

LOCAL AGENCY FORMATION COMMISSION COUNTY FOR SAN BERNARDINO

215 North "D" Street, Suite 204, San Bernardino, CA 92415-0490
(909) 383-9900 • Fax (909) 383-9901
E-mail: lafco@lafco.sbcounty.gov
www.sbclafco.org

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FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #11 – REVIEW AND CONSIDERATION OF AMENDMENT
TO THE SAN BERNARDINO LAFCO POLICY AND PROCEDURE
MANUAL**

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Adopt the Mission Statement as presented by staff, or as modified at this hearing;
2. Repeal the existing San Bernardino LAFCO Policy and Procedure Manual;
3. Certify that the proposed revision and reorganization of the Policy and Procedure Manual is statutorily exempt from the provisions of the California Environmental Quality Act and instruct the Executive Officer to file a Notice of Exemption within five (5) days of this action;
4. Provide staff with any changes, corrections or amendments to the Policy and Procedure Manual;
5. Adopt the Policy and Procedure Manual as revised, reorganized and consolidated, as may be modified at the September hearing; and,
6. Direct staff to prepare the resolution adopting the Policy and Procedure Manual and place the item on the Consent Calendar for October 19, 2011 hearing.
7. Establish an annual review of the Policy and Procedure Manual to be undertaken in August or September of every year so that the document remains current and relevant.

BACKGROUND:

At the Commission's August 2010 workshop, an update of the existing Policy and Procedure Manual (hereafter shown as "Manual") was discussed as well as preparation of a "Mission Statement" for the Commission. Thereafter, staff began its review of potential amendments to the Manual and determined that no review of its structure or general presentation had been made since its adoption in the late 1970s. In addressing this issue, staff came to the conclusion that a complete review, revamp, reorganization, and revision of the Manual was necessary to make it more useable for the Commission, staff, the entities we serve and the general public. The document, Attachment #1 to this report, has taken the Commission's Rules of Order and General Policies, along with the supplemental policies and procedures adopted, common practices of the Commissions, and included them in a single document. The Manual has been revised in its sections to provide for a clearer identification of the general policies of the Commission. The questions regarding the Commission's Island Annexation Policy are addressed under Item #12 on the Agenda and should be reviewed in conjunction with this report.

The information which follows identifies the new structure of the Manual and outlines the general revisions and reorganizations which are recommended by staff:

MISSION STATEMENT AND COMMISSION OPERATIONS:

The first section of the Manual has been revised to include the new Mission Statement requested by the Commission at the August 2010 Workshop. As identified at the July hearing, this section includes the Countywide Vision Statement adopted by the County and the 24 Cities/Towns in the County to provide for a unified vision for a sustainable system of infrastructure, development, and community. LAFCO staff has tiered off this statement to provide for the Commission's Mission statement, which is proposed as follows:

On September 28, 2011, the Commission adopted the following mission statement to reflect the unique circumstances and conditions which exist within San Bernardino County and to promote the Countywide Vision:

"The broad mission of the Local Agency Formation Commission for San Bernardino County is to implement the legislative direction and policies embodied in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 in a manner that provides for an orderly and efficient growth pattern that reconciles the varied needs of San Bernardino County, promotes the Countywide Vision Statement, is in keeping with the provisions of the California Environmental Quality Act, and addresses the parameters of the principle acts for Cities and Special Districts.

One of the fundamental principles of the Local Agency Formation Commission is to ensure the establishment of an appropriate, sustainable,

and logical municipal level government structure for the distribution of efficient and effective public services. The Local Agency Formation Commission for San Bernardino County will encourage and promote communication among agencies (public and private), property owners and residents of the County to achieve these goals. The Commission's policies shall be carried out in an efficient and courteous manner."

The first order of business in addressing the Manual Update will be to review the statement, provide corrections or amendment to the statement, and finally to adopt the Mission Statement for San Bernardino LAFCO.

The balance of the section provides information on the Commission's authorities, the organization of the Commission – the statutory selection requirements and terms of office – ending with the inclusion of the former Rules of Order. Staff has amended the Rules to combine those addressing the same issue, such as financial disclosure, and reordered them to improve the sequence.

ACCOUNTING AND FINANCIAL POLICIES:

This is a new section to the Manual to address the specific policies that have been adopted and to include practices which have been implemented and should be memorialized as a direct policy of the Commission. The introduction to this section outlines the existing agreements between the Commission and the County to address Commission operations. The policies have been extracted from the various locations in the prior Manual and have been placed in a revised order, staff has extracted the Expense Reimbursement policy from the Human Resources Policy Manual placing it in this section (Policy #4), added the practices for the Annual Audit as a policy declaration (Policy #6) and included the new Reserve Policy adopted at the June 2011 hearing (Policy #7). It is staff's position that this will provide for an easier review and explanation of the matters affecting the financial and accounting procedures for the Commission as an independent entity.

HUMAN RESOURCES POLICIES AND PROCEDURES AND BENEFIT PLAN:

At the June 15, 2011 Hearing, the Commission adopted a Revised Human Resources Policy and an updated Benefit Plan. The only change to these documents through their inclusion within the overall Manual is to extract the expense reimbursement policy and transfer it to the Accounting and Financial section as noted above.

PROJECT/APPLICATION PROCESSING POLICIES:

Staff has taken all the policies related to processing of applications as well as service reviews and spheres of influence and included them in a single section. The internal structure of the Section divides into application processing, Out-of-Agency Service Contracts, Service Reviews, and Spheres of Influence. Staff has not made substantial changes to this section; however, there have been minor changes to:

- The Incorporation Policy now addresses the adoption of the OPR Incorporation Guidelines and makes them an appendix to the Manual for ease of review. A copy of the Incorporation Guidelines is included as Appendix 1 to the Manual.
- The Out-of-Agency Service contract section has been revised to exclude the recitation of the existing statute section and to clarify the introductory background section.
- The Service Review policies includes a revision to the Approach section to clarify the existing process for these types of service reviews and the identification of the OPR Municipal Service Review Guidelines which were adopted by the Commission in May 2003 as its guidelines for use in its service review. For reference, a copy of these Guidelines is included as Appendix 2 to the Manual.
- The Sphere of Influence Policies have been updated to:
 - reflect changes in the law requiring establishment of spheres of influence for special districts within one year of formation;
 - include a definition of a “zero sphere of influence” as has been the practice of the Commission for many years; and
 - provide for language changes to reflect the determinations now statutorily required.

The questions regarding the Commission’s Island Annexation Policy and proposed additions are addressed under Item #12 on the Agenda and should be reviewed in conjunction with this report.

ENVIRONMENTAL REVIEW GUIDELINES

Staff has included the separate policy document adopted as the Commission’s environmental review guidelines in 1995 in its entirety within the Manual. Updates within this section have been included to reflect the language of Cortese-Knox-Hertzberg Local Government Reorganization Act and the Commission’s adopted practice of not moving forward with a proposal until environmental litigation is resolved has been added as a policy at the end of the document. No other changes have been included.

However, the inclusion of this document within the overall Manual has illuminated again the need for a complete overhaul of the Guidelines. Such a review and update was proposed to be undertaken in 2004, but due to time and staffing constraints was not completed. As a part of the FY 2012-13 Budget review, staff will be requesting that the Commission move forward with this update either through a Request for Proposal (RFP)

process or single-source contract with the Commission's environmental consultant depending upon the estimated cost for the project.

SPECIAL DISTRICTS REPRESENTATION POLICIES:

Again, LAFCO staff has placed the entire section of the prior Policy Manual into the amended Manual document. In reviewing the provisions, revisions have been included which address changes in the State law which affect the processing of changes of organization and the activation or divestiture of functions or services for special districts. The major change has been to identify the process for activation or divestiture of functions or services which is now considered to be a change of organization, requiring a Certificate of Filing, a Property Tax Transfer process under Revenue and Taxation Code Section 99, a protest process after Commission approval and the issuance of either a Certificate of Completion or Certificate of Termination following a protest proceeding.

FORMS:

The Commission is required to adopt its forms for use, at a minimum, to address the submission of protest. For San Bernardino LAFCO, the Commission has reviewed and adopted the full range of forms used in application processing. In this update process the following changes to forms have been proposed:

1. Notice of Intent to Circulate Petition and Landowner Consent forms have been corrected to make them official forms and remove confusion as to their use as examples for submission. This change will require applicants in the future to use these forms only for processing.
2. LAFCO staff has renamed the former "Justification for Proposal" form to "Application and Preliminary Environmental Description" form. The former name was confusing to many applicants. In addition, following the questions which arose with the processing of the San Bernardino Island application, the form now includes a clear identification of indemnification and the clear understanding regarding the extension of existing taxes, fees, and assessments upon annexation. In preparing these changes, staff reviewed other LAFCO forms throughout the State for the appropriate language and has developed a hybrid between San Diego LAFCO and Orange LAFCO language.
3. Supplement forms for all changes have been updated to outline the requirement for submission of a Fiscal Impact Analysis which addresses a minimum five-year projection of revenues and expenditures for the change.
4. The Application for Service Extension has been updated to include the indemnification requirement.

5. Under Service Reviews, the number of forms has been reduced to a single form for use in the mandatory service review process. Prior forms have been deemed to be checklists, listing of guidelines and/or data sheets for staff support not really a form subject to Commission review and adoption.

The balance of the forms within this section are unchanged. Staff is recommending that the Commission adopt these changes.

ENVIRONMENTAL CONSIDERATION:

At the July 2011 hearing, staff identified that the review of the efforts to revamp, revise, and reorganize the Manual with the Commission's Environmental Consultant, Tom Dodson, and Legal Counsel resulted in the recommendation that an environmental assessment of the project be undertaken. This prompted the need to continue the consideration to the September hearing.

Mr. Dodson has reviewed the actions proposed to revise, reorganize, and update the Policy and Procedure Manual and has indicated that it is his recommendation that the matter is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the updated Manual has no potential to cause an adverse effect on the environment; and therefore, the project is exempt from the requirements of CEQA as outlined in the State CEQA Guidelines, Section 15061(b)(3) and the Commission's Environmental Guidelines. It is recommended that the Commission adopt the Statutory Exemption for this project and direct the Executive Officer to file a Notice of Exemption with the appropriate agency within five days.

CONCLUSION:

First, staff recommends that the Commission adopt its Mission Statement, providing for amendments, additions, or changes to the statement provided. Second, staff recommends that the Commission provide its additions, amendments or corrections to the revamped and reorganized Manual and take the actions necessary to adopt the new document. Finally, staff recommends that the Commission establish an annual review of its Policy and Procedure Manual, to take place at the August or September hearing of each year, to make sure that the document remain current in the future.

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Attachments:

1. [Revised and Amended Policy and Procedure Manual](#)
2. [Letter Dated September 6, 2011 from Tom Dodson and Associates Recommending a Statutory Exemption](#)