

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Revenue & Expenditures

Budget By Categories of Expenditures	2017-18 Actual	2018-19 Adopted	2018-19 Estimated Actual	2019-20 Recommended	Change From FY18-19 Ado to FY19-20 Rec
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Total Revenues	\$ 8,390,787	\$ 9,374,400	\$ 9,560,400	\$ 9,519,900	\$ 145,500

County Counsel

LEGAL SERVICES BUDGET PROGRAM (CONT'D)

2018-19 Anticipated Accomplishments

ERG Resources, LLC; ERG Intermediate Holdings, LLC; and, ERG Operating Company, LLC -- collectively "ERG" -- property tax assessment appeals: The disputed assessments involved ERG's oil and gas activities in the Cat Canyon, West Cat Canyon, and Casmalia Oil Fields. ERG's taxable property includes land, improvements, trade fixtures, business personal property, new construction, and construction in progress. For tax years 2012-2018, ERG's total valuation dispute with the County Assessor was about \$1.26 billion, where ERG's opinion of value totaled only about \$213 million.

- Following several years of litigation, the Assessment Appeals Board approved a stipulation in September 2018, through which the taxable value for tax years 2012-2018 totaled about \$1.2 billion:
- In August 2016, ERG filed a motion asking the United States Bankruptcy Court for the Northern District of Texas to determine -- and significantly reduce -- ERG's tax liability for its oil and gas properties in Santa Barbara County. On behalf of the County Assessor -- and with significant help from County Assessor's staff -- we opposed that motion. In December 2016, the Bankruptcy Court denied ERG's motion and returned the valuation of ERG's property interests to the County's Assessment Appeals Board;
- Auditor-Controller reported that most of ERG's \$12 million in taxes for the 2012-2018 disputed years has already been collected and distributed; however, \$4.5 million would be additional available resources to all taxing entities after all: refunds are paid; payment plans are completed; impounds are released; and current year taxes are collected; and,
- Of that \$4.5 million, the County General Fund's share is about 19% or almost \$1 million. The County Fire Protection District's share is about 6%, or almost \$300,000. The remainder goes to other taxing entities, primarily education.

Effectively handled another year of the three-year uptick of defined "complex case" property tax assessment appeals which appears to be the "new normal": In 2016 and 2017, the Clerk of the Board received a significant surge of these "complex cases," where the taxable value of the property on the assessment roll is \$30 million or more. Compared to the prior three-year average of 4 complex cases: 2016 had 19 complex cases; 2017 had 15 complex cases; and 2018 had 15 complex cases. Defined complex cases need much more attorney support and many more hearing days than other assessment appeals. In 2018, we, with support of Assessor's staff, resolved 17 complex cases. Beginning in Fall 2017, we assigned two additional attorneys to these cases, full-time, to work closely with Assessor's staff and handle the increase in complex cases. With 15 complex cases in 2018 recently filed and the remaining unresolved complex cases, we anticipate continuing to assign approximately 2-3 attorneys to staff these cases. Ongoing.

County Counsel

LEGAL SERVICES BUDGET PROGRAM (CONT'D)

2018-19 Anticipated Accomplishments (Cont'd)

Thomas Fire disaster recovery: Throughout fiscal year 2018-2019, our attorneys provided legal support to disaster recovery operations. This included: 1) working with Outside Counsel to initiate litigation against Southern California Edison to recover County's damages, and defending against SCE's cross-complaint; 2) the frequent contracting support necessary to continue to provide resources; and to protect the County later with reimbursements and within audits; and 3) assisting with recovery projects including: Like-for-Like zoning ordinance; FEMA recovery maps; property acquisition and debris basin projects; and Hazard Mitigation Grant Program applications. Ongoing.

Cannabis regulation: After substantial changes in State law, we provided fast and extensive attorney support for the County's cannabis regulation, including: 1) zoning regulations; 2) business licenses; 3) permitting, and 4) enforcement.

Provided extensive and effective legal support to Behavioral Wellness for housing, contracts and Mental Health Plan update: Residences at Depot Street, a supported services housing project including \$2.4 million in MHPA funding for dedicated Behavioral Wellness units; updated contract templates for approximately 20 community-based organizations to incorporate regulatory changes under the \$53.79 million 2018-2021 Drug Medi-Cal Organized Delivery System contract; \$7.85 million SAPT grant for 2017-2020; and the Mental Health Plan for 2017-2022.

Revised Tajiguas Resource Recovery Project: Provide extensive and time-critical legal support for the resolution of litigation and public financing components of this major project that will use conversion technology to extend the life of the Tajiguas Landfill.

State audits of County Medi-Cal programs: Continued litigation of State Fiscal Year (SFY) 06/07-13/14 audits, which at the start of the fiscal year totaled more than \$6.7 million of disallowed County costs. Recovered \$2.3 million in FY 18-19 plus additional \$759,000 in FY 17-18.

We continued to support weekly court calendars and regular litigation for: 1) "probate" conservatorships; 2) "LPS" mental health conservatorships; and 3) child protection actions. With child protection cases, we prevailed in 9 of 10 writs and appeals at the Court of Appeal.

Other litigation since March 1, 2018 included:

- Successfully resolved 26 civil rights, tort, employment, and property rights cases for a total payout of less than \$780,000, where 15 of those cases (58%) were resolved with no County payout, including through motion practice, and another four were resolved with payouts of less than \$10,000 each.
- Prevailed in nine of ten Child Welfare Services appeals before the California Court of Appeal, involving issues such as termination of parental rights and adequacy/termination of family reunification services.

County Counsel

LEGAL SERVICES BUDGET PROGRAM (CONT'D)

2018-19 Anticipated Accomplishments (Cont'd)

- Continued to reduce County's self-insured liability for workers' compensation "tail claims" for pre-7/01/10 injuries by coordinating with Risk Management and Outside Counsel to resolve them economically and with appropriate contributions from County's excess insurer, CSAC-EIA. (Effective 7/01/10, County transitioned from self-insurance with excess coverage to "first dollar" coverage through CSAC-EIA's Primary Workers' Compensation Program.)
- Filed litigation against manufacturers and distributors of prescription opioids to recover County's damages from addressing opioid misuse by County's population. This complex matter will be part of Opioid Multidistrict Litigation.
- Prevailed in 2 other "land use" cases:
 - *3558 Sagunto Street*: prevailed against property owner's action seeking to enjoin County from applying the Development Plan and successfully demurred to inverse condemnation cause of action.
 - *Pollyrich Properties LLC v. County of Santa Barbara*: actively worked with Petitioner, first to stay this litigation against the County, while the related easement dispute between Petitioner and the Project Applicant was resolved, and, ultimately, to get Petitioner to dismiss the County. The case challenged County's approval of Sierra Grande zipline project.

County Counsel

LEGAL SERVICES BUDGET PROGRAM (CONT'D)

2019-20 Objectives

Continue to provide timely and effective legal support to the long-term Thomas Fire disaster recovery: We expect that the County's disaster recovery operations will continue to need a heavy amount of legal support throughout all of FY 2019-20. During late February 2018 we began to see a transition in the type of work requiring legal support: from support of urgent operations, such as clearing clogged stream channels before more rain; to support of longer-term issues with permitting and rebuilding.

Litigate complex case property tax assessment appeals, to protect about \$2.8 **billion** of "assessed value," including:

- United Launch Alliance, LLC. The disputed assessments involve ULA's space launch activities at Vandenberg Air Force Base. For tax years 2014-2018, ULA's total valuation dispute with the County Assessor is about \$1.2 **billion**;
- Exxon Mobil Corporation. The disputed assessments involve Exxon's oil and gas activities at the Las Flores Canyon Facility and the Santa Ynez Unit. For tax years 2016-2018, Exxon's total valuation dispute with the County Assessor is about \$425 million;
- CWI Santa Barbara Hotel LP & CWI2 Santa Barbara Hotel, LP. The disputed assessments involve the Ritz-Carlton Bacara, Santa Barbara (formerly Bacara Resort & Spa). For tax years 2017-2018, CWI's total valuation dispute with the County Assessor is about \$380 million; and
- Fairway BB Property, LLC. The disputed assessments involve a residential estate. For tax years 2014-2018, including the Superior Court refund action, Fairway BB's total valuation dispute with the County is about \$330 million.

Protect the County's interests in other federal and state litigation with significant expected financial impacts:

- *Thomas Fire/ Debris Flow Claims and Litigation*: This includes litigation by County against Southern California Edison (SCE) for County's unreimbursed costs and damages; and a cross-complaint by SCE against County for equitable indemnity.
- *Murray*: Disability Rights California's federal class action lawsuit alleging unconstitutional "conditions of confinement" at the Main Jail.
- *Opioid Litigation*: Case against opioid manufacturers and distributors of prescription opioids to recover County's damages from addressing opioid misuse in the County's population.
- *State audits of County Medi-Cal programs by Behavioral Wellness and Public Health*: We expect that further litigation will be ongoing throughout FY 2019-20, where we seek to recover the remaining about \$1.75 million of disallowed County costs for SFY 06/07-13/14.

County Counsel

LEGAL SERVICES BUDGET PROGRAM (CONT'D)

2019-20 Objectives (Cont'd)

Provide legal support to “Renew ’22’s” consideration of the County’s delivery of services with available resources: Over the next several years this will likely require significant legal analysis of: 1) “mandatory” versus “discretionary” County services; 2) potential changes in how the County delivers some services; and 3) potential cost-saving options for personnel and pension costs.

Northern Branch Jail Project: Anticipated construction completion is November 2019. Because of the State’s notification and/or concurrence requirements involving AB900 bond financing, legal support will continue to be more complicated for this project than for non-AB900 projects. We expect to see a sustained, heavy demand for legal support throughout the next year for: 1) supporting the 9 separate contracts within this project; 2) State agreements; separate contracts for onsite construction and offsite construction; and 5 consultant agreements [construction management; architect; project expert; Inspector of Record; and testing and special inspections]; 2) construction “change orders;” 3) any construction claims, litigation, closeouts and audits; and 4) related to opening the Northern Branch Jail, services contracts and Northern Branch Jail policies and procedures.

Revised Tajiguas Resource Recovery Project: Continue to provide extensive and time-critical legal support for the construction of this project that will use conversion technology to extend the life of the Tajiguas Landfill.

Laguna County Sanitation District Wastewater Plant Upgrade project: We expect to review project documents related to public financing; contracts; and construction.

Continue to provide legal support following the 2015 Refugio Oil Spill in order to advance the County’s role in the Natural Resource Damage Assessment process.

Defend County and its employees in federal civil rights and state tort litigation, including:

- Eight cases already set for trial before March 2020: *Keller* (alleges dangerous condition of County road caused collision that left Plaintiff paralyzed); *Alcox* (alleges wrongful conviction); *Huerta* (alleges wrongful death of jail inmate); *Homar* (alleges dangerous condition of sidewalk caused trip/fall resulting in permanent injuries); *Barbere* (alleges excessive force during traffic stop); *Whitson* (alleges privacy and civil rights violations); *McCrory* (alleges employment discrimination and retaliation), and *Beveridge* (alleges dangerous condition of County Flood Control structure caused flooding, property damage, and personal injuries).

Defend/prosecute County’s interests in state and federal court “land use” and property rights litigation, including:

- *Lazy Landing/ Nomad Village*: Lessees and operator of mobile home park allege civil rights violations from application of Mobile Home Rent Control Ordinance.

Continue to reduce County’s self-insured liability for workers’ compensation “tail claims”—among the most difficult and potentially costly to resolve—through economical settlements with appropriate contributions from CSAC-EIA.

County Counsel

LEGAL SERVICES BUDGET PROGRAM (CONT'D)

2019-20 Objectives (Cont'd)

Provide legal support to the Board of Supervisors and County staff about significant “land use,” “water quality” and “water” issues, including:

- Cannabis ordinance amendments, permitting and enforcement.
- Consideration of: Agricultural Tiered Permitting Project; Circulation Element; Safety Element; Short Term Rental Coastal ordinance; Rodeo (Union Valley Parkway) Road Extension; Santa Claus Lane Streetscape, Beach Access and Parking; Advanced Meter (Southern California Gas Company) ordinance amendment; and Energy and Climate Action Plan implementation.
- Negotiations for renewal of the Water Service Contract between the County Water Agency and the United States Bureau of Reclamation -- the “Cachuma Project” -- which otherwise expires in 2020.
- Under the 2014 “Sustainable Groundwater Management Act,” assisting with preparation of comments and consultation on Groundwater Sustainability Plans for Cuyama Valley by January 31, 2020, and for Santa Ynez River Valley by January 31, 2022.
- Concerning the 1963 Water Supply Contract between the State and the Santa Barbara County Flood Control and Water Conservation District:
 - Potential assignment of the Water Supply Contract (WSC) to Central Coast Water Authority; and/or
 - Potential WSC amendment(s) concerning “California WaterFix” (previously “Bay Delta Conservation Plan”); and/or
 - Potential WSC extension, which would be complicated by 19 Water Supply Retention Agreements executed between 1983-1988, involving the Flood Control and Water Conservation District; and a Transfer of Financial Responsibility Agreement in 1991, between the Flood Control and Water Conservation District, and the Central Coast Water Authority; and/or
 - Potential negotiations with the Department of Water Resources and Central Coast Water Authority, for a contract to reacquire 12,214 acre-feet of “Table A” water.