

# LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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**DATE:** NOVEMBER 13, 2012

**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer

**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** AGENDA ITEM #5 – Update of LAFCO Policy and Procedure Manual, Subsection Project/Application Processing to include Policy and Procedure on LAFCO Legal Counsel Waiver

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## **RECOMMENDATION:**

Staff recommends that the Commission adopt Resolution No. 3170 reflecting its adoption of the Amendment to the Policy and Procedure Manual, Subsection Project/Application Processing, Guidelines for Evaluating Proposals to include the Policy and Procedure for Waiver of LAFCO Legal Counsel Conflicts of Interest.

## **BACKGROUND:**

At the June hearing, the Commission reviewed and considered the adoption of a revised, amended and reorganized Policy and Procedure Manual. At that hearing, the Commission reviewed the changes proposed to comply with statutory updates most specifically related to the definition of disadvantaged unincorporated communities, the Attorney General Opinion affecting unincorporated islands of territory under the provisions of Government Code Section 56375.3, and determined to adopt the Countywide Vision Statement.

Since that consideration, staff has discovered that the Policy and Procedure Manual previously adopted did not include the policy and procedure for waiver of Legal Counsel conflicts of interest. Former Policy #34 has been in effect since May of 2005 and was overlooked in the renumbering and categorizing of existing policies. No change is proposed for the policy, simply that it be included in its appropriate place in the Guidelines for Evaluating Proposals portion of the Project/Application Processing section of the Policy and Procedure Manual. The policy and procedure are outlined below and will become Policy #10 of this subsection:

10. **WAIVER OF LAFCO LEGAL COUNSEL CONFLICTS OF INTEREST**  
(Adopted May 18, 2005)

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.

The adopted procedure for the Waiver of LAFCO Legal Counsel Conflicts Policy is as follows:

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.

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Attachment #1 to this report provides the updated Project/Application Processing Subsection of the Policy and Procedure Manual. Staff is recommending that the Commission adopt the draft resolution, included as Attachment #2 to this report, to adopt the revised section and correct this inadvertent omission during the processing of the Policy and Procedure Manual. Adoption of the resolution will direct that the Executive Officer provide a copy of the resolution to all affected and interested agencies and update the Policy and Procedure Manual on our website. A full copy of the update manual will be provided to each Commissioner as well.

KRM

Attachments:

1. [Updated Subsection – Project/Application Processing of the Policy and Procedure Manual Dated November 2012](#)
2. [Draft Resolution No. 3170](#)