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**AGENDA REPORT**

Consent | Action

June 4, 2018

**TO:** San Diego Commissioners

**FROM:** Keene Simonds, Executive Officer  
Holly Whatley, Commission Counsel

**SUBJECT:** **Approval of Conflict Waiver for County Counsel Services | Representation from Senior Deputy Rachel H. Witt**

**SUMMARY**

The San Diego Local Agency Formation Commission (LAFCO) will consider approving a conflict waiver consenting to County Counsel's simultaneous representation of the Commission and County of San Diego. The waiver would allow Senior Deputy Rachel H. Witt to continue to advise LAFCO on employment related matters and ahead of an anticipated increase in consultation beginning in 2018-2019 based on the adopted workplan. The waiver would also allow Ms. Witt to represent the County in negotiating a new support services agreement with LAFCO. Approval would match an earlier action taken by the County Board of Supervisors.

**BACKGROUND**

**Legal Services**

San Diego LAFCO utilizes two resources in receiving legal services. The first and primary resource involves legal services provided by Commission Counsel Michael Colantuono and his firm Colantuono Highsmith and Whatley (Grass Valley | Pasadena). These primary services involve ongoing guidance under LAFCO law as well as related areas, such as the California Environmental Quality Act. The second legal resource is provided by County Counsel and through Senior Deputy Rachel H. Witt and generally pertains to advising LAFCO on human resources and other related matters as needed.

## **DISCUSSION**

This item is for San Diego LAFCO to consider approving a conflict waiver to enable County Counsel to provide continued and expanded legal services to the Commission and through Senior Deputy Rachel H. Witt. The waiver is requested by County Counsel and precedes the Executive Officer's own request of Ms. Witt to participate in several anticipated projects that will substantively exceed the scope of her typical general advisement services to LAFCO. The waiver will also address a related Executive Officer request for Ms. Witt to represent the County in negotiating with LAFCO an update to an existing support services agreement. A summary of this and other projects contemplated for the waiver follows.

- The waiver would enable Ms. Witt to provide advice to LAFCO in step with its own scheduled job class and salary schedule review for non-management positions as provided under the Commission's 2018-2019 workplan. This project marks the first dedicated personnel review in more than 10 years with preliminary work having recently been commenced as detailed in the accompanying footnote.<sup>1</sup> It is envisioned Ms. Witt would provide ongoing consultation to LAFCO to help ensure all related legal considerations are addressed as well as remaining appropriately consistent with County personnel policies and practices.
- The waiver would enable Ms. Witt to represent the County in negotiating an update to the existing memorandum of understanding between LAFCO and the County as provided under the Commission's 2018-2019 workplan. This document has not been substantively updated since its establishment in 1974 and no longer adequately addresses the current relationship and/or needs of the respective agencies. Given her familiarity with both agencies Ms. Witt has been asked by the Executive Officer to serve as the County's lead on the project. The County is agreeable to this arrangement and has approved its own waiver for Ms. Witt to proceed as lead.
- The waiver would enable Ms. Witt to assist and provide advice to LAFCO in establishing new and/or amended policies as needed to independently clarify related employment and retirement benefits. This project would be informed through the completion of the two preceding projects. It is envisioned Ms. Witt would provide guidance on reconciling LAFCO's specific needs as a stand-alone agency relative to the more extensive personnel policies of the County.

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<sup>1</sup> Senior Analyst Darah Frondarina with County Human Resources has been assigned to LAFCO and is overseeing the data collection and review process underlying the job class and salary review project. Ms. Frondarina recently completed her initial interviews with LAFCO's non-management employees and will be scheduling individual desk audits over the next month before proceeding with a review of comparable positions within the County as well as with other LAFCOs. Ms. Frondarina will make recommendations to the Executive Officer on potential changes to either job classes or wages. The Executive Officer will draw from Ms. Frondarina recommendations in determining whether to proceed with forwarding changes to the Commission for formal approval.

## **ANALYSIS**

Approving the conflict waiver provides San Diego LAFCO two distinct benefits going forward. The first benefit is to address existing and continued legal services provided by County Counsel through Ms. Witt in advising LAFCO on general personnel matters. These existing services and Ms. Witt's expertise therein are particularly valuable given LAFCO's policy to align personnel functions – ranging from job classes and benefits to recruitments – with the County. These services are also expected to increase in regularity beginning in 2018-2019 and expand in scope from addressing compliance issues to now also advise on policy decisions as detailed in the preceding section. The second benefit is to allow Ms. Witt to represent the County in negotiating an updated County-LAFCO support service agreement. Markedly, it is reasonable to assume Ms. Witt's familiarity with both agencies' organization and needs will help formulate and expedite a mutually beneficial agreement while limiting the costs to both agencies in terms of resource demands.<sup>2</sup>

## **ALTERNATIVES FOR ACTION**

The following alternatives are available to San Diego LAFCO:

Alternative One (Recommended):

Authorize the Executive Officer to sign the conflict waiver on behalf of the Commission as prepared by County Counsel and provided in Attachment One.

Alternative Two:

Continue consideration of the item to the next regular meeting and provide direction to staff as needed.

Alternative Three:

Take no action.

## **RECOMMENDATION**

It is recommended San Diego LAFCO proceed with the actions outlined in the preceding section as Alternative One.

(over)

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<sup>2</sup> Commission Counsel would directly assist the Executive Officer in negotiating an updated support service agreement with the County.

**San Diego LAFCO**

June 4, 2018 Regular Meeting

Agenda Item No. 3 | Approval of Conflict Waiver for County Counsel Services

**PROCEDURES**

This item has been placed on San Diego LAFCO's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified by the Commission.

Respectfully,



Keene Simonds  
Executive Officer

Attachment:

- 1) County of San Diego County Counsel: Waiver Request



## County of San Diego

THOMAS E. MONTGOMERY  
COUNTY COUNSEL

OFFICE OF COUNTY COUNSEL  
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SENIOR DEPUTY  
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May 7, 2018

Keene Simonds  
Executive Director  
San Diego Local Agency Formation Commission (LAFCO)  
9335 Hazard Way, Suite 200  
San Diego, California 92123

Re: Conflict Waiver Request

Dear Keene:

You have asked the Office of County Counsel ("Office"), to advise LAFCO in updating service agreements between the County of San Diego ("County") and LAFCO and providing advice on various issues, including, but not limited to retirement and employment issues. As you know, this Office is primary legal advisor to the County and Special Counsel to LAFCO. In order for our Office to advise both you and the County in these matters, we need to obtain the written consent of both LAFCO and the County.<sup>1</sup>

While the Office of County Counsel is willing to represent LAFCO in providing advice on matters of general concern in the areas of retirement and employment issues, we are unable to provide legal advice to LAFCO in updating service agreements between the County and LAFCO. While both parties want a successful and fair agreement, due to the differing interests, we recommend that your General Counsel represent LAFCO in that specific matter.

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<sup>1</sup> Rule 3-310(C)(3) of the Rules of Professional Conduct governing the practice of law in California states, in relevant part:

(C) A member shall not, without the informed written consent of each client:

....


(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

However, if LAFCO consents to my representing the County in negotiating the County-LAFCO service agreement(s) and wishes to continue to use County Counsel for various retirement and employment benefits, we request LAFCO provide written consent to do so. LAFCO should give careful thought to the pros and cons of granting the waiver we request. The pros, of course, include continued access to our services. The cons include the risk that we might be perceived to have divided loyalties and provide less than our most vigorous representation of LAFCO. We believe we can provide vigorous and effective representation to both clients, but LAFCO must make that judgment for itself. LAFCO should consult its General Counsel before granting this request.

If LAFCO is willing and has authorized the waiver we request, please have this letter signed where indicated below and return it to me.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By   
Rachel H. Witt, Senior Deputy

RHW:rhw  
18-00404

On behalf of LAFCO, I have reviewed and understand the foregoing letter. I understand that signing this letter is evidence that LAFCO has agreed to consents to the simultaneous representation of LAFCO and the County of San Diego by the Office of County Counsel, including but not limited to, Senior Deputy Rachel H. Witt, as provided herein.

By: \_\_\_\_\_  
Name: Keene Simonds  
Title: Executive Director  
Date: