

MENDOCINO

Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482
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COMMISSIONERS

Maureen Mulheren, Chair
County Member

Gerald Ward, Vice-Chair/Treasurer
Public Member

Gerardo Gonzalez
City Member

Katharine Cole
Special District Member

Candace Horsley
Special District Member

Glenn McGourty
County Member

Mari Rodin
City Member

Francois Christen, Alternate
Special District Member

Douglas Crane, Alternate
City Member

John Haschak, Alternate
County Member

Richard Weinkle, Alternate
Public Member

STAFF

Executive Officer
Uma Hinman

Clerk/Analyst
Larkyn Feiler

Counsel
Scott Browne

REGULAR MEETINGS

First Monday of each month
at 9:00 AM in the
Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

Approved June 5, 2023

MINUTES

Mendocino Local Agency Formation Commission

Regular Meeting (Hybrid) of Monday, May 1, 2023

County Board of Supervisors Chambers 501 Low Gap Road, Ukiah, California

1. CALL TO ORDER and ROLL CALL (Video Time 4:25)

Chair Mulheren called the meeting to order at 9:01 a.m.

Regular Commissioners Present: Maureen Mulheren, Gerald Ward, Gerardo Gonzalez, Glenn McGourty, Mari Rodin, Candace Horsley (arrived at 9:02 a.m.), and Katharine Cole

Regular Commissioners Absent:

Alternate Commissioners Present: Richard Weinkle, Francois Christen (arrived at 9:03 a.m.), Douglas Crane

Alternate Commissioners Absent: John Haschak

Staff Present: Uma Hinman, Executive Officer and Larkyn Feiler, Clerk /Analyst

2. PUBLIC EXPRESSION

None

3. OTHER BUSINESS

None

4. CONSENT CALENDAR (Video Time 6:22)

4a) April 3, 2023 Regular Meeting Summary

4b) April 2023 Claims & Financial Report

Commissioner Ward asked for clarification on the City of Willits NOP and EO Hinman responded that a Notice of Preparation (NOP) is part of the California Environmental Quality Act (CEQA) process to solicit early comments for an Environmental Impact Report (EIR) and the Counsel time spent is not reimbursable since there is no application on file.

Commissioner Ward asked if GIS costs for applications is recouped from applicants and EO Hinman confirmed that is the case unless work is related to public inquiries or the work plan.

April 2023 Claims totaling:	\$ 15,205.49
Hinman & Associates Consulting	13,318.67
P. Scott Browne	900.00
Commissioner Stipends	149.13
Petty Cash	188.29
Streamline	50.00
Ukiah Valley Conference Center	599.40

Motion: Approve the consent calendar.		
Motion Maker: Ward	Motion Second: McGourty	Outcome: Passed unanimously
Roll Call Vote: Ayes: (6) Ward, Gonzalez, McGourty, Rodin, Horsley, Cole, Mulheren		

5. PUBLIC HEARING ITEMS (Video Time 9:22)

5a) PUBLIC HEARING Proposed Fiscal Year 2023-24 Budget and Work Program

Chair Mulheren opened the Public Hearing at 9:06 a.m. for the Commission to consider adoption of the proposed budget and work program for Fiscal Year (FY) 2023-24.

EO Hinman provided a [staff presentation](#) on the item. (Video Time 9:47 - 25:50)

The following are summary Commission discussion points for this item.

1. The coast region water/wastewater districts MSR/SOI study will evaluate the ability of private companies to deliver water as feasible. Determinations on capacity, deficiencies, and ability to provide adequate services to the service area are critical to the study and rely on information from providers and various other sources. Once adopted the study will be posted online and made available to the Mendocino County Water Agency as requested.
2. A Request for Proposals (RFP) for outsourcing the work plan is estimated to be prepared in the remainder of this fiscal year and consultant development of the MSR/SOI study is anticipated to be completed by June of 2024.
3. Staff has not been informed of smaller districts that struggle or are unable to pay LAFCo apportionment fees.
4. The remainder work plan funds (\$37,000) from this fiscal year will be applied towards the next fiscal year budget revenues and are included in the unreserved equity (\$56,000).
5. The proposed Basic Services budget line item supports approximately a 0.76 full-time equivalent employee (FTE) shared between the Executive Officer, Analyst, and Clerk/Administrative Assistant; applications and Work Plan tasks are under separate budget accounts. Applications revenue for the current fiscal year is approximately \$19K. The FTE is limited by the budget and in 2016 was 0.5 FTE shared between the Executive Officer, Analyst, and Clerk.
6. In-house staff time that will become available from outsourcing the work plan will be redirected to application processing and organizational improvements, such as policy and procedure updates and a streamlined MSR/SOI process.
7. There is a balance between addressing LAFCo directives and the ability of agencies to pay LAFCo apportionment fees. There is concern about a substantial increase in future apportionment fees if excess funds are not available to balance future budgets. Other staffing options should be considered next year. Historically there are excess funds each year.
8. A cost efficiency option is to connect MSR/SOI Updates with application requests since many agencies experience little change.
9. It is desirable to increase in-house staff productivity, which is more cost-effective than relying on consultants.
10. Staff recommends developing a streamlined MSR/SOI process with the intent for cost savings over time by reducing the number of and extending the time in between in-depth studies. This would involve a comprehensive 10-year review schedule and a midpoint streamlined checklist review, especially for agencies without significant changes since the prior study, to satisfy the LAFCo law requirement of SOI Updates every 5-years as needed.

Chair Mulheren opened the Public Comment Period at 9:32 a.m. No public comment was received.

Chair Mulheren closed the Public Hearing and Public Comment Period at 9:33 a.m.

<p>Motion: Adopt Resolution 2022-23-11 approving the Proposed Budget and Work Program, and direct staff to:</p> <p>a) Distribute the adopted Proposed Budget and Work Program to the 55 funding agencies (county, 4 cities, and 50 independent special districts) as required by GOV 56381; and</p> <p>b) Schedule a public hearing for June 5, 2023 to consider and adopt of a Final Budget and Work Program for FY 2023-2024.</p>
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Motion Maker: Gonzalez	Motion Second: McGourty	Outcome: Passed unanimously
Roll Call Vote: Ayes: (6) McGourty, Rodin, Ward, Gonzalez, Horsley, Cole, Mulheren		

6. WORKSHOP ITEMS

None

7. MATTERS FOR DISCUSSION AND POSSIBLE ACTION

7a) Firm/Individual Selection to Provide General Legal Counsel Services (Video Time 37:19)

The Commission considered the Executive Committee recommendation of Marsha A. Burch Law Office for firm/individual selection for General Legal Counsel Services and proceeding with contract negotiation.

EO Hinman provided a presentation. The following are summary Commission discussion points for this item.

1. The Executive Committee had a robust discussion on this item regarding firm/individual qualifications, conflicts of interest, evaluation criteria and scoring, and representation priorities.
2. Ms. Burch is well qualified to provide the Commission General Legal Counsel Services and the Commission can seek Special Legal Counsel Services for specific areas of expertise if needed.
3. There was concern that the RFP process could have been better. Staff presented the rankings at a Personnel Committee meeting with the Commission Officers and then the Executive Committee held a meeting to consider the Personnel Committee recommendation for the selection of Marsha A. Burch Law Office. It would have been more objective to have proposal scoring, in-depth conversions, and interviews at the Executive Committee level.
4. There was concern regarding staff's assignment of points for the scoring. Points were reduced for conflicts of interest whether managed or not, and there was no objective system for point reductions related to rates and qualifications.
5. The point structure and criteria were adapted from processes in other LAFcos due to the short turn-around time.
6. Commissioner Rodin's scoring resulted in the following top-ranking firms to proceed with interviews: Best Best & Krieger LLP; Colantuono, Highsmith & Whatley, PC; and Sloan Sakai Yeung & Wong.
7. The Personnel Committee, which consisted of staff and the Commission's Officers, received essentially the same packet of information as the Executive Committee. The Commissioner Officers independently reviewed the proposals and considered the scoring criteria and weighting before the Personnel Committee meeting.
8. The Personnel Committee review also considered personal experience, online research, and staff preference.
9. There have been no follow-up questions posed to the RFP responders.
10. The two top criteria should be expertise and neutrality, which are key in good legal advice and preventing conflicts.
11. Commissioner Horsley's scoring resulted in the following top-ranking firms: Colantuono, Highsmith & Whatley, PC; Sloan Sakai Yeung & Wong; and Best Best & Krieger LLP.
12. Ms. Burch has significant experience with the CKH, CEQA, local government, and litigation and has demonstrated reliability and problem solving in representing the Commission over the last year plus in Mr. Browne's absence. Mr. Brown is current counsel and has extensive LAFco experience with eight LAFcos, even if not noted in the proposal.
13. The importance of outcome over cost is critical for legal services; problem solving is essential to limit conflict.
14. Marsha A. Burch Law Office was the top-ranking firm because of the existing quality working relationship, cost-efficiency, the demonstrated excellence in providing General Counsel Services, and staff preference to proceed with existing representation instead of starting over in building trust and bringing new counsel up to speed.
15. It is inefficient to have Special Legal Counsel if General Legal Counsel can provide all the services needed.
16. Larger firms have paralegals that can perform work at lower rates.

17. The flat fee billing approach does not include a refund for unused retainer, it may be less costly to pay by the hour.
18. Staff preference is important, but staff experience is limited, and a different firm may be equally responsive.
19. The qualifications of a larger firm do not necessarily equate to the qualifications of the individual that will actually provide services. Often larger firms rely on paralegals to perform the work, and the preference for direct attorney involvement from a larger firm may ultimately result in much higher costs. It is a common approach for local agencies to have General Counsel that provides routine services and Special Counsel for areas of specific expertise.
20. The RFP criteria and weighting should be refined and memorialized in local policy for future processes.
21. Counsel is an integral part of the team, and it is important to ensure a good fit on paper and face-to-face.

No public comments were provided on the item.

Motion: Approve the Executive Committee recommendation of Marsha A. Burch Law Office for firm/individual selection for General Legal Counsel Services and proceed with contract negotiation.		
Motion Maker: Ward	Motion Second: Gonzalez	Outcome: Failed by one vote
Roll Call Vote: Ayes: (3) Ward, Gonzalez, Mulheren		Nays: (4) McGourty, Rodin, Horsley, Cole

Discussion ensued regarding the need for more time to further evaluate the proposals and conduct interviews at the Executive Committee level before returning to the Commission with a recommendation, since there is a high level of unresolved debate on this item.

Further proposal evaluation/questions should address the following items, at minimum:

- a) LAFCo-specific qualifications of the primary and back-up counsel.
- b) The types of and approach to conflicts of interest.
- c) The type of work that would be handled by attorneys and paralegals.
- d) Experience with the types of issues staff foresees in future applications (finances, consolidations, tax sharing, etc.).
- e) Experience with the expanded level of services anticipated (CEQA comments, policy development, etc.).

Staff was directed to continue the evaluation/interview process with the following firms/individuals: Marsha A. Burch Law Office; Colantuono, Highsmith & Whatley, PC; Sloan Sakai Yeung & Wong; and Best Best & Krieger LLP.

Staff was directed to confirm whether Commissioners that are not members of the Executive Committee can attend the meeting when interviews are conducted and clarify whether non-members can participate in the meeting.

Chair Mulheren asked Commissioners to provide additional questions for the firms/individuals to EO Hinman as soon as possible after the meeting to assist in preparing for the interviews.

8. INFORMATION AND REPORT ITEMS

8a) Work Plan, Current and Future Proposals (Video Time 1:30:55)

EO Hinman presented the item and noted that there are four applications on file that are pending a tax share agreement, one pre-application request is on file from the City of Fort Bragg related to a proposed annexation of newly acquired properties for recreation and water storage, and a request was received from the City of Ukiah to withdraw the application to detach the overlap areas with the Ukiah Valley Sanitation District. Staff is also working on developing the scope of the coastal water/wastewater agencies MSR/SOI study.

Commissioner Ward asked for more information about the Anderson Valley Community Services District annexation proposal and EO Hinman confirmed that this annexation was initially included with a 2017 application for activation of ambulance powers; however, the annexation component was removed following the tax share negotiation process.

Commissioner Rodin asked for clarification regarding at what point in the application process does staff seek legal advice and EO Hinman responded that it is project-specific, noted that there have been a number of legal questions on the Elk CSD and CSA 3 proposed activation of latent powers, and at minimum counsel reviews proposed resolutions.

8b) Correspondence

None

8c) CALAFCO Business and Legislation Report (Video Time 1:35:46)

EO Hinman reported that the CALAFCO Staff Workshop was last week, the CALAFCO Legislative Committee meeting is scheduled for May 5, 2023, and more information can be provided upon request.

8d) Executive Officer's Report (Video Time 1:36:16)

EO Hinman provided an update that Hinman & Associates Consulting hired a second part-time analyst to assist with application processing and work plan development. Commissioner Horsley asked if the new hire is local and EO Hinman responded that the new hire has Land Use Planning and MSR experience and will be working remotely from San Diego.

8e) Committee Reports (Executive Committee, Policies & Procedures, Work Plan Ad Hoc) (Video Time 1:37:19)

Chair Mulheren asked if the Policies and Procedures Committee will meet after the legal counsel services RFP process regarding policy development for future RFPs. EO Hinman agreed and noted that it would best to wait for counsel selection as they will be needed to review proposed policy language.

8f) Commissioners Reports, Comments or Questions (Video Time 1:38:03)

Commissioner Horsley gave apologies for tardiness due to an urgent home repair issue.

ADJOURNMENT (Video Time 1:38:31)

There being no further business, the meeting adjourned at 10:35 a.m.

The next regular meeting of the Commission is scheduled on Monday, **June 5, 2023** at 9:00 a.m. The meeting will be conducted in a hybrid format to accommodate both in-person and remote participation. The in-person meeting will be held in the County Board of Supervisors Chambers at 501 Low Gap Road, Ukiah.

Live web streaming and recordings of Commission meetings are available via the County of Mendocino's YouTube Channel. [May 1, 2023 YouTube meeting recording](#). Links to recordings and approved minutes are also available on the [LAFCo website](#).