

DATE: June 4, 2008

TO: LAFCO Administrative & Policy Committee  
Jeff Blanchfield, Susan Adams, Chris Burdick

FROM: Peter Banning, Executive Officer

SUBJECT: Proposed Amendment of Adopted LAFCO Policies, Procedures & Guidelines - Withdrawal of Proposals and Indemnification for Legal Costs

In January of this year, staff circulated a preliminary memorandum to the Administrative and Policy Committee surveying areas of the adopted Policies, Procedures and Guidelines in need of revision (see attached). The memo described policy issues or the need for changes to adopted policies in a number of areas. Policy Committee members have not commented on the contents of the previous memo to date. Staff plans to bring proposed changes to the Commission for consideration incrementally over the course of the rest of the calendar year. Staff recommends that the Commission consider the following policy amendments.

#### Indemnification for Legal Costs

In acting to process or approve a proposal, the Commission may incur legal liability even though the applicant will benefit from the approval. In order to appropriately allocate the costs of legal action to the applicant, the Commission should require applicants to indemnify LAFCO by requiring applicants to sign an Indemnification Agreement. The agreement would be signed by the applicant at the time an application is submitted for processing. Staff proposes that Chapter III, Section 2.A. listing of application requirements in the Commission's adopted Policies, Procedures and Guidelines be amended by adding the following text:

## 9. Indemnification Agreement

Applicants shall indemnify LAFCO against the costs of litigation arising from its actions on a requested boundary change or other application by signing an agreement containing the following language:

As part of this application, applicant and real party in interest, if different, agree to defend, indemnify, hold harmless, and release the Marin County Local Agency Formation Commission, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Marin County Local Agency Formation Commission, its agents, officers, attorneys, or employees.

### Withdrawal of Proposals

Applicants, both those submitting applications by petition and those submitting by resolution, sometimes wish to withdraw their proposals from further consideration. Since any number of individuals may be involved in submitting a petition or resolution of application and because not all of those individuals may agree on a request to withdraw a proposal, it is important for the Commission to set forth a policy governing these events.

Staff proposes that Chapter III, Section 2.C. of the Commission's adopted Policies, Procedures and Guidelines be replaced by the following added text (the existing provisions of Chapter III, Section 2. C through F would be re-numbered):

#### C. Withdrawal of Proposals

Applicants wishing to withdraw their applications from further processing or review by LAFCO may do so under the following conditions:

1. Prior to issuance of a certificate of filing, proposals submitted by petition may be withdrawn with the written request of all persons signing the petition of application.
2. Prior to issuance of a certificate of filing, proposals submitted by resolution of application may be withdrawn on receipt of a resolution requesting withdrawal from the applicant agency.

3. After issuance of a certificate of filing, proposals for change of local government organization may be withdrawn at the discretion of the Commission.

### **Conclusion & Recommendation**

The policy amendments described above will benefit the Commission and clarify its requirements to the public. Staff recommends that the Commission review and approve the proposed policy amendments discussed above or direct staff to develop additional information or further alternatives.

Respectfully submitted,

Peter Banning  
Executive Officer