

USA/WMI. The information included rate histories, claims against USA/WMI, financial information, compliance histories, and related materials. An administrative record of the entire proceedings pertaining to the Wilmar-USA/WMI assignment is available pursuant to the California Public Records Act through the office of the County Clerk-Recorder for the County of San Luis Obispo.<sup>28</sup>

### FRANCHISE ASSIGNMENT LAW

The law of assignment in the context of franchises and other contracts is beyond the scope of this article. However, certain basic contractual principles should be kept in mind when considering the actions of the County of San Luis Obispo with regard to the proposed Wilmar franchise assignment. For example, Wilmar expressly stipulated in the Franchise Agreement that the County selected Wilmar for its particular experience, skill and reputation in providing solid waste management services and for its financial resources.<sup>29</sup> Typically, where a contract calls in this way for the skill, credit and other personal qualities of a promisor, such as Wilmar, it is *not* assignable.<sup>30</sup> As previously mentioned, the County's Franchise Agreement is assignable by its terms, subject to the consent of the County, if the standards set forth in the Franchise Agreement are satisfied.<sup>31</sup>

It is also important to consider that solid waste franchises, to the extent that they create legal public monopolies, raise significant public policy concerns. Generally, monopolies are not favored creatures in the eyes of the law, particularly in view of the inevitable antitrust concerns. Nevertheless, monopolies in the form of solid waste franchises are expressly permitted by California law.<sup>32</sup> The public policy

concerns resulting from the establishment of legal solid waste monopolies through franchise agreements create additional concerns because solid waste is essentially comparable to public utilities like electricity, water, and natural gas.

### THE POLITICS OF THE DECISION TO APPROVE OR DENY THE USA/WMI ASSIGNMENT REQUEST

Compared to the rest of the civilized world, San Luis Obispo County is a strong pro-environmental community influenced by the coastal politics of California, as well as Cal-Poly State University at San Luis Obispo. For example, in 1988, the voters of San Luis Obispo County enacted Initiative Measure A, which requires a vote of the people before any onshore facilities can be established to support offshore oil platforms (which were proposed) off the coastline of San Luis Obispo County.<sup>33</sup> In 1976, the City of San Luis Obispo established one of the first curbside recycling programs in California. In 1990, the City of San Luis Obispo enacted one of the first municipal ordinances prohibiting smoking in public places, including bars and restaurants.<sup>34</sup> Throughout the 1990's, the County of San Luis Obispo and most of the incorporated cities adopted various forms of growth management ordinances, designed to limit new construction to prescribed annual limits based on resource constraints.<sup>35</sup>

As a picturesque community of bike lanes, alternative transportation, and scenic open space, it is hardly surprising that the residents of San Luis Obispo County might not be entirely enthralled with the idea of Godzilla coming to town.<sup>36</sup> Reflecting the political consciousness of the community, the San Luis Obispo County Board of

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<sup>28</sup> A copy of the Administrative Record can be obtained through the San Luis Obispo County Clerk-Recorder, subject to reasonable reproduction costs. Contact:

Office of the County Clerk-Recorder  
County of San Luis Obispo  
1144 Monterey Street  
San Luis Obispo, CA 93408  
805-781-5080

<sup>29</sup> Solid Waste Franchise Agreement, *supra*, section 6.D.

<sup>30</sup> 1 Witkin, Summary of California Law, pp. 831-832, Contracts, section 931 (9th ed. 1987).

<sup>31</sup> For cases discussing "reasonable consent" in other contexts, see *Shamrock Motors, Inc. v. Ford Motor Company*, (9<sup>th</sup> Cir. 1997) 120 F.3d 196; *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, (9<sup>th</sup> Cir. 1995) 69 F.3d 337; *Carma Developers, Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342.

<sup>32</sup> California Public Resources Code sections 400059(2) and 49200, et seq.

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<sup>33</sup> The enactment of Measure A led to Federal litigation, *WOGA v. Sonoma County, et al.* in which the cities and counties successfully defended the right of the voters to enact an initiative measure which regulates offshore oil development. To this date, there are still no offshore oil platforms located off the coast of San Luis Obispo County.

<sup>34</sup> San Luis Obispo County Code, Chapter 8.16 et seq.

<sup>35</sup> See e.g., San Luis Obispo County Code, Title 26 et seq.

<sup>36</sup> For example, a local "alternative" newspaper offered the following opinion: "County Staff and just about everyone else with a light on upstairs was uniformly against letting WMI take over the trash collection franchise of Wil-Mar Disposal Co., a local company WMI is trying to buy, along with every other garbage company in the Free World. Here is what I think: WMI really sucks. We're talking about some very bad people with a nasty track record of indictments for environmental damage, buying off political support, lying to regulators and even their own shareholders, strong-arming competitors, price fixing, and making threats to the counties they serve, including SLO County a few years back. . . . But don't worry. That's never stopped us from making dumb decisions in the past." *New Times*, "Opinion-The Shredder," January 7, 1999, page 10.