

## MEMORANDUM

TO: MGSA Board of Directors

FROM: David J. Byers, General Counsel

DATE: March 7, 2007

RE: Agenda Item C: Future Administration of MarinMap by MGSA

At our last Board of Directors meeting, I was authorized to do legal research regarding the appropriate manner for the MGSA to take over administration of MarinMap. Mike Garvey, our Executive Officer, had concerns that if the members of MarinMap became members of the MGSA, it could diminish the powers of the MGSA because a joint powers agency can only, theoretically, exercise powers common to all the member agencies. Government Code § 6502. Some of the MarinMap signatories such as Marin LAFCO are agencies of limited powers.

I have reviewed the relevant law. Although there is case authority that a joint powers agency can possess certain implied powers, that doctrine is rather vague and it would not be prudent to rely upon it. Because some of the member signatories of MarinMap are very limited power agencies by their nature, i.e., LAFCO, it would be far better for MGSA to not make such MarinMap signatories new members of MGSA but to continue to administer MarinMap through a new Joint Exercise of Powers Agreement modeled upon the existing agreement. MarinMap is not an entity; it is an agreement. My recommendation is that the present Joint Exercise of Powers Agreement which has the Marin Telecommunications Agency administering the MarinMap be modified such that MGSA substitute for the MTA. The following steps would be necessary:

1. I would redraft the MarinMap agreement. I do not anticipate making any

substantive changes, only substituting MGSA for MTA where appropriate and ensuring that the MGSA has all necessary powers for administrating MarinMap;

2. MarinMap signatories would have to, by resolution, enter into the new Joint Exercise of Powers Agreement in which MGSA administers MarinMap. I do not see any way to eliminate this requirement and I do not see why it would be particularly controversial.

I am available for questions at the meeting tomorrow. Paper copies of the memorandum will also be available for distribution.