

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

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DATE: AUGUST 11, 2008
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #5: Consideration of Special Counsel for LAFCO
3013 – Municipal Service Review and Sphere of Influence Update
for the Town of Apple Valley

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Continue LAFCO 3013 – Municipal Service Review and Sphere of Influence Update for the Town of Apple Valley to the September 17, 2008 Hearing; and,
2. Retain the firm of Colantuono & Levin, PC, Ms. Holly O. Whatley and/or Mr. Michael Colantuono, as Special Counsel for LAFCO 3013 – Municipal Service Review and Sphere of Influence Update for the Town of Apple Valley.

BACKGROUND:

LAFCO Legal Counsel Clark H. Alsop is a partner in the firm Best Best and Krieger (BB&K). BB&K has recently been retained as Town Counsel for the Town of Apple Valley. Staff notification of this potential conflict occurred after publication of the Notice for the August Commission Hearing. Pursuant to the Commission's policy related to Legal Counsel conflict (copy included as an attachment), the Executive Officer and Legal Counsel reviewed the application identified as LAFCO 3013 and were of the opinion that a controversy existed. Therefore, a waiver of conflict will not apply.

Under the usual procedures, staff would contact Jeffrey Goldfarb from Rutan and Tucker to represent the Commission as he has in previous circumstances. However, the firm of Rutan and Tucker, through Mr. Joel Kuperberg, is representing the Town of Apple Valley on its General Plan Update and has advised the Town on environmental questions that LAFCO staff raised on the Town's General Plan Amendment/Pre-Zone of its sphere of influence territory and beyond. Due to the adverse positions taken on these questions, LAFCO Counsel and I have determined that a conflict exists with Mr. Goldfarb serving as Special Counsel.

LAFCO staff has contacted the firm of Colantuono & Levin, PC (C&L) to represent the Commission on this MSR and Sphere of Influence Update. Ms. Holly Whatley of C&L has provided a retainer agreement for this service (copy attached) indicating the hourly rate for Counsel will be \$205.

The actions before the Commission are: 1) note the need to continue LAFCO 3013 to the September Hearing; 2) note Mr. Alsop's disqualification on the application; 3) note Mr. Goldfarb's disqualification on this application, and 4) direct staff to retain the firm of Colantuono & Levin for legal services as LAFCO Special Counsel. Since this matter relates to a Municipal Service Review and Sphere of Influence Update, the costs for Special Counsel will be borne by the Commission.

/KRM

Attachments:

Commission Policy #34 Waiver of LAFCO Legal Counsel Conflicts
Letter Retainer Agreement with Colantuono & Levin, PC