

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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DATE: AUGUST 9, 2005

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #5: Consideration of Special Counsel for LAFCO 2981 – Sphere of Influence Reductions for Cities of Fontana and Rialto and Waiver of Associated Costs

RECOMMENDATION:

1. Retain Jeffrey Goldfarb of Rutan and Tucker as Special Counsel for LAFCO 2981; and,
2. Accept offer of payment of the costs associated with Special Counsel for LAFCO 2981, not to exceed \$10,000, from Fifth District Supervisor Josie Gonzales through allocation of Priority Needs Funds from the County.

BACKGROUND:

At the July 20th hearing, the Commission discussed the need for Special Counsel for consideration of LAFCO 2981 due to LAFCO Legal Counsel Clark Alsop's removal on the basis that he represents the City of Fontana and it has objected to the actions proposed by the Bloomington Incorporation Commission (hereinafter BIC) to reduce its sphere of influence. At that hearing, questions arose regarding the costs associated with the contract for Special Counsel and the assignment of payment for those costs to the applicant, BIC. BIC requested that the matter be deferred to allow them to discuss their options and the Commissioners expressed concern regarding the need for payment of these costs by the community group. The Special Counsel portion of the item was continued to the August hearing to allow for further discussion on the issue of whether to waive the charges for Special Counsel in this case.

As background, the Commission's current fee policy assigning the costs for Special Counsel to the proposal's applicant has been in place since May 2001 and was included in the Commission's fee schedule as allowed by Government Code Section 56384(b) (copy included as Attachment #1). The Commission has imposed the payment of these costs on a number of occasions and received approximately \$23,000 during Fiscal Year 2004-05 to recover these costs. In each of these cases, the applicant has been a city, special district, or developer.

The question for the Commission is whether in this case it wishes to waive those charges for the BIC application to reduce the spheres of influence for the Cities of Fontana and Rialto. If the Commission feels it is appropriate to waive the imposition of this fee for the BIC proposal, since they are a grassroots community group seeking to process a change, the costs for Special Counsel could be absorbed by the Commission. The Commission's policies for waiver of fees allow for this to occur.

However, during the interim between hearings, LAFCO staff has been notified that Supervisor Gonzales has requested approval for an allocation from the County's priority needs budget of \$10,000 to cover the cost of Special Counsel for the sphere of influence reduction proposal. The Board of Supervisors Agenda item (copy included as Attachment #2) would allocate \$10,000 to the County's Economic Development Department which would in turn contract with LAFCO to pay the costs associated with Special Counsel up to the \$10,000 amount.

Therefore, the options available to the Commission in reviewing the policy determination are:

1. Waive the fee to recover Special Counsel costs for the processing of LAFCO 2981, relieving BIC of this obligation.
2. Accept the contractual relationship with the County to fund the costs for Special Counsel up to \$10,000, also relieving BIC of this obligation.
3. Uphold the fee policy and require BIC to pay the costs associated with the hiring of Special Counsel.

While, in the staff's view, it is appropriate to charge an applicant as allowed by law to recover the costs associated with the need for Special Counsel, it is the staff's recommendation that the Commission accept the contractual relationship offered by the County to fund the costs of Special Counsel not to exceed \$10,000. This will alleviate the costs being charged to BIC, who would have financial difficulty absorbing the cost, while not requiring that the costs be absorbed by all the agencies that are required to fund the Commission.

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Attachments:

1. Copy of Government Code Section 56384, Fee Schedule Page
Outlining Special Counsel Charges, and Fee Schedule
Implementation Policies
2. County Board Agenda Item #64 “Allocation from FY 2005/06
Priority Policy Needs Budget”