

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

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DATE **MAY 6, 2005**

FROM **KATHLEEN ROLLINGS-MCDONALD, Executive Officer**

TO **LOCAL AGENCY FORMATION COMMISSION**

**SUBJECT: AGENDA ITEM 10B: Review and Adoption of Final Budget for
Fiscal Year 2005-06**

RECOMMENDATION:

1. Adopt the Fiscal Year 2005-06 Final Budget as presented.
2. Adopt an amended policy and procedure related to Disclosure and Waiver of LAFCO Legal Counsel Conflict Issues as outlined and authorize the signing of the Public Agency Conflict letter as presented.
3. Direct the Executive Officer to submit to the County Auditor/Controller-Recorder the adopted Final Budget and request the apportionment of the Commission's net costs to the County, Cities and Independent Special Districts pursuant to the provisions of Government Code Section 56381.

BACKGROUND:

The Commission's annual budget process began at the April hearing through adoption of the Proposed Budget for Fiscal Year 2005-06. The Proposed Budget included an outline of the anticipated appropriations, revenues, and policy items for Commission consideration. The staff recommendation adopted at the April hearing included the approval of a 2.5% cost-of-living increase for LAFCO employees, a contract for performance of an audit of the financial records of the office by Moreland and Associates, the agreement for support from the County Information Services Department related to computer operations, website operations and digitized mapping, and the approval of purchasing replacement computer equipment for the LAFCO office. In addition, the April recommendation included the direction to staff to return at the May hearing with additional information and a response to any comments received from the Cities, Independent Special Districts or the County. Copies of the Final Budget

Spreadsheet and Narrative are included as Attachments #1 and #2 respectively to this report.

Following the April hearing, the Proposed Budget was forwarded for comment, as required by law. As of the date of this report, the only comment received related to questions on the development of the budget and the relationship of the carryover into the next fiscal year for processing of applications. No concerns have been provided by any of the Cities, Towns, Independent Special Districts, or the County regarding the Proposed Budget as adopted at the April hearing. If concerns are received following the publication of this report, staff will provide those to the Commission at the hearing along with an oral response.

One item that staff wished the Commission to consider during this budget review relates to the Commission's current policy regarding disclosure and consideration of conflict issues for LAFCO's Legal Counsel. Counsel Alsop and staff have discussed this issue and are proposing a modification to the existing policy which requires that the Commission consider every potential conflict at a noticed hearing with the Chairman authorized to sign the waiver notification. Attachment #3 to this report is a letter from Counsel Alsop outlining an alternative procedure which would reduce the time and expense in reviewing these conflict issues. The proposed policy and procedure is outlined as follows:

POLICY #34 – Waiver of LAFCO Legal Counsel Conflicts of Interest

Subject to procedures defined below, the Commission authorizes the Executive Officer to waive conflicts of interest under Rule 3.310 of the California Rules of Professional Conduct for LAFCO Counsel's public agency clients.

PROCEDURE:

LAFCO Counsel and the Executive Officer shall discuss each potential conflict and make the following determinations:

- 1) Where controversy is identified by either party, no waiver is approved.
- 2) Where no controversy is identified, a waiver will be tentatively approved subject to the following:
 - (a) In each case where a waiver is tentatively approved, the Executive Officer shall individually notify the Commission members of his/her proposed decision.

- (b) In the event the Executive Officer receives no objection from any Commissioner, the waiver is approved.

This policy will transfer the ability to sign the waiver of conflict to the Executive Officer subject to a specific procedure. During this procedure, if controversy is established at any time, special counsel will be retained through the existing process requiring notification of the applicant and consideration by the Commission. In addition, should there be concern by any member of the Commission regarding the waiver of conflict issue, special counsel will be required. Staff believes that this process will streamline the consideration while protecting the Commission's interests; as well as provide a cost-savings to applicants. This proposed modification in procedure does not change, in any way, the need for disclosure and consideration of the conflict as it is required by the California Rules of Professional Conduct identified as Rule 3-310.

During the current fiscal year, the agenda items for consideration by the Commission of these conflicts has resulted in publication, mailing and reproduction costs of approximately \$600. Special Counsel costs of \$16,134.58 have been incurred during this period related to matters involving development issues within the Donut Hole (\$1,075), City of Colton Island Annexation applications (\$2,325), City of Fontana Reorganization (LAFCO 2968) (\$8,433.25 to date) and the City of Rancho Cucamonga Annexations (\$4,301.33).

If the Commission authorizes this modification in policy, it is recommended that the Chairman be authorized to sign the Public Agency Conflict letter included as Exhibit "A" to Counsel Alsop's letter. This will return the Commission's practice back to its pre-2000 policy (copy included as Attachment #4) in compliance with the standard provisions of the Legal Counsel contract.

The staff will be happy to answer any questions from the Commission prior to or at the hearing regarding any of the items within the budget documents or this report.

/krm

Attachments:

1. [Final Budget Spreadsheet](#)
2. [Final Budget Narrative](#)
3. May 2, 2005 Letter from LAFCO Legal Counsel Regarding Update on Procedures for Conflicts of Interest
4. February 13, 1996 Memorandum from LAFCO Legal Counsel Clark Alsop on Waiver Policy